

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 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 Gina Doll of the State Controller's Office's Unclaimed Property Division. 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 § 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.

California Code of Civil Procedure § 1540(e) provides: Following a public hearing, the Controller shall adopt guidelines and forms that shall provide specific instructions to assist owners in filing claims pursuant to this article.

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"). By promulgating these regulations, the Controller endeavors to provide concise instructions and guidance to individuals to assist them with submitting claims to the State Controller's Office's Unclaimed Property Division, which processes claims and disburses funds to rightful owners. Moreover, through these regulations, the Controller incorporates by reference the specific claim form to be submitted by property owners submitting claims.

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: The claim form, made available on the Controller's web site, is hereby incorporated herein by reference. A copy of the claim form in use as of the promulgation of these regulations is attached hereto as Exhibit A.

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 little to no effect on small business. These regulations formally adopt the Claims Guidelines, and therefore do not represent any significant departure from past practices and are not intended to impose changes or additional requirements on small businesses in order to comply with these regulations.

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. The proposed regulations will benefit the health and welfare of California residents by allowing for a formal, transparent process and procedures for claimants to submit claims for unclaimed property held by the California State Controller's Office. The regulations are not expected to affect 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: 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 the person(s) identified 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 Submission of Claims for
Unclaimed Property Held by the California State 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 Gina Doll of the State Controller's Office's Unclaimed Property Division. 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 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 and Authority to Establish Guidelines for Claiming Unclaimed Property

This section provides the purpose and goals of the Proposed Regulation and recites the statutory basis for establishing guidelines for claiming unclaimed property and prescribing the requisite forms to be used by the claimants and holders.

§ 1301. Submission of Claims

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

§ 1302. Required Documentation

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

§ 1303. 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.

§ 1304. 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.

§ 1305. Incomplete Claim Package

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

§ 1306. 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.

§ 1307. 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.

California State Controller's Office
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Unclaimed Property Held by the California State 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 Claiming Unclaimed Property

§ 1300. Statement of Purpose and Authority to Establish Guidelines for Claiming Unclaimed Property

The purpose of these regulations is to formalize the procedures and format for owners claiming unclaimed property held by the State Controller and to effectuate the legislative mandate set forth in Code of Civil Procedure § 1501.5(c) to reunite owners with their property.

Authority: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.

Reference: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.

§ 1301. Submission of Claims

The State Controller shall require the claimant, or an authorized representative, to submit claim documentation that identifies the property or properties being claimed, and shall include the claimant's name, current mailing address, and personal identifying information, such as social security number and date of birth sufficient to verify the identity of the claimant. The claimant shall sign the claim form verifying the information on the claim form to be true and correct, that the claimant is the owner of and the person or entity entitled to receive the property being claimed. The claim form, made available on the Controller's web site, is hereby incorporated herein by reference. A copy of the claim form in use as of the promulgation of these regulations is attached hereto as Exhibit A.

The claimant may also submit a claim for unclaimed property electronically via the Controller's website. A claim initiated on the Controller's website and signed electronically shall constitute a claim.

Authority: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.

Reference: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.

§ 1302. Required Documentation

The State Controller shall require the claimant, or an authorized representative, to submit sufficient documentation to substantiate the claimant's identity and demonstrate that the claimant is the rightful owner as defined in section 1540(d) of the California Code of Civil Procedure before a payment will be authorized.

Authority: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.

Reference: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.

§ 1303. 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 substantiate 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.

Authority: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.

Reference: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.

§ 1304. Required Documentation for Claims on Behalf of a Business Entity

The State Controller shall require the claimant, or an authorized representative, to submit sufficient documentation to substantiate the business entity's Federal Employer Identification Number, if applicable, 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 the owner of the property before a payment will be authorized.

Authority: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.

Reference: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.

§ 1305. Incomplete Claim Package

If a claim package does not contain adequate documentation to establish the facts required by the applicable Sections 1302 through 1304, the State Controller shall contact the claimant to identify and obtain any missing documentation, using the contact information provided by the claimant in their claim submission. If the claimant does not provide the missing documentation, the State Controller will return the claim package to the claimant, the claimant's attorney, or the claimant's authorized representative. The claimant may resubmit the claim when the necessary supporting documentation has been obtained.

Authority: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.

Reference: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.

§ 1306. Claims Consideration

The State Controller's Office will consider a claim, and render a determination as to the validity of the 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.

Authority: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.

Reference: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.

§ 1307. 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. Attorneys who submit claims based under asset recovery agreements may submit a declaration under penalty of perjury stating that the asset recovery agreement complies with Section 1582 in lieu of providing the actual asset recovery agreement.

Authority: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.

Reference: California Code of Civil Procedure § 1580, California Code of Civil Procedure § 1540.