



Unclaimed Property ADVISORY ■

JULY 13, 2023

Insights into California's New Voluntary Compliance Program: Some Answers, More Questions

California's voluntary compliance program (VCP) is a few months old, and expectations remain high among holders and the State Controller's Office (SCO) which administers the VCP.

We raised some questions on how the state's VCP will be administered in our [February 23, 2022 advisory](#), our [August 23, 2022 advisory](#), and our [March 20, 2023 advisory](#). Some of those questions have been answered, but new questions have emerged as the SCO begins approving VCP applications.

The Known Knowns

The SCO Retired the Interest Form to Receive an Application.

The form was intended to engage holders in the intermediary period between the VCP's commencement and the holder's completion of the application. The form's demise establishes that it had very little utility.

All applicants who completed an interest form should receive VCP applications. Applicants who did not submit an interest form must now submit the VCP application directly to the SCO.

Applicants Are Expected to Review Their Books and Records Before Submitting VCP Applications.

The SCO has published deadlines for the completion of each step of the 2023 VCP application process.

- Holder representatives must complete training by July 31, 2023.
- Applicants must conduct due diligence by September 30, 2023.
- Applicants must submit notice reports by October 31, 2023.
- Applicants must submit remit reports and remit unclaimed property to the SCO by June 1–June 15, 2024.

While not saying so explicitly, the SCO expects applicants to completely review their books and records *before or soon after* submitting applications (certainly before the September 30, 2023 due diligence deadline, which would require applicants to know which items of property are subject to due diligence requirements).

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Section C of the VCP [application](#), “Inactive Property Estimates,” requests that applicants estimate the total cash value of unclaimed property. **Applicants who do not complete Section C or simply enter \$0 for each of the unclaimed property types listed run the risk of the SCO denying their application.**

Applicants who are serious about applying to the VCP should review their records to provide a reasonable estimate of their unclaimed property. Prospective applicants should weigh the benefits of coming into compliance through the VCP in the 2023 cycle against the feasibility of completing the VCP and the reviewing of their records within the SCO’s explicit—and implicit—deadlines.

The VCP Training Will Not Be Rigorous.

One of the VCP’s most curious and anxiety-provoking features is the mandatory holder training. Busy holder representatives are skeptical about undergoing training rather than using their limited time to review their records to meet the VCP deadlines. Applicants can relax. The training will not be rigorous.

The training consists of a webinar spanning 60–90 minutes that covers the basics of unclaimed property, the California Unclaimed Property Law (UPL), technical reporting and remit requirements, and the VCP. There likely will be question prompts throughout the webinar and a post-webinar quiz. Importantly, the training must be completed by representatives employed by an applicant, not third-party holder representatives like outside counsel, accountants, or consultants.

The Submission of the Interest Form and/or the VCP Application Does Not Preclude the SCO’s Ability to Commence an Examination.

Applicants hoping to stave off unclaimed property examinations under Section 1571 of the California Code of Civil Procedure and the potential assessment of interest under Section 1577 cannot rely on their submission of the VCP interest form or a VCP application. The risk of an examination continues until the SCO approves the application. This is particularly concerning because, unlike most states’ voluntary disclosure programs, **the submission of a VCP application does not guarantee the SCO’s acceptance of the applicant into the program.**

The new Section 1577.5(d) makes this limitation clear: “The Controller, in their discretion, may enroll eligible holders in the program.” Section E of the VCP application is explicit: “Enrollment in the VCP is not guaranteed.”

As the SCO notes in its VCP application, even eligible applicants who seemingly meet all of the VCP’s requirements may not be admitted. Although the potential reasons for the rejection of an otherwise eligible applicant are uncertain, and it seems unlikely that the SCO would undermine its own program by routinely rejecting eligible applicants, applicants should *not* assume that their application will be accepted as a matter of course.

Note that interest continues to accrue until applicants remit unclaimed property. And, if the SCO determines that the applicants have not disclosed and remitted all in-scope, past-due property, it may reinstate the waived interest. The SCO expects applicants to take the VCP seriously and fully comply with the VCP requirements to reap the benefits of the program.

The VCP Will Not End After Completion of the 2023 Program.

Applicants who elect not to participate in the 2023 cycle of the VCP or who are not able to meet the 2023 deadlines can do so in future iterations of the program (unless an audit or action is commenced against the holder in the intermediary period).

Representatives of the SCO have confirmed that the program should not be considered an amnesty program, because the program will continue beyond the 2023 reporting cycle. Of course, applicants may understandably feel the need to enter the VCP as soon as possible to preclude the SCO's commencing an examination. However, the SCO's intention to continue the program enables would-be applicants to better decide how to participate (e.g., whether to apply to the program as a single company or to include all subsidiaries and affiliated companies, and which property types to review).

The Known Unknowns

Will the Subsequent Iterations of the Program Be On-Cycle or Off-Cycle?

The current VCP's deadlines line up with the 2023 California two-phase annual reporting cycle, meaning VCP applicants must submit notice and remit reports under the same deadlines as unclaimed property holders submitting their annual reports. It is unclear whether future VCPs will be similarly calendared—which could delay otherwise-ready holders from applying or being accepted into the VCP—or whether the SCO will forgo the annual reporting cycle and offer VCP reporting deadlines in the spring or summer.

Will Applicants Against Whom the Previous Imposition of Interest Was Waived as Erroneous Be Barred from the VCP?

Section 1577.5(d)(4) of the California Code of Civil Procedure bars applicants from entering the VCP if the SCO "has waived interest assessed against the holder ... within the previous five years." Section B of the VCP application expands upon Section 1577.5(d)(4)'s language, providing that eligible holders are those who have "not received, within the past 5 years, an interest assessment under CCP Section 1577 that currently remains unpaid or unresolved."

These provisions make no exception for applicants against whom interest was assessed but later withdrawn (in whole or in part) because the SCO found that the initial interest assessment was erroneous. It is unclear under the plain language of these provisions whether these applicants would be barred from admission into the VCP, particularly because the SCO often does not reveal the basis for granting a waiver request.

This interpretation, however, seems unduly harsh and violates the spirit of Section 1577.5. Unlike applicants who successfully completed a VCP previously, which seems to be the intended class of excluded parties, applicants who received waivers based on successful arguments that the assessment itself was erroneous should not be similarly excluded. These applicants are not multiple-time offenders or gaming the system. They are no different from applicants without prior interest assessments and should be treated the same way. The SCO should specify in future waiver determinations whether the SCO's withdrawal or waiver of interest will or will not preclude subsequent admission into the VCP to better facilitate the separate treatment of applicants against whom the initial imposition of interest was erroneous.

Will Inaccurate Estimates of Unclaimed Property Liability by Property Type Lead to a Higher Risk of Examinations?

The SCO's insistence that applicants provide estimates of their unclaimed property liability has led to understandable fears that significant disparities between the estimations included on a holder's VCP application and final reported amounts may put applicants at a higher risk of being audited at the conclusion of the VCP than if they had not participated in the VCP.

The SCO has stated that all VCP reports will be reviewed for compliance, and it is certainly possible that compliance officers will compare application estimates with reported amounts. The SCO should treat estimates for what they are—necessarily imprecise conjecture. Applicants should not be penalized for providing estimates in good faith that ultimately prove to be inaccurate.

For many holders, particularly first-time filers, the VCP will be a learning process. Interpretations of the UPL and what property is subject to escheat may change as applicants learn the nuances of dormancy standards or retain the services of outside consultants to provide further context or different opinions. The SCO should encourage *accurate* reporting to reunite owners with their property rather than *more* reporting.

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