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November 13, 2008

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Attn: Comments RIN # 3064-AD37 Temporary Liquidity Guarantee Program

Dear Mr. Feldman:

I am writing on behalf of the National Legal Aid & Defender Association (NLADA), its members and the millions of low-income Americans with critical legal needs they represent to comment pursuant to your request regarding the Interim Rule implementing the Temporary Liquidity Guarantee Program (TLGP).

We strongly urge that the FDIC make an accommodation for Interest on Lawyers Trust Accounts (IOLTA) as it implements the Interim Rule to ensure that the essential resources generated by IOLTA that are primarily used to provide legal representation to the impoverished are not adversely affected. The Rule should ensure full insurance coverage regardless of the size of the individual deposit for IOLTA accounts similar to that provided by the TLGP for noninterest-bearing accounts.

NLADA, founded in 1911, is the oldest and largest national, nonprofit membership organization devoting all of its resources to advocating equal access to justice for all Americans. NLADA champions effective legal assistance for people who cannot afford counsel, serves as a collective voice for both civil legal services and public defense services throughout the nation and provides a wide range of services and benefits to its individual and organizational members. NLADA has more than 700 program members representing more than 15,000 attorneys in the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico and the U.S. Virgin Islands.

NLADA and its members are deeply troubled by the potential unintended consequences on the IOLTA programs in all 50 states inherent in the TLGP if these accounts are not provided unlimited insurance coverage similar to that contained in the Transaction Account Guarantee Program. Lawyers and firms participating in the IOLTA program often handle short term client deposits in excess of \$250,000. The unintended effect of the TLGP could be to force these lawyers, under their fiduciary duty to protect client

assets, to move these deposits into noninterest-bearing accounts if such protection is not provided.

Under the IOLTA rules or legislation in every state lawyers only deposit funds that are short-term or small in amount so that they **cannot** earn interest for the client due to the banking and administrative costs associated with handling the account. Thirty-seven states require lawyers to deposit such short-term funds in IOLTA accounts. Neither the lawyer nor the client has any expectation of earning interest from these funds.

IOLTA programs have been adopted by the highest courts or legislatures of all states, under their supervisory powers to regulate the legal profession, for the purpose of helping meet the enormous need for legal assistance that confronts low-income individuals, families and communities across the nation. Endorsed by the Conference on Chief Justices and the American Bar Association, IOLTA programs are an essential part of our civil justice system and strive to achieve "Equal Justice Under Law," the laudable objective carved in stone over the entrance to the Supreme Court.

A recent report issued by the Legal Services Corporation (LSC) entitled *Documenting the Justice Gap in America* found that existing LSC grantees were forced to turn away over half of their applicants who approached them for representation on issues with clear legal merit. IOLTA is the second largest resource available nationally to ensure that the justice gap is narrowed. Absent support from IOLTA, the citizens ably served by these programs would, in effect, be excluded altogether from participation in our justice system, and would consequently be deprived of any ability to obtain its protection.

IOLTA serves an essential public purpose. IOLTA-funded programs have achieved meaningful results for hundreds of thousands of Americans who, by virtue of such programs, have avoided eviction from the only housing available to them, obtained life-saving medical care, realized freedom from abusive spouses, relatives and institutional caregivers, collected restitution from unscrupulous merchants, and received public services and benefits that enable them to purchase life's basic necessities.

Just a few real-life examples of the various types of cases in which IOLTA has made a significant difference in the lives of needy Americans include:

- 1) *Legal aid providers rely on IOLTA funding to obtain critical Medicare or sustaining income during a medical crisis.*

In one example, a nurse's aide in her mid-30s with a three-year-old son was diagnosed with advanced breast cancer. For one year debilitating treatments prevented her from working and dissipated her savings. When she was wrongfully denied SSI benefits, the Community Legal Aid Society of Delaware amassed convincing evidence of her disability and persuaded an administrative law judge to award her desperately needed benefits on the spot.

Likewise, the Tennessee Justice Center (TJC) helped save a 13-year-old boy who was dying of respiratory complications. His family became lost in administrative

red tape when, although all medical personnel agreed that his condition required emergency surgery, the managed care company refused to pay. The TJC persuaded state officials to direct payment for the procedure, and the boy is successfully recovering.

- 2) *IOLTA funds programs assist rural farmers and ranchers with myriad legal and financial issues that plague small landowners coping with drought, water restrictions, natural disasters, and the everyday hardships of small farming operations. For instance, Nebraska Legal Services operates a Farm Mediation Service which offers farm borrowers and lenders the guidance of highly skilled impartial mediators to resolve disputes as an effective, confidential alternative to bankruptcy and foreclosure.*
- 3) *A working mother suffered cruel physical and emotional abuse at the hands of her unemployed husband. As a result, her child refused to speak. The Jacksonville Area Legal Aid Clinic successfully challenged the father's court-ordered custodial status (which he had obtained by threatening violence), secured an injunction requiring supervision of the father's visits, and assisted the mother in divorce proceedings. Removed from the violent environment, the child now speaks articulately.*

The need for legal advice and representation has never been more critical, as legal aid offices across the country are being besieged by additional requests resulting from the severe economic downturn. Poor people are always most deeply affected by bad economic times, experiencing huge legal needs related to unemployment, medical and psychological care, nutritional needs and the inevitable spike in domestic violence that results from financial stresses on family life.

Chief among the surge in service requests are those related to the potential loss of a home resulting from the foreclosure crisis. For many of these families, access to legal advice and assistance might be all that stands between them and the growing rate of homelessness facing needy families nationwide. NLADA has been encouraged by the FDIC's continuing concern in fashioning remedies for this enormous problem. Almost any response that is developed would be greatly facilitated if distressed homeowners had access to competent legal advice to help them protect their home.

Our members have any number of examples of cases they have handled that resulted in not only saving a home, but also righting significant injustices in instances of predatory lending abuse. For example:

- 1) *An 85-year-old woman who has lived in her home for 50 years defaulted on a \$25,000 home equity loan. She did not qualify for a prime product. A "Foreclosure Rescuer" offered to help her get the home equity loan repaid with a private loan, but in fact and without her realization of the true nature of the transaction, engineered a conveyance of ownership of the property to him. As a result, she lost \$150,000 of equity. Only through the intervention of a Minnesota*

legal aid lawyer was the client able to have the house returned to her. She was able to remain in the home because of a renegotiation of loan terms that she can actually afford.

- 2) *A client in Maine lives on island property that has been in his family for at least four generations. He is a lobsterman and he and his wife depend upon their boat to make a living. The couple got into trouble in 2003 when their lobster boat needed repairs, and a refinance company offered to help them take equity out of their home to pay for the repairs. In less than 2 years, predatory lending and repeat flipping grew their original mortgage on a modest island home from \$112,000 to \$400,000, plus over \$40,000 in fees. The case was complicated by the involvement of multiple lenders. After hundreds of hours of legal work by a Pine Tree staff attorney and co-counsel from the private bar over a three year period, the legal team was able to save the family's home from foreclosure.*

These real life examples are only a few of the thousands of instances where access to legal services made an enormous difference in the lives of low-income Americans. Without IOLTA, countless families would be denied the promise of equal justice in our society.

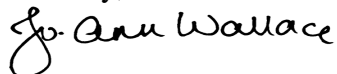
Therefore,

NLADA urges the FDIC to consider IOLTA accounts as noninterest-bearing accounts under the terms of the TLGP. As pointed out above, this position is supported by the very structure of IOLTA. No attorney or client has any expectation of receiving interest on the short-term escrow accounts that are accumulated to support the provision of legal assistance to the poor. Any accumulated interest is mandated by law in every state to serve the public interest and contribute to meeting the serious legal needs of those who cannot otherwise afford an attorney.

If the FDIC cannot consider IOLTA accounts to be noninterest-bearing, we would ask in the alternative that an exception be made in the TLGP interim rules providing unlimited deposit insurance to IOLTA accounts.

We appreciate your consideration of our comments. I would be happy to provide further information at any time.

Sincerely,



Jo-Ann Wallace
President and CEO