

180-2-01

Criteria for eligible depository institutions participating in the state's interest on lawyers' trust accounts (IOLTA) program.

(A) Purpose

Sections 4705.09 and 4705.10 of the Revised Code establish the state's Interest on Lawyers' Trust Accounts (IOLTA) program. Pursuant to section 4705.09 of the Revised Code, the supreme court may adopt and enforce rules of professional conduct that pertain to IOLTA accounts. Rule 1.15 of the supreme court of Ohio's rules of professional conduct requires that a lawyer establish and maintain an IOLTA account with an eligible depository institution as required by sections 4705.09 and 4705.10 of the Revised Code or any rules adopted by the Ohio legal assistance foundation pursuant to section 120.52 of the Revised Code. The purpose of this rule is to establish the criteria for an eligible depository institution with which an IOLTA account shall be established and maintained.

(B) Authority

This rule is promulgated pursuant to the authority vested in the Ohio legal assistance foundation under section 120.52 of the Revised Code.

(C) Definitions

(1) "Foundation" means the Ohio legal assistance foundation, which:

- (a) Is established pursuant to Chapter 120.521 of the Revised Code by the state public defender as a charitable, tax-exempt foundation;
- (b) Administers the state's IOLTA, IOTA (a pool-client trust account held by a title insurance agent engaged in the business of real estate closings, pursuant to section 3953.231 of the Revised Code), and the legal aid filing fee surcharge programs and the legal aid fund and the legal assistance foundation fund, and supports the delivery of quality legal services by local legal aid providers; and
- (c) Solicits and accepts gifts, bequests, donations, and contributions for use in providing financial assistance to legal aid societies, enhancing or improving the delivery of civil legal services to indigents, and operating the foundation.

(2) "IOLTA" means an Interest on Lawyers' Trust Account, which is:

- (a) An interest-bearing, pooled-client trust account in which the entire beneficial interest is held by the beneficiaries of the legal aid fund;
- (b) Held by a lawyer, a lawyer in the lawyer's firm, or a firm that owns an interest in a business that provides a law-related service;

(c) Pursuant to section 4705.09 of the Revised Code and Rule 1.15 of the supreme court of Ohio's rules of professional conduct; and

(d) Established as an IOLTA account product with an eligible depository institution.

(3) "IOLTA account product" means an IOLTA account, which:

(a) Is an interest-bearing transaction demand account product offered by an eligible depository institution; and

(b) Comports with the requirements of paragraph (E) of this rule.

(4) "Depository institution" means an institution chartered by the state or federal government to accept deposits and includes banks, savings banks, savings and loan associations and credit unions (i.e. the depositories listed in section 4705.09 of the Revised Code);

(5) "A lawyer, a lawyer in the lawyer's firm, or a firm that owns an interest in a business that provides a law-related service," as used in the supreme court of Ohio's rules of professional conduct, shall mean the same as "an attorney, law firm, or legal professional association," as used in sections 4705.09 and 4705.10 of the Revised Code.

(6) "Legal aid fund" means the fund established:

(a) With the treasurer of state, pursuant to section 120.52 of the Revised Code;

(b) For the deposit of monies collected by clerks of courts from a legal aid filing fee surcharge and by financial institutions from IOLTA and IOTA accounts; and

(c) For the charitable public purpose of providing financial assistance to legal aid societies that provide civil legal services to indigents in Ohio.

(D) An IOLTA account shall be established and maintained with an eligible depository institution. An eligible depository institution is a depository institution that the Foundation has determined to be:

(1) Authorized by federal or state law to do business in Ohio and insured by the Federal Deposit Insurance Corporation, the National Credit Union Administration or by an Ohio credit union share guaranty corporation, or any successor insurance corporation(s);

(2) Voluntarily offering and maintaining an IOLTA account product consistent with

the requirements contained in paragraph (E) of this rule; and

(3) Timely and accurately complying with the remittance and reporting requirements contained in paragraph (F) of this rule.

(E) All IOLTA accounts shall be established at an eligible depository institution as an IOLTA account product, consistent with the following requirements:

(1) All funds deposited in an IOLTA account shall be subject to withdrawal or transfer upon request and without delay, or as soon as permitted by law;

(2) All interest income generated from the IOLTA account, less the deduction of the charge described in paragraph (E)(7) of this rule, shall benefit only the legal aid fund, which is established in the state treasury for the charitable purpose of providing financial assistance to legal aid societies that provide civil legal services to indigents, pursuant to section 120.52 of the Revised Code.

(3) The federal tax identification number 31-1126612 shall be assigned to all IOLTA accounts. All income earned on IOLTA accounts with this federal tax identification number shall be assigned to the legal aid fund and shall not be taxable.

(4) The account shall be titled in the legal name of a lawyer, a lawyer in the lawyer's firm, or a firm that owns an interest in a business that provides a law-related service and include in the account title the phrase "Interest on Lawyers' Trust Account" or "IOLTA." The name of the account may contain additional identifying information to distinguish it from other accounts.

(a) The eligible depository institution shall document that the account was established pursuant to section 4705.09 of the Revised Code, but this information does not need to be included in the title of the account.

(5) The rate of interest payable on the IOLTA account shall be comparable to the rate paid by the eligible depository institution to its regular, non-attorney depositors.

(a) The rate of interest payable on each IOLTA account's deposits shall be determined by using one of the following options:

(i) OPTION ONE: The rate of interest payable on each IOLTA account shall equal or exceed the highest rate of interest generally paid by the eligible depository institution on its non-IOLTA deposit accounts located in Ohio with substantially similar balances and withdrawal restrictions.

(a) In establishing the rate of interest payable on each IOLTA

account under this option, the eligible depository institution shall:

(i) Consider the rate of interest paid on all of the eligible depository institution's non-IOLTA deposit accounts during the same reporting period, including the rates of interest offered to customers from internal rate sheets or through preferred or negotiated rates on a per customer basis.

(ii) Document, in the form and manner prescribed by the Foundation, which may include an independent, third-party auditor's verification or other objective method of verification, that for the respective reporting period the eligible depository institution paid a rate of interest not less than the rate of interest paid on all of the eligible depository institution's non-IOLTA deposit accounts located in Ohio with substantially similar balances and withdrawal restrictions.

(b) In establishing the rate of interest payable on each IOLTA account under this option, the eligible depository institution may apply a different rate of interest, which otherwise complies with the requirements of this paragraph of the rule, for:

(i) IOLTA accounts with an average daily balance of greater than or equal to one hundred thousand dollars; and

(ii) IOLTA accounts with an average daily balance of less than one hundred thousand dollars.

(ii) OPTION TWO: The rate of interest payable on each IOLTA account shall equal or exceed:

(a) For IOLTA accounts with an average daily balance of greater than or equal to one hundred thousand dollars, either seventy percent of the Federal Funds Target Rate or one hundred basis points, whichever is greater;

(i) Unless the Federal Funds Target Rate is more than six hundred basis points, in which case the rate shall equal sixty-five percent of the Federal Funds Target Rate;

(b) For IOLTA accounts with an average daily balance of less

than one hundred thousand dollars, either fifty-five percent of the Federal Funds Target Rate or twenty-five basis points, whichever is greater.

- (b) An eligible depository institution may pay a rate higher than the minimum rate required by either of the above options if there is no impairment of the right to withdrawal or transfer the principal immediately.
- (c) The option utilized by the eligible depository institution to determine the rate of interest payable on each IOLTA account shall be identified as part of its reporting requirements, as detailed in paragraph (F) of this rule. If the eligible depository institution uses Option One to determine the rate of interest payable on each IOLTA account, then the documentation required in paragraph (E)(5)(a)(i)(b) of this rule shall also be included as part of the eligible depository institution's reporting requirements, as detailed in paragraph (F) of this rule.
- (d) The eligible depository institution may switch monthly from one option of determining the rate of interest payable on each IOLTA account to the other option provided in this rule. Any change in the option for determining the rate of interest payable on each IOLTA account shall be applied on a prospective basis only and written notice shall be given to the Foundation, in the form and manner prescribed by the Foundation.
- (6) Gross interest earned on IOLTA accounts shall be calculated by applying the rate of interest payable on each IOLTA account provided in paragraph (E)(5) of this rule to the average monthly balance in the IOLTA account, or as otherwise computed in accordance with the eligible depository institution's standard practices.
- (7) An eligible depository institution may assess and deduct from gross interest income earned on the IOLTA account a reasonable and standard monthly maintenance charge, comparable in amount to the standard monthly maintenance charge assessed to its non-IOLTA deposit accounts located in Ohio with substantially similar balances and withdrawal restrictions.
- (a) The eligible depository institution may waive the charge described above, or assess and deduct from gross interest income earned on the IOLTA account an amount less than the charge described above.
- (b) In the event that the gross interest income from an IOLTA account for any month is less than the charge described above, then the eligible depository institution may assess part or all of the charge described above to the account-holder. In no event, may the eligible depository institution pay, in part or in whole, the charge described above from

interest income generated on another IOLTA account established with the eligible depository institution or with interest income earned on the same or other IOLTA account during a future period of time.

(c) All other fees and costs assessed by the eligible depository institution to the IOLTA account shall be charged to and paid by the account-holder or a third-party, or waived by the eligible depository institution.

(i) The following is the list of charges or fees that may not be deducted from gross interest income earned on the IOLTA account:

(a) Per transaction charges (e.g., per check, per deposit charge);

(b) Automated investment ("sweep") fees;

(c) Printing charges for checks or other negotiable instruments;

(d) Not-sufficient-funds (NFS) charges;

(e) Stop payment fees;

(f) Teller and ATM fees;

(g) Electronic fund transfer fees, including wire transfer fees;

(h) Federal deposit insurance or other deposit insurance premiums or fees;

(i) Brokerage and credit card charges; and

(j) Any other business-related expenses or other related charges not expressly permitted in this rule.

(d) The account-holder may deposit non-client funds in the IOLTA account sufficient to pay or enable the waiver of some or all charges or fees assessed to the IOLTA account or the account-holder.

(e) In no case may the eligible depository institution waive or reduce the fees or costs assessed to the IOLTA account and then reduce the rate of interest paid on the same account in order to off-set the cost incurred by the eligible depository institution in waiving or reducing the fees assessed to the IOLTA account.

(F) An eligible depository institution shall, in a timely and accurate manner:

(1) Remit monthly the interest or dividend earned on the eligible depository institution's IOLTA accounts, less the amount described in paragraph (E)(7)

of this rule, if any, to the treasurer of state for deposit in the legal aid fund.

(a) The remittance shall be completed no later than the fifteenth day of the month following the period for which the remittance is made.

(b) Remittances shall be made by electronic funds transfer in a manner acceptable to the treasurer of state and the Foundation, unless otherwise permitted in writing by the Foundation.

(2) Transmit monthly an activity statement to the treasurer of state and to the Foundation, and if requested, to the account-holder, at the time of each remittance required in paragraph (F)(1) of this rule.

(a) The activity statement shall include the following information for each IOLTA account on deposit with the eligible depository institution for the reporting period:

(i) The full legal name of the account,

(ii) That the account is an IOLTA account,

(iii) The account number,

(iv) The average monthly account balance in dollars,

(v) The rate of interest applied,

(vi) The dollar amount of gross interest or dividend earned,

(vii) The dollar amount of charges assessed to the IOLTA account, and

(viii) The dollar amount of net interest or dividend earned and remitted to the legal aid fund.

(b) The activity statement shall also include the following information for each remittance:

(i) The reporting period,

(ii) The sum total dollar amount of gross interest or dividend earned on all IOLTA accounts,

(iii) The sum total dollar amount of charges assessed to all IOLTA accounts,

(iv) The sum total dollar amount of net interest or dividend earned and remitted to the treasurer of state,

- (v) The option used to calculate the approved IOLTA rate, as required in paragraph (E)(5) of this rule, and
 - (vi) The documentation required in paragraph (E)(5)(a)(i)(a)(ii) of this rule, if applicable.
 - (c) The activity statement shall be transmitted electronically in a manner acceptable to the Foundation, unless otherwise permitted in writing by the Foundation.
 - (d) The activity statement shall serve as the eligible depository institution's certification of compliance with the requirements of this rule. The Foundation may periodically require additional information from participating depository institutions to ensure compliance with the requirements of this rule.
- (G) The Foundation shall maintain a current list of eligible depository institutions.
- (1) Should a depository institution maintaining one or more IOLTA accounts fail to timely or accurately demonstrate compliance with this rule, the Foundation shall provide the depository institution with a non-compliance notice identifying the deficiencies in compliance. Should the depository institution fail or refuse to correct such deficiencies within thirty days from receipt of the non-compliance notice, or other period of time established by Foundation, the Foundation may issue a final notice to the depository institution by certified mail, return receipt requested, that the depository institution has failed to comply with the requirements of this rule and that, for the purpose of this rule, the depository institution is no longer an eligible depository institution.

 - (a) The Foundation shall notify account holders that their IOLTA depository institution has failed to comply with the requirements of this rule and include with this notification that their IOLTA account is no longer held at an eligible depository institution, as required by the Ohio rules of professional conduct.
 - (b) The Foundation may notify the office of disciplinary counsel when a participating depository institution has failed to comply with the requirements of this rule and include with this notification a list of the affected IOLTA account-holders.
 - (c) The Foundation shall update its list of eligible depository institutions, as required under paragraph (G) of this rule, when a depository institution fails to comply with this rule and has received a final notice of non-compliance.

(H) If any paragraph, term, or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair or invalidate any other paragraph, term, or provision of this rule, but the remaining paragraphs, terms, and provisions shall be and continue in full force and effect.

Effective:

R.C. 119.032 review dates:

WITHDRAWN ELECTRONICALLY

Certification

06/16/2014

Date

Promulgated Under:	119.03
Statutory Authority:	120.52
Rule Amplifies:	120.52, 4705.09, 4705.10