

# Frequently Asked Questions

## Tennessee Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Amendments

### 1. What do the new IOLTA Rules do?

- Makes participation in IOLTA by lawyers and/or law firms mandatory.
- Defines institutions eligible to hold IOLTA accounts as only those institutions which agree to pay IOLTA account customers the highest interest rate or dividend generally available at their own institution to similarly situated non-IOLTA customers (called “comparability”). The changes require that higher rates be paid to qualifying IOLTA accounts if those rates are available to the bank’s other customers.
- Specifically authorize the use of U.S. Government money market funds and repurchase agreements collateralized with U.S. Government securities.
- Define allowable reasonable service charges.

### 2. Why are these changes necessary?

The interest rate parity provisions (comparability) and investment options were created to recognize that bank products and technologies have evolved significantly since IOLTA programs began in the 1980s, so, in many cases, a NOW account – the prior standard – is no longer an appropriate benchmark for many IOLTA accounts.

### 3. Do the Rules regulate financial institutions?

No. The Rules regulate the behavior of lawyers, who are required to place their IOLTA accounts at financial institutions that pay interest rates on IOLTA accounts comparable to those paid to non-IOLTA customers. The Tennessee Supreme Court, in the proper course of regulating attorneys, has adopted criteria for financial institutions participating in the IOLTA program. However, participation has always been and continues to be voluntary for financial institutions.

### 4. Do the Rules set IOLTA interest rates?

No. The Rules do not set or compare rates among banks. The rate paid is set by each bank for its own customers and is based on all the factors a bank normally considers when it sets its own rates. The new Rules only require a participating bank to pay interest rates comparable to what it already pays its similarly situated, non-IOLTA customers.

### 5. What are the product options available for IOLTA accounts?

The Rules require that IOLTA accounts earn interest comparable to other bank products with similar balance requirements and which meet other restrictions at that bank. The Rules also allow qualifying funds to be invested in repurchase agreements fully collateralized by U.S. Government securities or money market mutual funds which invest solely in U.S. Government securities. A financial institution may also elect, if it chooses, to pay a rate voluntarily negotiated with the Foundation to be in effect for and remain unchanged during a period of up to twelve months.

**6. If we offer no other type of account, does this mean we can continue to offer only our NOW account?**

It is important to review your entire portfolio of products to make sure there are no other comparable products, including tiered or preferred rate products, for which IOLTA accounts would qualify. We are happy to help you review your options. But, if your institution only offers a NOW account, then you will simply need to certify this fact to the Tennessee Bar Foundation (TBF), the administrator of the IOLTA program.

**7. Must we create multiple types of IOLTA accounts based upon different qualifications and rates?**

No. If you'd prefer, we can work with you to create a single blended rate or tiered rates that are based on the current portfolio of products, without establishing IOLTA accounts in those different product types.

**8. We have an investment company subsidiary. Is it necessary to offer the subsidiary's products as IOLTA accounts?**

Only if you wanted the subsidiary to hold IOLTA deposits in eligible accounts. If not, then you only need be concerned with your banking products. However, if you offer bank customers an automated transfer (sweep) to an external investment whether a subsidiary or not, such as money market mutual fund, you must offer that service or comparable rate to qualifying IOLTA customers.

**9. May we factor into the interest rate our personalized customer service?**

How you structure your rates internally is your decision, and we understand institutions may choose to provide value to customers in other ways than strictly pricing (including higher levels of service). We only need to insure that the IOLTA accounts are being treated equally and are earning the same rates as other depositors, whatever those rates are.

**10. May we factor in sweep or other fees in the rate?**

The allowable reasonable fees for IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, automated investment ("sweep") fees, (if those fees are charged on comparable bank accounts maintained by non-IOLTA depositors) and a reasonable IOLTA administrative fee. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account.

Allowable reasonable fees may be deducted from (but not in excess of) the interest earned on an account. Sweep fees may be considered on a "net yield" basis, that is, paying the equivalent after fee effective rate, without actually charging the fees. All net yield equivalent rates must be approved by TBF in advance.

**11. What if some accounts qualify for a higher interest rate product while others do not?**

The Rules allow financial institutions to pay different rates on different accounts. It is often more practical and a better administrative alternative to consider a single, blended rate, or tiered rates which are calculated and based on the different products or rates for which individual accounts may qualify.

**12. Must lawyers move their accounts to banks paying higher rates?**

No. The Rules only require a bank to pay its own IOLTA customers the highest interest rate generally paid to its own non-IOLTA customers with comparable accounts. A bank is not required to pay a rate other than that which the bank itself has established

**13. What if a financial institution doesn't offer higher rates of interest to non-IOLTA customers with comparable accounts?**

The bank would be in compliance with the Rules, as long as the bank is paying comparable rates to its IOLTA and non-IOLTA customers. The financial institution is required to do no more than pay the same rates on IOLTA accounts as it *already pays on similarly situated non-IOLTA accounts*. For example, most financial institutions offer non-IOLTA depositors preferred interest rates for larger balances. However, many of these same institutions do not distinguish between very small balance and very large balance IOLTA accounts. The Rules simply require that the bank now pay the large balance IOLTA account the same rate it would otherwise qualify for, were it not an IOLTA account.

**14. How will lawyers know if their financial institution is an eligible IOLTA institution?**

The TBF will maintain a list of eligible institutions on its website. Institutions will be certified as eligible by TBF upon a finding that they are in compliance with the Rules and based on the documentation and ongoing reporting the institution will file with TBF. Lawyers will only be notified if there is an issue with their particular financial institution.

**What happens next?**

- The IOLTA Compliance Statement and any necessary supporting documentation must be returned to the TBF before October 15, 2009.
- The TBF will publish its initial list of eligible financial institutions on its website on November 1, 2009.
- All Tennessee financial institutions that wish to remain IOLTA eligible depositories must be certified by the TBF before December 1, 2009.
- Tennessee lawyers and law firms may only maintain IOLTA accounts in eligible financial institutions as of January 1, 2010.

**Where can I get more information about the new rule?**

For additional information, please contact:

Barri Bernstein  
Executive Director  
Tennessee Bar Foundation  
618 Church Street, Suite 120  
Nashville, TN 37219-2456

615.242.1531/800.634.2516

[bb@tnbarfoundation.org](mailto:bb@tnbarfoundation.org)