

Note: These regulations are new to the CCR.

California Code of Regulations

Title 10: Investments

Division 1: California Secure Choice Retirement Savings Investment Board

Chapter 15: California Secure Choice Retirement Savings Trust

Section 10000. Existing Definitions

All meanings of the words or terms defined in California Civil Code Sections 1798 et seq.; California Government Code Sections 7290 et seq.; California Government Code Sections 100000-100050; California Unemployment Insurance Code Sections 1088.9 and 621; California Welfare and Institutions Code Section 12302.2; and Title 26 of the United States Code (“Internal Revenue Code”) Sections 401(a), 401(k), 403(a), 403(b), 408(a), 408(b), 408(k), 408(p), 408A, and 414(b-c) shall apply wherever the same words or terms are used throughout this Chapter.

NOTE – Authority Cited: California Civil Code Sections 1798 et seq.; California Government Code Sections 7290 et. seq.; California Government Code Sections 100000-100050; California Unemployment Insurance Code Section 621; California Unemployment Insurance Code Section 1088.9; California Welfare and Institutions Code Section 12302.2; Internal Revenue Code Section 401(a); Internal Revenue Code Section 401(k); Internal Revenue Code Section 403(a); Internal Revenue Code Section 403(b); Internal Revenue Code Section 408(a); Internal Revenue Code Section 408(b); Internal Revenue Code Section 408(k); Internal Revenue Code Section 408(p); Internal Revenue Code 408A; and Internal Revenue Code Sections 414(b-c).

Section 10001. Additional Definitions

The following definitions shall also apply wherever the terms are used throughout this Chapter:

- a) “Account” means a Participating Employee’s or Participating Individual’s Individual Retirement Account (“IRA”) held within the Program.
- b) “Acknowledgement Form” means the section of the Disclosure Form through which Eligible Employees and individuals may acknowledge they read all of the disclosures and understand their content.
- c) “Administrator” means the Program’s third-party administrator selected by the Board to operate the Program.
- d) “Automatic Escalation” means an automatic annual increase in a Participating Employee’s Contribution Rate as set forth in Section 10008 of these regulations.
- e) “Board” means the California Secure Choice Retirement Savings Investment Board.

- f) "Client Employer" means an Employer that is involved in a Tri-Party Employment Relationship due to obtaining the services of a third-party entity.
- g) "Compensation" means a Participating Employee's wages from his or her Covered Employer reportable as compensation on an Internal Revenue Service form W-2 ("W-2").
- h) "Contribution" means any monies contributed to an Account.
- i) "Contribution Rate" means the percentage or amount of a Participating Employee's Compensation to be withheld and contributed to his or her Account via payroll deduction under the Program.
- j) "Covered Employer" means an Employer that has five or more Employees; that does not maintain a Tax-Qualified Retirement Plan for at least one Employee; and that is not the federal government or any state, county, municipal corporation, foreign government, or other government entity, unit, or instrumentality.
- k) "Disclosure Form" means the form, to be provided as part of the Employee Information Packet to all Eligible Employees, further defined under Section 10005 of these regulations.
- l) "Eligible Employee" means any Employee of a Covered Employer who: is at least eighteen years of age; has the status of an employee under Unemployment Insurance Code Sections 621 et seq; and who receives a W-2 with California wages.
- m) "Employee" means any individual who is an employee under the usual common law rules applicable in determining the employer-employee relationship.
- n) "Employee Information Packet" means the packet of information provided by the Program that includes the Disclosure Form and the Opt-Out Form and other forms and information determined to be appropriate by the Program, further specified in Section 10005 of these regulations.
- o) "Employer" means a sole proprietor, partnership, corporation, or other entity, whether for profit or not for profit, that is an employer under common law rules.
- p) "Enrollment Date" means the date by which a Participating Employer shall offer Eligible Employees the opportunity to enroll in the Program. The Enrollment Date shall be either:
 - a. The date 30 days following the date the Covered Employer becomes a Participating Employer; or
 - b. For Employees hired by a Participating Employer after it begins participating in the Program, or an employee who becomes eligible after an Employer begins to participate in the Program, the date 30 days following their hire date or date of eligibility.

- q) “Exempt Employer” means an Employer that either (i) has fewer than five Employees; or (ii) that provides or contributes to a Tax-Qualified Retirement Plan; or (iii) is the federal government, the state, any county, any municipal corporation, or any of the state’s units or instrumentalities.
- r) “Implementation Date” means the date established by the Board, as reported to the Governor and Legislature under Government Code Section 100043(b)(1), that is the first date on which a Covered Employer may register for the Program.
- s) “IRA” means either a Roth IRA or a Traditional IRA.
- t) “Opt-Out Form” means the form, through which Eligible Employees can note their decision to opt out of participation in the Program.
- u) “Participating Employee” means an Eligible Employee who is enrolled in the Program.
- v) “Participating Employer” means a Covered Employer that registers with the Program to provide its Eligible Employees access to the Program.
- w) “Participating Individual” means an individual who is enrolled in the Program independent of an employment relationship, as further defined in Section 10008.
- x) “Program” means the California Secure Choice Retirement Savings Program.
- y) “Roth IRA” means an IRA established under Internal Revenue Code Section 408A.
- z) “Tax-Qualified Retirement Plan” means a retirement plan that qualifies for favorable federal income tax treatment under Internal Revenue Code Section 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p), including a multiemployer plan, Simplified Employee Pension, Savings Incentive Match Plan for Employees IRA, and an employer-provided automatic enrollment payroll deduction IRA.
- aa) “Traditional IRA” means an IRA established under Internal Revenue Code Section 408.
- bb) “Tri-party Employment Relationship” generally means relationships in which a Client Employer enters into a service contract with a third-party entity for services including, but not limited to, payroll, staffing (both temporary and non-temporary), and employer compliance with laws and regulations.

Section 10002. Administration

The Board intends that, consistent with California Civil Code Section 1798 et seq.; California Government Code Sections 7290 et seq.; California Government Code Sections 100000-100050; California Welfare and Institutions Code Section 12302.2; and California Unemployment Insurance Code Section 1088.9; the Program be operated, and these regulations be construed, in a manner consistent with applicable regulations and guidance provided by the U.S.

Department of Labor relating to payroll deduction IRA programs that are not pension plans under Title I of the Employee Retirement Income Security Act.

Section 10003. Employer Eligibility Determination

- (a) An Employer shall be eligible for the Program if:
 - (1) The Employer employs at least five Employees;
 - (2) The Employer does not provide, offer, or contribute to a Tax-Qualified Retirement Plan; or
 - (3) The Employer is not the federal government; the state; any county; any municipal corporation; or any of the state's units or instrumentalities.
- (b) The number of Employees for purposes of determining whether an Employer is a Covered Employer and to determine the date by which a Covered Employer must register with Program under Section 10004(b) of these regulations, shall be calculated based on the average number of Employees as reported on the Employment Development Department Form DE 9C for the quarter ending December 31 and the previous three quarters of available data.
 - (1) The Employer may, in its discretion, use another fixed date within each calendar quarter to calculate the average number of Employees if it reasonably determines that such dates are representative of its employment and applies such methodology consistently.
 - (2) A Covered Employer shall not be deemed exempt if the number of Employees drops below five for a period during the calendar year, but shall be exempt if its average number of Employees drops below five after a 12 month period.
- (c) For purposes of determining the number of Employees and whether an Employer provides, offers, or contributes to a Tax-Qualified Retirement Plan all entities in the Employer's "controlled group of corporations" or under "common control" under Internal Revenue Code Sections 414(b) and (c) shall be considered to be a single Employer.
- (d) An Employer shall cease to be a Covered Employer and Participating Employer as of the effective date of its adoption of or participation in a Tax-Qualified Retirement Plan.
- (e) Each Employer that ceases to be a Covered Employer shall promptly notify the Program under the procedures established by the Program.
- (f) By the Implementation Date, and annually thereafter, the Program will annually notify Employers which, based on available information, appear to be Covered Employers and provide Employers with methods—including electronically, via mail, or by phone—through which Covered Employers shall certify their eligibility for the Program and Exempt Employers may certify their exemption from the Program.
 - (1) Participating Employers shall not be required to annually certify eligibility.
- (g) For Employers in a Tri-Party Employment Relationship, the Covered Employer shall be either:
 - (1) In a joint employment relationship in which an individual is on the payroll of one entity ("Employer Organization") and provides services to a second organization ("Client Employer"), the Client Employer (and not the Employer Organization) generally shall be considered the Employer and shall be a Covered Employer if it satisfies the other requirements of these regulations.

- (2) In a leased employment relationship in which an individual is on the payroll of one entity (“Leasing Organization”) and provides services to a second organization (“Lessee Organization”) but is considered solely the Employee of the Leasing Organization, then the Leasing Organization shall be considered the Employer and shall be a Covered Employer if it satisfies the other requirements of these regulations.

Note – Authority Cited: California Government Code Section 100000; California Government Code Section 100010; California Government Code Section 100012; California Government Code Section 100032; California Government Code Section 100043; California Government Code Section 100048; and Internal Revenue Code Sections 414(b-c).

Section 10004. Employer Registration

- (a) Any Covered Employer may register with the Program at any time on or after the Implementation Date and shall register no later than the date specified in paragraph (b) below. However, if a Covered Employer registers before the deadline specified in paragraph (b) below, the Program may delay the enrollment of such Covered Employer’s Eligible Employees for the purposes of testing the Program platform among a limited set of Participating Employers, if it determines such a delay to be in the best interests of Program administration.
- (b) Each Covered Employer shall register with the Program no later than:
 - (1) For Covered Employers employing 100 or more Employees, the date 12 months following the Implementation Date.
 - (2) For Covered Employers employing 50 or more Employees, the date 24 months following the Implementation Date.
 - (3) For Covered Employers employing 5 or more Employees, the date 36 months following the Implementation Date.
- (c) An Employer’s number of Employees for the purposes of this Section shall be determined under the methodology of Section 10003(b) of these regulations.
- (d) An Employer that becomes a Covered Employer after the Implementation Date shall register with the Program within 24 months after the later of the date it becomes a Covered Employer or the date specified in paragraph (b) above.
- (e) A Covered Employer may register with the Program using the Program’s internet portal or by non-electronic means. The procedures for registration shall be established by the Program and implemented by the Administrator.
- (f) Upon registration, a Participating Employer shall provide the following information to the Administrator:
 - (1) Employer name and Doing Business As name, if applicable;
 - (2) Federal Employer Identification Number or California State Employer Payroll Tax Account Number;
 - (3) Employer mailing address;
 - (4) Name, title, telephone number, and email address of an individual designated by the Employer as the primary contact for the Program;
- (g) Upon registration, a Covered Employer is a Participating Employer.
- (h) A Covered Employer who lacks access to the internet may request to register with the Program by alternative means established by the Administrator. Such Covered

Employers shall make the request to the Administrator no later than 30 days prior to the date by which they must register with the Program.

- (i) The eligibility of Employers based on their number of Employees shall be evaluated annually as specified in Section 10003 of these regulations.

Note – Authority Cited: California Government Code Section 100002; California Government Code Section 100010; California Government Code Section 100012; California Government Code Section 100014; California Government Code Section 100032; California Government Code Section 100043; California Government Code Section 100048; California Unemployment Insurance Code Section 1088.9.

Section 10005. Employee Information Packet

- (a) The Employee Information Packet shall be prepared by the Program and include the Disclosure Form, Acknowledgement Form, Opt-Out Form, and any other form and such information deemed to be appropriate by the Program.
 - (1) The Disclosure Form shall include appropriate disclosures and background information on the Program as required in Government Code Section 100014.
 - (2) The Acknowledgement Form shall enable an Eligible Employee to acknowledge that he or she has received and read and understands the Disclosure Form.
 - (3) The Enrollment Form shall provide an Eligible Employee the opportunity to choose alternative elections, including Contribution Rate, type of IRA, investment allocation, and provide the opportunity to opt out of Automatic Escalation or choose an alternative Automatic Escalation rate.
 - (4) The Opt-Out Form shall provide an Eligible Employee the opportunity to elect not to participate in the Program.
 - (5) The Disclosure Form, Acknowledgement Form, Enrollment Form, and Opt-Out Form, or some combination of the respective forms, may be combined on a single form.
- (b) In accordance with California Government Code Section 7290 et. seq., the Program will furnish information and render services in the languages of the non-English speaking people it will serve.
- (c) The Employee Information Packet shall be provided by the Program to Participating Employers electronically or by supplying Participating Employers the online location where the materials may be downloaded, and shall be provided in hard copy form if requested by an Employer, as specified in Section 10006.

Note – Authority Cited: California Government Code Section 7290 et. seq.; California Government Code Section 100002; California Government Code Section 100010; California Government Code Section 100012; California Government Code Section 100014; California Government Code Section 100032; California Government Code Section 100043; California Government Code Section 100046; California Government Code Section 100048; and California Unemployment Insurance Code Section 1088.9.

Section 10006. Participating Employer Duties

- (a) After a Covered Employer registers with the Program and becomes a Participating Employer, and for each individual who becomes an Eligible Employee after such

registration, the Participating Employer shall provide to the Administrator within thirty days each:

- (1) Eligible Employee's full legal name;
 - (2) Eligible Employee's Social Security Number or Individual Taxpayer Identification Number;
 - (3) Eligible Employee's date of birth;
 - (4) Eligible Employee's mailing address;
 - (5) Eligible Employee's phone number, if available; and
 - (6) Eligible Employee's email address(es), if available;
- (b) Participating Employers shall ensure the Employee Information Packet is distributed to all Eligible Employees within 30 days of the initial date of registration.
- (1) After the date an employer registers with the Program, Participating Employers shall ensure the Employee Information Packet is distributed to all newly-hired or newly-Eligible Employees within 30 days.
 - (2) Participating Employers shall generally deliver the Employee Information Packet electronically, however the Employer may deliver the Employee Information Packet in hard copy form, either by requesting copies from the Administrator or printing their own copies.
 - (A) Covered Employers may request hard copies from the Administrator no later than 30 days prior to the date by which they must distribute the Employee Information Packet.
 - (3) If the Employer chooses to enroll Employees using a paper enrollment Disclosure Form, each remittance of a Contribution shall be deemed a certification that the Employer has obtained a completed Acknowledgement Form, that the Eligible Employee has not indicated on the Opt-Out Form that the employee decided to opt out of participation in the Program, and that the employer is remitting the Contribution at the default rate or at the Contribution Rate elected by the Participant. If the Participant has enrolled in the Program online the Administrator will provide the Employer with the applicable Contribution Rate.
 - (A) Participating Employers may, but shall not be required to, choose to submit completed Acknowledgement Forms and Opt-Out Forms to the Administrator.
- (c) Remit Contributions for each Participating Employee each Compensation period to the Administrator at the default Contribution Rate, or at such other Contribution elected by the Participating Employee, or at a rate increased automatically by Automatic Escalation, as directed by the Administrator.
- (1) Participating Employers shall remit all Compensation withheld to the Administrator within 15 business days after the end of the pay period during which the amounts were withheld.
- (d) Participating Employers shall remain neutral about the Program. Participating Employers shall not:
- (1) Require, endorse, or discourage Eligible Employee participation in the Program.
 - (2) Provide Participating Employees advice or direction on investment choices, Contribution Rates, participation in Automatic Escalation, or any other Participating Employee decision about the Program.

- (3) Remit any Contributions for any Participating Employee that completed an Opt-Out Form or failed to complete an Acknowledgement Form.
- (4) Exercise any authority, control, or responsibility regarding the Program other than as set forth in this Section.
- (e) A Participating Employer is not a fiduciary for the Program, is not a sponsor of the Program, and shall not be liable as a plan sponsor.
 - (1) A Participating Employer shall have no civil liability for acting in accordance with these regulations.

Note – Authority Cited: California Government Code Section 100000; California Government Code Section 100002; California Government Code Section 100008; California Government Code Section 100010; California Government Code Section 100012; California Government Code Section 100014; California Government Code Section 100032; California Government Code Section 100034; California Government Code Section 100043; California Government Code Section 100046; and California Government Code Section 100048.

Section 10007. Employee Enrollment

- (a) The initial Enrollment Date for each Eligible Employee shall be a date that is not more than 30 days after the date a Covered Employer registers with the Program.
- (b) An Eligible Employee shall be enrolled in the Program if he or she completes the Acknowledgement Form and does not opt out of the Program by making a notation on the Opt-Out Form.
- (c) If the Administrator is unable to enroll an Employee due to inability to verify the Employee identity, the Administrator shall notify the Employee directly to notify them that a problem occurred during enrollment and notify the Employer to cease remitting of Contributions for the Employee. Such communications shall be held in the strictest confidence and shall not be used for any purpose outside of the Program.
- (d) The Enrollment Date for newly-hired or newly-eligible Employees will be on or about the date that the Eligible Employee typically completes new hire paperwork, but in no event later than 30 days following the Eligible Employee’s start date or date of eligibility.
- (e) Eligible Employees who initially choose not to participate in the Program may enroll in the Program at any time by completing and delivering the Enrollment Form and Acknowledgement Form in accordance with Sections 10005 and 10009(b) of these regulations.

Note – Authority Cited: California Government Code Section 100002; California Government Code Section 100010; California Government Code Section 100012; California Government Code Section 100014; California Government Code Section 100032; California Government Code Section 100043; California Government Code Section 100046; California Government Code Section 100048; and California Unemployment Insurance Code Section 1088.9.

Section 10008. Individual Participation

- (a) An individual who is a California resident, eighteen years of age, and who is not an Eligible Employee may choose to participate in the Program as a Participating Individual outside of an employment relationship under such terms and procedures as the Program may require.

- (b) Any Contribution made by a Participating Individual must be at least \$10.
- (c) Participating Individuals may not make contributions to the Program through deductions from a non-participating Employer.

Note – Authority Cited: California Government Code Section 100002; California Government Code Section 100010; California Government Code Section 100012; and California Government Code Section 100048.

Section 10009. Default Program options and alternative elections for Contributions, Automatic Escalation, and investment options for Participating Employees

(a) Default Elections

A Participating Employee who has not made an alternative election as specified in this Section shall make Contributions to the Program according to the following default elections:

- (1) At a Contribution Rate of 5%.
- (2) Have Contributions subject to Automatic Escalation whereby the Contribution Rate shall increase by an additional 1% of Compensation on each January 1 following the Participating Employee's initial enrollment up to a maximum Contribution Rate of 8%.
 - (A) Participating Employees who choose an alternative Contribution Rate shall have Contributions subject to Automatic Escalation unless they choose to opt out of Automatic Escalation.
 - (B) A Participating Employee who has not participated in the Program for at least 180 days during the calendar year shall not be subject to Automatic Escalation until the January 1 that occurs after 180 days of participation.
 - 1. It shall be the responsibility of the Administrator to determine if a Participating Employee is subject to Automatic Escalation and to notify the Participating Employee and Participating Employer at least 90 days before the Automatic Escalation is scheduled to take effect.
- (3) Contributions shall be made to a Roth IRA.
- (4) Contributions will be invested in the investment option selected by the Board.

(b) Alternative Elections

- (1) A Participating Employee may select a Contribution Rate other than the default Contribution Rate between 0% and 100% of Compensation, or represented as whole dollar amounts, through a method established by the Administrator.
 - (A) Participating Employees may select an alternative Contribution, including whether or not to participate in Automatic Escalation, as frequently as they choose, however Participating Employers may choose to limit such changes to no more than once every 30 days.
- (2) A Participating Employee may opt out of Automatic Escalation at any time by notifying the Administrator under procedures established by the Administrator.
- (3) A Participating Employee may select an alternative Automatic Escalation amount at any time by notifying the Administrator under procedures established by the Administrator.

- (4) A Participating Employee may choose to make all or some of his or her Contributions to a Traditional IRA.
- (5) Alternative elections shall be implemented as quickly as practicable and no later than the nearest Compensation period 30 days following notification by the Administrator of the alternative election.

Note – Authority Cited: California Government Code Section 100002; California Government Code Section 100010; California Government Code Section 100012; California Government Code Section 100032; California Government Code Section 100034; California Government Code Section 100043; California Government Code Section 100048; and Internal Revenue Code Section 408A.

Section 10010. Contributions and Investments

- (a) Participating Employees
 - (1) A Participating Employee may elect to make non-payroll Contributions of at least \$10 directly to his or her Account in accordance with procedures developed by the Program.
 - (2) The Program shall establish procedures for payroll and non-payroll Contributions, including maximum Contribution amounts, in accordance with contribution limitations in federal law, including the Internal Revenue Code.
- (b) Participating Employers
 - (1) Participating Employers are prohibited from contributing to a Participating Employee's Account.
 - (A) An individual who is both a Participating Employer and a Participating Employee may make Contributions to his or her own Account under the same terms and conditions as other Participating Employees.
 - (2) Amounts withheld by the Participating Employer under this Section shall not exceed the amount of the Participating Employee's Compensation remaining after any payroll deductions required by law to have higher precedence, including a court order.
- (c) The Administrator shall promptly process all Eligible Employee contribution and opt-out elections (including default elections and Automatic Escalation and any election changes) and notify the Participating Employer of the appropriate Contribution Rate or opt-out.
- (d) The Participating Employer shall adjust its payroll withholding to reflect the appropriate Contribution Rate or an opt-out by the first day of the second payroll period after receiving notification from the Administrator.
- (e) The Program shall establish a mechanism for each Account holder (including a current or former Participating Employee or Individual) to designate one or more death beneficiaries and contingent death beneficiaries for his or her Account.
- (f) The Program may determine to allow Participating Employees and Participating Individuals to invest their Accounts among a menu of investment options as may be selected by the Program in accordance with Government Code Section 100002 and other applicable law.
 - (1) Investment elections shall be processed by the Administrator under such rules and procedures as may be established by the Program.

Note – Authority Cited: California Government Code Section 100002; California Government Code Section 100010; California Government Code Section 100012; California Government Code Section 100043; California Government Code Section 100048; and Internal Revenue Code Section 408A.

Section 10011. Withdrawals and Transfers

A Participating Employee or Participating Individual may request a full or partial withdrawal or transfer to another retirement vehicle from his or her Account at any time by submitting a properly-completed request to the Administrator in a manner as may be established by the Program in accordance with federal laws and regulations, including the Internal Revenue Code.

Note – Authority Cited: California Government Code Section 100002; California Government Code Section 100010; California Government Code Section 100012; California Government Code Section 100043; California Government Code Section 100048; and Internal Revenue Code Section 408A.

Section 10012. Confidentiality

- (a) The Board will treat Account information as confidential, including without limitation, names, addresses, telephone numbers, personal identification information, Contributions, earnings, and any issues related to verification of identity for an Eligible Employee.
- (b) Any information compiled pursuant to the operations of the Program shall be maintained by the Board and protected consistent with the requirements of the Information Practices Act of 1977 (Civil 20 Code Section 1798 et seq.)
- (c) A written authorization to release information is valid indefinitely, unless a specific end date is provided in the written statement.

Note – Authority Cited: California Civil Code Sections 1798 et seq.; California Government Code Section 100002; California Government Code Section 100010; and California Government Code Section 100014.

Section 10013. Disclosure

Notwithstanding anything else in these regulations, the Board may disclose aggregated anonymized data that does not include information that is identifiable to an individual Eligible Employee or Participating Employer for purposes of research associated with the Program. The Board may disclose information that it is required to disclose under the California Public Records Act. The Board may disclose Account information to the Administrator, the providers of investments for the Program, regulatory agencies to the extent disclosure is required by law, and to other persons or entities to the extent the Board determines disclosure is appropriate to administer the Program.

Note – Authority Cited: California Government Code Section 6250 et seq.; California Government Code Section 100010; and California Government Code Section 100048.