

Comparability Guidance

Pennsylvania IOLTA and MJ-IOTA Account Interest Rate Comparability April, 2014

Background

Financial institutions in Pennsylvania do not have to offer IOLTA and MJ-IOTA accounts for their attorney and judicial customers. In order to offer IOLTA accounts, the financial institution must be approved as an Eligible Institution in accordance with Pennsylvania Rule of Disciplinary Enforcement 221(h). In order to be an Eligible Institution, the financial institution must pay the highest non-promotional rate or dividend generally available from the financial institution to its non IOLTA and MJ-IOTA account customers when the IOLTA or MJ-IOTA account meets or exceeds the same minimum balance and other account eligibility qualifications applicable to those other accounts.

Guidance for aligning the IOLTA account product to this comparability standard follows.

Authority for Comparability

Rule of Professional Conduct 1.15(o)(3) (As amended September 4, 2008):

“o. An account shall not be considered an IOLTA Account unless the Eligible Institution at which the account is maintained shall:

(3) Pay a rate of interest or dividends no less than the highest interest rate or dividend generally available from the Eligible Institution to its non-IOLTA customers when the IOLTA Account meets the same minimum balance or other eligibility qualifications, and comply with the Regulations of the IOLTA Board with respect to service charges, if any.”

Rule of Disciplinary Enforcement 221 (h) (As amended September 4, 2008):

“(h) An Eligible Institution shall be approved as a depository for Trust Accounts of attorneys if it shall be in compliance with applicable provisions of Rule 1.15 of the Pennsylvania Rules of Professional Conduct and the Regulations of the IOLTA Board [and agrees to report checks presented against insufficient funds in the attorney trust accounts to another organization of the Supreme Court of Pennsylvania].”

Pursuant to Orders of the Supreme Court of Pennsylvania dated August 23, 2004 and January 6, 2005, the MJ-IOTA program is to be administered as a supplement to the IOLTA program. Satisfaction of the comparability standards set forth in this Guidance is required for financial institutions offering MJ-IOTA accounts.

Definitions

“High balance IOLTA and MJ-IOTA accounts” are determined by each financial institution based upon its account product eligibility criteria, but are generally considered accounts with an average daily collected balance of \$100,000 or more as measured over a rolling six month period.

“Highest yield” refers to the net interest or dividend payable to the PA IOLTA Board after reduction of service charges which are permitted to be offset against IOLTA or MJ-IOTA interest or dividends. Service charges which may not be charged to IOLTA or MJ-IOTA are disregarded in calculating the highest yield.

“Comparability” means the financial institution offers for use as an IOLTA or MJ-IOTA account the highest yielding bank product it offers to other customers when its IOLTA or MJ-IOTA customer maintains similar balances and meets other account eligibility qualifications, or the financial institution pays an equivalent yield on the IOLTA or MJ-IOTA account. Alternatively, the financial institution may pay the safe harbor rate on high balance IOLTA or MJ-IOTA accounts, or pay a rate on IOLTA and MJ-IOTA accounts to which the IOLTA Board has agreed.

“Equivalent yield” means the net yield paid by the financial institution on a given bank product. The net yield is determined by reducing the current interest or dividend on the bank product by service charges applied to earnings on the bank product. For example, the equivalent yield on a sweep account would be the then current sweep interest or dividend less the then current monthly sweep fee, and further reduced by any other service charges related to the sweep account product that are charged to other customers and which are permitted to be offset against interest or dividends paid on IOLTA or MJ-IOTA accounts. The financial institution shall determine the equivalent yield monthly, unless another method is agreed upon by the IOLTA Board.

“Safe harbor” rate is one of the rates described below. The safe harbor rate will be deemed to be a comparable rate, regardless of the highest yielding bank product available at the financial institution.

Safe Harbor Rates

A financial institution will be considered in compliance with comparability requirements if it pays either of the following rates on its IOLTA and MJ-IOTA accounts. These rates are the safe harbor rates:

1. For high balance accounts, a rate than produces an equivalent yield that is equal to the higher of 60% of the Federal Funds Target Rate determined as of the first day of each calendar month or 1%, and for other accounts a rate that produces an equivalent yield equal

to the highest of Product Options 2, 3 or 4 (described below). For high balance accounts, other timing calculation methods may be acceptable provided they are reasonable and consistently applied in relation to the Federal Funds Target Rate as it changes from time to time. Financial Institutions can become Platinum Leader banks by paying a net yield on **all** IOLTA accounts, regardless of balances, equal to the higher of 75% of the Federal Funds Target Rate, or 1%.

2. Another rate which produces a yield that is specified by the PA IOLTA Board and to which the financial institution agrees. Agreements regarding the agreed upon rate would remain in effect for a period of no more than twelve months.

Other Comparability Options

Satisfying the comparability requirement means the financial institution pays on IOLTA and MJ-IOTA accounts a rate that produces an equivalent yield equal to the **highest yield** available **as among** the following Product Option Types actually offered by the financial institution to its customers. The financial institution can either use the identified Product Option Type as an IOLTA or MJ-IOTA account or pay a rate that produces the equivalent yield on existing IOLTA or MJ-IOTA accounts in lieu of actually using the highest yielding Product Option Type.

Option 1. 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.

Option 2. A government (such as for municipal deposits) checking account paying interest.

Option 3. A checking account paying interest (e.g. money market or indexed rates, or other rates) such as a business checking account.

Option 4. An interest bearing checking account (for example, a Negotiable Order of Withdrawal account).

Additional Guidance

An account which has limited check writing capability, such as money market accounts, are disregarded in determining satisfaction of the comparability requirement. Checking accounts which pay money market interest rates on account balances without the check writing limitations are considered in determining satisfaction of the comparability requirement, and are considered Product Option 3 Products.

Rates that are not generally available to other account holders, such as special promotional rates used to attract new customers, are not considered for comparability purposes in Pennsylvania.

Reporting and Alignment

Unless the financial institution agrees to pay a safe harbor rate, the financial institution seeking approval as an Eligible Institution must supply interest rate, cost and account eligibility documentation concerning all of the checking accounts, including those with a sweep investment option, it offers to other customers.

In addition to the account data otherwise required (e.g., account number, account name, gross interest, service charges, net interest, etc.), Eligible Institutions are expected to report the average daily collected balance of each IOLTA and MJ-IOTA accounts on the remittance reports. This will allow the PA IOLTA Board to monitor compliance with the comparability requirement.

To the extent practical, Eligible Institutions are expected to provide remittance data electronically to the PA IOLTA Board.



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.

Topics Covered:

I. Overview

II. Assigning Interest Rates

III. Completing the Rate Certification Agreement

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 .75% or seventy-five percent of the low end of the Federal Funds Target Rate range* (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 .50% or sixty percent of the low end of the Federal Funds Target Rate range* (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.