



January 16, 2019

Ms. Annette Chinn  
Cost Recovery Systems, Inc.  
705-2 East Bidwell Street, #294  
Folsom, CA 95630

Ms. Jill Kanemasu  
Division of Accounting and Reporting  
State Controller's Office  
3301 C Street, Suite 700  
Sacramento, CA 95816

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Corrected Proposed Decision and Proposed Parameters and Guidelines**  
*U Visa 918 Form, Victims of Crime: Nonimmigrant Status, 17-TC-01*  
Penal Code Section 679.10; Statutes 2015, Chapter 721 (SB 674)  
City of Claremont, Claimant

Dear Ms. Chinn and Ms. Kanemasu:

On January 14, 2019, the Commission on State Mandates (Commission) issued the Proposed Decision and Proposed Parameters and Guidelines for the above-captioned matter for your review. However, text from pages 30-32 of the Proposed Decision was inadvertently deleted in the review process and has been restored in underline and strikeout for ease of review. The underline and strikeout will be deleted from the adopted Decision.

The corrected Proposed Decision can be found at <https://www.csm.ca.gov/matters/17-TC-01.php> on the Commission's website.

### **Hearing**

This matter remains set for hearing on **Friday, January 25, 2019** at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

### **Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Sincerely,

Heather Halsey  
Executive Director

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**ITEM 5**  
**CORRECTED PROPOSED DECISION**  
**AND**  
**PROPOSED PARAMETERS AND GUIDELINES**

Penal Code Section 679.10

Statutes 2015, Chapter 721 (SB 674)

*U Visa 918 Form, Victims of Crime: Nonimmigrant Status*

17-TC-01

The period of reimbursement begins July 1, 2016.

City of Claremont, Claimant

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**EXECUTIVE SUMMARY**

Text from pages 30-32 of the Proposed Decision was inadvertently deleted in the review process and has been restored in underline and strikeout for ease of review. The underline and strikeout will be deleted from the adopted Decision.

**I. Summary of the Mandate**

These Parameters and Guidelines address the mandated activities arising from Penal Code section 679.10, added by Statutes 2015, chapter 721 (SB 674), which requires local agencies, upon request of a victim of qualifying criminal activity, to complete and certify within specified deadlines the federal Form I-918 Supplement B (U Nonimmigrant Status Certification), if stated conditions are met, and to submit annual reports about the certifications to the Legislature.

On September 28, 2018, the Commission on State Mandates (Commission) adopted the Decision finding that the test claim statute imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the Test Claim for “certifying officials” from the “certifying entities” of local agencies (i.e., district attorney offices, sheriff’s departments, police departments, child protective services, and any other local agency authority that has the responsibility for the detection, investigation, or prosecution of a qualifying criminal activity within the meaning of the Penal Code section 679.10(a), with the *exception* of the police/security departments of school districts and special districts, and judges who are not eligible to claim mandate reimbursement in this case), to perform the following reimbursable state-mandated activities:

- For the certifying official to fully complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim’s family member, and “include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim’s helpfulness or likely helpfulness to the detection or

investigation or prosecution of the criminal activity” within 90 days of the request or 14 days of the request if the victim is in removal proceedings, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity. (Pen. Code, § 679.10(a)-(j).)

- For a certifying entity that receives a request for a Form I-918 Supplement B certification to report to the Legislature on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied. (Pen. Code, § 679.10(l).)

## **II. Procedural History**

On September 28, 2018, the Commission adopted the Decision partially approving the Test Claim.<sup>1</sup> On October 3, 2018, Commission staff issued the Draft Expedited Parameters and Guidelines.<sup>2</sup> On October 23, 2018, the claimant filed comments on the Draft Expedited Parameters and Guidelines, proposing additional activities which it asserts are reasonably necessary to perform the mandate.<sup>3</sup> On October 24, 2018, the State Controller’s Office (Controller) filed comments recommending no changes to the Draft Expedited Parameters and Guidelines.<sup>4</sup> On November 19, 2018, Commission staff issued the Draft Proposed Decision and Proposed Parameters and Guidelines.<sup>5</sup> On December 5, 2018, the claimant filed comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, proposing clarifications and additional activities which it asserts are reasonably necessary to perform the mandate.<sup>6</sup> On December 10, 2018, the Controller filed comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, recommending no changes to the Proposed Parameters and Guidelines.<sup>7</sup>

## **III. Discussion**

### **A. Reimbursable Activities (Section IV. of the Parameters and Guidelines)**

The claimant proposes a number of changes to the Parameters and Guidelines, as described below.

- 1. The proposed *one-time* activities to update policies and procedures and to train staff assigned to perform the ongoing reimbursable activities are supported by**

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<sup>1</sup> Exhibit A, Test Claim Decision.

<sup>2</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>3</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines.

<sup>4</sup> Exhibit D, Controller’s Comments on the Draft Expedited Parameters and Guidelines.

<sup>5</sup> Exhibit E, Draft Proposed Decision and Proposed Parameters and Guidelines.

<sup>6</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines.

<sup>7</sup> Exhibit G, Controller’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines.

**the law and the record and are, therefore, reasonably necessary to comply with the mandate (Section IV.A. of the Parameters and Guidelines).**

The claimant requests reimbursement for the following one-time activities as reasonably necessary to comply with the mandate:

One-time costs:

- 1) Update Department Policies and Procedures to incorporate new statutory requirements of (Pen. Code, § 679.10(a)-(j).)
- 2) Train new staff assigned to work on mandated program on requirements of Penal Code, § 679.10(a)-(j). This may include reading State statutes, instruction forms, and State or Federal Bulletins or Guidelines.<sup>8</sup>

Staff finds that the one-time activity of updating policies and procedures to incorporate the requirements of the test claim statute is reasonably necessary to comply with the mandate. As indicated in the Test Claim Decision, the California Department of Justice (DOJ) issued an Information Bulletin to all California State and Local Law Enforcement Agencies on “New and Existing State and Federal Laws Protecting Immigrant Victims of Crime,” which “encourages all agencies and officials subject to California’s new law to immediately establish and implement a U visa certification policy and protocol that is consistent with California law and the guidance provided in this law enforcement bulletin.”<sup>9</sup> In addition, the Department of Homeland Security (DHS) has published a Resource Guide on the U Visa program, which states that “DHS encourages certifying agencies to implement policies that accurately reflect and conform with the statute, regulations and DHS policies and with the information contained in this and other publications issued by USCIS [U.S. Citizenship and Immigration Services] and DHS on the U visa . . . programs.”<sup>10</sup> The claimant has also filed a declaration signed under penalty of perjury by Lieutenant Cizek, who has been employed in this capacity by the city of Claremont since 2009 and directly involved with the U Visa program, stating that “[i]t is standard practice of law enforcement agencies to update their written “Policies and Procedures” when additions or changes to the Penal Codes are made and in my opinion are a reasonably necessary activity of implementing the new subject State statutes.”<sup>11</sup>

Staff further finds that one-time training for each employee assigned to perform the reimbursable activities is reasonably necessary to comply with the mandate. Both the information bulletin on

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<sup>8</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2, italics and underline omitted.

<sup>9</sup> Exhibit A, Test Claim Decision, page 18; Exhibit H, California Department of Justice Information Bulletin No. DLE-2015-14, “New and Existing State and Federal Laws Protecting Immigrant Victims of Crime,” October 28, 2015, page 4.

<sup>10</sup> Exhibit H, “U and T Visa Law Enforcement Resource Guide,” Department of Homeland Security, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide 1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide%201.4.16.pdf), accessed July 10, 2018, page 14.

<sup>11</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 4 (Declaration of Michael Cizek, Lieutenant for the City of Claremont, October 17, 2018).

the test claim statute published by DOJ and the U Visa Resource Guide published by DHS support the use of their documents for training. In addition, the declaration of Lieutenant Ciszek states that:

One-Time Training of staff on the requirement of the new Statutes is necessary to ensure the complex and lengthy rules dictating this program are met and that the employee is completing the forms properly. This may include reading subject State Statutes, U VISA instructions and forms, State Department of Justice Information Bulletins, and Federal Homeland Security Guides (U and T Visa Law Enforcement Recourse [sic] Guide").<sup>12</sup>

**2. Some of the proposed additional ongoing activities are consistent with the law and evidence in the record and are, therefore, reasonably necessary to comply with the mandate, and those proposed additional activities which are inconsistent with the law and not supported by the evidence in the record are denied. (Section IV.B.1. of the Parameters and Guidelines).**

- a. The proposed administrative activities to receive and log the request; transmit the results to the victim or the victim's legal representative; and file, log, and close the case, are supported by the law and the record and are, therefore, reasonably necessary to comply with the mandate.

The claimant requests reimbursement to receive and log the request; transmit the results to the victim or the victim's legal representative; and file, log, and close the case, as administrative activities reasonably necessary to process U Visa requests. Staff finds that these activities are reasonably necessary to comply with the mandated activities of the certifying official to fully complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim's family member, and to maintain records to prepare the annual report to the Legislature regarding the number of requests received, approved, and denied.

The declaration from Lieutenant Ciszek states that he has personal knowledge of the U Visa program, process, and activities performed by the City of Claremont that are required by Penal Code 679.10, and asserts a belief that all activities listed in the Claimant's Comments on the Draft Proposed Parameters and Guidelines "directly result from the mandate and are reasonably necessary to implement the subject statutes of the U VISA program."<sup>13</sup> Moreover, these activities are consistent with the requirements of the test claim statute, the instructions for the U Visa form, and the Resource Guide prepared by DHS. The request must first be received from the victim or the victim's family or representative. The Resource Guide issued by the DHS further clarifies that: "Once the certifying official completes and signs the Form I-918 B . . . , the original should be given to the victim or the victim's legal representative or advocate, so that it can be added to the original U visa petition . . . application packet before submission to USCIS

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<sup>12</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 4 (Declaration of Michael Ciszek, Lieutenant for the City of Claremont, October 17, 2018, page 1).

<sup>13</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 4 (Declaration of Michael Ciszek, Lieutenant for the City of Claremont, October 17, 2018, page 1).

[U.S. Citizenship and Immigration Services].”<sup>14</sup> The instructions for Form I-918 Supplement B further require the victim to submit the Supplement B to the USCIS within six months of the date it was signed by the certifying official in order to be eligible for U nonimmigrant status.<sup>15</sup> In addition, the test claim statute requires that Form I-918 Supplement B certification be processed within 90 days of the request or 14 days of the request if the victim is in removal proceedings. This requirement is intended to timely assist the victim with his or her U Visa application, which must be filed with USCIS. Thus, to comply with this mandate, it is not enough for the certifying official to timely complete and sign Form I-918 Supplement B certification, but it is also necessary for the certifying entity to provide the Form I-918 Supplement B to the victim or the victim’s family or representative so that the petition for U nonimmigrant status can be completed and filed with USCIS.

Finally, the activities to file, log, and close the case are reasonably necessary to show compliance with the certification and processing requirements of the test claim statute, and to create a record for future reporting to the Legislature.

- b. The proposed activity to review a request for U Visa certification, including all documentation provided by the victim, is reasonably necessary to determine whether the certifying entity is required to complete a U Visa certification. However, the proposed activities to determine what relevant records exist (research), and to locate, obtain, and copy records for the purpose of reviewing them to determine if a qualifying criminal activity exists and whether the victim has been helpful, go beyond the scope of the mandate and are, therefore, denied.

The Test Claim Decision approved reimbursement for “certifying officials” from the “certifying entities” of local agencies to complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim’s family member. . . *when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity.*<sup>16</sup>

In order to determine whether the certifying official is required to complete a U Visa certification following receipt of a request, the claimant requests reimbursement to review the victim’s request.<sup>17</sup> The claimant also requests reimbursement to conduct detailed research of the original crime to determine if the conditions of the test claim statute are met, including obtaining prior criminal records and reports.<sup>18</sup> And, the claimant has requested reimbursement for the “time to determine what relevant records exist (research), locate, [and] obtain” the record in order to

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<sup>14</sup> Exhibit H, “U and T Visa Law Enforcement Resource Guide,” Department of Homeland Security, <https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide%201.4.16.pdf>, accessed July 10, 2018, page 25.

<sup>15</sup> Exhibit H, Test Claim, pages 81-82 (Instructions to Form I-918 Supplement B, pages 1-2).

<sup>16</sup> Exhibit A, Test Claim Decision, page 36, emphasis added.

<sup>17</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2,

<sup>18</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2, italics and underline omitted.

review the records to determine if the crime alleged is a qualifying crime and whether the victim was helpful.<sup>19</sup>

The proposed activities to research, locate, obtain, and copy records for the purpose of reviewing them to determine if a qualifying criminal activity exists and whether the victim has been helpful, go beyond the scope of the mandate and are, therefore, denied.

Penal Code section 679.10(e) makes it clear that certifying officials shall provide a victim with the Form I-918 Supplement B certification “*when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity.*”<sup>20</sup> Victim helpfulness is presumed and can be rebutted only “if the victim has refused or failed to provide information and assistance reasonably requested by law enforcement.”<sup>21</sup> A current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official.<sup>22</sup>

Thus, the test claim statute mandates the certifying entity to complete a U Visa certification when it has determined, in the normal course of its existing law enforcement duties, that the qualifying criminal activity occurred, regardless of the status of the criminal case, and that the victim of that criminal activity has not refused or failed to provide information and assistance reasonably requested by the certifying entity.<sup>23</sup> As stated in the Resource Guide for U Visa certifications: “*If, in the normal course of duties, a certifying official or agency has determined that a qualifying criminal activity has taken place, the victim possessed information related to the criminal activity, and the victim has been helpful . . .*” the U Visa certification is authorized under federal law.<sup>24</sup> The test claim statute does *not* mandate a local agency to detect, investigate, or prosecute the crime, or to research the original crime, to determine if a U Visa certification is required.

Moreover, the U Visa applicant has the burden to *demonstrate eligibility* for a U Visa, not the certifying entity or official.<sup>25</sup> The applicant is required by federal law to prove that the victim (i)

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<sup>19</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 1.

<sup>20</sup> Penal Code section 679.10(e), emphasis added.

<sup>21</sup> Penal Code section 679.1(f).

<sup>22</sup> Penal Code section 679.10(i).

<sup>23</sup> As discussed above, Penal Code section 679.10(f) established a rebuttable presumption that “a victim is helpful, has been helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.”

<sup>24</sup> Exhibit H, “U and T Visa Law Enforcement Resource Guide,” Department of Homeland Security, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf), accessed July 10, 2018, page 26.

<sup>25</sup> 8 Code of Federal Regulations, section 214.14 (c)(4) (“The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status.”).

has suffered substantial physical or mental abuse as a result of having been a victim of the qualifying criminal activity; (ii) possesses information concerning that criminal activity; (iii) has been helpful, is being helpful, or is likely to be helpful to authorities investigating or prosecuting qualifying criminal activity; (iv) that qualifying criminal activity violated the laws of the United States or occurred in the United States.<sup>26</sup> The non-exhaustive list of suggested forms of evidence to help the applicant establish these eligibility requirements includes the Form I-918 Supplement B certification, and trial transcripts, court documents, police reports, affidavits of other witnesses or officials, orders of protection and related legal documents.<sup>27</sup> The applicant is also required to provide a personal written statement describing the nature of the qualifying criminal activity; when the criminal activity occurred; who was responsible; the events surrounding the criminal activity; how the criminal activity came to be investigated or prosecuted; and what substantial physical and/or mental abuse suffered as a result of having been the victim of the criminal activity.<sup>28</sup> The victim must also “provide evidence that he or she has been, is being, or is likely to be helpful to a certifying official in the investigation or prosecution of the qualifying criminal activity.”<sup>29</sup>

In this respect, a victim requesting U Visa certification may already possess records from the certifying entity, received with a public records request, that shows that the victim was a victim of a qualifying criminal activity and was helpful to the detection, investigation, and prosecution of that criminal activity. Under the Public Records Act, Government Code section 6254(f) requires local law enforcement agencies to make public, upon receipt of a public records request, information surrounding an arrest and all complaints or requests for assistance received by the agency. In addition, the victim may also have received documentation of the alleged crime from the certifying entity pursuant to Family Code section 6228, which requires local agencies to provide one copy of all incident report face sheets, one copy of all incident reports, or both, to a victim of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult within specified times.<sup>30</sup>

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<sup>26</sup> 8 United State Code section 1101(a)(15)(U); 8 Code of Federal Regulations, section 214.14(b); 8 Code of Federal Regulations, section 214.14 (c)(4); Exhibit H, “U and T Visa Law Enforcement Resource Guide,” Department of Homeland Security, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf), accessed July 10, 2018, page 4.

<sup>27</sup> Exhibit H, Test Claim, pages 59-70 (Form I-918, Petition and Supplement A Instructions, pages 1-12).

<sup>28</sup> Exhibit H, Test Claim, page 71 (Form I-918, Petition and Supplement A Instructions, page 13).

<sup>29</sup> Exhibit H, Test Claim, page 82 (Form I-918, Supplement B Instructions, page 2).

<sup>30</sup> Family Code section 6228 was pled in *Crime Victims’ Domestic Violence Incident Reports* (99-TC-08) and was denied by the Commission on the ground that the statute’s requirements to provide, retrieve, and copy information relating to a domestic violence incident has long been required by the Public Records Act.



Even if a U Visa request is based on past criminal activity previously reported, investigated, and documented by the certifying entity in a closed law enforcement case, and a victim requesting a U Visa certification does not have records, or sufficient records that show that the victim was a victim of a qualifying criminal activity and was helpful to the detection, investigation, and prosecution of that criminal activity by that certifying entity, then the victim can request any additional existing records under the Public Records Act or Family Code first, before making the U Visa request with the certifying entity.

Thus, it is the Public Records Act and Family Code section 6228, and *not* the test claim statute, that require the certifying entity to research, search for, locate, or produce any documents, such as police reports or witness/victim statements, evidencing the qualifying criminal activity, that the victim was a victim of that activity, and that the victim was helpful, upon request of the victim and these requirements are not new. Again, the burden to demonstrate eligibility for a U Visa certification is on the victim, and not on the certifying entity or certifying official. Therefore, the certifying entity or certifying official can simply review the records included with the victim's request for U Visa certification to confirm that U Visa certification is required to be completed.

Accordingly, staff finds that the activity to review the request for U Visa certification, including all documentation provided by the victim, is reasonably necessary to confirm that the victim was a victim of a qualifying criminal activity, as defined in Penal Code section 679.10(c), and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, thus triggering the requirement to complete the certification. However, the activities to research the original crime, and to research, locate, obtain, and copy records for the purpose of determining whether the certifying entity is required to complete U Visa certification upon the victim's request go beyond the scope of the mandate and are not eligible for reimbursement.

- c. The proposed activities to locate and review any records of the qualifying criminal activity identified by the victim that were prepared in the normal course of the certifying entity's law enforcement duties in order to complete the Form I-918 Supplement B certification, and to attach those records to the Form I-918 Supplement B certification, are supported by the law and the record and, are therefore, reasonably necessary to comply with the mandate. However, the cost incurred to copy any reports to attach to the Form I-918 Supplement B certification is required by prior law, and not the test claim statute, and is, therefore, denied.

Once the certifying entity determines it is required to complete a U Visa certification, the test claim statute requires the certifying official to fully complete and sign the Form I-918 Supplement B certification.<sup>31</sup>

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<sup>31</sup> Penal Code section 679.10(g).

The claimant requests reimbursement for the time to determine what relevant records exist (research), locate, obtain, copy, and review records to complete the form.<sup>32</sup> The claimant relies on the Declaration from Lieutenant Cizek, which states that “to determine what relevant records exist, then search for, locate, copy and provide the records to the certifying official to make the determinations” is a “necessary and sometimes time-consuming step for law enforcement to comply with this mandate.”<sup>33</sup> The claimant also requests reimbursement to attach all relevant reports and findings to the Form I-918 Supplement B certification if they exist.<sup>34</sup>

Staff finds that the time to locate the certifying entity’s records necessary to complete the form is reasonably necessary to comply with the mandate. Although the U Visa applicant may have copies of police reports and other public documents to support the request for U Visa certification, Form I-918 Supplement B certification expressly requires the certifying official to declare under penalty of perjury that the “detailed information” on the form is “complete, true, and correct” based on the certifying official’s independent review of the facts.<sup>35</sup> Thus, it is not reasonable to rely solely on the documentation provided by the victim to complete the form.

Staff also finds that it is reasonably necessary to review the certifying entity’s records to complete the form. Penal Code section 679.10(g) and the Form I-918 Supplement B certification require “detailed information” about the criminal acts, including the dates on which the criminal activity occurred; the statutory citations for the criminal activity being investigated or prosecuted or that was investigated or prosecuted; a description of any known or documented injury to the victim; and asks that all relevant reports and findings be attached if they exist.<sup>36</sup> The form also asks specific questions regarding victim helpfulness, and then asks for an explanation if the questions were answered “yes.”<sup>37</sup> The Form I-918 Supplement B certification further requires the certifying official to declare under penalty of perjury that the “detailed information” on the form is “complete, true, and correct.”<sup>38</sup>

Finally, staff finds that it is reasonably necessary to comply with the mandate to fully complete the Form I-918 Supplement B certification, to attach all relevant reports prepared in the normal course of the certifying entity’s law enforcement duties expressly requested by the Form I-918 Supplement B certification, if they exist. Specifically, page 2 of the Form I-918 Supplement B expressly asks that the certifying official “attach copies of all relevant reports and findings” that

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<sup>32</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 2.

<sup>33</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 3 (Declaration of Michael Cizek, Lieutenant for the City of Claremont, December 4, 2018, page 1).

<sup>34</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 2.

<sup>35</sup> Exhibit H, Test Claim, page 79 (Form I-918 Supplement B certification).

<sup>36</sup> Exhibit H, Test Claim, page 77 (Form I-918 Supplement B certification).

<sup>37</sup> Exhibit H, Test Claim, page 78 (Form I-918 Supplement B certification).

<sup>38</sup> Exhibit H, Test Claim, page 79 (Form I-918 Supplement B certification).

describe the criminal activity being investigated and/or prosecuted and the involvement of the petitioner, and provide a description of any known or documented injury to the victim.<sup>39</sup>

However, the cost of copying or duplicating any attached reports prepared in the normal course of the certifying entity's law enforcement duties is required by prior law and, thus, goes beyond the scope of the mandate here. As indicated in the section above, the U Visa applicant has the burden to demonstrate eligibility for a U Visa, and can obtain copies of relevant reports with a Public Records Act request or a request under Family Code section 6228. The Public Records Act is very broad and already requires local law enforcement agencies, in Government Code section 6254(f), to provide copies of information surrounding an incident, an arrest and all complaints or requests for assistance received by the agency, including "the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved." And Family Code section 6228 requires local agencies to provide a copy of all incident report face sheets, a copy of all incident reports, or both, to a victim of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. The reports provided under existing law satisfies the requirements of the Form I-918 Supplement B certification, and the cost incurred to copy those records is not new. Thus, reimbursement for the cost of copying any attached record to the Form I-918 Supplement B certification is not required by the mandate, nor reasonably necessary to comply with the mandate, and is therefore not eligible for reimbursement.

- d. The claimant's request to strike the words "law enforcement" in Section IV.B.1.c. of the Parameters and Guidelines, relating to the review of records prepared in the normal course of the certifying entities "law enforcement" duties to complete the form, is not consistent with the mandate and is, therefore, denied.

The claimant requests that the Commission strike the words "law enforcement" in Section IV.B.1.c. of the Parameters and Guidelines relating to the review of records prepared in the normal course of the certifying entity's "law enforcement" duties in order to complete the U Visa form.

Staff recommends that the Commission deny this request. The proposal to strike "law enforcement" essentially requests reimbursement for the review of any record, beyond those records prepared in the normal course of the certifying entity's "law enforcement duties," in order to complete the U Visa form. The claimant argues that it recommends this change because "there are other types of certifying [sic] who may have to review their own types of records - such as court documents." The claimant provides no evidentiary or legal support for this proposition, and the proposal is not consistent with the law or the Commission's Test Claim Decision.

The Resource Guide issued by DHS refers to all certifying agencies and officials as law enforcement, noting that they are in the best position to determine if a qualifying crime has taken

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<sup>39</sup> Exhibit H, Test Claim, page 77 (Form I-918 Supplement B certification, page 2).

place.<sup>40</sup> Thus, the Resource Guide states that “[i]f, in the normal course of duties, a certifying official or agency has determined that a qualifying criminal activity has taken place, the victim possessed information related to the criminal activity, and the victim has been helpful, *law enforcement* may sign the U visa certification.”<sup>41</sup> In this respect, the mandate is expressly limited to certifying officials from certifying entities of local agencies that have the responsibility for the detection, investigation, or prosecution of a qualifying criminal activity (including district attorney offices, sheriff’s departments, police departments, child protective services, and any other local agency authority that has the responsibility for the detection, investigation, or prosecution of a qualifying criminal activity) to complete the U Visa form.

Thus, the only records that are relevant to complete the U Visa form are those prepared in the normal course of a certifying entity’s law enforcement duties.

- e. Claimant’s proposal to substitute the term “requesting party” for the term “victim” in Section IV.B.1.c. of the Parameters and Guidelines is not consistent with the test claim statute and is, therefore, denied.

The claimant also requests that the first paragraph in Section IV.B.1.c. of Parameters and Guidelines be modified to substitute the term “requesting party” for the term “victim”, as follows:

When it is determined that the ~~victim~~ requesting party was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, the certifying official shall fully complete . . . and sign the Form I-918 Supplement B certification upon the request of the victim or the victim's family member, and "include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity" within 90 days of the request or 14 days of the request if the victim is in removal proceedings."<sup>42</sup>

The claimant’s request is not consistent with the test claim statute. The activity approved by the Commission tracks the statutory language in Penal Code sections 679.10(e) and 679.10(g), which provides that the activity to certify victim helpfulness on the Form I-918 Supplement B certification is triggered upon the request of the victim or victim’s family member, but only when *the victim* was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that

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<sup>40</sup> Exhibit H, “U and T Visa Law Enforcement Resource Guide,” Department of Homeland Security, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide 1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide%201.4.16.pdf), accessed July 10, 2018, page 26.

<sup>41</sup> Exhibit H, “U and T Visa Law Enforcement Resource Guide,” Department of Homeland Security, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide 1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide%201.4.16.pdf), accessed July 10, 2018, page 26.

<sup>42</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 2.

qualifying criminal activity. If the *victim* is determined not to be a victim of a qualifying criminal activity or to be not helpful, as defined in the test claim statute, then a local agency is not mandated by the state to certify victim helpfulness on the Form I-918 Supplement B.

Thus, staff recommends that the Commission deny this request.

- f. The proposed activity to allow a “designee,” other than the certifying official, to fully complete and sign the Form I-918 Supplement B certification and the proposed deletion of the conditional language “upon the request of the victim or the victims’s family member” are not consistent with the law and are, therefore, denied.

The claimant requests reimbursement for the certifying official *or their designee* to fully complete and sign the Form I-918 Supplement B certification, and proposes to add “*(or their designee)*” to the approved activity for “the *certifying official* to fully complete and sign the Form I-918 Supplement B certification . . .”<sup>43</sup> The claimant also proposes to delete the conditional language “upon the request of the victim or the victims’s family member”.<sup>44</sup>

The Commission denies these requests because they are not consistent with the law.

Staff recommends that the Commission deny these request because they are not consistent with the law. Both the test claim statute and federal law require that the certifying official “fully complete and sign the Form I-918 Supplement B certification,” and specifically defines the certifying official as either the head of the certifying entity, or a person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that entity.<sup>45</sup> Thus, the law does not allow a person other than the certifying official to complete and sign the form.

- g. The proposed activity for the “supervisor [to] edit, review, approve, and certify (signatures) forms,” is not consistent with the law or supported by evidence in the record and is, therefore, denied.

The claimant also requests reimbursement for the following activities alleged to be reasonably necessary to comply with the mandate: “Supervisor edit, review, approval, and certification (signatures) of forms.”<sup>46</sup>

Staff recommends that the Commission deny this request. Apart from general assertion made by Lietenant Ciszek in his declaration stating that “it is my belief that the activities listed [in the claimant’s comments on the Draft Expedited Parameters and Guidelines] directly result from the mandate and are reasonably necessary to implement the subject statutes of the U VISA

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<sup>43</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>44</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>45</sup> Penal Code section 679.1(b); Code of Federal Regulations, title 8, section 214.14(a)(3).

<sup>46</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2, italics and underline omitted.

program,”<sup>47</sup> the claimant provides no support for this proposal and does not explain what it encompasses and why this activity should be reimbursable.

It appears that by using the word “supervisor,” the claimant might have meant for the “certifying official” to edit, review, approve, and certify Form I-918 Supplement B completed by another employee of the certifying entity who is not defined as a “certifying official.” However, as discussed above, only certifying officials (either the head of the certifying entity or a person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of the entity) are authorized to complete Form I-918 Supplement B, and therefore supervisory review, edit, and approval of Form I-918 Supplement B by the certifying official when the form is completed by another employee is not consistent with the law. While it might be necessary for the certifying official to review information identified by an employee of the certifying entity in relation to the U Visa request in order to determine whether U Visa certification is required and to fully complete and sign Form I-918 Supplement B certification, when required in accordance with the test claim statute and federal regulations, that is not what is being proposed by the claimant and that activity is already approved and cannot be double-claimed.

- h. The proposed activity for the “Police Chief/Certifying Official to review, approve, and authorize the release of the U Visa forms,” is not consistent with the law or supported by evidence in the record and is, therefore, denied.

The claimant requests reimbursement “for ‘Police Chief/Certifying Official to review, approve, and authorize the release of the U Visa forms.’”<sup>48</sup> To support this request, the claimant submitted a declaration from Lieutenant Ciszek stating that it is necessary for a head of the certifying agency, such as the police chief, to review and approve the release of U Visa certifications.<sup>49</sup>

This request goes beyond the scope of the mandate. The test claim statute requires the certifying official to fully complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim’s family member. The test claim statute defines “certifying official” to include both (1) “The head of the certifying entity,” or (2) “A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency.”<sup>50</sup> The instructions to Form I-918 Supplement B also explain that a certifying official is:

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<sup>47</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 4 (Declaration of Michael Ciszek, Lieutenant for the City of Claremont, October 17, 2018, page 1).

<sup>48</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 2.

<sup>49</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 3 (Declaration of Michael Ciszek, Lieutenant for the City of Claremont, December 4, 2018, page 1).

<sup>50</sup> Penal Code, section 679.10(b), emphasis added.

The head of the certifying agency *or* any person in a supervisory role, who was specifically designated by the head of the certifying agency to issue a U Nonimmigrant Status Certification on behalf of that agency<sup>51</sup>

The Form I-918 Supplement B itself states that:

I am the head of the agency listed in Part 2. *or* I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency.<sup>52</sup>

Finally, Form I-918 Supplement B instructions state that “[i]f the certification is not signed by the head of the certifying agency,” the certifying official must “attach evidence of the agency head’s written designation of the certifying official for this specific purpose.”<sup>53</sup>

Therefore, the law allows the head of the agency to specifically designate a supervisory employee to complete, sign, and issue U Visa forms, but does not require the head of the agency to review each individual completed form once the supervisory employee is designated as the certifying official. If an agency decides to comply with the law in the manner suggested by the claimant, that is within the discretion of the agency, but is not required or necessary to comply with the mandate.

Accordingly, staff recommends that the Commission deny this request.

**3. The claimant’s request to amend the language regarding the report to the Legislature is not consistent with the mandate and is, therefore, denied (Section IV.B.2. of the Parameters and Guidelines).**

The claimant requests that the language for the reporting activity be changed as follows (with ~~strikeout~~ and underline to reflect the change):

~~For a certifying entity that receives a request for a Form I-918 Supplement B certification to~~ Report to the Legislature on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied. (Pen. Code, § 679.10(1).)<sup>54</sup>

Staff recommends that the Commission deny this request. The language approved by the Commission tracks the statutory language in Penal Code section 679.10(1), and makes it clear that the activity to report to the Legislature is triggered only when the certifying entity receives a request for a Form I-918 Supplement B certification. If a request has not been made, then a local agency is not mandated by the state to prepare or provide a report to the Legislature. As described in the next section, however, minor changes to the language are included in the Parameters and Guidelines for readability.

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<sup>51</sup> Exhibit H, Test Claim, page 83 (Form I-918, Supplement B Instructions, page 3).

<sup>52</sup> Exhibit H, Test Claim, page 9 (Form I-918, Supplement B, page 4).

<sup>53</sup> Exhibit H, Test Claim, page 83 (Form I-918, Supplement B Instructions, page 3).

<sup>54</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

## **B. The Remaining Sections of the Parameters and Guidelines**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the following direct costs that are eligible for reimbursement: salaries and benefits, materials and supplies, contracted services, training, and fixed assets. However, travel costs are not included in the Parameters and Guidelines because those activities were not approved in the Test Claim Decision and the claimant did not request these costs as reasonably necessary to perform the mandated activities or submit evidence to support such a request.

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

## **IV. Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision and Parameters and Guidelines in accordance to article XIII B, section 6(a) of California Constitution and Government Code section 17514 to provide for reimbursement beginning July 1, 2016.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical changes to the Proposed Decision following the hearing.



BEFORE THE  
 COMMISSION ON STATE MANDATES  
 STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
 FOR:

Penal Code Section 679.10;  
 Statutes 2015, Chapter 721 (SB 674)  
 The period of reimbursement begins  
 July 1, 2016.

Case No.: 17-TC-01

*U Visa 918 Form, Victims of Crime:  
 Nonimmigrant Status*

DECISION PURSUANT TO  
 GOVERNMENT CODE SECTION 17500 ET  
 SEQ.; CALIFORNIA CODE OF  
 REGULATIONS, TITLE 2, DIVISION 2,  
 CHAPTER 2.5, ARTICLE 7.

*(Adopted January 25, 2019)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided the Decision and Parameters and Guidelines during a regularly scheduled hearing on January 25, 2019. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified/rejected] the Decision and Parameters and Guidelines by a vote of [vote count will be in the adopted Decision], as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Kate Gordon, Director of the Office of Planning and Research	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Yvette Stowers, Representative of the State Controller	
Jacqueline Wong-Hernandez, Representative of the Director of the Department of Finance, Chairperson	

## **I. Summary of the Mandate**

These Parameters and Guidelines address the mandated activities arising from Penal Code section 679.10, added by Statutes 2015, chapter 721 (SB 674) (test claim statute). The test claim statute requires local agencies, upon request of a victim of qualifying criminal activity seeking temporary immigration benefits under the federal U Visa program and willing to assist law enforcement with investigation or prosecution of the criminal activity, to complete and certify the federal Form I-918 Supplement B (U Nonimmigrant Status Certification) within specified deadlines, and to submit annual reports about the certifications to the Legislature.

On September 28, 2018, the Commission on State Mandates (Commission) adopted the Decision partially approving the Test Claim, finding that the test claim statute imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 beginning July 1, 2016, for “certifying officials” from the “certifying entities” of local agencies (i.e., district attorney offices, sheriff’s departments, police departments, child protective services, and any other local agency authority that has the responsibility for the detection, investigation, or prosecution of a qualifying criminal activity within the meaning of the Penal Code section 679.10(a), with the *exception* of the police/security departments of school districts and special districts, and judges who are not eligible to claim mandate reimbursement in this case), to perform the following reimbursable state-mandated activities:

- For the certifying official to fully complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim’s family member, and “include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim’s helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity” within 90 days of the request or 14 days of the request if the victim is in removal proceedings, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity. (Pen. Code, § 679.10(a)-(j).)
- For a certifying entity that receives a request for a Form I-918 Supplement B certification to report to the Legislature on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied. (Pen. Code, § 679.10(l).)

## **II. Procedural History**

On September 28, 2018, the Commission adopted the Decision partially approving the Test Claim.<sup>55</sup> On October 3, 2018, Commission staff issued the Draft Expedited Parameters and Guidelines.<sup>56</sup> On October 23, 2018, the City of Claremont (claimant) filed comments on the Draft Expedited Parameters and Guidelines, proposing activities which it asserts are reasonably

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<sup>55</sup> Exhibit A, Test Claim Decision.

<sup>56</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

necessary to implement the mandate.<sup>57</sup> On October 24, 2018, the State Controller's Office (Controller) filed comments concurring with the Draft Expedited Parameters and Guidelines.<sup>58</sup> On November 19, 2018, Commission staff issued the Draft Proposed Decision and Proposed Parameters and Guidelines.<sup>59</sup> On December 5, 2018, the claimant filed comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, proposing clarifications and additional activities which it asserts are reasonably necessary.<sup>60</sup> On December 10, 2018, the Controller filed comments recommending no changes to the Draft Proposed Decision and Proposed Parameters and Guidelines.<sup>61</sup>

### **III. Positions of the Parties**

#### **A. City of Claremont**

On October 23, 2018, the City of Claremont (claimant) filed comments on the Draft Expedited Parameters and Guidelines proposing a number of changes.<sup>62</sup> First, the claimant is requesting that the following one-time costs be approved as reasonably necessary to comply with the mandate:

One-time costs:

- 1) Update Department Policies and Procedures to incorporate new statutory requirements of (Pen. Code, § 679.10(a)-(j).)
- 2) Train new staff assigned to work on mandated program on requirements of Penal Code, § 679.10(a)-(j). This may include reading State statutes, instruction forms, and State or Federal Bulletins or Guidelines.<sup>63</sup>

Second, the claimant is requesting approval of the following on-going activities, which it asserts are reasonably necessary, "for a certifying entity that receives a request for a Form I-918 Supplement B certification from the victim or the victim's family member:"

On-going activities:

For a certifying entity that receives a request for a Form I-918 Supplement B certification from the victim or the victim's family member, the following activities are eligible for reimbursement:

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<sup>57</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines.

<sup>58</sup> Exhibit D, Controller's Comments on the Draft Expedited Parameters and Guidelines.

<sup>59</sup> Exhibit E, Draft Proposed Decision and Proposed Parameters and Guidelines.

<sup>60</sup> Exhibit F, Claimant's Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines.

<sup>61</sup> Exhibit G, Controller's Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines.

<sup>62</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, pages 1-3.

<sup>63</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

- 1) Receive, review and log the request
- 2) Research the original crime(s) the victim was involved to determine whether the requirements of Penal Code, § 679.10(a)-(j) are met and certification can be granted and to determine "victims' helpfulness". This includes obtaining prior criminal records, reports, and history, determining helpfulness and potential helpfulness of the victim; determining if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

[¶] . . . [¶]

- 3) Supervisor edit, review, approval, and certification (signatures) of forms
- 4) Transmit results to involved parties and legal representatives
- 5) File, log, and close case.

[¶] . . . [¶]<sup>64</sup>

Third, for the activities approved for the certifying official to fully complete and sign the federal form, the claimant proposes the following changes: “For the certifying official (or their designee) to fully complete and sign the Form I-918 Supplement B certification ~~upon the request of the victim or the victim’s family member . . .~~”<sup>65</sup>

Finally, the claimant recommends changes to the activity of reporting the U Visa requests to the Legislature as follows: ~~For a certifying entity that receives a request for a Form I-918 Supplement B certification to~~ Report to the Legislature on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied.”<sup>66</sup>

On December 5, 2018, the claimant filed comments generally concurring with the Draft Proposed Decision and Proposed Parameters and Guidelines.<sup>67</sup> The claimant, however, proposes the following additional changes to the text of the Proposed Parameters and Guidelines for the on-going activities performed upon receipt of a request for a Form I-918 Supplement B certification from the victim or the victim’s family member:

On-Going Activity B. 1. b. (paragraph 2): "If the crime alleged is based on past criminal activity previously reported and investigated or prosecuted by the certifying entity and the case is closed, reimbursement for this activity includes

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<sup>64</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>65</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>66</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 3.

<sup>67</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines.

time to determine what relevant records exist (research), locate, obtain, and review of any record of the alleged crime ... "68

On-Going Activity B. 1. c. (paragraph 1): "When it is determined that the ~~victim~~ requesting party was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, the certifying official shall fully complete (including attaching all relevant reports and findings if they exist) and sign the Form I-918 Supplement B certification upon the request of the victim or the victim's family member, and "include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity" within 90 days of the request or 14 days of the request if the victim is in removal proceedings."69

On-Going Activity B. 1. c. (paragraph 2): "To the extent that the certifying entity that receives a U Visa request has a record of the qualifying criminal activity identified by the victim or victim's family member, which was prepared in the normal course of the certifying entity's ~~law enforcement~~ duties, reimbursement for this activity includes time to determine what relevant records exist (research), locate, obtain, and review of any record to complete the Form I-918 Supplement B certification."70

In addition, the claimant is requesting approval of an additional on-going activity which it asserts is reasonably necessary "for 'Police Chief/Certifying Official to review, approve, and authorize the release of the U Visa forms.'"71

### **B. State Controller's Office**

On October 24, 2018, the Controller filed comments on the Draft Expedited Parameters and Guidelines recommending "no changes."72 On December 10, 2018, the Controller filed comments on the Draft Proposed Decision and Proposed Parameters and Guidelines recommending "no changes."73

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<sup>68</sup> Exhibit F, Claimant's Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 1.

<sup>69</sup> Exhibit F, Claimant's Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 2.

<sup>70</sup> Exhibit F, Claimant's Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 2.

<sup>71</sup> Exhibit F, Claimant's Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 2.

<sup>72</sup> Exhibit D, Controller's Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>73</sup> Exhibit G, Controller's Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines.

#### **IV. Discussion**

The Proposed Parameters and Guidelines authorize reimbursement, beginning July 1, 2016, for the state-mandated activities identified in the Test Claim Decision. The claimant has filed comments requesting that a number of activities be approved in Section IV. of the Parameters and Guidelines (Reimbursable Activities) as “reasonably necessary for the performance of the state-mandated program,” pursuant to Government Code section 17557(a) and section 1183.7(d) of the Commission’s regulations. “Reasonably necessary activities” are defined in the Commission’s regulations as follows:

“Reasonably necessary activities” are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of these regulations.<sup>74</sup>

The following analysis addresses the scope of the mandated activities, the claimant’s proposals to Section IV., Reimbursable Activities, and the remaining sections of the Parameters and Guidelines.

##### **A. Reimbursable Activities (Section IV. of the Parameters and Guidelines)**

The Test Claim Decision approved the following reimbursable state-mandated activities:

- A. For the certifying official to fully complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim’s family member, and “include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim’s helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity” within 90 days of the request or 14 days of the request if the victim is in removal proceedings, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity. (Pen. Code, § 679.10(a)-(j).)
- B. For a certifying entity that receives a request for a Form I-918 Supplement B certification to report to the Legislature on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied. (Pen. Code, § 679.10(l).)

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<sup>74</sup> California Code of Regulations, title 2, section 1183.7(d).

The claimant has proposed a number of additional activities, which it asserts are reasonably necessary, and other changes to the Parameters and Guidelines, as discussed below.<sup>75</sup>

1. **The proposed one-time activities to update policies and procedures and to train staff assigned to perform the ongoing reimbursable activities are supported by the law and the record and are, therefore, reasonably necessary to comply with the mandate (Section IV.A. of the Parameters and Guidelines).**

The claimant requests that the Commission approve the following one-time activities, which are quoted below, as reasonably necessary to comply with the mandate:

- 1) Update Department Policies and Procedures to incorporate new statutory requirements of (Pen. Code, § 679.10(a)-(j).)
- 2) Train new staff assigned to work on mandated program on requirements of Penal Code, § 679.10(a)-(j). This may include reading State statutes, instruction forms, and State or Federal Bulletins or Guidelines.<sup>76</sup>

The Commission finds that the one-time activity of updating policies and procedures to incorporate the requirements of the test claim statute is reasonably necessary to comply with the mandate. As indicated in the Test Claim Decision, the California Department of Justice (DOJ) issued an Information Bulletin to all California State and Local Law Enforcement Agencies on “New and Existing State and Federal Laws Protecting Immigrant Victims of Crime,” which “encourages all agencies and officials subject to California’s new law to immediately establish and implement a U visa certification policy and protocol that is consistent with California law and the guidance provided in this law enforcement bulletin.”<sup>77</sup> In addition, the Department of Homeland Security (DHS) has published a Resource Guide on the U Visa program, which states that “DHS encourages certifying agencies to implement policies that accurately reflect and conform with the statute, regulations and DHS policies and with the information contained in this and other publications issued by USCIS and DHS on the U visa . . . programs.”<sup>78</sup> The claimant has also filed a declaration signed under penalty of perjury by Lieutenant Ciszek, who has been employed in this capacity by the city of Claremont since 2009 and directly involved with the U Visa program, stating that “[i]t is standard practice of law enforcement agencies to update their written “Policies and Procedures” when additions or changes to the Penal Codes are made and in my opinion are a reasonably necessary activity of implementing the new subject

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<sup>75</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-3; Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines.

<sup>76</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2, italics and underline omitted.

<sup>77</sup> Exhibit A, Test Claim Decision, page 18; Exhibit H, California Department of Justice Information Bulletin No. DLE-2015-14, “New and Existing State and Federal Laws Protecting Immigrant Victims of Crime,” October 28, 2015, page 4.

<sup>78</sup> Exhibit H, “U and T Visa Law Enforcement Resource Guide,” Department of Homeland Security, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf), accessed July 10, 2018, page 14.

State statutes.”<sup>79</sup>

The Commission further finds that one-time training for each employee assigned to perform the reimbursable activities is reasonably necessary to comply with the mandate. Both the information bulletin on the test claim statute published by DOJ and the U Visa Resource Guide published by DHS support the use of their documents for training. DOJ’s information bulletin states that the bulletin provides guidance on the new state law, “summarizes existing federal law governing U visas, answers relevant questions regarding U visa eligibility, and encourages state and local law enforcement agencies and officials to be vigilant in identifying and supporting immigrant crime victims who may be eligible for U visas.”<sup>80</sup> The Resource Guide published by DHS specifically encourages training and includes a list of frequently asked questions in their documents for that purpose.<sup>81</sup> In addition, the claimant submitted the declaration of Lieutenant Ciszek, which states as follows:

One-Time Training of staff on the requirement of the new Statutes is necessary to ensure the complex and lengthy rules dictating this program are met and that the employee is completing the forms properly. This may include reading subject State Statutes, U VISA instructions and forms, State Department of Justice Information Bulletins, and Federal Homeland Security Guides (U and T Visa Law Enforcement Recourse [sic] Guide”).<sup>82</sup>

And the City of Costa Mesa, an interested party, submitted comments on the Draft Proposed Decision, stating that “[l]aw enforcement agencies that certify U VISA . . . are compelled to educate staff on the process and use U VISA certification.”<sup>83</sup>

Accordingly, the Commission finds that the one-time activities to update policies and procedures and to provide training for each employee performing the reimbursable activities are reasonably necessary to comply with the mandate and are eligible for reimbursement. Section IV. of the Parameters and Guidelines identify these activities as follows:

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<sup>79</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 4 (Declaration of Michael Ciszek, Lieutenant for the City of Claremont, October 17, 2018).

<sup>80</sup> Exhibit H, California Department of Justice Information Bulletin No. DLE-2015-14, “New and Existing State and Federal Laws Protecting Immigrant Victims of Crime,” October 28, 2015, page 1.

<sup>81</sup> Exhibit H, “U and T Visa Law Enforcement Resource Guide,” Department of Homeland Security, <https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide%201.4.16.pdf>, accessed July 10, 2018, pages 15-26 (see also page 15, which states: “For several years, DHS has been providing training and holding external stakeholder events and outreach, as well as working with law enforcement, judges, and other officials on U visa certifications . . .”).

<sup>82</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 4 (Declaration of Michael Ciszek, Lieutenant for the City of Claremont, October 17, 2018, page 1).

<sup>83</sup> Exhibit H, Interested Party’s (City of Costa Mesa’s) Comments on the Draft Proposed Decision, page 2.



- A. One-time activities:
1. Updating policies and procedures to incorporate the requirements of the test claim statute.
  2. Train staff assigned to perform the reimbursable activities listed in Section IV. (B) of these Parameters and Guidelines (one-time for each employee.)
  2. **Some of the proposed additional ongoing activities are consistent with the law and evidence in the record and are, therefore, reasonably necessary to comply with the mandate, but those proposed additional activities which are inconsistent with the law and not supported by the evidence in the record are denied (Section IV.B.1. of the Parameters and Guidelines).**

The Commission's Test Claim Decision approved the following ongoing activity:

For the certifying official to fully complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim's family member, and "include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity" within 90 days of the request or 14 days of the request if the victim is in removal proceedings, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity. (Pen. Code, § 679.10(a)-(j).)

The claimant has proposed a number of on-going activities, which it asserts are reasonably necessary to implement the mandate, as discussed below.<sup>84</sup>

- a. The proposed administrative activities to receive and log the request; transmit the results to the victim or the victim's legal representative; and file, log, and close the case are supported by the law and the record and are, therefore, reasonably necessary to comply with the mandate.

The claimant requests reimbursement for the following activities alleged to be reasonably necessary to comply with the mandate when a certifying entity receives a request for a Form I-918 Supplement B certification from the victim or the victim's family member:

- Receive and log the request;
- Transmit results to involved parties and legal representatives; and
- File, log, and close case.<sup>85</sup>

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<sup>84</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, pages 1-3; Exhibit F, Claimant's Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines.

<sup>85</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2, italics omitted.

The Commission finds that activities to receive and log the request; transmit the results to the victim or the victim's legal representative; and file, log, and close the case, constitute administrative activities required to process U Visa requests, and are reasonably necessary to comply with the mandate for the certifying official to fully complete and sign the Form I-918 Supplement B certification upon the request of the victim, the victim's family member or representative, and to maintain records to prepare the annual report to the Legislature regarding the number of requests received, approved, and denied.

To support its request for reimbursement for these activities, the claimant submitted a declaration from Lieutenant Ciszek, which states that he has personal knowledge of the U Visa program, process, and activities performed by the City of Claremont that are required by Penal Code 679.10, and asserts a belief that all activities listed in the Claimant's Comments on the Draft Expedited Parameters and Guidelines "directly result from the mandate and are reasonably necessary to implement the subject statutes of the U VISA program."<sup>86</sup> It should be noted that these activities were first described in the claimant's Test Claim to demonstrate procedures employed by the claimant to process U Visa applications,<sup>87</sup> and were similarly supported by general assertions in Lieutenant Ciszek's declaration in support of the Test Claim.<sup>88</sup>

Moreover, these activities are consistent with the requirements of the test claim statute, the instructions to the U Visa form, and the Resource Guide prepared by DHS. Penal Code section 679.10(e) states that "*Upon the request of the victim or victim's family member, a certifying official from a certifying entity shall certify victim helpfulness on the Form I-918 Supplement B certification, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity.*" The request must first be received by the certifying entity from the victim or the victim's family or representative.

The Resource Guide issued by the DHS further clarifies that: "Once the certifying official completes and signs the Form I-918 B . . . , the original should be given to the victim or the victim's legal representative or advocate, so that it can be added to the original U visa petition . . . application packet before submission to USCIS [U.S. Citizenship and Immigration Services]."<sup>89</sup> The instructions for Form I-918 Supplement B further requires the victim to submit the Supplement B to the USCIS within six months of the date it was signed by the certifying official in order to be eligible for U nonimmigrant status.<sup>90</sup> In addition, the test claim statute requires

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<sup>86</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 4 (Declaration of Michael Ciszek, Lieutenant for the City of Claremont, October 17, 2018, page 1).

<sup>87</sup> Exhibit H, Test Claim, pages 4-5.

<sup>88</sup> Exhibit H, Test Claim, page 13 (Declaration of Michael Ciszek, Lieutenant for the City of Claremont, March 1, 2018, page 1).

<sup>89</sup> Exhibit H, "U and T Visa Law Enforcement Resource Guide," Department of Homeland Security, <https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide%201.4.16.pdf>, accessed July 10, 2018, page 25.

<sup>90</sup> Exhibit H, Test Claim, pages 81-82 (Instructions to Form I-918 Supplement B, U Nonimmigrant Status Certification, pages 1-2).

that Form I-918 Supplement B certification be processed within 90 days of the request or 14 days of the request if the victim is in removal proceedings. This requirement is intended to timely assist the victim with his or her U Visa application, which must be filed with USCIS. Thus, to comply with this mandate, it is not enough for the certifying official to timely complete and sign Form I-918 Supplement B certification, but it is also necessary for the certifying agency to provide the Form I-918 Supplement B so that the victim can complete and file the petition for U Nonimmigrant Status with USCIS. Finally, activity 5 (to file, log, and close the case) is reasonably necessary to show compliance with the certification and processing requirements of the test claim statute, and to create a record for future reporting to the Legislature.

Accordingly, the Commission finds that the activities to receive and log the request; transmit the results to the victim or the victim's legal representative; and file, log, and close the case, are eligible for reimbursement.

- b. The proposed activity to review a request for U Visa certification, including all documentation provided by the victim, is reasonably necessary to determine whether the certifying entity is required to complete a U Visa certification. However, the proposed activities to determine what relevant records exist (research), and to locate, obtain, and copy records for the purpose of reviewing them to determine if a qualifying criminal activity exists and whether the victim has been helpful, go beyond the scope of the mandate and are, therefore, denied.

The Test Claim Decision approved reimbursement for "certifying officials" from the "certifying entities" of local agencies to complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim's family member. . . *when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity.*<sup>91</sup>

The claimant has requested a number of activities to determine whether it is required to complete a U Visa certification following receipt of a request.

In comments on the Draft Expedited Parameters and Guidelines, the claimant requests reimbursement to review the victim's request.<sup>92</sup>

The claimant also requests reimbursement to research the original crime to determine if the conditions of the test claim statute are met, including obtaining prior criminal records and reports as follows:

Research the original crime(s) the victim was involved [sic] to determine whether the requirements of Penal Code, § 679.10(a)-(j) are met and certification can be granted and to determine "victims' helpfulness". This includes obtaining prior criminal records, reports, and history, determining helpfulness and potential

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<sup>91</sup> Exhibit A, Test Claim Decision, page 36, emphasis added.

<sup>92</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2,

helpfulness of the victim; determining if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.<sup>93</sup>

In support of this request the claimant submitted a declaration of Lieutenant Ciszek stating that this and all other activities proposed by the claimant are “reasonably necessary to implement the subject statutes of the UVISA program.”<sup>94</sup> The claimant, however, provides no explanation as to why this activity is necessary to comply with the mandate. The activity was requested by the claimant in the Test Claim as follows:

For all requests, research the original crime(s) the victim was involved to determine whether new law criteria are met and certification can be granted and to determine “victim’s helpfulness”. This includes obtaining prior criminal records, reports, and history, determining helpfulness and potential helpfulness of the victim; determining if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

*(Detailed research and review of crime history/reports is now required for each case to determine the victim's helpfulness and potential helpfulness.*

*Before this law was added, the city would only have to determine the status of the case: if the case was found to be adjudicated, closed or is outside the statute of limitations, the City would find the victim's assistance was no longer needed and the UVISA application would be denied. Almost all requests could be denied just by determining whether the case was being or likely to be adjudicated which would typically take 5-10 minutes.*

*Because of the new requirements, estimate additional time to research each per case would usually take an extra 20-30 mins per case)<sup>95</sup>*

The claimant has also requested reimbursement for the “time to determine what relevant records exist (research), locate, [and] obtain” the record in order to review the records to determine if the crime alleged is a qualifying crime and whether the victim was helpful.<sup>96</sup> In support of this request, the claimant filed a Declaration from Lieutenant Ciszek, which states that “to determine what relevant records exist, then search for, locate, copy and provide the records to the certifying

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<sup>93</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2, italics and underline omitted.

<sup>94</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 4 (Declaration of Michael Ciszek, Lieutenant for the City of Claremont, page 1).

<sup>95</sup> Exhibit H, Test Claim, page 4, original emphasis. Exhibit A, Test Claim Decision, page 19 (discussing claimant’s position).

<sup>96</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 1.

official to make the determinations” is a “necessary and sometimes time-consuming step for law enforcement to comply with this mandate.”<sup>97</sup>

The claimant further states the following:

As pointed out in the staff analysis, there is no statute of limitations on how long a victim has to make the request and sometimes the case is quite old and the records not readily accessible.

Often a local agency will have to not only look for and pull the old reports, but may also have to locate audio and/or video recordings of the interviews conducted with victim(s) during the investigation to determine their helpfulness. This duty to locate pertinent existing records is often delegated to other employees of the department, such as records or evidence staff, who then provide the material to the certifying official to make the determination as required.

Because a record cannot be reviewed until it is identified, located, and obtained, we request this wording be added to the Parameters [and Guidelines] to provide greater clarity to all parties.<sup>98</sup>

The proposed activities to research the original crime, and to research, locate, obtain, and copy records for the purpose of reviewing them to determine if a qualifying criminal activity exists and whether the victim has been helpful, go beyond the scope of the mandate and are, therefore, denied.

Penal Code section 679.10(e) makes it clear that certifying officials shall provide a victim with the Form I-918 Supplement B certification “*when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity.*”<sup>99</sup> Victim helpfulness is presumed under California law, and can be rebutted only “if the victim has refused or failed to provide information and assistance reasonably requested by law enforcement.”<sup>100</sup> A current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official.<sup>101</sup>

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<sup>97</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 3 (Declaration of Michael Ciszek, Lieutenant for the City of Claremont, December 4, 2018, page 1).

<sup>98</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 1.

<sup>99</sup> Penal Code section 679.10(e), emphasis added.

<sup>100</sup> Penal Code section 679.1(f).

<sup>101</sup> Penal Code section 679.10(i), which provides that “[a] current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official.”

Thus, the test claim statute mandates the certifying entity to complete a U Visa certification when it has determined in the normal course of existing law enforcement duties that the qualifying criminal activity occurred, regardless of the status of the criminal case, and that the victim of that criminal activity has not refused or failed to provide information and assistance reasonably requested by the certifying entity.<sup>102</sup> As stated in the Resource Guide for U Visa certifications: “*If, in the normal course of duties, a certifying official or agency has determined that a qualifying criminal activity has taken place, the victim possessed information related to the criminal activity, and the victim has been helpful . . .*” the U Visa certification is authorized under federal law.<sup>103</sup> The test claim statute does *not* mandate a local agency to detect, investigate, or prosecute the crime, or to research the original crime, to determine if a U Visa certification is required.

Moreover, the U Visa applicant has the burden to *demonstrate eligibility* for a U Visa, not the certifying entity or official.<sup>104</sup> The applicant is required by federal law to prove that the victim (i) has suffered substantial physical or mental abuse as a result of having been a victim of the qualifying criminal activity; (ii) possesses information concerning that criminal activity; (iii) has been helpful, is being helpful, or is likely to be helpful to authorities investigating or prosecuting qualifying criminal activity; (iv) that qualifying criminal activity violated the laws of the United States or occurred in the United States.<sup>105</sup> The non-exhaustive list of suggested forms of evidence to help the applicant establish these eligibility requirements includes the Form I-918 Supplement B certification, and trial transcripts, court documents, police reports, affidavits of other witnesses or officials, orders of protection and related legal documents.<sup>106</sup> The applicant is also required to provide a personal written statement describing the nature of the qualifying criminal activity; when the criminal activity occurred; who was responsible; the events surrounding the criminal activity; how the criminal activity came to be investigated or prosecuted; and what substantial physical and/or mental abuse suffered as a result of having been

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<sup>102</sup> As discussed above, Penal Code section 679.10(f) established a rebuttable presumption that “a victim is helpful, has been helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.”

<sup>103</sup> Exhibit H, “U and T Visa Law Enforcement Resource Guide,” Department of Homeland Security, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf), accessed July 10, 2018, page 26.

<sup>104</sup> 8 Code of Federal Regulations, section 214.14 (c)(4) (“The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status.”).

<sup>105</sup> 8 United State Code section 1101(a)(15)(U); 8 Code of Federal Regulations, section 214.14(b); 8 Code of Federal Regulations, section 214.14 (c)(4); Exhibit H, “U and T Visa Law Enforcement Resource Guide,” Department of Homeland Security, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf), accessed July 10, 2018, page 4.

<sup>106</sup> Exhibit H, Test Claim, pages 59-70 (Form I-918, Petition and Supplement A Instructions, pages 1-12).

the victim of the criminal activity.<sup>107</sup> The victim must also “provide evidence that he or she has been, is being, or is likely to be helpful to a certifying official in the investigation or prosecution of the qualifying criminal activity.”<sup>108</sup>

In this respect, a victim requesting U Visa certification may already possess ~~(or may request under the Public Records Act and Family Code)~~ records from the certifying entity, received with a public records request, that shows that the victim was a victim of a qualifying criminal activity and was helpful to the detection, investigation, and prosecution of that criminal activity. Under the Public Records Act, Government Code section 6254(f) requires local law enforcement agencies to make public, upon receipt of a public records request, information surrounding an arrest and all complaints or requests for assistance received by the agency. Government Code section 6254(f) states in relevant part the following:

. . . . Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual’s physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) (A) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code may be withheld at the victim’s request, or at the request of the victim’s parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined in any of the sections of the Penal Code set forth in this subdivision may be deleted at

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<sup>107</sup> Exhibit H, Test Claim, page 71 (Form I-918, Petition and Supplement A Instructions, page 13).

<sup>108</sup> Exhibit H, Test Claim, page 82 (Form I-918, Supplement B Instructions, page 2).

the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(B) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the names and images of a victim of human trafficking, as defined in Section 236.1 of the Penal Code, and of that victim's immediate family, other than a family member who is charged with a criminal offense arising from the same incident, may be withheld at the victim's request until the investigation or any subsequent prosecution is complete. For purposes of this subdivision, "immediate family" shall have the same meaning as that provided in paragraph (3) of subdivision (b) of Section 422.4 of the Penal Code.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, if the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. This paragraph shall not be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

In addition, the victim may also have received documentation of the alleged crime from the certifying entity pursuant to Family Code section 6228, which requires local agencies to provide one copy of all incident report face sheets, one copy of all incident reports, or both, to a victim of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult within specified times.<sup>109</sup>

Even if a U Visa request is based on past criminal activity previously reported, investigated, and documented by the certifying entity in a closed law enforcement case, and a victim requesting a U Visa certification does not have records, or sufficient records that show that the victim was a victim of a qualifying criminal activity and was helpful to the detection, investigation, and

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<sup>109</sup> Family Code section 6228 was pled in *Crime Victims' Domestic Violence Incident Reports* (99-TC-08) and was denied by the Commission on the ground that the statute's requirements to provide, retrieve, and copy information relating to a domestic violence incident has long been required by the Public Records Act.



prosecution of that criminal activity by that certifying entity, then the victim can request any additional existing records under the Public Records Act or Family Code first, before making the U Visa request with the certifying entity.

Thus, it is the Public Records Act and Family Code section 6228, and *not* the test claim statute, that require the certifying entity to research, search for, locate, or produce any documents, such as police reports or witness/victim statements, evidencing the qualifying criminal activity, that the victim was a victim of that activity, and that the victim was helpful, upon request of the victim and these requirements are not new. Again, the burden to demonstrate eligibility for a U Visa certification is on the victim, and not on the certifying entity or certifying official.

Therefore, the certifying entity or certifying official can simply review the records included with the victim's request for U Visa certification to confirm that U Visa certification is required to be completed.

Accordingly, the Commission finds that the activity to review the request for U Visa certification, including all documentation provided by the victim, is reasonably necessary to confirm that the victim was a victim of a qualifying criminal activity, as defined in Penal Code section 679.10(c), and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, thus triggering the requirement to complete the certification. However, the activities to research the original crime, and to research, locate, obtain, and copy records for the purpose of determining whether the certifying entity is required to complete U Visa certification upon the victim's request go beyond the scope of the mandate and are not eligible for reimbursement.

- c. The proposed activities to locate and review any records of the qualifying criminal activity identified by the victim that were prepared in the normal course of the certifying entity's law enforcement duties in order *to complete* the Form I-918 Supplement B certification, and to attach those records to the Form I-918 Supplement B certification, are supported by the law and the record and, are therefore, reasonably necessary to comply with the mandate. However, the cost incurred to copy any reports to attach to the Form I-918 Supplement B certification is required by prior law, and not the test claim statute, and is, therefore, denied.

Once the certifying entity is required to complete a U Visa certification, the test claim statute requires the certifying official to fully complete and sign the Form I-918 Supplement B certification as follows:

The certifying official shall fully complete and sign the Form I-918 Supplement B certification and, regarding victim helpfulness, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.<sup>110</sup>

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<sup>110</sup> Penal Code section 679.10(g).

The claimant requests reimbursement for the time to determine what relevant records exist (research), locate, obtain, copy, and review records to complete the form.<sup>111</sup> The claimant relies on the Declaration from Lieutenant Cizek, which states that “to determine what relevant records exist, then search for, locate, copy and provide the records to the certifying official to make the determinations” is a “necessary and sometimes time-consuming step for law enforcement to comply with this mandate.”<sup>112</sup> The claimant also requests reimbursement to attach all relevant reports and findings to the Form I-918 Supplement B certification if they exist.<sup>113</sup>

The Commission finds that the time to locate the certifying entity’s records necessary to complete the form is reasonably necessary to comply with the mandate. Although the U Visa applicant may have copies of police reports and other public documents to support the request for U Visa certification, Form I-918 Supplement B certification expressly requires the certifying official to declare under penalty of perjury that the “detailed information” on the form is “complete, true, and correct” based on the certifying official’s independent review of the facts as follows:

I am the head of the agency listed in Part 2. or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual identified in Part 1. is or was a victim of one or more of the crimes listed in Part 3. I certify that the above information is complete, true, and correct to the best of my knowledge , and that I have made and will make no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.

Thus, it is not reasonable to rely solely on the documentation provided by the victim to complete the form. Accordingly, to the extent the certifying entity that receives a U Visa request has a record of the qualifying criminal activity identified by the victim or the victim’s family member, which was prepared in the normal course of the certifying entity’s law enforcement duties, reimbursement is authorized to locate those records to complete the form.

The Commission also finds that it is reasonably necessary to review those records to complete the mandated form. Penal Code section 679.10(g) and the Form I-918 Supplement B certification require “detailed information” about the criminal acts, including the dates on which the criminal activity occurred; the statutory citations for the criminal activity being investigated

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<sup>111</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 2.

<sup>112</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 3 (Declaration of Michael Cizek, Lieutenant for the City of Claremont, December 4, 2018, page 1).

<sup>113</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 2.

or prosecuted or that was investigated or prosecuted; a description of any known or documented injury to the victim; and asks that all relevant reports and findings be attached if they exist.<sup>114</sup> The form also asks the following three yes or no questions regarding victim helpfulness, and then asks for an explanation if the questions were answered “yes”:

1. Does the victim possess information concerning the criminal activity listed in Part 3?
2. Has the victim been helpful, is the victim being helpful, or is the victim likely to be helpful in the investigation or prosecution of the criminal activity detailed above?
3. Since the initiation of cooperation, has the victim refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity detailed above?

If you answer “yes” to Item Numbers 1-3, provide an explanation in the space below.<sup>115</sup>

The Form I-918 Supplement B instructions make clear that “[i]f a question does not apply to you type or print ‘N/A,’ unless otherwise directed.”<sup>116</sup>

The Form I-918 Supplement B certification further requires the certifying official to declare under penalty of perjury that the “detailed information” on the form is “complete, true, and correct.”<sup>117</sup>

Finally, the claimant requests reimbursement to attach all relevant reports and findings to the Form I-918 Supplement B certification. Page 2 of the U Visa Form I-918 Supplement B certification expressly asks that the certifying official “attach copies of all relevant reports and findings” with respect to the qualifying criminal activity and any injury to the victim, as specified below:

6. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the petitioner named in **Part 1**. Attach copies of all relevant reports and findings.
7. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.<sup>118</sup>

Thus, the Commission finds that it is reasonably necessary to comply with the mandate to fully complete the Form I-918 Supplement B certification, to attach all relevant reports prepared in the

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<sup>114</sup> Exhibit H, Test Claim, page 77 (Form I-918 Supplement B certification).

<sup>115</sup> Exhibit H, Test Claim, page 78 (Form I-918 Supplement B certification).

<sup>116</sup> Exhibit H, Test Claim, page 82 (Instructions to Form I-918 Supplement B, U Nonimmigrant Status Certification, page 2).

<sup>117</sup> Exhibit H, Test Claim, page 79 (Form I-918 Supplement B, U Nonimmigrant Status Certification, page 4).

<sup>118</sup> Exhibit H, Test Claim, page 77 (Form I-918 Supplement B certification, page 2).

normal course of the certifying entity's law enforcement duties expressly requested by the Form I-918 Supplement B certification, if they exist.

However, the cost of copying or duplicating any attached reports prepared in the normal course of the certifying entity's law enforcement duties is required by prior law and, thus, goes beyond the scope of the mandate here. As indicated in the section above, the U Visa applicant has the burden to demonstrate eligibility for a U Visa, and can obtain copies of relevant reports with a public records request or request under Family Code section 6228. The Public Records Act is very broad and already requires local law enforcement agencies, in Government Code section 6254(f), to provide copies of information surrounding an incident, an arrest and all complaints or requests for assistance received by the agency, including "the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved." And Family Code section 6228 requires local agencies to provide a copy of all incident report face sheets, a copy of all incident reports, or both, to a victim of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. The records and reports required to be provided under existing law satisfies the requirements of the Form I-918 Supplement B certification, and the cost incurred to copy those records is not new. Thus, reimbursement for the cost of copying any attached report to the Form I-918 Supplement B certification is not required by the mandate, nor reasonably necessary to comply with the mandate, and thus is not eligible for reimbursement.

- d. The claimant's request to strike the words "law enforcement" in Section IV.B.1.c. of the Parameters and Guidelines, relating to the review of records prepared in the normal course of the certifying entities "law enforcement" duties to complete the form, is not consistent with the mandate and is, therefore, denied.

The claimant requests that the Commission strike the words "law enforcement" in Section IV.B.1.c. of the Parameters and Guidelines relating to the review of records prepared in the normal course of the certifying entity's "law enforcement" duties to complete the U Visa form.<sup>119</sup>

The Commission denies this request. The proposal to strike "law enforcement" essentially requests reimbursement for the review of any record, beyond those records prepared in the normal course of the certifying entity's "law enforcement duties," in order to complete the U Visa form. The claimant argues that it recommends this change because "there are other types of certifying [sic] who may have to review their own types of records - such as court documents."<sup>120</sup> The claimant provides no evidentiary or legal support for this proposition, and the proposal is not consistent with the law or the Commission's Test Claim Decision.

The Resouce Guide issued by DHS refers to all certifying agencies and officials as law enforcement, noting that they are in the best position to determine if a qualifying crime has taken

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<sup>119</sup> Exhibit F, Claimant's Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 2.

<sup>120</sup> Exhibit F, Claimant's Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 2.

place.<sup>121</sup> Thus, the Resource Guide states that “[i]f, in the normal course of duties, a certifying official or agency has determined that a qualifying criminal activity has taken place, the victim possessed information related to the criminal activity, and the victim has been helpful, *law enforcement* may sign the U visa certification.”<sup>122</sup> In this respect, the mandate is expressly limited to certifying officials from certifying entities of local agencies that have the responsibility for the detection, investigation, or prosecution of a qualifying criminal activity (including district attorney offices, sheriff’s departments, police departments, child protective services, and any other local agency authority that has the responsibility for the detection, investigation, or prosecution of a qualifying criminal activity) to complete the U Visa form.

Thus, the only records that are relevant to complete the U Visa form are those prepared in the normal course of a certifying entity’s law enforcement duties.

Accordingly, the Commission denies this request.

- e. The claimant’s proposal to substitute the term “requesting party” for the term “victim” in Section IV.B.1.c. of the Parameters and Guidelines is not consistent with the test claim statute and is, therefore, denied.

The claimant also requests that the first paragraph in Section IV.B.1.c. of Parameters and Guidelines be modified as follows:

When it is determined that the ~~victim~~ requesting party was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, the certifying official shall fully complete . . . and sign the Form I-918 Supplement B certification upon the request of the victim or the victim's family member . . . .”<sup>123</sup>

The claimant’s request to substitute the term “requesting party” for the term “victim” is not consistent with the test claim statute and is, therefore, denied.

The activity approved by the Commission tracks the statutory language in Penal Code sections 679.10(e) and 679.10(g), which reads:

*(e) Upon the request of the victim or victim’s family member, a certifying official from a certifying entity shall certify victim helpfulness on the Form I-918 Supplement B certification, when the victim was a victim of a qualifying criminal*

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<sup>121</sup> Exhibit H, “U and T Visa Law Enforcement Resource Guide,” Department of Homeland Security, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf), accessed July 10, 2018, page 26.

<sup>122</sup> Exhibit H, “U and T Visa Law Enforcement Resource Guide,” Department of Homeland Security, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf), accessed July 10, 2018, page 26.

<sup>123</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 2.

*activity* and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity.

(g) The certifying official shall fully complete and sign the Form I-918 Supplement B certification and, regarding victim helpfulness, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.

This language provides that the activity to certify victim helpfulness on the Form I-918 Supplement B certification is triggered upon the request of the victim or victim's family member, but only when the *victim* was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity. If the *victim* is determined not to be a victim of a qualifying criminal activity or to be not helpful, as defined in the test claim statute, then a local agency is not mandated by the state to certify victim helpfulness on the Form I-918 Supplement B.

Thus, the Commission denies this request.

- f. The proposed activity to allow a “designee,” other than the certifying official, to fully complete and sign the Form I-918 Supplement B certification and the proposed deletion of the conditional language “upon the request of the victim or the victims’s family member” are not consistent with the law and are, therefore, denied.

The claimant requests to add “*or their designee*” to the approved activity “for the certifying official to fully complete and sign the Form I-918 Supplement B certification. . .” The claimant also proposes to delete the conditional language “upon the request of the victim or the victims’s family member”.<sup>124</sup>

The Commission denies these requests because they are not consistent with the law. Both the test claim statute and federal law require that the certifying official “fully complete and sign the Form I-918 Supplement B certification,” and specifically defines certifying official as the head of the certifying entity or a person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency.<sup>125</sup> The instructions to Form I-918 Supplement B also explain that:

A certifying official is:

1. The head of the certifying agency or any person in a supervisory role, who was specifically designated by the head of the certifying agency to issue a U Nonimmigrant Status Certification on behalf of that agency; or
2. A Federal, state, or local judge.

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<sup>124</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>125</sup> Penal Code section 679.1(b); Code of Federal Regulations, title 8, section 214.14(a)(3).

If the certification is not signed by the head of the certifying agency, attach evidence of the agency head's written designation of the certifying official for this specific purpose.<sup>126</sup>

Form I-918 Supplement B itself requires the certifying official to certify that:

I am the head of the agency listed in Part 2. or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency.<sup>127</sup>

The DHS Resource Guide specifically provides that: “only a law enforcement official, prosecutor, judge, or other government official authorized to sign certifications/declarations may complete and sign the Form I-918B.”<sup>128</sup>

Accordingly, the claimant’s proposal to add the activity for a “designee” other than the certifying official to fully complete and sign the form is denied. Additionally, the requirement for the certifying official to “fully complete and sign the Form I-918 Supplement B certification,” is conditioned “upon the request of the victim or the victims’s family member”<sup>129</sup> and therefore deletion of this conditional language is inconsistent with the law and also denied.

- g. The proposed activity for the “supervisor [to] edit, review, approve, and certify (signatures) forms,” is not consistent with the law or supported by evidence in the record and is, therefore, denied.

The claimant requests reimbursement for the following activities it alleges are reasonably necessary to comply with the mandate: “Supervisor edit, review, approval, and certification (signatures) of forms.”<sup>130</sup>

The Commission denies this request. Apart from general assertion made by Lieutenant Ciszek in his declaration stating that “it is my belief that the activities listed [in the claimant’s comments on the Draft Expedited Parameters and Guidelines] directly result from the mandate and are reasonably necessary to implement the subject statutes of the U VISA program,”<sup>131</sup> the claimant provides no support for this proposal and does not explain what it encompasses and why this

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<sup>126</sup> Exhibit H, Test Claim, page 83 (Instructions to Form I-918 Supplement B, U Nonimmigrant Status Certification, page 3).

<sup>127</sup> Exhibit H, Test Claim, page 9 (Form I-918, Supplement B, page 4).

<sup>128</sup> Exhibit H, “U and T Visa Law Enforcement Resource Guide,” Department of Homeland Security, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf), accessed July 10, 2018, page 25.

<sup>129</sup> Penal Code section 679.10(a).

<sup>130</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2, italics and underline omitted.

<sup>131</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 4 (Declaration of Michael Ciszek, Lieutenant for the City of Claremont, October 17, 2018, page 1).

activity should be reimbursable. The claimant provided a more detailed explanation of the request in the Test Claim, as follows:

Supervisor review and approval of the detailed description of victim's helpfulness narrative. *(Estimated additional time at 5-10 minutes per case)*

[¶]...[¶]

Supervisor review and approval of the "complete" U VISA paperwork *(Estimated additional 5-10 minutes per case.) In the past, denied cases did not require completion of all the forms, therefore additional time is required to review these additional requests and completed forms.*<sup>132</sup>

It appears that by using the word “supervisor,” the claimant might have meant for the “certifying official” to edit, review, approve, and certify Form I-918 Supplement B completed by another employee of the local agency who is not defined as a “certifying official.” However, as discussed above, only certifying officials (either the head of the agency or a person in a supervisory role who has been specifically designated by the head of the agency to issue Form I-918 Supplement B certifications on behalf of the agency) are authorized to complete Form I-918 Supplement B, and therefore supervisory review, edit, and approval of Form I-918 Supplement B by the certifying official when the form is completed by another employee is not consistent with the law. While it might be necessary for the certifying official to review information identified by an employee of the certifying agency in relation to the U Visa request in order to determine whether U Visa certification is required and to fully complete and sign Form I-918 Supplement B certification, when required in accordance with the test claim statute and federal regulations, that is not what is being proposed by the claimant.

Accordingly, the Commission denies this request.

- h. The proposed activity for the “Police Chief/Certifying Official to review, approve, and authorize the release of the U Visa forms,” is not consistent with the law or supported by evidence in the record and is, therefore, denied.

In comments on the Draft Proposed Decision, the claimant requests reimbursement “for ‘Police Chief/Certifying Official to review, approve, and authorize the release of the U Visa forms.’”<sup>133</sup> To support this request, the claimant submitted a declaration from Lieutenant Ciszek stating that it is necessary for a head of the certifying agency, such as the police chief, to review and approve the release of U Visa certifications, as follows:

[T]hough the Police Chief is the "certifying official", the Detective Bureau Lieutenant was the supervisor designated by the Chief to complete the City's U Visa requests. However, before the completed forms are released, the Police Chief

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<sup>132</sup> Exhibit H, Test Claim, page 5.

<sup>133</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 2.



is informed of the Lieutenant's determination. On occasion, the Chief has requested to review and inspect those forms for a final review and approval.<sup>134</sup>

This request goes beyond the scope of the mandate. The test claim statute requires the certifying official to fully complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim's family member. The test claim statute defines "certifying official" to include both (1) "The head of the certifying entity," *or* (2) "A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency."<sup>135</sup>

The instructions to Form I-918 Supplement B also explain that a certifying official is:

The head of the certifying agency *or* any person in a supervisory role, who was specifically designated by the head of the certifying agency to issue a U Nonimmigrant Status Certification on behalf of that agency.<sup>136</sup>

The Form I-918 Supplement B itself states that:

I am the head of the agency listed in Part 2. *or* I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency.<sup>137</sup>

Finally, Form I-918 Supplement B instructions further instruct that "[i]f the certification is not signed by the head of the certifying agency," the certifying official must "attach evidence of the agency head's written designation of the certifying official for this specific purpose."<sup>138</sup>

Therefore, the law allows the head of the agency to designate a supervisory employee to complete, sign, and issue U Visa forms, but does not require the head of the agency to review each individual completed form once the supervisory employee is designated as the certifying official. If an agency decides to comply with the law in the manner suggested by the claimant, that is within the discretion of the agency, but is not required or necessary to comply with the mandate.

Accordingly, the Commission denies this request.

**3. The claimant's request to amend the language to report to the Legislature is not consistent with the mandate and is, therefore, denied (Section IV.B.2. of the Parameters and Guidelines).**

The Commission approved reimbursement for the following state-mandated activity:

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<sup>134</sup> Exhibit F, Claimant's Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines, page 3 (Declaration of Michael Cizek, Lieutenant for the City of Claremont, December 4, 2018, page 1).

<sup>135</sup> Penal Code, section 679.10(b), emphasis added.

<sup>136</sup> Exhibit H, Test Claim, page 83 (Form I-918, Supplement B Instructions, page 3).

<sup>137</sup> Exhibit H, Test Claim, page 9 (Form I-918, Supplement B, page 4).

<sup>138</sup> Exhibit H, Test Claim, page 83 (Form I-918, Supplement B Instructions, page 3).

For a certifying entity that receives a request for a Form I-918 Supplement B certification to report to the Legislature on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied. (Pen. Code, § 679.10(10).)

The claimant requests that the language be changed as follows:

~~For a certifying entity that receives a request for a Form I-918 Supplement B certification to~~ ~~[sic: r]~~ Report to the Legislature on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied. (Pen. Code, § 679.10(1).)<sup>139</sup>

The Commission denies this request. The language approved by the Commission tracks the statutory language in Penal Code section 679.10(1), and makes it clear that the activity to report to the Legislature is triggered only when the certifying entity receives a request for a Form I-918 Supplement B certification. If a request has not been made, then a local agency is not mandated by the state to prepare or provide a report to the Legislature. As described in the next section, however, minor changes to the language are included in the Parameters and Guidelines for readability.

#### **4. Summary of Section IV., Reimbursable Activities**

Based on the above analysis and findings, Section IV. of the Parameters and Guidelines now states in relevant part the following (with strikeout and underline to reflect the changes to the Draft Proposed Parameters and Guidelines:

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

##### **A. One-time activities:**

1. Updating policies and procedures to incorporate the requirements of the test claim statute.<sup>140</sup>

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<sup>139</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>140</sup> Penal Code section 679.10(a)-(j); Exhibit H, California Department of Justice Information Bulletin No. DLE-2015-14, "New and Existing State and Federal Laws Protecting Immigrant Victims of Crime," October 28, 2015, page 4; "U and T Visa Law Enforcement Resource Guide," Department of Homeland Security, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf), accessed July 10, 2018, page 14; and Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, filed October 23, 2018 (Declaration of Michael Ciszek, Lieutenant for the City of Claremont, dated October 17, 2018).

2. Train staff assigned to perform the reimbursable activities listed in Section IV.(B) of these Parameters and Guideline (one-time for each employee.)<sup>141</sup>

B. Ongoing activities:

1. When a certifying entity receives a request for a Form I-918 Supplement B certification from the victim or the victim's family member, the following activities, which must be completed within 90 days of the request or 14 days of the request if the victim is in removal proceedings, are eligible for reimbursement:
  - a. Receive and log the request.
  - b. Review the request for U Visa certification and all documentation provided by the victim or the victim's family member to confirm that the victim was a victim of a qualifying criminal activity, defined in Penal Code section 679.10(c), and has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity. Victim helpfulness is presumed and is rebutted only if the victim refuses or fails to provide information and assistance reasonably requested by law enforcement.<sup>142</sup>
  - c. The certifying official shall fully complete and sign the Form I-918 Supplement B certification, upon the request of the victim or the victim's family member, when it is determined that the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity, and "include specific details about the nature of the crime the certifying entity investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the certifying entity in the detection or investigation or prosecution of the criminal activity."

To the extent the certifying entity that receives a U Visa request has a record of the qualifying criminal activity identified by the victim or victim's family member, which was prepared in the normal course of the certifying entity's law enforcement duties, reimbursement for this activity includes locating and reviewing the record to complete the Form I-918 Supplement B certification.

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<sup>141</sup> Penal Code section 679.10(a)-(j); California Department of Justice Information Bulletin No. DLE-2015-14, "New and Existing State and Federal Laws Protecting Immigrant Victims of Crime," October 28, 2015, page 1; U and T Visa Law Enforcement Resource Guide," Department of Homeland Security, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf), accessed July 10, 2018, pages 15-26; Declaration of Michael Ciszek, Lieutenant for the City of Claremont, October 17, 2018.

<sup>142</sup> Penal Code section 679.10(f); Penal Code section 679.10(i) ("A current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official.").

Reimbursement for this activity also includes attaching to the Form I-918 Supplement B certification, relevant reports prepared in the normal course of the certifying entity's law enforcement duties, detailing the criminal activity being investigated or prosecuted and the involvement of the victim, and relevant reports containing a description of any known or documented injury to the victim.

***However, reimbursement is not required for the cost of copying the attached reports.***

- d. Transmit the results to the victim or the victim's legal representative.
- e. File, log, and close the case.<sup>143</sup>

***Reimbursement is not required for the following activities: detection of a crime; investigation of a crime; prosecution of a crime; research; review of records that are not identified in section IV.B.(1)(b) or (c) of these Parameters and Guidelines; and locating, obtaining, and copying records for the purpose of determining whether a certifying entity is required to issue a U Visa certification pursuant to Section IV.B.1.b. of these Parameters and Guidelines.***

- 2. A certifying entity that receives a request for a Form I-918 Supplement B certification shall report to the Legislature on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied.<sup>144</sup>

## **5. The Remaining Sections of the Parameters and Guidelines**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the following direct costs that are eligible for reimbursement: salaries and benefits, materials and supplies, contracted services, training and fixed assets. However, travel costs are not included in the Parameters and Guidelines because those activities were not approved in the Test Claim Decision and the claimant did not request these costs as reasonably necessary to perform the mandated activities or submit evidence to support such a request.

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

## **V. Conclusion**

Based on the foregoing, the Commission hereby adopts the Decision and Parameters and Guidelines.

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<sup>143</sup> Penal Code section 679.10(a)-(j); Instructions to Form I-918 Supplement B, U Nonimmigrant Status Certification.

<sup>144</sup> Penal Code section 679.10(l).

## **PROPOSED PARAMETERS AND GUIDELINES**

Penal Code Section 679.10

Statutes 2015, Chapter 721 (SB 674)

*U Visa 918 Form, Victims of Crime: Nonimmigrant Status*

17-TC-01

Period of reimbursement begins July 1, 2016.

### **I. SUMMARY OF THE MANDATE**

These Parameters and Guidelines address the mandated activities arising from Penal Code section 679.10, added by Statutes 2015, chapter 721 (SB 674) (test claim statute). The test claim statute requires local agencies, upon request of a victim of qualifying criminal activity seeking temporary immigration benefits under the federal U Visa program and willing to assist law enforcement with investigation or prosecution of the criminal activity, to complete and certify the federal Form I-918 Supplement B (U Nonimmigrant Status Certification) and to submit annual reports about the certifications to the Legislature.

On September 28, 2018, the Commission on State Mandates (Commission) adopted the Decision partially approving the Test Claim finding that the test claim statute imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission partially approved the Test Claim for “certifying officials” from the “certifying entities” of local agencies (i.e., district attorney offices, sheriff’s departments, police departments, child protective services, and any other local agency authority that has the responsibility for the detection, investigation, or prosecution of a qualifying criminal activity within the meaning of the Penal Code section 679.10(a), with the *exception* of the police/security departments of school districts and special districts, and judges who are not eligible to claim mandate reimbursement in this case), finding only the following activities to be mandated by the plain language of the statute:

- For the certifying official to fully complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim’s family member, and “include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim’s helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity” within 90 days of the request or 14 days of the request if the victim is in removal proceedings, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity. (Pen. Code, § 679.10(a)-(j).)
- For a certifying entity that receives a request for a Form I-918 Supplement B certification to report to the Legislature on or before January 1, 2017, and annually thereafter, the

number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied. (Pen. Code, § 679.10(l).)

## **II. ELIGIBLE CLAIMANTS**

Any city, county, city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement. School districts and special districts are not eligible to claim reimbursement for this program.

## **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 claimant filed the Test Claim on March 6, 2018, establishing eligibility for reimbursement for the 2016-2017 fiscal year. Therefore, costs incurred on or after July 1, 2016 are reimbursable.

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 (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. 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(a).
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 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 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, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, 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 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. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

A. One-time activities:

1. Updating policies and procedures to incorporate the requirements of the test claim statute.<sup>1</sup>
2. Train staff assigned to perform the reimbursable activities listed in Section IV.(B) of these Parameters and Guideline (one-time for each employee.)<sup>2</sup>

B. Ongoing activities:

1. When a certifying entity receives a request for a Form I-918 Supplement B certification from the victim or the victim's family member, the following activities, which must be completed within 90 days of the request or 14 days of the request if the victim is in removal proceedings, are eligible for reimbursement:
  - a. ~~Receive, review (if a written request is received),~~ and log the request.
  - b. ~~Determine if~~ Review the request for U Visa certification and all documentation provided by the victim or the victim's family member to confirm that the victim was a victim of a qualifying criminal activity, listed defined in Penal Code section 679.10(c), and has been helpful, is being helpful, or is likely to be helpful to the detection, or investigation, or prosecution of that qualifying criminal activity.

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<sup>1</sup> Penal Code section 679.10(a)-(j); Exhibit H, California Department of Justice Information Bulletin No. DLE-2015-14, "New and Existing State and Federal Laws Protecting Immigrant Victims of Crime," October 28, 2015, page 4; "U and T Visa Law Enforcement Resource Guide," Department of Homeland Security, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf), accessed July 10, 2018, page 14; and, Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, filed October 23, 2018 (Declaration of Michael Ciszek, Lieutenant for the City of Claremont, dated October 17, 2018).

<sup>2</sup> Penal Code section 679.10(a)-(j); California Department of Justice Information Bulletin No. DLE-2015-14, "New and Existing State and Federal Laws Protecting Immigrant Victims of Crime," October 28, 2015, page 1; U and T Visa Law Enforcement Resource Guide," Department of Homeland Security, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf), accessed July 10, 2018, pages 15-26; Declaration of Michael Ciszek, Lieutenant for the City of Claremont, October 17, 2018.

Victim helpfulness is presumed and is rebutted only if the victim refuses or fails to provide information and assistance reasonably requested by law enforcement.<sup>3</sup> ~~If it is determined that the victim was not a victim of a qualifying criminal activity or has refused or failed to provide information and assistance reasonably requested by law enforcement, then the request can be denied.~~

~~If the crime alleged is based on past criminal activity *previously reported and investigated or prosecuted by the certifying entity and the case is closed*, reimbursement for this activity includes review of any record of the alleged crime prepared in the normal course of a certifying entity's law enforcement duties only to determine if the crime alleged is a qualifying crime under Penal Code section 679.10(e) and to determine if the record rebuts the presumption that the victim "has been helpful" to the detection, investigation, or prosecution of that qualifying criminal activity (i.e., that the victim refused or failed to provide information and assistance reasonably requested by law enforcement).~~<sup>4</sup>

- c. The certifying official shall fully complete and sign the Form I-918 Supplement B certification, upon the request of the victim or the victim's family member. ~~When it is determined that the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection, or investigation, or prosecution of that qualifying criminal activity, the certifying official shall fully complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim's family member, and "include specific details about the nature of the crime the certifying entity investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the certifying entity in the detection or investigation or prosecution of the criminal activity."~~<sup>2</sup> ~~within 90 days of the request or 14 days of the request if the victim is in removal proceedings.~~

To the extent the certifying entity that receives a U Visa request has a record of the qualifying criminal activity identified by the victim or victim's family member, which was prepared in the normal course of the certifying entity's law enforcement duties, reimbursement for this activity includes locating and reviewing of the record to complete the Form I-918 Supplement B certification.

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<sup>3</sup> Penal Code section 679.10(f); Penal Code section 679.10(i) ("A current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official.").

<sup>4</sup> ~~"A current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official." (Pen. Code, § 670.10(i).)~~



Reimbursement for this activity also includes attaching to the Form I-918 Supplement B certification, relevant reports prepared in the normal course of the certifying entity's law enforcement duties, detailing the criminal activity being investigated or prosecuted and the involvement of the victim, and relevant reports containing a description of any known or documented injury to the victim. ***However, reimbursement is not required for the cost of copying the attached reports.***

- d. Transmit the results to the victim or the victim's legal representative.
- e. File, log, and close the case.<sup>5</sup>

***Reimbursement is not required for the following activities: detection of a crime; investigation of a crime; prosecution of a crime; ~~or~~ research; ~~or~~ review of records that are not identified in section IV.B. (1)(b) or (c) of these Parameters and Guidelines; and locating, obtaining, and copying records for the purpose of determining whether a certifying entity is required to issue a U Visa certification pursuant to Section IV.B.1.b. of these Parameters and Guidelines.***

- 2. A certifying entity that receives a request for a Form I-918 Supplement B certification shall report to the Legislature on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied.<sup>6</sup>

## V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed 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 the 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

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<sup>5</sup> Penal Code section 679.10(a)-(j); Instructions to Form I-918 Supplement B, U Nonimmigrant Status Certification.

<sup>6</sup> Penal Code section 679.10(l).

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. 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 services that were performed during the period covered by the reimbursement claim. If the contract services are 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 attorney invoices with the claim and a description of the contract scope of services.

### 4. Fixed Assets

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

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

## 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 both: (1) 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 Code of Federal Regulations (CFR) part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

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

The distribution 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 OMB Circular A-87 attachments A & 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 that 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 OMB Circular A-87 attachments A & 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. RECORD 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>7</sup> is subject to the initiation of an audit by the 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. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. 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**

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

Any offsetting revenue 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 from any source, including but not limited to, service fees collected, federal funds, and other applicable state funds, 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 90 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 these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), 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 request of a local agency, the Commission shall review the claiming instructions issued by the 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 and the Controller shall 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), and California Code of Regulations, title 2, section 1183.17.

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

The decisions adopted for the Test Claim and Parameters and Guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On January 16, 2019, I served the:

- **Corrected Proposed Decision and Proposed Parameters and Guidelines issued January 16, 2019**

*U Visa 918 Form, Victims of Crime: Nonimmigrant Status, 17-TC-01*  
Penal Code Section 679.10; Statutes 2015, Chapter 721 (SB 674)  
City of Claremont, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 16, 2019, at Sacramento, California.

  
\_\_\_\_\_  
Jill L. Magee  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

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**Last Updated:** 1/9/19

**Claim Number:** 17-TC-01

**Matter:** U Visa 918 Form, Victims of Crime: Nonimmigrant Status

**Claimant:** City of Claremont

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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