

## **FREQUENTLY ASKED QUESTIONS ABOUT IOLTA INTEREST RATE COMPARABILITY**

**WHAT IS IOLTA?** IOLTA is an acronym for Interest on Lawyers' Trust Accounts, established by Oklahoma Rule of Professional Conduct 1.15, Safekeeping Property. Under this Rule, client funds held by attorneys that cannot earn net interest for a client must be deposited into an interest-bearing trust account. Interest earned by pooling these funds in an IOLTA account is paid to the Oklahoma Bar Foundation. IOLTA funds support legal aid programs for the poor, elderly, children, domestic violence survivors, the homeless, and many others, and support access to justice programs, law-related education, high school mock trial programs, and many other critical law-related charitable programs and activities throughout Oklahoma.

**WHAT DO THE AMENDMENTS TO RULE 1.15 DO?** The amendments clarify the meaning and implementation of "interest rate comparability" in Rule 1.15, and also clarify what bank fees and service charges can be assessed on an IOLTA account.

**WHAT IS INTEREST RATE COMPARABILITY?** Interest rate comparability ensures that IOLTA Accounts are treated fairly and equally - like the accounts of other bank customers. Rate comparability means that a financial institution that wishes to offer IOLTA Accounts to attorneys must pay the same rates of interest and dividends on IOLTA accounts as it pays on other non-attorney accounts with the same balances and other requirements.

**WHAT DID RULE 1.15 SAY ABOUT INTEREST RATES BEFORE AMENDMENT?** The Rule that was amended included interest rate comparability by stating: "The rate of interest payable on the account shall not be less than the rate paid by the depository institution to regular, non-lawyer depositors." It did not, however, contain necessary language or a process for determining what rates financial institutions were paying on accounts of other non-lawyer depositors or how to determine comparable rates.

**DOES INTEREST RATE COMPARABILITY REGULATE BANKS? IS A BANK REQUIRED TO OFFER IOLTA ACCOUNTS?** No. Interest rate comparability provisions do not regulate banks. A bank's participation in the Oklahoma IOLTA program has always been voluntary and will continue to be voluntary. Each bank individually decides whether it wants to meet the requirements necessary to qualify to offer IOLTA Accounts to attorneys.

**DOES AN IOLTA INTEREST COMPARABILITY RULE SET BANK RATES?** No. Interest rate comparability does not set or compare rates among banks. Rates paid under comparability are set by each bank and are based on all the factors that a bank normally considers when it sets rates. Comparability only requires a participating bank to pay interest rates or dividends comparable to what it already pays its similarly situated non-attorney customers. For example, most financial institutions offer non-IOLTA depositors preferred interest rates for larger balances. However, these same institutions do not distinguish between small and large balance IOLTA accounts. The amended Rule 1.15 simply ensures that financial institutions now pay the large balance IOLTA Account the same rate it would otherwise qualify for if it were not an IOLTA Account.

**HOW DO BANKS COMPLY WITH INTEREST RATE COMPARABILITY?** The amendments to Rule 1.15 offer banks several different options if they want to offer IOLTA

Accounts. They can: (1) perform an analysis of their different products to establish what they pay as a comparable rate; or (2) pay a Safe Harbor interest rate keyed to the familiar Federal Funds Target Rate, which would be the higher of 60% of the Federal Fund Target Rate or .60 percent; or (3) pay a rate that is agreed to by the financial institution and the Foundation.

**WHY WOULD A BANK CHOOSE TO PAY A SAFE HARBOR RATE?** A Safe Harbor Rate is simple and easy to implement. If a bank chooses to pay a Safe Harbor Rate, it does not have to perform an analysis of its products. The bank will be automatically presumed to meet the interest rate comparability requirements. In the 38 other IOLTA jurisdictions that have interest rate comparability in their rules, banks often choose to pay a Safe Harbor rate.

**DO INTEREST RATE COMPARABILITY PROVISIONS IMPOSE ANY NEW REQUIREMENTS ON OKLAHOMA ATTORNEYS?** No. The prior Rule 1.15 already required attorneys to open IOLTA Accounts at financial institutions that have been approved by the Oklahoma Bar Association Office of the General Counsel to offer IOLTA Accounts. The amendment simply adds the interest rate comparability provisions that a bank has to meet to be approved. Oklahoma attorneys do not have to do anything different from what they already do.

**HOW WILL ATTORNEYS KNOW IF A BANK IS IN COMPLIANCE AND IS A BANK THAT IS APPROVED TO OFFER IOLTA ACCOUNTS?** The Oklahoma Bar Foundation, as administrator of the IOLTA Program, will make an individual determination on whether a bank is in compliance with the interest rate comparability documentation and reporting requirements. The Foundation will report its determinations to the Office of the General Counsel, and continue to maintain in its office a list of Approved Institutions.

**WHAT IS THE IMPACT WHEN BANKS PAY LOW INTEREST RATES?** Low interest rates paid on IOLTA Accounts mean the OBF's ability to make grant awards to meet the legal service needs of Oklahomans is impaired. Low rates impair the ability to make awards to programs that rely on the Foundation for annual funding and the ability to make consistent annual awards that nonprofits can rely on. Low rates can even jeopardize the existence of some programs, and prevent the funding of new programs.

**WHAT CHANGES DO THE AMENDMENTS MAKE REGARDING BANK FEES AND SERVICE CHARGES ON IOLTA ACCOUNTS?** The prior Rule 1.15 said that lawyers can only deposit their own funds in an IOLTA Account to pay for bank fees and service charges in the amount necessary for that purpose. The amendments clarify what fees may be charged to an IOLTA Account and what normal service charges remain the responsibility of a lawyer or law firm.

Specifically, the only fees that may be deducted from IOLTA interest or dividends are the reasonable costs for banks to comply with their IOLTA reporting and payment requirements under Rule 1.15, and any fees for automated investment features on bank products, if those products are used to establish a comparable rate. A bank may not assess against the interest or dividends earned on an IOLTA Account those service charges normally imposed on business accounts, such as insufficient funds charges, fees for certified or cashiers checks, etc. Such charges remain the financial responsibility of the lawyer or law firm as a normal operating cost of the practice, and should be properly disclosed to the lawyer or law firm by the bank.