



IOLTA Frequently Asked Questions

Q: What Is IOLTA?

A: Indiana's Interest on Lawyers' Trust Accounts (IOLTA) program requires attorneys to place commingled nominal in amount and/or held for short-term Indiana client trust funds into interest-bearing trust accounts. Such monies could not earn income for the client exceeding the costs incurred to secure such income. Financial institutions periodically remit the interest earned on these funds to a designated administrative body, which in Indiana is the Indiana Bar Foundation.

IOLTA is governed by Indiana Supreme Court [Rules of Professional Conduct Rule 1.15](#).

In situations where an attorney believes that the client funds are to be held long enough and/or are of sufficient size to earn interest for the client net of administrative fees, such funds should not be placed into IOLTA accounts. Rather, these funds should be placed into interest-bearing accounts, with interest being forwarded to the client. The attorney may use his or her good faith judgment to determine which funds should and should not be placed into IOLTA accounts.

Funding from IOLTA is forwarded biannually to Pro Bono Indiana (PBI), which helps develop pro bono legal service programs for the poor throughout Indiana. PBI serves as a liaison between the lawyers providing pro bono services and the indigent individuals that need those services.

Lawyers will continue to provide legal services to their pro bono clients. IOLTA funds streamline this process by paying for litigation and mediation costs, on-line legal research costs, and other services as needed throughout Indiana. In this way, legal services can be delivered more efficiently to the citizens of Indiana.

Q: How will money collected under IOLTA be spent?

A: A component of the IOLTA Program is the establishment of an approved local pro bono program in each of Indiana's 14 judicial districts. Funding from IOLTA helps develop these pro bono legal service programs for the poor. Each district funds programs tailored to meet the specific needs of the district. The Indiana Pro Bono Commission, created by the Indiana Supreme Court as a program of the Indiana Bar Foundation, serves to coordinate the efforts of the state's pro bono programs.

The local programs serve as liaisons between the lawyers providing pro bono services and the indigent individuals that need those services. Lawyers will continue to provide legal services to their pro bono clients, as in the past, but IOLTA funds streamline this process, by providing for such things as litigation costs, mediation costs, on-line legal research costs, and other services based on the special needs of the district, enabling services to be delivered more efficiently and helping to permit pro bono attorneys to focus on providing legal services, rather than some of the other issues which may arise in pro bono representation.

Q: Is the IOLTA program unique to Indiana?

A: No, Indiana was the last state to adopt an IOLTA program. The programs range from VOLUNTARY (which gives an attorney a choice to participate), to OPT-OUT to MANDATORY (or UNIVERSAL). Indiana began with the optout program but now follows a Universal program. As a result of the 2003 United States Supreme Court decision upholding mandatory IOLTA programs, several other states are also converting their programs from opt-out to mandatory.

Q: How does Indiana's program work?

A: The program requires lawyers that hold Indiana client funds in trust accounts to convert their "pooled" nominal and/or short term non-interest bearing client trust accounts into interest-bearing IOLTA accounts. Under the current Universal program, lawyers are unable to "opt-out", or formally decline to do this, as they were able to do in previous years. The current rule requires that any client funds held in trust by lawyers must earn interest for either the client if it is possible for the funds to earn income net of the fees and expenses associated with the account, or alternatively, the funds must be placed into an IOLTA account to earn interest for the IOLTA program.

Q: What is the status of the U.S. Supreme Court review of IOLTA?

A: In March, 2003, the United States Supreme Court ruled 5 to 4 in favor of the constitutionality of mandatory IOLTA programs. The Court indicated that the taking of client property is constitutional if the taking is used for public purposes, and if the affected individuals are compensated appropriately. The Court ruled that IOLTA is clearly beneficial to the public good, in that hundreds of millions of IOLTA dollars each year are targeted for legal service programs throughout the country. Further, interest is earned on IOLTA accounts simply because they are IOLTA accounts; without IOLTA, these trust funds would be incapable of earning any net interest. Therefore, the affected clients lose nothing. The Court concluded that, as such, IOLTA programs throughout the country should proceed as they did prior to its ruling.

Q: Do other states have universal programs?

A: More than half of the states have mandatory or universal programs, and that number is expected to increase.

Q: What is required of attorneys?

A: Each August, each attorney will receive his or her Annual Registration Fee notification from the Clerk of the Indiana Supreme Court. The attorney must fully complete the appropriate section on the Clerk's online Portal to indicate whether he or she has an active Indiana OLTA account or is exempt from participating.

Lawyers that wish to establish an IOLTA account need only complete a [Notice to Financial Institution Form](#).

Upon completion of the form, attorneys should send the form to the Foundation, rather than directly to the financial institution. The Foundation will forward the completed form to a designated individual at the attorney's financial institution.

Provisions are made either to open a new IOLTA account or convert an existing trust account to an IOLTA account. In the case of a new IOLTA account, to streamline the process, an attorney may wish to proceed to his or her local financial institution and establish a non-interest-bearing account for conversion, prior to completing the Notice form.

Q: What happens if an attorney refuses to comply with the program?

A: The Indiana Bar Foundation will confirm that each attorney has correctly completed his or her annual registration fee form and is either matched with an existing IOLTA account or is exempt from participating in the IOLTA program. The Foundation has been directed to provide the Indiana Supreme Court with the names of those attorneys who do not fall into one of those two categories.

Q: What if I do not have a commingled non interest-bearing client trust account?

A: Lawyers who do not hold client funds in trust are exempt from the provisions of this Rule. Those lawyers simply signify this on their Annual Registration Fee forms by checking the appropriate box(es).

Q: May lawyers still deposit individual client funds into accounts which pay interest that can be passed on to the client?

A: Yes. In fact, lawyers are expected to establish separate, interest-bearing accounts for individual client's funds when the sum is large enough and/or the duration is long enough to justify the cost of opening, administering and closing the account. Any interest accrued becomes the property of the client. If clients request their money be placed in a separate trust account, the lawyer is ethically bound to fulfill the clients' request. If the client funds are not large enough or the duration is not long enough to earn income net of the costs associated with the account, then the funds must be placed into an IOLTA account.

Q: Will it take much lawyer time and money to be involved in participating in IOLTA?

A: Minimal administrative time and no money. The mechanics of converting to an IOLTA account are simple. All the attorney or law firm must do is complete a Notice to Financial Institution form and forward the form to the Foundation. There is no change to the operation of the trust account, and the firm is no longer responsible for regular administrative expenses on the account.

Q: Who notifies the banks?

A: The Indiana Bar Foundation notifies the lawyer's bank of the lawyer's intent to participate in IOLTA. In order to establish an IOLTA account, a lawyer or law firm should forward a copy of the Notice to Financial Institution Form to the Foundation, which will, in turn, forward a copy to the appropriate financial institution. This form specifically authorizes the financial institution to disclose to the Foundation necessary information necessary for the IOLTA account to be established, including, but not limited to, information designated by Indiana Rules of Professional Conduct Rule 1.15.

Q: How will my local bank learn about IOLTA?

A: At this point in time, most banks throughout Indiana are familiar with IOLTA. The Foundation will encourage banks not currently participating in the program to participate, especially if the Foundation has on hand completed Notice to Financial Institution forms to forward to the bank upon the bank's agreement to participate. The Foundation will distribute materials to these banking centers so that lawyers and law firms who ask questions can be assisted. These financial institutions will also be encouraged to designate one IOLTA contact person who will serve as the liaison between that financial institution and the Foundation.

Q: It is extremely impractical for me to establish an IOLTA account. What should I do?

A: Describe your situation to the Indiana Bar Foundation in writing. Exemptions from participation may be granted in extreme circumstances, depending on the situation.

Q: Who pays the service charges or fees for the IOLTA account?

A: Monthly bank service charges are paid from the interest earned by the IOLTA account, ordinarily up to the amount of interest earned on that account. The majority of banks currently waive all fees in excess of interest earned. In the event that the banks bill the Foundation for fees in excess of interest earned on an account, the Foundation may affirmatively exempt that account from participating. Under no circumstances should the account principal be changed by IOLTA involvement, nor should the lawyer be billed for regular IOLTA-produced expenses. The attorney will still be responsible for any transactional fees associated with their IOLTA account.

Q: Must attorneys have new checks printed for IOLTA accounts?

A: No. Attorneys may continue to use their checks as they did prior to converting the account into an IOLTA account.

Q: What about legal proceedings on an IOLTA account, such as “How should I handle an IOLTA account for an attorney that has passed away”?

A: A [Request for Ethical Guidance form](#) should be completed and forwarded to the Indiana Supreme Court Disciplinary Commission for consideration.

Q: I have held money for a client for some time. I am unable to locate the client. What should I do with this money?

A: As of now, the Foundation is unable to accept unclaimed money in an IOLTA account. Such funds should be reported to the [Unclaimed Property division of the Indiana Attorney General’s Office](#).

Q: Which banks may lawyers use?

A: Any bank that participates in the Trust Account Overdraft Notification Program required under the Indiana Rules of Professional Conduct may be used. Eligible financial institutions must also meet the interest rate requirements described in 1.15(f)(5). All banks with at least one IOLTA account are approved for trust account overdraft reporting. Please contact the Foundation if you are unsure as to whether or not your bank qualifies.

Q: Must lawyers negotiate fees and charges on IOLTA accounts with the bank?

A: The Indiana Bar Foundation or its designees handles interest rate and fee discussions with the bank. The IOLTA rule requires that eligible financial institutions must provide that IOLTA accounts earn the highest interest rate or dividend rate generally available to non-IOLTA customers meeting the same balance and other requirements.

Q: What is required of financial institutions?

A: Any financial institution that participates in the Trust Account Overdraft Notification Program required under the Indiana Rules of Professional Conduct may be used.

The current listing of such financial institutions is found [here](#).

The Foundation's Tax ID number (35-6032377) should be depicted on each Indiana IOLTA account. The account should be titled in the name of the lawyer or law firm.

Eligible financial institutions must also meet the interest rate requirements for IOLTA accounts as described in Indiana Rules of Professional Conduct Rule 1.15(f)(5):

“Participating financial institutions shall maintain IOLTA accounts which pay the highest interest rate or dividend available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate or dividend available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balances, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts for non-IOLTA customers, and that these factors do not include that the account is an IOLTA account.”

What this Means:

Rule 1.15(f)(5) simply means that IOLTA accounts must earn the same rates as the rates earned on comparable products with comparable balances at the financial institution. For example, if the financial institution only offers one type of interest-bearing checking account, then the rate on that checking account is the rate that should be applied to IOLTA accounts. However, if the institution offers multiple types of checking accounts, the highest yielding product for which an IOLTA account qualifies should be applied to that IOLTA account, including:

- Business checking accounts with automated investment features, such as overnight sweep and investment in repurchase agreements fully collateralized by US government securities.
- Governmental (such as for municipal deposits) interest bearing checking accounts.
- Any other interest-bearing checking account offered by the institution to its non-IOLTA customers.

Safe Harbor Provision:

The Foundation has also established a “Safe Harbor” interest rate provision as an alternative to the highest interest rate or dividend requirement described above. An institution that agrees to pay 60% net yield (net interest after any fees) of the Federal Funds target rate as reported in the Wall Street Journal on the first business day of each calendar month will be considered an eligible institution for the purpose of Rule 1.15(f)(5), without further consideration of interest rates to their non-IOLTA customers.

Example of Multiple Product Compliance with Rule 1.15(f):

If an institution has multiple products for which IOLTA accounts are eligible, pays 1.5% on NOW accounts for all balance levels, and 3.0% on an automated investment (sweep) account for account balances above \$100,000, then the bank must pay at least 1.5% on all IOLTA accounts with balances below \$100,000 and at least 3.0 % on all IOLTA accounts with balances exceeding \$100,000 (less applicable sweep fees, if any). The institution could either place IOLTA accounts in the two different product categories, or simply apply the same tiered rate structure to the IOLTA product.

Alternatively, the institution could choose to pay ALL IOLTA accounts a blended rate equal to the weighted average of the two products above.

Finally, the institution could also choose to pay the Safe Harbor interest rate based on the current Federal Funds rate.

Please contact the Foundation if you have specific questions about how to correctly determine the required IOLTA interest rate as an eligible institution.

Q: Which tax identification number is used?

A: The financial institution is instructed to use the tax identification number of the Foundation, not the tax identification number of the lawyer or law firm. As such, the lawyer or law firm should never receive a 1099 form for IOLTA interest. This method of account identification will allow the earned interest to be recorded annually in the name of the Foundation and not in the name of the lawyer/law firm. The name on the account, however, is to be that of the lawyer or law firm.

Q: What about 1099 forms?

A: Financial institutions have been notified that the Foundation is a not-for-profit corporation, exempt from federal income tax. As a result, no 1099 forms are required for the IOLTA accounts and no W-9 form mailing is required. The financial institutions have been advised that rulings have been obtained by the Foundation from the appropriate federal regulatory agencies authorizing “NOW” or similar type accounts to be used for IOLTA accounts. Attorneys who establish non-IOLTA trust accounts that generate interest for their clients and receive a 1099 form from the bank may be required to forward the 1099 forms to those clients.

Q: Will data on individual IOLTA accounts be made public?

A: No. The information contained in financial statements to lawyers and the Foundation shall remain confidential. (Rule 1.15 (f) (10)). The Foundation may release only a compilation of data from such statements, which does not include any identifying information.

Q: I have other IOLTA questions. To whom should I address them?

Please contact Michael Tranovich, IOLTA Manager, at 317 269-7868 or mtranovich@inbf.org.