



# The State Bar *of California*

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## **OPEN SESSION AGENDA ITEM 4.2 NOVEMBER 2023 LEGAL SERVICES TRUST FUND COMMISSION**

**DATE:** November 9, 2023

**TO:** Members, Legal Services Trust Fund Commission

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

**SUBJECT:** Approve Recommended Approach to Carryover Period for Grants with Multiyear Spenddown

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### **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 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 raised 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 recommended that the Eligibility and Budget Review Committee 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). The committee agreed with that rationale regarding 2024 IOLTA and recommends approval to the LSTFC.

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## **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.

## **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. 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**

The committee recommends that the LSTFC adopt a policy that 2024 IOLTA grants, and subsequent IOLTA or EAF grants with a planned multiyear spenddown, should not receive an additional six-month carryover period after the approved spending period ends.<sup>1</sup>

## **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 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.

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<sup>1</sup> Staff originally recommended the same approach to 2022 EAF awards, which had a two-year spending period, but acknowledged that there had not been sufficient time to notify the legal aid community to prepare accordingly as the end of that spending period approaches. As such, the committee recommended following office practice of applying the standard carryover period for 2022 EAF funds.

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 2024 IOLTA, grantees will have an additional 36 months to spend the funds. With few exceptions, carryover periods for IOLTA/EAF grants have historically been limited to six months, so this spending period is significantly longer.

## **FISCAL/PERSONNEL IMPACT**

None

## **RECOMMENDATIONS**

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

**RESOLVED**, that the LSTFC finds that the extended spending period afforded to grantees for 2024 IOLTA awards represents a preapproved carryover, with no further carryover permitted beyond 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