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MAY 22, 2023

AGENDA ITEM 8  
ACTION ITEM

CALSAVERS RETIREMENT SAVINGS BOARD

*Resolution No. 2023-02, Approval of Readoption of Emergency Regulations Amendments to Sections 10000, 10001, 10002, 10005, and 10006 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 the readoption of regulations amendments to Sections 10000, 10001, 10002, 10005, and 10006 of Chapter 15 of Title 10 of the California Code of Regulations.

***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 readoption 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***

**Rulemaking Processes**

Staff are seeking Board approval to readopt regulations amendments that were necessary to conform regulations with changes made to statute through passage of Senate Bill (SB) 1126 (Cortese) in 2022, as well as some additional amendments to correct typographical errors and update obsolete language.

Because the amendments were made using the emergency rulemaking process, they are temporary until staff can complete a process known as a certificate of compliance (often referred to as “regular rulemaking”). Unless readopted, or until the certificate of compliance process is completed, the amendments will expire on July 1, 2023.

Staff initiated the certificate of compliance process on March 24, 2023. The public comment period on the amendments concluded on May 8, 2023. At the time this item was written, staff were preparing to submit the rulemaking file to the Office of Administrative Law (OAL).

Staff anticipate the certificate of compliance will be approved before the expiration of the amendments, but a readoption will be necessary if they are not approved in time. For that reason,

staff are seeking Board approval to readopt the regulations amendments if the certificate of compliance is not approved by the time the emergency regulations amendments expire.

#### Conforming Amendments with SB 1126

Amendments to the definitions of “Eligible Employer” and “Exempt Employer,” were necessary to conform the regulations with the changes made to statute through SB 1126. Specifically, amendments were necessary to adjust the number of employees that will be used to determine employer eligibility in each definition. Additionally, because SB 1126 establishes that employers are exempt if their only employee(s) are also business owners, an amendment to the definition of “Exempt Employer” was necessary to include that cause for exemption.

Section 10001(b) refers to conditions that cause an eligible employer to become an exempt employer. The regulation specifies employers shall become exempt when their number of employees drops below five. Due to the changes made to statute through SB 1126, an amendment to Section 10001(b) was necessary to conform the regulations with statute by establishing that employers become exempt when they cease to employ employees.

Finally, amendments were necessary to update the employer registration deadlines established in Section 10002(a) to include the registration deadline of December 31, 2025, that applies to employers with fewer than five employees.

#### Technical Cleanup

Section 10000(n) defines “Employee,” a term that is referred to in the regulations. Section 10002(a)(1)-(3) should have referred to that definition, but instead used the lower case “employee.” To avoid any uncertainty by the regulated community about the specific meaning of the term employee used in the section, staff amended the regulations to capitalize the words “employee” used in Sections 10002(a)(1)-(3).

Section 10005(a)(4) establishes the default investment option for savers. Because technical changes were necessary to accommodate a change made to the default investment option in 2021, the regulations specified a date upon which the default investment option would change: April 8, 2021. Similar amendments were necessary due to changes made to the minimum amount of non-recurring non-payroll contributions established in Sections 10005(b)(4) and 10006(c). Staff amended each section to remove the obsolete language and consolidate subsections accordingly.

Section 10006(a) refers to a capitalized “Individual,” a term which is not defined in the regulatory definitions. Staff amended the regulations to make the term lower-case.

#### ***Recommendation***

Staff recommend the Board approve resolution 2023-02 to authorize the executive director to readopt emergency regulations amendments to Sections 10000, 10001, 10002, 10005, and 10006 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 8A: Text of Regulations Amendments
- Attachment 8B: Resolution 2023-02: Approval of Readoption of Emergency Regulations Amendments to Sections 10000, 10001, 10002, 10005, and 10006 of Chapter 15 of Title 10 of the California Code of Regulations and Authority to Conduct Rulemaking