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*California's protection and advocacy system*

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November 13, 2008

*Via E-Mail to [Comments@FDIC.gov](mailto:Comments@FDIC.gov)*

Sheila Bair, Chair  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, N.W.  
Washington D.C. 20429

Re: RIN 3064-AD37 (12 CFR 370)

Why the Temporary Liquidity Guarantee Program (TLGP) must treat Lawyer Trust Accounts under IOLTA ("Interest on Lawyer Trust Accounts) programs the same way as Non-Interest Bearing Accounts for purposes of unlimited deposit insurance.

I am a member of the Board of the National Health Law Program (N-HeLP), a back-up center providing legal and technical support to legal services programs on health issues including those programs serving limited income persons with disabilities such as the program I work for. One of the offices of N-HeLP is in California Part of the funding for N-HeLP's work comes from the California IOLTA program. I am writing to urge you to include IOLTA accounts under the TLGP as a transaction account with FDIC protection regardless of the amount of money that may be transitorily in them.

N-HeLP provides critically important services to local programs to enable them to effectively represent their clients in negotiating their way through the intricacies of State and federal Medicaid law including eligibility, access to services, rights in medical facilities, coordination and complications with Medicare and private health care coverage, and the special rules protecting

children. The assistance N-HeLP provides to legal services attorneys and advocates is through its publications and issue papers and other materials on its website, coordinating listserves and conference calls, training as well as one-on-one support and cocounseling. This is complicated stuff. Even the Supreme Court agrees: “The Social Security Act [including Medicaid] is among the most intricate ever drafted by Congress. Its Byzantine construction . . . makes the [Medicaid] Act ‘almost unintelligible to the uninitiated.’” *Schweiker v. Gray Panthers*, 453 U.S. 34, 43 (1981).

I give you one small example of the importance of N-HeLP’s work on behalf of low-income people supported in part by IOLTA funding: I was representing a child who was placed by his school district in an out-of-state program because of the complexity of his special education and disability needs. He was covered by our State Medicaid program. When he needed medical assistance the local children’s hospital refused to accept his State Medicaid as payment because California pays much less than other States. Access to ongoing medical care was essential to his health and his ability to continue in the out-of-state education program. With the help of N-HeLP’s website and publications, I was able to determine that the hospital had received Hill-Burton funds in the past which imposed an obligation to serve Medicaid patients in perpetuity and the regulatory and statutory basis of that obligation. With that help I was able to draft a letter that resulted in the Children’s hospital accepting him as a patient and accepting California’s lousy Medicaid rates.

Under the TLGP, the FDIC insures bank accounts to \$250,000 and provides full coverage for non-interest bearing accounts, such as payroll accounts, regardless of the amount in the account. IOLTA or Lawyer Trust Accounts must be included in the definition of non-interest bearing accounts or, in the alternative, the TLPG interim rules must be modified to allow unlimited deposit insurance for IOLTA accounts. This conclusion is compelled by the nature and history of these accounts.

Many years ago Lawyer Trust Accounts were non-interest bearing accounts into which lawyers placed short-term client funds – i.e., funds from real estate closings, retainers, settlements, etc. Neither the clients nor the attorney received or had any expectation of receiving any interest on these transaction accounts. With the permission of federal regulators and pursuant to State law, California along with 36 other states enacted laws pooling the IOLTA accounts so that they produce interest on the

aggregate of funds in Lawyer Trust Accounts for the benefit of low-income individuals who receive free legal services. Thus IOLTA accounts should be treated as non-interest bearing transaction accounts for purposes of the TLGP.

If the Interim rules are not clarified, then lawyers consistent with their fiduciary responsibilities could not use IOLTA accounts. Establishing multiple transaction accounts at various banks is not a viable solution. Often funds are in the IOLTA account only long enough for checks to clear and the funds to be disbursed. Further, a lawyer cannot know when funds in an account may exceed \$250,000.

On behalf of low income persons including people with disabilities who need legal services to access health care and therefore need N-HeLP, I urge you to treat Lawyer Trust Accounts that are part of an IOLTA program like other transactional accounts and extend TLGP coverage to those accounts regardless of the amount of money in them.

Sincerely,

A handwritten signature in cursive script that reads "Marilyn Holle".

Marilyn Holle

Senior Attorney

And Member of the Board of the National Health Law Program

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