

Trust Account Options *as of July 1, 2016*

Trust Account Options as of July 1, 2016 The 2016 trust account rule provides lawyers and law firms with several options for their IOLTA trust accounts. In determining which option will work best, a lawyer or law firm should first identify the types of transactions that are currently being used and those that the lawyer or law firm would like to use in the future. The types of transactions that are now permitted include: remote deposits; electronic transfers (ACH transactions); credit, debit and pre-paid cards; checks, wire transfers, and teller deposits.

Each of the options under the 2016 rule offers a different approach to safeguarding funds in trust, and is based on the types of transactions that the lawyer wants to use. The three options include: **1)** a stand-alone, traditional IOLTA, in which electronic transactions are prohibited; **2)** an E-Banking IOLTA Trust Account which permits electronic deposits and disbursements and requires maintaining a second account that is a traditional IOLTA; and **3)** an Alternative to the E-Banking Trust Account, which permits checking and electronic transactions within a single IOLTA account.

1. The Standard IOLTA Trust Account SCR 20:1.15(c)(1)

The Standard IOLTA is the traditional IOLTA account that has served lawyers well for decades. If you are happy writing checks and taking deposits to the bank, this one is for you. If you are not making electronic deposits or disbursements, and you have complied with the requirements of SCR 20:1.15, effective prior to July 1, 2016, the new rule does not require you to make any changes to that account. However, please see the new **Security Requirements**, below.

Remote Deposits. There is one possible feature that can be added to the standard IOLTA. The new rule permits lawyers to make remote deposits to this account, provided that the lawyer keeps a record of the client or matter to which each remote deposit relates, and the lawyer's bank maintains an image of the front and reverse of the deposit item for at least six years. See, [SCR 20:1.15\(f\)\(3\)a.](#) . Again, please see the new **Security Requirements**, below.

Security Requirements: While the new rule requires no changes to the Standard IOLTA account, lawyers are now "responsible for the security of each transaction in the lawyer's trust account and shall not conduct or authorize transactions for which the lawyer does not have commercially reasonable security measures in place." See, [SCR 20:1.15\(f\)\(1\)](#) .

Commercially Reasonable Security Measures: Lawyers should consult their financial institutions to determine what security measures are commercially reasonable for the specific types of electronic transactions that a lawyer plans to use. [read more](#) .



2. The E-Banking Trust Account SCR 20:1.15(f)(3)b.

If you have been accepting credit and debit cards, PayPal, or electronic payments for fee and cost advances and you want to continue doing so, an E-Banking Trust Account (EBTA) may work well for you without requiring extensive changes to the way that you now handle fees and costs.

An EBTA operates similarly to the Credit Card Trust Account (CCTA) that was available under the former rules. Just like the CCTA, two separate IOLTA accounts are required for this option. The first is an E-Banking IOLTA Trust Account and the second is a standard, or “primary IOLTA,” as it is called in the new rule.

While CCTAs were limited to the receipt of legal fees and costs by credit card, debit card and other electronic transactions, the new EBTA is much more versatile, allowing lawyers to make deposits for any purpose whatsoever and to disburse funds electronically rather than by check. As with the CCTA, funds can be deposited to an EBTA via any type of payment card, including credit and debit cards and via other electronic deposits as long as a third party making the deposit is prohibited from withdrawing funds without the lawyer’s permission.

If your firm currently has a CCTA and a Standard IOLTA, you can convert the CCTA to meet the requirements for an “E-Banking Trust Account” that are identified in [SCR 20:1.15\(f\)\(3\)b.](#) .

Converting an Existing CCTA: In order to convert a CCTA to an EBTA, you will need to change the account title that appears on the account’s signature card from “Credit Card Trust Account” to “E-Banking Trust Account.” Confirm that the EBTA will remain an IOLTA account and that there is an Overdraft Agreement on file with OLR for the account. Then, discuss with your banker the types of electronic transactions that you plan to use and determine what steps you need to take to ensure that [commercially reasonable security measures](#)  are in place in order to conduct those transactions.

Your standard IOLTA is called the “primary IOLTA” under the new rule, but it is not necessary to change the title of this account at your bank. You will, however, need to review the primary IOLTA’s security with your banker, particularly if you plan to electronically transfer funds from the EBTA to the

primary IOLTA rather than using checks. The only electronic transactions that are permitted in the primary IOLTA are remote deposits and transfers to and from the EBTA.

Opening a new EBTA: If you are opening a new account as an EBTA, you may already have a standard IOLTA. That IOLTA will become your “primary IOLTA.” It is not necessary to change the title of the existing, primary IOLTA at your bank. Your new IOLTA must be titled: “E-Banking Trust Account.” Just like any other IOLTA, the EBTA must be subject to an [IOLTA Agreement](#)  and an [Overdraft Notification Agreement](#) . Discuss the types of electronic transactions that you plan to use with your banker, and determine what steps you need to take to ensure that [commercially reasonable security measures](#)  are in place to conduct those transactions.

EBTA Checks: It is no longer necessary to use checks to transfer funds from the E-Banking Trust Account to the primary IOLTA account. Funds may now be electronically transferred from the EBTA to the primary IOLTA. If you choose to continue using checks, you may use your CCTA checks until they are depleted. However, when new checks are ordered, the title of the account printed on the checks must be changed to “E-Banking Trust Account.”

Remote Deposits: If you choose to transfer funds from the EBTA to the primary IOLTA or the business account by check, you can remotely deposit those checks to the primary IOLTA or the business account. Again, be sure to verify with your bank whether this requires any additional security measures.

Additional Requirements of an EBTA

A. Maintenance Account: Lawyer or law firm funds must be held in the EBTA in an amount that is reasonably sufficient to cover the monthly account fees as well as the fees deducted from deposits. A ledger for those law firm funds (i.e., a Maintenance Account Ledger) must be kept for the various fees and surcharges, and the law firm funds that are held in the account to cover them. (See, [SCR 20:1.15\(f\)\(3\)b.3. and 4.](#) ) Arranging to have the fees and surcharges deducted from the law firm’s business account, rather than the trust account, does not violate this rule.

B. Transfer Requirements: The gross amount of each deposit to the EBTA must be transferred from the EBTA within 3 business days of its availability. If there are not sufficient funds in the EBTA’s Maintenance Account to cover any fees or surcharges that reduced the amount of a deposit, the lawyer or law firm must deposit additional law firm funds to the Maintenance Account to cover those deductions.

◆ **Legal Fees and Cost Advances:** If the law firm holds unearned fees in trust, pursuant to [SCR 20:1.5\(f\)](#), those fees, as well as any cost advances, must be transferred electronically or by check to the primary IOLTA within 3 business days of availability. (See, [SCR 20:1.15\(f\)\(3\)b.4.a.](#))

◆ **Earned Fees and Fees subject to SCR 20:1.5(g):** If the law firm receives earned fees through the EBTA rather than the business account or uses the [SCR 20:1.5\(g\)](#) alternative to holding unearned fees in trust, those fees, as well as any cost reimbursements received via the EBTA, must be transferred electronically or by check to the firm's business account within 3 business days of availability. (See, [SCR 20:1.15\(f\)\(3\)b.4.b.](#))

◆ **Client Directives:** If a client directs the lawyer or law firm to transfer funds electronically, such transfers must be promptly made from the EBTA. (See, [SCR 20:1.15\(f\)\(3\)b.4.c.](#)) Such directives may relate to funds that have been deposited in the EBTA but not yet transferred to the primary IOLTA or to funds that have been held in the primary IOLTA and are then transferred to the EBTA for disbursement.

CAUTION: While lawyers are required to promptly transfer funds at a client's request, a lawyer must also exercise caution to assure that the funds from which the transfer will be made have actually cleared and are available for disbursement. While a financial institution may make funds available prior to the clearing of a deposit, lawyers must be very cautious about disbursing funds before a deposit has cleared.

◆ **Other Funds:** All funds received in trust via electronic transfer, other than those identified above, must be transferred electronically or by check to the primary IOLTA within 3 business days of availability. (See, [SCR 20:1.15\(f\)\(3\)b.4.d.](#))

◆ **Fees and Surcharges relating to:**

- **Legal Fees and Costs:** The lawyer or law firm **is** responsible for paying fees and surcharges that relate to legal fees and costs, regardless of whether the fees are advanced or earned, or whether the costs are advanced or reimbursed.

- **Any Other Purpose:** The client **may be** responsible for paying fees and surcharges that relate to funds received in trust for any purpose other than legal fees or costs (e.g., receipt of a personal injury settlement or any other type of settlement, an escrow, a restitution payment, a fine, etc.) the lawyer or law

firm may deduct the electronic transfer fees and surcharges relating to that deposit from the client's funds. Prior to doing so, however, the lawyer must advise the client of the anticipated fees and surcharges for receiving the electronic payment, and the client must agree, in writing, to the electronic payment along with the associated fees. (See, [SCR 20:1.15\(f\)\(3\)b.4.e.](#) )

C. Record-keeping Requirements: The lawyer or law firm must maintain records regarding each disbursement from an EBTA. (See, [SCR 20:1.15\(f\)\(3\)b.5.](#) )

◆ **Checks:** The client matter and purpose of each check must be identified on the check's memo line.

◆ **Electronic Transfers:** The date, amount, payee, client matter and reason for disbursement must be identified in the financial institution's electronic payment system.

◆ **Transfers prohibited due to lack of records:** Lawyers and law firms cannot make disbursements from an EBTA by credit, debit, prepaid or other types of payment cards.

CAUTION: Any type of electronic payment that does not generate a record of the date, amount, payee, client matter and reason for the disbursement in the financial institution's electronic payment system is prohibited.

D. Chargebacks, Reversals and Negative Balances: Within 3 business days of being notified of a chargeback, surcharge or ACH reversal in an EBTA, the lawyer or law firm must replace all funds that have been withdrawn and reimburse the EBTA for any shortfall or negative balance caused by those transactions. In addition, the lawyer or law firm cannot accept new deposits or transfer funds from the primary IOLTA to the EBTA until the lawyer or law firm has reimbursed the EBTA for any shortfall caused by a chargeback, surcharge or ACH reversal.



3. Alternative to the E-Banking Trust Account

If you have been accepting credit and debit cards, PayPal, or electronic payments for fee and cost advances or you want to begin doing so, the Alternative to an E-Banking Trust Account is an option, but will require arranging for account security and purchasing a bond or crime insurance policy to cover losses due to theft, including cyber scams.

The Alternative to the E-Banking Trust Account, which will be referred to as an "All-in-One IOLTA," enables a lawyer or law firm to use a single IOLTA account for checking and electronic transactions. Funds can be deposited to the All-in-One IOLTA via bank deposit, remote deposit, any type of payment card, including credit, debit and prepaid cards, and any other electronic deposit as long as a third party making the deposit is prohibited from withdrawing funds without the lawyer's permission. Funds can be disbursed from the account by check or electronic transfers.

If your firm currently has a traditional IOLTA, that account can be converted to an All-in-One IOLTA without changing the account's title, so long as the title includes words similar to "Client Account" or "Trust Account," not simply "IOLTA Account." The All-in-One IOLTA must also be subject to both an IOLTA Agreement and an Overdraft Notification Agreement.

Converting a traditional IOLTA to an All-in-One IOLTA simply requires establishing the safeguards required by [SCR 20:1.15\(f\)\(3\)c.](#)  Those safeguards include:

A. Commercially Reasonable Account Security: Lawyers should consult their financial institutions to determine what security measures are "commercially reasonable" for the specific types of electronic transactions that a lawyer plans to use. [read more](#) . (See also, [SCR 20:1.15\(f\)\(3\)c.1.](#) )

B. A Bond or Crime Insurance Policy: The lawyer or law firm must maintain a bond or crime policy to cover loss of funds stemming from theft by law firm staff, account takeover, cyber or other scams.

CAUTION: Cyber insurance and cyber liability insurance do not meet this requirement. Such policies typically cover costs incurred by a business due to privacy breaches and liability to third parties for loss of personally identifiable information. Any policy that will not replace funds lost due to cyber crime will not meet this requirement.

C. Procedures for Chargebacks, Reversals, Fees, and Deductions from Deposits: The lawyer or law firm must either:

1) Arrange for all chargebacks, ACH reversals, monthly account fees and fees deducted from deposits to the All-in-One IOLTA to be withdrawn from the firm's business account; or

2) Replace any funds withdrawn by the financial institution or card issuer within 3 business days of being notified of a chargeback, surcharge or ACH reversal in the All-in-One IOLTA. In addition, the lawyer or law firm must reimburse the All-in-One IOLTA for any shortfall or negative balance and must do so before disbursing any funds from that account.

D. Compliance with Record-keeping Requirements: The lawyer or law firm must maintain complete records regarding each disbursement from an All-in-One IOLTA. (See, [SCR 20:1.15\(g\)\(1\)](#). )

◆ **Checks:** The client matter and purpose of each check must be identified on the check's memo line.

◆ **Electronic Transfers:** The date, amount, payee, client matter and reason for disbursement must be identified in the financial institution's electronic payment system.

◆ **Transfers prohibited due to lack of records:** Lawyers and law firms cannot make disbursements from an All-in-One IOLTA by credit, debit, prepaid or other types of payment cards.

CAUTION: Any type of electronic payment that does not generate a record of the date, amount, payee, client matter and reason for the disbursement in the financial institution's electronic payment system is prohibited.