



Date: June 9, 2022

To: Members, Legal Services Trust Fund Commission Eligibility & Budget Review Committee

From: Erica Carroll, Lead Program Analyst

Subject: 2023 IOLTA/EAF Application Review: Incorrect Financial Statements; Late-Submitted Applications; Eligibility Review Conferences

EXECUTIVE SUMMARY

Interest on Lawyers' Trust Accounts (IOLTA) and Equal Access Fund (EAF) grants are awarded to approximately 100 qualified legal services projects (LSP) or support centers (SC) each year to support the provision of free civil legal aid in California to indigent persons. These grants must comply with criteria set forth in Business & Professions Code (B&P) sections 6210-6228, State Bar Rules, and Eligibility Guidelines for Legal Services Projects and Support Centers. (Attachment A.)

This year, the Office of Access & Inclusion (OA&I) received 103 applications for IOLTA/EAF funding for grant year 2023. There were 101 renewal applications and two new applications for funding. Eighty-one applicants are seeking funding as LSPs and 21 as SCs.¹ Recommendations made by the Eligibility & Budget Review Committee (Committee) will be approved by the Legal Services Trust Fund Commission (LSTFC).

The Committee will be expected to discuss the IOLTA/EAF application review process and the general eligibility requirements for LSPs and SCs. At this meeting, the Committee will also be asked to consider (1) a request to submit a reviewed financial statement in lieu of an audit, (2) the submission of late applications, and (3) which organizations to schedule for eligibility review conferences (ERCs).

¹ One applicant subsequently withdrew, leaving the current number at 102 pending applications.

BACKGROUND

IOLTA and EAF grants are awarded to approximately 100 LSPs and SCs each year. These organizations provide free civil legal aid in California to indigent persons, or legal training, technical assistance, and advocacy support to the organizations that directly serve indigent persons. Although IOLTA and EAF grants are separate sources of funding, there is one combined application for both IOLTA and EAF grants.

IOLTA funds are mainly generated from interest accrued on lawyers' trust accounts while EAF funds are included in the State's annual budget act, as part of the judicial branch budget. Business and Profession Code sections 6210-6228 (referred to here as the "IOLTA statute"), is the primary governing authority that defines how IOLTA funds are generated and distributed. The vast majority of EAF funds are also distributed using the IOLTA formula. IOLTA and EAF grants are both governed by the IOLTA statute, State Bar Rules, and Eligibility Guidelines for LSPs and SCs. Organizations may apply for IOLTA and EAF funding as either a LSP or SC.

LSPs must have a primary purpose to provide free civil legal aid to indigent persons to be eligible for funding. LSPs may apply for funding in each county in which they provide these services. IOLTA and EAF grant amounts are based on an LSP's qualified expenditures (the amount spent on the delivery of free civil legal aid to eligible individuals) from the previous fiscal year in each county for which it is applying for funding. In addition, if an LSP's primary purpose is the delivery of these services through pro bono volunteers, it may apply for an additional pro bono allocation for those counties.

SCs must have a primary purpose to provide support services to LSPs and the broader legal aid community statewide to be eligible for funding. SCs apply for IOLTA and EAF grants on a statewide basis. The total amount of IOLTA and EAF funds available for distribution to SCs each year is determined by the IOLTA formula. That total amount available is then split equally amongst all eligible SCs.

Grant Year 2023 Application Process and Next Steps

IOLTA/EAF funding applications were due on May 16, 2022, at 5 p.m., and staff is currently reviewing them. (See Attachment B for the current list of IOLTA/EAF funding applicants for grant year 2023.) The purpose of the IOLTA and EAF application review is to determine if applicants 1) meet primary purpose; 2) have identified appropriate qualified expenditures; and 3) have adequate quality control. Staff completes an initial review of grant applications and presents recommendations to the Committee, which then makes recommendations to the LSTFC for a final eligibility determination.

The June 17 discussion will focus on the submission timeline, audit issues, and new applicants. At the next committee meeting on July 15, staff will identify additional eligibility issues for consideration (such as primary purpose, pro bono allocations, and support center deeming). The Committee will identify applicants it wants to meet with during ERCs that will be scheduled in July. The Committee will present its eligibility recommendations to the LSTFC at its August 12 meeting. Once the LSTFC approves eligibility for 2023 grants, staff will run the IOLTA formula and release award allocations and budget applications on or around August 26.

DISCUSSION

After an initial review of applications, staff would like the Committee to consider the following issues: (1) a request to submit a reviewed financial statement in lieu of an audit; (2) late submission of applications; and (3) which organizations to schedule for eligibility review conferences.

A. Submission of Reviewed Financial Statement in Lieu of an Audit

Business and Professions Code section 6222 and State Bar Rule 3.680(E)(1) require organizations applying for IOLTA grants to submit “an audited financial statement by an independent certified public accountant for the fiscal year that concluded during the prior calendar year” as part of a “timely and complete” application. (Attachment A.) This is necessary to confirm the organization’s qualified expenditures to determine eligibility and ultimately the amount of any grant award. According to the Schedule of Charges and Deadlines, the audit or financial review is due “no later than May 1.”² (Attachment C.)

State Bar Rule 3.680(E)(1) allows organizations with less than \$500,000 of gross corporate expenditures to submit a reviewed financial statement in lieu of an audit. Business and Professions Code section 6222 specifies that an audit must be performed by a Certified Public Accountant (CPA). As for the financial review, the statute only notes that the State Bar must approve it. However, Eligibility Guideline 2.7.1 requires financial reviews to be conducted by an “independent certified public accountant.”

A financial review, though less rigorous than an audit, is an important step in ensuring that each organization’s qualified expenditures are correctly reported. Staff have provided consistent guidance that applicants must submit a financial review conducted by an independent CPA.³

² Staff typically has discretion to grant an extension through the date of the application deadline. At its last meeting on April 29, 2022, the Committee delegated to a working group comprised of committee members responsibility for recommendations to the LSTFC regarding audit extensions past the application deadline. Consequently, an update will be provided at this meeting, but the topic will not be addressed in this memorandum.

³ Through the codification process, staff recommended explicitly stating in State Bar Rule 3.680(E)(1) that an independent certified public accountant must conduct financial reviews. The Rules Committee recommended the

One organization from this application cycle, Coalition of California Welfare Rights Organizations (CCWRO), submitted a reviewed financial statement from a CPA, rather than an audit, despite having gross corporate expenditures in excess of \$500,000. CCWRO has been a funded support center since the inception of the IOLTA program in 1983. Historically, CCWRO has always submitted a reviewed financial statement because it has always reported expenditures below \$500,000 in the prior fiscal year. This year, for the first time, CCWRO's expenditures exceeded this threshold by a small amount (\$503,654).

Staff Recommendation

Staff does not have a recommendation at present. This is the first time that CCWRO's expenditures have risen to the level requiring an audit instead of a review. Though such requests are infrequent, the LSTFC has previously exercised discretion to grant a good-faith exception to the "review in lieu of an audit" limit on at least one occasion when the grantee had never previously made this error and on condition that, going forward, it would provide full audits as required by rule. However, staff believes that example was prior to the rule changes surrounding audits in 2019 and will conduct additional research prior to the meeting regarding the committee's options in this instance.

B. Late Submission of IOLTA/EAF Application

State Bar Rule 3.680 requires applicants to submit "timely and complete" grant applications in the manner prescribed by the LSTFC. The IOLTA/EAF grant application instructions inform applicants that the LSTFC has sole discretion to accept late applications. By action of the LSTFC, the Committee has been delegated the authority to make the determination related to late applications.

IOLTA/EAF grant applications were due on Monday, May 16, 2022, at 5 p.m. Three applicants submitted late applications:

1. Youth Law Center, 5:04 p.m. on May 16
2. Legal Aid Foundation of Los Angeles, 5:44 p.m. on May 16
3. Legal Services for Children, 11:48 a.m. on May 17

Two of the applications were submitted on the due date, shortly after the deadline. Legal Aid Foundation of Los Angeles experienced some technical difficulties and reached out to staff for assistance. In the case of Legal Services for Children, the organization mistakenly believed that its application had already been successfully submitted, and upon learning it was still in draft status, the organization submitted promptly.

proposed revision to the rule. The Legal Services Trust Fund Commission and Board of Trustees must approve the recommendation for it to take effect.

Staff Recommendation

Staff recommends the Committee to exercise its discretion to accept these late applications as eligible for review.⁴

C. Identify Organizations for Eligibility Review Conferences

When an application for IOLTA/EAF funding raises issues concerning the organization's eligibility for funding, which staff believes warrants further consideration, staff will recommend an eligibility review conference (ERC). This provides an opportunity for committee members, State Bar staff, and applicant organization staff to explore eligibility questions and obtain more information before the Committee makes a final recommendation to the LSTFC. Staff is in the process of reviewing applications; while some have presented questions requiring clarification, staff would like more time to follow up with organizations before recommending any particular applicant for an ERC.

Staff Recommendation

Staff requests that the Committee delegate authority to staff to schedule ERCs as necessary between now and the next meeting to ensure efficient and timely review of any significant eligibility concerns. Staff will notify the Committee of any prospective conferences and coordinate committee member attendance at all ERCs.

ATTACHMENTS

- A. Governing Authorities: [IOLTA statute](#) (Business & Professions Code sections 6210-6228); [Rules of the State Bar](#); Eligibility Guidelines for [Legal Services Projects](#) and [Support Centers](#)
- B. List of 2023 IOLTA/EAF Applicants
- C. State Bar [Schedule of Charges and Deadlines](#) for State Bar Rule 3.680(E)(1)

⁴ In March 2022, the LSTFC adopted recommendations from the Rules Committee that would allow staff discretion to accept late applications within this timeframe (one business day). Such changes will be presented to the Board of Trustees and go through a public comment period. If confirmed, in the future staff will provide updates on late submissions that fall within this period but will not require committee action.

2023 IOLTA/EAF Applicants

Legal Services Projects

- 1 Advancing Justice - Asian Law Caucus
- 2 Affordable Housing Advocates
- 3 Aids Legal Referral Panel
- 4 Alameda County Homeless Action Center
- 5 Alliance for Children's Rights
- 6 Asian Americans Advancing Justice - Los Angeles
- 7 Asian Pacific Islander Legal Outreach
- 8 Bay Area Legal Aid
- 9 Bet Tzedek Legal Services
- 10 California Indian Legal Services
- 11 California Rural Legal Assistance, Inc.
- 12 Capital Pro Bono Inc.
- 13 Casa Cornelia Law Center
- 14 Central California Legal Services
- 15 Centro Legal de la Raza
- 16 Community Lawyers Inc.
- 17 Community Legal Aid SoCal
- 18 Community Legal Services in East Palo Alto
- 19 Contra Costa Senior Legal Services
- 20 Dependency Advocacy Center
- 21 Disability Rights California
- 22 Disability Rights Legal Center
- 23 East Bay Community Law Center
- 24 Elder Law & Advocacy
- 25 Eviction Defense Collaborative
- 26 Family Violence Law Center
- 27 Greater Bakersfield Legal Assistance
- 28 Harriett Buhai Center for Family Law
- 29 Housing and Economic Rights Advocates
- 30 IEP Collaborative, Inc.
- 31 Inland Counties Legal Services
- 32 Inland Empire Latino Lawyers Association, Inc.
- 33 Inner City Law Center
- 34 Justice & Diversity Center of the Bar Association of San Francisco
- 35 La Raza Centro Legal
- 36 LACBA Counsel for Justice
- 37 Law Foundation of Silicon Valley
- 38 Lawyers' Committee for Civil Rights
- 39 Learning Rights Law Center

40 Legal Access Alameda
41 Legal Aid at Work
42 Legal Aid Foundation of Los Angeles
43 Legal Aid Foundation of Santa Barbara County
44 Legal Aid of Marin
45 Legal Aid of Sonoma County
46 Legal Aid Society of San Bernardino
47 Legal Aid Society of San Diego
48 Legal Aid Society of San Mateo County
49 Legal Assistance for Seniors
50 Legal Assistance to the Elderly
51 Legal Services for Children
52 Legal Services for Seniors
53 Legal Services of Northern California
54 Los Angeles Center for Law and Justice
55 Loyola Marymount University
56 McGeorge Community Legal Services
57 Mental Health Advocacy Services
58 Neighborhood Legal Services
59 Open Door Legal
60 Prison Law Office
61 Public Advocates Inc.
62 Public Counsel
63 Public Law Center
64 Riverside Legal Aid
65 San Diego Volunteer Lawyer Program
66 San Joaquin College of Law
67 San Luis Obispo Legal Assistance Foundation
68 Santa Barbara County Immigrant Legal Defense Center
69 Santa Clara County Asian Law Alliance
70 Santa Clara University Alexander Law Center
71 Senior Adults Legal Assistance
72 Senior Advocacy Network
73 Senior Citizens Legal Services
74 Social Justice Collaborative
75 UC Davis School of Law Legal Clinics
76 UnCommon Law
77 USD School of Law Legal Clinics
78 Veterans Legal Institute
79 Wage Justice Center
80 Watsonville Law Center
81 Yuba-Sutter Legal Center for Seniors

Support Centers

- 82 California Advocates for Nursing Home Reform
- 83 California Rural Legal Assistance Foundation
- 84 California Women's Law Center
- 85 Center for Gender and Refugee Studies - California
- 86 Center for Human Rights and Constitutional Law
- 87 Child Care Law Center
- 88 Coalition of California Welfare Rights Organizations
- 89 Disability Rights Education and Defense Fund
- 90 Family Violence Appellate Project
- 91 Immigrant Legal Resource Center
- 92 Impact Fund
- 93 Justice in Aging
- 94 Legal Services for Prisoners with Children
- 95 National Center for Youth Law
- 96 National Health Law Program
- 97 National Housing Law Project
- 98 OneJustice
- 99 Public Interest Law Project
- 100 Western Center on Law and Poverty
- 101 Worksafe, Inc.
- 102 Youth Law Center