



FAQ

1. Does the Florida Bar Foundation engage in any compliance or oversight of IOTA funds?

Yes, in multiple ways and as ordered by the Florida Supreme Court.

For example, in addition to the IOTA program itself, the Foundation was the first in the nation to propose and have implemented a “comparability rule” for IOTA accounts. *In re: Amendments to the Rules Regulating the Florida Bar Rule 5-1.1(e)*, 797 So. 2d 551(Fla. 2001). In short, the comparability rule requires banks to pay comparable rates for IOTA accounts as they would for their other similarly situated private accounts.

In adopting the “comparability rule”, the Court specifically held, “[t]he Foundation shall be charged with the responsibility of determining the initial and continuing eligibility of banks, savings and loan associations and investment companies to hold IOTA accounts in accordance with the criteria set forth in the rule.” *Id* at 552. The Foundation has carried out that responsibility.

In particular, the Foundation currently has a two-person IOTA Department responsible for overseeing the IOTA program from lawyers, law firms and participating financial institutions. As part of its responsibility for overseeing the IOTA Program, the Foundation and its IOTA Department:

- Monitors on a monthly basis 168 financial institutions (currently) for comparability compliance and accuracy of proposed remittances;
- Monitors and oversees approximately 35,000 IOTA accounts;
- Assists financial institutions with IOTA program compliance, as generally described in the Foundation’s IOTA Program Manual;
- Creates and maintains records for each participating bank;

- Creates and maintains records for each lawyer IOTA account (new accounts are opened usually on a weekly basis);
- Responds to numerous inquiries and provides instructions and information to lawyers about setting up and maintaining IOTA accounts;
- Monitors receipts and remittances for accuracy;
- Projects IOTA revenues for budgeting and grants allocations purposes; and
- Assists The Florida Bar with trust account inquiries and potential disciplinary investigations and actions.

The Foundation also monitors grantee performance using Foundation funds, including IOTA receipts. Grantee performance influences funding decisions going forward as the Foundation is focused on helping the most people possible with the limited funds it has to distribute.

In addition to the administration and oversight of IOTA accounts, the Foundation also oversees the expenditure and investment of IOTA monies.

2. Is there a cost to the Foundation in collecting and distributing IOTA funds?

Yes. The Foundation expends considerable time and monies in connection with carrying out its duties related to the collection and distribution of IOTA funds.

Any suggestion or assertion that IOTA monies are generated with no effort or money expended by the Foundation is inaccurate.

The IOTA Department's functions and activities, as described above, require 100% of the Department's time in overseeing, administering, and monitoring the IOTA program and its incumbent receipts. In addition, to the costs associated with running the IOTA department, approximately 10-20% of the Grants Department is spent monitoring grants performance issues, many of which include IOTA funds. The Finance Department spends about 20-25% of its time on IOTA-related issues and about 30-40% of its time assisting with investments, which are primarily handled by an outside vendor (the same one used by TFB) with direction from the Foundation's investment committee whose members include financial advisors and banking professionals who serve as volunteers. The Executive Department spends about 10% of its time on IOTA-related issues, such as supervision of the IOTA Department, monitoring projections, communicating with other programs, and attempting to increase IOTA revenues.

In addition, the Foundation also engages in regular and ongoing dialogue with banks about enhancing or increasing their rates of returns on their IOTA accounts. This effort has resulted in literally millions of more IOTA dollars being received, either through waiver of banking fees (117 out of 168 banks currently waive their fees for the Foundation) or increased interest rates on selected accounts.

Separate from personnel costs, the Foundation incurs direct costs and expenses associated with the collection, distribution and monitoring of IOTA funds. For starters, the Foundation has spent considerable amounts of money developing specific software (IOLTA 3) to monitor and administer IOTA funds. It also has to subscribe to a specialized service to access and monitor bank accounts for IOTA and comparability rule compliance. It incurs actual ACH charges in connection with each IOTA remittance and payment from each bank and further incurs expenses for financial and investment advice along with costs associated with annual financial audits.

The Foundation also reviews and assesses grantee performance related to grants funded using IOTA funds. Direct costs associated with such reviews include grants management systems, case management systems, IT expenses related to various software products necessary to administer and monitor grants performance both individually and collectively, and costs directly associated with reporting results and overall performance.

3. Does the Foundation award grants to provide direct legal services to low income clients?

Yes.

The vast majority of all Foundation grants are designed to provide direct legal services in the form of legal assistance and counsel to low income clients. In fact, more than 75% of the roughly \$14.3 million dollars in grant allocations disbursed during FY 2019-20 by the Foundation directly funded legal representation of low-income Floridians who seek assistance from a legal aid office for a specific problem.

In FY 2019-20, the Foundation administered 13 different grants programs. Each has its own purpose and objectives. For quick reference, here is a listing:

Grants Program	Funded with IOTA funds?
Improvements in the Administration of Justice	Yes

Community Economic Development	No
Children's Legal Services	Partially
Engle Award (USDC M.D. Fla)	No
Equal Justice Works Fellowship	Partially
Florida Legal Aid Disaster Relief Funds	Partially
Florida Legal Aid Training Initiative	Yes
Law School Civil Legal Clinics	No
Legal Aid Summer Fellowships	Yes
Limited Matching Funds (new)	Yes
Loan Repayment Assistance Program	Mostly
Pro Bono Innovation	Yes
Pro Bono Transformation Grants	Yes

For more information, attached is a link to a description of all current grants programs sponsored by the Foundation: <https://thefloridabarfoundation.org/what-we-do/grant-programs/>

Any suggestion or assertion that the Foundation "reports that little, if any, IOTA funds are being awarded to grantees for [purposes of providing direct legal services to low-income persons]" fails to appreciate the context in which the Foundation's alleged statements were made.

Specifically, the task force submitted several written requests to the Foundation during the course of its proceedings, one of which sought,

Description of grant programs (including amounts) funded by the Foundation (using IOTA funds) where the grantee organization is required by the terms of the grant to provide direct legal services to low income Florida litigants (as used in this letter, the term "litigants" has the meaning described in FN 1 of the draft combined subcommittee report).

The report referenced in the question was so strictly limited that if an attorney in a legal aid office had any other responsibilities – which we understand all of them do – none of their work could be counted as direct legal services as defined by the task force. Thus, in light of the task force’s definitions and restrictions at that time, we answered, “As phrased, the answer is none.” We then went onto explain, among other things,

In the view of the Foundation, all of our current grants help provide legal services either directly or indirectly to low income Floridians, although many uses of grant funds do not fit within the narrow definition indicated by the Revised Combined Recommendations of the Subcommittees. And all grantees, by nature of their charitable status and their own internal constraints, provide legal services to low income Floridians, based on eligibility requirements established by their own governing boards. By use of the modifier “direct” and based on the definition of “qualified attorney” as provided within the Revised Combined Recommendation of the Subcommittees, the technically most accurate answer is that none of the legal services are direct because the attorneys will, as we understand it, be assigned duties other than direct representation of legal aid clients. In which case, it may be that none of the funds disbursed by the Foundation would be categorized as direct legal services because the attorneys in legal aid offices have other duties and responsibility. If none of the funds go to direct legal services under the terms given by the proposed recommendations, then all of the grant programs we have described would be considered indirect.

On the other hand, if we set aside the proposal’s definition to the extent it would include staff attorneys who provide direct legal services, but who do not provide such services “to the exclusion of all other duties and responsibilities,” that would still considerably narrow the set of grantees who provide legal services other than direct representation of clients with discrete litigation or pre litigation matters.

Response to Task Forced dated May 15 at 31-32.

Later in the submission we stated,

Even the apparent plan of the Revised Combined Recommendations of the Subcommittee to limit IOTA funds to legal aid attorney compensation and benefits is impaired by the restriction to such attorneys who “to the exclusion of all other duties and responsibilities” provide direct legal

services. Based on our communications with legal aid offices, and our own understanding of how these offices work, we are not sure if there is any such person. The restriction is so restrictive as to exclude by its terms even those we believe the Subcommittees intended to benefit. If that restriction were in place, for example, with regard to the LRAP program, it is questionable whether any lawyer employed by any legal aid office in Florida would qualify.

Id at 43.

We also answered the direct question asked - whether the language in our grant contracts contained the language used by the task force at that time. We wrote,

[T]he Foundation has traditionally funded programs that provide legal information, legal assistance, and legal counsel to those living and working in Florida in need of civil legal aid assistance. The grants funded are generally restricted to low income Floridians by the nature and terms of the grant and the grantee, as these organizations will normally employ their own measures of income and assets to screen clients. *While the Foundation does not generally use such specific restrictive language in the grants themselves, common provisions of grants limit use of the funds to the purposes of the grants and to the purposes for which grantee's organization was established.*

Id. at 30 (Emphasis added).

Thus, these comments were made in the context of the very restrictive definition of "direct legal services" used by the task force at that time. Notably, the task force has subsequently changed its definition of "qualified attorney" which now establishes that the Foundation provides the vast amount of its grants for qualified legal services as currently defined by the task force.

4. Does the Foundation provide financial assistance other than grants to civil legal providers?

Yes. Aside from direct grants, the Foundation also supports particular expenditures in order to generally benefit the legal aid community. These expenses are identified as Program Related expenses and include group purchases of Westlaw and Legal Server, and grants to legal aid attorneys to help them pay off their student debts and encourage them to retain employment as legal aid attorneys. The Foundation has also been responsive to

particular requests of grantees that have been deemed appropriate to enhance delivery of legal services to the needy, such as funds for specialized training when legal needs require additional training, attendance at seminars, and other support.

Currently, Program-Related Expenses for the Foundation primarily consist of:

- Grants Department Operations (\$231,345);
- Pro Bono Operations (\$128,790);
- Capacity Building (\$171,460);
- Pro Bono initiatives (\$ 84,300);
- Interim Technology (\$91,000);
- Evaluations (\$15,000); and
- Other (\$18,450)

For the current budget, **Program Related Expenses** total **\$740,345** as budgeted for FY 2020-21 which represents **6.4%** of total expenditures for FY 20-21).

5. Does the Foundation engage in fundraising and development activities over and above its receipt of IOTA funds?

Yes. The Foundation has received **\$24,476,068** through its total and all-time development efforts through June 30, 2019. These funds include development and other associated revenues (i.e. dinner sponsorships, tickets, etc.).

The Foundation has raised more than **\$825,000 in FY 2019-20**.

Historically, fundraising expenses have averaged .9% of total expenses (1.1% after functional allocation, which if applied lowers overall M&G percentages).

Moreover, **since 1982**, the Foundation has pooled its investments and, together with fundraising efforts, has thereby **generated about \$700,000 more than actual expenses** for the Foundation during that time. This explains why IOTA revenues have totaled \$488 million since 1982, but the Foundation's charitable giving in that same time frame has exceeded \$500 million. In essence, the Foundation's investment activities and fundraising efforts have generated enough money for the Foundation to operate during that same time, effectively allowing the Foundation to disburse to its grantees and programs all IOTA funds it received.

It is also important to remember that IOTA has historically been the primary, if not sole, source of Foundation funding and expenses. There are no other legislative funds, filing fees, etc. from the state or local governments that supplement Foundation funding.

Thus, when federal interest rates decline, IOTA account interest rates also decline along with the Foundation's primary source of funding.

Finally, there is a corresponding Florida Bar Foundation Endowment which is funded mostly by private donations and a Fellows program that seeks \$1,000 from each fellow who pledges. Since the inception of the Fellows program, approximately 4,000 individuals have pledged, which represents less than 4% of the TFB membership and the default rate on total pledges approximates 2-5%. The Endowment's current assets approximate \$5 million. Of that amount, approximately \$2.5 million is restricted and inaccessible to the Foundation. The Foundation initially funded the Endowment with \$1.083 million. During the Great Recession, the Foundation received from the Endowment \$3.8 million to help defray costs and fund grants in light of the steep decline in IOTA receipts. Neither of these two amounts have been returned yet.

6. What is the Foundation's "overhead" expense ratio related to its total expenditures?

The Foundation does not normally use "overhead" to describe its expenses. Expenses are characterized and defined internally as either Operating Expenses or Program Activities. Operating Expenses are presented as "M&G" (for Management and General), "Fundraising" and "Program-Related."

"M&G" is therefore the equivalent of "overhead" per the Foundation's definitions. M&G expenditures comprise among other things personnel, office, and professional expenses. Because Fundraising is generally self-sufficient, it is not included within M&G, and is therefore broken out separately.

Since 1982, the Foundation's M&G expenses have averaged 10% of the Foundation's total expenditures, which is well within industry standards. Review of published studies shows that for an organization of our size, this number would typically be 14-15%. In considering this spending ratio, **it is important to remember that, as a philanthropic funder, total expenditures means all expenses paid by the Foundation. As such, grants and program related expenses (monies spent to directly benefit the grantees other than grants) are included in total expenditures.**

Fundraising expenses have averaged .9% of total expenditures and Program-Related Expenses have averaged 2.2% of total expenditures from 1982 to 2019.

As a result, **86.9%** of all Foundation expenditures during that **37-year time**

period were for **grant awards to grantees**. And **total charitable expenses** (Grants and Program Related expenses) **averaged 89.1%** of the Foundation's total expenses during that time.

For FY 2019-20, the Foundation's **M&G expenses** comprised **10%** of total expenses, Fundraising expenses made up 1% of total expenses, Program Related Expenses took 4% and **Grants** consisted of **85%**. **Total charitable expenses** (Grants and Program Related expenses) equaled **89%** of total expenses.

Put another way, 89 cents out of every dollar the Foundation spent from 1982 to June 30, 2020 went to direct support for the Foundation's grantees.

Because of reduced IOTA revenues and the exhaustion of other significant funding sources (Bank of America and *Engle* funds), the Foundation projects that **M&G expenses** for **FY 20-21** will be **16.8%**, Fundraising will require 1.6%, and Program Related expenses will take up 6.4% of the Foundation's total expenses. **Total charitable expenses** will take up the remaining **81.6%** of Foundation expenses (75.2% for Grants plus 6.6% for Program Related Expenses).

7. In addition to "overhead" expenses, does the Foundation charge "administrative or processing" fees in connection with its grant awards?

No. While some charitable funders charge a percentage of an award granted to a recipient for an administrative or processing fee, the Foundation does not. With very few exceptions, it never has.

In the past, the Foundation received some legislative funding from the Florida legislature. This limited funding (FACLA funding) provided for administrative costs to be specifically tracked (using timesheets) with respect to disbursement of such funds. This funding has not been available to the Foundation for more than ten years.

The Middle District of Florida awarded the Foundation \$3.6 million dollars in 2019 (*Engle* award) and ordered the Foundation to disburse those funds throughout the Middle District. In so doing, the Court allowed the Foundation to use \$75,000 for administrative expenses and also allowed the Foundation to capture some investment income on the funds pending disbursement. As of the Board's June 18 Board meeting, all *Engle* award monies have been awarded and are in the process of being disbursed. The first round of

funding occurred in October 2019 and the second and final round will be disbursed in or around October 2020.

Other funding sources in the past have allowed the Foundation to capture investment income generated on donated dollars pending disbursement to grantees. Such awards generated from legal proceedings involving various states' attorneys general and did not allow for administrative costs to be deducted from the principal amounts. Instead, interest earned on the funds pending disbursement was allowed in some cases. The most recent example of such an award was the Bank of America Community Economic Development grants, which have been awarded to grantees. And while the Foundation was allowed to use investment income to offset its expenses, the Foundation nevertheless put most of that investment income back into its grantees' programs.

8. How much of the Foundation's income is from IOTA funds and how much is from other sources?

Since 1982, IOTA funds have represented about **83%** of Foundation income.

However, beginning in 2008 with the Great Recession, IOTA revenues declined dramatically as federal interest rates remained at less than 1% for more than a decade. The Foundation was fortunate to have reserved substantial amounts of money before that time which allowed it to continue operating and funding grants. It also was fortunate to receive other sources of funding arising out of litigation involving financial institutions. Not counting an aberrational year in 2008-09 (IOTA revenues dropped 75% from the previous year and the Foundation also suffered \$10.1m in investment losses because of the market crash that set off the Great Recession), IOTA revenues ranged from as little as 31.1% to as much as 97.8%, with a resulting cumulative average of 52.7% of all Foundation revenues from FY 2009-10 to FY 2016-17.

With increased IOTA rates and the exhaustion of other third-party sources of income (Bank of America and Engle grant awards), IOTA income as a percentage increased to **61.4% in FY 18-19** and was at **63.4% on April 30, 2020**. The Foundation projects IOTA receipts to constitute about **84.5% of Foundation income in FY 20-21**.

The remaining sources of income since 1982 have generally consisted of investment income revenues, fundraising and development efforts, and sporadic awards generally characterized as *cy pres* awards received from private litigants and on occasion from government agencies. The Foundation has also historically benefitted from donations earmarked by Florida lawyers paying bar dues and proceeds derived from sales of specialty license plates. Other than investment income (subject to market fluctuations),

fundraising, and donations from Florida lawyers, income revenue from sources other than IOTA receipts is unpredictable and inconsistent.

The Foundation has long recognized the need to identify and secure other sources of funding and that it cannot rely solely on lawyers and the justice system to support and pay for civil legal aid. It is working on this issue vigorously and welcomes all input and suggestions.

9. What percentage of the Foundation's overhead is paid for by IOTA funds?

Before answering this question, it must be understood that the amount of IOTA funds used to pay for the Foundation's "overhead" fluctuates depending on the amount of all revenues received from all sources and all expenses paid in any given year. It is also important to remember that IOTA funds have been the primary source of income for the Foundation since 1982.

Notwithstanding the source, all funds received by the Foundation for the Foundation's use have always been pooled into common investment funds. By pooling investments, more interest can be generated which in turn can be turned back into the system. Also, such process saves considerable time, staff resources and money. Similarly, the Foundation's expenses are paid from those pooled amounts. Thus, the specific amount of "IOTA revenues" contained in a particular expense is not readily ascertainable except where certain funding sources are specifically designated for grants that do NOT use IOTA funds. Examples of such funds are the Bank of America Community Economic Development Grants and the United States District Court for the Middle District of Florida's "Engle" award.

With all of that said, a reasonable estimation of the percentage of IOTA funds contained in any given Foundation expense can be calculated using a percentage of IOTA receipts compared with all other funding receipts in a particular fiscal year, but the Foundation has not made such calculations in the past for the reasons stated above. For example, in FY 2018-19, IOTA funds constituted 39.9% of all FBF total expenditures which includes, among other things grants, program-related expenses and other payments made to grantees. But given the fact that administrative fees or expenses are not taken from other revenue sources, IOTA funds paid for 86.7% of FBF's operating expenses that year. This calculation can be done for any given fiscal year if necessary.

10. How much IOTA funds can be expected going forward?

IOTA receipts correlate with federal interest rates and the amount of money held in trust on any given date. Trust account balances in Florida have remained fairly consistent since 2007 and have actually increased from about \$4.5 Billion to around \$6 Billion in that timeframe. IOTA rates have been historically low since 2007 but made a slight comeback in 2018 and 2019. However, the surprise cuts in the federal interest rate in response to the COVID-19 pandemic returned interest rates to virtually zero and experts forecast that rates will not increase until the end of 2021.

IOTA revenues for **FY 20-21** are projected at **\$9.4 million**, down from \$16.1 million in FY 19-20.

11. What reporting, if any, does the Foundation submit or provide?

The Florida Bar Foundation prepares multiple reports and makes them available for all to see. The Foundation regularly creates and/or disseminates:

- An annual report;
- An annual audit report;
- Budget projection reports on at least a quarterly basis;
- Financial dashboard reports;
- Board meeting reports;
- Board and executive committee minutes;
- Restricted and unrestricted gifts reports;
- Development reports; and
- Newsletter and website reports covering all aspects of the Foundation, its directors, staff, stakeholders, and activities.

It also produces status reports for funders and state agencies (i.e. Reports to the Attorney General, Courts, and others upon requests) and produces or causes to be produced: geo-spatial mapping reports showing coverage areas, resources and general results; economic-impact studies; and program review reports (SAR and Desk reviews). It has and will continued to produce or procure legal needs assessment reports and it occasionally commissions others to prepare reports and studies regarding specific issues. In addition, it prepares templates and reporting requirements for grantees regarding grants and assistance provided by the Foundation. Any and all of these materials have been and continue to be available for inspection upon request.

The Foundation welcomes any discussion or input regarding its current reports. If requested or directed to produce any other types of reports, the Foundation will promptly endeavor to prepare and publish such other reports.

12. Does the Foundation gather “metrics” from its grantees?

Yes. Each grants contract awarded by the Foundation requires reporting from grantees regarding their performance and results obtained through the grant. The required reports do and always have included metrics. These metrics measure performance objectives, deliverables, types of services provided, and statistical and demographic information relating to the clients served.

The Foundation also procures Self-Assessment Reports and Desk Review Reports regarding grantees’ operations and grants performance. These reports discuss numerous metrics, provide narrative examples of results and outcomes, and include economic impact analysis. Previously prepared on an annual basis, they are now prepared on a three-year basis to save expense and resources.

The Foundation has also developed metrics for use in evaluating the Foundation's Reset and resulting programs. Pursuant to a Board directive, Spark Policy Institute was hired and from that effort, 11 distinct metrics were developed:

	Metric	Rationale
1	Number and types of organizations being financially supported.	This metric will help the Foundation track what types of organizations are being supported and the extent to which funding aligns with the Reset's strategies.
2	Amount of funding leveraged.	This metric will help the Foundation track the amount of funding leveraged by grantees.
3	Number and ways in which people are trained.	One of the goals of the Reset is to build organizational capacity. This metric will help the Foundation understand who and how people are being trained by the Foundation or its grantees.
4	Number and types of materials developed and shared.	One of the goals of the Reset is to build organizational capacity. This metric will help the Foundation to understand how they are supporting the field.
5	Number and types of innovative models supported, including pro bono.	One of the goals of the Reset is to increase the effectiveness and efficiency of services. This metric will help the Foundation understand the models that are being developed to catalyze increased access to justice.
6	Number and percent of grantees, legal aid providers, and pro bono providers adopting best practices or shared standards of practice.	One of the goals of the Reset is to support adoption of best and shared standards of practice. This metric will allow the Foundation to understand how key players are changing their practices. Data can also be used to inform funding decisions.
7	Number of clients using self-help resources or accessing low-cost representation.	This metric will help the Foundation understand the ways in which it and its partners are educating and activating community members to address unmet needs.
8	Number and types of new partnerships.	Creating, promoting, enhancing, and institutionalizing partnerships can help expand the system's capacity. This metric will help the Foundation understand the number and types of partners that are part of, or who are joining, the "system."
9	Economic benefits received by clients.	This metric provides a quantitative means of measuring the social impact of this work. The definition of "economic benefits" is clear, consistent, and transparent to help ensure that it is viewed as credible.
10	Total number and types of individuals who receive or benefit from civil legal support.	This metric will help the Foundation understand the number and types of people being reached or helped in some manner. The Foundation can examine the "value add of" specific efforts (e.g., grant approaches). Describing the different types of individuals served helps enhance transparency and credibility.
11	Actions and reactions of key stakeholders on the Strategic Reset.	This metric will keep the Foundation apprised of comments and reactions from all stakeholders in the legal aid delivery system relating to acceptance and implementation of, accountability for, compliance with, and collaboration on the Strategic Reset.

While these metrics have not yet made their way through a full grants cycle, they are applied and considered during the grants application process and are being incorporated into required final reports from grantees as well.

Lastly, the Foundation has recently instituted an assessment of all grantee pro bono programs, designed to gauge the level and quality of pro bono efforts by grantees. The resulting scores are then used in review and consideration of all other grant applications submitted by Foundation grantees.

Thank you for your interest and attention.

END OF DOCUMENT