

NEGATIVE NETTING RULES AND “BECOMING AN IOLTA FRIENDLY BANK” FEE CAMPAIGN

What is Negative Netting?

“Negative Netting” is the practice by which a financial institution aggregates all of the service charges against all IOLTA accounts in the bank and deducts these from all of the interest earned in the aggregate on IOLTA accounts in the bank. Some accounts may have positive interest while other accounts might be so small in size that the service charges are greater than the interest. By using negative netting, the institution is able to recover service charges on all accounts. This has the affect, however, of reducing the earnings on the IOLTA accounts for that institution.

From the banker’s perspective, negative netting may appear appropriate, because without the requirement for attorneys to maintain IOLTA accounts it is possible that the unprofitable accounts would simply have been terminated. Furthermore, it is also possible that the bank would have collected the service charges from the attorney rather than from the IOLTA fund.

What are Typical Bank Account Fees?

There are two basic types of fees. The first is a service or maintenance fee which is charged simply for the cost of keeping an account open at the institution. This is a monthly charge and is usually a fixed amount. By contrast, a bank may also impose fees for specific activities. These include fees for NSF or overdraft, wire transfer, stop payment, account balance inquiry, research fees, copies of items, and check printing fees. These types of fees represent costs for specific individual services or products provided to the customer. Some IOLTA programs have rules providing that service or maintenance fees are properly paid by the IOLTA program but fees for specific services such as wire transfer fees, NSF or overdraft fees, stop payment, and check printing fees are the responsibility of the attorney.

Fiscal Impact of Negative Netting.

When an institution engages in negative netting, the overall income to the IOLTA program is reduced. With dropping interest rates, this increase in cost was creating a significant loss of revenue to our program.

Strategy for Negotiating With Banks.

In order to reduce the expense to the fund and thereby increase our revenue, we first did our homework. This meant that we used our database to identify and stratify institutions. Our plan was to go after the institutions with the largest amount of deposits first and then go after our second tier banks later. Most of our community banks either charge no fees or very minimal fees and were not representing a significant cost to the program anyway.

We next identified the law firms that had significant deposits in the target institutions. Within those law firms it was critical to locate the influential partners or those with specific contacts with the financial institution.

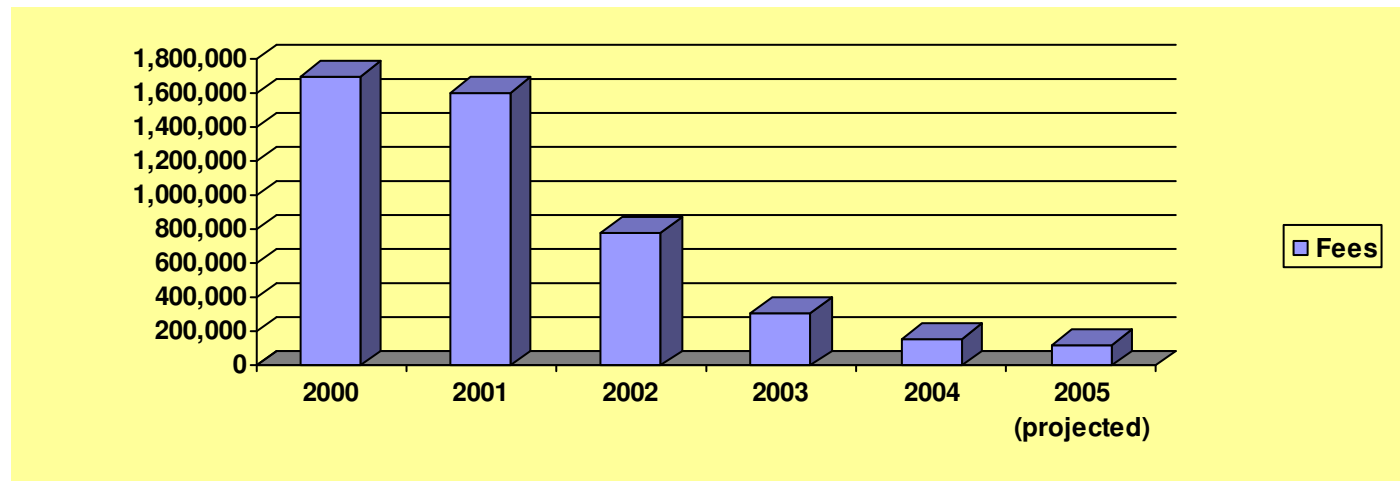
The next step was to identify the decision makers within the target institutions. For the large interstate banks, this might mean the head of operations in the State of Texas or it might actually be a decision maker in corporate headquarters far away. Our strategy involved identifying both types of parties so that we could utilize our local attorneys first and then leverage that into negotiations with other decision makers as might become necessary.

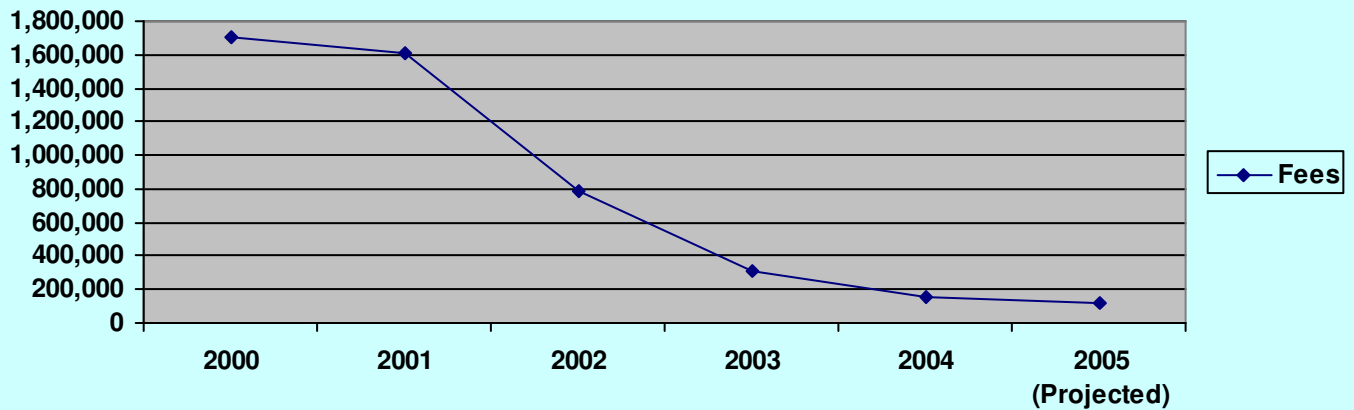
Next, we developed a communications campaign. Our key here was to make it easy for attorneys to assist us in our efforts. Our first response was to send approximately 10,000 letters to attorneys in early 2002, telling them that banks were changing fees on their accounts, costing the program \$1.6 million. We developed a sample letter for attorneys to use with their bank. By July 2002, every major bank agreed to waive all fees, resulting in a savings of over \$800,000.

Results.

Here are our fees over the last five years. The campaign has significantly dropped fees, increasing our yield.

YEAR	FEES
2000	\$1,700,000
2001	\$1,605,000
2002	\$785,600
2003	\$312,000
2004	\$157,600
2005	<i>(projected)</i> \$125,000





Next Challenge.

Unfortunately, our successes may be undone by some recent proposed changes in the Federal Bank Secrecy Act (BSA) Examination Procedures. It is our understanding from visiting with bankers who have undergone field testing of new BSA examination procedures that IOLTA accounts are listed as “high risk” businesses. Therefore, banks are being asked to engage in extra due diligence on these accounts. This means additional monitoring, additional tracking of deposits with particular attention to currency deposits, and additional activities. All of this is extremely expensive for the institution. Some smaller community banks who have already been examined under the proposed procedures are seriously considering eliminating IOLTA accounts altogether because of the costs and the significantly increased exposure for the institution. A bank that has deficits in its BSA program is subject to criticism, regulatory action and, in extreme cases, civil money penalties. It is absolutely vital that we work together to assure that these examination procedures do not become carved in stone. We must convince the decision makers in the banking agencies that IOLTA accounts are *not* high risk business but rather are good business for banks to engage in.