

# **IOLTA** **INTEREST ON LAWYER TRUST ACCOUNTS**

Guidelines for Financial Institutions  
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South Carolina  
**BAR FOUNDATION**  
 Lawyers Sustaining Justice

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## Introduction

The South Carolina Bar Foundation (SCBF) is grateful to more than 90 financial institutions in the Palmetto state that have partnered with SCBF for the success that has been generated by the Interest On Lawyers' Trust Accounts (IOLTA) program.

Through IOLTA, together we are:

- Funding programs that put non-violent dads in livable wage jobs so that they can pay child support and reconnect with their children.
- Supporting non-profits that get women and their children out of abusive and life threatening situations.
- Funding initiatives that teach today's youth about the importance of being a good citizen and how they can make a positive difference in their communities.
- Educating low income citizens about their rights and responsibilities under the law.
- Fostering collaboration, communication and efficient work from those we support.
- Striving to make sure that poverty is not a barrier to justice.

Since 1987, the Foundation has awarded more than \$41 million to various legal related organizations that work on behalf of the justice community. These *Guidelines for Financial Institutions* provide details about IOLTA accounts for you to share with your colleagues. The guidelines include the following information:

- Financial institution eligibility
- Method to submitting IOLTA reports
- Forms to be distributed to colleagues at your financial institution
- Link to the rule governing IOLTA accounts
- Types of accounts used for IOLTA deposits
- Frequently Asked Questions ("FAQs")

Attorneys may only place their IOLTA accounts at eligible financial institutions. SCBF makes the determination as to whether a financial institution is an eligible institution. **If a bank is new to IOLTA**, the financial institutions (banks and savings & loan associations) must contact SCBF prior to opening any IOLTA accounts. SCBF will provide the financial institution with documents that must be completed and submitted. After review, SCBF will contact the financial institution with approval or an explanation as to why approval was not granted. **If a bank has been certified as eligible**, IOLTA accounts may be opened at that bank as long as it remains an eligible institution. Banks will be recertified annually.

Please make copies of these guidelines and provide them to your colleagues. Should you have any questions, contact the SCBF staff.

## History of IOLTA and Comments about Comparability

IOLTA programs originated in Australia and Canada during the 1960s. IOLTA programs have existed and have been administered in all fifty states and the District of Columbia since 1995.

The South Carolina Supreme Court created the IOLTA program to provide funds for law related public service projects and programs designed to improve the administration of justice. Before the creation of IOLTA, nominal or short-term client funds held in escrow or trust were customarily pooled and

deposited into non-interest bearing checking accounts. Since the creation of the program, such funds are now deposited in special interest-bearing IOLTA products at eligible financial institutions. The interest generated on IOLTA accounts, less allowable service charges, is automatically forwarded by financial institutions to the South Carolina Bar Foundation. The Foundation uses these funds to provide for charitable and educational law related public service projects and programs to improve the administration of justice in South Carolina.

In March 2005, amendments made to Rule 412 by the SC Supreme Court made participation in the SC IOLTA program mandatory for attorneys. It clarified that attorneys had to enroll all of their IOLTA-eligible funds in one or more IOLTA accounts.

On December 17, 2009, Rule 412 was amended to clarify the language regarding the interest rate to be paid on IOLTA accounts so that there is no misunderstanding about how accounts are to be treated. The Order is effective June 15, 2010. Specifically, the amendments:

- 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 their own institution to similarly situated non-IOLTA customers.
- Require higher rates be paid to qualifying IOLTA accounts, but only if those rates are already available to their other customers.
- Authorizes the use of US Government money market funds and repurchase agreements collateralized with US Government securities.
- Defines allowable reasonable service charges.

The full version of the Court rule can be viewed at: <http://sctbarfoundation.org/Rule412.asp>

The interest rate parity provisions and investment options were added to clarify how IOLTA accounts were to be treated. Since 2005, the South Carolina IOLTA rule has required interest rates on IOLTA accounts that are no less than those paid on comparable accounts. The rule was revised to include specific examples and to clarify language about the intent of the provision. More than 29 IOLTA programs in other states have adopted similar language in their rules.

The rule regulates the behavior of lawyers, as it has always done. Lawyers are required to place their IOLTA accounts at financial institutions that have been certified as eligible by the SCBF. The 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.**

### Financial Institution Eligibility

In December 2009, the Supreme Court of South Carolina amended the IOLTA rule to require that attorneys may only place their IOLTA accounts at eligible institutions. IOLTA eligible institutions are those that pay no less on IOLTA accounts than the highest interest rate or dividend offered to non-IOLTA customers, when IOLTA accounts meet or exceed the same minimum balance or other eligibility qualifications. Financial institutions have until June 15, 2010 (the effective date), to achieve compliance with the revised Rules.

A financial institution may offer any one of the following in order to comply with the rules:

The account product may be an interest-bearing checking account, including market rate products with or tied to check writing; a sweep account which is a government money market fund or daily overnight financial institution repurchase agreement invested solely in or fully collateralized by United States government securities; or an open-end money market fund<sup>1</sup> solely invested in or fully collateralized by United States government securities.<sup>2</sup>

Comparable account types generally do NOT include:

- Accounts that are transaction limited, including most money market savings accounts
- Accounts that require additional relationships
- Accounts with a temporary, promotional rate

## Ways to Achieve Comparability

### Account Options

To give banks flexibility and maximum choice in complying with comparability requirements, financial institutions have a variety of methods for achieving comparability. For some institutions, comparability may already be achieved and no changes will be necessary. For those banks that do have to make adjustments, the following options are available. Options 1 and 2 require a review of all comparable accounts within the institution. Option 3 is an alternative provided in lieu of a review of all account offerings. It is an administrative tool designed to make the process easier, but strictly is optional for each institution.

#### **Option 1: To convert or establish an IOLTA account in a higher yield product**

If the financial institution determines that the current IOLTA product is not the highest yielding comparable product available, per the Rule, it may convert IOLTA accounts to the highest yielding product or products.

#### **Option 2: To duplicate interest rates of higher yield products**

Instead of physically converting IOLTA accounts to (a) new product type(s), the financial institution may simply apply the comparable product rate structure(s) to the existing IOLTA account. A common way to achieve this is by the use of a tiered rate IOLTA account, which applies the rates of one or more products for which the IOLTA accounts qualify.

#### **Option 3: To pay the benchmark rate**

The benchmark rate was established to allow for a quick and easy way for financial institutions to obtain compliance with the revised rule, without an exhaustive evaluation of their existing product portfolio, and to have a flexible interest rate that moves with other short term rates. It is also a way for financial institutions that may have higher internal rate structures to limit the absolute rate they would have to pay to one that is based on an overall comparable rate for the

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<sup>1</sup> “Open-end money market fund” is a fund holding itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Act of 1940 and, at the time of the investment, having total assets of at least \$250,000,000.

<sup>2</sup> “United States government securities” are United States treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including obligations of Government Sponsored Enterprises.

SC IOLTA Program. The benchmark rate is presented as an additional choice for financial institutions and, it may make sense for some institutions, but is not required to comply with the rule.

Banks may choose any of the above three options to achieve comparability. Should a bank wish to switch the method used, it may do so with 90-days notice to the Foundation, and no more than two times annually.

## The Benchmark Rate

The benchmark rate is established by the Foundation in accordance with the specifications provided for in the IOLTA Rule. Those specifications call for a benchmark rate equal to the greater of 0.65% or 65% (the index) of the Federal Funds Target Rate (the benchmark), unless re-determined by the Foundation. As of this writing, the benchmark rate is 0.65%. The Foundation will post the benchmark rate on its website to alert financial institutions of future changes to the benchmark rate.

Financial institutions electing the benchmark rate to achieve eligibility may change their method of eligibility determination to either of the other two methods noted above upon 90-days written notice to the Foundation. The Foundation will provide 90-days written notice to financial institutions regarding any change in benchmark rate criteria (either the index or the benchmark). The Foundation will review the criteria no more than two times annually to ensure the rate remains reflective of overall statewide comparability, as determined by the Foundation. When possible, the benchmark rate will be expressed in relation to the Federal Funds target rate. Changes in the benchmark rate due solely to a change in the Fed Funds rate (no changes to criteria) will be reported only on the Foundation web site.

Changes to the Federal Funds Target Rate can also be found at:

<http://www.federalreserve.gov/fomc/fundsrate.htm>

## Prime Partner Program

While the provisions of interest rate comparability described above determine the minimum rate that eligible financial institutions may pay on IOLTA accounts, leadership institutions in South Carolina have historically gone above and beyond the minimum requirements to insure the laudable goals of the IOLTA program are achieved.

South Carolina financial institutions can reinforce their commitment to our communities by becoming IOLTA Prime Partners. Prime Partners have committed to pay an interest rate, net of allowable reasonable fees, that is the higher of 1) 75% or more of the Fed Funds Target Rate; or 2) a minimum of 0.75% on all IOLTA accounts. (NOTE: the Prime Partner rate is only adjusted at the time of any benchmark rate adjustment.)

*Benefits of Becoming a Prime Partner:*

- \*Highlighted on Eligible Institutions list as a “Prime Partner”
- \*Featured prominently on South Carolina Bar Foundation Web site
- \*Active link from South Carolina Bar Foundation Web site to Prime Partner’s Web site
- \*Mention in statewide newsletter distributed to all licensed attorneys

- \*Featured in press releases issued to local and statewide media and bar association publications
- \*Letter to attorneys who open new IOLTA accounts advising them of bank's Prime Partner status
- \*Local community recognition
- \*Mention in legal aid communications
- \*Promoted and prominently featured at Bar Association events, including Annual Bar Meetings
- \*Featured at various local & specialty bar meetings
- \*Community Redevelopment Act (CRA) Letter
- \*Customized publicity can be developed for individual financial institutions
- \*Prime Partner certificate for financial institutions

Please contact the SCBF staff to learn more about how your financial institution can become a Prime Partner. Contact information can be found at the end of this Guidebook.

## Operational Information

### How to Open an IOLTA Account

Employees of financial institutions should follow these procedures when opening a new IOLTA account:

1. All IOLTA accounts should be established in the name of the attorney or law firm and should be interest-bearing trust accounts.
2. Complete the *Enrollment Form for Lawyers and Law Firms* (located at <http://sctbarfoundation.org/forms.asp>) with all of the required information. Fax the form to 803-779-6126, mail the form to the Foundation's PO Box or e-mail a PDF version to [iolta@sctbar.org](mailto:iolta@sctbar.org).
3. Use SCBF's TIN, 23-7181552, for the IOLTA account— do not use the attorney's or law firm's TIN or Social Security number.
4. Inform the attorney that interest will be paid directly to SCBF, neither to the attorney nor to the attorney's client(s).
5. If your institution does not waive fees, then inform the attorney that only allowable reasonable service charges and fees will be assessed against the IOLTA interest. Negative netting (deducting service fees in excess of the interest earned by an individual account) is prohibited. Non-allowable fees (wire transfers, NSF, check orders, electronic bank fees, etc.) are the responsibility of the lawyer or law firm maintaining the IOLTA account.

Please also see Appendices A and B for helpful information to distribute at your financial institution.

### Attorney Forms

When opening IOLTA accounts, the *Enrollment Form for Lawyers and Law Firms* should be completed by the attorney and financial institution and mailed or faxed to the Foundation. This form instructs financial institutions how to establish an IOLTA account and should be provided to all branches to accommodate attorneys and law firms in establishing IOLTA accounts.

Should an attorney have a change of status in regard to their IOLTA account(s), the attorney should complete the *Change of Status* form (located at <http://sctbarfoundation.org/forms.asp>). Attorneys and

firms are also provided with copies and/or access to these forms. However, experience has revealed that financial institutions who keep the forms available provide great assistance to the attorney clients.

### **Basic Account Information**

All IOLTA accounts should have the same closing date (or statement cycle) at the end of the month.

IOLTA accounts should not be designated as “closed” if the accounts go to “0” balance. It is the nature of these accounts to go to “0” balance since the attorneys deposit client funds which are dispersed quickly. The account should only be designated as “closed” when the attorney or law firm officially closes the account. Once an account is designated as “closed” on the IOLTA Remittance Report, it should not be listed on future reports.

### **Tax Identification Number (TIN)**

SCBF’s TIN, 23-7181552, will be used for all IOLTA accounts. Please do not use the attorney’s or law firm’s TIN for any IOLTA accounts.

Due to SCBF’s status as a tax-exempt, non-profit South Carolina corporation, all IOLTA accounts are exempt from backup withholding. Do not withhold any interest from an IOLTA account. Should you receive an IRS withholding letter for an IOLTA account, please call the Foundation’s office immediately.

Neither the Internal Revenue Service nor the South Carolina Bar Foundation requires that a 1099 be generated on IOLTA accounts. As a result, if your data processing allows, please suppress 1099 reporting. If a 1099 is generated, it should reflect the South Carolina Bar Foundation as the beneficiary of the interest.

### **Fees and Service Charges**

Many financial institutions have elected to waive fees and service charges for IOLTA accounts to preserve the charitable use of the interest earned on the accounts. For financial institutions that do not waive fees or service charges on IOLTA accounts, the following information details how and what fees and service charges may be assessed.

### **Expenses That May be Deducted from IOLTA Interest (Called “Reasonable Fees” in Rule 412 (a) (5))**

If service charges are assessed, only the following fees may be deducted from the interest or dividends earned in an IOLTA account:

- Per check charges
- Per deposit charges
- Fee in lieu of a minimum balance
- Federal deposit insurance fees
- Sweep fees
- Reasonable IOLTA account administrative fee

Prior to assessing the above fees against the IOLTA interest, the financial institution should verify that the fee is no greater than what is being charged on comparable accounts, and that the fees are reasonable and customary. All other fees outside of those noted above, if assessed, are the responsibilities of the lawyer or law firm maintaining the account.

Negative interest earnings resulting from service charges which exceed interest earned are prohibited on IOLTA accounts (see section on negative netting below).

### **Negative Netting**

Allowable IOLTA fees (see prior list) may only be charged against the interest earned on an individual account. A financial institution may not collect allowable IOLTA fees in excess of the interest earned by the account, from interest generated on other IOLTA accounts or from the account balance. In reporting and paying the net amount for each account where the service charge exceeds the interest or dividends earned on the account, the depository institution should report and pay "0" as such net amount for the period. Again, no account may earn negative interest.

### **Expenses That MAY NOT be Deducted from IOLTA Interest**

Only the allowable fees noted above may be charged against the IOLTA interest. All other fees if assessed by the financial institution are the responsibility of the lawyer or law firm maintaining the account. The following are examples of fees that may only be charged to the attorney or law firm, not charged to the IOLTA interest. Such fees must be brought to the attention of the lawyer or law firm by the financial institution, who in turn may absorb these specific costs or pass along those fees to the client(s) being served by the transaction (in accordance with attorney/client agreements).

- Wire transfer
- Insufficient funds (NSF)
- Account Overdrafts
- Stop payment
- Account reconciliation
- Cash management fees
- Check printing

### **Rule 1.15: Safekeeping Property**

[Rule 1.15](#) makes it clear that an attorney or firm may deposit their own funds in a client trust account for the sole purpose of paying service charges they are responsible for on that account, but only in an amount necessary for that purpose. Alternatively, an attorney or law firm may make arrangements with his or her bank to have any service charges on the trust account charged to an operating or general account.

### **Insufficient Funds**

Under Rule 1.15(h), as revised October 1, 2005, a lawyer who maintains a trust account must file with the financial institution a written directive requiring the institution to report to the Commission on Lawyer Conduct when any properly payable instrument drawn on the account is presented for payment against insufficient funds. The Commission's address is: PO Box 12159, Columbia, SC 29211. A copy does NOT need to be sent to SCBF.

### **FDIC Protection**

The Federal Deposit Insurance Corporation (FDIC) announced in 2008 that client funds deposited in IOLTA accounts at participating financial institutions are eligible for unlimited deposit insurance coverage under the Transaction Account Guarantee Program (TAGP). On September 1, 2009, the FDIC extended the TAGP from December 31, 2009 until June 30, 2010. As a result, IOLTA funds held at

institutions that participate in the extended TAGP will continue to be guaranteed in full by the FDIC until June 30, 2010. Financial institutions opting out of the extended coverage must display a notice to customers.

FDIC webpage link: <http://www.fdic.gov/deposit/deposits/changes.html>

## Completing the IOLTA Remittance Report Forms

### IOLTA Remittance

Financial institutions are to remit interest and reports to the Foundation monthly with 30 days of the end of each month. For example: March interest (Time Period 03/01/YY through 03/31/YY) should be remitted by April 30. The Time Period is the period of time during which the interest is actually earned.

### How do I report?

Transmit at least quarterly to the depositing lawyer or law firm a report or statement that provides the appropriate information. A spreadsheet containing all the required information is available to facilitate the reporting process. A hard copy of the spreadsheet is included with this manual for your reference. The actual Excel document can be sent upon request or downloaded at [www.scarfoundation.org](http://www.scarfoundation.org). To improve accuracy and speed data entry, the Foundation will institute electronic forms for use in remittance of IOLTA reports. Many banks already remit electronically and should continue to do so. The Foundation will contact you should you become a candidate for this type of reporting.

### How is interest transmitted?

Via ACH:            Receiving Bank's ABA #: XXX  
                         Customer Name (Beneficiary): South Carolina Bar Foundation, Inc.  
                         Account Number: XXXXXXXX (please call for specifics)

Via Cashiers Check/Bank Check: send check with a copy of your remittance report to:  
                         Attn: Dee Sanders  
                         SC Bar Foundation  
                         PO Box 608  
                         Columbia, SC 29202

### Account Errors

Please contact SCBF as soon as possible regarding any errors that you may encounter with IOLTA accounts and IOLTA reporting. Errors may include IOLTA accounts that were not opened correctly, inaccurate reporting and payment of IOLTA interest, incorrect tax ID number, etc. Further information should be reported through the Financial Institution Error Report Form.

### Financial Institution Mergers

In a merger, the financial institution that remains will be referred to as the "surviving institution" and "acquired institution" will indicate the closing institution. The acquired institution will remit all interest on IOLTA accounts up to the merger date (see example below). The complete name and city of the surviving institution should be listed on the IOLTA Remittance Report as a footnote.

The surviving institution will remit all interest on IOLTA accounts acquired through the merger as of the merger date (see example below). Each account should be marked clearly as a merger account on the

IOLTA Remittance Report with a footnote listing the acquired institution's name and merger date. SCBF can provide a list of the acquired accounts to the surviving institution so that account numbers and names can be verified.

Example: Bank A acquires Bank B. Bank A is the surviving institution and Bank B is the acquired institution. The merger date is April 10, 2009.

Bank B (acquired institution) submits a report and remittance check for all IOLTA accounts with a time period of April 1, 2009 - April 9, 2009 using the same account numbers previously used.

Bank A (surviving institution) submits an additional report for the "merger" accounts with a time period of April 10, 2009 - April 30, 2009. If the surviving institution changes the account numbers, a list of the "old" and "new" account numbers should be attached to the IOLTA Remittance Report. The surviving bank can remit one check for all of the accounts or may wish to remit two checks (one check for their existing IOLTA accounts and one check for the acquired IOLTA accounts).

## Frequently Asked Questions

### **Q: What is the basic concept of IOLTA?**

A: Clients often transfer money to an attorney to hold. When the amount is large or if the funds are to be held for a long period of time, lawyers invest those funds for the benefit of the client. But, when the funds are small or expected to be held for a short time, they cannot practically be invested to benefit the owner of the funds. The IOLTA program allows attorneys to convert these accounts into interest-bearing accounts that generate interest income. The financial institution sends the interest directly to the Foundation which distributes the funds as grants to a variety of initiatives that support the justice system.

### **Q: How are IOLTA eligible funds determined?**

A: "Nominal" or "short-term" funds are those of a client or third party that the lawyer has determined cannot provide a positive net return to the client or third party. An attorney shall exercise good faith judgment in determining whether or not funds belong in an IOLTA account. No lawyer shall be charged with ethical impropriety based on the exercise of good faith judgment.

### **Q: Do all attorneys need IOLTA accounts?**

A: Only attorneys that handle client trust funds that are nominal in amount or held for a short time are required to establish IOLTA accounts. Licensed attorneys in South Carolina who do not handle client trust funds are not required to establish an IOLTA account.

### **Q: Who qualifies for exclusion?**

A: The following Bar members are excluded: lawyers who do not maintain the practice of law; those employed in a corporate capacity; those employed by local, state or federal government; law clerks, professors or members of the judiciary; retired attorneys; lawyers whose practices do not require the maintenance of trust/escrow accounts and those who do not have an office or maintain funds in depository institutions in the state. Exclusions may be noted on the annual SC Bar license fee statement.

**Q: Who is exempt?**

A: An IOLTA account that has or may have the net effect of costing the IOLTA program more in fees than earned in interest over a period of time may, at the discretion of the Foundation, be exempted from the IOLTA program. Lawyers may also request exemption if participation would work an undue hardship or would be extremely impractical. Attorneys desiring exemption due to hardship should make their request in writing to the Bar Foundation Board of Directors. Contact the Foundation for exemption forms.

**Q: Where do attorneys deposit client trust funds that do not meet the short-term or nominal fund requirements of IOLTA?**

A: Client trust funds that do not meet the nominal or short-term fund requirements of an IOLTA account should be deposited in a separate demand account to earn interest for the benefit of that client. The attorney must use that client's tax ID number instead of SCBF's tax ID number.

**Q: What taxpayer ID number should be used when opening an IOLTA account?**

A: SCBF's TIN is 23-7181552. This is the TIN that must be used when opening an IOLTA account. The attorney's or law firm's TIN should never be used when an IOLTA account is opened.

**Q: Are IOLTA accounts subject to service charges? Who pays the services charges?**

A: If the financial institution assesses service charges and fees on the IOLTA account, they should be reasonable and customary. Certain reasonable fees as defined in the Rule may only be deducted from interest or dividends that are earned on IOLTA accounts; they may not be deducted from the IOLTA principal. All other fees and service charges are the responsibility of the attorney or law firm maintaining the account. The financial institution may choose to waive any and all fees on an IOLTA account.

**Q: How can financial institutions assist attorneys or law firms in opening IOLTA accounts?**

A: The financial institution can have on hand a copy of the *Enrollment Form for Lawyers and Law Firms*, which instructs the financial institution on how to establish an IOLTA account. The financial institution or attorney must fax, e-mail or mail a copy of the completed form to the Foundation.

**Q: Are there any tax consequences for the client or for the attorney?**

A: There are no tax consequences for the attorney or client. Financial institutions should not issue IRS 1099 forms to anyone including the attorney, law firm nor the attorney's client.

**Q: How can my financial institution become a Prime Partner?**

A: Contact the SCBF staff about how your financial institution can become a Prime Partner.

**Q: If we offer no other type of account, does this mean we can continue to offer only our NOW account and still meet the comparability provisions of the revised Rule?**

A: It is important to review your entire portfolio of products to make sure there are no other comparable products, including tiered or preferred rate product 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 SCBF to be in compliance with the Rule.

**Q: Do we have to create multiple types of IOLTA accounts based upon different qualifications and rates?**

A: 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.

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

A: 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.

**Q: Can we factor in the interest rate our specialized customer service?**

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

**Q: Can we factor in sweep or other fees in the rate?**

A: 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, and a reasonable maintenance fee, if those fees are charged on comparable bank accounts maintained by non-IOLTA depositors. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account.

Allowable reasonable fees can be deducted from (but not in excess of) the interest earned on an account. Sweeps fees in particular can be considered on a "net yield" basis – for example – paying the equivalent after fee effective rate, without actually charging the fees. All net yield equivalent rates must be approved by SCBF in advance.

**Q: What if some accounts qualify for a higher interest rate product and others do not?**

A: The rule allows 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 individual accounts may qualify for.

**Q: Would attorneys have to change to banks paying higher rates?**

A: No. IOLTA comparability rule only requires a bank to pay its own IOLTA customers the highest interest rate generally paid to its own non-IOLTA customers with comparable accounts. It does not require a bank to pay rates other than that which the bank itself has established.

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

A: The bank would be in compliance with the rule 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 and very large balance IOLTA accounts. The rule simply requires that they now pay the large balance IOLTA account the same rate it would otherwise qualify for, were it not an IOLTA account.

**Q: How will attorneys know if their financial institution is an eligible IOLTA institution?**

A: The SCBF will maintain a list of eligible institutions on its Web site. Institutions will be certified as eligible by SCBF upon a finding that they are in compliance with the rule and based on the documentation and ongoing reporting the institution will file with SCBF.

**Q: Do we need to contact our clients about the rule change?**

A. The Bar Foundation will continue to notify and educate attorneys about the IOLTA program as it has done since inception. A Guidebook similar to this one has been developed for attorneys. Banks should always feel confident in referring attorney questions to the Bar Foundation.

**Q. Where are insufficient funds notices sent?**

A. NSF notices should be sent to the Commission on Lawyer Conduct. Their address is PO Box 12159, Columbia, SC 29211. A copy does NOT need to be sent to SCBF.

**SCBF Contact Information**

For additional information or to answer questions that you may have, please visit our Web site [sctbarfoundation.org](http://sctbarfoundation.org) or contact the Foundation's staff:

Shannon Willis Scruggs  
Executive Director  
[shannon.scruggs@sctbar.org](mailto:shannon.scruggs@sctbar.org)

Juliana Sobey  
Records Administrator  
[iolta@sctbar.org](mailto:iolta@sctbar.org)

(803) 765-0517  
(877) SC-IOLTA

The Bar Foundation periodically distributes an IOLTA bank contact E-Blast. If you are not included on this distribution and would like to be a part, please notify [Juliana Sobey](mailto:Juliana.Sobey).

## Appendix A: Summary for Operations Personnel

**Note:** This page should be kept so that the IOLTA Operations contact person at your financial institution can refer to it as a summary of the Guidebook information. For more detailed information please refer to the relevant section in the Guidebook.

The account product may be an interest-bearing checking account, including market rate products with or tied to check writing; a sweep account which is a government money market fund or daily overnight financial institution repurchase agreement invested solely in or fully collateralized by United States government securities; or an open-end money market fund solely invested in or fully collateralized by United States government securities.

IOLTA accounts should be paid an interest rate that is no less than the highest interest rate that is paid to non-IOLTA customers **meeting the same eligibility criteria**.

Allowable reasonable fees and service charges are:

- Per check charges
- Per deposit charges
- Fee in lieu of a minimum balance
- Federal deposit insurance fees
- Sweep fees
- Reasonable IOLTA account administrative fee

Allowable reasonable fees may be deducted only from the interest earned in an IOLTA account. All other fees should be charged to the lawyer or law firm maintaining the account. Banks may waive any and all fees on IOLTA accounts.

Negative netting is prohibited – see page 9 for more information.

Always use 23-7181552 as the tax identification number for IOLTA accounts.

IOLTA Remittance Reports are due within 30 days after the reporting period end.

If you mail in a paper report for your IOLTA Remittance Report, or send a Cashiers Check/Bank Check, send to SC Bar Foundation, Attn: Dee Sanders, PO Box 608, Columbia, SC 29202.

If you currently send your IOLTA Remittance Report in electronic format [Microsoft Excel (.xls) or Text File (.txt)], then continue to process the reports in the same manner.

If you would like to send your IOLTA interest payment via ACH, please use the following information:

Receiving Bank's ABA #: XXX

Customer Name (Beneficiary): South Carolina Bar Foundation, Inc.

Account #: XXXXXXXX

*[For specifics, call the Foundation at (877) SC-IOLTA]*

Always submit an Enrollment Form for Lawyers and Law Firms to the SCBF via mail to the address listed above, fax to (803) 779-6126 or email [iolta@scbar.org](mailto:iolta@scbar.org)

## **Appendix B: Summary for Branch Personnel**

**Note:** Information at the top of this page should be completed by the contact person at your financial institution. After completing the information, this page and the Enrollment Form for Lawyers and Law Firms should be distributed to personnel at your financial institution's banking centers (i.e. branches). Feel free to make copies or PDF files of this Summary for Branch Personnel and the Enrollment Form.

Contact Person at My Financial Institution:

Name \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email Address \_\_\_\_\_

Contact Information at South Carolina Bar Foundation (SCBF):

Shannon Willis Scruggs

Executive Director

[shannon.scruggs@scbar.org](mailto:shannon.scruggs@scbar.org)

Juliana Sobey

Records Administrator

[iolta@scbar.org](mailto:iolta@scbar.org)

(803) 765-0517

(877) SC-IOLTA

### **How to set up an IOLTA Account:**

1. All IOLTA accounts should be established in the name of the attorney or law firm and should be interest-bearing trust accounts.
2. Have the lawyer complete the *Enrollment Form for Lawyers and Law Firms* (located at <http://scbarfoundation.org/forms.asp>) with all of the required information. Fax the form to 803-779-6126, mail the form to the Foundation's PO Box or e-mail a PDF version to [iolta@scbar.org](mailto:iolta@scbar.org).
3. Use SCBF's TIN, 23-7181552, for the IOLTA account— do not use the attorney's or law firm's TIN or Social Security number.
4. If your institution does not waive fees, then inform the attorney that only allowable reasonable service charges and fees will be assessed against the IOLTA interest. Negative netting (deducting service fees in excess of the interest earned by an individual account) is prohibited. Non-allowable fees (wire transfers, NSF, check orders, electronic bank fees, etc.) are the responsibility of the lawyer or law firm maintaining the IOLTA account.
5. Inform the attorney that in **all** instances, other fees (check printing, stop payments, NSF, wire transfer fees, etc) will be assessed to the attorney, **not** to the IOLTA principal.