LA08-601

BARNEY FRANK, MA, CHAIRMAN

SPENCER BACHUS, AL, RANKING MEMBER

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

November 13, 2008

FDIC
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OFFICE OF LEGISLATIVE AFFAIRS

VIA FACSIMILE

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

Comments RIN #3064-AD37

Dear Chairwoman Bair:

We are writing to provide comments on the FDIC's Interim Rule published on October 23 establishing the Temporary Liquidity Guarantee Program (TLGP). We believe that the FDIC's final rule should clarify that the Corporation will fully guarantee, in addition to noninterest-bearing accounts, Interest on Lawyer Trust Accounts (IOLTAs).

The IOLTA program represents a significant source of financial support to civil legal aid programs for the poor. These programs operate in all 50 states, the District of Columbia and the Virgin Islands, and in 37 states, they are mandatory. IOLTAs contain client funds held by a lawyer for a short period of time. Interest generated from these accounts is paid to charitable organizations, not the lawyer or the client. When state legislatures and state supreme courts created IOLTA, the FDIC carved out an exception to Regulation D that allowed the payment of interest on these demand accounts.

Because IOLTAs pay interest, the TLGP Interim Rule would seemingly not cover them, thereby excluding IOLTAs from unlimited FDIC insurance coverage. If so, then attorneys in the 37 states with IOLTA mandates, acting in accordance with their fiduciary duties to maintain the security of client funds, might transfer IOLTA accounts from local banks to larger "safer" institutions; and attorneys in other jurisdictions might transfer funds from IOLTA accounts to non-interest bearing accounts to qualify for unlimited FDIC coverage. If the final FDIC rules encourage lawyers to disadvantage community banks or reduce or eliminate the interest income generated on IOLTAs, this critical source of civil legal aid will unnecessarily and inappropriately shrink.

It is our view that because of the public good provided by IOLTA programs – and because the interest on these accounts exclusively benefits third parties – the FDIC should ensure that IOLTAs are eligible for unlimited deposit insurance coverage through TLGP.

Thank you for your consideration of our views.

Sincerely,

Barney Frank
Chairman

Spencer Bachus
Ranking Member