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## United States Senate

COMMITTEE ON BANKING, HOUSING, AND  
 URBAN AFFAIRS

WASHINGTON, DC 20510-6075

November 19, 2008

VIA FACSIMILE

The Honorable Sheila C. Bair  
 Chairman  
 Federal Deposit Insurance Corporation  
 550 17<sup>th</sup> Street, NW  
 Washington, DC 20429

**Re: Interim Rule Concerning Temporary Liquidity Guarantee Program  
 Comments RIN #3064-AD37**

Dear Chairman Bair:

We are writing to provide comment on the FDIC's October 23 Interim Rule establishing the Temporary Liquidity Guarantee Program (TLGP), which provides full deposit insurance coverage of non-interest bearing accounts. We would encourage you to consider providing an exception in the final rule to cover Interest on Lawyers' Trust (IOLTA) accounts to ensure that resources generated by the IOLTA program to provide legal representation to the poor are not adversely affected.

Similar to payroll accounts that are covered under the TLGP, IOLTA accounts act as clearing accounts for pooled client funds. Client funds in small amounts or that are held for brief periods of time – such as settlements, real estate closing fees, or court filing fees – are pooled and held in IOLTA accounts. Funds are placed in these accounts because neither the attorney nor the client are allowed to earn interest from the account, and the IOLTA account allows the interest that accrues to be paid to IOLTA programs that issue grants for the provision of civil legal aid to the poor. The FDIC provided an exception to Regulation D that allowed the payment of interest on these demand accounts.

IOLTA accounts are a critical source of funding for legal aid programs nationwide. According to the American Bar Association (ABA), IOLTA grants totaled \$240 million in 2007. IOLTA programs currently operate in all fifty states as well as the District of Columbia and the U.S. Virgin Islands, and are mandatory in 37 states.

The Temporary Liquidity Guarantee Program as currently framed will not provide unlimited deposit insurance to IOLTA accounts, but will provide it to other non-interest bearing accounts. Client funds in excess of \$250,000 currently held in IOLTA accounts are eligible for unlimited insurance if they are removed from the IOLTA account and

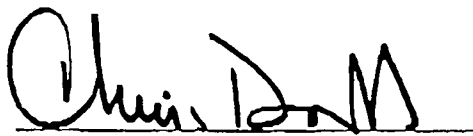
placed in non-interest bearing deposit transaction accounts. Given the instability in the financial system and their fiduciary duty to their clients, attorneys will look for the safest account in which to place their clients' funds. Attorneys in states that mandate IOLTA accounts will be incentivized to move their funds from smaller community banks to larger institutions that are perceived as safer. The discrepancy between the amount of deposit insurance provided for the different types of accounts could lead attorneys in other states, as trustees of their clients' funds, to transfer client funds from IOLTA accounts to other covered noninterest bearing accounts with unlimited FDIC coverage.

This would greatly reduce the interest income received by IOLTA programs, which, according to the ABA, are the second largest source of funding for civil legal aid for the poor. The impact on IOLTA and legal aid for the poor could be devastating. Without this critical source of funding, families will be deprived of access to legal advice and assistance during a severe economic downturn that is affecting families nationwide.

We should not be compounding the harm that the current financial crisis has already caused to IOLTA revenue and legal aid service, particularly since the crisis itself has increased the number of households in need of legal aid. Nor should we put community banks at a disadvantage at a time when the FDIC is seeking to strengthen confidence and encourage liquidity in the banking system. We therefore urge you to consider providing an exception in the final rule guaranteeing IOLTA accounts unlimited deposit insurance through the Temporary Liquidity Guarantee Program.

Thank you for your consideration of this matter.

Sincerely,



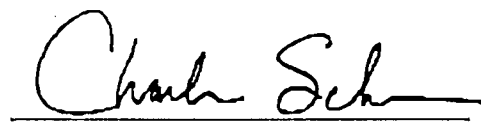
Senator Christopher J. Dodd



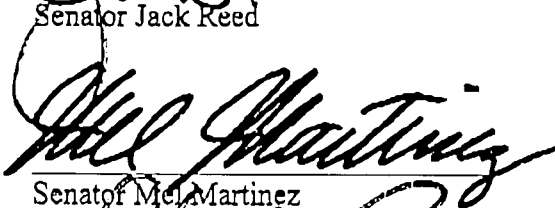
Senator Richard Shelby



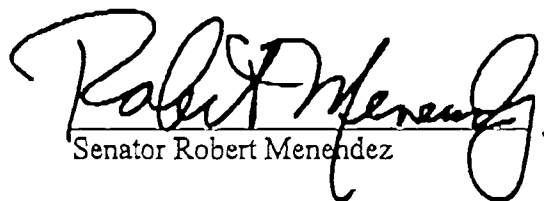
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