



**MICHIGAN
FINANCIAL INSTITUTIONS
IOLTA HANDBOOK
April, 2017**

I O L T A
(Interest on Lawyer Trust Accounts)

adopted by the
Michigan Supreme Court
as part of the
Michigan Rules of Professional Conduct
regulating Michigan lawyers

Administered by:

Michigan State Bar Foundation
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I O L T A

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THE MICHIGAN STATE BAR FOUNDATION
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MICHIGAN FINANCIAL INSTITUTIONS IOLTA HANDBOOK
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I O L T A

Interest on Lawyer Trust Accounts

A GUIDE FOR FINANCIAL INSTITUTIONS

THE IOLTA PROGRAM

The Michigan Supreme Court adopted IOLTA (Interest on Lawyer Trust Accounts), effective October 1, 1990, as amended October 18, 2005 and February 4, 2015. The IOLTA program allows lawyers to place certain nominal and short-term client funds into pooled interest- or dividend-bearing accounts. The interest or dividends are remitted by financial institutions directly to the Michigan State Bar Foundation (Foundation) to support charitable purposes named by the Michigan Supreme Court. All 50 states and the District of Columbia have IOLTA programs.

Since 1990, Michigan financial institutions and lawyers have participated in an important partnership. Through the Interest on Lawyers' Trust Accounts (IOLTA) program, over \$31 million has been distributed for law-related charitable projects that improve the administration of justice and support civil legal aid for low-income families. For example, nonprofit legal aid programs that receive IOLTA grants resolve critical legal problems every day, such as protecting people from domestic violence, assisting veterans and others who need access to healthcare, keeping seniors from being victimized by unscrupulous contractors, ensuring support for children, and addressing other needs. Many financial institutions have received local and statewide recognition for waiving all IOLTA fees to make more grant dollars available throughout the entire state.

THE IOLTA ACCOUNT

The account that pools nominal and short-term deposits and pays the interest or dividends to the Foundation is called the "IOLTA account." The IOLTA account remains in the lawyer/law firm's name, but it bears the Foundation's tax identification number (38-1459016).

Not every lawyer's or law firm's trust account will be an IOLTA account. Lawyers and law firms—not financial institutions—are responsible for deciding which accounts they must have and what is deposited in each.

Because the Supreme Court rule requires that all client funds be placed in an interest or dividend-bearing account, lawyers or law firms may also have one or more individual or pooled interest- or dividend-bearing trust account(s) for the benefit of individual clients or third persons where the fund is large enough or held long enough to justify being invested for the client(s) or third person(s). Such non-IOLTA accounts usually bear the social security number or tax identification number of the individual client or third person or the law firm.

Under the Court rule, funds properly included in an IOLTA account are those that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held. Once the lawyer makes a good faith decision at the outset to deposit a fund into the

IOLTA account, the financial institution must remit the interest or dividends earned to the Foundation. For errors, the Foundation has a process for handling refund requests from lawyers.

ELIGIBLE FINANCIAL INSTITUTIONS

Participation in IOLTA remains voluntary for financial institutions, but a lawyer cannot keep an IOLTA account at a financial institution that does not participate or meet IOLTA requirements.

IOLTA accounts must be established at banks, credit unions, savings and loan associations or open-end investment companies. Banks, credit unions and savings and loan associations must be authorized to do business in Michigan, with their deposits insured by an agency of the federal government. Open-end investment companies must be registered with the Securities and Exchange Commission and meet certain capital guidelines defined in the next section. All must pay IOLTA accounts no less than the highest rate they pay to their own non-IOLTA customers when the account meets the same minimum balance or other eligibility qualifications. A number of IOLTA programs in other states have similar rate comparability provisions.

TAON (TRUST ACCOUNT OVERDRAFT NOTIFICATION) RULE

Before an institution may offer any lawyer trust accounts (IOLTA or non-IOLTA accounts), the requirements of MRPC 1.15A must be met. Under TAON, financial institutions must first obtain approval from the State Bar of Michigan to serve as a depository for lawyer trust accounts by submitting a signed agreement that they will provide overdraft reports to the account holder and to the Attorney Grievance Commission. For more information about TAON, see <http://www.michbar.org/opinions/TAON>.

IOLTA ACCOUNT TYPES

Under the amended IOLTA Rule, an IOLTA account is an “interest or dividend-bearing account as defined by the Michigan State Bar Foundation.” The Foundation’s IOLTA definitions are contained in the [Court-approved attorney guidelines brochure](#), which is available at www.msbf.org/iolta.

An IOLTA account can be established as:

- 1) An interest-bearing checking account.
- 2) A money market account with or tied to check-writing.
- 3) A sweep product using a money market fund or daily overnight financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities. A daily overnight financial institution repurchase agreement may be established only with an institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations. “U.S. Government Securities” refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. *Due to minimum balance requirements the sweep option is only available to accounts identified by the eligible institution and the Michigan State Bar Foundation.*

An institution is not required to offer sweep products for IOLTA accounts if it does not offer them to non-IOLTA customers or if the institution elects to pay its sweep account rate or a higher rate on IOLTA checking accounts which meet relevant minimum balance and other requirements. **IMPORTANT NOTE: Instead of setting up sweep products for IOLTA accounts, an institution can simply choose to pay the sweep rates (or other comparable rates, e.g., tiered rates) on existing IOLTA accounts.** Financial institutions generally select this option; benefits

may include ease of administration and the option to keep IOLTA funds on their financial institution's operations balance sheet.

4) An open-end money market fund solely invested in or fully collateralized by U.S. Government securities. An open-end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, have total assets of at least \$250,000,000.

For all accounts, funds must be subject to withdrawal upon request and without delay as soon as permitted by law.

Most IOLTA accounts will not be affected by the provisions requiring comparable rates for similar balances, so not all financial institutions will be affected by these provisions. Institutions which are affected hold high balance IOLTA accounts (generally those with balances consistently above \$100,000—less than 10% of IOLTA accounts) and/or pay checking account interest rates based on balance size. Financial institutions do not have to create new products if these are not already offered to other customers.

The Foundation will work with both financial institutions and lawyers whose accounts are affected to facilitate application of the rate comparability provision. Financial institutions should let lawyers who call know that they are working with the Foundation as to higher balance accounts, and can feel free to direct any attorney inquiries to the Foundation.

PROCEDURES TO ESTABLISH AN IOLTA ACCOUNT

To set up the IOLTA account, lawyers will deliver to their financial institution a completed "Notice to Eligible Financial Institution" Form which can be obtained from the Foundation, copied from page 7 of this Handbook, or downloaded from www.msbf.org/iolta. The lawyer/law firm completes a separate form for each IOLTA account. Most lawyers or law firms will not have more than one IOLTA account since eligible deposits can all be pooled in one IOLTA account.

"NOTICE TO ELIGIBLE FINANCIAL INSTITUTION" FORM

The "Notice to Eligible Financial Institution" form gives authority to financial institutions to establish IOLTA accounts for their lawyer/law firm customers. It instructs the financial institution to:

- Set up (if new) or change the status of each existing (non-interest-bearing) pooled account to an interest- or dividend-bearing account.
- Use the Foundation's tax identification number (**38-1459016**) on each IOLTA account instead of the lawyer/law firm's tax identification number.
- Remit interest or dividends for each IOLTA account, less allowable service charges or fees, directly to the Foundation's depository bank as follows:

Remit check/draft to:

Michigan State Bar Foundation
306 Townsend Street
Lansing, MI 48933

Fed wire information:

Call the
Michigan State Bar Foundation
for instructions at (800)968-6723.

ACH information:

Call the
Michigan State Bar Foundation
for instructions at (800) 968-6723.

- Send remittance advice to the Foundation for each IOLTA account (report form on page 9) and provide the lawyer/law firm with normal periodic statements of account activity. Under the

Court rule, the remittance advice must identify each lawyer or law firm and identify the amount of the remittance attributable to each account maintained by each lawyer or law firm, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees deducted, if any, and the average account balance for the period for which the report is made.

A copy of the "Notice to Eligible Financial Institution" form is included in this handbook. Forms copied from this Handbook or obtained from the Foundation's web site may be used. The form must be completed even if the financial institution also requires the lawyer/law firm to sign its own new signature cards. (See "Signature Cards and Corporate Resolutions" below.)

The "Notice to Eligible Financial Institution" form was revised as of February 4, 2015 for new accounts or account changes. However, there is no need to file a new form for existing accounts unless the financial institution requires the IOLTA account to actually be established as a higher rate product, necessitating additional signature authorization on standard forms for the higher rate product. In that case, financial institutions should advise the Foundation, which will assist in notifying and working with lawyers whose accounts may be affected.

After the financial institution accepts by signing the form, the lawyer/law firm will give one (or original) copy to the financial institution, send a second copy to the Foundation, and keep a third copy for the lawyer/law firm records.

SIGNATURE CARDS AND CORPORATE RESOLUTIONS

One way for financial institutions to streamline their IOLTA account procedures is to accept the "Notice to Eligible Financial Institution" form and not require new signature cards or corporate resolutions when an account is enrolled in IOLTA. This form is signed by the same authorized persons who sign customary signature cards or corporate resolutions for the account.

RATES

The interest or dividend rate paid on IOLTA accounts may not be less than the highest rate generally available from the financial institution to its non-IOLTA customers when the account meets the same minimum balance or other eligibility qualifications. Interest or dividends shall be calculated in accordance with the institution's standard practice, but institutions may elect to pay a higher rate on IOLTA accounts.

REMITTANCE TO THE MICHIGAN STATE BAR FOUNDATION

Interest or dividends, net of reasonable service charges (outlined below), must be remitted to the Michigan State Bar Foundation either quarterly or monthly (monthly remittance preferred). Payment may be made by check, wire transfer, or ACH transfer to the lock box indicated.

A remittance may be made for all of a financial institution's IOLTA accounts in one lump sum. One way to facilitate the remittance process is to flag and coordinate all IOLTA accounts to the same closing date or statement cycle.

INTEREST OR DIVIDEND REMITTANCE REPORT

The "IOLTA Remittance Report" allows the Foundation to record IOLTA interest or dividends by individual lawyer/law firm IOLTA accounts, using the account number assigned by the financial institution. Financial institutions should use the remittance report form (suitable for duplication)

included in this handbook at page 9. An electronic file with this information is preferred. An Excel spreadsheet template is available at www.msbf.org/iolta, and encrypted remittance reports can be sent to ioltareport@msbf.org.

Submit remittance advice for each IOLTA account even if no interest or dividend is being paid for the remitting period. Information reported on the remittance advice must show the IOLTA account number, the name of the lawyer or law firm, the amount of the remittance attributable to each account maintained by each lawyer or law firm, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees deducted, if any, and the average account balance for the period for which the report is made.

ACCOUNT STATEMENT TO LAW FIRM

The financial institution must also send the lawyer/law firm holding the account a report in accordance with normal procedures for reporting to depositors. The lawyer/law firm address should be used for this statement. This statement should not be sent to the Foundation.

REMITTANCE ERRORS

Financial institutions should immediately report in writing any error in remittance showing both the original and corrected information.

SERVICE CHARGES

Financial institutions may deduct only the following service charges from the interest or dividends earned on each IOLTA account: per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees and a reasonable administrative or maintenance fee. Fees and service charges must be calculated in accordance with the institution's standard practice and may only be deducted from the interest or dividends earned on the IOLTA account. These charges may not be deducted from the principal balance, and they may not be deducted from the interest or dividends earned on other IOLTA accounts. The lawyer is responsible for all other fees (e.g., check-printing, wire-transfer, NSF charges, etc.).

WAIVING SERVICE CHARGES AND PROVIDING PREMIUM RATES

Because IOLTA is a charitable program serving public purposes, many financial institutions choose to waive all service charges on IOLTA accounts. The Foundation regularly publicizes to Michigan Lawyers those institutions that waive all fees. Institutions may also choose to contribute by voluntarily paying a higher yield on IOLTA accounts. The Foundation can provide sample or customized information for inclusion in a CRA statement and will assure other public recognition as appropriate.

NO 1099 OR W-9 FORMS REQUIRED

The IOLTA account will carry the tax identification number of the Michigan State Bar Foundation (**38-1459016**) which has beneficial ownership of the interest or dividends generated on IOLTA accounts. The Foundation is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Accordingly, 1099 forms or other reports of interest or dividends should not be prepared or submitted to the IRS for IOLTA accounts. Because the Foundation's tax identification number will not match the lawyer/law firm's name on the account, unnecessary tax reporting on these accounts could cause difficulty.

Financial institutions will simplify their administration of IOLTA and avoid difficulties with the Internal Revenue Service by using an appropriate code to suppress 1099 forms for IOLTA accounts. However, if your data processing system cannot bypass tax reporting, be sure to identify the Michigan State Bar Foundation as the payee/recipient of the interest or dividends (tax identification number **38-1459016**).

Financial institutions that must issue 1099 forms for IOLTA accounts should use their "second address" capability for this purpose and send the forms directly to the Foundation rather than the lawyer or law firm. Also, if you issue a substitute W-9 form, it should list the Foundation as "Payee," bear the Foundation's tax identification number (**38-1459016**), and state that IOLTA accounts are "Not Subject to Backup Withholding."

MINIMUM BALANCE REQUIREMENTS

Lawyers or law firms that hold client funds are required to establish IOLTA accounts regardless of the size of the account balance. Therefore, financial institutions may wish to waive minimum balance requirements required to maintain the account. Also, precautions should be taken in the financial institution's data processing to avoid automatic "zeroing out" or closing IOLTA accounts that temporarily reach a low balance.

DISTRIBUTING IOLTA PROCEDURES TO BRANCH PERSONNEL

IOLTA operating procedures are generally developed by a financial institution's main office or branch operations center. However, because lawyers/law firms may ask questions or give the "Notice to Eligible Financial Institution" form to new account or other lobby personnel, it is important that financial institutions distribute their IOLTA procedures, and any updates, to those branch personnel who most often deal directly with customers. Branch personnel may be encouraged to call the Foundation with questions.

IOLTA CONTACT PERSON

Financial institutions are encouraged to designate an "IOLTA Contact Person" for their institution to serve as liaison with the Foundation. Financial institutions should advise the Foundation of any new "IOLTA Contact Person" by e-mailing the contact's name, title, address, phone, fax, and email address to ioltareport@msbf.org.

ASSISTANCE AVAILABLE

The Foundation is available to answer questions and help financial institutions with their IOLTA accounts. Additional copies of this handbook and IOLTA forms are available upon request or may be downloaded from www.msbf.org/iolta.

In addition, the **Michigan Bankers Association**, the **Michigan Association of Community Bankers**, the **Michigan Credit Union League** and the **Michigan Department of Insurance and Financial Services** have generously provided guidance as Michigan's IOLTA program evolved.

FOR MORE INFORMATION

For additional information see www.msbf.org or call 800-968-6723. The Foundation welcomes your comments and suggestions.

PLEASE DISTRIBUTE THIS
FINANCIAL INSTITUTIONS
IOLTA HANDBOOK
TO ALL APPROPRIATE
OPERATIONS PERSONNEL

All or any part of this
Handbook may be
duplicated as needed.

Additional copies of this
Handbook are available from the
Michigan State Bar Foundation.

*The Michigan State Bar Foundation provides
leadership and grants
to improve access for all to the justice system,
including support for civil legal aid to the poor,
law-related education, and conflict resolution.*

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