

What do I have to do?

- * If you already maintain an IOLTA account, nothing
- * If you need to convert an existing non-interest bearing client account to IOLTA, complete and send the compliance form to the Bar Foundation.

The Bar Foundation is working with all banks to try to make the process as easy as possible. Some are allowing the attorneys to simply switch from a non-interest checking account to an IOLTA. Citizens Bank has informed us that they cannot convert existing accounts and will require new accounts to be open. Where attorneys are required to open new accounts, the Foundation will certainly cover any out of pocket expenses if they are assessed.

Please contact the Bar Foundation to find out the best procedure. For assistance, call Ginny Caldwell at (401) 421-6541 or gcaldwell@ribar.com.

Most local branches do not have the capability to convert accounts. As a result, you need to send requests to convert accounts to the Bar Foundation staff who will then process them through the banks' central offices. In the event that a particular product cannot be converted, the Bar Foundation will notify you.

- * If you are exempt from IOLTA, complete and send the compliance form to the Bar Foundation.
- * To open a new IOLTA account, complete the compliance form and bring it to your bank.

What is an IOLTA Account?

An IOLTA account is a corporate/business checking account (such as a NOW account) for pooled client funds that pays all interest earned to the Rhode Island Bar Foundation. Qualified funds for deposit by attorneys are those which are nominal in amount or which will be held for such a short term that sufficient interest income will not be generated to justify the expense of administering a segregated account. Qualified funds are too small in amount or are expected to be held for too short a period of time to generate net economic benefit for the client or beneficial owner.

How will attorneys establish IOLTA Accounts?

Attorneys can establish IOLTA accounts at financial institutions either by converting an existing unsegregated, non-interest-bearing client escrow account to an interest-bearing IOLTA account or opening a new interest-bearing IOLTA account for this purpose using the enrollment form provided by the Rhode Island Bar Foundation.

How should IOLTA accounts be registered?

The attorney or law firm's name must be used on the account. The account name and checks may be designated as "Client Trust Account" or "Client Escrow Account." Please note that the IOLTA account and the checks printed for the account CANNOT identify the Rhode Island Bar Foundation as designee, trustee or owner. The words Interest on

Lawyers Trust Accounts or the acronym, IOLTA, need not be placed on checks or deposit slips.

An IOLTA account is operationally different because:

- The taxpayer identification number (TIN) on the account is the Rhode Island Bar Foundation's, not the attorney's or the law firm's; and
- The bank collects the interest earned on the IOLTA account and sends it, along with a remittance report, to the Rhode Island Bar Foundation.

May IOLTA accounts be assessed service charges?

Financial institutions are permitted to impose reasonable service charges for administration of IOLTA accounts, but such service charges must be offset against IOLTA interest earnings, not the principal maintained in IOLTA accounts. Many financial institutions choose to waive service charges in the interest of public service.

What about non-routine charges and fees?

Fees for services such as stop payments, certified checks, insufficient funds, and wire transfers should not be assessed against IOLTA interest nor deducted from the principal of the IOLTA account. Instead, such charges should be brought to the attention of the attorney for payment or, by agreement with the attorney, charged to the attorney's business account.

How should the Foundation be notified of an account opening?

The Rhode Island Bar Foundation needs to have a confirmation that an attorney or law firm has opened an account with a given financial institution. A copy of the enrollment form used to open an IOLTA account must be mailed by the financial institution and/or attorney to the Rhode Island Bar Foundation for its records.

Does participation in IOLTA affect my current trust account practices?

No. Participation in IOLTA will not affect a lawyer's current trust account practices. The depository bank will calculate and remit all accumulated interest, less service charges, directly to IOLTA. Participation in IOLTA will never affect the principal balance of the account. Of course, lawyers still retain complete discretion to determine whether a trust deposit is of sufficient size or duration to justify placement in a separate interest bearing account.

What are the tax consequences of IOLTA participation?

According to the Internal Revenue Service, IOLTA participation imposes no tax consequences to the client or the lawyer. Each IOLTA account will bear the tax identification number of the Rhode Island Bar Foundation to ensure that all accumulated interest is reported as income of the IOLTA program.

What is an IOLTA Comparability Rule?

An IOLTA Comparability Rule requires attorneys to place their IOLTA accounts in a financial institution that pays those accounts the highest interest rate generally available

at that institution to other customers when IOLTA accounts meet the same minimum balance or other account qualifications, if any.

How many other states have adopted Comparability Rules?

To date, a total of 23 states have adopted comparability rules. In those states, IOLTA income has more than doubled and has often increased by three to five times the amount received prior to adoption of comparability rules.

Will banks stop offering IOLTA accounts to attorney customers in opposition Comparability Rule?

To date, only one bank has stopped participating in the IOLTA program due to comparability rules in any of the 23 states that have implemented an IOLTA Comparability Rule. Indeed, states consistently report that IOLTA Comparability Rules have not disrupted relationships between law firms and financial institutions. Even when banks pay comparable rates, IOLTA accounts remain profitable, since the bank is only paying what it already pays to its other depositors. Banks also profit from other fee-generating relationships with an attorney or law firm that an IOLTA account often brings. Some banks have embraced the comparability rule concept with enthusiasm, and some banks have resisted the implementation of comparability rules but have remained in the IOLTA program.

Do IOLTA Comparability Rules regulate banks?

No. Comparability requirements regulate the behavior of lawyers, who are required to place their IOLTA accounts only at financial institutions that pay IOLTA accounts the highest interest rate applied to accounts with the same minimum balance or other requirements. Participation in the IOLTA Program has always been, and continues to be, voluntary for financial institutions. All 50 states have an IOLTA Program, and all 50 states have set various terms and conditions for bank participation in the voluntary program. A comparability rule would be one of the requirements for participation in IOLTA, just as reporting obligations and periodic payments of net interest by the banks are requirements for IOLTA participation.

What if a financial institution doesn't offer higher rates of interest to non-IOLTA customers with comparable accounts?

A bank is in compliance with the Rule, as long as the bank is paying comparable rates to its IOLTA and non-IOLTA customers. The financial institution is required to do no more than pay the same rates on IOLTA accounts as it already pays on similarly situated non-IOLTA accounts.

Does an IOLTA Comparability Rule set bank rates?

No. Comparability does not set or compare rates among banks. Rates paid under comparability are set by each bank for its own customers and are based on all the factors a bank normally considers when it sets rates. Comparability only requires a participating bank to pay interest rates comparable to what it already pays its own similarly situated non-IOLTA customers. For example, most financial institutions offer non-IOLTA depositors preferred interest rates for larger balances. However, many of these same

institutions do not distinguish between very small and very large balance IOLTA accounts. The Rule simply requires that the financial institution now pay the large balance IOLTA account the same rate it would otherwise qualify for if it were not an IOLTA account.

Would attorneys have to change to banks paying higher rates?

No. The IOLTA Comparability Rule only requires a bank to pay its own IOLTA customers the highest interest rate generally paid to its own non-IOLTA customers with comparable accounts. It does not require a bank to pay rates other than that which the bank itself has established.

Do attorneys and law firms have to monitor their bank's compliance with an IOLTA Comparability Rule?

No. The Rhode Island Bar Foundation will be responsible for ensuring implementation and monitoring compliance. The Rhode Island Bar Foundation will work with each of Rhode Island's participating banks and will provide technical assistance to each financial institution to assist with implementation and ensure compliance.

What happens if an attorney or law firm's bank decides to stop participating in IOLTA?

In that unlikely event, the Rhode Island Bar Foundation would advise the affected attorneys and law firms of the bank's decision, provide the attorneys with a list of approved financial institutions, and would cover the costs of replacing existing supplies of IOLTA account checks from the previous bank.

Couldn't fair rates be achieved through purely voluntary efforts?

No. Voluntary efforts have not produced consistent or lasting results. The Rhode Island Bar Foundation has engaged in efforts over the years to achieve fair rates of return on IOLTA deposits, with very limited success. Experience in other states is similar, with IOLTA programs realizing little success in having banks pay comparable rates on a voluntary basis.