

California State Controller's Office
Proposed Regulatory Action: Regulations Governing the Submission of Claims for
Unclaimed Property Held by the California State Controller
Notice

NOTICE IS HEREBY GIVEN that the California State Controller is proposing to take the action described in Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Persons in this Notice, must be received by the State Controller's Office not later than March 28, 2022.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact persons listed below no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the State Controller's Office, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact persons and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Public Comment Period: February 11, 2022 through March 28, 2022.

AUTHORITY AND REFERENCE

California Code of Civil Procedure § 1580 provides: **Rules and Regulations.** The State Controller is hereby authorized to make necessary rules and regulations to carry out the provisions of this chapter.

California Code of Civil Procedure § 1540 provides: **Filing of Claim — Controller's Notice of Decision to Claimant.** (a) Any person, excluding another state or state agency, who claims to have been the owner, as defined in subdivision (d), of property paid or delivered to the Controller under this chapter may file a claim to the property or to the net proceeds from its sale. The claim shall be on a form prescribed by the Controller and shall be verified by the claimant.

Authority cited: Sections 1540, 1580, California Code of Civil Procedure

Reference cited: Sections 1540, 1580, California Code of Civil Procedure

INFORMATIVE DIGEST

As required by California Code of Civil Procedure § 1580, following a 1999 public hearing, the State Controller's Office proposed Guidelines for Claiming Unclaimed Property (the "Claims Guidelines"). These Claims Guidelines were adopted and last updated in September 2003 and

are available on the Controller's web site at: https://www.sco.ca.gov/Files-UPD/guide_upd_claiming.pdf

In addition, the Controller's web site contains a set of claims guidance and resources for owners of unclaimed property to assist them with claiming property in the custody of the Controller's office. Such resources include, but are not limited to, claim filing instructions and forms, video tutorials to assist owners with electronically claiming property, and instructions for contacting the Property Owner Advocate's Office.

However, on April 27, 2021, the Superior Court of the County of San Francisco, ruling in the case of *Yee. v. Clubcorp Holdings, Inc.*, Case No. CGC-19-576314 ("*Clubcorp*"), held that the California Administrative Procedures Act "applies to the Policies and Procedures." Order Re Demurrer to Petition for Writ of Mandate and Cross-Complaint (April 27, 2021), p. 6.

While not directly at issue, the logic of *Clubcorp* would be applicable to the Claims Guidelines. Currently, the above-described information and guidance made available by the Controller on the Controller's web site set forth the requirements and procedures for owners to submit claims regarding unclaimed property, as well as certain information for holders of unclaimed property. However, there is no formal regulatory framework for the unclaimed property claims process in place at this time.

In order to provide clarity and formal guidance for owners seeking to claim unclaimed property, the Controller proposes regulations implementing and governing a process by which owners may submit unclaimed property claims to the Controller's office (the "Proposed Claims Regulations").

Policy Statement Overview / Anticipated Benefits of Proposal

The State Controller's Office has, since September 2003, adhered to the Claims Guidelines, which explain the claims submission process for owners, the required documentation an owner must submit, the Controller's claims consideration processes, claims reporting processes for holders, and rules pertaining to interest income on unclaimed property held by the Controller. In addition, the Appendices to the Claims Guidelines contain certain mandatory forms required as part of the claims submission processes, including the Universal Holder Face Sheet (UFS-1) (required in connection with all reports), Claim Form/Affirmation for the claimant, Declaration Under Probate Code Section 13101, Table of Heirship, and Holder's Claim For Reimbursement.

The adoption of the Proposed Claims Regulations will formalize the procedures and requirements employed by the Controller in seeking to reunite owners with their unclaimed property entrusted to the Controller for safekeeping pursuant to California's unclaimed property laws.

Consistency/Compatibility with Existing State Regulations

The Controller has determined that the Proposed Claims Regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Controller has concluded that these are the only regulations that govern the procedures for claiming unclaimed property. The Proposed Claims Regulations are

meant to formalize the processes already in place and in use by the Controller's office for several decades.

Documents Incorporated by Reference: None

Documents Relied Upon in Preparing the Regulations: None

FISCAL IMPACT ESTIMATES AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: No

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Adverse Business Impact: The Controller has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. These regulations formally adopt the Claims Guidelines, and therefore do not represent any significant departure from past practices.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability to Compete: The Controller has made an initial determination that this regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. These regulations formally adopt the Claims Guidelines, and therefore do not represent any significant departure from past practices.

Cost Impact on Representative Private Person or Business: The Controller is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

Effect on Small Business: The Controller has made an initial determination that the proposed regulatory action will have no effect on small business. These regulations formally adopt the Claims Guidelines, and therefore do not represent any significant departure from past practices.

Result of Economic Impact Assessment/Analysis Summary Comments: The full Economic Impact Statement is presented in the Initial Statement of Reasons. These regulations are not anticipated to create or eliminate jobs within the State of California, create or eliminate existing businesses within the State of California, or expand or eliminate existing businesses within the State of California. These regulations are not anticipated to affect the health and welfare of

California residents, worker safety, or the state's environment. These regulations formally adopt the Claims Guidelines, and therefore do not represent any significant departure from past practices.

CONSIDERATION OF ALTERNATIVES

The agency must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments with respect to alternatives to the proposed regulatory action.

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS, THE TEXT OF PROPOSAL AND THE RULEMAKING FILE

The Controller has prepared an Initial Statement of the reasons for the proposed action and has available all the information upon which the proposal is based. The Initial Statement of Reasons is available on the Controller's website.

Copies of the express language of the Proposed Claims Regulations, any document incorporated by reference, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained throughout the rulemaking process upon request from the Controller contact or on the website listed below.

The documents and other information are available for public inspection during the dates of the public comment period, described below, excluding weekends and holidays, from 8:00 a.m. through 5:00 p.m. The rulemaking file is maintained at the following address:

California State Controller's Office
Contact: Arica Presinal | Staff Counsel
State Controller's Office - Legal Division
300 Capitol Mall, Suite 1850, Sacramento, CA 95814
Phone: (916) 322-5369
Fax: (916) 322-1220

Due to restrictions related to COVID-19, the Controller's public counter is not open to the public. Please contact the contact persons below to arrange for public inspection of the rulemaking documents. Options for public inspection during COVID-19 may include having the rulemaking documents emailed to you or scheduling an in-person review.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

A Final Statement of Reasons will be created after the closing of the public comment period. A copy of the final statement of reasons can be obtained once it has been prepared from the contact persons named below or by accessing the website listed below.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

California State Controller's Office
Contact: Arica Presinal | Staff Counsel
State Controller's Office - Legal Division
300 Capitol Mall, Suite 1850, Sacramento, CA 95814
Phone: (916) 322-5369
Fax: (916) 322-1220
Email: abryantpresinal@sco.ca.gov

The backup contact shall be:

California State Controller's Office
Backup Contact: Richard J. Chivaro | Special Counsel
State Controller's Office - Legal Division
300 Capitol Mall, Suite 1850, Sacramento, CA 95814
Phone: (916) 445-6854
Fax: (916) 322-1220
Email: rchivaro@sco.ca.gov

Website Access: Materials regarding this proposal can be found at:

<https://www.sco.ca.gov/>

California State Controller's Office
Proposed Regulatory Action: Regulations Governing the Submission of Claims for
Unclaimed Property Held by the California State Controller
Initial Statement of Reasons

PUBLIC HEARING AND COMMENT

Hearing Date: No hearing date is scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact person listed no later than 15 days prior to the close of the written comment period.

Written Public Comment Period: February 11, 2022 through March 28, 2022.

Subject Matter of Proposed Regulations: the procedures and forms for claiming unclaimed property held by the Controller

Section(s) Affected: The Proposed Regulations will add a new Article 6, § 1300 et seq., to Title 2 – Administration; Division 2 - Financial Operations; Chapter 2 - State Controller; Subchapter 8 - Unclaimed Property Law; of the California Code of Regulations.

PURPOSE AND NECESSITY

As required by California Code of Civil Procedure § 1580, following a 1999 public hearing, the State Controller's Office proposed Guidelines for Claiming Unclaimed Property (the "Claims Guidelines"). These Claims Guidelines were adopted and last updated in September 2003 and are available on the Controller's web site at: https://www.sco.ca.gov/Files-UPD/guide_upd_claiming.pdf

In addition, the Controller's web site contains a set of claims guidance and resources for owners of unclaimed property to assist them with claiming property in the custody of the Controller's office. Such resources include, but are not limited to, claim filing instructions and forms, video tutorials to assist owners with electronically claiming property, and instructions for contacting the Property Owner Advocate's Office.

However, on April 27, 2021, the Superior Court of the County of San Francisco, ruling in the case of *Yee. v. Clubcorp Holdings, Inc.*, Case No. CGC-19-576314 ("*Clubcorp*"), held that the California Administrative Procedures Act "applies to the Policies and Procedures." Order Re Demurrer to Petition for Writ of Mandate and Cross-Complaint (April 27, 2021), p. 6.

While not directly at issue, the logic of *Clubcorp* would be applicable to the Claims Guidelines. Currently, the above-described information and guidance made available by the Controller on the Controller's web site set forth the requirements and procedures for owners to submit claims regarding unclaimed property, as well as certain information for holders of unclaimed property. However, there is no formal regulatory framework for the unclaimed property claims process in place at this time.

In order to provide clarity and formal guidance for owners seeking to claim unclaimed property, the Controller proposes to herein adopt Regulations governing the procedures for claiming unclaimed property (the “Proposed Claims Regulations”).

FACTUAL BASIS / RATIONALE

The factual basis and rationale for each section of the proposed regulations are as follows:

§ 1300. Statement of Purpose

This section provides the purpose and goals of the Proposed Regulation.

§ 1301. Authority to Establish Guidelines for Claiming Unclaimed Property

This section recites the statutory basis for establishing guidelines for claiming unclaimed property and prescribing the requisite forms to be used by the claimants and holders.

§ 1302. Submission of Claims

This section describes the submission of claims maintained by the State Controller’s Office.

§ 1303. Required Documentation

This section establishes that certain documentation shall be submitted by the claimant.

§ 1304. Additional Required Documentation for Claiming the Property of Deceased Owners

This section describes the additional documentation required when a claimant seeks to claim property of deceased owners.

§ 1305. Required Documentation for Claims on Behalf of a Business Entity

This section describes the documentation required when a claimant seeks to claim property on behalf of a business entity.

§ 1306. Incomplete Claim Package

This section addresses claim packages that do not contain sufficient documentation to prove ownership.

§ 1307. Claims Consideration

This section details the claims consideration process of State Controller’s Office and the process after the determination that a claimant is unable to prove a claim.

§ 1308. Asset Recovery Agreements

This section describes the requirements for the processing of claims filed under asset recovery agreements.

ECONOMIC IMPACT STATEMENT

Creation or Elimination of Jobs within the State of California

It is not anticipated that these regulations will create or eliminate jobs within the State of California. These regulations do not create a new process for claiming unclaimed property held by the Controller or reporting escheatable property to the Controller. Rather, the Proposed Claims Regulations only clarify and largely reenact the previous Claims Guidelines.

Creation of New or Elimination of Existing Businesses within the State of California

It is not anticipated that these regulations will create or eliminate existing businesses within the State of California. These regulations do not create a new process for claiming unclaimed property held by the Controller or reporting escheatable property to the Controller. Rather, the Proposed Claims Regulations only clarify and largely reenact the previous Claims Guidelines.

Expansion of Businesses or Elimination of Existing Businesses within the State of California

It is not anticipated that these regulations will expand businesses or eliminate existing businesses within the State of California. These regulations do not create a new process for claiming unclaimed property held by the Controller or reporting escheatable property to the Controller. Rather, the Proposed Claims Regulations only clarify and largely reenact the previous Claims Guidelines.

Benefits of the Regulations

The State Controller's Office has, since at least 2003, adhered to the procedures and requirements set forth in the Claims Guidelines. The Controller's Office and the Unclaimed Property Division have the mission of (a) reuniting lost and abandoned property with its rightful owner, and (b) safeguarding lost and abandoned property from being used by holders for their private gain. To enhance the efforts of the Controller's Office in reuniting Californians with their lost and abandoned property, the Controller wrote the Property Owner Bill of Rights (rev. November 4, 2016) and created the role of Property Owner Advocate's Office to assist individuals, businesses, and local governments who have been unable to resolve their property claims in a timely manner.

Continued use of the claims procedures for unclaimed property, as proposed in the Proposed Claims Regulations, will allow the Controller to continue to safeguard lost or forgotten property for California residents and reunite owners with their unclaimed property.

REASONABLE ALTERNATIVES

The only alternative considered was to leave existing regulations and guidelines available online unchanged, potentially risking allegations and legal action on the grounds that the Claims Guidelines were invalid on the grounds that they were not properly adopted as regulations pursuant to the rulemaking procedures. Clarity and enforceability of the Claims Guidelines indicated that adopting the Proposed Claims Regulations was preferable.

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Proposed Regulation Text

Title 2. Administration
Division 2 - Financial Operations
Chapter 2 - State Controller
Subchapter 8 - Unclaimed Property Law

The California Controller is proposing to add the following regulations to Article 6 of the above-referenced portion of the California Code of Regulations

Article 6: Regulations Governing Claiming Unclaimed Property

§ 1300. Statement of Purpose

The purpose of these regulations is to formalize the procedures and format for owners claiming unclaimed property held by the State Controller.

§ 1301. Authority to Establish Guidelines for Claiming Unclaimed Property

The Controller is authorized to make necessary rules and regulations to carry out the provisions of this chapter pursuant to California Code of Civil Procedure § 1580.

The Controller is authorized to prescribe the forms for filing claims for unclaimed property pursuant to California Code of Civil Procedure § 1540.

§ 1302. Submission of Claims

The State Controller shall require the claimant to submit a claim form that identifies the property or properties being claimed, and shall include the claimant's name, current mailing address, and identifying information such as social security number and date of birth. The claimant shall sign the claim form declaring the information on the claim form to be true and correct, that they are the owner of and person entitled to receive the property being claimed. Claims initiated on the Controller's website and signed electronically shall sufficiently constitute a claim.

§ 1303. Required Documentation

The State Controller shall require the claimant to submit sufficient documentation to verify the claimant's identity and demonstrate that the claimant is the rightful owner entitled to the unclaimed property before a payment will be authorized. The State Controller's determination as to the sufficiency of documentation submitted by the claimant shall be controlling unless clearly unreasonable.

§ 1304. Additional Required Documentation for Claiming the Property of Deceased Owners

In addition to documentation required by Section 1303, the State Controller shall require the claimant to submit sufficient documentation to verify that the reported owner of the property being claimed is deceased, the claimant's association to the deceased property owner, and entitlement to the deceased owner's property that is being claimed before a payment will be authorized. The State Controller's determination as to the sufficiency of documentation submitted by the claimant shall be controlling unless clearly unreasonable.

§ 1305. Required Documentation for Claims on Behalf of a Business Entity

The State Controller shall require the claimant to submit sufficient documentation to verify the business entity's Federal Employer Identification Number, that the business entity is in good standing with the California Secretary of State, if applicable, that the claimant is authorized to claim on behalf of the business entity, and that the business entity is entitled to the property being claimed before a payment will be authorized. The State Controller's determination as to the sufficiency of documentation submitted by the claimant shall be controlling unless clearly unreasonable.

§ 1306. Incomplete Claim Package

If a claim package does not contain adequate documentation to establish the facts required by the applicable Sections 1303 through 1305, the State Controller shall contact the claimant to identify and obtain any missing documentation. If the claimant does not provide the required documentation, the State Controller will respond to the claimant. The claimant may resubmit the claim when the necessary supporting documentation has been obtained.

§ 1307. Claims Consideration

The State Controller's Office will consider a claim within one hundred eighty (180) days of receipt of a completed claims package. If the claim is denied in whole or in part, the State Controller shall provide the claimant with a written notification of the denial.

§ 1308. Asset Recovery Agreements

The State Controller shall process claims filed under asset recovery agreements submitted by organizations, private investigators, attorneys, heir finders, and other individuals or entities only if the State Controller determines the agreement to be in compliance with Code of Civil Procedures Section 1582.