



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No. 23-057

For business meeting on January 20, 2023

Title

Allocations and Reimbursements to Trial Courts: Court Interpreters Program Funding and Allocation Methodology

Agenda Item Type

Action Required

Effective Date

January 20 and July 1, 2023

Rules, Forms, Standards, or Statutes Affected

Not applicable

Date of Report

December 14, 2022

Recommended by

Trial Court Budget Advisory Committee
Hon. Jonathan B. Conklin, Chair
Ms. Rebecca Fleming, Vice-Chair

Contact

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Executive Summary

The Trial Court Budget Advisory Committee (TCBAC) recommends an ongoing allocation methodology for Court Interpreters Program funding. The current methodology requires updating because it was intended to be temporary, until the TCBAC's Ad Hoc Interpreter Subcommittee could develop an ongoing workload-based methodology.

Recommendation

The Trial Court Budget Advisory Committee recommends that the Judicial Council:

1. Approve the allocation methodology, excluding the fiscal year 2020–21 pandemic year in the three-year average expenditure data used in the model indefinitely, effective July 1, 2023;
2. Approve the use of historical expenditure data in the model while the Ad Hoc Interpreter Subcommittee continues collaborating with the Language Access Services Program on possible enhancements with the data collected in the Court Interpreter Data Collection System and how that data could be utilized in the allocation methodology, effective July 1, 2023;

3. Approve the approach and methodology for when courts experience a shortfall, in which courts with a shortage will first be covered by other court savings, up to the appropriation amount, after which the Court Interpreters Program fund balance will be used if available savings are insufficient to make a court whole, and funds will be allocated proportionally based on the percentage of the shortfall, if savings or fund balance is insufficient to cover the shortage, effective July 1, 2023;
4. Approve a process whereby “home” courts will submit cross-assignment reimbursements to “receiving” courts for “receiving” courts to cover the costs of interpretation using their Court Interpreters Program allocations, effective January 20, 2023; and
5. Defer inclusion of data on video remote interpreting in the allocation methodology until more data and information is developed and finalized.

This recommendation was presented to the Judicial Branch Budget Committee on November 16, 2022; updated by a December 1, 2022, action by email; and approved for consideration by the Judicial Council.

Relevant Previous Council Action

Before 2020–21,¹ the Court Interpreters Program (CIP) fund fully reimbursed trial courts for all eligible trial court interpreter expenses, and until recently the CIP carried a funding surplus. Before the onset of the COVID-19 pandemic in early 2020, the CIP fund at times faced a shortfall, with expenditures exceeding allocations. To address the shortfalls, CIP savings were first used, and then Trial Court Trust Fund (TCTF) unrestricted fund balance was used as approved by the council.

With adoption of the Judicial Council’s *Strategic Plan for Language Access in the California Courts* in 2015, the council has also approved budget change proposals (BCPs) to augment the CIP to support expansion of interpreter services to all case types under the plan. Expenditure increases in the CIP are a result of multiple factors, including wage growth on ratified agreements, expansion of interpreter services to all case types, increases in the number of mandated staff interpreters and mandated contractor use, and merit salary adjustments. The use of savings, BCP augmentations, and TCTF unrestricted fund balance through 2019–20 has allowed courts to cover cost increases and maintain service levels.

At its business meeting on September 21, 2018, the council approved an allocation of unrestricted fund balance from the TCTF on a one-time basis to address an anticipated shortfall in the CIP for 2018–19, not to exceed the estimated \$3.4 million required to cover cost increases and maintain service levels (see Link A). The council directed staff to continue to monitor CIP funding, provide regular updates to the TCBAC to report any changes, and incorporate any additional funding after release of the Governor’s proposed budget in January 2019.

¹ This and all subsequent year spans represent fiscal years, unless otherwise stated.

At its business meeting on May 17, 2019, the council approved a one-time allocation of unrestricted fund balance from the TCTF in an amount not to exceed \$13.5 million to address the projected 2019–20 shortfall (see Link B).

At its business meeting on September 25, 2020, the council approved TCBAC’s recommendation for a one-time allocation methodology for 2020–21, not to exceed the 2020 Budget Act appropriation, while the TCBAC Ad Hoc Interpreter Subcommittee (subcommittee) continued development of an ongoing workload-based allocation methodology, for implementation beginning in 2021–22 (see Link C). The recommended change from a reimbursement to an allocation methodology addressed funding shortfalls previously addressed through the use of now-depleted program savings and unrestricted TCTF fund balance, which is not a viable, ongoing fund source. The Judicial Council–approved 2020–21 allocation methodology was effective immediately.

At its business meeting on May 21, 2021, the council approved the TCBAC’s recommendation for a one-time CIP allocation methodology for 2021–22 to allocate the same \$130.977 million in funding provided to trial courts in 2020–21, to return unspent 2020–21 funds for use in offsetting shortfalls that courts experienced in 2020–21, and to revert remaining funds to the TCTF as restricted program funding (see Link D).

The council continued its efforts to secure additional funding as needed through the BCP process, which most recently included over \$9 million in the 2020 Budget Act. That same year, the CIP was initially projected to experience a deficit. However, the effect of the COVID-19 pandemic and related operating changes resulted in expenditures below the appropriation amount allocated to the trial courts, because of longer case-processing times and increased video remote interpreting (VRI) usage.

On January 21, 2022, the council approved TCBAC’s recommendations for an ongoing, workload-based allocation methodology for CIP funding, including cross-assignments, benefit cost changes, and unspent funds, effective July 1, 2022 (see Links E and F). The approved recommendations included:

- i. A proportional allocation methodology based on the three-year average of available expenditure data (2017–18, 2018–19, and 2019–20), up to the CIP appropriation amount effective 2022–23, while the subcommittee continues review of pandemic impact and reporting data considerations effective in 2023–24;
- ii. Require courts to return to the Judicial Council all unspent 2021–22, 2022–23, and ongoing CIP-allocated funds, which will first reimburse courts with a shortfall in each respective year not to exceed the overall appropriation amount, with any remaining funds reverting to the TCTF as restricted program funding;
- iii. Allocate staff interpreter benefits dollar for dollar to courts reporting cost-benefit changes, effective 2022–23; and

- iv. Require receiving courts to offset interpreter expenses to courts providing cross-assignments (or “home” courts), and charge the subcommittee with working with Judicial Council staff on development of a payment and/or reimbursement method.

Analysis/Rationale

The change from a reimbursement to an allocation methodology, effective 2020–21, recognized the need to address insufficient funding to reimburse trial courts based on actual expenditures. Through TCBAC, a one-time approach to allocate the 2020–21 and 2021–22 appropriation was developed to ensure timely allocation information and planning opportunities to the courts. The funding methodology used for the current and prior year was an interim approach to allocate available funds to provide the subcommittee with additional time to develop an ongoing, workload-based methodology.

Recommendation 1

The 2023–24 and out-year allocations will continue to include three-year average expenditure data, and the full pandemic year 2020–21 will be excluded indefinitely to more accurately reflect expenditures based on normal court operations. As a result, the 2023–24 allocation will include fiscal years 2018–19, 2019–20, and 2021–22; the 2024–25 allocation will include fiscal years 2019–20, 2021–22, and 2022–23; and so on.

Recommendation 2

Recognizing that additional data elements are needed and that Court Interpreter Data Collection System (CIDCS) updates can take time, TCBAC determined that the subcommittee would continue recommending historical data at this time and commit to enhancing the amount of data collected in CIDCS through collaboration with the Language Access Services Program to include consideration of feasibility and cost, consistent and timely data reporting, and reliability of data. From there, deliberations would be required on how the enhanced data could be utilized in the allocation methodology.

Recommendation 3

The current process will remain in place whereby courts with a shortfall are reimbursed by courts with excess funding up to the appropriation amount, and the CIP fund balance will be used as needed to make courts whole. Annual CIP fund balance information will be shared with the council every July when the new fiscal year’s TCTF allocations are recommended.

If the amount of the shortfall exceeds the appropriation, and no surplus fund balance is available, courts will be provided advance notification that they are projected to exceed their allocation, and they will be required to fund these excess costs from their trial court operating budgets. This notification will be provided by Judicial Council staff to the impacted courts as information is identified through the CIP projection process.

If savings and surplus funding are insufficient to cover the full amount of court shortages, the methodology to provide the available funding will be a proportional approach by shortage amount as outlined in Table 1.

Table 1. Funding Shortage Example

Court	Appropriation & Allocation	Expenditures	Difference Surplus/(Deficit)
A	\$100,000	\$150,000	(\$50,000)
B	200,000	175,000	25,000
C	300,000	300,000	0
D	400,000	425,000	(25,000)
Total	\$1,000,000	\$1,050,000	

Because only \$25,000 in savings is available from Court B to cover the \$75,000 shortage in Courts A and D, each court will receive a percentage of available dollars based on the respective shortage amounts as outlined in Table 2.

Table 2. Funding Shortage Methodology

Court	Difference Surplus/(Deficit)	% of Shortage	Proportional Allocation	Amount to be Covered by the Court	Total
A	(\$50,000)	67	\$16,750	\$33,250	\$50,000
D	(25,000)	33	8,250	16,750	25,000
Total	(\$75,000)	100%	\$25,000	\$50,000	\$75,000

In this example, \$75,000 of the shortage will be covered partially by court savings of \$25,000, with the remaining \$50,000 covered from the impacted courts' operating budgets.

If the CIP fund balance is depleted, future BCPs may be required to keep pace with increasing costs.

Recommendation 4

Beginning in 2022–23, a court receiving interpreter services (“receiving” court) from another court (“home” court) through a cross-assignment will reimburse the home court for cross-assignment expenses—including salary, benefits, overtime, and travel costs—out of the receiving court’s CIP allocation.

The accounts receivable and payable processes will occur directly between the receiving and home courts, and Judicial Council staff will collaborate on the development of an invoice template for court use.

Recommendation 5

Uniform VRI definitions are being developed by the Language Access Services Program and the Regional Employment Relations Committee Chairs because the term *VRI* is not currently used consistently within each of the four regions. CIDCS also does not currently capture the cost of all remote assignments. As a result, the subcommittee has determined that more information is needed before it can consider the inclusion of VRI data into a CIP allocation methodology.

Policy implications

This approach to collect unspent 2023–24 and ongoing CIP-allocated funds—which will first reimburse courts with shortfalls in each respective year, not to exceed the overall appropriation amount, with any remaining funds reverting to the TCTF as restricted program funding—could allow the program to experience a reserve for future planning purposes.

An ongoing, workload-based methodology will help trial courts plan because they will know in advance how much funding will be available to provide interpreter services to limited-English-proficient court users. The allocation methodology not to exceed the current appropriation amount will require courts to continue to carefully consider their program expenditures, including cost-saving measures, which will help to preserve current interpreter service levels.

Comments

This item did not circulate for comment and received no public comment.

Alternatives considered

The subcommittee considered the data used for developing this workload-based methodology and identified court filings as a potential option. However, because filings data that distinguish which cases include an interpreter are unavailable at this time, the subcommittee recommended using actual, prior-year expenditures.

In addition, the subcommittee considered funding courts that experience a shortfall using current-year CIP savings. It deliberated over whether courts should be funded using savings that exceeded the current-year appropriation amount and determined that the use of savings, and then available fund balance as needed, should not exceed the appropriation in an effort to encourage courts to work within their allocations and use efficiencies accordingly. This approach could also minimize the amount courts would be required to fund from their trial court operating budgets.

Fiscal and Operational Impacts

Some courts may not need the full allocation amount in 2023–24; other courts' CIP expenditures may exceed the allocated funding amounts. Judicial Council staff will continue to monitor usage and work with courts to support cost-saving measures, including appropriate use of technology to provide interpreter services and reduce costs. Judicial Council staff will also collaborate on the development of an invoice template to reimburse a home court for cross-assignment expenses out of the receiving court's CIP allocation, including salary, benefits, overtime, and travel costs.

Attachments and Links

1. Link A: Judicial Council meeting minutes, Sept. 21, 2018,
<https://jcc.legistar.com/View.ashx?M=M&ID=559788&GUID=1AF2481A-79EE-44AD-A8E6-1D5F9E02CC7A>
2. Link B: Judicial Council meeting minutes, May 17, 2019,
<https://jcc.legistar.com/View.ashx?M=M&ID=640297&GUID=9C71CADA-D8FB-4AA9-A887-0260DB284273>

3. Link C: Judicial Council meeting minutes, Sept. 25, 2020,
<https://jcc.legistar.com/View.ashx?M=M&ID=711584&GUID=760102E7-3D1B-4C00-9CA8-0A7AA617BF8B>
4. Link D: Judicial Council meeting minutes, May 21, 2021,
<https://jcc.legistar.com/View.ashx?M=M&ID=803678&GUID=183ADEA3-1A53-4ED1-9E95-A43E3C390D21>
5. Link E: Judicial Council report, Jan. 21, 2022, Item 22-021, *Allocations and Reimbursements to Trial Courts: Court Interpreters Program Funding and Allocation Methodology*,
<https://jcc.legistar.com/View.ashx?M=F&ID=10355221&GUID=7EA909C1-C551-46AA-9795-09A8FAC0B7C6>
6. Link F: Judicial Council meeting minutes, Jan. 21, 2022,
<https://jcc.legistar.com/View.ashx?M=M&ID=869095&GUID=3DDA3E03-F7A5-4C1F-AF15-AB32C4ABF652>