

NOTICE OF PROPOSED RULEMAKING ACTION
Title 10, Chapter 15, CalSavers Retirement Savings Board, California Code of
Regulations

Amendment to the California Code of Regulations, Title 10 Chapter 15, Regarding the
CalSavers Retirement Savings Program

Notice Published May 31, 2024

Notice is hereby given that the CalSavers Retirement Savings Board (Board) is proposing to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed regulations.

Public Proceedings

The Board is conducting a 45-day written public proceeding during which time any interested person or such person's duly authorized representative may present statements, arguments, or contentions (all of which are hereinafter referred to as comments) relevant to the action described in the Informative Digest/Policy Statement Overview section of this notice.

To request copies of the regulatory proposal in an alternate format, please write: 901 P Street, Suite 313B, Sacramento, CA 95814, email Tristan.Woolacott@treasurer.ca.gov, or call (916) 653-1744.

Written Comment Period

Written comments pertaining to this proposal, regardless of the method of transmittal, must be received by the Board on July 16, 2024, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely.

Written comments must be submitted as follows:

By email

CalSavers@sto.ca.gov.

It is requested that email transmission of comments, particularly those with attachments, contain "regulation" in the subject line; to facilitate timely identification and review of the comment;

By regular mail

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

By courier delivery

CalSavers Retirement Savings Board

Re: Rulemaking for the CalSavers Retirement Savings Program
901 P Street, Suite 313B
Sacramento, CA 95814

Public Hearing

A public hearing has not been scheduled for this rulemaking action. However, the Board will conduct a public hearing if a written request for a public hearing is received from any interested person, or their authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8.

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.

Informative Digest/Policy Statement Overview

Summary of Proposal

The 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 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. Lastly, improving the transparency and clarity of the Board's regulations are anticipated to expand access to the Program to employees who may have been prevented from accessing the Program by employers who misunderstood the Board's requirements for the Program.

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.

Consideration of Alternatives

The Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which this 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.

Documents or Forms Incorporated by Reference

None for this rulemaking.

Mandate by Federal Law or Regulations

None.

Other Statutory Requirements

None.

Local Mandate

The Board has determined that this regulatory action would not impose a mandate on local agencies or school districts, nor are there any costs that require state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Fiscal Impact Statements

Cost Estimate

The Program is funded through administrative fees assessed on the assets invested in the Program. As established under GOV Code Section 100050, startup costs for the Program are appropriated from the General Fund in the annual Budget Act in the form

of a loan and are required to be repaid through the fees assessed on the Program fund, with interest calculated at the rate earned by the Pooled Money Investment Account.

The Board estimates direct costs as follows:

- Cost to any local agency or school district requiring reimbursement pursuant to Section 17561 GOV Code: no impact
- Costs or savings to any state agency: no impact
- Nondiscretionary cost or savings imposed on local agencies: no impact
- Cost or savings in federal funding to the state: no impact

Housing Costs

The Board has determined that these regulations will not affect housing costs.

Results of the Economic Impact Assessment

The operation of the Program as required under state law could have an indirect impact on the creation or elimination of jobs within the state through changes to consumption and new investment resulting from new savings by participating employees.

These regulations amendments do not alter the cost impacts on a representative person or business, as they are intended to clarify existing regulations and practices. Additionally, the only potential costs incurred as a result of the adoption of these regulations are in the form of penalties assessed by the Board. These penalties are required by Section 100033 GOV Code and cannot be assessed on any person or business entity that is in compliance with the Board's regulations by permitting eligible employees to participate in the Program. In short, any person or business that is in compliance with these proposed regulations will incur no costs including no penalties.

As a result the Board has made the following determinations:

- Creation or elimination of jobs in California: no impact
- Creation of new businesses or elimination of existing businesses in California: no impact
- Expansion of businesses currently doing business in California: no impact
- Benefits of the regulation to the health and welfare of California residents, worker safety, and the State's environment: As stated above under the "Overall Anticipated Benefits of this Rulemaking" section the proposed regulations will benefit the health and welfare of California residents by increasing access to the Program for employees who may have been prevented from participating by their employers, as well as clarify for employers and the regulated community at large penalties for noncompliance. Additionally, by increasing access to the Program for employees who previously lacked access because of employer noncompliance the proposed regulations are anticipated to improve retirement outcomes and financial stability for these employees which may improve the health and welfare of participating employees in the immediate term and in the future. Lastly, the proposed regulations are not expected to affect worker safety or California'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 any other entity.

Small Business

Small business compliance with the governing statute and 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.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete

The Board has not identified any significant statewide adverse economic impact directly affecting business, including the 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 Relied

None for this rulemaking.

Contact Person

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Tristan Woolacott of the Board, at Tristan.Woolacott@treasurer.ca.gov.

Back-Up Contact Person

In the event the primary contact person listed above is unable to be contacted, inquiries regarding the proposed regulations described in this notice may be directed to Jacob Schafer, at Jacob.Schafer@treasurer.ca.gov.

Availability Statements

The Board will have the rulemaking file available for inspection online at treasurer.ca.gov/calsavers/regulations/index.asp. To request a physical inspection of the rulemaking file, please contact the contact persons identified above in the “Contact Person” section 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. If any changes are made to these proposed regulations due to feedback provided by the regulated community during public proceedings the Board will make said changes available for at least 15 days prior to the adoption, repeal, or amendment of the changed regulations.

Copies of this rulemaking action may be obtained by contacting Tristan Woolcott at the email address or by calling the phone number listed above in the “Contact Person” section.

Final Statement of Reasons

A copy of the final statement of reasons (when prepared) will be available upon written request by contracting the person identified above in the “Contact Person” section of this notice.

Internet Access

Materials regarding the action described in this notice (including this public notice, the text of the proposed regulations, and the initial statement of reasons) that are available via the Internet may be accessed clicking on this link treasurer.ca.gov/calsavers/regulations/index.asp and locating the regulations under the header “Regular Rulemaking (posted May 31, 2024).