
JANUARY 28, 2019

AGENDA ITEM 6
ACTION ITEM

CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD

Resolution No. 2019-02: Adoption of Regulations and Authority to Conduct Rulemaking

Summary

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

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. State law also grants the Board authority to adopt regulations to implement the Program and deems the adoption, amendment, repeal, or reoption of a regulation to address an emergency.

The California Secure Choice Retirement Savings Investment Board approved a set of proposed regulations at the November 6, 2018 Board meeting. Those regulations were approved by the Office of Administrative Law (OAL) and took effect November 19, 2018. The regulations are the first adopted for the Program and establish the rules and policies of the Program not already defined in statute.

The regulations were adopted through what is known as the emergency rulemaking process and will expire in May 2019. If necessary, the regulations can be temporarily readopted for up to two 90-day periods. At the latest, the regulations will expire in November 2019.

For this item, the Board will consider approving a revised set of proposed regulations and providing staff with broader authority to initiate the regular rulemaking process to make the regulations permanent.

This version of the proposed regulations would maintain the majority of the regulations already in place, but would make a few amendments summarized below:

- Shift from an annual open enrollment period to biennial;
- Clarify employer eligibility;
- Establish deadlines for facilitating contributions; and
- Various edits to improve clarity and consistency.

Timeline

Upon approval by the Board, staff will initiate the regular rulemaking process. The timeline for adoption of regulations through this process will vary depending on the time and resources necessary to consider and respond to public comment and whether OAL requires any edits to the regulations. At a minimum, the regular rulemaking process will require a total of about four months for conducting the public comment period, staff work to consider and respond to comments, and review by OAL. Additional detail regarding the estimated timeline is included in an attachment to this item.

Summary of Changes

The changes to the regulations are almost entirely clarifying edits to further specify the meaning of the regulations and ensure the regulations are interpreted consistently by the regulated community.

Below is a list of notable differences between the existing regulations and the version presented for the Board's consideration:

Open Enrollment– Government Code Section 100032(f)(2) requires the Board to designate an open enrollment period during which eligible employees that previously opted out shall be given the employee information packet and, if they do not opt out again, shall be enrolled in the Program. Statute requires the Board establish the open enrollment period at least once every two years.

The existing regulations establish an annual open enrollment period and establish that any employee who opted out within six months of an enrollment period would not be subject to automatic enrollment.

Due to comments expressed by the Board and some in the regulated community, staff reconsidered the regulations and propose adopting a biennial open enrollment period. Additionally, staff propose adjusting the rules so that any eligible employee that opts out within one year of the open enrollment period would not be subject to automatic enrollment, rather than the current six month period.

Employer Eligibility – These proposed regulations would fix an inconsistency in the definitions for employer eligibility. This edit does not change the meaning of the existing regulations, but would amend definitions to avoid any potential for inconsistent reading of the regulations.

Deadlines for Facilitating Contributions – These regulations would add a requirement that an employee's initial contributions to their account be made no later than the nearest payroll period that falls after they have been enrolled for at least 30 days. This language is consistent with similar requirements already in the existing regulations.

Various Changes – Other non-substantive edits were made to improve clarity and consistency.

Staff recommendation

Staff recommend the Board approve resolution no. 2019-02 to approve the content of the regulations and authorize the Executive Director to begin the formal rulemaking process.

Attachments

- Attachment #1 – Draft Regulations (no markup)
- Attachment #2 – Draft Regulations (with redlined edits showing all changes from current regulations)
- Attachment #3 – Rulemaking Timeline
- Attachment #4 – Resolution No. 2019-02
- Attachment #5 – Presentation on the Proposed Regulations