
NOVEMBER 6, 2018

AGENDA ITEM 3
ACTION ITEM

CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD

Resolution No. 2018-11: Adoption of Regulations and Authority to Conduct Rulemaking

Summary

For this item, staff will present a revised set of proposed regulations for the Board's consideration and seek authority to conduct the formal rulemaking process.

Background

State law compels the California Secure Choice Retirement Savings Investment Board ("Board") to design and implement the CalSavers Retirement Savings Program ("CalSavers" 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.

The Board approved proposed regulations at the September 24, 2018 Board meeting and provided staff limited authority to initiate the rulemaking process and make non-substantive edits to the regulations. During the rulemaking process, the Office of Administrative Law ("OAL") informed staff that some edits to the regulations were necessary to be approved. While the edits would not materially change the policies and key elements of the operation of the Program, the edits were deemed to be substantive. Because the edits were deemed substantive, staff are required to obtain Board approval of the revised set of proposed regulations.

For this item, the Board will consider approving the revised set of proposed regulations and providing staff with broader authority to revise the proposed regulations during the rulemaking process.

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

- Definitions of key terms;
- Employer eligibility;
- Employer registration;
- Employer duties;
- Employee enrollment;
- Default account settings and alternative elections;
- Individual participation;
- Contributions and distributions; and
- 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.

Staff posted a [notice of proposed emergency rulemaking](#) October 30, 2018. Upon further analysis with the program administrator, staff made an additional edit to the regulations and posted a new [notice of proposed emergency rulemaking](#) on November 1, 2018. If the Board approves the regulations at this meeting, staff would file the regulations with OAL on November 8, 2018. Upon filing with OAL, a five calendar day public comment period would begin and a ten calendar day review period by OAL would begin simultaneously. If approved by OAL, the regulations would take effect November 19, 2018.

If the proposed emergency regulations are approved, staff would initiate the regular rulemaking process soon after.

Summary of Changes

The changes to the regulations are almost entirely clarifying changes to further specify the meaning of the regulations. Below is a list of notable changes from the version approved by the Board at the September 24, 2018 meeting:

Open Enrollment– The open enrollment policies were amended so any employee that previously opted out within six months of an open enrollment period will not receive the employee information packet and be enrolled if they don't choose to opt out. Other changes were made to further specify the processes to of open enrollment by establishing dates and deadlines (Section 10004(c)(1));

Opt-Out Procedures– Additional specificity was added to note the required employee data points for an individual to opt out: last four digits of Social Security Number or Individual Tax Identification Number; date of birth; and ZIP Code. (Section 10004).

Participant Contributions – Additional detail was added to describe how participating employees' contribution rates will be communicated to the participating employer. The edit to the regulations does not change the policies already adopted by the Board, but further clarifies how the process will occur.

Employee Enrollment outside of automatic enrollment – Eligible employees that previously opted out of the program will be able to enroll at any time. The regulations were modified to specify the processes for such enrollment, which shall be done directly with the administrator by mail or through the website.

Enrollment Verification – The Board has approved regulations that would require the Program to notify any individuals directly if the Program is unable to enroll them for any reason. The regulations were modified to specify the Program will notify the individuals by email if possible and, if not, by mail within 30 days (Section 10004(f)).

Eligible Employer definition – The term “Covered Employer” previously used in the regulations was changed to “Eligible Employer” for the purposes of using terms consistent with statute (Section 10000(1)).

Various Changes – Other changes were made to remove sections that are duplicative of statute and to remove sections that did not serve any regulatory purpose.

Staff recommendation

Staff recommend the Board approve resolution no. 2018-11 to approve the content of the regulations and authorize the Executive Director to conduct the formal rulemaking process.

Attachments

- Attachment #1 – Draft Regulations (clean version)
- Attachment #2 – Draft Regulations (with redlined edits showing all changes from October 12, 2018 version)
- Attachment #3 – Draft Regulations (with redlined edits showing only changes from the October 30, 2018 version)
- Attachment #4 – Resolution No. 2018-11