INITIAL STATEMENT OF REASONS

Specific Purpose of the Regulations and Factual Basis for Determination that Regulations are Necessary.

Problem this Rulemaking is Intended to Address:

This rulemaking will make a variety of emergency regulations amendments permanent. The amendments were made through three separate rulemakings in 2020.

Due to the COVID-19 pandemic, the CalSavers Retirement Savings Board ("Board") extended the first employer registration deadline from June 30, 2020, to September 30, 2020, through the emergency rulemaking process to provide impacted employers additional time to respond to and prepare for the deadline.

On June 29, 2020, Governor Newsom signed Assembly Bill 102 (Chapter 21, Statutes of 2020), which made a variety of amendments to the CalSavers Retirement Savings Program's ("Program") governing statutes. On July 27, 2020, the Board approved a variety of emergency regulations amendments, some due in part to the operative effect of that bill. The amendments removed a feature in which eligible employees who previously opted out are subjected again to automatic enrollment; added a new default investment fund for participants born January 1, 2003, to January 1, 2007, a change that was necessary to make before December 31, 2020; clarified the tax-qualified retirement plans that, if offered by an employer, would render the employer exempt; and made a variety of technical amendments that improve the clarity of the regulations, including the removal of obsolete and repetitive language.

At the December 7, 2020, Board meeting, the Board approved the emergency regulations amendments 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. The Board also approved emergency regulations amendments to clarify the processes for enforcing employer compliance, reduce the minimum contribution amounts for non-payroll contributions, clarify the frequency for recurring non-payroll contributions, clarify that rollovers and transfers into a CalSavers account are permissible, and amend the definition of a tax-qualified plan.

Collectively, these regulations amendments address problems created by the COVID-19 pandemic. Specifically, those problems include a low interest rate environment, which precipitated the change to the default investment option, and impacts to employers. Those specific problems led to regulations amendments to change the default investment option and to extend the first employer registration deadline. Additionally, these regulations amendments improve the clarity of the regulations and the Board's ability to enforce employer compliance with the Program and the state laws governing it.

ECONOMIC IMPACT ANALYSIS

Program staff analyzed the economic impacts caused by a direct result of this rulemaking package. These regulations amendments do not materially change the duties or requirements of participating employers or significantly change accessibility for eligible employees or eligible individuals. These regulations amendments do include some changes that may impact the experience of participating employers, employees, and individuals. Those changes include the removal of the open enrollment period, the change to the default investment option, and the

reduction in the minimum contribution amount for non-recurring non-payroll contributions. However, none of those changes are expected to impact the following:

The creation or elimination of jobs within the state
These regulations are not expected to cause any incentives for innovation in the private sector that could create new jobs, nor are they expected to create any need to increase volume for existing jobs.

These regulations amendments are intended to improve accessibility for participating employees and participating individuals by reducing the minimum contribution amount for non-recurring non-payroll contributions, however that change should have no impact on the creation or elimination of jobs in the state. The regulations amendments also changes the default investment option. While that option may result in participants accruing greater investment interest than they would have otherwise earned in the former default investment option, any impacts on jobs in the state related to that change would be an indirect result of these regulations amendments.

The creation of new businesses or the elimination of existing businesses within the state
Similar to the reasons stated in the paragraph above, these regulations amendments should have no impact on the creation of new businesses or the elimination of existing businesses within the state. These regulations amendments make no impact on whether or not existing businesses should be eliminated, nor do they give cause for the creation of new businesses.

The operation of the program in general may create incentives for retirement plan providers to create or market products in the state. The operation of the program in general may also create an incentive for payroll providers or third-party human resource vendors to create or market products within the state. However, these regulations do not include any material impacts that would bolster or lessen those incentives.

The expansion of businesses currently doing business within the state
These amendments are not expected to have any impact on the expansion of businesses currently doing business within the state. The operation of the program in general may create benefits for smaller employers to recruit and retain employees by providing them an easy, no-fee way to help their employees save for retirement. As noted above, the program in general may also create an incentive for payroll providers or third-party human resource vendors to create or market products within the state. However, these regulations do not include any material impacts that would cause an expansion of those businesses.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment
These amendments may benefit the welfare of participating employees and participating individuals by increasing the possibility of them earning stronger gains on their initial contributions than the previous default investment option. The new default investment option will ensure participating employees continue to have a brief period during which their initial investments will be directed into a fund designed for safety and liquidity and ensure they can have their contributions invested in a fund with opportunity to earn more meaningful interest long term.

The change to the default investment option may result in participants accruing more retirement assets long term than they would have under the previous default investment option, leading to greater economic security in retirement age.

The amendment to reduce the minimum contribution amount for non-recurring non-payroll contributions may have similar benefits by increasing the likelihood that participants will contribute to their retirement account and therefore accrue more financial security.

While any associated impacts to the health of California residents would be indirect, better financial security may result in better health outcomes for the population of California residents who participate in the program.

These regulations amendments should have no effect on worker safety or the state's environment.

Overall Benefit of this Rulemaking:
Nearly half of California workers are on track to experience significant economic hardship in retirement age. Without the ease and simplicity of regular payroll contributions to a retirement savings account at work, many simply do not save for retirement. Research shows that people are 15 times more likely to save when they have access to a payroll deduction savings vehicle at work.

CalSavers will ensure about 7 million California workers have access to a retirement savings program at their job, and self-employed individuals will also be able to save via the Program. As more Californians join the workforce in the decades to come; the program will ensure the next generation of working Californians has the ability to begin saving for retirement throughout their careers. The Program will be self-sustaining by participant fees, with no direct cost to employers or taxpayers, and, over time, should provide a net benefit to taxpayers as fewer elder citizens will require taxpayer-funded public assistance.

The Program provides some indirect benefits for participating employers by providing a retirement savings option that is simple and requires no direct costs or annual reporting with no fiduciary liability. By having an easy way to provide a popular employee benefit, the Program should help some smaller employers improve their value in the labor market and help to recruit and retain employees.

These regulations amendments will benefit employers by improving the clarity of the regulations through changes to definitions, removal of obsolete language, and eliminating repetitive language. They will benefit employers by eliminating the open enrollment period, which would have placed stress on the employers to update their employee rosters more frequently. They will benefit employers by making permanent the delay of the first employer registration deadline from June 30, 2020, to September 30, 2020, which gave employers more time to make themselves compliant during the COVID-19 pandemic. They will benefit employers by clarifying the Program's methods and rules of enforcement so employers can remain compliant and avoid penalties.

These regulations amendments will benefit individuals by eliminating the open enrollment period, saving those who prefer not to participate time and effort by not forcing non-participants to opt out multiple times.

The regulations will benefit participants by changing the default investment option to move initial contributions into a Target Date Fund after 30 days, thus avoiding a scenario in which participants are defaulted into an investment intended for capital preservation but that experiences negative returns net of fees during low interest rate periods without the possibility of experiencing greater investment returns should the market improve. They will benefit participants by adding Target Date Funds for younger participants born between January 1, 2003, and January 1, 2007, allowing more participants to start saving for retirement. They will benefit participants by reducing the minimum contribution amount for non-recurring non-payroll contributions and clarifying the frequency that recurring non-payroll contributions can be made. They will benefit participants by adding a new method by which participants may re-characterize their CalSavers account to a Traditional Individual Retirement Account (IRA).

Evidence Supporting Finding of No Significant Statewide Adverse Economic Impact Directly Affecting Business:

Based on the Economic Impact Analysis stated above, CalSavers concludes that the proposed regulation will not have a significant statewide adverse economic impact directly affecting business, including ability to compete with businesses in other states.

Reasonable Alternatives to the Regulations and the Agency's Reasons for Rejecting those Alternatives:

Regulation amendment to Section 10002: Employer Registration (First Employer Deadline)

In regards to the first registration deadline change in Section 10002(a), the Board considered two types of alternatives:

Alternative 1: Maintain the existing June 30, 2020, registration deadline;

Alternative 2: Allow hardship requests for employers impacted by the COVID-19 pandemic.

The Board declined the first alternative due to concerns that maintaining the June 30, 2020, registration deadline would unduly burden employers experiencing hardship due to the COVID-19 pandemic. The Board declined the second alternative due to concerns it would be difficult to communicate clearly to the regulated community about the criteria necessary to be granted a hardship request and because it would burden employers impacted by the COVID-19 pandemic further by requiring them to report and document their hardship request.

Regulations amendment to Section 10004: Employee Enrollment (Open Enrollment Period):

In regards to the elimination of the open enrollment period, the Board considered the following alternative:

Alternative 1: Maintain Section 10004(g), which required the Program to enroll eligible employees who previously opted out if they do not opt out again.

The Board declined this alternative due to concerns about the experience of those eligible employees and that the feature may require additional employer duties in order to ensure eligible employee contact information is current.

Regulation amendment to Section 10005: Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants (Default Investment Change):

In regards to the default investment change, the Board considered the following alternatives:

Alternative 1: Maintain the existing default investment option.

The Board declined the alternative because it would likely result in more participating employees earning negative investment returns (net of fees) on initial contributions during low interest rate periods and reduce the possibility of earning stronger gains on those initial contributions during market upswings. Instead, the new default option will more quickly invest contributions in a fund with a diverse portfolio of stocks and bonds that has a greater potential to earn more in long-term investment returns. The new default investment option will ensure participating employees continue to have a brief period during which their initial investments will be directed into a fund designed for safety and liquidity and ensure they can have their contributions invested in a fund with opportunity to earn more meaningful interest long term.

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. Helman, R., Greenwald, M., et. al., (April 2007) The Retirement System in Transition: The 2007 Retirement Confidence Survey, Employee Benefit Research Institute

13. John, D. and Koenig, G. (2015), Workplace Retirement Plans Will Help Workers Build Economic Security, AARP Public Policy Institute

14. Madrian, B. and Shea, D., (May 2000) The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior, National Bureau of Economic Research

15. 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

16. Morse, D, (October 25, 2018), Letter to CalSavers Retirement Savings Program Executive Director Kathleen Selenski Regarding Implementation of CalSavers Retirement Savings Program

17. 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

18. Pew Charitable Trusts (January 2016), Employer-based Retirement Plan Access and Participation across the 50 states (California)

19. Pew Charitable Trusts, (June 2017), Employer Barriers to and Motivations for Offering Retirement Benefits

20. Pew Charitable Trusts, (July 2017) Employer Reactions to Leading Retirement Policy Ideas

21. Pew Charitable Trusts, (March 2018) Auto-IRAs could help retirees boost Social Security Payments

22. Sanzenbacher, G. and Belbase, A., (June 2016) Update on Market Analysis Data to Support Plan Design, Center for Retirement Research at Boston College

23. Scott, J., Blevins, A., et. al. (January 2016) Who's in, who's out *Pew Charitable Trusts*

24. 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

25. U.S. Government Accountability Office, (May 2016), Low defined contribution savings may pose challenges

26. Utkus, S. and Young, J., (2017) How America Saves 2017, Vanguard

27. 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

28. Investment Policy Statement adopted by the CalSavers Retirement Savings Board December 1, 2018, and Revised December 7, 2020

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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, subsection (s)

Specific Purpose:

The definition of "Multi-Party Employment Relationships" establishes a term not identified in statute for categories of employment relationships.

Factual Basis:

This regulation amendment is necessary to improve the clarity of the regulations. While CalSavers staff are not aware of multi-party employment relationships with more than three parties, the amendment will ensure any employment relationship is covered by the regulations.

Section 10000. Definitions, subsection (s)

Specific Purpose:

The definition for "Open Enrollment Period" defines a term described in statute. The amendment eliminates the term from the Program regulations due to the removal of the feature from the regulations.

Factual Basis:

This regulation amendment is necessary to remove the "Open Enrollment Period" feature from the regulations due to the Board's approval to eliminate the function from the. This amendment to the regulations is because of statutory changes enacted by Assembly Bill 102 (Chapter 21, Statutes of 2020), which changed the Program's open enrollment period function from being mandatory to optional. Upon the operative date of the bill, the Board exercised its discretion to remove the open enrollment period feature due to concerns about the experience of eligible employees and the potential impact to employers who may be required to maintain employee contact information in order to effectuate the "Open Enrollment Period."

Section 10001. Eligible Employers, subsection (e)

Specific Purpose:

This regulation clarifies employer eligibility for employers in a Multi-Party Employment Relationship.

Factual Basis:

This regulation amendment is necessary to improve the clarity of the regulations. While CalSavers staff are not aware of multi-party employment relationships with more than three parties, the amendment will ensure any employment relationship is covered by the regulations.

Section 10002. Employer Registration (a)

Specific Purpose:

Government Code Section 100032(b)-(d) provides deadlines for employer registration that vary according to an employer's number of employees. Government Code Section 100032(e) authorizes the Board to extend those time limits. This regulation establishes the deadline for employers with more than 100 employees.

Factual Basis:

This regulation amendment is necessary to extend the date by which eligible employers with more than 100 employees must register with the Program. The proposed regulations amendment would change the registration deadline from June 30, 2020, to September 30, 2020, to allow eligible employers additional time to prepare for the deadline.

Section 10002. Employer Registration, subsection (f)

Specific Purpose:

This regulation identifies the information employers need to provide the Program to maintain each employer's account.

Factual Basis:

This regulation amendment is necessary to require eligible employers to provide the Program administrator with their physical address. Knowledge of the eligible employer's physical addresses is necessary for the Program administrator to adhere to federal financial laws and regulations regarding "know your customer" policies and anti-money laundering efforts.

Section 10003. Participating Employer Duties, subsection (a)(4)

Specific Purpose:

This regulation requires participating employers to provide specific eligible employee information necessary for the automatic enrollment of newly hired employees.

Factual Basis:

This regulation amendment is necessary to require eligible employers to provide the Program administrator with a physical address for eligible employees. Knowledge of the eligible employee's physical addresses is necessary for the Program administrator to adhere to federal financial laws and regulations regarding "know your customer" and anti-money laundering laws and regulations.

Section 10003. Participating Employer Duties, subsection (c)

Specific Purpose:

This regulation establishes a deadline by which the employer must remit the first participating employee's contribution.

Factual Basis:

This regulation amendment is necessary to improve clarity. The regulations currently require employers to begin submitting employee contributions beginning with the first payroll period following 30 days after notification by the Program administrator of the participating employee's enrollment. That requirement was identified in Sections 10004(b)(1) and 10004(e)(1) of the regulations. The amendment does not make any material change to the regulations, but rather moves what is clearly an employer duty to the appropriate section of the regulations.

Section 10004. Employee Enrollment, subsection (b)(1)

Specific Purpose:

This regulation establishes the deadline by which the employer must remit the first participating employee contribution.

Factual Basis:

This regulations amendment is necessary to improve the clarity of the regulations. Due to the amendment to Section 10003(c), this language would become redundant and is no longer necessary.

Section 10004. Employee Enrollment, subsection (e)(1)

Specific Purpose:

This regulation establishes the deadline by which the employer must remit the first contribution of a participating employee contribution.

Factual Basis:

Due to the amendment to Section 10003(c), this language would become redundant and is no longer necessary.

Section 10004. Employee Enrollment, subsection (g)

Specific Purpose:

This regulation establishes how the "Open Enrollment Period" identified in statute would function.

Factual Basis:

Previously, Government Code Section 100032(f)(2) required the Board to automatically enroll eligible employees who previously opted out if they do not opt out again during what is referred to as an "Open Enrollment Period." That section of the Government Code was recently amended upon the chaptering of Assembly Bill 102 (Chapter 21, Statutes of 2020) on June 29, 2020, to make the feature optional for the Board to implement rather than required. The Board approved the removal of this feature from the regulations due to concerns about the experience of those eligible employees and concerns that the feature may require additional employer duties to ensure eligible

employee contact information is current. This regulations amendment is necessary to remove the "Open Enrollment Period" feature.

Section 10005. Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants, subsection (a)(2)(b)

Specific Purpose:

The purpose of this regulation is to establish automatic escalation and the rules for how automatic escalation may apply to a participating employee.

Factual Basis:

This amendment is necessary to improve clarity. While a reasonable person may infer the existing regulation's plain meaning reference to a timeframe means continuous calendar months, the amendment will remove any doubt about the meaning of the timeframe.

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

Specific Purpose:

This regulation establishes how contributions are invested in the default investment option.

Factual Basis:

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. This regulations amendment also adds additional default investment options for participating employees based on their age.

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

Specific Purpose:

This regulation clarifies the alternative methods for the contributions of participating employees, who may elect to make non-payroll contributions. The regulation also establishes the minimum amount of recurring contributions and defines the frequency with which a participating employee may make recurring contributions.

Factual Basis:

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, subsection (b)(4)

Specific Purpose:

The purpose of this regulation is to establish the meaning of the term “non-recurring” non-payroll contributions and identify the minimum amount of those contributions.

Factual Basis:

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 10005. Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants, subsection (c)(4)

Specific Purpose:

This regulation establishes the process by which a participant may elect to recharacterize their savings to a Traditional IRA.

Factual Basis:

This regulation amendment is necessary to clarify the methods through which participants may recharacterize their retirement savings to a Traditional IRA.

Section 10006. Individual Participation, subsection (a)

Specific Purpose:

This regulation establishes that individuals are able to enroll in the Program outside of an employment relationship with a participating employer.

Factual Basis:

This regulations amendment is necessary to remove obsolete language and ensure there is no doubt about the availability of the feature.

Section 10006. Individual Participation, subsection (b)

Specific Purpose:

This regulation establishes that participating individuals may elect to make recurring Contributions, establishes the minimum amount of recurring contributions, and defines the meaning of the term “recurring contributions.”

Factual Basis:

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

Section 10006. Individual Participation, subsection (c)

Specific Purpose:

This regulation establishes that participating individuals may elect to make non-recurring contributions and establishes the minimum amount of non-recurring contributions.

Factual Basis:

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 Program participants 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 10007. Contributions and Distributions, subsection (b)

Specific Purpose:

This regulation establishes whether rollovers or transfers into a Program account are permissible.

Factual Basis:

This regulation amendment is necessary to inform Program participants they may choose to rollover or transfer funds into their account.

Section 10008. Enforcement of Employer Compliance, subsection (a)

Specific Purpose:

This regulation establishes that the Board may delegate employer compliance to Program staff, and the measures that staff must take before issuing notices of penalties for non-compliance.

Factual Basis:

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

Section 10008. Enforcement of Employer Compliance, subsection (b)

Specific Purpose:

This regulation outlines the methods by which Program staff shall notify employers about non-compliance penalties.

Factual Basis:

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