



Date: June 23, 2023

To: Members, Legal Services Trust Fund Commission

From: Legal Services Trust Fund Commission Executive Committee

Subject: 5.1 Approve Recommendations Regarding Commission Oversight of IOLTA and EAF Funds, Including Developing Guidelines for the Use of a Loan Repayment Assistance Program (LRAP)

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## EXECUTIVE SUMMARY

In recent years, members of the Legal Services Trust Fund Commission (LSTFC) and other advisory bodies have promoted the creation of a loan repayment assistance program (LRAP) as a recruitment and retention tool. An LSTFC-supported proposal to obtain funding for a five-year LRAP to benefit civil legal aid attorneys was included, but ultimately removed, from the 2022-2023 California budget. In response, members of the California Access to Justice Commission (CalATJ) proposed an alternative program allowing State Bar grantee organizations to use existing Equal Access Fund (EAF) monies to support an LRAP administered by CalATJ. This memorandum discusses whether the LSTFC should also consider establishing its own LRAP with the use of IOLTA funds as a recruitment and retention strategy, or, as the Executive Committee recommends, focus its efforts on developing guidelines for the use of State Bar-administered funds as part of other LRAPs.

## BACKGROUND

### RELATED LRAP PROPOSALS

In early 2021, members of the LSTFC, Council on Access and Fairness (COAF), and CalATJ convened a working group to address loan repayment and loan forgiveness options for attorneys in California. The main goals were to assist with recruitment and retention of attorneys of color in the legal profession and to reduce turnover in legal aid. After several months of research, the group coalesced around a proposal to establish an LRAP for civil legal aid attorneys throughout the state.

The program would have been partially funded by the State Bar but primarily supported through the state budget. It was also more expansive than most other LRAPs, covering repayment of undergraduate and law school loans, as well as private and federal loans. The program had no income cutoff as long as the recipient worked for a qualifying employer. This proposal was initially included in the 2022-2023 California budget as a five-year, \$55 million pilot program to be administered by the Student Aid Commission. However, the governor removed this item from the final budget.

Earlier this year, the CalATJ working group representatives advanced an idea to create their own LRAP and recommended that State Bar grantees use EAF monies to route loan repayments through the CalATJ administrator. This would result in ostensibly tax-free loan repayment assistance. Though the program would be initiated with the use of EAF monies, CalATJ would not necessarily be limited to EAF in terms of the types or source of funds it could accept as part of the LRAP. For example, if an organization wanted to use its IOLTA award for loan repayment assistance through this program, CalATJ would accept those funds as well.

The LSTFC and COAF working group members expressed support for finding another avenue to establish an LRAP, though members raised questions about the authority and structure of the proposal, while others expressed a preference for the Legal Services Trust Fund Commission to administer the LRAP since it was already the administrator of grant funds. Nevertheless, CalATJ has since elevated its proposal to the Legislature. The budget for next year was not yet finalized at the time of drafting this memorandum, but staff reported to the Executive Committee that the proposal had already passed through budget subcommittees in the Assembly and Senate. Staff expects that it will ultimately be included in the budget.

#### **ANTICIPATED INCREASE IN 2024 IOLTA FUNDS**

The 2023 IOLTA distribution reached almost \$50.7 million. Due to sustained interest rate increases and large amounts on deposit in client trust accounts, IOLTA revenue has surged this year. By the time of this meeting, the LSTFC's Rules Committee will have reviewed an IOLTA reserve policy proposal which would allow for some funds to be set aside for distribution once IOLTA revenue inevitably decreases, sometime in the future. Assuming the proposal is adopted—even with an amount set aside for reserve—the 2024 IOLTA distribution could exceed \$100 million, more than double this year's total grant amount.<sup>1</sup>

The Office of Access & Inclusion provides grantees with regular updates regarding IOLTA revenue to offer some insight into what the legal aid community might expect in the coming year, though there are never any guarantees. In response to such a large, anticipated funding increase, grantees have asked for guidance in budgeting for this increase of IOLTA funds beyond

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<sup>1</sup> The actual 2024 distribution amount will be determined by the LSTFC at its June 23 meeting, to be approved by the Board of Trustees in July.

standard budgeting practices (such as salary increases). Grantees are already permitted to use their IOLTA grant awards for self-administered LRAPs, the payments for which are included in employees' salaries, but many grantees do not utilize the funds in this way.<sup>2</sup>

## **DISCUSSION**

### **WHETHER THE LSTFC SHOULD ESTABLISH AN LRAP FOR THE USE OF IOLTA FUNDS**

With the large increase in IOLTA revenue, staff researched the possibility of the LSTFC administering its own LRAP with the use of IOLTA funds. LRAPs have been identified as a key recruitment and retention tool in legal aid. Supporting loan repayment along with salary increases could help mitigate the high turnover and vacancy rates at many grantee organizations. In consultation with certain members of the LRAP working group and Legal Services Trust Fund Commissioners, staff strongly considered recommending an LSTFC-administered LRAP. However, staff recommended against the creation of an LSTFC-administered LRAP at this point, and the Executive Committee agrees.

The State Bar itself, as a government entity, and CalATJ, as a nonprofit organization, would potentially meet the requirements under 26 US Code 108(f) to provide tax-free LRAP benefits.<sup>3</sup> However, the initiation of two separate LRAP programs in the same year for State Bar-administered grants (i.e., EAF for CalATJ and IOLTA for the LSTFC) could prove confusing to grantee organizations. There may be value in piloting two programs to determine how different approaches impact program administration and effectiveness, but it would also represent duplication of efforts to some extent.

The Executive Committee believes the better approach would be to coordinate and collaborate with CalATJ to support its proposed LRAP as it is likely that CalATJ's requested administrative fees will be included in the state budget. This would include the LSTFC developing guidelines for the use of LSTFC-administered funds as part of a CalATJ-administered LRAP, as CalATJ has indicated it does not intend to draft guidelines as part of its program.

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<sup>2</sup> Employer-administered LRAPs are often treated as part of an employee's compensation, rendering the repayment taxable and thus diminishing the value of the loan assistance. Despite State Bar grantees' status as 501(c)(3) organizations, under 26 US Code section 108(f)(3), employer-made loans would not be considered tax-free. However, a temporary provision under the CARES Act allows up to \$5,250 per year of tax-free employer-paid assistance through 2025.

<sup>3</sup> This code section deals with the treatment of taxpayer income. The State Bar does not purport to give tax advice and would refer individual LRAP beneficiaries to a tax expert to determine their tax liability as a result of any LRAP participation.

## **CREATION OF GUIDELINES FOR USING STATE BAR FUNDS AS PART OF AN LRAP**

The LSTFC has primary responsibility of overseeing State Bar-administered grants and ensuring compliance from grantee organizations. It does not exercise authority over LRAP administrators. The development of guidelines for the use of State Bar-administered grant funds would thus provide strong direction to grantee organizations who would rely on them to ensure the money is spent responsibly and in accordance with LSTFC requirements. Moreover, guidelines would create a uniform standard for grantees to utilize these funds to provide their employees with loan repayment assistance, no matter which entity administers a relevant LRAP, now or in the future.

The timeline for the creation of such guidelines is short. The LSTFC makes eligibility determinations for IOLTA and EAF grants in early August. By late August, staff releases tentative 2024 allocation amounts, and grantee organizations have approximately 30 days to submit budget proposals.

In order to provide the necessary oversight for use of 2024 funds, the Executive Committee recommends that guidelines be developed and approved by the date of the LSTFC's August meeting. If the LSTFC agrees with this proposal, staff will convene a working group of LSTFC and COAF members to draft guidelines for review. Volunteers at the LSTFC's June meeting will be needed to start work on the guidelines immediately.

Questions for the working group to consider include: Which employees or staffing categories may be covered by the State Bar funds contributed to the LRAP? What proportion of the grant or set dollar amount would be the maximum permitted contribution to an LRAP? Must the employee who receives LRAP benefits only perform what would be considered "qualifying" work under State Bar grants, or can some proportion of their work be devoted to other activities? How will LRAP funds be reflected in organizational budgets (e.g., as salaries, contract service to program, etc.)?

The working group can keep CalATJ apprised of its progress and tentative recommendations in order to obtain feedback. Further, CalATJ has invited LSTFC and COAF members to serve on its advisory committee. If approved, the LSTFC and CalATJ would issue a joint press release to promote the LRAP program before hosting a joint webinar once the guidelines are issued in order to explain the requirements to grantees.

## **RECOMMENDATION**

The Executive Committee recommends the development of appropriate guidelines regarding the use of State Bar-administered grant funds as part of any LRAP program. If the LSTFC agrees, staff will convene a working group of LSTFC and COAF members to draft guidelines for review.

Should the LSTFC concurs with the Executive Committee's recommendation, passage of the following resolution is recommended:

**RESOLVED**, in anticipation of CalATJ securing a statutory change to allow EAF funds to be redirected to an LRAP program, the LSTFC will develop guidelines regarding the use of IOLTA, EAF, and, if applicable, any other State Bar-administered funds.

And it is **FURTHER RESOLVED**, if CalATJ is unsuccessful in securing a statutory change, the LSTFC will administer its own LRAP program in addition to issuing guidelines regarding the use of IOLTA, EAF, and, if applicable, any other State Bar-administered funds.