

Financial Institution IOLTA Participation Certification
July 1, 2018 to June 30, 2019

PARTICIPATION CERTIFICATION

Execution of this Participation Certification constitutes an agreement to participate with the Arizona Foundation for Legal Services and Education (“the Foundation”) and State Bar of Arizona (“the State Bar”) in the Arizona IOLTA program and to adhere to the requirements set forth herein, under Rule 43 of the Arizona Supreme Court (ATTACHMENT A), and the September 1, 2009, Attorney General Opinion 109-005 (ATTACHMENT B). This Certification shall apply to all branches or units of the Financial Institution holding Arizona IOLTA accounts.

I. Interest Payments and Service Charges

A. Financial Institutions¹ shall remit the sum total of all interest earned on the aggregate IOLTA account balances minus the allowed charges against the interest. In order to accommodate the standard accounting practices of each partnering Financial Institution, this Certification provides for three methods of calculating the interest and allowed charges. Each Financial Institution must select one of the following options to be used in complying with the IOLTA regulations under this Certification. If you do not indicate a selection below, the Foundation will use the method under option I. A. (1) below as the default choice:

1. ___ Financial Institutions shall remit the sum total of all interest earned on the aggregate IOLTA account balances, minus the allowed charges against the interest. The allowed charges will not be greater than an amount calculated in good faith to be equal to 10% of the gross interest earned on such aggregate account balances held by that Financial Institution during the applicable reporting period.² The remittance will be sent directly to the Foundation in one single payment, for each reporting period by ACH, check or wire transfer.
2. ___ Financial Institutions shall remit the sum total of all interest earned on the aggregate IOLTA account balances, equal to the rate that is offered to their Money Market deposits, and shall not charge additional fees against the IOLTA interest remittance. The remittance will be sent directly to the Foundation in one single payment, for each reporting period by ACH, check or wire transfer.
3. ___ Financial Institutions shall remit the sum total of all interest earned on the aggregate IOLTA account balances, based upon a mutually acceptable relation to a current deposit interest product as the Foundation and Financial Institution shall determine, and the Financial Institution shall not charge additional fees against the IOLTA interest remittance beyond those agreed to in the identified product association. The Financial Institution shall provide quarterly verification, upon request, that the chosen product association meets the Rule 43 requirements and the Attorney General

¹ “Financial Institution” means any bank or savings and loan association authorized by federal or state laws to take deposits and conduct financial transactions with Arizona lawyers and insured by the Federal Deposit Insurance Corporation or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to take deposits and conduct financial transactions with Arizona lawyers, all of which must meet the requirements set out in Rule 43.

² For any percentage of the allowed 10% charge which is not retained by the Financial Institution, the Foundation will work with the Financial Institution toward recognition as a contribution and/or Community Reinvestment Act inclusion as regulators permit.

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Opinion 109-005. The remittance will be sent directly to the Foundation in one single payment, for each reporting period by ACH, check or wire transfer.

- B. Financial Institutions may only impose limited and reasonable service charges on such accounts in the following manner and subject to the following limitations:
 - 1. The Financial Institution may include charges to the attorney, as holder of the account, for the reports and records required by Rule 43 in maintaining an IOLTA account.
 - 2. The Financial Institution will not retain, from the interest earned, greater than an amount calculated in good faith, to be equal to 10% of the gross interest earned on such aggregate accounts during a reporting period.
 - 3. The Financial Institution shall not deduct recording and reporting charges from the interest earned on the IOLTA trust account if the inclusion of such charges causes the total service charge to exceed the agreed upon amount as calculated under the terms of this Certification.
- C. Financial Institutions may remit interest payments to the Foundation on a monthly basis, but shall remit at least on a quarterly basis.
- D. Financial Institutions understand that the Foundation and the State Bar may give recognition to Financial Institutions that do not withhold any part of IOLTA interest for fees.

II. Required Reporting

- A. Financial Institutions shall submit the required data reporting, covering the period relating to the interest payment remitted to the Foundation, no later than fifteen (15) days after making such interest payment to the Foundation pursuant to the terms hereof.
- B. Financial Institutions shall complete and submit their data report as outlined in ATTACHMENT C.
- C. Financial Institutions also shall transmit a report on each separate account, similar to that provided for in ATTACHMENT C, to the lawyer or law firm that opened the account.

III. Operation Compliance

- A. In the event that any properly payable instrument is presented for payment against an attorney's trust account containing insufficient funds, uncollectible funds, or a negative available balance, and regardless of whether the Financial Institution honors the instrument or not, the Financial Institution must send notification of such event to the Chief Bar Counsel of the State Bar at the following address:

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**Chief Bar Counsel
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, AZ 85016-6266**

- B. Financial Institutions shall not offer credits or other incentives relative to the Arizona IOLTA program that in any manner directly or indirectly benefit the attorney, as the holder of the account.
- C. If the Financial Institution receives a subpoena duces tecum issued pursuant to Arizona Supreme Court Rule 47(h) requesting documents pertaining to an attorney's IOLTA account with the Financial Institution, the Financial Institution shall, pursuant to 15 U.S.C. §6802(e)(8), provide the documents specified in the subpoena duces tecum. The State Bar shall pay the reasonable costs associated with producing the requested documents.
- D. The Financial Institution acknowledges the provisions of Rule 68(a), Ariz. R. Sup. Ct., that service of appointment of conservator for a lawyer's practice on a financial institution modifies an agreement of deposit between the lawyer and the financial institution.

IV. Revocation, Termination and Reauthorization

- A. The State Bar and the Foundation each have the right to initiate recommendations to the other for the revocation and termination of a Financial Institution as a qualified participant in the Arizona IOLTA program, if any of the following has occurred:
 - 1. Identification, documentation, and notification of the Financial Institution's deficiency in meeting the requirements of Rule 43 of the Arizona Supreme Court (ATTACHMENT A), evidencing a breach of any provision of this Participation Certification and the Financial Institution's failure to respond and make mutually agreed upon arrangements to correct the breach within the ninety (90) days allowed after receipt of the written notice of deficiency.
 - 2. The Financial Institution understands that the State Bar will notify the attorney IOLTA account holders of the possibility of the Financial Institution's termination if the Financial Institution has not cured the noncompliance following forty-five (45) days from the notification of noncompliance.
- B. The Financial Institution may withdraw from the Arizona IOLTA program with thirty (30) days written notice; however, the Financial Institution is bound to all terms and obligations under this Participation Certification until all Arizona IOLTA funds have been transferred from said Financial Institution.
- C. The State Bar and the Foundation may not cancel or revoke this Participation Certification except upon 30 days' advance written notice to the Financial Institution.
- D. The terms of this Participation Certification continue in effect while the Financial Institution is attempting to become reauthorized as provided for in Rule 43.

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V. Further Understanding

- A. The Foundation is not subject to any interest withholding requirements and pursuant to Internal Revenue Service (IRS) regulations does not need to file an exemption certificate. The Financial Institution shall not issue an IRS Form 1099 to the Foundation on any interest earned and paid on IOLTA accounts to the Foundation. Financial Institutions should use the Foundation's taxpayer identification number: 95-3351710 for any reports to taxing authorities.
- B. This Participation Certification constitutes a commitment to abide by the requirements set forth herein governing the approval and termination of approval status for Financial Institutions pursuant to Rule 43.
- C. The Foundation, the State Bar, and Financial Institution understand that confidential information will be shared among these parties and the parties shall use the confidential information solely for the purposes contemplated by Rule 43 regulations and the requirements set forth herein, and shall not disclose confidential information to any third party except as necessary under the Arizona IOLTA program requirements.
- D. The Foundation, the State Bar, and Financial Institution agree to maintain appropriate administrative, technical and physical safeguards for all confidential information in accordance with applicable law.

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By signing below, the undersigned acknowledges that he/she has reviewed and understands Rule 43 and the requirements set forth in this Participation Certification and Attachments and agrees to abide by the terms and conditions stated herein. This Participation Certification is effective from July 1, 2018 until June 30, 2019. The State Bar and the Foundation have the right to enforce the Rule 43 regulations and requirements set forth herein.

Financial Institution Name

AUTHORIZED REPRESENTATIVE

Authorized Representative Signature

Date

Printed / Typed Name

Printed / Typed Title

Address

City, State, Zip

E-Mail

Phone

IOLTA REPORT CONTACT

IOLTA Report Contact Signature

Date

Printed / Typed IOLTA Report Contact

Printed / Typed Title

Address

City, State, Zip

E-Mail

Phone

Signed IOLTA Certification should be returned to:

Arizona Foundation for Legal Services and Education
ATTN: IOLTA Administrator
4201 N. 24th Street, Ste 210
Phoenix, AZ 85016
Or by fax to:
(602) 773-3160
Or by scanned email to:
AZIOLTA@azflse.org