

INITIAL STATEMENT OF REASONS

TITLE 2. ADMINISTRATION

DIVISION 2. FINANCIAL OPERATIONS

CHAPTER 1. CALIFORNIA VICTIM COMPENSATION BOARD

ARTICLE 2.5 GENERAL HEARING PROCEDURES

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



BACKGROUND AND SUMMARY

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 the 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 either the application or the request for reimbursement of expenses. When CalVCB staff recommend 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.)

As the program has been administered, the need for clarification of existing regulations has become evident. Additionally, on August 5, 2024, Alameda County Superior Court Judge Frank Roesch ruled that California Code of Regulations, title 2, section 647.20.1, which provided a means to conduct an informal hearing based on documentary evidence alone at the hearing officer's discretion, is invalid. The court ordered that the regulation be removed from the regulatory scheme. The ruling necessitated a rewriting of the regulations governing hearing procedures. As part of the rewrite, clarifying the distinction between the general procedures that apply to all hearings

conducted by CalVCB, which includes both victim compensation hearings and Penal Code section 4900 hearings, and those that apply only to victim compensation hearings is necessary.

For these reasons, staff propose revisions to the following regulations that govern all hearings conducted by the CalVCB:

Cal. Code Regs., tit. 2, § 615.2	Definitions
Cal. Code Regs., tit. 2, § 617.1	Public Hearing
Cal. Code Regs., tit. 2, § 617.4	Hearing by Electronic Means
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, § 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, § 619.4	Notice and Public Comment on Proposed Decision
Cal. Code Regs., tit. 2, § 619.5	Action on Proposed Decision by Board

California Code of Regulations, title 2, sections 615.2 through 619.5 implement and make specific Penal Code section 4903 and Government Code section 13959 by clarifying the general hearing procedures that apply to all hearings conducted by CalVCB.

Staff also propose revisions to the following regulations that govern hearings for indemnification of citizens benefiting the public and indemnification of victims of crime:

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	Right to Hearing
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, § 647.21	Notice of Hearing
Cal. Code Regs., tit. 2, § 647.22	Information about Hearing Procedures
Cal. Code Regs., tit. 2, § 647.25	Hearing by Electronic Means
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

California Code of Regulations, title 2, sections 647.3 through 647.31 implement and make specific the hearing requirements of Government Code section

13959 (Victim Compensation) and Government Code section 13973 (Good Samaritans) by clarifying the hearing procedures.

Staff also propose revisions to the following regulations that implement and clarify the Government Code sections that apply to the indemnification of victims of crime and citizens benefiting the public:

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

These regulations implement Government Code sections 13950 through 13970 by making program requirements clear. 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.

These proposed revisions are based on the issues that have arisen in implementing the program based on existing regulations and are the result of extensive administrative consideration. The Board has determined that the proposed regulatory action is necessary for clarity and transparency, and the efficient and consistent administration of the program.

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 victim 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.

PROPOSED AMENDMENTS TO ARTICLE 2.5 GENERAL HEARING PROCEDURES

SECTION 615.2

PROBLEMS TO BE ADDRESSED

Section 615.2 contains a list of definitions pertaining to all hearings conducted by the Board; however, this section does not include all of the necessary definitions. Some definitions are found in section 647.3, which relates to hearings held pursuant to Government Code sections 13950 through 13965 (indemnification of victims of crime) and 13970 through 13974.1 (indemnification of citizens benefiting the public), but not hearings pursuant to Penal Code section 4900 (erroneously convicted felons). Additionally, some terms that warrant definition are not included in the current regulations. The lack of a succinct statement of definitions applicable to all hearings creates confusion and ambiguity.

BENEFITS

Consolidation of the definitions that pertain to all hearings conducted by the Board in one location will provide clarity that the defined words have the same meaning throughout the regulations governing hearings. It will also make it easier for Board staff, the public, and applicants to locate them, and thereby assist them in understanding the hearing regulations. Additionally, the inclusion of previously undefined terms will serve to further assist Board staff, the public, and applicants in understanding the hearing regulations and how the formerly undefined words are interpreted and applied. The additional definitions also highlight information that might not otherwise be apparent to lay people.

PURPOSE

Section 615.2, subdivisions (a)(2)(A)-(B): The proposed revisions to these subdivisions update the Government Code sections cited in response to Legislative renumbering.

Section 615.2, subdivision (a)(3): The proposed revision removes the definition for "bid protest" as the Board no longer runs the Government Claims Program to which that term is related. The proposed revision then repurposes this paragraph to instead define the word "attorney," which is used in this chapter. This definition clarifies who qualifies as an "attorney" in proceedings before CalVCB.

Section 615.2, subdivision (a)(4): The proposed revision to this subdivision states that the word "claimant," which was previously undefined, refers to

the person on whose behalf an application was submitted. To accommodate this additional definition, the current version of section 615.2, subdivision (a)(4) is being renumbered as subdivision (a)(6).

Section 615.2, subdivision (a)(5): The proposed revision to this subdivision states that the phrase “final decision,” which was formerly undefined, refers to the last decision rendered by the Board before any action for judicial review may be instituted. This definition will assist applicants and the public in understanding the difference between a final decision and a proposed decision.

Section 615.2, subdivision (a)(6): The proposed revision will renumber the current version of subdivision (a)(4), defining the term “hearing,” to subdivision (a)(6) to accommodate new definitions.

Section 615.2, subdivision (a)(7): The proposed revision will renumber the current version of subdivision (a)(5), defining the term “hearing officer,” to subdivision (a)(7) to accommodate new definitions.

Section 615.2, subdivision (a)(8): The proposed revision will renumber the current version of subdivision (a)(6), defining the term “informal hearings,” to subdivision (a)(8) to accommodate new definitions. Additionally, the proposed revision will delete the reference to hearings limited to the submission of written materials as CalVCB has revised its hearing procedures and limited the circumstances allowing a hearing to be conducted solely on the written materials to situations where an applicant or claimant requests a review based on the written materials, waives an oral hearing, fails to appear at an oral hearing, fails to proceed at an oral hearing, or declines to request an oral hearing. Former subdivision (a)(6) is renumbered to (a)(8) to accommodate new definitions. Former subdivision (a)(8) defining “mail delivery service,” will be deleted because the definition is out-of-date, confusing, and not reflective of CalVCB procedures which comport with the service requirements stated in the Code of Civil Procedure.

Section 615.2, subdivision (a)(9): The proposed revision will renumber the current version of subdivision (a)(7), defining the term “may,” to subdivision (a)(9), to accommodate new definitions.

Section 615.2, subdivision (a)(10): The proposed revision will renumber the current version of subdivision (a)(9), defining the term “party,” to subdivision (a)(10). The proposed revision will include representatives of

the parties in that definition and corrects a grammatical error, by capitalizing the term “Board.”¹

Section 615.2, subdivision (a)(11): The proposed revision will add a definition for the term “preponderance of the evidence,” which was not previously defined, to clarify the meaning of the standard that must be met in most proceedings before the CalVCB. This definition mirrors the plain English language approved in Judicial Council of California Civil Jury Instruction 200.

Section 615.2, subdivision (a)(12): The proposed revision will add a definition for the term “proposed decision,” to clarify that this is the written decision that is submitted to the Board for consideration. This definition will assist applicants and the public in understanding the difference between a proposed decision and a final decision.

Section 615.2, subdivision (a)(13): The proposed revision will define the term “representative,” which was not previously defined. This definition clarifies that the term “representative” includes both attorneys and non-attorneys.

Section 615.2, subdivision (a)(14): The proposed revision will renumber the current version of subdivision (a)(10), defining the term “shall,” to subdivision (a)(14) to accommodate new definitions. The substance of the subdivision remains unchanged.

Section 615.2, subdivision (a)(15): The proposed revision will add a definition for the term “subsequent application,” which was not previously defined, to clarify that the term refers to an application for a separate and unrelated crime that occurs after the initial application was submitted and is not part of a series of related acts which are considered to be one crime.

Section 615.2, subdivision (a)(16) The proposed revision will add a definition for the term “supplemental claim,” which was not previously defined, to clarify that the term refers to a bill or expense that is submitted in connection with a previously submitted application for assistance pursuant to Government Code sections 13950-13966.

¹ The term “party” will be used throughout this Initial Statement of Reasons to indicate a reference to the applicant and/or the applicant’s representative.

NECESSITY

Section 615.2, subdivisions (a)(2)(A)-(B): The proposed revision is necessary to accurately identify the statutes governing the victim compensation and good Samaritan programs.

Section 615.2, subdivision (a)(3): The proposed revision is necessary to remove the definition of “bid protest,” as the Board no longer handles Government Claims, the program to which that term relates. The revision then adds a definition for “attorney” in order to make clear who qualifies to act as an “attorney” in proceedings before CalVCB.

Section 615.2, subdivision (a)(4): The proposed revision is necessary to ensure the word “claimant” is clarified and understood by both CalVCB staff, the public, and applicants. Renumbering is necessary to prevent confusion and maintain consistency.

Section 615.2, subdivision (a)(5): The proposed revision is necessary to clarify the term “final decision” refers to the last decision rendered by the Board before any action for judicial review may be instituted. This definition is necessary to assist applicants and the public in differentiating between a final decision and a proposed decision.

Section 615.2, subdivision (a)(6): The proposed revision is necessary simply to renumber the current version of (a)(4) to section (a)(6) to accommodate new definitions.

Section 615.2, subdivision (a)(7): The proposed revision is necessary simply to renumber the current version of (a)(5) to section (a)(7) to accommodate new definitions.

Section 615.2, subdivision (a)(8): The current version of this section, which defines the term “mail delivery service,” needs to be repealed as it refers to an outdated process that is no longer reflective of CalVCB’s procedures which comport with the service requirements stated in the Code of Civil Procedure. Further, to accommodate new definitions and maintain sequential numbering, the current version of section (a)(6) needs to be renumbered as (a)(8). The proposed revision is also necessary to clarify what the term “informal hearing” means, taking into consideration the August 2024 superior court decision limiting the use of hearings on the written record.

Section 615.2, subdivision (a)(9): The proposed revision is necessary to renumber the current version of section (a)(7) to section (a)(9) to accommodate new definitions.

Section 615.2, subdivision (a)(10): The proposed revision is necessary to renumber the current version of section (a)(9) to section (a)(10) to accommodate new definitions. It is also necessary to clarify that the term “party” includes representatives of the parties and ensure that applicants and the public understand the legal significance of this word.

Section 615.2, subdivision (a)(11): The proposed revision is necessary to include a definition of “preponderance of the evidence,” which is the standard for the burden of proof that is used throughout the Board’s governing statutes and regulations.

Section 615.2, subdivision (a)(12): The proposed revision is necessary to add a definition for the term “proposed decision,” which will clarify for applicants and the public that this term refers to the written decision that is submitted to the Board for consideration.

Section 615.2, subdivision (a)(13): The proposed revision is necessary to add a definition for the term “representative” to ensure that applicants and the public understand who the Board will recognize as an approved representative.

Section 615.2, subdivision (a)(14): The proposed revision is necessary to renumber the current version of subdivision (a)(10) to accommodate new definitions.

Section 615.2, subdivision (a)(15): The proposed revision is necessary to include the definition of the term “subsequent application” to avoid confusion for applicants and the public when communicating about the status of an application or claim when there are multiple applications on file for the same individual.

Section 615.2, subdivision (a)(16): The proposed revision is necessary to include the definition of the term “supplemental claim” to clarify that this term refers to a request for a specific benefit on an application that was previously filed pursuant to Government Code sections 13950-13966.

SECTION 617.1

PROBLEMS TO BE ADDRESSED

The current version of this section has caused a great deal of confusion for applicants and the public, and has resulted in unnecessary litigation costs, as it does not clearly identify the type of CalVCB hearings to which it applies.

Section 617.1 applies to hearings held on erroneously convicted felon claims, filed pursuant to Penal Code section 4900. It does not apply to hearings held pursuant to Government Code sections 13950 through 13966 (victim compensation claims), and 13970-13974.1 (Good Samaritan claims). However, the current version of the regulation does not expressly state that. Instead, applicants and the public must read through all the regulations addressing CalVCB hearings in order to locate sections 647.33 and 647.2, subdivision (d), which resolve the confusion. Section 647.33 states that hearings held on victim compensation claims are closed to the public as these proceedings necessarily discuss confidential and sensitive information. The one exception is when the party requests that the hearing be open to the public. Section 647.2, subdivision (d) then clarifies the apparent conflict between sections 617.1 and 647.33 by providing that, when there are any inconsistencies or conflicts between the provisions found in the general hearing regulations located in California Code of Regulations, title 2, article 2.5, and the provisions pertaining exclusively to hearings conducted pursuant to Government Code sections 13950 through 13966 (victim compensation claims), and 13970-13974.1 (Good Samaritan claims), which are located in article 5.2, the provisions found in article 5.2 shall apply. The fact that the relevant regulations are scattered throughout the Code of Regulations, title 2, makes it unduly burdensome for lay people to read and apply the applicable laws.

Additionally, the current version of the regulation contains outdated references to physical presence at hearings. Due to modern technology, the parties may now attend the hearing from a remote location. While all applicants retain the right to request that they be physically present at their hearing, the majority of the hearings that occur are conducted remotely.

Furthermore, CalVCB is located in a secure facility due to the necessity to safeguard sensitive and confidential information. CalVCB is not structured to permit unannounced, walk-in visits. Any visit to the facility must be pre-arranged, with security available to monitor a visitor's ingress and egress. Before records may be reviewed, they must be pulled and prepared by staff to redact any Personally Identifiable Information (PII). As such, any request to review records must be made through the Information Practices Act or the Public Records Act.

Accordingly, deletions and revisions to the existing regulation need to be made to address these concerns.

Moreover, the current version of the section allows for the inspection of transcripts obtained by the Board or hearing officer. This language is problematic. While hearings are recorded, CalVCB does not generate transcripts of those hearings and does not have the means to do so.

Finally, the current version of the regulation contains an outdated citation to the Public Records Act in the Note section. This needs to be corrected.

BENEFITS

First, by expressly stating that section 617.1 applies only to hearings held pursuant to Penal Code section 4900, and not to hearings held pursuant to Government Code sections 13950 through 13966 (victim compensation claims), and 13970-13974.1 (Good Samaritan claims), the regulation will provide clarity and prevent further litigation costs incurred to defend challenges to the meaning and applicability of this section.

Second, by deleting the language stating that a member of the public may be “physical[ly] presen[t]” at the location where the Board or hearing officer is conducting the hearing, CalVCB will have the flexibility to conduct public hearings remotely.

Third, by striking the language that appears to invite the public to visit CalVCB's secure facility, the regulation will prevent confusion and potential security incidents. Likewise, by requiring that requests to obtain or review records be made through the Information Practices Act or the Public Records Act, CalVCB staff can track requests, formulate responses, prepare records and, if necessary, make special arrangements for a visit.

Fourth, updating the citation to the Public Records Act will show applicants and the public where to look if they wish to review the law for themselves. Deleting all references to transcripts will bring the regulation in line with CalVCB's practices.

PURPOSE

Section 617.1, subdivision (a): The purpose of the proposed revision is to make clear that section 617.1 applies only to hearings conducted pursuant to Penal Code section 4900.

Section 617.1, subdivision (b): The purpose of the proposed revision is to make clear that section 617.1 does not apply to hearings conducted pursuant to Government Code sections 13950-13966 or 13970-13974.1, unless an applicant challenging a decision on a victim compensation claim requests that the hearing be open to the public, as provided in section 647.33, subdivision (a).

Section 617.1, subdivision (c): The purpose of the proposed revision is to renumber subdivision (a) to subdivision (c), to accommodate the new language added as subdivisions (a) and (b).

Section 617.1, subdivision (d): The purpose of the proposed revision is to renumber the current version of subdivision (b) to subdivision (d), to accommodate the new language added as subdivisions (a) and (b).

Section 617.1, subdivision (e): The purpose of the proposed revision is to renumber the current version of subdivision (c) to subdivision (e), to accommodate the new language added as subdivisions (a) and (b).

NECESSITY

Section 617.1, subdivision (a): The proposed revision is necessary to clarify that section 617.1 applies only to hearings conducted pursuant to Penal Code section 4900.

Section 617.1, subdivision (b): The proposed revision is necessary to clarify that section 617.1 does not apply to hearings conducted pursuant to Government Code sections 13950-13966 or 13970-13974.1, unless an applicant challenging a decision on a victim compensation claim requests that the hearing be open to the public, as provided in section 647.33, subdivision (a).

Section 617.1, subdivision (c): The proposed revision is necessary to renumber subdivision (a) to subdivision (c) to accommodate the new language added as subdivisions (a) and (b) clarifying the hearings to which section 617.1 does and does not apply.

Section 617.1, subdivision (d): The proposed revision is necessary to renumber the current version of subdivision (b) to subdivision (d), to accommodate the new language added as subdivisions (a) and (b).

Section 617.1, subdivision (e): The proposed revision is necessary to renumber the current version of subdivision (c) to subdivision (e), to accommodate the new language added as subdivisions (a) and (b).

SECTION 617.4

PROBLEMS TO BE ADDRESSED

The current version of the regulation contains outdated language. It refers to a method of conducting a hearing that is no longer used (i.e. television), and neglects to include the use of more modern platforms such as video conferencing. Additionally, the current regulation contains language stating that each participant of a hearing that is conducted by electronic means must have an “opportunity prior to the hearing to see each exhibit” when hearings may be conducted by electronic means that allow participants to observe the exhibits during the hearing itself. Additionally, CalVCB has determined that it needs to be made clear that all parties are responsible for their own costs if the hearing is conducted by electronic means.

BENEFITS

Deleting the reference to “television” and including a reference to “video conference” will update the regulation to the use of modern technology. Additionally, deleting the provision that a party must be provided with an opportunity prior to the hearing to see each exhibit to be relied on at the hearing will further update the regulation by allowing the requirement that a party be able to observe exhibits to be satisfied by simultaneous observation of the exhibits during the hearing. Finally, the revisions will make clear that all parties are responsible for their own costs if the hearing is conducted by electronic means.

PURPOSE

Section 617.4, subdivision (a)(1)-(3): The purpose of the proposed revision is to update the regulation to state that video conference hearings are allowable and delete outdated references to the use of a “television.” The proposed revision is also intended to simplify the requirement that a party be able to observe exhibits in advance of the hearing and allow parties the ability to observe exhibits during the hearing itself.

Section 617.4, subdivision (b): The purpose of the proposed revision is to delete the outdated reference to “television” and include a reference to “video conference” to more accurately reflect the current technology used for hearings.

Section 617.4, subdivision (c): The purpose of the proposed revision is to delete the outdated reference to “television” and include a reference to “video conference” to more accurately reflect the current technology used for

hearings. The proposed revision also uses terminology consistent with other subdivisions by including the word “simultaneous” before the word “electronic.”

Section 617.4, subdivision (d): The purpose of the proposed new subdivision is to make clear that all parties are responsible for their own costs if the hearing is conducted electronically, rather than the Board.

Section 617.4, subdivision (e): The purpose of the proposed revision is to renumber subdivision (d) to subdivision (e), to allow for the inclusion of an additional subdivision.

NECESSITY

Section 617.4, subdivisions (a)(1)-(3): The proposed revision is necessary to ensure that the regulation accurately identifies the different means by which an electronic hearing may be held and to provide greater flexibility for the parties by allowing them to view exhibits during a hearing.

Section 617.4, subdivision (b): The proposed revision is necessary to ensure that the regulation accurately identifies the different means by which an electronic hearing may be held.

Section 617.4, subdivision (c): The proposed revision is necessary to ensure that the regulation accurately identifies the different means by which an electronic hearing may be held.

Section 617.4, subdivision (d): The proposed revision is necessary to make specific that all parties are responsible for their own costs of the hearing if conducted by electronic means.

Section 617.4, subdivision (e): The proposed revision is necessary to renumber the current version of subdivision (d) to subdivision (e) to allow the addition of a new requirement. The language in this subdivision is necessary to ensure all parties are aware of their obligations prior to a virtual hearing. This revision notifies all parties that the Board will not be providing a phone or computer for the party's use at an electronic hearing and allows the applicant to make an informed choice about whether they would like to appear virtually or be physically present.

SECTION 617.5 (Repeal)

PROBLEMS TO BE ADDRESSED

The current version of this section pertains only to hearings in which the Executive Officer or hearing officer exercises their discretion to limit the hearing to the written record alone. Following the August 2024 superior court decision prohibiting such hearings, this section is no longer valid.

BENEFIT

Repealing this section will eliminate an invalid provision.

PURPOSE

The purpose of this revision is to remove a regulation that is no longer valid.

NECESSITY

It is necessary to repeal this section as it is no longer valid and may simply create confusion as to which laws apply to CalVCB hearings.

SECTION 617.6 (Repeal)

PROBLEMS TO BE ADDRESSED

The current version of this section discusses the parameters of hearings in which the Board, Executive Officer, or hearing officer exercises their discretion to limit the hearing to the written record alone. Following the August 2024 superior court decision prohibiting such hearings, this section is no longer valid.

BENEFITS

Repealing this section will eliminate an invalid provision.

PURPOSE

The purpose of this revision is to remove a regulation that is no longer valid.

NECESSITY

It is necessary to repeal this section as it is no longer valid and may simply create confusion as to which laws apply to CalVCB hearings.

SECTION 617.7

PROBLEMS TO BE ADDRESSED

The current version of this section states that oral evidence must be taken under oath or affirmation in all hearings except hearings in which the hearing officer has exercised discretion to conduct a hearing on the written record alone. It also provides the parameters by which oral evidence may be presented. As a result of an August 2024 superior court decision prohibiting a hearing officer from exercising discretion to base a hearing on the written record only, this section must be revised to delete references to such hearings.

BENEFIT

By removing the language indicating that this section does not apply to hearings based solely on the written record, this section will now apply to all hearings conducted by the Board. The proposed revision will also correct the grammatical errors by capitalizing the word "Board" in subdivisions (d) and (e).

PURPOSE

Section 617.7, subdivision (a): The purpose of the proposed revision is to clarify that section 617.7 applies to all hearings conducted by the Board.

Section 617.7, subdivision (b): The purpose of the proposed revision is to renumber subdivision (c) to subdivision (b) to accommodate the deletion of current subdivision (b) and delete the language stating that a "hearing reporter" may administer an oath or affirmation.

Section 617.7, subdivision (c): The purpose of the proposed revision is to renumber subdivision (d) to subdivision (c) to accommodate the deletion of current subdivision (b), and to clarify that the parties have the right to examine witnesses, introduce exhibits into the record, and rebut evidence.

Section 617.7, subdivision (d): The purpose of the proposed revision is to renumber subdivision (e) to subdivision (d) to accommodate the deletion of current subdivision (b) and capitalize the word "Board."

Section 617.7, subdivision (e): The purpose of the proposed revision is to renumber subdivision (f) to subdivision (e) to accommodate the deletion of current subdivision (b), and to capitalize the word "Board."

Section 617.7, subdivision (f): The purpose of the proposed revision is to renumber subdivision (g) to subdivision (f) to accommodate the deletion of current subdivision (b).

NECESSITY

Section 617.7, subdivision (a): It is necessary to revise subdivision (a) to make clear that section 617.7 applies to all hearings conducted by the Board.

Section 617.7, subdivisions (b)-(f): The proposed revisions are necessary to accommodate the deletion of current subdivision (b), which relates to hearings in which the hearing officer has exercised their discretion to limit it to the written record only, as these hearings are no longer conducted. Additional revisions to subdivisions (d) and (e) are necessary ensure consistency throughout the regulations in the capitalization of the word "Board."

SECTION 617.8

PROBLEMS TO BE ADDRESSED

The current version of section 617.8 contains grammatical errors. It also fails to specify that the Board or hearing officer may take official notice of the policies adopted by the Board, pursuant to Evidence Code section 452. As section 647.31, which applies specifically to hearings being held pursuant to Government Code sections 13950 through 13966 (victim compensation claims), and 13970-13974.1 (Good Samaritan claims), is also being revised to include the authority to take official notice of policies adopted by the Board, this section needs to be revised to ensure uniformity in the application of the laws governing all CalVCB hearings.

BENEFIT

The proposed revision will correct the grammatical errors by capitalizing the word "Board" in subdivisions (a) and (b). Additionally, the revision will make clear that the Board or hearing officer may take official notice of the policies adopted by the Board. This will also ensure consistency in the regulations governing the hearings that are held by the Board or hearing officers as section 647.31 is also being revised to include the authority to take official notice of policies adopted by the Board.

PURPOSE

The purpose of the proposed revision is to make clear that the Board or hearing officer may take official notice of the policies adopted by the Board. This will also ensure consistency in the regulations governing hearings that are held by the Board or hearing officers. Additionally, the proposed revisions are intended to ensure consistency throughout the regulations by capitalizing the word "Board" wherever it appears.

NECESSITY

The revisions are necessary to provide consistency in all regulatory references to the "Board" and to clarify that the official notice provisions in this Chapter allow for the Board or hearing officer to take notice of the same things regardless of the type of hearing being held.

SECTION 617.9

PROBLEM TO BE ADDRESSED

When a matter is set for hearing, CalVCB staff send a Notice of Hearing to the parties at least 20 days before the date for which the hearing is scheduled. The parties must be prepared to proceed at the specified date and time. Frequently, the parties either fail to appear at the hearing or they appear at the hearing and decline to participate or provide any additional documentary evidence.

BENEFIT

The proposed revision will make it clear that if a party either fails to appear at a hearing or fails to proceed with the hearing, the hearing officer then has the discretion to proceed on the written materials in the record alone. Alternatively, if the hearing officer finds good cause has been shown for the failure to appear or failure to proceed, the hearing officer has the discretion to grant a continuance of the hearing or extension of time for the party to submit additional documentary evidence.

PURPOSE

The purpose of the proposed revision is to notify the parties that they must appear at the scheduled time and be prepared to proceed. The proposed revision will further notify them that their failure to appear for the hearing or failure to proceed with the hearing authorizes the hearing officer to issue a decision based solely on the written record. Finally, the proposed revision notifies parties that, if they fail to appear or fail to proceed, the hearing officer has discretion to continue the hearing or grant an extension of time for the submission of additional evidence if they make a showing of good cause.

NECESSITY

The proposed revision is necessary to ensure that the parties are aware of the consequences of their failure to appear or to appear unprepared to proceed. The proposed revision is also necessary to advise the parties that, if they are able to demonstrate good cause for a failure to appear or proceed with the hearing, the hearing officer has the discretion to continue a hearing or to grant an extension of time for them to submit additional evidence.

SECTION 619.4

PROBLEMS TO BE ADDRESSED

After a hearing is concluded and the record officially closes, the hearing officer drafts a proposed decision for the Board to consider. The current version of section 619.4 states that copies of the proposed decision and notice of the Board meeting at which it will be considered must be sent to the parties. The section further states that the party may submit written argument concerning that proposed decision. While this section was intended to apply only to hearings held pursuant to Penal Code section 4900, applicants and the public have expressed confusion as to whether it applies to hearings held pursuant to Government Code sections 13950 through 13966 (victim compensation claims), and 13970-13974.1 (Good Samaritan claims). Additionally, any interpretation that this section applies to hearings on victim compensation claims conflicts with section 647.33, which states that such hearings are confidential and closed to the public.

BENEFIT

The proposed revisions will make clear that this section, which provides a requirement of notice and public comment on proposed decisions, applies only to hearings held pursuant to Penal Code section 4900, and not to hearings held pursuant to Government Code sections 13950 through 13966 (victim compensation claims), and 13970-13974.1 (Good Samaritan claims). This will resolve confusion that applicants and the public currently experience.

PURPOSE

Section 619.4, subdivision (a): The purpose of this new subdivision is to make clear that section 619.4 applies only to hearings held pursuant to Penal Code section 4900.

Section 619.4, subdivision (b): The purpose of this new subdivision is to make clear that section 619.4 does not apply to hearings held pursuant to Government Code sections 13950 through 13966 (victim compensation claims), and 13970-13974.1 (Good Samaritan claims).

Section 619.4, subdivision (c): The purpose of this revised subdivision is to renumber the current version of subdivision (a) to subdivision (c), and to capitalize the word "Board."

Section 619.4, subdivision (d): The purpose of this revised subdivision is to renumber the current version of subdivision (c) to subdivision (d).

Section 619.4, subdivision (e): The purpose of this revised subdivision is to renumber the current version of subdivision (d) to subdivision (e), and to capitalize the word "Board."

NECESSITY

Section 619.4, subdivision (a): The proposed revision is necessary to make clear that section 619.4 applies only to hearings held pursuant to Penal Code section 4900.

Section 619.4, subdivision (b): The proposed revision is necessary to make clear that section 619.4 does not apply to hearings held pursuant to Government Code sections 13950 through 13966 (victim compensation claims), and 13970-13974.1 (Good Samaritan claims), thereby resolving confusion on behalf of applicants and the public.

Section 619.4, subdivision (c): The proposed revision is necessary to renumber the current version of subdivision (a) to subdivision (c), to allow the addition of new subdivisions. It is also necessary to create consistency in regulations by capitalizing the word "Board."

Section 619.4, subdivision (d): The proposed revision is necessary to renumber the current version of subdivision (c) to subdivision (d), to allow the addition of new subdivisions.

Section 619.4, subdivision (e): The proposed revision is necessary to renumber the current version of subdivision (d) to subdivision (e), to allow the addition of new subdivisions. It is also necessary to create consistency in the regulations by capitalizing the word "Board."

SECTION 619.5

PROBLEMS TO BE ADDRESSED

The current version of section 619.5, which discusses the actions that the Board may take on a proposed decision, creates confusion as it appears to suggest that the Board will deliberate, in a public session, on proposed decisions related to all three types of hearings that CalVCB conducts. To the extent that it can be interpreted to state that hearings held on claims filed pursuant to Government Code sections 13950-13966 (victim compensation) are open to the public, it conflicts with California Code of Regulations, title 2, sections 647.33, subdivision (a) and 647.2, subdivision (d). Section 647.33, subdivision (a) states that hearings held on victim compensation claims are closed to the public as these proceedings necessarily discuss confidential and sensitive information. The one exception is when the party requests that the hearing be open to the public. Section 647.2, subdivision (d) then clarifies that, if there is a conflict between the general hearing regulations located in California Code of Regulations, title 2, article 2.5 (which includes section 619.5), and the provisions pertaining exclusively to hearings conducted pursuant to Government Code sections 13950 through 13966, which are located in article 5.2 and include section 647.33, the provisions found in article 5.2 shall apply. While the current version of the regulations do not discuss the forum in which a hearing on a claim filed pursuant to Government Code sections 13970-13974.1 (Good Samaritan) must be held, the policy and privacy concerns that require the Board to deliberate in closed session on hearings held on victim compensation claims also apply to hearings held on Good Samaritan claims. Consequently, section 619.5 needs to be revised to clarify that, while it applies to all three types of hearings, hearings conducted on claims filed pursuant to Penal Code section 4900 are open to the public, while hearings conducted on claims filed pursuant to Government Code sections 13950-13966 or 13970-13974.1, are closed to the public. The regulation also needs to be revised to capitalize the word "Board."

BENEFITS

By revising section 619.5 to clarify that hearings on claims filed pursuant to Penal Code section 4900 are open to the public, while hearings on claims filed pursuant to Government Code sections 13950-13966 or 13970-13974.1 are confidential and closed to the public, applicants and the public will have clarity on whether this section applies to them. The revision will also bring consistency to the regulations by capitalizing the word "Board."

PURPOSE

Section 619.5, subdivision (a): The purpose of the proposed revision is to capitalize the term “Board” to make it consistent with the other references to this body throughout the regulations pertaining to the CalVCB.

Section 619.5, subdivision (b): This purpose of this new subdivision is to clarify that the Board must consider the proposed decisions relating to applications submitted pursuant Government Code sections 13950-13966 or 13970-13974.1 in closed session.

Section 619.5, subdivisions (c)-(f): The purpose for the proposed revisions to these subdivisions is to renumber them to accommodate the proposed addition of a new subdivision (b), and to bring consistency to the regulations by capitalizing the word “Board.”

NECESSITY

Section 619.5, subdivision (a): This revision is necessary to ensure the word “Board” is uniformly capitalized throughout this Chapter.

Section 619.5, subdivision (b): This proposed revision is necessary to further clarify for applicants and the public that the Board's consideration of proposed decisions on claims submitted pursuant Government Code sections 13950-13966 or 13970-13974.1 will be held in closed session. This will help alleviate any ongoing confusion about which Board proceedings are open to the public and which are closed to the public due to their confidential and sensitive nature.

Section 619.5, subdivisions (c)-(f): These proposed revisions are necessary to renumber the subdivision to accommodate the addition of new language in subdivision (b). They are also necessary to ensure that the word “Board” is uniformly capitalized throughout this Chapter.

**PROPOSED AMENDMENTS TO
ARTICLE 5.2 HEARINGS FOR INDEMNIFICATION OF CITIZENS BENEFITING THE PUBLIC
AND INDEMNIFICATION OF VICTIMS OF CRIME**

Section 647.3 (Repeal)

PROBLEMS TO BE ADDRESSED

This section needs to be repealed because it is duplicative of other new and existing sections. The existing section is entitled “Definitions” and purports to define terms applicable to victims of crime claims. However, the applicability of the existing regulation is only evident by its placement in the regulatory scheme. Additionally, there are currently two separate sections, 615.2 and 647.3, which each contain “definitions” of terms that are used interchangeably throughout the general hearing procedures that apply to all hearings (Article 2.5, sections 615.1 through 619.7), the hearing procedures specific to claims by persons erroneously convicted of felonies (Article 5, sections 640 through 645), and the hearing procedures for victims of crime claims and Good Samaritan claims (Article 5.2, sections 647.1 through 647.38). Having two “definitions” sections creates confusion about which terms apply to which type of hearing. Further, some terms were entirely duplicative of each other and other terms had slightly different definitions or citations. It is desirable to have one “definitions” section that applies to all types of hearings.

BENEFITS

Repealing this section and moving the defined terms in the current version of this section to the revised version of Section 615.2 eliminates confusion and creates clearer, streamlined regulations. This creates a regulatory scheme that is much easier to read and follow.

PURPOSE

The purpose of the proposed repeal of this provision is to prevent confusion that has been created by having two separate “definitions” sections that apply to hearings on victim compensation claims. The definitions from this section were incorporated into the definitions section above (Section 615.2). This ensures all articles in this chapter are uniformly interpreted according to a single set of definitions, which apply to this chapter in full, and to prevent parties from overlooking a relevant definition by having only one section that provides definitions.

NECESSITY

Before this change, sections 615.2 and this section each contained relevant defined terms applicable to both chapters. However, some terms appeared in both sections and contained slightly different definitions of the same word. This has caused confusion about which definitions applied to each section.

SECTION 647.4 (Repeal)

PROBLEMS TO BE ADDRESSED

The existing regulation sets forth the processes for consideration of an application or supplemental claim, notifying an applicant of a staff recommendation, and requesting a hearing. In light of the fact that the process of conducting informal hearings on the written record at the discretion of the hearing officer was invalidated by court order, CalVCB was required to revise its hearing procedures. Revision of the hearing procedures requires revision of the appeal procedures, as well. As a result, the existing regulation is now inaccurate and outdated. It should be repealed.

BENEFITS

The proposed repeal of this regulation will allow CalVCB to formalize new appeal processes and hearing procedures.

PURPOSE

The purpose of repealing this section is to allow for the adoption of new processes and procedures. The repeal of this provision will also eliminate inaccurate information.

NECESSITY

This revision is necessary to allow CalVCB to adopt new appeal processes and hearing procedures.

SECTION 647.20

PROBLEM TO BE ADDRESSED

The existing regulation addresses the circumstances under which an applicant has the right to request a hearing. However, CalVCB is currently revising its appeal and hearing procedures. The changes must be addressed in regulations so that the public will understand how applications and supplemental claims are processed and how the right to an appeal arises. The proposed regulation updates the procedures that were previously set forth in section 647.4, which is being repealed.

BENEFITS

The proposed regulation addresses the Board staff's process of recommending an application or claim be allowed or denied (Cal. Code Regs., tit. 2, § 647,20, subd. (a)), the right to appeal (Cal. Code Regs., tit. 2, § 647,20, subds. (b)-(c)), CalVCB's obligations to provide notice of recommendations which may be appealed (Cal. Code Regs., tit. 2, § 647,20, subd. (d)), and the result that can be expected when a party fails to appeal an adverse recommendation or overpayment assessment (Cal. Code Regs., tit. 2, § 647,20, subd. (e)). The proposed revisions accurately reflect how applications and claims are processed. The benefit of the proposed regulation is to provide transparency by making processes and procedures clear to the public.

PURPOSE

Section 647.20, subdivision (a): The purpose of the proposed subdivision is to make clear the types of recommendations that staff may make including allowing or denying a claim or application, in whole or in part. According to Government Code section 13959, the Board shall grant a hearing when an applicant contests a staff recommendation that compensation be denied in whole or in part.

Section 647.20, subdivisions (b)(1)-(3): The purpose of the proposed subdivisions is to make clear what actions may give rise to a party's right to appeal. Specifically, the purpose of the proposed subdivisions is to state that a right to appeal arises when staff recommends any of the following actions: 1) denial of an untimely application because no good causes exists for the late filing; 2) denial of an application or supplemental claim; or 3) determination that an applicant should reimburse the CalVCB for an overpayment.

Section 647.20, subdivision (c): The purpose of the proposed subdivision is to include and renumber the substance of what was, in the previous iteration of

this regulation, contained in subdivision (b). The subdivision sets forth the circumstance when a party does not have the right to appeal according to Government Code section 13957.2, subdivision (a).

Section 647.20, subdivision (d): The purpose of this proposed subdivision is to specify the notice and information that will be provided to an applicant who has a right to appeal a staff recommendation. It describes how notice will be provided, the designated time limitations, and the actions the applicant or their representative must take to appeal a recommendation.

Section 647.20, subdivision (e): The purpose of this proposed subdivision is to put parties on notice that, if a party fails to appeal, the staff recommendation will become the final decision.

NECESSITY

Section 647.20, subdivision (a): The proposed subdivision is necessary to make clear the possible outcomes of applications and supplemental claims. This provides transparency of Board processes.

Section 647.20, subdivision (b)(1)-(3): This proposed subdivision is necessary to make clear when an applicant has the right to appeal and to authorize the Board to accept and consider appeals under the specified circumstances.

Section 647.20, subdivision (c): This proposed subdivision carries over from the prior iterative of this regulation but is renumbered here. The subdivision is necessary to make clear that there is no right to appeal when the sole objection is to the rates and limitations set by the Board under Government Code section 13957.2, subdivision (a). Because such rates and service limitations are exempt from the Administrative Procedure Act and providers who accept payment from the Board "shall not accept any payment" from other sources above the maximum rate set by the Board, applicants do not have a right to challenge them on appeal.

Section 647.20, subdivision (d): The proposed subdivision is necessary to ensure that parties are provided with notice of their right to appeal adverse recommendations or assessments. The proposed subdivision is also necessary to provide transparency of Board practices.

Section 647.20, subdivision (e): The proposed revision is necessary to ensure parties are aware of the consequences of declining to appeal.

SECTION 647.20.1 (Repeal)

PROBLEM TO BE ADDRESSED

This regulation was invalidated by court order signed on August 5, 2024, by Alameda County Superior Court Judge Frank Roesch in the matter of *Mothers Against Murder v. California Victim Compensation Board* bearing case number 21CV003220. CalVCB was directed by the court to remove this regulation from the regulatory scheme.

BENEFITS

Repeal of this section will comply with a court order and make it clear that CalVCB is no longer conducting hearings on the written record without applicants first being given the opportunity to present oral evidence at a hearing.

PURPOSE

The repeal of this section is required to comply with the court's order and will, thus, eliminate inaccurate information. Repealing this section will also allow for the adoption of new processes and procedures.

NECESSITY

Repeal of this section is necessary by court order and will allow CalVCB to adopt new appeal processes and hearing procedures.

SECTION 647.21

PROBLEMS TO BE ADDRESSED

The current version of this section contains an outdated process. Therefore, CalVCB is required to implement new processes for the manner in which applicants' appeals will be decided. A review of the current regulations governing the appeal process showed that numerous updates and revisions were necessary. Repurposing the regulation to reflect new procedures is desirable.

BENEFIT

Revision of this regulation to accurately state the new processes and procedures used by CalVCB will be beneficial because the public will be notified of program changes and advised of how their applications and claims will be handled. Revisions will clarify that this section governs the procedures and notice provided to applicants who wish to appeal an adverse staff recommendation and describe how they can obtain a hearing. This section is necessary because it provides specific details about the rights of claimants and the responsibilities of the Board.

PURPOSE

Section 647.21, subdivisions (a)-(b): The purpose of these proposed new and revised subdivisions is to provide the public with notice of what the Board will do upon receipt of an appeal from an applicant challenging a staff recommendation that a benefit be denied in whole or in part. In particular, it specifies that a hearing officer will be assigned to review the appeal, and the applicant or applicant's representative will be provided with notice of the hearing officer's recommendation and their right to a hearing.

Section 647.21, subdivision (c): The purpose of this new proposed subdivision is to notify the public of the time limitations and methods for requesting a hearing after receiving the notice described in subdivision (b).

Section 647.21, subdivision (d): The purpose of the proposed new subdivision is to expressly provide that additional evidence may be submitted to the Board regardless of whether a hearing is requested and that, if the applicant chooses not to have a hearing, the decision will be based on evidence in the record.

Section 647.21, subdivisions (e)-(f): These proposed new subdivisions serve the purpose of explaining the procedures that will be used in the event a hearing is

requested. These provisions specify how a hearing date and time will be set and describe the required content of the notice of hearing.

Section 647.21, subdivision (g): The purpose of this new subdivision is to describe what will happen if an applicant does not appeal or request a hearing. It makes clear that the recommendation of the hearing officer will be sent to the Board to adopt as a final decision. This subdivision is necessary to provide adequate notice to applicants and their representatives about what the Board will do if a recommendation is not appealed.

NECESSITY

Section 647.21, subdivisions (a)-(b): This proposed subdivision is necessary to memorialize the newly adopted procedures that the Board will follow after an appeal is received.

Section 647.21, subdivision (c): This proposed subdivision is necessary to ensure the public is aware of how to request a hearing, the types of hearings available, and the time limitations for requesting a hearing.

Section 647.21, subdivision (d): This new subdivision is necessary to ensure that applicants and/or their representatives are aware that, regardless of whether a hearing is requested or attended, additional evidence can be submitted and will be considered by the hearing officer. This section also sets forth the notice period for submitting such evidence. This provides necessary transparency and educates the public on their options in the event they do not want a hearing.

Section 647.21, subdivision (e)-(f): These proposed subdivisions are necessary to notify the public of the process by which their appeal is set for hearing and the manner in which they will be notified of the hearing. This is also necessary to ensure that the public is provided sufficient notice of the hearing in advance of the hearing. It also informs the public how to access information about hearing procedures if needed.

Section 647.21, subdivision (g): This proposed subdivision is necessary to provide the public with notice of what will happen if they do not request a hearing so that applicants and their representatives can make an informed decision on whether they wish to request a hearing or submit additional evidence.

SECTION 647.22 (Repeal)

PROBLEM TO BE ADDRESSED

The existing regulation sets forth a statement that the Board shall provide information about the hearing procedures upon request. However, under the new procedures that are in the process of being adopted, the documentation provided to the applicants and/or their representatives will contain citations to the regulations which govern hearing procedures, making this section unnecessary. Additionally, this is an outdated regulation that was implemented before widespread adoption of the internet. Hearing procedures are more accessible now and can easily be found online.

BENEFITS

The proposed repeal of this regulation will allow CalVCB to explain to applicants how to access the hearing procedures rather than requiring that they make a request, following which, staff mails out the documents. However, nothing prevents applicants from making such a request if they wish to do so. Similarly, nothing prevents CalVCB from sending hearing procedures by mail if an applicant prefers.

PURPOSE

The purpose of repealing this section is to allow for the adoption of new processes and procedures.

NECESSITY

This revision is necessary to allow CalVCB to adopt new appeal processes and hearing procedures.

SECTION 649.25 (Repeal)

PROBLEMS TO BE ADDRESSED

The existing regulation addresses hearings conducted by electronic means. In light of the fact that the hearing procedures have been revised, this section needs to be repealed. Specifically, the information contained in this regulation has been relocated and incorporated into proposed Section 617.4. As a result, the existing regulation is now outdated and duplicative.

BENEFITS

The proposed repeal of this regulation will allow CalVCB to formalize new appeal processes and hearing procedures.

PURPOSE

The purpose of repealing this section is to allow for the adoption of new processes and procedures.

NECESSITY

This revision is necessary to allow CalVCB to adopt new appeal processes and hearing procedures.

SECTION 647.26 (Revised and Renumbered to 647.22)

PROBLEMS TO BE ADDRESSED

The existing regulation addresses requests for continuances. In light of the fact that the hearing procedures have been revised, this section needs to be revised to address how an applicant or their representative may request that a hearing be rescheduled and the need to demonstrate good cause. Renumbering is needed to fit the revisions to this regulation into the proper chronological order of the new hearing procedures.

BENEFITS

The benefit of revising this regulation is to set forth the manner in which an applicant or their representative can seek to reschedule a hearing upon a showing of good cause. The renumbering of the section to 647.22 will ensure that the order of the hearing procedures makes logical sense.

PURPOSE

Section 647.26 (to be renumbered to 647.22), subdivision (a): The purpose for revising this subdivision is to update the procedures and time limitations for requesting that a hearing be rescheduled once the new procedures are adopted.

Section 647.26 (to be renumbered to 647.22), subdivisions (b)-(c): The purpose for the revisions to these subdivisions is to change the timeline for requesting to reschedule a hearing in order to help accommodate an increase in the number of hearings being conducted. These subdivisions clarify that a hearing will only be rescheduled if good cause exists to do so. These revisions serve the purpose of ensuring the Board is able to accommodate the increased appeal workload while also accommodating the due process rights of applicants or their representatives to reschedule hearings. These changes also repeal the requirement that a request to reschedule a hearing be denied if it is based on technological failure.

NECESSITY

Section 647.26 (to be renumbered to 647.22), subdivision (a): These revisions are needed to provide the public with notice of the updated procedures for requesting that a hearing be rescheduled. The revisions promote due process by ensuring the public is aware of how, and when a request must be made, to seek a continuance of the hearing.

Section 647.26 (to be renumbered to 647.22), subdivisions (b)-(c): The proposed revisions are needed to provide the Board with a uniform standard to use when assessing requests to reschedule a hearing. The revisions also broaden the grounds for granting a request by deleting the requirement that a request be denied if it is based on a broken cellular phone. This change is needed to allow for additional discretion in granting requests that are timely.

SECTION 647.30

PROBLEM TO ADDRESSED

The existing provision does not inform a party that the issues to be addressed at a hearing will be noticed in advance. The existing provision also included references to informal hearings on the written record which are now only being conducted if an applicant requests a review on the written materials, waives an oral hearing, fails to appear at an oral hearing, fails to proceed at an oral hearing, or declines to request an oral hearing. Additionally, the existing regulation does not accurately reflect updated hearing processes and procedures or set forth the authority of the hearing officer. Revisions are desirable.

BENEFIT

The benefit of the proposed revisions is to make clear to applicants that they will receive notice of the issues to be addressed at the hearing. This will ensure all parties are prepared to discuss relevant issues. References to an informal hearing on the written record are removed to delete inaccuracies that do not comport with current practices. Additionally, the proposed revisions make it clear that testimony will be taken under oath and recorded, which notifies parties that the hearing will become part of their CalVCB record. Furthermore, the revisions set forth the basic authority of hearing officers.

PURPOSE

Section 647.30, subdivision (a): The purpose of this revised subdivision is to remove the references to procedures used in informal hearings. The new subdivision now articulates the scope of the issues that will be addressed at the hearing in light of the new procedures being implemented.

Section 647.30, subdivision (b): The purpose of this revised subdivision is to specify that witnesses who provide oral evidence will be placed under oath and that their testimony may be recorded. This broadens the hearing officer's authority to make both a video and audio recording.

Section 647.30, subdivision (c): The purpose of this new subdivision is to explain the parties' obligation to provide the Board with copies of any exhibits that will be relied on at the hearing. This subdivision is necessary to clearly articulate the responsibility of the parties and to ensure the parties are aware that transmittal of the exhibits may be provided either before or after the hearing.

Section 647.30, subdivision (d): The purpose of new subdivision (d) is to put all parties on notice that the hearing officer has discretion to alter the date, time, or location of a hearing if it is necessary to ensure due process.

Section 647.30, subdivision (e): The purpose of this subdivision is to revise and renumber from subdivision (c) from the current version of the subdivision to subdivision (e) for a more logical flow of the section to enhance the readability of this chapter. The purpose of the revisions to this subsection is to articulate that, although the regulation states that a party may not submit additional evidence and arguments after a hearing record is closed, the hearing officer retains the discretion to review the additional evidence.

NECESSITY

Section 647.30, subdivision (a): The proposed revision is necessary to remove references to the now eliminated informal hearing procedures. The proposed subdivision articulates the scope of the issues that will be addressed at a hearing and provides notice of the update to the applicant and/or their representative as well as the public.

Section 647.30, subdivision (b): The proposed revision is necessary to update the regulations governing hearings.

Section 647.30, subdivision (c): The proposed revision is necessary to notify parties that they are required to provide the Board with copies of exhibits, so that all parties are aware of this obligation.

Section 647.30, subdivision (d): This proposed revision is necessary to ensure the hearing officer is able to accommodate the needs of the parties at the hearing in the event the time or location of the proceeding does not meet the parties' needs or other, due process concerns require accommodation.

Section 647.30, subdivision (e): This proposed revision is necessary to provide parties with information about what evidence a hearing officer has the discretion to consider.

SECTION 647.31

PROBLEMS TO BE ADDRESSED

The current regulation contains a subdivision that explains what evidence the Board or hearing officer may take official notice of. That information is already contained in section 617.8, subdivisions (a) and (b). Having two different regulations with the same information, but slightly different verbiage, has created confusion as to which provisions apply to the different hearings that CalVCB holds. By revising this section to move subdivision (f) to section 617.8, CalVCB can ensure that the Board uniformly permits official notice of the policies they have adopted.

BENEFITS

The revisions to this subdivision ensure that the information related to the Board's authorization to take official notice of the policies they have adopted makes clear that the official notice provisions in this Chapter allow for the Board or hearing officer to take notice of the same things regardless of the type of hearing being held.

PURPOSE

Section 647.31, subdivisions (f)(1)-(3): The proposed revision removes duplicative language that is unnecessary and is more appropriately located in article 2.5, Section 617.8, which addresses hearing procedures.

NECESSITY

Section 647.31, subdivisions (f)(1)-(3): The proposed revision is necessary to ensure that two nearly duplicative provisions addressing the same topic do not exist.

SECTION 649

PROBLEMS TO BE ADDRESSED

The California Victim Compensation Board considers applications from victims and derivative victims of crime. A “derivative victim” is an individual who sustains pecuniary loss as a result of injury or death to a victim. (Gov. Code, § 13951, subd. (c).) However, the Board is a payor of last resort, which means that the Board may only reimburse an applicant for their pecuniary losses that are not covered by other reimbursement sources. (Gov. Code, §§ 13951 and 13954.) If the Board does not ensure that other reimbursement sources are exhausted before Board funds are utilized for the same benefit, applicants may be paid twice for the same pecuniary losses from both the Board and the other source. The receipt of double payment constitutes an overpayment for which the applicant is liable to repay the Board. (Gov. Code, § 13965.) For example, if a person is paid income loss from the EDD through SDI, the amount of those benefits must be deducted from the Board’s income loss calculations for the same period. While some identified reimbursement sources are evident, others are not specifically listed in the current version of California Code of Regulations, title 2, section 649, subdivision (a)(18).

BENEFITS

The proposed regulation will provide a more complete list of the reimbursement sources that the Board must take into consideration before Board funds can be utilized to pay benefits. It will also make clear that SDI is not considered a reimbursement source for self-employed individuals unless they have elected to participate in the optional, Disability Insurance Elective Coverage (DIEC), program through EDD or otherwise qualify for benefits through prior employment.

Additionally, the proposed regulation will capitalize the first word of every subdivision to be consistent with the formatting of the other regulations.

PURPOSE

Section 649, subdivisions (a)(1)–(28): The proposed revision to the entirety of regulation 649 capitalizes the first word of every subdivision to be consistent with the formatting of the other regulations.

Section 649, subdivision (a)(13): The proposed revision to subdivision (a)(13) corrects an incomplete citation.

Section 649, subdivision (a)(18)(B): The proposed revision to subdivision (a)(18)(B) adds two potential sources of reimbursement benefits -- CalFresh and CalWORKs -- adds acronyms and corrects capitalization errors.

Section 649, subdivision (a)(18)(E): The proposed revision to subdivision (a)(18)(E) makes clear that SDI will not be considered a reimbursement source for self-employed individuals who do not qualify for such benefits. Current regulations require that all applicants demonstrate that they have attempted to exhaust SDI benefits.

Section 649, subdivision (a)(27): The proposed revision to subdivision (a)(27) corrects a citation to the Harbors and Navigations Code that has changed since the current regulation was enacted.

NECESSITY

Section 649, subdivisions (a)(1)–(28): The proposed revisions are necessary to make the formatting of this regulation consistent with the other regulations by capitalizing the first word of each subdivision.

Section 649, subdivision (a)(13): The proposed revision to subdivision (a)(13) is necessary to correct an incomplete citation.

Section 649, subdivision (a)(18)(B): The proposed revision to subdivision (a)(18)(B) is necessary to specify what potential reimbursement sources the Board considers when determining the amount of benefits available by including CalFresh and CalWORKs.

Section 649, subdivision (a)(18)(E): The proposed revision to subdivision (a)(18)(E) is necessary to ensure that self-employed individuals who are not covered by SDI benefits, and their derivative victims, are not disqualified from seeking reimbursement for income or support loss for failure to demonstrate exhaustion of such benefits.

Section 649, subdivision (a)(27): The proposed revision to subdivision (a)(27) is necessary to provide the correct citation.

SECTION 649.8

PROBLEMS TO BE ADDRESSED

The current regulations governing emergency awards contain misstatements and misinterpretations of the statute. CalVCB is proposing revisions to this section to ensure the regulation accurately reflects the statutory provisions of Government Code § 13952.5(a) that it is interpreting.

This statute does not contemplate subsequent claims or bills. The language of the statute appears to conflict with the current version of California Code of Regulations, Title 2, § 649.8(a) which states that an applicant may indicate on the application, *subsequent application or bill* that he or she is applying for an emergency award.

The existing regulation states that an emergency award may be requested on an “application, subsequent application or bill.” The regulation misinterprets the language of the statute because it creates different justifications and timelines for when an emergency award can be requested. The statute is very narrow in scope and allows emergency funds to only be awarded in limited situations prior to the full consideration of an application. The terms “subsequent application” or “bill” is not included in the statute and is contrary to the directives in the statute. The phrase “subsequent application or bill” has created significant confusion about when an emergency award may be requested. This has led to applicants and Board staff requesting emergency awards after they’re application has been fully considered and allowed. The language of the statute, however, does not allow for emergency awards after full consideration of an application. Nevertheless, it does allow for further consideration of the application for a regular award if the emergency award request is denied

Additionally, the existing statute allows a claimant to request that payment of an expense(s) be considered on an emergent basis. Due to the inaccurate interpretation of the statute that is contained in the regulation, applicants, the public and CalVCB staff have been misled that a request for an emergency award can happen at any time after an application is submitted. This misinterpretation has led to a process at CalVCB whereby an emergency request initiates an accelerated process of staff considering and verifying emergency awards at any time they are requested. This is because the regulation appears to authorize emergency awards at any time when in fact the statute only allows for them during a specifically described time period. If an applicant requests an emergency award on a bill or claim after full consideration of their application, CalVCB staff has authorized the emergency award and expedited review and payment of claims despite those actions and funding not being contemplated or authorized by the statute. There is no statutory authority that allows CalVCB to award emergency funds beyond the

statutory restricted timeline that limits emergency awards to instances when delaying funds until full consideration and approval of the application will cause substantial hardship. The regulation, therefore, contains inaccurate information and confuses the public and applicants about when they can request an emergency award.

Due to the errors in the regulation, CalVCB has received numerous emergency award requests that appear to circumvent the statute by requesting emergency awards after full consideration of the application. The regulation requires these requests for funds to be considered on an emergency basis even if the request is made several months or even years after the crime and initial approval of the application. Making emergency awards after full consideration of the application is not authorized by the statute and therefore some have been processed and awarded in error.

Additionally, the regulation does not adhere to the statutory guidance of the standard under which emergency awards are considered and processed. The regulation states that an applicant may receive an emergency award to avoid or mitigate substantial hardship. The regulation provides examples of substantial hardship that are not exclusive but create ambiguity about what constitutes a substantial need. This causes confusion and allows for inconsistent application of the statute and regulations, which has led to CalVCB granting emergency awards that are not authorized under to the statute. Revisions to the regulation is needed to clarify the timeframe during which emergency awards are authorized and what circumstances will give rise to allowing for an emergency award.

BENEFIT

The proposed revisions accurately interpret the statutory language. This puts the public on notice of when and how an emergency award may be granted and the statutory timeframe for when an emergency award must be provided. The revisions provide notice to the public that emergency awards are only awarded under certain circumstances and there is a limited timeframe when they can be considered and awarded. It also notifies the public and applicants of the procedures they must undertake and the standard of review that must be met to obtain an emergency award. This will reduce the number of emergency award requests and aid CalVCB staff in efficiently considering applications that include a request for an emergency award.

PURPOSE

Section 649.8, subdivision (a): The purpose of this subdivision is to state that an emergency award request can be made at the time of application for CalVCB

benefits. It makes clear that emergency awards are only available at the time of application and not available for any bills that are submitted after an application is approved. Additionally, by removing the terms “subsequent application” and “bill” from the regulation clarifies that emergency awards are made in connection with applications and not when an applicant submits claims or bills on an existing, approved application.

Section 649.8, subdivision (b): The purpose of the proposed revisions is to separate the timeline for the review and issuance of an emergency award. The processing time was relocated to newly created subdivision (g). These revisions also serve the purpose of replacing the outdated “VCP” (referring to the Victim of Crimes Program) with the more universally understood word “Board.”

Section 649.8, subdivision (c)(1)-(3): The purpose of the proposed revision to these provisions is to make clear that emergency awards require proof of a substantial hardship and immediate need, consistent with the statutory requirement (Government Code § 13952.5(a)). It further provides that the Board cannot issue an emergency award when it appears the applicant is ineligible for compensation. In addition, the purpose of the revisions are to make clear that reimbursement for crime scene cleanup includes only the costs associated with certain professional cleaning services.

Section 649.8, subdivision (g): The purpose for revising this subdivision is to specify the statutory timeline governing when emergency awards must be decided and paid. This notifies the public of their right to expedited payment in the event an emergency award is granted and that they can agree to an extension when needed to allow for additional consideration of requests for an emergency award.

NECESSITY

Section 649.8, subdivision (a): The proposed revisions are necessary to make clear to the public that an emergency award request may be submitted with an application. Furthermore, the revisions ensure that applicants cannot circumvent standard processing by simply labeling every bill as an emergency. Additionally, the deletion of “subsequent application” and “bill” resolves ambiguity about when and how to request an emergency award and eliminates any conflict with the governing statute, Government Code § 13952.5(a).

Section 649.8, subdivision (b): The purpose of the revisions is to clarify the process whereby CalVCB will consider emergency awards and eliminates confusing and superfluous terms. It also includes updates to correct or eliminate out-of-date terms that are not being used and may lead to confusion.

Section 649.8, subdivisions (c)(2)-(3): The revisions are necessary to ensure the public is adequately informed of what level of need must be shown to obtain an emergency award. The revisions are also necessary to establish that reimbursement for crime scene cleanup expenses is available on an emergency basis, subject to limitations specified in the governing statute.

Section 649.8, subdivision (g): This proposed revision is necessary to expressly identify the time limits for CalVCB to consider and verify emergency awards. It also clarifies that the time limits may be adjusted if all parties agree. Additionally, the proposed revisions conform the regulation to the governing statute (Government Code § 13952.5(a)).

SECTION 649.32

PROBLEMS TO BE ADDRESSED

In 2009, California Code of Regulations, title 2, section 649.32 was adopted to provide the Board and the public with guidance on how eligibility for income loss and support loss would be verified and determined. The regulation was amended in 2011, 2012, and 2014. Nevertheless, the current regulation does not address all situations that arise in relation to applicants' requests for reimbursement of income loss and support loss. The regulation needs to be updated to clarify the requirements and include additional employment situations that have arisen since the regulation was first enacted. This will enable more applicants to successfully establish eligibility for these important benefits.

To determine eligibility for "income loss," the Board must verify that the victim was employed or self-employed at the time the crime occurred and, if so, how much income loss they sustained as a direct result of the crime. This determination is dependent on the documentation submitted by the applicant and obtained by the Board. Income loss is commonly based on the victim's earnings, meaning the Board staff must verify the victim's earnings to determine the victim's eligibility and calculate the appropriate benefits.

To determine eligibility for "support loss," the Board must verify the amount of support the derivative victim is no longer receiving due to the victim's death or disability that was a direct result of the crime. As with "income loss," determining eligibility for support loss is also dependent on the documentation submitted by the victim or derivative victim and verified by the Board. Often, support loss is based on the victim's earnings, which then requires that Board staff verify the victim's earnings in order to determine eligibility and calculate the appropriate benefits.

However, the existing regulation is unclear and deficient for several reasons. This renders many applicants unaware of the circumstances under which income and support loss may be awarded, and often results in victims or derivative victims being unable to qualify for reimbursement of income and support loss, a result never intended by the current regulation.

First, the existing regulation neglects to define the term "income" or identify the sources of revenue the Board will consider in determining eligibility for income loss. Additionally, it does not address all types of employment and self-employment. For example, the regulation lacks direction about the eligibility of individuals who work in the gig economy, such as ride-share drivers, food delivery drivers, and other gig workers. Additionally, the existing regulation does

not allow the payment of income loss benefits to individuals who have received and accepted a job offer, but have not yet begun to work.

Second, the existing regulation neglects to define "support loss" or identify what sources of revenue the Board will consider in determining eligibility for the benefit. The regulation also does not identify the documentation necessary to verify both eligibility and the amount of support loss for which the applicant is eligible.

Third, the existing regulation fails to clearly and concisely delineate the process by which a request for reimbursement for income or support loss may be made. Currently, applicants may simply check a box on the CalVCB application. When this box is checked, it triggers CalVCB staff to immediately begin processing a request for income or support loss even though an applicant may have only intended to reserve their rights rather than initiate a full inquiry into their income and employment status. This can result in applicants feeling that their request for benefits was prematurely evaluated and recommended for denial. The proposed regulation will require submission of a written request for income or support loss that will resolve this issue.

Fourth, the existing regulation fails to clearly and concisely set forth all of the information and documentation that an applicant must submit in order to demonstrate eligibility for income or support loss. Rather, many of the requirements are scattered throughout multiple regulations, which often results in applicants feeling as though they are repeatedly being asked for additional documentation. For example:

- The applicant must show the victim was employed or self-employed at the time of the crime. (Cal. Code Regs., tit. 2, § 649.32, subd. (a).)
- The applicant must show that the income or support loss is necessary as a direct result of the crime. (Cal. Code Regs., tit. 2, §§ 649.32, subd. (b), 649.7, subd (a)(5).)
- The applicant must produce evidence of income loss. (Cal. Code Regs., tit. 2, § 649.7, subd. (b)(2).)
- Evidence of income loss must be in the following form: 1) tax returns from the Franchise Tax Board (FTB); and either 2) verification of employment through the Work Number; or 3) a statement under penalty of perjury from the employer. (Cal. Code Regs., tit. 2, § 649.32, subd. (d)(1)-(3).)
- A treating health care provider must provide a disability statement (Cal. Code Regs., tit. 2, § 649.7, subd. (b)(2).)
- The disability statement must come from one of the treating health care providers identified in the regulation. (Cal. Code Regs., tit. 2, § 649.32, subd. (g).)

- The disability statement must verify the victim's disability, diagnosis, prognosis and the expected duration of the disability (Cal. Code Regs., tit. 2, § 649.32, subd. (g).)
- The disability statement must certify that the losses are a direct result of the crime. (Cal. Code Regs., tit. 2, §§ 649.7, subd. (a)(5), 649.32, subd. (g).)
- The provider must provide their license number and contact information, and sign the disability statement. (Cal. Code Regs., tit. 2, § 649.7, subd. (b)(1)).

Because these requirements are not concisely stated in one place, an applicant's request for reimbursement of income or support loss may be denied for failure to provide all of the necessary information and documentation. Oftentimes, applicants receive multiple denial recommendations because after one requirement is satisfied, they are advised there is yet another requirement that has not been met. To alleviate confusion and create clear and transparent procedures, it is desirable for CalVCB's regulations to state, in a single regulation, all of the requirements that the applicant must satisfy to successfully demonstrate eligibility for income or support loss.

Fifth, the existing regulation is written to require documents, such as FTB records, to verify income loss for employed individuals that is difficult or impossible for some individuals to obtain. Currently, CalVCB must receive FTB tax returns, and either verification through the Work Number or verification under penalty of perjury from the employer. (Cal. Code Regs., tit. 2, § 649.32, subd. (d)(1)-(3).) It is extremely difficult, if not impossible, for a qualifying victim or derivative victim who lives out-of-state to demonstrate eligibility as the lack of this documentation necessarily requires rejection of a claim for income or support loss. Unless an out-of-state applicant has lived and worked in California at some point during the year the crime occurred or during the year that immediately preceded the year the qualifying crime occurred, they will not have filed a tax return with the FTB. While the existing regulation allows the Board to obtain tax returns from the Internal Revenue Service (IRS), the IRS is not required to comply with the Board's requests for tax returns or subpoenas, and CalVCB has never been successful in requesting and receiving such records. Likewise, out-of-state taxing authorities are also not required to respond to California-issued subpoenas or requests for tax returns. Consequently, it is imperative that the regulation be changed to free CalVCB from mandated reliance on FTB records in all cases.

Further, many employers do not respond to CalVCB's requests that they complete and return an Employment Verification form and many employers do not use the Work Number. Currently, if CalVCB cannot obtain either of these documents, an applicant's request for income or support loss must necessarily be recommended for denial.

Sixth, the existing regulation makes the income loss verification process more challenging and cumbersome for self-employed victims and their derivative victims. It requires that, as part of the verification process, a self-employed victim must submit proof that the victim applied for SDI benefits from the EDD, as well as the response they received from the EDD. In the absence of this documentation, the Board cannot consider reimbursing the self-employed victim for income loss or the self-employed victim's derivative victims for support loss. However, self-employed individuals are generally ineligible for SDI unless they have opted to purchase elective disability insurance coverage, which is an uncommon situation. Thus, self-employed applicants are required to apply for a benefit for which they do not qualify. This creates an onerous and irrelevant step in the verification process and is frequently an additional obstacle to the receipt of income or support loss benefits. The proposed regulation will delete this requirement and expedite the process of approving income or support loss benefits.

Finally, the existing regulation contains inconsistent wording and syntax, which causes confusion for Board staff, applicants, and the public. Clarification and clear language are desirable.

BENEFITS

The proposed regulation will implement Government Code section 13957, subdivision (a)(3), which governs income and support loss claims. The proposed regulation substantially rewrites the current regulation as the current regulation fails to address many of the situations that the Board frequently encounters and is unnecessarily restrictive. The proposed regulation addresses income loss and support loss separately. It defines each benefit, and comprehensively identifies the documentation required to demonstrate eligibility, as well as the basis upon which the benefits are calculated. These clarifications will provide the public with the specificity needed for applicants to successfully obtain compensation and will provide Board staff with clear directions for verifying eligibility and calculating the amount of the benefits. Additionally, the proposed regulation will make it easier for employed applicants to obtain income loss by removing the requirement that tax records be received by CalVCB in all cases. Moreover, the proposed regulation will allow applicants to submit itemized wage statements, payroll records or bank records to establish their earnings. Once that requirement is met, CalVCB then has the burden of verifying the employment information by requesting and obtaining one of three documents - tax returns, EDD wage information, or employer verification of employment.

Further, the proposed regulation will make it easier for self-employed applicants to qualify for income loss by deleting the onerous and pointless requirement in the current regulation that such individuals demonstrate they applied for SDI from the EDD, which is one of the identified reimbursement sources. While such individuals are generally ineligible for SDI benefits, the current regulation requires that all applicants requesting income loss apply for SDI. Deleting this requirement will help streamline the verification process for self-employed victims and their derivative victims seeking reimbursement for income loss and support loss. Additionally, the proposed regulation deletes the requirement that Board staff obtain verifying documentation from the Social Security Administration (SSA) or Board of Equalization (BoE) when the Board is unable to obtain a self-employed applicant's tax returns. This requirement is also pointless as the Board has never been able to obtain documentation from either of these agencies.

Moreover, the proposed regulation provides additional avenues by which applicants, both California residents and non-California residents, can satisfy the eligibility requirements, thereby allowing compensation for applicants who would be ineligible under the current regulation.

Finally, the proposed regulation will interpret and implement general aspects of the law to ensure clarity, transparency, and consistency in the application of the regulation. This will enable the Board to decide these claims in a more uniform and efficient manner.

PURPOSE

Section 649.32, subdivision (a)(1): The purpose of this proposed subdivision is to clarify that income loss and support loss will be paid if the victim or derivative victim was receiving earned income either from employment or self-employment at the time the crime occurred.

Section 649.32, subdivision (a)(1)(A): The purpose of the proposed subdivision is to define "earned income" by identifying the sources that constitute earned income, as well as those that do not. The purpose of the subdivision is to make clear the scope of what income can be considered by the Board.

Section 649.32, subdivision (a)(1)(B): The purpose of this subdivision is to make clear the scope of the term "support loss." The proposed subdivision defines "support loss" as including the victim's earned income or child support, or both.

Section 649.32, subdivision (a)(1)(C): The purpose of this proposed subdivision is to make clear that income loss includes losses sustained when the victim missed time from work to attend medical and mental health appointments. This subdivision refines the scope of what will be considered income.

Section 649.32, subdivision (a)(1)(D): This proposed subdivision defines “gig economy” and clarifies that individuals who worked in gig economy activity at the time the crime occurred are considered “self-employed” for purposes of income and support loss eligibility.

Section 649.32, subdivision (a)(1)(E): The purpose of this proposed subdivision is to define the term “scope of employment” by mirroring the language used in the Judicial Council of California Civil Jury Instructions (CACI), number 3720, which is one of the official plain-English jury instructions used in California. Clarification of the meaning of this term will enable applicants and Board staff to better understand and apply the provisions relating to worker’s compensation insurance which are found in subdivision (f).

Section 649.32, subdivision (a)(1)(F): This proposed subdivision interprets Government Code, section 13957, subdivision (a)(3) and clarifies that the Board may pay income or support loss based on a documented job offer that is supported by documented acceptance of the job offer, when employment is scheduled to begin within 30 days of the qualifying crime. The purpose of this subdivision is to expand the availability of reimbursement for income and support loss.

Section 649.32, subdivision (a)(2): This proposed subdivision was amended to delete the words, “cash payments” because the Board is not authorized to make “cash payments.” There are no other substantive changes. The proposed subdivision will also correct a grammatical error by making the subject singular rather than plural.

Section 649.32, subdivision (b): This proposed subdivision contains the header “Written Request for Income Loss.” The purpose of this section is to orient the reader to the content of the subdivision with a focus on the requirement that a request for income loss be made in writing.

Section 649.32, subdivision (b)(1)(A)–(E): These proposed subdivisions clarify and make specific the information that an applicant must provide when making a request for income loss. The purpose of the proposed subdivisions is to make clear what information is required from applicants before a request for income loss can be processed. These proposed subdivisions are also designed to streamline the verification process and reduce the likelihood of overpayments, for which recipients could be required to repay the Board (Gov. Code, § 13965).

Section 649.32, subdivision (b)(2): This proposed subdivision clarifies the process for requesting and obtaining income loss by requiring that a request for income loss be renewed every six months unless a provider certifies that the victim is permanently disabled. This prevents overpayments, for which recipients could be required to repay the Board. (Gov. Code, § 13965.)

Section 649.32, subdivision (b)(3): This proposed subdivision clarifies and makes specific that employed victims must apply for SDI benefits through the EDD for disabilities that last one year or less, while self-employed victims do not have to apply for SDI benefits as the latter group of individuals is not eligible for SDI. The proposed subdivision further clarifies that all victims, whether employed or self-employed, must apply for Social Security Disability Insurance (SSDI) benefits from the Social Security Administration (SSA) for disabilities that last longer than one year. The purpose of this subdivision is to clarify the application of these two reimbursement sources – SDI and SSDI -- to a victim's request for income or support loss, depending upon their status as a W-2 employee or a self-employed individual.

Section 649.32, subdivision (c): This proposed subdivision contains the header, "Disability Statements." The purpose of this subdivision is to orient the reader to the content of the subdivision with a focus on the disability statement requirement.

Section 649.32, subdivision (c)(1): The purpose of this proposed subdivision is to orient the reader to the fact that the paragraphs that follow are "general requirements" applicable to all disability statements.

Section 649.32, subdivision (c)(1): The purpose of this proposed subdivision is to orient the reader to the specific documentation requirements necessary to establish a valid disability period.

Section 649.32, subdivision (c)(1)(A)(i)-(iii): The purpose of these proposed subdivisions is to specify the requirements that apply to all disability statements, including: i) the disability statement be signed by a treating licensed medical or mental health provider; ii) the disability statement must indicate that the disability is a direct result of the crime; and iii) the disability statement is only valid for six months unless the treating provider certifies that the disability is permanent and that the victim has reached the point in the healing process when they are not expected to further improve with generally accepted medical treatment.

Section 649.32, subdivision (c)(2): The purpose of this proposed subdivision is to identify the types of acceptable health care providers that may submit a disability statement.

Section 649.32, subdivision (c)(2)(A): The purpose of this proposed subdivision is to make clear the types of medical providers who are authorized to provide a disability statement when a victim is disabled by physical injuries. This subdivision expands the list of acceptable providers to include physician assistants and nurse practitioners, neither of which are included in the current version of this regulation.

Section 649.32, subdivision (c)(2)(B): The purpose of this proposed subdivision is to make clear the types of mental health providers who are authorized to provide a disability statement based on emotional injuries. This subdivision expands the list of acceptable providers to include physician assistants and nurse practitioners, neither of which are included in the current version of this regulation.

Section 649.32, subdivision (c)(2)(C): The purpose of this proposed subdivision is to clarify that out-of-state providers are able to provide disability statements if the provider has licensure that is equivalent to California's standards.

Section 649.32, subdivision (c)(3): The purpose of this proposed subdivision is to clearly state that the Board may accept a disability statement on either the Board's approved form or the treating provider's letterhead as long as it meets the requirements set forth in the subdivisions that follow.

Section 649.32, subdivision (c)(3)(A)-(H): The purpose of these subdivisions is to set forth the minimum requirements for the content of a valid disability statement.

Section 649.32, subdivision (d): This proposed subdivision contains the header "Income Loss – Verification Requirements." The purpose of this section is to orient the reader to the content of the subdivision with a focus on the documentation that must be submitted by the applicant and verified by CalVCB.

Section 649.32, subdivision (d)(1): This proposed subdivision contains the header "Employed Victims and Derivative Victims." The purpose of this section is to orient the reader to the fact that the following paragraphs apply to employed victims that are regular employees earning income from an employer that is obligated to issue a W-2, Wage and Tax Statement.

Section 649.32, subdivision (d)(1)(A): The purpose of this proposed subdivision and its subparts is to specify and make clear that in order to make a valid claim for income loss, some evidence of income loss must be submitted to the CalVCB.

Section 649.32, subdivision (d)(1)(A)(i)-(iii): The purpose of this proposed subdivision is to establish that CalVCB will verify a request for reimbursement of income loss is made when CalVCB receives one of three types of documents verifying loss of income: i) itemized wage statements (paystubs); ii) employer payroll records; or iii) bank records.

Section 649.32, subdivision (d)(1)(B): The purpose of this proposed subdivision and its subparts is to specify and make clear the evidence that CalVCB must receive to verify employment and establish income loss. This proposed subdivision further clarifies that CalVCB may accept tax returns directly from the victim or

derivative victim if there is independent verification from a third-party source demonstrating that the tax returns were filed.

Section 649.32, subdivision (d)(1)(B)(i)-(iii): The purpose of these subdivisions is to make clear that CalVCB must verify employment and income from at least one the following sources: i) tax returns; ii) EDD documentation used to establish a victim's earnings from employment; and iii) an employer verification of employment and earnings under penalty of perjury which includes information necessary for CalVCB to perform income loss calculations.

Section 649.32, subdivision (d)(2): This proposed subdivision contains the header "Self-Employed Victims and Derivative Victims." The purpose of this section is to orient the reader to the fact that the following paragraphs apply to self-employed victims.

Section 649.32, subdivision (d)(2)(A): The purpose of this section is to set forth the documentation that must be submitted by the applicant and verified by CalVCB to demonstrate income loss eligibility for self-employed victims and derivative victims. The proposed subdivision makes clear that the victim's or derivative victim's tax returns, as filed with the IRS, FTB, or the appropriate jurisdiction's taxing authority, must be verified to establish a self-employed person is eligible for income loss.

Section 649.32, subdivision (d)(2)(B): This proposed subdivision makes clear that Board staff must use the victim or derivative victim's net annual income to calculate income loss, which is found on Line 31 of IRS form Schedule C: Profit or Loss from Business.

Section 649.32, subdivision (e): The purpose of this proposed subdivision is to orient the reader to the verification requirements for support loss requests.

Section 649.32, subdivision (e)(1): The proposed subdivision is a header that orients the reader to the fact that the following paragraphs will address the verification requirements for claims of support loss based upon the employment of a victim who was employed by an employer obligated to issue a W-2, Wage and Tax Statement.

Section 649.32, subdivision (e)(1)(A)–(C): These proposed subdivisions interpret and make clear the basis upon which the support loss calculations are to be made for survivors and dependents who lived with the victim at the time the qualifying crime occurred, minor dependents who did not live with the victim at the time the qualifying crime occurred, and adult dependents who did not live with the victim at the time the qualifying crime occurred.

Section 649.32, subdivision (e)(1)(D): This proposed subdivision interprets and makes clear that Board staff must follow the verification requirements in subdivision (d)(1) of Section 649.32.

Section 649.32, subdivision (e)(2): This proposed subdivision is a header alerting the reader that the following paragraphs apply to support loss claims based on a victim's income from self-employment.

Section 649.32, subdivision (e)(2)(A)–(C): These proposed subdivisions interpret and make clear the basis upon which the support loss calculations are to be made for survivors and dependents who lived with the victim at the time the qualifying crime occurred, minor dependents who did not live with the victim at the time the qualifying crime occurred, and adult dependents who did not live with the victim at the time the qualifying crime occurred.

Section 649.32, subdivision (e)(2)(D): This proposed subdivision interprets and makes clear that Board staff must follow the verification requirements in subdivision (d)(2) of Section 649.32.

Section 649.32, subdivision (e)(3): The purpose of this proposed subdivision is to make clear that derivative victims are not eligible for support loss during the same time that the direct victim is being fully compensated for income loss.

Section 649.32, subdivision (f): The purpose of this proposed subdivision is to orient the reader to the fact that the following paragraphs will address income and support loss claims based on a qualifying crime that occurred at the victim's workplace or while the victim was acting in the scope of their employment.

Section 649.32, subdivision (f)(1): The purpose of this proposed subdivision is to make specific the required documentation that is necessary to demonstrate eligibility for income loss when the qualifying crime occurred at the victim's workplace or while the victim was acting in the scope of their employment. The proposed subdivision is necessary to make clear that the applicant must meet the same requirements as employed or self-employed individuals and must submit documentation relating to a claim for workers' compensation or the Uninsured Employer's Benefits Trust Fund (UEBTF) as these are considered reimbursement sources.

Section 649.32, subdivision (f)(2): The purpose of this proposed subdivision is to orient the reader to the fact that the following paragraphs will address restrictions on income loss claims based on a qualifying crime that occurred at the victim's workplace or while the victim was acting in the scope of their employment.

Section 649.32, subdivision (f)(2)(A): The purpose of this proposed subdivision is to make clear that CalVCB will not reimburse income loss when a victim is receiving worker's compensation benefits. The purpose of this subdivision is to prevent a double recovery and to make certain that all other reimbursement sources are accounted for before CalVCB, as the payor of last resort, pays benefits.

Section 649.32, subdivision (f)(2)(B): The purpose of this proposed subdivision is to make clear that a person receiving worker's compensation benefits is considered to be fully reimbursed for income loss during the time the person is receiving such benefits. The purpose of this subdivision is to prevent a double recovery and to make certain that all other reimbursement sources are accounted for before CalVCB, as the payor of last resort, pays benefits.

Section 649.32, subdivision (g): The purpose of this proposed subdivision is to clarify that victims are not required to utilize paid employment leave as a reimbursement source before requesting income loss. This subdivision further clarifies that, if the victim has already received full or partial compensation from paid leave or uses such leave during the period for which they are requesting income loss, those payments will be considered a reimbursement source.

Section 649.32, subdivision (h): The purpose of this proposed subdivision is to authorize CalVCB staff to contact the victim or derivative victim's employer or the victim's treating healthcare provider for additional information if the Board receives documentation that is insufficient to verify income loss or support loss.

Section 649.32, subdivision (i): This proposed subdivision implements Government Code, section 13957.5, subdivision (a)(1), by prohibiting the Board from reimbursing an applicant for income loss beyond the timeframes set forth in this statute, regardless of whether there are gaps in the victim's total disability period, or the victim or derivative victim has been partially or fully compensated for their income or support loss through other reimbursement sources.

NECESSITY

Section 649.32, subdivision (a): The proposed subdivision is a header. It is necessary to alert the reader to topics covered in the following subdivisions.

Section 649.32, subdivision (a)(1): The proposed subdivision is necessary to clarify the overarching requirement for income and support loss eligibility – that the victim or derivative victim must have been receiving documented earned income, as an employee or from self-employment, at the time the crime occurred. The proposed regulation deletes the word “benefits” from the phrase “earned income benefits,” found in the current version of the regulation because the word is ambiguous and undefined, and creates confusion for Board staff, the public, and applicants.

Section 649.32, subdivision (a)(1)(A): The proposed subdivision is necessary to define the term, “earned income.” This clarifies the income sources that are considered “earned” income, which is the basis for income and support loss claims, versus those that are “passive income,” which are not taken into consideration for income and support loss calculations. This clarification is necessary to reduce the potential for overpayments, which recipients could be required to repay (Gov. Code, § 13965).

Section 649.32, subdivision (a)(1)(B): This proposed subdivision is necessary to clarify the meaning of the term “support loss.” It makes it clear to applicants that support loss is intended to replace the victim's earned income or child support payments paid by the victim, or both, which were lost due to the qualifying crime.

Section 649.32, subdivision (a)(1)(C): This proposed subdivision is necessary to state that victims may be reimbursed for income loss sustained to attend medical or mental health appointments. This proposed revision also deletes the words “includes but is not limited to” found in the current version of 649.32, subdivision (c). As the proposed revision now specifically defines “earned income,” the need for enlargement language is no longer necessary.

Section 649.32, subdivision (a)(1)(D): This proposed subdivision is necessary to define “gig economy” to recognize the category of workers that are independent contractors and to make clear that those workers are self-employed. This subdivision is necessary to ensure that gig workers may be eligible for income or support loss.

Section 649.32, subdivision (a)(1)(E): This proposed subdivision is necessary to define the meaning of the term “scope of employment” as later used in subdivision (f) of this proposed regulation.

Section 649.32, subdivision (a)(1)(F): This proposed subdivision is necessary to articulate the expansion of the availability of income loss to individuals who can document a job offer and acceptance. This is an expansion of eligibility as the existing regulation does not allow reimbursement of income loss when a victim has accepted a job offer but has not yet started employment.

Section 649.32, subdivision (a)(2): This subdivision was amended for clarity to delete the words, “cash payments,” as all benefits are paid via check and not cash. This subdivision is necessary to accurately reflect that CalVCB does not make any “cash payments” of income or support loss.

Section 649.32, subdivision (b): This proposed subdivision is needed to orient the reader that this subdivision will address the requirements and procedures for making a written income loss request. This subdivision is necessary to make clear that checking a box for income or support loss on the application alone is insufficient to begin the inquiry to establish eligibility. Rather, this subdivision introduces the concept that a separate written request for income is required.

Section 649.32, subdivisions (b)(1)(A)-(E): These subdivisions are necessary to make it clear that a written request for income loss must contain all the information stated in the paragraphs that follow. The subdivision is needed to succinctly explain the information that is necessary to establish eligibility for income loss. These subdivisions are necessary to make clear the information that an applicant must provide when requesting income loss. These subdivisions are needed to streamline the verification process by ensuring applicants are on notice of what information must be provided up front. This will allow Board staff to begin the verification process earlier and be more efficient in the handling of claims. This proposed regulation will also reduce the potential for overpayments, which recipients could be required to repay to the Board (Gov. Code, § 13965).

Section 649.32, subdivision (b)(2): This proposed subdivision is necessary to clarify one of the requirements for a valid income loss request – that it be renewed no less than every six months, unless the victim is permanently disabled. This clearly establishes time limits for disability statements, which enables Board staff to verify the applicant's continued need for income loss on an ongoing basis. This subdivision makes it clear that income loss benefits will not be paid indefinitely, and applicants must keep CalVCB updated about their status. This will help prevent overpayments, which recipients could be required to repay to the Board. (Gov. Code, § 13965.)

Section 649.32, subdivision (b)(3): This proposed subdivision is necessary to clarify for Board staff, the public, and applicants that SDI from the EDD and SSDI from the SSA are reimbursement sources for which the victim must apply before seeking reimbursement of income loss from the Board. It clarifies the distinction between the two disability benefits based on the length of the applicant's disability. Applicants who are disabled for one year or less must apply for SDI and applicants who are disabled beyond one year must apply for SSDI. While existing section 649, subdivision (a)(18), which defines "reimbursement sources," states that "all forms of public ... assistance paid to, or on behalf of, the victim ... including ... social security, state disability insurance ..." are reimbursement sources, applicants are often unaware that they must apply for SDI or SSDI benefits. Moreover, this provides clarity and transparency as applicants who refuse to apply for other benefits that are potentially available to them from sources other than the Board may be found to have failed to cooperate with the Board. (Gov. Code, § 13954, subd. (b)(2)(C).) The failure to cooperate with the Board may be used as a sole basis to reject an

application. (Gov. Code, § 13954, subd. (b)(1).) The inclusion of subdivision (b)(3) clarifies and highlights this requirement, thereby reducing confusion and delay of verifying and processing income and support loss claims.

Section 649.32, subdivision (c): This subdivision contains the header “Disability Statements.” This subdivision is necessary to make it clear that subdivision (c) deals entirely with the requirement that requests for reimbursement of income loss must be supported with a disability statement.

Section 649.32, subdivision (c)(1): This subdivision contains the header “General Requirements.” This subdivision is necessary to make it clear that all disability statements must conform to the standards noted in the paragraphs that follow.

Section 649.32, subdivision (c)(1)(A): This subdivision is necessary to clarify that when income loss is sought due to disability, CalVCB must receive a disability statement.

Section 649.32, subdivisions (c)(1)(A)(i)-(iii): These subdivisions are necessary to make it clear that a disability statement must: i) be signed by a treating medical or mental health provider who treated the victim's injuries or disabilities; ii) must contain all of the information set forth in subdivision (c)(3) (“Content of Disability Statement”) and contain sufficient information to demonstrate that the injury or disability was a direct result of the qualifying crime or the direct result of an exacerbation of a pre-existing condition; and iii) must be renewed on at least a six month basis unless the treating provider certifies the disability is permanent. These subdivisions are needed because CalVCB often receives deficient statements from applicants and providers. Without this subdivision, the requirements for a valid disability statement will continue to require cross-reference to other regulations.

Section 649.32, subdivision (c)(2): This subdivision contains the header “Acceptable Providers.” This subdivision is necessary to make it clear that the paragraphs that follow specify the types of providers that can submit a valid disability statement.

Section 649.32, subdivision (c)(2)(A): This proposed subdivision is necessary to make clear the types of medical providers who may submit a disability statement to the Board when the request for income loss is based on a physical injury. This subdivision is also necessary to make clear that the categories of acceptable providers have been expanded to include physician assistants and nurse practitioners.

Section 649.32, subdivision (c)(2)(B): This proposed subdivision identifies the types of mental health providers who may submit a disability statement to the Board when the request for income loss is based on an emotional injury. This subdivision is also necessary to make clear that the categories of acceptable providers have been expanded to include physician assistants and nurse practitioners.

Section 649.32, subdivision (c)(2)(C): This proposed subdivision is necessary to clarify that out-of-state medical or mental health providers may complete a disability statement if their licensure is equivalent to the licensure of one of the authorized California medical or mental health providers.

Section 649.32, subdivision (c)(3): This subdivision contains the header “Content of Disability Statement” along with a statement that providers are not required to use a CalVCB form. This subdivision is necessary to enumerate and compile in one location the items that are required for a valid disability statement. Additionally, this subdivision is necessary because it makes clear that this is a performance standard stating objective criteria that must be met rather than a prescriptive standard requiring the use of a particular form.

Section 649.32, subdivisions (c)(3)(A)-(H): These proposed subdivisions are necessary to delineate and make clear the information that must be provided on a disability statement for it to be valid.

Section 649.32, subdivision (d): This proposed subdivision is necessary to orient the reader to the fact that the paragraphs that follow set forth the verification requirements for requests for reimbursement of income loss.

Section 649.32, subdivision (d)(1): This proposed subdivision is necessary to orient the reader to the fact that the paragraphs that follow set forth the verification requirements for requests for reimbursement of income loss

when the victim is an employed person whose employer is obligated to issue a W-2 Wage and Tax Statement.

Section 649.32, subdivision (d)(1)(A): This proposed subdivision is necessary to alert applicants that in order to make a written request for income loss, at least one of the documents specified must be provided.

Section 649.32, subdivisions (d)(1)(A)(i)-(iii): These proposed subparagraphs are necessary to make clear that before CalVCB can process a request for reimbursement of income loss, it must receive evidence of income. The purpose of this proposed subdivision is to establish that a request for reimbursement of income loss is made when CalVCB receives one of three types of documents verifying loss of income: i) itemized wage statements (paystubs); ii) employer payroll records; or iii) bank records.

Section 649.32, subdivision (d)(1)(B): This proposed subdivision is necessary to establish that CalVCB has the burden of verifying the claim for income loss by a variety of means before the request can be approved. This proposed subdivision is also needed to make clear that CalVCB's burden to verify employment and earnings only matures when the applicant submits one of the three documents listed in subdivision (d)(1)(A) and a valid disability statement.

Section 649.32, subdivisions (d)(1)(B)(i)-(iii): These proposed subdivisions are necessary to make clear that CalVCB must obtain at least one independent third party verification of the victim or derivative victim's income. Acceptable documentation must be one of the following three types: i) tax returns that the victim or derivative victim filed; ii) EDD documentation, which includes wage abstracts or earning reports; or iii) employer verification.

These proposed subdivisions are also necessary to prevent the automatic rejection of requests for income loss from victims and derivative victims who do not live in California. It allows out-of-state applicants to submit a copy of their tax returns from the IRS or the appropriate out-of-state taxing authority

directly to the Board if they provide evidence that the tax return was, in fact, filed.

These proposed subdivisions are also necessary to make clear that the Board must receive the tax returns directly from the FTB if the victim or derivative victim lives in California. This requirement is necessary to prevent the submission of fraudulent documentation and assessments of potential overpayments, which recipients could be required to repay to the Board. (Gov. Code, § 13965.)

Section 649.32, subdivision (d)(2): This subdivision includes a header to notify the reader that the subdivision addresses requests for reimbursement of income loss by self-employed individuals. This subdivision is necessary to make clear the scope of the section.

Section 649.32, subdivision (d)(2)(A): This proposed subdivision is necessary to provide clarity about the documentation required for self-employed victims and derivative victims and the verification of such claims. This proposed subdivision is necessary to clearly state that the Board must receive tax returns for self-employed victims and derivative victims seeking reimbursement for income loss.

This subdivision makes it clear that earnings from self-employment must be based on tax returns, not on Form 1099s or summaries of earnings from companies such as Uber, Lyft or Door Dash. Such documents do not establish earnings because they only show gross income before expenses. As noted in subdivision (a)(1)(D), gig economy workers are considered self-employed. Using gross income documents to support an income or support loss calculation would result in artificially high earnings estimations for self-employed individuals.

Section 649.32, subdivision (d)(2)(B): This proposed subdivision is necessary to make clear that a self-employed individual's income loss must be determined based on the individual's net annual income to determine income loss, as stated on IRS form Schedule C: Profit or Loss from Business.

Section 649.32, subdivision (e): This proposed subdivision is necessary to orient Board staff, the public, and applicants to the verification requirements for support loss requests.

Section 649.32, subdivision (e)(1): This proposed subdivision is necessary to orient Board staff, the public, and applicants to the requirements for a support loss claim specific to the survivors and dependents of employed victims.

Section 649.32, subdivisions (e)(1)(A)–(C): These proposed subdivisions make clear that they apply to support loss claims based on the victim's W-2 employment. These proposed subdivisions are necessary to delineate between: A) survivors and dependents who lived with the victim at the time the qualifying crime occurred; B) minor victims who did not live with the victim at the time the qualifying crime occurred; and C) adult dependents who did not live with the victim at the time the qualifying crime occurred. This section is necessary to describe how a support loss calculation will be made to provide greater transparency to the public.

Section 649.32, subdivision (e)(1)(D): This proposed subdivision is necessary to make clear that the verification process for these claims is located in subdivision (d)(1).

Section 649.32, subdivision (e)(2): This proposed subdivision is necessary to orient Board staff, the public, and applicants to the requirements for a support loss claim specific to the survivors and dependents of self-employed victims.

Section 649.32, subdivisions (e)(2)(A)–(C): These proposed subdivisions make clear that they apply to support loss claims based on a victim's self-employment. These proposed subdivisions are necessary to delineate between: A) survivors and dependents who lived with the victim at the time the qualifying crime occurred; B) minor victims who did not live with the victim at the time the qualifying crime occurred; and C) adult dependents who did not live with the victim at the time the qualifying crime occurred. This section is necessary to describe how support loss calculations will be made to provide greater transparency to the public.

Section 649.32, subdivision (e)(2)(D): This proposed subdivision is necessary to make clear that the verification process for these claims is located in subdivision (d)(2).

Section 649.32, subdivision (e)(3): This subdivision is necessary to make clear that when all available benefits are being paid for income loss, support loss will not also be concurrently paid.

Section 649.32, subdivision (f): This proposed subdivision is necessary to orient the Board, the public, and applicants to the requirements and verification process for income and support loss claims when the qualifying crime occurred at the victim's workplace or while the victim was acting in the scope of their employment.

Section 649.32, subdivision (f)(1): This proposed subdivision is necessary to make clear that the Board must receive the documentation specified in subdivisions (d)(1) or (2) to verify a claim for income or support loss. Additionally, this proposed subdivision is necessary to establish that workers' compensation or Uninsured Employers Benefits Trust Fund (UEBTF) benefits are considered reimbursement sources that CalVCB must consider when calculating pecuniary losses.

Section 649.32, subdivision (f)(2): This proposed subdivision is necessary to orient the Board, the public, and applicants to the fact that there are specific restrictions on income loss stated in the following paragraphs.

Section 649.32, subdivision (f)(2)(A): This proposed subdivision is necessary to make clear that the Board must receive documentation from the victim's workers' compensation carrier or the UEBTF reflecting that the victim filed a claim and, if the claim has been resolved, any documentation pertaining to the claim's resolution. Such funds are considered a reimbursement source that the Board must apply to an income loss calculation before disbursing any benefits. This is necessary to prevent overpayments, which recipients could be required to repay to the Board. (Gov. Code, § 13965.)

Section 649.32, subdivisions (f)(2)(B): This proposed subdivision is necessary to interpret Government Code, section 13957, subdivision (a)(3), and make clear that a victim's receipt of workers'

compensation or UEBTF is considered full reimbursement of income loss and makes the victim ineligible for income loss reimbursement from the Board. (Gov. Code, § 13965.)

Section 649.32, subdivision (g): This proposed subdivision is necessary to clarify the relationship between paid leave and income loss. This proposed subdivision is necessary to clarify that applicants are not required to use paid leave during the disability period but if they do, the paid leave is considered a reimbursement source. This prevents overpayments, which recipients could be required to repay to the Board. (Gov. Code, § 13965.)

Section 649.32, subdivision (h): This proposed subdivision is necessary in order to authorize Board staff to contact the victim or derivative victim's employer, or the victim's treating health care provider for additional information if the Board receives documentation that is insufficient to verify the income loss or support loss claim. This allows Board staff to assist applicants in collecting the necessary information and documentation, which will streamline the processing of applications and bills.

Section 649.32, subdivision (i): This proposed subdivision is necessary to clarify that the Board is prohibited from reimbursing an applicant for income loss beyond the timeframes set forth in Government Code, section 13957.5, subdivision (a)(1).

SECTION 649.33

PROBLEMS TO BE ADDRESSED

The California Victim Compensation Board considers applications from both victims and derivative victims of crime. A “derivative victim” is an individual who sustains pecuniary loss as a result of injury or death to a victim. (Gov. Code § 13951, subd. (c).) California Code of Regulations, title 2, section 649.33 addresses support loss eligibility for derivative victims. It states that, to be eligible for support loss, the derivative victim must have been legally dependent on the victim at the time the crime occurred, defines “legally dependent,” and identifies the documents that are considered acceptable to demonstrate legal dependency.

The term “legally dependent” has presented issues when the claimant is a minor child as the language describing the relationship between the minor child and the direct victim has not been clear and did not appear to include the minor child of a legal spouse or registered partner who is primarily living in the household. Additionally, the list of evidence that would be accepted to demonstrate legal dependency includes documentation that is not, in fact, acceptable, and fails to mention one acceptable document – a voluntary declaration of parentage/paternity. Furthermore, the regulation provided conflicting information on the eligibility of prior spouses. While prior spouses were not included in the language defining “legally dependent,” subdivision (b)(3), which identified the list of documentation that was acceptable to demonstrate legal dependency, listed alimony awards and settlements or agreements for spousal support. This led to confusion about whether prior spouses had derivative victim status for purposes of claiming support loss. Finally, the regulation contained spelling errors, syntax and continuity issues, and citation errors. (Cal. Code Regs., tit. 2, § 649.33, subd. (a), (b), (b)(1) and (b)(2).)

BENEFITS

Revision is necessary to clarify the applicability of this regulation for both Board staff and the public, bring consistency to every section of the regulation, and correct the syntactical errors. It clarifies that, to be eligible for support loss, the derivative victim must have been legally dependent on the victim at the time the crime occurred, defines “legally dependent,” and identifies the documents that are considered acceptable to demonstrate legal dependency.

PURPOSE

Section 649.33, subdivision (a): This proposed subdivision will correct the misspelling of the word, “dependent,” and change the syntax to use the same language as other regulations when describing “the time the crime occurred.”

Section 649.33, subdivision (b): This proposed subdivision defines the term “legally dependent” and corrects the syntax to use the same language as other regulations when describing “the time the crime occurred.”

Section 649.33, subdivision (b)(1): This proposed subdivision clarifies that a minor child who lives in the victim’s household with a parent is a derivative victim.

Section 649.33, subdivision (b)(2): This proposed subdivision clarifies that spouses and domestic partners are legal dependents.

Section 649.33, subdivision (b)(3): This proposed subdivision corrects a capitalization error at the beginning of the clause.

Section 649.33, subdivision (c): This proposed subdivision clarifies the list of documentation that is acceptable to demonstrate legal dependency. It deletes documentation previously listed that is not acceptable and adds an additional document -- voluntary declarations of parentage or paternity.

NECESSITY

Section 649.33, subdivision (a): This proposed subdivision is necessary to correct the spelling of the word “dependent” and improve syntax and continuity by replicating the language used in other regulations when describing “the time the crime occurred.”

Section 649.33, subdivision (b): This proposed subdivision is necessary to improve syntax and continuity by replicating the language used in other regulations when describing “the time the crime occurred.”

Section 649.33, subdivision (b)(1): This proposed subdivision is necessary to make clear that any minor children who lives in the household with a parent is a derivative victim, whether a natural born or adopted child of the victim, or the minor child of a legal spouse or registered partner who is primarily living in the household.

Section 649.33, subdivision (b)(2): This proposed subdivision is necessary to clarify that spouses and domestic partners are legal dependents.

Section 649.33, subdivision (b)(3): This proposed subdivision is necessary to correct a capitalization error at the beginning of the clause.

Section 649.33, subdivision (c): This proposed subdivision is necessary to remove documents that are not acceptable to demonstrate legal dependency. It is also necessary to add voluntary declarations of parentage or paternity as acceptable documentation.

SECTION 649.41

PROBLEMS TO BE ADDRESSED

At times, the Board will receive several applications for victim compensation that are based on multiple and similar crimes that were similar in nature. Such crimes may have been committed by the same perpetrator, or against the same victim. This is often seen in domestic violence situations. California Code of Regulations, title 2, section 649.41 describes the scenario where someone is the victim of a series of related acts. The Board considers all of the related events to be one crime for purposes of compensation, which allows for one application. If the same victim submits multiple applications based on a series of related events, any applications filed after the initial application are considered duplicative of the original application. However, the current regulation does not contain a direct and clear statement specifying that applicants may only file one application when the underlying events are a series of related acts. It is important that the regulations are clear to applicants that claims for pecuniary losses stemming from a series of related acts will be addressed under the original application. Additionally, the regulation contains an error as it does not capitalize the first word of each subdivision.

BENEFITS

By including a direct statement clarifying that applicants may only file one application per series of related crimes or acts, the regulation will provide notice and transparency into the grouping of the same or similar acts or crimes, committed by the same perpetrator, against the same victim. This will avoid applicant confusion, reduce the time staff spend processing multiple applications and then correcting the duplication, and avoid the possibility of overpayments for which the applicant is liable to repay the Board. (Gov. Code, § 13965.)

PURPOSE

Section 649.41, subdivisions (b)(1), (2) and (3): The proposed changes to these subdivisions capitalize the first word of each subpart to be consistent with the formatting of other regulations.

Section 649.41, subdivision (f): This proposed subdivision interprets Government Code section 13950 by providing a clear and concise rule that a victim or claimant may only file one application per crime. It also makes clear that when the events that underly the application are a series of related acts, they constitute one crime and all pecuniary losses that were incurred as a result of those related acts will be processed in the original application.

NECESSITY

Section 649.41, subdivisions (b)(1), (2) and (3): The proposed changes are necessary to make the format of the regulations consistent with other regulations.

Section 649.41, subdivision (f): This proposed subdivision is necessary to reduce confusion and the submission of duplicate applications. The proposed subdivision ensures that the public is aware that a series of related acts are considered one crime for which only one application should be submitted. It also makes clear that if multiple applications are submitted for a series of related acts, the later filed application will be denied as a duplicate application.

SECTION 649.48

PROBLEMS TO BE ADDRESSED

“Human trafficking” (Pen. Code, § 236.1) is considered a qualifying crime for purposes of Board compensation. In 2000, the United States Congress created U visas and T visas to encourage immigrants to report human trafficking crimes and protect the victims. The United States Citizenship and Immigration Services determines eligibility for such visas. While section 649.48 states that “special visas” may be considered as evidence of human trafficking, it does not specifically identify these special visas by type. The Board would like to make this regulation clearer by identifying the visas by name that are considered evidence of Human Trafficking.

Additionally, section 649.48 references Penal Code section 236.2 as the authority for Law Enforcement Agency Endorsements; however, that law is no longer current. In 2005, the aforementioned Penal Code section 236.1, which prohibits human trafficking, was enacted alongside Penal Code section 236.2. As originally numbered, Penal Code section 236.2 required that law enforcement issue a “Law Enforcement Agency (LEA) endorsement” if police determined that the individual reporting the crime was a victim of human trafficking. In 2008, Penal Code section 236.2 was renumbered to Penal Code section 236.5, but contains the same substantive requirements for a LEA endorsement. Meanwhile, California Code of Regulations, title 2, section 649.48 became operative in 2009, just after the renumbering of the Penal Code section. Given the crossover in timing, section 649.48 incorrectly cites to outdated Penal Code section 236.2, rather than the renumbered Penal Code section 236.5. It needs to be changed to reflect the correct citation.

Finally, the formatting of section 649.48 is inconsistent with the other regulations as the first word of each subdivision is not capitalized.

BENEFITS

By specifically identifying U visas and T visas as the types of documents that may be considered evidence of human trafficking, the regulation makes it clear that individuals holding these specifically identified visas may be eligible for program benefits. Additionally, by allowing consideration of U visas and T visas, the regulation will ensure that human trafficking victims are treated consistently across government agencies and are not obligated to prove eligibility by different standards. Also, the proposed regulation will provide the correct Penal Code citation, which will fix the inaccuracy and assist the public in finding the relevant statute. Finally, capitalization changes are desirable to make the regulation consistent with other regulations in the same article.

PURPOSE

Section 649.48, subdivision (a): The proposed revision of subdivision (a) corrects an inaccurate citation.

Section 649.48, subdivision (b): The proposed revision of subdivision (b) corrects a capitalization error in the first word of each subdivision.

Section 649.48, subdivision (c): The proposed revision of subdivision (c) interprets and makes specific Government Code section 13951, subdivision (b)(1), which defines “crime,” Government Code section 13952, subdivision (c)(1), which requires the submission of information to determine eligibility, and Government Code section 13954, subdivision (a), which requires the CalVCB to verify the circumstances of the crime. The subdivision clearly and specifically identifies T and U visas as documents that the CalVCB will consider as evidence of human trafficking.

NECESSITY

Section 649.48, subdivision (a): The proposed revision of subdivision (a) is necessary to correct an inaccurate citation.

Section 649.48, subdivision (b): The proposed revisions of subdivision (b) correct the capitalization of the first word of each subdivision for consistency throughout the regulations in this article.

Section 649.48, subdivision (c): The proposed revision of subdivision (c) is necessary to make clear the specific visas that may be considered by the CalVCB as evidence of human trafficking.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board did not rely upon any technical, theoretical or empirical studies, reports or documents in proposing the adoption of these regulations. Rather, the Board relied upon the expertise and experience of the CalVCB employees responsible for the administration of the program.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The purpose of the proposed regulations is to revise, interpret, and implement the current law governing victim compensation. When an application for compensation is approved, victims can submit bills for reimbursement of losses. Compensation is awarded after the bill is verified. In fiscal year 2021-2022, CalVCB received 39,015 applications and provided \$40.35 million in compensation to victims; in fiscal year 2020-2021, CalVCB received 40,640 applications and provided \$52.74 million in compensation to victims; in fiscal year 2019-2020, CalVCB received 50,699 applications and provided \$58.69 million in compensation to victims; and in fiscal year 2018-2019, CalVCB received 52,973 applications and provided \$61.88 million in compensation to victims. The amount paid in compensation has remained relatively stable over the past four years and CalVCB does not anticipate a significant change in future payouts. Accordingly, the proposed regulations will not directly impact jobs or the wider economy.

The Board has determined that the selected alternative will not affect:

(A) The creation or elimination of jobs within the State of California,

The proposed regulations do not impact jobs because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

(B) The creation of new businesses or the elimination of existing businesses within the State of California, and

The proposed regulations do not impact the creation of new businesses or elimination of existing businesses in California because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

(C) The expansion of businesses currently doing business within the State of California.

The proposed regulations do not impact the expansion of businesses currently doing business within the State of California because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:

CalVCB has determined that the proposed regulations do not impact worker safety or the state's environment because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has no evidence indicating any potential significant adverse impact on business as a result of this proposed action. The Board has determined that the proposed regulations do not affect business because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has determined that there are no other reasonable alternatives to this rulemaking action.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has no evidence indicating any potential adverse impacts to small business are expected as a result of this proposed action. The Board has determined that the proposed regulations do not affect small businesses because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.