

**State of California  
Office of Administrative Law**

**In re:**  
California Secure Choice Retirement Savings  
Investment Board

**Regulatory Action:**

**Title 10, California Code of Regulations**

**Adopt sections:** 10000, 10001, 10002,  
10003, 10004, 10005,  
10006, 10007

**Amend sections:**

**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6**

**OAL Matter Number: 2019-0424-04**

**OAL Matter Type: Emergency Readopt (EE)**


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This emergency readoption action by the California Secure Choice Retirement Savings Investment Board maintains the regulations adopted in OAL File No. 2018-1108-04ER, which established the CalSavers Retirement Savings Program (Program) in response to Senate Bill 1234 (Stats. 2012, ch. 734), Senate Bill 923 (Stats. 2012, ch. 737), and Senate Bill 1234 (Stats. 2016, ch. 804). This action: 1) defines employer eligibility in the Program, 2) establishes employer registration and employee enrollment requirements, 3) defines employer duties, and 4) establishes default account settings and alternative election options.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 5/21/2019 and will expire on 8/20/2019. The Certificate of Compliance for this action is due no later than 8/19/2019.

Date: May 6, 2019

  
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Lindsey S. McNeill  
Attorney

For: Holly Pearson  
Acting Director

Original: Kathleen Selenski, Executive  
Director

Copy: Eric Lawyer

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

**EMERGENCY**

**ENDORSED - FILED**

in the office of the Secretary of State of the State of California

MAY 06 2019

1:38 pm

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
Z-		2019-0424-04EE	

For use by Office of Administrative Law (OAL) only

2019 APR 24 P 3 22  
OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

**AGENCY WITH RULEMAKING AUTHORITY**

California Secure Choice Retirement Savings Investment Board

AGENCY FILE NUMBER (if any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) CalSavers Retirement Savings Program	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2018-1108-04ER; 2019-0219-04; 2019-0415-06EE
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	2018-1019-05E per agency request 5/3/19
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT 10000, 10001, 10002, 10003, 10004, 10005, 10006, 10007
TITLE(S) 10	AMEND REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <b>May 21, 2019</b>
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON

Eric Lawyer	TELEPHONE NUMBER (916) 653-1748	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) elawyer@sto.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE  
*Kathleen Selenski*

DATE  
4/24/19

TYPED NAME AND TITLE OF SIGNATORY  
Kathleen Selenski, Executive Director, California Secure Choice Retirement Savings Investment Board

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

MAY 06 2019

Office of Administrative Law

Note: These regulations are new to the CCR.

## **California Code of Regulations**

### **Title 10: Investment**

### **Chapter 15: California Secure Choice Retirement Savings Investment 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 California Secure Choice Retirement Savings Investment Board.
- f) "Client Employer" means an Employer that is involved in a Tri-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 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 self-employed 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 Internal Revenue Code Section 401(c)(2) in which personal services of the individual are a material income-producing factor.
- k) "Eligible Employee" means any employee of an Eligible Employer who is at least eighteen years of age; 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, Eligible Employee shall also mean a sole proprietor, partner, or member of a limited liability company treated as sole proprietor or partner for federal tax purposes.

- l) "Eligible Employer" means an Employer that (i) has five or more employees, 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.
- m) "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.
- n) "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.
- o) "Exempt Employer" means an Employer that (i) has fewer than five employees, as determined under the methodology described in Section 10001(a); (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.
- p) "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.
- q) "Open Enrollment Period" means the period during which Eligible Employees that previously opted out of the Program shall be given the Employee Information Packet with the disclosure and Opt-Out Forms, for the employee to enroll in the Program or opt out of the Program.
- r) "Opt-Out Form" means the form through which Eligible Employees may note their decision to opt out of participation in the Program.
- s) "Participant" means any person who is or was a Participating Employee, Participating Individual, or Beneficiary.
- t) "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.
- u) "Participating Employer" means an Eligible Employer that registered with the Program to provide its Eligible Employees access to the Program.

- v) "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 a Program IRA, and is not a Participating Employee.
- w) "Program" means the CalSavers Retirement Savings Program offered by the California Secure Choice Retirement Savings Trust.
- x) "Tax-Qualified Retirement Plan" means a retirement plan that qualifies for favorable federal income tax treatment under Internal Revenue Code Sections 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p). An employer-provided payroll deduction IRA program that does not provide for automatic enrollment is not a Tax-Qualified Retirement Plan.
- y) "Tri-Party Employment Relationship" means a relationship in which an Employer enters into a service contract with a third-party entity for services including, but not limited to, payroll, staffing (both temporary and non-temporary), human resources, and Employer compliance with laws and regulations.

Note – Authority Cited: Sections 100010 and 100048, California Government Code.  
Reference: Sections 100000, 100012, 100014 and 100032, California Government Code.

**Section 10001. Eligible Employers**

- (a) To determine whether an Employer is an Eligible Employer, an Employer's number of employees shall be the average number of employees as reported to the Employment Development Department for the quarter ending December 31 and the previous three quarters of available data from the reports.
- (b) An Employer shall cease to be an Eligible Employer either upon the effective date of its adoption of, or participation in, a Tax-Qualified Retirement Plan or if its average number of employees drops below five for a calendar year.
  - (1) An Eligible Employer shall be an Exempt Employer only if its average number of employees drops below five for a calendar year as determined using the methodology prescribed in subsection (a).
- (c) Each Participating Employer that ceases to be an Eligible Employer shall notify the Program within 30 days through one of the methods established in Section 10002(f).
- (d) The Program will notify Employers about the Program and its registration deadlines and require Eligible Employers that have not previously registered for the Program to do so on or before the deadlines set forth in Section 10002(a). Exempt Employers may, but need not, inform the Program of their exemption from the Program using one of the methods established under Section 10002(f).
- (e) For Employers in a Tri-Party Employment Relationship, the Eligible Employer shall be:
  - (1) For a temporary services employer or leasing employer, as defined in California Unemployment Insurance Code Section 606.5(b), the temporary services employer or leasing employer.

- (2) For a professional employer organization described under Internal Revenue Code Section 7705(e)(2)(A)-(E), without regard to the word "certified" in subparagraph (C), that enters into a contract with a Client Employer, the Client Employer.
- (3) For a motion picture payroll services company defined under California Unemployment Insurance Code Section 679(f)(4), the motion picture production company defined under California Unemployment Insurance Code Section 679(f)(5).

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

Reference: Sections 100000, 100012, 100032 and 100043, California Government Code.

### **Section 10002. Employer Registration**

- (a) Each Eligible Employer shall register with the Program no later than:
  - (1) For Eligible Employers employing more than 100 employees, June 30, 2020.
  - (2) For Eligible Employers employing more than 50 employees, June 30, 2021.
  - (3) For all other Eligible Employers, June 30, 2022.
- (b) An employer that becomes an Eligible Employer after July 1, 2019 shall register with the Program according to the dates in subsection (a) or within 24 months, whichever is later.
- (c) An Employer's number of employees shall be determined under the methodology prescribed in Section 10001(a).
- (d) Exempt Employers are prohibited from participating in the Program.
- (e) In order to register, an Eligible Employer shall provide the following information to the Administrator through one of the methods listed in subsection (f).
  - (1) Employer name, legal name, and "doing business as" name, if applicable;
  - (2) Federal Employer Identification Number and California Employer Payroll Tax Account Number;
  - (3) Employer mailing address; and
  - (4) Name, title, phone number, and email address of an individual designated by the Employer as the primary contact for the Program.
- (f) An Eligible Employer may register with the Program using the Program's website (employer.calsavers.com), by phone (855-660-6916), by overnight mail (CalSavers, 95 Wells Avenue, Suite 155, Newton, MA 02459), or regular mail (CalSavers, P.O. Box 55759, Boston, MA 02205-5759).

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

Reference: Sections 100032 and 100043, California Government Code.

### **Section 10003. Participating Employer Duties**

- (a) Within 30 days of registration, a Participating Employer shall provide the following information to the Administrator for each Eligible Employee:
  - (1) Employee's full legal name;
  - (2) Employee's Social Security Number or Individual Taxpayer Identification Number;
  - (3) Employee's date of birth;

- (4) Employee's mailing address;
  - (5) Employee's phone number, if available; and
  - (6) Employee's email address(es), if available.
- (b) For each Eligible Employee hired by a Participating Employer after it has registered with the Program, the Participating Employer shall provide the same information included in subsection (a) to the Administrator within 30 days of the Eligible Employee's hire date.
  - (c) Participating Employers shall ensure the Employee Information Packet is delivered to all Eligible Employees no later than 30 days after complying with subsection (a) or (b). Participating Employers shall satisfy this obligation by providing the Program with contact information for their Eligible Employees. The Program will deliver the packet directly to the employees using the provided contact information.
  - (d) Participating Employers shall remit each Participating Employee's Contribution each payroll period to the Administrator at the applicable Contribution Rate. The Contribution Rate shall be established by the Participating Employer and reported to the Employer by the Administrator through the Program's website (employer.calsavers.com).
    - (1) Participating Employers shall remit all Compensation withheld to the Administrator as soon as administratively possible, not to exceed seven business days from the date of deduction.
  - (e) Participating Employers shall not:
    - (1) Require, endorse, encourage, prohibit, restrict, or discourage employee participation in the Program.
    - (2) Provide Participating Employees or Beneficiaries of deceased Participating Employees advice or direction regarding investment choices, Contribution Rates, participation in Automatic Escalation, or any other employee decision about the Program.
    - (3) Remit any Contributions for any Eligible Employee who opted out of the Program.
    - (4) Exercise any authority, control, or responsibility regarding the Program other than as set forth in this Section.

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

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

**Section 10004. Employee Enrollment**

- (a) An Eligible Employee shall be enrolled into the Program if they do not opt out within 30 days after the date the Employee Information Packet is delivered. The information prescribed in Section 10003(a) will be used by the Administrator to execute the enrollment.
- (b) An Eligible Employee who does not opt out of the Program is deemed to have read and understood the content in the Employee Information Packet if the Eligible Employee has been furnished a copy of the Employee Information Packet pursuant to Section 10003(c) and has been provided an opportunity to opt out of the Program.

- (c) An Eligible Employee may opt out of the Program either electronically (saver.calsavers.com), by phone (855-650-6918), or by completing the Opt-Out Form and submitting the form by overnight mail (CalSavers, 95 Wells Avenue, Suite 155, Newton, MA 02459) or regular mail (CalSavers, P.O. Box 55759, Boston, MA, 02205-5759)
  - (1) To opt out by overnight mail or regular mail, Eligible Employees must provide the last four digits of their Social Security Number or Individual Tax Identification Number, date of birth, ZIP Code, and sign the form.
  - (2) To opt out electronically or by phone, Eligible Employees must provide the last four digits of their Social Security Number or Individual Tax Identification Number, date of birth, and ZIP Code.
- (d) Eligible Employees who opt out of the Program may enroll at any time through one of the methods established in subsection (c) except by phone, by providing the information pursuant to Section 10003(a) to the Administrator.
- (e) If the Administrator is unable to enroll an employee for any reason, the Administrator shall notify the Participating Employer with instructions not to remit Contributions for the employee within 30 days. The Administrator shall subsequently notify the Employee by regular mail or email, if the Administrator has the employee's email address, within 30 days of the attempted enrollment.
- (f) The Participating Employer shall ensure the Employee Information Packet is delivered annually during the Open Enrollment Period to all Eligible Employees who are not Participating Employees through the procedures identified in Section 10003(c).
  - (1) The Open Enrollment Period shall begin October 1 and conclude November 30.
  - (2) The Program shall deliver the Employee Information Packet to Eligible Employees by October 31.
  - (3) Eligible Employees that opted out of the Program at least six months prior to the Open Enrollment Period shall be enrolled in the Program if they do not opt out using one of the methods described in subsection (c) by the end of the Open Enrollment Period.

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

Reference: Sections 100000, 100012, 100014, 100032, 100043 and 100046, California Government Code.

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

- (a) Default Elections
 

Upon enrollment, a Participant 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