

California State Controller's Office
Proposed Regulatory Action: Regulations Governing the Activities of Third-Party
Auditors Who Are Hired by the 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 August 7, 2023.

NOTICE IS FURTHER HEREBY GIVEN that a public hearing has been scheduled. The hearing shall take place on August 22, 2023 at 10:00 a.m. Pacific Standard Time at 300 Capitol Mall, Suite 616, Sacramento, CA 95814, and shall be conducted by Lisa Hughes, Bureau Chief, Division of Audits. At the public hearing, both written and oral comments will be accepted.

Following the public hearing and the written comment period, 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: June 23, 2023 through August 7, 2023.

AUTHORITY AND REFERENCE

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

California Code of Civil Procedure Section 1571(b) provides authority for the Office of the State Controller to request that the unclaimed property examination be conducted by third-party auditors.

California Code of Civil Procedure § 1571(c) states that "Following a public hearing, the Controller shall adopt guidelines as to the policies and procedures governing the activity of third-party auditors who are hired by the Controller."

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.

Authority cited: Sections 1571(a), 1571(b), 1571(c), 1580 California Code of Civil Procedure

Reference cited: Sections 1571(a), 1571(b), 1571(c), 1580 California Code of Civil Procedure

INFORMATIVE DIGEST

As required by California Code of Civil Procedure § 1571(c), following a 1999 public hearing, the State Controller’s Office adopted guidelines as to the policy and procedures governing the activities of third-party auditors who are hired by the Controller (the “Policies and Procedures”). These policies and procedures were enacted in 2003, and amended in 2020.¹

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, held that despite the language of 1571(c), 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.

In order to avoid further disruption to the Controller’s enforcement efforts, and to resolve any lingering questions about the validity of the Policies and Procedures, the Controller proposes to herein adopt Regulations governing the activities of third-party auditors who are hired by the Controller (the “Proposed Regulations”).

Policy Statement Overview / Anticipated Benefits of Proposal

The State Controller’s Office has, for a number of years, relied on third-party auditors to conduct unclaimed property audits for the Controller. The use of third-party auditors has provided a number of benefits to the residents of California, and the State Controller’s Office uses third-party auditors to locate, identify, and collect unclaimed property. For example, the Controller, working with the assistance of third-party auditors, led a national team that restored approximately \$2.4 billion in life insurance benefits nationally, and more than \$300 million to Californians. See https://www.sco.ca.gov/eo_pressrel_17198.html. As reported in a recent report by the Legislative Analyst’s Office, only approximately 2% of California businesses file unclaimed property reports annually. See <https://lao.ca.gov/Publications/Report/3978>. The use of third-party auditors is one way for the Controller to increase compliance with the unclaimed property law.

Continued use of third-party auditors, as proposed in the Proposed Regulations, will allow the Controller to continue to locate, identify, and collect unclaimed property.

Unless otherwise specifically noted, the Proposed Regulations are closely analogous to the Policies and Procedures.

Consistency/Compatibility with Existing State Regulations

The Controller has determined that the Proposed Regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would

¹ 2003 is the earliest dated version of the Policies and Procedures the Controller has been able to identify.

relate to or affect this area, the Controller has concluded that these are the only regulations that concern the use of third-party auditors in California. In fact, the use of third-party auditors was governed by the Policies and Procedures for the last two decades and adoption of the Proposed Regulations will allow the use of third-party auditors to continue.

Documents Incorporated by Reference: (1)The State Controller’s Regulations For Appealing an Examination of Unclaimed Property, (2) the Unclaimed Property Appeal Hearing Request form, (3) the Unclaimed Property Law and Regulations.

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 Policies and Procedures, 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 Policies and Procedures, 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 Policies and Procedures, 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 will benefit the health and welfare of California residents by allowing formal, transparent processes and procedures that govern the retention of third-party auditors and providing a clear, standardized set of guidelines to be followed in connection with retention of such auditors. The regulations are not expected to affect worker safety or the state's environment. These regulations formally adopt the Policies and Procedures, 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 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: Ethan Jaffe | Staff Counsel
State Controller's Office - Legal Division
300 Capitol Mall, Suite 1850, Sacramento, CA 95814
Phone: (530) 902-3050
Fax: (916) 322-1220

Please contact the contact persons listed herein to arrange for public inspection of the rulemaking documents.

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: Ethan Jaffe | Staff Counsel
State Controller's Office - Legal Division
300 Capitol Mall, Suite 1850, Sacramento, CA 95814
Phone: (530) 902-3050
Fax: (916) 322-1220
Email: EJaffe@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 Activities of Third-Party
Auditors Who Are Hired by the Controller
Initial Statement of Reasons

PUBLIC HEARING AND COMMENT

Hearing Date: A public hearing has been set for **August 22, 2023 at 10:00 a.m.** Pacific Standard Time at 300 Capitol Mall, Suite 616, Sacramento, CA 95814, and shall be conducted by Lisa Hughes, Bureau Chief, Division of Audits. At the public hearing, both written and oral comments will be accepted.

Written Public Comment Period: June 23, 2023 through August 7, 2023

Subject Matter of Proposed Regulations: the Activities of Third Party Auditors who are hired by the Controller

Section(s) Affected: The Proposed Regulations will add a new 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.

PURPOSE AND NECESSITY

As required by California Code of Civil Procedure § 1571(c), following a 1999 public hearing, the State Controller's Office adopted guidelines as to the policy and procedures governing the activities of third-party auditors who are hired by the Controller (the "Policies and Procedures"). These policies and procedures were enacted in 2003, and amended in 2020.²

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, held that despite the language of 1571(c), 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.

In order to avoid further disruption to the Controller's enforcement efforts, and to resolve any lingering questions about the validity of the Policies and Procedures, the Controller proposes to herein adopt Regulations governing the activities of third-party auditors who are hired by the Controller (the "Proposed Regulations").

FACTUAL BASIS / RATIONALE

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

§ 1200. Statement of Purpose

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

² 2003 is the earliest dated version of the Policies and Procedures the Controller has been able to identify.

§ 1201. Authority to Conduct Unclaimed Property Examinations

This section recites the statutory basis for retaining third-party auditors to conduct examinations of unclaimed property.

Authority: Code of Civil Procedure 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 Code of Civil Procedure Section 1500 *et seq.*

California Code of Civil Procedure Section 1571(b) provides authority for the Office of the State Controller to request that the unclaimed property examination be conducted by third-party auditors.

Code of Civil Procedure Section 1571(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.

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.

§ 1202. Adherence to contract

This section requires third-party auditors to adhere to any contract they may sign with the Controller.

§ 1203. Terms of Compensation

This section specifies the permissible terms of compensation for a third-party auditor.

§§ 1204-1214 – Principles of Examination

These sections provide the general principles for examinations by third party auditors, including independence, training and expertise, conflict of interest, confidentiality, communications with holder, requirements for authorization, restrictions on subcontracting, and preparation, availability, and retention of working papers.

§ 1215. Opening Conference

This section describes the opening conference and preparation for the opening conference.

§ 1216. Topics Covered in Opening Conference

This section describes the topics to be covered in the opening conference.

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

This section describes the information gathering and site selection to be conducted during Phase I of the examination.

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

This section describes the information gathering and site selection to be conducted during Phase II of the examination.

§ 1219. Phase III of Examination: Examination of Accounts

This section describes the information gathering and site selection to be conducted during Phase III of the examination.

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

This section describes the information gathering and site selection to be conducted during Phase IV of the examination.

§ 1221. Phase V of Examination

This section describes the information gathering and site selection to be conducted during Phase V of the examination.

§ 1222. Extension of Examination Period

This section describes the circumstances under which the examination period may be extended.

§ 1223. Informal Conferences During Examination

This section explains that the State Controller's Office exercises final control over an examination and that a party under examination always has the right of to confer with the State Controller during the examination.

§ 1224. Explanation of Appeals Process

This section requires the third-party auditor to provide the holder with an explanation of the state appeals process.

§§ 1225-1230 - Working Paper Requirements

These sections requires the third-party auditor to prepare working papers and includes requirements for those working papers.

§ 1231. Sampling Requirements

This section provides requirements before a third-party auditor can use a sampling method.

§ 1232. Cooperation Among the States

This section addresses limitations on multi-state audits and the process for resolving any conflicts that arise between states in a multi-state audit.

§ 1233. Closure

This section provides the requirements for closing an audit, including provision of an examination report.

§ 1234. Third-Party Auditor's Compliance with Regulations

This section provides that a third-party auditor's failure to comply with regulations shall not invalidate or impair an audit.

§ 1235. Correspondence

This section provides the address and telephone number for correspondence regarding these regulations.

§ 1236. Sample Confidentiality Agreement

This section provides a form of confidentiality agreement.

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 overseeing the activities of third-party auditors in the State of California, but clarify and reenact the previous Policies and Procedures.

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 overseeing the activities of third-party auditors in the State of California, but clarify and reenact the previous Policies and Procedures.

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 overseeing the activities of third-party auditors in the State of California, but clarify and reenact the previous Policies and Procedures.

Benefits of the Regulations

The State Controller's Office has, for a number of years, relied on third-party auditors to conduct unclaimed property audits for the Controller. The use of third-party auditors has provided a

number of benefits to the residents of California, and the State Controller's Office uses third-party auditors to locate, identify, and collect unclaimed property. For example, the Controller, working with the assistance of third-party auditors, led a national team that restored approximately \$2.4 billion in life insurance benefits nationally, and more than \$300 million to Californians. See https://www.sco.ca.gov/eo_pressrel_17198.html. However, as reported in a recent report by the Legislative Analyst's Office, only approximately 2% of California businesses file unclaimed property reports annually. See <https://lao.ca.gov/Publications/Report/3978>. The use of third-party auditors is one way for the Controller to increase compliance with the unclaimed property law.

Continued use of third-party auditors, as proposed in the Proposed Regulations, will allow the Controller to continue to locate, identify, and collect unclaimed property.

Unless otherwise specifically noted, the Proposed Regulations are closely analogous to the Policies and Procedures.

REASONABLE ALTERNATIVES

The only alternative considered was to leave existing regulations unchanged, or to pursue further legal action regarding the validity of the Policies and Procedures as originally adopted. However, questions about the clarity and enforceability of the Policies and Procedures indicated that adopting the Proposed Regulations was preferable.

Moreover, due to the volume of unclaimed property audits conducted by the State Controller's Office, it is not feasible for the Office to conduct all audits using the Controller's in-house audit personnel. Relying solely on the Controller's Office's auditors is not a reasonable alternative. Accordingly, it is necessary for the Controller to employ third-party auditors to assist the Controller with undertaking unclaimed property audits.

In addition, the Controller often joins multi-state audits of entities whose records and data are stored out of state, rendering third-party auditors best suited to conduct such audits outside of the State.

Finally, California represents approximately ten (10) percent of the population in the United States. Given its significant size, it would be impracticable for the Controller's in-house audit teams to conduct all unclaimed property audits internally. The Controller's audit staff necessarily relies on third-party auditors due to the volume and scope of the State's unclaimed property audits.

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

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 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 at the State Controller's Office, Division of Audits. This article is intended to:

1. Ensure that the examinations by a third-party auditor 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1201. Authority to Conduct Unclaimed Property Examinations

The Controller is authorized 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 Code of Civil Procedure Section 1500 *et seq.* 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 holders' 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Adherence to Contract

A third-party auditor shall comply with all terms and conditions specified in any contract between a third-party auditor and the State Controller's Office. Any failure by a third-party auditor to adhere to the terms of its contract shall not give rise to any claims or rights on the part of the auditee or any party other than Office of the Controller.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1202. Terms of Compensation

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 a third-party auditor shall not be withheld from any recovery obtained by reason of an audit.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1203. Principles of Examination Conducted by Third-Party Auditors

A third-party auditor conducting examinations under California's Unclaimed Property Program at the State Controller's Office, Division of Audits, shall adhere to the general principles of examination set forth in §§ 1205 through 1214.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1204. Independence

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

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1205. Training and Expertise

A third-party auditor shall possess sufficient training and experience to adequately perform the unclaimed property examination.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1206. Conflict of Interest

A third-party auditor 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 that contains a provision that is adverse to the interest of the State of California, or having an existing obligation to a holder that is adverse to the interest of the State of California.

From time to time, a third-party auditor may solicit a holder for preparation of a voluntary report of the holder's unclaimed property. Such an engagement may be one wherein a 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 a 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1207. Confidentiality

A third-party auditor shall maintain strict confidentiality of any records or documents gathered during the examination. The required strict confidentiality shall be maintained in as follows:

- a. A third-party auditor shall sign a confidentiality agreement, akin to the agreement contained in section 1237 herein, to preserve the integrity of state security and confidentiality. The third-party auditor shall sign a confidentiality agreement to preserve the holder's interest and the reasonable expectation of privacy of the owner's interest, and shall maintain a file of each confidentiality agreement and provide such statements to the State upon request. Such files must be maintained throughout the duration of the audit and shall not be destroyed until the audit has been completed.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1208. Communications with Holder

A third-party auditor 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1209. Prior Written Authorization Required

A third-party auditor shall not engage in any examinations on behalf of California without written authorization from the State Controller's Office. A third-party auditor 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1210. Subcontracting and Affiliated Companies

A third-party auditor shall not subcontract any work without prior written authorization from the State Controller's Office. A third-party auditor is responsible for ensuring that any affiliated companies and any sub-contractors that are used during the examinations 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1211. Preparation of Working Papers

A third-party auditor shall properly document its 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1212. Availability of Working Papers

Upon request, a third-party auditor shall promptly 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1213. Retention of Working Papers

A third-party auditor shall 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Opening Conference

The opening conference provides the initial forum for a 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. A third-party auditor may exercise its discretion to determine when and how to utilize certain examination processes, including the determination of the sequencing of examination phases, site visits, and response time frames. A third-party auditor may modify such examination processes based upon the circumstances of examination.

Prior to the opening conference, a third-party auditor shall provide the holder with an approved form of the confidentiality agreement (see Section 1237), 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. The State Controller's Regulations For Appealing an Examination of Unclaimed Property, and the Unclaimed Property Appeal Hearing Request form, and the Unclaimed Property Law and Regulations are incorporated herein by reference.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1214. Topics Covered in Opening Conference

During the opening conference, a third-party auditor shall:

- 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 potential disagreements 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1215. 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 a third-party auditor and the holder, at which time a third-party auditor requests basic corporate and unclaimed property data and information. A third-party auditor may request that the data and information be produced electronically. The holder shall respond to the data and information requests within 30 days or an agreed-upon time period.

A third-party auditor shall inform the holder that if the holder 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. A third-party auditor shall 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. A third-party auditor shall inform the holder that if sampling techniques are used, the liability determined by the third-party auditor will represent a fair estimation only.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1216. 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 a third-party auditors to the holder. A third-party auditor may request that the data and information be produced electronically. The holder shall respond to the third-party auditors' requests within 60 days or an otherwise agreed-upon time period.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1217. 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. A third-party auditor may request that the data and information be produced electronically. If requested, the site or virtual visit shall take place within 30 days after the data and information requested is received. During the site or virtual visit, a third-party auditor analyzes the holder's books and records, and if necessary, selects items for testing. The holder shall produce documentation supporting its accounting for the items selected within 60 days or an otherwise agreed-upon time period. A third-party auditor then may make a second site or virtual visit to the holder at an agreed-upon date to review and analyze the documents produced.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1218. Phase IV of Examination: Detailed Testing Covering Entire Examination Period

The objective of Phase IV of an unclaimed property examination is to conduct testing, as necessary, 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 a third-party auditor 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. If a third-party auditor determine that a site visit or virtual visit is needed, the third-party auditor and the holder shall decide upon a mutually agreed-upon date for one or more site or virtual visits to perform testing procedures and select samples for testing. Alternatively, a third-party auditor may request that samples be produced electronically for testing. The holder shall produce documentation supporting its accounting for the items selected within 60 days or an otherwise agreed-upon time period. If the holder believes it has been responsive to a third-party auditor's requests, but the third-party auditor disagrees, the holder has an additional 30 days, or an otherwise agreed-upon time period, to provide additional documentation to the third-party auditor 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1219. 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 shall have 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. A 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. A third-party auditor 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1220. 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1221. Explanation of Appeals Process

A third-party auditor shall explain to the holder the state appeal process and procedures. Further, a third-party auditor shall obtain from the holder written confirmation acknowledging understanding of the state appeal process and procedures.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1222. Working Paper Requirements

A third-party auditor is required to prepare working papers that provide documentary evidence of the work performed in the examination. The working papers are a record that shall be understandable to other auditors many years later, whether or not the auditor preparing the working papers is available. Each work paper shall “stand alone” and include adequate cross-references. The format for individual working papers shall contain the following information identified in Sections 1226-1230 herein.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1223. Signing, Dating, and Paginating

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

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1224. Source, Purpose, Scope, Procedures, Findings and Conclusions.

The source, purpose, scope, procedures, findings, and conclusions of an audit typically appear on every working paper. Occasionally, only the source and purpose are required, particularly when documents are obtained for background information.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Indexing.

The essential elements of an indexing system are (i) standard prepared index; and (ii) sequential numbering of all pages after the assignment is completed.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1225. Cross-Referencing.

The cross-referencing page numbers shall be written in red.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1226. Legends and Tick Marks.

A legend shall 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 shall be on or referenced on the first page of the working paper.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1227. 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1228. Cooperation Among the States

During the opening conference, the third-party auditor shall notify the holder of any additional or unique state requirements. To the extent a holder has an issue with the third-party auditor or the examination, a 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1229. Closure

(a) After the holder and the third-party auditor have agreed to the amount deliverable, a 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 and in accordance with Section 1234(b) herein. A 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Third-Party Auditor's Compliance with Regulations

The failure of a third-party auditor to comply with a regulation shall neither invalidate nor impair an audit or otherwise give rise to rights or claims by an auditee, if at the conclusion of the audit the Controller determines that the conduct of the audit was fundamentally fair and that the conclusion reached by the third-party auditor was reasonable.

§ 1230. Correspondence

The examination report and any relevant correspondence shall 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.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

§ 1231. Sample Confidentiality Agreement

The following template constitutes a sample confidentiality agreement that should be executed by a third-party auditor and the holder.

Authority: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

Reference: Code of Civil Procedure Section 1571(a), Code of Civil Procedure Section 1571(b), Code of Civil Procedure Section 1571(c), Code of Civil Procedure Section 1580

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: