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FEBRUARY 26, 2018

AGENDA ITEM 8  
ACTION ITEM

CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD

*Resolution No. 2018-04: Authority to Initiate Emergency Rulemaking*

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***Background***

State law compels the California Secure Choice Retirement Savings Investment Board (“Board”) to design and implement the California Secure Choice Retirement Savings Program (“Secure Choice” or “the Program”) and makes the Board responsible for the effective and efficient administration of the California Secure Choice Program Trust (“Trust”). State law also grants the Board authority to adopt regulations to implement the Program and deems the adoption, amendment, repeal, or readoption of a regulation to address an emergency.

Staff began working on regulations last summer by convening informal employer and employee stakeholder working groups to discuss, analyze, and make recommendations on key elements for the design of the Program, including elements to be defined through regulations.

Staff consulted the expertise of those stakeholder groups, policy experts, the program consultants, external counsel, similar programs in other states and within the State of California, and independent external research to develop analysis and a series of recommendations on the design and operation of the Program and presented analysis and recommendations at the October 23, 2017 Board meeting. Staff used the input and direction from the October Board meeting to develop a first draft of Program regulations, presented at the November 27, 2017 Board meeting.

Following the November 27, 2017 Board meeting, staff solicited written public comments on the draft regulations from stakeholders, policymakers, researchers, subject matter experts, industry trade organizations, and the public at large. Staff held two informal workshops open to the public to provide a presentation on the draft regulations and provide the public an opportunity to submit comments and questions orally. Staff then presented a summary of the comments to the Board at the December 18, 2017 Board meeting and sought Board Member feedback on the options for regulations identified by staff.

Following the December 18, 2017 Board meeting, staff analyzed Board questions and comments and amended the draft regulations according to Board direction provided at the meeting. Staff have continued to make other refinements to the draft regulations based on some of the public comments received, the input of the general program consultant, and external legal counsel.

The proposed regulations seek to define and clarify the following topics:

- Definitions of key terms

- Employer eligibility
- Employer registration
- Employee information packet
- Employer duties
- Employee enrollment
- Individual participation
- Default account settings and alternative elections
- Contributions and investments
- Withdrawals and transfers
- Confidentiality and disclosures

***Timeline***

Government Code Section 100048 deems the adoption of regulations for the Program to address an emergency. Emergency regulations remain effective for 180 days and may be readopted for two additional 90 day periods.

If the Board approves filing emergency regulations at the February 26, 2018 Board meeting, staff estimate the regulations would take effect in mid-March 2018. Staff would seek Board approval to initiate the regular rulemaking process, the process necessary to make regulations permanent, at a subsequent Board meeting.

Additional detail on the estimated timeline for adoption of regulations can be found in attachment five.

***Amendments***

Staff believe these regulations are complete and address all significant topics and policies necessary to operate the Program. However, the Program and its stakeholders may benefit from future amendments to these regulations made after the third-party administrator(s) begin developing the operational platform for the Program to add greater specificity and additional detail where it is needed.

***Resolution No. 2018-04***

Resolution no. 2018-04, if approved by the Board, would express Board approval for the substance of the regulations and authorize the Executive Director to initiate the emergency rulemaking process. The resolution would also grant some limited authority to staff to make technical or non-substantive modifications to the regulations if requested by the Office of Administrative Law.

***Staff recommendation***

Staff recommend the Board approve resolution no. 2018-04 to approve the content of the regulations and authorize the Executive Director to initiate the emergency rulemaking process.

***Attachments***

- Attachment #1 – Draft Regulations (clean version)
- Attachment #2 – Draft Regulations (redline version – all changes from 11/27/17 version)
- Attachment #3 – Draft Regulations (redline version – all changes from 1/22/18 version)

- Attachment #4 – Presentation on Draft Regulations
- Attachment #5 – Timeline for Development and Adoption of Secure Choice Regulations
- Attachment #6 – Resolution No. 2018-04
- Attachment #7 – Contribution and Escalation Analysis by AKF Consulting Group