

**Winter 2009 IOLTA Workshops
Boston, MA**

**Gear Up While Rates Are Down:
Things You Can Do Now to
Prepare for Recovery**

Materials for Plenary and Breakouts

Thursday, February 12, 2009
1:15 p.m. – 4:30 p.m.

Materials Package
for
***"Gear Up While Rates Are Down:
Things You Can Do Now to Prepare for the
Recovery"***

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Expanding Access

the newsletter of

The Resource

for Great Programs Inc.

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Monitoring Banks' Compliance with Rate Comparability: Duty *and* Opportunity

by **Ken Smith and Kelly Thayer**

IOLTA interest rate comparability provides a powerful tool for expanding access to civil justice in your state. As an IOLTA leader, under rate comparability, you no longer have to hope for fair treatment from banks – your rule requires it.

Like any rule, however, rate comparability needs enforcement. It's not that banks will go out of their way to violate it. But experience shows that some banks might neglect to consider your rule and its implications for IOLTA accounts when raising rates on, or adding new, non-IOLTA products.

Monitoring banks' compliance with your rate comparability rule is your duty but, more importantly, it presents a tremendous opportunity. How well you do it will mean real dollars for IOLTA, build stronger relations with banks, and convey to all stakeholders your program's professionalism and diligence in carrying out the fiduciary responsibility delegated by the state supreme court or legislature.

Monitoring means real dollars for IOLTA.

Compliance monitoring over time can yield a lot of money for your program – much more than the investment you make in the analytical work. We have determined that even a small state, whose biggest bank has \$20 to \$40 million in IOLTA balances, can gain (or avoid losing) tens or even hundreds of thousands of dollars annually by investing in a monitoring process that detects when a bank's IOLTA rates have drifted from rate comparability and takes action immediately to help the bank get back into alignment and preserve its eligibility to offer IOLTA accounts.

A rigorous monitoring program enhances confidence in the IOLTA program's administration.

- **The bench, bar, and other stakeholders** will know the program is well run.
- **Banks** will know the program is paying attention and expecting timely, on-going compliance with the comparability rule.
- **Grantees** will appreciate knowing the IOLTA program is working hard to maximize revenue.
- **Low income people**, facing crises in their lives and having nowhere else to turn but to the IOLTA-funded legal assistance programs in your state, will continue to need and deserve your program's best efforts at maximizing IOLTA revenue.

Monitoring: Duty *and* Opportunity

Continued from First Page

When we say a bank has “drifted from rate comparability,” we mean that over time it has failed to keep its IOLTA rates aligned with those paid to non-IOLTA customers having accounts of comparable size and other characteristics. For example, this can happen when a bank:

- Introduces a new, higher-rate, non-IOLTA account product without adjusting its IOLTA rates accordingly;
- Over-compensates for a drop in interest rates by cutting IOLTA rates disproportionately or under-compensates IOLTA when rates rise;
- Fails to properly take into account IOLTA requirements regarding fees, such as “allowable” and “reasonable” provisions and “no-negative-netting” policy, when adjusting its IOLTA rates for comparability.
- Merges with another bank having a different set of rates and products without re-aligning its IOLTA rates with the highest non-IOLTA rates offered by the new, merged entity.

Revenue impact of “Comparability Gaps”

See examples and table on next page...

In our monitoring efforts for programs, we have found that within 6-12 months following implementation of an amended rule, “comparability gaps” of 25 to 100 basis points can emerge between what banks are paying IOLTA and what they pay others. The next page shows the revenue impact of actual comparability gaps we are seeing in our current monitoring work. ▲

Ken Smith, Ph.D, President of The Resource, has been a pioneer in IOLTA revenue enhancement since 1992 and in Legal Aid program assessment and development since 1977. His experience includes more than a decade working with Citibank as a financial modeling consultant prior to 1997.

Kelly Thayer, The Resource’s Manager of IOLTA Revenue Enhancement, has helped IOLTA programs in numerous states, encompassing more than 1,000 participating banks, to implement rate comparability programs quickly and with great impact. He is a former journalist, community organizer, and Peace Corps volunteer.

Monitoring supports strong relationships with IOLTA banks.

- ▲ Banks respect competence and fairness.
- ▲ Compliance monitoring provides banks with predictability. On a regular basis, it lets them know where they stand and what they must do to stay aligned with rules governing IOLTA.
- ▲ Over time, monitoring will improve banks’ compliance. Early intervention as soon as a bank falls out of compliance will discourage repetition.
- ▲ Every finding that a bank is *in* compliance provides an opportunity for an IOLTA program to say, “Thank you for partnering with IOLTA.”

Actual Examples from Our Recent Compliance Monitoring Work

- **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.

Table for Estimating Revenue Impact Based on IOLTA Principal in a Bank and the Size of the Comparability Gap*

Total Principal in IOLTA Accounts	Annual IOLTA Revenue Impact By Size of Comparability Gap* in Basis Points**					
	10 bp	20 bp	30 bp	40 bp	50 bp	100 bp
1 Million	\$ 1,000	\$ 2,000	\$ 3,000	\$ 4,000	\$ 5,000	\$ 10,000
5 Million	\$ 5,000	\$ 10,000	\$ 15,000	\$ 20,000	\$ 25,000	\$ 50,000
10 Million	\$ 10,000	\$ 20,000	\$ 30,000	\$ 40,000	\$ 50,000	\$ 100,000
20 Million	\$ 20,000	\$ 40,000	\$ 60,000	\$ 80,000	\$100,000	\$ 200,000
100 Million	\$100,000	\$200,000	\$300,000	\$400,000	\$500,000	\$1,000,000

* **Comparability Gap** - The difference between the average blended rate (discounted for IOLTA-allowable fees, including sweep fees) that the bank pays IOLTA accounts compared with what it pays its non-IOLTA customers for accounts meeting the same minimum balance and other requirements. We quantify the comparability gap using independent rate data and our proprietary IOLTA financial models.

** **Basis points** - 100 bp = one percentage point (1.0%).

We are...

The Resource for Great Programs. Our company and our IOLTA staff – led by Ken Smith & Kelly Thayer – have been dedicated to serving the civil justice community for 25 years. Contact us today!

Maximizing IOLTA revenue & pursuing full access across America since 1984.

The Resource

for Great Programs, Inc.

Benchmark (or Safe Harbor) Rates of IOLTA Programs Across America

Prepared for the IOLTA Workshops, Boston, Mass.

Feb. 10, 2009

By Safe Harbor Rate (ascending):

1) Alabama	55% of FFR	9-27-07 Adopted; 1-1-08 Effective.
2) Massachusetts	55% of FFR ¹	7-26-06 Adopted; 1-1-07 Effective.
3) Maryland	55% of FFR ²	4-1-08 Effective.
4) <u>New Mexico</u>	55% of FFR	9-3-08 Adopted; 1-1-09 Effective.
5) Louisiana	60% of FFR ³	1-3-08 Adopted; 4-1-08 Effective.
6) Missouri	60% of FFR ⁴	8-21-07 Adopted; 1-1-08 Effective.
7) New Jersey	60% of FFR	May 2002. ⁵
8) <u>New York</u>	60% of FFR	8-15-07 Effective.
9) Maine	65% of FFR ⁶	9-21-07 Adopted; 1-1-08 Effective.
10) West Virginia	65% of FFR	10-08 submitted to court; pending. ⁷
11) <u>Texas</u>	65% of FFR ⁸	1-13-09 Effective.
12) <u>California</u>	68% of FFR	10-10-07 Gov. Approved; 1-1-08 Effective.
13) Hawaii	70% of FFR	6-16-08 Issued; 7-1-08 Effective.
14) Illinois	70% of FFR	1-25-07 Adopted; 6-1-07 Effective.
15) Indiana	70% of FFR	Unspecified. ⁹
16) <u>Utah</u>	70% of FFR	4-1-08 Effective.
17) Minnesota	80% of FFR ¹⁰	12-21-06 Adopted; 1-1-07 Effective.

Important note: Some IOLTA programs listed above also honor banks that pay a set interest rate *above* the benchmark, including Maryland's "Honor Roll" rate (65% of FFR; 1% floor), Texas' "Prime Partner" rate (75% of FFR; 1% floor), Massachusetts "Leadership" program (75% of FFR; 1% floor). Maine's "Prime Partner" rate (75% of FFR; 2% floor), Missouri's "Partners in Justice" rate (70% of FFR), and New York's tiered floor rates (0.50% - 0.80% as of 1-31-09). Pennsylvania does not have a benchmark rate, but does have a "Platinum Leader" bank program that offers banks some recognition in exchange for paying 60% FFR. Other IOLTA programs also might offer incentive programs for banks that go above and beyond comparability.

¹ Massachusetts includes a 1% rate floor.

² Maryland includes a 0.55% rate floor.

³ Louisiana includes a 0.60% rate floor. Safe Harbor option appears only in Louisiana Bar Foundation "IOLTA Handbook."

<http://www.raisingthebar.org/pdf/iolta-%20CertifiedEligibleFinancialInstitution.pdf>

⁴ Missouri includes 0.60% rate floor.

⁵ Comparability in various forms has been in effect since May 2002.

⁶ Fed Funds Target Rate in effect July 1st of each year; rate resets yearly.

⁷ Court action expected December 2008.

⁸ Benchmark rate previously was 60 percent of the Fed Funds Target Rate, effective March 1, 2007. Texas also added a 0.65% rate floor effective Jan. 13, 2009.

⁹ Safe Harbor option appears only in Indiana Bar Foundation "IOLTA Handbook." See

http://www.inbf.org/Media/Universal_IOLTA_Handbook.pdf.

¹⁰ Minnesota might be the only state not to define the safe harbor or benchmark rate as already net of fees.

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Sweep Accounts and IOLTA Funds: A Primer

Prepared for the Winter 2009 IOLTA Workshops in Boston, Mass.

February 9, 2009

IOLTA Interest Rate Comparability & the Use of Sweep Accounts – One of the most important changes that IOLTA programs make when they adopt IOLTA interest rate comparability requirementsⁱ is to allow IOLTA funds to be placed in overnight “sweep” accounts. Sweep accounts typically generate revenue at much higher rates than ordinary interest-bearing checking accounts do. Accordingly, provisions allowing IOLTA funds to be placed in sweep accounts contribute significantly to the overall gains in IOLTA revenues produced by comparability requirements.

The term “sweep account,” however, remains unfamiliar to many. *The Resource* provides the following primer to help those in the IOLTA community who are contemplating an IOLTA interest rate comparability requirement understand what sweep accounts are and how they relate to IOLTA funds.

What is a sweep account?

Sweep accounts are checking accounts in which depositors’ excess funds are automatically transferred (“swept”) out of the accounts and into an investment product. “Sweeps” come in many forms, but for IOLTA’s purposes, they are limited to overnight sweep accounts – those that transfer funds at the close of business each day, and return it to depositors’ accounts at the start of business the next day, along with any interest or dividends earned. This ensures the availability of client funds whenever they are needed.

Banks typically offer sweep services only to account holders with large cash balances – those exceeding \$100,000 or more, for example. This is due in part to the substantial fees associated with sweep services. For sums below \$100,000, the cost of sweep services might outweigh the revenues generated, though minimum balance requirements and fees will vary by financial institution.

What kinds of investments are allowed with IOLTA funds?

Banks commonly offer their clients a range of investment options with their sweep accounts. Some investment options offer the possibility of higher returns in exchange for greater risk. IOLTA rules uniformly reject such arrangements. Instead, IOLTA interest rate comparability requirements are designed to accept modest returns in exchange for the safety of very conservative investments by allowing IOLTA funds to be invested in only two kinds of investment products: Repurchase agreements and money market mutual funds. Moreover, they limit each kind of investment to ensure the safety of client funds.

Repurchase Agreements. A repurchase agreement is an agreement in which an account holder purchases a security from a financial institution, and the financial institution agrees to buy it back the next day at a slightly higher price. It is a very secure investment because it involves a pledge of payment from the financial institution. So long as the financial institution is solvent, it can be expected to honor its agreement. Moreover, an interest rate comparability requirement usually boosts the safety of repurchase agreements by limiting IOLTA funds to repurchase agreements that are issued by financial institutions that are deemed to be in good financial health under federal law.ⁱⁱ Accordingly, the risk of insolvency is slight.

Rate comparability commonly also addresses the risk of a bank’s insolvency by requiring that the repurchase agreement be collateralized by U.S. Government Securities. These are debt securities issued by the federal government or a government-sponsored enterprise, and are backed by an explicit or implicit federal guarantee.ⁱⁱⁱ Accordingly, they are deemed very secure investments. In the event that a financial

institution could not meet its obligations under a repurchase agreement, the depositor would take title to the U.S. Government Securities that collateralized the agreement. To recoup the principal invested, the depositor need only sell the securities. Repurchase agreements are customarily collateralized at a minimum of 102% of the initial investment.^{iv} This protects account holders from a decline in the price of the purchased securities and provides a margin for any transaction costs incurred in the sale of the securities. Accordingly, the risk to client funds invested in a repurchase agreement that complies with such requirements is negligible.

Money-Market Mutual Funds. Money-market mutual funds are, by design, conservative investments. Any fund that holds itself out as a money-market mutual fund is required by law to invest in a diverse portfolio of high quality, low-risk securities.^v Moreover, money-market mutual funds must be managed with the goal of maintaining a \$1-per-share price. This requirement is intended to preserve the shareholders' investment principal, while also generating modest dividend income. Due to these features, money-market funds are deemed the safest kind of mutual fund available.^{vi}

IOLTA interest rate comparability requirements ordinarily limit the kinds of money market mutual funds into which IOLTA funds may be invested to further enhance their safety. Specifically, they provide that the funds must be invested solely (or primarily, depending on the specific IOLTA rule) in U.S. Government Securities, or repurchase agreements fully collateralized by U.S. Government Securities, or both. As above, these are widely deemed to be very safe investments. Pooling them together in a money market mutual fund further mitigates any risk of loss to the principal invested.^{vii}

Conclusion

A sweep account is an innovative banking product and an increasingly important one for IOLTA purposes. The rates paid on sweep accounts often exceed those paid on ordinary checking accounts by 100 basis points or more. Thus, allowing IOLTA funds to be placed in sweep accounts promises to yield substantial increases in IOLTA revenue. IOLTA interest rate comparability requirements commonly incorporate significant safeguards to ensure that this increased revenue does not come at the expense of undue risk to client funds.

ⁱ As of January 1, 2009, a total of 23 states have an IOLTA interest rate comparability rule or policy in place, according to the American Bar Association Commission on IOLTA. IOLTA interest rate comparability requires attorneys to maintain trust accounts for client funds ("IOLTA accounts") in institutions that pay interest or dividends on those accounts at rates at least as high as they pay on similar non-IOLTA accounts.

ⁱⁱ Specifically, IOLTA interest rate comparability policies typically require the financial institutions that issue the repurchase agreements to be "well capitalized" or "adequately capitalized" under federal law. These terms refer to ratings given by the Federal Deposit Insurance Corporation to federally insured financial institutions, and influence the cost of federal insurance. Moreover, institutions that are not at least "adequately capitalized" are subject to corrective action. *See, generally*, 12 U.S.C. 1831o(a), et seq.

ⁱⁱⁱ *See, generally*, Kevin Kosar, "Government-Sponsored Enterprises (GSEs): An Institutional Overview", Congressional Research Service Report No. RS21663, 4 (April 2007).

^{iv} See the Financial Policy Forum's "Primer on 'Repo' or Repurchase Agreement Market," available at www.financialpolicy.org.

^v See Rule 2a-7 of the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq.

^{vi} See "Frequently Asked Questions About Money Market Funds" at www.ici.org.

^{vii} See "A Guide to Understanding Mutual Funds," Investment Company Institute (September 2006), at 7. The brochure is available at www.ici.org.

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Establishing & Revising the Benchmark Rate

Prepared for the Winter 2009 IOLTA Workshops in Boston, Mass.

February 10, 2009

Concept of a “Benchmark” Rate (aka “Safe Harbor”) – As of January 1, 2009, a total of 23 states have an IOLTA interest rate comparability rule or policy in place, according to the American Bar Association Commission on IOLTA. Of those states, per *The Resource’s* review, at least 17 have included a “benchmark” or “safe harbor” rate in their rule, with the rates ranging from Alabama’s 55 percent of the Federal Funds Target Rate to Minnesota’s 80 percent of the Fed Rate.

The intent of a benchmark rate (the term preferred by the ABA Commission on IOLTA), generally, is to simplify compliance for banks and administration for the IOLTA program itself. The benchmark rate provides banks the option of complying with a rate comparability rule by remitting based on a single, simple calculation, rather than actually converting IOLTA accounts to a comparable, high-rate product or setting up IOLTA accounts to emulate such a product. A bank choosing the benchmark option would pay a blended net yield (after fees are subtracted) based on a fixed percentage, as established by the IOLTA program, of the Federal Funds Target Rate. For example, the Utah IOLTA program in April 2008 set its benchmark rate at 70 percent of the Fed Rate; the Fed Rate at that time stood at 2.25 percent, resulting in a benchmark rate of 1.575 percent. As the Fed Rate changes, so does the benchmark rate proportionately. Utah’s rule contains this language related to the option of a bank complying by choosing the “safe harbor” rate:

(f)(1)(C) pay an amount on funds that would otherwise qualify for the investment options noted at (f)(3) equal to 70% of the federal funds targeted rate as of the first business day of the month or other IOLTA remitting period, which is deemed to be already net of allowable reasonable service charges or fees. The safe harbor yield rate may be adjusted once per year by the Foundation, upon 90 days’ written notice to financial institutions participating in the IOLTA program;¹

Setting the “Benchmark” Rate – In setting a benchmark rate, *The Resource* recommends that an IOLTA program conduct, or rely upon, a thorough analysis of bank remittance data, as well as independent information on what rate and fees banks offer their non-IOLTA customers holding accounts of similar size and other characteristics to IOLTA accounts. We advise analyzing those banks (usually fewer than 10) holding the majority of IOLTA principal balances in your state.

The purpose of such an analysis is to determine what these banks would pay if each complied precisely with a rate comparability requirement, in order to set the benchmark rate as close as possible (but not below) that level. In this way, the letter and spirit of the rate comparability requirement is respected and banks know that they’re being treated fairly and consistently. Once the benchmark rate is established, each bank will determine for itself whether it wishes to pay such a rate or comply in other ways proscribed by the IOLTA rule.

¹ Article 10. IOLTA. Rule 14-1001. IOLTA. A copy of the rule can be found at www.utahbarfoundation.org/.

The Resource recommends that An IOLTA program should resist the temptation to increase revenues by setting the benchmark rate higher than the program’s analysis suggests because banks might reject such an option *en masse*. We advise that an IOLTA program seek to balance its goal of increasing revenues with the legitimate interest of IOLTA-participating banks in pursuing their competitive strategies in the marketplace. Striking that balance should result in a benchmark rate that is attractive to banks and lucrative and easy to manage for the IOLTA program. It’s worth noting that a state bankers’ association might seek to lower the benchmark rate while the comparability rule is in draft form; having a thorough analysis underpinning your recommended benchmark rate should help an IOLTA program resist such pressure.

Revising the “Benchmark” Rate – On Dec. 16, 2008, the Federal Reserve’s Open Market Committee lowered the Federal Funds Target Rate to a historically low level and with the unprecedented step of conveying the “target” as a range (from 0.00 percent to 0.25 percent). Not only did this have the effect of suppressing IOLTA programs’ benchmark rates to very low levels, it also raised uncertainty regarding how precisely to apply a benchmark rate to a range.

This action touched off numerous discussions among IOLTA programs about how to respond, and some programs quickly took action by revising their comparability rule or policy in order to establish a floor or minimum benchmark rate. For example, the Louisiana IOLTA program in late December 2008 set its floor rate at a *fixed* 0.60 percent (60 basis points). The Louisiana IOLTA program reasoned that a Fed Rate “range” is not suitable for the purpose of applying the benchmark, instead turning to the last Fed Rate that was not a range, which was 1.00 percent. Louisiana then applied its benchmark rate (60 percent of the Fed Rate) to the 1.00 percent Fed Rate, resulting in the 60-basis point floor.

Other IOLTA programs, including in Maryland, Massachusetts, Missouri, and Texas have taken steps to set a benchmark rate floor. Those actions are too recent to determine the impact, including whether banks that previously selected the benchmark option would agree to the newly established floor or would seek to comply by paying IOLTA precisely what it would pay similarly situated non-IOLTA customers. Discussions in the IOLTA community continue regarding how best to reconcile the concept of a “floor” with the intent under rate comparability that banks treat IOLTA and non-IOLTA customers in the same manner.

The Resource has concluded that the unprecedented decline in the Federal Funds Target Rate underscores the importance of an IOLTA program, in drafting its comparability rule, retaining the right to adjust the benchmark rate at its discretion, and with at least 30 days’ written notice to participating banks.

###

Texas Equal Access to Justice Foundation Interest on Lawyers' Trust Accounts Program

Prime Partners

Prime Partners are financial institutions that go above and beyond eligibility requirements to foster the IOLTA program. These institutions pay a net yield of 70 percent or more of the Federal Funds Target Rate. They are committed to ensuring the success of the IOLTA program and increased funding for legal aid.

Benefits include:

- Highlighted on Eligible Institutions list as a “Prime Partner”
- Featured prominently on Texas Access to Justice Foundation Web site
- Active link from Texas Access to Justice Foundation Web site to Prime Partner’s Web site
- Mention in statewide newsletter distributed to all licensed Texas attorneys
- Featured in press releases issued to local and statewide media and bar association publications
- Included in advertising in Texas Lawyer weekly newspaper
- Letter to attorneys who open new IOLTA accounts advising them of bank’s Prime Partner status
- Local community recognition
- Mention in legal aid newsletters

Current Prime Partners:

- Amegy Bank of Texas
- Capital Bank
- Citibank Texas
- Comerica
- Compass
- Coppermark Bank
- Crosby State Bank
- Dallas City Bank
- First International Bank
- First National Bank of Bosque County
- First State Bank
- First Victoria National Bank
- Lindale State Bank
- NexBank
- North Dallas Bank & Trust
- OmniAmerican Bank
- PlainsCapital Bank
- Redstone Bank
- Security State Bank
- State National Bank
- Texas Brand Bank
- Town North Bank
- VisionBank Texas

For more information about the Texas IOLTA Program or to become a Prime Partner, contact the Texas Access to Justice Foundation at 512.320.0099, ext. 105, or visit www.teajf.org.

SAMPLE PRIME PARTNER LETTER

DATE

Re: Texas Interest on Lawyers' Trust Accounts (IOLTA) Program

Dear IOLTA Program Participant:

As you aware, the Supreme Court of Texas has amended the Interest on Lawyers' Trust Accounts (IOLTA) rules to require attorneys to place IOLTA accounts at financial institutions that pay interest rates comparable to those paid on similarly situated non-IOLTA accounts. The rule was changed to ensure that IOLTA accounts be treated fairly by receiving comparable interest rates.

While _____ is currently an eligible financial institutions, I am requesting that you reconsider your level of participation by becoming an IOLTA Program Prime Partner. Prime Partner banks pay 70 percent of the Federal Funds Target Rate on high-balance IOLTA accounts, which results in more funding for legal aid.

The IOLTA Program was created to support the goal of ensuring that all Texans, regardless of income, have access to our civil justice system. IOLTA funds are granted to organizations that provide free legal aid to low-income Texans in matters such as family law, landlord-tenant issues and public benefits. It is imperative that Texas banks collaborate with the access-to-justice community to boost the IOLTA Program, thereby increasing resources for legal aid.

At this time, more than 20 banks have joined the ranks of Prime Partner, demonstrating their commitment to Texas communities. I strongly encourage your bank to become a member of this elite group, which will serve to garner _____ extensive positive exposure.

Thank you for your prompt attention to this urgent matter. Should you have any questions, please contact me at _____.

Sincerely,

Banking on Justice

The Supreme Court of Texas has amended the rules governing IOLTA, requiring attorneys to place IOLTA accounts at banks that pay interest rates comparable to rates paid on other similarly situated accounts. The rule means more funding for legal aid. More than 500 banks are eligible to hold IOLTA accounts under the new rule.

The Houston Bar Association thanks all eligible banks, especially the Prime Partners who are surpassing eligibility requirements and paying higher interest rates on IOLTA.

IOLTA Prime Partners in the Houston Area:

Amegy Bank of Texas

Capital Bank

Citibank Texas

Comerica Bank

Compass Bank

Crosby State Bank

PlainsCapital

Redstone Bank

For a complete list of eligible and Prime Partner banks, visit www.teajf.org.

The Texas Access to Justice Foundation grants IOLTA funds to organizations that provide free civil legal aid to low-income Texans. The Foundation is a 501(c)(3) nonprofit created by the Supreme Court of Texas in 1984.

THE FLORIDA BAR FOUNDATION
GRANT PROGRAM RESERVE

DESCRIPTION

Background

The Foundation's board of directors approved re-establishment of the Grant Program Reserve in September 2005 as recommended by the Foundation's grant program committee. The Foundation's board of directors originated the Reserve in the early 1990s recognizing that IOTA revenue would rise and fall based on IOTA account balances and short-term interest rates. At that time, the goal of the Reserve was to maintain grant funding allocations (allocations) steady for two years. In 2005, the board increased the goal to four years.

Grant Program Reserve

The specific goal for the Grant Program Reserve is to prevent cuts in annual allocations for Legal Assistance for the Poor/Law Student Assistance and Administration of Justice grants for four years once IOTA revenue goes into its next down cycle.¹ When annual IOTA revenue is less than the year before, Reserve funds will be tapped to make up the difference.

Calculating the necessary amount of Reserve funds is done annually. In 2005-06, it was calculated as follows (numbers are actual, but "rounded" in this example):

To maintain grant allocations at the 2005-06 level for four years:²

a.	2005-06 LAP/LSA and AOJ grant allocation	\$17 million
b.	Subtract the current "worst-case" scenario for funds available for allocation for grants	<u>(\$11 million)</u>
c.	The result is the one-year shortfall in IOTA funds available for grants if the "worst case" scenario for IOTA revenue is realized	\$ 6 million
d.	Multiple one-year shortfall by four	x 4
e.	Amount of funds needed to maintain the 2005-06 grant allocation of \$17 million for four years	\$24 million

In each subsequent year of increasing IOTA revenue (assuming grant allocation also is increased), this calculation is repeated with updated information. For example, the calculation of the required amount in the Grant Program Reserve for 2006-07 would start with the \$25.8 million allocated for LAP/LSA and AOJ in 2006-07, subtract the \$11 million worst-case scenario for IOTA funds available for grants (or whatever amount is considered the "worst-case scenario" at the time), which leaves a shortfall of \$14.8 million. Multiply the one-year short-fall by four (\$59.2 million). That is the amount required in the Reserve to maintain grant allocation at the 2006-07 level of \$25.8 million for four years.

grants/grant reserve policies/2005-06 grant program reserve description.org (2006-09-05)

¹ Annual IOTA grant allocations are based on IOTA revenue and expenses in the prior year 12-month period

² The Foundation determined not to include investment income earned on the Grant Reserve into the calculation.

LOUISIANA BAR FOUNDATION
NAIP Mid-year meeting
February, 2009

RESERVE POLICY (As adopted by the Board of Directors on January 12, 2001):

15% net (of fees) calendar year revenue will be designated to the IOLTA investment account. The amount is remitted to the investment account quarterly.

Note: The Board of Directors may suspend this allocation when they deem appropriate and necessary such as during a period of significant revenue loss. However, an amount equal to the 15% allocation during the suspended time shall be remitted to the account once the Board determines funds are available (during a time of increasing revenue).

SPENDING POLICY (As adopted by the Board of Directors on April 19, 2002): Not more than 5% of the IOLTA investment portfolio value at fiscal year-end (June 30), shall be disbursed into the IOLTA operating account on a quarterly basis beginning in January of the following year and made available for grants making.

Note: The “up to 5%” is based upon the expectation of realizing an average of 5% annual investment interest income on the investment account.



IOLTA Interest Rate Comparability

As of Jan. 1, 2009, a total of 23 jurisdictions have adopted comparability legislation, rules, regulations and/or guidelines which include:

- Defining comparability as the highest rates generally available to other similarly-situated non-IOLTA customers
- Allowing the use of higher rate products including repurchasing agreements (REPOs) and government Money Market Funds
- Requiring that lawyers maintain IOLTA accounts only at financial institutions that meet the comparability requirements

The jurisdictions are:

- 1) Alabama
- 2) Arkansas (effective February 1, 2007)
- 3) California (effective January 1, 2008)
- 4) Connecticut
- 5) Florida
- 6) Hawaii (effective July 1, 2008)
- 7) Illinois (effective June 1, 2007)
- 8) Indiana
- 9) Louisiana (effective April 1, 2008)
- 10) Maine (effective April 1, 2008)
- 11) Maryland (effective April 1, 2008)
- 12) Massachusetts (effective January 1, 2007)
- 13) Michigan
- 14) Minnesota (effective July 1, 2007)
- 15) Mississippi (effective January 1, 2007)
- 16) Missouri (effective January 1, 2008)
- 17) New Jersey
- 18) New Mexico (effective January 1, 2009)
- 19) New York (effective August 15, 2007)
- 20) Ohio
- 21) Pennsylvania (effective September 20, 2008)
- 22) Texas (effective March 1, 2007)
- 23) Utah (effective April 1, 2008)

Note: Effective dates are listed for those states where comparability has been in effect for less than 24 months. Some of these states are still in the process of implementing comparability.