



## NEW MEXICO COMMISSION ON ACCESS TO JUSTICE

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November 13, 2008

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Federal Deposit Insurance Corporation  
[Comments@FDIC.gov](mailto:Comments@FDIC.gov)

RE: Temporary Liquidity Guarantee Program (TLGP):  
FDIC RIN # 3064-AD37

*Extending Full FDIC Insurance Coverage of IOLTA Accounts*

To Whom It May Concern:

The recently announced Temporary Liquidity Guarantee Program (TLGP) and the Interim Rule which provides full coverage on non-interest bearing deposit transaction accounts will deal an unintended, but potentially devastating blow to legal services funding in the State of New Mexico. The Interim Rule does not provide full coverage for Interest on Lawyer Trust Accounts (IOLTA), which are similar to these transaction accounts and which provide substantial funding for legal services programs for the poor.

The New Mexico Commission on Access to Justice is a statewide body dedicated to expanding and improving civil legal assistance to New Mexicans living in poverty. The Commission goals include expanding resources. New Mexico has one of the highest rates of poverty in the Nation, with approximately one-quarter of her people living at or below 125 percent of the poverty line. These people are all eligible for legal services. However, Legal Services Corporation data collected by the two New Mexico LSC programs in 2004 showed that on an annual basis they turn away approximately two people for every one they are able to serve. Although the amount of available resources has increased since 2004, legal service providers still do not have sufficient resources to provide legal services to all those who qualify for and desperately need those services. Most legal service providers obtain their funding not from one source, but rather in bits and pieces from the few funding sources available. *IOLTA funds are crucial as one of the few sources in New Mexico.* In 2008, twelve New Mexico nonprofits that provide civil legal services for the poor, improvements

in the administration of justice or legal education for the public will receive more than \$300,000 in IOLTA funding.

The unintended consequence of this Interim Rule is that a lawyer must choose between the interest which constitutes the funding capability of IOLTA accounts and FDIC insurance coverage. A lawyer's first duty in this situation is to the client. A client's total funds in one financial institution including the amount in an IOLTA account exceeding \$250,000 are eligible for unlimited insurance only if they are moved to a covered "non-interest bearing deposit transaction account." As co-chairs of the New Mexico Access to Justice Commission, we urge the expansion of expanding the TLPG to provide full coverage for IOLTA accounts, regardless of dollar amount, because:

- This is not the time to force lawyers to abandon a program that provides much needed revenue for legal aid for the poor, especially now with increases in foreclosures and evictions. While the need for IOLTA-generated income is great, a lawyer's paramount responsibility is the fiduciary duty to maintain security of client funds. Lawyers holding significant client funds must consider whether to continue to use their IOLTA accounts, as required by supreme court rule or legislation in many states, or to place their client funds in a fully insured, non-interest bearing deposit transaction account. The current TLGP Interim Rule might encourage lawyers to move their trust accounts; this would greatly reduce the interest income received by IOLTA programs, which nationally are the second largest source of funding for civil legal aid for the poor.

- IOLTA accounts are effectively the same as the covered transaction accounts. IOLTA accounts act as clearing accounts for pooled client funds. Funds are placed in IOLTA accounts because they cannot earn interest for an individual client net of banking charges and administrative fees. Client funds pooled in an IOLTA account are either nominal in amount or significant amounts held only long enough for a check to clear or for the attorney to disperse the funds. Typical funds held by a lawyer on behalf of clients include court filing fees, settlements and retainers.


- FDIC and Federal Reserve *exceptions* permit banks to pay interest on these otherwise similar transaction accounts. Almost 30 years ago, the FDIC and Federal Reserve granted an exception to banking regulations that prohibited the payment of interest on demand accounts. This exception was instrumental for states establishing IOLTA programs because it allowed interest to be paid for charitable purposes to a third party, the IOLTA program. Today, IOLTA programs

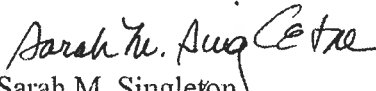
exist in all 50 states; 37 states *require* lawyers to deposit client funds that cannot earn net interest for the client in IOLTA accounts. New Mexico requires IOLTA accounts, but includes an annual procedure for lawyers to opt out.

- TLGP coverage is vital for IOLTA accounts, which may hold funds for a client that could exceed the \$250,000 coverage limit. IOLTA accounts may hold large amounts of client funds for short periods of time, such as when the lawyer holds large settlements for multiple clients prior to distribution. Establishing multiple accounts at various financial institutions for amounts over \$250,000 for a client is not a viable solution: attorneys cannot know whether a client may later deposit additional funds of its own at a particular bank, and it is not practical to separate a large deposit that would be in the IOLTA account just long enough for the check to clear.

Thank you for your consideration of these issues.

Sincerely,

  
Honorable Petra Jimenez Maes  
Co-Chair, Access to Justice  
Commission

  
Sarah M. Singleton  
Co-Chair, Access to Justice  
Commission

SMS/jr