NATIONAL ASSOCIATION OF
UNCLAIMED PROPERTY ADMINISTRATORS
A Network of the National Association of State Treasurers

EXAMINATION STANDARDS

Approved by NAUPA on November 5, 2018

The 2016 RUUPA Section 1003(a) states that "The Administrator shall adopt rules governing procedures and standards for an examination . . ." In accordance with the charge NAUPA received from the Uniform Law Commission regarding such rules NAUPA offers the following proposed rules template for states to use in their rule making process. This Examination Standards document is intended to complement the rules that already exist in each state and not to replace them. The term "Act" refers to the Unclaimed Property Act of the state adopting the rule. The term "Person" refers to the individual or entity responsible for reporting unclaimed property, as defined by the Act. Bracketed [comments] are for use where applicable and may not be needed in all cases. Italicized wording represents direct quotes from the RUUPA.

Examinations

a) Authority to conduct examinations. Pursuant to the Act the Administrator may, at reasonable times and on reasonable notice, *examine the records of any person to determine whether the person has complied with* the *Act even if the person believes it is not in possession of any property that must be reported, paid, or delivered under* the *Act*. [Insert Citation to State Unclaimed Property Act]

b) Purpose of Examinations
   1) The goal of an unclaimed property examination is to determine whether a Person is in compliance with the [holder reporting requirements of the] Act. Unclaimed property is reported to the State of [STATE NAME] pursuant to the Act and the federal common law [as established in the United States Supreme Court cases of *Texas v. New Jersey*, 379 U.S. 674 (1965), *Pennsylvania v. New York*, 407 U.S. 206 (1972), and *Delaware v. New York*, 507 U.S.490 (1993)].
   2) The Administrator's goal in every examination is to determine the full and proper historical reporting compliance of the Person under examination, and to encourage and facilitate such Person's ongoing and future compliance with the Act.

c) Multistate examinations
   1) The Administrator may agree to participate in an examination of a Person for compliance with unclaimed property laws of multiple states, including the Act, where a single Third-Party Auditor (Auditor) performs an examination for more than one state.
   2) Multistate examinations are intended to be more efficient and effective for both the Person being examined and the states which have authorized the examination.
   3) Because different states participating in a multistate examination will have different rules for examinations, there may be variations among the statutory or administrative rules for how the Auditor should conduct the examination. Where practicable the Auditor should comply with the requirements of this Section when conducting a multistate examination. However, if there is a conflict between the requirements of this Section and the requirements of one or more other states, then the Auditor may vary from the requirements of this Section so long as the Auditor:

        A) follows any requirements imposed by the language of the Act with regard to property reportable to this State, including but not limited to confidentiality requirements;
        B) uses the Act with regards to any property for which the state has the superior claim pursuant to the federal common law [established in the United States Supreme Court cases of *Texas v. New Jersey*, 379 U.S. 674 (1965), *Pennsylvania v. New York*, 407 U.S. 206 (1972), and *Delaware v. New York*, 507 U.S.490 (1993)]; and,
        C) complies with the goal of determining the historical compliance of the Person being examined, and of encouraging and facilitating such Person's ongoing and future compliance with the Act.

d) Third-Party Auditors
    1) *The Administrator may contract with a Person to conduct* unclaimed property examinations to determine compliance with the Act. Such a *contract shall be awarded pursuant to a request for proposals or quotations issued in compliance with the* [insert citation to applicable statute, rules, etc. requiring competitive procurement of auditing services].
    2) A *contract* to conduct an examination *may provide for compensation of the Person based on a fixed fee, hourly fee, contingent fee.* [insert any state specific conditions if any], or other state specific criteria, if any.
    3) *A contract* with a Person to conduct an examination *is a public record under the* [insert cross-reference to appropriate FOIA or public records law].
    4) An Auditor and the Auditor's staff shall collectively possess sufficient training and experience to adequately perform unclaimed property examinations.
    5) An Auditor shall not engage in any unclaimed property examination to determine compliance with the Act without written authorization from the Administrator.
    6) An Auditor shall maintain independence in performing the examination and avoid conflicts of interest.
    7) An Auditor shall report in writing to the Administrator at least monthly on the status of all unclaimed property examinations which the Auditor has been authorized to perform by the Administrator.

e) Advocates
    1) A Person subject to examination may retain third-party Advocates (an "Advocate") to assist them in the examination process.
    2) The retention of an Advocate is no basis to delay the commencement of the examination and the Administrator will not delay the examination so that the Advocate may conduct a review or its own audit of the books and records of the Person subject to examination in advance of the Administrator's examination.
    3) The Administrator should cooperate with the Person subject to examination and its Advocate and keep both of them apprised of records requests, interviews, and the progress of the audit in general.

f) Notice of Examination
    1) All unclaimed property examinations should begin with an official notice of examination letter.
    2) A notice letter will:
        A) notify the Person subject to examination that its books and records (including those belonging to subsidiary and related entities or maintained by a third party that has contracted with such Person) are subject to examination;
        B) identify the assigned Auditor; and,
        C) include Auditor contact information.

3) A notice letter may either be sent (a) directly to the Person subject to examination by the Administrator or (b) to the Auditor assigned to the examination for delivery to the Person subject to examination.

g) Entrance Conference

1) Once an examination is assigned and written notice of an examination is provided to the Person subject to examination, the Auditor and/or Examiner should schedule an entrance conference to include representatives of the Person subject to examination. A representative of the Administrator may, but is not required to, participate in an entrance conference.

2) During the opening conference, by way of example and not limitation, the Auditor shall:

A) Identify to the extent possible the types of property that will be subject to the examination and the time period covered by the examination;

B) Discuss an examination work plan, a tentative schedule, and any potential scoping issues;

C) Provide contact information for both the Auditor and the Administrator;

D) Provide the Person subject to examination a draft confidentiality agreement, if a draft has not been presented prior to the opening conference;

E) Notify the Person subject to examination of their ability to request an informal conference with the Administrator pursuant to the Act;

F) Advise the Person subject to examination that the Administrator and not the Auditor makes determinations concerning such Person's liability under the Act and that interpretations of the Act are made by the Administrator;

G) Request records and materials necessary to proceed with the next steps of the examination;

H) Explain the requirement to provide a due diligence notice to the apparent owner of property presumed abandoned; and,

I) Explain that, unless otherwise agreed to in writing by the Administrator, the Person subject to examination shall remit to the Auditor any unclaimed property identified during the examination that is owed to the state.

h) Examination Guidelines

1) The Auditor and the Person subject to examination shall act in good faith to conduct the examination under the terms and within the time frame established in the entrance conference.

2) During the examination, the Auditor may make subsequent requests to the Person subject to examination for additional books and records as needed to complete the examination.

A) The Auditor shall submit record requests to the Person subject to examination in writing, or if the request is made verbally, shall follow up with written documentation of the request.

B) Record requests shall have reasonable deadlines in order to move the examination forward and avoid unnecessary delays. The Person subject to examination is responsible for advising the Auditor in advance of any anticipated difficulties in achieving deadlines and agreed upon deliverables.

C) The Auditor shall provide a reasonable timeframe for the Person subject to examination to respond to the request based on the type and extent of the information requested and other relevant facts and circumstances.

D) The Auditor shall provide confirmation of receipt to submissions received from the Person subject to examination, with reasonable projected response times.

3) The examination shall not be limited to a review of work papers, compilations, or record summaries prepared by the Person subject to examination or an Advocate but shall include, but not be limited to, access to the original books and records deemed by the Administrator to be necessary to ascertain compliance with the Act. The Third-Party Auditor may utilize data sources

in their examination, for example the Social Security Administration's Death Master File (DMF), the United States Post Office National Change of Address database (NCOA), etc.

4) The Auditor shall properly document the examination and make the working papers gathered during the unclaimed property examination available for review by the Administrator. Such working papers will include planning information and all related calculations, statistical analyses, and summarizations.

i) Confidentiality of records obtained or compiled during examination

1) *Records obtained and records, including work papers, compiled by the Administrator* or the Administrator's agent *in the course of conducting an examination*:
   A) [insert language concerning FOIA or open records treatment of unclaimed property examination records – extent of confidentiality]
   B) *may be used by the Administrator in an action to collect property or otherwise enforce* the *Act;*
   C) *may be used in a joint examination conducted with another state, the United States, a foreign country or subordinate unit of a foreign country, or any other governmental entity if the governmental entity conducting the examination is legally bound to maintain the confidentiality and security of information obtained from a person subject to examination in a manner substantially equivalent to* [confidentiality provision] of the Act*;*
   D) *may be disclosed, on request, to the person that administers the unclaimed property law of another state for that state's use in circumstances equivalent to circumstances described in* [examinations provisions] of the Act*, if the other state is required to maintain the confidentiality and security of information obtained in a manner substantially equivalent to* [confidentiality provision] of the Act*;*
   E) *must be produced by the Administrator under an administrative or judicial subpoena or administrative or court order; and*
   F) *must be produced by the Administrator on request of the Person subject to the examination in an administrative or judicial proceeding relating to the property.*

2) Confidentiality Agreement
   A) A Person subject to examination *may require, as a condition of disclosure of the records of the Person to be examined, that [the Administrator*, if the Administrator is performing the examination, *or] the Third-Party Auditor execute and deliver to the Person to be examined a confidentiality agreement that:*
      (i) *is in a form that is satisfactory to the Administrator; and*
      (ii) *requires the Person having access to the records to comply with the provisions of* [confidentiality provision] of the Act *applicable to the Person.*
   B) If the Person subject to examination and the Auditor are unable to enter into a confidentiality agreement within 60 calendar days from the date an agreement reasonably satisfactory to the Administrator was first presented to the Person subject to the examination by the Auditor or the Administrator, then the examination may commence without a confidentiality agreement in place and the parties shall rely on the confidentiality provisions of [confidentiality provision] of the Act.

3) Auditors shall not disclose confidential information obtained during an unclaimed property examination to any Person other than to the Administrator or the Administrator's designee and, in the case of a multistate examination, to authorized representatives of a state participating in the examination.

4) Auditors shall not use confidential information obtained from the Person subject to an examination for any purpose other than for purposes of the examination. Auditors shall take reasonable steps to

ensure that the confidential information provided by the Person subject to an examination is securely maintained.

5) Auditors must comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures of confidential information. [may include cross-references to specific state data breach laws]

j) Evidence of unpaid debt or undischarged obligation

1) *A record of a* Person subject to examination *showing an unpaid debt or undischarged obligation is prima facie evidence of the debt or obligation.*

2) *A* Person subject to examination *may establish by a preponderance of the evidence that there is no unpaid debt or undischarged obligation for a debt or obligation… or that the debt or obligation was not, or no longer is, a fixed and certain obligation of the* Person subject to examination. Thus, the *prima facie* evidence may be rebutted by the Person subject to examination.

3) [*A* Person subject to examination *may overcome prima facie evidence… by establishing by a preponderance of the evidence that a check, draft, or similar instrument was:*

   A) *issued as an unaccepted offer in settlement of an unliquidated amount;*

   B) *issued but later was replaced with another instrument because the earlier instrument was lost or contained an error that was corrected;*

   C) *issued to a party affiliated with the issuer;*

   D) *paid, satisfied, or discharged;*

   E) *issued in error;*

   F) *issued without consideration;*

   G) *issued but there was a failure of consideration;*

   H) *voided not later than [90 days][a reasonable time frame] after issuance for a valid business reason set forth in a contemporaneous record;*

   I) *issued but not delivered to the third-party payee for a sufficient reason recorded within a reasonable time after issuance.*

4) *In asserting a defense under this Section, and subject to the records retention requirements of* the Act*, a putative holder may present evidence of a course of dealing between the putative holder and the apparent owner.*]

k) Estimation

1) *If a Person subject to examination does not retain the records required by* the Act, *the Administrator may determine the value of property due using a reasonable method of estimation based on all information available to the Administrator, including extrapolation and use of statistical sampling when appropriate and necessary.*

2) *A payment made based on estimation under this Section is a penalty for failure to maintain the records required by* the Act *and does not relieve a Person from an obligation to report and deliver property to a State in which the holder is domiciled.*

3) Unless agreed to by a Person subject to examination, estimation should be used only when [there are insufficient records to perform an examination] [there has been a violation of [records retention requirement] of the Act]. The ability of the Administrator to use estimation is intended as a deterrent to the intentional or negligent destruction of records that would be used in an unclaimed property examination to identify unclaimed property.

4) An Auditor may not use estimation in an examination unless either the:

   A) Person subject to examination agrees in writing to the use of estimation as part of an audit resolution agreement; or,

   B) Administrator approves in writing the use of estimation in the examination.

5) Prior to approving the use of estimation in an examination under the Act the Administrator shall:
   A) Notify the Person subject to examination in writing that the Administrator is considering the use of estimation because of a failure to maintain the records required by [records retention requirement] of the Act;
   B) After considering any evidence submitted by the Auditor and the Person subject to examination, make a written determination that the Person subject to examination has failed to maintain the records required by [records retention requirement] of the Act;
   C) Provide an opportunity for the Person subject to examination to submit written objections including, but not limited to:
      (i) submitting evidence that the Person subject to examination has maintained sufficient records to perform the examination for some or all of the years during the time period covered by the examination; or
      (ii) proposing an estimation methodology;
   D) Notify in writing the Person subject to examination of the estimation methodology to be used and for which years during the time period covered by the examination estimation will be used.

l) Bankruptcy

If at any time before or during the course of an examination the Person subject to examination files for bankruptcy, such Person shall give notice of the filing to the Auditor. The Auditor shall, within seven (7) calendar days of receiving notice or the discovery of the event, notify the Administrator of the bankruptcy filing. If the Administrator so elects, the Auditor shall assist the Administrator to ensure that a proper proof of claim is filed timely in the bankruptcy action.

m) Audit Resolution Agreements

1) Pursuant to the Administrator's authority to conduct an examination, the Administrator possesses the authority to resolve an examination via negotiation and settlement with the Person subject to examination. This provides flexibility to both the Person subject to examination and the Administrator to resolve issues that could require formal appeal or litigation. Such settlements are often referred to as "audit resolution agreements."
2) The Administrator may not agree in a settlement to provide indemnification beyond that provided in [applicable state law on indemnification from the Act or other state law]
3) The Administrator may agree to reduce or waive interest and penalties as part of a settlement, to the extent permitted by law.
4) A mutually-agreed upon settlement resolves a specific examination and does not create any precedent on specific legal issues.

n) Report to holder

[citation to reporting section] *At the conclusion of an examination, unless waived in writing by the Person being examined, the Administrator shall provide to the Person whose records were examined a report that specifies:*

1) *the work performed;*
2) *the property types reviewed;*
3) *the methodology of any estimation technique, extrapolation, or statistical sampling used in conducting the examination;*
4) *each calculation showing the value of property determined to be due; and,*
5) *the findings of the Person conducting the examination.*