



January 16, 2009

## LETTER SENT TO FINANCIAL INSTITUTION

Dear Financial Institution:

The Texas Access to Justice Foundation (Foundation) would like to thank you for your bank's participation in the Interest on Lawyers' Trust Account (IOLTA) program. We are writing to advise you of recent changes affecting IOLTA accounts in Texas brought about by the current economic situation and to outline the process and timetable for implementing those changes.

On January 13, 2009, the Supreme Court of Texas amended the *Rules Governing the Operation of the Texas IOLTA Program*. A copy of the amendments (Rule 7) most pertinent to financial institutions is attached for your information (complete copy of amended Rules at [www.teajf.org](http://www.teajf.org)). These amendments become effective immediately and must be implemented by March 1, 2009. We are committed to working with you to make the implementation as smooth as possible for you and your IOLTA customers.

The Foundation, as the administrator of the Texas IOLTA program, requires certain information to determine whether your institution already meets the rate comparability requirement or must adjust rates in order to obtain approval as an IOLTA-eligible financial institution. We are working, therefore, with each IOLTA-participating financial institution to ensure that Texas attorneys continue to be able to hold IOLTA accounts in their current financial institutions. This letter, with enclosures, outlines the following:

A) Request for Information from Your Financial Institution by February 13, 2009

In order to determine whether your institution is an eligible financial institution under the amended IOLTA Rules and to keep this process on schedule, we ask that you fill out the enclosed IOLTA Rate Comparability Information Form along with copies of relevant brochures or other account documents requested and return them to the Foundation no later than February 13, 2009. We will review that information and advise your financial institution of any changes needed.

B) Process and Timetable for Financial Institutions to Implement the Amended IOLTA Rules

The Foundation will take a number of steps in the weeks ahead to assist you in determining what, if any, changes to your institution's IOLTA accounts will be needed to implement the amended IOLTA Rules.

We ask that you pay special attention to the February 13, 2009 reply deadline for the return of rate and fee information. You should contact the Foundation immediately if you are unable to meet the deadline. Any delay in implementation could jeopardize your institution's approval as an IOLTA-eligible financial institution.

C) Approaches for Meeting the Rate Comparability Requirement

The following are examples of approaches that a financial institution may choose for complying with the rate comparability requirement:

**Automatically comply by choosing Approaches A or B**

- **Approach A:** Become a Prime Partner by agreeing to pay, net of allowable reasonable fees, the **higher** of:
  - 75.00% of the Federal Funds Target Rate for IOLTA accounts; or
  - A minimum of 1.00% on IOLTA accounts
- **Approach B:** Index ("benchmark") option. A financial institution may comply by adjusting the yield, net of all allowable reasonable fees, to the higher of 0.65% or 65% of the Federal Funds Target Rate for IOLTA accounts.

**Approaches C and D: Compliance will be reviewed by the Foundation's staff - you may be asked to furnish more information**

- **Approach C:** Choosing to pay a higher interest rate or dividend rate on an IOLTA account in lieu of establishing IOLTA accounts as a higher rate product.
- **Approach D:** Conversion of large IOLTA accounts to highest-rate products for which IOLTA accounts are eligible. For example, if you offer overnight REPO sweep or money market mutual fund sweep accounts, then IOLTA accounts that meet the same minimum balance and other requirements could, under the Rules, be moved into that product (with the Foundation responsible for obtaining executed sweep account forms by the lawyer or law firm) and could be assessed the same sweep fees and other fees allowable under the amended Rules. If your bank does not have a business sweep account for which IOLTA is eligible, but offers tiered checking accounts to non-IOLTA customers for which IOLTA *is* eligible, the bank could apply those checking rates and tier structures to its IOLTA accounts.

The Foundation is committed to helping your institution comply with the changes in the IOLTA Rules. The Foundation looks forward to continuing its 25 year partnership with financial institutions throughout the state to ensure that IOLTA funding will continue for the benefit of low-income Texans. Please feel free to call me at (512) 320-0099, extension 105 with any questions.

Sincerely,



Betty Balli Torres  
Executive Director

## Texas Access to Justice Foundation's

# Texas IOLTA Prime Partners

### **Prime Partner Banks Receive Many Benefits and Statewide Visibility**

- Prime Partners listed on **Foundation Web site** with active hyperlinks
- Presentation and **promotional materials continuously updated** with new Prime Partner Bank information
- Link to Foundation Web site listed on **Texas Access to Justice Commission Web site**
- Print local **Prime Partner cards** for distribution at local bar and legal aid events
- Provide Prime Partners with **certification form** that can be given to **attorney customers**
- Provide updated reports of Prime Partner activities to **Texas Access to Justice Commission, Texas Access to Justice Foundation, State Bar of Texas, legal aid providers and local bar associations**
- **Congratulatory letters sent to new attorney customers** opening IOLTA accounts
- **Publicity in law-related newsletters/journals**

See year-end report of 2008 Prime Partner activities at [www.teajf.org](http://www.teajf.org)

# **RULES GOVERNING THE OPERATION OF THE TEXAS ACCESS TO JUSTICE FOUNDATION**

**(Amended January 13, 2009)**

## 7. Accounts to be Maintained at Eligible Institutions.

An Account established at an eligible institution pursuant to Rule 4 shall be a trust account from which withdrawals or transfers may be made on demand (subject only to any notice period which the financial institution is required to reserve by law or regulation) established in any bank, savings bank, credit union, savings and loan association authorized by federal or state law to engage in business in Texas, which is insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, or an investment company which is registered with the Securities & Exchange Commission and the State Securities Commission (as may be required). The determination of whether or not an institution is an eligible institution and whether it is meeting the requirements of this rule shall be made by the Texas Access to Justice Foundation, which must maintain a current list of eligible institutions on its website. Participation by banks, savings and loans associations, credit unions, and investment companies in the IOLTA Program is voluntary. Effective, March 1, 2007, attorneys may not maintain an IOLTA trust account at a financial institution which does not meet the requirements of this rule and is therefore not an eligible institution. An eligible institution that elects to offer and maintain IOLTA accounts is one that meets the requirements of this rule, including the following:

- (a) The eligible institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers; provided, however, that such factors shall not discriminate between IOLTA accounts and non-IOLTA accounts, nor shall such factors include or consider the fact that the account is an IOLTA account. An eligible institution will satisfy these requirements if it pays a qualifying rate on IOLTA accounts or a qualifying account product:

- 1) The eligible institution may establish the IOLTA account as a qualifying higher rate product, including tiered interest rate checking accounts and a checking account with an automated sweep account that provides a mechanism for the overnight investment of balances in the IOLTA account in an interest-bearing or dividend-bearing account that is a daily financial institution repurchase agreement or a money-market fund.

2) An eligible institution may choose to pay the higher interest or dividend rate on an IOLTA checking account in lieu of establishing it as a qualifying higher rate product.

3) An eligible institution may choose to pay a rate equal to the greater of 0.65% or 65% (the “index”) of the federal funds target rate (the “benchmark”) as of the first business day of the IOLTA remitting period, which rate is deemed to be net of allowable reasonable fees, on an IOLTA checking account. The index and benchmark are determined periodically, but not more frequently than every six months, by the Foundation to reflect an overall comparable rate for the Texas IOLTA Program. When applicable, the Foundation will express its benchmark in relation to the Federal Funds Target Rate.

4) A yield specified by the Foundation, if the Foundation so chooses, which is agreed to by the financial institution. The qualifying yield would be in effect for and remain unchanged during a period of no more than twelve months from the inception of the agreement between the financial institution and the Foundation.

- (b) Nothing in this rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and service charges on an IOLTA account.
- (c) Interest and dividends shall be calculated in accordance with the eligible institution’s standard practices for non-IOLTA customers.
- (d) Allowable reasonable fees are the only fees and service charges that may be deducted by an eligible institution from interest earned on an IOLTA account. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No fees or service charges other than allowable reasonable fees may be assessed against the accrued interest or dividends on an IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the attorney or law firm maintaining the IOLTA account.