



SUPREME COURT OF PENNSYLVANIA  
PENNSYLVANIA INTEREST ON  
LAWYERS TRUST ACCOUNT BOARD

## **Financial Institution Guidance Bulletin 2016-02: IOLTA Compliance Requirements**

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](http://www.paiolta.org).

### Topics Covered:

I. Overview

II. Account Identification / Enrollment

III. Tax Consequences

IV. Account Reporting & Remittances

V. Service Charges

VI. Compliance Assessments

### **I. Overview**

A Pennsylvania IOLTA account is an interest-bearing trust account into which attorneys deposit qualified funds. 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 IOLTA compliance obligations set out in Title 204 of the Pennsylvania Code. Institutions may also hold minor judiciary trust accounts (MJ IOTA). The compliance requirements for these accounts are similar to IOLTA accounts and may be found at 204 PA. CODE § 81.306, however, these accounts are not discussed in this Guidance Bulletin as IOLTA accounts make up the vast majority of trust accounts that an institution will need to report to the IOLTA Board.

### **II. Opening & Closing Accounts**

Attorneys bear the responsibility of identifying an account as a Pennsylvania IOLTA account and do so by completing the account enrollment form with the institution (available online at [www.paiolta.org](http://www.paiolta.org)). The institution should always send a copy of the completed account enrollment form to the Pennsylvania IOLTA Board via fax at (717) 238 2003 or by e-mail at [paiolta@pacourts.us](mailto:paiolta@pacourts.us).

With respect to proper account titling, the burden is on the attorney; however, banks should consider ensuring that their IOLTA account opening process includes a reminder to the attorney that the account title should contain the words "IOLTA Trust Account" or "IOLTA Escrow

Account” and the name of the lawyer or the law firm who maintains the account in the main title of the account. The word “IOLTA” need not be placed on checks or deposit slips, however, they should indicate that they are tied to a trust account.

Attorneys whose physical office location is outside of Pennsylvania may nonetheless need to open a Pennsylvania IOLTA account due to their practice of law in Pennsylvania (and must do so using the account enrollment form available online which designates the account as being related to their Pennsylvania practice). In this case, the institution should ensure that the account is included in the reporting and interest remittances provided to the Pennsylvania IOLTA Board regardless of the physical branch location at which the account was opened.

We recommend that bank’s e-mail ([paiolta@pacourts.us](mailto:paiolta@pacourts.us)) or fax ((717) 238 2003) copies of enrollment forms for new accounts to the IOLTA Board no less frequently than monthly and ideally as soon as the account is opened. When accounts are closed, they should be reported as closed in the bank’s monthly or quarterly activity reports provided to the IOLTA Board.

### III. Tax Consequences

The Internal Revenue Service has concluded that the IOLTA Program is the beneficial owner of the interest accrued on IOLTA accounts, and that as a non-profit organization under section 501 (c)(3) of the Internal Revenue Code, there is no tax liability to the Program. Therefore, it is not necessary that either Forms W-9 or 1099 be sent to the IOLTA Board in connection with IOLTA accounts. If your institution’s system requires the entry of a Tax Identification Number (TIN), please use the Pennsylvania IOLTA Board’s TIN for the interest income only (which is listed on the account enrollment form). If your system cannot suppress the issuance of Form 1099’s for the interest income, then please send the forms to the Pennsylvania IOLTA Board via P.O. Box 62445, Harrisburg, PA 17106-2445.

### IV. Account Reporting & Remittances

At least quarterly (preferably monthly), each financial institution must remit any interest earned on IOLTA accounts to the IOLTA Board in the form of an automated clearinghouse (ACH) transfer on or before the 10th business day following the close of the period. The institution should also transmit via e-mail to the IOLTA Board the Interest Remittance Report in Microsoft Excel format.

The Interest Remittance Report is made available online at [www.paiolta.org](http://www.paiolta.org) and requires information for the following fields:

**From:** Include your institution's name and Headquarters address. **Note:** If your institution has changed its name or undergone a merger, please indicate it here and also notify the IOLTA Board via [paiolta@pacourts.us](mailto:paiolta@pacourts.us).

**Contact:** List the primary operational contact for questions regarding IOLTA remittances. **Note:** In addition to updating the operational point of contact

in the interest remittance, institutions should also notify the IOLTA Board by e-mail if the points of contact listed in the rate certification agreement have changed.

**Period Covered:** Date range covered by this report (i.e., 01/01/2016 - 01/31/2016).

**Interest Rate:** Interest rate applied to IOLTA accounts expressed as a decimal (e.g., fifteen basis points expressed as .15). This rate should match your rate certification agreement provided to the IOLTA Board per 204 PA. CODE § 81.106 (if this will change, you must complete a new rate certification agreement with the IOLTA Board).

**Account Name:** Name as it appears on the IOLTA account enrollment form completed by the attorney.

**Account Number:** Account number provided by the bank.

**Amount of Interest:** Gross interest earned by the IOLTA account during the period in question.

**Service Charge:** Charges assessed against the interest income earned by the account. These charges must comply with the restrictions for IOLTA accounts and MJ IOTA accounts as set out in the applicable regulations in Title 204 of the Pennsylvania Code.

**Net Interest:** Net interest remitted to the IOLTA Board.

**Average Daily Balance:** Average daily balance of the IOLTA account. This is determined by adding the ending balance in the account for each day of the period and dividing that figure by the number of days in the period. For example, an account that had a balance of \$1,000 for 15 days of a month, and \$3,000 for 15 days of a 2 (30 day) month, would have an average daily balance of \$2,000 for the month. This balance is sometimes referred to as the Average Collected Balance, or Average Ledger Balance.

**Open Date:** If the IOLTA account is a new account, indicate the date the account was opened in the report for the month the account was opened. This date may be deleted in future reports.

**Close Date:** If an account was closed by an attorney, indicate the date the account was closed. This account should be removed from future reporting for subsequent months. **Note: if the account will be escheated to the state, notify the IOLTA Board via [paiolta@pacourts.us](mailto:paiolta@pacourts.us).**

**Totals:** Include the sum totals for each of the following columns: Amount of

Interest, Service Charge, Net Interest, and Average Daily Balance.

## V. Service Charges

Financial institutions may not assess any fees or charges against the *principal* balance of IOLTA accounts which is *attributed to client or third party* funds.\*

Service charges, account maintenance fees, and transaction charges are considered to be reasonable and permitted to be assessed against the *interest* earned on IOLTA accounts if they are also charged routinely on comparable account products to non-IOLTA customers where the same eligibility requirements are met. However, not only must a charge be reasonable, it must be applied in a manner which complies with 204 PA. CODE § 81.107.

Charges assessed against the interest income of an IOLTA account (in which the IOLTA Board holds the beneficial interest) may only be charged against the interest income of the account which incurred the charge (i.e., there may be no “negative netting” of charges incurred from Account A against the interest income of Account B). Additionally, charges incurred during one reporting period may not be assessed against the interest income earned in subsequent reporting periods.

Financial institutions may enter into agreements with attorneys to separately bill attorneys for supplemental services such as check printing, etc., as described more fully in 204 PA. CODE § 81.107 and shown in the table below:

<b>Permissible Service Charges under 204 PA. CODE § 81.107</b>			
	Reasonable service charges; account maintenance fees; transaction charges	Check printing; overdraft charges; charges for stopped payments; certified checks; wire transfers	Charges to file required Pa. R.D.E. 221(m) dishonored check reports to the Lawyers' Fund for Client Security
IOLTA Interest Income	<b>Yes</b>	<b>N/A</b>	<b>N/A</b>
IOLTA Principal Balance (client/third party funds)*	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>
Attorney (as agreed to separately between the attorney and the financial institution)	<b>N/A</b>	<b>Yes</b>	<b>Yes</b>

\*Note: per Pa R.P.C. 1.15(h), an attorney may put some of their own money into an IOLTA account for the purpose of paying service charges, but only in an amount necessary for that purpose.

## VI. Compliance Assessments

While institutions are expected to comply with the IOLTA requirements in Title 204 of the Pennsylvania Code, given the unique rules applicable to IOLTA accounts, the IOLTA Board conducts periodic reviews of the interest remittances and account reporting provided by approved financial institutions.

Institutions which are selected for a review will be sent a compliance questionnaire as well as an interest remittance assessment on a selection of Pennsylvania IOLTA accounts. This review is used to confirm compliance with the regulatory requirements in Title 204 of the Pennsylvania Code related to service charges, account reporting, and interest remittances, as well as the financial institution's most recent rate certification approved by the IOLTA Board per 204 PA. CODE § 81.106(c).