



The State Bar *of California*

OPEN SESSION

AGENDA ITEM

APRIL 2019

PROGRAMS COMMITTEE III.A

DATE: April 25, 2019

TO: Members, Programs Committee

FROM: Hellen Hong, Director, Office of Access & Inclusion
Doan Nguyen, Program Supervisor, Office of Access & Inclusion

SUBJECT: Approval of Distribution of Bank Grant Funds for 2020-2022 Grant Cycle

EXECUTIVE SUMMARY

In 2015 and 2016, the State Bar of California received \$50.9 million from Bank of America and Citi following the settlement of lawsuits brought by the U.S. Department of Justice (DOJ). These national settlements required that the funds be distributed to legal aid organizations for the sole purpose of providing “foreclosure prevention legal assistance and community redevelopment legal assistance.” The funds were provided to the entity in each state responsible for distribution of Interest on Lawyers’ Trust Accounts (IOLTA). To date, the State Bar, through the Legal Services Trust Fund Commission (LSTFC), has allocated \$40.8 million to legal aid organizations funding 128 community redevelopment and foreclosure prevention projects.

The LSTFC recommends distribution of \$6.5 million of the remaining \$10.5 million¹ Bank Community Stabilization and Reinvestment Grant (BCSR) funds for statewide and regional foreclosure prevention and community redevelopment collaborations to existing IOLTA-funded providers through a competitive Request for Proposal (RFP) process. If approved, approximately \$4 million will remain for future distributions.

¹ The amount already allocated (\$40.8 million) plus the amount remaining (\$10.5 million) does not equal the total amount awarded (\$50.9 million) as a result of investment income earned on the principal and the authorized use of funds for administrative expenses.

BACKGROUND

At its March 14, 2019 meeting, the Programs Committee deferred action on the Legal Services Trust Fund Commission's (LSTFC) recommended distribution of \$6.5 million of the remaining \$10.5 million Bank Community Stabilization and Reinvestment Grant (BCSR) funds for statewide and regional foreclosure prevention and community redevelopment collaborations. The Programs Committee requested additional information regarding: (1) why eligibility for direct funding is restricted to existing IOLTA-funded legal aid organizations; (2) how non-IOLTA funded organizations have, if at all, benefited from the settlement funds and whether the 2020-2022 RFP should expressly expand the reach of the grants beyond the IOLTA community; and (3) whether a formal scoring rubric could be implemented for the upcoming review of Request for Proposals (RFP). The following day, the Board of Trustees approved delegating the final decision on this item to the Programs Committee.

DISCUSSION

This agenda item focuses on the specific questions posed by the Programs Committee at the March 14, 2019 meeting, noted above. The agenda item for that March meeting included a more comprehensive background and discussion on the bank grant process and this proposal for distribution of \$6.5 million. That agenda item is attached as attachment A for reference.

Following the direction of the Programs Committee at the March 14, 2019 meeting, staff and Programs Committee members Debbie Manning and Sean SeLegue met with the Chair of the Bank Grants Committee and the Chairs of the Legal Services Trust Fund Commission to share the concerns expressed by the Programs Committee. Ultimately, the LSTFC did meet to consider the issues, however Trustee SeLegue explained at that meeting that he and Trustee Manning had a better understanding about the rationale and distributions of funds, including non-IOLTA organizations, after discussions with the Commissioners, and now would recommend approval of the issuance of the RFP as presented to the Committee to avoid any delay on the implementation of the RFP. The analysis and outcomes of those discussions is set forth below.

RATIONALE ON RESTRICTION TO IOLTA-FUNDED ORGANIZATIONS

The first \$6.1 million that the State Bar received in 2015 from Bank of America and Citi prohibited the use of settlement funds for expenses related to the administration of these funds, including salaries and benefits of State Bar employees. As a result, the LSTFC decided to limit grants to existing-IOLTA funded organizations to avoid additional administrative expenses.

In 2016, the State Bar received a second distribution of \$44.8 million from Bank of America. In anticipation of these funds, State Bar staff asked the Bank of America Monitors to permit the funds to be used to cover administrative expenses related to the administration of these funds. The new settlement terms allowed "expenses directly related to the purpose of providing funds to legal aid organizations in the state of California to be used for foreclosure prevention legal

assistance and community redevelopment assistance.”² General overhead expenses, including indirect costs, such as general information technology and accounting support from the State Bar, were still prohibited. Although the Bank of America settlement terms expressly permitted direct administrative expenses, the LSTFC believed that it was prudent to limit eligibility to existing IOLTA organizations since there was already a long established structure in place to monitor grant funds, to avoid spending limited staff resources to build new processes for a short term fund, and to distribute the maximum amount to funding organizations.

EXISTING PROCESSES TO DETERMINE IOLTA-ELIGIBILITY AND MONITORING

The State Bar’s Office of Legal Services (now known as the Office of Access & Inclusion) has distributed IOLTA funding to qualified legal aid organizations since the implementation of the legislation in Business and Professions Code section 6210-6228 (IOLTA Trust Fund statute). Eligibility criteria include requirements that IOLTA grantees be nonprofit corporations, maintain quality control procedures approved by the LSTFC, meet minimum funding and service criteria set out in the IOLTA Trust Fund statute, and that grantees’ primary purpose is to provide legal services to indigents or other legal services organizations without charge. The requirements regarding eligibility and use of funds are reflected in the IOLTA Trust Fund statute, rules, guidelines, grant conditions and incorporated into a written agreement with each grant recipient. To monitor compliance with these requirements, the State Bar administers a system of grant reporting and oversight that includes written reports, regular personal contact, and on-site visits.

Oversight begins with the annual application for IOLTA funding. The application includes extensive information about the legal services provider’s activities and services, accompanied by an annual financial statement that must be audited (or reviewed if gross expenditures are less than \$500,000) by an independent certified public accountant. Following the LSTFC’s determination of eligibility and the amount of grant funds that would be allocated to each program based on the IOLTA formula, each applicant submits a proposed budget for use of the funds. The budget includes a narrative description of the services to be provided and how the efficacy and impact of those services will be measured and maximized. The LSTFC reviews this budget to ensure that it complies with the requirements noted above before any funds are actually distributed. Subsequently grant recipients provide written reports on their expenditure of grant funds, services provided, and clients or customers served. In the last IOLTA application cycle, six staff members reviewed approximately 100 applications over the span of five months, and each grant application required approximately three to fifteen hours of analysis in addition to follow-up with applicants and preparation for Committee and Commission meetings.

On-site visits supplement review of the application and budget documentation to monitor compliance with the rules and grant conditions as well as to evaluate provider effectiveness and monitor the provider’s fiscal practices for the handling of grant funds. Site visits are conducted on a three-year cycle.

² Bank Settlement Monitor Letter, page 5

Based on the current review structure, the LSTFC believed that the best way to ensure adequate oversight of grant funds and reduce administrative costs was to keep eligibility to current IOLTA grantees but allow and encourage those entities to subcontract with other nonprofits to support foreclosure prevention and community development work.

NON-IOLTA SUPPORTED ORGANIZATIONS BENEFITTING FROM SETTLEMENT FUNDS

All previous bank grant RFPs, though requiring the applicants to be IOLTA grantees, permitted grantees to subcontract with non-IOLTA organizations to expand the breadth of services available, encourage collaborations, and potentially reach broader communities. In the past three years, 58 non-IOLTA nonprofit organizations were funded more than \$4 million in total. Among other things, grants using non-IOLTA subcontracts sought to preserve mobile and manufactured homes in rural areas and develop statewide policy responses to address predatory lending scams. These collaborations included diverse groups of nonprofits throughout the state with different types of services. A few examples of the non-IOLTA organizations funded included: the Fair Housing of Riverside County, Venice Community Housing Corporation, Central Valley Children's Network, and Mesa Grande Band of Indians.

The 2020-2022 bank grant proposal continued this approach of permitting non-IOLTA programs as subcontractors, but did not seek to provide direct funding to non-IOLTA organizations. Staff recommend continuing this process for this proposal.

SCORING RUBRIC FOR EVALUATION OF PROPOSALS RECEIVED

Requests for Proposal (RFP) issued by the LSTFC (including those for Bank Grants and Equal Access Fund Partnership Grants), do not use a formal scoring rubric in determining which organizations to award funding. The 2017-2019 Bank Grant RFP and the proposed 2020-2022 Bank Grant RFP indicate funding will be awarded to programs whose proposals effectively demonstrate:

- Need of the Targeted Population
- Impact of (Planned) Services
- Deliverables within the Grant Period
- Partnerships and Collaboration
- Leverage and Sustainability
- Organizational Excellence
- Diversity of Project
- Services to Rural Areas

These criteria allow LSTFC flexibility to ensure that funds are distributed in an equitable manner based on the application pool, amount of requested funds, and ability to address emergent needs. Although a formal rubric could be developed, staff recommends that the current RFP be released as presented and that all the RFPs (including Equal Access Fund Partnership Grants and Bank Grants) moving forward have a formal scoring rubric. Since the 2020 Equal Access Fund Partnership Grant RFPs have been already released, the scoring rubric cannot be added at this

time. This recommendation allows the LSTFC and staff to work together to develop a consistent rubric to be used for all RFPs issued in 2020 or later.

If the Programs Committee approves the recommendations set forth in this agenda item, we would still be on track to award distribution of funds as originally anticipated in January 2020.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 4. Support access to justice for all California residents and improvements to the state's justice system.

Objective: a. Support increased funding and enhanced outcome measures for Legal Services.

RECOMMENDATIONS

It is recommended that the Programs Committee approve the following resolution:

RESOLVED, that the Board of Trustees, through its delegation to the Programs Committee, approve distribution of \$6.5 million of the remaining BCSR funds for statewide and regional foreclosure prevention and community redevelopment collaborations; and it is

FURTHER RESOLVED, that the State Bar award up to \$2.17 million annually for three years using a competitive RFP process as outlined in Attachment A of this agenda item, with projects commencing January 2020 and concluding December 31, 2022.

ATTACHMENT LIST

- A. 132 March 2019 Program Committee Memo III.C



The State Bar *of California*

OPEN SESSION

AGENDA ITEM

132 March 2019

PROGRAMS COMMITTEE III.C

DATE: March 14, 2019

TO: Members, Programs Committee
Members, Board of Trustees

FROM: Hellen Hong, Director, Office of Access & Inclusion
Doan Nguyen, Program Supervisor, Office of Access & Inclusion

SUBJECT: Approval of Distribution of Bank Grant Funds for 2020-2022 Grant Cycle

EXECUTIVE SUMMARY

In 2015 and 2016, the State Bar of California received \$50.9 million from Bank of America and Citi following the settlement of lawsuits brought by the U.S. Department of Justice (DOJ). These national settlements provided funds to states for “foreclosure prevention legal assistance and community redevelopment legal assistance.” The funds were provided to the entity in each state responsible for distribution of Interest on Lawyers’ Trust Accounts (IOLTA). To date, the State Bar, through the Legal Services Trust Fund Commission (LSTFC), has allocated \$40.8 million to fund 128 community redevelopment and foreclosure prevention projects.

The LSTFC recommends distribution of \$6.5 million of the remaining \$10.5 million¹ Bank Community Stabilization and Reinvestment Grant (BCSR) funds for statewide and regional foreclosure prevention and community redevelopment collaborations to existing IOLTA-funded providers through a competitive Request for Proposal (RFP) process. If approved, approximately \$4 million will remain for future distributions.

BACKGROUND

A. First and Second Distributions of Bank Grant Awards

¹ The amount already allocated (\$40.8 million) plus the amount remaining (\$10.5 million) does not equal the total amount awarded (\$50.9 million) as a result of investment income earned on the principal and the authorized use of funds for administrative expenses.

In 2015, as a result of settlements between the U.S. DOJ and Bank of America and Citi, the State Bar received \$6.1 million for administration of grants to legal services organizations to provide “foreclosure prevention legal assistance and community redevelopment legal assistance.” The LSTFC assumed responsibility for the administration of these funds, including setting all parameters regarding grant eligibility, the amounts available for distribution, funding criteria and priorities, and grant periods. In carrying out this responsibility, the LSTFC defined the types of work that would be encompassed within the meaning of foreclosure prevention legal assistance and community redevelopment legal assistance. California, like many other states, defined community redevelopment legal assistance broadly, requiring projects to support and promote economic development by providing legal services that revitalize or stabilize low-income communities. To qualify as community redevelopment work, the services must be tied to broader systemic work that benefits the community as a whole. The bank settlement agreements did not require funds to be distributed to only IOLTA-funded organizations but the LSTFC believed that it was necessary to limit eligibility to existing IOLTA programs to ensure adequate oversight of grant funds and reduce administrative costs.

In the first round of grant distributions, 16 community development and nine foreclosure prevention projects, totaling close to \$6 million, were funded through an RFP process. Two- and three-year projects launched on January 1, 2016. The projects were innovative, geographically diverse, and served a variety of disadvantaged populations, such as day laborers, low-income children, and mobile-home owners in rural communities. Programs could propose projects requiring funding of up to \$175,000 per year.

In February 2016, the State Bar received an additional \$44.8 million from the Bank of America settlement to further support foreclosure prevention and community redevelopment efforts. The LSTFC again assumed responsibility for administering these funds, and issued a second round of grant awards based on proposals previously submitted in connection with the original \$6.1 million settlements, awarding \$2.8 million to seven additional community redevelopment and six additional foreclosure prevention projects that were not funded in the first round.

Programs were required to submit evaluations to capture the outcomes and economic benefits achieved. In 2016, these projects protected the housing of over 5,000 low-income households and engaged in impact litigation and advocacy work to develop over 10,000 new units of affordable housing. In addition, organizations participated in efforts to secure over \$500 million in additional funding for the development of affordable housing and rental assistance programs throughout California.

B. Third Distribution of Bank Grant Awards

On April 15, 2016, the LSTFC voted to approve another \$3 million of bank settlement funds for distribution through an RFP process, with projects beginning in January 2017. In 2017 alone, bank grant projects supported an additional \$200 million toward homelessness prevention. The grants were used to prevent an additional 413 foreclosures and protect the housing of over

42,000 low-income mobile-home residents, including seniors and families with children in rural communities.

Recognizing the value the remaining \$38 million could have on low-income Californians, the LSTFC carved out funds for a one-year planning period from July 2016 through June 2017. The planning period was intended to enable programs to thoughtfully work to identify the best and most impactful uses for the remaining \$38 million BSCR funds. The purpose of this planning period was (1) to enable programs of all sizes to participate in exploring use of funds and (2) to brainstorm and develop potential statewide or regional priorities and strategies. Seventy-four organizations opted into the one-year planning process, with each receiving a \$10,000 planning grant. Programs were required to use the planning grant towards developing individual, regional, and/or statewide project proposals and collaborations. At the end of the planning period, several substantive priority areas were identified by programs, including housing and homelessness prevention, capacity building for nonprofits and small businesses, and equitable development.

C. Fourth Distribution of Bank Grant Awards

On March 17, 2017, towards the end of the one-year planning period, the LSTFC voted to distribute approximately \$28.5 million in three-year grants, with projects commencing January 2018. The bank settlement agreements did not require distribution pursuant to the IOLTA formula, but the LSTFC determined that grants should be awarded using a modified version of the IOLTA formula and a competitive RFP process. Programs could receive a formula grant or a RFP grant, but not both. For the formula grant, each program that proposed qualifying community redevelopment or foreclosure prevention work received an amount calculated at 50% of the program's 2017 IOLTA formula allocation subject to a \$25,000 minimum and a \$150,000 maximum for each year of the three-year grant period. Programs that sought a larger award could apply for a RFP grant, which combined its regular formula grant amount with additional funds up to \$175,000 each year for a total maximum amount between the two sources up to \$325,000 per year. If a project was not funded through the competitive RFP process, the program that submitted the project was still eligible to receive its formula grant for funding of qualifying work. The LSTFC funded 71 projects through this process, leaving approximately \$10.5 million in remaining BCSR funds.

As part of the Appendix I review, the Board confirmed that going forward, the Board would approve LSTFC recommendations regarding how such discretionary funds will be distributed.

DISCUSSION

A. Rationale for Recommended 2020-2022 Distribution Plan

As described above, the one-year planning process from 2016 to 2017 enabled the LSTFC to strategize about how to distribute the remaining bank settlement funds to achieve the greatest impact for low-income communities throughout California. Given the likely one-time and non-recurrent nature of these funds, as well as their significant size, the LSTFC sought community

feedback through a series of surveys, webinars, and in-person statewide planning meetings. Existing IOLTA-funded programs had multiple opportunities to suggest how funds should be allocated. Through letters, surveys, in-person convenings, and public comments at LSTFC meetings, many programs advocated for the funds to be distributed through either the IOLTA formula or a hybrid structure where the funds would be awarded by a modified version of the IOLTA formula and competitive RFP processes. As a result of this planning process, the LSTFC determined to set aside \$6.5 million for special larger scale collaborative projects in addition to distributing \$28.5 million through formula and RFP grants as outlined above.

B. General Terms of Distribution Plan

At its November 16, 2018 meeting, the LSTFC approved recommending to the Board the distribution of \$6.5 million of the remaining bank grant funds for statewide and regional foreclosure prevention and community redevelopment collaborations. Under this proposal, the State Bar will award up to \$2.17 million annually for three years using a competitive RFP process.

Programs would apply for three-year grants, with funding to commence in January 2020. Eligibility would again be restricted to California IOLTA-funded programs. Such IOLTA-funded programs would be permitted to subgrant to non-IOLTA-funded 501(c)(3) programs or to other IOLTA-funded programs. The restriction to IOLTA programs is intended to reduce administrative costs and improve oversight.

The proposed distribution is intended to fund large, high-impact projects. The LSTFC recommends that funded projects consist of a collaboration between at least two programs, and services must be provided statewide or regionally. Statewide is defined as providing services in five of the following seven districts: Northern California, Sacramento Area, Bay Area, Central Coast, Central Valley, Eastern California, and Southwestern California. Regional is defined as: (1) five or more counties; or (2) two or more districts; or (3) at least two counties that have a total of least 400,000 people living below the 125% federal poverty threshold. The size of grant available for each collaboration is dependent upon the number of programs partnering in the project, with projects consisting of two partners eligible for up to \$175,000 per year, and projects consisting of five partners eligible for up to \$400,000 per year.

Grant awards will be based on a variety of factors, including, but not limited to, the demonstrated need of the targeted population,² impact of services, deliverables achievable within the grant period, extensiveness of partnerships and collaboration, sustainability, and organizational excellence. Preference will be given to projects serving rural or isolated areas. The criteria used are similar to previously issued RFPs. Although the RFP does not describe a scoring rubric, a guide based on the criteria was developed in previous review cycles and a similar guide will help with this review process. In addition, funded projects will be required to submit annual fiscal expenditures and program evaluations, including achievements of identified deliverables and outcomes.

² RFP does not include income eligibility requirements for clients served.

If the Board approves this concept for distribution of the funds, the RFP will be released the week of March 18, 2019, with a due date of April 12, 2019.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 4. Support access to justice for all California residents and improvements to the state's justice system.

Objective: a. Support increased funding and enhanced outcome measures for Legal Services.

RECOMMENDATIONS

It is recommended that the Programs Committee and Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve distribution of \$6.5 million of the remaining BCSR funds for statewide and regional foreclosure prevention and community redevelopment collaborations; and it is

FURTHER RESOLVED, that the State Bar award up to \$2.17 million annually for three years using a competitive RFP process as outlined in this agenda item, with projects commencing January 2020 and concluding December 31, 2022.

ATTACHMENT LIST

- A. 2020-2022 Bank Community Stabilization and Reinvestment Grants - Draft Request for Proposals

2020 – 2022 BANK COMMUNITY STABILIZATION AND REINVESTMENT GRANTS REQUEST FOR PROPOSALS

In 2015 and 2016, the State Bar of California received over \$50 million from Bank of America and Citi in accordance with bank settlements with the U.S. Department of Justice. These national settlements provided funds to IOLTA organizations in every state, for “foreclosure prevention legal assistance and community redevelopment legal assistance.” To date, the State Bar, through the Legal Services Trust Fund Commission, has allocated approximately \$41 million to fund 128 community redevelopment and foreclosure prevention projects.

On <insert date>, the State Bar’s Board of Trustees¹ approved the distribution of \$6.5 million of the remaining Bank Community Stabilization and Reinvestment Grant (BCSR) funds for statewide and regional foreclosure prevention and community redevelopment collaborations as described below.

I. Award Information

The Bar will distribute up to \$2.17 million annually for three years using a competitive RFP process. Programs may apply for three year grants, with funding to commence in January 2020. Eligibility is restricted to California IOLTA-funded programs; however, IOLTA-funded programs may subgrant to non-IOLTA-funded 501(c)(3) programs or to other IOLTA-funded programs. Organizations that previously received bank grant awards may apply for funding, and previous awards will not be applied to funding caps in this application cycle, even if prior awards are for the 2020 grant year.

A. Funding Caps

Each project must consist of one IOLTA-funded program serving as the lead Grant applicant and at least one other program, who may be an IOLTA or a non-IOLTA funded program. Funding caps are determined by the number of programs in a collaborative project:

- Two or more programs (including Grant applicant) may apply for up to \$175,000 per year for a total of \$525,000 for three years
- Three or more programs (including Grant applicant) may apply for up to \$250,000 per year for a total of \$750,000 for three years
- Four or more programs (including Grant applicant) may apply for up to \$325,000 per year for a total of \$975,000 for three years
- Five or more programs (including Grant applicant) may apply for up to \$400,000 per year for a total of \$1,200,000 for three years

The exact dollar amount of grants awarded will vary depending on the number and quality of applications received, as well as an assessment of needs for funding of the particular projects.

B. Subgrants

Subgrants may be made to non-IOLTA-funded 501(c)(3) organizations or to other IOLTA-funded programs. Funding caps for lead Grant applicants will include subgrantee amounts. If an IOLTA-funded program is both a lead Grant applicant and a subgrantee in another project, the subgrant award will not count towards the funding caps in the IOLTA-funded program’s lead Grant application. However, the total amount requested per organization (as Grant applicant and subgrantee) may be taken into consideration when determining grant awards. IOLTA-funded organizations that are both subgrantees of other organizations and are also applying as a grantee must demonstrate that these separate sources of funding will not fund the same activities.

¹ In this RFP, references to the State Bar mean the Board of Trustees, the Legal Services Trust Fund Commission, or staff in the Office of Access & Inclusion as appropriate.

C. How To Apply

Grant applications must be submitted via SmartSimple by 5:00 p.m. on Friday, April 12, 2019.

The State Bar has full discretion to award or hold funding for any reason, including an assessment of the ability of the applicants to meet the articulated requirements below. Any funds that are not committed in 2020 will be added to the distribution pool for future years.

Grantees will be required to complete annual evaluative reports and reports on milestones reached, including service and outcome data. The State Bar retains discretion with respect to funding for second and third year grants.

II. Guidelines for Statewide and Regional Collaborations

A project must include a collaboration between at least two programs, and services must be provided statewide or regionally.

A. Statewide

Grant applicants must establish that their services are available, and will be actually provided, on a “statewide” basis. Statewide is defined as providing services in five of the following seven districts: Northern California, Sacramento Area, Bay Area, Central Coast, Central Valley, Eastern California, and Southwestern California.²

B. Regional

Alternatively, grant applicants can provide services within a specific region. Region is defined as:

- 1) Five or more counties; or
- 2) Two or more districts; or
- 3) At least two counties that have a total of at least 400,000 people living below the 125% federal poverty threshold, which is approximately 5% of the total poverty population in California.³

III. Guidelines for Foreclosure Prevention and Community Redevelopment Legal Assistance

Grants may be awarded in either of two substantive areas:

A. Foreclosure Prevention Legal Assistance

Proposals should describe how grant funds would be used to prevent foreclosure in the context of the specific circumstances currently faced by the communities served. Recognizing that the foreclosure crisis has slowed, an applicant should discuss specifically which foreclosure trends, and ongoing borrower needs, the project seeks to address, and how the proposed services will meet those needs. Strategies may be across a broad range of options including but not limited to advice and counsel, representation, mediation programs, or policy and impact work, but should reflect an understanding of the current needs and challenges within the communities to be

² This definition of statewide is adopted from Support Center requirements for statewide support services and the seven districts are included in the 2017 Regional Map for Support Centers. A copy of the 2017 Map is included at the end of the RFP.

³ A copy of the county population living in poverty based on the California 2016 ACS Data is included at the end of the RFP.

served, knowledge of successful models, flexibility and creativity, and necessary collaborations to achieve stated goals.

Examples of legal assistance for foreclosure prevention include:

- Outreach and education on the foreclosure process and legal options
- Review of loan documents and counseling regarding the viability of loan modifications, and triage for state or federal violations, including Homeowner Bill of Rights violations
- Loan modification assistance, including forbearance agreements and repayment plans for debt forgiveness or reduction, interest rate reduction, or extending time for payment; also transitional options, including short sale, deed in lieu of foreclosure, and cash for keys
- Negotiation, mediation, and litigation to address service violations
- Loan modification denial appeals
- Reverse mortgage advice to older adults
- Pursuing affirmative actions to restore title in other contexts, such as consumer fraud, predatory lending, or financial abuse
- Legislative or administrative advocacy, Policy advocacy and support services to increase capacity and foster collaboration with local, state, and national groups on any of the issues above

By the terms of the settlement agreement, grants in this category must “prevent foreclosure.” Therefore, protecting the rights of a tenant generally will not be considered for funding under this category. However, if the applicant can make the appropriate case that particular activities identified are foreclosure prevention, they should do so. If, in proposing a project, the applicant can justify why the project falls within US DOJ settlement parameters, it should do so with documented evidence.

If a program submits a proposal that includes work that is clearly not qualifying – such as eviction defense for individual tenants in already foreclosed properties – the State Bar will not likely be able to fund that proposal. Applications will be reviewed based on the information provided and it is the applicant’s responsibility to establish, in the original application, the connection to qualified purposes.

B. Community Redevelopment Legal Assistance

Proposals should describe how grant funds would be used for community redevelopment legal services.⁴ Proposed projects should support and promote economic development by providing legal services that revitalize or stabilize low-income communities. Strategies may cross a broad range of options from counseling advocacy groups, transactional law, representation, or policy and impact work, but should reflect an understanding of the current needs and challenges within the communities to be served, and the knowledge of successful models for meeting those needs. The organization should have established partnerships that are necessary to achieve the stated goals.

Applicants should present projects that will have far-ranging and lasting impact on communities. Applicants have flexibility in defining community redevelopment. **However, the Bar generally will not fund for these purposes legal services that benefit individuals. While improving the situation of individuals suggests those individuals will bring resources back to their communities, for individual services to qualify as community redevelopment work the services must be tied to broader systemic work that benefits the community as a whole.**

⁴The term “community redevelopment” is from the bank settlement agreements. For purposes of this RFP, we will not be relying on California’s Community Redevelopment Law as it existed prior to the adoption of the Dissolution Act, or as it exists as modified by the Dissolution Act to define “community redevelopment.”

Examples of community redevelopment legal assistance include:

- Transactional support: 1) to develop capacity of nonprofit organizations that serve low-income communities; 2) to support projects typically considered community development, such as development and preservation of affordable housing, childcare, senior centers, job training centers, day labor centers, etc.; or 3) for micro-businesses and low-income entrepreneurs, or other local and community-owned services (childcare and credit unions)
- Developing the capacity of low-income community members to advocate on behalf of their community with respect to proposed laws or legislative action, whether by representing a nonprofit organization or a community group
- Representation of low-income communities with respect to community conditions, e.g., with respect to environmental justice, equity in transit-oriented development, prevention and elimination of homelessness, inclusion of affordable housing, and other matters that protect the healthy development of communities
- Legal assistance that is transformative to a community, promotes systemic change, promotes economic security, and/or has broad impact
- Redevelopment assistance to cities and counties, e.g., ensuring that localities and developers meet their obligations to provide adequate relocation assistance and replacement housing for families displaced by redevelopment
- Devising program, policy, and legislative solutions to the loss of affordable housing, other affordable housing advocacy to combat displacement and enforce redevelopment law
- Developing anti-displacement and gentrification-prevention strategies
- Strategies to eliminate and prevent conditions of blight
- Legislative or administrative advocacy

If a program submits a proposal that includes work that is clearly not community redevelopment – such as direct legal immigration help or direct public benefits legal assistance – that proposal will not likely be funded. Applications will be reviewed based on the information provided and it is the applicant's responsibility to establish, in the original application, the connection to qualified purposes.

IV. Criteria for RFP Funding

Demonstrated Need of the Targeted Population: While there are no income-eligibility requirements for this funding, the Bar will consider the articulated needs of a defined target population, with consideration to indigency, and to other special needs, such as those of minority populations, or persons with limited-language capacity. Income eligibility might be, for example, service to persons at 400 percent of the federal poverty threshold, or 80 percent of the Home Affordable Modification Program level for the county, particularly if the target population has other special needs.

Impact of Services: The Bar will consider the anticipated outcomes of the services, including the number of people that will be served, and the nature of the impact on the lives of targeted populations.

Deliverables within Grant Period: Grant deliverables must be achievable within the period of the proposed grant. While funding a portion of a project (e.g., impact litigation) coupled with other funding as a bigger project, or over a longer term, will be considered, the proposal should articulate the specific deliverables that will be achieved with this grant funding during the grant period.

Partnerships and Collaboration: The Bar will consider the extent to which an applicant already has developed necessary partnerships, or has demonstrated the ability to collaborate with community organizations, local government, or other stakeholders to accomplish their goals.

Leverage and Sustainability: Because this funding is of limited duration, the Bar is particularly interested in understanding how the proposed project fits within current organizational programming. If it is an existing project, how will funds be leveraged to increase services? If the project is new, how will the

organization sustain the project? Is it replicable or scalable? How will information about the project be shared with other legal aid organizations?

Organizational Excellence: The Bar will also consider the experience of the grantee in successfully executing similar projects, and the stability of the organization infrastructure as it affects the ability, as necessary, to hire, retrain, and supervise attorneys, and to administer the grant successfully, including the timely and accurate submission of grant budgets, reports, and evaluations.

Diversity of Projects: The Bar would like to fund a variety of different types of projects, and will take into consideration various factors such as geographic region, program size, and project type.

Services to Rural Areas: Preference will be given for projects that serve rural communities. According to the California Commission on Access to Justice's 2010 report entitled, "Improving Civil Justice in Rural California," the most helpful approach for defining "rural" is the approach used by the medical community, which uses sub-county areas.⁵ For the purposes of this RFP, "rural" is defined as areas that meet the definition of "rural" or "frontier" that the medical community uses to analyze the availability of medical services. This classification scheme is known as Medical Service Study Areas (MSSAs). Rural MSSAs have 50,000 or fewer residents and population densities below 250 people per square mile, while "frontier" MSSAs are defined by population densities of fewer than 11 people per square mile. A map of MSSAs in California is included at the end of the RFP. Rural areas will be evaluated on where specifically services are provided, and not on specific counties.

V. Evaluation Plans and Data Collection

A. Evaluation Plans

The application should include a clear statement of the goals of the project, objectives to be used to achieve those goals, and the evaluation methods to be used to make any mid-course adjustments to the delivery model, and to evaluate the success of the project at its conclusion.

B. Data Collection and Status Reports

Grantees will be required to report on the status of the grants, including on its achievement of identified service deliverables, and outcomes. In addition to client stories and corresponding main benefit data that grantees will be collecting in conjunction with IOLTA funding, grantees will also be required to report:

Foreclosure Prevention Legal Assistance

- How many individuals were served (separately, how many elderly, children and veterans)?
- How many foreclosures were prevented?
- How many foreclosure clients benefitted in other ways?

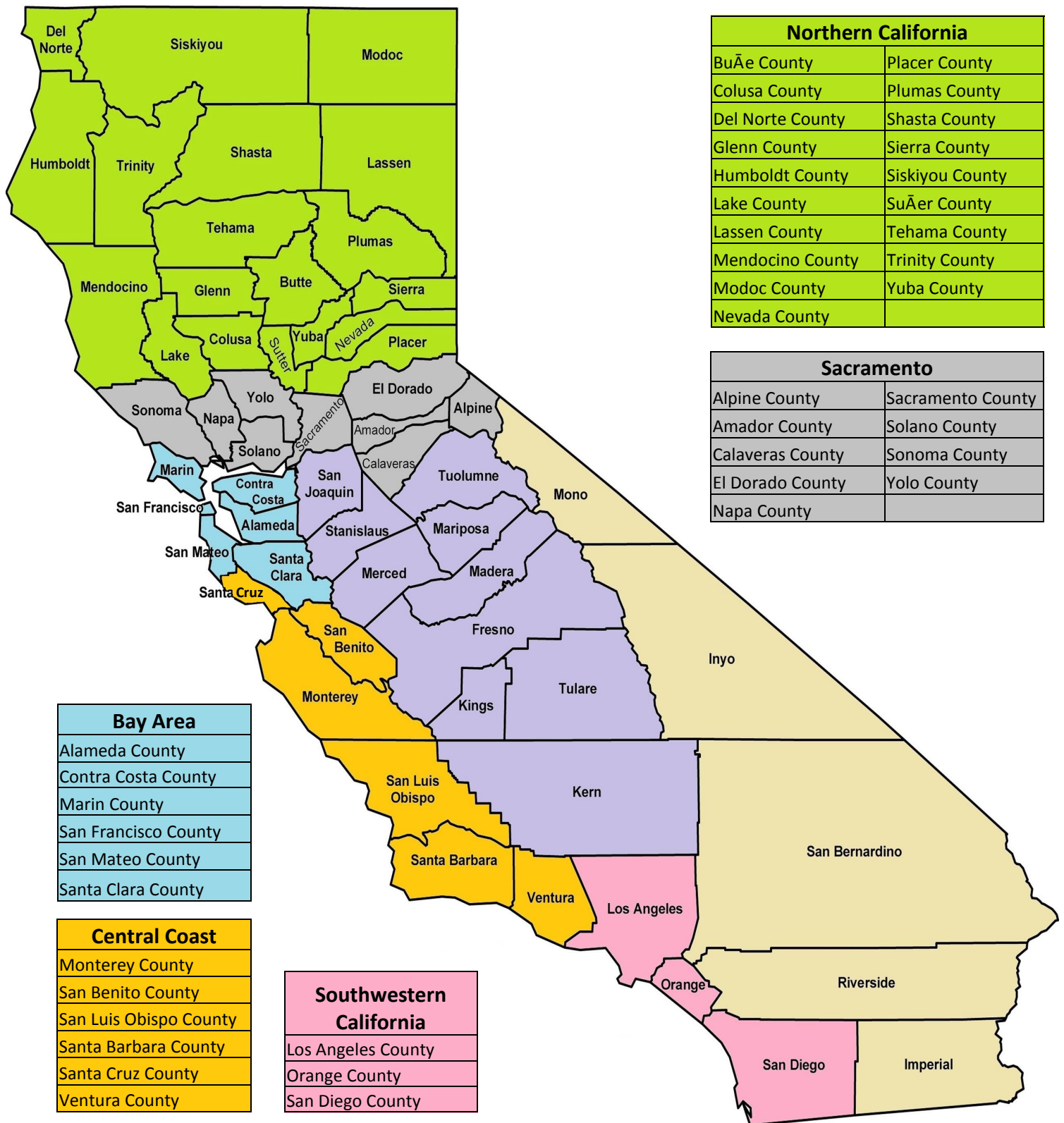
Community Redevelopment Legal Assistance

- How many individuals benefitted (separately, how many elderly, children and veterans)?
- How many non-profits benefitted, if any?
- How many small business clients benefitted, if any?

⁵ The California Commission on Justice to Justice (2010). [Improving Civil Justice in Rural California](#), 19.

As a grant condition, grantees must agree to cooperate in providing any additional reporting information required by Bank of America, their settlement monitors, regulators or other concerned national organizations.

DRAFT



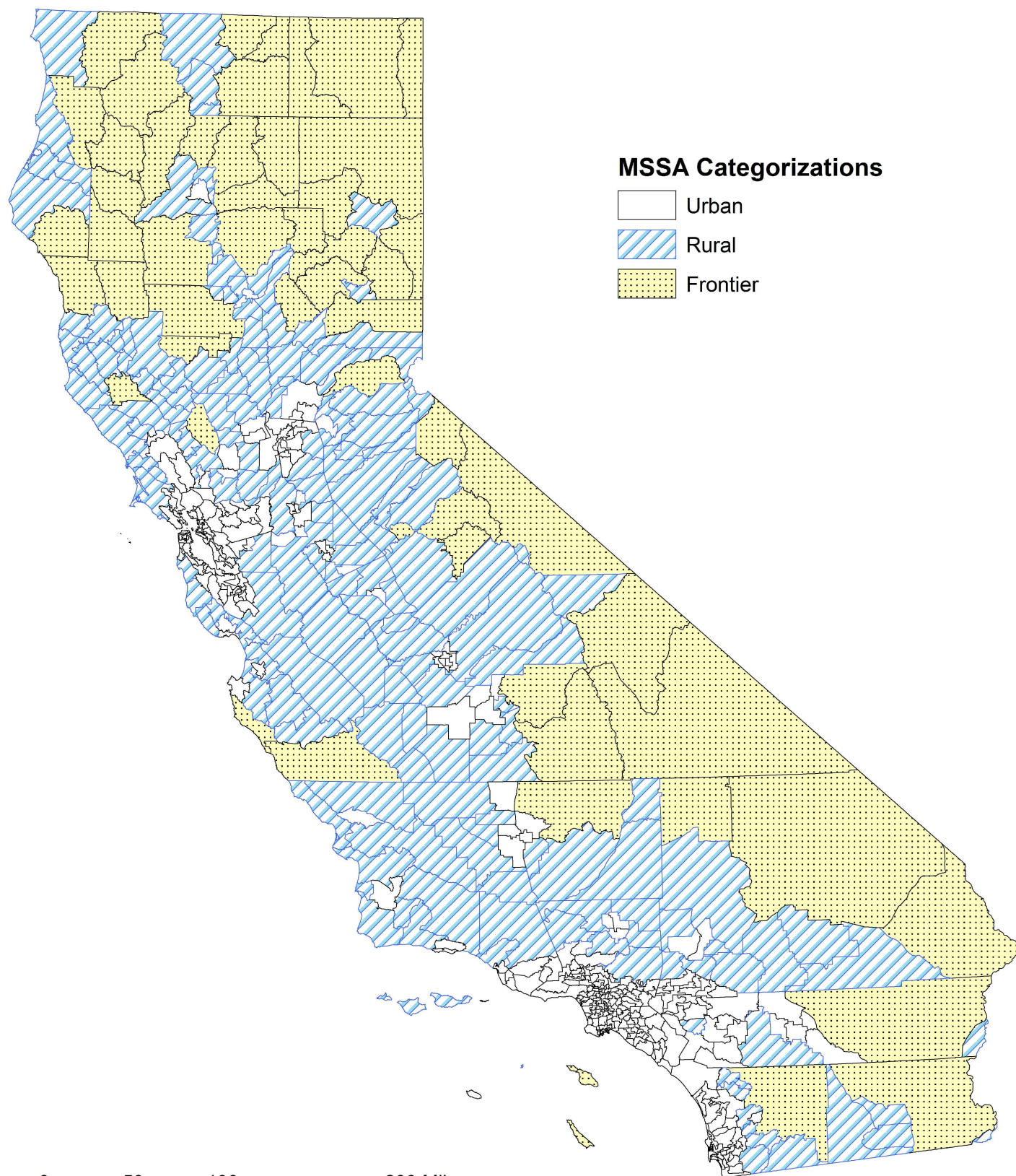
**Legal Services Trust
Fund Program**

Support Center — 2017 Regional Map

2016 ACS Poverty Data

County	Total Population	Total <125%
Alpine County, California	1170	250
Sierra County, California	2902	468
Mono County, California	13936	1,684
Modoc County, California	8761	1,950
Inyo County, California	17706	2,633
Mariposa County, California	17457	3,398
Plumas County, California	18363	3,535
Trinity County, California	12947	3,560
Colusa County, California	21150	4,287
Lassen County, California	21974	4,482
Amador County, California	32969	4,891
Del Norte County, California	24011	6,703
Glenn County, California	27541	6,990
Calaveras County, California	44280	7,212
San Benito County, California	57696	9,038
Tuolumne County, California	50446	9,813
Siskiyou County, California	43259	12,210
Nevada County, California	97760	15,794
Tehama County, California	62205	17,772
Napa County, California	137140	18,797
Lake County, California	63263	19,622
Yuba County, California	72585	19,711
Mendocino County, California	86001	22,705
Sutter County, California	94349	22,823
El Dorado County, California	181369	23,846
Marin County, California	253100	25,803
Humboldt County, California	131865	36,184
Kings County, California	132716	39,119
Shasta County, California	176464	40,571
Placer County, California	367202	41,482
Madera County, California	145251	43,363
San Luis Obispo County, California	262763	48,128
Yolo County, California	201542	48,489
Santa Cruz County, California	259991	50,984
Imperial County, California	168279	52,279
Butte County, California	218439	60,238
Solano County, California	418688	70,357
Sonoma County, California	491031	76,293
San Mateo County, California	748756	78,557
Merced County, California	258684	83,311
Santa Barbara County, California	420739	90,011
Monterey County, California	411820	93,532
Ventura County, California	831731	122,923
Stanislaus County, California	524616	129,497

Medical Service Study Areas (MSSAs) California



MSSA Categorizations

- Urban
- Rural
- Frontier

0 50 100 200 Miles

Map by:
Xiyue Wang
Carrie Reiling



The State Bar *of California*

DATE: April 17, 2019

TO: Members, LSTFC Eligibility and Budget Review Committee

FROM: Office of Access & Inclusion

SUBJECT: Impact Litigation & Advocacy Work (ILAW) Report

EXECUTIVE SUMMARY

The Trust Fund Statute distributes IOLTA funds to qualified legal services organizations based on a formula centered in part on the organization's expenditures on "qualified legal activities" that benefit indigent persons under Business and Professions Code §6216. EAF funds are also distributed according to the IOLTA formula. The Legal Services Trust Fund Commission Eligibility and Budget Review Committee (Committee) will meet on April 23, 2019 to review potentially non-qualifying impact litigation and advocacy activities, as reported by both qualified legal services projects (QLSPs) and support centers (SCs) in the Impact Litigation and Advocacy Work (ILAW) report. Activities found to be non-qualifying would need to be deducted in the organizations' 2020 IOLTA and EAF grant application. A reduction in the amount of qualifying expenditures could result in reducing the allocation of funds to an organization.

For QLSPs, non-legal activities and any legal services not provided to indigent persons, as defined in Business and Professions Code §6213, State Bar Rule 3.672(a), and Commentary to 2.3.4 of the Legal Services Projects Eligibility Guidelines, are non-qualifying for purposes of determining IOLTA and EAF grant awards. For SCs, non-support services and direct legal assistance, including impact litigation, are non-qualifying unless the direct assistance falls into one of the exceptions enumerated in State Bar Rule 3.672(b) and 2.3(c) of the Support Center Eligibility Guidelines.

In previous years, potentially non-qualifying impact cases and advocacy activities had been reviewed as part of the IOLTA and EAF application review process. This year, these activities reported in ILAW are being reviewed prior to the 2020 IOLTA and EAF application to streamline the review process for Commissioners and staff.

Staff conducted an initial review of the ILAW reports to assess the qualifying nature of activities according to the requirements for QLSPs and SCs. Where the activity initially appeared to be non-qualifying, staff is elevating said activity to the Committee for further review. Of the 390 impact cases and 437 advocacy activities reported, staff is seeking the Committee's

determination for the 2020 IOLTA and EAF grant application on 12 impact cases and 23 advocacy activities. See Attachment B and C.

Lastly, staff identified four categories for which organizations were not able to provide clear data to demonstrate that the activities primarily impact indigent persons, although the sheer number of indigent persons who benefitted may have been large and the substantial impact on indigent persons was clear. In the absence of existing policy to provide further guidance, staff proposes that the Committee approve impact litigation and advocacy activities this year in four categories as meeting the indigency requirement: affordable housing, low-income immigrants, public benefits, and education equity where free or reduced lunch statistics were used as a proxy for indigent persons.

BACKGROUND

A. Governing Authorities

The Trust Fund Statute provides for distribution of IOLTA funds to qualified legal services organizations based on a formula centered in part on the organization's expenditures on "qualified legal activities" that benefit indigent persons (Business and Professions Code §6216). In other words (for QLSPs), generally the more expenditures an organization spends on qualified legal activities, the larger their IOLTA and EAF allocation award. QLSPs and SCs have different requirements for what is considered a qualifying activity. According to Business and Professions Code §6213(a), a QLSP's primary purpose is to provide legal services to indigent persons without charge. As such, to be considered qualifying, the activities in a QLSP's ILAW report must be legal services and primarily impact indigent individuals. Business and Professions Code §6213(d) defines indigent person as someone whose income is 125% or less of the federal poverty threshold, a senior, a person with a developmental disability, or a person who is eligible for Supplemental Security Income. QLSPs that receive a pro bono allocation may use the higher HUD income thresholds to determine indigency (Business and Professions Code §6213(d)). In addition, State Bar Rule 3.672 defines legal services (as distinct from legal support services) to "include all professional services provided by a member of the State Bar and similar or complementary services of a law student or paralegal under the supervision and control of a member of the State Bar."

Unlike QLSPs, SCs are not required to provide services that would directly impact indigent persons. According to Business and Professions Code §6213(b), a SC's primary purpose is the provision of legal training, technical assistance, or advocacy support without charge and which provides a significant level of support services without charge to QLSPs on a statewide basis. State Bar Rules and Support Center Eligibility Guidelines refined this definition, providing that direct representation to clients, including in impact litigation, is not considered a qualifying support service unless the case is:

- co-counseled with a QLSP (State Bar Rule 3.672(b));

- co-counseled at the request of a private attorney representing indigent clients without charge (Support Center Eligibility Guidelines 2.3(c)); or
- undertaken at the request of a QLSP that is unable to assist the client (State Bar Rule 3.672(b)).

The governing authorities do not provide a clear definition of advocacy work for either QLSPs or SCs.

B. Staff Review Process

The ILAW reports required each grantee to submit its top 15 impact litigation cases and top 10 advocacy activities, based on the highest number of staff hours. If its total number of cases and activities exceeded this requirement, the organization was asked to provide a brief description of the nature of those additional activities. Staff reviewed ILAW reports to assess which activities were qualifying or non-qualifying based on governing authorities, and which activities needed to be elevated to the Committee for further review.

1. Qualified Legal Services Projects

For QLSPs, staff determined an impact litigation or advocacy activity was qualifying if it primarily impacted indigent persons as defined by Business and Professions Code §6213(d) and Commentary to 2.3.4 of the Legal Services Projects Eligibility Guidelines. Historical practice has been to interpret “primarily” as more than 50% of persons who would benefit from the activity. As such, staff considered an impact case qualifying if one of the following criteria was met:

- the named plaintiff was indigent;
- more than 50% of the named class was indigent; and/or
- sufficient support was provided to demonstrate that more than 50% of those impacted were indigent.

If the named plaintiff was not indigent, or less than 50% of the class was indigent and no data or limited data exists to demonstrate that the case primarily impacted indigent persons, staff included the impact case in Attachment B and C for the Committee’s review.

An advocacy activity must both be a legal service and primarily impact indigent persons in order to be qualified. While the governing authorities does not explicitly state that advocacy activities are qualifying for QLSPs, historical practice has been to interpret legal services to include legal advocacy activities. Staff has therefore interpreted qualifying advocacy activities to include policy work such as drafting a bill, participating in a legislative campaign, or enforcing a law or regulation where the majority impacted were indigent persons. If a QLSP did not engage in clearly qualifying legal services advocacy work or did not provide sufficient support to demonstrate that more than 50% of those impacted by the advocacy work was indigent, staff included the advocacy activity in Attachment B and C for the Committee’s review.

2. Support Centers

Due to the nature of the work of SCs, the definition of a qualifying activity is different. As long as the impact case is: co-counseled with a QLSP; co-counseled at the request of a private attorney representing indigent clients without charge; or undertaken at the request of a QLSP that is unable to assist the client, the cases are qualifying under the current rules. See State Bar Rules 3.672(b) and 3.682 and Commentary to 2.2.1 of the Support Center Eligibility Guidelines.

Staff considered advocacy work qualifying if it generally supported QLSPs or legal services advocates who provided direct civil legal services to indigent persons. Under this analysis, no ILAW reports from SCs are being elevated to this Committee for further review.

C. Staff Proposal for Categories Meeting Indigency Requirement

Staff identified four categories for which organizations were not able to provide clear data to demonstrate that the activities primarily impact indigent persons, although the sheer number of indigent persons who benefitted may have been large and the substantial impact on indigent persons was clear. In the absence of existing policy to provide further guidance, staff proposes that the Committee approve impact litigation and advocacy activities this year in four categories as meeting the indigency requirement: affordable housing, low-income immigrants, public benefits, and education equity where free or reduced lunch statistics were used as a proxy for indigent persons.

1. Affordable Housing

Qualified Legal Services Projects reported 85 impact cases and advocacy activities related to affordable housing. Examples of affordable housing activities reported include challenging local rent ordinances; legislation to increase stock of affordable housing such as mobile homes; policy advocacy work to address rehabilitation or preservation of affordable housing in rural communities; enforcement of rent control policies; litigation to enforce the Surplus Land Act; and challenging exclusionary zoning ordinances.

The IOLTA income threshold does not generally adjust for cost of living, and affordable housing litigation and advocacy in high cost areas may not always align with IOLTA income guidelines. However, the lack of affordable housing disproportionately impacts seniors and low-income individuals and families, and the problem is exacerbated in high-cost areas such as San Francisco and Los Angeles.

Staff recommends that affordable housing impact cases and advocacy activities be approved as meeting the indigency requirement.

2. Low-Income Immigrants

Qualified Legal Services Projects reported 21 impact cases and advocacy activities related to low-income immigrants in California. Examples of reported activities benefitting low-income

immigrants include litigation and policy advocacy work related to immigrants in detention, unaccompanied minors, and the Deferred Action for Childhood Arrivals (DACA) program. Limited or no data exist that clearly demonstrates that more than 50% of those impacted are within the IOLTA definition of indigent. However, the activities reported describe how this constituency is generally low-income and likely indigent per the IOLTA income requirement.

Staff recommends that impact cases and advocacy activities aimed at primarily impacting low-income immigrants be approved as meeting the indigency requirement.

3. Public Benefits

Qualified Legal Services Projects reported 28 impact litigation and advocacy activities that address public benefits-related issues for low-income Californians. Limited or no data exist that clearly demonstrates that more than 50% of those impacted fall within the IOLTA definition of indigent. However, organizations have presented data that serves as a compelling proxy for measuring the number of indigent persons and that this work most likely impacted primarily indigent populations. For example, one organization cited that Medi-Cal eligibility for most adults, many of which are seniors, is limited to 138% and 128% of the federal poverty threshold. Given that public benefits programs are designed to meet the basic needs of low-income families and children, a lack of clear data should not prohibit organizations from claiming this work as qualified.

Staff recommends that impact cases and advocacy work related to public benefits – including but not limited to CalWorks, CalFresh, Medi-Cal, and Denti-Cal – be approved as meeting the indigency requirement.

4. Education Equity

Qualified Legal Services Projects reported 10 impact litigation and advocacy activities related to education equity for low-income students in California. Examples of reported activities are legislation to reduce the disproportionate use of suspensions and expulsions against students of color in predominately low-income school districts and litigation and policy advocacy to ensure that students with disabilities have access to the supports they need in school and that schools remain a safe and toxin free space for children to learn. Limited or no data exist that clearly demonstrates that more than 50% of those impacted fall within the IOLTA definition of indigent. However, the Committee has previously accepted the use of data demonstrating that the majority of students in a school are eligible for free or reduced lunch as a proxy for measuring the number of indigent persons and sufficient to support that activities primarily impact indigent students.

Staff recommends that impact cases and advocacy work related to education equity be approved as meeting the indigency requirement if data is provided to demonstrate that the majority of students in the school impacted are eligible for free or reduced lunch.

ATTACHMENT LIST

A. Governing Authorities

1. Business and Professions Code 6212-6216
2. State Bar Rules, Legal Services Trust Fund Program
3. Eligibility Guidelines for Qualified Legal Services Projects
4. Eligibility Guidelines for Support Centers

B. Spreadsheet summarizing all ILAW reports being elevated for Committee review

C. ILAW reports of all cases and advocacy activities being elevated for Committee review

ILAW Reports for Commission Review

Impact Litigation

#	Organization	Case Name
1	Bay Area Legal Aid	Coalition on Homelessness v. City and County of San Francisco et. Al.
2	Bet Tzedek Legal Services	Kim v. Reins
3	Bet Tzedek Legal Services	Yousif v. Sup. Court (RPI Marri)
4	Public Law Center	Courthouse News v. Yamasaki
5	Central California Legal Services	Kings Credit Services v. Dalva
6	Central California Legal Services	Financial Credit Network v. Gonzalez
7	Public Law Center	Meza v. Portfolio Recovery Associates
8	Legal Aid at Work	Faiz v. Fidelity Home Energy, Inc.
9	Legal Aid at Work	Roger Joiner v. City and County of San Francisco
10	Legal Aid at Work	Alqalqili v. Barstow Community Hospital et al.
11	Public Law Center	Immigration Impact Advocacy
12	Santa Clara County Asian Law Alliance	Yumori-Kaku v. City of Santa Clara

Advocacy Activities

#	Organization	Advocacy Activity Name
1	Advancing Justice - Asian Law Caucus	Census Planning & Outreach funding
2	La Raza Centro Legal	Advocating for Transparency, Equity, and Accountability in 2018
3	La Raza Centro Legal	Signed on to CHANGE CALIFORNIA'S DEADLY USE OF FORCE LAW
4	California Rural Legal Assistance, Inc.	AB 617 Blueprint Comments
5	California Rural Legal Assistance, Inc.	HCD/HUD Community Development Block Grant Disaster Recovery Program (CDBG-DR)
6	California Rural Legal Assistance, Inc.	Fresno Council of Governments (COG) Regional Transportation Plan (RTP) Justice Advisory Committee
7	Disability Rights California	Transportation Accessibility Bill
8	Public Advocates Inc.	Transit Equity Advocacy
9	California Rural Legal Assistance, Inc.	2018 UCP Stakeholders Meetings
10	Public Advocates Inc.	Educational Equity/Opportunity to Learn Project
11	Public Advocates Inc.	Equal Access to Fully-Prepared and Effective Teachers
12	Public Advocates Inc.	Higher Education — Low-Income Student Advocacy Project
13	Legal Aid at Work	AB 2366
14	Bet Tzedek Legal Services	California Low-Income Consumer Coalition (CLICC)
15	California Rural Legal Assistance, Inc.	IIPP Employee Access Regulatory Comments
16	Legal Aid at Work	Advocacy concerning regulations about national origin discrimination, retaliation, and harassment being issued by the California Fair Employment and Housing Council
17	Legal Aid at Work	Berkeley Paid Family Leave Ordinance
18	Legal Aid at Work	SB 937
19	Legal Services of Northern California	Providing Comments in Opposition to Changes to the USCIS Fee Waiver Application Process
20	La Raza Centro Legal	NoMuslimBanEver.com sign on
21	Legal Aid Society of San Diego	Support of AB 2343 (Chiu)
22	Legal Services of Northern California	Opposition to Proposal to Apply All Limited Case Procedures to Unlawful Detainer Cases
23	Public Law Center	Housing Advocacy