



January 13, 2011

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429-9990

Dear Chairman Bair:

On December 29, 2010, President Obama signed into law legislation (H.R. 6398) that extends unlimited FDIC insurance for Interest on Lawyers Trust Accounts (IOLTA) through December 31, 2012. This law requires the Corporation to extend unlimited deposit insurance for “a trust account established by an attorney or law firm on behalf of a client, commonly known as IOLTAs or a functionally equivalent account, as determined by the Corporation.” As the FDIC recognized in its March 18, 2009 letter in regards to the Transaction Account Guarantee Program (TAGP), Interest on Trust Accounts (IOTA) mandated by state law are the functional equivalent to IOLTAs. On behalf of the 3,800 member companies of the American Land Title Association (ALTA) I am seeking confirmation that the Corporation will continue to recognize that IOTAs are the functional equivalent of IOLTAs and will receive the same unlimited deposit insurance protection.

Similar to an IOLTA, a non attorney title agent or settlement service provider establishes an Interest on Trust Account to place the funds they collect that are necessary to complete a real estate transaction in a trust account separate from their own money. These accounts hold the funds deposited by buyers, sellers and lenders including earnest money deposit, taxes and prepaid interest that are necessary for closing the transaction. Depending on state law these funds may be held in separate trust accounts or pooled into a single account.

In the March 18, 2009 letter, the Corporation recognized that non-attorney title agent or settlement service provider IOTAs are functionally equivalent to attorney IOLTAs for two reasons. “First, the interest does not inure to the benefit of the title insurance company or its clients.” This fact is still true. As with IOLTAs the interest earned on funds deposited in title agent IOTA accounts do not benefit the title agent. Depending on state law, the interest earned on these trust funds must either inure to the beneficiary if the funds are sufficiently large enough or will be held long enough to generate sufficient interest in excess of the costs incurred to collect that interest. Just like IOLTAs, if the interest is insufficient, it inures to a charitable cause like legal aid or affordable housing as required under state statute.

The second reason the letter gave was that, “the interest is given to the same State entity that receives the interest on IOLTAs and is used by that entity for the same purposes.” In states like Connecticut, Ohio and Maryland, depository institutions collect the interest earned on these trust/escrow funds and forward it to a statutorily specified charitable organization. In both Connecticut and Ohio, both IOTA and IOLTA funds benefit the same organization, the Connecticut Bar Fund and Ohio Legal Assistance Foundation respectively. In Maryland, IOLTA funds benefit the Maryland Legal Services Corporation, while IOTA funds benefit the Maryland Affordable Housing Trust. Attorneys in that state may elect to place real estate trust funds into either form of trust account. This showcases that the state of Maryland recognizes that IOLTA and IOTA funds are truly functionally equivalent. Regardless of their form the interest earned on IOLTA or IOTA funds benefit a state-selected charitable entity and are used by the entity for a specific legislatively-selected purpose.

ALTA would be grateful if the Corporation would reaffirm that our members’ Interest on Trust Accounts are functionally equivalent to the Interest on Lawyers Trust Accounts that the President and Congress granted unlimited deposit insurance coverage. Thank you for your time and consideration of this matter. If you have any questions please contact ALTA’s Director of Government Affairs, Justin Ailes, at 202-261-2937 or jailes@alta.org.

Sincerely,

A handwritten signature in blue ink that reads "Kurt Pfothauer" followed by a horizontal line.

Kurt Pfothauer
Chief Executive Officer

Enclosure



March 18, 2009

Kurt Pfotenhauer
Chief Executive Officer
American Land Title Association
1828 L Street, N.W., Suite 705
Washington, D.C. 20036

Dear Mr. Pfotenhauer:

Thank you for your recent letter addressed to Chairman Bair. Your letter involved the coverage of Interest on Lawyers Trust Accounts ("IOLTAs") under the FDIC's Transaction Account Guarantee Program ("TAGP"). The TAGP is part of the FDIC's Temporary Liquidity Guarantee Program ("TLGP"). Under the TAGP, the funds in "noninterest-bearing transaction accounts" at participating insured depository institutions are fully protected through December 31, 2009. See 12 C.F.R. § 370.4. For purposes of the TAGP, the term "noninterest-bearing transaction account" includes "[a]ccounts commonly known as Interest on Lawyers Trust Accounts (IOLTAs) (or functionally equivalent accounts)." 12 C.F.R. § 370.2(h)(3)(i).

By defining the term "noninterest-bearing transaction account" to include IOLTAs, the FDIC has provided full protection for IOLTAs at participating insured depository institutions through December 31, 2009. You have asked for similar treatment for "Interest on Trust Accounts" or "IOTAs" held at participating insured depository institutions by title insurance companies. As explained in your letter, the funds in such accounts do not belong to the holder of the account (the title insurance company). Moreover, "[t]he interest earned in such accounts benefits the particular state's housing trust fund or legal aid fund."

Please be advised that the FDIC staff already has advised the Ohio Legal Assistance Foundation ("OLAF") that IOTAs in Ohio will be treated as IOLTAs. In reaching this conclusion, the staff relied upon two facts. First, the interest does not inure to the benefit of the title insurance company or its clients. Second, the interest is given to the same State entity that

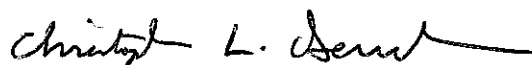
receives the interest on IOLTAs and is used by that entity for the same purposes.

The same reasoning would apply to IOTAs in other states. In other words, the IOTA would be protected as an IOLTA under the following circumstances: (1) the interest does not inure to the benefit of the title insurance company or its clients; and (2) the interest is given to the same state entity that receives the interest on IOLTAs and is used by that entity for the same purposes.

The FDIC staff has not recognized IOTAs as IOLTAs under other circumstances. For example, the staff has not recognized IOTAs as IOLTAs when the interest is not given to the same state entity that receives the interest on IOLTAs. Under such circumstances, full protection for the IOTA might not be available without an amendment to the FDIC's regulations (for example, an amendment specifically stating that IOTAs are protected).

I hope that this information is useful. The opinions expressed herein represent the views of the Legal Division staff and should be considered advisory in nature. Staff opinions are not binding upon the FDIC or its Board of Directors. This opinion is based upon the facts presented. Any changes in the facts or circumstances could result in different conclusions.

Sincerely,



Christopher L. Hencke
Counsel