

CALIFORNIA VICTIM COMPENSATION BOARD

REQUEST FOR APPROVAL TO BEGIN THE RULEMAKING PROCESS FOR

TITLE 2. ADMINISTRATION

DIVISION 2. FINANCIAL OPERATIONS

CHAPTER 1. CALIFORNIA VICTIM COMPENSATION BOARD

ARTICLE 2.5 GENERAL HEARING PROCEDURES

SECTIONS 615.2, 617.1, 617.4, 617.5, 617.6, 617.7, 617.8, 617.9, 619.4 & 619.5

ARTICLE 5.2 HEARINGS FOR INDEMNIFICATION OF CITIZENS BENEFITTING THE

PUBLIC AND INDEMNIFICATION OF VICTIMS OF CRIMES

SECTIONS 647.3, 647.4, 647.20, 647.20.1, 647.21, 647.22,

647.25, 647.26, 647.30 & 647.31

ARTICLE 5.6. INDEMNIFICATION OF VICTIMS OF CRIME

SECTIONS 649, 649.8, 649.32, 649.33, 649.41 & 649.48

January 16, 2025

Action Requested

Staff propose to amend and adopt the regulations located at California Code of Regulations, title 2, sections. 615.2, 617.1, 617.4, 617.5, 617.6, 617.7, 617.8, 617.9, 619.4, 619.5, 647.3, 647.4, 647.20, 647.20.1, 647.21, 647.22, 647.25, 647.26, 647.30, 647.31, 649, 649.8, 649.32, 649.33, 649.41 and 649.48

It is requested that the Board authorize staff to begin the rulemaking process for the proposed regulatory changes. This request includes the Text of the Proposed Regulations and the Initial Statement of Reasons for submission to the California Office of Administrative Law (OAL). This request also includes the publication of the Notice of Rulemaking Action, a copy of which is also attached. A public comment period will follow.

Summary of Proposed Changes

A. Background

The California Victim Compensation Board ("CalVCB" or "Board") was the first victim compensation program established in the nation and remains one of the largest. To be eligible for victim compensation, a victim or derivative victim must have suffered a pecuniary loss as a direct result of a qualifying crime. (Gov. Code, §§ 13955, 13957.) "Crime" is defined as a crime or public offense that would constitute a misdemeanor or felony offense. (Gov. Code, § 13951, subd. (b).) A crime is considered to be a "qualifying crime" for purposes of victim compensation from CalVCB if the victim is deceased or sustained physical injury

or threat of physical injury as a direct result of the crime. (Gov. Code, § 13955, subd. (f)(1) & (2).) The Board may also find the existence of a qualifying crime based on an emotional injury alone when the crime is among a list of offenses enumerated in Government Code section 13955, subdivision (f)(3).

If CalVCB staff determine that a qualifying crime occurred and there are no bars to eligibility, CalVCB can pay certain expenses, as authorized by the Legislature, that are a direct result of the crime on which the application was based. (Gov. Code, § 13957.) Eligible expenses include medical and dental care, mental health services, income and support loss, funeral and burial expenses, relocation, and residential security, among others enumerated in statute. (Gov. Code, § 13957.) However, CalVCB is a payor of last resort, meaning that CalVCB provides compensation for costs that are not covered by other reimbursement sources, including, but not limited to, private insurance, State Disability Insurance (SDI), Social Security Disability Insurance (SSDI), and civil lawsuits. (Gov. Code, §§ 13951, 13954.)

Conversely, the Board must deny an application for compensation or request for reimbursement of expenses if the applicant fails to demonstrate eligibility for the program or for a request for reimbursement of expenses. When CalVCB staff recommends that an application or a request for reimbursement be denied, applicants have a right to appeal the staff's recommendation. (Cal. Code Regs., tit. 2, § 647.20.) If an applicant appeals, CalVCB must provide the applicant with a hearing. (Gov. Code, § 13959.) A

B. Hearing Regulations

In August 2024, a superior court judge found that California Code of Regulations, title 2, section 647.20.1, which provided a means by which the hearing officer could elect to conduct an informal hearing based on documentary evidence alone, is invalid and ordered that it be removed from the regulatory scheme. During a subsequent review of the regulations, the Board determined that it is necessary to clarify the distinction between the general procedures that apply to all hearings conducted by CalVCB (which includes hearings on victim compensation claims, Good Samaritan claims, and Penal Code section 4900 claims), and those that do not apply to all three types of hearings.

For these reasons, staff propose that the following regulations be revised to clarify that they are general hearing provisions that govern all hearings conducted by CalVCB:

Cal. Code Regs., tit. 2, § 615.2 Definitions

Cal. Code Regs., tit. 2, § 617.4	Hearing by Electronic Means
Cal. Code Regs., tit. 2, § 617.7	Presentation of Oral Evidence
Cal. Code Regs., tit. 2, § 617.8	Official Notice
Cal. Code Regs., tit. 2, § 617.9	Failure to Appear or Proceed
Cal. Code Regs., tit. 2, § 619.5	Action on Proposed Decision by Board

Further, staff propose that the following regulations be revised to clarify that they apply to hearings conducted pursuant to Government Code sections 13950-13966 (victim compensation claims) or 13970-13974.1 (Good Samaritan claims) only:

Cal. Code Regs., tit. 2, § 647.20	Right to Hearing
Cal. Code Regs., tit. 2, § 647.21	Notice of Hearing
Cal. Code Regs., tit. 2, § 647.26	Request for Continuance
Cal. Code Regs., tit. 2, § 647.30	Conduct of Hearing
Cal. Code Regs., tit. 2, § 647.31	Evidence

Additionally, staff propose that the following regulations be revised to clarify that they apply to hearings conducted pursuant to Penal Code section 4900 only:

Cal. Code Regs., tit. 2, § 617.1	Public Hearing
Cal. Code Regs., tit. 2, § 619.4	Notice and Public Comment on Proposed Decision

Finally, staff propose that the following regulations be deleted, either pursuant to the August 2024 superior court order directing that CalVCB delete section 647.20.1, or to reduce duplication in the regulations:

Cal. Code Regs., tit. 2, § 617.5	Informal Hearing
Cal. Code Regs., tit. 2, § 617.6	Presentation Limited to Written Materials
Cal. Code Regs., tit. 2, § 647.3	Definitions
Cal. Code Regs., tit. 2, § 647.4	Consideration of Applications and Supplemental Claims
Cal. Code Regs., tit. 2, § 647.20.1	Hearing on the Written Record for Failure to State Basis to Grant Relief
Cal. Code Regs., tit. 2, § 647.22	Information about Hearing Procedures
Cal. Code Regs., tit. 2, § 647.25	Hearing by Electronic Means

C. Proposed Changes that Apply to Applications Filed Pursuant to Government Code sections 13950-13966 (victim compensation claims) or 13970-13974.1 (Good Samaritan claims)

In addition, the need for clarification of the governing statutes has become evident due to the recurring issues that have arisen in implementing the program based on the existing regulations. Following extensive review and consideration, staff propose that the following regulations be revised to account for changes in the labor market, to make it easier for applicants to demonstrate eligibility for income and support loss, to provide clarity and transparency, and to enable the efficient and consistent administration of the program:

Cal. Code Regs., tit. 2, § 649	Definitions
Cal. Code Regs., tit. 2, § 649.8	Emergency Awards
Cal. Code Regs., tit. 2, § 649.32	Verification of Income or Support Loss
Cal. Code Regs., tit. 2, § 649.33	Derivative Victims Eligible for Support Loss
Cal. Code Regs., tit. 2, § 649.41	Acts Constituting One Qualifying Crime
Cal. Code Regs., tit. 2, § 649.48	Human Trafficking

Through administration of the program, it became clear that the governing statutes needed to be clarified to address new scenarios and make it easier for victims to obtain compensation. Specifically, Section 649 provides definitions of terms used by the Board. Section 649.8 clarifies the circumstances under which an emergency award may be granted. Section 649.32 rewrites the income and support loss regulation to significantly expand the availability of benefits by defining new categories of workers and liberalizing the evidence which may be used to establish income or support loss. Section 649.33 expands program eligibility by enlarging the definition of “legal dependent.” Section 649.41 clarifies that an applicant may only file one application per crime or series of related acts. Section 649.48 makes specific the types of visas that CalVCB will consider as evidence of human trafficking.

D. Conclusion

These regulatory changes are proposed pursuant to the authority granted the Board by the California State Legislature in Government Code sections 13920 and 13974 and Penal Code section 4906. The proposed regulations are intended to implement, interpret, and make specific Government Code sections 13950 through 13965 and 13970 through 13974.1, and Penal Code sections 4900 through 4903.

The proposed hearing regulations were drafted after conferring with department subject-matter experts. In addition, the draft regulations regarding

hearing procedures were shared with the 58 county victim witness advocate offices before being finalized. Advocates were invited to offer feedback, edits or comments on the draft regulations, but none were received. Further, with respect to the proposed regulation addressing verification of income and support loss (Section 649.32), the Legal staff conferred with departmental subject-matter experts and sought input from a Tax Specialist at Government Operations who, in turn, reached out to the Franchise Tax Board's legal division for suggestions on the avenues that could be used to verify income loss of self-employed individuals. The proposed regulation represents the consensus that tax returns are the best viable solution to the issue of verifying self-employment income. In sum, these proposed regulations are the result of the careful weighing of alternatives, giving full consideration of all feedback, comments, suggestions and proposals from various parties, stakeholders and experts.

Each proposed revision is reasonably necessary to carry out the authority conferred by the statutes. Each proposed revision addresses an administrative requirement, condition, or circumstance that arises in connection with an application for compensation. The Board has determined that administration of the program in the manner proposed is consistent with, and promotes, the objectives underlying the statutes that guide the program.

A copy of the draft Proposed Regulations and Initial Statement of Reasons, as well as the Notice of Rulemaking Action are attached. In the Proposed Regulations, deleted text appears in strikethrough and new text is underlined.

Recommendation

It is recommended that the Board authorize staff to begin the rulemaking process. This includes authorization for the Executive Officer to submit the Proposed Regulations and Initial Statement of Reasons to the Office of Administrative Law (OAL). This includes authorization to publish the Notice of Rulemaking Action, followed by a public comment period.

Certification

I certify that at its January 16, 2025, Board Meeting, the California Victim Compensation Board adopted the proposed recommendation.

Andrea Burrell
Board Liaison