27 NCAC 01D .1317 COMPARABILITY REQUIREMENTS FOR IOLTA ACCOUNTS

(a) Comparability of Interest Rate. Eligible Banks that offer and maintain IOLTA Accounts must pay to an IOLTA Account the highest interest rate generally available from the bank to non-IOLTA Accounts (Comparable Rate) when the IOLTA Account meets or exceeds the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate generally available from the bank to non-IOLTA accounts, an Eligible Bank may consider factors, in addition to the IOLTA account balance, customarily considered by the bank when setting interest rates for its customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts.

(b) Options for Satisfying Requirement. An Eligible Bank may satisfy the Comparable Rate requirement by electing one of the following options:

(1) use an account product that has a Comparable Rate;

(2) without actually changing the IOLTA Account to the bank's Comparable Rate product, pay the Comparable Rate on the IOLTA Account; or

(3) pay the benchmark rate (Benchmark), which shall be determined by NC IOLTA periodically, but not more frequently than every six months, to reflect the overall Comparable Rate for the NC IOLTA program. The Benchmark shall be a rate equal to the greater of: (i) 0.65 percent or (ii) 65 percent of the Federal Funds Target Rate as of the first business day of the IOLTA remitting period, and shall be net of allowable reasonable service charges. When applicable, NC IOLTA will express the Benchmark in relation to the Federal Funds Target Rate.

(c) Options for Account Types. An IOLTA Account may be established as:

(1) subject to Paragraph (d), a business checking account with an automated investment feature (Sweep Account), such as an overnight investment in financial institution daily repurchase agreements or money market funds invested solely in or fully collateralized by US government securities, which are US Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof;

(2) a checking account paying preferred interest rates, such as market based or indexed rates;

(3) a public funds interest-bearing checking account, such as accounts used for governmental agencies and other non-profit organizations;

(4) an interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, or business checking account with interest; or

(5) any other suitable interest-bearing deposit account offered by the bank to its non-IOLTA customers.

(d) Financial Requirements for Sweep Accounts. If a bank establishes an IOLTA Account as described in Paragraph (c)(1), the following requirements must be satisfied: an overnight investment in a financial institution daily repurchase agreement shall be fully collateralized by United States government securities, as described in this Rule, and may be established only with an Eligible Bank that is "well capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. A "money market fund" is an investment company registered under the Investment Company Act of 1940, as amended, that is qualified to hold itself out to investors as a money market fund under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act. A money market fund shall be invested solely in United States government securities or repurchase agreements fully collateralized by United States government securities, as described in this Rule, and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars ($250,000,000).

(e) Interest Calculation. Interest shall be calculated in accordance with an Eligible Bank's standard practice for comparable non-IOLTA Accounts.

(f) Higher Rates and Waiver of Service Charges Allowed. Nothing in this rule shall preclude a participating bank from paying a higher interest rate than described above or electing to waive any service charges on IOLTA Accounts.

History Note: *Authority G.S. 84-23;*
Eff. July 1, 2010.