

CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD
ADDENDUM TO INITIAL STATEMENT OF REASONS

Pursuant to Government Code section 11346.8(c) and California Code of Regulations, title 1, section 44, the California Secure Choice Retirement Savings Investment Board (“Board”) is providing notice of changes made to proposed regulation sections 10000(k)-(aa), 10005(b)(3)-(4), and 10006(b)-(c). These changes are necessary to bring clarity to the proposed regulations text and have been revised based on written comments received during the 45-day public comment period and the oral comments received at the public hearing meeting held on April 15, 2019.

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

Problem this Rulemaking is Intended to Address:

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 and required it 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 Assembly Bill 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 implementation of the Program without subsequent authorizing legislation.

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.

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).

The specific purpose of these proposed regulations is to:

- a. Define terms and definitions 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 enrollment of eligible employees into the Program;
- f. Define the default account settings for participants that do not make an alternative election;
- g. Define the alternative elections available to participants;
- h. Establish policies for participation of individuals in the Program outside of an employment relationship with an Eligible Employer; and
- i. Define processes and policies for contributions, distributions, and transfer of savings.

The adoption of these regulations is necessary for the operation of the CalSavers Retirement Savings Program (“CalSavers” or “the Program”). The regulations will implement, interpret, and make specific the California Secure Choice Retirement Savings Trust Act (Title 21 of the California Government Code, commencing with Section 100000). Many of the regulations directly address questions of eligibility, processes, and duties received from members of the public.

Overall Benefit of this Rulemaking: Nearly half of California workers are on track to live at or near poverty upon reaching 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 fifteen times more likely to save when they have access to a payroll deduction savings vehicle at work.

CalSavers will ensure about seven 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 career. 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 when fewer elder citizens 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.

Implementation of these regulations will benefit participating individuals by providing them access to a workplace retirement savings program, increasing the likelihood they will accrue meaningful retirement savings and improve their financial security. The impact will 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, how they choose to invest their contributions, investment performance, and the Program’s ability to reduce administrative fees.

New businesses will not be created and current businesses will not be eliminated within the state as a direct result of the adoption of these regulations. The regulations should also have no impact on the expansion of businesses currently doing business in the state. Any impacts on businesses would be indirectly related to changes in demand and investment due to changes in saving and investing among working Californians, which are detailed in the SRIA. There may also be some opportunity cost impacts due to the time necessary to perform the duties required of Participating Employers under the regulations. The SRIA used survey data from similar programs in other states to estimate the time necessary for employers to perform what are essentially the same tasks required of employers through these regulations. Using those data, the SRIA estimates there will be no direct costs required of Participating Employers, but some opportunity costs due to the time spent performing their duties. The authors estimate those opportunity costs to be \$157 in a Participating Employer’s first year in the Program and \$135 annually thereafter. Those estimates assume it will require employers an average of 71 minutes to comply with the requirements of the Program in an Employer’s first year of participation and 30 minutes annually thereafter. On a time basis and dollar basis, this opportunity cost impact is marginal and insignificant.

These proposed regulations would make a few amendments to the emergency regulations approved by the Office of Administrative Law on November 19, 2018. These proposed regulations would amend the open enrollment period to make it biennial, rather than annual. The proposed

regulations would also establish that eligible employees that opted out of the Program within one year of an open enrollment period would not be subject to automatic enrollment, an increase to the six-month period currently established in the emergency regulations. These proposed regulations would also make some technical clarifying amendments regarding employer eligibility, establish some deadlines for facilitation of contributions, and make various non-substantive edits to improve clarity and consistent reading of the regulations.

Reasonable Alternatives to the Regulations and the Agency’s Reasons for Rejecting those Alternatives: As part of its adoption of Senate Bill 1234 in 2012, the legislation that established the California Secure Choice Retirement Savings Investment Board, the California Legislature found and declared middle class families in California are at significant risk of not having enough retirement income to meet even basic expenses. The Legislature declared California workers without access to an employer-sponsored retirement plan need a retirement savings system to provide them the opportunity to build assets and help them attain future financial stability. The Legislature also declared the lack of sufficient retirement savings poses a significant threat to the state’s safety net programs and threatens to undermine California’s fiscal stability.

Before adopting the proposed regulations, the Board considered some alternatives to certain aspects of the regulations. CalSavers staff estimated the economic and fiscal impacts and benefits of the proposed and alternative regulations. The table below summarizes the significant alternatives to the proposed regulations considered by the Board:

Proposed Regulations	Alternative
5% Default Contribution Rate	3% Default Contribution Rate
Implement Automatic Escalation of 1% annually up to 8%	Not Implement Automatic Escalation
Designate a biennial open enrollment period	Designate an annual open enrollment period
Allow individuals to participate outside of an employment relationship	Prohibit participation from individuals not employed by a participating employer
Establish Roth as the default IRA type	Establish Traditional as the default IRA type

Alternative 1: Adopt a 3% default contribution rate

Before the Board adopted the 5% default contribution rate, it solicited the input of informal stakeholder groups and the public at large. The majority of stakeholders preferred a 5% default contribution rate, however that support was not unanimous. Two stakeholder groups preferred a lower rate of 3% due to concerns that a higher rate would dissuade some lower-wage employees from participating in the Program. The Board also relied on some of the analysis conducted for the feasibility study completed in 2016. As part of the feasibility study, the consultants held six focus groups throughout the state and conducted an online survey of over 1,000 eligible workers to estimate future participation of eligible workers and analyze the expected behavior of future participants.

Alternative 1 would likely result in significantly less savings among participants, impact the Program finances, and reduce the Board’s ability to minimize administrative fees, further impacting participant savings and future financial security.

Because the mean and median income of likely participants is relatively low, it is unlikely that either a sustained 3% or 5% contribution rate would result in savings sufficient to provide total financial security in retirement for most participants. Given this reality, the deliberation on the ideal default contribution rate centers on which rate is most likely to result in optimal participant behavior

including its impact on a participant's contributions and their decision of whether or not to participate in the Program.

The Board rejected Alternative 1 because it would likely result in insufficient retirement savings for the target population and would not result in a measurably greater number of employees participating.

Alternative 2: Not implement automatic escalation

“Automatic escalation” is a term used to describe a retirement plan feature in which a participant's contributions are increased by a certain amount automatically at certain intervals for a certain period. Government Code Section 100032(k) provides the Board authority to implement automatic escalation and limits it to increases of no more than 1% of salary annually, up to a maximum of 8%.

The Board decided to implement automatic escalation of 1%, to occur annually January 1, as a default account setting for participants. Participants have the option to opt out of automatic escalation at any time, or could choose an alternative automatic escalation rate. Participants that have not been enrolled in the Program for at least six months would not have contributions subject to automatic escalation as a default option until the January 1 that falls after the participant has exceeded 180 days of participation.

During the pre-rulemaking period, most stakeholders and public comments expressed a preference for implementing automatic escalation, however some expressed interest in automatic escalation rates below 1% due to concerns about financial burdens to participants. At least one commenter conditioned their support for automatic escalation on a lower default contribution rate. Most, if not all, commenters expressed an understanding of the benefits of some level of automatic escalation as a valuable tool to encourage greater retirement savings.

Automatic features in retirement plans have been increasingly prevalent in retirement plans nationwide over the past decade—spurred in part by passage of the Pension Protection Act of 2006. Nationwide, about half of retirement plans use automatic enrollment and about two-thirds of those plans use automatic escalation.

A survey performed for the Board's market analysis and feasibility study found 81% of those surveyed noted they would remain in the Program if it utilized automatic escalation, however a third expressed they would opt out of the automatic increases.

The use of automatic escalation will provide individuals with a substantial increase in retirement savings compared to models without automatic escalation. For a typical eligible individual age 25, use of automatic escalation of 1% annually resulted in \$43,526 more retirement savings, a 35% increase compared to models that do not use automatic escalation.

Some commenters have expressed concerns that automatic escalation could result in financial burden for participants who may not remember the default automatic increase feature. To mitigate such concerns, the Board has adopted proposed regulations that would require notice to Participating Employees at least 90 days prior to any automatic escalation—to be followed by additional notices nearer to the escalation. In addition, employees will have the opportunity to opt out of automatic escalation at any time or change their automatic escalation amount. Employees will also be made aware of the opportunity at enrollment, before they have made any contributions to their account.

Due to the benefits of automatic escalation and incorporation of policies that mitigate risk of individual financial impacts, the Board rejected Alternative 2.

Alternative 3: Designate an annual open enrollment period

Government Code Section 100032(f)(2) requires the Board to designate an open enrollment period during which eligible employees that previously opted out shall be given the Employee Information Packet and, if they do not opt out again, shall be enrolled in the Program. Statute requires the Board establish the open enrollment period at least once every two years.

The existing regulations establish an annual open enrollment period and establish that any employee who opted out within six months of an enrollment period would not be subject to automatic enrollment.

Due to comments expressed by the Board and some in the regulated community, staff reconsidered the regulations and propose adopting a biennial open enrollment period. Additionally, staff propose adjusting the rules so that any eligible employee that opts out within one year prior to the open enrollment period would not be subject to automatic enrollment, rather than the current six-month period.

The Board chose to adopt a biennial open enrollment period to mitigate employer impacts and reduce the likelihood of impacts on employees that do not wish to participate in the Program.

Alternative 4: Prohibit individual participation

Government Code Section 100004(a) establishes the California Secure Choice Retirement Savings Trust and identifies its purpose as "...promoting greater retirement savings for California private employees in a convenient, voluntary, low-cost, and portable manner."

Government Code Section 100012(k) compels the Board to "Evaluate and establish the process by which an individual or an employee of a nonparticipating employer may enroll in and make contributions to the program."

By allowing individual participation, participating employees will be able to continue contributing to their CalSavers account if they leave a participating employer—increasing the likelihood they will accrue meaningful retirement savings. In addition, this provision enables self-employed individuals and contractors to access low-fee, professionally managed, transparently-governed investments.

Disallowing individual participation would reduce the portability and reach of the Program, reducing the likelihood that individuals would continue saving throughout their career and would flout one of the four key tenets of the Program established in state law.

Potential disadvantages of allowing individual participation pertain mostly to impacts on administrative efficiency and costs. Each additional individual participating in the Program will result in additional costs necessary to administer their account. However, those costs are at least partly covered by the contributions an individual makes into the Program. Because such individuals will not have the benefit of regular automatic payroll contributions, the Program will rely on affirmative actions by the individual to contribute directly into their account. While individual participation could negatively impact administrative efficiency, such individual participation could result in a net benefit for administrative efficiency if such individuals make meaningful contributions to their account consistently.

The proposed regulations would allow California residents, who are not employees of participating employers, to participate in the Program (for these purposes, referred to as "individual participation"). To participate, individuals can contribute to a CalSavers account directly using bank transfers. Due to concerns about cost efficiency, each contribution must be at least \$10 under the proposed regulations.

Alternative 5: Establish Traditional IRA as the default IRA type

In general, lower participant income and a longer investment horizon suggests an advantage to participating in a Roth IRA, since there is no (or a reduced) benefit to the reduction in taxable income provided by a Traditional IRA. Additionally, since Roth IRA contributions are made with after-tax dollars, both the contributions and earnings can be withdrawn tax free in retirement.

If a participant decides they do not want to participate in the Program after being automatically enrolled, or withdraw their contributions for any reason, the contributions are treated as if they were never made as long as the distribution occurs by the due date of their tax return for the year in which they made the contribution(s). The withdrawal of contributions is tax free, but any earnings on the contributions must be reported as income for the year in which they were earned and may be subject to a penalty.

Because the greatest share of participants are likely to benefit more from saving in a Roth IRA treatment rather than Traditional, the proposed regulations would establish Roth IRAs as the default IRA type.

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

The considerations for 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 via the link below:

<http://www.treasurer.ca.gov/scib/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) [Initial Contribution Rates and Automatic Escalation](#), 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

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Section 10000. Definitions, subsection (a)

Specific Purpose:

The definition “Account” specifically refers to accounts established by Participants through the CalSavers Retirement Savings Program.

Factual Basis:

The definition is necessary to delineate between an account established under the Program and other retirement savings accounts that may be established by a Participant or Employer unrelated to the Program.

Section 10000. Definitions, subsection (b)

Specific Purpose:

The definition for “Administrator” establishes a term for the Program’s third-party administrator responsible for recordkeeping and other operations.

Factual Basis:

The California Secure Choice Retirement Savings Investment Board (“Board”) is the entity responsible for overseeing and administering the Program, including the design and implementation of the Program, the execution of contracts, establishment of investment policies, and the delegation of authority to the Executive Director, among other duties.

Government Code Section 100010 provides the Board authority to retain a third-party administrator to operate the Program. Government Code Section 100012(g) compels the Board to establish an operational model for the Program that may include the services of a third-party administrator. Government Code Section 100043(b)(1)(D) requires, as a condition of implementation of the Program, the Board to adopt a third-party administrator operational model that limits employer interaction and transactions with the employee to the extent feasible.

The definition for Administrator is necessary to clearly identify and distinguish between the roles and responsibilities of Participating Employers, the Board, the Program, and the Administrator.

Section 10000. Definitions, subsection (c)

Specific Purpose:

The definition “Automatic Escalation” defines a term referred to in statute and used in the regulations.

Factual Basis:

Government Code Section 100032(k) provides the Board authority to “implement annual automatic escalation of employee contributions.” The statutory Section restricts Automatic Escalation to no more than 1% annual increases not to exceed 8% of salary and allows a Participating Employee to opt out of Automatic Escalation.

The definition is necessary to clearly identify the meaning of the term when used in the regulations.

Section 10000. Definitions, subsection (d)

Specific Purpose:

The definition “Beneficiary” defines a term used in the regulations for an individual or entity entitled to receive the proceeds of a Participating Employee or Participating Individual’s CalSavers account.

Factual Basis:

Statute does not explicitly mention or refer to beneficiaries; however administration of retirement programs compels the development of policies and procedures for designation of beneficiaries and the rules applicable to those beneficiaries. The inclusion of beneficiaries in the regulations is necessary for the purposes of clarity.

Section 10000. Definitions, subsection (e)

Specific Purpose:

The definition “Board” defines the shorthand term for the California Secure Choice Retirement Savings Investment Board.

Factual Basis:

The definition of “Board” is identical to the definition established under Government Code Section 100000(a). The definition in the regulations is necessary to ensure the regulations are clearly written and applied consistently.

Section 10000. Definitions, subsection (f)

Specific Purpose:

The definition “Client Employer” establishes a definition for a term not identified in statute and necessary to clarify employer eligibility.

Factual Basis:

The definition is necessary to further specify and define the eligibility of employers engaged in contracts with third-parties for the purposes of payroll, staffing, and employer compliance with laws and regulations. Because such relationships may not necessarily result in a clearly identifiable employer responsible for compliance, these definitions were necessary to ensure employers in such relationships can clearly identify the responsible entity.

Section 10000. Definitions, subsection (g)

Specific Purpose:

The definition “Compensation” defines the specific meaning of the term for the purposes of these regulations. The definition includes both Compensation as defined in the Code of Federal Regulations for traditional employment relationships and the definition of “Earned Income” as defined for sole proprietors, a partner in a partnership, a member of a limited liability company treated as a sole proprietor or partner, or a self-employed individual.

Factual Basis:

The definition “Compensation” is necessary to clarify the specific meaning of Compensation has the same meaning as used in Title 26 of the Code of Federal Regulations. The definition is also necessary to specify the meaning of the term with regard to sole proprietors, a partner in a partnership, a member of a limited liability company treated as a sole proprietor or partner, or a self-employed individual, which refers to a different definition than Title 26 of the Code of Federal Regulations.

Title 26 of the Code of Federal Regulations 1.415(c)-2(d)(4) establishes a definition of the term “Compensation” for the purposes of defined contribution retirement plans (i.e. 401(k)s or Individual Retirement Accounts (IRAs)). Because the IRAs offered by the Program are treated the same as IRAs under federal law, the definition refers to the definition in the Code of Federal Regulations.

The definition of “Compensation” used in the Code of Federal Regulations defines the term for employees. Because the Program allows participation by sole proprietors, a partner in a partnership, a member of a limited liability company treated as a sole proprietor or partner, or a self-employed individual, and because the Compensation of such individuals does not fall neatly under the federal definition, this regulation is necessary to specify Compensation may also mean such individuals’ Earned Income.

Section 10000. Definitions, subsection (h)

Specific Purpose:

The definition for “Contribution,” establishes a term to refer specifically to any monies contributed to a CalSavers account.

Factual Basis:

This regulation is necessary for the purposes of clarity. The definition ensures the reader may not confuse this specific Contribution with any other types of contributions.

Section 10000. Definitions, subsection (i)

Specific Purpose:

The definition for “Contribution Rate” defines the term for the percentage of a Participating Employee’s Compensation to be withheld and contributed to their Account.

Factual Basis:

Government Code Section 100032(k)(3) establishes a Participating Employee may set their contribution rate at a level determined by the Participating Employee.

The regulation is necessary to clarify the meaning of a term referred to in statute, but not defined, to ensure consistent reading by the regulated community.

Section 10000. Definitions, subsection (j)

Specific Purpose:

The definition “Earned Income” defines a category of Compensation not included under the definition of compensation established under Title 26 Code of Federal Regulations 1.415(c)-2(d)(4).

Factual Basis:

The purpose of this definition is to define the meaning of Earned Income for the purposes of defining Compensation for a category of Eligible Employees.

Because the Program allows participation by sole proprietors, a partner in a partnership, a member of a limited liability company treated as a sole proprietor or partner, or a self-employed individual, and because the Compensation of such individuals does not fall neatly under the federal definition, this regulation is necessary to define Earned Income, a definition used in the Compensation definition.

The definition refers to the definition established under Internal Revenue Code Section 401(c)(2), which defines earned income as the net earnings related to self-employed individuals and owner-employees for defined contribution retirement programs.

Section 10000. Definitions, subsection (k)

Specific Purpose

The definition for “Electronic Fund Transfer” clarifies a category of non-payroll contribution that may be made by a Participant.

Factual Basis:

The definition is necessary to clarify the types of non-payroll contributions Participants can make. The regulations have been amended to include this definition in response to a comment letter

received during the 45-day public comment period, which requested clarity regarding whether a bank account is necessary to make non-payroll contributions.

Section 10000. Definitions, subsection (l)

Specific Purpose:

The definition for “Eligible Employee” further defines and clarifies the term established in statute. The definition adds the requirement that an employee be at least age eighteen to be determined eligible for the Program. By referring to the “Employee” definition in the regulations, this regulation specifies the meaning of the term “employee” referred to in statute and specifies eligibility for certain sole proprietors, partners, or members of a limited liability company treated as a sole proprietor or partner for federal tax purposes.

Factual Basis:

This regulation is necessary to further define the term “eligible employee” established in statute by restricting the definition to employees age eighteen and above and clarify the meaning of the term “employee” from the statutory definition.

By referring to the term “Employee” established in these proposed regulations, this definition also further clarifies the definition in statute by defining an employee using the state’s definitions in the Unemployment Insurance Code, defining an employee as an individual who receives a W-2 with California wages, and also defining an employee to mean a sole proprietor, partner, or member of a limited liability company treated as a sole proprietor or partner for federal tax purposes.

The proposed permanent regulations would modify the existing regulatory definition by referring to the new definition “Employee.” Because that definition includes the language defining an employee as one 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” the language was removed from this section.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation’s subsection has been amended to subsection (l).

Section 10000. Definitions, subsection (m)

Specific Purpose:

The definition for “Eligible Employer” further defines a term included in statute by clarifying how eligibility is determined concerning an employer’s number of employees and their sponsorship, or lack thereof, a retirement savings program.

The regulatory definition further specifies the meaning of the term “employee” used in statute by referring to the definition of “Employee” in the proposed regulations. The definition for “Eligible Employer” also clarifies that an employer must employ at least one Eligible Employee to be determined eligible for the Program.

Additionally, the definition for “Eligible Employer” specifies the types of retirement plans that, if sponsored by an employer, would result in an employer being exempt.

Factual Basis:

Government Code Section 100000(d) defines the term “Eligible Employer.” This regulation is necessary to further specify the definition of Eligible Employer included in statute. Specifically, the regulation is necessary to further specify the meaning of the requirement that an Eligible Employer “...has five or more employees...” and to specify the meaning of statutory language regarding the requirement an Eligible Employer does not “...provide a retirement savings program...”

This regulation would further define the meaning the statutory definition by defining the term “employee” used in the statutory definition, establish the methods by which the number of employees shall be determined, and specifically identify the meaning of the term “retirement savings program” used in statute.

The definition in the proposed permanent regulations alters the existing definition by referencing the new term “Employee” and adding the clause noting the number of Employees shall be determined under the methodology described in Section 10001(a). The purpose of the change is to resolve a potential misunderstanding of the existing rules. Section 10000(l) in the existing version of regulations would define an Eligible Employer as an employer with “...five or more employees...” to register. While some could interpret the word “employee” to mean a California employee, the regulation could also be read to refer to any type of employee, including employees outside of California. The latter interpretation would conflict with the regulations established in Section 10001(a), which bases an employer’s number of employees on the number of California-based employees.

To clarify, these proposed regulations include a definition for “Employee” as an individual with the status of an employee under California Unemployment Insurance Code who receives a W-2 with California wages. By establishing this definition, and by using the definition for the Eligible Employer definition, the regulations make it clear an employer must employ at least five Employees—employees defined under California law who receive a W-2 with California wages.

The proposed regulations would also require an Eligible Employer to employ at least one Eligible Employee to ensure employers are not required to register for the Program if they have no Employees that could participate.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation’s subsection has been amended to subsection (m).

Section 10000. Definitions, subsection (n)

Specific Purpose:

The definition for “Employee” further specifies terms established in statute. The definition establishes that an “Employee” is any individual who has the status of an employee under Unemployment Insurance Code and who receives a W-2 with California wages. The definition for “Employee” also specifies that an employee can include a sole proprietor, partner, or member of a limited liability company treated as a sole proprietor or partner for federal tax purposes.

Factual Basis:

As noted above, this definition is necessary to further clarify the meaning of the word “employee” used in statute. The definition is necessary to specify employee means an individual with the status of an employee as established under Unemployment Insurance Code and who receive a W-2 with California wages. This regulation is necessary to recognize the Board does not have authority to over employees working outside of California and, therefore, limits eligibility to employees working in the state.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation’s subsection has been amended to subsection (n).

Section 10000. Definitions, subsection (o)

Specific Purpose:

The definition for “Employee Information Packet” defines a term frequently used in the regulations, but not defined.

Factual Basis:

Government Code Section 100014(a) requires the Board to design and disseminate an Employee Information Packet that includes background information on the Program, disclosures, and include an Opt-Out Form through which an employee may opt out of participation in the Program. This section of statute specifies the information that must be included in the Employee Information Packet.

The definition for “Employee Information Packet” is necessary for the clarity and consistent reading of the regulations by ensuring the regulated community does not confuse this Employee Information Packet with any other types of employee information materials related to the Program.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation’s subsection has been amended to subsection (o).

Section 10000. Definitions, subsection (p)

Specific Purpose:

The definition for “Employer” defines a term that could be interpreted to have alternate definitions if left undefined in the regulations. The definition establishes an employer to mean an “Employer” as defined under California Unemployment Insurance Code.

Factual Basis:

The term “Employer” is necessary for the purposes of clarity and consistency. The term is also necessary to distinguish it from the definition of “Eligible Employer.”

The definition specifies the types of entities that are considered an employer for the purposes of the proposed regulations as determined under California Unemployment Insurance Code Division 1, Part 1, which establishes the definitions of an employer for the purposes of the state’s Unemployment Insurance.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation's subsection has been amended to subsection (p).

Section 10000. Definitions, subsection (q)

Specific Purpose:

The definition for "Exempt Employer" establishes conditions that would define an Employer as exempt from the requirements of the Program.

The definition parallels the definition for "Eligible Employer." The regulation defines an "Exempt Employer" as an Employer that either has fewer than five employees or employs five or more employees but does not employ at least one Eligible Employee. The regulation also defines an "Exempt Employer" as one that maintains or contributes to a Tax-Qualified Retirement Plan, a term further defined in these regulations. Finally, the regulation defines "Exempt Employer" as the federal government, the state, any county, any municipal corporation, or any of the state's units or instrumentalities.

Factual Basis:

The term "Exempt Employer" is not explicitly established in statute. This regulation is necessary to establish the term, which is used in the regulations to specify what Exempt Employers may or may not do with respect to the Program.

The proposed permanent regulations would establish processes in Section 10001(a) for the Program to determine an Employer's number of Employees for purposes of determining an Employer's eligibility. To account for fluctuations in employment, the Program would calculate the average number of an Employer's Employees over a calendar year. The regulations count an Employer's Employees based on the calculation of the average number of Employees as reported to the Employment Development Department (EDD) for the quarter ending December 31 and the previous three quarters of available data.

As noted above in the description for Section 10000(l), the proposed permanent regulations would modify the existing definition of "Exempt Employer" to use the new term "Employee" and establish that an otherwise Eligible Employer with five or more Employees would be exempt if they do not employ at least one Eligible Employee.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation's subsection has been amended to subsection (q).

Section 10000. Definitions, subsection (r)

Specific Purpose:

The definition for "IRA" defines a term frequently used in the regulations and establishes a shorthand definition for Individual Retirement Account. The definition is identical to the definition in statute.

Factual Basis:

Individual Retirement Accounts (IRAs) are established under Section 408 of the Internal Revenue Code. The definition refers to an Individual Retirement Account or Individual Retirement Annuity under Sections 408(a), 408(b), or 408A of the Internal Revenue Code. Section 408(a) defines what is commonly referred to as a Traditional IRA, Section 408(b) defines an Individual Retirement Annuity, and Section 408A defines what is commonly known as a Roth IRA.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation's subsection has been amended to subsection (r).

Section 10000. Definitions, subsection (s)

Specific Purpose:

The definition for "Open Enrollment Period" defines a term described in statute. The term informs the regulated community about the Open Enrollment Period and to distinguish the period from other potential interpretations.

Factual Basis:

The definition is necessary to define a term used in the regulations and to distinguish it from other potential inferences about the meaning of the term.

Government Code Section 100032(f)(2) compels the Board to designate an Open Enrollment Period during which Eligible Employees that previously opted out of the Program shall be given the Employee Information Packet and enrolled into the Program if they do not opt out.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation's subsection has been amended to subsection (s).

Section 10000. Definitions, subsection (t)

Specific Purpose:

The definition for "Opt-Out Form" defines a term frequently used in the regulations, but not defined in statute. The definition does not alter or expand the meaning of the term used in statute.

Factual Basis:

Government Code Section 100014(a) requires the Board to develop an Employee Information Packet to include background information about the program that includes a disclosure form and an Opt-Out form for an Eligible Employee to note their decision to opt out of participation in the Program.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation's subsection has been amended to subsection (t).

Section 10000. Definitions, subsection (u)

Specific Purpose:

The definition of “Participant” establishes a term necessary to refer to all types of Participants, including a Participating Employee, Participating Individual, or Beneficiary.

Factual Basis:

The regulation is necessary to define the collective group of all potential types of Participants, which may include Participating Employees, Participating Individuals, or Beneficiaries. While some sections of the regulations are specifically drafted to apply to just one of those types of Participants, some sections of the regulations apply to all such types of Participants.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation’s subsection has been amended to subsection (u).

Section 10000. Definitions, subsection (v)

Specific Purpose:

The definition for “Participating Employee” defines a category of Participant, distinguishing it from a Participating Individual and Beneficiary.

Factual Basis:

The term “Participating Employee” is not explicitly defined in statute, but frequently used in the statute and regulations. The regulation is necessary, as Participating Employees will have different rules and options available to them that may not be available to other types of Participants, including the automatic enrollment feature.

The definition is also necessary to clarify and ensure consistent reading of the regulations regarding the roles and duties of employers.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation’s subsection has been amended to subsection (v).

Section 10000. Definitions, subsection (w)

Specific Purpose:

The definition “Participating Employer” defines a category of employer, distinguishing it from an eligible or Exempt Employer.

Factual Basis:

The definition “Participating Employer” is necessary to distinguish between categories of employers – including Eligible Employers and employers generally— and to ensure clarity of the regulations. In particular, an employer’s duties or obligations under statute may differ depending on

if they are eligible, exempt, or Participating Employers. The definition of “Participating Employer” is identical to the definition established in statute.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation’s subsection has been amended to subsection (w).

Section 10000. Definitions, subsection (x)

Specific Purpose:

The definition of “Participating Individual” defines a type of Participant referred to in statute, but not defined. The definition establishes a category of Participant and distinguishes it from a Participating Employee or Beneficiary.

Factual Basis:

The definition of “Participating Individual” is necessary to establish a definition not established in statute.

Government Code Section 100012(k) provides the Board the power and authority to “...evaluate and establish the process by which an individual or an employee of a nonparticipating employer may enroll in and make contributions to the Program.” This definition is necessary to define the types of individuals outside of a typical employer-employee relationship eligible to participate in the Program.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation’s subsection has been amended to subsection (x).

Section 10000. Definitions, subsection (y)

Specific Purpose:

The definition for “Program” establishes a shorthand for the “CalSavers Retirement Savings Program.”

Factual Basis:

The definition of “Program” is necessary to define the shorthand version of the term “CalSavers Retirement Savings Program.”

Government Code Section 100000(b) establishes a definition for the CalSavers Retirement Savings Program as “...a retirement savings program offered by the California Secure Choice Retirement Savings Trust.” The definition in the regulations is essentially identical to the definition in statute.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation’s subsection has been amended to subsection (y).

Section 10000. Definitions, subsection (z)

Specific Purpose:

The “Tax-Qualified Retirement Plan” definition clearly defines the types of retirement plans that, if offered by an employer, would result in the employer deemed to be exempt from the requirements of statute. By exclusion, the definition establishes the types of savings arrangements or other employer benefits that would not result in an employer deemed to be an Exempt Employer.

Factual Basis:

The “Tax-Qualified Retirement Plan” definition is necessary to clarify and make specific the definition of “Eligible Employer” in Government Code Section 10000(d) and the related Government Code Section 100032(g). The definition is necessary to specify the types of Tax-Qualified Retirement Plans that will render an employer exempt from the requirements of statute.

Government Code Section 100032(g) identifies some of the employer-sponsored retirement plans that would, if offered by an employer, result in them being defined as an Exempt Employer. The section clearly identifies some plans, but does not provided a comprehensive list of the types of plans that would render an employer exempt.

The “Tax-Qualified Retirement Plan” definition in the proposed regulations includes the list of all retirement plans that, if offered by an employer, would result in them being exempt from the requirements of statute. By exclusion, the list also establishes programs that would not render an employer exempt from the requirements of statute.

The proposed permanent regulations would make a non-substantive edit to the existing regulations by referring to Title 21 of the United States instead of the Internal Revenue Code. This edit has no impact on the meaning of the regulations. The edit was made to stay consistent with formatting used throughout the regulations.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation’s subsection has been amended to subsection (z).

Section 10000. Definitions, subsection (aa)

Specific Purpose:

The definition of “Tri-Party Employment Relationships” establishes a term not identified in statute.

Factual Basis:

The definition is necessary to further specify and define the eligibility of employers, particularly those engaged in contracts with third-parties for the purposes of payroll, staffing, and employer compliance with laws and regulations. Because such relationships may not necessarily have a clearly identifiable employer responsible for compliance, this definition was necessary to ensure employers in such relationships can clearly identify the responsible entity.

Amendment:

Due to the addition of a new definition to Section 10000, subsection (k), this regulation's subsection has been amended to subsection (aa).

Section 10001. Eligible Employers, subsection (a)

Specific Purpose:

This regulation defines the methods by which the Program will calculate an Employer's number of Employees for the purposes of determining their eligibility for the Program.

Factual Basis:

Government Code Section 100012(f) provides the Board the power and authority to determine the eligibility of an employer and Government Code Section 100032(b-d) identifies the deadlines by which employers must register with the Program, which varies according to the employer's number of employees. The regulation clarifies an issue of significant interest among the regulated community, particularly employers, as statute does not specify the exact method through which the program will determine an employer's total number of employees. The regulation is necessary to specify the number of employees will be determined based on the average number of employees in a calendar year as reported on the employer's quarterly employee wage reports to the Employment Development Department.

Section 10001. Eligible Employers, subsection (b)

Specific Purpose:

This regulation defines the circumstances upon which an Eligible Employer becomes an Exempt Employer. Specifically, the regulation establishes an Eligible Employer will only become exempt on the basis of their total number of employees at the time after which their average number of employees drops below five for a calendar year.

Factual Basis:

Employers are exempt if they a) either employ fewer than five employees or b) provide a retirement plan as defined in Section 10000(y). Depending on the cause, an employer would become exempt either immediately upon the effective date of its adoption of a Tax-Qualified Retirement Plan or only after a calendar year has elapsed. As established in Section 10001(a)(1), an employer will cease to be an Eligible Employer only when their average number of employees drops below five for a calendar year. Comparatively, an Eligible Employer will be an Exempt Employer upon the effective date of its adoption of, or participation in, a Tax-Qualified Retirement Plan.

This regulation is necessary to establish the timeframes and events that would result in an Eligible Employer becoming an Exempt Employer.

The proposed regulations would modify the regulation to add the clause referring to the methodology established in subsection (a) and would delete Section 10001(b)(1) because it would become redundant.

Section 10001. Eligible Employers, subsection (c)

Specific Purpose:

This regulation establishes requirements for Participating Employers to notify when they cease to be Eligible Employers.

Factual Basis:

As noted above, some of the regulated community had concerns about how their compliance with statute could be impacted by seasonal fluctuations of their workforce. This regulation is necessary to provide the timeframes by which Eligible Employers that later become Exempt Employers will have to notify the Program about their eligibility change.

Section 10001. Eligible Employers, subsection (d)

Specific Purpose:

This regulation specifies the processes through which the program will begin to register employers.

Factual Basis:

The regulation is necessary to affirm that Eligible Employers will be required to register with the Program prior to their respective registration deadline and notes that Exempt Employers may, but are not required to certify their exemption from the Program. The regulation also describes the methods through which employers may certify their exemption and provides the specific address, phone number, and internet address through which employers may complete the function.

Section 10001. Eligible Employers, subsection (e)

Specific Purpose:

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

Factual Basis:

This regulation is necessary to further specify and define the eligibility of employers engaged in contracts with third-parties for the purposes of payroll, staffing, and employer compliance with laws and regulations. Because such relationships may not always have a clearly identifiable employer responsible for compliance, these definitions were necessary to ensure employers in such relationships can clearly identify the responsible entity.

The proposed regulations would modify the regulations by capitalizing the term “Employer” in order to refer to the defined term “Employer” established in the regulations, referring to Title 26 of the United States Code rather than the Internal Revenue Code, and making other minor edits to improve clarity.

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) provides

the Board authority to extend those time limits. This regulation extends the statutory deadlines by approximately 7.5 months and identifies specific dates for the employer registration deadlines.

Factual Basis:

The Program was implemented November 19, 2018. Government Code Section 100032(b-d) establishes deadlines upon which an Eligible Employer is required to register for the Program beginning twelve months following implementation of the Program. Government Code Section 100032(e) provides the Board authority to extend the deadlines for Employer compliance as appropriate. This regulation is necessary to extend each deadline by approximately 7.5 months.

This regulation is necessary to inform the regulated community of those specific deadlines.

Section 10002. Employer Registration, Subsection (b)

Specific Purpose:

This regulation identifies the deadlines for employers to comply with the Program if either they are a new employer created after the implementation date or become eligible for the Program after the implementation date—either by ceasing to offer a Tax-Qualified Retirement Plan or by beginning to employ five or more employees.

Factual Basis:

The registration deadlines established in Section 10002(a) would apply to employers that are Eligible Employers on the first day the Program is launched. Absent this regulation, any new employer, or newly-Eligible Employer, could infer they are required to register by those deadlines – even if, for example, they become eligible just the day before the deadline. This regulation is necessary to establish the deadlines by which Employers that become Eligible Employers – e.g. new Employers or previously-exempt Employers – are required to register for the Program.

The proposed regulations would also modify the existing regulation by capitalizing the term “Employer” to refer to the definition established in the regulations. The proposed regulations would also modify the language to further clarify the existing language.

Section 10002. Employer Registration, Subsection (c)

Specific Purpose:

This regulation establishes the methods through which the Program shall determine an employer’s number of employees for the purposes of the registration deadlines established under statute. The Program will determine an employer’s number of employees based on the calculation established in Section 10001(a) in these proposed regulations.

Factual Basis:

Government Code Section 100032(b) establishes deadlines by which employers will be required to comply with statute. This regulation is necessary to affirm that the deadlines are determined on the methodology established by Section 10001(a).

Section 10002. Employer Registration, Subsection (d)

Specific Purpose:

This regulation establishes that Exempt Employers are prohibited from participating in the Program in the same manner as a Participating Employer.

Factual Basis:

Some members of the regulated community have inquired if they could participate in the Program even if they already maintain or contribute to a Tax-Qualified Retirement Plan or employ fewer than five employees. Government Code Section 100012(k) compels the Board to evaluate and establish a process by which an individual or employee of a nonparticipating employer may enroll in and make contributions to the program. Section 10006(d) establishes businesses that choose to facilitate payroll deductions for such Participating Individuals are responsible for ensuring such an arrangement is not an employee benefit plan regulated under Title 1 of the Employee Retirement Income Security Act. This regulation is necessary to identify the limitations of activities that may be performed by Exempt Employers with regard to the Program.

Section 10002. Employer Registration, subsection (e)

Specific Purpose:

This regulation identifies the specific methods through which Eligible Employers may register with the Program.

Factual Basis:

This regulation is necessary to identify the methods through which Eligible Employers may register for the Program. The methods and addresses identified in this section have been established by the Program's Administrator to ensure employers have a variety of methods through which they can register for the Program.

The proposed permanent regulations would modify the existing regulations by moving this subsection within the section for easier reading by the regulated community.

Section 10002. Employer Registration, subsection (f)

Specific Purpose:

This regulation requires employers to provide the Program information necessary to maintain each employer's account.

Factual Basis:

This regulation is necessary to ensure Participating Employers provide the information necessary to maintain their account. Each piece of information is necessary to ensure the accuracy and security of employer accounts and ensure efficient administration of the Program's systems.

Section 10003. Participating Employer Duties, subsection (a)

Specific Purpose:

This regulation requires Participating Employers to provide specific Eligible Employee information necessary for automatic enrollment.

Factual Basis:

Government Code Section 100032(f)(1) provides each Eligible Employee shall be enrolled in the Program unless the Employee elects not to participate in the Program and 100012(h) compels the Board to design the processes for the enrollment of Eligible Employees. The enrollment method established in statute is commonly referred to as “automatic enrollment.” In order to establish Accounts for employees automatically enrolled in the Program, the Program must first obtain the information necessary to establish a Participant Account—including an employee’s name, social security or individual tax identification number, date of birth, mailing address, and, if available, phone number and email address. This regulation is necessary to establish requirements for Participating Employers to provide information for each Eligible Employee.

The proposed regulations would modify the existing regulations to correct a typographical error. While subsection (a) establishes requirements for Participating Employers to provide certain information for each Eligible Employee, the current regulations use only the term “Employee,” not “Eligible Employee.” To correct the typo and ensure consistent interpretation of the regulations, the proposed regulations would change the term for subsections (1)-(6) from “Employee” to “Eligible Employee.”

Section 10003. Participating Employer Duties, subsection (b)

Specific Purpose:

This regulation establishes requirements for transmission of Eligible Employee information for Eligible Employees hired by a Participating Employer after it has registered for the Program.

Factual Basis:

This regulation is necessary to identify the timeframes by which Participating Employers shall provide employee information to the Administrator.

Section 10003. Participating Employer Duties, subsection (c)

Specific Purpose:

This regulation establishes a deadline by which the Employee Information Packet is delivered to all Eligible Employees and identifies the means through which employers can accomplish the duty.

Factual Basis:

Government Code Section 100014(a) requires the Board to “...disseminate to employers...an employee information packet...” and Government Code Section 100014(f) requires “The employee information packet...(to) be made available to employers...and supplied to employees at the time of hiring.” Government Code Section 100012(a)(3) requires the Board to design and operate the Program “With simplicity, ease of administration for participating employers...”

The regulation is necessary to identify the process through which employers shall satisfy their statutory requirement by providing the Program with the employee information identified in subsection (a) of this Section so the Program may deliver the Employee Information Packet directly

to the employee. The Board adopted processes for distributing the Employee Information Packet directly from the Administrator to the Eligible Employee. The purpose is to minimize the role of the employer in order to ensure ease of administration instead of requiring employers to distribute the Employee Information Packet.

The proposed permanent regulations would modify the existing regulations to correct a typographical error by changing one instance of the word “employees” to “Eligible Employees.”

Section 10003. Participating Employer Duties, subsection (d)

Specific Purpose:

This regulation identifies the method through which each employee’s contribution rate shall be reported to the employer and establish the timeframes by which Participating Employers are required to remit Contributions following the date of deduction.

Factual Basis:

The regulation is necessary to clearly establish the role of the Administrator and the Participating Employee in establishing and communicating a Contribution Rate change to a Participating Employer and describe the duties of a Participating Employer in remitting Contributions.

The regulation also establishes the maximum timeframe by which a Participating Employer shall remit the Compensation withheld (e.g. the amount of the Contributions). The timeframe is identical to the timeframes included in regulations issued by the U.S. Department of Labor for state-sponsored retirement programs like CalSavers. The time period is the same time period allowable under the safe harbor rule established by the U.S. Department of Labor for employee Contributions to retirement programs with fewer than 100 Participants.

Section 10003. Participating Employer Duties, subsection (e)

Specific Purpose:

This regulation further clarifies the limitations on an employer’s role referred to in statute.

Factual Basis:

This regulation is necessary to ensure that Participating Employers do not take on responsibilities that would violate Government Code Section 100034.

Section 10004. Employee Enrollment, subsection (a)

Specific Purpose:

This regulation specifies the timeframes by which an Eligible Employee can choose to opt out of the Program before they would be enrolled automatically.

Factual Basis:

Government Code Section 100032(f)(1) establishes “...each eligible employee shall be enrolled in the program unless the employee elects not to participate in the program.” The regulation is

necessary to establish the timeframes by which Eligible Employees shall be enrolled in the Program if they do not opt out.

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

Specific Purpose:

The proposed regulation would add a deadline for Participating Employers to facilitate Contributions for Participating Employees.

Factual Basis:

The proposed permanent regulations would add a subsection establishing deadlines for a Participating Employer to facilitate a Participating Employee's Contributions. This regulation is necessary to ensure Participating Employers remit Participating Employee Contributions in a timely manner without disrupting an employer's normal payroll processes. The proposed regulation would establish a deadline for Participating Employers to facilitate Contributions "...no later than the first payroll period following 30 days after...the Participating Employee's enrollment."

Section 10004. Employee Enrollment, subsection (b)

Specific Purpose:

This regulation establishes the method by which the program will deem an Eligible Employee has read and understands the content of the disclosure form.

Factual Basis:

Government Code Section 100014 requires the Program to include a disclosure form to be provided to each Eligible Employee and that the employee shall have a method to acknowledge they have read and understand the content of the form. This regulation is necessary to establish the methods through which the Program deems acknowledgement of the disclosure.

Section 10004. Employee Enrollment, subsection (c)

Specific Purpose:

This regulation establishes the specific methods through which an Eligible Employee may elect to opt out of the Program.

Factual Basis:

Government Code Section 100032(f)(1) establishes "Each eligible employee shall be enrolled in the program unless the employee elects not to participate in the program..." The regulation is also necessary to describe the methods by which an Eligible Employee can notify the Program regarding their decision to opt out of the Program.

The proposed permanent regulations would modify the existing regulations by affirming an Eligible Employee may opt out of the Program "...at any time." The edit was made to affirm the intent of the language in the existing regulations and ensure the regulations are consistent with statute, which

establishes an Eligible Employee "...may terminate his or her participation in the program at any time in a manner prescribed by the board..."

Section 10004. Employee Enrollment, subsection (d)

Specific Purpose:

This regulation establishes that Eligible Employees who opt out of the Program may enroll at any time and to clarify the processes through which they may enroll.

Factual Basis:

Government Code Section 100032(f)(3) establishes "An employee who elects to opt out of the program who subsequently wants to participate may only enroll during the board's designated Open Enrollment Period or if permitted at an earlier time." This regulation is necessary to establish that Eligible Employees may elect to participate at an earlier time than during the Open Enrollment Period.

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

Specific Purpose:

The proposed permanent regulation would add a deadline for Participating Employers to facilitate Contributions for Participating Employees that enroll in the Program outside of the Open Enrollment Period. This deadline is the same as the deadline established in Section 10004(a)(1).

Factual Basis:

This regulation is necessary to ensure Participating Employers remit Contributions for Participating Employee who join the Program outside of automatic enrollment or open enrollment in a timely manner. The proposed regulation would establish a deadline for Participating Employers to facilitate Contributions "...no later than the first payroll period following 30 days after...the Participating Employee's enrollment."

Section 10004. Employee Enrollment, subsection (e)

Specific Purpose:

This regulation clarifies the methods through which the Administrator shall notify employees and Employers if it is unable to enroll an Employee for any reason. The regulation would require the Administrator to notify the Participating Employer not to remit Contributions within 15 days of the Administrator's attempt to enroll the Participating Employee and notify the employee directly within 15 days of attempting to enroll the Participating Employee.

Factual Basis:

The Administrator will likely experience some errors in enrolling an Eligible Employee due to typographical errors or other reasons. This regulation is necessary ensure the Administrator notifies a Participating Employer not to remit Contributions for such an Eligible Employee and to notify the employee about the enrollment error by the time they would have otherwise been enrolled in the Program.

The proposed regulations would alter the existing regulation by specifying the event to precipitate the Administrator's deadline to notify the employer and employee. The existing regulations establish requirements for the Administrator to notify the employee "...within 30 days of the attempted enrollment". The existing regulations would require the Administrator to notify the Participating Employer "...within 30 days." Because this portion of the regulation does not define the event precipitating the timeframe, the proposed permanent regulations would modify this subsection to note the timeframe begins "...after the Administrator's attempt to enroll the Eligible Employee."

Additionally, the proposed permanent regulations would shorten the deadline from 30 days to 15. The 15-day timeframe would allow the employer and employee to receive notification by the time the employee would have otherwise been enrolled in the Program.

Section 10004. Employee Enrollment, subsection (f)

Specific Purpose:

This regulation would establish Eligible Employees who opted out of the Program within one year of an Open Enrollment Period would not be subject to automatic enrollment during an Open Enrollment Period.

Factual Basis:

Government Code Section 100032(f)(2) requires the Board to designate an open enrollment period at least once every two years. The Open Enrollment Period is defined in statute as a 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 and enrolled in the Program if they do not choose to opt out. The proposed regulation is necessary to ensure Eligible Employees who previously opted out of the Program are not subject to automatic enrollment during an Open Enrollment period within one year of their decision to opt out.

The proposed permanent regulations would alter Section 10004(f)(3) of the existing regulations by extending the period after which an employee who previously opted out of the Program shall be subject to automatic enrollment. Individuals who opted out of the Program nearer to the Open Enrollment Period are presumed to be disinterested in enrolling in the Program and the Board decided a minimum of one year is a reasonable timeframe for someone to reconsider enrollment.

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

Specific Purpose:

This regulation would establish Open Enrollment Periods shall begin November 1 and conclude November 30.

Factual Basis:

The proposed permanent regulations would modify the existing regulations by establishing the Open Enrollment Period to begin November 1 and conclude November 30. Before the period begins, employees eligible for the Open Enrollment Period would receive the Employee Information Packet and other materials and, if they do not choose to opt out by November 30,

would be enrolled in the Program. The regulation is necessary to provide the regulated community with information regarding when the Open Enrollment Period will occur.

Section 10004. Employee Enrollment, subsection (f)(2)

Specific Purpose:

This regulation would clarify the meaning of subsection (f)(3) by establishing that Eligible Employees that do not opt out during the Open Enrollment Period shall be enrolled in the Program.

Factual Basis:

Government Code Section 100032(f)(2) establishes Eligible Employees who previously opted out of the Program shall receive an Employee Information Packet "...for the employee to enroll in the program or opt out of the program..." This regulation is necessary to ensure Eligible Employees are notified of the date by which they would be enrolled in the Program if they do not opt out during the Open Enrollment Period.

Section 10004. Employee Enrollment, subsection (f)(3)

Specific Purpose:

This regulation would establish the frequency of Open Enrollment Periods for each Participating Employer. The regulation would establish Open Enrollment Periods to occur once every two years for each Participating Employer. The regulation would also establish an employer's first Open Enrollment Period would not occur until the second November after it registers for the Program.

Factual Basis:

Government Code Section 100032(f)(2) requires the Board to designate an Open Enrollment Period at least once every two years.

This regulation is necessary to establish the frequency of Open Enrollment Periods and establish the first Open Enrollment Period shall not be held until the second November after a Participating Employer registers for the Program. Because each Participating Employer may register for the Program at various times in a year, and some employers will enroll in alternating years, the regulations must establish the year in which a Participating Employer's first Open Enrollment Period should be held. Holding an Open Enrollment period in the first November in which an Employer has been participating in the Program would serve no purpose, as there would be no employees eligible for it under Section 10004(f).

The proposed permanent regulations would alter the existing regulations by designating an Open Enrollment Period to occur once every two years rather than once annually.

Section 10005. Default Program Options and Alternative Elections for Contributions,

Automatic Escalation, and Investment Options for Participants, subsection (a)

Specific Purpose:

The purpose of this regulation is to identify the default elections for a Participating Employee that does not otherwise make an election for their Contribution Rate, participation in Automatic Escalation, IRA type, or investment options.

Factual Basis:

Government Code Section 100032(f)(1) establishes each Eligible Employee shall be enrolled in the Program unless they choose not to participate in the Program, something commonly referred to as automatic enrollment. This regulation is necessary to identify the default Account settings for Participating Employees, as individuals may be enrolled passively without actively selecting their preferred investment options, Contribution Rate, or IRA type.

The proposed permanent regulation will alter the existing regulations by removing the title “Default elections.”

Section 10005. Default Program Options and Alternative Elections for Contributions,

Automatic Escalation, and Investment Options for Participants, subsection (a)(1)

Specific Purpose:

The purpose of this regulation is to establish the default Contribution Rate for a Participating Employee.

Factual Basis:

Government Code Section 100032(i) establishes the default Contribution Rate to be 3% of the employee’s salary or wages and Government Code Section 100032(j) provides the Board authority to adjust the default Contribution Rate through regulations to no more than 5% and no less than 2%. This regulation is necessary to identify the default Contribution Rate for Participating Employees that do not affirmatively select their own Contribution Rate.

Section 10005. Default Program Options and Alternative Elections for Contributions,

Automatic Escalation, and Investment Options for Participants, subsection (a)(2)

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:

Government Code Section 100032(k) provides the Board the power to implement Automatic Escalation and limits the Automatic Escalation rates to no more than one percent annually, not to exceed eight percent of salary.

The proposed permanent regulations would establish Automatic Escalation to occur after January 1 because the start of a new calendar year may be easier for employees to identify a pending Automatic Escalation.

The proposed regulation is necessary to establish Participating Employees would not be subject to Automatic Escalation if they had only been participating in the Program for a period fewer than six

months. The Board adopted the rule in an effort to limit the frequency at which a Participating Employee is subject to Automatic Escalation and ensure there is a period for adequate notice of any pending Automatic Escalation increases.

Additionally, the proposed permanent regulations establishes requirements for the Administrator to notify Participating Employees of any pending Automatic Escalation increase at least 60 days before the pending increase to ensure there is adequate notice to the Participating Employee.

Section 10005. Default Program Options and Alternative Elections for Contributions,

Automatic Escalation, and Investment Options for Participants, subsection (a)(3)

Specific Purpose:

The purpose of this regulation is to establish the default IRA type for Participating Employees.

Factual Basis:

Government Code Section 100008 compels the Board to include one or more payroll deduction IRA arrangements. This regulation is necessary to establish the default IRA arrangement and affirm that the default IRA arrangement would be established for a Participating Employee if they have not established an IRA for themselves through the Program's website.

While the Program uses automatic enrollment, in which an individual that does not choose to opt out shall be enrolled in the Program, Eligible Employees may choose to enroll themselves directly by accessing the Program's website – in addition to enrolling passively through automatic enrollment. When an Eligible Employee enrolls directly, they will establish their own IRA by actively enrolling. However, an Eligible Employee that enrolls passively through automatic enrollment must have an IRA established on their behalf.

Section 10005. Default Program Options and Alternative Elections for Contributions,

Automatic Escalation, and Investment Options for Participants, subsection (a)(4)

Specific Purpose:

The purpose of this regulation is to establish the default investment options for Participating Employees and specify how the default investment options will be designated for a Participating Employee based on their age.

Factual Basis:

Government Code Section 100012(a)(2) provides the Board the power and authority to "...design and establish the Program with the appropriate selection of default investments to encourage participation and savings according to sound investment practices."

The proposed permanent regulations are necessary to establish the default investment options and specify the specific Target-Date Fund to be established based on the Participating Employee's age.

Section 10005. Default Program Options and Alternative Elections for Contributions,

Automatic Escalation, and Investment Options for Participants, subsection (b)

Specific Purpose:

This regulation establishes the methods through which a Participant can make an alternative election.

Factual Basis:

The proposed permanent regulations would alter the existing regulations by removing the title “Alternative Elections and shifting subsection (b)(1) to subsection (b). The regulation is necessary to identify the methods by which a Participant can make alternative elections for the matters covered in subsection (a).

Section 10005. Default Program Options and Alternative Elections for Contributions,

Automatic Escalation, and Investment Options for Participants, subsection (b)(1)

Specific Purpose:

This regulation establishes the alternative Contribution Rates that may be selected by a Participating Employee.

Factual Basis:

The regulation allows a Participating Employee to choose a Contribution Rate at any integer value between 0% and 100%. The regulation is necessary to establish the outer limits of an alternative Contribution Rate.

Section 10005. Default Program Options and Alternative Elections for Contributions,

Automatic Escalation, and Investment Options for Participants, subsection (b)(2)

Specific Purpose:

This regulation establishes the methods through which a Participating Employee may opt out of Automatic Escalation.

Factual Basis:

This regulation is necessary to clarify the methods through which a Participating Employee may opt out of Automatic Escalation. The Board chose to adopt a variety of easy methods through which a Participating Employee may choose to opt out of Automatic Escalation.

Section 10005. Default Program Options and Alternative Elections for Contributions,

Automatic Escalation, and Investment Options for Participants, subsection (b)(3)

Specific Purpose:

This regulation establishes alternative methods for Contributions for Participating Employees, who may elect to make non-payroll Contributions. The regulation would also establish the minimum amount of recurring Contributions, and define the meaning of the term recurring Contributions.

Factual Basis:

This regulation is necessary to establish the methods for non-payroll Contributions to the Program, establish minimum contribution amounts for recurring Contributions, establish the meaning of the term “recurring”, and identify the methods through which the Contributions can be made.

Amendment:

This regulation has been amended to clarify the meaning of the term “electronic” with regard to non-payroll contributions. The regulations were amended to replace the term “electronic” with “Electronic Fund Transfer,” a term defined in federal law that encompasses a variety of electronic fund transfers from one account to another.

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 such Contributions.

Factual Basis:

This regulation is necessary to establish the minimum Contribution amount for non-recurring non-payroll Contributions, define the meaning of the term “non-recurring,” and identify the methods through which the Contributions can be made.

Amendment:

This regulation has been amended to clarify the meaning of the term “electronic” with regard to non-payroll contributions. The regulations were amended to replace the term “electronic” with “Electronic Fund Transfer,” a term defined in federal law that encompasses a variety of electronic fund transfers from one account to another.

Section 10005. Default Program Options and Alternative Elections for Contributions,

Automatic Escalation, and Investment Options for Participants, subsection (b)(5)

Specific Purpose:

The purpose of this regulation is to identify the processes through which a Participant may elect one or more investment options.

Factual Basis:

The proposed permanent regulations would alter the existing regulation by adding a clause from the existing subsection (b)(7) that affirms a Participant may “...change investment elections for any portion of their existing balance in their Account...” This edit was necessary to condense the regulations and delete the existing subsection (b)(7) without altering the effect or clarity of the regulations. The regulation is necessary to provide notice to the regulated community regarding how to make investment choices.

Section 10005. Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants, subsection (b)(6)

Specific Purpose:

This regulation identifies the maximum timeframe by which an alternative contribution election shall be made by a Participating Employer.

Factual Basis:

This regulation is necessary to establish the maximum timeframe by which Participating Employers must incorporate alternative contribution elections for their Participating Employees.

Section 10005. Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants, subsection (c)(1)

Specific Purpose:

This regulation prohibits employer Contributions to their employees' Accounts.

Factual Basis:

Government Code Section 100012(j) compels the Board to allow Participating Employers to make their own Contributions to their employees' Accounts if it would not cause the Program to be treated as an employee benefit plan under the federal Employee Retirement Income Security Act. This regulation is necessary to prohibit such Contributions due to concerns it could cause the Program to be treated as an employee benefit plan under the federal Employee Retirement Income Security Act.

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

Specific Purpose:

This regulation clarifies the meaning of Section 10005(c)(2) by establishing that employers that are also technically employees may contribute to their own Account.

Factual Basis:

This regulation is necessary to clarify that Section 10005(c)(1) does not apply to Participating Employers that are also an Employee that choose to enroll in and make Contributions to their Account.

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

Specific Purpose:

This regulation establishes a Participating Employee's Contributions shall not exceed the amount of Compensation remaining after other payroll deductions required by law.

Factual Basis:

The Board deemed this regulation necessary to ensure there is no instance in which a Participating Employee's Contributions would result in a legally-required deduction to be modified or delayed.

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 a Traditional IRA, advises the regulated community that such an option is not yet available, and provides the regulated community information on how they will be notified of the availability of the option.

Factual Basis:

The Administrator may not be able to develop the technology necessary for two separate IRA types by the time the regulations take effect. The proposed regulation would alter the existing regulation by specifying the website page on which the Program will announce the availability of the feature. This regulation is necessary to provide information to Participants that may be interested in a Traditional IRA.

Section 10006. Individual Participation, subsection (a)

Specific Purpose:

This regulation establishes that individuals will be able to enroll in the Program outside of an employment relationship with a Participating Employer.

Factual Basis:

Government Code Section 100012(k) compels the Board to evaluate and establish the process by which an individual or employee of a nonparticipating employer may enroll in and make Contributions to the Program.

This regulation is necessary to establish that individuals at least eighteen years of age will be able to enroll in the program outside of a relationship with a Participating Employer when the feature is made available by the Administrator and to establish the location at which the Administrator will post notice of 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 define the meaning of the term recurring Contributions.

Factual Basis:

This regulation is necessary to establish the methods for recurring Contributions to the Program, establish minimum contribution amounts for recurring Contributions, establish the meaning of the term "recurring", and identify the methods through which the Contributions can be made.

Amendment:

This regulation has been amended to clarify the meaning of the term “electronic” with regard to non-payroll contributions. The regulations were amended to replace the term “electronic” with “Electronic Fund Transfer,” a term defined in federal law that encompasses a variety of electronic fund transfers from one account to another.

Section 10006. Individual Participation, subsection (c)

Specific Purpose:

This regulation establishes that Participating Individuals may elect to make non-recurring Contributions and establish the minimum amount of non-recurring Contributions.

Factual Basis:

This regulation is necessary to establish the methods for non-recurring Contributions to the Program, establish minimum contribution amounts for non-recurring Contributions, establish the meaning of the term “non-recurring”, and identify the methods through which the Contributions can be made.

Amendment:

This regulation has been amended to clarify the meaning of the term “electronic” with regard to non-payroll contributions. The regulations were amended to replace the term “electronic” with “Electronic Fund Transfer,” a term defined in federal law that encompasses a variety of electronic fund transfers from one account to another.

Section 10006. Individual Participation, subsection (d)

Specific Purpose:

This regulation establishes it is the responsibility of an Exempt Employer to ensure any payroll deduction arrangement it chooses to make available to a Participating Individual is not an employee benefit plan regulated under Title 1 of the Employee Retirement Income Security Act (ERISA).

Factual Basis:

Government Code Section 100043(b)(A) requires the Program to be structured “...in a manner to keep the program from being classified as an employee benefit plan subject to the federal Employee Retirement Income Security Act.” Federal regulations established pursuant to ERISA allow employers to voluntarily remit employee Contributions to an Individual Retirement Account without such an arrangement deemed to be an employer-sponsored retirement plan subject to ERISA. This regulation establishes Exempt Employers may also establish such payroll Contribution arrangement to a Participating Individual’s CalSavers Account. This regulation is necessary to establish that it is the sole responsibility of such an employer to determine their arrangements satisfy the legal requirements for such an exemption from ERISA.

Section 10007. Contributions and Distributions, subsection (a)

Specific Purpose:

This regulation specifies that it is the responsibility of the Participant to determine if they are eligible for making Contributions to a Roth or Traditional IRA and determine if their annual Contributions are within the limits established by the Internal Revenue Code.

Factual Basis:

The Internal Revenue Code establishes eligibility requirements for participation in a Roth or Traditional IRA and limits on the amount of contributions an individual may make to their IRA. For example, individuals earning \$137,000 or more and couples earning \$203,000 or more in 2019 are ineligible to participate in a Roth IRA. For 2019, individuals below age 50 can contribute up to \$6,000 to an IRA and individuals over age 50 can contribute up to \$7,000.

This regulation is necessary to affirm it is solely the responsibility of Participants and not Participating Employers or another third party to determine their eligibility to participate in a Roth or Traditional IRA. This regulation does not preclude the Program from educating Participants about eligibility requirements and annual contribution amounts.

The proposed permanent regulation would alter the existing regulation by referring to Title 26 of the United States Code instead of the Internal Revenue Code.

Section 10007. Contributions and Distributions, subsection (b)

Specific Purpose:

This regulation identifies that rollovers or transfers into an Account will not be available until a later time and to provide individuals with an address at which they can learn when the feature is made available.

Factual Basis:

This regulation is necessary to inform Participants they may choose to rollover or transfer funds into their account when the feature is made available by the Program and to notify them of the location at which the Program will provide notification of the feature's availability.

The proposed permanent regulations would alter the existing regulations by referring to a specific page on the website.

APPENDICES:

- Standardized Regulatory Impact Assessment (SRIA) for the CalSavers Retirement Savings Investment Program submitted September 7, 2018
- Comments from Department of Finance regarding SRIA submitted October 8, 2018
- Response to Department of Finance submitted November 7, 2018