



# The State Bar *of California*

---

## **OPEN SESSION**

## **AGENDA ITEM**

**JUNE 2023**

## **LEGAL SERVICES TRUST FUND COMMISSION RULES COMMITTEE 4.3**

**DATE:** June 21, 2023

**TO:** Rules Committee, Legal Services Trust Fund Commission

**FROM:** William Boschelli, Legal Services Trust Fund Commission Rules Committee  
Erica Connolly, Legal Services Trust Fund Commission Rules Committee  
James Meeker, Legal Services Trust Fund Commission Rules Committee

**SUBJECT:** Codification of Grant Administration Practices: Carryovers and Budget Modifications

---

### **EXECUTIVE SUMMARY**

The Legal Services Trust Fund Commission Rules Committee (Rules Committee) is working to gather, codify, and revise, as necessary and appropriate, the decision points and considerations related to the grants administration process. The purpose of the codification process is to ensure consistency, ease of administration, and clarity for grantee applicants, the commission, and State Bar staff.

This memo presents a working group of the Rules Committee's preliminary recommendations on the following issues regarding grant carryovers and budget modifications:

- how carryovers, budget deviations, and budget modifications are defined;
- what types of carryover requests require staff and/or commission review and approval;
- what types of budget modification requests require staff and/or commission review and approval;
- whether carryover and/or budget modifications should be capped; and
- the implications of failing to timely request a carryover or budget modification.

The working group sought feedback regarding the proposed recommendations from the legal aid community through the Legal Aid Association of California (LAAC) on January 20, 2023. LAAC convened with legal aid organizations and provided a summary of the feedback to the working

group on March 17, 2023. The working group will present its recommendations and the legal aid community's feedback to the Rules Committee on June 21, 2023.

---

## **BACKGROUND**

### **CODIFICATION PROCESS**

In 2019, at the recommendation of the State Bar Board of Trustees, State Bar staff and the Legal Services Trust Fund Commission (commission) agreed to engage in a multi-phase process of revising and/or codifying decision points employed in the grant-making process for Interest on Lawyer Trust Account (IOLTA) grants, Equal Access Fund (EAF) grants, and other Trust Fund Program grants. The intent was to provide more transparency about the process and to ensure consistency in administering the grants.

Commission members form working groups to investigate the questions raised in the Rules Committee's work plan and develop preliminary recommendations. The working groups develop preliminary recommendations, which are circulated by the committee to the legal aid community through the Legal Aid Association of California (LAAC) to obtain feedback. The Rules Committee considers the feedback before making a final recommendation to the commission, and in turn, the Board of Trustees. The Board of Trustees must approve any recommendation made by the commission unless it makes a finding in writing that a recommendation conflicts with a statutory, fiduciary, or legal obligation of the State Bar.

### **GOVERNING AUTHORITIES**

Applicants and grantees must comply with requirements set forth in Business & Professions Code sections 6210-6228, State Bar Rules and Appendices, Eligibility Guidelines for Legal Services Projects and Support Centers, General Grant Provisions, and Standards for Financial Management Systems and Audits.

### **Functional Matrix**

The State Bar's current policies regarding carryover and budget modification requests are noted in the functional matrix, which provides information on the roles of State Bar staff, the commission, and the State Bar Board of Trustees in various grantmaking and grant oversight tasks. For all grants, the functional matrix notes that State Bar staff has the authority to review and approve budget revision and carryover requests between 10 and 25 percent of the grant award amount. It notes that the commission has the authority to review and approve budget revision and carryover requests in excess of 25 percent of the grant award amount. This is the current controlling authority on carryover and budget modification review processes.

### 2022 Functional Matrix Excerpt

Key Grant Approval and Administration Functions by Grant Type	Current Staff Role	Current Commission Role
Review/approval of budget revisions	Staff reviews/approves requests between 10% and 25% of total award	Commission reviews/approves revisions in excess of 25%
Review/approve carryover requests	Staff reviews/approves requests between 10% and 25% of total award	Commission reviews/approves revisions in excess of 25%

### General Grant Provisions

The General Grant Provisions (Provisions) also provide insight into the importance of timely and accurate carryover and budget modification requests, though they are no longer the controlling authority on how and when grantees must make, and the State Bar or commission must review, such requests (the functional matrix controls).

The Provisions required grantees to obtain written consent before materially deviating from their approved grant budget. Section 7.01 of the Provisions states:

“A material deviation will be deemed to have occurred in the event of anticipated or actual expenditures of Grant Funds which are materially greater or less than as set forth in the Approved Budget, whether in total or by individual line item, or which materially alter the ratio of Program to Administrative Costs or which involve a disposition of property acquired with Grant Funds. Budget amount increases or decreases are deemed material when they meet either of the following tests:

1. The individual deviation is in excess of \$1,000 and exceeds the lesser of \$10,000 or 10% of the Recipient’s Grant for that Grant Period; or
2. The accumulated total of all budget deviations since the beginning of the Grant Period exceeds the lesser of \$10,000 or 10% of the Recipient’s Grant for that Grant Period.”

The Provisions also required that grantees request budget revisions in writing and provide “the request, the reasons for it, why it is necessary and its effect on the Recipient.” If the proposed use of funds was consistent with Legal Services Trust Fund Program Rules and requirements, the Provisions state the request was to be approved and the budget amended.

If a grantee failed to request a budget modification (or was denied a budget modification) and used the funds out of accordance with their approved budget and budget narrative, the Provisions state the recipient shall be deemed in default and the State Bar has the right to alter

the grant payment schedule, terminate the grant, or demand repayment of improperly spent grant funds.

As they relate to carryover requests, the Provisions indicate grantees must “return all unused Grant funds immediately unless a carryover thereof has been approved by the Commission,” but the Provisions did not provide guidance on how or when State Bar staff or the commission should review and approve such requests.

Again, while the Provisions provide helpful insight into past practices, the State Bar is **not** currently processing carryover or budget modification requests in accordance with Section 7.01 of the Provisions. The State Bar anticipates replacing the Provisions with new State Bar Rules over the course of the codification process. The new Rule proposed in this memorandum would supersede the General Grant Provisions as they relate to carryovers and budget modifications.

## **CURRENT PRACTICE**

### **Carryover Requests**

When a grantee cannot or does not spend all grant funds during the period for which they were awarded, the grantee must submit a carryover request if it wishes to spend remaining funds after the grant period ends. Currently, grantees may make requests at the beginning of the calendar year to request to carry over funds from the prior year (for one-year grants that align with the calendar year, like IOLTA, EAF, and partnership grants).<sup>1</sup> In the past, the State Bar processed carryover requests in the fall, shortly before the grant year ended. Processing carryover requests before the end of the grant period required grantees to predict what their spending would be in the final month(s) of the grant period to then request a carryover of any anticipated unspent funds.

Grantees are not currently required to request carryovers of up to 10 percent of the grant award amount. Such carryovers are self-executing. If a grantee wishes to carry over more than 10 percent of the grant award amount, a request must be made. Carryover requests for totals between 10 and 25 percent of the grant award amount may be approved by staff. Carryover requests greater than 25 percent are taken to the commission—or a committee of the commission if delegated authority—for discussion and approval. If approved, grantees typically have six months after the end of the grant period to spend carryover funds.<sup>2</sup>

The State Bar does not currently have a cap on carryover amounts. A grantee could, in theory, request to carry over their entire grant amount beyond the grant period, though most carryover requests are much smaller. In 2018 and 2019, the average IOLTA/EAF carryover request was about 20 percent of the grant award amount. However, during the COVID-19 pandemic, more grantees requested carryovers, and grantees requested larger carryovers than in prior years. Many grantees experienced an influx of COVID relief funds, while also struggling

---

<sup>1</sup> Because carryovers refer to the spending of grant funds beyond the end of the grant period, carryover requests are only required at the end of the grant term—the final year of the grant—for multi-year grants.

<sup>2</sup> Self-executing carryovers of up to 10 percent must be spent down in the same timeframe.

to hire staff or provide services during the pandemic, and therefore had difficulty spending grant funds during the applicable grant periods. In response, the commission afforded more flexibility in allowing longer carryover periods and larger carryover amounts than historically approved.<sup>3</sup> In 2020, the average carryover request was about 32 percent of the grant award amount. Four of these requests were for amounts greater than \$250,000; two were greater than \$1,000,000. By late 2021, however, the commission indicated that it would be less likely to continue to approve large carryover requests moving forward.<sup>4</sup>

The commission's history of approving or declining carryover requests varies by grant type. The commission has been less likely to approve carryover requests for partnership grants, since they are one-year competitive grants for which grantees may reapply annually. The commission has been more likely to approve carryover requests for IOLTA and EAF grant funds that are formula-based. Relatedly, the authorizing legislation of some discretionary grants includes firm spend-down dates which disallow carryovers. In these instances, State Bar staff and the commission must comply with the grants' authorizing legislation and are not able to approve carryover requests.<sup>5</sup>

### **Budget Modification Requests**

Before the start of a grant period, a grantee must submit a budget for approval. Current practice allows grantees' actual expenditures to deviate from that approved grant budget by up to 10 percent of the grant award amount. If a grantee wishes to deviate from their proposed budget by more than 10 percent of the grant amount, a budget modification must be requested.

Before the grant period starts, grantees are also required to sign a contract, or grant agreement, agreeing to the terms and requirements of that specific grant. Most State Bar grant agreements require grantees to alert the State Bar to proposed budget modifications within five business days.<sup>6</sup> In practice, however, the commission and its committees typically review, discuss, and approve budget modification requests at the same time they review, discuss, and

---

<sup>3</sup> Typical office practice allows grantees with an approved carryover six months to spend down carryover funds. However, because of pauses in hiring and service delivery during the COVID-19 pandemic, grantees were afforded 12 months (a full calendar year) to spend down approved carryovers of 2020 IOLTA/EAF grant funds. Additionally, 2022 EAF grant awards were much larger than usual, so grantees were able to propose a two-year budget. This effectively served as a pre-authorized carryover with a 12-month spend-down period.

<sup>4</sup> At its December 13, 2021, meeting, the commission passed the following resolution: "RESOLVED, given extraordinary circumstances in 2020-2021, the Legal Services Trust Fund Commission has exercised its discretion to permit a flexible approach to carryover requests. In light of that exercise of discretion, the commission approves the remaining budget revision and carryover requests above 25 percent of the 2021 IOLTA/EAF grant awards. The commission does not anticipate such extraordinary circumstances going forward and therefore will no longer apply that flexible approach when considering future requests." The IOLTA/EAF carryover requests approved during the December 13 meeting ranged from 49 percent to 76 percent of the grant amount.

<sup>5</sup> For these discretionary grants with statutorily required spend-down dates, even self-executing carryovers of up to 10 percent are not allowable.

<sup>6</sup> For example, 2021 and 2022 IOLTA and EAF grant agreements required grantees to "notify the State Bar within five (5) business days of any material change in the planned activities or proposed budget contained in the Application Materials or any revision thereto." Grant agreements do not define what a "material change" is.

approve carryover requests (near or shortly after the end of the grant year), and grantees have generally requested budget modifications annually according to that review process. Current State Bar practice, therefore, does not provide an effective process by which grantees can comply with the “five business days” requirement stated in most State Bar grant agreements and is not strongly enforcing that requirement. State Bar staff and the working group also do not believe the “five business days” requirement is realistic and would recommend it be removed from grant agreements in the future, or at a minimum, edited to clarify what is meant by a “material change” in planned activities or the proposed budget, as referenced in the grant agreement language.

Budget deviations are currently calculated by summing individual proposed or actual line-item deviations in the budget, where money moved from one line item to another is only counted once. For example, if a grantee proposed to move \$20,000 from the “attorney salary” budget line to the “paralegal salary” budget line and \$10,000 from the “space” budget line to the “equipment” budget line, the total budget deviation would total \$30,000. If the cumulative sum of deviations totals to more than 10 percent of the grant award amount, a budget modification must be requested. Budget modification requests for deviations between 10 and 25 percent of the grant award amount may be approved by staff; requests for deviations greater than 25 percent of the grant award amount are taken to the commission for discussion and approval. The commission has historically approved all or nearly all submitted budget modification requests, because grantees have requested to use grant funds in a way that continued to be in compliance with grant requirements.<sup>7</sup>

Importantly, the State Bar does not currently require carryover requests or budget modification requests when grantees wish to move funds year-to-year in multi-year grants. Carryover requests are only required to carry forward funds at the end of a grant period, and budget deviations only include the movement of funds between budget line-items.

Because the commission has typically approved most budget modification requests and there is currently little guidance regarding the movement of funds between years in multi-year grants, there is limited precedence outlining the type and severity of consequences for grantees whose expenditures are found to deviate beyond 10 percent of the grant amount (during a routine monitoring visit, for example), but had not requested a budget modification.

## DISCUSSION

---

<sup>7</sup> Grantees’ budgets must align with other fiscal guidelines and requirements. Grant budgets are not to allocate more than 25 percent to non-personnel costs nor allocate more than 25 percent to administrative costs without commission approval. Grantees are expected to adhere to these expense ratios even when they deviate from their approved budget; if budget deviations result in grantees falling out of compliance with these expense ratios, they are expected to submit a budget modification request so that the expense ratio may be reviewed and approved by the commission.

## IMPORTANCE OF TIMELY USE OF FUNDS

State Bar staff and commissioners have expressed concern that some grantees request large and/or repeated carryovers, particularly of EAF and IOLTA grant funds (the latter of which can be spent more flexibly than other funding sources), with the possible effect of building or maintaining a reserve fund for the organization. While the working group acknowledges that nonprofit legal aid organizations benefit from having reserves, using carryover requests to build such reserves is likely inconsistent with the statutory requirements for State Bar grants. California Business and Professions Code section 6210 states that the purpose of Article 14, which provides funds for the provision of legal services to indigent persons, is “to expand the availability and improve the quality of existing free legal services in civil matters to indigent persons, and to initiate new programs that will provide services to them.” State Bar-funded grants are awarded with the understanding that the services proposed in the grant application will be provided during the grant period.<sup>8</sup> It is therefore important that grantees make substantial efforts to spend awarded funds during the grant period.

The working group recognizes, though, the value of providing some flexibility. Unexpected circumstances, such as staff turnover, hiring difficulties, or lower than expected client demand, may result in delays in service provision or lower than expected spending during the grant period. The working group therefore wishes to continue to allow for some carryover of funds.

As a reference point, the working group looked to the Legal Services Corporation (LSC), which provides federal funding for civil legal aid. LSC allows recipients to retain from one fiscal year to the next 10 percent of their LSC funding. LSC recipients may request a waiver to retain up to 25 percent for “special circumstances” and in excess of 25 percent only for “extraordinary and compelling circumstances, such as when a natural disaster or other catastrophic event prevents the timely expenditure of LSC funds, or when the recipient receives an insurance reimbursement, the proceeds from the sale of real property, a payment from a lawsuit in which the recipient was a party, or a payment from an LSC-funded lawsuit, regardless of whether the recipient was a party to the lawsuit.”<sup>9</sup>

The working group feels that the State Bar’s current practice regarding carryover requests—allowing carryovers of up to 10 percent to be self-executing, requiring staff review and approval of carryover requests up to 25 percent, and requiring commission review and approval of carryover requests greater than 25 percent—largely balances the need to ensure all or most grant funds are spent during the grant period, while allowing for flexibility for unexpected circumstances. The working group recommends that this practice be maintained and codified.

However, to discourage large carryover requests, the working group recommends that carryover requests equal to or greater than 50 percent of the grant award amount only be approved in cases of extraordinary circumstances that impact a broad segment of the legal services community, such as significant economic downturns and natural disasters.

---

<sup>8</sup> Grant agreement language states the grant period start and end date, and incorporates the application materials (including grant application, budget, and budget narrative) into the contract.

<sup>9</sup> See U.S. 45 CFR § 1268.3. <https://www.ecfr.gov/current/title-45/section-1628.3>

Organization-specific reasons will not be found to meet this “extraordinary circumstances” threshold.

Additionally, the working group recommends the proposed Rule incorporate factors that staff and the commission should consider when determining whether to approve a carryover request, including:

- the grantee’s explanation for the underspending and need for a carryover,
- the size of the carryover request and the grantee’s ability to spend down remaining grant funds,
- the grantee’s history of carryover requests,
- the grantee’s plan to avoid carryover requests in the future,
- the requirements and purpose of the grant at issue, and
- other factors determined relevant by the commission.<sup>10</sup>

State Bar staff and the commission should evaluate the grantee’s explanation for the underspending and need for a carryover to assess whether the grantee made reasonable attempts to spend down grant funds within the grant period. Similarly, the size of the carryover request may speak to the grantee’s ability to spend down remaining grant funds within the spend-down period if the carryover is approved.

When evaluating a grantee’s history of carryover requests, the commission should consider the number and size of carryover requests made and approved in the preceding three years. The working group wishes to emphasize that grantees are not to use carryovers to build reserves or continue to hold money year-over-year, and the commission is unlikely to approve continued carryover requests, absent compelling circumstances. To aid in facilitating evaluation of this factor, the working group recommends that grantees report when they carry over less than 10 percent of grant funds past the end of the grant period so that the commission has a record of those practices. Relatedly, staff and the commission may evaluate the grantee’s plan to avoid carryover requests in the future, given the working group’s desire to discourage large and frequent carryover requests.

When evaluating the requirements and purpose of the grant at issue, the commission will comply with spend-down requirements where applicable and evaluate the relative flexibility of the particular grant. The commission may be more willing to approve carryover requests of IOLTA/EAF funds that are more flexible in their purpose and requirements than of discretionary grant funds, where grant applications and budgets are developed to provide a specific, well-defined set of services and deliverables in a specified timeframe (the grant period).<sup>11</sup>

---

<sup>10</sup> “Other factors determined relevant by the commission” might include, but are not limited to, factors such as substantial and unexpected changes to the grantee’s funding sources (like Paycheck Protection Program loans received during the pandemic).

<sup>11</sup> The working group acknowledges that EAF grants are less flexible than IOLTA and have requirements more akin to discretionary grants in that EAF grant funds must be spent on particular services; however, grantees have more flexibility to adjust these services than they do for discretionary grants (like partnership, homelessness prevention, foreclosure prevention, and consumer debt grants). The working group therefore believes that flexibility for EAF grants remains in the interest of both the grantees and the client populations that they serve.



The working group anticipates that the larger the size of the carryover request, the greater the level of scrutiny that the request will receive, and the greater the justification a grantee will need to make for each of the factors listed above.

The working group recommends that the commission have discretion to approve a carryover request in full or in part, subject to the justification provided. For example, if the commission finds that a grantee's request does not justify the requested carryover amount but does support a lower carryover amount, the commission having the discretion to approve the smaller amount would afford greater flexibility that would benefit grantees.

The working group recommends codifying that, should a carryover request be denied by State Bar staff or the commission, the grantee must return grant funds unspent in the grant period (minus 10 percent of the grant amount that is a self-executing carryover, if allowed for the particular grant) within 30 days of notice of the denial, or within 30 days of the end of the grant period, whichever is later.<sup>12</sup>

Carryover requests are to be submitted in compliance with annual deadlines, or grant-specific deadlines when the grant period is not a calendar year, set by State Bar staff. Should a grantee fail to make a timely carryover request in accordance with these Rules, the commission would be authorized to impose corrective measures and/or require additional oversight of the grantee's fiscal and governance functions. This additional oversight might include one or more of the following:

- the commission sending a letter to the grantee's governing body to notify them of the failure to comply with requirements;
- requiring a corrective action plan;
- requiring additional monitoring;
- withholding grant payments until corrective action is taken;
- or other action the commission deems appropriate.

Failure to adhere to State Bar Rules and requirements would also be a breach of contract which could result in a loss of current or future State Bar funding. If a grantee fails to request a carryover and is found to have spent funds beyond the grant period without approval, the commission may, at its discretion, require the grantee return those funds (minus 10 percent of the grant amount, if self-executing carryovers are allowed for the grant) within 30 days of notification.<sup>13</sup>

---

<sup>12</sup> Grantees would be able to appeal to the commission State Bar staff denials of carryover requests of up to 25 percent of the grant amount.

<sup>13</sup> State Bar staff have identified instances of grantees using grant funds after the end of the grant period without requesting a carryover during routine monitoring visits. Should a grantee be found to have carried over funds and not spent them, the entire amount of unspent funds is to be returned to the State Bar.

## Consideration of Multi-year Grants

Current State Bar practice does not require grantees to submit a carryover request or budget modification to move money from one grant year to another in multi-year grants. State Bar staff and the working group have concerns that this limits important oversight opportunities. In 2022, for example, a grantee was found—through a review of routine expense reporting—to have spent zero dollars in the first two years of a three-year discretionary grant. This lack of spending did not require a carryover request because the grant term was not ending, and it did not require a budget modification since the money was not spent on different line items than budgeted for—it was not spent at all. However, commissioners were concerned to learn of this lack of spending and its impact on service delivery.

As with one-year grants, a grantee's failure to spend multi-year grant funds on time impacts services to clients. In multi-year grant application materials, the grantee outlines not only the budget by year but also the services and deliverables by year. If a grantee fails to spend down much of their grant funds in a particular grant year, that may indicate services are not being delivered as proposed. This is of particular concern for discretionary grants (like some homelessness prevention grants, CalHFA foreclosure prevention grants, and consumer debt grants) that are scored in a competitive application process and awarded grant funds, in part, based on the strength of the proposed services and deliverables over time.

To ensure that State Bar staff and the commission have adequate oversight of the rate at which grantees spend down funds in multi-year grants, the working group recommends the State Bar codify and implement a **rollover** request process that mirrors the carryover request process. A rollover would be defined as the use of grant funds after the grant **year** for which they are budgeted, in a multi-year grant.

A grantee would be allowed to rollover up to 10 percent of a **yearly** grant award amount in a multi-year award without making a request. However, should a grantee wish to rollover more than 10 percent of a yearly grant award amount, a request would need to be submitted. The working group recommends that State Bar staff have authority to approve rollovers of up to 25 percent of the yearly grant amount and the commission have authority to approve rollovers in excess of 25 percent of the yearly grant amount. Unlike with carryovers, the working group is not recommending that rollovers equal to or greater than 50 percent of the yearly grant award amount only be approved in extraordinary circumstances; however, the working group expects larger rollovers, especially those over 50 percent, to be accepted only in limited circumstances.

Additionally, the working group recommends the proposed Rule incorporate the same factors for consideration for rollover requests as would be considered for carryover requests:

- the grantee's explanation for the underspending and need for a rollover,
- the size of the rollover request and the grantee's ability to spend down remaining grant funds,
- the grantee's history of rollover requests,
- the grantee's plan to avoid rollover requests in the future,
- the requirements and purpose of the grant at issue, and
- other factors determined relevant by the commission.

Rollover requests are to be submitted in compliance with annual deadlines, or grant-specific deadlines when the grant year does not align with a calendar year, set by State Bar staff. Should a grantee fail to make a timely rollover request in accordance with these Rules, the commission would be authorized to impose corrective measures and/or require additional oversight of the grantee's fiscal and governance functions, like in instances of noncompliance with carryover request policies. Should a rollover request be denied, the commission may, at its discretion, require the grantee to return funds unspent in the relevant year of the grant (minus 10 percent) within 30 days of notice.<sup>14</sup>

### **IMPORTANCE OF USING FUNDS IN ACCORDANCE WITH APPROVED APPLICATION MATERIALS**

State Bar staff and the commission spend significant amounts of time reviewing grant application materials, including the budget, budget narrative, and anticipated services and deliverables, to ensure grant projects comply with statutory requirements, State Bar Rules, and grant parameters. So that the State Bar and commission can ensure grantees continue to follow these Rules and requirements throughout the grant period, State Bar grant agreements require grantees to spend funds in accordance with approved application materials unless they receive approval otherwise. This necessitates a process by which grantees can request budget modifications when they wish to deviate from, and make changes to, the approved budget. In short, a budget modification process allows State Bar staff and the commission to exercise appropriate oversight of public funds and ensure grantees continue to spend funds in compliance with relevant Rules and requirements.

However, current governing authorities do not adequately define how budget deviations should be calculated or when a budget modification request—a request to change the approved budget—is required. The working group recommends that budget deviations be calculated by summing overspending on individual budget line-items, over the course of the grant period, compared to the approved budget. Such a calculation would capture any movement of grant funds from one budget line-item to another, because the line-item to which funds were moved would be over budget (see example budget deviations below). The working group also recommends that State Bar staff make available a worksheet in which grantees can input their approved budget and anticipated or actual expenditures to calculate the size of the budget deviations, since this has been a source of confusion for grantees in the past. An example of such a worksheet is provided in Attachment B.

The State Bar's current practice—allowing grantees to deviate from their approved budgets by up to 10 percent of the grant award amount without a budget modification, requiring staff review and approval of budget modification requests up to 25 percent, and requiring commission review and approval of budget modification requests greater than 25 percent—is largely sufficient. The working group recommends that this practice be maintained and codified.

---

<sup>14</sup> Grantees would be able to appeal to the commission State Bar staff denials of rollover requests of up to 25 percent of the yearly grant amount.

### Example One-Year Grant Budget Deviation Calculation

	Approved Budget	Increases	Decreases	Proposed Budget
Attorneys	\$100,000		\$20,000	\$80,000
Paralegals	\$75,000	\$20,000		\$95,000
Space	\$20,000		\$10,000	\$10,000
Equipment	\$5,000	\$10,000		\$15,000
<b>Total</b>	<b>\$200,000</b>	<b>\$30,000*</b>	<b>\$30,000</b>	<b>\$200,000</b>

\*The budget deviation, the sum of overspending (“increases”) on individual budget line-items compared to the approved budget, in this example would be \$30,000. Because \$30,000 is greater than 10 percent of the total grant award amount of \$200,000, the grantee would need to submit a budget modification request.

### Example Three-Year Grant Budget Deviation Calculation

	Approved Three-Year Budget	Increases	Decreases	Proposed Three-Year Budget
Attorneys	\$300,000		\$100,000	\$400,000
Paralegals	\$225,000	\$100,000		\$325,000
Space	\$60,000		\$5,000	\$15,000
Equipment	\$15,000	\$5,000		\$20,000
<b>Total</b>	<b>\$600,000</b>	<b>\$105,000*</b>	<b>\$105,000</b>	<b>\$600,000</b>

\*The budget deviation, the sum of overspending (“increases”) on individual budget line-items compared to the approved budget, in this example would be \$105,000. Because \$105,000 is greater than 10 percent of the total grant award amount of \$600,000, the grantee would need to submit a budget modification request.

The working group recommends that there be a process by which grantees can submit budget modification requests on a rolling basis, for review and approval at least quarterly. Grantees must submit the budget modification request in the quarter during which their proposed or actual budget deviations sum to more than 10 percent of the grant award amount.

Like carryover and rollover requests, the working group recommends the proposed Rule incorporate factors for staff and the commission to consider when evaluating budget modification requests, though given differences in flexibility and requirements across grant types, not all factors may be relevant to all budget modification requests. These factors would include:

- the grantee’s explanation for the change in spending and need for a budget modification,
- the size of the budget modification request and the grantee’s ability to spend the grant funds in accordance with the requested modification,
- the impact on proposed grant services and deliverables,
- the requirements and purpose of the grant at issue, and
- other factors determined relevant by the commission.

State Bar staff and the commission should evaluate the grantee's explanation for the change in spending and need for a budget modification to assess the reasonableness of the requested change. A grantee's budget modification request for a competitive grant may be viewed more favorably, for example, if the grantee is requesting to adjust their budget to respond to different service needs in the community rather than because they did not propose a thoughtful budget in the original application. Similarly, the size of the budget modification may speak to the grantee's ability to spend the grant funds in accordance with the requested modification if approved.

When evaluating the impact on proposed grant services and deliverables, State Bar staff and the commission will assess whether changes in spending would result in significant changes to services and grant deliverables. This factor, in addition to "the requirements and purpose of the grant at issue," speaks to whether the new use of funds is still aligned with the grant requirements. This analysis will be additionally important when considering budget modifications requests for competitive grants. For example, a project that removes funding from attorney salaries and instead funds only paralegal salaries is likely to deliver a different set of legal services to its clients than it would under its original staffing plan. For formula grants, the commission has and will continue to approve all or nearly all budget modifications where the new use of funds is in accordance with grant requirements and permissible uses. For competitive grants, however, the commission may be less willing to approve budget modifications that result in substantial service delivery changes because competitive grant proposals are scored and awarded based on the strength on the application materials submitted, including anticipated deliverables.<sup>15</sup>

Should a budget modification request be denied, the grantee must either use the funds in accordance with the approved budget and budget narrative or, at the commission's discretion, return the funds that cannot be spent in accordance with the approved budget and narrative.<sup>16</sup> This return of funds would be required within 30 days of the end of the grant period. If the budget modification request is approved, the proposed modified budget would become the approved budget and would be incorporated into the grantee's application materials.

---

<sup>15</sup> Grantees are statutorily obligated to receive IOLTA funding if found eligible, and IOLTA funding may be utilized flexibly, for core operating expenses or to fund particular activities and staff. Budget modification requests for IOLTA grants, therefore, will be more likely to be approved since more activities and uses of funding are allowable. Similarly, grantees are statutorily obligated to EAF funding and formula-based discretionary funds (like some homelessness prevention grants) if they are found eligible and propose to provide permissible services with those grant funds. The commission therefore is likely to approve most budget modifications for these grants but will be mindful in evaluating the impact of budget modifications on grant services and deliverables and ensure the new use of funding is still in line with the grant requirements. The commission should ensure the grantee incorporates any necessary application material changes (to the project budget, budget narrative, and anticipated services and deliverables) to accurately reflect the new use of funds. Alternatively, grantees are awarded competitive grants (like partnership grants, some homelessness prevention grants, CalHFA foreclosure prevention grants, and consumer debt grants) based on the scoring of their application materials, including the originally proposed budget, budget narrative, and anticipated services and deliverables. The commission will be less willing to approve a budget modification that would substantially alter a competitive grant recipient's services and deliverables, because the grant funds were awarded based on the strength of the proposal submitted and services promised.

<sup>16</sup> Grantees would be able to appeal to the commission State Bar staff denials of budget modification requests of up to 25 percent of the grant award amount.

While the working group does not anticipate many budget modification requests will be denied, allowing the commission to require a return of funds when a grantee proposes to use funds in a way that does not align with a grant's purpose and requirements assures the commission can effectively exercise its oversight responsibilities.

As with carryovers and rollovers, should a grantee fail to timely request a budget modification in accordance with these Rules, the commission would be authorized to require additional corrective action and/or oversight of the grantee's fiscal and governance functions. This might include one or more of the following:

- the commission sending a letter to the grantee's governing body to notify them of the failure to comply with requirements;
- requiring a corrective action plan; requiring additional monitoring;
- withholding grant payments until corrective action is taken;
- or other action the commission deems appropriate.

Failure to adhere to State Bar Rules and requirements would also be a breach of contract which could result in a loss of current or future State Bar funding. If a grantee fails to request a budget modification and is found to have deviated from the approved budget by more than 10 percent of the grant award amount, the commission may, at its discretion, require the grantee return those funds (minus 10 percent of the grant amount) within 30 days of notification.

#### **ADDITIONAL NOTES ON PROPOSED STATE BAR RULE LANGUAGE**

Attachment A provides proposed State Bar Rule language on carryover, rollover, and budget modification requests. This is not the final recommended Rule language but rather a reference point for discussing specific modifications.

The proposed Rule discusses budget deviations from the **approved budget**. This language is included to ensure grantees do not attempt to circumvent the budget modification review process by making repeated small budget deviations of up to 10 percent of the grant amount that, if taken together, would result in a total budget deviation of more than 10 percent and would require review. Grantees will continue to be allowed to deviate from an approved grant budget by up to 10 percent of the grant award amount; however, these deviations are not incorporated into the approved budget without a budget modification being requested. Once budget deviations total to more than 10 percent of the grant award, a budget modification must be requested; only once a budget modification is approved would the changes be incorporated into the approved budget by State Bar staff or the commission.

The proposed language also indicates that budget deviations, even those less than 10 percent of the grant award, require review and approval if the new budget **would not comply with existing State Bar or Legal Services Trust Fund fiscal guidelines and requirements**. This language is included to ensure grantees do not, either intentionally or unintentionally, make budget deviations that result in a budget that is out of compliance with established financial guidelines and policies. The most common example of this is budget deviations that impact the

personnel/non-personnel costs ratio and the program/administrative costs ratio. A grantee may not spend less than 75 percent of their grant award on personnel expenses without approval nor may they spend less than 75 percent of their grant award on program (non-administrative) expenses without commission approval. The working group wishes to avoid a situation, for example, in which a grantee's approved budget includes 76 percent spending on personnel and then the grantee later has a budget deviation that results in 74 percent spending on personnel without review. Therefore, budget modification requests must be submitted for any budget deviations that result in a violation of existing guidelines and requirements, regardless of the size of the budget deviation. The example worksheet provided in Attachment B includes calculations of the personnel/non-personnel costs ratio and the program/administrative costs ratio for reference.

### **LEGAL AID COMMUNITY FEEDBACK**

The legal aid community provided several points of feedback which were summarized by LAAC and shared with the working group on March 17, 2023 (see Attachment C). The community's feedback and the working group's responses are detailed below.

### **VARYING UNDERSTANDING OF, AND NEED FOR, CARRYOVERS AND BUDGET MODIFICATIONS**

LAAC indicated that the legal aid community has varying experiences with the current budget modification and carryover request procedures. Larger legal aid organizations reported greater need to make such requests; however, other grantees were unaware of the ability to request budget modifications and carryovers or were concerned that it does not "look good" to do so. LAAC therefore asked for State Bar staff to reiterate that carryovers and budget modifications are expected. The working group agrees that budget modifications are expected; actual expenditures very often differ from budgeted figures, and grantees proactively identifying, reporting, and requesting approval for these deviations (when necessary) is a sign of strong financial accounting. However, the working group continues to discourage grantees from requesting large and repeated carryovers; grant funds should—whenever possible—be spent in the grant period for which they were awarded.

LAAC also noted grantee confusion and difficulty with the carryover and budget modification process. Grantees reported difficulty receiving clarity around when requests were required and whether requests were approved. In some instances, grantees reported difficulties contacting the appropriate State Bar contact and recommended a single point of email contact. State Bar staff are hopeful that assigning each grantee a fiscal staff contact (which is always listed in SmartSimple) will help streamline this process for grantees and anticipate that the proposed Rule will provide clarity to grantees, staff, and the commission.

### **REQUESTS FOR GREATER FLEXIBILITY OR PROCESS SIMPLICITY**

LAAC noted that most budget modification and carryover requests are made because of hiring difficulties. For example, a budget modification may be requested if a contract attorney (for which expenses are reported as "contract services") is hired instead of a staff attorney. The legal aid community desired a simpler budget modification request process for such staffing

changes. The working group does not recommend a different process at this time but recognizes that contract services are considered “non-personnel” costs and these staffing changes may impact a grantee’s personnel versus non-personnel spending ratio. The working group suggests the commission and its committees consider approving budget modifications that result in greater than 25 percent non-personnel costs when those non-personnel costs are driven upwards by hiring contract staff to fill otherwise vacant positions.

The legal aid community also requested that the commission have discretion to approve a carryover request in part if it would otherwise be denied in full, and that the carryover period be lengthened from six-months.<sup>17</sup> Discretion to approve carryovers in part has been incorporated into the proposed Rule and accompanying guidance above; however, the working group does not recommend lengthening the carryover request period.

The legal aid community also requested that the working group consider increasing the percentage thresholds such that carryovers of up to 20 percent of the grant award amount be self-executing, State Bar staff have authority to approve requests up to 35 percent, and the commission have authority to approve requests greater than 35 percent. The working group was not comfortable raising these thresholds, particularly as IOLTA grant award amounts are projected to increase in the near term.

#### **ADDITIONAL FEEDBACK**

The working group’s proposal moves the budget modification request review process from annual (in practice), to quarterly. The legal aid community was mixed on whether this change was preferred. Some grantees appreciated that the proposed process would allow for State Bar staff and the commission to be more quickly responsive and transparent about requests; however, some grantees felt a quarterly review process would create more work for grantees. The working group wishes to clarify that grantees would only be required to make budget modification requests in the quarter during which budget deviations would total to greater than 10 percent of the grant amount. This would not necessarily require quarterly budget modifications; it would require grantees to review their expenditures at least quarterly, but many State Bar grants already require quarterly expenditure reporting.

Finally, LAAC noted that Section 7.01 of the General Grant Provisions currently defines a material budget deviation, in part, as an “individual deviation is in excess of \$1,000 and exceeds the lesser of \$10,000 or 10% of the Recipient’s Grant for that Grant Period.” They indicated that the \$1,000 trigger is too low. The working group agrees. The General Grant Provisions are not the current governing authority on budget modifications and this trigger is not currently being enforced. State Bar staff anticipate that the General Grant Provisions will be replaced via codification of fiscal matters this fall.

---

<sup>17</sup> In some instances, such as with 2022 EAF distributions, the commission has allowed spend-down periods of 12 months; however, the default carryover period is six months.



## **RECOMMENDATION**

Should the committee concur in the proposed action, passage of the following motion is recommended:

**RESOLVED**, that the Rules Committee of the Legal Services Trust Fund Commission approves the following working group's recommendation related to carryovers and budget modifications as set forth in the working group's June 21, 2023, memorandum.

Once the Rules Committee makes its final recommendations, the recommendations will be reviewed by both the commission and the State Bar Board of Trustees.

## **ATTACHMENTS LIST**

- A. Proposed State Bar Rule Language
- B. Example Budget Modification Worksheet
- C. LAAC Feedback to the Preliminary Working Group Recommendations

## PROPOSED STATE BAR RULE LANGUAGE

**Rule X.XXX Carryovers, Rollovers, and Budget Modifications**

- (A) A “carryover” is the use of grant funds after the grant period for which they were awarded.
- (B) A “rollover” is the use of grant funds after the grant year, but during the grant period, for which they were awarded.
- (C) A “budget deviation” is the use of grant funds in different budget line-items than proposed in the approved budget.
  - a. Budget deviations are to be calculated by summing overspending in each budget line-item compared to the approved budget.
- (D) Subject to grant requirements, grant recipients shall not carry over more than 10 percent of grant funds beyond the grant period for which they were awarded without obtaining consent from State Bar staff or the Commission.
  - a. State Bar staff may approve carryover requests of up to 25 percent of the grant award amount. The Commission may approve, in part or in full, carryover requests in excess of 25 percent of the grant award amount. The Commission may approve carryover requests of 50 percent or more of the grant award amount only in extraordinary circumstances. Factors that State Bar staff and the Commission shall consider when determining whether to approve a carryover request include, but are not limited to:
    - i. the grantee’s explanation for the underspending and need for a carryover,
    - ii. the size of the carryover request and the grantee’s ability to spend down remaining grant funds,
    - iii. the grantee’s history of carryover requests,
    - iv. the grantee’s plan to avoid carryover requests in the future,
    - v. the requirements and purpose of the grant at issue, and
    - vi. other factors determined relevant by the Commission.
  - b. If a carryover request is denied, the grant recipient shall return funds not spent within the grant period for which they were awarded (minus 10 percent of the grant award amount, unless carryovers are not allowed for the grant type) within 30 days of notice of denial, or within 30 days of the end of the grant period, whichever is later.
  - c. Grant recipients must submit carryover requests in compliance with annual deadlines, or grant-specific deadlines when the grant period is not a calendar year, set by State Bar staff.
  - d. Failure to comply with the requirements in this Rule may result in a breach of

contract. If a grant recipient fails to make a timely carryover request in accordance with this Rule, the Commission may require additional corrective action and/or oversight of the grantee's fiscal and governance functions, including, but not limited to:

- i. sending a letter to the organizations' governing body to notify them of the failure to comply with requirements,
  - ii. requiring a corrective action plan,
  - iii. requiring additional monitoring,
  - iv. withholding grant payments until corrective action is taken, or
  - v. or other action the Commission deems appropriate.
- e. If a grantee fails to request a carryover and is found to have spent funds beyond the grant period without approval, the Commission may, at its discretion, require the grantee return those funds (minus 10 percent of the grant amount, unless carryovers are not allowed for the grant type) within 30 days of notification.
  - f. Grantees shall report to State Bar staff any carryovers of up to 10 percent of the grant amount within 30 days of the end of the grant period.

(E) Subject to grant requirements, grant recipients shall not roll over more than 10 percent of yearly grant funds, in a multi-year grant, beyond the grant year for which they were budgeted without obtaining consent from State Bar staff or the Commission.

- a. State Bar staff may approve rollover requests of up to 25 percent of the yearly grant award amount. The Commission may approve rollover requests in excess of 25 percent of the yearly grant award amount. The Commission may approve rollover requests of 50 percent or more of the yearly grant award amount only in extraordinary circumstances. Factors that State Bar staff and the Commission shall consider when determining whether to approve a rollover request include, but are not limited to:
  - i. the grantee's explanation for the underspending and need for a rollover,
  - ii. the size of the rollover request and the grantee's ability to spend down remaining grant funds,
  - iii. the grantee's history of rollover requests,
  - iv. the grantee's plan to avoid rollover requests in the future,
  - v. the requirements and purpose of the grant at issue, and
  - vi. other factors determined relevant by the Commission.
- b. If a rollover request is denied, the grant recipient may, at the Commission's discretion, be required to return funds not spent within the grant year for which they were awarded (minus 10 percent of the yearly grant amount) within 30 days of notice of denial.
- c. Grant recipients must submit rollover requests in compliance with annual deadlines, or grant-specific deadlines when the grant period is not a calendar year, set by State Bar staff.

- d. Failure to comply with the requirements in this Rule may result in a breach of contract. If a grant recipient fails to make a timely rollover request in accordance with this Rule, the Commission may require additional corrective action and/or oversight of the grantee's fiscal and governance functions, including, but not limited to:
    - i. sending a letter to the organizations' governing body to notify them of the failure to comply with requirements,
    - ii. requiring a corrective action plan,
    - iii. requiring additional monitoring,
    - iv. withholding grant payments until corrective action is taken, or
    - v. or other action the commission deems appropriate.
  - e. If a grantee fails to request a rollover and is found to have spent funds beyond the budgeted grant year without approval, the Commission may, at its discretion, require the grantee return those funds (minus 10 percent of the yearly grant amount, unless rollovers are not allowed for the specific grant type) within 30 days of notification.
- (F) Grant recipients shall not deviate from an approved budget by more than 10 percent of grant funds without obtaining consent from State Bar staff or the Commission.
- a. A budget modification request must be made to modify the approved budget when:
    - i. Anticipated or actual budget deviations total to more than 10 percent of the total grant award amount, or
    - ii. Any budget deviation would result in a budget being out of compliance with any other State Bar or Legal Services Trust Fund fiscal guidelines and requirements.
  - b. State Bar staff may approve budget modification requests of up to 25 percent of the grant award amount. The Commission may approve budget modification requests in excess of 25 percent of the grant award amount. Factors that State Bar staff and the Commission shall consider when determining whether to approve a budget modification request include, but are not limited to:
    - i. the grantee's explanation for the change in spending and need for a budget modification,
    - ii. the size of the budget modification request and the grantee's ability to spend the grant funds in accordance with the requested modification,
    - iii. the impact on proposed grant services and deliverables,
    - iv. the requirements and purpose of the grant at issue, and
    - v. other factors determined relevant by the Commission.
  - c. If a budget modification request is approved, the approved budget is to be modified in accordance with the request.

- d. If a budget modification request is denied, the grant recipient may, at the Commission's discretion, be required to return funds not spent in accordance with the approved budget within 30 days of the end of the grant period.
- e. Grant recipients must submit budget modification requests in compliance with deadlines set by State Bar staff.
- f. Failure to comply with the requirements in this Rule may result in a breach of contract. If a grant recipient fails to make a timely budget modification request in accordance with this Rule, the Commission may require additional corrective action and/or oversight of the grantee's fiscal and governance functions, including, but not limited to:
  - i. sending a letter to the organizations' governing body to notify them of the failure to comply with requirements,
  - ii. requiring a corrective action plan,
  - iii. requiring additional monitoring,
  - iv. withholding grant payments until corrective action is taken, or
  - v. or other action the Commission deems appropriate.
- g. If a grantee fails to request a budget modification and is found to have spent funds not in accordance with the approved budget, the Commission may, at its discretion, require the grantee return those funds (minus 10 percent of the grant amount, unless the deviation would result in a budget being out of compliance with any other State Bar or Legal Services Trust Fund fiscal guidelines and requirements, in which case the Commission may require return of all funds spent not in accordance with the approved budget) within 30 days of notification.

<b>Instructions:</b>	Input your <b>approved budget</b> in this column		Input your <b>proposed modified budget</b> in this column		This column will calculate line-item increases in your proposed budget (do not enter data)	This column will calculate line-item decreases in your proposed budget (do not enter data)	Input your <b>actual or anticipated total spending</b> at the end of the grant year	This column will calculate your <b>proposed carryover</b> of unspent funds (do not enter data)
	Approved Budget	Proposed Modified Budget	Proposed Increases	Proposed Decreases			Anticipated Total Year Spending	Proposed Carryover
<b>GRAND TOTAL</b>	<b>\$450,000</b>	<b>\$450,000</b>	<b>\$83,500</b>	<b>\$83,500</b>				<b>\$0</b>
<b>Personnel</b>								
Attorneys	\$250,000	\$175,000	\$0	\$75,000			\$175,000	\$0
Paralegals	\$60,000	\$85,000	\$25,000	\$0			\$85,000	\$0
Other Staff	\$0	\$25,000	\$25,000	\$0			\$25,000	\$0
<b>SUBTOTAL</b>	<b>\$310,000</b>	<b>\$285,000</b>	<b>\$50,000</b>	<b>\$75,000</b>			<b>\$285,000</b>	<b>\$0</b>
Employee Benefits	\$56,000	\$50,000	\$0	\$6,000			\$50,000	\$0
<b>TOTAL PERSONNEL</b>	<b>\$366,000</b>	<b>\$335,000</b>	<b>\$50,000</b>	<b>\$81,000</b>			<b>\$335,000</b>	<b>\$0</b>
<b>Non-Personnel</b>								
Space	\$15,000	\$15,000	\$0	\$0			\$15,000	\$0
Equipment Rental and Maintenance	\$0	\$0	\$0	\$0			\$0	\$0
Office Supplies	\$3,000	\$3,500	\$500	\$0			\$3,500	\$0
Printing and Postage	\$1,500	\$1,000	\$0	\$500			\$1,000	\$0
Telecommunications	\$0	\$0	\$0	\$0			\$0	\$0
Technology	\$10,000	\$20,000	\$10,000	\$0			\$20,000	\$0
Program Travel	\$2,500	\$2,500	\$0	\$0			\$2,500	\$0
Training	\$2,500	\$2,500	\$0	\$0			\$2,500	\$0
Library	\$0	\$0	\$0	\$0			\$0	\$0
Insurance	\$1,500	\$2,500	\$1,000	\$0			\$2,500	\$0
Litigation	\$5,000	\$7,000	\$2,000	\$0			\$7,000	\$0
Capital Additions	\$0	\$0	\$0	\$0			\$0	\$0
Contract Services to Clients	\$2,000	\$0	\$0	\$2,000			\$0	\$0
Evaluation	\$1,000	\$1,000	\$0	\$0			\$1,000	\$0
Other	\$0	\$0	\$0	\$0			\$0	\$0
<b>TOTAL NON-PERSONNEL</b>	<b>\$44,000</b>	<b>\$55,000</b>	<b>\$13,500</b>	<b>\$2,500</b>			<b>\$55,000</b>	<b>\$0</b>
<b>Administrative</b>								
Personnel	\$15,000	\$25,000	\$10,000	\$0			\$25,000	\$0
Non-Personnel	\$10,000	\$10,000	\$0	\$0			\$10,000	\$0
<b>TOTAL ADMINISTRATIVE</b>	<b>\$25,000</b>	<b>\$35,000</b>	<b>\$10,000</b>	<b>\$0</b>			<b>\$35,000</b>	<b>\$0</b>
Total Sub-Grants	\$15,000	\$25,000	\$10,000	\$0			\$25,000	\$0
<b>GRAND TOTAL</b>	<b>\$450,000</b>	<b>\$450,000</b>	<b>\$83,500</b>	<b>\$83,500</b>			<b>\$450,000</b>	<b>\$0</b>

**Budget Deviations**

Percentage of Grant Amount 18.6%

If budget deviations (sum of line-item increases) total to **more than 10 percent** of the grant amount, a budget modification request is required.

**Carryovers**

Percentage of Grant Amount 0.0%

If unspent funds total to **more than 10 percent** of the grant amount, a carryover request is required.

**Expense Ratios**

<b>Personnel Costs</b>	\$360,000	<b>Non-Personnel Costs</b>	\$90,000
Percent of Grant Amount	80.0%	Percent of Grant Amount	20.0%
<b>Program Costs</b>	\$415,000	<b>Administrative Costs</b>	\$35,000
Percent of Grant Amount	92.2%	Percent of Grant Amount	7.8%

If non-personnel costs or administrative costs total **more than 25 percent** of the grant amount, a budget modification request is required.

*Legal Aid Fights for Justice. We Fight for Them.*



**March 17, 2023**

LSTFC Rules Committee  
The State Bar of California, San Francisco Office  
180 Howard Street  
San Francisco, CA 94105

**Re: LSTFC Codification: Preliminary Recommendations on Carryovers and Budget Modifications**

To the Rules Committee,

We are writing on behalf of the Legal Aid Association of California (LAAC) regarding the preliminary recommendations on carryovers and budget modifications. Thank you to State Bar staff for giving us the opportunity to gather feedback from the legal aid community on the preliminary recommendations.

**For the benefit of newer members of this committee, LAAC is the statewide membership association of over 100 public interest law nonprofits that provide free civil legal services to low-income people and communities throughout California.** LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations. LAAC serves as California's unified voice for legal services and is a zealous advocate advancing the needs of the clients of legal services on a statewide level regarding funding and access to justice.

**Organization size:** For carryovers and budget modifications, some of the discussion appears contingent on organizational budget size. While perhaps obvious, smaller organizations are likely dealing with small amounts, while larger organizations could be looking to carryover or modify significant amounts of funding. Generally, it may also be less frequent for small organizations to carryover or modify, including because their grants are smaller. For example, a smaller organization, in describing that carryovers are rare, reported to us that the last time this issue came up was in the context of the disruptions due to COVID and PPP, stating that they did not end up spending enough time on a project, but that they could, in fact, use the funding within the next 6 months. However, larger organizations reported to us that they have to carryover or request budget modifications more frequently.

**Leadership turnover:** One thing we realized in talking with programs is that many programs are unaware of the ability to request carryovers or budget modifications—this

seems especially relevant when an organization receives a new source of funding for work that previously would have been billed to IOLTA. It is possible that there is a perception that it does not “look good” to request a budget modification, when, in fact, those modifications should be expected in changing funding environments. With clarity around these rules and potential changes, we encourage the State Bar staff to reiterate that they expect budget modifications and carryovers from programs.

**Hiring issues:** Across the board, the members of the legal aid community that we spoke with articulated a sense of a new labor market that makes it increasingly hard to hire. Everyone familiar with legal aid is well-acquainted with this issue, so we do not mean to repeat something that all are aware of. Still, organizations described how pivotal this factor is in being able to spend down funding, such as for multi-year EAF funding. When they do carryover or modify, it is largely due to this reason, and this community-wide problem also means that another organization may not necessarily be readily able to spend the money either. This results in the fact that, while the goal is to hire and provide more services—or use the money to retain current staff—this may not always be possible. One related issue with this is that some organizations may need to have a budget modification due to a change in staffing—for example, hiring a contract attorney for part-time temporary work when the organization is unable to hire a full-time attorney on staff. There was some desire to simplify the process when these types of non-substantive changes are needed and deliverables are not impacted.

**Confusion about system:** The other main theme we heard was confusion, or at least difficulty, with the process around seeking a carryover or budget modification. Organizations described issues specifically with the request process, including that they did not hear back from Bar staff about their requests when it was around 10% (or even 15%), and, perhaps rightfully, assumed that this meant their request was approved. Beyond this confusion, organizations described sending multiple rounds of emails, spending time trying to communicate on what they considered to be non-consequential aspects of the deliverable, such as the type of person being hired (e.g., insignificantly different titles). They spoke about how it could be helpful to have a single point of contact the Bar for budget modifications so that they budget could be approved quickly, rather than dealing with multiple people and potentially getting stuck in the process. In understanding the issue, LAAC agrees. We think this also may be an inefficient use of Bar staff time as well. We would suggest a slightly different system for budget modifications that goes through a single point of email contact (perhaps [budgetmod@calbar.ca.gov](mailto:budgetmod@calbar.ca.gov)), with a cc to their programmatic staff.

**End of year vs. quarterly changes:** We received comments on the topic of waiting until the end of the year or changing the requests to quarterly would be positive, but the feedback was mixed in terms of reaching a consensus. The tradeoff is between the fact that the quarterly system would be more work for legal aid staff to put together the request, but, on the other hand, it could help the Bar in being more quickly responsive and transparent regarding the request, even if it is more work. This ties into the idea around confusion described above. In addition, we asked programs if the spreadsheet provided by Bar staff would be helpful. We found out that they considered it to be



helpful, mainly because they find SmartSimple to not be user-friendly for these purposes and that this could reduce the frequency with which organizations have to reach out to Bar staff with questions. Nonetheless, reaching out to Bar staff seems like a big part of how they navigate this system, and there was some concern around not knowing who their program staff was with recent staffing changes.

**\$1,000 trigger in Section 7.01 of the Provisions:** An important point was made by a large organization about the \$1,000, 10%, or lesser of the two triggers. For a big organization, \$1,000 is a far too small amount of money and requires a lot of administrative work to request a budget modification for. This amount should either be increased to \$10,000 or should be removed and the 10% should remain. They felt that moving this meter would be very helpful but should still achieve the goals of the trigger.

**Approve or deny a carryover request in full:** We believe that the Commission and staff should have the discretion to approve a portion of the carryover request, if otherwise the carryover request will be denied in full. We believe this may be the current practice but were unsure. Ideally, this would be done in consultation with the organization to discuss a resolution that includes a carryover of a lesser amount that works for the organization's needs.

**Length of Carryover:** We heard arguments for changing the date that carryovers must occur by (from June). Programs appreciated the additional flexibility in the years where the PPP loans impacted one-year budgets. Allowing a longer carryover, even contingent upon a clear plan for spending, will aid in future years where other grants may end and IOLTA or EAF can bridge the gap in work as organizations seek additional funding. An example would be an organization that is slightly under-spending for their IOLTA grant in 2023—they could carry over some of that funding into 2024 to maintain current staffing for their HP 2 grants, which end this year.

**Larger Percentage Carryover:** Some organizations expressed a need to carry over more than 25%, particularly when they are worried about extreme drops in IOLTA or EAF. We think this is an idea that needs further fleshing out, especially in relation to the IOLTA Reserves Working Group work. For example, if the Bar announces in May of 2024 that IOLTA revenue is down and that 2025 grants will drop by 50%, organizations should be able to plan ahead by holding positions vacant or postponing new projects and carry over a higher percentage of 2024 grants into 2025. Conversely, if the Bar announces in May of 2024 that IOLTA revenue is up and that 2025 grants will increase by 50%, organizations should know to not carry over as much, as they will have a more difficult time spending down 2025 grants if there is a large amount of their 2024 grants as well. What has been really fantastic over the last few years is that Bar staff is sharing this information with the community earlier on in the year, with all the caveats that we cannot predict the future. Even knowing if the next year's grants are likely to increase or decrease is very helpful information for EDs as they create budgets.

**Ongoing unpredictability of funding and extraordinary circumstances:** The Legal Services Corporation has the same thresholds of <10 % (no questions asked), 10–25% (a waiver is needed, but NLADA reported to LAAC that they have never heard of a request being rejected), and >25% (requires “extraordinary circumstances”). In the regulation, they mention examples of “extraordinary circumstances,”

such as when a natural disaster or other catastrophic event prevents the timely expenditure of LSC funds, or when the recipient receives an insurance reimbursement, the proceeds from the sale of real property, a payment from a lawsuit in which the recipient was a party, or a payment from an LSC-funded lawsuit.

Further, NLADA reported that,

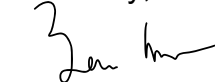
since the COVID-19 Pandemic and the influx of additional (but often one-time and/or unpredictable) funding sources, LSC has taken the position that the Pandemic itself counts as an extraordinary circumstance. They issued a program letter in March of 2021<sup>1</sup> that they were granting blanket approval for any and all fund balance/carryover requests for that year. That policy has continued.

LAAC believes that we are still in a time of unpredictable funding and would generally urge for greater flexibility in carryover requests. Organizations should be able to submit plans to spend the funds and be able to answer questions from commissioners and State Bar staff, but often a new source of funding means IOLTA funds are not needed for their original purpose. This is actually a positive result: we want to encourage organizations to apply for and secure outside funding and not be worried that it would impact their ability to spend IOLTA dollars and therefore not seek funding.

For that reason, we suggest increasing the thresholds. For example, organizations could carry over up to 20% with self-executing requests (up from 10%), have State Bar staff review from 20–35% (up from 10–25%), and then elevate to Commission discussion at 35% (up from >25%), where the ability to spend 35% of a grant in the following year may be more difficult and would need a conversation with Commissioners. Finally, more data may also be helpful on this point—if State Bar staff can identify if or when an organization has not been able to spend down a carryover in the following year, we would know at what threshold it was less likely to be put to good use in providing legal services to those client communities.

Thank you for giving us the opportunity to provide comment. Please contact us with any questions.

Sincerely,



Zach Newman, *Directing Attorney*, **Legal Aid Association of California**  
Salena Copeland, *Executive Director*, **Legal Aid Association of California**

<sup>1</sup> Program Letter, <https://www.lsc.gov/about-lsc/laws-regulations-and-guidance/program-letters/program-letter-2021-02>.