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DECEMBER 13, 2021

AGENDA ITEM 7  
ACTION ITEM

CALSAVERS RETIREMENT SAVINGS BOARD

*Resolution No. 2021-12, Approval of Emergency Regulations Amendments to Sections 10000, 10001, 10002, and 10004 of Chapter 15 of Title 10 of the California Code of Regulations and Authority to Conduct Rulemaking*

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***Summary***

The CalSavers Retirement Savings Board (“Board”) will consider approving regulations amendments to Sections 10000, 10001, 10002, and 10004 of Chapter 15 of Title 10 of the California Code of Regulations. The Board will consider authorizing the executive director to conduct the emergency rulemaking process and, after approval of the emergency regulations amendments, to conduct the regular rulemaking process to make the regulations permanent.

***Authority***

Title 21 (commencing with Section 100000) of the Government establishes the Board and the CalSavers Retirement Saving Program (“Program”). Section 100048 of the Government Code authorizes the Board to adopt regulations to implement the Program and deems the adoption, amendment, repeal, and re-adoption of those regulation as addressing an emergency for the purposes of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

***Detail***

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 emergency rulemaking process. Staff estimate these amendments would take effect by March 2022. Staff would begin the regular rulemaking process soon after to make these regulations amendments permanent.

Most of the amendments relate to employer registration deadlines; however, staff propose making some additional amendments to improve clarity and correct a typographical error.

***Section 10001(a) - Employer Eligibility***

Staff propose amending Section 10001(a) to add two new subsections. The purpose of the amendments is to ensure employers may register sooner than what is currently allowed in the current text of the regulations if they do not yet have a full calendar year of employee data.

Currently, the regulations define employer eligibility as based on the employer’s average number of employees from the prior calendar year. The Board adopted the regulation to ensure employers do not fluctuate in and out of eligibility during a year as their employee count

changes. Several employers have sought to register with the Program, despite lacking a full calendar year of employee data. Because the regulations define employer eligibility as based on their number of employees during the previous calendar year, the regulations could be read to prohibit their registration until they have reported a full calendar year of employee information – significantly delaying the time at which they can begin to participate in the Program.

Section 10001(a)(1) of the proposed amendment would allow employers who lack a full calendar year of employee data to register for the Program if they have submitted at least one Form DE 9C, “Quarterly Contribution Return and Report of Wages (Continuation),” for the preceding quarter and otherwise meet the definition of an Eligible Employer. Section 10001(a)(2) of the proposed amendment is included to ensure employers without a full calendar year of employee data are not subject to a more immediate registration deadline than they are currently.

*Section 10002(a)(3) – Registration Deadline for Employers with More than Five Employees*  
Staff propose amending Section 10002(a)(3) to ensure the June 30, 2022 registration deadline applies to any Eligible Employer with five or more employees, rather than the existing language which limits the deadline to apply only to employers with 5-50 employees.

Employers are grouped into what staff refer to as “waves” based on their number of employees. Employer eligibility and employer registration deadlines are determined based on their average number of employees from the prior calendar year. Employee counts may fluctuate between one calendar year and the next, causing an employer to move between waves from one calendar year to the next. This amendment would ensure employers that move from wave 3 (five or more employees) to either wave 1 or wave 2 continue to be subject to wave 3 deadline – rather than be subject to their respective deadline for their new wave assignment.

*Section 10002(b) – Registration Deadline for Newly-Eligible Employers*

This amendment change would modify the rules for when newly Eligible Employers must register with the Program. This amendment will be necessary because the current language refers to deadlines related to a specific date by requiring newly Eligible Employer to register no later than “...the applicable date specified in subsection (a) or within 24 months of the date upon which the Employer became an Eligible Employer, whichever is later.” Due to the passage of earlier registration deadlines, this language is obsolete.

Retaining this language may lead to confusion with the regulated community. To ensure clear and consistent enforcement of the regulations, staff are proposing to establish a specific calendar date by which newly Eligible Employers must register: December 31.

With these amendments, employers would be required to participate by the end of the calendar year in which they have been notified of their eligibility. The revised regulations would ensure employers receive notification at least six months before their registration deadline. Staff estimate employers would receive the notification of their eligibility in June of each calendar year. Staff typically receive the final quarter of employment data from the Employment Development Department (“EDD”) in April of each year and require a few weeks to analyze the data and deploy email and letter notifications to employers.

At the most, the amendment would shorten an employer's registration deadline by one year. Staff have considered a variety of alternatives to this amendment, including ones that provide employers a longer period of time before their registration deadline. Data and anecdotal evidence have shown employers prefer to take action closer to their registration deadlines. This amendment would ensure the deadline is a) easy to understand by the regulated community, b) provide sufficient time for employers to plan for the deadline, and c) improve likelihood of employer compliance. For those reasons, staff recommend approval of the proposed amendment.

#### *Other Amendments*

In addition to the amendments identified above, staff propose to amend:

- Section 10000(q) to correct a typographical error;
- Section 10002(e) to simplify the employer registration process; and
- Section 10004(a) to account for longer delivery times by the United States Postal Service.

#### *Recommendation*

Staff recommend the Board approve Resolution 2021-12 to authorize the executive director to approve proposed regulations amendments to Sections 10000, 10001, 10002, and 10004 of Chapter 15 of Title 10 of the California Code of Regulations, authorize the executive director to conduct the emergency rulemaking process to enact the amendments, and provide authority to conduct the regular rulemaking process to make the amendments permanent.

#### *Attachments*

- Attachment 7A: Text of Regulations Amendments
- Attachment 7B: Resolution 2021-12: Approval of Emergency Regulations Amendments to Sections 10000, 10001, 10002, and 10004 of Chapter 15 of Title 10 of the California Code of Regulations and Authority to Conduct Rulemaking