

Breakout Session A: Opportunities for States With Rate Comparability in Place

Leader:

Ken Smith, President, The Resource for Great Programs, Inc.

Recorders:

Anne Goico, Finance Director, Connecticut Bar Foundation

Chuck Dunlap, Executive Director, Indiana Bar Foundation

The Resource for Great Programs, Inc., February 12, 2009

Opportunities

- ◆ Negotiating higher rates from banks
- ◆ Adjustments in benchmark rates
- ◆ Monitoring bank compliance
- ◆ Mitigating the ebbs and flows of IOLTA revenue

The Resource for Great Programs, Inc., February 12, 2009

2

1. Negotiating higher rates from banks

Negotiations seek to:

- Find a win-win strategy that rewards banks for preferential IOLTA rates and/or fees
- Engage the banks that make a difference – Big banks holding 80-90% of IOLTA balances
- Preserve the long-term viability of comparability – Enhance, not jeopardize, relationships with banks; build partnerships.

Negotiations with Banks, Continued

Impact of This work

Each 10-basis-point increase by a bank holding \$10 million in IOLTA balances =

- \$10,000 more per year for grants;
- 6 more families in crisis having someplace to turn... An advocate by their side.

Principles for Bank Negotiations

1. **Revisit the basics...**
 - **Things that work.** Review and apply the successful methods of your own and other states.
2. **Focus on incentives...**
 - **Marketing benefits.** Offer banks high visibility in the lucrative law firm market – e.g., articles in Bar News.
 - **Big customers get a hearing.** Deploy big law firm customers of the bank to deliver your message.
 - **Good publicity.** Some banks will resonate with opportunities for polishing community image.
3. **Campaign strategies work!**
 - **Use your access to the press.** Bar publications... Local media... Stories about the crisis in your grantee programs and their clients.
 - **Target the big banks.** Focus your limited resources where they will have the greatest dollar impact.
 - **Deploy your partners...** Supportive law firms... Prominent judges... Board members... Grantee board members... Media contacts...

Negotiations with Banks, Continued

- ◆ **Methods include:**
 - **General solicitation** letters, followed by telephone calls
 - **Face-to-face meetings**
 - ◆ Using Board members, lawyers or other key contacts as negotiators
 - ◆ It's harder for banks to say "no" in person
 - **A specific rate request, based upon:**
 - ◆ What other "leadership" banks are paying or
 - ◆ What rate comparability would require, if it were in place
 - ◆ Could be a flat-rate request or a rate that floats, for ex., with the Federal Funds Rate

Negotiations with Banks, Continued

- ◆ **Methods include (cont.):**

- **An offer or incentive:**

- ◆ Inclusion on Honor Roll
- ◆ Invitation to annual gala for recognition
- ◆ Marketing & promotion such as TX “Prime Partner”
 - Highly attractive to some banks competing to keep, attract lawyer/law firm customers
 - Builds reputation as good corp. citizen
 - Builds familiarity & partnerships

- ◆ **Programs reporting some success in past year:**

- Arizona, Georgia, Idaho, Minn., N. Carolina, Nebraska, Nevada, NY, S. Carolina, Washington

2. Adjustments in benchmark rates (AKA “safe harbor”)

- ◆ **Special focus for “comparability” programs.**

- At least 17 “comparability” states have a benchmark rate & virtually all are considering a revision

- ◆ **Perceived problem:**

- Fed Rate is at historically low level & a range (0.00% - 0.25%), raising uncertainty about how to apply the benchmark
- Very low yield:

Example: 0.25% X 60% benchmark = 0.14%

Adjusting the Benchmark Rate (Continued)

- ◆ **Perceived solution: Set a “floor” rate.**
 - ◆ **Examples:** Maryland, Massachusetts, Missouri & Texas (see “Benchmark Rates” handout)
 - ◆ **Risk/reward:**
 - Reward – Might gain additional revenue
 - Risk – Banks might opt out of benchmark & pay even less now (& in future)
 - Risk – Does a “floor” compromise the underlying simplicity and fairness of comparability?

3. Monitoring Bank Compliance

Monitoring seeks to:

- Keep banks in alignment with comparability
- Flag “comparability gaps” before IOLTA revenue is lost
- Quickly steer banks back into compliance

There’s real money on the table.

- **Bank A** - \$86 million in IOLTA principal; 52-basis point (bp) comparability gap; IOLTA revenue impact: **\$450,000 per year** underpayment to IOLTA.
- **Bank B** - \$43 million in IOLTA principal; 47-bp comparability gap; IOLTA revenue impact: **\$200,000 per year** underpayment to IOLTA.
- **Bank C** - \$55 million in IOLTA principal; 28-bp comparability gap; IOLTA revenue underpayment: **\$156,000 per year** underpayment to IOLTA.

Monitoring Bank Compliance *continued*

Features of a good monitoring approach

- **Fair and transparent.** Provides level playing field for banks... Grounded in the IOLTA rule or statute.
- **Rigorous.** Based on reliable, accurate information system, including a good IOLTA data base.
- **Duly diligent.** IOLTA board and grantees know that comparability requirement is being enforced... No money left on the table.

4. Mitigating the ebbs and flows of IOLTA revenue

- ◆ **The Problem: The “Boom or bust” cycle of IOLTA grant-making...**
 - In the boom years: Grantees hire lawyers; expand services
 - In the bust years: Grantees lay off staff; close offices
 - Cost: \$39,000 per lawyer in lost hiring & training investment
 - Cost: Lost productivity, quality, morale

- ◆ **Strategic opportunities**
 - Grant Reserves
 - Multi-year grants
 - New revenue streams...

Grant Reserves

- ◆ **Technical considerations:**
 - Constraints of IOLTA rules or statutes
 - Computing the size of reserve needed

- ◆ **How do we get a strong policy in place?**
 - Get support from grantees and other stakeholders
 - Best practices – review policies and lessons from other states

- ◆ **Resources:** See *IOLTA.org* for copies of states' reserve policies

Multi-Year Grants

- ◆ Opportunities versus risks
- ◆ Will it work?
- ◆ How much do we need?
- ◆ How do we implement it?

Summary: Opportunities... Short, Mid and Long Term

Short term – next 12 months: *While rates are low*

- **Negotiate with banks...** *Offer incentives for banks in return for preferential IOLTA rates... Priority on biggest 5-15 banks.*
- **Prepare...** *Put in place your bank monitoring systems, grant reserve policies, multi-year grant-making policies.*
- **Explore new revenue streams...** *In partnership with the Access to Justice community in your state.*

Summary:
Opportunities, Continued

- ◆ **Mid term:** *When rates start rising in next 12-24 months:*
 - **Monitor banks closely...** *Apply rigorous monitoring systems & tools... Maximize IOLTA revenue within framework of fairness & due-diligence... "train" banks to stay in compliance.*

Summary:
Opportunities, Concluded

- ◆ **Long term:** *Use the income steam while rates (and revenues are high) to prepare for the next IOLTA downturn.*
 - **Set ceiling on grant awards** to level that can be sustained through the next "down" cycle.
 - **Direct "X" percent of revenues into grant reserve;**
 - **Or...**
 - **Encumber "X" percent of revenues** to support multi-year grants.