Interest on Lawyers' Trust Accounts (IOLTA)

Urgent Fix Needed to Wall Street Law to Protect Client Funds and Legal Services

The Federal Deposit Insurance Corporation (FDIC) in November 2008 created the Transaction Account Guarantee (TAG) program to strengthen confidence and encourage liquidity in the banking system by providing full coverage of *non-interest-bearing deposit transaction accounts* (such as payroll accounts used by businesses) regardless of dollar amount. Many members of Congress, led by Senate Banking Committee Chairman Dodd and Ranking Member Shelby and House Financial Services Chairman Frank and Ranking Member Bachus, along with the ABA, state bar associations, constituent lawyers and community bankers wrote the FDIC to urge the Board to include Interest on Lawyers' Trust Accounts (IOLTA) in the final rule. The FDIC agreed. IOLTA has always been included in the TAG program, which the FDIC has extended several times since November 2008. The FDIC in June 2010 extended TAG (including the very specific IOLTA provision) through December 31, 2010.

A last-minute addition to the "Dodd-Frank Wall Street Reform and Consumer Protection Act" extended the TAG program for two years. However, in an oversight, this Act (H.R. 4173) did not use the FDIC TAG program definitions of covered accounts. As a result, IOLTA would not be covered after H.R. 4173's effective date of December 31, 2010. Congress must amend H.R. 4173 to restore IOLTA to the TAG program because:

- **TAG coverage is vital for IOLTA, which may hold funds for a client that could exceed the FDIC $250,000 deposit insurance limit.** IOLTA contains client funds that cannot earn interest for an individual client net of banking charges and administrative fees. These pooled accounts hold either nominal amounts of client funds or large amounts of client funds for very short periods of time, such as real estate transactions and large settlements for multiple clients prior to distribution. Establishing multiple accounts at various financial institutions for amounts over $250,000 for a client is not a viable solution: attorneys cannot know whether a client may later deposit additional funds of her own at a particular bank, and it is not practical to separate a large deposit that would be in the IOLTA account just long enough for the check to clear.

- **IOLTA generates much-needed revenue that is used to provide legal services to the poor; now is not the time to abandon this program, especially with increases in foreclosures and evictions.** Over 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, the District of Columbia and the Virgin Islands; 42 jurisdictions *require* lawyers to deposit into IOLTA client funds that cannot earn net interest for the client. Interest generated from IOLTA is paid to IOLTA programs that issue grants for the provision of civil legal aid to the poor, the administration of justice, and law-related education—which are vital to our democratic system's guarantee of equal access to justice for all.

- **Lawyers and law firms are required to protect client funds.** While the need for IOLTA-generated income is great, a lawyer's paramount responsibility is her fiduciary duty to maintain security of client funds. Lawyers holding significant client funds must consider whether to continue to use their IOLTA, as required by supreme court rule or legislation in many states, or to place their client funds in a fully insured, non-interest-bearing deposit transaction account. If lawyers move their accounts, the interest income received by IOLTA programs, which has been the second largest source of funding for civil legal aid for the poor, would be severely reduced.

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