



# The State Bar of California

## OFFICE OF ACCESS & INCLUSION

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Date: June 23, 2023

To: Members, Legal Services Trust Fund Commission

From: Legal Services Trust Fund Commission Eligibility & Budget Review Committee

Subject: Unreported 2020 and 2021 IOLTA/EAF Carryovers and Budget Deviations Disclosed During 2022 Monitoring Visit

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### EXECUTIVE SUMMARY

All recipients of State Bar-administered grants are subject to monitoring visits conducted by Office of Access & Inclusion (OAI) staff. These visits occur every three years and ensure compliance with grant requirements and offer opportunities to provide grantees with additional technical assistance and resources as needed. A number of monitoring visits conducted in 2022 revealed that grantees had revised their prior year IOLTA/EAF budgets, either without submitting a formal request or without following proper procedure and timing to do so. Most recently, this occurred with California Women's Law Center (CWLC). The Eligibility & Budget Review Committee (EBR) recommends that the committee approve this organization's late carryover requests and budget deviations with clear indication that, should this issue recur, CWLC will be required to return the funds.

### GOVERNING AUTHORITIES

Pursuant to the Functional Matrix approved by the State Bar's Board of Trustees, grantees must request and receive approval for any budget deviation and/or carryover of funds that amounts to 10 percent or more of their grant award. Requests between 10 and 25 percent of the grant amount may be approved by the Director of OAI; any request above 25 percent must be reviewed and approved by the Legal Services Trust Fund Commission (LSTFC).

Moreover, grant agreements between the State Bar and grantee organizations specify that grantees must "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."

Under the General Grant Provisions of the Legal Services Trust Fund Program, Article IX, section 9.01, states that a grantee “shall be deemed in default upon the occurrence of any of the following: ... 2. Any use of Grant Funds not in substantial accordance with the Approved Budget and Budget Narrative including approved revisions for that Grant Period. ... 5. Any failure to return unused Grant funds at the end of a Grant period unless a Carryover has been approved by the Commission.”

Further, section 9.02 specifies that the remedies for default may include conditioning current year grant payments on curing the default, terminating the grant entirely, or requiring return of funds.

## **BACKGROUND**

### **BUDGET REVISION AND CARRYOVER PROCESS**

The grant period for IOLTA/EAF grants conforms to the calendar year, running from January 1 through December 31. This is clearly stated in the grant agreements signed by grant recipients. Thus, any amount of funds that a grantee anticipates will remain unspent as of December 31 must either be returned to the State Bar or receive approval to be spent in the next grant period. Historically, the carryover period is six months (January through June of the following year), though the LSTFC has lengthened that period to 12 months under certain circumstances (e.g., in 2020 due to the COVID pandemic; in 2022 for EAF funds due to the very large one-time increase in funds). The carryover process usually occurs in late fall.

For budget revisions, grantees are supposed to notify OAI within five business days of a known budget deviation. However, this provision has not been strongly enforced in recent years. Consequently, the period for submitting carryover requests towards the end of the calendar year also typically functions as the last opportunity for grantees to obtain approval for budget deviations that occurred during the year.

OAI has developed forms and processes for grantees to submit their budget revision and carryover requests through the SmartSimple grants platform. Historically, OAI has set the administrative deadline to submit these requests in late October to allow the LSTFC to review and approve them before the end of the year.<sup>1</sup> Despite sending various announcements and reminders about the deadline, it is not uncommon for OAI to receive several budget revision and carryover requests in December and January, requiring the LSTFC to revisit this topic at its

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<sup>1</sup> For the 2022 grant year, OAI staff implemented a January deadline to minimize late requests. However, discussion will focus on prior practice as none of the grants implicated in this memorandum are from the 2022 grant year.

first meeting of the year. Regardless of the timing, it is rare for these requests to be denied, though the LSTFC has scrutinized large carryover requests more closely in recent grant cycles.

### **FISCAL MONITORING VISITS**

OAI staff conduct monitoring visits with grantee organizations every three years. The visits comprise program and fiscal components, including interviews with staff and review of relevant documentation. The fiscal portion of the visit entails an audit of the grantee's expenditures of State Bar-administered funds in the prior calendar year (in this case, 2021—and any 2020 carryover amounts—since the visits were conducted in 2022). These are compared with what was reported to the State Bar, which sometimes results in findings that the grantee has erred in its reporting. This may require award allocation adjustments, repayment, etc.

When the finding is significant and pertains to IOLTA/EAF grants, staff reports these findings to the Eligibility & Budget Review Committee. However, when the grantee agrees with the finding, these reports typically take the form of an update and do not require committee action. When the grantee contests the recommended action, or staff's recommendation involves the use of discretion, then the issue is brought to the committee for resolution.

### **CWLC'S UNREPORTED CARRYOVER AND BUDGET DEVIATIONS**

During its most recent monitoring visit, State Bar fiscal staff determined that CWLC had both substantially deviated from its approved budget and carried forward IOLTA and/or EAF funds in 2020 and 2021 without submitting a formal request.

#### **2020 Carryovers**

In 2020, CWLC carried forward both IOLTA and EAF funds without submitting a request. The IOLTA carryover amounted to \$160,170, or 42 percent of the grant award. The EAF carryover amounted to \$49,821, or 32 percent of the grant award. It appears the funds were spent in 2021. OAI did not receive a request to carry forward these funds, which would have required LSTFC approval.

#### **2021 Carryover and Budget Deviations**

In 2021, CWLC submitted a carryover request for its EAF grant. A carryover amount of \$39,237 was approved. However, its expense reporting indicated that CWLC carried forward \$43,850, or 12 percent more of the grant than it had requested or reported at the time. Additionally, the carryover request that was submitted did not include the organization's budget deviations, which amounted to 17 percent each for both IOLTA and EAF. The budget deviations would have required staff approval.

## CWLC's Response

In its response to the monitoring visit findings, CWLC indicated that it believed it submitted a request in 2020 but could not find record of it. (OAI has no record of this request in SmartSimple, the grants management platform through which all such requests are submitted.) It further stated that it received an email in early 2022 indicating the 2020 carryover was approved.<sup>2</sup> It also noted its completion of subsequent expense reports as evidence of its compliance.

For its 2021 additional carryover and budget deviations, CWLC acknowledged its mistake, attributing its failure to submit a request due to clerical errors and challenges with working in a remote environment. CWLC reported that it is taking steps to address its processes and implement regular review of its records to avoid future mistakes. It stated that it is committed to meeting State Bar requirements and requested understanding and leniency in this instance.

## DISCUSSION

OAI attempts to help grantees with general grant compliance and meeting deadlines, but it is ultimately the grantee's responsibility to ensure it is fulfilling its obligations. Staff believed that CWLC's unreported carryovers and budget deviations constituted a breach of CWLC's grant agreements, placing them in default. Staff was originally inclined to recommend return of the funds, consistent with section 9.02 of the General Grant Provisions.

After speaking with CWLC and reviewing its reply to the monitoring visit findings, staff believed that it would produce undue hardship to seek return of the funds at this juncture. Staff also noted that, as it relates to the 2020 carryover amounts, the LSTFC was flexible in granting both large and long-term (12-month) carryovers at the time in an attempt to mitigate the impact of the pandemic on grantee operations. Consequently, had the request been timely submitted, staff reminded EBR that the 2020 carryover amounts would likely have been approved.

Further, the requirements around budget revisions and carryovers are not memorialized in statute or State Bar Rules. The codification process will address budget revisions this year, proposing the creation of a rule regarding such requests, which will include clear explanation of grantee requirements and possible consequences for noncompliance.

At its meeting on April 26, EBR discussed staff's recommendations and also spoke with CWLC's executive director, who attended the meeting. The grantee reiterated assurances that the organization is working to avoid these issues in the future. After discussion, EBR voted to

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<sup>2</sup> OAI acknowledges that an email was sent January 14, 2022, however, it related to the organization's 2021 requests; there was an error with the grant year referenced in the automated email produced by SmartSimple.

recommend that the LSTFC approve these belated budget deviations and carryover amounts. The committee further recommends that the LSTFC provide a warning to CWLC regarding possible consequences in the event these issues were to recur in the future.

## RECOMMENDATION

Should the LSTFC concur with the Eligibility & Budget Review Committee's recommendations, adoption of the following is advised:

**RESOLVED**, that the LSTFC approves the unreported 2020 IOLTA and EAF carryover amounts, 2021 EAF carryover amount, and 2021 IOLTA and EAF budget deviations from California Women's Law Center.

And it is **FURTHER RESOLVED**, that LSTFC warns California Women's Law Center that future unreported budget deviations and/or carryover amounts will not be approved, and the LSTFC will pursue any of the remedies available to it under the General Grant Provisions.