

## **Initial Statement of Reasons**

### **Summary of Proposal**

The CalSavers Retirement Savings Board (Board) proposes the adoption of several regulations be made permanent through the regular rulemaking process as the regulations proposed in this rulemaking action were previously implemented through the emergency rulemaking process. These regulations define “noncompliance”, clarify and communicate the Board’s penalty enforcement, and establish penalty refund processes.

### **Background**

In 2012, the California Legislature enacted, and the Governor signed, Senate Bills (SB) 1234 and (Chapter 734, Statutes of 2012) and SB 923 (Chapter 737, Statutes of 2012) which established the California Secure Choice Retirement Savings Investment Board (subsequently changed to the “CalSavers Retirement Savings Board” through Assembly Bill (AB) 102 in 2020). The legislation among other things required the Board to determine, based on the market analysis, if conditions to implement the CalSavers Retirement Savings Program (Program) can be met and prohibited the implementation of the Program without subsequent legislation to authorize it.

In 2016, the California Legislature enacted, and the Governor signed SB 1234 (Chapter 804, Statutes of 2016) which, among other things, granted the Board the authority to take the steps necessary to implement the Program, including the adoption of regulations.

In 2020, the California Legislature enacted, and the Governor signed AB 102 (Chapter 21, Statutes of 2020) which among other things, created a penalty enforcement scheme administrated by the CalSavers Retirement Savings Board and the Franchise Tax Board (FTB). The bill expressly vested the Board with the ability to levy penalties on employers for failing to allow its eligible employees to participate in the Program. The bill requires the Board to provide penalty notices to employers who fail to allow its employees to participate in the Program. If compliance is not satisfied after the Board’s notice is served on a noncompliant employer, the bill permits FTB to impose a penalty of \$250 for failure to allow employees to participate in the Program. If noncompliance persists after the initial penalty is imposed, FTB is authorized on behalf of the Board to issue additional penalties of \$500 for continued noncompliance. Lastly, the bill created an appeals process by which employers may dispute penalties authorized by the bill with FTB.

In April of 2020, the Board authorized Board staff to engage in rulemaking activities which among other things, created Section 10008 subsections (a) and (b) of Title 10 of the California Code of Regulations (CCR). By January 13, 2022, Board staff had completed the emergency rulemaking process and made permanent those regulations authorized by the Board. Title 10 Section 10008 subsections (a) and (b) delegate penalty enforcement to Board staff and set forth requirements for Board staff to notify employers of pending enforcement activities.

At the November 13, 2023, meeting, the Board approved regulations amendments to clarify the assessment and collection of penalties from employers who fail to allow their employees to participate in the Program and provide the Board with the ability to refund penalties collected in error. This filing is intended to enact the regulatory changes approved by the Board.

### **Policy Statement Overview**

#### **Objectives, Goals, & Problems Addressed by this Rulemaking**

The objective of this rulemaking action is to provide clarity to the regulated community regarding when and how often penalties will be assessed by the Board, define terms used by the Board in its regulations, and establish a refund process for penalties that are assessed by the Board.

#### **Overall Anticipated Benefits of this Rulemaking**

This rulemaking action, if implemented, would bolster the Program by clarifying terms used by the Board in its regulations which among other things administer the Program. Additionally, these regulations will notify and communicate to employers when they are subject to penalties assessed by the Board and provide refunds for penalties in limited circumstances.

By improving clarity in the Board's regulations, communicating a penalty schedule for noncompliance, and setting forth requirements for penalty refunds the Board is providing nonmonetary benefits to the regulated community by improving transparency of the Board's requirements.

#### **Effect of the Proposed Regulations**

Similar to the benefits of this rulemaking, the effects of the proposed regulations are as follows.

1. Improve clarity of the Board's regulations as it relates to penalties assessed by the Board and terms used in the regulations.
2. Communicate to the regulated community when and how often penalties will be assessed by the Board for noncompliance.
3. Provide penalty refunds to employers in limited circumstances.

#### **Evaluation as to Whether the Proposed Regulations Are Inconsistent or Incompatible with Existing State and Federal Regulations**

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

Additionally, the Board found that there are no federal statutes that the proposed regulations are inconsistent nor incompatible with.

## **Reasonable Alternatives to the Regulations and the Board's Reasons for Rejecting those Alternatives:**

The Board considered the following alternatives:

### Alternative 1: Continue to collect revenue collected in error and fail to hold noncompliant employers accountable for continued non-compliance.

The Board declined this alternative, as the Program should not keep penalty revenue collected in error, nor should the Program allow noncompliant employers to remain out of compliance through the payment of a single penalty.

Assessing penalties on habitual noncompliant employers is required by Section 100033 subsection (b)(2) GOV Code for not permitting eligible employees to participate in the Program. If the Board were to not assess subsequent penalties for noncompliance, it would be abdicating itself from its statutory responsibilities.

### **Authority and Reference Citations**

Authority: Sections 100010 and 100048 of the Government Code (GOV Code) provides the Board with the authority to adopt regulations to implement Title 21 GOV Code.

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

### **Detailed Discussion of Regulations Affected**

The section of the regulations proposed for adoption is identified below including a description of the objectives and necessity for the adoption.

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

##### **Adopt subsection (t):**

The Board proposes to adopt subsection (t) to define "Noncompliance." The adoption of subsection (t) and defining of the term "Noncompliance" is necessary to define the term as it is used throughout the Chapter.

By defining the term, the Board is informing the regulated community as to what the Board means when it uses the term "noncompliance" and as a result provides clarity to the regulated community. Additionally, defining the term provides a distinction between a compliant employer and a noncompliant employer.

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

##### **Adopt subsection (c):**

The Board proposes to adopt subsection (c) to communicate to noncompliant employers that until compliance is reached by the employer, they will be subject to penalties set forth in GOV Code section 100033(b). Since noncompliance means "The failure of an Eligible Employer to allow and Eligible Employee to participate in the Program" as defined in Section 10000 subsection (t), then compliance means that the employer has allowed eligible employees to participate in the Program.

##### **Adopt subsection (c)(1):**

The Board proposes to adopt subsection (c)(1) to communicate to the regulated community that penalties will escalate from \$250 to \$500 for noncompliance that takes place after an initial penalty of \$250 is assessed. Additionally, the regulation sets forth an annual penalty assessment schedule by communicating that a penalty of \$500 will be issued to employers that are not compliant for each calendar year in which they have failed to reach compliance after the initial penalty of \$250 was assessed.

This regulation is necessary to inform and provide guidance to the regulated community regarding penalties they will face for noncompliance. Lastly, this regulation is necessary to further clarify the timing and ongoing nature of penalties that will be imposed by the Board for noncompliance.

**Adopt subsection (c)(2):**

The Board proposes to adopt subsection (c)(2) to communicate to the regulated community that noncompliance does not need to take place in consecutive years for a \$500 penalty to be imposed. In other words, the regulation is communicating that in any calendar year in which an employer is not compliant after having a penalty of \$250 imposed, said employer will receive a \$500 penalty. This regulation is necessary to inform the regulated community regarding penalties they will face for noncompliance and the manner in which they will be imposed.

**Adopt subsection (d):**

The Board proposes to adopt subsection (d) to set forth a process by which the regulated community can receive a penalty refund if they demonstrate to the Board that they were in fact in compliance with the requirement to allow eligible employees to participate in the Program prior to the penalty being received by the Board. Additionally, penalty refunds will be issued to employers if Board staff determine upon review of the employer's account status that the employer was in compliance prior to the penalty being received by the Board.

Lastly, subsection (d) provides a blanket refund for any penalty payment that was found to have been made erroneously. These regulations are necessary to inform the regulated community which circumstances penalty payments will be refunded and by which measures an employer may qualify for a refund. These regulations provide clarity to the regulated community and implement the Board's procedures concerning penalty refunds.

### **Economic Impact Assessment**

**The Creation or Elimination of Jobs Within the State**

These regulations are not expected to cause any incentives for innovation in the private sector that could create new jobs, nor are they expected to create any need to increase volume for existing jobs.

These regulations are not expected to lead to the elimination of jobs within the state as compliance with the regulations will result in no costs being borne by employers and employees.

### **The Creation of New Businesses or the Elimination of Existing Businesses Within the State**

Similar to the reasons stated in the paragraph above, these regulations are anticipated to have no impact on the creation of new businesses or the elimination of existing businesses within the state. These regulations make no impact on whether or not existing businesses should be eliminated, nor do they give cause for the creation of new businesses.

The operation of the Program in general may create incentives for retirement plan providers to create or market products in the state. The operation of the Program in general may also create an incentive for payroll providers or third-party human resource vendors to create or market products within California. However, these regulations do not include any material impacts that would bolster or lessen those incentives.

### **The Expansion of Businesses Currently Doing Business Within the State**

These regulations are not expected to have any impact on the expansion of businesses currently doing business within California. The operation of the Program in general may create benefits for smaller employers to recruit and retain employees by providing them an easy and convenient way to help their employees save for retirement. As noted above, the Program in general may also create an incentive for payroll providers or third-party human resource vendors to create or market products within California. However, these regulations do not include any material impacts that would cause an expansion of those businesses.

### **The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment**

These regulations will have no effect on the health and welfare of California residents, worker safety, or the state's environment.

### **Cost Impacts on 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.

While the regulations in this rulemaking action do impose financial penalties on employers, said penalties are only assessed on employers for not permitting eligible employees to participate in the Program. So long as employers are complying with the Board's regulations by permitting eligible employees to participate in the Program no penalties nor any costs associated with these regulations will affect employers.

### **Business Report**

The proposed regulations do not require any reports to be made by any business or other entity.

### **Small Business**

Small business compliance with the regulations will result in no cost to small businesses. The same rationale explained in the “Cost Impacts on Representative Person or Business” section applies to small businesses as well.

Lastly, the regulations do not require small business to enforce them and as such do not provide any benefit nor detriment regarding enforcement by a small business.

**Evidence Supporting Finding of no Significant Statewide Adverse Economic Impact Directly Affecting Business**

Based on the Economic Impact Assessment stated above, the Board concludes that the proposed regulation will not have a significant statewide adverse economic impact directly affecting business, including ability of California businesses to compete with businesses in other states.

**Specific Technologies or Equipment**

None.

**Technical, Theoretical, and Empirical Study, Report, or Similar Document on Which The Agency Relies**

None for this rulemaking.