

CALSAVERS RETIREMENT SAVINGS BOARD

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October 27, 2021

NOTIFICATION OF PROPOSED EMERGENCY REGULATION ACTION

California Code of Regulations, Title 10, Chapter 15, Sections 10000, 10005, 10006, 10007 & 10008

CalSavers Retirement Savings Program Regulations

The CalSavers Retirement Savings (“Board”) is proposing to readopt emergency regulations to amend Sections 10000, 10005 10006, and 10007 and to add Section 10008 to the California Code of Regulations, Title 10, Chapter 15.

Government code section 11346.1(a)(2) requires that, at least five working days prior to the submission of the proposed emergency action to the Office of Administrative Law (“OAL”), the adopting agency provide a notice of proposed emergency action to every person who has filed a request for notice of regulation action with the agency. After the submission of the proposed emergency regulations, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. Upon filing, the OAL will have ten (10) calendar days to review and make a decision on the proposed emergency rulemaking. If approved, the OAL will file the regulations with the Secretary of State, and the emergency regulations will remain effective for 90 days. Within the 90-day effective period, the Board will proceed with a regular rulemaking action. The emergency regulations will remain in effect during this rulemaking action.

Attached to this notice is the specific regulatory language of the Board’s proposed emergency action and Finding of Emergency. Any restatement of law is necessary for clarity pursuant to section 12(b)(1) of Title 1 of the California Code of Regulations.

You may also review the proposed regulatory language and Finding of Emergency on the Program website at the following address:

<http://www.treasurer.ca.gov/calsavers/regulations/index.asp>

If you have any questions regarding this proposed emergency action, please contact Eric Lawyer at (916) 653-1744.

Kathleen Selenski, Executive Director
CalSavers Retirement Savings Board

FINDING OF EMERGENCY

CalSavers Retirement Savings Board
CalSavers Retirement Savings Program
Amendment to Sections 10000, 10005, 10006, & 10007 and
Addition of Section 10008
California Code of Regulations Title 10, Chapter 15

The CalSavers Retirement Savings Board (Board) intends to readopt amendments to Sections 10000, 10005, 10006, and 10007, and add Section 10008 on an emergency basis for the immediate preservation of the public peace, health, safety, or general welfare, pursuant to Government Code Section 11346.1.

Government Code Section 11346.1(a)(2) requires that at least five working days prior to the submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. To this end, the Board posted the proposed emergency regulations on its website and simultaneously disseminated notice of the proposed emergency action to all persons who have filed a request for notice.

After the submission of the proposed emergency regulations to the Office of Administrative Law (OAL), the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6. To determine the OAL five-day comment period, please check <http://www.oal.ca.gov/>. The Board will also provide additional notice of the five-day comment period through email notification.

FINDING OF EMERGENCY

Pursuant to Government Section 100048, the California Legislature has deemed the adoption, amendment, repeal, or readoption of regulations necessary to implement the CalSavers Retirement Savings Trust Act as addressing an emergency (Title 21 (commencing with Section 100000) of the Government Code)..

NECESSITY FOR EXTENSION

This emergency regulations amendment and addition are necessary to implement, interpret and make specific Title 21 of the Government Code. Specifically, this regulations amendment and addition are necessary to amend Sections 10000, 10005, 10006, and 10007 and add Section 10008 to the regulations. These amendments are necessary to amend the default investment option, reduce the minimum contribution amounts for non-payroll contributions, clarify the frequency during which non-payroll contributions can be made, clarify the tax-qualified retirement plans that, if offered by an employer, would render them exempt, and add a section clarifying how enforcement of employer compliance shall be made by the Board.

At the December 7, 2020 meeting, the CalSavers Retirement Savings Board (“Board”) approved amendments to the program regulations and authorized the Executive Director of the Program to initiate the emergency rulemaking process. Those regulations were approved by OAL and took effect January 25, 2021.

Unless readopted, this regulations amendment will expire November 24, 2021. This readoption is necessary to maintain the programmatic changes listed above. CalSavers staff began regular rulemaking in March 2021. The Notice of Proposed Action package was posted on OAL’s website March 19, 2021. The 45-day comment period concluded on May 3, with no comments received by

staff related to the rulemaking package. Staff has been in the process of completing an economic and fiscal impact assessment update during this time, and will be ready to file the regular rulemaking package this fall.

Substantial Progress Toward Submitting Certificate of Compliance

This readoption is necessary to maintain the extended registration deadline date while staff complete the the regular rulemaking process. CalSavers staff began regular rulemaking in March 2021. The Notice of Proposed Action package was posted on OAL's website March 19, 2021. The 45-day comment period concluded on May 3, with no comments received by staff related to the rulemaking package.

Since that time, staff have been working to refine the economic and fiscal impact assessment for the STD. 399. The estimates and assumptions used for the STD. 399 have required refinement of the data used to project participation in the program, including employer compliance, saver participation, saver contribution amounts, investment return scenarios, and a variety of other calculations necessary to predict economic and fiscal impact. Staff completed a STD. 399 on September 13, 2021 and expect to file the Certificate of Compliance in October 2021.

AUTHORITY AND REFERENCE

Authority: Section 100048 of Government Code provides the CalSavers Retirement Savings Board ("Board") the authority to adopt regulations to implement Title 21 of the Government Code and deems the adoption, amendment, repeal, or readoption of a regulation authorized by the section to address an emergency for purposes of Sections 11346.1 and 11349.6 of the Government Code, and thereby exempts the Board from the requirements of subdivision (b) of Section 11346.1.

Reference: Sections 100000, 100002, 100004, 100008, 100012, 100014, 100032, 100033, 100034, 100043, and 100046, California Government Code.

INFORMATIVE DIGEST

In 2012, the California Legislature enacted and the Governor signed Senate Bills (SB) 1234 and (Chapter 734, Statutes of 2012) and SB 923 (Chapter 737, Statutes of 2012,) which established the California Secure Choice Retirement Savings Investment Board (subsequently changed to the "CalSavers Retirement Savings Board" through Assembly Bill ("AB") 102 in 2020) and required the Board to conduct a market analysis to determine whether the necessary conditions for implementing the California Secure Choice Retirement Savings Program (subsequently changed to the "CalSavers Retirement Savings Program" through AB 1817 in 2018) could be met. The legislation required the Board to determine, based on the market analysis, if necessary conditions can be met and prohibited the implementation of the Program without subsequent legislation to authorize it.

In 2016, the California Legislature enacted and the Governor signed SB 1234 (Chapter 804, Statutes of 2016,) which, among other things, granted the Board the authority to take the steps necessary to implement the Program, including the adoption of regulations.

On October 31, 2019, the Office of Administrative Law approved permanent regulations for the Program that implement, interpret, and make specific the rules, policies, and procedures for the Program. Specifically, these regulations accomplish the following:

- a. Define terms used in the regulations and further clarify the meaning of definitions in statute;
- b. Define employer eligibility for the Program and establish the means by which the Program shall determine such eligibility;

- c. Establish the deadlines and processes by which eligible employers shall register for the Program;
- d. Define the duties for participating employers and the processes by which participating employers shall comply with the requirements of the Program;
- e. Establish processes for the enrollment of eligible employees into the Program;
- f. Define the default account settings for participants whom do not make an alternative election;
- g. Define the alternative elections available to participants;
- h. Establish the policies for the participation of individuals in the Program outside of an employment relationship with an Eligible Employer;
- i. Define the processes and policies for contributions, distributions, and transfer of savings; and
- j. Define the policies for confidentiality and the disclosure of information collected by the Program.

Due to the COVID-19 pandemic, the Board extended the first employer registration deadline from June 30, 2020, to September 30, 2020, in April 2020 through the emergency rulemaking process. On June 29, 2020, Governor Newsom signed AB 102, which made a variety of amendments to the Program's governing statutes. The amendments included a change to the name of the Program's governing board and the Program trust. Nonsubstantive changes to existing regulations were filed with the OAL on July 7, 2020, to change the Board and trust name, pursuant to Section 100 of Title 1 of the California Code of Regulations (CCR).

On July 27, 2020, the Board approved a variety of regulations amendments. The amendments added a new default investment fund for participants born January 1, 2003, to December 31, 2007, a change that was necessary to make before December 31, 2020; removed a feature in which eligible employees who previously opted out are subjected again to automatic enrollment; clarified the tax-qualified retirement plans that, if offered by an employer, would render them exempt; and made a variety of technical amendments that improve the clarity of the regulations.

At the October 19, 2020, Board meeting, the Board voted to authorize the executive director to develop amendments necessary to change the default investment option to one in which Contributions are directed to the Capital Preservation Fund (referred to as the Money Market Fund) for the first 30 days of employee participation and, on the 31st day, have all funds directed into a Target Retirement Fund selected based on the Participating Employee's age. At the meeting, the executive director also informed the Board it would consider a package of regulations amendments, including the enforcement of employer compliance and reduction of the minimum contribution amount for non-payroll contributions at the subsequent meeting.

At the December 7, 2020, Board meeting, the Board voted to approve regulations amendments to change the default investment option as described above, clarify processes for enforcing employer compliance, reduce the minimum contribution amounts for non-payroll contributions, clarify the frequency for recurring non-payroll contributions, and clarify that rollovers and transfers into a CalSavers account, and amend the definition of a Tax-Qualified Plan.

The Board is authorized under Government Code Section 100048 to adopt regulations it deems necessary to implement the Program consistent with the Internal Revenue Code and regulations issued pursuant to that code to ensure that the program meets all criteria for federal tax-exempt benefits. Government Code Section 100048 deems the adoption, amendment, repeal, or readoption of such regulations to address an emergency for purposes of Government Code Sections 11346.1 and 11349.6 and thereby exempts the Board from the requirements of Government Code Section 11346.1(b).

AN EVALUATION OF WHETHER OR NOT THE PROPOSED REGULATIONS ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

The Board evaluated whether or not there are any other regulations that may be adversely impacted by adoption of these proposed regulations. Because these regulations are solely for the purpose of operating the CalSavers Retirement Savings Program, and no other regulations exist in the CCR pertaining to the operation of the CalSavers Retirement Savings Program, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

COST ESTIMATE

The program is funded through administrative fees assessed on the assets invested in the Program. As established under Government Code Section 100050, startup costs for the Program are appropriated from the General Fund in the annual Budget Act in the form of a loan and are required to be repaid through the fees assessed on the program fund, with interest calculated at the rate earned by the Pooled Money Investment Account. The Board evaluated potential indirect economic and fiscal impacts in the [Standardized Regulatory Impact Assessment \("SRIA"\) submitted to the Department of Finance August 31, 2018](#).

The Board estimates direct costs as follows:

- Costs or savings to any state agency: no impact
- Cost to any local agency or school district requiring reimbursement: no impact
- Nondiscretionary cost or savings imposed on local agencies: no impact
- Cost or savings in federal funding to the state: no impact

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

There are no direct cost affects that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. However, there will be some indirect opportunity costs for employers necessary to comply with the Program, detailed further in the [SRIA](#). These regulations amendments do not substantially alter the cost impacts on a representative person or business.

BUSINESS REPORT

The proposed regulations do not require any reports to be made by any business or other entity.

SMALL BUSINESS

Small business compliance with the governing statute and regulations may have some indirect impacts for small businesses. However, these regulations do not substantially change those impacts already identified in the SRIA..

ALTERNATIVES INFORMATION

The Board considered the following alternatives:

Alternative 1: Maintaining the \$50 minimum contribution for non-recurring, non-payroll Contributions

The Board declined this alternative because a lower minimum contribution amount will encourage more savings by participating employees.

Alternative 2: Maintain the existing default investment option

The Board declined this alternative because it would likely result in more Participating Employees having their Contributions invested in a default investment option that could earn negative investment returns (net of fees) caused by a low interest rate environment. The new default investment option will ensure Participating Employees continue to have a period during which their initial investments will be made into a fund designed for safety and liquidity, but will also avoid a scenario in which participants are defaulted into an investment that experiences negative returns during low interest rate periods without the possibility of experiencing greater investment returns should the market improve. Instead, the default option will more quickly invest Contributions in a fund with a diverse portfolio of stocks and bonds that has greater potential to earn more in long-term investment returns.

LOCAL MANDATE STATEMENT

The proposed regulations do not impose any mandate on local agencies. There are no “state-mandated local costs” in these regulations that require state reimbursement under Part 7 (commencing with Seciton 17500) of the Government Code..

FISCAL IMPACT

These regulations do not impose a mandate upon local agencies or school districts. There are no “state-mandated local costs” established in these regulations that require state reimbursement under Part 7 (commencing with Seciton 17500) of the Government Code..

The operation of the Program may result in a reduction in sales and use tax revenue due to new savings (and, presumably, foregone spending) by individuals throughout the state. These impacts are detailed further in the [SRIA](#). These regulations amendments are not expected to cause any substantial changes to the fiscal impacts.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The Board has not identified any significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The operation of the Program as required under state law could have an indirect impact on the creation or elimination of jobs within the state through changes to consumption and new investment resulting from new savings by Participating Employees. These regulations amendments do not substantially alter the cost impacts on a representative person or business. As a result of the adoption of these regulations, it is not anticipated new businesses will not be created and current businesses will not be eliminated within the state. Additionally, neither benefits nor detriments are expected to worker safety or the state’s environment due to the adoption of these regulations amendments.

STATEMENT OF NECESSITY

The section of the regulations proposed for amendment is identified below including a description of the objectives and necessity for the amendment.

Section 10000, Definitions – subdivision (z)

This regulations amendment is necessary to conform the regulations with state law.

Sections 413(c) and 413(e) were added to the regulations in the summer of 2020 to clarify that pooled employer plans permissible due to the passage of a federal law in 2019 were considered Tax-Qualified Retirement Plans. Sections 413(c) and 413(e) establish that unrelated employers can participate in a pooled employer plan, such as a pooled 401(k). Because any qualified plans permissible to be included in a pooled employer plan under Sections 413(c) and 413(e) are already included in the definition, neither Section 413(c) nor 413(e) were necessary to add to the regulations. Furthermore, those sections permit unrelated employers to participate in a pooled payroll deduction IRA scheme – with or without automatic enrollment. Because Government Code Section 100032(g)(1) does not allow a non-automatic enrollment IRA a Tax-Qualified Retirement Plan, this regulations amendment is necessary to conform the regulations with statute.

Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (a)(4)

This regulations amendment is necessary to change the default investment option for Participating Employees who have not made an alternative election.

To allow the Board sufficient time to notify Participating Employees about the change, and because the technology necessary for the new default investment option will not be implemented by the time these regulations amendments will be completed, it is necessary to identify the date by which the new default investment option will become available.

Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision(b)(3)

This regulations amendment is necessary to clarify the frequency by which a Participating Employee may make recurring non-payroll contributions.

Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision(b)(4)

This regulation amendment is necessary to reduce the minimum contribution amount for non-recurring, non-payroll Participating Employee Contributions from \$50 to \$10.

Because the technology necessary for the minimum contribution amount change will not be implemented by the time these regulations amendments will be completed, it is necessary to identify the date by which the reduced minimum contribution amount will become available.

Section 10006, Individual Participation – subdivision (b)

This regulations amendment is necessary to clarify the frequency by which a Participating Individual may make recurring non-payroll contributions.

Section 10006, Individual Participation – subdivision (c)

This regulation amendment is necessary to reduce the minimum contribution amount for non-recurring, non-payroll Individual Contributions from \$50 to \$10 and to clarify the options for savers to choose the frequency of recurring Contributions.

Because the technology necessary for the minimum contribution amount change will not be implemented by the time these regulations amendments will be completed, it is necessary to identify the date by which the reduced minimum contribution amount will become available.

Section 10008, Causes for Enforcement Actions – subdivision (a)

This regulation is necessary to clarify how the Board may delegate authority to enforce employer compliance to staff.

Section 10008, Causes for Enforcement Actions – subdivision (b)

This regulation is necessary to establish the methods through which Board staff may enforce employer compliance.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT ON WHICH THE AGENCY RELIES

The considerations for the development of these regulations were based, in part, on the market analysis, program design, and financial feasibility study commissioned by the Board and completed by Overture Financial LLC and its subcontractors in 2016. The report is available on the following webpage:

<https://www.treasurer.ca.gov/calsavers/report.pdf>

The Board considered the findings from additional studies and reports to make decisions about the content of the proposed regulations, included below:

1. Allegretto, S.A., Rhee, N., et. al., (2011), [California Workers' Retirement Prospects](#) in N. Rhee's [Meeting California's Retirement Security Challenge](#), U.C. Berkeley Center for Labor Research and Education
2. Baki, M., Rhee, N., et. al., (2016), [Final Report to the California Secure Choice Retirement Savings Investment Board](#), Overture Financial LLC
3. Belbase, A. and Sanzenbacher, G., (December 2015) [Report on the Design of Connecticut's Retirement Security Program](#), Center for Retirement Research at Boston College
4. Beshears, J., Choi, J., et. al., (September 2010) [Defined Contributions Savings Plans in the Public Sector: Lessons from Behavioral Economics](#), National Bureau of Economic Research
5. Beshears, J., Benartzi, S. et. al., (October 7, 2017) [How Do Consumers Respond When Default Options Push the Envelope?](#), Voya Behavioral Finance Institute for Innovation
6. Beshears, J., Choi, J., et. al., (December 7, 2017), [Borrowing to Save? The Impact of Automatic Enrollment on Debt](#), Harvard University/Yale University/United States Military Academy
7. Brown, J., and Oakley, D., (November 2018), [Latinos' Retirement Insecurity in the United States](#), UnidosUS Policy & Advocacy/National Institute on Retirement Security

8. Brown, J., Saad-Lessler, J., and Oakley, D., (September 2018), [Retirement in America: Out of Reach for Working Americans?](#)
9. Choi, J., Laibson, D., et. al., (December 2001) [For Better or For Worse: Default Effects and 401\(k\) Savings Behavior](#), National Bureau of Economic Research
10. Dushi, I., Iams, H.M., Lichtenstein, J., (2015), [Retirement Plan Coverage by Firm Size: An Update](#), Social Security Administration Office of Retirement and Disability Policy
11. Singley-Harvey, C., (May 2015), [Enhancing Latino Retirement Readiness in California](#), UnidosUS (formerly National Council of La Raza)
12. John, D. and Koenig, G. (2015), [Workplace Retirement Plans Will Help Workers Build Economic Security](#), AARP Public Policy Institute
13. Madrian, B. and Shea, D., (May 2000) [The Power of Suggestion: Inertia in 401\(k\) Participation and Savings Behavior](#), National Bureau of Economic Research
14. McInerney, M., Rutledge, M. S., King, S. E., (October 2017), [How Much Does Out-of-Pocket Medical Spending Eat Away at Retirement Income?](#), Center for Retirement Research at Boston College
15. Munnell, A. H., Belbase, A., Sanzenbacher, G.T., (March 2018), [An Analysis of Retirement Models to Improve Portability and Coverage](#), Center for Retirement Research at Boston College in conjunction with Summit Consulting, LLC
16. Pew Charitable Trusts (January 2016), [Employer-based Retirement Plan Access and Participation across the 50 states \(California\)](#)
17. Pew Charitable Trusts, (June 2017), [Employer Barriers to and Motivations for Offering Retirement Benefits](#)
18. Pew Charitable Trusts, (July 2017) [Employer Reactions to Leading Retirement Policy Ideas](#)
19. Pew Charitable Trusts, (March 2018) [Auto-IRAs could help retirees boost Social Security Payments](#)
20. Sanzenbacher, G. and Belbase, A., (June 2016) [Update on Market Analysis Data to Support Plan Design](#), Center for Retirement Research at Boston College
21. Scott, J., Blevins, A., et. al. (January 2016) [Who's in, who's out](#) *Pew Charitable Trusts*
22. Semega, J., and Welniak, Jr., E., (2015) [The Effects of the Changes to the Current Population Survey Annual Social and Economic Supplement on Estimates of Income](#), Proceedings of the 2015 Allied Social Science Association (ASSA) Research Conference
23. U.S. Government Accountability Office, (May 2016), [Low defined contribution savings may pose challenges](#)

24. Utkus, S. and Young, J., (2017) [How America Saves 2017](#), Vanguard
25. VanDerhei, J., (2015) [Auto-IRAs: How Much Would They Increase the Probability of 'Successful' Retirements and Decrease Retirement Deficits? Preliminary Evidence from EBRI's Retirement Security Projection Model](#), Employee Benefit Research Institute, Notes 36, no. 6 (2015): 11–29
26. [Investment Policy Statement adopted by the CalSavers Retirement Savings Board December 1, 2018 and Revised December 7, 2020](#)
27. [Agenda Item 5 From the October 19, 2020 CalSavers Retirement Savings Board Meeting](#)
28. [Memorandum from CalSavers Retirement Savings Board Investment Consultant, Meketa Investment Group, Regarding Money Market Replacement Options, as presented to the Board October 19, 2020](#)
29. [Presentation from CalSavers Retirement Savings Board Investment Consultant, Meketa Investment Group, Regarding Money Market Financial Burden Analysis as presented to the Board October 19, 2020](#)

California Code of Regulations

Title 10: Investment

Chapter 15: CalSavers Retirement Savings Board

Section 10000. Definitions.

The following definitions shall apply wherever the terms are used throughout this Chapter:

- (a) "Account" means a Participant's Individual Retirement Account ("IRA") held within the Program.
- (b) "Administrator" means the third-party administrator that operates the Program.
- (c) "Automatic Escalation" means an automatic annual increase in a Participating Employee's Contributions as set forth in Section 10005.
- (d) "Beneficiary" means the individual(s) or entity(ies) entitled to receive the proceeds of a Participating Employee's or Participating Individual's Account upon their death.
- (e) "Board" means the CalSavers Retirement Savings Board.
- (f) "Client Employer" means an Employer that is involved in a Multi-Party Employment Relationship due to obtaining the services of a third-party entity.
- (g) "Compensation" has the same meaning as defined in Title 26 Code of Federal Regulations Section 1.415(c)-2(d)(4) (April 5, 2007), which is incorporated herein by reference. In the case of a sole proprietor, a partner in a partnership, a member of a limited liability company treated as a sole proprietor or partner, or another selfemployed individual, Compensation means such individual's Earned Income.
- (h) "Contribution" means any monies contributed to an Account.
- (i) "Contribution Rate" means the percentage of a Participating Employee's Compensation to be withheld and contributed to their Account via payroll deduction under the Program.
- (j) "Earned Income" means an individual's net earnings from self-employment from the Participating Employer as determined under Section 401(c)(2)(A) of Title 26 of the United States Code.

- (k) "Electronic Fund Transfer" has the same meaning as the term established under Section 1693a(7) of Title 15 of the United States Code.
- (l) "Eligible Employee" means any Employee of an Eligible Employer who is at least eighteen years of age.
- (m) "Eligible Employer" means an Employer that (i) has five or more Employees, as determined under the methodology described in Section 10001(a), at least one of whom is an Eligible Employee; (ii) does not maintain or contribute to a Tax-Qualified Retirement Plan; and (iii) is not the federal government, the state, any county, any municipal corporation, or any of the state's units or instrumentalities.
- (n) "Employee" means any individual who has the status of an employee under Unemployment Insurance Code Sections 621, 621.5, 622, or 623 and who receives a W-2 with California wages. In the case of an Eligible Employer that is a sole proprietorship, partnership, or a limited liability company treated as a sole proprietorship or partnership for federal income tax reporting purposes, Employee shall also mean a sole proprietor, partner, or member of a limited liability company treated as a sole proprietor or partner for federal tax purposes.
- (o) "Employee Information Packet" means the packet of information provided by the Program that includes the Opt-Out Form, instructions on how to opt out of the Program, and other information required under Government Code Section 100014.
- (p) "Employer" means a sole proprietor, partnership, limited liability company, Subchapter C or Subchapter S corporation, trust, or other entity, whether for profit or not for profit, that is an employer under California Unemployment Insurance Code Division 1, Part 1.
- (q) "Exempt Employer" means an Employer that (i) has fewer than five Employees, as determined under the methodology described in Section 10001(a) or has more than five Employees, but does not employ any Eligible Employees; (ii) maintains or contributes to a Tax-Qualified Retirement Plan; or (iii) is the federal government, the state, any county, any municipal corporation, or any of the state's units or instrumentalities.
- (r) "IRA" means an individual retirement account or individual retirement annuity under Section 408(a), 408(b), or 408A of Title 26 of the United States Code.
- (s) "Multi-Party Employment Relationship" means a relationship in which an Employer enters into a service contract with a third-party entity(ies) for services including, but not limited

to, payroll, staffing (both temporary and non-temporary), human resources, and Employer compliance with laws and regulations.

- (t) "Opt-Out Form" means the form through which Eligible Employees may note their decision to opt out of participation in the Program.
- (u) "Participant" means any person who is or was a Participating Employee, Participating Individual, or Beneficiary.
- (v) "Participating Employee" means any person who is an Eligible Employee, is enrolled in the Program, maintains a Program IRA, and is not a Participating Individual.
- (w) "Participating Employer" means an Eligible Employer that registered with the Program to provide its Eligible Employees access to the Program.
- (x) "Participating Individual" means any person who enrolled in the Program independent of an employment relationship with an Eligible Employer, as further defined in Section 10006; maintains an Account; and is not a Participating Employee.
- (y) "Program" means the CalSavers Retirement Savings Program offered by the CalSavers Retirement Savings Trust.
- (z) "Tax-Qualified Retirement Plan" means a retirement plan that qualifies for favorable federal income tax treatment under Sections 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p), ~~413(c), or 413(e)~~ of Title 26 of the United States Code. An employer-provided payroll deduction IRA program that does not provide for automatic enrollment is not a Tax-Qualified Retirement Plan.

Note – Authority Cited: Sections 100010 and 100048, Government Code.

Reference: Sections 100000, 100012, 100014 and 100032, Government Code.

Section 10005. Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants.

- (a) Upon enrollment, a Participating Employee who has not made an alternative election as specified in this Section shall make Contributions to the Program according to the following default elections:
 - (1) At a Contribution Rate of 5%.
 - (2) Have Contributions subject to Automatic Escalation whereby the Contribution Rate shall increase by an additional 1% of Compensation on each January 1 following the Participating Employee's enrollment, up to a maximum Contribution Rate of 8%.

- (A) Participating Employees who choose an alternative Contribution Rate shall have Contributions subject to Automatic Escalation unless they choose to opt out of Automatic Escalation by notifying the Administrator using one of the methods identified in Section 10004(d).
- (B) A Participating Employee who has not participated in the Program for at least six consecutive calendar months during a calendar year shall not have Contributions subject to Automatic Escalation until the January 1 that follows the next calendar year in which the Participating Employee has at least six calendar months of participation.
1. The Administrator shall notify the Participating Employee of the Automatic Escalation increase at least 60 days before January 1 to provide the Participating Employee an opportunity to opt out of Automatic Escalation.
- (3) Have Contributions made to a Roth IRA. The Program will establish the IRA on behalf of Participating Employees that have not established an IRA for themselves utilizing the information required by Section 10003(a).
- (4) Have Contributions invested in the default investment option.
- (A) Until April 8, 2021, the first \$1,000 in Contributions shall be invested in a capital preservation investment. All subsequent Contributions shall be invested in a Target Date Fund based on the Participating Employee's age as reported on the Program's records and an assumed retirement at age 65.
- (B) Notwithstanding subparagraph (A) and beginning April 8, 2021, a Participating Employee who has not made an alternative election shall have all Contributions invested in a capital preservation investment for 30 days. After those 30 days have elapsed, unless the Participating Employee makes an alternative election, the Participating Employee's Contributions shall be invested in a Target Date Fund based on the Participating Employee's age as described above in subparagraph (A). The default investment option described in this subparagraph shall apply to all Participating Employees who enrolled prior to, on, or after April 8, 2021.
- (C) The applicable Target Date Fund described in subparagraphs (A) and (B) shall be determined as described in the following table:

Date of Birth	Target Retirement Years	CalSavers Fund Name
12/31/1947 or Earlier	2012 or earlier	CalSavers Target Retirement Fund
1/1/1948 - 12/31/1952	2013 - 2017	CalSavers Target Retirement 2015 Fund

1/1/1953 - 12/31/1957	2018	-	2022	CalSavers Target Retirement 2020 Fund
1/1/1958 - 12/31/1962	2023	-	2027	CalSavers Target Retirement 2025 Fund
1/1/1963 - 12/31/1967	2028	-	2032	CalSavers Target Retirement 2030 Fund
1/1/1968 - 12/31/1972	2033	-	2037	CalSavers Target Retirement 2035 Fund
1/1/1973 - 12/31/1977	2038	-	2042	CalSavers Target Retirement 2040 Fund
1/1/1978 - 12/31/1982	2043	-	2047	CalSavers Target Retirement 2045 Fund
1/1/1983 - 12/31/1987	2048	-	2052	CalSavers Target Retirement 2050 Fund
1/1/1988 - 12/31/1992	2053	-	2057	CalSavers Target Retirement 2055 Fund
1/1/1993 - 12/31/1997	2058	-	2062	CalSavers Target Retirement 2060 Fund
1/1/1998 - 12/31/2002	2063	-	2067	CalSavers Target Retirement 2065 Fund
1/1/2003 – 12/31/2007	2068	-	2072	CalSavers Target Retirement 2070 Fund
1/1/2008 or later	2073	-	or later	[Funds to be added later – not a valid Participant age]

(b) Participants may make an alternative election at any time through one of the methods established under Section 10004(d).

- (1) A Participating Employee may elect a Contribution Rate other than the default Contribution Rate at any integer between 0% and 100% of Compensation.
- (2) A Participating Employee may opt out of Automatic Escalation or elect an alternative Automatic Escalation percentage at any time by notifying the Administrator using one of the methods established in Section 10004(d).
- (3) A Participating Employee may elect to make recurring non-payroll Contributions of at least \$10 each to their Account. Such recurring non-

payroll Contributions ~~must~~ may be made ~~at least~~ as frequently as ~~quarterly~~ weekly, once every two weeks, twice monthly, or monthly and must be made and contributed through Electronic Fund Transfer.

(4) (A) A Participating Employee may also elect to make non-recurring non-payroll Contributions. Such Contributions may be made through Electronic Fund Transfer or by personal check and must be a minimum of \$50 each.

(B) Beginning April 8, 2021, non-recurring non-payroll Contributions must be at least \$10 and must be made through Electronic Fund Transfer or by personal check.

~~(4)~~(5) A Participant may elect one or more investment options for any portion of their existing balance or future contributions. Participants may make this alternative election by notifying the Administrator using one of the methods established in Section 10004(d).

~~(5)~~(6) Alternative contribution elections (including Contribution Rates, Automatic Escalation and opt out elections) shall be implemented as soon as administratively practicable but no later than the first payroll period following 30 days after notification to the Administrator of the alternative election.

(c) Other Contribution and Investment Election Rules

(1) Participating Employers are prohibited from contributing to a Participating Employee's Account.

(2) An individual who is both a Participating Employer and a Participating Employee may make Contributions to their own Account under the same terms and conditions as other Participating Employees.

(3) Amounts withheld by the Participating Employer shall not exceed the amount of the Participating Employee's Compensation remaining after any payroll deductions required by law to have higher precedence, including a court order.

(4) A Participant may elect to recharacterize all or some of their Contributions to a Traditional IRA by phone (855-650-6918).

Note – Authority Cited: Sections 100010 and 100048, Government Code.

Reference: Sections 100002, 100004, 100008, 100012, 100032 and 100043, Government Code.

Section 10006. Individual Participation.

(a) An individual who is at least eighteen years of age, and who is not an Eligible Employee may elect to participate in the Program as a Participating Individual outside of an employment relationship with an Eligible Employer. An Individual may enroll in the Program through any of the methods established in Section 10004(d) by providing the information required in Section 10003(a).

- (b) Any recurring Contribution by a Participating Individual must be made at least as frequently as weekly, once every two weeks, twice monthly, or once monthly and quarterly, must be made through Electronic Fund Transfer, and must be at least \$10.
- (c) (1) Participating Individuals may make non-recurring Contributions through Electronic Fund Transfer or by personal check, in an amount of at least \$50.
- (2) Beginning April 8, 2021, non-recurring Contributions must be in an amount of at least \$10 and must be made through Electronic Fund Transfer or by personal check.
- ~~(e)~~(d) Businesses that use the services of Participating Individuals have not elected to participate in the Program merely because they, at the request of Participating Individuals, choose to facilitate remittance to the Administrator for deposit into a Participating Individual's Account all or a portion of the money owed to such Participating Individuals. Exempt Employers that choose to facilitate deposits to a Participating Individual's Account shall take all steps necessary to ensure their payroll deduction IRA program is not an employee benefit plan regulated under Title 1 of the Employee Retirement Income Security Act (ERISA).

Note – Authority Cited: Sections 100010 and 100048, Government Code.
Reference: Sections 100002 and 100012, Government Code.

Section 10007. Contributions and Distributions.

- (a) It shall be the responsibility of the Participant to determine whether they are eligible to make Contributions to a Roth IRA or Traditional IRA (when available) and whether the amount of their Contributions to a Roth IRA or Traditional IRA (when available) complies with the limits established under Title 26 of the United States Code.
- (b) A Participant may choose to rollover or transfer funds into their Account. ~~This option is not yet available. After complying with the Administrative Procedure Act Chapter 3.5, the Administrator shall post notice of the option on the Program's website (saver.calsavers.com).~~

Note – Authority Cited: Sections 100010 and 100048, Government Code.
Reference: Sections 100002, 100008 and 100012, Government Code.

Section 10008. Enforcement of Employer Compliance

- (a) The Board may delegate enforcement of employer compliance with Title 21 (commencing with Section 100000) of the Government Code, including all failures by an Eligible Employer to allow its Eligible Employees to participate in the Program, to the Board staff. Staff shall exercise due diligence to ensure reasonable attempts are made to bring employers into compliance prior to issuing a final notice of penalty application to a noncompliant Employer.

(b) Enforcement efforts by Board staff, pursuant to subdivision (a), shall include email and letter notifications of penalty application to the noncompliant Employers identifying the cause of their noncompliance and the methods available to Employers to comply.

Note – Authority Cited: Sections 100010 and 100048, Government Code.

Reference: Sections 100014, 100032 and 100033, Government Code.