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DECEMBER 7, 2020

AGENDA ITEM 4  
ACTION ITEM

CALSAVERS RETIREMENT SAVINGS BOARD

*Regulations – Emergency Regulations Amendments, Authority to Readopt Emergency Regulations, and Authority to Conduct Regular Rulemaking*

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***Summary***

The CalSavers Retirement Savings Board (“Board”) will consider approving new regulations amendments to (1) change the default investment option, (2) clarify processes for enforcing employer compliance, and (3) reduce the minimum contribution amounts for non-payroll contributions. The Board will also consider authorizing the Executive Director to conduct the regular rulemaking process to make the new emergency regulations amendments, and other emergency regulations amendments approved in 2020, permanent.

Additionally, the Board will consider authorizing the Executive Director to readopt emergency regulations amendments due to expire in March 2021.

***Detail***

New Regulations Amendments

Staff are seeking Board approval for a variety of regulations amendments. If approved by the Board, staff will file the regulations amendments and begin the formal rulemaking process. Staff estimate these amendments could take effect in December 2020.

*Enforcement of Employer Compliance*

Assembly Bill 102, passed in 2020, made a series of amendments to CalSavers statute. Those amendments included shifting enforcement duties for employer compliance from the Employment Development Department to the CalSavers Retirement Savings Board and Franchise Tax Board (“FTB”). These proposed regulations amendments will clarify the methods of enforcement of employer non-compliance that may result in a penalty.

FTB will be responsible for adopting other regulations related to enforcement, including the process for considering employer appeals of a penalty. Further information about FTB’s enforcement role is included in Item 5.

*Default Investment Option*

At the October 19, 2020 meeting, the Board approved a change to the default investment option. The change would have contributions invested in the Money Market Fund for the first 30 days of employee participation and then sweep those contributions into a Target Retirement Fund based

on the participating employee's age. These regulations amendments include provisions effectuating the changes to the default investment option.

Because of the time necessary to make the technological changes to the default investment treatment, and to allow sufficient time to communicate the change to participating employees, the change will not take effect until April 8, 2021.

#### *Minimum Contribution Amounts for Non-Payroll Contributions*

Staff are proposing the Board approve emergency regulations amendments to change the minimum contribution amount for any non-payroll contribution from \$50 to \$10 beginning April 8, 2021. The change would improve accessibility and encourage more frequent contributions by savers. The amendments also include specifying the frequency savers can choose for recurring non-payroll contributions, which include weekly, bi-weekly, bi-monthly, and monthly frequencies. The Board voted to authorize this change during the July 27, 2020 meeting, but the change was held from the regulations package due to technology constraints.

#### *Changes to the Tax-Qualified Retirement Plan Definition*

This technical change would clean up the definition. Sections 413(c) and 413(e) establish that a plan may be sponsored by multiple employers, but the tax qualification of those plans is already established in other code sections already included in the Tax-Qualified Retirement Plan definition.

#### *Rollovers and Transfers into a CalSavers Account*

Section 10007(b) was drafted before rollovers or transfers into a CalSavers account was possible in the CalSavers platform. Because the platform has been updated to allow for rollovers and transfers into a CalSavers account, staff propose to update the regulation.

#### Authority to Conduct the Regular Rulemaking Process

The Board has already approved two separate emergency regulations amendments in 2020. Emergency regulations are temporary unless approved via the regular rulemaking process.

As part of Resolution 2020-07, staff are seeking Board approval to conduct the regular rulemaking process to make permanent the regulations amendments under its consideration at this meeting and the emergency regulations amendments approved under Board Resolutions 2020-02 and 2020-04 earlier this year.

If approved, staff will begin the regular rulemaking process in January 2021, with a public comment period that would conclude in mid-March 2021. Staff anticipate the regulations could be approved early summer 2021. See Attachment 4E for a timeline of the proposed regulations processes.

#### Readoption of Emergency Regulations

Staff are seeking Board authority to readopt the emergency regulations amendments approved by the Board at the April 15, 2020 meeting. Those regulations extended the registration deadline for eligible employers with more than 100 employees to September 30, 2020 from June 30, 2020. Without a readoption, those regulations will expire March 3, 2020.

***Recommendation***

Staff recommend the Board approve Resolution 2020-07 to approve proposed regulations amendments, authority to conduct the regular rulemaking process to make these and existing emergency regulations permanent, and approve Resolution 2020-08 to readopt emergency regulations amendments.

***Attachment***

- Attachment 4A: Text of Proposed Regulations Amendments
- Attachment 4B: Resolution 2020-07: Resolution of the CalSavers Retirement Savings Board to Approve Proposed Regulations Amendments
- Attachment 4C: Resolution 2020-08: Resolution of the CalSavers Retirement Savings Board to Readopt Emergency Regulations
- Attachment 4D: Copies of Resolutions 2020-02 & 2020-04
- Attachment 4E: Timeline for Regulations Adoption