

TITLE 10, CHAPTER 15, CALSAVERS RETIREMENT SAVINGS BOARD

NOTICE OF PROPOSED RULEMAKING ACTION

AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 15,
REGARDING THE CALSAVERS RETIREMENT SAVINGS PROGRAM

Notice published November 11, 2022

The CalSavers Retirement Savings Board (“Board”) proposes to adopt the regulations amendments described below after considering all comments, objections, and recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may be submitted by email to CalSavers@sto.ca.gov, or by mail:

Regular Mail

CalSavers Retirement Savings Board
Re: Rulemaking for the CalSavers Retirement Savings Program
P.O. Box 942809
Sacramento, CA 95815

Courier Delivery

CalSavers Retirement Savings Board
Re: Rulemaking for the CalSavers Retirement Savings Program
915 Capitol Mall, Suite 105
Sacramento, CA 95814

The written comment period will close December 27, 2022. The Board will only consider comments received by that time. All written comments received by the Board are subject to disclosure under the Public Records Act.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or their duly authorized representative, submits a written request for a public hearing to the contact person listed below no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the original proposed text, it will make the modified text (with the changes clearly indicated) available to the public at <https://www.treasurer.ca.gov/calsavers/regulations/index.asp> for at least 15 days before the Board adopts the regulations as revised. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AUTHORITY AND REFERENCE

Authority: Section 100048 of Government Code provides the CalSavers Retirement Savings Board the authority to adopt regulations to implement Title 21 of the Government Code.

Reference: Sections 100000, 100012, 100014, 100032, 100043, and 100046, Government Code.

INFORMATIVE DIGEST

Existing law establishes the CalSavers Retirement Savings Program (“Program”) and Board in Title 21 (commencing with Section 100000) of the Government Code. The Program requires eligible employers, as defined in statute and regulation, to make available a payroll deposit retirement savings arrangement so that eligible employees may contribute a portion of their salary or wages to a retirement savings program account in the Program, as specified. Existing law authorizes employees to opt out of participating in the Program, as specified. Existing law grants the Board the power to administer the enforcement of employer compliance, including the power to impose specified penalties on employers who fail to allow eligible employees to participate in the program, subject to an appeals and collections process administered by the Franchise Tax Board, as specified.

On October 31, 2019, the Office of Administrative Law (“OAL”) approved permanent regulations for the Program that implement, interpret, and make specific the rules, policies, and procedures for the Program. Specifically, these regulations accomplish the following:

- a. Define terms used in the regulations and further clarify the meaning of definitions in statute;
- b. Define employer eligibility for the Program and establish the means by which the Program shall determine that eligibility;
- c. Establish the deadlines and processes by which eligible employers are required to register for the Program;
- d. Define the duties for participating employers and the processes by which participating employers are required to comply with the requirements of the Program;
- e. Establish processes for the enrollment of eligible employees into the Program;
- f. Define the default account settings for participants whom do not make an alternative election;
- g. Define the alternative elections available to participants;
- h. Establish the policies for the participation of individuals in the Program outside of an employment relationship with an eligible employer; and
- i. Define the processes and policies for contributions, distributions, and the transfer of savings.

Throughout 2020, the Program filed multiple sets of emergency regulations to achieve several programmatic amendments. The changes made were as follows:

- Due to the COVID-19 pandemic, the Board extended the first employer registration deadline in April 2020 through the emergency rulemaking process. The deadline for employers with more than 100 employees was changed from June 30, 2020, to September 30, 2020.
- On June 29, 2020, Governor Newsom signed AB 102 (Chapter 21, Statutes of 2020), which made a variety of amendments to the Program’s governing statutes. The amendments, among other things, changed the name of the Program’s governing board and the Program trust account. Non-substantive changes to existing regulations were filed with the OAL on

July 7, 2020, to change the Board and trust account name pursuant to Section 100 of Title 1 of the California Code of Regulations (CCR).

- On July 27, 2020, the Board approved a variety of regulations amendments, some in response to the passage of AB 102. The amendments added a new default investment fund for participants born January 1, 2003, to January 1, 2007, a change that was necessary to make before December 31, 2020; removed a feature in which eligible employees who previously opted out are subjected again to automatic enrollment; clarified the tax-qualified retirement plans that, if offered by an employer, would render them exempt; and made a variety of technical amendments that improve the clarity of the regulations.
- At the December 7, 2020, Board meeting, the Board voted to approve regulations amendments to change the default investment option, clarify processes for enforcing employer compliance, reduce the minimum contribution amounts for non-payroll contributions, clarify the frequency for recurring non-payroll contributions, clarify that rollovers and transfers into a Program account are permissible, and amend the definition of a tax-qualified plan.

The Board completed a regular rulemaking effort in January 2022 to make permanent the emergency rulemakings described above.

The regulations amendments referred to in this notice were approved by the Board at the December 13, 2021, Board meeting and adopted through an emergency rulemaking completed in March 2022. The regulations amendments were readopted on September 9, 2022. The Board did not receive any public comments during the initial emergency rulemaking or the readoption.

The Board is authorized under Government Code Section 100048 to adopt regulations it deems necessary to implement the Program consistent with the Internal Revenue Code and regulations issued pursuant to that code to ensure that the program meets all criteria for federal tax-exempt benefits. Government Code Section 100048 deems the adoption, amendment, repeal, or readoption of those regulations to address an emergency for the purposes of the Administrative Procedure Act and, more specifically, Government Code Sections 11346.1 and 11349.6 and, thereby, exempts the Board from the requirements of Government Code Section 11346.1(b).

Pre-Rulemaking Activity

These regulations amendments were approved by the Board at the December 13, 2021, Board meeting. Staff posted a notification of proposed emergency rulemaking March 4, 2022, and approved by the Office of Administrative Law (OAL) on March 18, 2022.

At the August 22, 2022, Board meeting, the Board approved a readoption of the emergency regulations amendments. Staff posted the notification of proposed emergency rulemaking August 22, 2022. The readoption was approved by OAL September 7, 2022.

Through our client services team, our internal outreach team, local chambers of commerce and other business associations, interactive webinars with the public that occur multiple times a week, and our social media platforms, the Board receives regular feedback about facets of the Program, thoughts on how the Program could be improved, as well as general praise and criticism.

In addition to the public comment periods involved in the rulemaking process and the public comment periods at each Board meeting, the Board also received and considered input from Program employers and participants that have already begun participating in the Program.

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Anticipated Benefits of the Proposed Regulations:

About half of working Californians are on track to live at or near poverty upon reaching retirement age. Without the ease and simplicity of regular payroll contributions through a workplace retirement savings arrangement, many simply do not save for retirement. While the problem of retirement insecurity has many causes, including low wages and rising costs of living, research shows access to a retirement savings vehicle makes individuals 15 times more likely to save for retirement. The Program will ensure a majority of California workers have access to a workplace retirement savings vehicle by mandating that employers either sponsor their own plan or register for the Program. The Program and its associated laws were established in an effort to improve retirement security for working Californians. The operation of the program in general is expected to benefit participating employees and individuals by providing a simple pathway to improve their retirement security.

These regulations amendments will benefit employers and employees by providing them earlier access the program. The amendments will also benefit employers by clarifying the registration deadlines for newly mandated employers. Most benefits from these amendments are due to allowing some employees more immediate access to the Program and, therefore, improve their ability to save for retirement. Any new savings resulting from these amendments will have a portion of savings invested in California-based companies. Benefits due to that new investment are expected to reach \$15,703,748 in 2023 and increase each year thereafter.

The regulations amendments to Section 10002(b) will have benefits for some employers, however staff expect those benefits to be de minimis. The amendments will allow employers to register sooner than what is currently allowed in the current text of the regulations if they do not yet have a full calendar year of employee data. Because of the change, staff expect some employers will have access to the Program sooner than would be allowed under the prior regulations.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The Board evaluated whether or not there are any other regulations that may be adversely impacted by the adoption of these proposed regulations. Because these regulations are solely for the purpose of operating the Program, and no other regulations exist in the California Code of Regulations pertaining to the operation of the Program, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following determinations regarding fiscal impact:

- Mandate on local agencies and school districts: none.
- Cost to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630: none.
- Cost or savings to any state agency: none.
- Other nondiscretionary cost or savings imposed on local agencies: none.
- Costs or savings in federal funding to the state: none.

- Cost impacts on a representative person or business: For participating employers, the Program requires no direct costs or fees to participate. Although participating employers' role in facilitating the Program requires minimal activities, employers will be required to perform some duties upon the initial registration and ongoing maintenance to facilitate payroll deductions and assist with the enrollment of new employees. For those duties, the Board estimates approximately \$157 in opportunity costs for the staff time necessary to register and annual ongoing opportunity costs of \$135.

Participation in the Program is completely voluntary for eligible employees. Participating employees will pay an administrative fee taken from their contributions and investment interest. Those fees currently range between 0.82 and 0.95 percent depending on the investment option selected by the participant.

The regulations amendments included in this rulemaking do not materially change the duties of participating employers nor do they impact the administrative fees for participants, and, therefore, cause no changes to the cost impacts on a representative person or business.

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- Small Business Determination: The proposed regulation may affect small business.
- Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: none.
- Significant effects on housing costs: none.
- The proposed regulations do not require a report to be made.

MAJOR REGULATION: STATEMENT OF THE RESULTS OF THE STANDARDIZED REGULATORY IMPACT ANALYSIS (SRIA) (Gov. Code. § 11346.3, subd. (c))

Program staff determined the regulations amendments to be major regulations and completed a standardized regulatory impact analysis on September 2, 2022, detailing the expected economic and fiscal impacts of the regulations amendments. The Department of Finance (DOF) provided comments in response to the SRIA on September 30, 2022. Staff responded to those comments on October 24, 2022, to provide specific data and narrative requested by DOF. The full SRIA, the comments provided by DOF, and the response to those comments are attached to the Initial Statement of Reasons (ISOR).

The following list identifies the estimated impacts by each category of potential impacts.

The creation or elimination of jobs within the state: the amendments will have no direct impacts on the creation or elimination of jobs within the state. The amendments could have indirect impacts, as they will lead to increased new savings by Californians, which will lead to reduced consumption. The reduced consumption is expected to result in reduced demand, which could lead to reduction of 303 jobs in 2023. The amendments will also lead to new investment in California companies and are expected to create 90 jobs in 2023 due to the new investment.

The creation of new businesses or the elimination of existing businesses within the state: no impact.

Competitive advantages or disadvantages for businesses currently doing business within the State: no impact.

The expansion of businesses currently doing business within the state: no impact.

Increase or decrease of investment in the State: Due to shortening the registration deadline for some employers, there will be more savings by participants, which will naturally lead to an increase in investment in California-based companies. Staff estimate the regulations amendments will result in approximately \$61 million in new retirement savings contributions by participants in 2023, with 12.5% of those new investments made in California-based companies. The SRIA details expected macroeconomic impacts resulting from those new investments.

Incentives for innovation in products, materials, or processes: no impact.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment: see previous section on anticipated benefits.

Department of Finance Comments and Responses by the CalSavers Retirement Savings Board

The Department of Finance submitted comments in response to the SRIA on September 30, 2022. A copy of DOF's comments and the full response submitted by the Board are included as attachments to the ISOR and summarized below.

In their comments in response to the SRIA, DOF generally concurred with the methodology and results of the SRIA. DOF requested technical clarifying edits to the section defining the economic baseline, clearly report on the specific economic cost impacts of each alternative, and requested staff to complete some sensitivity analyses to estimate the range of potential economic and fiscal impacts under a variety of assumptions, specifically those regarding employer and employee participation. DOF also requested staff to include specific impacts for some fiscal impacts that were described to be "*de minimis*" in the SRIA.

Economic Baseline

In the SRIA, the authors stated the economic baseline was the environment prior to the emergency regulations that were analyzed in the SRIA. In the SRIA, the authors calculated the estimated number of businesses, individuals, and industries impacted by the regulations. The SRIA reports on the expected economic impacts due to reduced consumption resulting from the amendments and details the macroeconomic impacts on those industries. The SRIA also includes estimates of expected economic benefits to California companies due to increased investments and details the macroeconomic impacts.

DOF noted the economic baseline was, in fact, the economic state that includes the impacts from the regulations amendments. While those impacts had been reported throughout the SRIA, the 'economic baseline' had been mislabeled.

Quantification of Alternatives

DOF's comments pertain to another instance of mislabeling, whereby staff had not identified the specific benefits and costs of each alternative as clearly as possible. In the Board's response to DOF's comments, staff included a table that identified the specific dollar amounts of benefits and cost of the baseline and each alternative.

Sensitivity Analysis

The economic and fiscal impacts evaluated in the SRIA could be significantly impacted by a range of outcomes that can be difficult to predict, including employer activity, employee participation, and external factors including the performance of the stock market. For those reasons, DOF requested

staff to conduct a sensitivity analysis to estimate economic and fiscal impacts under a range of assumptions for increased saver participation and increased employer facilitation, which directly impacts the expected number of participating employees, and, therefore, expected economic and fiscal impact.

In the SRIA, staff used actual program data to predict employer and employee participation. To estimate the range of potential outcomes, staff estimated impacts under four additional scenarios, including one with moderately higher employer facilitation, high employer facilitation, high employee participation, and a combination of the high employer and employee participation.

Fiscal Impact

In the SRIA, the authors described how the amendments would result in fiscal impacts, quantifying the impacts related to reduced sales and use tax. The authors also described how, if at all, the amendments could impact income tax revenue, claims of the California Earned Income Tax Credit (CalEITC), expenses for the Franchise Tax Board, Medi-Cal, and the Federal Saver's Credit, describing the fiscal impacts of each to be "*de minimis*."

In the response to DOF, the authors described why the amendments will not have fiscal impacts due to claims of the California Earned Income Tax Credit, the Franchise Tax Board, Medi-Cal, or the federal Saver's Credit. In their response, staff also quantified expected impacts to sales and use tax revenue, estimating impacts of approximately \$119,000 in 2023.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5 (a)(13), the Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Eric Lawyer
Director of Policy & Communications
CalSavers Retirement Savings Board
915 Capitol Mall, Suite 105
Sacramento, CA 95814
Telephone: (916) 653-1748
Email: Eric.Lawyer@sto.ca.gov

Please direct any inquiries regarding the regulatory process to Mr. Lawyer at the above address. The designated backup contact person is Jacob Schafer, who can be reached at Jacob.Schafer@sto.ca.gov or by phone at (916) 653-1744.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board will have the rulemaking file available for inspection online at <https://www.treasurer.ca.gov/calsavers/regulations/index.asp>. To request a physical inspection of the rulemaking file, please contact the contact persons identified above and they will schedule a time and location for the inspection.

As of the date of this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the economic and fiscal impact analysis, and the initial statement of reasons. Copies may be obtained by contacting Eric Lawyer at the email address or by calling the phone number listed above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

After it is completed, a copy of the Final Statement of Reasons may be obtained by submitting a written request to the contact person identified above.