

180-2-01

Eligible depository institution participation in the interest on lawyer's trust accounts (IOLTA) program.**(A) Purpose**

The purpose of this rule is to amplify the statutory requirements for depository institutions that establish and maintain IOLTA accounts in order to deposit certain client funds 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. This rule shall also provide guidance, when required by statute or other rule, for depository institutions that also establish and maintain IOTA accounts for title insurance agents who perform the duties and responsibilities of an escrow or closing agent for escrow transactions in this state. This rule thus ensures uniformity and consistency between the state's IOTA and IOLTA programs by maintaining a common set of depository requirements and expectations provided in rules promulgated by the Ohio legal assistance foundation.

(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) "Interest on Trust Account," or "IOTA," means an interest-bearing, pooled-client trust account established with an eligible depository institution by a title insurance agent, agency or company pursuant to section 3953.231 of the Revised Code for the deposit of all non-directed escrow funds.
- (2) "Interest on Lawyers' Trust Account," or "IOLTA," means an interest-bearing, pooled-client trust account established as an IOLTA account product with an eligible depository institution by an attorney, law firm, or legal professional association pursuant to section 4705.09 of the Revised Code. For the purpose of this rule and unless otherwise specified, IOLTA shall hereafter refer to both IOLTA accounts and IOTA accounts, if the latter is referenced to this rule by statute or other rule, without any further distinction or difference between the two types of accounts.
- (3) "IOLTA account product" means a separate and unique interest-bearing checking account product offered by an eligible depository that comports with the requirements of this rule.
- (4) "Eligible depository institution" means a depository or financial institution, including any bank, savings bank, savings and loan association or credit union that satisfies all of the following:
 - (a) It is authorized by federal or state law to do business in Ohio and maintains in the state at least one banking office, as defined by section

1101.01 of the Revised Code.

- (b) It is insured by the Federal Deposit Insurance Corporation, or if a credit union, it is insured by the national credit union administration or by an Ohio credit union share guaranty corporation, or any successor insurance corporation(s).
- (c) It voluntarily offers and maintains an IOLTA account product consistent with the requirements contained in this rule.
- (d) It certifies to the Ohio legal assistance foundation that it offers and maintains an IOLTA account product consistent with the requirements contained in this rule.
- (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, and "an attorney, law firm, or legal professional association," as used in sections 4705.09 and 4705.10 of the Revised Code, shall be used in this rule interchangeably to mean the same person, persons, or entity.

(D) Depository institution participation in the IOLTA program is voluntary.

- (1) The criteria provided in paragraph (F) of this rule shall be the method by which depositories certify compliance with the requirements of this rule. The Ohio legal assistance foundation may periodically require additional information from participating depositories to ensure compliance with the requirements of this rule.
- (2) The Ohio legal assistance foundation shall maintain a list of eligible depository institutions. The list of eligible depository institutions shall consist of those depositories that are in compliance with this rule.
- (3) Should a depository institution maintaining IOLTA accounts fail to comply with the requirements of this rule, the Ohio legal assistance foundation shall promptly send to the depository by certified mail, return receipt requested, a non-compliance notice specifically identifying the deficiencies in compliance. Should the depository institution fail or refuse to correct such deficiencies within thirty days from receipt of notice or other period of time agreed upon by Ohio legal assistance foundation and the depository, the Ohio legal assistance foundation shall notify the depository by certified mail, return receipt requested, that it is no longer an eligible depository institution for IOLTA accounts.
 - (a) Because participation in the IOLTA program is voluntary and because there is a need for certainty at all times in all matters in the administration of the IOLTA program, all determinations and decisions

made by Ohio legal assistance foundation regarding the eligibility of a depository institution shall be final and not subject to appeal.

(b) The Ohio legal assistance foundation shall promptly notify the office of disciplinary counsel or other entity when a depository is no longer an eligible depository institution and include with this notice a list of the affected IOLTA account-holders. The Ohio legal assistance foundation may notify some or all account-holders that their IOLTA depository is no longer an eligible depository and that they are required to establish their IOLTA account at an eligible depository.

(c) The Ohio legal assistance foundation shall update its list of eligible depository institutions, as required under paragraph (D)(2) of this rule, when a depository is no longer an eligible depository institution.

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

(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 earned on the IOLTA account, less the amount described in paragraph (E)(8) of this rule, shall benefit only the legal aid fund, which is established in the state treasury for the charitable public 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. Federal internal revenue 1099-INT reporting is not required, unless any interest earned on funds deposited in an IOLTA account, except for the amount described in paragraph (E)(8) of this rule, is paid to or inures to the benefit of the depository, the account-holder, a client or other person who owns or has a beneficial ownership of the funds deposited, any other account, or any person or entity other than in accordance with sections 120.51 to 120.55 of the Revised Code.

(4) The account shall be in the 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 name the phrase "Interest on Lawyers' Trust Account" or "IOLTA." If the account is established pursuant to section 3953.231 of the Revised Code and applicable rule, then the account shall be named as required by statute or rule. The name of the account may contain additional identifying information to distinguish it from other accounts.

(a) The depository shall document all individuals associated with the account (i.e. those individuals whose clients' funds may be deposited in the account), but this information does not need to be included in the proper

name of the account.

(b) The depository shall document that the account was established pursuant to section 3953.231 or 4705.09 of the Revised Code, but this information does not need to be included in the proper name of the account.

(5) Funds deposited in an IOLTA account pursuant to sections 4705.09 and 4705.10 of the Revised Code shall not be commingled with funds deposited in an IOTA account established pursuant to section 3953.231 of the Revised Code. Funds deposited in an IOTA account established pursuant to section 3953.231 of the Revised Code shall not be commingled with funds deposited in an IOLTA account established pursuant to sections 4705.09 and 4705.10 of the Revised Code.

(6) The rate of interest payable on the each IOLTA account's deposits shall be not less than the approved IOLTA rate.

(a) An eligible depository shall utilize one of the following methods, provided below in paragraphs (i) to (iii), as the approved IOLTA rate of interest on its IOLTA account product:

(i) The approved IOLTA rate shall equal or exceed the highest interest rate or dividend rate paid by the eligible depository on its account products that are not IOLTA account products.

(a) In paying not less than the highest interest rate or dividend paid by the depository on its account products that are not IOLTA account products, an eligible depository shall do the following:

(i) For IOLTA accounts with balances of less than one hundred thousand dollars, pay a rate that equals or exceeds the highest rate paid on its business checking account paying preferred interest rates or any other similar interest-bearing account offered by the eligible depository on its account products that are not IOLTA account products; and

(ii) For IOLTA accounts with balances of one hundred thousand dollars or more, pay a rate that equals or exceeds the highest rate paid on its business checking account with an automated investment feature, such as an overnight sweep account, business investment or other similar premium checking account, or any other similar interest-bearing account offered by the depository on its account products that are not IOLTA

account products.

(b) In determining the highest interest rate or dividend paid by the eligible depository on its account products that are not IOLTA account products, an eligible depository shall consider the rates paid on account products such as short-term jumbo certificates of deposit and money market accounts, as well as the rates it offers its customers from internal rate sheets or through preferred or negotiated rates on a per customer basis. In considering the rate for the IOLTA account product, the depository may also take into consideration and discount for factors such as fees paid by the account-holder (e.g., fees on sweep products), time commitments, and withdrawal limitations. The eligible depository shall not use these factors to preclude the consideration of the rates paid on one or more of its account products that are not IOLTA account products in the eligible depository's establishment of a rate for the IOLTA account product.

(ii) Alternatively, the approved IOLTA rate shall equal or exceed:

(a) For IOLTA accounts with an average daily balance of greater than or equal to one hundred thousand dollars, not less than seventy percent of the Federal Funds Target Rate, or other interest rate index upon written agreement between the Ohio legal assistance foundation and the depository;

(i) Unless the Federal Funds Target Rate, or other agreed upon interest rate index, is less than one hundred and twenty-five basis points, in which case the approved IOLTA rate shall equal not less than one hundred basis points;

(b) For IOLTA accounts with an average daily balance of less than one hundred thousand dollars, a rate comparable to the rate paid on accounts with similar balances and restrictions or not less than fifty percent of the Federal Funds Target Rate, or other interest rate index upon written agreement between the Ohio legal assistance foundation and the depository.

(iii) Alternatively, in the event that the eligible depository opts to pay a rate of interest on its IOLTA account product that is less than the approved IOLTA rate provided in paragraph (E)(6)(a)(i) or (ii) of this rule, the approved IOLTA rate shall equal a rate agreed to in

writing by the Ohio legal assistance foundation and the depository.

(a) The eligible depository institution shall request such an agreement with the Ohio legal assistance foundation and must demonstrate, in the form and manner prescribed by the Ohio legal assistance foundation, which may include an independent, third-party auditor's verification, the following:

(i) that the rates of interest paid on its IOLTA accounts are not less than the rate(s) paid by the eligible depository institution on its non-IOLTA account products with similar balances and restrictions; and

(ii) that no more than five percent of its non-IOLTA accounts with an average daily balance of greater than or equal to one hundred thousand dollars have rates that are higher than the eligible depository institution's IOLTA accounts with similar balances and restrictions during the same reporting period.

(b) An eligible depository institution may pay a rate higher than the approved IOLTA rate.

(c) The method utilized by the eligible depository to set the approved IOLTA rate shall be identified as part of its reporting requirements, as detailed in paragraph (F) of this rule.

(7) Interest on IOLTA accounts shall be calculated by applying the approved IOLTA rate to the average monthly balance in the IOLTA account, or as otherwise computed in accordance with the eligible depository's standard practices.

(8) An eligible depository institution may assess a reasonable service charge on the IOLTA account and deduct this amount from gross interest income earned on the IOLTA account.

(a) The amount assessed shall be limited to a reasonable and standard monthly maintenance charge that is comparable to the amount the eligible depository charges on its account products that are not IOLTA account products.

(i) The eligible depository may waive this charge or assess an amount less than the amount the eligible depository charges on its account products that are not IOLTA account products.

- (ii) In the event that the gross interest income earned on an IOLTA account for any month is less than the service charge amount assessed to the IOLTA account, then the eligible depository may waive this charge or assess part or all of the charge to the account-holder. In no event, may the eligible depository use the interest income from another IOLTA account established with the eligible depository to pay or off-set part or all of the service charge amount assessed to the IOLTA account.
- (b) All other service charges or fees assessed by the eligible depository to the IOLTA account, the account-holder, or a third-party shall be charged to and paid by the account-holder or waived by the eligible depository.
- (i) The following is a non-exclusive list of service charges or fees that may be assessed to an IOLTA account by an eligible depository and shall not be deducted from IOLTA account proceeds:
 - (a) per transaction charges (e.g., per check, per deposit charge);
 - (b) printing charges for checks or other negotiable instruments;
 - (c) not-sufficient-funds (NFS) charges;
 - (d) stop payment fees;
 - (e) teller and ATM fees;
 - (f) electronic fund transfer fees, including wire transfer fees;
 - (g) brokerage and credit card charges; and
 - (h) any other business-related expenses or other related charges not expressly permitted in this rule.
- (c) The account-holder may deposit additional funds in the IOLTA account sufficient to pay or enable the waiver of any and all service charges or fees assessed to the IOLTA account or the account-holder.
- (d) In no case, may the eligible depository waive or reduce the service charges or fees assessed to the IOLTA account or the amount deducted from IOLTA interest income and then reduce the rate of interest paid on the same account in order to off-set the cost incurred by the eligible depository in waiving or reducing the service charges or fees assessed to the IOLTA account or the amount deducted from IOLTA interest income.

(F) An eligible depository shall do all of the following:

- (1) Establish and maintain its IOLTA account product consistent with the requirements of paragraph (E) of this section.
- (2) Remit monthly interest income, less the amount described in paragraph (E)(8) of this rule, if any, to the treasurer of state, not later than the fifteenth day of the month following the period for which the remittance is made, for deposit in the legal aid fund.
 - (a) Remittances shall be made by electronic funds transfer in a manner acceptable to the treasurer of state and the Ohio legal assistance foundation, unless otherwise permitted in writing by the Ohio legal assistance foundation.
- (3) Transmit monthly an activity statement to the treasurer of state and to the Ohio legal assistance foundation, and if requested, to the account-holder, at the time of each remittance required in paragraph (F)(2) of this rule.
 - (a) The activity statement shall include the following information for each IOLTA account on deposit with the depository for the reporting period:
 - (i) The name(s) of each lawyer, lawyer in the lawyer's firm, or firm that owns an interest in a business that provides a law-related service, or agent or agency, if applicable, who are associated with the account for which the remittance is sent.
 - (ii) That the account was established under the authority of section 3953.231, if applicable, or section 4705.09 of the Revised Code.
 - (iii) The account number.
 - (iv) The average monthly account balance.
 - (v) The rate of interest applied.
 - (vi) The gross interest earned.
 - (vii) The service charge amount, as described in paragraph (E)(8), deducted from the interest earned, and
 - (viii) The net interest earned.
 - (b) The activity statement shall also include the following information for each remittance:

- (i) The reporting period.
 - (ii) The sum total gross interest earned on all IOLTA accounts.
 - (iii) The sum total amount of service charges, as described in paragraph (E)(8), deducted from the sum total gross interest earned.
 - (iv) The sum total net amount remitted to the treasurer of state.
 - (v) The method used to set the approved IOLTA rate, as required in paragraph (E)(6) of this rule, and
 - (vi) A depository rate sheet for the reporting period listing the rates of interest on comparable deposit account products.
- (c) The activity statement shall be transmitted electronically in a manner acceptable to the Ohio legal assistance foundation, unless otherwise permitted in writing by the Ohio legal assistance foundation.
- (d) The activity statement shall serve as the eligible depositories' certification of compliance with the requirements of this rule.
- (G) 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:

Certification

Date

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