

**State of California  
Office of Administrative Law**

**In re:**  
CalSavers Retirement Savings Board

**Regulatory Action:**

**Title 10, California Code of Regulations**

**Adopt sections:**

**Amend sections: 10000, 10008**

**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6**

**OAL Matter Number: 2024-0611-03**

**OAL Matter Type: Emergency Readopt (EE)**

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This action by the CalSavers Retirement Savings Board (Board) readopts emergency regulatory provisions in the Board's regulations which define "noncompliance" and specify penalties and the process for assessment of penalties on eligible employers for noncompliance with the CalSavers Retirement Savings Program.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 6/20/2024 and will expire on 9/19/2024. The Certificate of Compliance for this action is due no later than 9/18/2024.

Date: June 20, 2024

  
Dale P. Mentink  
Assistant Chief Counsel

For: Kenneth J. Pogue  
Director

Original: Fiona Ma, State Treasurer and  
Chair

Copy: Tristan Woolacott

# EMERGENCY

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2024-0611-03EE</b>
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For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW  
2024 JUN 11 PM 1:38

NOTICE	REGULATIONS
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**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

**JUN 20 2024**  
**1:41 PM**

AGENCY WITH RULEMAKING AUTHORITY  
**CalSavers Retirement Savings Board**

AGENCY FILE NUMBER (If any)

### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) <b>CalSavers Retirement Savings Program Noncompliance Amendments</b>	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) <b>2023-1215-01E</b>
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND <b>10000, 10008</b>
	REPEAL

TITLE(S)  
**10**

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <b>6/24/2024</b>
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON <b>Tristan Woolcott</b>	TELEPHONE NUMBER <b>(916) 653-1744</b>	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) <b>twoolcott@sto.ca.gov</b>
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>David Teykaerts</i>	DATE <b>6/11/2024</b>
TYPED NAME AND TITLE OF SIGNATORY <b>David Teykaerts, Executive Director, CalSavers Retirement Savings Program</b>	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

**JUN 20 2024**

**Office of Administrative Law**

## California Code of Regulations

**Title 10: Investment**

**Chapter 15: CalSavers Retirement Savings Board**

### **Section 10000. Definitions.**

The following definitions shall apply wherever the terms are used throughout this Chapter:

(a) "Account" means a Participant's Individual Retirement Account ("IRA") held within the Program.

(b) "Administrator" means the third-party administrator that operates the Program.

(c) "Automatic Escalation" means an automatic annual increase in a Participating Employee's Contributions as set forth in Section 10005.

(d) "Beneficiary" means the individual(s) or entity(ies) entitled to receive the proceeds of a Participating Employee's or Participating Individual's Account upon their death.

(e) "Board" means the CalSavers Retirement Savings Board.

(f) "Client Employer" means an Employer that is involved in a Multi-Party Employment Relationship due to obtaining the services of a third-party entity.

(g) "Compensation" has the same meaning as defined in Title 26 Code of Federal Regulations Section 1.415(c)-2(d)(4) (April 5, 2007), which is incorporated herein by reference. In the case of a sole proprietor, a partner in a partnership, a member of a limited liability company treated as a sole proprietor or partner, or another self-employed individual, Compensation means such individual's Earned Income.

(h) "Contribution" means any monies contributed to an Account.

(i) "Contribution Rate" means the percentage of a Participating Employee's Compensation to be withheld and contributed to their Account via payroll deduction under the Program.

(j) "Earned Income" means an individual's net earnings from self-employment from the Participating Employer as determined under Section 401(c)(2)(A) of Title 26 of the United States Code.

(k) "Electronic Fund Transfer" has the same meaning as the term established under Section 1693a(7) of Title 15 of the United States Code.

(l) "Eligible Employee" means any Employee of an Eligible Employer who is at least eighteen years of age.

(m) "Eligible Employer" means an Employer that (i) has one or more Employees, as determined under the methodology described in Section 10001(a), at least one of whom is an Eligible Employee; (ii) does not maintain or contribute to a Tax-Qualified Retirement Plan; and (iii) is not the federal government, the state, any county, any municipal corporation, or any of the state's units or instrumentalities.

(n) "Employee" means any individual who has the status of an employee under Unemployment Insurance Code Sections 621, 621.5, 622, or 623 and who receives a W-2 with California wages. In the case of an Eligible Employer that is a sole proprietorship, partnership, or a limited liability company treated as a sole proprietorship or partnership for federal income tax reporting purposes, Employee shall also mean a sole proprietor, partner, or member of a limited liability company treated as a sole proprietor or partner for federal tax purposes.

(o) "Employee Information Packet" means the packet of information provided by the Program that includes the Opt-Out Form, instructions on how to opt out of the Program, and other information required under Government Code Section 100014.

(p) "Employer" means a sole proprietor, partnership, limited liability company, Subchapter C or Subchapter S corporation, trust, or other entity, whether for profit or not for profit, that is an employer under California Unemployment Insurance Code Division 1, Part 1.

(q) "Exempt Employer" means an Employer that (i) has zero Employees, as determined under the methodology described in Section 10001(a), has one or more Employees, but does not employ any Eligible Employees, or who does not employ any individuals other than the owners of the business; (ii) maintains or contributes to a Tax-Qualified Retirement Plan; or (iii) is the federal government, the state, any county, any municipal corporation, or any of the state's units or instrumentalities.

(r) "IRA" means an individual retirement account or individual retirement annuity under Section 408(a), 408(b), or 408A of Title 26 of the United States Code.

(s) "Multi-Party Employment Relationship" means a relationship in which an Employer enters into a service contract with a third-party entity(ies) for services including, but not limited to, payroll, staffing (both temporary and non-temporary), human resources, and Employer compliance with laws and regulations.

(t) "Noncompliance" means the failure of an Eligible Employer to allow an Eligible Employee to participate in the program.

(u) "Opt-Out Form" means the form through which Eligible Employees may note their decision to opt out of participation in the Program.

(v) "Participant" means any person who is or was a Participating Employee, Participating Individual, or Beneficiary.

(w) "Participating Employee" means any person who is an Eligible Employee, is enrolled in the Program, maintains a Program IRA, and is not a Participating Individual.

(x) "Participating Employer" means an Eligible Employer that registered with the Program to provide its Eligible Employees access to the Program.

(y) "Participating Individual" means any person who enrolled in the Program independent of an employment relationship with an Eligible Employer, as further defined in Section 10006; maintains an Account; and is not a Participating Employee.

(z) "Program" means the CalSavers Retirement Savings Program offered by the CalSavers Retirement Savings Trust.

(aa) "Tax-Qualified Retirement Plan" means a retirement plan that qualifies for favorable federal income tax treatment under Sections 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p) of Title 26 of the United States Code. An employer-provided payroll deduction IRA program that does not provide for automatic enrollment is not a Tax-Qualified Retirement Plan.

Note – Authority Cited: Sections 100010 and 100048, Government Code.

Reference: Sections 100000, 100012, 100014, 100032, and 100033, Government Code.

#### **Section 10008. Enforcement of Employer Compliance**

(a) The Board may delegate enforcement of employer compliance with Title 21 (commencing with Section 100000) of the Government Code, including all failures by an Eligible Employer to allow its Eligible Employees to participate in the Program, to the Board staff. Staff shall exercise due diligence to ensure reasonable attempts are made to bring employers into compliance prior to issuing a final notice of penalty application to a noncompliant Employer.

(b) Enforcement efforts by Board staff, pursuant to subsection (a), shall include email and letter notifications of penalty application to the noncompliant Employers identifying the cause of their noncompliance and the methods available to Employers to comply.

(c) Noncompliant employers are subject to the penalties set forth in Gov. Code Section 100033(b) until compliance is satisfied.

(1) A noncompliant employer, who fails to achieve compliance after the initial \$250 penalty is assessed, will be fined \$500 per eligible employee for each subsequent calendar year in which the employer is noncompliant;

(2) Noncompliance does not need to be consecutive to assess the penalty of \$500. Any calendar year of noncompliance after the initial penalty of \$250 will result in a penalty of \$500 per eligible employee.

(d) If, through the collection efforts of the Franchise Tax Board as described in Cal Code regs. Tit. 18 § § 19285 et seq., and before the penalty payment is received, a noncompliant employer demonstrates compliance through the submission of written documentation, or as determined by review of the employer's account status, then the Board staff shall inform the Franchise Tax Board that the current year penalty shall not be imposed due to the Eligible Employer's compliance with the requirements of Title 21 (commencing with Section 10000) of the Government Code. Any erroneously made payments shall be refunded.

Note – Authority Cited: Sections 100010 and 100048, Government Code.  
Reference: Sections 100014, 100032, and 100033, Government Code