

SUPREME COURT OF NEVADA
JAMES W. HARDESTY, JUSTICE
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November 13, 2008

Via E-mail and Facsimile at (202) 828-3500

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

RE: Temporary Liquidity Guarantee Program

Dear Chairwoman Bair:

On behalf of the Nevada Supreme Court and Nevada's Access to Justice Commission, I write you to voice our concerns regarding the unintended consequences resulting from the recently announced Temporary Liquidity Guarantee Program (TLGP). The TLGP does not fully protect lawyer trust accounts under Nevada's mandatory Interest on Lawyer Trust Account (IOLTA) program. We strongly urge the Board of Directors of the Federal Deposit Insurance Corporation to either deem IOLTA accounts "Noninterest-bearing Transaction Accounts," as defined in TLGP, or amend the TLGP regulations to expressly cover all funds deposited in IOLTA accounts. We have reviewed the letter to you by Thomas M. Susman on behalf of the American Bar Association and we endorse his request that the FDIC board provide full TLGP coverage for IOLTA accounts because, as Mr. Susman points out:

- IOLTA accounts are effectively the same as payroll accounts;
- While these accounts pay interest, banks do so with explicit permission of federal regulators and only pay the interest to third party non-profit IOLTA programs;
 - Thirty-Seven (37) states, including Nevada, require lawyers to deposit client funds that cannot earn interest for the client or attorney in IOLTA accounts; and
 - Now 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 the increased foreclosures and evictions.

Sheila C. Bair, Chair
Federal Deposit Insurance Corporation
November 13, 2008
Page Two

In addition, we urge the Board to afford IOLTA accounts protection under TLGP because failure to do so will have a negative impact on Nevada's legal aid programs.

On October 23, 2008, Nevada's Access for Justice Commission ratified a civil legal needs assessment for Nevada. The report indicated that the IOLTA programs supply funds that assist individuals with various legal needs, from domestic and disability issues to financial and immigration issues. The report also evidenced, however, that Nevada's access to justice resources are seriously inadequate. For example, in 2008, the ratio of persons in poverty residing in Nevada to legal service providers was 5,256 to every one legal aid lawyer. Moreover, nearly one-third of all households in Nevada have a total household income under \$35,000 per year; that figure combines the incomes of all members of the household. And, a telephone survey indicated that over two-thirds of the low to moderately low income households experience significant civil legal problems that would ordinarily require at least some assistance from a lawyer in order to resolve them. Only 20% of those with one or more legal problems received assistance from a lawyer.

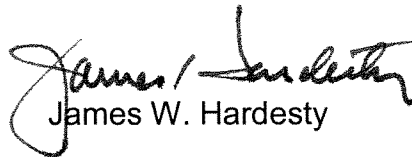
Recent research has shown that the interest rate paid by Nevada's banking institutions on lawyers' client-trust accounts was minimal in comparison to other western states' banking institutions. Therefore, over the past six months, the Nevada legal community has made substantial efforts to secure the cooperation from banking institutions within the state to increase the amount of interest paid on lawyers' client-trust accounts for this important charitable need. Our efforts have proven fruitful as several banks have agreed to increase the interest rate they pay to a more competitive level. In light of the progress that the Nevada legal community has made, FDIC protection of IOLTA accounts is imperative to lawyers who transfer their client-trust accounts to banks that are offering more competitive interest rates. We suspect that if IOLTA accounts remain unprotected under TLGP, our vigorous attempts to promote competitive interest rates for lawyer client-trust accounts will be frustrated and Nevada's legal aid programs will suffer.

The TLGP's failure to fully cover IOLTA accounts will have a devastating effect on Nevada's already limited legal assistance resources. Not only is it unreasonable, it is unnecessary to force lawyers to choose between contributing to Nevada's legal aid community and insuring their client's funds. These harmful effects can be avoided by categorizing IOLTA accounts as "Noninterest-bearing Transaction Accounts" under the TLGP or expressly including IOLTA accounts as covered accounts in the program.

Sheila C. Bair, Chair
Federal Deposit Insurance Corporation
November 13, 2008
Page Three

Accordingly, we urge the FDIC to either deem IOLTA accounts as "Noninterest-bearing Transaction Accounts," as defined in TLGP, or amend the TLGP regulations to expressly cover IOLTA accounts. We greatly appreciate your time and consideration on this matter. Please do not hesitate to contact us if you have any questions or seek additional information.

Sincerely,



James W. Hardesty

JWH/mms

c: All Nevada Supreme Court Justices
Senator Harry Reid
Senator John Ensign
Representative Dean Heller
Representative Shelley Berkley
Representative Jon C. Porter
Representative-Elect Dina Titus
Access to Justice Commission Members
Board of Governors, State Bar of Nevada