

**SUPREME COURT OF NEW JERSEY
SUPPLEMENTAL
ADMINISTRATIVE DETERMINATION**

RE: IOLTA AND THE "BEST CUSTOMER" STANDARD

On November 15, 2005, the Supreme Court issued an Administrative Determination that approved the use of a "Best Customer Standard" for financial institutions with IOLTA accounts. As part of that standard, the institutions are offered a "default" option of using 60% of the Federal Funds Target Rate (FFTR). This was viewed as a convenience to the institutions that would enable them to participate in IOLTA without having to demonstrate their comparable rate structures.

IOLTA's Board of Trustees has reported to the Court that the FFTR is at historic lows that render unworkable the current indexed option offered to banks. For that reason, the Board has recommended to the Court that the existing default option be amended to provide that it become the *greater* of 60% of the Federal Funds Target Rate or 1%. In making that recommendation, the Board made the following points:

1. The recommendation is consistent with a reasonable assessment of the current market interest rate environment;
2. All other Best Customer Standard comparability options still remain fully available for banks that do not wish to adopt the default option;
3. Given the continued availability of all alternative options, placing a floor under the convenience option does not adversely affect the program's flexibility; and
4. In light of the "floating" Federal Funds Target Rate being grounded at 0.00%, there is a need for immediate action to assist banks seeking guidance about how to meet the Best Customer Standard.

The amended Best Customer Standard is appended to this Administrative Determination. It takes effect March 1, 2009.

The Court continues to acknowledge its appreciation for the efforts by financial institutions to cooperate with and contribute to the ongoing viability of the IOLTA program in New Jersey.

For the Court:

/s/ Stephen W. Townsend, Esq.

Clerk of the Supreme Court

Date: February 18, 2009

IOLTA
Best Customer Standard
(As Amended February 18, 2009, to take effect March 1, 2009)

This standard describes the actions necessary to demonstrate that a financial institution is offering a comparable and reasonable return on IOLTA accounts, as required by the IOLTA Guidelines.

A. A financial institution shall provide to IOLTA the highest yield available among the following types of accounts, as provided to the best customers of the institution with similarly-sized deposits in such accounts in New Jersey:

1. A money market account with or tied to check writing capability;
2. A business interest-paying checking account backed by a sweep capability, with the sweep to a money market fund or daily overnight financial institution repurchase agreement invested in or fully collateralized by U.S. Government securities;
3. A government (such as for municipal deposits) checking account;
4. An open-end money market fund with or tied to check writing capability solely invested in or fully collateralized by U.S. Government securities (and with total assets of at least \$250,000,000); or
5. Any other interest-paying business checking account product with preferred interest rates, such as money market, tiered, or indexed rates.

B. As alternatives to the foregoing, the institution may offer:

1. The higher of 60% of the Federal Funds Target Rate or 1%, paid on an interest-bearing checking account; or
2. A yield specified by IOLTA, if IOLTA so chooses, which is agreed to by the financial institution and would be in effect for and remain unchanged during a period of twelve months from the inception of the agreement between the institution and IOLTA.

C. The following additional provisions are applicable. As indicated by their terms, some apply only to one or some of the options set forth above.

1. If the highest yielding of the first five options is chosen by the institution, it shall pay not less than the best rate paid by the lowest bank in the third quartile of all IOLTA participating financial institutions offering that type of account, as specified in options 1 through 5. Quartiles will be created by ranking all banks according to the rates paid for each of options 1 through 5 above, from highest to lowest, and then

dividing them into fourths. Such quartiles and amounts shall be determined by IOLTA on a quarterly basis. Based on the reports submitted by participating financial institutions concerning the rates paid to all bank customers for each type of account, IOLTA will determine on a quarterly basis the distribution of banks in each quartile and the cut off rate at the bottom of the third quartile for each type of account.

2. The sixth option (Fed Funds) shall be calculated as of the first day of each month or on the day following the announcement of a Federal Funds rate change.

3. A bank may elect to offer the highest rates that it pays on sweep, government or high-yield money market accounts on another qualifying IOLTA checking account, instead of actually offering such an account.

4. All account types will provide immediately available funds as required by Supreme Court rule for attorney trust accounts. Money market accounts shall comply with applicable banking regulations.

5. IOLTA will continue to exempt low balance accounts [which average \$5,000 or less,] as part of its annual registration process.

6. Participating financial institutions shall certify their compliance with these requirements in the form and manner prescribed by the IOLTA Fund.

7. The requirements set forth in this section shall apply to IOLTA accounts with average balances of \$100,000 or more.

8. All participating financial institutions shall report, in the form and manner prescribed by the IOLTA Fund, on the best rate paid to their best customers for each of the types of accounts they offer within the definitions specified in options 1 through 5 above.

9. Attorneys with accounts in a financial institution which ceases for any reason to be an approved depository for attorney trust accounts shall move those accounts to an institution in the first or second quartiles at the time of the move.

10. Where there is reasonable cause to believe a financial institution is willfully misrepresenting its best yield information, the IOLTA Fund may condition continued trust account depository approved status on a finding by the institutions auditor that its certifications have been accurate.

D. The IOLTA Board shall monitor and report periodically to the Supreme Court on the effectiveness of this standard.

(Note: New language is underscored. Deleted language is in [brackets].)