



The State Bar *of California*

OPEN SESSION

AGENDA ITEM 4.2

AUGUST 2023

LEGAL SERVICES TRUST FUND COMMISSION RULES COMMITTEE

DATE: August 2, 2023

TO: Rules Committee, Legal Services Trust Fund Commission

FROM: Erica Connolly, Working Group Member
Jason Galkin, Working Group Member
Patience Milrod, Working Group Member

SUBJECT: Codification of Grant Administration Practices: Fiscal Issues – Eligibility and Grant Amounts

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 preliminary recommendations of the Rules Committee's working group on the following fiscal issues regarding eligibility and grant amounts:

- How to address findings identified by independent certified public accountants in an organization's audited financial statements or financial reviews;
- What criteria are needed for the payment of grant funds;
- What criteria are needed for implementing and processing grant funding reductions and terminations; and
- How to define and develop a formal process for redistributing unspent funds and reallocating relinquished funds.

The working group sought feedback regarding the proposed recommendations from the legal aid community through the Legal Aid Association of California (LAAC) on June 30, 2023, and the working group received a summary of the feedback on July 14, 2023. The working group will present its recommendations and the legal aid community's feedback to the Rules Committee on August 2, 2023.

CODIFICATION PROCESS

In 2019, at the recommendation of the State Bar Board of Trustees, State Bar staff and the Legal Services Trust Fund Commission (LSTFC) 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.

LSTFC 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.

FISCAL CODIFICATION/ CODIFICATION ISSUE

Given the complex nature of fiscal issues as it pertains to grants administration, the working group is undergoing its own a multi-phase process to review all issues and develop codification recommendations. In efforts to avoid contradictory recommendations, the working group has carefully grouped interrelated issues under general topic categories:

1. Eligibility for Grants, Allocation Methods, and Payment of Grant Funds
2. Grantee Expenditures
3. Grantee Fiscal Oversight
4. Federal Funding Grant Issues
5. Miscellaneous

After initial discussion, the working group determined it would be most efficient to take a bifurcated approach that further categorizes fiscal issues as either warranting a rule change or as an administrative process that needs clarification. While this process is ongoing, thus far, issues with potential implications for eligibility and/or grant compliance have been identified as appropriate for the codification process. The working group recommends that administrative processes be captured and documented in a separate grantee handbook. This handbook would be a complementary resource for all State Bar Rules, providing administrative guidance for how the rules would be implemented. Unlike the proposed State Bar Rules, this resource would be flexible and subject to change on a more frequent basis.

The working group intends to share its preliminary recommendations with the legal aid community and Rules Committee on a rolling basis. From February through June 2023, the working group met and discussed various issues under category 1. This memo presents preliminary recommendations regarding eligibility and grant amounts.

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.

While the existing governing authorities provide helpful insight into some of the fiscal codification issues, the working group has found that referenced definitions and processes are either outdated, not documented, or inconsistent with current office practice. The working group anticipates replacing the General Grant Provisions, Eligibility Guidelines for Legal Services Projects and Support Centers, and Standards for Financial Management Systems and Audits with new State Bar Rules and a grantee handbook over the course of the codification process.

DISCUSSION

After discussing various issues related to eligibility and grant payments, the working group determined that issues regarding audit findings, payment of grant funds, funding reductions and terminations, and unspent and relinquished funds warranted a potential rule change.

AUDIT FINDINGS

State Bar Rule 3.680 (E)(1) requires that applicants submit either an audited financial statement by an independent certified public accountant or audited financial statement as part of the IOLTA/EAF application process. However, this rule does not provide guidance on how to handle audits with repeat findings, specific audit findings, or other audit-related issues during the process of determining IOLTA/EAF eligibility.

The working group had concerns that serious and recurring audit issues may be an indication of poor internal controls, possible grant management issues, and organizational capacity issues. Therefore, it recommends implementing a new rule to provide guidance and clarity. The proposed rule (Attachment A) provides that staff would review all audit or financial review findings. If the findings include, but are not limited to Single Audit¹ findings, evidence that organizations are not accurately reflecting expenditures by activity, findings of fraud, or repeat findings from prior audits, staff will send a letter to the organization's governing body, potentially requiring a corrective action plan, and notify the LSTFC. The LSTFC would have the authority to require additional corrective action, require an Eligibility Review Conference, withhold grant payments, or take any other actions it deems necessary.

DELAYED PAYMENT OF GRANT FUNDS

As part of the application process, organizations submit proposals with anticipated service deliverables and proposed budgets. The LSTFC and State Bar staff then spend significant amounts of time reviewing grant application materials to ensure the grant projects comply with statutory requirements, State Bar Rules, and grant parameters. If an organization is determined

¹ The Code of Federal Regulations (CFR) Title 2 Part 200 Subpart F § 200.501 (b)

to be an eligible grantee, they must sign a grant agreement, with the expectation that that all deliverables would be met, and grant monies would be spent as described in the approved grant application, within the grant period.

Once a distribution schedule has been established for a grant, there are no specific rules for how to handle ongoing grant payments when a grantee demonstrates or reports significant underspending and/or performance issues. Recently, some grantees with multiyear grants have reported underspending, or in some cases, reported not spending any grant monies during the first years of a three-year grant. Such grantees received grant payments that resulted in little or no service deliverables. This has larger implications for the equity of available services across the state. For example, if the grantee reported underspending or underperformance for a discretionary competitive grant, these funds could have been otherwise awarded to other applicants who could have provided much needed services to indigent persons during the grant period.

If there was a spending threshold requirement, this could have reinforced expectations regarding grant expenditures and conditions for receiving subsequent grant payments. To ensure that grant payments are made in accordance with the grant agreement and parameters, the working group proposes implementing a new rule (Attachment B) to delay grant payments under specific circumstances.

In the absence of established spending thresholds, in compliance with Business & Professions Code section 6224 and Rule 3.691, staff may convert grant payments from annual or quarterly payments to monthly payments, if there are circumstances including, but not limited to, indications of fraud, organizational mismanagement, and/or failure to comply with grant requirements. Staff will notify the grantee and LSTFC of the change in payment schedule and the reason for the change.

FUNDING REDUCTIONS AND TERMINATIONS

During the course of a grant period, adjustments to a grant award may be needed to either reduce the funding amount or terminate the grant. The working group recommends implementing a new rule that codifies current office practice and outlines new processes for additional situations warranting a potential grant adjustment. The proposed rule (Attachment C) categorizes grant award adjustments into three levels and clarifies who has authority to approve such adjustments.

Grantee-Initiated Adjustments

A funding reduction or termination would be grantee-initiated if an organization is ceasing operations, is no longer providing services in a specific county, is requesting less than the calculated formula amount, or is requesting a reduction of a competitive-based grant award.

Though grantee-initiated adjustments are uncommon, staff administratively processes all grantee-initiated adjustments as the current office practice. Depending on when the adjustment is made, this could entail the grantee not signing a grant agreement for an

upcoming grant year, signing a modified grant agreement reflecting the adjusted grant amount, or being invoiced to return grant monies. Because these adjustments are administrative, the working group proposes that staff maintain the authority to approve all grantee-initiated reductions and terminations, except competitive-based grant award reductions of greater than 25 percent which will require LSTFC oversight, as discussed below.

The Rules Committee met on June 21, 2023, to discuss recommendations regarding carryover and budget modifications requests. At that meeting, the Rules Committee asked the working group overseeing this topic to consider alternatives to the current practices (many of which the working group advised codifying). While this working group will remain in dialogue with the working group overseeing budget modifications and carryovers, this working group nevertheless believes that 25 percent remains an appropriate threshold level for LSTFC oversight. The working group looks the Legal Services Corporation's thresholds (which are set at 25 percent), as well as the history of the LSTFC in using 25 percent as a threshold at which to incorporate Commission-level involvement. In light of this history, as well as the need for the Commission to be aware of significant changes to grantee services, which a 25 percent decrease in grant monies may signal, the working group proposes using the same thresholds for discretionary grant reductions.

Staff-Initiated Adjustments

For formula grants, staff may initiate a grant award adjustment if it is determined by the grantee or staff that the grantee's qualified expenditures used to calculate the formula were incorrect. This would typically occur during the budget review process or would be revealed during the course of a monitoring visit. In this case, staff recalculates the formula award using the corrected qualified expenditures to determine the correct formula grant award. Again, because this adjustment is administrative and necessary, the working group proposes that staff maintain the authority to approve all staff-initiated reductions. Staff-initiated adjustments would only pertain to formula grants. Staff will report these adjustments to the LSTFC.

LSTFC-Initiated Adjustments

Whereas the first two categories capture administrative processes, additional oversight and review may be needed if there is evidence that: the grantee is not in compliance with grant terms; if the grantee demonstrates underperformance on grant deliverables; if there is evidence of significant underspending; or if there are other substantive concerns. In making any adjustments, the LSTFC will follow the process outlined in Rule 3.691. The working group felt that it was also important to maintain LSTFC oversight of competitive-based grants requesting a funding reduction of more than 25 percent of an award amount because of its larger impact on legal aid. Because some of these grants are competitive and/or time-restricted, other applicants that were denied funding could have used these funds to provide legal services to indigent Californians.

Therefore, the working group recommends codifying the LSTFC's authority to reduce a grant award or terminate a grant pursuant to procedures in place under Rule 3.691. The LSTFC may

also determine if the reduction or termination may impact a grantee's future grant awards or require additional terms and agreements for future grant disbursements.

UNSPENT AND RELINQUISHED FUNDS

If a grantee is unable to spend the full grant amount for reasons such as ceasing operations, no longer serving a county, or is unable to meet deliverables, grant funds must be returned. Depending on the grant's authorizing statute or other controlling authority, grant monies are either held and redistributed during a subsequent grant period or reallocated during the grant period. Funds that are not able to be redistributed or reallocated will be returned to the original funding agency.

The IOLTA, EAF, Partnership, and Bank grants allow for unspent funds to be held and redistributed in a subsequent grant period because there is more flexibility regarding expenditure of these funds. For example, unspent IOLTA funds in the 2021 grant year could be redistributed for the 2022 IOLTA grant year, or the next practicable grant period.

In recent years, the State Bar has administered several multiyear grants including the Homelessness Prevention grants and Consumer Debt grants, whose enabling authorities do not allow for redistribution in subsequent grant periods. Grant monies must only be used for the designated grant activities and must be spent within a specific grant period. For these grants, unspent funds must be returned to the appropriate funding agency at the end of the grant period.

In early 2023, there were Homelessness Prevention 2 grantees that reported that they would not be able to spend their allocated grant awards before the end of the grant period on December 31, 2023. To avoid returning funds back to the funding agency and instead disburse those funds to other grantees to provide services, this situation necessitated staff to develop a reallocation process that would distribute this grant money to other grantees who would have the capacity to spend down funds within the grant period.²

To clarify differences among processes for returned grant funds, the working group proposes codifying the following definitions based on office practice (Attachment D).

Unspent vs. Relinquished Funds

First, the working group proposes new and relevant definitions for returned funds, unspent funds, and relinquished funds. One key difference between unspent and relinquished funds is the timing of when funds are returned, which would be either at the end of the grant term or during the grant term.

“Returned funds” are unspent or relinquished funds that have been returned to the State Bar.

² State Bar staff anticipates that the HP 3 and CalHFA grants will have relinquished funds that will need to be reallocated before the end of those respective grant periods.

“Unspent funds” are grant funds that are not spent by the end of the grant term.

“Relinquished Funds” are grant funds that have been returned to the State Bar during the term of the grant.

To date, relinquished funds have only been identified by grantees who are unable to perform a grant fully. The working group proposes including additional authority for the LSTFC to reclaim grant funds as part of its oversight actions if a grantee demonstrates noncompliance with grant terms, underperformance, or other substantive grant management issues.

Use of Returned Funds

Next, the working group felt it was important to define and distinguish processes regarding returned funds.

Redistribution

If permissible by the grant’s authorizing statute, unspent funds are redistributed during a subsequent grant period. If unspent funds are designated for a specific county, redistribution would be limited to that county. The working group proposes the following definition:

“Redistribution” or “redistribute” is the process of adding unspent funds to a subsequent grant year for allocation to organizations.

Reallocation

If redistribution is not permissible by the grant’s authorizing statute or controlling authority or the Commission determines that reallocation is preferable, and funds are relinquished, grant monies would be reallocated during the current grant period. This process would entail 1) identifying the amount of funds to be reallocated, 2) contacting current grantees to opt-in if they were interested in receiving additional grant monies, and 3) calculating a formula to determine the pro-rata award amount per grantee. Before grant funds are released, grantees would be required to submit a revised project budget reflecting the new reallocated amount and sign a new grant agreement addendum. The working group proposes the following definition:

“Reallocation” or “reallocate” is the process of awarding relinquished funds to other grantee(s) during a grant period.

Return to the Funding Agency

If redistribution is not permissible or if reallocation does not occur during the grant period, funds must be returned to the original funding agency.

FEEDBACK FROM THE LEGAL AID COMMUNITY AND WORKING GROUP RESPONSE

The legal aid community provided several points of feedback which were summarized by LAAC and shared with the working group (see Attachment E). Overall, the community did not oppose the working group's recommendations, but had concerns regarding implementation and the ambiguity regarding some language used to describe the recommendations.

The working group reviewed the feedback and made a few minor changes to the proposed rules for clarity, as described below. In general, the working group believes that it would be more appropriate to include specific examples and guidance regarding implementation in the memo and the proposed grantee handbook, instead of the rules themselves. The new rules would work in the tandem with both the memo, which provides historical context regarding the new for the rule and the grantee handbook which would provide administrative guidance to grantees.

Feedback Regarding Audit Findings

The community inquired whether audit findings were widespread, and whether the LSTFC would be concerned with all audit findings. Because audits are also opportunities for nonprofits to learn and to continue to improve their operations, the community suggested distinguishing between serious and minor audit findings.

In response to this feedback, the working group affirms that its recommendations are intended to ensure that grant funds are being handled appropriately and used for their intended purpose. Recently, there have been multiple organizations with unresolved audit findings spanning several years that indicated difficulty complying with fiscal grant management. While serious audit findings are not currently a widespread issue among applicants and grantees, when it has come up, there has been no guidance or past office practice to inform the appropriate response. Since audits are a critical part of determining IOLTA/EAF eligibility, the working group felt that its recommendations would create appropriate LSTFC oversight.

In the first paragraph of the proposed rule, the working group replaced the phrase, "including but not limited to..." with "such as" to better convey the examples given. The working group also deleted reference to "Single Audit Finding" in efforts to narrow the scope of audit findings that would be elevated to the LSTFC. For consistency, the working group replaced "withholding" with "delaying" grant payments in section ii.

However, the working group disagrees that the proposed rule is a blanket rule. Examples are provided in the rule's language³, and as mentioned above, specific examples will be outlined in the grantee handbook.

³ See Attachment A. The proposed rule says, "For findings such as, organizations not accurately reflecting expenditures by activity, findings of fraud, or repeat findings from prior audits..."

Feedback Regarding Delayed Payment of Grant Funds

The community felt that it was unclear whether applicants or grantees would have opportunities to participate in discussions regarding delayed payment of grant funds, and if there would be an appeals or reconsideration process. The working group has added paragraph 4 to the proposed rule in Attachment B specifying all changes to the grant payment schedule are subject to reconsideration process outlined in Rule 3.691. While Rule 3.691 currently addresses only denial or termination of funding, the reconsideration process outlined would be applicable to the delay of grant funds. At the conclusion of its review of all fiscal codification topics, the working group intends to recommend amending Rule 3.691 to be broadened so that it would be applicable to multiple situations.

To provide more clarity regarding the phrase “failure to comply with grant requirements,” the working group added examples in paragraph 2 of the proposed rule.

Feedback Regarding Funding Reductions and Termination

The community requested clarity regarding which substantive issues under this rule would be brought to the LSTFC for consideration and had concern about the language indicating that decisions under this topic could have a potential impact on future funding. Since this rule also referenced the same percentage thresholds used for budget modifications and carryovers, the community inquired why carryovers were not emphasized more in the memo, or if there would be any implications given the ongoing discussions. Finally, similar to its feedback for delayed payment of grant funds, the community wanted to confirm that this rule would have an appeals or reconsideration process.

In response, the working group revised paragraph 6 to include specific factors the LSTFC would consider when deciding whether to reduce funding or terminate a grant agreement. These factors were similar to the ones outlined in the proposed rule regarding delayed payment of grant funds. The working group also deleted reference to “other factors as deemed appropriate by the LSTFC” in the same paragraph.

The working group also clarified that the impact on future funding clause would only apply to competitive grants, and paragraph 9 to the proposed rule in Attachment C was updated to reflect this. Since funding determinations for competitive grants are made on a discretionary basis through the use of a scoring rubric, the working group felt that it was appropriate to also consider if applications had past funding reductions or terminations.

The carryover process did not receive significant mention in this memo because it is being codified as a separate topic. The working group maintains its original stance regarding the 25 percent threshold recommendation. While the working group plans to remain in dialogue with the working group overseeing budget modifications and carryovers, the working group believes that 25 percent remains an appropriate threshold level for LSTFC oversight at this time.

The working group also added paragraph 10 to the proposed rule specifying that all staff-initiated and LSTFC-initiated reductions are subject to the reconsideration processes outline in Rule 3.691.

Feedback Regarding Unspent and Relinquished Funds

The community expressed concern about “additional authority” proposed for the LSTFC to reclaim grant funds and asked for examples or hypotheticals in which this would occur. It also suggested updating the definition of “redistribution” to remove reference to the word “allocate” to avoid confusion.

The working group agrees with revising the definition of “redistribution,” and replaced the word “allocate” to “distribute” in the proposed rule in Attachment D. While the term “additional authority” was included in the memo, and not in the rule, the working group would like to clarify that the recommendation only seeks to codify the existing authority for the LSTFC. Pursuant to Rule 3.691, the LSTFC has explicit authority to deny initial funding, renewal for funding or to terminate existing funding. In terms of examples, the working group felt that the HP 2 spending scenario referenced above sufficiently illustrated a scenario in which LSTFC reclamation would have been appropriate.

FISCAL/PERSONNEL IMPACT

None.

WORKING GROUP RECOMMENDATIONS

Should the Rules Committee concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Rules Committee of the Legal Services Trust Fund Commission approves the working group recommendations related to eligibility and grant amounts, as referenced in Attachments A, B, C, and D.

ATTACHMENT(S) LIST

- A.** Proposed State Bar Rule re: Audited Financial Statement/Financial Review Findings
- B.** Proposed State Bar Rule re: Delayed Payment of Grant Funds
- C.** Proposed State Bar Rule re: Grant Award Reductions or Grant Terminations
- D.** Proposed State Bar Rule re: Unspent and Relinquished Grant Funds
- E.** LAAC Feedback to the Preliminary Working Group Recommendations

Attachment A

Proposed Rule

Rule XX.XX Audited Financial Statement/Financial Review Findings

State Bar staff will review all audited financial statements and financial review findings. For serious findings, such as grant recipients not accurately reflecting expenditures by activity, findings of fraud, or repeat findings from prior audits, staff shall take the following steps:

- i. send a letter to the grant recipient's governing body requesting the current status of the finding, and if the finding is not resolved, require a corrective action plan; and
- ii. notify the Commission.

The Commission may require additional corrective action and/or oversight of the grantee's fiscal and governance functions, including, but not limited to:

- i. requiring an Eligibility Review Conference, or
- ii. delaying grant payments until corrective action is taken* or
- iii. taking other action(s) the Commission deems appropriate, such as requiring additional monitoring or proceeding with the denial or termination process outlined in Rule 3.691

*Refer to proposed rule XX.XX regarding delayed payment of grant funds.

Attachment B

Proposed Rule

Rule XX.XX Delayed Payment of Grant Funds

1. The Commission may require that a grant recipient meet spending thresholds before receiving subsequent grant distributions. If the Commission has set a threshold, staff will delay subsequent grant payment distributions if these spending thresholds have not been met. Spending thresholds may be established based on factors including, but not limited to, grant parameters and length of the grant term.
2. In the absence of an established spending threshold, staff may convert grant payments from annual or quarterly payments to monthly payments based on circumstances such as indications of fraud, organizational mismanagement, evidence of significant underspending, accounting irregularities, misuse of funds, or failure to meet service deliverables. Staff will notify the grantee and Commission of the change in payment schedule and the reason for the change.
3. The Commission will determine if conditions need to be met before returning to the original payment schedule.
4. All changes to the grant payment schedule are subject to reconsideration as outlined in Rule 3.691.

Attachment C

Proposed Rule

Rule XX.XX Grant Award Reductions or Grant Terminations

1. “Funding reduction” is when the grant award amount is reduced.
2. “Grant termination” is when the grant agreement is terminated.
3. Grant recipients must return to the State Bar any unspent funds or relinquished funds (as defined in rule XX.XX) when a grant agreement is terminated or amended.
4. Grant recipients must request a funding reduction or grant termination if they cease operations, are unable to perform the grant activities fully, and/or are no longer providing services in a particular county if the grant terms require services to be performed in a particular county.
5. State Bar staff may reduce a formula grant if the grant recipient or staff determines that the organization’s reported qualified expenditures used to calculate the formula amount were incorrect. Staff may recalculate the formula award amount based upon the organization’s corrected qualified expenditures.
6. The Commission has authority to reduce grant awards or terminate grant agreements.¹ In determining whether a reduction of a grant award or a termination of a grant agreement is warranted, the Commission shall consider whether there is evidence of the following: lack of substantial compliance with the terms and conditions of the grant, fraud, organizational mismanagement, significant underspending, accounting irregularities, misuse of funds, or failure to meet service deliverables.
7. Staff may approve the following funding reductions without Commission approval; all reductions shall be reported to the Commission:
 - a. Grant recipient-initiated reductions
 - i. Termination of grant agreements due to cessation of operations
 - ii. Grant recipients no longer providing services in a particular county if the grant terms require services to be performed in a particular county
 - iii. Grant recipients requesting less than the calculated formula amount
 - iv. Grant recipients requesting a reduction that is equal to or less than 25 percent of their competitive-based grant award

¹ Business & Professions Code 6224.

- b. Staff-initiated grant reductions based upon corrected qualified expenditures.
- 8. The following are subject to review and approval by the Commissions:
 - a. Competitive-based grant reductions that are greater than 25 percent
 - b. Any grantee-initiated reductions not by staff
- 9. Following a staff-initiated, grant recipient-initiated, or Commission-initiated funding reduction or grant termination the Commission has the discretion to find that the reduction or termination will impact future competitive grant awards; to add additional terms and conditions to current or future grant agreements; to require additional monitoring visits; to require eligibility review conferences; to delay future grant distributions* until corrective action is taken; or to undertake other actions the Commission deems appropriate in furtherance of its oversight responsibilities.
- 10. All staff-initiated and Commission-initiated reductions are subject to reconsideration pursuant to the procedures set forth in Rule 3.691.

*Refer to proposed rule XX.XX regarding delayed payment of grant funds.

Attachment D

Proposed Rule

Rule XX.XX Unspent and Relinquished Grant Funds

1. “Unspent funds” are grant funds that were not spent by the end of the grant term.
2. “Relinquished funds” are grant funds that have been returned to the State Bar during the term of the grant. Relinquished funds may be initiated either by the grant recipient (e.g., a grant recipient is unable to perform a grant fully) or by the Commission, such as a reclamation of funds based upon Commission oversight actions (e.g., noncompliance with grant terms, underperformance, etc.).
3. “Returned funds” are unspent or relinquished funds that have been returned to the State Bar.
4. “Reallocation” or “reallocate” refers to the process of awarding relinquished funds to other grantee(s) during a grant period.
5. “Redistribution” or “redistribute” refers to the process of adding unspent funds to a subsequent grant year for distribution.
6. As permissible by the grant’s authorizing statute or other controlling authority, the Commission will redistribute or reallocate returned funds using the following methods:
 - a. The Commission will redistribute returned funds in subsequent grant periods in compliance with the grant’s authorizing statute or other controlling authority, to the extent permitted by the authorizing statute or controlling authority, unless the Commission determines that returned funds should be reallocated to other grant recipients in the current grant period, considering factors including the amount of the returned funds, other grant recipients’ capacity to accept and use reallocated funds, and the time remaining in the grant period
 - b. If returned funds are not redistributed, they will be reallocated if practicable. Reallocation will be limited to grant recipients currently receiving funds pursuant to the grant from which the returned funds originated. Grant recipients must formally opt-in to receive reallocated funds through a process determined by State Bar staff.

Formula-based grant reallocation amounts will be based upon the reallocation-receiving grant recipient’s pro rata share of the original formula as calculated by State Bar staff, unless a grant recipient requests a smaller reallocation amount. Competitive-based grant reallocation amounts are subject to the Commission’s discretion. For all grants, the Commission may establish additional eligibility

criteria for receiving the reallocated funds. Criteria may include, but is not limited to, meeting spending thresholds or timely resolution of State Bar monitoring findings related to the grant.

To receive reallocated grant funds, a grant recipient must submit to the State Bar a revised budget and execute an amendment to the original grant agreement which shall govern the reallocated grant funds, pursuant to deadlines set by State Bar staff. Staff will determine the timing for disbursement of the reallocated amounts to the eligible grant recipients.

7. Returned funds that are not reallocated or redistributed will be returned to the funding source as required in the grant's enabling statute or the funding contract.

From: Zach Newman <znewman@laaonline.org>

Sent: Friday, July 14, 2023 1:53 PM

To: Hom, Elizabeth <Elizabeth.Hom@calbar.ca.gov>

Cc: Lorin Kline <Lkline@laaonline.org>; Salena Copeland <scopeland@laaonline.org>; Nguyen, Doan <Doan.Nguyen@calbar.ca.gov>; Slater, Heidi <Heidi.Slater@calbar.ca.gov>; Bundang, Christal <Christal.Bundang@calbar.ca.gov>

Subject: Re: Fiscal Codification Memo for Community Feedback

Thanks Elizabeth. Just as I submitted this, I had one more comment to add from a member organization that was not reflected in the above statements. I've summarized it below, in the body of the email. Please add these comments to ours described above, as reflecting feedback collected from the community.

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Audit Findings

We appreciate the concern of organizations that are consistently receiving “findings” in their audits. It is unclear how widespread this issue is, or how frequently the State Bar discovers that an organization has had findings in an audit. It is also somewhat unclear if the Committee is concerned about all audit findings, or specifically audit findings that are more serious, that would indicate that the applicant does not have the ability to manage its finances, meet its deliverables, or other key aspects of the applicant. In other situations, audit findings are relatively minor and require a simple fix that otherwise will have no impact on the financial health (or programmatic health) of the applicant. It may be worthwhile to distinguish between certain types of findings. Audits are opportunities for nonprofits to learn and to continue to improve their operations; we are concerned that the Commission’s ability to use the audit, a supposed learning opportunity, to punish an applicant, could be detrimental to applicants. While we clearly support ensuring that funds are being handled correctly, and are being used for their intended purpose, we are not sure that a blanket rule such as the one proposed by the working group is the answer. We believe there may need to be more nuance to the type and scope of findings that could lead to consequences from the Commission.

Delayed Payment of Grant Funds

Overall, the proposal by the Working Group is acceptable. One question that was raised was whether or not applicants would be able to participate in the discussions around pausing grant payments under specific circumstances. It seems that there should be a reconsideration or appeal process, or at least a clear opportunity for an applicant to be able to provide an explanation as to the circumstances that led to the concern. Similarly, when staff have the authority to convert the grant payments to monthly, there should also be an opportunity for discussion with the applicant, and possibly a more formal reconsideration or appeal process, that would ensure the applicant understands the reasoning behind the switch to monthly payments and can address the concerns raised by the staff. Post-pandemic, and even before, some QLSPs have experienced unique circumstances that have led them to failing to comply with deliverables or other grant requirements that are unlikely to occur repeatedly. In those circumstances, it could be an opportunity for staff to offer three or four months of monthly payments, until they have the reassurance needed that the applicant is on the right track to comply with the grant requirements. There is a need for conversation, or reconsideration or appeal, because there are reasons why converting to monthly payments, pausing grant payments, or other similar actions could exacerbate the challenges that the applicant is facing.

Funding Reductions and Terminations

In general, the 25% threshold continues to make sense, and we appreciate the trust the Commission shows by allowing that leeway. In Attachment B, number 8 mentions that the Commission has approval and review rights for any grantee-initiated reduction not approved by staff. We want to clarify that means that the Commission will review and approve any reduction that is not specifically listed in number 7, section a, which lists four specific circumstances when grantees might initiate reductions. Also in Attachment B, number 9 states that the Commission has discretion to find that the reduction or termination will impact future awards. We understand, as the funder, that this discretion makes sense. However, it would be helpful to identify criteria or factors that might go into that decision, such as repeat and/or recent reductions or terminations, general articulated concerns over the fiscal health of the organization, or other points that might lead to a reduction or termination impacting future grant awards. In some cases, applicants may have no choice but to request a reduction or termination, but providing some guidance will aid in decision-making, both in terms of which sources of funding to apply for, and how to manage those sources of funding once awarded. For staff-initiated adjustments, State Bar Rule 3.691 makes it clear that applicants may request reconsideration for staff-initiated adjustments to their awards. We want to ensure that the opportunity to request reconsideration is also clear in any codification or other statement of the Rule. Finally, for Commission-initiated adjustments, the memo identifies “other substantive concerns” that may justify an adjustment. While we recognize that the Commission has discretion as a funder, a note or other guidance with examples from the past or that the working group came up that would fit in the catch-all would be very beneficial for the legal aid community. Has the Commission already identified current challenges experienced by applicants that could impact future grant awards? Without naming the applicants of course, some generalized examples could be helpful.

Unspent and Relinquished Funds

We are concerned about the “additional authority” being proposed for the Commission to reclaim grant funds. Are there examples or hypotheticals that the working group has considered that could be shared? For the definition of “redistribution,” we propose that it read “Redistribution or redistribute is the process of adding unspent funds to a subsequent grant year for distribution to eligible organizations.” We suggest not using the word “allocate” in the definition of redistribution or redistribute, since there is a separate definition for reallocation, and using the root of that word in the other definition makes it more difficult to differentiate the two terms. We appreciate the committee differentiating between the two terms, and believe this will help clarify the differences between them. We suggest adding in the term “eligible” in front of “organization” for clarity, but that is not necessary.

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Attachment E – LAAC Community Feedback (as of July 14, 2023)

On Fri, Jul 14, 2023 at 1:43 PM Hom, Elizabeth <Elizabeth.Hom@calbar.ca.gov> wrote:

Hi Zach,

Thank you for this feedback. We will review and let you know if there are any questions.

Have a nice weekend,

Elizabeth

Elizabeth A. Hom (she/her/hers)

Program Director, Office of Access & Inclusion

[The State Bar of California](#) | 180 Howard Street | San Francisco, CA 94105

415-538-2143 | elizabeth.hom@calbar.ca.gov

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From: Zach Newman <znewman@laaonline.org>

Sent: Friday, July 14, 2023 1:41 PM

To: Hom, Elizabeth <Elizabeth.Hom@calbar.ca.gov>

Cc: Lorin Kline <Lkline@laaonline.org>; Salena Copeland <scopeland@laaonline.org>; Nguyen, Doan <Doan.Nguyen@calbar.ca.gov>; Slater, Heidi <Heidi.Slater@calbar.ca.gov>; Bundang, Christal <Christal.Bundang@calbar.ca.gov>

Subject: Re: Fiscal Codification Memo for Community Feedback

Hello all - Due to the limited feedback we received on this matter, I will be summarizing a brief amount of feedback here. Generally, we stand by prior comments we've made, and do not have very major comments at this point.

One issue we heard from members, and were curious ourselves, pertains to carryovers. They are briefly alluded to, without much discussion, and mostly in terms of the decision to keep going with the same threshold for review. Does this mean that the Committee and Working Group will keep working on this and discuss changes with us and the community? We all can probably agree this is a big issue these days and hope that we can keep discussing it, with the Bar and the community, to ensure that the rules work for all. So, no significant comment, but some members were wondering why carryovers did not receive greater mention, as they've been discussed at length a lot lately.

One other issue was simply around the somewhat open-ended language around "failure to comply with grant requirements," which occurs in at least a couple places. Similarly, the phrase "other substantive concerns" is used too, elsewhere. We just wanted to flag, as we've done in the past, this sort of language makes us uneasy, because it is fairly broad. In my memory, we often signal issues with this kind of wording, just because we are wary of it being misused. We merely wanted to note that, where

Attachment E – LAAC Community Feedback (as of July 14, 2023)

possible, we find it better to eliminate this kind of open-ended wording and maintain the more specific examples in the text.

Thanks,
Zach

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On Mon, Jul 3, 2023 at 10:13 AM Zach Newman <znewman@laaonline.org> wrote:

Thank you Elizabeth! Confirming receipt, and that at this time that return day is workable.

Best,

Zach

Zach Newman | Directing Attorney
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On Fri, Jun 30, 2023 at 4:40 PM Hom, Elizabeth <Elizabeth.Hom@calbar.ca.gov> wrote:

Hello Zach and Lorin,

Attached please find the draft memo on the first set of fiscal topics. Please provide feedback to us by **Friday, July 14, 2023**.

If you have any questions or concerns before then, please feel free to reach out.

Thank you!

Elizabeth

Elizabeth A. Hom (she/her/hers)
Program Director, Office of Access & Inclusion
The State Bar of California | 180 Howard Street | San Francisco, CA 94105

Attachment E – LAAC Community Feedback (as of July 14, 2023)

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