

California State Controller's Office
Proposed Regulatory Action: Regulations Governing the Activities of Third-Party
Auditors Who Are Hired by the Controller

Notice of Modification to Text of Proposed Regulation

Pursuant to the requirements of Government Code section 11346.8(c) and section 44 of Title 1 of the California Code of Regulations, the California State Controller's Office hereby provides notice of changes made to proposed regulations at Article 6, § 1200 *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.

The State Controller's Office will accept written comments on the proposed changes from January 10, 2023 to January 25, 2023. Written comments may be submitted via mail or facsimile to:

California State Controller's Office
Contact: Ethan Jaffe | Staff Counsel
State Controller's Office - Legal Division
300 Capitol Mall, Suite 1850, Sacramento, CA 95814
Phone: (916) 327-1041
Fax: (916) 322-1220

Comments may also be submitted by e-mail to EJaffe@sco.ca.gov.

All written comments received by January 25, 2023, which pertain to the indicated changes will be reviewed by the Board and will be summarized and responded to in the Final Statement of Reasons. Please limit your comments to the modifications to the text.

California State Controller's Office
Proposed Regulatory Action: Regulations Governing the Activities of Third-Party
Auditors Who Are Hired by the Controller
Proposed Regulation Text

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

On [DATE], the California Controller proposed to add the certain regulations to Article 6 of the above-referenced portion of the California Code of Regulations. After considering comments received during the initial 45-day comment period, the State Controller hereby proposes the following changes for this 15-day notice, which are indicated by single underline for addition and single strikethrough for deletions.

Article 6: Regulations Governing the Activities of Third Party Auditors Who Are Hired by the Controller

§ 1200. Statement of Purpose

This article governs the activities of third- party auditors conducting examinations under California's Unclaimed Property Program. This article is intended to

1. Ensure that the examinations by third-party auditors are conducted objectively and impartially.
2. Ensure that the examinations are completed promptly and without undue burden to the holders.
3. Ensure that strict confidentiality is maintained for records obtained from the state and the holders.
4. Ensure that the holder under examination is fully apprised of its appeal rights.

§ 1201. Authority to Conduct Unclaimed Property Examinations

CCP, Section 1571 (a) provides authority for the Office of the State Controller (SCO), at reasonable times and upon reasonable notice, to examine the records of any person if the Controller has reason to believe that the person is a holder who has failed to report property that should have been reported pursuant to CCP Section 1500 et seq.

CCP, Section (c) provides authority for the Office of the State Controller to adopt guidelines as to the policies and procedures governing the activity of third-party auditors who are hired by the Controller.

Reasons to believe that a person has failed to report property include, but are not limited to: a) Inconsistencies, omissions, or lack of detail in a holder's past reports; b) Inconsistencies or differences between a holder's past reports and similarly sized holders or holders in a similar line of business; c) A holder's history of reporting or history of compliance or noncompliance; or d) Available public data regarding the holder, including without limitation, annual company reports, and press materials.

§ 1202. Adherence to contract

Third-party auditors shall comply with all terms and conditions specified in any contract between the Third-party auditor and the State Controller's Office.

§ 1203. Terms of Compensation

At the discretion of the State Controller, a contract with a third-party auditor may specify that the auditor is to be compensated on a time and materials basis, as percentage of the amount recovered by the third-party auditor, or in any combination thereof. However, any compensation to the third-party auditor shall not be withheld from any recovery obtained by reason of an audit.

§ 1204. Principles of Examination Conducted by Third-Party Auditors

Third-party auditors conducting examinations under California's Unclaimed Property Program shall adhere to the following general principles of examination.

§ 1205. Independence

In all matters relating to the examination, an independence in mental attitude is to be maintained by the auditor or auditors

§ 1206. Training and Expertise

The third-party auditors shall collectively possess sufficient training and experience to adequately perform the unclaimed property examination.

§ 1207. Conflict of Interest

The third-party auditors shall not participate in examinations in which such participation could be construed as a conflict of interest. An example of a conflict of interest would be a third-party auditor entering into an agreement with, or having an existing obligation to the holder, that is adverse to the interest of the State of California.

From time to time, a contractor may solicit a holder for preparation of a voluntary report of the holder's unclaimed property. Such an engagement may be one wherein the third-party auditor provides expertise, guidance, and counseling to the holder with respect to submission of unclaimed property. This is a clear example of a conflict of interest. However, such a solicitation does not constitute a conflict of interest providing the third-party auditor was representing the State's interest in the preparation of the voluntary report, and:

- a. Did not receive any fees, payments, or payments-in-kind from the holder for its services, and
- b. Did not obtain any holder information that cannot be disclosed to the State of California because it is deemed confidential.

§ 1208. Confidentiality

The third-party auditors shall maintain strict confidentiality of any records or documents gathered during the examination.

- a. Third-party auditor shall sign a confidentiality statement to preserve the integrity of state security and confidentiality.
- b. Third-party auditor shall sign a confidentiality statement to preserve the holder's interest and the reasonable expectation of privacy of the owner's interest.
- c. Third-party auditor shall maintain a file of confidentiality statements and provide such statements to the state upon request.

§ 1209. Communications with Holder

The third-party auditors shall fully explain to the holder:

- a. The purpose, scope, and objectives of the examination.
- b. The general approach of the examination and the procedures to be applied.
- c. Circumstances in which estimation techniques may be used, along with a description of the methodology that may be employed.
- d. The holder's right to appeal the results of the examination.

§ 1210. Prior Written Authorization Required

The third-party auditors shall not engage in any examinations on behalf of California without written consent from the State Controller's Office. The third-party auditors shall provide the holder with a copy of the State Controller's Office letter authorizing the third-party auditor to perform the examination on the Controller's behalf.

§ 1211. Subcontracting and Affiliated Companies

Third-party auditors shall not subcontract any work without prior written authorization from the State Controller's Office. The third-party auditors are responsible for ensuring that any affiliated companies and any sub- contractors that are used during the examinations collectively possess sufficient training and experience to adequately perform the unclaimed property examination and fully comply with these and all other policies and procedures governing its conduct.

§ 1212. Preparation of Working Papers

The third-party auditors shall properly document their examination, and make the working papers supporting their conclusions available on demand for review by the State Controller's Office, the California State Auditor, and the Attorney General's Office. Such working papers will include planning information and all related calculations, statistical analyses, and summarizations.

§ 1213. Availability of Working Papers

Upon request, the third-party auditors should provide the holder with relevant copies of working papers supporting any calculation made of unclaimed property escheatable to the State of California, and notify the State Controller's Office, Division of Audits, of the request.

§ 1214. Retention of Working Papers

The third-party auditors agree to maintain working papers for a minimum of five years following the completion of the assignment, the escheatment of abandoned property, the resolution of any administrative appeal, or finality of judgment in any litigation, whichever is later.

§ 1215. Opening Conference

The opening conference provides the initial forum for the third-party auditor and the holder to discuss the examination objectives, scope, methodologies, document requests, use of testing and estimation if necessary, the examination closure process, and the informal appeals process. This section provides an overview of these topics below. The examination processes described herein, including sequencing of examination phases, site visits and response time frames are suggestions and may be modified based on the circumstances of examination.

Prior to the opening conference, the third-party auditor should provide the holder with an approved form of the confidentiality agreement (see Section 1236), a copy of these Regulations, a copy of the State Controller's Regulations For Appealing an Examination of Unclaimed Property, and the Unclaimed Property Appeal Hearing Request form, and a copy of the Unclaimed Property Law and Regulations.

§ 1216. Topics Covered in Opening Conference

During the opening conference, the third-party auditor will:

- a. Identify the time period to be covered by the examination and describe the general examination methods to be employed, including sampling and estimation.
- b. Identify, in writing, the State Controller's Office examination liaison to whom the third-party auditor is accountable, including his or her full name, title, address, email address, telephone and facsimile number, and advise the holder that it is free to discuss the examination directly with the liaison at any time regarding allegations of misconduct, unethical behavior, or significant disagreement relating to legal authority.

- c. Identify, in writing, each and every third-party auditor, third-party auditor representative, employee, and agent who will take part in the examination.
- d. Explain the holder's appeal rights and procedures and the third-party auditor's responsibility during the appeal process.
- e. Fully disclose to the holder its fee arrangement with the State Controller's Office.
- f. Explain and describe the Phases of the examination, which typically include the below-listed phases.
- g. Explain and describe the types of information and data that the third-party auditor may be requesting and that the auditor may request that the data and information be produced electronically.

§ 1217. Phase I of Examination: Basic Corporate Information Gathering

The objective of Phase I of an unclaimed property examination is to determine the particular entities, business units, and third-party accounts to be examined. This phase commences with a telephone conference call or virtual meeting (the opening conference) between the third-party auditor and the holder, at which time the third-party auditor requests basic corporate and unclaimed property data and information. The holder is expected to respond to the data and information requests within 30 days, or an agreed-upon time period..

The holder should be informed that if it has fully reliable records for the examination period, there is no need for estimation techniques. The holder should also be informed that if it (i) wants to question the accuracy of its own records or (ii) does not have records for the entire period, then a sampling and extrapolation may be performed after approval from the SCO. The third-party auditor should advise the holder of the parameters of the sampling technique and try to reach agreement with the holder as to the integrity thereof. Failure to reach such agreement, however, should not halt the examination. The holder should be informed that if sampling techniques are used, the liability determined by the third-party auditor will represent a fair estimation only.

§ 1218. Phase II of Examination: Devising the Examination Program

The objective of Phase II of an unclaimed property examination is a) to identify accounts which may contain abandoned properties within the examination period. b) to understand policies and procedures related to accounting for and reporting abandoned property, and c) to determine the amount of outstanding liability related to the stale-dated and dormant amounts contained in the holder's presently maintained internal accounting system. Phase II commences with a written data and information request from the third-party auditors to the holder. The holder is expected to be fully responsive to the third-party auditors' requests within 60 days or an agreed-upon time period.

§ 1219. Phase III of Examination: Examination of Accounts

The objective of Phase III of an unclaimed property examination is to analyze a holder's accounts and identify abandoned property. This phase commences with a written data and information request from the third-party auditors to the holder, and may include a mutually agreed-upon date for a site or virtual visit. If requested, the site or virtual visit is expected to take place within 30 days after the data and information requested is received. During the site or virtual visit, the third-party auditors analyze the holder's books and records, and if necessary, select items for testing. The holder is expected to produce documentation supporting its accounting for the items selected within 45 days, or an agreed-upon time period. The third-party auditors then may make a second site or virtual visit to the holder at an agreed-upon date to review and analyze the documents produced.

§ 1220. Phase IV of Examination: Detailed Testing Covering Entire Examination Period

The objective of Phase IV of an unclaimed property examination is to determine the overall escheatable property due and owing for the entire period under examination. As discussed in Phase I, sampling and extrapolation may be performed after approval from the State Controller's Office. If, due to record retention policy constraints, less than the entire examination period will be examined, determine the base period to be utilized; calculate total escheatable property generated during the base period (i.e., amounts escheated, plus amounts suspended, plus amounts written off); extrapolate total escheatable property results from base period to entire period; then credit amounts actually escheated.

This phase commences with discussions between the third-party auditors and the holder regarding the design of the Phase IV examination program. The design of the examination program is expected to take 30 to 45 days. The third-party auditors and the holder then may decide upon a mutually agreed-upon date for one or more site or virtual visits to perform testing procedures and select samples for testing. The holder is expected to produce documentation supporting its accounting for the items selected within 60 days, or an agreed-upon time period.

If the holder believes it has been responsive to the third-party auditors' requests, but the third-party auditors disagree, the holder has an additional 30 days (or an otherwise agreed-upon time period) to provide additional documentation to the third-party auditors to support its position.

Because many holders have multiple divisions, subsidiaries, and affiliates, and generate various types of property that require examination, separate analyses and reports will be prepared, so that the SCO may receive property as amounts due are determined, and not wait for all areas to be completed.

§ 1221. Phase V of Examination

The objective of Phase V of the Examination is to reach agreement with the holder on the amount of escheatable property due and owing. Phase V commences with the provision of a draft report to the holder. The holder has 20 days to respond to the draft. Discussions are held with the holder to finalize the findings, which are expected to occur within 15 days of the holder's initial response. Promptly thereafter, the final report is issued. Third-party auditor will prepare and submit to SCO unclaimed property Holder Notice Reports in accordance with the requirements of CCP section 1530 and unclaimed property Holder Remit Reports with property

remittance in accordance with the requirements of CCP section 1532. Third-party auditors will instruct holders and/or their agents to relinquish to the Third-party auditor, or the Third-party auditor's custodian, property deemed owing in accordance with CCP section 1532.

§ 1222. Extension of Examination Period

The examination period may be extended to include any year subsequent to the years initially included if the examination is completed after additional report years have elapsed.

§ 1223. Final Decision-Making Authority

Although an examination may be conducted by a third party auditor, the State Controller's Office at all times maintains final decision-making authority over the conduct and conclusions of the examination.

§ 1224. Explanation of Appeals Process

The third-party auditor should fully explain to the holder the state appeal process and procedures. Further, the third-party auditor should obtain from the holder written confirmation acknowledging understanding of the state appeal process and procedures.

§ 1225. Working Paper Requirements

The third-party auditor is required to prepare working papers that provide documentary evidence of the work performed in the examination. The working papers provide the basis for the review and evaluation of the work of the auditors and must be complete and accurate to provide proper support for findings, conclusions, and recommendations. Working papers must be clear and understandable, ensuring that supplementary explanations are not needed. Other auditors using the working papers should be able to readily determine the purpose, nature, and scope of the work done and the auditor's conclusions. Working papers must be legible and neat. The information contained in working papers should be restricted to matters materially important, relevant, and useful to the objectives established for the examination. The working papers are a record that should be understandable to other auditors many years later, whether or not the auditor preparing the working papers is available. Each work paper should "stand alone" and include adequate cross-references. The format for individual working papers should contain the following:

§ 1226. Signing, Dating, and Paginating

Each lead working paper must be initialed and dated by the preparer and the reviewer, and all pages numbered.

§ 1227. Source, Purpose, Scope, Procedures, Findings and Conclusions.

Each of these items usually appear on every working paper. Occasionally, only the source and purpose are required, particularly when documents are obtained for background information.

Procedures are necessary when the purpose of the working paper does not make them self-evident.

§ 1228. Indexing.

The essential elements of an indexing system are (i) standard prepared index; (ii) total pages to each working paper; and (iii) sequential numbering of all pages after the assignment is completed. This ensures that all working papers are accounted for and allows the auditor to detect any missing pages.

§ 1229. Cross-Referencing.

To highlight references among working papers, the cross-referencing page numbers should be written in red.

§ 1230. Legends and Tick Marks.

A legend should be included on each working paper that adequately explains audit procedures performed and represented by a particular tick mark. If several pages of information are to be tested, the tick mark legend should be on or referenced on the first page of the working paper.

§ 1231. California Public Records Act and California Information Practices Act

§ 1232. All records of the holder accessed, possessed, or recreated by the third-party auditor as the result of an examination are exempt from the California Public Records Act pursuant to Government Code section 7925.015, except as provided therein. All work papers created pursuant to an unclaimed property examination, less those records of holders discussed above, are exempt from the California Public Records Act for a period of one year after the completion of an examination. Any information disclosed pursuant to the CPRA will also comply with the California Information Practices Act. Sampling Requirements

The two possible approaches to sampling are non-statistical sampling and statistical sampling. Regardless of the sampling approach selected, an auditor must properly plan, perform, and evaluate the results of the sample in accordance with applicable professional standards.

§ 1233. Cooperation Among the States

The third-party auditor shall notify the holder of any additional or unique state requirements during or after the opening and exit conferences. To the extent a holder has an issue with the third-party auditor or the examination, the third-party auditor is to confer with the first state that authorized the examination to assist in resolving the issue. To the extent possible, the examination should proceed while disputes are being resolved. This procedure should not be interpreted as states limiting their authority or waiving their rights to the state performing the examination.

§ 1234. Closure

(a) After the holder and the third-party auditor have agreed to the amount deliverable, the third-party auditor will provide the holder and the SCO with an examination report summarizing the procedures performed and the conclusions reached, including the amount deliverable. The content and format of the report shall be in the manner prescribed by the State. The third-party auditor's work papers will be subject to SCO review. The holder will be notified of any interest or penalties assessed on delinquent property.

(b) The examination report will specify: (1) the work performed; (2) the property types reviewed; (3) the methodology of any sampling technique used in conducting the examination; (4) each calculation showing the value of property determined to be due; and (5) the findings of the third party auditor conducting the examination.

§ 1235. Correspondence

The examination report and any relevant correspondence should be sent to the

Unclaimed Property Program at the State Controller's Office
Attn: Division of Audits,
Post Office Box 942850,
Sacramento, California 94250-5874

Inquiries should be directed to the Division of Audits' Unclaimed Property Program at (916) 324-8907.

§ 1236. Sample Confidentiality Agreement

Confidentiality Agreement

[Date]

[Holder]

Dear

The third-party auditor, as agent for the States set forth on Annex A (the "States"; such term also including any additional States that may during the course of the Contractor's examination also authorize the Contractor to act as its agent), has requested certain information from [Name of Holder] (the "Holder") in connection with its abandoned property examination of the Holder's books and records.

The Contractor shall treat as confidential and protect from disclosure to third parties, other than its own employees, agents, and representatives, and the States, all information that the Holder may furnish verbally and in writing to the Contractor or its agents, representatives, or employees in connection with its abandoned property examination; provided however, that this

letter agreement shall not prohibit the Contractor from disclosing such information to (a) any person specifically approved by the Holder or (b) pursuant to or as required by law. The Contractor further agrees that it will not use any such information for any purpose other than the performance of such examination.

The information referred to in the preceding paragraph shall not include any information (i) previously known to the Contractor prior to the receipt of such information, (ii) subsequently acquired by the Contractor from a third party having an independent right to disclose such information, or (iii) that is now or later becomes publicly known through no fault of the Contractor.

Any failure or delay by the Holder in enforcing any provision of this letter agreement will not operate as a waiver of that provision, and the Holder will be entitled to injunctive relief, as well as all other remedies available at law or equity, if the Contractor breaches this letter agreement.

This letter agreement constitutes the entire agreement between us and may only be modified in writing. This letter agreement and all controversies arising from it shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflicts of law principles.

Sincerely,

[Contractor, Employee, Agent, and Contractor Representative]

AGREED TO:

(i) [HOLDER]

By: _____
Name: