

**State of California
California Victim Compensation and Government Claims Board
Victim Compensation Program Regulations**

Title 2, §§ 649.3, 649.18, 649.20, 649.21, 649.24, 649.32

INITIAL STATEMENT OF REASONS

The California Victim Compensation Program (CalVCP), which is administered by the California Victim Compensation and Government Claims Board (Board), compensates victims and their families for the pecuniary losses they suffer as a direct result of criminal acts. CalVCP is funded by the Restitution Fund (Fund), which derives its revenue primarily from fines and penalties at the state level, and federal matching funds based on claims payments made in a prior year. The Fund is also a source of funding for several non CalVCP programs.

Over the last several years the Fund has suffered a decline in revenues and an increase in payouts. If no action is taken, it is projected that the Fund will be in the negative in Fiscal Year 2012/13 by at least \$29 million. In order to prevent the Fund from becoming insolvent, the Board is taking action to align CalVCP expenditures with Fund revenues. At its February 2011 meeting, the Board considered a proposal to modify covered benefits, rates and fees under CalVCP (Attachment: Exhibit A). This proposal details the Fund's dire financial situation and projects outcomes if no action is taken and if certain proposed actions are taken. After careful consideration, the Board authorized staff to take several actions, including preparation of a regulation package implementing the following:

- Lowering the maximum CalVCP benefit from \$70,000 to \$63,000.
- Setting a maximum benefit of \$30,000 per application for the purchase, renovating, and retrofitting of vehicles.
- For CalVCP purchased, renovated, or retrofitted vehicles where the victim will be operating the vehicle, adding a requirement that the applicant submit documentation from a mobility or rehabilitation specialist stating that the victim is mentally and physically capable of operating the vehicle.
- Narrowly defining the documentation that can be used to evidence income loss or support loss claims, and eliminating the payment of income and support loss when the victim only had a job offer, but was not yet working, at the time of the crime as an effort to guard against fraud for these claims.
- Verifying the reasonableness of the attorney's fees paid by CalVCP, by requiring attorneys to submit fee statements documenting the attorney services actually rendered to the applicant prior to receiving payment from the Board for those services.
- Protecting applicants by requiring that attorney representatives sign the application before the applicant signs it, thereby ensuring that the applicant is aware of the attorney's representation and consents to that representation.

- Lowering the maximum funeral/burial benefit from \$7,500 to \$5,000, and eliminating from the covered funeral/burial expenses the cost for food, beverages, and renting equipment and supplies such as tables and chairs.

These regulatory actions to limit CalVCP payouts and combat fraud are part of a comprehensive effort by the Board to better align benefit payments and program expenditures to revenue. As detailed in the proposal, the Board has and continues to reduce its operating expenses, and is taking steps to increase revenue. For FY 2010-11, the Governor's budget estimates that Fund revenues will be down by 3%, while CalVCP claim payments are projected to increase by 2.1%. In an effort to assure that the Board can continue to compensate victims of crime, the Governor's Budget for FY 2011-12 calls for more than \$5.8 million in savings. These savings include:

- A \$2.2 million savings in operating expenses and a reduction in Joint Power (JP) and Criminal Restitution Compact (CRC) local assistance program contracts of \$700,000.
- A cap on the growth rate of benefit payments to victims of 2.5 percent for claims from FY 2010-11 to FY 2011-12.

However, even with these proposed savings in the Governor's budget, the Restitution Fund would still have a projected deficit of \$20.3 million in 2013.

The Board cannot control the number of eligible applications and bills received. Thus the Board has no choice but to reduce benefits in order to comply with the Governor's cap and to prevent the Fund from becoming insolvent.

Moreover, the Board cannot continue to offer the current level of benefits to CalVCP applicants and must improve its efforts to prevent fraud and abuse of CalVCP benefits. CalVCP must operate within its financial means, and this regulatory action supports this effort.

The specific purpose of each revision or proposed regulation, and the reasons that the revision or proposed regulation is necessary, together with a description of the public problem, is described below.

§ 649.3 Authorized Indemnification

Authority and Reference

Pursuant to Government Code sections 11400.20, 13920 and 13974, the Board has authority to adopt necessary regulations for CalVCP. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code sections 13957(b) and California Code of Regulations, title 2, section 649.24(b).

Specific Purpose of Regulation

The specific purpose of this regulatory modification is to lower the total amount of benefits available to each applicant.

Rationale

The Board has determined that the modification is reasonably necessary to carry out the purpose for which it is proposed.

Government Code section 13957(b) states that “*the total award to or on behalf of each victim or derivative victim may not exceed thirty-five thousand dollars (\$35,000), except that this amount may be increased to seventy thousand dollars (\$70,000) if federal funds for that increase are available.*” This statute allows the Board to set the total award available to victims and derivative victims up to \$70,000. California Code of Regulations, title 2, section 649.24(b) currently states that “*Any cash payments made in response to an application or supplemental claim, arising out of the same crime, shall not exceed the monetary limits permitted by statute for a single application.*”

However, because of the drastic condition of the Fund, the Board needs to lower the maximum award per application to \$63,000. It may do so by amending regulation section 649.24(b) to state a maximum payment of \$63,000. The Board estimates that this revision would result in a \$.2 million cost savings for the Fund in Fiscal Year 2011/2012. Doing so will lower the overall demand for money from the Fund, helping to avoid insolvency, and will enable the Board to comply with the Governor’s cap on CalVCP payouts.

The regulation is being renumbered to move it to the front of the CalVCP regulation numbers because of its importance.

§ 649.18 Reimbursement of Funeral/Burial Expenses

Authority and Reference

Pursuant to Government Code sections 13920 and 13974, the Board has authority to adopt necessary regulations for CalVCP. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code section 13957(a)(9)(B).

Specific Purpose of Regulation

The specific purpose of this regulatory action is to lower the total amount paid by CalVCP on funeral/burial claims, thereby lowering the overall demand for money from the Fund.

Rationale

The Board has determined that the modification is reasonably necessary to carry out the purpose for which it is proposed.

Government Code section 13957(a)(9)(B) allows the Board to reimburse “The funeral and burial expenses incurred as a direct result of the crime, not to exceed seven thousand five hundred dollars (\$7,500).” Currently, the Board is paying up to the maximum permitted, \$7,500, in funeral/burial expenses per victim.

The regulation modification is necessary to revise this regulation to lower the maximum funeral/burial benefit amount, and to delete the subsection allowing for payment of food, beverages, and the cost for renting equipment and supplies such as tables and chairs. Funeral and burial expenses represent nearly 13 percent (\$12 M) of the total expenditures made by CalVCP for Fiscal Year 2009/10. It is projected that the modification will result in \$4 million in savings for FY 2011/2012. Doing so will lower the overall demand for money from the Fund, helping to avoid insolvency, and will enable the Board to comply with the proposed cap on CalVCP payouts in the Governor’s budget.

§ 649.20. Purchase of Vehicles

Authority and Reference

Pursuant to Government Code sections 13920 and 13974, the Board has authority to adopt necessary regulations for CalVCP. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code section 13957.

Specific Purpose of Regulation

This regulatory action has two purposes:

- To limit the total amount paid by CalVCP for vehicles, thereby lowering the overall demand for money from the Fund, and
- To ensure that the CalVCP only purchases, renovates, or retrofits a vehicle for a victim to drive if that victim can operate the vehicle safely. This requirement does not apply if the victim is not going to operate the vehicle.

Rationale

The Board has determined that the modifications are reasonably necessary to carry out the purpose for which they are proposed. Government Code section 13957(a) (7) allows reimbursement of the expense of renovating or retrofitting a victim's vehicle to make the vehicle accessible or the vehicle operational by a victim upon verification that the expense is medically necessary for a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total. There is currently no maximum benefit amount for vehicle purchase, renovating and retrofitting, except for the maximum total benefit amount for each application.

In FY 2009/10 CalVCP payments for vehicle purchase, renovating and retrofitting totaled \$494,578. This payment reflects assistance to 13 victims of crime. Of the 13 applications for vehicle renovation/retrofitting or vehicle purchase processed in FY 2009/10, CalVCP purchased 11 vehicles at an average cost of \$23,659 and renovated or retrofitted the vehicle to meet the unique needs of the claimant for an additional average cost of \$19,280 (\$42,939 average cost per vehicle). The two remaining applications were well below the average as one victim bought a fully converted van for \$16,200 and CalVCP paid to retrofit one victim's vehicle for \$2,361.

It is estimated that the regulatory action to cap vehicle purchase, renovating and retrofitting will result in \$160,000 in benefit savings in FY 2011/12. Thus, the regulation modification will lower the overall demand for money from the Fund, helping to avoid insolvency, and will enable the Board to comply with the proposed cap on CalVCP payouts in the Governor's budget.

The Board has also added a requirement to ensure that when applicants receive benefits for the purchase, retrofitting, or renovating of a vehicle that the victim is going to drive, the applicant provides documentation from a qualified professional that the victim

can physically and mentally operate the vehicle safely. This is to ensure the safety of both the victim and the public.

§ 649.21 Verification of Attorney's Fees

Authority and Reference

Pursuant to Government Code sections 13920 and 13974, the Board has authority to adopt necessary regulations for CalVCP. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code sections 13954(a) and 13957.7(g).

Specific Purpose of Regulation

The specific purpose of this regulatory action is to limit the amount of attorney's fees paid by CalVCP to fees for services actually rendered for applicants. The proposed new regulation will prevent attorneys from receiving payment from CalVCP when they actually provided no or little attorney services on a claim. In addition, the proposed new regulation would ensure that applicants are aware that their applications list an attorney representative and that they are consenting to that representation.

Rationale

The Board has determined that the modification is reasonably necessary to carry out the purpose for which it is proposed.

Government Code section 13957.7(g) states that "the board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars (\$500), which ever is less, for each victim and each derivative victim." There is currently no regulation implementing this statute.

The current practice of the Board is to pay attorney's fees of \$500 or ten percent of the award amount, which ever is less, on each application listing an attorney. The Board does not verify or evaluate the reasonableness of attorney's fees paid. This is the only type of payment made by the Board that does not require any proof prior to payment.

The proposed new regulation would have the Board satisfy its verification obligation, as set forth in Government Code section 13954(a), and ensure that the attorney's fees paid are based on the actual reasonable value of legal services received by the applicants, up to the statutorily set limit of \$500 or ten percent of the award, which ever is less. The proposed new regulation requires the attorneys to submit detailed fee statements, describing the services provided, for review by the Board. This procedure will ensure that the attorney's fee payments made by CalVCP are for services that were actually rendered by the attorney.

The requirement that the attorney submit a fee statement is not overly burdensome for the attorneys. Most lawyers, with the exception of those being paid under contingency fee agreements, only receive payment for services rendered after submitting detailed fee statements. The preparation of fee statements is a common legal industry practice. Lawyers seeking payment of fees for mandated reported actions must provide detailed fee statements prior to receiving payment from the Board. The California Department of Justice provides detailed fee statements to its client agencies. Every insurance

company requires its legal counsel to provide detailed fee statements prior to receiving payment for services. An attorney should not automatically receive payment of attorney's fees from CalVCP whether or not that attorney provided attorney services. The proposed new regulation would ensure that CalVCP only actually pays for legal services rendered.

In addition, the proposed new regulation is intended to protect applicants by ensuring that applicants are aware that their applications list an attorney representative and that the applicants are consenting to that representation. The language of the proposed new regulation specifically prohibits attorneys from adding their names to applications after the application has been signed by the applicant.

§ 649.32. Verification of Income or Support Loss

Authority and Reference

Pursuant to Government Code sections 13920 and 13974, the Board has authority to adopt necessary regulations for CalVCP. This rulemaking action is intended to implement, interpret, and/or make specific Government Code sections 13957(a)(4) and 13957.5.

Specific Purpose of Regulation

The specific purpose of this regulatory action is to prevent payment on fraudulent income and support loss claims under CalVCP and to lower the overall demand for money from the Fund.

Rationale

The Board has determined that the modification is reasonably necessary to carry out the purpose for which it is proposed.

Government Code section 13957(a)(4) states that the Board may authorize compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's or derivative victim's injury or the victim's death. Government Code section 13957.5 details the individuals entitled to income or support loss. Government Code section 13954 requires that the Board verify all claimed losses prior to paying benefits for those losses. California Code of Regulations, title 2, section 32, currently implements the verification of the amount of income and support loss suffered by an applicant as follows, in relevant part:

(c) Evidence of income loss may include but not be limited to, documentation of earnings immediately preceding the date of the qualifying crime such as copies of all wage check stubs for periods immediately preceding the date of the qualifying crime, or copies of all state and federal income tax returns filed by the victim or applicant for the tax year immediately preceding the date of the crime or during the year of the crime, if available, or a Statement of Wages or Income as used to file with federal or state taxing authorities such as a W-2 IRS form actually filed with the taxing authorities, or a statement signed by the employer attesting to the payment of wages or income to the victim which statement shall include the name, telephone number and address of the employer or person who paid or would have paid the wages or income along with the employer's Federal Identification Number, or wage abstract from the Employment Development Department, or a profit/loss statement for self-employed victim or application generated and signed by a certified public accountant. For a self-employed victim or applicant, the income loss will be calculated based upon the adjusted gross income.

(d) Evidence of income loss may also include payment based upon a bona fide job offer, including but not limited to a job offer on the employer's letterhead with the employer's signature and federal tax

identification number stating the terms of employment, work order or contracts for jobs in progress.

Income and support loss benefits represent approximately 17 percent (\$16.3 M) of the total expenditures made by the CalVCP for FY 2009/10. Since FY 2005/06 there has been an overall upward trend and a 27% percent increase in expenditures for income and support loss benefits.

Current verification requirements are not stringent enough to avoid fraud entirely and also require a considerable amount of staff time to complete, causing delays in processing other applications. The Board staff has encountered numerous instances where the information provided to support income loss or support claims turned out to be fraudulent. For example, applicants have provided letters stating that they had a job offer, when it is clear that the company allegedly making the offer could never have paid the listed salary. Similarly, applicants have provided documents from alleged employers which turned out to be false.

The proposed regulation modification would narrow the scope of acceptable income and support loss evidence to only those documents that are from a reliable source. This will speed up the approval and denial of income and support loss claims, as well as guard against fraudulent claims.

There is precedent for the type of verification requirements proposed in the regulation modification. The Texas victim compensation program requires income loss benefit verification by way of a tax return along with an employer verification form. Washington's victim compensation program does not allow speculative job offers, but instead only pays victims who are "gainfully employed" at the time of the crime.

The proposed regulation modification would ensure that CalVCP only pays for the actual income or support lost by applicants, and would thereby assist in protecting the Fund from insolvency.

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

- “Proposal to Consider Modifications to Covered Benefits, Rates and Fees under the California Victim Compensation Program,” (Proposal), and “Combined Projected Savings Proposals” which were considered at the Board’s February 2011 meeting (Exhibit A).
- Various statistical reports from CaRES regarding previous payments by CalVCP for FY 09/2010.

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. This rulemaking action is being taken in conjunction with other measures to decrease CalVCP payments and increase CalVCP revenues.

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.

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.