

NOTICE OF PROPOSED RULEMAKING ACTION

**TITLE 2. ADMINISTRATION
DIVISION 2. FINANCIAL OPERATIONS
CHAPTER 1. CALIFORNIA VICTIM COMPENSATION BOARD
ARTICLE 2.5 GENERAL HEARING PROCEDURES
SECTIONS 615.2, 617.1, 617.4, 617.5, 617.6, 617.7, 617.8, 617.9, 619.4 & 619.5
ARTICLE 5.2 HEARINGS FOR INDEMNIFICATION OF CITIZENS BENEFITTING THE
PUBLIC AND INDEMNIFICATION OF VICTIMS OF CRIMES
SECTIONS 647.3, 647.4, 647.20, 647.20.1, 647.21, 647.22,
647.25, 647.26, 647.30 & 647.31
ARTICLE 5.6. INDEMNIFICATION OF VICTIMS OF CRIME
SECTIONS 649, 649.8, 649.32, 649.33, 649.41 & 649.48**

[Notice Published February 14, 2025]

The California Victim Compensation Board ("CalVCB" or "Board") proposes to adopt the regulations described below after considering all comments, objections and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action; however, the Board will schedule and hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested individual, or their authorized representative, may submit written comments relevant to the proposed regulatory action. To be considered, written comments must be received by April 1, 2025. The Board will consider only comments received at its office by this deadline. Written comments may be mailed to:

Neil Ennes, Legislative Coordinator
California Victim Compensation Board
P.O. Box 48
Sacramento, CA 95812-0048

Written comments may also be submitted by facsimile (FAX) at (916) 491-6441 or by e-mail to: regulations@victims.ca.gov.

AUTHORITY AND REFERENCE

Government Code sections 13920 and 13974 and Penal Code section 4906 authorize the Board to adopt these proposed regulations. The proposed regulations are intended to implement, interpret, and make specific Government Code sections 13950 through 13965 and 13970 through 13974.1, and Penal Code sections 4900 through 4903.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

CalVCB was the first victim compensation program established in the nation and remains one of the largest. To be eligible for victim compensation, a victim or derivative victim must have suffered a pecuniary loss as a direct result of a qualifying crime. (Gov. Code, §§ 13955, 13957.) "Crime" is defined as a crime or public offense that would constitute a misdemeanor or felony offense. (Gov. Code, § 13951, subd. (b).) A crime is considered to be a "qualifying crime" for purposes of victim compensation from CalVCB if the victim is deceased or sustained physical injury or threat of physical injury as a direct result of the crime. (Gov. Code, § 13955, subd. (f)(1) & (2).) The Board may also find the existence of a qualifying crime based on an emotional injury alone when the crime is among a list of offenses enumerated in Government Code section 13955, subdivision (f)(3).

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

Conversely, the Board must deny an application for compensation or request for reimbursement of expenses if the applicant fails to demonstrate eligibility for either the application or the request for reimbursement of expenses. When CalVCB staff recommends that an application or a request for reimbursement be denied, applicants have a right to appeal the staff's recommendation. (Cal.

Code Regs., tit. 2, § 647.20.) If an applicant appeals, CalVCB must provide the applicant with a hearing. (Gov. Code, § 13959.)

As the program has grown, the need for clarification of existing statutes has become evident. Additionally, in August 2024, a superior court ruled that California Code of Regulations, title 2, section 647.20.1, which provided a means by which the hearing officer could elect to conduct an informal hearing based on documentary evidence alone, is invalid. The court ordered that the regulation be removed from the regulatory scheme. The ruling necessitated a rewriting of the regulations governing hearing procedures.

A. Hearing Regulations

While reviewing the hearing regulations following the court's order, the Board determined that it is necessary to clarify the distinction between the general procedures that apply to all hearings conducted by CalVCB (which includes hearings on victim compensation claims, Good Samaritan claims, and Penal Code section 4900 claims), and those that do not apply to all three types of hearings.

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

Cal. Code Regs., tit. 2, § 615.2	Definitions
Cal. Code Regs., tit. 2, § 617.4	Hearing by Electronic Means
Cal. Code Regs., tit. 2, § 617.7	Presentation of Oral Evidence
Cal. Code Regs., tit. 2, § 617.8	Official Notice
Cal. Code Regs., tit. 2, § 617.9	Failure to Appear or Proceed
Cal. Code Regs., tit. 2, § 619.5	Action on Proposed Decision by Board

Further, staff propose that the following regulations be revised to clarify that they apply to hearings conducted pursuant to Government Code sections 13950-13966 or 13970-13974.1 only.

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

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

Cal. Code Regs., tit. 2, § 617.1	Public Hearing
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Cal. Code Regs., tit. 2, § 619.4	Notice and Public Comment on Proposed Decision
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Finally, staff propose that the following regulations be deleted, either pursuant to the court order or to reduce duplication in the regulations:

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

B. Proposed Changes that Apply to Applications Filed Pursuant to Government Code sections 13950-13966 or 13970-13974.1

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

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

These regulations make program requirements clear. 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 revises 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 demonstrate 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.

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

Anticipated Benefits of the Proposed Regulations:

The proposed regulations comply with the current statutes governing victim compensation claims, Good Samaritan claims, and Erroneously Convicted Felon claims interpret and implement general aspects of the law to ensure their consistent application, and provide the public with the transparency and specificity needed for applicants to successfully obtain compensation. By doing so, they will provide clear guidance to the public and enable the Board to decide these claims in a more uniform and efficient manner.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

During the process of developing the proposed regulatory action, the Board conducted a search for any regulations on the topic of hearing procedures. The Board considered the informal hearing procedures of the Administrative Procedures Act codified at Government Code sections 11445.10 through 11445.60 and CalVCB's existing hearing procedures which are located in the California Code of Regulations, title 2, at sections 615.1 through 619.7 (general hearing provisions), 647.1 through 647.38 (hearing procedures for victims of crime), and 640 through 646 (hearing procedures for claims of persons erroneously convicted of felonies). The Board conducted an evaluation of these related regulations and concluded that the proposed regulations are neither inconsistent nor incompatible with existing regulations.

Additionally, after conducting an evaluation for any regulations related to CalVCB's indemnification of victims of crime regulations, the Board has found that the proposed regulations are the only regulations concerning definitions, emergency awards, verification of income and support loss, derivative victims eligibility of support loss, acts constituting one qualifying crime and human trafficking. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative, private individual, or business: The Board is not aware of any cost impacts that a representative, private person, or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The purpose of the proposed regulations is to interpret and implement the current statutes governing victim compensation. When an application for compensation is approved, victims can submit bills for reimbursement of the pecuniary losses they sustained as a direct result of a qualifying crime. Compensation is then paid on an allowed application after staff have verified the bill or expense. 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; 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.

CalVCB has determined that the proposed regulations 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:

The Board has determined that the proposed regulations would benefit the health and welfare of California residents by reimbursing crime victims for pecuniary losses they sustained as a direct result of a qualifying crime. The Board has determined that the proposed regulations are not expected to impact worker safety or the state's environment.

SMALL BUSINESS DETERMINATION

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.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private individuals than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested individuals to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed regulatory revisions may be directed to:

Neil Ennes, Legislative Coordinator
California Victim Compensation Board
P.O. Box 48
Sacramento, CA 95812-0048
Telephone: (916) 491-3728

The backup contact person for inquiries concerning the proposed regulatory revisions is:

Kim Gauthier
California Victim Compensation Board
P.O. Box 48
Sacramento, CA 95812-0048
Telephone: (916) 491-3605

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based, to Neil Ennes at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at 400 R Street Sacramento, CA 95811 and on the website <https://victims.ca.gov>. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the Initial Statement of Reasons. Copies may be obtained by contacting Neil Ennes at the P.O. Box or phone number provided above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if requested, and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the original proposed text, it will make the modified text available to the public at least 15 days before the Board adopts the regulation as revised. Please send requests for copies of the modified regulation to the attention of Neil Ennes at the P.O. Box indicated above. The Board will

accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Neil Ennes at the above P.O. Box address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the proposed text of the regulations in underline and strikeout can be accessed through the CalVCB's website at <https://victims.ca.gov>.

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