



NEW YORK
CITY BAR

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November 11, 2008

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Temporary Liquidity Guarantee Program

Dear Mr. Feldman:

The Association of the Bar of the City of New York writes to provide comments on the Interim Rules posted in the Federal Register, to urge that IOLTA (Interest on Lawyer Trust) accounts be covered by the Temporary Liquidity Guarantee Program (TLGP), regardless of the amount in the account.

IOLTA accounts should be covered because they are, in effect, non-interest bearing accounts and because not to include them would greatly reduce a private, widely accepted stream of funds that support legal services for society's most needy.

IOLTA accounts generate interest, but not to the lawyer who owns the account, nor to the clients whose funds are placed in the account. Rather, with the explicit permission of federal regulators, these accounts pay interest only to third parties – organizations that provide legal assistance to the poor. IOLTA programs, started over 20 years ago, have generally been accepted by the legal community. IOLTA accounts consist of funds held by the lawyer on behalf of a client that are deposited for short periods, in circumstances where the funds cannot generate sufficient interest to justify segregating and collecting that interest. The account holds pooled funds, as administratively it is overly burdensome to require a lawyer to maintain segregated accounts for each client. Prior to the formation of IOLTA's in the various states, these funds were held in non-interest bearing accounts. However, the IOLTA concept was to draw the significant income generated by all these accounts in a state and supplement the government funding provided to legal services, so that more people who desperately need legal services but cannot afford them can get the assistance they require.

Were the TLGP program to exclude IOLTA accounts, lawyers holding client funds in trust would be placed in the difficult fiduciary position of choosing between maintaining the funds in an IOLTA account, thus benefiting society but leaving those funds unprotected by federal deposit insurance, or opening a non-interest bearing account, thereby extending the insurance to all client-held funds. We should not place lawyers in this quandary, nor risk undermining the very successful IOLTA programs that have served the neediest in our country so well.

Despite government and pro bono efforts, less than a fifth of the legal needs of poor people in this country are met. People who live in or near poverty need the assistance of the legal system, often to a greater degree than those who can afford the services:

- the battered spouse and children need to preserve her health and safety;
- the veteran needs to obtain benefits he or she is entitled to;
- the family with defenses to an eviction of foreclosure needs to assert those defenses to continue to have a place to live;
- the indigent consumer needs to fight a fraudulent consumer debt;
- spouses seeking a divorce need help resolving child custody and visitation issues;
- the child in a troubled family needs the appointment of a guardian.

IOLTA accounts have been an excellent source of assistance to these and millions of people nationwide who require these types of assistance. In New York alone, over \$250 million in funds have been generated for legal assistance programs. These are funds generated in the private sector, and the process has been accepted as a reasonable and worthwhile way of conducting business. Indeed, a previous exception was made for IOLTA accounts in an exception to Regulation D, in recognition of their unique importance. Particularly in these economic times – when more people will fall into poverty and have legal needs they cannot afford – it is particularly essential to preserve IOLTA accounts.

The Association of the Bar of the City of New York urges the FDIC to construe IOLTA as a “non-interest bearing transaction account” in its final rules governing the TLGP program, or to make clear that IOLTA accounts have unlimited deposit insurance coverage.

We appreciate your consideration of our views.

Very truly yours,



Patricia M. Hynes