

**ITEM 5**  
**FINAL STAFF ANALYSIS**  
**PROPOSED PARAMETERS AND GUIDELINES**

Penal Code Section 273.75(a) and (c)  
Statutes 2001, Chapter 713 (AB 1129)

*Domestic Violence Background Checks*  
01-TC-29

County of Alameda, Claimant

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**EXECUTIVE SUMMARY**

This test claim statute requires district attorneys and prosecuting city attorneys to perform database searches of persons who are charged with domestic violence, or when considering domestic violence restraining orders, and present the information for consideration by the courts under certain circumstances. The claimant proposes activities in addition to the activities adopted in the statement of decision. The State Controller's Office proposes nonsubstantive revisions to the parameters and guidelines. Staff finds that pursuant to section 1183.1 of the Commission on State Mandates' (Commission) regulations, there is evidence in the record to show that the additional activities proposed by claimant are the most reasonable methods of complying with the mandate. The proposed activities are included in the parameters and guidelines. Staff also included the revisions proposed by the State Controller. Staff recommends the Commission adopt the proposed parameters and guidelines and authorize staff to make any necessary technical corrections following the hearing.

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**STAFF ANALYSIS**

**Claimant**

County of Alameda

**Chronology**

- 07/26/2007 Commission adopts statement of decision
- 03/20/2008 Commission issues a letter to claimant indicating claimant has missed the 30-day deadline for filing parameters and guidelines, and that pursuant to the Commission's regulations, claimant's first 12 months of incurred costs will be reduced by 20 percent for missing the 30-day deadline
- 06/25/2008 Commission issues second notice of failure to submit parameters and guidelines, and asks if claimant has abandoned this claim
- 06/26/2008 Claimant files letter stating intent to work with Department of Finance to formulate a joint reasonable reimbursement methodology (RRM)

- 07/29/2009 The California State Association of Counties and League of California Cities file a letter stating they continue to work with Finance to develop a joint RRM
- 02/11/2011 Commission issues letter indicating that parties have not met deadlines for submitting a joint RRM and therefore, Commission is setting the parameters and guidelines for hearing
- 02/11/2011 Commission issues proposed parameters and guidelines for comment
- 03/11/2011 State Controller's Office files comments on proposed parameters and guidelines
- 03/14/2011 County of Alameda files comments on proposed parameters and guidelines
- 06/09/2011 Commission staff issues draft staff analysis and proposed parameters and guidelines
- 06/29/2011 State Controller's Office files comments on draft staff analysis and proposed parameters and guidelines
- 06/30/2011 Department of Finance files comments on draft staff analysis and proposed parameters and guidelines

**I. Background and Summary of the Mandate**

Claimant County of Alameda submitted the test claim in July 2002 alleging a reimbursable state-mandated program for courts, district attorneys and prosecuting city attorneys to perform data base searches of persons who are charged with domestic violence, or when considering domestic violence restraining orders.

On July 26, 2007, the Commission adopted a statement of decision finding that Penal Code section 273.75 imposes a reimbursable state-mandated program on district attorneys or prosecuting city attorneys within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to do the following upon any charge involving acts of domestic violence (as defined in Pen. Code, § 13700 & Fam. Code, §§ 6211 & 6203):

- Perform or cause to be performed, in specified electronic data bases,<sup>1</sup> a thorough investigation of the defendant's history, including, but not limited to, prior convictions for domestic violence, other forms of violence or weapons offenses and any current protective or restraining order issued by any civil or criminal court (Pen. Code, § 273.75(a)).
- Present the information for consideration by the court: (1) when setting bond or when releasing a defendant on his or her own recognizance at the arraignment, if

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<sup>1</sup> As specified in Penal Code section 273.75(b), the electronic data bases to be searched, "when readily available and reasonably accessible," are:

- (1) The Violent Crime Information Network (VCIN).
- (2) the Supervised Release File.
- (3) State summary criminal history information maintained by the Department of Justice pursuant to Section 11105 of the Penal Code.
- (4) The Federal Bureau of Investigation's nationwide data base.
- (5) Locally maintained criminal history records or data bases.

the defendant is in custody; and (2) upon consideration of any plea agreement (Pen. Code, § 273.75(a)).

- If a protective or restraining order is issued in the current criminal proceeding, and if the investigation reveals a current civil protective or restraining order issued by another criminal court and involving the same or related parties, the district attorney or prosecuting city attorney sends relevant information regarding the contents of the order issued in the current criminal proceeding, and any other information regarding a conviction of the defendant, to the other court immediately after the order has been issued (Pen. Code, § 273.75(c)).

The Commission denied all other code sections pled by the claimant.

## **II. Commission's Responsibility for Adopting Parameters and Guidelines**

If the Commission approves a test claim, the Commission is required by Government Code section 17557 to adopt parameters and guidelines for the reimbursement of any claims. The successful test claimant is required to submit proposed parameters and guidelines to the Commission for review. The parameters and guidelines shall include the following information: a summary of the mandate; a description of the eligible claimants; a description of the period of reimbursement; a description of the specific costs and types of costs that are reimbursable, including activities that are not specified in the test claim statute or executive order, but are determined to be reasonably necessary for the performance of the state-mandated program; instructions on claim preparation, including instructions for the direct or indirect reporting of the actual costs of the program or the application of an RRM; and any offsetting revenue or savings that may apply.<sup>2</sup>

As of January 1, 2011, the hearing on the adoption of proposed parameters and guidelines is conducted under Article 7 of the Commission's regulations.<sup>3</sup> Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is based on substantial evidence in the record, and oral or written testimony is offered under oath or affirmation.<sup>4</sup> Each party has the right to present witnesses, introduce exhibits, and submit declarations. However, the hearing is not conducted according to the technical rules of evidence. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used to supplement or explain, but is not sufficient in itself to support a finding unless the hearsay evidence would be admissible in civil actions.<sup>5</sup>

Should the Commission adopt this analysis and proposed parameters and guidelines, a cover sheet would be attached indicating that the Commission adopted the analysis as its decision. The decision and adopted parameters and guidelines are then submitted to the State Controller's Office to issue claiming instructions to local governments, and to pay and audit reimbursement claims. Issuance of the claiming instructions constitutes the notice of the right of local

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<sup>2</sup> Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

<sup>3</sup> California Code of Regulations, Title 2, section 1187.

<sup>4</sup> Government Code section 17559(b); California Code of Regulations, Title 2, section 1187.5.

<sup>5</sup> California Code of Regulations, Title 2, section 1187.5.

governments to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.

### **III. Discussion**

The claimant was required to submit proposed parameters and guidelines on or before August 30, 2007. No proposed parameters and guidelines were submitted. Therefore, on March 30 and June 24, 2008, Commission staff sent notices to the claimant indicating they missed the 30-day deadline for submitting parameters and guidelines, and that pursuant to Government Code section 17557(a), the first 12 months of incurred costs will be reduced by 20 percent for missing the 30-day deadline.

On June 25, 2008, the claimant submitted a letter noticing its intent to jointly develop an RRM in lieu of parameters and guidelines. Under Government Code section 17557.1, a notice of intent to develop a joint RRM must include the date the claimant and Finance will submit a plan for the RRM, including the date the RRM will be submitted to the Commission. The date the RRM is submitted must be no later than 180 days after the notice of intent is filed. Upon request of the claimant and Finance, the Commission may provide up to four extensions of this 180-day period.

This process was not followed by the parties. The claimant indicated a plan would be submitted on August 15, 2008, but no plan was submitted. The proposed RRM was not submitted to the Commission within 180 days, and no requests for extensions were requested. In fact, no RRM was ever submitted. In addition, the Commission did not provide notice to the claimants requesting the joint RRM or requesting submittal of the parameters and guidelines.

Therefore, on February 11, 2011, Commission staff issued a letter indicating that the parties have not met deadlines for submitting a joint RRM and therefore, the Commission is setting the parameters and guidelines for hearing.

Section 1183.12 of the Commission's regulations authorizes Commission staff, within 10 days after adoption of a statement of decision, to expedite parameters and guidelines by drafting proposed parameters and guidelines to assist the claimant. Government Code section 17554 authorizes the Commission to waive procedural requirements, upon the agreement of parties. With the parties' agreement, staff drafted and issued the proposed parameters and guidelines for comment.<sup>6</sup>

#### **A. Position of the Claimant**

On March 14, 2011, the claimant filed comments on the proposed parameters and guidelines.<sup>7</sup> The claimant requested the following additional activities:

- review by district attorney or prosecuting city attorney or at the direction of such attorneys by investigative staff, support staff, legal assistant or others of any or all of the databases as listed in Penal Code section 273.75 as based on defendant information provided in or with the law enforcement report;
- review of databases or printouts from databases by district attorney or prosecuting city attorney in preparation for presenting such database evidence in court;

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<sup>6</sup> Exhibit A.

<sup>7</sup> Exhibit B.

- presentation of evidence in court by district attorney or prosecuting city attorney;
- review of databases or printouts from databases, case file, and other sources as may be necessary by district attorney or prosecuting city attorney, or by another at the direction of the attorney, to obtain relevant information for a letter or report to be sent to order-issuing court of a different jurisdiction;
- draft letter or report and sign; and
- prepare envelope and mail.

B. Position of the State Controller's Office

On March 11, 2011, the State Controller's Office filed comments on the proposed parameters and guidelines, recommending several non-substantive technical changes.<sup>8</sup> Staff accepted the revisions proposed by the State Controller's Office.

On June 29, 2011, the State Controller's Office filed comments on the draft staff analysis and proposed parameters and guidelines, recommending no changes.<sup>9</sup>

C. Position of the Department of Finance

On June 30, 2011, the Department of Finance filed comments on the draft staff analysis stating that it had no concerns with the proposed parameters and guidelines, but encouraged claimants to implement the program in "a reasonable, non-excessive amount of time."<sup>10</sup>

D. Staff Analysis

Commission staff reviewed the statement of decision, draft parameters and guidelines and the comments filed by the claimant, the State Controller's Office, and Department of Finance. Staff made non-substantive changes to conform these parameters and guidelines to other parameters and guidelines previously adopted by the Commission and to address the Controller's request for technical revisions.

Staff made substantive changes to the following section:

Section IV. Reimbursable Activities

The claimant proposed additional language for each of the activities approved by the Commission in order to provide further clarification. (The activities approved in the statement of decision are listed below. Claimant's proposed clarifying language is also listed below in italics.)

- A. Perform or cause to be performed, in specified electronic data bases, a thorough investigation of the defendant's history, including, but not limited to, prior convictions for domestic violence, other forms of violence or weapons offenses

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<sup>8</sup> Exhibit C

<sup>9</sup> Exhibit D

<sup>10</sup> Exhibit E.

and any current protective or restraining order issued by any civil or criminal court. (Pen. Code, § 273.75(a)).

*This activity includes review by the district attorney or prosecuting city attorney, or at the direction of such attorneys by investigative staff, support staff, legal assistant or others of any or all of the databases as listed in Penal Code section 273.75 regarding the defendant information provided in or with the law enforcement report.*

- B. Present the information for consideration by the court: (1) when setting bond or when releasing a defendant on his or her own recognizance at the arraignment, if the defendant is in custody; and (2) upon consideration of any plea agreement (Pen. Code, § 273.75(a)).

*This activity includes:*

*(1) review of databases or printouts from databases by district attorney or prosecuting city attorney in preparation for presenting such database evidence in court; and*

*(2) presentation of evidence in court by district attorney or prosecuting city attorney.*

- C. If a protective or restraining order is issued in the current criminal proceeding, and if the investigation reveals a current civil protective or restraining order issued by another criminal court and involving the same or related parties, the district attorney or prosecuting city attorney sends relevant information regarding the contents of the order issued in the current criminal proceeding, and any other information regarding a conviction of the defendant, to the other court immediately after the order has been issued (Pen. Code, § 273.75(c)).

*This activity includes:*

*(1) review of databases or printouts from databases, case file, and other sources as may be necessary by district attorney or prosecuting city attorney, or by another at the direction of the attorney, to obtain relevant information for a letter or report to be sent to an order-issuing court of a different jurisdiction;*

*(2) draft letter or report and sign; and*

*(3) prepare envelope and mail.*

Section 1183.1(a)(4) of the Commission's regulations authorizes the Commission to include the "most reasonable methods of complying with the mandate" in the parameters and guidelines. The "most reasonable methods of complying with the mandate" are "those methods not specified in statute or executive order that are necessary to carry out the mandated program."

There is evidence in the record that the activities proposed by the claimant are necessary to implement the program. The test claim, signed under penalty of perjury by the claimant, states that the information found through the database search must be presented to the judge, and must be provided to other courts. Staff finds that it is reasonably necessary for the district attorney or city prosecuting attorney to review the information

culled in the database search before they go to court to present the information to the judge, or draft a letter to send it to other courts. Therefore, staff included the language proposed by the claimant in the proposed parameters and guidelines.

### **Staff Recommendation**

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines, beginning on page 8.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

## PROPOSED PARAMETERS AND GUIDELINES

Penal Code Section 273.75(a) and (c)

Statutes 2001, Chapter 713 (AB 1129)

*Domestic Violence Background Checks*  
*01-TC-29*

County of Alameda, Claimant

### I. SUMMARY OF THE MANDATE

The test claim statute requires district attorneys and prosecuting city attorneys to perform data base searches of persons who are charged with domestic violence, or when considering domestic violence restraining orders, and present the information for consideration by the courts under certain circumstances.

On July 26, 2007, the Commission on State Mandates found that Penal Code section 273.75 imposes a reimbursable state-mandated program on district attorneys or prosecuting city attorneys within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to do the following upon any charge involving acts of domestic violence (as defined in Pen. Code, § 13700 & Fam. Code, §§ 6211 & 6203):

- Perform or cause to be performed, in specified electronic data bases,<sup>1</sup> a thorough investigation of the defendant's history, including, but not limited to, prior convictions for domestic violence, other forms of violence or weapons offenses and any current protective or restraining order issued by any civil or criminal court (Pen. Code, § 273.75(a)).
- Present the information for consideration by the court: (1) when setting bond or when releasing a defendant on his or her own recognizance at the arraignment, if the defendant is in custody; and (2) upon consideration of any plea agreement (Pen. Code, § 273.75(a)).
- If a protective or restraining order is issued in the current criminal proceeding, and if the investigation reveals a current civil protective or restraining order issued by another criminal court and involving the same or related parties, the district attorney or prosecuting city attorney sends relevant information regarding the contents of the

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<sup>1</sup> As specified in Penal Code section 273.75(b), the electronic data bases to be searched, "when readily available and reasonably accessible," are:

- (1) The Violent Crime Information Network (VCIN).
- (2) The Supervised Release File.
- (3) State summary criminal history information maintained by the Department of Justice pursuant to Section 11105 of the Penal Code.
- (4) The Federal Bureau of Investigation's nationwide data base.
- (5) Locally maintained criminal history records or data bases.



order issued in the current criminal proceeding, and any other information regarding a conviction of the defendant, to the other court immediately after the order has been issued (Pen. Code, § 273.75(c)).

The Commission denied all other code sections pled by the claimant.

## II. ELIGIBLE CLAIMANTS

~~Any county district attorneys and prosecuting city attorneys that incur~~ Any city or county that employs prosecuting attorneys or district attorneys respectively, and incurs increased costs as a result of this reimbursable state-mandated program is ~~are~~ eligible to claim reimbursement of ~~these~~ these costs.

## III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Alameda filed the test claim on July 31, 2002, establishing eligibility for reimbursement beginning July 1, 2001. However, Statutes 2001, chapter 713 did not become operative until January 1, 2002. Therefore, costs incurred for compliance with the mandated activities are reimbursable on or after January 1, 2002.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. ~~In the event~~ If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code, § 17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

## IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any given fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for

the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, time sheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below.

For each eligible claimant, the following ongoing activities are eligible for reimbursement upon any charge involving acts of domestic violence (as defined in Pen. Code, § 13700 & Fam. Code, §§ 6211 & 6203):

- A. Perform or cause to be performed, in specified electronic data bases, a thorough investigation of the defendant's history, including, but not limited to, prior convictions for domestic violence, other forms of violence or weapons offenses and any current protective or restraining order issued by any civil or criminal court (Pen. Code, § 273.75(a)).
  - A-1. Review by district attorney or prosecuting city attorney, or at the direction of such attorneys by investigative staff, support staff, legal assistant or others of any or all of the databases as listed in Penal Code section 273.75 as based on defendant information provided in or with the law enforcement report.
- B. Present the information for consideration by the court (1) when setting bond or when releasing a defendant on his or her own recognizance at the arraignment, if the defendant is in custody, and (2) upon consideration of any plea agreement (Pen. Code, § 273.75(a)).
  - 1. Review of databases or printouts from databases by district attorney or prosecuting city attorney in preparation for presenting such database evidence in court.
  - B-2. Presentation of evidence in court by district attorney or prosecuting city attorney.
- C. If a protective or restraining order is issued in the current criminal proceeding, and if the investigation reveals a current civil protective or restraining order issued by another criminal court and involving the same or related parties, the district attorney or prosecuting city attorney sends relevant information regarding the contents of the order issued in the current criminal proceeding, and any other information regarding a conviction of the defendant, to the other court immediately after the order has been issued (Pen. Code, § 273.75(c)).

1. Review of databases or printouts from databases, case file, and other sources as may be necessary by district attorney or prosecuting city attorney, or by another at the direction of the attorney, to obtain relevant information for a letter or report to be sent to order-issuing court of a different jurisdiction.
2. Draft letter or report and sign.
3. Prepare envelope and mail.

## V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for the reimbursable activities identified in section IV of this document. Each reimbursable cost must be supported by source documentation as described in section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### A. Direct Cost Reporting

Direct costs are those costs incurred specifically for reimbursable activities. The following direct costs are eligible for reimbursement.

#### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

#### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

#### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services that were performed and itemize all costs for those services during the period covered by the reimbursement claim. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and invoices with the claim and a description of the contract scope of services.

#### 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets ~~and equipment~~ (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset ~~or equipment~~ is also used for

purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

#### 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

#### B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include: (1) the overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distributions base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. the allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or
2. the allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect

costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

## **VI. RECORDS RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>2</sup> is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsetting revenues the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1)(A), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon the request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d)(1)(a), and California Code of Regulations, title 2, section 1183.2.

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<sup>2</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

**X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.