



The State Bar of California

OPEN SESSION

AGENDA ITEM 4.1

MAY 2024

LEGAL SERVICES TRUST FUND COMMISSION RULES COMMITTEE

DATE: May 7, 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 – Nonqualified Expenditures

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 expenditures that are not for the provision of civil legal services for indigent persons, or for qualifying support center activities, referred to as "nonqualified expenditures."

The working group sought preliminary feedback from the legal aid community through the Legal Aid Association of California (LAAC) on April 15. The working group will present its recommendations and the legal aid community's feedback to the Rules Committee on May 7, 2024.

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 2023 through April 2024, the working group met and discussed various issues under category 1 related to the IOLTA allocation. This memo presents preliminary recommendations regarding nonqualified expenditures, which are expenditures that must be deducted from total corporate expenditures because the expenses are not for qualifying activities.

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, QEs are expenditures for free civil legal services provided without charge to indigent persons for QLSPs or the provision of legal training, legal technical assistance, or advocacy support of QLSPs for Support Centers. 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.

Current Office Practice

Applicants report total corporate expenditures in the IOLTA/EAF application based on their audited financial statement or review from the previous fiscal year. From there, applicable non-cash expenditures and passthrough/fiscal sponsorship expenditures are excluded. Nonqualified expenditures are then reported and deducted from the remaining corporate expenditures to calculate QEs.

The current itemized nonqualified expenditures for QLSPs on the application include:

1. Activities other than the delivery of legal services
2. Lease/sublease revenue and related property management expenses
3. Criminal legal services
4. Administrative fees above \$20
5. Services provided to non-indigent clients
6. Services provided outside of California
7. Other activities/expenses not described above

The current itemized nonqualified expenditures for Support Centers include:

1. Activities other than legal training, legal technical assistance, or advocacy support without charge to QLSPs or other qualifying entities
2. Fees charged for legal support services
3. Fees charged for publications or resource materials
4. Reimbursements for any expenses incurred for legal support services
5. Expenses incurred as manager, lessor, or sub-lessor of property
6. Other activities/expenses not described above

Primary purpose is then calculated by dividing qualified expenditures by the total corporate expenditures, minus any relevant excluded funds. QLSPs and Support Centers meet primary purpose if at least 75 percent of its expenditures are qualifying¹.

Issues to Consider

While the working group generally agreed with the itemized list of nonqualified expenditures and current office practice, it felt that there were opportunities to streamline, provide clarity, and increase consistency among applicants as it relates to how nonqualifying expenditures are reported and deducted.

The working group observed inconsistent descriptions of overlapping categories in the QLSP and Support Center applications. Both QLSPs and Support Centers applications include expenditures related to subleasing and managing rental properties. QLSP applicants are asked to report expenditures in two categories related to leased space and property management activities, whereas Support Centers are only asked to report on expenses as manager, lessor or sub-lessor of property. The working group felt it was important to developing one streamlined description that would apply to all applicants.

The working group also considered whether other nonqualifying expenditures should be deducted, such as the administrative expenditures related to excluded expenditures, which was discussed at the March 12, 2024, LSTFC Rules Committee meeting, fundraising expenditures, and expenditures related to legal settlements or judgments.

The working group was concerned that the requirement to deduct expenditures related to fee generating work was not clear based upon the way the questions are posed on the application. For example, Support Centers are asked if they charge for any of its support services or publications and materials. Many grantees report the amount of revenue that was generated from this activity, rather than the amount of expenditures related to producing and selling the publications and materials, which is the requirement.

Another consideration was whether fundraising expenditures and expenditures related to legal settlements or judgments should be considered nonqualifying. The State Bar's Office of General Counsel advised that the statute permits "reasonable overhead," which would allow for fundraising expenditures for the purposes of raising funds to provide free civil legal services. However, if fundraising would be for nonqualifying program work, it would not be permissible under the statute. Similarly, a legal settlement or judgment related to activities or personnel who provided free civil legal service would be permissible, whereas funds used for a legal settlement or judgment related to activities or staff who did not provide qualifying activities would not be permissible under the statute.

¹ Primary purpose for Support Centers is a separate codification topic that will be discussed by the LSTFC Rules Committee in November 2024.

Initial Working Group Recommendations and Grantee Feedback

Based on the considerations described above, the working group recommends codifying office practice, defining general nonqualifying expenditure categories that must be deducted from total corporate expenditures, and requiring a reasonable and verifiable methodology for the deduction amount(s) based on actual expenditures. After reviewing the itemized list for both QLSPs and Support Centers, the working group identified three categories for nonqualifying expenditure deductions: (1) administrative expenditures, (2) expenditures related to fee-generating activities, and (3) expenditures related to nonqualifying program activities.

Under administrative expenditures, the working group proposes including subleasing or property management expenditures, fundraising activities for nonqualifying work, and legal settlements or judgments based upon nonqualifying activities or employees who do not perform qualifying work. Consistent with the recommendations discussed in March 2024, the working group also added administrative fees related to subgrants, fiscal sponsorship, and direct assistance funds under this category.

Under fee-generating activities, the working group proposes including fee-for-services, fee-generating cases that do not meet the statutory exemption, and support center expenditure incurred providing legal training, technical assistance, and advocacy support or for providing publications or resource materials to QLSPs for a fee.

The final category the working group identified was nonqualifying program activities. They felt this category best captured non-program work. For QLSPs, this includes services provided to non-indigent clients, services provided outside of California, and criminal legal matters. For Support Centers, this involves activities other than legal training, legal technical assistance, or advocacy support without charge to QLSPs or other qualifying entities.

Applicants must describe the methodology used to calculate nonqualified expenditures as part to the IOLTA/EAF application process. Reasonable and verifiable methodology includes calculations using actual expenditures that can be tied to supporting documentation. For example, time and effort reports for personnel expenditures and a pro-rata share of indirect expenditures. Supporting documentation is not required as part of the IOLTA/EAF application process but may be subject to review upon request.

FEEDBACK FROM THE LEGAL AID COMMUNITY

The working group sought community feedback through LAAC regarding the proposed rule on April 15, 2024. On April 23, 2024, and April 25, 2024, LAAC provided a response (Attachment B). LAAC indicated that while most organizations would be able to implement the proposed changes with advanced notice and technical assistance, some organizations did not agree with or were confused with some of the recommendations.

Some organizations expressed concern that tracking administrative overhead, administrative expenses for fundraising, and administrative expenses for subgrants would be burdensome and

did not agree with the related recommendations. The legal aid community was unsure of the extent to which the LSTFC was concerned about the current administrative allowance of 25 percent. One organization proposed that the State Bar consider an indirect cost rate, similar to other government agencies. In regard to fundraising, some organizations were concerned on how to determine what amount would be for nonqualifying activities because sometimes they are unsure of how funds will be used.

Other organizations expressed confusion and had questions about the administrative costs for administering subgrants. With the proposed changes to how subgrants are counted, it would be difficult to differentiate and track expenses, especially if an organization has both nonqualifying and qualifying subgrants. Another concern was that the State Bar generally encourages subgrants. If the subgrant is a qualified expenditure, it was unclear why the administrative costs would not also be considered qualifying.

Working Group Response to Legal Aid Community Feedback

Upon reviewing the legal aid community feedback, the working group observed a general apprehension from organizations about being required to track and report various nonqualifying administrative expenditures. While the working group appreciates the concerns raised, the working group would like to clarify that most of the recommendations simply codify current office practice. In order to calculate qualified expenditures, organizations are required to and are responsible for tracking and deducting all nonqualifying expenditures, including related administrative expenditures.

The working group considered the community feedback related to deducting administrative expenditures for administering subgrants. The working group agreed with the feedback that deducting such expenditures could potentially disincentivize organizations to subgrant with other organizations that would otherwise provide qualifying services. In response, the working group revised the proposed rule to distinguish between qualifying and nonqualifying subgrant activities.

With this change, administrative expenditures related to administering subgrants for qualifying activities would be considered qualifying and no deductions would be needed. However, if the subgrant is fully or partially for nonqualifying activities, those related administrative expenditures would need to be deducted. Depending on the portion of nonqualifying activities funded, the deductions would need to be made either in full or on a pro rata basis.

In response to the feedback regarding fundraising activities, the working group would like to clarify that expenditures related to fundraising activities are only permissible to the extent that the funds raised will be used for qualifying activities. If the funds raised are used for both qualifying and nonqualifying work, then a proportional share of the expenditures related to the fundraising activities will need to be deducted.

As for the concerns raised regarding support centers who currently subgrant with qualified legal service projects to provide legal services to indigent clients, the working group would like to

clarify that those expenditures would be considered qualifying. However, if Support Center engages in direct legal services other than those outlined in State Bar Rule 3.672 (C)(2), then they must deduct the expenditures related to the provision of those services.

The working group acknowledges the concerns raised about the complexity of tracking the various administrative expenditures. In codifying the existing practice and clarifying the expenditures that are considered nonqualifying, the intent is not create an additional burden on the applicants. Rather, the expectation is that applications will use a reasonable standard to determine the appropriate share of administrative expenditures related the nonqualifying activity. While time and effort cost allocations are preferred, there are other permissible methods of accounting for administrative expenses, such as applying a pro rata share of the administrative expenses or using an indirect cost rate that is consistent with the applicant's use of indirect cost rates in other areas. The primary objective in identifying these expenditures is to create a reasonable connection the actual expenditures incurred. State Bar staff is also available to discuss accounting strategies with individual organizations to help them identify the method that will work best for the organization.

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 nonqualified expenditures, as referenced in Attachment A.

ATTACHMENT(S) LIST

- A. Proposed revisions to State Bar Rule 3.680 (E)(4)
- B. LAAC Feedback to the Preliminary Working Group Recommendations regarding nonqualified expenditures as of April 25, 2024.

Article 3. Applications and distributions¹**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

¹ 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 3.691²

- (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:

² 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 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 **that are for nonqualifying activities** must be tracked and reported as non-qualifying expenditures.

- (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. **Applicants must have a reasonable and verifiable method for tracking and reporting expenditures that must be deducted.**

The following expenditures must be reported and deducted from the total corporate expenditures:

- (a) administrative expenditures including:
 - (i) Expenditures incurred related to subleasing and or managing rental properties.
 - (ii) Expenditures incurred related to fundraising that are for nonqualifying activities.
 - (iii) Expenditures incurred related to the administration of fiscal sponsorship, and direct assistance funds.
 - (iv) Expenditures incurred related to the administration of sub grants for nonqualifying activities.

- (v) Expenditures incurred related to legal settlements or judgements based upon nonqualifying activities or employees who do not preform qualifying work.
 - (vi) Expenditures incurred for other administrative activities that support nonqualifying work.
- (b) Expenditures related to fee generating activity(ies), including:
- (i) Expenditures incurred providing fee-for-service or sliding scale legal services, excluding a \$20 administrative charged to indigent individuals.
 - (ii) Expenditures incurred providing services on a fee generating cases that do not meet the statutory exception.
 - (iii) Support Center expenditures incurred providing legal training, legal technical assistance, or advocacy support services to qualified legal service projects for a fee or reimbursement.
 - (iv) Qualified legal service project expenditures incurred providing legal training, legal technical assistance, or advocacy support services that are not relate the provision of free civil legal services.
 - (v) Support Center Expenditures incurred providing publications or resource material to qualified legal services projects for a fee.
 - (vi) Expenditures incurred for other fee generating activities that support nonqualifying work.
- (c) Expenditures related to nonqualifying program activity(ies), including:
- (i) Qualified legal services projects
 - i. Expenditures incurred providing services to clients who do not meet the indigency standard.
 - ii. Expenditures incurred providing criminal legal services.
 - iii. Expenditures incurred providing services outside the State of California
 - iv. Expenditures incurred in providing other services that do not meet the civil legal services standard.
 - (ii) Support Centers

- i. Expenditures incurred for providing direct legal service work that does not meet the statutory exemption.
- ii. Expenditures incurred in providing other services that do not meet the legal training, legal technical assistance, or advocacy support services.

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. 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 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: [Nguyen, Doan](#); [Hom, Elizabeth](#); [Slater, Heidi](#); [Zach Newman](#)
Subject: Re: Fiscal Codification Memo for Community Feedback by 4/25
Date: Monday, April 22, 2024 3:23:01 PM

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Hi y'all,

I'm mostly getting a lot of questions from folks. Most are asking how to track some of these administrative costs if they aren't already. Will the Bar offer some technical assistance on what methodology you will accept? (i.e. if they have 5% of their program work as non-qualifying, can they just use 5% of their admin costs as non-qualifying, or will you require more math?)

I also got this question, which I wasn't sure how to answer:

What is meant by "administrative fees related to subgrants"? The State Bar is always encouraging us to partner with other organizations and that costs money. If the subgrant is a qualified expenditure, why wouldn't the administrative cost of the subgrant also be qualified?

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

Executive Director

Legal Aid Association of California

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Why include pronouns? I include pronouns in an effort to share my personal and professional commitment to transgender inclusivity and visibility. Through sharing my pronouns, I hope to support a safer and braver space for transgender professionals to share their pronouns.

From: [Salena Copeland](#)
To: [Bundang, Christal](#)
Cc: [Nguyen, Doan](#); [Hom, Elizabeth](#); [Slater, Heidi](#); [Zach Newman](#)
Subject: Re: Fiscal Codification Memo for Community Feedback by 4/25
Date: Tuesday, April 23, 2024 4:32:31 PM

Hi!

I'll send another email on the 25th - I set a calendar reminder for myself so I don't forget. A few people had questions for me and wanted to talk with me to figure it if they had a concern, so I may have a bit more.

I think the biggest concern has just been that administrative burden of figuring out what of the administrative costs are for non-qualifying work. I think some orgs just don't track it in a way that will be easy for them to pull out their non-qualifying admin overhead.

I've also heard a few questions about administrative costs for administering subgrants for qualifying work - they don't track that separately in such a way that they could report. For example, if LAAC has a subgrant to an organization, and my admin time is largely just checking in with the ED once a quarter and asking for financial updates and invoices, I don't track my time that discreetly. I just call it "admin" in the big admin bucket I use for audit and 990 purposes. Our admin time is then allocated across FTEs, following GAAP, but nowhere is it tracked that I talked with so-and-so for 2 hours this year. I think this may be pretty common from what I'm hearing from others. I mean, I could estimate a de minimis amount of expenses for that, but would that be enough for the State Bar if I were an IOLTA grantee?

This specific issue may be worth a tiny listening session to learn how organizations are currently tracking it to ensure that you know that organizations are not using IOLTA dollars for non-qualifying work without asking small grantees to completely overhaul their accounting practices.

Salena

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

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From: [Salena Copeland](#)
To: [Bundang, Christal](#)
Cc: [Nguyen, Doan](#); [Hom, Elizabeth](#); [Slater, Heidi](#); [Zach Newman](#)
Subject: Re: Fiscal Codification Memo for Community Feedback by 4/25
Date: Thursday, April 25, 2024 2:48:08 PM

Hi y'all,

I'm back with our final comment, which is actually just a lot of questions that can hopefully be answered in the memo or at the meeting.

Thank you so much for sharing this memo with LAAC in advance of the Rules Revision committee meeting. At first read, I was unsure how some of these reporting changes would impact organizations, as, for many of the changes, the ease of implementation is entirely dependent on how each organization currently tracks administrative costs. Below, I'll characterize where we heard opposition, confusion, or concern. For the most part, most organizations felt they could implement these changes with enough advance notice and, in some cases, some technical assistance. Many organizations were worried about when this would be implemented - if, for example, it would be implemented for the May 2025 grant application for 2026 funding, they would need to be tracking it now in CY 2024.

Opposition & Concern

Some organizations were opposed to beginning tracking their admin overhead allowance as qualifying or non-qualifying admin overhead. They stated that either it would be too difficult to report, or they may indeed use a bit of IOLTA funds as admin overhead on work because they do not track it. I have had several conversations with organizations that already track this separately, and they have shared that the reporting is "very burdensome" and the allocations are "incredibly tedious" because they have to track admin overhead on 120 grants or contracts in order to ensure that there is no "disqualified" admin overhead being included with the IOLTA admin. This is especially difficult with grants and contracts that cut across multiple fiscal years.

One question I had for the Rules Revision Committee and for the Legal Services Trust Fund Commission is to what extent they are worried about this. We have had conversations at the full commission level over the last 15 years about why IOLTA's admin allowance is so high at 25%, when other grants may only allow 10-15%. Each time, State Bar staff has educated new Commissioners that the reason is that many other sources of funding do not cover their actual overhead costs, and IOLTA funds help organizations leverage other funding sources by "covering" the cost of those programs. For organizations whose QEs are 80% or more of their total corporate expenditures, we're talking about a relatively small amount of non-qualifying admin overhead. One organization proposed that the State Bar consider an indirect cost rate, similar to other government agreements, where it's assumed that there is an admin cost that may be unknown at the time budgets are due.

A specific scenario that may play out soon is that for organizations that lose other revenue sources, but that do not immediately cut administrative staff and/or are unable to downsize other costs, like rent, the admin overhead that their IOLTA grant must cover will be a larger percentage of their overall admin costs.

Related to this is the requirement to not include fundraising expenses as part of overhead/admin that are for non-qualifying services. I think some organizations were concerned about how to track this. One example I thought of is if there were a fundraising event that raised \$200,000 for unrestricted/general operating expenses, which used \$5,000 in staff time to plan the event, how does the organization track that if they don't know at year's closure exactly how those funds will be used? Should they assume a certain percentage would be used for non-qualifying work? What if the majority of the funds raised were put into reserves for a future budget year because they were planning for a deficit budget the following year? Fundraising expenses in particular will not match the time in which those dollars will be used.

Confusion

I also heard back from several programs with questions about the administrative costs for running subgrants. Many organizations may not be tracking the exact amount of time spent administering particular subgrants if they have a lot of subgrants - some of which are for qualifying work and some as non-qualifying. With the proposed change to how subgrants are counted, this may become even more confusing.

I heard from a few support centers that they were confused by page 11's reference to nonqualifying activities such as: "Expenditures incurred for direct legal service work that does not meet the statutory exemption." For some support centers that issue subgrants to legal aid providers for direct legal services, I would recommend considering a separate note about those. I would also encourage the LSTFC to consider those costs as qualifying costs - specifically because we want to encourage subgranting so that funds are used where they are needed most. Several support centers receive funds from foundations or private individuals with a directive to use the funds where they are needed most - some with a grant agreement that requires subgranting, others with an understanding that subgranting is the primary purpose, but the foundations don't want to be too limiting. I worry here that if you don't allow the support centers to count their admin overhead costs and admin staffing costs in administering these grants, it may ultimately result in fewer funds going to QLSPs if support centers are worried about their "primary purpose" percentages in accepting new grants that could become subgrants.

Thank you again for the opportunity to solicit feedback before the meeting.

Take care,
Salena

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

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