
MAY 19, 2021

AGENDA ITEM 3
ACTION ITEM

CALSAVERS RETIREMENT SAVINGS BOARD

Interagency Agreement with the Franchise Tax Board for Employer Compliance Enforcement Services

Summary

In establishing the CalSavers Retirement Savings Program in statute, lawmakers included penalties for employer noncompliance and provided the basic framework for an enforcement mechanism. In this item, the CalSavers Retirement Savings Board (“Board”) will consider approving an Interagency Agreement (“IA”) with the Franchise Tax Board (“FTB”) for employer compliance enforcement services. On December 7, 2020, the Board authorized staff to enter into the IA with FTB. However, a resolution document is required to complete the IA, which requires the Board to vote again on the resolution specifically.

Background

CalSavers aims to achieve full employer compliance based on the program’s value to participants and ease of use for employers. However, with a scope as ambitious as CalSavers’ and a scale as large as California’s, and based on observations in peer programs in Oregon and Illinois, some level of noncompliance is expected.

Broadly, noncompliance can be due to any reason an employer fails to make the program available to their employees, including failure to register by their respective deadline or failure to meet any of the duties established in regulations that are necessary for employees to participate. Those compliance failures can include missed deadlines to upload the employee roster, add new employees, or submit contributions for enrolled employees.

The existence of a penalty structure alone should have a deterrent effect on a substantial portion of would-be noncompliant employers. For others, receipt of a first penalty notice should help to capture attention and stimulate compliance. Throughout every stage of outreach, onboarding, and participation, CalSavers will continue to provide outstanding customized service to employers and support them through a variety of modalities (in-person visits, video conference, telephone, email, etc.).

Government Code Section 100033 provides the Board with the power and duties necessary to administer the enforcement of employer compliance with the CalSavers Retirement Savings Trust Act (“Act”). The code section also outlines the penalty structure imposed on employers, and provides for FTB to notice employers of penalties for failure to comply with the Act. In

addition, the code section specifies that the Board shall reimburse FTB for the costs incurred by FTB in administering the employer enforcement model.

Scope

At a high level, FTB’s primary role will be to distribute penalty notices for employers deemed by CalSavers to be noncompliant, route most questions to the CalSavers customer service center, implement an appeals process for matters unresolved directly by CalSavers, and transfer any penalty revenue received to CalSavers. In service of these duties, FTB will:

- Collaborate with CalSavers to finalize the language and design of penalty notices to be sent by FTB for each category of noncompliance;
- Develop and maintain the technology infrastructure required to implement the enforcement program, including handling inbound and outbound data;
- Receive data files from CalSavers indicating noncompliant employers and penalty amounts;
- Produce and distribute penalty notices to noncompliant employers;
- Receive inquiries from recipients of penalty notices and in most cases route to CalSavers customer service center;
- Collect payments and remit to CalSavers; and
- Operate an appeals process for employer matters not resolved directly by CalSavers.

The purpose of the IA is to establish the terms under which FTB will notify non-compliant employers of penalties, operate the collection of penalties, and consider employer appeals for employer non-compliance with the CalSavers Retirement Savings Program as authorized in Revenue and Taxation Code Section 19286 through 19288.

Penalty Revenue

Any penalty revenue collected by FTB will be transferred in its entirety to the CalSavers Retirement Savings Trust Administrative Fund via the State’s FISCAL financial accounting system and be used to operate the CalSavers Program and reduce the need for loan funding.

Timing

CalSavers and FTB staff seek to complete all foundational and preparatory work in time for FTB to begin distribution of the first penalty notices to noncompliant Wave 1 employers (those with more than 100 employees whose deadline is September 30, 2020) in December 2021. A tentative calendar of the high-level phases of implementation is included below.

Tentative CalSavers / FTB Enforcement Calendar
Subject to change, pending operational development

	Registration Deadline	CalSavers Follow-up & Support	CalSavers Due Process Notices (3)	FTB 1st Penalty Notice	CalSavers Follow-up & Support	FTB 2nd Penalty Notice
Wave 1 >100 EEs	9/30/20	Oct. 2020 – July 2021	Aug - Nov. 2021	Dec. 2021	Ongoing	Mar. 2022

Wave 2 >50 EEs	6/30/21	July 2021 – April 2022	May - Aug. 2022	Sept. 2022	Ongoing	Dec. 2022
Wave 3 ≥5 EEs	6/30/22	July 2022 – April 2023	May - Aug. 2023	Sept. 2023	Ongoing	Dec. 2023

Technology

CalSavers and FTB will utilize a Secure File Transfer Protocol (SFTP) between the two agencies to share employer compliance data. The SFTP will allow for secure data transfer between the two agencies as frequently as necessary to allow for the most efficient application of the enforcement program.

Data Privacy

CalSavers is permitted to share confidential employer information received from EDD with FTB through authorization in Interagency Agreement No. CSCRSIB05-19 (Amendment #2) with EDD. FTB is prohibited from re-disclosing any employer or employee data received as part of its partnership with CalSavers.

Contract Term and Cost

The term of this Agreement will be through June 30, 2025, and shall not exceed \$4,058,810.00. Budget detail is included as Exhibit B in the attached proposed IA. Summary charges per fiscal year are as follows:

Fiscal Year	2020-21	2021-22	2022-23	2023-24	2024-25	Total
Personal Services	\$405,782	\$337,260	\$1,228,388	\$695,459	\$336,368	\$3,003,257
OE&E	\$38,769	\$41,777	\$229,588	\$359,355	\$151,991	\$821,480
Department Overhead	\$ 31,015	\$ 25,902	\$ 95,131	\$55,893	\$26,132	\$234,073
Total	\$475,566	\$ 404,939	\$ 1,553,107	\$1,110,707	\$514,491	\$4,058,810

While the above amounts reflect the possible total cost, per the IA, FTB shall invoice the Board only for services rendered, and salary costs reflect salaries at the top of each classification range, and may be lower when billed. The increased costs in fiscal years 2022-23 and 2023-24 reflect an increase in technology expenditures to automate portions of the workload due to the anticipated increase in volume as the mandate extends to employers of all sizes.

Staff Recommendation

Staff recommends the Board authorize the Executive Director to enter into an Interagency Agreement with FTB, for employer compliance services, in substantially the same form as Attachment 3A.

Attachments

- Attachment 3A: Proposed Interagency Agreement with Franchise Tax Board
- Attachment 3B: Resolution 2021-03: Resolution of the CalSavers Retirement Savings Board Authorizing the Executive Director to Enter into an Agreement with the Franchise Tax Board for Employer Compliance Enforcement Services