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JULY 27, 2020

AGENDA ITEM 6  
ACTION ITEM

CALSAVERS RETIREMENT SAVINGS BOARD

*Resolution 2020-04: Approval of Regulations Amendments and Authority to Conduct Rulemaking*

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***Summary***

The Board will review proposed amendments to the CalSavers Retirement Savings Program (Program) regulations to be made in 2020 and discuss future regulations amendments to consider for 2021.

***Detail***

Before the end of calendar year 2020, at least one regulations amendment will be necessary to add an additional default target-retirement fund for eligible employees born January 1, 2003 and later. By summer 2021, regulations amendments will be necessary to add detail regarding enforcement of employer compliance and associated penalties. In addition, staff have identified a number of potential regulatory amendments to consider, described below.

1. New Target-Retirement Fund for Youngest Savers

*Timeframe:* must be in effect by January 1, 2021

Regulations define which specific target-retirement fund will be automatically selected for an eligible employee depending on the date they were born. A regulations amendment is necessary before the start of 2021 to add the default target-retirement fund for employees born January 1, 2003 and later.

2. Second Automatic Enrollment Feature

*Timeframe:* October 1, 2020

Until passage of Assembly Bill (AB) 102 on June 29, 2020, the Board was required to, at least once every two years, automatically enroll employees who previously opted out unless they opt out again. AB 102 amended statute to allow the Board to implement the feature at its discretion. Should the Board decide to cease implementation of this feature for any length of time, a regulatory change would be required by November 2020. For more information on the topic, please see the attached analysis.

3. Employer Enforcement

*Timeframe:* June 1, 2021

A variety of amendments will be necessary to specify how penalties will be applied for employers that do not comply with the requirements established in statute and regulations. CalSavers staff will work with staff from the Franchise Tax Board (FTB) over the coming

months to develop the regulations and update the Board on the proposal at each Board meeting. The regulations will specify the categories of employer non-compliance that would result in a penalty, how the penalty will be calculated, and how employers may appeal a penalty.

#### 4. Minimum Contribution Amounts

*Timeframe:* flexible at Board's discretion

Current regulations establish minimum contribution amounts for non-payroll contributions. The regulations require at least \$50 for a one-time contribution or \$10 for recurring contributions (which must occur at least as frequently as once each quarter). Staff propose amending the regulations to set all minimum contribution amounts to \$10 and remove any language regarding recurring contributions.

#### 5. Defining Employer Size

*Timeframe:* N/A

Current regulations establish an employer's number of employees is determined based on their average number of employees in a calendar year. The purpose of that definition is to ensure employers do not fall in and out of compliance with the program and its registration deadlines as their workforce fluctuates throughout the year.

Staff do not propose amending those regulations at this time. However, given the experiences of employers due to the COVID-19 emergency, staff continue to monitor the experience and input of employers to evaluate whether a more optimal solution exists.

#### 6. Technical Cleanup

*Timeframe:* flexible at Board's discretion

A variety of technical amendments could be made to improve the clarity of the regulations, including:

- Adding physical address to required data for employers and employees (current requirements include mailing address);
- Adding Pooled Employer Plans and Multiple Employer Plans to the definition of the Tax-Qualified Retirement Plans; and
- Clarifying how individuals may select a Traditional IRA recharacterization option and how they may roll existing retirement savings into a CalSavers account.

#### ***Recommendation***

Staff recommend the Board authorize the Executive Director to begin the rulemaking process to amend the regulations in substantially the same form as in Attachment 1, which would:

- Add a default target-retirement fund for individuals born January 1, 2003 and later (number 1 above);
- Remove the language regarding the second automatic enrollment feature (number 2 above);
- Reduce the minimum contribution amount for non-recurring contributions (number 4 above); and
- Make a variety of technical amendments (number 6 above).

***Attachment***

- Attachment 1: Text of Proposed Regulations Amendments
- Attachment 2: Resolution 2020-04: Resolution of the CalSavers Retirement Savings Board to Approve Proposed Regulations Amendments
- Attachment 3: Analysis of the Second Automatic Enrollment Feature