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IOLTA Feature

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Partnership Bank Programs: Maximizing IOLTA Revenue in Difficult Times

IOLTA

Partnership Bank Programs

By Ken Smith, Betty Balli Torres and Judith Baker

From the Chair

With short term interest rates expected to remain historically low well into 2014, IOLTA leaders are trimming expenses and abandoning any lingering hopes for a "magic bullet" that would restore IOLTA revenues to the peak levels seen just a few years ago.

Grantee Spotlight

Yet the impact of low interest rates has been less dramatic in some states than others. Although revenues everywhere continue to be well below "normal," some IOLTA programs have managed to keep rates substantially above those being paid by banks to their best non IOLTA customers — i.e. above "comparability." What explains that phenomenon?

Pro Bono

Success with Partnership Bank programs in Oregon and Texas provide an important insight: savvy bankers are willing to pay 70 to 100 more basis points in IOLTA interest in return for something every IOLTA program potentially can offer: visibility and promotion in the lucrative law firm market. This article outlines factors which can motivate a big bank to say "Yes" to a Partnership Bank Program, even at a time when doing so might cost the bank tens or hundreds of thousands of dollars annually.

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Oregon's "Leadership Banks" Program

For many years, the staff and board of the Oregon Law Foundation (OLF) have worked hard to maintain positive relationships with the largest banks holding the bulk of IOLTA deposits. As a result, Oregon has historically enjoyed some of the highest average net yields on IOLTA accounts in the country.

In 2005, state supreme courts and legislatures began following Florida's example of authorizing rule changes allowing for IOLTA rate comparability. OLF's staff and board decided to take a hard look at its preferred approach for getting banks to pay premium IOLTA rates on a strictly voluntary basis. A Revenue Enhancement Committee was formed to develop a comprehensive strategy and track results. A new initiative called the "Leadership Bank" program was a centerpiece of the approach they created.

Under the Leadership Banks program, banks qualify for "Visionary Bank" status by agreeing to pay 1.0 percent interest on IOLTA accounts.

The Oregon "Leadership Banks" Program At a Glance

Participation:

- 20 banks – One out of every three Oregon banks
- Five of 10 biggest banks are participants

IOLTA Rates:

- 1.00% ("Visionary Bank")
- 0.70% ("Advocacy Bank")

Impact:

- 69 percent of all IOLTA deposits are in Leadership Banks, paying average net yield of 0.71%, compared with 0.10% estimated yield that these banks pay their non IOLTA customers holding comparable accounts.

Alternatively, institutions can qualify for "Advocacy Bank" status by paying 0.7 percent. In return, they receive a stream of benefits, including:

- Prominent listing on the OLF website — the go to place for lawyers seeking information about the IOLTA requirements for eligibility to practice law in Oregon.
- Recognition at dozens of statewide and local bar events throughout the year such as the Campaign for Equal Justice Annual Luncheon. Materials included in New Member Packets distributed to new admittees to the bar.
- Articles such as "Leading the Way" in the Oregon State Bar *Bulletin* describing the impact of the Leadership Banks program on access to justice across the state.
- OLF cooperation with marketing efforts such as a mailing by Wells Fargo Bank to lawyers in the state, expressing the bank's pride in being a Leadership Bank supporting access to justice.

The Impact on IOLTA Revenues

A feasibility study commissioned by OLF in 2011 to assess the potential of a comparability requirement had results that were surprising. Oregon IOLTA was receiving more revenue under its Leadership Banks program than it would under a comparability rule. Moreover, not only would it continue to do so in the current environment when rates are low, but also in the future when rates are expected to be higher.

The OLF's overall IOLTA net yield is 0.57 percent for all deposits. According to the rigorous quantitative models applied in the feasibility study, this yield is over five times the rate that Oregon banks, as a whole, would pay on comparable accounts for their non IOLTA customers.

Under the Leadership Banks program, 29 percent of total IOLTA deposits are in Visionary Banks paying a rate of 1 percent. Another 40 percent of deposits are in Advocacy Banks paying 0.7 percent. The net result is that 69 percent of IOLTA deposits are in banks paying an average net yield of 0.71 percent compared with an average of less than 0.10 percent paid by banks to their non IOLTA customers holding comparable accounts.

The Leadership Bank program has achieved its goal of maximizing IOLTA revenue while also maintaining the excellent working partnership of the banking and legal communities. It builds on the positive banking relationships that Oregon IOLTA has developed through its sustained efforts over many years.

The experience of the Oregon IOLTA program demonstrates that a Partnership Bank program can offer a great opportunity in a small to medium sized state, where it is feasible (albeit not easy) for an IOLTA program to maintain face to face relationships with decision makers, Oregon's program demonstrates that these relationships can even be forged with large banks like Wells Fargo and US Bank that hold the bulk of IOLTA deposits. With a strong strategic vision and sustained effort, the Oregon Leadership Bank program is able to generate significantly higher yields than other states are able to receive from comparable IOLTA deposits.

The Texas "Prime Partners" Program

Like many IOLTA programs, for many years Texas had published an Honor Roll on its website listing banks that paid preferential rates or waived service fees on IOLTA accounts. In 2007, shortly after the Supreme Court of Texas adopted an IOLTA rate comparability requirement, the staff and board of the Texas Access to Justice Foundation (TAJF) saw an opportunity to generate even more income. Reviewing the experience of Florida and other states, TAJF knew

The Texas "Prime Partners" Program At a Glance

Participation:

- 70 banks – One out of every seven Texas banks
- Two top-tier banks and several 2nd-tier banks are participants

that implementation of the new rule would mean intense interactions with banks in the months ahead. TAJF crafted a bold proposition: *Pay more than required under comparability and your bank will be highly publicized in the legal community as a "Prime Partner," willing to comply and to go above and beyond for the benefit of low income people who need access to our civil justice system.*

Surprisingly, many banks accepted the proposition. Bankers saw an opportunity: *We have to pay more under comparability; why not pay a little extra and stand out from the crowd?* Within four months, many banks, including five institutions holding the largest total IOLTA deposits, became Prime Partners. This shift provided a clear signal that TAJF was striking a resonant chord. Although bankers tend to be cautious when it comes to spending money, they saw an opportunity to gain an edge over the competition in a market that matters.

In the beginning, Prime Partner banks agreed to pay 70 percent of the Federal Funds Target Rate (the "Fed Rate"), compared with the 60 percent required under the benchmark ("safe harbor") provision in the rule. However, after 2009 when rates dropped below 1.0 percent, TAJF revised the Prime Partner rate to a flat 1.0 percent, where it remains today.

In return for paying this rate, Prime Partner banks receive benefits including:

- Prominent listing on the TAJF website with active hyperlinks to the bank's website and cross links with partners such as the Texas Access to Justice Commission, State Bar of Texas Litigation Section, and TAJF grantees.
- Prime Partner information included in every issue of the "Update" newsletter mailed quarterly to all licensed Texas attorneys (approx. 86,000).
- Presentation of awards to Prime Partner Banks at local bar association meetings/events.
- Prominent mention in 3–6 promotional activities each month, such as an article in Texas Young Lawyers Association *eNews*, reaching 20,000 young lawyers in Texas.
- Announcement on TAJF's Facebook page which now encompasses 1,500 "fans" including lawyers, judges, and media.

A key strategic element is TAJF's focus on keeping Prime Partner banks informed about the promotional efforts being conducted every month on their behalf. An annual report lists in detail the scores of presentations, publications, and other ways in which Prime Partner banks are promoted continuously in efforts that reach every lawyer in Texas several times a year.

Impact on Revenues

In 2007, when the Fed Rate was still at 5.25 percent, TAJF estimated that the Prime Partner banks were paying \$4 million per year more than required under comparability. After the Fed Rate dropped to near zero, three of the five biggest banks dropped out of the program. Although a significant loss, it still left two top tier banks and several second tier banks among the 70 still in the program. Today the 1.0 percent paid by the Prime Partner banks represents a bonus of \$1.5 million in IOLTA revenues. This revenue is sufficient to fund 30 additional legal aid lawyers at the national average salary of \$50,000 per year.

Operating in a large state with over 500 banks, Texas IOLTA has proven that even in the current economy, banks can be persuaded to pay premium rates on IOLTA accounts. These rates can elevate IOLTA revenues by millions of dollars and can be obtained with a proactive approach.

IOLTA Rates:

- 1.00% ("Prime Partner")

Impact:

- Estimated \$1.5 million annually above what banks are required to pay under IOLTA interest rate comparability – enough to fund 30 legal aid lawyers.

Lessons Learned: Five steps for Boosting IOLTA Revenue

The key to a successful Partnership Bank program is linking the bank's need — for differentiation in the competitive law firm market — with the advantage an IOLTA program can offer, visibility and promotion. Both Oregon and Texas have been successful at not only delivering the promised advantage, but in letting bankers know they are getting what they are paying for. Similarly, IOLTA programs can use these five steps in varying combinations to launch a Partnership Bank program.

Step One: Develop the business proposition

It's all about how participation in a partnership program can help a bank be the "bank of choice" for law firms. Both Oregon and Texas laid out clear propositions: *Here is what we can deliver that will provide a clear competitive benefit in this market. Here is the IOLTA rate premium we seek in return.*

Step Two: Enroll some market leaders

Bankers are competitive; they want to be the best in the game. With an initial focus on quietly enrolling one or two banks in each market segment, an IOLTA program is able to foster a competitive vibe as the program is rolled out to other banks. A large bank that joins will get the attention of its peers. Smaller banks are welcome, but enrolling one or two big players in each tier of banks will build momentum for the program's success.

Step Three: Run a strong campaign

Recruit and deploy spokesperson such as lawyers who are significant customers of the bank being approached. Members of an IOLTA or legal aid board who are bankers and can speak the language can be effective spokesperson for the program. Deploy the leadership of the state legal community to let banks know that lawyers support the program.

Step Four: Sustain the program

Network marketing is more than a cliché; it really works in this situation. Personal relationships are imperative. Meet and greet bankers on their own turf at industry gatherings or meet bankers over breakfast. Give awards at industry events and bar gatherings. Get articles published in bar and banking periodicals and send a copy to every banker on your list.

Step Five: Deliver the product

Make sure that Partnership Banks get the results they are promised and make sure they know they are getting those results. In Texas, this is accomplished by sending an annual report to all banks that lists the benefits and statewide visibility that partner banks receive through participation in the program.

Looking to the Future

The Oregon and Texas examples show that a Partnership Bank program can boost revenues for civil legal assistance in states large and small. Success can mean five to seven times the revenue banks would pay under a less proactive approach.

An even more important result lies in the future. Bank economists believe rates will begin to rise toward more "normal" levels in 2014. With the infrastructure in place, Oregon and Texas will be well positioned to expand their Partnership Bank programs, and therefore the size of the pool of IOLTA deposits on which banks are paying higher than comparable rates. The additional millions of dollars that are generated will go a long way in restoring legal aid funding and replenishing IOLTA reserves.

There still is time to establish a strong Partnership Bank program before rates begin to rise. Doing so will lay the foundation for a much stronger and more effective IOLTA program in the near future. In the process, the stronger links being forged between the legal and banking communities will promote a common interest: strengthening civil justice for those unable to

afford legal assistance. They will make the vision of IOLTA as a *partnership of lawyers and bankers* a reality, not just a slogan.

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