

FINDING OF EMERGENCY

CalSavers Retirement Savings Board
CalSavers Retirement Savings Program
Amendment to Sections 10000, 10001, 10002, 10005, & 10006 and
California Code of Regulations Title 10, Chapter 15

The CalSavers Retirement Savings Board (Board) intends to readopt amendments to Sections 10000, 10001, 10002, 10005, and 10006 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(a)(2) requires that at least five working days prior to the submission of the proposed emergency action to the Office of Administrative Law, 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 Office of Administrative Law (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

This emergency regulations amendment and addition are necessary to implement, interpret and make specific Title 21 of the Government Code. Specifically, this regulations amendment and addition are necessary to readopt amendments to Sections 10000, 10001, 10002, 10005, and 10006 of the regulations. These amendments are necessary to conform regulations with changes made to statute through passage of Senate Bill (SB) 1126 (Cortese) in 2022, as well as some additional amendments to correct typographical errors and update obsolete language.

AUTHORITY AND REFERENCE

Authority: Section 100048 of Government Code provides the CalSavers Retirement Savings Board ("Board") the authority to adopt regulations to implement Title 21 of the Government Code and deems the adoption, amendment, repeal, or readoption of a regulation authorized by the section to address an emergency for purposes of Sections 11346.1 and 11349.6 of the Government Code, and thereby exempts the Board from the requirements of subdivision (b) of Section 11346.1.

Reference: Sections 100000, 100002, 100004, 100008, 100012, 100014, 100032, 100033, 100034, 100043, and 100046, California Government 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) and required the Board to conduct a market analysis to determine whether the necessary conditions for implementing the California Secure Choice Retirement Savings Program (subsequently changed to the “CalSavers Retirement Savings Program” through AB 1817 in 2018) could be met. The legislation required the Board to determine, based on the market analysis, if necessary conditions 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.

On October 31, 2019, the Office of Administrative Law approved permanent regulations for the Program that implement, interpret, and make specific the rules, policies, and procedures for the Program. Specifically, these regulations accomplish the following:

- a. Define terms used in the regulations and further clarify the meaning of definitions in statute;
- b. Define employer eligibility for the Program and establish the means by which the Program shall determine such eligibility;
- c. Establish the deadlines and processes by which eligible employers shall register for the Program;
- d. Define the duties for participating employers and the processes by which participating employers shall comply with the requirements of the Program;
- e. Establish processes for the enrollment of eligible employees into the Program;
- f. Define the default account settings for participants whom do not make an alternative election;
- g. Define the alternative elections available to participants;
- h. Establish the policies for the participation of individuals in the Program outside of an employment relationship with an Eligible Employer;
- i. Define the processes and policies for contributions, distributions, and transfer of savings; and
- j. Define how enforcement of employer compliance shall be conducted.

Due to the COVID-19 pandemic, the Board extended the first employer registration deadline from June 30, 2020, to September 30, 2020, in April 2020 through the emergency rulemaking process. On June 29, 2020, Governor Newsom signed AB 102, which made a variety of amendments to the Program’s governing statutes. The amendments included a change to the name of the Program’s governing board and the Program trust. Nonsubstantive changes to existing regulations were filed with the OAL on July 7, 2020, to change the Board and trust name, pursuant to Section 100 of Title 1 of the California Code of Regulations (CCR).

On July 27, 2020, the Board approved a variety of regulations amendments. The amendments added a new default investment fund for participants born January 1, 2003, to December 31, 2007, a change that was necessary to make before December 31, 2020; removed a feature in which eligible employees who previously opted out are subjected again to automatic enrollment; clarified the tax-qualified retirement plans that, if offered by an employer, would render them exempt; and made a variety of technical amendments that improve the clarity of the regulations.

At the October 19, 2020, Board meeting, the Board voted to authorize the executive director to develop amendments necessary to change the default investment option to one in which Contributions are directed to the Capital Preservation Fund (referred to as the Money Market Fund) for the first 30 days of employee participation and, on the 31st day, have all funds directed into a Target Retirement Fund selected based on the Participating Employee's age. At the meeting, the executive director also informed the Board it would consider a package of regulations amendments, including the enforcement of employer compliance and reduction of the minimum contribution amount for non-payroll contributions at the subsequent meeting.

At the December 7, 2020, Board meeting, the Board voted to approve regulations amendments to change the default investment option as described above, clarify processes for enforcing employer compliance, reduce the minimum contribution amounts for non-payroll contributions, clarify the frequency for recurring non-payroll contributions, and clarify that rollovers and transfers into a CalSavers account, and amend the definition of a Tax-Qualified Plan.

The Board released a notice of proposed rulemaking March 19, 2021, to make permanent the three emergency rulemakings approved by the Board in 2020. The rulemaking was approved by the Office of Administrative Law January 13, 2022.

At the December 13, 2021, meeting, the Board approved a new set of regulations amendments to allow employers to register earlier than currently allowed in regulations, to specify the date by which newly eligible employers must register for the Program to maintain compliance, to correct a typographical error, to simplify the employer registration process, and to update language to account for longer delivery times by the United States Postal Service. The emergency rulemaking to make the amendments was notified on March 1, 2022. The OAL approved the emergency regulations amendments on March 18, 2022. The certificate of compliance for the rulemaking was posted in the notice register on November 11, 2022 and staff anticipate completing the rulemaking in early 2023.

On August 26, 2022, Governor Gavin Newsom signed SB 1126 into law, changing the CalSavers Program eligibility to include businesses with as few as one employee. This bill also made other changes to eligibility, including a carve-out for sole proprietors and establishing a new deadline for those newly eligible employers to register for the Program.

On November 21, 2022, the Board approved a set of regulations amendments to bring the CalSavers Program in line with newly established California law that was then submitted to OAL and approved through the emergency regulations process on December 21, 2022. On March 13, 2023, staff began the regular rulemaking process to make permanent the emergency regulations. The public comment period closed on May 8, 2023, with no public comments submitted. Staff is in the process of submitting the final regulations package to OAL. On May 22, 2023, the Board authorized staff to readopt the regulations amendments to ensure the emergency regulations do not lapse before the regular rulemaking process has been completed.

The Board is authorized under Government Code Section 100048 to adopt regulations it deems necessary to implement the Program consistent with the Internal Revenue Code and regulations issued pursuant to that code to ensure that the Program meets all criteria for federal tax-exempt benefits. Government Code Section 100048 deems the adoption, amendment, repeal, or readoption of such regulations to address an emergency for purposes of Government Code Sections 11346.1 and 11349.6 and thereby exempts the Board from the requirements of Government Code Section 11346.1(b).

AN EVALUATION OF WHETHER OR NOT THE PROPOSED REGULATIONS ARE
INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

The Board evaluated whether or not there are any other regulations that may be adversely impacted by readoption of these proposed regulations. Because these regulations are solely for the purpose of operating the CalSavers Retirement Savings Program, and no other regulations exist in the CCR pertaining to the operation of the CalSavers Retirement Savings Program, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

COST ESTIMATE

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:

- Costs or savings to any state agency: no impact
- Cost to any local agency or school district requiring reimbursement: 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

There are no direct cost affects that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. However, there will be some indirect opportunity costs for employers necessary to comply with the Program. These regulations amendments do not substantially alter the cost impacts on a representative person or business.

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 governing statute and regulations may have some indirect impacts for small businesses.

ALTERNATIVES INFORMATION

The Board considered the following alternatives:

Alternative 1: Establish a later employer registration date than the December 31, 2025, deadline established in the bill, as allowed by the Board's regulatory power.

SB 1126 established a December 31, 2025, registration deadline for employers with one or more employees. Section 100032(f) of the enabling statute allows the Board to extend the employer registration deadlines. The Board declined this alternative because the deadline established by the bill allowed more than enough time for newly mandated employers to become compliant, based on previous employer registration deadlines for the CalSavers Program.

Alternative 2: Maintain the language in sections 10002, 10005, and 10006 that included outdated references to the April 8, 2021, date upon which the change to the default investment option and minimum contribution amount for non-recurring non-payroll contributions occurred.

The Board declined this alternative because maintaining the language could be confusing to anyone reading the regulations in the future, since the time frame has passed.

LOCAL MANDATE STATEMENT

The proposed regulations do not impose any mandate on local agencies. There are no “state-mandated local costs” in these regulations that require state reimbursement under Part 7 (commencing with Section 17500) of the Government Code.

FISCAL IMPACT

These regulations do not impose a mandate upon local agencies or school districts. There are no “state-mandated local costs” established in these regulations that require state reimbursement under Part 7 (commencing with Section 17500) of the Government Code.

The operation of the Program in general may result in a reduction in sales and use tax revenue due to new savings (and, presumably, foregone spending) by individuals throughout the state. These impacts are detailed further in the SRIA completed for the Program’s first regular rulemaking and a [SRIA completed for a subsequent rulemaking in 2022](#).

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.

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 substantially alter the cost impacts on a representative person or business. As a result of these regulations amendments, it is not anticipated new businesses will not be created and current businesses will not be eliminated within the state. Additionally, neither benefits nor detriments are expected to worker safety or the state’s environment due to these regulations amendments.

STATEMENT OF NECESSITY

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

Section 10000, Definitions – subdivision (m)

This section of regulations is necessary to define what an “Eligible Employer” is for Program participation and enforcement purposes.

This amendment is necessary to change the definition of “Eligible Employer” to make regulations consistent with a changed California statute, which was amended through Senate Bill 1126.

SB 1126 amended Government Code Section 100000(d)(1), the definition of an eligible employer, from essentially any employer that does not sponsor a retirement plan and has at least five employees to any employer that does not sponsor a retirement plan and has at least one employee. The amendment included an exception for employers for whom the only employee is the business owner. Changes to this section purely make the regulations consistent with the

amended statute by updating the definition of “Eligible Employer” to include employers with one or more employees, rather than five or more employees. Without the amendment, the regulations would be inconsistent with the changed statute and the Board had no discretion to adopt a change which differs from the one chosen. The proposed amendment would edit only one word in the existing regulations, changing “five” to “one,” to make the definition consistent with the changed statute.

Section 10000, Definitions – subdivision (q)

This section of regulations is necessary to define what an “Exempt Employer” is for Program participation and enforcement purposes.

This amendment is necessary to change the definition of an “Exempt Employer” to make regulations consistent with a changed California statute, which was amended through Senate Bill 1126. Without the amendment, the regulations would be inconsistent with the changed statute and the Board had no discretion to adopt a change which differs from the one chosen.

SB 1126 changed the definition of eligible employer to be one that has at least one employee, rather than one that has at least five employees. This amendment makes corresponding amendments to the definition of an “Exempt Employer,” by reducing the number of employees that would render an employer exempt from fewer than five to fewer than one. The Section was also amended to be consistent with statutory amendments made to Section 100000(d)(1) through SB 1126, which exclude businesses for whom the only employee is the owner of the business.

Section 10001, Eligible Employers – subdivision (b)

This section of regulations is necessary to identify the conditions under which an Employer shall cease to be an Eligible Employer.

This amendment is necessary to make regulations consistent with a changed California statute, which was amended through Senate Bill 1126. Without the amendment, the regulations would be inconsistent with the changed statute and the Board had no discretion to adopt a change which differs from the one chosen.

The existing regulation is based on statute prior to passage of SB 1126, which excluded employers with fewer than five employees from the definition of an “Eligible Employer.” Because SB 1126 reduced the threshold number of employees used to determine employer eligibility, a corresponding edit to this section is necessary to make the regulations consistent with statute. Because statute will define “Eligible Employers” in part on them having at least one employee, we must amend this regulation to instead refer to situations in which employers begin to employ fewer than one employee as instances in which they become exempt.

Section 10002, Employer Registration – subdivision (a)

This section of regulations is necessary to identify the deadlines by which Eligible Employers must register for the Program.

The amendments to subsections (1)-(3) are necessary to correct a typographical error. The use of the term “employee” in the existing regulations should have been capitalized, in order to make it clear that the regulations referred to the definition of “Employee” established in Section 10000(n).

The amendment to include a subsection (4) is necessary to conform the regulations with a change in statute. This addition is necessary for the sake of clarity to the regulated community and simply repeats the December 31, 2025, registration deadline established in statute.

Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (a)(4)

This section of regulations is necessary to outline the way in which contributions made into the default investment option will occur if a participant chooses not make their own election.

This amendment is necessary to remove language that became obsolete after passage of the date specified in the regulations, April 8, 2021. The amendment would also make necessary edits to consolidate language between two subsections that were necessarily separated before the April 8, 2021, event occurred.

The amendment deletes the language in subsection (A), which referred to the default investment option established prior to April 8, 2021, and makes necessary conforming edits to add in the specific language included in subsection (A) that had been referred to in subsection (B): “reported on the Program’s records and an assumed retirement at age 65”

Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (b)(4)

This section of regulations is necessary to establish the minimum contribution amount and methods of contributions allowed for non-recurring non-payroll contributions made by Eligible Employees.

This amendment is necessary to remove language that become obsolete after passage of the date specified in the regulations, April 8, 2021. The amendment makes necessary edits to consolidate language between two subsections that were necessarily separated before the April 8, 2021, event occurred.

Section 10006, Individual Participation – subdivision (c)

This section of regulations is necessary to establish the minimum contribution amount and methods of contributions for non-recurring non-payroll contributions made by individual participants

These amendments are necessary to remove language that has become obsolete due to passage of the date specified in the regulations.

The proposed amendments would make necessary edits to consolidate language between two subsections that were necessarily separated before the April 8, 2021, event occurred.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT ON WHICH THE AGENCY RELIES

The Board considered the findings from studies and reports to make decisions about the content of the proposed regulations, included below:

None for this rulemaking.