

FINDING OF EMERGENCY
Readoption of Emergency Regulations

CalSavers Retirement Savings Board
CalSavers Retirement Savings Program
Amendment to Sections 10002, California Code of Regulations Title 10, Chapter 15

The CalSavers Retirement Savings Board (Board) intends to readopt the amendment to California Code of Regulations Title 10, Chapter 15, Section 10002(a)(1) 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 (Title 21 (commencing with Section 100000) of the Government Code) as addressing an emergency.

NECESSITY FOR EXTENSION

At the April 15, 2020 meeting, the CalSavers Retirement Savings Board (“Board”) approved a revised set of proposed regulations and authorized the Executive Director of the Program to initiate the emergency rulemaking process. Those regulations were approved by the Office of Administrative Law (OAL) and took effect May 4, 2020.

This emergency regulations amendment is necessary to implement, interpret and make specific Title 21 of the Government Code. Specifically, this regulations amendment is necessary to extend the first registration deadline for eligible employers from June 30, 2020 to September 30, 2020. This change was necessary to provide California employers additional time to respond to the COVID-19 pandemic and prepare for their registration deadline.

Unless readopted, this regulations amendment will be repealed October 2, 2021. This readoption is necessary to maintain the extended registration deadline date. 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 compiling the regular rulemaking package during this time, and should be ready to submit to OAL in early Fall 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 100032(b) and 100032(e), 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 accomplished 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; and
- h. Establish the policies for the participation of individuals in the Program outside of an employment relationship with an Eligible Employer;

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. Adoption of this regulation amendment may have resulted in delays in employer participation in the Program. However, due to disruptions caused by the COVID-19 pandemic, these delays in employer participation may have been inevitable for many businesses. By extending the registration deadline, employers had additional time to respond to the impacts caused by the COVID-19 pandemic and prepare for the new deadline.

This delay in the first employer registration deadline may have resulted in delays in employee access to the Program through their employer. While these employees have the ability to set up a CalSavers account and contribute directly through their bank account, data indicate people are significantly less likely to begin saving on their own than if they have access to the Program at work. Impacts to employees depend on a number of factors, including whether and when an individual decides to participate in the Program, their decisions regarding how much they contribute and how they choose to invest their contributions, investment performance, and the Program's ability to reduce administrative fees.

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 re-adoption 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 California Code of Regulations 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 effects that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. These regulations amendments do not substantially alter the cost impacts on a representative 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 two types of alternatives: maintain the existing June 30, 2020 registration deadline, extend the first registration deadline to a later date, or 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 emergency.

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.

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 Section 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 Section 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 CalSavers participants. 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, 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 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 10002, Employer Registration – subdivision (a).

This regulation is necessary to define the date by which Eligible Employers with more than 100 employees must register with the Program. The regulations amendment changed the registration deadline from June 30, 2020 to September 30, 2020 to allow Eligible Employers additional time to prepare for the deadline.

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](#)