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SEPTEMBER 25, 2017

AGENDA ITEM 3  
INFORMATION ITEM

CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD

*Summary of Input to-date from Informal Stakeholder Working Groups*

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To better inform the California Secure Choice Retirement Savings Investment Board (“Board”) and staff in developing and implementing the California Secure Choice Retirement Savings Program (“Secure Choice” or “the Program”), Secure Choice staff convened two informal stakeholder working groups composed of employer and employee stakeholder organizations to solicit input from their respective constituencies. Working group members were selected to represent the diverse array of employees and employers throughout the state. This item is the second report to the Board on the working group meetings.

To date, there have been seven total meetings of the two stakeholder groups, four with the employee group, two with the employer group, and one meeting with both groups. These meetings have been focused on design, eligibility, and process features of the Program, which will ultimately inform the development of proposed regulations.

After obtaining high-level direction and feedback from the Board during the October and November meetings, staff will hold at least one interested persons meeting for additional public input on regulations and plan design in early-December. Staff will consider the input of the working groups along with input from the interested parties meeting(s), other state agencies, the program consultant, industry, legal counsel, and academic experts in developing draft regulations to be presented for the Board’s consideration at the December 19, 2017 Board meeting. Formal public comment periods will be held once regulations are filed with the Office of Administrative Law, estimated to be in early-2018.

Attached to this item is a document that summarizes the input to date from both working groups on significant regulatory topics. Feedback that represents consensus views is noted under each topic. Inclusion of some items does not necessarily reflect consensus among members of each working group, and these perspectives do not necessarily reflect staff recommendations currently in development, but are included to provide the Board the full set of perspectives of working group members.

The information received thus far has been invaluable as the Board, staff, and consultants begin to develop and implement the Program. Secure Choice staff would like to sincerely thank the participants of these groups for sharing their time and expertise and we look forward to continuing the open dialogue with the stakeholder community.

***Attachment:***

Attachment #1 – Summary of Informal Working Group Feedback to Date

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## **Define Eligible Employees**

### **General Consensus Among Employer and Employee Working Groups:**

- Utilize any existing definitions, practices, and reporting to determine eligible employees. Some members recommended defining eligible employees as any who receive a W-2 with wages subject to California Unemployment Insurance, and reportable as employees to the EDD such as the DE 9C quarterly tax reports—practices similar to the Oregon program. This would simplify the employer’s administrative duties as well as provide a clean and clear definition as to who is an eligible employee.
- Eligibility should be limited to those 18 and over to remove any issues regarding minors holding accounts, guardianship, etc. There were some opinions expressed on offering the program to all employees regardless of age, however they recognize that this could cause legal or other requirements, but requested the Board explore ways to include all employees, regardless of age, as the program matures.
- Business owners should be eligible to participate if they are also an employee as prescribed above.
- Use either a Social Security Number or Individual Tax Identification Number (ITIN) to verify a participant identity.

### **Other Recommendations**

- While initial eligibility should be limited as prescribed above, the Board should explore ways to include as many types of workers as is legal and practical, perhaps through voluntary participation for individuals not employed by participating employers, contractors, etc. (Employee group, or “EE”)
- In-Home Supportive Service (IHSS) workers and child care workers should be allowed to participate. (EE)
- Some undocumented individuals may use a Social Security Number that does not belong to them. The program should consider methods of identity verification that avoids “outing” undocumented workers to their employers. (EE)

### **Open Questions / Issues**

- While seasonal and part-time workers are included in the definition of Employee as prescribed above while they are working, the request was made to explore establishing a minimum number of hours across a time period to be eligible to participate, aggregated across multiple employers. Concerns were expressed that this would require additional reporting by employers

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and could create administrative burden for the employers and the program. The employee group recommended that there should be no limitation based on hours worked and important to recognize could hinder persons who work multiple jobs.  
(ER)

- Would allowing for voluntary participation expose the employer or the program to ERISA issues or any practical complications?

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## **Define Eligible Employers**

### **General Consensus Among Employer and Employee Working Groups:**

- Similar to the consensus above for the determination of eligible employee, the program should utilize any existing definitions, reporting, counts, mechanisms, etc. to determine employee count for determining when/if an employer is mandated to participate in the program. (i.e. DE 9C quarterly tax reports)
- Once an employer is participating in the program, they should be allowed to continue participation even if their workforce drops below five employees, at least for the remainder of that calendar year.
- An employer is exempt from the mandate if they offer a “qualified” retirement plan.
- Employees of an employer currently providing a qualified plan should not be allowed to participate in Secure Choice in lieu of participating in their employer plan.
- If an employer adopts their own qualified plan after mandated participation in Secure Choice, the program should offer options and defaults as to how to handle those accounts such as rolling the funds into the new employer plan or leaving them with Secure Choice with no additional contributions coming in. The employee would retain the right to leave accumulated funds with Secure Choice or rollover to another retirement vehicle at any time.
- Once exemption from the mandate is determined, it remains in effect for a period of time (i.e. one year) unless the employer elects to participate sooner (assuming they are subject to the mandate with their current employee count).
  - Some employee working group members expressed a preference for a one-year exemption period, whereas some members of the employer working group recommended a three-year exemption period. Working group members also recommended this process coincide with other open enrollment periods, such as open enrollment periods for the purchase of health insurance.

### **Other Recommendations**

- When establishing the employee count for the purposes of the mandate, consider using an average or rolling count as opposed to a point-in-time number (i.e. the employee count for the quarter ending September 30). (ER)
- Explore means of allowing voluntary participation by employers not subject to the mandate.

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**Accessibility – Employee Stakeholder Group**

As this topic has only been addressed by the employee stakeholder group there is no general consensus to report across the groups as the employer group has not addressed the same topic as of yet. The following information represents comments received from the Employee group among whom there is general agreement on the issues at hand.

**General Consensus Among Employee Working Group:**

- Access to information about Secure Choice accounts should be easy, intuitive and provide different options for employees: mobile, paper statements and materials, online, a 1-800 number and live operator. Program information should be readily available in multiple language, be culturally competent, and be accessible to the needs of the disabled.
- Print information should be available in multiple sizes, designs, etc. (posters, door hangers, wallet sized guides, bookmarks, etc.)
- Secure Choice should have a goal to minimize perceived barriers to funds, and participants should have easy ability to rollover or distribute funds with no additional restrictions similar to other retirement plan arrangements.
- Participants should be able to access accounts while outside of the country.
- Facilitate outreach and ongoing information sharing through County Offices, community-based organizations, representative groups, etc.
- Include employee representative groups involved in outreach and communication and facilitate means of ongoing feedback on customer support mechanisms.

**Open Questions / Issues**

- How will beneficiaries be notified in the event they receive control of a participant's account holdings?
- Would face-to-face customer service be financially and practically feasible, similar to navigators used in the rollout of the Affordable Care Act? How could the program best facilitate face-to-face outreach and education?

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**Confidentiality / Privacy – Employee Stakeholder Group**

As this topic has only been addressed by the employee stakeholder group there is no general consensus to report across the groups as the employer group has not addressed the same topic as of yet. The following information represents comments received from the Employee group among whom there is general agreement on the issues at hand.

**General Consensus Among Employee Working Group:**

- The program should provide participants disclosures and information on the privacy policies of the program, including what information is being collected and how it is used.
- Privacy policies should be stated simply and concisely, in multiple languages, accessible by persons with disabilities, and available through multiple modes of communication including online and in hard copies.
- The program should prohibit any unnecessary sharing of information, including a prohibition on optional information sharing solicited by the third-party administrator to participants.
- The program must be sensitive about how it communicates with participants about their rights to privacy and confidentiality and the program's protection of those rights.
- The program should prohibit any waiving of rights and responsibilities.

**Other Recommendations**

- The program should emphasize data security in the procurement of third-party administrator.
- Consider requiring security features including fraud alerts and two-step authentication in order for participants to access online accounts.
- The program should seek safeguards against federal subpoena of personal information of participants to the extent possible under federal law.

**Open Questions / Issues**

- Consider potential dangers of fraud and identity theft related to hard copy account statements.
- What are existing practices for administrators regarding social security numbers that do not match the participant?

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- What local, state, and federal benefit programs exclude IRA savings from asset tests? What benefit programs, if any, do include IRA savings in asset tests?
- How can the program best advise employees about potential impacts on public benefit eligibility due to accumulation of retirement savings?
- Could participants' Secure Choice accounts be subject to garnishment and/or levies? What kind of access could law enforcement have to the accounts?
- What impact, if any, could 'know your customer' laws and regulations have on the privacy and confidentiality of undocumented participants?



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**Consumer Protections – Employee Stakeholder Group**

As this topic has only been addressed by the employee stakeholder group there is no general consensus to report across the groups as the employer group has not addressed the same topic as of yet. The following information represents comments received from the Employee group among whom there is general agreement on the issues at hand.

**General Consensus Among Employee Working Group:**

- The program should provide clear and linguistically appropriate disclosures to participants about how their money is invested, how much the participant has accumulated in retirement savings, and all fees applied to their account.
- The program should provide consumer education on the penalties, taxes, and impacts on long-term retirement savings associated with early withdrawals.
- All consumer education materials should be provided online—through a website, direct email, applications, etc.—and distributed through hard copies.
- Fee disclosure should be represented in both percentages and actual dollar amounts.
- The program should provide participants realistic illustrations of how much in savings they are expected to accumulate and what their current retirement savings would produce if converted to lifetime streams of income at retirement age through tools such as a retirement calculator.
- The program should prohibit the use of Secure Choice accounts as collateral for loans to the extent possible under state and federal law.
- Any firms responsible for investments and communication with Secure Choice participants should be held to a fiduciary standard.

**Other Recommendations**

- The program should provide consumer education on wage theft. The program should consider collaborating with California municipalities that have established offices of wage standards and coordinate with state and federal agencies that regulate wage and other relevant labor issues.
- The program should require any program administrator and/or investment manager to disclose any conflicts of interest.

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- The program should require any investment manager to disclose 1) full disclosure of investment and administrative fees and 2) regular disclosures of account balances and investment options.
- The program should prohibit forced arbitration provisions by any program administrator to the extent allowed by federal and state law.
- The program should protect participants from judgment creditors to the extent allowed by state and federal law.
- Determine if there is any mechanism to protect against coercion by payday lenders to use Secure Choice accounts as collateral.
- Advise participants about the dangers of receiving retirement account distributions in forms other than electronic wire transfer. What other payout options are safe, practical, and feasible?
- The program should advise participants of power of attorney that goes into effect if one is incapacitated, known as springing power of attorney. How can the program best prevent exploitation of mentally incapacitated participants?
- Consider the costs, feasibility, and practicality of the state providing advice and disclosures regarding consumer protections, rather than the third-party administrator.
- Determine processes for dispute resolution. Consider establishing an ombudsman for the program. Determine who would have authority to respond to complaints and appeals.
- Consider means of detecting financial abuse, including exploitation of family members. What role could the third-party administrator have in prevention?
- Determine how the program can best ensure employer compliance with the program.
- The program should educate participants about how savings could or could not be considered in asset tests to determine eligibility for public benefits.

**Open Questions / Issues**

- What is oversight structure for the program?
- What creditor financial protections already exist in state law?
- Could the program limit how participants can rollover their Secure Choice account balances?

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- What prohibition on forced arbitration is possible given state and federal laws? Do any other state savings programs limit forced arbitration? What impact could prohibition have on limiting vendor participation?
- What are state and federal laws that can be applied to protect participants from judgment creditors?
- What happens to funds in the event of a bankruptcy?

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## **Enrollment**

### **General Consensus**

- Minimize employer role to the extent possible.
- The employer's role should be limited to notifying employees that the program exists and provide them with informational and disclosure materials that include instructions how to access information about the program online, via telephone, and via email.
- Remove the employer from any and all transactions, including initial enrollment and/or acknowledgement and have all processes handled by the Third-Party Administrator (TPA).

### **Other Recommendations**

- Individuals should be enrolled into the program automatically unless they affirmatively choose to opt-out of participation.
- Individuals who do not acknowledge they have read and understood disclosure material should not be enrolled. (ER)
- The program should handle employees requesting participation after initial start date either through an open enrollment period (concurrent with other open enrollment periods for other benefits..) or possibly at the start of the subsequent quarter, similar to contribution changes. (ER)
- Frequency of enrollment and disenrollment decisions should be limited to avoid potential administrative burden for employers. (ER)
- Changes to employee contributions or discontinuing program participation may be made through the TPA at any time, but should not be required to be reflected by the employer until an appropriate time period, such as the beginning of the next quarter. (EE)
- New employees would be allowed to start contributing during their first pay period through automatic enrollment unless they choose to opt out of the program. (EE)
- Employees should have the option to acknowledge receipt of disclosure material online via an e-signature or other method of acknowledgement and also have the option to submit a hard copy submitted via mail. (EE)
- Consider how to best provide easy enrollment for non-office-based employment environments. (EE)

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**Default Contributions and Automatic Escalation**

**General Consensus**

- The majority of participants were comfortable with a default contribution of 5% of compensation. Some members indicated a preference for 3%.
- The program should include automatic escalation.

**Other Recommendations**

- Suggest escalations occur on January 1 as opposed to individual employee anniversary of program participation. (EE)
- Participants should receive advance notice of the rate change through various modes of communication. As recommended in other areas, the material should be concise, clear, and in a variety of languages. (EE)
- Participation in automatic escalation should be on an 'opt-out' basis in which participants will automatically participate unless otherwise noted. (EE)
- Participation in automatic escalation should be on an 'opt-in' basis in which participants must assertively select their desire to participate. (EE)
- Contributions should automatically escalate by 1% each year. (EE)
- Contributions should automatically escalate by 0.25% or 0.50% each year. (EE)

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**Default IRA type – Employee Working Group**

**General Consensus Among Working Groups**

- The default IRA should be a Roth IRA.
- The program should offer both Roth and Traditional IRAs to participants.

**Other Recommendations**

- Including traditional IRAs could be administratively burdensome for employers and the program. (ER)

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<b>Employee Stakeholder Group Participants</b>	<b>Employer Stakeholder Group Participants</b>
AARP	California Association for Micro Enterprise Opportunity
California Asset Building Coalition / Western Center on Law & Poverty	California Association of Nonprofits
California Immigrant Policy Center	California Chamber of Commerce
California Labor Federation	California Farm Bureau Federation
California Retirement Security For All / SEIU State Council	California Manufacturers & Technology Association
California Rural Legal Assistance Foundation	California Restaurant Association
EARN	California Small Business Development Center
PolicyLink	California Society Of Certified Public Accountants
Restaurant Opportunities Center United	National Federation of Independent Business
San Francisco Office of Financial Empowerment	National Payroll Reporting Consortium / ADP
UnidosUS (formerly National Council of La Raza)	Small Business California
Young Invincibles	Small Business Majority