

**Questions & Answers for Financial Institutions
Regarding Maine's IOLTA Program
Managed by the Maine Bar Foundation**

What is IOLTA?

IOLTA stands for "Interest **O**n **L**awyers **T**rust **A**ccounts." Attorneys routinely receive client funds to be held in trust for future use. If the amount is large or the funds are to be held for a long period of time, the attorney must place these monies at interest for the benefit of the client. However, in the case of amounts that are small or are to be held for a short time, it is impractical to establish separate interest-bearing accounts for individual clients. Participating in the IOLTA program allows attorneys to place these funds at interest with that interest paid to the Maine Bar Foundation and dedicated to support civil legal aid for low income and disadvantaged people, law related education and administration of justice projects

Why are we discussing IOLTA now?

For almost 25 years, Maine lawyers have voluntarily maintained IOLTA accounts. However, the Maine Supreme Judicial Court recently changed the Maine Bar Rules, and as of April 1, 2008, the IOLTA Program will be mandatory for attorneys not otherwise exempt from participation.

In addition, under the new rules, IOLTA funds must be held in an eligible financial institution. Note that financial institutions are not required to participate, but if they wish to offer IOLTA accounts, they will have to offer terms comparable to what they offer to non-IOLTA customers.

What determines if an institution is an "eligible institution"?

The Maine Bar Foundation is charged with designating those institutions that are eligible to accept IOLTA deposits. Lawyers will simply choose from the list.

There are two criteria the Foundation will use:

- First, the *institution* must qualify, which it does if it is authorized to do business in Maine and its deposits are insured by an agency of the federal government. If an institution intends to offer a repurchase-agreement type of uninsured IOLTA product, to be eligible it also must be deemed by its regulator to be well or adequately capitalized.
- Second, the *product* must qualify, which means that its terms must be comparable to those offered non-IOLTA customers. The Maine Bar Foundation will examine interest-transmittal reports from each participating bank and compare the terms on IOLTA accounts to those offered on similar non-IOLTA accounts by the same bank at the same time.

For most IOLTA accounts there will be no change under the new rule, with only those accounts with large balances being affected.

To get the program started, the Maine Bar Foundation will designate as eligible those institutions that complete and return a letter which acknowledges the new rule's comparability criteria and agree to work with the Foundation to identify comparable products or to adopt the "safe harbor" provision. These institutions will be listed as "Vanguard Financial Institutions," as well as being designated as eligible to hold IOLTA funds. The Foundation will publish the list of eligible institutions so that attorneys may assure that their IOLTA deposit accounts comply with the new rule.

Does "comparable" mean that I must pay the same interest rate or dividend to an IOLTA depositor that I pay to my "best" non-IOLTA customers, with whom we have extensive relationships?

No. The standard for comparability is that IOLTA customers are paid the highest interest rate or dividend generally available at the same institution to similarly situated non-IOLTA customers.

Does "comparable" mean that my institution will have to pay the same rates as other banks?

No. The new rule compares IOLTA accounts only to the non-IOLTA accounts in your institution. What your competitors are doing doesn't enter into the comparison.

What types of IOLTA accounts can a financial institution offer?

The most common IOLTA account is an interest-bearing transaction account, similar to NOW and business interest-bearing checking accounts. For large balances, some institutions offer a business-oriented sweep arrangement, with balances over a threshold swept daily into a repurchase agreement. Other options include government-securities money fund, and money market deposit accounts. Please see Rule 6(3) IOLTA Account Defined. Under the new rule, it may also elect the "safe harbor alternative".

What is the "safe harbor alternative"?

Some institutions may not choose to code their deposit systems to automatically price IOLTA deposits like non-IOLTA deposits or they may not want to maintain comparability manually. These institutions may be interested in the new rule's safe-harbor alternative.

Each July 1, the Maine Bar Foundation will note the Federal Reserve's announced target rate for federal funds. For the following year, institutions may achieve comparability simply by paying 65% of that rate, regardless of product type.

Note that while the federal funds target rate may change at any time, the safe-harbor rate is locked in place until the following July 1. **The safe-harbor rate for the first half of 2008 will be 65% of the federal funds target rate as of January 1, 2008.**

In order to take advantage of the safe-harbor feature of the rule, an institution must advise the Maine Bar Foundation that it wishes to do so. It must also notify the Foundation if it decides to move back to a non-safe-harbor comparable rate.

What about service charges?

Today, no Maine bank applies service charges or fees against IOLTA accounts and we expect that in the future most will continue that practice. If a bank wishes to separately identify and apply permissible service charges and fees against an IOLTA account, it may do so, provided that it does not discriminate against the IOLTA deposit. The bank's transmittal report should break out those charges so that the Maine Bar Foundation can monitor them for comparability.

Does the rule require attorneys to contact financial institutions?

No. The Maine Bar Foundation will initiate compliance activity on an institution-by-institution basis and will contact affected attorneys or law firms with specific information and assistance.

Where can I get more information?

By contacting the Maine Bar Foundation, 207-622-3477; info@mbf.org. Or by visiting our website, www.mbf.org, where you will find a link to the relevant Maine Bar Rules