THE STATE BAR
OF CALIFORNIA

JEFFREY L. BLEICH
PAST PRESIDENT

November 13, 2008

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

Re: Comments RIN #3064-AD37

Dear Chairperson Bair:

I am writing to you as a partner in a national law firm, Munger, Tolles & Olson LLP, the immediate past President of the State Bar of California, and most importantly as a person who has devoted a good deal of his professional career towards ensuring the fair administration of Justice in various federal and state roles.

I thank the FDIC for creating the TLGP to "strengthen confidence and encourage liquidity in the banking system by, among other things, providing full coverage of non-interest bearing deposit transaction accounts." This is an important interim rule, however, as released for public comment it does not expressly include coverage for Interest on Lawyers' Trust Accounts (IOLTA). This ambiguity imperils one of the most important sources of funds needed to ensure access to justice by indigent persons. By legislation, attorneys in California are required to deposit into a pooled IOLTA account all client funds that are too small in amount or held for too brief a period of time to net a positive return for the client. The interest or dividends earned on those accounts is remitted to the State Bar for the charitable purpose of providing access to justice for millions of Californians.

As an attorney, I am concerned that not extending the TLGP to include IOLTA accounts creates a dilemma for California lawyers who are on the one hand obligated to protect their client funds and are, on the other hand under a statutory obligation to deposit short term and nominal funds into an IOLTA account that may not be fully

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covered by FDIC insurance. Compliance with legal and ethical obligations under this scenario would require the lawyer to split client funds into multiple financial institutions to stay within $250,000 insurance limits, which would create an untenable burden on both attorneys (who would need to build relationships with multiple financial institutions and then track and report on multiple accounts) and State Bar staff (who are responsible for regulating and monitoring IOLTA accounts).

As a lawyer who has himself devoted thousands of hours to serving the poor on a pro bono basis, I can attest to the importance of the IOLTA program to support the almost 100 nonprofit legal aid programs that serve those within our society who are most vulnerable. Working with legal aid organizations, I have volunteered to help mothers suffering domestic abuse, families living on the streets, parents facing the loss of their children, and veterans in need of benefits. I know that the IOLTA program supports a system of legal aid that has been stretched thin from decades of inadequate funding leaving millions of deserving people without access to a lawyer. IOLTA funding is absolutely critical to protect frail seniors from consumer fraud and elder abuse, ensure that veterans receive the benefits to which they are entitled, and that disabled children receive the education and healthcare they need to thrive. Since the inception of the IOLTA program in California 25 years ago, over $300 million in IOLTA revenue has been granted to nonprofit organizations that provide civil legal aid to those who need it most. Failure to include IOLTA accounts in the TLPG could threaten this program.

For these reasons, I strongly urge the FDIC to construe IOLTA as non-interest bearing transaction accounts under the TLGP or in the alternative, grant an exception in the TLGP explicitly providing that funds in IOLTA accounts have unlimited deposit insurance coverage regardless of dollar amounts.

Sincerely,

Jeffrey L. Bleich
Partner, Munger, Tolles & Olson, LLP
Immediate Past President, State Bar of California