



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

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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.

We can help you with monitoring.

The Resource’s recommendation –

Monitor each IOLTA-participating bank at least once a year. Large banks should be monitored quarterly. This investment will be repaid many-fold. We can provide:

- ▲ **In-house design assistance.** We can help your staff set up a rigorous, in-house monitoring process and provide the analytical and communications tools you need to carry it out.
- ▲ **Our custom monitoring services.** Or we can be your bank monitoring team and prepare analyses and frame messages for you. We can provide any IOLTA program, regardless of size, with a first-class monitoring capacity, and you pay only for the amount of periodic assistance you really need.
- ▲ **Assurance.** Our comparability analyses assure that your program is applying its comparability rule or statute with consistency and rigor, while maximizing revenue for legal aid. In our review of a bank, we utilize our proprietary financial models and third-party data on products and rates that banks in your state offer their non-IOLTA customers.
- ▲ **Experience.** IOLTA programs large and small count on us to help them monitor banks and strategize about solutions to banking issues they are facing.

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%).

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."

About The Resource for Great Programs

We get results...

- ▲ Leading the way, with funds from the Ford Foundation in 1992 to design and carry out the first national training on IOLTA revenue enhancement for the National Association of IOLTA Programs & the ABA Commission on IOLTA.
- ▲ Helping IOLTA programs increase their annual revenue by two to 5 times their previous annual income through design and implementation of IOLTA rate comparability rules.
- ▲ Working with more than a dozen IOLTA programs large and small across America, including Florida, Michigan, Connecticut, Texas, California, Utah, Hawaii, and others.
- ▲ Helping garner tens of millions more dollars per year – perpetually – in increased revenues for IOLTA.

We can help with all aspects of rate comparability...

- ▲ **Conduct revenue impact studies** – To determine how much you could reap through a rate comparability rule and to set a fair and effective “benchmark” or “safe harbor” rate.
- ▲ **Develop a rate comparability rule** – To earn the same high rates for IOLTA that non-IOLTA customers get.
- ▲ **Persuade bench, bar, & banks** – To support your efforts for more money & fair rates.
- ▲ **Implement your comparability rule** – To join the multiple states we’ve helped to implement rules with more than 1,000 banks. Campaigns to move from voluntary to mandatory too.
- ▲ **Make sense of your remit data** – To understand what the rates & principal balances are.
- ▲ **Learn what banks should be paying IOLTA** – To level the playing field in your state.
- ▲ **Foster policy innovations** – To maximize revenue & strengthen your hand with banks.
- ▲ **Monitor bank compliance** – To ensure banks continue to comply with your rule as products, rates, & fees change.
- ▲ **Forecast your future revenues** – To allow you to develop reserves & stabilize grants.

The Resource’s IOLTA Staff, led by **Ken Smith & Kelly Thayer**, would be pleased to answer your questions and help your program increase revenues. *Contact us today!*

Maximizing IOLTA revenue & pursuing Full Access across America since 1984.