

Financial Institution - Frequently Asked Questions

Tennessee IOLTA (Interest On Lawyers' Trust Accounts) Program

1. What do the IOLTA Rules (Supreme Court Rule 43 – “Interest On Lawyers’ Trust Accounts” and Rule of Professional Conduct 1.15 “Safekeeping Property”) do?

- Make participation in IOLTA mandatory for lawyers and/or law firms holding IOLTA-eligible funds.
- Define 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 the institution to similarly situated non-IOLTA customers (called “comparability”).
- Define allowable reasonable service charges.

2. 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 lawyers, has adopted criteria for financial institutions participating in the IOLTA program. However, participation has always been and continues to be voluntary for financial institutions.

3. Do the Rules set IOLTA interest rates?

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

4. What product options are available for IOLTA accounts?

The Rules require that IOLTA accounts be paid an interest rate no lower than the rate the financial institution pays on comparable products with similar balance and other requirements offered to non-IOLTA customers. 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.

5. If a financial institution offers no other type of account, does this mean a NOW account may be offered?

It is important to review the financial institution’s entire portfolio of products to make sure there are no others, including tiered or preferred rate products, for which IOLTA accounts would qualify.

Tennessee Bar Foundation (TBF), the administrator of the IOLTA program, will help an institution review options. But, if only a NOW account is offered, then that fact will need to be certified to TBF.

6. Must multiple types of IOLTA accounts be created based upon different qualifications and rates?

No. TBF will work with an institution to create a single, blended rate or tiered rates based on the current portfolio of products, without establishing IOLTA accounts in those different product types.

7. If a financial institution has an investment company subsidiary, is it necessary to offer the subsidiary's products as IOLTA accounts?

Only if the subsidiary will hold IOLTA deposits in eligible accounts. If not, then only the financial institution's products are concerned. However, if customers are offered an automated transfer (sweep) to an external investment, whether a subsidiary or not, such as money market mutual fund, it must offer that service or a comparable rate to qualifying IOLTA customers.

8. May a financial institution factor its personalized customer service into the interest rate structure?

How the rates are structured internally is the institution's decision, and it is understood that value may be provided to customers in ways other than strictly pricing (including higher levels of service). TBF needs only to insure that the IOLTA accounts are treated equally and are earning the same rates as other depositors, whatever those rates may be.

9. May a financial institution factor in sweep or other fees in the rate?

The allowable reasonable fees for IOLTA accounts are:

- per check or electronic debit charges;
- per deposit or electronic credit charges;
- a fee in lieu of minimum balance;
- FDIC insurance fees or FDIC account guarantee fees and/or NCUA insurance fees or NCUA account guarantee fees;
- a sweep fee; and
- a reasonable IOLTA account 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.

10. 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.

11. Must lawyers move their accounts to financial institutions paying higher rates?

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

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

The financial institution would be in compliance with the Rules, as long as it is paying comparable rates to its IOLTA and non-IOLTA customers. The 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 a large balance IOLTA account be paid the same rate it would otherwise qualify for, were it not an IOLTA account.

13. How do lawyers know if a financial institution is an "eligible" IOLTA institution?

TBF maintains a list of eligible institutions on its website (www.tnbarfoundation.org/eligible-financial-institutions/). Institutions are certified as eligible by TBF upon a finding that they are in compliance with the Rules. Compliance is an ongoing requirement for eligible institutions, and TBF, as administrator of the IOLTA program, routinely monitors and verifies this compliance. Again, lawyers and law firms may only maintain IOLTA accounts in eligible institutions.

14. How does a financial institution become eligible to offer IOLTA accounts?

Contact the Foundation staff to initiate the process. Certification of eligibility may only take a week or two, after all documentation is submitted.

For additional information, please contact:

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