



The State Bar of California

OPEN SESSION

AGENDA ITEM 5.2

NOVEMBER 2023

LEGAL SERVICES TRUST FUND COMMISSION ELIGIBILITY AND BUDGET REVIEW COMMITTEE

DATE: November 3, 2023

TO: Members, Legal Services Trust Fund Commission Eligibility and Budget Review
Committee

FROM: Office of Access & Inclusion Staff

SUBJECT: Recommend Approach to Carryover Period for Grants with Multiyear
Spenddown to Legal Services Trust Fund Commission (LSTFC)

EXECUTIVE SUMMARY

Historically, Interest on Lawyers' Trust Accounts (IOLTA) and Equal Access Fund (EAF) formula grants have been administered on a one-year basis (i.e., funds are both distributed and expected to be spent within a one-year timeframe). If funds remain unspent at the end of the year, depending on the amount, a grantee may require either State Bar staff or Legal Services Trust Fund Commission (LSTFC) approval to carry funds forward into the next grant cycle. The traditional carryover period has been six months.

Yearly distribution is required by statute. However, due to large short-term increases in funding in recent years, the Legal Services Trust Fund Commission (LSTFC) has allowed grantee organizations more than one year to spend the funds. Grantees were permitted to budget 2022 EAF over a period of two years and 2024 IOLTA over a period of four years. This new approach raises the question of whether the longer spending timeline represents an extended carryover period or if another six-month carryover period would be permitted at the end. Staff recommends that the committee and LSTFC adopt the first option (i.e., longer spend-down periods of a year or more represent a preapproved carryover with no additional six-month carryover at the end of that time).

BACKGROUND

According to the Functional Matrix, grantees may carry over up to 10 percent of their IOLTA and/or EAF formula awards without obtaining prior approval. Carryovers between 10 and 25 percent of the award require State Bar staff approval, and any amount above 25 percent requires LSTFC approval. Though not codified, the historical practice has been to permit carryovers for a period of six months into the next grant term. One notable exception occurred during the COVID-19 pandemic, during which grantees were allowed to carry over 2020 IOLTA and EAF formula grant funds for a period of 12 months through the end of 2021.

2022 EAF AWARDS

In 2022, there was a one-time increase to EAF funding that nearly doubled the amount available for distribution compared with prior years. To help grantees accommodate and budget for the additional funding, especially during a time when IOLTA funds had dropped, the LSTFC agreed to a two-year spending period for 2022 EAF funds. Grant agreements for the 2022 grant year defined the grant period as the calendar year (January 1 – December 31, 2022). All funds were disbursed during the 2022 year, but grantees were permitted to retain and continue spending those funds through 2023.

In the 2022 budget proposals, grantees were asked whether they wished to submit a two-year budget. As this was the first time that grantees were permitted a multiyear spending period, staff received a number of questions regarding the administration of the funds. In reply, staff messaged that the second year would function similarly to a preapproved carryover. Approximately one-third of grantees chose the two-year option when submitting their original budget. Toward the end of 2022, an additional third of grantees that had opted for a one-year budget requested to carry over funds for the second year. All requests were approved by the LSTFC.

2024 IOLTA AWARDS

Interest rates have increased significantly in the past two years. Consistently high interest rates have yielded increasing revenue for IOLTA grants. As a result, the planned distribution of \$95.3 million in IOLTA funds in 2024 is almost double that of 2023. Faced with a challenge of absorbing an increase in funding without a guarantee that it might be sustained, grantees expressed support for a longer spending period for 2024 IOLTA funds. In response, the LSTFC approved a four-year spending period. Like 2022 EAF funds, the 2024 IOLTA funds will be completely disbursed during the 2024 calendar year, regardless of whether grantees opt for a longer spending period in their budget submissions. Grantees will continue to receive yearly allocations of IOLTA funds in subsequent cycles.

DISCUSSION

Staff recommends that the committee recommend, and the LSTFC adopt, a policy that IOLTA and EAF grants with a planned multiyear spenddown should not receive an additional six-month carryover period after the approved spending period ends.

THE RATIONALE FOR AUTHORIZING EXTENDED SPENDING PERIODS IS CONSISTENT WITH TREATING THEM AS EXTENDED CARRYOVERS

Provision 1.02 of the Legal Services Trust Fund Commission's General Grant Provisions defines the grant period as "the period of time specified in the Grant Agreement during which expenditures for items set forth in the Approved Budget may be applied against the Grant." Further, carryover "means the use of Grant Funds in a Grant Period subsequent to the Grant Period for which they were awarded."

The grant period for IOLTA and EAF awards has been, and remains, one year, as specified in their respective grant agreements. The purpose of the extended spending period for the 2022 EAF and 2024 IOLTA funds was to allow grantees enough time to plan and spend the entirety of the grant award. In function, this is similar to a preapproved carryover.

Staff reminded grantees that additional yearly allocations would continue and urged grantees to be mindful of this impact on their budgeting plans. In the case of 2022 EAF, grantees had an additional 12 months beyond the typical grant period to spend the funds, and with 2024 IOLTA, grantees will have an additional 36 months. With few exceptions, carryover periods for IOLTA/EAF grants have historically been limited to six months. As these spending periods are significantly longer, staff sees little benefit to adding another six months. Moreover, the committee has observed a pattern of repeated carryover requests recently; allowing additional carryover may continue this pattern in future years.

FISCAL/PERSONNEL IMPACT

None

RECOMMENDATIONS

RESOLVED, that the LSTFC's Eligibility and Budget Review Committee recommends that the LSTFC establish that the extended spending periods afforded to grantees for 2022 EAF and 2024 IOLTA awards represent preapproved carryovers, with no further carryover permitted beyond the two-year spending period for 2022 EAF or the four-year spending period for 2024 IOLTA awards, and it is

FURTHER RESOLVED, that this same policy will apply to subsequent approved multiyear spending periods for IOLTA and/or EAF grants unless and until the LSTFC decides otherwise.

ATTACHMENT(S) LIST

None