



Date: March 6, 2020

To: Members, LSTFC Bank Grant Committee

From: Christine Holmes, Senior Program Analyst

Subject: Redistribution Options for Discontinued or Unused Bank Grant Funds

EXECUTIVE SUMMARY

The Bank Grant Committee (Committee) is charged with administering the Bank Community Stabilization and Reinvestment Grant (Bank Grant), including crafting recommendations for the Legal Services Trust Commission (Commission) to approve regarding funding criteria and distributions. Based on the Legal Services Stakeholder Working Group, recommendations on funding policies then go to the Board of Trustees for approval. The Office of Access & Inclusion (OAI) has on hand \$339,106 in unused Bank Grant Funds that had initially been approved for distribution under the 2018 to 2020 Bank Grant Request for Proposal (RFP); this amount comprises unused, returned, or discontinued grant funds that had been approved for distribution to five separate grantees. The Committee is convening on March 13, 2020 to approve a recommendation for the redistribution of these funds, which may be presented at the Commission's March 27, 2020 meeting. This memo provides the Committee with three options for redistributing the \$339,106.

BACKGROUND

In the past, discontinued or unspent Bank Grant funds were not redistributed immediately. Instead, they were added to the total unallocated Bank Grant funds for future distribution. However, the previous unspent amounts were not as sizable, and ranged from approximately \$9,000 to \$150,00. This is the first time that the unspent bank grant amount may be large enough to fund an entire community redevelopment or foreclosure prevention project.¹

In the past year, a total of \$339,106 in discontinued or unused Bank Grant funds from five separate grantees has become available²:

¹ The Office of Access & Inclusion occasionally receives sizable returned IOLTA/EAF funds. Unlike, discretionary grants, IOLTA/EAF funds are allocated based on a pro rata county-by-county formula. The Office of Access & Inclusion does not rerun the formula to immediately distribute returned IOLTA/EAF funds. Instead, returned funds are held for distribution in subsequent grant years.

² During a 2019 monitoring visit to Central California Legal Services (CCLS) the State Bar identified \$601 of residual 2016 unused Bank Grant funds. CCLS returned the \$601 in October 2019. Because the returned funds were not a significant amount and from a closed 2016 grant, the \$601 not included in the \$339,106 for possible redistribution.

- Three Bank Grant grantees did not request carryovers of unused 2018 funds to be spent down in 2019. On July 17, 2019, the Commission approved the Committee's recommendation to deduct the unused amounts from each grantee's 2020 award allocation as follows: 1) Impact Fund (\$38,976); 2) La Raza Centro Legal (\$25,000); and 3) National Center for Youth Law (\$7,342).
- Review of 2018 non-personnel expenses during a 2019 monitoring visit to California Rural Legal Assistance, Inc. (CRLA) revealed inaccurate allocations to the program's Bank Grant funds. CRLA returned the \$42,788 in misallocated cost to the State Bar.
- During a 2019 monitoring visit to Legal Aid Society of San Bernardino (LASSB) the State Bar identified that LASSB had not executed their 2018 Bank Grant activities in accordance with their proposal materials, including the application and budgets. The Commission, at its January 30, 2020 meeting, approved a motion to discontinue funding for the final (2018) year of LASSB's Bank Grant, which totaled \$225,000.

There is no established policy for redistributing discontinued or unused discretionary funds, including Bank Grant funds. At the State Bar's January 2019 Board of Trustees' (Board) meeting, it approved a motion to adopt the Functional Matrix (Matrix) created by the Legal Services Trust Fund Commission Stakeholder Working Group clarifying the roles of the Staff, LSTFC, and Board in key grant approval and administration functions by grant type. As listed in the Matrix, developing policy regarding the distribution of Bank Grant funds is a joint effort by staff and the Commission. Furthermore, the Board has final "approval of the policy regarding how funds will be distributed." Any option for distributing these funds that involves a departure from an already approved distribution policy would require Board approval.

DISCUSSION

Below are three options regarding distribution of the discontinued and unused Bank Grant funds. Staff recommend the Committee adopt the first option and add the funds to the remaining Bank Grant funds for future distribution.

(1) Add Funds to the Remaining Bank Grant Funds for Future Distribution

The Committee could follow past practice and add the \$339,106 from discontinued and unused funds to the unallocated general Bank Grant fund. This would increase the amount available for the next distribution from approximately \$4.4 million to \$4.7 million³. Because this option does not involve a modified distribution plan it will not require Commission nor Board approval.

Staff recommend the Committee adopt this option for ease of administration and because the cumulative total of unused funds is very small relative to past distributions (which totaled \$28.5 million in 2018 and \$6.5 million in 2020).

(2) Redistribute to 2018 Grantees or Applicants

³ These figures are based on the current unencumbered portion of Bank Settlement net assets. The available balance in the fund fluctuates based on investment income, administrative expenses, and additional unused or discontinued grants.

Alternatively, the Committee could redistribute the \$339,106 to grantees or applicants from the 2018 Bank Grant RFP/Formula cycle,⁴ where the unused and discontinued funds originated. While the Commission would not need to approve this option at its March 27, 2020 meeting, it would ultimately need to approve the new bank grant awards themselves, as it does with other discretionary award selections. Because this option would not require a modified distribution plan, it will not need Board approval.

Staff do not recommend redistributing the funds to 2018 Bank Grant recipients as these awards were determined more than two years ago and projects have already begun their final year of funding for these three-year grants. An influx of additional funds in the last year of a three year grant may be a challenge to absorb and spend down, especially in light of the increased distribution from IOLTA (which doubled this past year) and the additional distribution of \$20million in homelessness prevention funds.

3) Redistribute to 2020 Grantees or Applicants

Lastly, the Committee could move to redistribute the unspent funds to grantees or applicants from the recent 2020 to 2022 Bank Grant RFP;⁵ however, it would need both Commission and Board approval to do so. Since the Commission and Board approved the distribution of only \$6.5 million to the 2020 to 2022 Bank Grant RFP, distributing these funds pursuant to the 2020 to 2022 Bank Grant RFP would be a change to the already-approved policy, and would thus require approval by the Commission and Board.⁶

Staff do not recommend redistributing the unspent funds to 2020 Bank Grant recipients or applicants nor do Staff think a formal policy change for unspent funds should be explored at this time. The Committee recommended which projects to fund and at what level of funding for three-year grants based on the criteria outlined in the RFP and the \$6.5 million approved for distribution. After discussing all the projects at its meeting on November 5, 2019, the Committee recommended the nine projects rated “High” and four of the eleven projects rated “Medium” for funding. Funding any of the applicants from the 2020 Bank Grant RFP will set a precedent for how to redistribute discontinued or unused funds. A policy change regarding unspent funds would be better explored through the codification process.

⁴ On March 17, 2017, the LSTFC voted to distribute approximately \$28.5 million in three-year grants from 2018 to 2020. The LSTFC determined that grants should be awarded using a modified version of the IOLTA formula and a competitive RFP process. The LSTFC funded 71 projects through this process. These projects are in the last year of the grant cycle. The range of the total award amounts for this distribution of Bank Grant funds is \$50,000 to \$850,000. Of the nine programs awarded grants based on the modified IOLTA formula, seven were awarded \$75,000. The average amount awarded for RFPs was \$434,000.

⁵ On April 25, 2019, the Board approved the Commission’s recommendation for the distribution of \$6.5 million for three-year statewide and regional collaborations, with projects commencing January 2020. The State Bar received 35 applications requesting a total of \$27.26 million. The range of the total award amounts for this distribution of Bank Grant funds is \$250,000 to \$900,000. The most common award amount is \$300,000 and the average is \$500,000.

⁶ Alternatively, at the Committee’s recommendation, the Commission could request the Board to grant the Commission authority to redistribute unspent funds as it best sees fit.

RECOMMENDATION OPTIONS

It is recommended that the Bank Grant Committee approve the following resolution:

RESOLVED, that the \$339,106 from discontinued and unused bank grant funds and any additional funds be added to the unallocated general Bank Grant fund, thereby increasing the amount available for the next distribution.