

AGENDA ITEM IIIA

JANUARY 2017

DATE: January 12, 2017

TO: Members, Executive Committee

FROM: Justin Ewert, Budget and Performance Analyst
Office of Research and Institutional Accountability

SUBJECT: Fund 88

EXECUTIVE SUMMARY

This item seeks to reallocate certain non-Sections revenues currently housed within a Sections family of funds. The monies at issue are currently within Fund 88. Pursuant to the Bar's reserve policy, adopted March 11, 2016, Sections Funds are categorized as Special Revenue Funds, meaning that although these funds could be accounted for within the General Fund, there is compelling reason to account for the use of these resources separately. Over the past 15 years the Fund 88 balance has grown and was approximately \$2.9 million at the end of 2016. A chart showing the growth of the fund balance over the years is provided as Attachment A.

Last year, the Chief Operating Officer (COO) began to explore the nature of Fund 88 to better understand its relationship to Sections operations and the source of its large fund balance. While the Office of Education Director responsible for the Fund, along with leadership from the Council of State Bar Sections, appeared to have reached a consensus - about the nature of Fund 88 - that it was non-Sections education revenue - the COO wanted to conduct further analysis and review. The results of that effort, which are documented below, indicate that the Fund is inappropriately categorized as part of the Sections Special Revenue Funds, and that it instead represents almost entirely *unrestricted General Fund* revenue. The COO presented these preliminary findings to the Council of State Bar Sections and no objections were raised. The Planning and Budget and Audit Committees were asked to review the work that staff had done to date on this issue at a joint meeting held on December 12, 2016, and provide feedback and direction in preparation for a formal recommendation to transfer Fund 88 to the General Fund. The Committees concurred with staff's findings and directed them to proceed in their work and present the results to the Executive Committee acting on behalf of the Board of Trustees.

The Executive Committee is asked to approve the recommended transfers from Fund 88 outlined in this agenda item. Once completed, these transfers will result in the Fund 88 fund balance totaling \$0, at which point it will be dissolved.

BACKGROUND

Fund 88 Revenue

Continuing Legal Education

Fund 88 serves largely as a clearinghouse for online revenue received from InReach, which hosts the State Bar's online Continuing Legal Education (CLE). This revenue is received quarterly from InReach as a lump sum payment for all CLE. A report from InReach is then used to reallocate a majority of the revenue back out to the Sections that produced the respective educational programs. An example of this report is provided as Attachment B.

In addition to online CLE developed by the Sections, InReach hosts other CLE programming, including Lawyering Skills Programs, Ethics, Substance Abuse, Legal Services and Elimination of Bias. Revenue from these programs has not historically been reallocated, but has instead remained in Fund 88.

CLE Revenue for State Bar Professional Liability Insurance Policyholders Benefit

An additional Fund 88 revenue source relates to a relatively new benefit added to the State Bar's professional liability insurance program. In 2012, the Bar amended its contract for the program to provide policy holders with 25 units of State Bar online CLE at no cost, a 50% Solo Summit registration discount, a \$200 Annual Meeting discount, and a free first year membership in a new Section of their choice. As compensation for the value of these benefits, the program broker has made payments to the Bar through 2015 totaling \$430,000. These payments have all been deposited in Fund 88.

Rebate Revenue

Mosaic Event Management contracts with the Sections for hotel site selection and contract negotiation services. As part of the contract, Mosaic pays the State Bar 10% of all commissions they receive from bookings on behalf of the State Bar Sections. In addition, the Sections have a contract with Documation for design, printing and mailing services for all of the educational promotion pieces. Each year Documation provides a royalty annually to the Sections based on work produced per annum. Historically, all of this rebate revenue was deposited in Fund 88, based on the premise that Fund 88 was used to pay for shared meeting expenses, primarily videographers used at annual meetings, and thus the rebate revenue could be used to offset these shared costs. The total amount of rebate revenue identified was \$369,789.

Miscellaneous Revenue

In addition, this Fund also received minimal amounts of revenue from interest, sponsorships, pamphlets, rebates, the Section Education Institute, Solo Summit and other workshops.

Fund 88 Expenses

As noted above, Fund 88 has been used to pay for meeting expenses for both Section and Non-Section CLE programming, including videographers and other technical support that has enabled programs to be captured and then sold online. Historically these charges have averaged approximately \$18,000 annually.

In addition to these routine expenses, in 2016, a percentage of a number of Office of Education staff were charged to Fund 88. This was done to address concerns raised by the Sections regarding increased cost allocation to their funds. For 2016, the budgeted Fund 88 salary allocation totaled \$168,000. Prior to 2016, there was no salary charged to Fund 88.

DISCUSSION

Fund 88 Analysis and Review

In 2015, the Bar contracted with Moss-Adams to conduct a review of Fund 88 to better understand the nature of the Fund and to determine if any of the fund balance needed to be transferred to Sections funds¹. While the review identified some nominal needed reallocations of revenue, both to and from Fund 88 (and the Sections), no significant transfer was recommended, and no concerns were identified regarding the methodology underlying ongoing decisions about what revenue remained in Fund 88 versus what was identified for transfer to the Sections. The Moss-Adams review is provided as Attachment C.

Subsequent to the Moss-Adams review, which served as a useful initial indication of the appropriate characterization of Fund 88 as non-Sections Fund revenue, staff from the Office of Finance and the Office of Research and Institutional Accountability undertook a detailed review of every Fund 88 deposit and expenditure dating back to 2003. The InReach data used for comparison went back to 2007, the first year for which such records are available. This work has specifically involved:

- Obtaining transaction level data from the InReach system for the years 2007-2015 (over 800,000 records);
- Sorting this data using statistical software into two groups: Sections and non-Sections CLE by using the “primary category” assigned to each online course;
- Taking the non-Section CLE and further sorting into type of program provided to identify resources responsible for production while comparing this against previous Annual Meeting program listings;
- Identifying the resources responsible for production for those programs not listed in the Annual Meeting program;
- Reconciling these revenue amounts against the Oracle system revenue report totals; and
- Creating a percentage allocation from the available data to apply to the non-Section CLE fund balance.

While the bulk of Fund 88, comprised of largely non-Sections revenue as set forth herein, should be transferred to the General Fund, there are other necessary transfers that should be effectuated as follows:

- **Non-Sections, Non-General Fund Online CLE Revenue.** A portion of the Fund 88 fund balance derives from non-Sections and non-General Fund supported online CLE, specifically content developed by the Bar’s Lawyer Assistance Program (LAP) and Elimination of Bias (EOB) programs. Based on a review of the number of LAP and EOB programs accessed via InReach, staff recommends that these transfers of \$238,211 and \$89,457 for LAP and EOB respectively
- **CLE Revenue for State Bar Professional Liability Insurance Policyholders Benefit.** The costs associated with the actual utilization of the free CLE, reduced cost Solo

¹ The initial assumption was that Fund 88 included revenue that might be more appropriately characterized as Sections revenue.

Summit and Annual Meeting Registration, and section membership benefits, related to this benefit have not been consistently tracked. These costs will be identified and prospectively tracked, and the associated costs will be borne by the revenue deposited for this purpose. With respect to the \$430,000² that has already been deposited, staff recommends that it be transferred to the Sections Administration Fund, Fund 70, pending further analysis. Staff will specifically determine how many vouchers have been used and for what specific purpose, and allocate the benefit payment accordingly. It is anticipated that much of the benefit payment identified for allocation will go to the Sections, as a result a transfer to Sections Administration Fund is recommended. After this accounting has been completed, any remaining money should be transferred to the General Fund, EOB Fund or LAP Fund.

- **Rebate Revenue.** As described above, revenue has been generated through Mosaic and Docuement rebates. These funds were originally left in Fund 88 to help offset costs associated with creating content at annual meetings (e.g. videographer costs). The total amount of the rebate identified is \$369,789.

Given that the current recommendation proposes to distribute all monies out of Fund 88, the approach to rebate revenue has been revisited. This revenue was intended to address certain annual meeting costs; as reflected in Attachment D, the total amount of these costs over the studied period is \$137,488. Deducting these expenses (\$137,488) from the total amount of rebate received (\$369,789) results in a \$232,301 balance that should be allocated to the Sections Funds, as it is the Sections activity that is the generating source for these rebate payments. This proposal reflects our recommendation that these monies be allocated on the same proportional share basis that is used to allocate overhead expenses to the Sections.

- **Moss Adams Review Offset.** The Moss Adams review recommended a \$32,571 transfer from the Sections Funds to Fund 88. As a result of these recommendations, the \$662,301 transfer to the Sections Fund from Fund 88 for prior year rebate payments and MCLE benefits has been reduced to \$629,730. Please see Attachment D for this calculation.

Future non-Sections InReach revenue will be deposited in the General Fund (or EOB or LAP Funds as appropriate). Any future rebate revenue will be allocated out to the Sections in accordance with the proportional cost sharing methodology currently employed to allocate the Office of Education overhead costs.

Future CLE State Bar Liability Insurance Policyholders Benefit revenue will additionally be allocated to the appropriate Sections in the future.

RECOMMENDATION

² Moss Adams indicated this amount should be transferred to the General Fund since it was related to the insurance programs that are in the General Fund. Although the insurance programs are located in the General Fund, the purpose of these funds is to reimburse costs related to CLE, which is why staff believes this money is more appropriately transferred to the Sections Administration Fund.

Staff recommends that the Board:

1. Transfer \$1,380,184 from Fund 88 to the General Fund.
2. Transfer \$629,730 from Fund 88 to the Sections Funds.
3. Transfer \$89,457 from fund 88 to the Elimination of Bias Fund
4. Transfer \$238,211 from Fund 88 to the Lawyer Assistance Program Fund

FISCAL/PERSONNEL IMPACT

As outlined above.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

BOARD COMMITTEE RECOMMENDATIONS

Staff recommends that the Executive Committee approve the following resolution:

Resolved, that the Executive Committee hereby adopts and directs staff to implement the following transfers:

1. Transfer \$1,380,184 from Fund 88 to the General Fund.
2. Transfer \$629,730 from Fund 88 to the Sections Funds.
3. Transfer \$89,457 from fund 88 to the Elimination of Bias Fund
4. Transfer \$238,211 from Fund 88 to the Lawyer Assistance Program Fund

Further Resolved, that the Executive Committee authorizes staff to make technical adjustments to the transfers indicated above following the close of the 2016 fiscal year.

ATTACHMENTS LIST

- A. Fund 88 Balance Growth
- B. Sample InReach Report
- C. Moss Adams Fund 88 Review
- D. Fund 88 Calculations