



November 19, 2018

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: Draft Proposed Decision and Proposed Parameters and Guidelines, Schedule for Comments, and Notice of Hearing

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:

The Draft Proposed Decision and Parameters and Guidelines for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision and Parameters and Guidelines by **December 10, 2018**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Ms. Chinn and Ms. Kanemasu

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Hearing

This matter is set for hearing on **Friday, January 25, 2019** at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about January 11, 2019. 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.

Sincerely,



Heather Halsey
Executive Director

ITEM _
DRAFT 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

EXECUTIVE SUMMARY

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.¹ On October 3, 2018, Commission staff issued the Draft Expedited Parameters and Guidelines.² On October 23, 2018, the claimant filed comments on the Draft Expedited Parameters and Guidelines.³ On October 24, 2018, the State Controller's Office (Controller) filed comments recommending no changes to the Draft Expedited Parameters and Guidelines.⁴ On November 19, 2018, Commission staff issued the Draft Proposed Decision and Proposed Parameters and Guidelines.⁵

III. Discussion

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

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

- 1. The claimant's 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.**

The claimant requests reimbursement for the following one-time costs 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.⁶

¹ Exhibit A, Test Claim Decision.

² Exhibit B, Draft Expedited Parameters and Guidelines.

³ Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines.

⁴ Exhibit D, Controller's Comments on the Draft Expedited Parameters and Guidelines.

⁵ Exhibit E, Draft Proposed Decision and Proposed Parameters and Guidelines.

⁶ Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2 (italics and underline omitted).

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.”⁷ 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.”⁸ 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 State statutes.”⁹

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 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, UVISA instructions and forms, State Department of Justice Information Bulletins, and Federal Homeland Security Guides (U and T Visa Law Enforcement Recourse [sic] Guide”).¹⁰

2. **Some of the claimant’s proposed activities to fully complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim’s family member are consistent with the law and evidence in the record and are, therefore, reasonably necessary to comply with the mandate.**

⁷ Exhibit A, Test Claim Decision, page 18.

⁸ Exhibit X, “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, accessed July 10, 2018, page 14.

⁹ 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).

¹⁰ 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).

The claimant requests that the language regarding the mandate for the certifying official to fully complete and sign the form be modified and include the following additional activities alleged to be reasonably necessary (the claimant's proposed changes are noted in underline and strikeout):

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:

- 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.
- + 4) 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~~, 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).)
- 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.¹¹
 - a. The proposed reasonably necessary activities to receive, review (but only if a written request is received), 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.

Staff finds that the proposed reasonably necessary activities to receive, review (if a written request is received), 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 reasonably necessary to process U Visa requests. These activities are reasonably necessary to comply with

¹¹ Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2 (italics omitted).

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 UVISA program."¹² 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, and when it is received in writing, it must be reviewed by the local agency and certifying official to fully complete the form. 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]."¹³ 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.¹⁴ 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 agency 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 claimant's request for reimbursement to "research the original crime" to determine the crime and victim helpfulness is not consistent with the law and is denied as stated. However, review of the certifying entity's own records to complete the form, to the extent they exist, is reasonably necessary to comply with the mandate.

The claimant requests reimbursement to:

¹² 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).

¹³ Exhibit X, "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, accessed July 10, 2018, page 25.

¹⁴ Exhibit X, Test Claim, pages 81-82 (Instructions to Form I-918 Supplement B).

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 helpfulness of the victim; determining if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.¹⁵

Staff recommends that the Commission deny this request as stated, and clarifies the scope of the mandated activity.

Under federal law, the burden to demonstrate eligibility for a U Visa is on the victim.¹⁶ The victim is required to submit the Form I-918 Supplement B signed by a certifying official within six months of filing an application for a U Visa, any additional evidence that the victim wants USCIS to consider to establish eligibility, and a signed statement by the victim describing the facts of the victimization.¹⁷ "USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."¹⁸

The test claim statute makes it clear 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."¹⁹ In this respect, DHC's resource guide states that a victim may request certification at any stage of a criminal matter, including at the point of detection (when a report has not yet been made or an investigation not yet started), or after the investigation or case is closed. A current investigation, the filing of charges, a prosecution or conviction is not required to sign the certification. And there is no statute of limitations on signing the certification.²⁰

The test claim statute also makes it clear that the mandate to "fully complete and sign the Form I-918 Supplement B certification" is triggered only when the certifying official determines that the victim "has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of [a] qualifying criminal activity."²¹ The test claim statute does *not* mandate a local agency to investigate or prosecute a crime.

¹⁵ Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2 (italics and underline omitted).

¹⁶ Code of Federal Regulations, title 8, section 214.14(c)(4).

¹⁷ Code of Federal Regulations, title 8, section 214.14(c)(2).

¹⁸ Code of Federal Regulations, title 8, section 214.14(c)(4).

¹⁹ Penal Code section 679.1(i).

²⁰ Exhibit X, "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 7; see also pages 18-19.

²¹ Penal Code section 679.1(e); Exhibit X, Test Claim, page 81 (Instructions for Supplement B, U Nonimmigrant Status Certification).

Nor does the test claim statute or federal law require a local agency to “[r]esearch the original crime” to determine whether the requirements of Penal Code, § 679.1(a)-(j) are met, as requested by the claimant. As indicated above, a local agency will not have records of a crime if the victim is first reporting the crime at the same time he or she requests a U Visa certification. The instructions to the Form I-918 Supplement B certification simply require the victim to be helpful and likely to be helpful; i.e., to have knowledge of details concerning the qualifying criminal activity that would assist in the investigation or prosecution of the qualifying criminal activity.²² In addition, the test claim statute makes it clear that there is a rebuttable presumption that the victim is 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.²³ The presumption of helpfulness is rebutted only if the victim has refused or failed to provide information and assistance reasonably requested by law enforcement.²⁴ Thus, “detailed research” is not required when the certifying entity is currently investigating, prosecuting, or sentencing for the qualifying crime and the victim has knowledge of the details concerning the criminal activity that would assist in the investigation or prosecution of the criminal activity.

A U Visa request may also be based on past criminal activity previously reported, investigated, and documented in a closed law enforcement case. As stated above, the burden is on the victim to show to USCIS that he or she was helpful and previously assisted in the detection or investigation or prosecution of that qualifying criminal activity. However, for the state mandate to fully complete and sign the U Visa form to be triggered, the determination that the past crime alleged is qualifying and that the victim was helpful has to be made by the local certifying entity.²⁵ Thus, under these limited circumstances, where the crime alleged is based on past criminal activity that was previously reported and investigated or prosecuted, it is reasonably necessary “to review” 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 qualifying under Penal Code section 679.1(c) and to determine if the record rebuts the presumption that the victim “has been helpful.” Victim helpfulness is presumed and is only rebutted if the victim refused or failed to provide information and assistance reasonably requested by law enforcement.²⁶

In addition, the test claim statute and the Form I-918 Supplement B certification request detailed information about the criminal acts “your agency is investigating, prosecuting, or sentencing,” 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

²² Exhibit X, Test Claim, page 84 (Instructions for Supplement B, U Nonimmigrant Status Certification).

²³ Penal Code section 679.1(f).

²⁴ Penal Code section 679.1(f).

²⁵ Penal Code section 679.1(e).

²⁶ Penal Code section 679.1(f).

and findings be attached if they exist.²⁷ Therefore, 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 certifying entity's law enforcement duties, the staff finds that it is reasonably necessary to review the record to complete the mandated form. No further research is required.

- c. The claimant's request for reimbursement to allow a certifying official "or their designee" to fully complete and sign the Form I-918 Supplement B certification is not consistent with the law and is, therefore, denied.

The claimant proposes the following changes to the proposed Parameters and Guidelines:

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~~, 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).)²⁸

Staff recommends that the Commission deny this request because it is 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 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 agency.²⁹ Thus, the law does not allow a person other than the certifying official to complete and sign the form.

- d. The claimant's request for reimbursement for the "supervisor to edit, review, approve, and certify (signatures) forms are not consistent with the law or supported by the evidence in the record.

The claimant also requests reimbursement for the following activities the claimant alleges are reasonably necessary to comply with the mandate: "Supervisor edit, review, approval, and certification (signatures) of forms."³⁰

²⁷ Penal Code section 679.1(e); Exhibit X, Test Claim, page 77 (Form I-918 Supplement B certification).

²⁸ Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

²⁹ Penal Code section 679.1(b); Code of Federal Regulations, title 8, section 214.14(a)(3).

³⁰ Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2 (italics and underline omitted).

Staff recommends that the Commission deny 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 UVISA program,”³¹ 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 local agency who is not defined as a “certifying official.” However, as discussed above, only certifying officials are authorized to complete Form I-918 Supplement B, and therefore supervisory review, edit, or 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 and that activity is already approved above and cannot be double claimed.

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.

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).)³²

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.

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

³¹ 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).

³² Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

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:

Member	Vote
Lee Adams, County Supervisor	
Ken Alex, 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.³³ On October 3, 2018, Commission staff issued the Draft Expedited Parameters and Guidelines.³⁴ On October 23, 2018, the City of Claremont (claimant) filed comments on the Draft Expedited Parameters and Guidelines.³⁵ On October 24, 2018, the State Controller’s

³³ Exhibit A, Test Claim Decision.

³⁴ Exhibit B, Draft Expedited Parameters and Guidelines.

³⁵ Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines.

Office (Controller) filed comments concurring with the Draft Expedited Parameters and Guidelines.³⁶ On November 19, 2018, Commission staff issued the Draft Proposed Decision and Proposed Parameters and Guidelines.³⁷

III. Positions of the Parties

A. City of Claremont

The claimant proposes a number of changes to the Draft Expedited Parameters and Guidelines.³⁸ 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.³⁹

Second, the claimant is requesting approval of the following on-going reasonably necessary activities “for a certifying entity that receives a request for a Form 1-918 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:

- 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

³⁶ Exhibit D, Controller’s Comments on the Draft Expedited Parameters and Guidelines.

³⁷ Exhibit E, Draft Proposed Decision and Proposed Parameters and Guidelines.

³⁸ Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-3.

³⁹ Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

4) Transmit results to involved parties and legal representatives

5) File, log, and close case.

[¶]⁴⁰

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 . . .~~”⁴¹

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.”⁴²

B. State Controller’s Office

On October 24, 2018, the Controller submitted comments on the Draft Expedited Parameters and Guidelines and recommends “no changes.”⁴³

IV. Discussion

The Draft Expedited Parameters and Guidelines authorize reimbursement for the state-mandated activities identified in the Test Claim Decision beginning July 1, 2016. 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

⁴⁰ Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

⁴¹ Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

⁴² Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 3.

⁴³ Exhibit D, Controller’s Comments on the Draft Expedited Parameters and Guidelines, page 1.

documentary evidence submitted in accordance with section 1187.5 of these regulations.⁴⁴

The Controller recommends no changes. No other comments were received.

The following analysis addresses the scope of the mandated activities, 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:

1. 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).)
2. 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).)

The claimant has proposed a number of reasonably necessary activities and changes to the Draft Expedited Parameters and Guidelines, which are discussed below.⁴⁵

- 1. The claimant's 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.**

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).)

⁴⁴ California Code of Regulations, title 2, section 1183.7(d).

⁴⁵ Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, pages 1-3.

- 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.⁴⁶

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.”⁴⁷ 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.”⁴⁸ 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 State statutes.”⁴⁹

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.”⁵⁰ The resource guide published by DHS specifically encourages training and includes a list of frequently asked questions in their

⁴⁶ Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2 (italics and underline omitted).

⁴⁷ Exhibit A, Test Claim Decision, page 18.

⁴⁸ Exhibit X, “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 14.

⁴⁹ 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).

⁵⁰ Exhibit X, 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.

documents for that purpose.⁵¹ 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, UVISA instructions and forms, State Department of Justice Information Bulletins, and Federal Homeland Security Guides (U and T Visa Law Enforcement Recourse [sic] Guide").⁵²

And the City of Costa Mesa, an interested party, submitted comments on the Test Claim, stating that “[l]aw enforcement agencies that certify U VISA . . . are compelled to educate staff on the process and use UVISA certification.”⁵³

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:

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 claimant’s proposed activities to fully complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim’s family member are consistent with the law and evidence in the record and are, therefore, reasonably necessary to comply with the mandate.**

The Commission’s Test Claim Decision approved the following ongoing activity, which was included in the Expedited Draft Parameters and Guideline:

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

⁵¹ Exhibit X, “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, 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 . . .”).

⁵² 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).

⁵³ Exhibit X, Interested Party’s (City of Costa Mesa’s) Comments on the Test Claim, page 2.

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 requests that the language be modified and include additional activities alleged to be reasonably necessary to comply with the mandate as follows (the claimant’s proposed changes are noted in underline and strikeout):

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:

- 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.
- + 4) 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~~, 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).)
- 3) Supervisor edit, review, approval, and certification (signatures) of forms
- 4) Transmit results to involved parties and legal representatives
- 5) File, log, and close case⁵⁴

The analysis below discusses the claimant’s proposal and clarifies the scope of the mandate.

⁵⁴ Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2 (italics omitted).

- a. Claimants proposed activities to receive, review (but only if the request is in writing), 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 Commission finds that activities to receive, review (but only if the request is in writing), 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 UVISA program.”⁵⁵ 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,⁵⁶ and were similarly supported by general assertions in Lieutenant Ciszek’s declaration in support of the Test Claim.⁵⁷

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. The request must first be received from the victim or the victim’s family or representative, which must be reviewed by the local agency and certifying official to fully complete the form. 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].”⁵⁸ 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.⁵⁹ In addition, the test claim statute requires that Form I-918 Supplement B

⁵⁵ 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).

⁵⁶ Exhibit X, Test Claim, pages 4-5.

⁵⁷ Exhibit X, Test Claim, page 13 (Declaration of Michael Ciszek, Lieutenant for the City of Claremont, March 1, 2018, page 1).

⁵⁸ Exhibit X, “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, accessed July 10, 2018, page 25.

⁵⁹ Exhibit X, Test Claim, pages 81-82 (Instructions to Form I-918 Supplement B, U Nonimmigrant Status Certification).

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, review (but only if the request is in writing), 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 claimant's request for reimbursement to "research the original crime" to determine the crime and victim helpfulness is not consistent with the law and is denied as stated. However, review of the certifying entity's own records to complete the form, to the extent they exist, is reasonably necessary to comply with the mandate.

The claimant requests reimbursement to:

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.⁶⁰

This activity was requested by the claimant in the Test Claim and is identified in the Test Claim Decision 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

⁶⁰ Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2 (italics and underline omitted).

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)⁶¹

As described below, the Commission denies this request as stated and clarifies the scope of the mandated activity.

As stated in the Test Claim Decision, eligibility for a U Visa is governed by the Victims of Trafficking and Violence Protection Act (VTVPA) and determined by USCIS. Under federal law, individuals without authorized immigrant status are eligible to apply for a U visa if they: (1) are victims of qualifying crimes, (2) have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity, (3) have specific knowledge and details of a qualifying crime committed within the United States, and (4) are currently assisting, have previously assisted, or are likely to be helpful in the detection, investigation, or prosecution of the qualifying crime.⁶² The burden to demonstrate eligibility for a U Visa is on the victim.⁶³ The victim is required to submit the Form I-918 Supplement B signed by a certifying official within six months of filing an application for a U Visa, any additional evidence that the victim wants USCIS to consider to establish eligibility, and a signed statement by the victim describing the facts of the victimization.⁶⁴ “USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, “U Nonimmigrant Status Certification.”⁶⁵

The test claim statute makes it clear 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.”⁶⁶ In this respect, DHC’s resource guide clarifies that a victim may request certification at any stage of a criminal matter, including at the point of detection (when a report has not yet been made or an investigation not yet started), or after the investigation or case is closed. A current investigation, the filing of charges, a prosecution or conviction is not required to sign the certification. And there is no statute of limitations on signing the certification. The resource guide states the following:

Law enforcement, prosecutors, judges or government officials can certify a U visa based on past, present, or the likelihood of future helpfulness of a victim. A

⁶¹ Exhibit A, Test Claim Decision, page 19.

⁶² Exhibit A, Test Claim Decision, page 6 (citing 8 United States Code section 1101(a)(15)(U); 8 Code of Federal Regulations, section 214.14(b)(c); “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, accessed July 10, 2018, page 4.)

⁶³ Code of Federal Regulations, title 8, section 214.14(c)(4).

⁶⁴ Code of Federal Regulations, title 8, section 214.14(c)(2).

⁶⁵ Code of Federal Regulations, title 8, section 214.14(c)(4).

⁶⁶ Penal Code section 679.10(i).

current investigation, the filing of charges, a prosecution or conviction is not required to sign the law enforcement certification. An instance may occur where the victim has reported criminal activity, but an arrest, prosecution, or conviction cannot take place due to evidentiary or other circumstances. Examples of this include, but are not limited to, when the perpetrator has fled or is otherwise no longer in the jurisdiction, the perpetrator cannot be identified, or the perpetrator has been deported by federal law enforcement officials. There is no statute of limitations on signing the certification – one can be signed for a crime that happened many years ago or recently. A certification may also be submitted for a victim in a closed case. However, the victim must submit a recently signed certification with his or her U visa petition (signed within six months of submission), even if the crime certified did not recently occur.⁶⁷

The test claim statute also makes clear that the mandate to “fully complete and sign the Form I-918 Supplement B certification” is triggered only when the certifying entity determines that the victim “has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of [a] qualifying criminal activity.”⁶⁸ The test claim statute does *not* mandate a local agency to investigate or prosecute a crime.

Nor does the test claim statute or federal law require a local agency to “[r]esearch 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,” in all cases, as requested by the claimant.⁶⁹ As indicated above, a local agency will not have records of a crime if the victim is first reporting the crime at the same time he or she requests a U Visa certification. The instructions to the Form I-918 Supplement B certification simply require the victim to have knowledge of details concerning the criminal activity that would assist in the investigation or prosecution of the criminal activity, as follows:

A [U Visa] petitioner must possess information about the qualifying criminal activity of which he or she is a victim. A petitioner is considered to possess information concerning qualifying criminal activity of which he or she is a victim if he or she has knowledge of details concerning criminal activity that would assist in the investigation or prosecution of the criminal activity. . . .

When the victim is under 16 years of age, incapacitated, or incompetent, he or she is not required to personally possess information regarding the qualifying criminal

⁶⁷ Exhibit X, “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, accessed July 10, 2018, page 7; see also pages 18-19.

⁶⁸ Penal Code section 679.10(e); Exhibit X, Test Claim, page 81 (Instructions for Form I-918 Supplement B, U Nonimmigrant Status Certification).

⁶⁹ Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

activity. The parent, guardian, or next friend of the petitioner may provide that information.⁷⁰

And “detailed research of the original crime” is not required to determine if the victim is helpful or is likely to be helpful in the detection, investigation, or prosecution of the qualifying crime under these circumstances. There is a rebuttable presumption that the victim is 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.⁷¹ The instructions to the Form I-918 Supplement B certification further state that “[b]eing ‘helpful’ means assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.”⁷² The presumption of helpfulness is rebutted only if the victim has refused or failed to provide information and assistance reasonably requested by law enforcement.⁷³ Thus, “detailed research” is not required when the certifying entity is currently investigating, prosecuting, or sentencing for the qualifying crime and the victim has knowledge of the details concerning the criminal activity that would assist in the investigation or prosecution of the criminal activity.

A U Visa request may also be based on past criminal activity previously reported, investigated, and documented in a closed law enforcement case. As stated above, the burden is on the victim to show to USCIS that he or she was helpful and previously assisted in the detection or investigation or prosecution of that qualifying criminal activity. However, for the state mandate to fully complete and sign the U Visa form to be triggered, the determination that the past crime alleged is qualifying and that the victim was helpful has to be made by the local certifying entity.⁷⁴ Thus, under these limited circumstances, where the crime alleged is based on past criminal activity that was previously reported and investigated or prosecuted, it is reasonably necessary to review 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 qualifying and to determine if the record rebuts the presumption that the victim “has been helpful.” Victim helpfulness is only rebutted if the victim refused or failed to provide information and assistance reasonably requested by law enforcement.⁷⁵

Moreover, 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 certifying entity’s law enforcement duties, the Commission finds that it is reasonably necessary to review the record to complete the mandated form. Penal Code section 679.10(g) and the Form I-918 Supplement B certification request “detailed

⁷⁰ Exhibit X, Test Claim, page 84 (Instructions for Form I-918 Supplement B, U Nonimmigrant Status Certification).

⁷¹ Penal Code section 679.1(f).

⁷² Exhibit X, Test Claim, page 84 (Instructions for Form I-918 Supplement B, U Nonimmigrant Status Certification).

⁷³ Penal Code section 679.10(f).

⁷⁴ Penal Code section 679.10(e).

⁷⁵ Penal Code section 679.10(f).

information” about the criminal acts “your agency is investigating, prosecuting, or sentencing,” 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.⁷⁶ 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.⁷⁷

The instructions further make clear that “[i]f a question does not apply to you type or print ‘N/A,’ unless otherwise directed.”⁷⁸

Except as stated above, no further research is required.

Accordingly, the Parameters and Guidelines include these reasonably necessary activities as follows:

- b. Determine if the victim was a victim of a qualifying criminal activity listed 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. Victim helpfulness is rebutted only if the victim refuses or fails to provide information and assistance reasonably requested by law enforcement. 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 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

⁷⁶ Exhibit X, Test Claim, page 77 (Form I-918 Supplement B certification).

⁷⁷ Exhibit X, Test Claim, page 78 (Form I-918 Supplement B certification).

⁷⁸ Exhibit X, Test Claim, page 82 (Instructions to Form I-918 Supplement B, U Nonimmigrant Status Certification, page 2).

Code section 679.10(c) 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).⁷⁹

- c. ~~For~~ 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 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.

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 review of the record to complete the Form I-918 Supplement B certification. (Pen. Code, § 679.10(a)-(j).)

The Parameters and Guidelines further state that **“Reimbursement is not required for the following activities: 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.”**

- c. The claimant’s request for reimbursement to allow a certifying official “or their designee” to fully complete and sign the Form I-918 Supplement B certification is not consistent with the law and is, therefore, denied.

The claimant proposes the following changes to the proposed Parameters and Guidelines:

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,~~ 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

⁷⁹ “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).)

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).)⁸⁰

The Commission denies this request because it is 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.⁸¹ 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.

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.⁸²

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.⁸³

Finally, 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.”⁸⁴

Accordingly, the claimant’s proposal to authorize a “designee” other than the certifying official to fully complete and sign the form is denied.

- d. The claimant’s request for reimbursement for the “supervisor [to] edit, review, approve, and certify (signatures) forms” are not consistent with the law or supported by evidence in the record.

⁸⁰ Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

⁸¹ Penal Code section 679.1(b); Code of Federal Regulations, title 8, section 214.14(a)(3).

⁸² Exhibit X, Test Claim, page 83 (Instructions to Form I-918 Supplement B, U Nonimmigrant Status Certification, page 3).

⁸³ Exhibit X, Test Claim, page 9 (Form I-918, Supplement B, page 4).

⁸⁴ Exhibit X, “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.

The claimant also requests reimbursement for the following activities the claimant alleges are reasonably necessary to comply with the mandate: “Supervisor edit, review, approval, and certification (signatures) of forms.”⁸⁵

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 UVISA program,”⁸⁶ the claimant provides no support for this proposal and does not explain what it encompasses and why this activity should be reimbursable. The claimant provided a more detailed explanation of the request in the Test Claim, as follows:

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

[¶]...[¶]

- 2) Supervisor review and approval of the "complete" UVISA 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.*⁸⁷

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.

3. The claimant’s request to amend the language to report to the Legislature is not consistent with the mandate and is, therefore, denied.

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

⁸⁵ Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2 (italics and underline omitted).

⁸⁶ 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).

⁸⁷ Exhibit X, Test Claim, page 5.

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 (strikeout and underline added by the claimant 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).)⁸⁸

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 Expedited 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.⁸⁹
2. Train staff assigned to perform the reimbursable activities listed in Section IV.(B) of these Parameters and Guideline (one-time for each employee.)⁹⁰

⁸⁸ Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

⁸⁹ 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, accessed July 10, 2018, page 14; Declaration of Michael Ciszek, Lieutenant for the City of Claremont, October 17, 2018.

⁹⁰ 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,"

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 are eligible for reimbursement:

- a. Receive, review (if a written request is received), and log the request.
- b. Determine if the victim was a victim of a qualifying criminal activity listed 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. Victim helpfulness is rebutted only if the victim refuses or fails to provide information and assistance reasonably requested by law enforcement. 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(c) 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).⁹¹

- c. ~~For~~ 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 ~~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~~

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, pages 15-26; Declaration of Michael Ciszek, Lieutenant for the City of Claremont, October 17, 2018.

⁹¹ “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).)

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.

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 review of the record to complete the Form I-918 Supplement B certification. (Pen. Code, § 679.10(a)-(j).)

- d. Transmit the results to the victim or the victim's legal representative.
- e. File, log, and close the case.⁹²

Reimbursement is not required for the following activities: 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.

- 2. ~~For a~~ A certifying entity that receives a request for a Form I-918 Supplement B certification ~~to~~ 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.⁹³ (Pen. Code, § 679.10(1).)

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.

⁹² Penal Code section 679.10(a)-(j); Instructions to Form I-918 Supplement B, U Nonimmigrant Status Certification.

⁹³ Penal Code section 679.10(1).

DRAFT 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.¹
2. Train staff assigned to perform the reimbursable activities listed in Section IV.(B) of these Parameters and Guideline (one-time for each employee.)²

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 are eligible for reimbursement:
 - a. Receive, review (if a written request is received), and log the request.
 - b. Determine if the victim was a victim of a qualifying criminal activity listed 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. Victim helpfulness is rebutted only if the victim refuses or fails to provide information and assistance reasonably requested by law enforcement. 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

¹ 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, accessed July 10, 2018, page 14; Declaration of Michael Ciszek, Lieutenant for the City of Claremont, October 17, 2018.

² 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, accessed July 10, 2018, pages 15-26; Declaration of Michael Ciszek, Lieutenant for the City of Claremont, October 17, 2018.

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(c) 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).³

- c. ~~For~~ 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 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.

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 review of the record to complete the Form I-918 Supplement B certification. (Pen. Code, § 679.10(a)-(j).)

- d. Transmit the results to the victim or the victim's legal representative.
- e. File, log, and close the case.⁴

³ "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).)

⁴ Penal Code section 679.10(a)-(j); Instructions to Form I-918 Supplement B, U Nonimmigrant Status Certification.

Reimbursement is not required for the following activities: 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.

2. ~~For a~~ A certifying entity that receives a request for a Form I-918 Supplement B certification ~~to~~ 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.⁵ ~~(Pen. Code, § 679.10(1).)~~

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

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

⁵ Penal Code section 679.10(1).

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 chapter⁶ 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

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.

⁶ This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

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 November 19, 2018, I served the:

- **Draft Proposed Decision and Proposed Parameters and Guidelines issued November 19, 2018**

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 November 19, 2018 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/16/18

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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