

## FINDING OF EMERGENCY

CalSavers Retirement Savings Board  
CalSavers Retirement Savings Program  
Amendment to Section 10000 and 10008  
California Code of Regulations Title 10, Chapter 15

The CalSavers Retirement Savings Board (Board) intends to readopt amendments to Title 10 of the California Code of Regulations (CCR) Sections 10000 and 10008 on an emergency basis for the immediate preservation of the public peace, health, safety, or general welfare, pursuant to Government Code Section 11346.1.

Government Code Section 11346.1 subsection (a)(2) requires that at least five working days prior to the submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. To this end, the Board posted the proposed emergency regulations on its website and simultaneously disseminated notice of the proposed emergency action to all persons who have filed a request for notice.

After the submission of the proposed emergency regulations to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6. To determine the OAL five-day comment period, please check <http://www.oal.ca.gov/>. The Board will also provide additional notice of the five-day comment period through email notification.

### **Finding of Emergency**

Pursuant to Government Section 100048, the California Legislature has deemed the adoption, amendment, repeal, or readoption of regulations necessary to implement the CalSavers Retirement Savings Trust Act as addressing an emergency (Title 21 (commencing with Section 100000) of the Government Code).

### **Necessity**

The proposed emergency regulations amendments are necessary to implement, interpret and make specific Title 21 of the Government Code. Specifically, this rulemaking action amends Sections 10000 and 10008 of Title 10 CCR. These amendments are necessary to clarify terms used by the Board in its regulations. 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.

### **Authority and Reference**

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**

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 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, Board 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 readopt those Board approved regulations while Board staff conduct the regular rulemaking process to make the regulations permanent.

On May 31, 2024, the Board began the regular rulemaking process by posting on its webpage and in the California Regulatory Notice Register a notice of proposed rulemaking action to make these regulations permanent. Currently the public comment period is underway.

## **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.

### **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.

### **Discussion of Regulations Affected**

The section of the regulations proposed for re-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 “noncompliance”, 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.

### **Fiscal Impacts/Cost Estimates**

#### **Fiscal Impact**

The Program is funded through administrative fees assessed on the assets invested in the Program. As established under Government 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: 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

#### **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 and Title 21 of the Government Code 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.

#### **Local Mandate**

The proposed regulations do not impose any mandate on local agencies or school districts. There are no “state mandated local costs” in these regulations that require reimbursement under Government Code, Title 2, Division 4, Part 7.

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

Based on the cost impacts 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.

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

None for this rulemaking.