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March 6, 2025

AGENDA ITEM 7  
ACTION ITEM

CALSAVERS RETIREMENT SAVINGS BOARD

*Resolution No. 2025-03, Approval of Emergency Regulations to Create an Employer Participation Incentive Program by Adopting Section 10012 of Chapter 15 of Title 10 of the California Code of Regulations and Authority to Conduct Rulemaking*

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***Summary***

The CalSavers Retirement Savings Board (Board) will consider approving the proposed adoption of Section 10012 of Chapter 15 of Title 10 of the California Code of Regulations. The Board will also consider authorizing the Executive Director to conduct emergency rulemaking activities to implement an employer program participation incentive program for employers that register and facilitate the Program prior to the end of 2025.

***Authority***

Title 21 (commencing with Section 100000) of the Government Code establishes the Board and the CalSavers Retirement Saving Program (“Program” or “CalSavers”). Section 100048 of the Government Code authorizes the Board to adopt regulations to implement the CalSavers Retirement Savings Program (Program) and deems the adoption, amendment, repeal, and readoption of those regulation as addressing an emergency for the purposes of the Administrative Procedure Act (APA) (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

***Detail***

Board staff are seeking Board approval for the adoption of Section 10012 to create an employer participation incentive program. The proposed incentive program provides employers with financial incentives for registering and facilitating the Program in advance of the final employee count-based enrollment deadline. Employers that register and facilitate the Program from between 1/1/2025 and 11/30/2025 and Wave 4 employers (Employers with 1-4 employees) that registered and facilitated the program (among other things) before 1/1/2025 will be entered into two lottery pools for the chance to win \$500 for complying with the Program mandate ahead of when they are legally obligated to comply.

Board staff propose this incentive program with the intent of spurring early adoption of the Program and generating media and promotional content out of the offering of financial incentives. If this concept is successful in improving early adoption of the Program, then in theory there should be reduced service-level issues and prolonged for employers ahead of the largest enrollment deadline in Program history.

If approved by the Board, staff will file the proposed adoption of emergency regulations with the Office of Administrative Law and begin the rulemaking process. The proposed regulations are described in detail below.

### Section 10002 – Employer Registration

Staff proposed to amend Section 10002 as follows:

#### **Regulations – Program participation deadline**

“(a) Registration Deadlines.

(1) Eligible Employers employing more than 100 Employees shall register and establish a retirement savings arrangement with the Program no later than September 30, 2020.

(2) Eligible Employers employing more than 50 Employees shall register and establish a retirement savings arrangement with the Program no later than June 30, 2021.

(3) Eligible Employers that have employed five or more Employees for more than one continuous calendar year, based on the criteria established in Section 10001(a), shall register and establish a retirement savings arrangement with the Program no later than June 30, 2022.

(4) Eligible Employers with four or fewer Employees shall register and establish a retirement savings arrangement with the Program no later than December 31, 2025.

(b) An Employer that becomes an Eligible Employer due to having an average of five or more employees for a calendar year, as established in Section 10001(a), shall register and establish a retirement savings arrangement with the Program no later than December 31 of the year in which the Employer is notified by the Program about their eligibility.”

#### **Explanation**

Board staff propose these changes to align the Board’s employer enrollment and participation deadline with the CalSavers Retirement Savings Trust Act (Title 21 of the Government Code Section 100032) which requires that employers not only register with the Program but register and establish a payroll retirement savings arrangement with the Program by a specific date. Additionally, Board staff propose these amendments to align these regulations with the proposed employer participation incentive program which requires employers register and facilitate the Program to be eligible for the opportunity to receive financial incentives. If these changes are not adopted the two bodies of regulations contained in Section 10002 and the proposed Section 10012 will not be in alignment.

### Section 10012- Program Incentives

Staff propose to adopt Section 10012 to implement the following:

#### **Regulations – Basics of the financial incentives**

“(a) The Board may offer financial incentives to Participating Employers that meet the requirements of subsections (b) and (f).

(1) Financial incentives offered by the Board pursuant to this Section shall be:

(A) In the amount of \$500 per awardee.

(B) Disbursed via Electronic Fund Transfer or personal check by the Administrator to Participating Employers that are announced as awardees pursuant to subsection (e).

(C) Disbursed to awardees within 180 calendar days of the awardees being announced.”

### **Explanation**

Board staff propose adopting these regulations as they accomplish four key objectives.

1. Empowering the Board with the ability to offer financial incentives to employers for Program participation.
2. Communicate to the public how much these financial incentives will be (\$500).
3. Communicate how financial incentives will be sent to awardees.
4. Communicate to the public when financial incentives will be sent to awardees.

The adoption of this set of regulations is necessary to establish the employer participation incentive program, to create transparency regarding what the financial incentives will be, how they’ll be disbursed to the public, and when they’ll be disbursed.

### **Regulations – Eligibility requirements**

“(b) Participating Employers will be eligible for entrance into two separate lottery pools for completing the following.

(1) Registering and establishing a payroll deposit retirement savings arrangement with the Program between the following dates.

(A) January 1, 2025, and July 31, 2025. Participating Employers who have a Program participation deadline established by Section 10002 subsection (a)(4) who registered and established a payroll deposit retirement savings arrangement with the Program prior to January 1, 2025, will be automatically entered into this lottery pool.

(B) August 1, 2025, and November 30, 2025.

(2) Being in full compliance with the regulations contained in this Chapter and Title 21 of the Government Code.

(3) Have at least one Participating Employee in the Program.

(4) Facilitate at least one Contribution to the Program.”

### **Explanation**

This set of regulations creates and communicates to the public the rules concerning eligibility to enter into two lottery pools to receive financial incentives. The lottery entrance rules are as follows:

1. Participating employers must register and establish a payroll deposit retirement savings arrangement with the Program between January 1, 2025, and July 31, 2025, and August 31, 2025, and November 30, 2025. These two date ranges will serve as the main dividing line for which participating employers get entered into each lottery pool.
2. Wave 4 employers that registered and facilitated the Program before January 1, 2025, are eligible for entrance into the January 1, 2025-July 31, 2025, lottery pool assuming they meet the other lottery rules. This rewards Wave 4 employers who were early adopters of the Program and prevents wave 2023 and wave 2024 employers from lottery entrance as they are not the intended target audience for this incentive program.
3. Participating employers must be in compliance with the applicable laws pertaining to the Program to be eligible for entry (including sustained compliance at the time of drawing of

awardees). This rule prevents employers from simply registering and running payroll a few times but ultimately lapsing on their legal obligation to continue to run the Program. Board staff believe that it would be unwise to reward employers who fail to meet basic obligations such as complying with state law.

4. Participating employers must have a participating employee in the Program to be eligible for entry into a lottery.

5. Participating employers must facilitate at least one contribution to the Program for entry. This rule is especially important as the main goal of this incentive program is to spur full adoption of the Program earlier in the year. By incentivizing running payroll, Board staff hope that more employers will complete that task which is the only way employees at scale can save for retirement through our Program.

### **Regulations – Selecting awardees**

“(c) Eligible lottery entrants will be announced on the Board’s website

(treasurer.ca.gov/CalSavers) at least ten calendar days prior to the announcement of awardees.

(d) No more than 1,000 awardees shall be selected from each lottery pool established pursuant to subsection (b).

(1) In the event that a lottery pool contains 1,000 or fewer eligible entrants all eligible entrants shall be awarded a financial incentive.

(e) The Board will select and announce awardees at a board meeting or at a public hearing held by the Executive Director of the Board or their Designee.

(1) Awardees shall be selected via a random number generator.

(2) In the event a public hearing is held to announce awardees Board staff shall provide notice of the time, date, and place of the hearing by publishing said details on the Board’s website (treasurer.ca.gov/CalSavers) and by mailing or emailing the notice to every person who has filed a request for notice with the Board.”

### **Explanation**

These regulations, while more technical than the other regulations contained in this proposal, accomplish the following.

1. Provide full transparency as to who is entered into the financial incentive lotteries by making this information available to members of the public via the Board’s website.

2. Communicate how many awardees will be selected from each lottery. This also prevents the Board from spending more on financial incentives than it has available to offer. Board staff have reserved \$1,000,000 to spend on these financial incentives. If both lotteries disburse the maximum amount of \$500 to 1,000 awardees (per lottery), then the Board will spend \$1,000,000 on this incentive program.

3. In the event there are fewer eligible lottery entrants than there are potential awardees (less than 1,000) Board staff can simply announce all lottery entrants are recipients. This will make administering the drawing of lottery winners easier for smaller lottery cohorts.

4. Establish that the lottery announcement will be conducted at a Board meeting or a public hearing. This is necessary to conduct the lottery entrance and the announcement of awardees in full view of the public thus achieving complete transparency and accountability of this incentive program. Board staff intend on conducting these events at Board meetings. In the event that a Board meeting cannot be held due to a failure to reach quorum or some other unforeseen issue

Board staff propose having the option to announce lottery awardees at a public hearing. This alternative provides Board staff with the ability to conduct the lottery announcement in full view of the public without the hurdles of setting up and successfully holding a Board meeting.

5. Communicate to the public that Board staff will use a random number generator to select awardees. Random number generators like those that can be utilized in Microsoft Excel or on the internet provide a safe, secure, and unbiased way to select awardees in full view of the public without interference by Board staff. This is necessary to maintain the full faith and trust of the public by conducting the lottery selection process in a fair and public manner.

6. Lastly, the final rule amongst this set of regulations requires Board staff to meet some of the same notification requirements as the Bagley-Keene Open Meeting Act which among other things requires state bodies to provide notice of the time, date, and location of certain meetings. This is necessary to ensure that if Board staff were to hold a public hearing as an alternative to a Board meeting that members of the public still have the same opportunity to be aware of the hearing and be able to participate in the announcement in a manner that is functionally no different than if a Board meeting were held.

**Regulation** – Auto entry into second drawing

“(f) Eligible Participating Employers that entered the financial incentive lottery by meeting the requirements of subsection (b)(1)(A) and (b)(2)-(4) and were not announced as an awardee from that lottery pool, will be automatically entered in the lottery pool specified in subsection (b)(1)(B).”

**Explanation**

This rule rewards participating employers who were entered into the first lottery and were not selected as awardees by automatically entering them into the second lottery. The goal here is to further incentivize early adoption of the Program by providing another opportunity for participating employers to receive a financial incentive if they registered and began facilitating the Program from January 1, 2025-July 31, 2025.

**Regulations** - Safeguards

“(g) Participating Employers may only receive one financial incentive issued pursuant to this Section.

(h) Notwithstanding any provision of this Section, failure to meet the terms and conditions enumerated in this Section will disqualify awardees from receiving a financial incentive issued by the Board pursuant to this Section.”

**Explanation**

These two rules represent the last but necessary safeguards for this financial incentive program. First, Board staff propose limiting participating employers to receiving only one financial incentive. This is necessary to ensure that taxpayer money is being allocated as efficiently and fairly as possible by spreading the wealth amongst the most employers possible (Within the pool of 2,000 potential awardees).

Second, including the rule stating that notwithstanding any other provision of this section, awardees will be disqualified from receiving a financial incentive if they do not meet the requirements of these regulations is necessary to ensure awardees continue to facilitate the Program as they are legally required. Simply put, this rule prevents Board staff from sending

financial incentives to awardees that failed to sustain compliance with the Board’s regulations and the CalSavers Retirement Savings Trust Act. Lastly, the inclusion of this provision should eliminate the potential for members of the public to interpret the lottery rules as only requiring compliance with the law from time of entrance to announcement of winners.

**Regulation – Sunset provision**

“(i) This Section shall be in effect only until January 1, 2028, and as of that date is repealed.”

**Explanation**

Board staff propose adopting a self-executing sunset provision to repeal the employer incentive program from the Board’s regulations well after the financial incentive program is complete. This is necessary to eliminate these regulations after they become unnecessary and no longer pertain to the public and the Board. Additionally, by adopting this rule Board staff will not need to conduct further rulemaking proceedings with the Office of Administrative Law to remove these regulations.

**Recommendation**

Board staff recommend the Board approve Resolution 2025-03 to authorize the Executive Director to conduct the emergency rulemaking process to adopt section 10012 of Chapter 15 of Title 10 of the California Code of Regulations and any subsequent rulemaking activities necessary to implement and preserve these regulations.

In summary, the proposed regulations accomplish the following.

1. Authorize the Board to offer financial incentives to participating employers.
2. Establish how much the financial incentives will be and communicate how and when they will be disbursed to awardees.
3. Communicate to participating employers how to qualify for eligibility to receive a financial incentive.
4. Communicate to the public how recipients of financial incentives will be determined.
5. Safeguard financial incentives from being sent to participating employers who fail to comply with the Board’s regulations and California law.
6. Conduct the selection and announcement of these financial incentives in full view of the public with the ability for the public to participate.

**Attachments**

- Attachment 7A: Text of Regulations
- Attachment 7B: Resolution 2025-03: Resolution of the CalSavers Retirement Savings Board to Adopt Emergency Regulations Creating Section 10012 of Chapter 15, Title 10 of the California Code of Regulations and Authority to Conduct Rulemaking Activities