



Date: August 12, 2022

To: Members, Legal Services Trust Fund Commission

From: Erica Carroll, Lead Program Analyst

Subject: IOLTA and EAF Funding for Grant Year 2023

EXECUTIVE SUMMARY

Interest on Lawyers' Trust Accounts (IOLTA) and Equal Access Fund (EAF) grants are awarded to approximately 100 qualified legal services projects (QLSP) 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 (referred to as the IOLTA statute), State Bar Rules, and Eligibility Guidelines for Legal Services Projects and Support Centers.

This year, the Office of Access & Inclusion (OA&I) received 102 applications for IOLTA and EAF funding for grant year 2023. There were 101 renewal applications and one application for first-time funding.¹ Eighty-one applicants are seeking funding as QLSPs and 21 as SCs. Staff recommends that the Legal Services Trust Fund Commission (LSTFC) find 101 applicants eligible for IOLTA and EAF for grant year 2023 and find one applicant ineligible for IOLTA and EAF funding for grant year 2023.² The Eligibility & Budget Review Committee (Committee) further recommends finding 18 organizations eligible for a pro bono allocation and one organization ineligible in one of the counties where it applied in 2023.

BACKGROUND

IOLTA and EAF grants are awarded to approximately 100 QLSPs and SCs each year. QLSPs provide free civil legal aid in California to indigent persons, and SCs provide legal training, technical assistance, and advocacy support to the organizations that directly serve indigent

¹ OA&I initially received 103 applications, but one organization subsequently withdrew.

² The Eligibility & Budget Review Committee will review and vote on these recommendations the morning of August 12. Should there be any deviation from the recommendation, the Committee will provide an oral update to the LSTFC at its August 12 afternoon meeting.

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. 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 both a QLSP and SC but will only receive funding for one or the other.³

QLSPs must have a primary purpose to provide free civil legal aid to indigent individuals to be eligible for funding. QLSPs may apply for funding in each county in which they provide these services. IOLTA and EAF grant amounts are based on a QLSP's qualified expenditures (the amount spent on the delivery of free civil legal aid to eligible individuals) for the previous fiscal year in each county for which it is applying for funding. If a QLSP'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 QLSPs 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 and is then split equally among all eligible SCs.

Grant Year 2023 Application Process and Next Steps

OA&I received 102 applications for IOLTA and EAF funding for grant year 2023, including 101 renewal applications and one application for first-time funding. Eighty-one applicants seek funding as QLSPs and 21 as SCs. See Attachment A for a list of IOLTA and EAF funding applicants for grant year 2023, with recommendations regarding funding eligibility for each.

IOLTA/EAF funding applications were due on May 16, 2022 at 5 p.m. 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 controls in place, as determined by the State Bar, to ensure proper oversight and service delivery. Staff completes an initial review of grant applications and presents recommendations to the Committee, which makes recommendations to the full LSTFC for a final determination. At its June 17, July 15, and August 12 meetings, the Committee reviewed and discussed issues raised by staff and made eligibility recommendations.

³ An organization submitting two applications must designate its primary application. The secondary application will only be considered if the applicant does not qualify under the primary application. State Bar Rule 3.680(D).

Once the LSTFC approves eligibility for 2023 grants, OA&I will run the IOLTA formula and release to applicants their tentative award allocations for 2023, as well as budget proposal forms. The information is scheduled to be released on August 26 with the budget proposals due September 26. The Committee is then scheduled to reconvene on November 4 to discuss any substantive issues related to budget proposals. The LSTFC will meet on November 16 to approve award allocations in light of the analysis of the budget proposals.

DISCUSSION

The IOLTA and EAF application review process consists of several components. Staff reviews IOLTA and EAF applications to ensure they meet eligibility requirements and that applicants accurately report their expenditures in order to calculate grant awards. Threshold issues include whether organizations meet primary purpose (as discussed above) and have submitted acceptable audits or financial reviews to confirm their expenditures in the prior year.

A careful review of the organization's activities and reported expenses helps staff determine if deductions are required from organizations' qualified expenditures—the expenditures upon which primary purpose is determined and grant awards are based (in the case of QLSPs). When concerns arise that an applicant fails to meet threshold requirements, staff works with the Committee to schedule an eligibility review conference with the applicant to discuss its qualifications. This year, no eligibility review conferences were deemed necessary.

The IOLTA statute also requires SCs not in existence prior to December 31, 1980, to participate in a deeming process every three years, where a majority of QLSPs must agree that the SC is of "special need." Staff administers this deeming process through a survey to all QLSPs.

Finally, the IOLTA statute provides for additional funding for QLSPs that apply and qualify for a pro bono allocation in one or more counties where they receive funding.

In addition to the total number of applicants recommended as eligible for funding to the Committee and then the LSTFC, staff also reports out and recommends action to the Committee throughout the application process, as summarized below.

A. Pro Bono Allocation

An additional pro bono allocation is available to grantees whose "principal means" for the delivery of legal services is through pro bono attorneys who provide free legal representation to indigent persons or to qualified legal services projects in California (Business and Professions Code section 6216(b)(1)(B)). There are 18 applicants for the pro bono allocation for grant year 2023, some in multiple counties. (Attachment B.)

The Eligibility Guidelines for Legal Services Projects (Guidelines) set forth the criteria for QLSPs to qualify for pro bono allocations. The Commentary in Guideline 2.6.3.1 requires that applicants meet a “substantial numbers” threshold test to qualify for the pro bono allocation. The threshold requires the applicant to have “recruited at least 30 attorneys who provided services in the previous calendar year,” or the applicant to have “recruited at least 5 percent of the licensed attorneys in the county in the previous calendar year,” or that the attorneys recruited “donated at least 1,000 hours of legal services for clients in the previous calendar year.” This year, 18 applicants met this threshold test in one or more counties, and one organization did not (but only in one county where it applied).

If an applicant satisfies this threshold requirement, the commentary in Guideline 2.9.2 sets forth the additional requirement that the applicant utilize private attorneys as its “principal means” of providing legal services. QLSPs can demonstrate that they meet this requirement in one of three ways:

1. Confirm that the number of service hours provided by volunteer attorneys exceeded the number of service hours worked by staff attorneys in the previous calendar year (Test A);
2. Establish through a formula involving volunteer attorney and paralegal hours compared with staff attorney and paralegal hours that they meet the requirements. The applicant must show: (1) that the attorneys recruited actually provided substantial free civil legal services; (2) that the combined number of hours of service by volunteers, both attorneys and paralegals, exceeds the combined number of hours of service by staff attorneys and paralegals; and (3) that the number of hours of service by volunteer attorneys is more than half as many as the combined number of hours of service by staff attorneys and paralegals (Test B); or
3. Provide a narrative explanation for its method of calculating the delivery of services through volunteer attorneys (Test C).

Applicants that meet Tests A or B do not require Committee review; it is longstanding office practice that only applicants requesting an allocation under Test C are elevated to the Committee and then the LSTFC.

Eleven applicants applied for the pro bono allocation under Test C,⁴ and the Committee recommends that the LSTFC find all applicants eligible except for Legal Aid Society of San Bernardino (LASSB) for its Riverside County operations. LASSB failed to meet the threshold test

⁴ The seven remaining organizations met either Test A or B and are deemed eligible for the allocation, pending any other general IOLTA/EAF grant eligibility issues.

of recruiting at least 30 attorneys, 5 percent of the county attorney population, or 1000 hours in donated attorney time in Riverside.

B. Support Center Deeming

By statute, SCs not providing services in California before December 31, 1980, must be “deemed to be of special need by a majority of the qualified legal services projects.” The Office of Access & Inclusion implements a deeming process for every SC that was not in existence as of that date on a rolling three-year basis (Business & Professions Code §6215).

This year, the SC to be deemed was Center for Gender and Refugee Studies – California (CGRS-CA). At the close of the voting period, 65 of 80 QLSPs submitted votes, and CGRS-CA was deemed to be of special need.

C. Submission of Late Audited or Reviewed Financial Statement

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. Organizations with gross expenditures of less than \$500,000 may submit a financial review in lieu of an audit (State Bar Rule 3.80(E)(1)). This is necessary to confirm the organization’s qualified expenditures for the purposes of determining 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.”⁵

Staff has discretion to grant an extension up to the application deadline, and the LSTFC has the authority to grant an extension to submit the audited or reviewed financial statement past the application deadline upon a showing of extraordinary circumstances. An applicant for first-time funding, Santa Barbara County Immigrant Legal Defense Center, sought an extension to obtain a reviewed financial statement earlier in the application process. The LSTFC denied this request at its June 2022 meeting, as the applicant had not demonstrated extraordinary circumstances for the request. The audited or reviewed financial statement is an essential part of the application process. Consequently, this organization is recommended as ineligible for 2023 IOLTA/EAF funding because the application is incomplete. (Attachment A.)

⁵ In the past, applications were due in February and audits were due within 60 days of the application deadline. A revision to State Bar Rule 3.680(E)(1) and the Schedule of Charges and Deadlines went into effect in January 2019, streamlining the process to require all applicants to submit their audits no later than May 1 or seek an extension.

RECOMMENDATIONS

It is recommended that the Legal Services Trust Fund Commission approve the following resolutions:

RESOLVED, that the Legal Services Trust Fund Commission finds 18 organizations eligible for a pro bono allocation, and one organization ineligible in one county in 2023 (see Attachment B); and it is

FURTHER RESOLVED, that the Legal Services Trust Fund Commission find Santa Barbara County Immigrant Legal Defense Center **ineligible** for IOLTA and EAF funding for grant year 2023; and it is

FURTHER RESOLVED, that the Legal Services Trust Fund Commission finds that the remaining 101 applicants, listed in Attachment A, **eligible** for IOLTA and EAF funding for grant year 2023.

ATTACHMENTS LIST

- A. List of Applicants Recommended as Eligible or Ineligible for IOLTA and EAF Funding for Grant Year 2023
- B. List of Applicants Recommended as Eligible or Ineligible for a Pro Bono Allocation for Grant Year 2023

2023 IOLTA/EAF Applicant Eligibility Recommendations

Organizations recommended as eligible

Legal Services Projects		
#	Organization	Pro Bono Applicant
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	YES
6	Asian Americans Advancing Justice Southern California	
7	Asian Pacific Islander Legal Outreach	
8	Bay Area Legal Aid	
9	Bet Tzedek Legal Services	YES
10	California Indian Legal Services	
11	California Rural Legal Assistance, Inc.	
12	Capital Pro Bono Inc.	YES
13	Casa Cornelia Law Center	YES
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	YES
19	Contra Costa Senior Legal Services	
20	Dependency Advocacy Center	
21	Disability Rights California	
22	Disability Rights Legal Center	YES
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	YES
29	Housing and Economic Rights Advocates	
30	IEP Collaborative, Inc.	
31	Inland Counties Legal Services	
32	Inland Empire Latino Lawyers Association, Inc.	YES
33	Inner City Law Center	
34	Justice & Diversity Center of the Bar Association of San Francisco	YES
35	La Raza Centro Legal	
36	LACBA Counsel for Justice	YES
37	Law Foundation of Silicon Valley	
38	Lawyers' Committee for Civil Rights	YES
39	Learning Rights Law Center	
40	Legal Access Alameda	YES
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	YES
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	YES
63	Public Law Center	YES
64	Riverside Legal Aid	YES
65	San Diego Volunteer Lawyer Program	YES
66	San Joaquin College of Law	
67	San Luis Obispo Legal Assistance Foundation	
68	Santa Clara County Asian Law Alliance	
69	Santa Clara University Alexander Law Center	
70	Senior Adults Legal Assistance	
71	Senior Advocacy Network	
72	Senior Citizens Legal Services	
73	Social Justice Collaborative	
74	UC Davis School of Law Legal Clinics	
75	UnCommon Law	
76	USD School of Law Legal Clinics	
77	Veterans Legal Institute	YES
78	Wage Justice Center	
79	Watsonville Law Center	
80	Yuba-Sutter Legal Center for Seniors	
Support Centers		
#	Organization	
81	California Advocates for Nursing Home Reform	
82	California Rural Legal Assistance Foundation	
83	California Women's Law Center	
84	Center for Gender and Refugee Studies - California	
85	Center for Human Rights and Constitutional Law	
86	Child Care Law Center	
87	Coalition of California Welfare Rights Organizations	
88	Disability Rights Education and Defense Fund	
89	Family Violence Appellate Project	
90	Immigrant Legal Resource Center	
91	Impact Fund	
92	Justice in Aging	
93	Legal Services for Prisoners with Children	
94	National Center for Youth Law	

95 National Health Law Program
96 National Housing Law Project
97 OneJustice
98 Public Interest Law Project
99 Western Center on Law and Poverty
100 Worksafe, Inc.
101 Youth Law Center

Organizations recommended as ineligible

Legal Services Projects

102 Santa Barbara County Immigrant Legal Defense Center

2023 IOLTA/EAF Applicants Seeking Pro Bono Allocation

Number	Program Name	County	Recommend as Eligible?
1	Alliance for Children's Rights	Los Angeles	YES
2	Bet Tzedek Legal Services	Los Angeles	YES
3	Capital Pro Bono Inc.	Sacramento	YES
4	Casa Cornelia Law Center	San Diego	YES
5	Community Legal Services in East Palo Alto	San Mateo	YES
		Santa Clara	YES
6	Disability Rights Legal Center	Los Angeles	YES
7	Harriett Buhai Center for Family Law	Los Angeles	YES
8	Inland Empire Latino Lawyers Association, Inc.	San Bernardino	YES
		Riverside	YES
9	Justice & Diversity Center of the Bar Association of San Francisco	San Francisco	YES
10	LACBA Counsel for Justice	Los Angeles	YES
11	Lawyers' Committee for Civil Rights	Alameda	YES
		Contra Costa	YES
		Imperial	YES
		Marin	YES
		Sacramento	YES
		San Francisco	YES
		San Mateo	YES
		Santa Clara	YES
12	Legal Access Alameda	Alameda	YES
13	Legal Aid Society of San Bernardino	San Bernardino	YES
		Riverside	NO
14	Public Counsel	Los Angeles	YES
15	Public Law Center	Orange	YES
16	Riverside Legal Aid	Riverside	YES
17	San Diego Volunteer Lawyer Program	San Diego	YES
18	Veterans Legal Institute	Los Angeles	YES
		Orange	YES