STATE BAR OF CALIFORNIA
LEGAL SERVICES TRUST FUND PROGRAM
Interest on Lawyers' Trust Accounts (IOLTA)

Guide for Financial Institutions

These guidelines are designed to answer questions regarding your administration of Interest on Lawyers' Trust Accounts (IOLTA). The interest generated by these accounts fund the Legal Services Trust Fund Program (LSTFP) of the State Bar of California.

Background: The IOLTA Program

The IOLTA program, authorized by the legislature at Business & Professions Code §§6211 et seq. ("Statute") requires lawyers to place short-term or nominal client funds into interest- or dividend-bearing accounts. Accounts that pool nominal and short-term deposits and pay the interest or dividends to the Legal Services Trust Fund Program are called "IOLTA accounts." Interest and dividends generated from IOLTA accounts are used to fund legal services to indigent people, seniors and people with disabilities. These funds are an integral part of a comprehensive system to ensure that low-income Californians have access to justice in the State of California. Since 1981, California bankers and lawyers have partnered to achieve access to justice for all Californians.

All funds that a lawyer or law firm receives or holds for the benefit of a client or other person in connection with the performance of a legal service or representation by a lawyer must be deposited in one or more trust accounts, but not every trust account established by a lawyer or law firm will be an IOLTA account. It is the attorney or law firm's obligation to determine which funds should be held in an IOLTA account – only those funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income should be held in an IOLTA account. If a lawyer or law firm determines that funds should be held for the benefit of individual clients or third persons, then the lawyer or firm will place the funds in a non-IOLTA account that will usually bear the social security number or tax identification number of the individual client, third person, or law firm.

Eligible Financial Institutions

Participation in the IOLTA program is voluntary for financial institutions, but a lawyer cannot keep an IOLTA account at a financial institution that does not meet the requirements set forth in the Statute.

Duties of IOLTA Eligible Institutions

An IOLTA eligible institution must pay comparable interest rates or dividends as required by Statute (the "comparability requirements") and may choose to do so in one of three ways:

- **Establish IOLTA accounts as comparable rate products:** Comparable rate products are eligible accounts that earn no less than the highest interest rate or

dividend generally available from the institution to non-IOLTA account customers when the IOLTA account meets the same minimum balance or other eligibility qualifications;

- **Emulate the comparable product rate:** Instead of converting IOLTA accounts to higher paying products such as money market or other business sweep accounts, an institution can simply choose to pay the equivalent rates, less chargeable fees, if any, of those products in the IOLTA deposit accounts meeting the same minimum balance and other requirements. Financial institutions that select this option benefit from ease of administration and the option to keep IOLTA funds on the financial institution's operations balance sheet.

- **Pay the Established Compliance Rate:** In lieu of paying the comparable rate, financial institutions may opt to pay the "Established Compliance Rate." The Established Compliance Rate as of May 1, 2009 will be an amount on funds that is 68% of the Federal Funds target rate or .68%, whichever is higher, as of the first business day of the quarter or other IOLTA remitting period, which amount is deemed to be already net of allowable reasonable fees. This Established Compliance Rate may be adjusted every six months by the LSTFP, upon 60 days written notice to participating financial institutions.

At a minimum, interest or dividends must be calculated in accordance with the institution's standard practice for non-IOLTA customers with comparable accounts, but institutions may elect to pay a higher rate on IOLTA accounts.

Eligible Accounts

An "IOLTA account" means an account or investment product established and maintained pursuant to subdivision (a) of Section 6211 that is any of the following:

1. An interest-bearing checking account.
2. An investment sweep product that is a daily (overnight) financial institution repurchase agreement or an open-end money-market fund.
3. Any other investment product authorized by California Supreme Court rule or order.

A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities or other comparably conservative debt securities, and may be established only with any eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities or other comparably conservative debt securities, shall hold itself out as a "money-market fund" as that term is defined by federal

statutes and regulations under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and, at that time of the investment, shall have total assets of at least $250,000,000.

Although the rate comparability requirement applies to all IOLTA accounts, the amended IOLTA statute affects most significantly those IOLTA accounts whose high balances and other characteristics qualify them for investment sweep accounts, premium checking accounts, or other high-rate accounts offered to non-IOLTA customers holding comparable balances. Typically, those "high balance" accounts hold average balances of $100,000 or more. Financial institutions do not have to create new products if these are not already offered to other customers.

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

Benefits to Financial Institutions

Participation in IOLTA is a great way for banks to show they care about the communities they serve. IOLTA grants provide needed legal service to people who otherwise would have nowhere to turn for access to justice. Because IOLTA is a charitable program serving public purposes, many financial institutions choose to waive all service charges on IOLTA accounts, choose to pay a higher than comparable rate of interest or dividends, or otherwise increase the IOLTA yield.

- The Legal Services Trust Fund Program will regularly publicize to its 157,700 active member lawyers and others, the names of those institutions that choose to contribute by voluntarily increasing the yield on IOLTA accounts to a level significantly higher than strictly required under the comparability requirement.

- A financial institution may report on its CRA Statement (for use under the Community Reinvestment Act of 1977, as amended (12 U.S.C. §2901) that it is eliminating or reducing fees on IOLTA accounts or paying higher interest rates on IOLTA accounts than on comparable business accounts to reflect its contributions to the communities in which it is located.

- A financial institution may also reflect IOLTA contributions in banking information brochures, newsletters, and annual reports to shareholders. By doing this, you let investors and customers know that the financial institution is playing an active role to support the justice system and worthwhile law-related programs in your community.

Administrative Costs to Adapt Systems

If a financial institution expects to experience administrative costs to adapt its system to comply with the provisions of the Statute or in making investment products available to IOLTA members, the financial institution should notify the LSTFP, advising of the amounts and nature

of the anticipated costs. The LSTFP will consider whether there are options to help financial institutions defray such reasonable up-front costs. Itemized costs should be submitted at least 60 days in advance for approval by the LSTFP.

Procedures to Establish an IOLTA Account

To set up the IOLTA account, lawyers will deliver to their financial institution a completed form, which can be obtained from the Legal Services Trust Fund Program, or downloaded from www.calbar.ca.gov. Most lawyers or law firms will not have more than one IOLTA account because eligible deposits can all be pooled in one IOLTA account.

Information for attorneys about opening and maintaining attorney-client trust accounts can be found on the State Bar's website at www.calbar.ca.gov.

Signature cards and corporate resolutions: One way for financial institutions to streamline their IOLTA account procedures is to accept the attorney 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.

Remittance to the State Bar

Financial Institutions may remit interest or dividend payments monthly (LSTFP's preference) or quarterly for all the accounts they hold. Interest or dividends earned on the accounts should be calculated based on the aggregate average balance of each individual IOLTA account. **Remittances are due the 10th of the month following the end of the reporting period**, and will be considered delinquent on the last day of the month following the end of the reporting period. One way to facilitate the remittance process is to flag and coordinate all IOLTA accounts to the same closing date or statement cycle.

Financial institutions may:

- Hold the interest or dividends in the depositing attorney's account until remitted.
- Debit the depositing attorney's account for the interest or dividends when paid and hold it in a separate account until remitting it to the State Bar.
- Pay interest or dividends directly into a separate account until remitting the interest or dividends to the State Bar or pay interest or dividends directly to the State Bar.

Reasonable service charges: Financial institutions may only deduct the following service charges from the interest or dividends earned on each IOLTA account: per-check charges, per-deposit charges, monthly fees such as fees in lieu of minimum balance, federal deposit insurance fees, or sweep fees. Fees and charges must be calculated in accordance with the institution's standard practice and may be deducted only 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. All other charges are the responsibility of and may be charged to the lawyer or law firm account holder. Financial

institutions may choose to waive any and all fees on IOLTA accounts.

Reasonable service charges include only those charges listed in the above paragraph; therefore, they do not include other costs such as the cost of check printing, deposit stamps, NSF charges, collection charges, and fees for cash management services. These other charges are deemed to be ordinary business expenses that must be paid for by an attorney or law firm that receives or disburses trust funds.

Send remittance to: Financial institutions may remit interest to the State Bar by check mailed directly to: The State Bar of California, Legal Services Trust Fund Program, Department 05-590, San Francisco, California 94139; or by wire transfer to Wells Fargo Bank Routing Number: 121000248 Account Number: 4159-394709.

Reporting to the State Bar

The "IOLTA Remittance Report" allows the LSTFP to record IOLTA interest or dividends by individual lawyer/law firm IOLTA accounts, using the account number assigned by the financial institution. 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 on which the interest or dividends were paid (for example, average daily collected balance) for the period for which the report is made.

Electronic remittance: To improve accuracy and speed data entry, the LSTFP has instituted electronic forms for use in remittal of IOLTA statements. Templates in Microsoft Excel and a plain text format (comma delimited values) can be downloaded from the State Bar website at www.calbar.ca.gov. Electronic remittance reports should be sent to iolta@calbar.ca.gov.

Reporting 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 LSTFP.

Unproductive Accounts

If service charges exceed interest and dividends for any account during a remitting period, the financial institution has several options: 1) maintain the account and write off or absorb any uncollected charges; 2) maintain the account and accrue charges, offsetting them against future interest earnings on that account; 3) pass these service charges and costs to the lawyer or law firm customer's operating account; 4) require the lawyer or law firm to maintain a reasonable balance in the IOLTA account to cover the excess charges/fees; or, 5) if the account is deemed "unproductive" by the LSTFP under the criteria below, close the account.

An account is "unproductive" if:

1. On an annual basis, the account has been negative for at least two years; **and**

2. Where service charges would still exceed interest even if the interest rate were increased by 100 basis points

Upon notice from the financial institution that an account is unproductive, the LSTFP will send written notice to the account holder that the account holder has 60 days to make arrangements to maintain a reasonable balance in the IOLTA account to cover the charges and fees, or notify the financial institution that it will cover those charges out of a general account. If the attorney or attorney firm does not respond within 60 days, the State Bar will send 30-day notice to the account holder that it will direct the bank to convert the IOLTA account to a non-interest bearing trust checking account and that the State Bar will no longer pay for services charges/fees. The State Bar at that time will notify the bank that it should remove the State Bar's Federal Taxpayer Identification number from the account.

Tax Identification and No Withholding

In order to report to the appropriate taxing authorities, financial institutions should use the State Bar of California's Taxpayer Identification number 94-6001385 on all Interest on Lawyers' Trust Accounts. This number is to be set up as a Taxpayer Identification number and not as a Social Security number.

The State Bar is not subject to any interest withholding requirements and pursuant to regulations promulgated by the Internal Revenue Service need not file an exempt certificate unless required by the financial institution.

Adjustments and Errors

Remittance errors: The State Bar will make refunds when interest or dividends have been remitted in error, whether the error is that of the financial institution or the attorney. Attorneys requesting payment of interest or dividends on funds placed in an account in error should submit a timely request to the financial institution for a refund of interest or dividends on the identified funds. The financial institution should make a timely request in writing, accompanied by documentation of the error. As needed for auditing purposes, the State Bar may request additional documentation. In no event will the refund exceed the interest or dividends actually received by the State Bar.

Reconciliation of account information: Semi-annually the State Bar reconciles the information in financial institution remittance reports with the compliance reports that California attorneys provide to us. The cooperation of financial institutions in finding and correcting errors is appreciated.

Erroneous deductions: If the LSTFP becomes aware that a member business expense is erroneously deducted from IOLTA funds, the LSTFP will inform the financial institution and request the error be corrected.

Miscellaneous

Contact person: Financial institutions are encouraged to designate an "IOLTA Contact Person" for their institution to serve as a liaison with the LSTFP. Financial institutions should advise of any new "IOLTA Contact Person" by e-mailing the contact's name, title, address, phone, fax, and email address to iolta@calbar.ca.gov. Also, please provide immediate notice if the financial institution acquires, merges with or is acquired by another financial institution.

Distributing IOLTA procedures to branch personnel: It is requested that financial institutions distribute their IOLTA procedures, and any updates, to branch personnel who most often deal directly with customers. Branch personnel may be encouraged to call the LSTFP with any questions.

Assistance is Available

The LSTFP will work with lawyers and financial institutions to make California's IOLTA program a success. Staff is available to answer questions and to help financial institutions with their IOLTA accounts. Additional copies of the Statute, relevant State Bar Rules, and IOLTA forms are available upon request, or may be downloaded from www.calbar.ca.gov.

Additionally, the LSTFP is available to assist institutions to comply with the Statute and implementing rules in the following ways:

- Discuss defraying reasonable up-front costs to adapt IOLTA compliance systems;
- Provide detailed reporting and remittance specifications, including technical support;
- Assist in identifying IOLTA accounts to be placed in higher-paying products; and
- Coordinate communications and assistance to affected lawyers and law firms to move IOLTA accounts to higher-paying products.

For assistance or additional information, please contact our compliance auditor at Legal Services Trust Fund Program, The State Bar of California, 180 Howard Street, San Francisco, California 94105-1639, or email iolta@calbar.ca.gov. You also can call one of the compliance auditors at (415) 538-2046 or (415) 538-2227. The LSTFP welcomes your comments and suggestions.