



The State Bar of California

OPEN SESSION

AGENDA ITEM

JUNE 2021

LEGAL SERVICES TRUST FUND COMMISSION V.A

DATE: June 25, 2021

TO: Members, Legal Services Trust Fund Commission

FROM: Doan Nguyen, Program Manager, Office of Access & Inclusion

SUBJECT: Approval of Interest on Lawyers' Trust Accounts (IOLTA) Grant Distribution for 2022

EXECUTIVE SUMMARY

Annually, the Legal Services Trust Fund Commission (Commission) recommends to the Board of Trustees the grant amount to be made available for distribution from Interest on Lawyers' Trust Accounts (IOLTA) to qualified nonprofit legal aid organizations in California. Interest revenue generated by these accounts is the main source of funding for these grants, referred to as "IOLTA grants," but over the years these funds have been supplemented by Justice Gap Fund donations and optional contributions from State Bar licensees as part of their annual licensing fee payments.

After careful review of the revenue projections and consideration of the needs of low-income Californians and legal aid programs, staff recommends a calendar year 2022 grant distribution of ~~\$36,492,066~~\$35,487,840, which is a ~~52~~48 percent increase over the 2021 grant distribution of \$23,951,697. This distribution amount would yield a projected reserve of \$11,747,500 at the end of the 2022 calendar year.

BACKGROUND

IOLTA STATUTE

In 1981 the Legislature authorized the IOLTA program under Business and Professions Code sections 6210-6228 (IOLTA statute). The purpose of the statute was to increase access to justice

and improve the administration of justice through expansion of legal services. In pursuit of those goals, the Legislature prioritized improving the quality of existing free legal services in civil matters to indigent persons and initiating new programs to provide such services.

The IOLTA statute requires lawyers to place nominal client funds, or funds that are on deposit for short periods of time, into interest- or dividend-bearing accounts in which the interest or dividend is paid to the State Bar.¹ Such accounts can only be kept at approved financial institutions certified by the State Bar to ensure compliance with the IOLTA statute.

The interest earned from pooled IOLTA accounts is remitted to the State Bar. The State Bar subtracts its administrative costs and then distributes the approved fund amount (based on the IOLTA statutory formula) to organizations that provide free civil legal aid in California to indigent persons,² or legal training, legal technical assistance, and advocacy support to the organizations that directly serve indigent persons. The Office of Access & Inclusion (OA&I) administers the Legal Services Trust Fund Program for the State Bar under the oversight of the Commission and Board of Trustees.

DISTRIBUTION OF IOLTA FUNDS

Each year, the Commission recommends for approval to the Board of Trustees the amount of IOLTA grants to be made available for distribution in the following calendar year. For many legal aid organizations, IOLTA funding provides their core support, meaning that organizations have the flexibility to use the funds where they need it most; many other funders impose specific restrictions on funds (e.g. salaries only, but no benefits or no overhead costs; specific projects; etc.). Unlike foundation funding that may not be as consistent, IOLTA grants generally offer stability to grantees by supporting all aspects of their operational need to provide free civil legal services to the indigent. Moreover, once a grantee's eligibility is established, they are guaranteed funding for that year based upon a statutorily mandated formula.

In the first eight grant years (1984-1992) the Legal Services Trust Fund Program recommended to the Board distribution of the total money projected to be "on hand" as of the end of the prior 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, such that 100 percent of the money for grants was "on hand" for distribution throughout the year. 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 then Board of Governors adopted a cash-on-hand policy to hold only 75 percent of a year's cash on hand. Over the years,

¹ If there is a large sum of money involved, or it will be held for a long time, an attorney can hold the client's funds in an individual account, designated as a Client Trust Account, and the interest earned will go to the client.

² Per the IOLTA statute, an "indigent person" is an individual 1) whose income is not higher than 125 percent of the federal poverty threshold, or 2) eligible for Supplemental Security Income or free services under the Older Americans Act (seniors 60+) or Developmentally Disabled Assistance Act (Business & Professions Code section 6213(d)).

subsequent interest rate declines led to further reductions bringing the target range to 30 to 75 percent of the prior year's projected revenue.

IOLTA revenue remained flat between 2001 and 2004—approximately \$10 million—but showed a steady increase beginning with the 2005 grant year. In 2006 the Commission proposed, and the Board of Governors approved, a revision to the cash-on-hand policy described above (also known as the reserve policy, see Attachment A). The goal was to build reserve funds that could be distributed during lean years. Then, as now, the Board and the Commission recognized that the ability to rely on stable IOLTA funding is critical to the health and survival of legal aid organizations that receive IOLTA funding.

In applying the cash-on-hand policy over the past few years, a portion of increased receipts was held in reserve as a hedge against future declines in revenue. Under the policy, when revenue is higher than in the previous year, grants are increased incrementally while also increasing the reserve/cash on hand. The cash-on-hand policy applies the following methodology in years where revenue has increased from the previous year:

1. The previous year's grant distribution is established as the planned grant distribution base amount;
2. Increased revenue is used to increase grant distribution by 5 percent over the prior year's amount;
3. If additional funds remain, ten percent of the prior year's grant distribution is added to the reserve/cash on hand;
4. Any additional projected funds remaining are split equally, increasing both grant distribution and reserve/cash on hand.

This prudent planning to build a reserve proved essential during the Great Recession of 2008 as well as in the latest 2020 recession. In 2019, IOLTA interest revenue reached a record high of \$46.5 million. Then, due to the pandemic and a precipitous drop in interest rates beginning in March 2020, IOLTA revenue decreased to \$26.2 million at the close of 2020, a reduction of \$12.8 million from original projections. Funds put aside because of the reserve policy (and additional revenue from sources such as the Justice Gap Fund and the Legal Services Assistance Fund) supplemented low IOLTA revenue and prevented the State Bar from having to reduce grants mid-year in 2020.

Unfortunately, the reserve policy does not provide a similar step-by-step formula for calculating the distribution amount when revenues are declining, rather than increasing, setting only the target that reserves remain between 30 and 75 percent of the prior year's projected revenue. The Commission is slated to update the reserve policy through the rules codification process and the Rules Committee is scheduled to develop recommendations for a new reserve policy in the first half of 2022.

Recertification Efforts and Leadership Bank Program to Increase Revenue

In the past four years OA&I has engaged in an intensive bank recertification and negotiation effort, which has proven to be especially helpful in the past 15 months as interest rates have remained low. The State Bar receives interest from approximately 174 financial institutions offering IOLTA accounts. The recertification process confirms their compliance with the IOLTA statute, particularly ensuring that IOLTA accounts holding those assets are receiving comparable interest rates to similarly situated accounts. By the end of 2020, all IOLTA-eligible financial institutions had completed a recertification review.

The recertification process, coupled with rising interest rates, allowed for higher distributions in 2019 and 2020. In 2019, the State Bar distributed \$27.5 million in IOLTA grants, nearly double the amount distributed in the prior year. The amount approved for distribution in 2020 was again double the prior year, approximately \$55 million. Unfortunately, with the federal funds rate dropping to near zero in March of 2020, some financial institutions have requested to be recertified at lower rates. Despite the current low-interest climate, State Bar staff still strive to utilize the recertification process to strengthen relationships with bank representatives and to negotiate a higher rate than what the financial institution may have initially requested.

As of April 2021, financial institutions in California held about \$6.1 billion in IOLTA deposits, an 18 percent increase over 2020. However, bank remittances collected through April 2021 show that the total average balance for the top ten revenue-generating banks decreased by ten percent, a decrease of approximately \$400 million occurred between March 2021 and April 2021. While the average IOLTA interest rate of 0.54 percent for the top-ten revenue-generating banks is significantly higher than the federal funds rate, the recent decrease in average balance may reduce the amount of interest collected for the remainder of the 2021 year. OA&I is tracking these developments carefully and will continue to provide the Commission with updates throughout the year.

To generate additional revenue, the State Bar also established a “Leadership Bank” program in 2019. Leadership Banks are required to pay at least the established compliance rate (ECR) on IOLTA accounts and waive fees and charges on all IOLTA accounts, regardless of the account’s size. The State Bar’s ongoing efforts to maintain enrollment in the Leadership Bank Program has successfully mitigated some of the loss in IOLTA revenue that would have otherwise occurred over the past year (see next section). Two of the three highest revenue-generating banks maintained their compliance rate at the Leadership level throughout the pandemic, and the three highest revenue generating banks represent 70 percent of the monthly IOLTA revenue.

The chart below illustrates the IOLTA grant distributions over the past 5 years.³

Year	Total IOLTA Revenue (including Justice Gap donations)	Percent Change Over Prior Year	IOLTA Grant Distribution (in millions)	Percent Change over Prior Year
2021	23.5(projected)	(35.3%)	\$24	(57%)
2020	36.3	(34.1%)	\$55.3	101%
2019	55.1	102.6%	\$27.5	98%
2018	27.2	94.3%	\$13.8	26%
2017	14.0	9.4%	\$11	(1%)

CHANGES TO THE FEDERAL FUNDS RATE AND ONGOING FUNDING CHALLENGES

Through most of 2019, the FFR was 2.5 percent, the highest it had been in over 10 years. By the end of 2019, the FFR decreased to 1.75 percent, but actual IOLTA revenues still exceeded the amount previously projected for 2019 by \$5 million. Unfortunately, in March 2020, the FFR fell precipitously to 0.25 percent as an attempt to offset the dramatic impact of COVID-19 on the economy.⁴ The FFR remains at 0.25 percent and is likely to remain low for quite some time.⁵

The consequence of these changes has been and will continue to be significantly lower IOLTA revenue than the high watermark experienced in 2019. Fortunately, the drop in IOLTA revenue has not been as sharp as previously forecasted. This time last year, OA&I projected total revenue to drop to approximately \$27 million for the 2020 calendar year and \$14 million in 2021. Actual 2020 revenue totaled approximately \$36 million at the close of the year. While the forecast for IOLTA revenue is much better than originally projected, there remains a decline of approximately \$20 million from 2019 levels.

DISCUSSION

RECOMMENDED 2022 IOLTA DISTRIBUTION AND TARGET RESERVE

Staff proposes that the Commission recommend a 2022 grant distribution of ~~\$36,482,066~~\$35,487,840 with a projected reserve of \$11,747,500 at the end of 2022, which is 50 percent of the prior year's revenue.

Forecasting IOLTA Revenue

³ As noted earlier, in years of rising revenue, the grant distribution is increased based on the formula set forth in the cash on hand policy.

⁴ The FFR represents a target range of interest rates, in this case zero to 0.25 percent. When negotiating with financial institutions, the industry standard is to use the higher end of the range as the target.

⁵ In the case of the recession starting in 2008, interest rates did not increase for seven years—until December 2015—and the increase was gradual.

To aid the Commission in its decision, staff has prepared three different approaches to revenue projections for 2021 and 2022: (1) aggressive; (2) moderate; and (3) conservative. (Attachment C). All three projections assume that the Federal Funds Rate will remain at its lowest rate through 2022, that the State Bar will not be able to generate more revenue through the recertification process or Leadership Bank Program, and that voluntary donations through fee statements and the Justice Gap Fund will decrease slightly. In addition, all three projections assume that total IOLTA deposits will not decrease or increase from the current \$6.1 billion.

The projections are based on actual bank remittances collected through April 2021 and focus on trends in revenue collected from the top 10 revenue-generating banks, which represents 87 percent of total IOLTA revenue. The current interest rate environment is extremely volatile and forecasting IOLTA revenue for the remainder of the year and into 2022 has proven especially challenging. Some factors that we have taken into consideration when projecting revenue include: the ongoing pandemic and increase in vaccines; the opening of courts and businesses; and the Federal Reserve's continued strategy on quantitative easing and low interest rates.

The aggressive scenario projects minimal overall loss with no decreases in the IOLTA rate for the top seven revenue-generating banks. In this scenario, the remaining three banks will provide comparable rates between 0.03 to 0.10 percent and the average IOLTA rate for the top ten revenue-generating banks will decrease from 0.57 percent to 0.43 percent.

The moderate scenario projects that the top revenue-generating bank will maintain their average IOLTA rate of 0.68 percent and that the remaining nine banks will provide comparable rates between 0.10 percent to 0.20 percent. This scenario estimates that the change in the average IOLTA rates for the top ten revenue-generating banks will decrease from 0.57 percent to 0.36 percent.

The conservative scenario projects a significant loss in IOLTA revenue with decreases in all top ten revenue-generating banks. In this scenario the average interest rate for the top ten banks will decrease from 0.57 percent to 0.12 percent. The estimated decrease assumes the continued near zero Federal Funds Rate, resulting in the banks dropping rates further for IOLTA accounts.

Based on the current revenue trends and analysis of bank remittances in the past 15 months, staff recommends the Commission adopt a moderate approach, which projects \$23,495,000 for total IOLTA revenue in 2021, a reduction of \$12.8 million from actual total IOLTA revenue of \$36.3 million for 2020. If revenue is insufficient to cover the projected grant distribution, the State Bar has no obligation to fund the grants beyond the revenue received. However, the Commission recognizes that it would be an immense hardship to grantees were the State Bar to be unable to meet grant obligations. For this reason, staff strongly encourages the Commission to adopt a moderate approach along with a 50 percent reserve amount, which is discussed more below.

Target Reserves

As noted in the Background section, above, the reserve policy describes a target reserve amount that is 30 to 75 percent of the prior year's projected revenue. It provides a formula for determining the distribution and reserve amounts when revenues are increasing, but it does not identify the formula for calculating the total distribution and reserve amounts when, as we are faced with now, revenue is declining.

The larger the reserve as a percentage of the prior year's revenue, the less funds available for distribution. Establishing a larger reserve could allow for more stable funding in subsequent years if revenue continues to decrease, but it would reduce the total funds available for distribution now, during a time when they have reported increased demand for services. In contrast, a smaller reserve reflects a decision to distribute more funds currently. It maximizes the available funding but may leave grantees in a more difficult position in succeeding years if funding decreases more dramatically than anticipated.

While the Commission has discretion to recommend a reserve between 30 to 75 of the prior year's revenue, staff recommends a 50 percent reserve, which is in the middle of the range. As we discussed above, the economy is in transition and the trend of decreased deposit balances and lower IOLTA rates may continue through 2021 and into 2022. With so much economic uncertainty, it is prudent planning to build a slightly higher reserve to buffer against any revenue shortfalls and to provide for more funding stability for grantees.

Reserves for 2022 are calculated by multiplying the reserve percentage by the projected full-year revenue for 2021. If the Commission chooses to adopt a moderate approach to revenue projections, total 2021 IOLTA revenue would be \$23,495,000. A 50 percent reserve based on this scenario would leave \$11,747,500 at the end of 2022.

The formula for grant distribution is:

(net assets/cash on hand from the prior year) + (projected revenue during the grant year) – (reserve amount)

Funds Available		Projected Reserve/Ending Net Assets	Total Grants
2021 net assets/cash on hand	2022 projected revenue (based on 2021 revenue and after admin expenses deducted)	Target reserve (50 percent)	2022 distribution

\$ 2625 .8million	+	\$21.4 million	-	\$11.7 million	=	\$ 3635 .5 million
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Adopting a moderate approach to revenue projections coupled with a 50 percent target reserve will yield a 2022 distribution of \$~~3635~~.5 million, which is a ~~52-48~~ percent increase from the 2021 distribution of \$23.95 million. If the Commission wishes to establish a smaller or larger reserve amount, the distribution will increase or decrease by the same amount that the reserve increases or decreases.

Additional Funding to Legal Aid

There is a substantial increase to legal aid funding proposed in the 2021-2022 state budget that went into print on June 10, 2021. Senate Bill 112 provides a \$50 million increase to the Equal Access Funds, with \$45 million of that amount being administered by the State Bar and the Commission. It is expected that the \$50 million increase will be reduced to a \$20 million increase after the first year. In addition, the budget bill proposes an additional \$40 million per year for three years for homelessness prevention, which would also be administered by the State Bar and the Commission. Since the additional funding to legal aid is still uncertain, staff maintains a recommendation of a 50 percent reserve; however, should the funding become more certain by the time the Commission meets on June 25, staff encourages the Commission to consider maintaining a reserve higher than 50 percent. A larger reserve might buffer against any additional decreases to IOLTA and offer grantees added stability. Should the Commission decide to set the reserve at 75 percent based on a moderate revenue projection, then the grant distribution in 2022 would be \$~~3029~~.6 million, which would still produce a significant increase of ~~28-24~~ percent over the 2021 grant distribution. In this scenario, the projected reserve would be \$17.6 million at the end of the 2022 calendar year.

Recommendation to the Board of Trustees

In summary, staff recommends a calendar year 2022 IOLTA distribution of \$~~36,492,066~~~~35,487,840~~, leaving a projected reserve of \$11,747,500 at the end of 2022. At a time when the need for free legal services is more critical than ever, this sizable increase from 2021 will enable grantees to increase services and help more indigent Californians. Moreover, the reserve will provide grantees with some funding stability beyond 2022 and into 2023, which may prevent the need for reduced staff and enable grantees to adopt long-term strategies for recruitment and retention. The Board of Trustees will meet on July 22 and 23, 2021 to consider the Commission's recommendation.

FISCAL/PERSONNEL IMPACT

Administration of the IOLTA program is fully funded through IOLTA revenue. The recommended distribution is net of the \$2.1 million projected cost to administer the program; the actual amount distributed to grantees in 2022 will be the same as the distribution amount stated herein. Should staff determine that the amount is insufficient to cover the share of staff salaries

and other expenses necessary to administer this program, staff will return to the Commission and Board to request approval to allocate additional amounts from the cash on hand. This recommendation does not affect the general fund budget. No additional staff or other expenses will be incurred as a result of this recommendation.

RECOMMENDATIONS

RESOLVED, that the Legal Services Trust Fund Commission recommends that the Board of Trustees approve the 2022 IOLTA distribution in the amount of ~~\$36,492,066~~\$35,487,840, with a projected reserve of \$11,747,500 at the end of 2022.

ATTACHMENT(S) LIST

- A.** State Bar 2006 Cash On Hand Policy/Reserve Policy
- B.** Distribution Spreadsheet of Revenue and Expenses Since 2008
- C.** IOLTA 2020 and 2021 Revenue Projections vs. Actual Detail
- D.** IOLTA 2022 Revenue Projections and Grant Distribution Detail

AGENDA ITEM

MARCH 54-166

Legal Services Trust Fund Program:
Set Amount for Distribution for
2006-2007 IOLTA Grants

BCSR

03/17/06

Open / Action
Item III.B.

DATE: February 28, 2006

TO: Members of the Board of Committee on Stakeholder Relations
Members of the Board of Governors

FROM: Judy Garlow, Director, Legal Services Trust Fund Program

SUBJECT: Legal Services Trust Fund Program:
Set Amount for Distribution for 2006-2007 IOLTA Grants

Executive Summary

Each year, the Board of Governors sets an amount for distribution in Legal Services Trust Fund Program grants from interest on lawyer trust accounts ("IOLTA"). Since 1992, the method for setting the amount has been to allocate for the grants the amount of prior year revenue less administrative costs, adjusted by an amount by which cash on hand as of June 30 is projected to be more or less than a specific percent of the prior year's net revenue. Most recently, this cash-on-hand target has been 30 percent. After consultation with the Legal Aid Association of California, the Legal Services Trust Fund Commission is recommending adjusting this target for this year upward to approximately 50 percent, so as to take advantage of increased IOLTA revenue to put us in a position to cushion the effects of lower interests rates as needed in the future. Using this system will result in 2006-2007 grants of \$12.7 million, up about 6 percent from the \$12 million distributed in the 2005-2006 grant year.

BACKGROUND

The Board of Governors each year sets an amount for distribution in IOLTA grants to be administered by the Legal Services Trust Fund Program. That amount is distributed for the 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 each recipient program of a grant amount, give them 30 days to prepare proposed budgets, review the budgets and still get grant agreements signed and the checks mailed in July.

For each of the first eight grant periods (fiscal years 1984-1985 through 1991-1992), the amount approved for distribution was the total money projected to be on hand June 30. This amounted to the total revenue of the program in the year preceding the grant period, 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 percent of the money for grants was on hand. Grants were disbursed in quarterly payments. At the same time, money came in that would become the next year's grants, so the program always had on hand about one full year's revenue.

In 1992, the Board of Governors changed that system on the recommendation of the Legal Aid Association of California and the Trust Fund Commission. We moved away from a system where grants were made up only of money already in hand, and to a system of paying part of the grant out of income as it came in. The motivation for this change was the view that the program did not need to keep such a large amount of cash on hand, especially in times of low interest rates and correspondingly lower revenue.

The basic distribution method remained, as before, to allocate for grants the amount of prior year revenue less administrative costs. To determine the amount for distribution, this net prior year revenue amount was adjusted by the amount by which cash on hand as of June 30 was projected to be more or less than a set percentage of the prior year's revenue amount. When the original change was made in 1992, interest rates had begun to drop and the target was set at 75 percent, in order to increase grants by 6 percent over the previous year even though revenue was down about 7 percent. Subsequently, interest rates fell dramatically. The cash-on-hand target was reduced to 60 percent and then to 30 percent, where it has remained for the last 12 grant years.

In years when revenue is increasing, the money coming in exceeds the grant amount going out, and cash on hand builds up above 30 percent. That "extra" amount is added onto the grants for the next year, resulting in a larger increase. In years when revenue is decreasing, the money coming in is less than the grant amount going out, and cash on hand drops below 30 percent. We make up for that by holding back money to increase the cash on hand for the next year, resulting in a greater decrease in grants.

This system has had the desired effect of putting the money in the hands of grant recipients quickly, and has minimized the amount of the program's cash on hand. Because of the swings in interest rates in the last several years, however, it has also meant there were somewhat unpredictable swings in the amount of grants from year to year. As just one example, the total grant amount went up 22 percent in 2001 and then back down 38 percent the following year. Although the grants on average represent a small share of each recipient's total income, in many cases, the ups and downs have been significant. In a time of increasing revenue, the Trust Fund Commission decided to explore whether there might be a better approach.

PROPOSED CHANGE

The Commission has now discussed its proposed change with the Legal Aid Association of California, which consulted with all of the recipients of Trust Fund Program grants. LAAC came back to the Commission in support of the proposal, with a few relatively small suggestions that the Commission has incorporated into this recommendation.

The proposal is to increase cash on hand above 30 percent with the goal of decreasing the fluctuation in grants caused by sizable increases and decreases in interest rates. In years of increasing revenue, grants would be held to a smaller increase than is currently provided for, so as to increase cash on hand. Then in years of decreasing revenue, the cash on hand will be spent down again, to keep grants larger than they would otherwise have been.

The recommendation of the Commission and the legal services community involves a three-step calculation for years in which income is increasing:

- The amount for distribution will be allowed to increase by 5 percent before increasing cash on hand above the current 30 percent. For 2006-2007, this means an increase from \$12 million to \$12.7 million in total grants.
- The funds that would represent the next 10 percent increase—in this case, \$1.2 million—will go to increasing the cash on hand.
- In years when revenue increases more than that, the additional amount will be divided equally between increased grants and increased cash on hand, up to a cap of 75 percent of the previous year's available funds. For this year, there is \$229,520 to be shared equally between grants and increased cash on hand.

Two elements of this change will required ongoing discussion between the Legal Services Trust Fund Commission and the Legal Aid Association, to arrive at further recommendations as needed by this time next year. The first of these two elements is the system for distributing the funds held back when we come upon years of declining income. It is much more difficult to come up with an automatic formula for that. It is likely that a policy will be developed after consultation with the Legal Aid Association.

A second issue for ongoing discussion is the cap on the amount held back to increase cash on hand. LAAC suggested limiting the cash on hand to a specific target, in the range of 50 to 75 percent. The Trust Fund Commission has agreed to a 75 percent cap, and also agreed to discuss whether it should be smaller (or larger) than that. The amount for this year will be 53 percent. Between now and the next time the board goes through this process, a year from now, we can explore the most effective cap. This is a decision that must in any case be made annually, based on the particular income in that year.

CURRENT AND PROJECT REVENUE AND CASH ON HAND

Using this revised system for determining the grant amount will result in setting the grant amount for 2006-2007 at \$12.7 million. This grant amount is larger than the 2005-2006 distribution, due primarily to increased income from substantial increases in the balance on deposit in attorney-client trust accounts and also to small increases in the interest rates on checking accounts.

We currently expect net IOLTA revenue (income less expenses) for the period July 1, 2005 through June 30, 2006 to be \$14 million. At this income level, the program expects to have on hand as of June 30, 2006 about \$7.5 million, which is 53 percent of last year's net revenue. To calculate the grant amount for the coming year, we have added to last year's grant amount a 5 percent increase, plus half of the amount by which net revenue is greater than 15 percent of last year's grants.

RECOMMENDATION

The attached schedule shows the calculation, based on actual experience to date and projections through the rest of the grant year.

Because money will continue to be disbursed as it is received, the Trust Fund Commission will continue to monitor revenue closely and will return with recommendations if there are significant variances from the projections. The agreements signed with grant recipients will continue to include language to make clear that payment of these grants is contingent upon the Legal Services Trust Fund Program having sufficient money on hand from IOLTA revenue to make the scheduled payments. In addition, the Trust Fund Commission will meet with LAAC over the coming months to evaluate the effectiveness of the procedures used this year and what changes should be made for the future.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT: None.

PROPOSED RESOLUTION

The Board Committee on Stakeholder Relations will have a recommendation at the time of your meeting. If you agree with this proposal, the following resolution would be appropriate:

RESOLVED, upon recommendation of the Board Committee on Stakeholder Relations, that the Board hereby approves that the distribution of IOLTA grants from the Legal Services Trust Fund Program for the grant period July 1, 2006 through June 30, 2007 shall be made in the order and manner provided by Business and Professions Code Section 6216, and the funds to be distributed shall be \$12,720,721 calculated as follows

- (1) The amount projected to be received by the Legal Services Trust Fund Program and the interest earned thereon from July 1, 2005 through June 30, 2006, totaling \$15,256,329, shall be allocated for the grant period July 1, 2006 through June 30, 2007.
- (2) The administrative costs to be deducted prior to distribution shall be the costs projected for the period July 1, 2005 through June 30, 2006, totaling \$1,220,280.
- (3) To be subtracted from the total amount prior to distribution shall be \$1,200,568, 10 percent of prior year net revenue reserved for cash on hand.
- (4) Also to be subtracted from the total amount prior to distribution shall be \$114,760, one-half of the amount over 15 percent of prior year net revenue reserved for cash on hand, and it is

FURTHER RESOLVED that grant payments are to be made from funds received pursuant to Business and Professions Code Section 6212 and the income earned from investment of such funds, 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 Commission is directed to monitor program revenue during the grant year and to recommend action to change the total grant amount for the year if needed in the event of significant variances from projections.

STATE BAR OF CALIFORNIA
Legal Services Trust Fund Distribution
Available Funds for Grant Period 2006-2007

DATE: FEBRUARY 21, 2006

AMOUNT**A. Revenue: 7/1/05 – 6/30/06**

2005:	3rd Quarter	\$	3,726,984
	4th Quarter		3,679,345
2006:	1st Quarter (Projected)		3,900,000
	2nd Quarter (Projected)		<u>3,950,000</u>
Total Revenue		\$	15,256,329

B. Administrative Costs: 7/1/05 – 6/30/06

7/1/05 – 12/31/05	\$	734,972
1/1/06 – 6/30/06 (Budgeted)		815,308
Less Projected Equal Access Fund Reimbursements		<u>(330,000)</u>
Total Administrative Costs	\$	1,220,280

C. Cash-on-Hand Calculation

Cash on Hand 6/30/05	\$	5,547,400
Add: Net Revenue 7/1/05 – 6/30/06		14,036,049
Less: 2005-2006 Grants (Net of amounts from past years redistributed)		<u>(12,005,677)</u>
Projected Cash on Hand – 6/30/06 (53 percent of prior year net revenue)	\$	7,577,772

Grant Amount Calculation

2005-2006 Net Revenue	\$	14,036,049
Less 10 percent reserved for cash on hand		(1,200,568)
Less one-half of amount over 15 percent reserved for cash on hand	\$	<u>(114,760)</u>

Total Grant Amount for 2006-2007	\$	12,720,721
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Prior Year Distribution (2005-2006)	\$	12,005,677
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Percent Increase from Prior Year Distribution	6%
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ATTACHMENT

Selection Guidelines for State Bar Appointments to the ABA House of Delegates

The State Bar will strive to appoint members from its applicant pool meeting the following guidelines:

- One (1) delegate who qualifies as the young lawyer representative;
- Up to two (2) delegates to include the most immediate past member of the ABA Board of Governors and any immediate past officer of the ABA from the California ABA Delegation;
- Two (2) members who have not had substantial volunteer experience but who possess the leadership and other skills to be successful delegation members; and
- Six (6) delegates who have substantial bar experience, especially with the ABA, and are typical of other State Bar appointments.

Unless otherwise authorized by the Board of Governors, Each each member of the State Bar's ABA delegation would be eligible for reappointment to no more than three (3) consecutive two-year appointments or a maximum of six (6) consecutive years of service with the delegation. Delegates who have completed such service may apply in the future after a period of not less than two years from the date of the expiration of the delegate's last term of service with the State Bar.

All members will be encouraged to become broadly participant in ABA activities in order to fully represent the interests of California attorneys.

54-166

RESOLVED, upon recommendation of the Board Committee on Stakeholder Relations, that the Board hereby approves that the distribution of IOLTA grants from the Legal Services Trust Fund Program for the grant period July 1, 2006 through June 30, 2007 shall be made in the order and manner provided by Business and Professions Code Section 6216, and the funds to be distributed shall be \$12,720,721 calculated as follows:

- (1) The amount projected to be received by the Legal Services Trust Fund Program and the interest earned thereon from July 1, 2005 through June 30, 2006 totaling \$ 15,256,329, shall be allocated for the grant period July 1, 2006 through June 30, 2007.
- (2) The administrative costs to be deducted prior to distribution shall be the costs projected for the period July 1, 2005 through June 30, 2006, totaling \$1,220,280.
- (3) To be subtracted from the total amount prior to distribution shall be \$1,200,560 10 percent of prior year net revenue reserved for cash on hand.
- (4) Also to be subtracted from the total amount prior to distribution shall be \$114,760, one-half of the amount over 15 percent of prior year net revenue reserved for cash on hand, and it is

FURTHER RESOLVED that grant payments are to be made from funds received pursuant to Business and Professions Code Section 6212 and the income earned from investment of such funds, 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 Commission is directed to monitor program revenue during the grant year and to recommend action to change the total grant amount for the year if needed in the event of significant variances from projections.

RESOLVED, upon recommendation of the Committee on Group Insurance Programs, that the Board Committee on Operations, acting on behalf of the Board between regularly scheduled meetings, hereby approves the formal acknowledgment of Raphael Cotkin's 25 years of service to the State Bar of California; and it is

FURTHER RESOLVED, that that Board Committee on Operations, acting on behalf of the Board between regularly scheduled meetings, hereby authorizes the Committee on Group Insurance Programs to formally present this Board Resolution to Raphael Cotkin at it's Planning Session dinner on Monday, March 13, 2006.

[The above is a report of emergency fax-poll action taken by the Board Committee on Operations on behalf of the Board, March 3 – 6, 2006, between regularly scheduled Board meetings.]

RESOLVED, upon the recommendation of the Los Angeles County Bar Association, that the Board Committee on Operations, acting on behalf of the Board between meetings, approves the resolution adopted by the Los Angeles County Bar Association; and it is

FURTHER RESOLVED, that the Board Committee on Operations, acting on behalf of the Board between meetings, authorizes participation in this resolution in the Tribute Book by March 15, 2006, to be presented to the Chief Justice at the dinner in his honor on April 4, 2006.

[The above is a report of emergency fax-poll action taken by the Board Committee on Operations on behalf of the Board, March 3 – 6, 2006, between regularly scheduled Board meetings.]

Upon motion made, seconded and adopted, it was

RESOLVED, upon recommendation of the Board Committee on Operations, that the Board hereby rejects the Foundation's proposed change to the at-will termination clause, accepts the Foundation's change to the revenue, and modifies Article 2.3 of the MOU along the lines discussed, and delegate to the Executive Director the authority to communicate a final proposal to the Foundation; and it is

Average FFR Interest Rate	1.92%	0.16%	0.18%	0.10%	0.14%	0.11%	0.09%	0.13%	0.39%	1.00%	1.79%	2.16%	0.38%
Income	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Bank Trust Account Revenue	\$ 22,268,850	\$ 6,540,851	\$ 6,793,426	\$ 6,077,611	\$ 5,007,709	\$ 4,992,897	\$ 5,225,763	\$ 5,584,435	\$ 6,439,199	\$ 7,036,095	\$ 20,910,031	\$ 46,454,116	\$ 26,276,804
Licensee Fee Statement-Opt out	-	-	-	1,670,370	3,304,600	3,280,250	4,843,352	6,347,184	6,332,929	6,863,038	6,030,730	6,255,553	6,417,677
Justice Gap Donations	-	609,392	1,040,068	868,382	2,214,528	1,041,706	969,523	1,022,211	1,161,470	1,409,276	980,045	1,537,668	1,820,706
Transfer from Affinity & Insurance	-	-	-	-	2,000,000	-	-	400,000	-	-	463,845	-	-
Transfer from Legislative Activities	-	-	-	-	-	2,000,000	-	-	-	-	-	-	-
Transfer from Justice Gap	-	-	-	-	-	-	-	-	-	-	-	-	1,000,000
Tax-Intercept Funds	-	-	-	-	-	-	178,289	99,134	75,822	119,584	154,868	177,141	914
Grants & Grant Repayments	6,128	13,993	5,417	7,353	5,867	-	-	-	-	46,753	5,000	-	-
Investment Income	634,273	177,417	51,655	18,128	14,242	14,648	13,594	14,193	56,941	77,687	143,834	661,740	696,142
IOLTA Sub-Total	24,718,174	7,341,653	7,890,566	8,641,844	12,546,946	11,329,501	11,230,521	13,467,157	14,066,361	15,552,433	28,688,353	55,086,218	36,212,243
Equal Access-CA General Funds	12,215,898	10,979,325	10,605,450	10,070,700	10,002,050	10,392,000	10,392,000	10,392,000	12,642,000	17,642,000	20,392,000	35,242,000	16,215,600
Equal Access-AB145 Filing Fees	6,104,395	5,696,068	6,323,433	5,818,791	5,706,445	5,617,106	3,806,328	3,701,281	3,800,000	4,433,556	4,926,673	4,864,180	3,138,445
Equal Access-State Bar Admin	514,575	566,446	526,379	528,451	527,199	525,120	498,910	442,413	457,500	550,626	487,904	593,540	228,880
Grant Repayments	15,682	5,866	4,321	7,737	57,735	8,123	-	-	-	-	116,876	134,591	168,263
Investment Income	80,673	18,861	12,802	3,355	(1,514)	(7,332)	(4,429)	(1,324)	2,392	10,073	(45,597)	52,697	226,708
EAF Sub-Total	18,931,223	17,266,566	17,472,385	16,429,034	16,291,915	16,535,017	14,692,809	14,534,370	16,901,892	22,636,255	25,877,856	40,887,008	19,977,896
Bank Settlement Awards	-	-	-	-	-	-	-	6,085,197	44,778,670	-	-	-	-
Grants & Grant Repayments	-	-	-	-	-	-	-	-	-	15,976	11,928	601	-
Investment Income	-	-	-	-	-	-	-	-	155,347	287,025	658,219	497,098	321,855
Bank Settlement Sub-Total	-	-	-	-	-	-	-	6,085,197	44,934,017	303,001	670,147	497,699	321,855
Total Income	\$ 43,649,397	\$ 24,608,219	\$ 25,362,951	\$ 25,070,878	\$ 28,838,861	\$ 27,864,518	\$ 25,923,330	\$ 34,086,724	\$ 75,902,270	\$ 38,491,689	\$ 55,236,356	\$ 96,470,925	\$ 56,511,994
General & Administration Expenses													
Employees as of December	10	10	10	10	10	10	9	8	10	10	9	15	14
Personnel	\$ 902,007	\$ 1,034,490	\$ 970,071	\$ 1,037,705	\$ 1,042,168	\$ 1,092,472	\$ 1,077,398	\$ 1,094,524	\$ 1,111,466	\$ 1,225,475	\$ 1,447,230	\$ 1,532,509	\$ 1,380,131
Operating	217,838	84,046	101,381	115,291	105,593	105,135	148,573	130,371	47,013	85,894	113,241	153,741	-
Equal Access-OneJustice/LAAC	193,205	202,867	192,888	174,548	169,748	226,699	154,222	229,296	198,865	197,740	178,615	212,910	199,573
Indirect Costs	327,116	312,876	354,496	462,773	493,622	469,861	398,910	578,654	663,120	806,376	829,804	901,200	810,034
General & Administration Sub-Total	1,640,166	1,634,279	1,618,836	1,790,317	1,811,131	1,894,167	1,779,103	2,032,845	2,020,464	2,315,485	2,568,890	2,800,360	2,389,738
Grant Award Distributions													
Legal Services Trust (IOLTA)	15,543,372	13,952,109	11,866,435	10,685,785	10,685,783	9,617,213	4,808,577	10,064,288	11,088,089	11,035,486	13,849,656	27,463,024	55,294,144
Equal Access	16,158,761	16,158,554	17,831,833	18,245,360	16,142,680	16,264,319	12,020,468	17,610,257	14,837,423	20,804,644	25,677,762	34,567,326	25,006,696
Bank Settlement	-	-	-	-	-	-	-	-	4,872,790	7,089,925	9,891,289	9,452,789	11,111,629
Grant Expense Sub-Total	31,702,133	30,110,663	29,698,268	28,931,145	26,828,463	25,881,532	16,829,045	27,674,545	30,798,302	38,930,055	49,418,707	71,483,139	91,412,469
Total Expenses	\$ 33,342,299	\$ 31,744,942	\$ 31,317,104	\$ 30,721,462	\$ 28,639,594	\$ 27,775,699	\$ 18,608,148	\$ 29,707,390	\$ 32,818,766	\$ 41,245,540	\$ 51,987,597	\$ 74,283,499	\$ 93,802,207
General & Admin Exp/Total Expenses	4.92%	5.15%	5.17%	5.83%	6.32%	6.82%	9.56%	6.84%	6.16%	5.61%	4.94%	3.77%	2.55%
Year-End Net Position (Net Assets)													
Legal Services Trust (IOLTA)¹	\$ 16,048,383	\$ 8,401,696	\$ 3,269,770	\$ (49,922)	\$ 500,717	\$ 922,462	\$ 4,914,889	\$ 6,787,029	\$ 10,260,650	\$ 11,171,340	\$ 24,082,586	\$ 49,842,538	\$ 28,397,036
Percentage Net Assets to prior year revenue		34%	45%	-1%	6%	7%	43%	60%	76%	79%	155%	174%	52%

¹Legal Services Trust (IOLTA) Net Position includes Justice Gap Fund balance.

Legal Services Trust Fund (IOLTA) 2020 Projections vs. Actual

Revenue, Expenses, and Assets		2019	2020	
		Actual	Projection	Actual
A. Revenue				
Jan-April IOLTA Revenue	\$	12,470,995	\$ 11,458,963	\$ 9,545,822
May-December IOLTA Revenue	\$	33,983,121	\$ 8,561,986	\$ 16,730,982
IOLTA Revenue	\$	46,454,116	\$ 20,020,949	\$ 26,276,804
Justice Gap, Legal Services Donations, and other revenue:				
Justice Gap Fund Donations	\$	1,537,668	\$ 800,000	\$ 1,820,706
Legal Services Voluntary Fee Donations	\$	6,255,553	\$ 6,165,478	\$ 6,417,677
Justice Fund Gap Study Working Group (JGF Transfer)				\$ 1,000,000
Combined LSTF & JGF Interest & Tax Intercept Funds	\$	838,881	\$ 250,000	\$ 747,791
Total Revenue:	\$	55,086,218	\$ 27,236,427	\$ 36,262,978
		Actual	Projections	Actual
B. Expenses*				
IOLTA Grant Distributions	\$	27,463,024	\$ 55,294,144	\$ 55,294,144
IOLTA Administration*	\$	1,863,242	\$ 2,100,000	\$ 1,410,109
Justice Gap Fund (Transfer Out)				\$ 1,000,000
Justice Gap Fund Administration				\$ 4,226
*Projection include Judicial Council Admin funding				
Total Expenses:	\$	29,326,266	\$ 57,394,144	\$ 57,708,479
C. Net Revenue less Expenses	\$	25,759,952	\$ (30,157,717)	\$ (21,445,501)
D. Net Assets				
Net Position for Prior Year (Both JGF and LSTF)	\$	24,082,586	\$ 49,842,538	\$ 49,842,538
Net Revenue less Expenses for Prior Year	\$	25,759,952	\$ (30,157,717)	\$ (21,445,501)
Total Ending Net Assets:	\$	49,842,538	\$ 19,684,821	\$ 28,397,037

Legal Services Trust Fund (IOLTA) 2021-2022 Grants Distributions

Revenue, Expenses, and Assets		2021		
		Projections for 2022 Distribution		
A. Revenue		(A)	(B)	(C)
Jan-April IOLTA Revenue		\$ 7,137,789	\$ 7,137,789	\$ 7,137,789
May-December IOLTA Revenue		\$ 14,062,211	\$ 8,612,211	\$ 5,062,211
IOLTA Revenue		\$ 21,200,000	\$ 15,750,000	\$ 12,200,000
Justice Gap, Legal Services Donations, and other revenue:				
Justice Gap Fund Donations		\$ 1,500,000	\$ 1,440,000	\$ 1,040,815
Legal Services Voluntary Fee Donations		\$ 6,500,000	\$ 6,300,000	\$ 6,005,156
Justice Fund Gap Study Working Group (JGF Transfer)		\$ -	\$ -	\$ -
Combined LSTF & JGF Interest & Tax Intercept Funds		\$ 7,250	\$ 5,000	\$ 2,269
Total Revenue:		\$ 29,207,250	\$ 23,495,000	\$ 19,248,240
		Projections for 2022 Distribution		
		(A)	(B)	(C)
B. Expenses*				
IOLTA Grant Distributions		\$ 23,951,697	\$ 23,951,697	\$ 23,951,697
IOLTA Administration*		\$ 2,100,000	\$ 2,100,000	\$ 2,100,000
*Projection include Judicial Council Admin funding				
Total Expenses:		\$ 26,051,697	\$ 26,051,697	\$ 26,051,697
C. Net Revenue less Expenses		\$ 3,155,553	\$ (2,556,697)	\$ (6,803,457)
D. Net Assets				
Net Position for Prior Year (Both JGF and LSTF)		\$ 29,401,263	\$ 29,401,263	\$ 29,401,263
Net Revenue less Expenses for Prior Year		\$ 3,155,553	\$ (2,556,697)	\$ (6,803,457)
Total Ending Net Assets:		\$ 32,556,816	\$ 26,844,566	\$ 22,597,806

Projection for Distribution and Reserves		2022		
		Projections for 2022 Distribution		
		2022* (A)	2022* (B)	2022* (C)
E. Projected Revenue & Administration Expenses				
IOLTA Revenue		\$ 21,200,000	\$ 15,750,000	\$ 12,200,000
Justice Gap Fund Donations		\$ 1,500,000	\$ 1,440,000	\$ 1,040,815
Legal Services Voluntary Fee Donations		\$ 6,500,000	\$ 6,300,000	\$ 6,005,156
Interest Income & Tax Intercept Funds		\$ 7,250	\$ 5,000	\$ 2,269
Administration, Net of EAF & Bank Settlement		\$ (2,100,000)	\$ (2,100,000)	\$ (2,100,000)
Gross Income less Administration Expenses:		\$ 27,107,250	\$ 21,395,000	\$ 17,148,240
Prior Year Ending Net Assets:		\$ 32,556,816	\$ 26,844,566	\$ 22,597,806
Funds Available:		\$ 59,664,066	\$ 48,239,566	\$ 39,746,047
F. Grants				
Prior Year Grant distribution (baseline)		\$ 23,951,697	\$ 23,951,697	\$ 23,951,697
Total Grants:		\$ 45,060,441	\$ 36,492,066	\$ 30,121,927
Percentage Change vs Prior Year Grant Allocation:		88%	52%	26%
G. Reserve/Cash on Hand/Net Assets				
10% of 2019 Grants to Stabilization Reserve				
Remainder Split between Reserve/Cash and Programs				
Projected Reserve/Ending Net Assets:		\$ 14,603,625	\$ 11,747,500	\$ 9,624,120
Reserve as Percentage of Prior Year Revenue:		50%	50%	50%