

INDIANA STATE BAR ASSOCIATION

Serving the legal profession and the public



November 11, 2008

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

R. William Jonas, Jr.
President

*Re: Clarification/Exception Needed to Temporary Liquidity
Guarantee Program for Protection of Lawyer Trust Accounts*

Dear Chairman Bair:

I write today as President of the Indiana State Bar Association, a voluntary bar association representing more than 12,000 of Indiana's 15,000 lawyers. I ask you today to take all necessary action to ensure that the Temporary Liquidity Guarantee Program (TLGP) covers all lawyer trust accounts, including those in the program Interest on Lawyer Trust Accounts (IOLTA). The vast majority of Indiana lawyers maintain IOLTA accounts which could be at risk if the current TLGP standards remain unchanged.

The Indiana State Bar Association urges that TLGP be amended or clarified to provide full coverage for IOLTA accounts for the following reasons:

1. IOLTA accounts are effectively the same as transaction accounts expressly protected by TLGP. IOLTA accounts serve as clearing accounts for pooled client funds. Lawyers deposit client funds in IOLTA accounts because they can not earn interest for an individual client net of banking charges and administrative fees. Client funds in IOLTA accounts are either nominal in amount or significant amounts held only long enough for a check to clear or for an attorney to disburse funds. Such accounts typically include client funds held by the lawyer for court filing fees, real estate escrows, settlements and retainers.

2. FDIC and Federal Reserve exceptions permit banks to pay interest on similar transaction accounts. About 30 years ago, the FDIC and Federal Reserve granted an exception to banking regulations that prohibited the payment of interest on demand accounts. This exception was instrumental for states establishing IOLTA programs because it allowed interest to be paid for charitable purposes to a third party, the IOLTA program. Today, IOLTA programs exist in all 50 states and 37 states require lawyers to deposit client funds that cannot earn net interest for the client in IOLTA accounts. Interest generated on these accounts is paid to IOLTA programs that issue grants for the provision of legal aid to the poor, the administration of justice, and law-related education, all of which are vital to our country's guarantee of equal access to justice for all.

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Indiana State Bar Association

Chairman Bair

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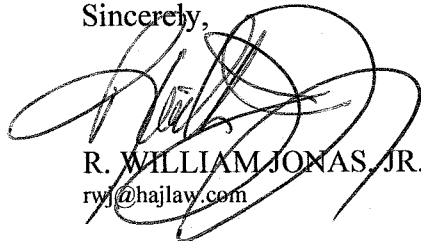
3. TLGP coverage makes sense for IOLTA accounts, which may hold funds for an attorney's clients in excess of \$250,000 coverage limit. IOLTA accounts often hold large amounts of client funds for short period of time – as in the case of a real estate closing. In other instances, they may hold large settlements for multiple clients prior to distribution. Establishing multiple accounts at various institutions for amounts over \$250,000 per client is not a viable solution. Attorneys can not know if a particular client may later deposit additional funds of its own at a certain bank, and it is impractical to separate a larger deposit that would be in an IOLTA account only long enough for a check to clear.

4. Now is not the time to force lawyers to abandon programs that provide much-needed revenue for legal aid for the poor. While the need for IOLTA-generated income is great – and increasing daily as foreclosures and evictions multiply – a lawyer's paramount duty is the fiduciary duty to protect client funds. Lawyers holding significant client funds must consider whether to retain the funds in their IOLTA accounts, as required by Supreme Court rules or legislation in many states, or to place their client funds in a fully insured, non-interest bearing deposit transaction account. The current TLGP Interim Rule may encourage lawyers to move their trust account funds; this would greatly reduce the interest income received by IOLTA programs, which are the second largest source of funding for civil legal aid to the poor.

With the pressures of the current economic crisis – and the disproportionate impact of its consequences on the poor – now is most decidedly not the moment to take any step that discourages lawyers from utilizing IOLTA accounts and thereby threaten this most vital source of funds for civil legal aid to the indigent.

I urge you to take all steps necessary to ensure that IOLTA accounts are afforded full protection under the TLGP.

Sincerely,



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RWJjr/ksr

cc: Hon. Richard Lugar, Hon. Evan Bayh, Hon. Peter J. Visclosky, Hon. Joe Donnelly, Hon. Mark Souder, Hon. Steve Buyer, Hon. Dan Burton, Hon. Mike Pence, Hon. Julia Carson, Hon. Brad Ellsworth, Hon. Baron Hill, Tom Pyrzs, Esq.