

FAQs about IOLTA “Comparability”

When the IOLTA program was created over 25 years ago, interest-bearing checking accounts were the only bank products thought suitable for lawyers’ trust accounts. In the intervening years, banks have introduced new products that still provide safety and liquidity for clients but at a much greater return. In response, in the 2007 legislative session, the Assembly Judiciary Committee chaired by Assemblyman Dave Jones introduced AB 1723. The bill was enacted, and California thus joined 15 states that have adopted rules expanding the range of products available for IOLTA accounts. Because the law also requires that financial institutions pay a rate of return or dividends on IOLTA accounts comparable to what they pay their similarly situated non-IOLTA customers, AB 1723 is often called the “Comparability” bill. See the Frequently Asked Questions below for more information on how this new legislation affects IOLTA accounts.

FREQUENTLY ASKED QUESTIONS

1. What is the “Comparability” bill?
2. What impact does “Comparability” have on Lawyers?
3. What impact does “Comparability” have on Clients?
4. What impact does “Comparability” have on Financial Institutions?
5. Does “Comparability” affect the determination of what funds should be placed in my IOLTA account?
6. Is there a list of eligible banks complying with “Comparability”?
7. Why was the Comparability bill necessary?

1. What is the “Comparability” bill?

Answer: [Assembly Bill 1723](#) is a bill amending [Business and Professions Code Sections 6091.2, 6211, 6212, 6213](#), effective January 1, 2008, that requires attorneys with IOLTA accounts to hold those accounts at financial institutions offering to pay dividends or interest rates to IOLTA customers that are “comparable” to what they pay their similarly-situated customers. The amendments also update the kinds of investment vehicles attorneys can use for their IOLTA accounts, particularly large-balance accounts, allowing IOLTA funds to be held in conservative, high-yield bank products.

2. What impact does “Comparability” have on Lawyers?

Answer: Business and Professions Code Section 6210 *et seq.* and an order of the Supreme Court require that attorneys place their IOLTA accounts only with banks that comply with the statutes. However, as an IOLTA account holder, **you do not need to take any action at this time**. The State Bar will work closely with the banking community to help them meet eligibility requirements before engaging lawyers in the process. As banks come into compliance, they will be posted on a list of banks that are “Eligible” or that are “Provisionally Eligible.” Based on experience in other states that have passed similar “comparability” rules, we anticipate that attorneys will not have to do anything differently with respect to their IOLTA accounts. We ask you to defer action until you are contacted by someone from our staff.

After comparability is implemented, lawyers’ handling of IOLTA accounts will be the same. The financial institution calculates income on IOLTA accounts, remits the income to the State Bar and sends all required reports to the lawyer and the State Bar.

3. What impact does “Comparability” have on Clients?

Answer: Comparability has no impact on clients. IOLTA only involves funds that a lawyer would not otherwise invest on the client’s behalf because those funds would not produce net income over the cost of investing the funds.

4. What impact does “Comparability” have on Financial Institutions?

Answer: Currently, over 280 financial institutions participate in the IOLTA program in California. Financial institutions are under no obligation to hold IOLTA, but in order to be eligible to hold IOLTA, they must agree to comply with comparability requirements. Because the comparability requirements only ask financial institutions to pay dividends or interest rates to IOLTA customers that are “comparable” to what they pay their similarly situated customers, nationally, we are aware of no financial institution that has opted not to continue to offer IOLTA because of comparability requirements.

5. Does “Comparability” affect the determination of what funds should be placed in my IOLTA account?

Answer: No. The Comparability Rule does not affect [Rule of Professional Conduct 4-100](#), which requires attorneys to deposit funds received or held for the benefit of clients in a trust account separate from the attorney's own funds. [State Bar Rules, Title 2, Division 5, Rule 2.110\(A\)](#) identifies factors that you should consider in making the determination whether the funds should be held in an account for the benefit of a client or in a pooled IOLTA trust account. You also may address questions about Rule 4-100 or other questions about ethics to the bar's **Ethics Hotline** at 1-800-2ETHICS (1-800-238-4427). For general information on Client Trust Accounts, refer to [Handbook on Client Trust Accounting for Attorneys](#).

6. Is there a list of eligible banks complying with “Comparability”?

Answer: The State Bar is working with financial institutions to verify their compliance as “Eligible” or “Provisionally Eligible” (working toward eligibility) by the April 30th, 2008 absolute deadline, and will begin posting a list on its website on February 1, 2008. Refer to [Eligible Financial Institutions](#). State Bar members do not need to contact their bank.

7. Why was the Comparability Bill necessary?

Answer: It's about fairness. Even when Federal Funds rates increased 425 percent, IOLTA interest rates in California remained near one percent. California's interest rates for IOLTA accounts have consistently been lower than the national average. The IOLTA Program, which exists to expand the availability and improve the quality of free legal services in civil matters to indigent persons, is currently drastically under-funded. AB 1723 improves efforts to increase the yield on IOLTA, potentially resulting in an enormous impact on increasing access to justice. This, in turn, is good for business and the vitality of our society. This statute was supported by the California Chamber of Commerce, Chief Justice Ronald George, and dozens of prominent individuals, businesses and non-profit organizations that care about their communities.

Other Helpful links:

[IOLTA FAQs](#)