



The State Bar *of California*

OPEN SESSION

AGENDA ITEM 3.6

AUGUST 2023

LEGAL SERVICES TRUST FUND COMMISSION

DATE: August 10, 2023

TO: Members, Legal Services Trust Fund Commission (LSTFC)

FROM: Members, LSTFC Eligibility and Budget Review Committee

SUBJECT: Approve Worksafe, Inc.'s. 2022 IOLTA/EAF Carryover Requests

EXECUTIVE SUMMARY

Interest on Lawyers Trust Accounts (IOLTA) and Equal Access Fund (EAF) formula grants operate on an annual cycle. If a grantee does not spend all its awarded funds in a given year, it often needs approval to retain those funds to spend in the next year. Carryover requests above 25 percent of the grant award require LSTFC approval. The Eligibility and Budget Review Committee recommends approval of Worksafe, Inc.'s 2022 IOLTA and EAF carryover requests.

GOVERNING AUTHORITIES

Pursuant to the Functional Matrix approved by the State Bar's Board of Trustees, a grantee must request and receive approval for any carryover of funds that amounts to more than 10 percent of its grant award.¹ 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). Under Article X, section 10.01(B) of the General Grants Provisions, a grantee must "[r]eturn all unused Grant funds [at the end of the grant period] immediately unless a Carryover thereof has been approved by the Commission."

¹ Though administered on the same basis, IOLTA and EAF formula grants come from distinct funding sources. Any carryover percentage is calculated against the amount of the individual grant implicated.

BACKGROUND

CURRENT PRACTICE

OAI announced the availability of budget revision and/or carryover request forms for 2022 IOLTA/EAF grants starting October 11, 2022. The deadline for requests was January 31, 2023. This was a change from prior practice, which usually set the deadline in late October or early November. However, given the large number of late requests received for these grants each year, staff piloted a new practice of accepting requests through the end of January. As noted earlier, requests between 10 and 25 percent of the grant award can be approved by the Director of OAI, and requests above 25 percent must be reviewed and approved by the LSTFC. Any budget deviation or carryover amount below 10 percent of the grant award is considered self-executing.

Staff looks at the carryover percentage (and the actual dollar amount, as the percentage may be high but the amount relatively low, depending on the size of the organization), determines if there is a pattern of recurring requests, and considers the reasonableness of the request. If the explanation is compelling and/or there is no history of repeated carryover, staff will generally recommend approval of these requests.

CARRYOVER PERIODS

Historically, grantees have been required to spend all carryover funds within the first two quarters of the following grant period (Qs 5 and 6), because the funds are intended to be spent in the year awarded on services, not to provide a reserve for organizations. However, due to the pandemic in 2020, the LSTFC allowed grantees 12 months to spend their carryover funds (both IOLTA and EAF). Since then, IOLTA carryover has reverted to the six-month period.

In anticipation of an unprecedented increase to EAF funds in 2022, the LSTFC also allowed grantees to propose two-year, instead of the traditional one-year, budgets to allow more planning and stability for grantees, and in turn, reduce carryover requests. Approximately one third of grantees opted for a two-year 2022 EAF budget, so they were not required to request carryover into 2023. To ensure that the carryover process was equitable under these circumstances, the LSTFC passed a resolution at its December 2022 meeting allowing grantees with an approved EAF carryover request 12 months to spend the funds through December 31, 2023.

DISCUSSION

WORKSAFE, INC.'S 2022 IOLTA AND EAF CARRYOVER REQUESTS

Worksafe previously submitted and received staff approval for a 2022 EAF budget revision at the time such requests were due. During review, staff asked the organization to make necessary updates to the budget revision form and reopened the record. The organization also completed the carryover form at that time, but staff was not immediately alerted to this as a completed carryover table was not included in the original request.

After analyzing Worksafe's carryover requests, the requested IOLTA carryover amounts to 11 percent of the grant award (\$26,058), and the EAF carryover amounts to 37 percent of the grant award (\$145,625). The organization provided the following explanation for the carryover requests:

"The reason we requested the carry-over is the same that led us to request a budhet modification [sic]. Due to the pandemic, Worksafe was able to secure an unexpected grant from LWDA and CDPH to do COVID-related work with vulnerable workers and communities. We hired new staff to support the legal team, and it helped realize savings in the IOLTA EAF grants while allowing us to conduct the program as proposed. Due to those circumstances, we would like to request a budget modification and increase non-personnel funds."

In response to the question of how the organization would ensure it spends down both the carryover and its 2023 awards, Worksafe stated the following: "The two above-mentioned grants, received for COVID work, have all ended. As such, that income surplus of grants no longer exists. This decline in revenue created the gap for us to spend the carryover funds during the period along with our 2023 allocation."

Staff noted for the Eligibility and Budget Review Committee that the IOLTA carryover request was just above the range that would be considered self-executing (11 percent versus 10 percent). Though it fell in the range that staff would typically approve, staff elevated the request as it was received late. After review, the Eligibility and Budget Review Committee recommends approval of the IOLTA carryover amount.

In order to conform to the flexibility accorded during the budgeting phase for 2022 EAF grant awards and all other EAF carryover requests, the Eligibility and Budget Review Committee recommends approval of Worksafe's EAF carryover request. If approved, the grantee will have through December 31, 2023, to spend its EAF carryover amount.

RECOMMENDATIONS

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

RESOLVED, the LSTFC approves Worksafe, Inc.'s requested 2022 IOLTA and EAF carryover amounts, along with the requirements that IOLTA funds not spent by June 30, 2023, and EAF funds not spent by December 31, 2023, be returned to the State Bar.

FISCAL/PERSONNEL IMPACT

None