

# AGENDA ITEM

**MARCH 162**

IOLTA 2010-2011 Grant  
Distribution Amount

DATE: February 10, 2010

TO: Members of the Committee on Legal Services, Pro Bono & Equal Access  
Members of the Board of Governors

FROM: Stephanie Choy, Managing Director, Legal Services Trust Fund Program

SUBJECT: IOLTA 2010-2011 Grant Distribution Amount

## **EXECUTIVE SUMMARY**

Each year, the Board of Governors sets the grant amount available for distribution from Interest on Lawyers' Trust Accounts ("IOLTA"). Generally, the distribution amount is calculated by reviewing six months of actual IOLTA revenue and six months of projected revenue, less administrative costs. In years when revenue is anticipated to be high, under a policy recommended by the Legal Services Trust Fund Commission and adopted by the Board in 2006, a percentage of the revenue is pulled into a stabilization reserve fund.

Last year, the Board approved drawing on that stabilization fund to minimize the impact of the bad economy on the 2009-2010 IOLTA grant distribution. The nonprofit legal aid organizations that are funded by IOLTA continue to suffer the harsh effects of the down economy, while at the same time struggling to provide services for the increasing numbers of people needing civil legal aid. Therefore, this year, the Legal Services Trust Fund Commission again recommends that the Board of Governors approve maximizing the grant distribution through prudent use of stabilization reserves, at the same time recognizing the need to keep some stabilization funds in reserve to cushion the impact of the economy for the year following. The Commission recommends distributing \$11,873,143 in IOLTA and Justice Gap Funds for the 2010-2011 grant year, leaving a projected fund balance at June 30, 2011 of \$4,386,040. The recommended IOLTA distribution reflects a 15% cut from the 2009-2010 IOLTA grant distribution.

Questions regarding this agenda item should be directed to Stephanie Choy, Managing Director, Legal Services Trust Fund Program (415) 538-2249.

## BACKGROUND

The Board of Governors each year sets the amount of Interest on Lawyers' Trust Accounts (IOLTA) funds for distribution during the next grant year, beginning July 1. The amount is set in March or April, depending on the board meeting schedule, so that: the Trust Fund Commission can notify recipient programs of a grant amount; the legal aid organizations have 30 days to prepare proposed budgets; and the staff and the commission can review the budgets, obtain fully executed grant agreements, and begin to distribute funds in July.

For each of the first eight grant periods (1984 - 1992), the amount approved for distribution was the total money projected to be on hand as of the end of the year, less administrative costs during the same period. In other words, the program collected money for a year and then gave it out in the following year. At the beginning of the grant year, 100% of the money for grants was "on hand" for distribution throughout the following year. While funds were disbursed in quarterly payments, financial institutions continued to remit interest earned, so the program always had on hand about one full year's revenue.

In 1992, in response to low interest rates and declining revenue, the Board of Governors adopted the recommendations of the Trust Fund Commission and the Legal Aid Association of California (LAAC), to hold less than a year's cash on hand in order that more funds are immediately released for distribution. That year, the target cash on hand was set at 75% of the prior year's grant. In response to subsequent and dramatic interest rate declines, that target was later reduced to 60% and then to 30%, where it remained for a 14-year period until 2006.

Revenue remained flat between 2001 and 2004 (below \$10 million), but showed steady increase in the years ending 2005 (\$11.6 million), 2006 (\$14.9 million), 2007 (\$17.1 million), and 2008 (\$20.2 million). For many legal aid organizations, IOLTA funding is a core support. Recognizing the importance of stabilizing grants to avoid big fluctuations in funding amounts, the Commission proposed revising the cash on hand policy to build a reserve that could be distributed during lean years. Then, as now, the Commission recognized that the ability to rely on stable IOLTA funding is critical to the health and survival of legal aid programs that are the beneficiaries of the statutory IOLTA framework. The Board of Governors approved that policy in 2006.

Under this policy, when revenue is higher than the prior year, grants are held to a smaller increase so as to build a reserve to stabilize grants. In years when revenue is decreasing, the reserve can be spent down in an attempt to maintain grant levels. The following three-step calculation is applied whenever anticipated revenue exceeds prior year grants: 1) the first 5% of any increase in revenue is distributed to legal aid programs; 2) the next 10% increase in revenue is held by the LSTFP in a stabilization reserve fund; and 3) if projected revenue exceeds 15%, then the additional amount is divided equally between increased grants and increased reserve, up to a cap of 75% of the previous year's available funds. Because of this prudent policy, as of June 30, 2009, the LSTFP has a fund balance of just over \$20 million.

## **CURRENT AND PROJECTED REVENUE AND STABILIZATION RESERVE**

Historically, staff developed a recommended amount for distribution using two quarters of actual revenue and two quarters of projections, adjusted to account for administrative costs and funds to be held in reserve. This methodology worked well when interest rates fluctuated within normal market conditions, but was not a reliable predictor in 2008, when revenue increased substantially because of the newly enacted IOLTA comparability statute, or in 2009, when the federal funds target rate (which is one predictor of interest rates) dropped to the lowest in history.

Last year, we reported that IOLTA-funded legal aid organizations were struggling with tremendous loss of funding at a time when there are increasing numbers of people seeking their services. Under that scenario, the Commission determined to push out as much funding as possible in 2009-2010 (10% cut in grants), even recognizing (and cautioning grant recipients) that if revenue did not outperform projections, there would be little reserve left to add to the grant distribution in 2010-2011. Fortunately, the IOLTA revenue for 2009, initially projected at a low of about \$3 million, in fact reached \$7 million. This increase was achieved in part due to the combined efforts of the Legal Services Trust Fund Commission, staff and the legal aid community to encourage banks to increase IOLTA rates, but reflects amounts that we cannot count on for the 2010 year. Because revenue was higher than anticipated, cuts for the 2010-2011 grant year need not be as steep as projected.

**As detailed in the Projected Available Funds for Grant Period 2010-2011 (Attachment 1), the Commission requests that the Board approve a distribution of \$11,873,143, which represents a 15% drop in funding from last year. That amount is comprised of anticipated IOLTA revenue, funds taken from stabilization reserves, anticipated Justice Gap Fund contributions, investment income, and contract fees for administration of the Equal Access Fund grants, less the administrative expenses to operate the Legal Services Trust Fund Program. The grants will be distributed to the eligible programs under the statutory distribution formula. That will leave a projected fund balance of \$4,386,040 at June 30, 2011. In the event that the projections for 2011-2012 revenue and expenses remain the same, then next year at this time, the Commission will still be in a position to recommend a 2011-2012 grant distribution of slightly over \$6 million, leaving a \$2.6 million fund balance at June 30, 2012.**

Of course, this revenue projection is based on currently available information. We are keeping careful watch on the predictions of economists, who currently forecast that the Federal Reserve could keep the fed funds target rate low through 2010 and deep into 2011. Financial news reports that “the other shoe has yet to drop” and recent bank calls to the Trust Fund Program about rates, both lead us to believe that despite our best efforts, revenue will drop in 2010.

**PERSONNEL/BUDGET IMPLICATIONS:** This recommendation does not affect the general fund budget. No additional staff or other expenses will be incurred as a result of this recommendation.

**BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:** None.

**RULE AMENDMENTS:** No rule amendment is necessary.

### **RECOMMENDATION**

The attached schedule shows the calculation, based on actual experience through December 31, 2009 and revenue and expense projections through June 30, 2010.

Because money will continue to be disbursed as it is received, the Trust Fund Commission will monitor revenue closely throughout the year and will return with recommendations if there are significant variances from the projections. The agreement signed with grant recipients includes language to make clear that distribution of grant funds is contingent upon the Legal Services Trust Fund Program having sufficient money on hand from IOLTA revenue to make the scheduled payments.

### **PROPOSED RESOLUTION**

If you agree with this proposal, the following resolution would be appropriate:

**RESOLVED**, upon recommendation of the Board Committee on Legal Services, Pro Bono & Equal Access, that the Board hereby approves that the distribution of IOLTA grants from the Legal Services Trust Fund Program for the grant period July 1, 2010 through June 30, 2011 shall be made in the order and manner provided by Business and Professions Code Section 6216, and the funds to be distributed shall be \$11,873,143 calculated as follows:

- (1) The amount projected to be received by the Legal Services Trust Fund Program from March 2010 through February 2011, totaling \$5 million, shall be allocated for the grant period July 1, 2010 through June 30, 2011.
- (2) Funds from the reserve in the amount of \$7,443,143 shall be allocated for the grant period July 1, 2010 through June 30, 2011.
- (3) Donations to the Justice Gap Fund in the amount of \$750,000 shall be allocated for the grant period July 1, 2010 through June 30, 2011.
- (4) Other revenue, including investment income and reimbursement for expenses for reimbursement of the Equal Access Fund in the amount of \$280,000.
- (5) Actual administrative costs, projected at \$1,600,000 for the period July 1, 2010 through June 30, 2011, shall be deducted.

**FURTHER RESOLVED** that grant payments are to be made from funds received pursuant to California Business and Professions Code, Sections 6212 et seq. and Section 6033, and that payment of grants is contingent upon the State Bar having sufficient money on hand from such sources to make the scheduled payments; and it is

**FURTHER RESOLVED** that the Legal Services Trust Fund Program is directed to monitor program revenue during the grant year, and to recommend changes to the grant amount, if necessitated by significant variances between projected and actual revenue.

**Attachment 1 - Projected Available Funds for Grant Period 2010-2011**