



October 28, 2008

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

Dear Executive Secretary Feldman:

I am writing on behalf of The Real Estate Bar Association for Massachusetts (REBA), a 3000-member state-wide bar association, to raise our concerns about the potential unintended consequences to the Interest on Lawyers Trust Account Program (IOLTA) and legal aid to the poor related to the creation of the FDIC's Temporary Liquidity Guarantee Program (TLGP). We urge you to write to the FDIC and ask them to ensure that the critical resources generated by the IOLTA Program to provide legal representation to the poor not be adversely affected.

When IOLTA was created, the FDIC carved out an exception to Regulation D (prohibiting the payment of interest on demand accounts) recognizing the unique nature of IOLTA accounts and their charitable purposes. The exception made the establishment of IOLTA possible. We are asking once again for an exception, this time to preserve this important program.

The TLGP as presented in the draft interim Rule published with request for comment on October 24, 2008 includes the "Transaction Account Guarantee Program." Under this program, "non-interest bearing transaction accounts" are afforded full FDIC deposit insurance, while other interest bearing accounts, including those from which the interest is paid to non-profit, philanthropic, or government entities, are limited to standard insurance amounts. The TGLP, if not extended to include IOLTA accounts, has the potential to greatly reduce the interest income received by IOLTA programs because attorney account holders concerned with ensuring the protection of their clients' funds may divert funds to accounts protected by TLGP. In many states a significant portion of the IOLTA funds are generated by attorneys holding large amounts of client funds for very short periods of time, such as funds held for real estate transactions and for large settlements for multiple clients prior to distribution. IOLTA accounts act as clearing accounts for such funds.

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Because the interest on IOLTA accounts cannot inure to the benefit of either the client or attorney, neither lawyer account holders nor the ever-changing list of clients whose funds are in IOLTA accounts have any expectation of earning interest. Instead, IOLTA accounts produce interest on the aggregate of funds that could not otherwise benefit depositors for the benefit of low-income individuals who receive free civil legal aid.

IOLTA funds are essential because they provide more than 50% of revenues for legal aid programs in the Commonwealth. The recent recession has boosted unemployment and exacerbated problems in housing, transportation, health care and education. In addition, federal and state budget cuts are significantly affecting programs that protect the poor. The lingering effects of the recession will plague the poor and lower income families for years to come. During these challenging economic times legal services face a growing demand for assistance with critical civil legal problems.

The FDIC, in its request for comments, has asked whether the Transaction Guarantee Program should be extended to NOW accounts held by sole proprietorships, non-profit religious, philanthropic, charitable organizations and governmental units for the deposit of public funds. IOLTA accounts would appear to be included in such an extension. REBA requests that you write to the FDIC urging them to extend the Transaction Guarantee Program to include IOLTA accounts for the reasons stated above. The FDIC deadline for comments is Friday, November 7, 2008. Contact information appears on the next page.

Please let us know if you need further information or clarification.

Sincerely,



Paul E. Alphen, Esq.
REBA President

Cc: REBA Board of Directors