



# The State Bar *of California*

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## **OPEN SESSION**

### **AGENDA ITEM 4.1**

**MARCH 2024**

### **LEGAL SERVICES TRUST FUND COMMISSION RULES COMMITTEE**

**DATE:** March 20, 2024

**TO:** Rules Committee, Legal Services Trust Fund Commission

**FROM:** Erica Connolly, Working Group Member  
Jason Galkin, Working Group Member  
Jonathan Sandville, Working Group Member

**SUBJECT:** Codification of Grant Administration Practices: Fiscal Issues – Excluded Funds/  
Passthrough Funds, Exchanged Funds, and County Expenditures

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### **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 regarding passthrough funds, exchanged funds, and county expenditures.

The working group sought preliminary feedback from the legal aid community through an optional feedback session for grantees on January 31, 2024, and through the Legal Aid Association of California (LAAC) on February 23, 2024. The working group will present its recommendations and the legal aid community's feedback to the Rules Committee on March 20, 2024.

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### **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 typically circulated by the committee to the legal aid community through the 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 LSTFC 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 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 (including Federal funding-related issues)
3. Grantee Fiscal Oversight (including Federal funding oversight)
4. Miscellaneous issues/topics

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 August through February 2024, the working group met and discussed various issues under category 1 that related to the IOLTA allocation. This memo presents preliminary recommendations regarding State Bar grant expenditure deductions.

### **GOVERNING AUTHORITIES**

Applicants and grantees must comply with requirements set forth in Business & Professions Code sections 6210-6228, State Bar Rules, 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**

Qualified Legal Services Project (QLSP) allocations are determined based upon the organization's share of qualified expenditures (QEs) for a particular county. While not formally defined, QLSP QEs are expenditures for free civil legal services provided without charge to indigent persons. In the course of the fiscal codification review, the working group proposed adding a formal definition of QE in proposed revised State Bar rule 3.680(E)(4). This definition is based on the IOLTA statute, State Bar rules, and current office practice.

During the IOLTA/EAF application process, QLSPs are required to report on total corporate expenditures as reported in an audited financial statement or financial review. From that amount, various adjustments, such as deductions for nonqualifying expenditures, are made.<sup>1</sup> Once the qualified expenditure amount is confirmed, it is used in the grant allocation process.

These expenditure adjustments detailed in the application include passthrough funds, exchanged funds, and county expenditures. The working group felt it was important to address these fiscal codification topics following its recommendations regarding State Bar grant expenditure deductions because of their impact on QEs and grant allocation amounts.

Passthrough funds and exchanged funds were initially considered as separate topics and recommendations were discussed in 2021 by both the Rules Committee and LSTFC. However, in consideration of the working group's updated approach to review interrelated fiscal codification topics holistically, the working group decided to revisit these topics and propose new recommendations.

Given the complex nature of these topics, the working group gathered preliminary feedback from the legal aid community through an optional grantee feedback session held on January 31, 2024. There were 21 representatives from 16 grantee organizations who attended the session to provide feedback regarding the working group's initial recommendations.

### **Passthrough Funds - Current Office Practice**

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<sup>1</sup> Because Support Center allocations are based on an equal share of the annual Support Center distribution amount, regardless of qualified expenditures, this fiscal codification topic does not apply to their allocation calculation. However, because this topic includes qualifying expenditures, it may impact primary purpose calculations for both QLSPs and Support Centers, and thus impact their eligibility status.

In 2019, a section was added to IOLTA/EAF application to capture passthrough/fiscal sponsorships expenditures. Prior to this, staff identified these expenditures informally. Once identified, these expenditures were excluded from the calculation for Primary Purpose determination and not included towards QEs.

Per the application instructions, applicants are instructed to “...identify funds that are passed through from the applicant to another organization, for which the applicant has no involvement, oversight, or engagement in the execution of the funded work (e.g. program simply forwards payment to another organization but is not involved in decision-making and does not have oversight responsibilities, or involvement is limited to selecting a subgrantee but program does not participate in decision-making or oversight beyond that). The Commission will determine whether what is reported conforms to statutory and State Bar requirements and may seek additional information from the applicant to make a final determination.”

Applicants are not required to provide supporting documentation for the passthrough/fiscal sponsorships expenditures reported. Approximately 20 percent of applicants reported passthrough funds in their 2023 and 2024 IOLTA/EAF applications.

### **Passthrough Funds – Issues to Consider**

In reviewing the types of expenditures reported as passthrough expenditures, the working group observed inconsistent interpretations from applicants, which could be attributed to several reasons:

- The IOLTA statute and State Bar rules do not provide a specific definition or guidance regarding passthrough funds.
- The term “passthrough” is also used in accounting but has a different meaning and use when compared to the IOLTA/EAF application.
- There is ongoing ambiguity in how passthrough funds and exchanged funds are treated. Depending upon the organization, exchanged funds are often reported as passthrough funds or vice versa.
- Because of overlap with other subgrants, passthrough funds creates an inconsistent treatment of subgrants.

The working group also considered the potential impact passthrough expenditures have on the allocation. Depending on how an individual organization interprets the category, the expenditure would either be included or excluded from QEs. In reviewing prior passthrough fund data, there has been an inconsistent interpretation of the passthrough funds, with some applicants excluding QEs that would be qualifying, resulting in a lower allocation for the organization.

Another issue the working group considered is the lack of verification of reported passthrough funds. While they are occasionally reflected in audited financial statements, applicants are not required to provide supporting documentation of the amounts provided. The working group felt that this lack of verification has added to the inconsistent interpretation and application of the passthrough fund exclusion from QEs.

## Initial Working Group Recommendations and Grantee Feedback

To improve clarity and in consideration of the intent of this adjustment, the working group recommends eliminating the term “passthrough” and instead using a new term, “excluded expenditures” with clear descriptions of what types of expenditures should be excluded from an applicant’s total corporate expenditures, as follows:

- **In-kind/donated services:** contributed services provided by a volunteer and recognized and recorded at the fair market value, as verified by audited financial statement or financial review.
- **Unrealized loss:** a decline in the value of an asset that has not yet been sold, as verified by audited financial statement or financial review.
- **Direct assistance funds:** restricted funds that require the applicant to distribute the funds to individuals directly. These funds are not available for general use by the applicant.
- **Fiscal sponsorship funds:** funds that an applicant provided under a fiscal sponsorship agreement where the applicant is providing funding to a sub-recipient that is an unincorporated entity unable to receive the funds directly.
- **Required subgrants:** restricted funds that require the applicant to distribute the funds to subgrantee(s). These funds are not available for general use by the applicant.

To ensure accurate reporting of excluded expenditures, the working group recommends that applicants be required to provide supporting documentation for the last three types - direct assistance funds, fiscal sponsorship funds, and required subgrants. Also acknowledging that the defined excluded expenditures are not for the provision of free civil legal services, the working group also felt it was important that corresponding administrative expenses for these excluded expenditures be deducted from the applicant’s QEs. Because in-kind/donated services and unrealized loss can be verified by the audited financial statement or financial review that is submitted with the application, the working group does not propose requiring additional supporting documentation for these types of excluded expenditures.

During the January 31, 2024, grantee feedback session, there was no clear opposition to the working group’s initial recommendations regarding passthrough funds. Rather, grantees asked questions and sought clarification regarding the proposed changes. Grantees asked about the proposed restricted/required nature of the expenditures in the excluded expenditure definitions, and staff confirmed that if the subgrant is not required as part of the contract for receipt of funds, it would not be considered an excluded expenditure. Grantees also asked for clarification related to the proposed requirement to deduct the administration of excluded expenditures as nonqualifying and how to track such expenditures.

## Exchanged Funds – Current Office Practice

QLSPs are currently required to report all funds paid to or received from other QLSPs. Per the application instructions, “Not including funding from IOLTA, EAF, or a Sargent Shriver grant which are reported separately below, if the applicant paid money to, or received money from,

another legal services project, both programs must disclose this fact and the amount of any such payment(s) in their applications. Expenditures will be attributed to the program receiving the funds unless a contrary agreement has been made between the two applicants.” QLSPs are also required to upload exchanged fund agreements that are reviewed and validated by staff. In 2023 and 2024, approximately 30 percent of QLSPs reported exchanged funds.

This requirement is only applicable to QLSP-to-QLSP subgrants. If a QLSP subgrants with Support Centers or non-QLSP legal organizations<sup>2</sup> for qualifying work, those expenditures are counted towards QEs.

### **Exchanged Funds – Issues to Consider**

Since the current practice of deducting exchanged funds is not statutorily required, the working group considered potential negative implications on QLSPs with exchanged funds. First, the working group considered whether current practice inadvertently penalizes QLSPs who choose to use their funds to provide additional services that benefit their clients through subgrants to other QLSPs. The working group also considered whether current practice might generally disincentivize QLSPs from subgranting with other QLSPs.

Another consequence of current practice is that it inadvertently creates inequity among grantees and the treatment of subgrants. Some organizations require the subgrantee to allow the grantor organization to count the funds, thus creating a potentially inequitable power dynamic among grantees. Current practice also promotes an uneven treatment of subgrants, because QLSP-to-QLSP subgrants are treated differently than any other subgrant. Under current office practice, QLSPs are permitted to count subgrants to Support Centers or other non-QLSP legal organizations towards QEs but are not permitted to count funds given to QLSPs towards QEs.

The exchanged funds process also poses significant administrative challenges for both applicants and staff. It is often difficult to reconcile the information provided from both organizations given the varying fiscal years, amounts awarded, and inconsistent supporting documentation.

### **Initial Working Group Recommendations and Grantee Feedback**

To encourage equity among grantees and ease administrative challenges, the working group recommends discontinuing the practice of reporting and deducting exchanged funds. The working group felt that this recommendation was most aligned with the plain language reading of Business & Professions Code Section 6216 (1) (A), which defines expenditures as “the amount of their total budget expended in the prior year for civil legal services without charge for indigent persons in that county.”

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<sup>2</sup> Existing QLSPs may have exchanged funds with first-time applicant organizations who may be deemed eligible for IOLTA/EAF funding during the application cycle. QLSP subgrants with first-time applicants do not get deducted because they were not a QLSP at the time of application.

The working group anticipates that this recommendation would help address the administrative burden for applicants and staff, such as reducing errors and inconsistency and alleviate the need to reconcile differing fiscal years among partner organizations.

Consistent with the LSTFC's existing recommendation that QEs include all State Bar grant expenditures, the working group recommends that any funds paid to or received from other QLSPs would be allowed to count as QEs.

During the January 31, 2024, grantee feedback session, there was general consensus that the elimination of exchanged funds would alleviate the administrative burden, but some grantees expressed concerns regarding the impact of this recommendation.

One potential impact would be that smaller organizations could receive lower allocation awards if larger organizations were able to count the same exchanged funds towards their QEs. Another impact is that certain counties have providers who always partner with each other, so the proposed elimination could disadvantage other organizations in the same county. To address this potential inequity, one grantee proposed possibly allowing the lead agency to count the funds but at a discounted or pro-rated amount (e.g., only 50 percent of the funds would count towards QEs). While the working group appreciates the concerns raised by grantees, the working group posits that the elimination of exchanged funds may incentivize QLSPs to subgrant with other QLSPs because they would no longer be required to deduct exchanged funds from QEs.

Another scenario posed was that if a lead organization grants funds to another organization who is able to use the funds to serve individuals above the 200 percent poverty threshold, which would require the subgrant agency to deduct the portion of expenses used to serve clients over the poverty threshold, would the lead organization be required to also deduct some of the funds given to the subgrantee and if so, how would they know what to deduct. Finally, some grantees expressed concern about potential "double counting" of the same grant funds. The working group reminds QLSPs who choose to subgrant with other QLSPs that they must have mechanisms in place to account for nonqualifying activities performed under the subgrant agreement and are responsible for making appropriate deductions for nonqualifying activities on the application, if applicable.

The working group also maintains that because there are multiple factors—including factors that are unforeseen and unpredictable—that impact the grant allocation calculation from year to year, its recommendations should focus on the principle and intent of the IOLTA statute.

### **County Expenditures – Current Office Practice**

QLSPs are required to report qualifying expenditures by county. A QLSP's qualifying expenditures in a county determines the amount of EAF and IOLTA grants the QLSP receives for that county (e.g., if a QLSP's qualified expenditures in the county is 10 percent of the total QE

by all QLSPs in the county, the QLSP will receive 10 percent of the allocation<sup>3</sup> for that county). QLSPs that serve multiple counties are required to describe the allocation of expenditures for each county. Approximately 50 percent of all QLSPs receive multi-county allocations.

In the application, there are separate sections to report county expenditures for counties for which the applicant has previously received and is applying to continue to receive an allocation, discontinued counties (e.g., counties for which an applicant no longer wishes to receive an allocation), out of county expenditures (e.g. counties for which an applicant has not received an allocation and does not wish to receive an allocation), and counties for which the applicant wishes to receive a new county allocation.

Historically, QLSPs that spent money in a county for which they were not seeking IOLTA/EAF funding were permitted to count those expenditures as qualified expenditures in another county for which they were receiving funding. If the QLSP was discontinuing services in a county or provided limited services in a county they did not routinely serve, they were permitted to include that county's qualified expenditures in their home county or across counties for which they were applying for IOLTA/EAF funding.

During the course of reviewing current practice, the State Bar's Office of General Counsel recommended that to ensure complete alignment with the statutory requirements of the IOLTA formula (Business and Professions Code section 6216), QLSPs no longer be allowed to treat expenditures in counties for which they are not applying for an allocation as qualifying. This practice will be discontinued beginning with the 2025 IOLTA/EAF application. For this application cycle, QLSPs now have to report 2023 county expenditures only in the county(ies) where the expenses occurred. For purposes of individual county allocations, only qualified expenditures within each individual county will count towards that county's qualified expenditures.

In light of this update, the working group decided to focus on how grantees account for county expenditures in counties where they provide qualifying legal services.

### **County Expenditures – Issues to Consider**

Currently, there is no formal rule requiring applicants to have a clear basis for how they account for the expenditures by county; current guidance is only provided in the eligibility guidelines and application instructions. Under the current practice, there is a wide variety of methodologies and levels of rigor that grantees use to support the division of expenses by county. Given how critical county expenditures are in calculating the grant allocation amounts, the working group felt this requirement needed clarification.

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<sup>3</sup> This is referring to the main allocation pursuant to Business & Professions Code section 6216(b)(1)(A), not the pro bono allocation pursuant to section 6216(b)(1)(B).



## **Initial Working Group Recommendations and Grantee Feedback**

The working group recommends codifying and clarifying the existing guidance regarding county allocations into a State Bar rule. This rule would further define permissible allocation methodologies and relevant factors that must be included and define the frequency of how often the methodology and/or source data must be updated by the applicant.

During the January 31, 2024, grantee feedback session, there was no clear opposition to the working group's initial recommendations. Grantee questions were directed toward the existing requirement to track and report expenditures by county and there was concern on when the proposed changes, if adopted, would be implemented.

## **FEEDBACK FROM THE LEGAL AID COMMUNITY**

In addition to gathering preliminary community feedback on January 31, 2024, the working group sought community feedback through LAAC regarding the proposed rule on February 23, 2024. On March 11, 2024, LAAC responded and indicated general support of the working group's recommendations. LAAC also supported greater clarity in defining what counts as QEs and what is excluded. LAAC reported that the new categories for excluded funds will lead to equity between programs when determining what is included in the primary purpose calculation. LAAC also suggested that Frequent Asked Questions (FAQ) documents be developed to help grantees to understand both the out of county expenditure changes and excluded funds. LAAC did not provide any additional feedback regarding exchanged funds.

## **FISCAL/PERSONNEL IMPACT**

None.

## **WORKING GROUP RECOMMENDATION**

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 passthrough funds, exchanged funds, and county expenditures referenced in Attachment A.

## **ATTACHMENT(S) LIST**

- A. Proposed revisions to State Bar Rule 3.680
- B. LAAC feedback to the preliminary working group recommendations regarding passthrough funds, exchanged funds, and county expenditures as of March 11, 2024

**Article 3. Applications and distributions<sup>1</sup>****Rule 3.680 Application for Trust Fund Program grants**

To be considered for a Trust Fund Program grant, a qualified legal services project or qualified support center seeking a Trust Fund Program grant must submit a timely and complete application for funding in the manner prescribed by the Commission. The applicant must agree to use any grant in accordance with grant terms and legal requirements.

- (A) A qualified legal services project must meet statutory criteria.
- (1) A law school clinical program must demonstrate that it meets all of the following criteria: an identifiable and dedicated location designed to provide civil legal services to indigent Californians; dedicated staffing (whether full- or part-time) whose job duties exclusively serve the law school clinical program; a clinical director (regardless of title) with authority over operations and staffing of non-faculty positions; segregation of fiscal records and activities (including, but not limited to, the ability to provide audited confirmation of clinic expenditures); and proof of institutional oversight such as by identifying specific position(s) and/or mechanisms.
  - (2) A law school clinical program must demonstrate it has been in operation for at least two years as of the date on which its application is due. Law school clinical programs may provide a combination of audited financial statements and schedules, budgets, staff lists, class rosters, clinic enrollment records, or functional equivalent.
  - (3) Law school clinical programs may include funds received from parent or affiliate entities and organizations towards the \$20,000 or more in cash funds per year from other sources as required by Business and Professions Code section 6214(b)(1).
- (B) A qualified support center must agree to offer support services in two or more of the following ways: consultation, representation, information services, and training. The board of directors of the support center must establish priorities for providing such services after consulting with legal services attorneys and other relevant stakeholders.
- (C) A support center not in existence prior to December 31, 1980 must demonstrate that it is deemed to be of special need by a majority of qualified legal services projects in accordance with Trust Fund Program procedures. Upon request, the Commission must make available to the applicant a list of all the names and addresses of qualified legal services projects.
- (D) A nonprofit corporation that believes it meets the criteria for a qualified legal services project and qualified support center may submit two applications, one as a project and one as a support center, indicating in each application whether it is to be considered the primary or secondary application. The Commission will consider the secondary application only if the primary application is not

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<sup>1</sup> Rules that have been previously discussed or recommended by the LSTFC Rules Committee are in blue font. The new proposed revisions that have not yet been discussed are in red font.

approved. No applicant may receive a grant as a qualified legal services project and as a qualified support center.

(E) An application must include

- (1) an audited financial statement by an independent certified public accountant for the fiscal year that concluded during the prior calendar year. A financial review by an independent certified public accountant in lieu of an audited financial statement may be submitted by an applicant whose gross corporate expenditures, excluding in-kind donated services, were less than the amount specified in the Schedule of Charges and Deadlines. Law school clinical programs may submit audited financial statements for the clinic or law school, provided the latter include a schedule for the clinical program showing its revenues and expenditures;

(a) 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) 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<sup>2</sup>

- (2) information about the maintenance of quality service and professional standards and how the applicant maintains standards, such as internal quality control and review procedures; experience and educational requirements of attorneys and paralegals; supervisory structure, procedures, and responsibilities; job descriptions and current salaries for all filled and unfilled professional and management positions; and fiscal controls and procedures.

- (3) the total corporate expenditures for the fiscal year that concluded during the prior calendar year, which must be itemized on the application. The expenditures reported must match those reported on the audited financial statement or financial review. The following types of expenditures, defined below, shall be excluded from the total corporate expenditures:

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<sup>2</sup> This rule was recommended by LSTFC Rules Committee on August 22, 2024, and is pending public comment and LSTFC approval.

- (a) In-kind/donated services: contributed services provided by a volunteer and recognized and recorded at the fair market value, as verified by audited financial statement.
- (b) Unrealized loss: a decline in the value of an asset that has not yet been sold, as verified by audited financial statement.
- (c) Direct assistance funds: restricted funds that require the applicant to distribute the funds to individuals directly. These funds are not available for general use by the applicant.
- (d) Fiscal sponsorship funds: funds that an applicant provided under a fiscal sponsorship agreement where the applicant is providing funding to a sub-recipient that is an unincorporated entity unable to receive the funds directly.
- (e) Required Sub-Grants: restricted funds that require the applicant to distribute the funds to sub-grantee(s). These funds are not available for general use by the applicant.

Supporting documentation verifying the restrictions and the amount of funds for direct assistance funds, fiscal sponsorship funds, and/or required sub-grants must be provided. The administration costs related to direct assistance, fiscal sponsorships, and required sub-grants must be tracked and reported as non-qualifying activities.

- (4) the applicant's qualified expenditures. To determine the qualified expenditures of the applicant, if applying for funding as a qualified legal service project, applicants must report expenditures that were not for providing free civil legal services to indigent persons. If applying as a qualified support center, applicants must report expenditures that were not related to the provision of legal training, legal technical assistance, or advocacy support without charge. These expenses will be deducted from the total corporate expenditures.

Unless otherwise provided in these rules or statute, when calculating their total qualified expenditures for the purpose of determining IOLTA grant awards, qualified legal services projects shall include qualifying expenditures that were made with funds from all sources, including all State Bar grants and funds received from other qualified legal service projects<sup>3</sup>. An organization applying for funding as a qualified legal services project that pays funds to another organization may count such funds as qualified expenditures if the organization receiving the funds spends them on providing free civil legal services to indigent persons in a county for which the applicant is applying for an allocation.

- (5) all qualified expenditures by county if the applicant is applying for funding as a qualified legal service project. If the applicant serves more than one county, it must explain the basis of the by-county allocation. The allocation must be reasonably related to the geographic distribution of the indigent persons who will benefit from the services. In allocating total expenditures among counties, an applicant must use a method that is reasonably related to the actual expenditure of funds on indigent persons in any given county and explain the basis of the allocation. The

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<sup>3</sup> This rule was previously sent out for public comment. Additional language has been added to reflect the working group's recommendations regarding exchanged funds.

allocation methodology and source data used for the allocation must be reviewed and updated by the applicant at least annually.

- (a) In evaluating the reasonableness of such allocations, the Commission may consider the following factors and any others that aid in making that determination:
    - (i) numbers of clients served who reside in each county.
    - (ii) number of cases handled in each county.
    - (iii) actual or estimated hours of service provided in each county, or provided to clients who reside in each county.
    - (iv) actual expenses of providing service to clients in each county, including both personnel and non-personnel expenses.
    - (v) statistics that establish the geographic distribution by county of persons who will benefit from the services provided.
    - (vi) the forum in which the matter is being pursued, e.g., courts, administrative agency, legislature, etc.
    - (vii) in the case of a class action, the definition of the class contained in the complaint and proposed or actual class certification orders.
    - (viii) a description of the group of individuals that would benefit from a favorable resolution of the legal matter.
  - (6) a budget and budget narrative, which must be submitted within thirty days of receipt of a notice of tentative allocation, explaining how funds will be used to provide civil legal services to indigent persons, especially underserved client groups such as, the elderly, the disabled, juveniles, and non-English-speaking persons within the applicant's service area; and
  - (7) information about program activities, such as substantive practice areas, extent and complexity of services, a summary of litigation, and populations served.
- (F) State Bar staff may accept application materials, except for audited financial statements or financial reviews, which are addressed in Appendix A of these Rules, submitted up to one business day after the posted deadline. The Commission or a committee of its members may accept, accept with conditions, or reject application materials that are submitted beyond one business day after the posted deadline or that are submitted up to one business day after the posted deadline but not accepted by State Bar staff. Factors that the Commission or committee may consider when determining whether to accept a late application include, but are not limited to
- (1) how late after the deadline the submission was received;

- (2) the completeness of the submission;
  - (3) the reasonableness of the applicant's explanation for the delay;
  - (4) any mitigating factors that the applicant provides to the committee; and
  - (5) the number of late application or reporting submissions made by the applicant in the preceding three years.
- (G) Qualified legal services projects and support centers may apply for competitive discretionary grants if they meet threshold eligibility requirements for those funding opportunities. A scoring rubric will be utilized to aid in the review and evaluation of competitive discretionary grant applications. The scoring rubric should, absent an explanation from the Legal Services Trust Fund Commission, consist of the general selection criteria: Impact, Administration, and Evaluation, as well as other grant-specific criteria. Selection criteria, point allocations, and implementation of the scoring rubric will be at the discretion of the Legal Services Trust Fund Commission.

**From:** [Salena Copeland](#)  
**To:** [Bundang, Christal](#)  
**Cc:** [Hom, Elizabeth](#); [Nguyen, Doan](#); [Slater, Heidi](#); [Zach Newman](#)  
**Subject:** Re: Fiscal Codification Memo for Community Feedback by 3/8  
**Date:** Monday, March 11, 2024 11:56:48 AM

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We've received no other feedback, so here is a summary of our input.

LAAC supports greater clarity in what to count as QEs and what is excluded. We particularly appreciated the new categories, as we think that will lead to more equity between programs who may have been under or over-reporting "pass-through" expenses. We believe this will also be helpful for organizations to understand what is not counted against QEs for the purposes of primary purpose calculations. What we've heard from organizations in the past is that they were unsure whether to accept funds from a foundation that were meant to immediately subgrant to individuals or other organizations. This is sometimes done for the convenience of the foundation, and our community doesn't want to make it more difficult for foundations to support our client community.

We believe an FAQ document will be particularly helpful, especially for the change in county county expenses. Some organizations are concerned about the immediate drop in their expenses if they are no longer able to count out-of-county expenditures for their main county. We understand this change is required due to OGC's interpretation, but we want to make sure all organizations understand the change.

We also think an FAQ doc would be helpful, at least in implementation, for the change in excluded funds. There may need to be specific examples of what subgrants are required and excluded from QEs and what subgrants could count in QES.

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That's it. Thank you!

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**Salena Copeland (pronouns she/her) ([hear me say my name](#))**

Executive Director

Legal Aid Association of California

Legal Aid fights for justice. We fight for them.

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