



SUPREME COURT OF PENNSYLVANIA
PENNSYLVANIA INTEREST ON
LAWYERS TRUST ACCOUNT BOARD

Financial Institution Guidance Bulletin 2016-01: Interest Rate Comparability

This is a guidance bulletin for financial institutions that hold Pennsylvania IOLTA accounts. For additional information and guidance related to Pennsylvania's IOLTA program, visit www.paiolta.org.

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I. Overview

A Pennsylvania IOLTA account is an interest-bearing trust account into which attorneys deposit qualifying client funds while a MJ IOTA account is a trust account in which members of the minor judiciary (Magisterial District Judges, Municipal Court Judges, etc.) place qualified funds that are received in a custodial capacity. The Pennsylvania IOLTA Board holds the beneficial interest in the income generated by these accounts, and this income is used to fund grants to legal aid organizations across Pennsylvania. This guidance bulletin is intended to assist financial institutions with their obligations regarding interest rate(s) for IOLTA and MJ IOTA accounts.

At a minimum a financial institution must ensure that the yield for IOLTA accounts is not less than the highest yield offered to non-IOLTA customers where the same eligibility criteria are met. As an alternative to meeting this standard, the institution may opt to participate in one of the preferred interest rate programs offered by the IOLTA Board (Safe Harbor, Platinum Leader, etc.) which serve to reduce the institution's compliance obligation and also create a reliable source of funding for grants to legal aid organizations. Institutions that opt to participate in the Platinum Leader Bank program also qualify to receive Community Reinvestment Act reporting for their federal regulators. A Rate Certification Agreement must be completed by the institution and reviewed and approved by the IOLTA Board prior to the institution being approved to hold IOLTA accounts and prior to changing a previously certified rate.

II. Assigning Interest Rates

At a minimum a financial institution must ensure that the interest rate and the resulting yield for IOLTA accounts is not less than the highest yield offered to non-IOLTA customers where the same

eligibility criteria are met. As an alternative to meeting this standard, the institution may opt to participate in one of the preferred interest rate programs offered by the IOLTA Board (Safe Harbor, Platinum Leader, etc.) which serve to reduce the institution's compliance obligation and also create a reliable source of funding for grants to legal aid organizations. Institutions that opt to participate in the Platinum Leader Bank program also qualify to receive Community Reinvestment Act (CRA) reporting.

- 1) **Platinum Leader Rate:** *Greater of 1% or 75% of the Federal Funds Target Rate* (qualifies for CRA reporting on the community development impact of the bank's investment and service; financial institution is relieved of the comparability compliance burden and is featured in IOLTA outreach materials to Pennsylvania attorneys).
- 2) **Safe Harbor Rate:** *Greater of 1% or 60% of the Federal Funds Target Rate* (financial institution is relieved of the comparability compliance burden).
- 3) **Comparable Rate:** *Highest of Comparable Financial Products* (the institution will need to provide evidence of rate comparability and must ensure that a new rate certification agreement is completed when previously certified rates change). An institution must ensure that the interest rate paid for IOLTA and MJ IOTA accounts is not less than the highest yield available to non-IOLTA customers where the same eligibility requirements are met. A comparable product refers to a financial account product that is interest bearing with check writing capability. Additional considerations for institutions that use the comparable rate to achieve IOLTA compliance are outlined below:

(a) Types of products typically considered for comparability: Generally, an institution should look at interest bearing deposit accounts with check writing capability when determining the highest comparable product rate:

- A checking account paying interest (e.g., negotiable order of withdrawal (NOW) accounts, business checking accounts, personal checking accounts, checking accounts paying money market rates, etc.).
- A government / municipal checking account paying interest.
- A checking account with a sweep investment capability, with the swept funds invested in a money market fund or financial institution repurchase agreements. The financial institution repurchase agreements must be fully collateralized by, and the money market fund must consist solely of, United States Government Securities. The daily financial institution repurchase agreement may be established only with a financial institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations. In addition to United States Treasury Bonds, United States Government Securities, for the purposes of this section, include obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

These product options are not exhaustive. If the institution offers interest bearing accounts to non-IOLTA / non-MJ IOTA customers that meet the general functionality needed to be used as trust accounts, they should be included within the product types considered.

(b) Rate differences among account balance tiers: An institution may be able to use a single product type if the balance tiers for the particular product would ensure that the IOLTA account would receive the highest yield across a variety of balance tiers. However, if the institution offers a variety of products with different balances, the institution may need to look to several account types to ensure compliance. For example:

Acme Bank offers NOW checking accounts at .09% for balances greater than \$2,000 and .15% for balances greater than \$20,000 as well as business checking accounts at .05% for all balance tiers, does not charge any service fees, and has no other comparable products.

In order to be compliant, Acme Bank must at a minimum ensure that IOLTA and MJ IOTA accounts have a rate of .05% for balances \$0 - \$2,000, .09% for balances between \$2,000 - \$20,000 and .15% for balances greater than \$20,000.

III. Completing the Rate Certification Agreement

Financial institutions must complete an interest rate certification form pursuant to 204 PA. CODE § 81.106(c) which must be reviewed and approved by the IOLTA Board prior to holding IOLTA accounts and when any previously certified interest rates for IOLTA accounts will change (i.e., the institution wishes to lower the rate or the institution must raise the rate as the rates for comparable products have increased).

If an institution has opted to participate in either the Safe Harbor or the Platinum Leader Rate program, the institution is relieved of the burden of filing a new certification agreement when rates for comparable financial products change.

The rate certification agreement is made available on the IOLTA Board's website at www.paiolta.org or can be requested from the IOLTA Board via paiolta@pacourts.us or P.O. Box 62445, Harrisburg, PA 17106-2445. Changing the interest rates on the remittance reports provided to the IOLTA Board is not sufficient notice to change a previously certified interest rate.