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STATE MANDATED COST

February 10, 2010

Ms. Jill Kanemasu
Chief, Bureau of Payments
State Controller's Office
3301 C Street, Suite 500
Sacramento, CA 95816

Dear Ms. Kanemasu,

I am writing to you in response to your notice regarding the release of claiming instructions dated Wednesday, January 6 (Claiming Instructions: 2009-12, 2009-13, 2009-14, 2009-16, 2009-17 and 2009-18) and also the release and availability of the Annual Claiming Instructions Manual due on Tuesday, February 16, 2010.

As stated on the State Controller's Office website, the Division of Accounting & Reporting, Bureau of Payments, Local Reimbursements Sections prescribe claiming instructions for local agencies and schools to follow in preparing reimbursement claims for mandated cost programs. (*Government Code Sections 17550-17571 and 17610-17616*). It is with this in mind that I am voicing concern regarding the proper release and notice of claiming instructions in accordance with Government Code.

Notice of Release of Claiming Instructions (dated January 6, 2010)

The first issue regarding claiming instructions involves the multiple notices dated January 6, 2010 to all local agencies and school districts. For your review, I have cited Government Code section 17561 (d)(1):

17561 (d)(1): For initial reimbursement claims, the Controller shall issue claiming instructions to the relevant local agencies and school districts pursuant to Section 17558. 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, the reasonable reimbursement methodology approved by the commission pursuant to Section 17557.2, or statutory declaration of a legislatively determined mandate and reimbursement methodology pursuant to Section 17573.

Thus, my concern stems from the notice dated Wednesday, January 6, 2010. According to this notice, the claims identified in this notice are due on Tuesday, April 20, 2010. The date of this notice fails to meet the 120-day requirement identified in GC Section 17561 (d)(1)(A):

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17561 (d)(1) (A): When claiming instructions are issued by the Controller pursuant to Section 17558 for each mandate determined pursuant to Section 17551 or 17573 that requires state reimbursement, each local agency or school district to which the mandate is applicable shall submit claims for initial fiscal year costs to the Controller within 120 days of the issuance date for the claiming instructions.

Adding to my concern is the fact that I have spoken with a little more than half of my clients (11 of 21) regarding their receipt of this notice. All eleven of those clients did not receive the January 6 notice until after Wednesday, January 20 (two full weeks after the date of the letter).

As defined above by 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” Clearly, a notice dated on January 6 and not delivered until Thursday, January 21 (the earliest date any of my eleven clients received this notice) falls well short of the 120 days required by law.

Annual Claims For FY 2007-2008 and FY 2008-2009

For the Annual Claims deadline for Fiscal Year 2007-2008 (claims due on February 15, 2009), the State Controller’s Office Claiming Instructions for these programs were amended for the following programs during January and early February 2009. Once again, citing the Government Code sections 17550-17571 and 17610-17616 identified on your website, below is Government Code section 17560 (b):

17560 (b): In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of Section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Since the State Controller’s Office failed to provide notice of a “new” filing date 120 days after these revisions were posted, I believe the State Controller’s Office failed to comply with the provisions of 17560 (b).

On a similar point, the Fiscal Year 2008-2009 Annual Claims due next week have the identical requirement regarding revised claiming instructions. Although the failure for the FY 2008-2009 claims is not as egregious as FY 2007-2008 scenario described above, nevertheless, GC section 17560 (b) still has not been followed.

All three types of Local Government Claiming Instructions (Local Agencies, School Districts and College Districts) were posted between November 15 and February 15. The Fiscal Year 2008-2009 Annual Claiming Instructions for Local Agencies were not uploaded on the State Controller’s website until the end of the business day on Monday, November 16. The cover page for these claiming instructions was dated, November 16, 2009.

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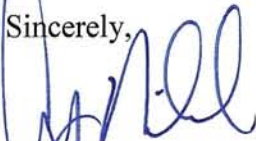
The Fiscal Year 2008-2009 Annual Claiming Instructions for both School Districts and College Districts were posted no earlier than Monday, November 23 (Monday before Thanksgiving). The cover page for both of these sets of claiming instructions were back-dated to November 16 2009.

Resolving These Two Claiming Instructions Issues and Future Steps

With the above in mind, I am interested to hear how the State Controller's Office will remedy these identified violations of Government Code sections 17550 – 17571 for both the Claiming Instructions with a dated release of January 6, 2009 and the Annual Claims for FY 2008 – 2009 due next week. I am also equally interested in hearing what steps the State Controller's Office will take in the future to ensure full compliance with Government Code regarding proper release and notice is given.

Please feel free to contact me if you disagree with my interpretations of Government Code sections 17550 – 17571. I invite your comments and eagerly await your response. Thank you.

Sincerely,



Andy Nichols
Nichols Consulting

cc: Michael Havey, Chief, Division of Accounting and Reporting
Ginny Brummels, Section Manager, Local Reimbursements
Richard Chivaro, Deputy Controller –Chief Counsel
Neil McCormick, Executive Director, California Special Districts Association

Enclosures



JOHN CHIANG
California State Controller
Division of Accounting and Reporting

March 5, 2010

Mr. Andy Nichols
Nichols Consulting
1857 44th Street
Sacramento, CA 95819

Dear Mr. Nichols:

This is in reply to your letter dated February 10, 2010. Thank you for bringing this to our attention. After reviewing your letter, I concur that the Notice of Release of Claiming Instructions did not allow the time specified in law and am revising the filing due date accordingly. A more thorough response to each of your concerns is provided below.

Notice of Release of Claiming Instructions (dated January 6, 2010)

Upon receipt of your letter, staff researched the actual date of the Claiming Instructions were mailed and discovered that the letters dated January 6, 2010, were not mailed out until January 15th. Additionally, since January 18th was a holiday, the date you specified as the receipt date of January 21st is understandable. In recognition of the delay, we will be revising the filing due date for Claiming Instructions 2009-12, 2009-13, 2009-14, 2009-16, 2009-17 and 2009-18 to May 20, 2010. A letter of notification will be mailed out to all claimants informing them of the new filing due date.

Annual Claims for FY 2007-2008 and FY 2008-2009

Regarding the 2007-08 and 2008-09 manuals, Government Code Section 17560(b), provides:

GC 17560(b): *In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of Section 17558 between November 15 and February 15, a local agency of school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.*

As specified in Section 17560(b), the reference is to revised claiming instructions issued pursuant to Section 17558 (c). That section provides:

GC 17558 (c): *The Controller shall, within 60 days after receiving amended parameters and guidelines, an amended reasonable reimbursement methodology from the commission or other information necessitating a revision of the claiming instructions, prepare and issue revised claiming instructions for mandates that require state reimbursement...*

Mr. Andy Nichols

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The claiming instructions provided in the manuals contained no substantive changes to the programs; the changes that were made attempted to standardize the claiming instruction forms, verbiage, instructions, and synchronize descriptions and line items of allowable reimbursable costs on the forms with the existing parameters and guidelines. Therefore, we believe Section 17560(b) is not applicable.

Resolving These Two Claiming Instructions Issues and Future Steps

I hope the resolution of the first issue and explanation of the second address your concerns. We are developing change control procedures within the office and will diligently monitor our timelines to ensure full compliance with statutory requirements. If you have further questions or comments, you may contact me at (916) 322-9891 or via email at jkanemasu@sco.ca.gov.

Sincerely,



JILL KANEMASU, Chief

Bureau of Payments

Division of Accounting and Reporting

cc: Michael Havey, Chief, Division of Accounting and Reporting
Ginny Brummels, Section Manager, Local Reimbursements
Richard J. Chivaro, Chief Counsel
Neil McCormack, Executive Director, California Special Districts Association