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By E-Mail and Facsimile 202-828-3500

Sheila C. Bair
Chair, Federal Deposit Insurance Corporation
550 17th Street, NW
Room 6028
Washington, D.C. 20429

Re: Inclusion of Lawyer Trust Accounts in Temporary Liquidity Guarantee Program

Dear Chairman Bair:

I am writing to urge that Lawyer Trust Accounts be included in the recently announced Temporary Liquidity Guarantee Program (TLGP). The FDIC should provide full coverage, regardless of dollar amount, for these interest-bearing deposit transaction accounts, which provide critically important funding for civil legal services for the poor.

IOLTA accounts contain client funds held by a lawyer that cannot earn net interest for the client, either because the funds are nominal in amount or held only for a short period of time. Under the States' IOLTA programs, attorneys pool these nominal or short-term funds into one account, with the bank remitting the interest to non-profit organizations to fund civil legal services for the poor or programs to improve the administration of justice. IOLTA accounts may operate in this fashion under an exception to Regulation D (prohibiting the payment of interest on demand accounts) that was granted in the 1980s by the Federal Reserve in recognition of the unique nature of IOLTA and its charitable purposes.

By their terms, the States' IOLTA rules apply only to client funds that are so small in amount or held so briefly that they cannot produce net interest for an individual client, after consideration of the costs related to establishing and maintaining the account. For that reason, clients have no expectation of earning interest on these deposits. It is therefore appropriate to consider an IOLTA account as a non-interest bearing transaction account for purposes of the TLGP. IOLTA accounts produce interest only because court and banking rules allow remission of interest on pooled client funds that could not otherwise benefit individual depositors.

The Temporary Liquidity Guarantee Program should not create a situation in which client funds in excess of $250,000, currently held in IOLTA accounts, are eligible for unlimited insurance only if they are removed from an IOLTA account and placed in "non-interest bearing deposit transaction accounts." Absent clarification from the FDIC, attorneys holding significant client funds may feel compelled to place these client funds in a non-interest bearing deposit transaction accounts in order to qualify for the new insurance. This would have a serious, adverse effect on IOLTA programs in Massachusetts and other states. A significant portion of IOLTA-program funds come from interest generated by large deposits (for real estate transactions or litigation settlements) held by attorneys for a short period prior to distribution. If these funds are now diverted to non-IOLTA accounts, critical legal aid programs will suffer.

The ends served by IOLTA – providing equal access to the courts and improving the administration of justice – are so universally embraced that each of the fifty States has implemented the program in some fashion. In Massachusetts, IOLTA-funded programs provide representation for low-income clients in family, housing, consumer, employment, education, disability, and similar legal matters. IOLTA funds also support programs to improve the administration of justice, such as alternative dispute resolution projects and legal education programs. The Massachusetts Legal Assistance Corp. (MLAC), which funds 18 civil legal services programs statewide, receives a substantial portion of its funding from the IOLTA program. Lower interest rates and the steep decline in the number of real estate transactions have resulted in a 54% decrease in the income MLAC receives from the IOLTA program. If IOLTA accounts are not covered by the TLGP, substantial funding for legal services to the poor will be lost at a time when these services are most needed -- especially with the current wave of home foreclosures and residential evictions. The FDIC should not, in these difficult times, enact regulatory changes that could gut a program that provides much needed revenue for legal aid for the poor.

I urge the FDIC to construe IOLTA accounts as non-interest bearing transaction accounts under TLGP. Alternatively, I urge the FDIC to grant an exception in the TLGP rules explicitly stating that funds in IOLTA accounts have unlimited deposit insurance coverage regardless of dollar amounts.

Thank you for your consideration of this important issue.

Cordially,

Martha Coakley

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