



MASSACHUSETTS BAR FOUNDATION

KEEPING THE PROMISE OF JUSTICE SINCE 1964

October 30, 2008

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.,
Washington, DC 20429.

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Dear Mr. Feldman:

I am writing on behalf of the Massachusetts Bar Foundation, the philanthropic partner of the Massachusetts Bar Association, to express our concern regarding potential unintended consequences for the Interest on Lawyers Trust Account Program (IOLTA) related to the creation of the FDIC's Temporary Liquidity Guarantee Program (TLGP).

As you know, the IOLTA program represents a significant source of financial support to civil legal aid programs for the poor. In response to the FDIC's request for comments on the TLGP, we respectfully urge you to write to the FDIC and ask them to extend the Transaction Account Guarantee Program to IOLTA accounts. This inclusion will ensure that the critical resources generated by the IOLTA Program will not be adversely affected.

IOLTA accounts contain client funds held by a lawyer that are nominal in amount or held for a short period of time. As such, these funds cannot earn interest for the client net of banking charges and administrative fees. Because the interest on IOLTA accounts cannot inure to the benefit of either the client or attorney, neither the lawyer account holders, nor the clients whose funds are held in IOLTA accounts have any expectation of earning interest. Instead, interest generated from IOLTA accounts is paid to charitable organizations that distribute the funds as grants to programs that provide civil legal aid to the poor and improve the administration of justice. In Massachusetts, IOLTA funds are absolutely essential as they provide more than 50% of the revenues for the Commonwealth's legal aid programs.

When IOLTA was created, the FDIC carved out an exception to Regulation D (which prohibits the payment of interest on demand accounts) recognizing the unique nature of IOLTA accounts and their charitable purposes. This exception made the establishment of IOLTA possible. On behalf of the thousands of vulnerable Massachusetts citizens assisted by programs funded by IOLTA support, we are asking once again for an exception—an exception that will preserve this important program.

As presented in the draft interim Rule, published with request for comment on October 24, 2008, the TLGP includes the Transaction Account Guarantee Program. Under this program, non-interest bearing accounts, including those from which the interest is paid to nonprofit, philanthropic, or governments entities, are limited to standard insurance

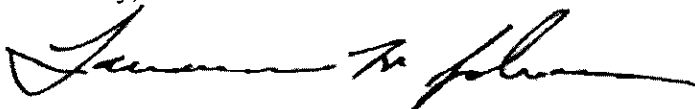
amounts. Because IOLTA accounts are not specifically included in the TLGP, attorney account holders, rightly concerned with ensuring the protection of their clients' funds, may divert such funds from IOLTA accounts to those accounts that would be clearly protected by the TLGP. Funds held in non-IOLTA accounts would yield no benefit for clients, attorneys, or for the thousands of citizens currently assisted through IOLTA funded legal aid programs. As such, under the current proposal, the TLGP has the potential to greatly reduce the interest income received by IOLTA programs, which in turn would dramatically decrease the level of financial support to direct legal service for the poor.

The recent recession has boosted unemployment and exacerbated problems in many areas, including housing, health care, education, and others that adversely affect low-income individuals and families. Programs that protect the poor are also being hit hard by federal and state budget cuts. During these challenging economic times, legal services programs face a growing demand for assistance with civil legal problems that far outpaces their resources.

The FDIC, in its request for comments, has asked whether the Transaction Account Guarantee Program should be extended to NOW accounts held by sole proprietorships, nonprofit religious, philanthropic, charitable organizations, and governmental units for the deposit of public funds. IOLTA accounts would appear to be included in such an extension.

Thank you for your consideration of this important issue. Please contact us if you need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Laurence M. Johnson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Laurence M. Johnson, Esq.
President