

NATIONAL CONFERENCE OF BAR PRESIDENTS

The organization of the nation's present, past and future bar leaders

c/o ABA Division for Bar Services • 321 North Clark Street, 20th Floor • Chicago, IL 60654-7598

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November 13, 2008

Mr. Robert E. Feldman

Executive Secretary

Federal Deposit Insurance Corporation

550 17th Street, N.W.

Washington, DC 20429

ATTN: Comments RIN #3064-AD37

Dear Mr. Feldman:

I write to you on behalf of the National Conference of Bar Presidents, a national organization comprised of state and local bar associations as well as bar leaders throughout the United States, regarding the impact of the Temporary Liquidity Guarantee Program (TLGP) on IOLTA (Interest on Lawyers' Trust Accounts). As we understand it, TLGP, as currently configured, does not provide for FDIC protection of IOLTA accounts. We urge you to take appropriate action to prevent this untoward and I dare say unintended situation.

IOLTA programs exist in all fifty states and the Territories of the District of Columbia and the Virgin Islands and are mandatory in thirty seven states. They are comprised of client funds that are too small in amount or held for too brief a period to earn interest for the client, net of bank charges or administrative fees, and are placed in a pooled interest-bearing trust account. The funds are then used to provide civil legal services to those who cannot afford them, for law related education, and for the administration of justice. IOLTA accounts are functionally equivalent to non-interest bearing accounts as it relates to the clients and the attorneys. Regulation D and appropriate IRS regulations made this vital program possible.

The problem now existing is two-fold: First, attorneys in the thirty seven states which are required to participate in IOLTA are obliged at the same time to protect their clients' funds. By participating in IOLTA, they thereby risk the funds in the event of the failure of a banking institution in which they are deposited in an uninsured account. By not participating in IOLTA, they would be in violation of the licensure requirements and subject to discipline. This is the proverbial rock and a hard place.

The second substantial issue is that without IOLTA functioning as it has so well for so many years, the funds from IOLTA, which have helped support civil legal services for the poor and which are so critical to that important endeavor, will be significantly adversely affected even as the beneficiaries of IOLTA are disproportionately impacted by the financial crisis giving rise to TLGP. This would be in addition to the considerable decrease of revenue caused by interest rate drops and the decline of real estate transactions which materially contribute to IOLTA income.

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

If any further information is needed, please feel free to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "M. Joe Crosthwait, Jr.", with a stylized flourish at the end.

M. Joe Crosthwait, Jr.
President, NCBP