

TITLE 10, CHAPTER 15, CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS
INVESTMENT BOARD

Notice published May 20, 2019

NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS

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 copy of the full text of the regulations with the proposed changes indicated is attached to this notice.

Any person may submit written comments on the proposed changes during the 15-day public comment period. If you have any comments regarding the proposed changes, the Board will accept written comments from May 21, 2019 until 5:00 p.m. on June 4, 2019. Written comments can be submitted by email to CalSavers@sto.ca.gov or by mail to either of the following addresses:

Regular Mail

California Secure Choice Retirement Savings Investment Board
Re: Rulemaking for the CalSavers Retirement Savings Program
P.O. Box 942809
Sacramento, CA 95815

Courier Delivery

California Secure Choice Retirement Savings Investment Board
Re: Rulemaking for the CalSavers Retirement Savings Program
915 Capitol Mall, Suite 105
Sacramento, CA 95814

All written comments received by 5:00 p.m. on June 4, 2019 that pertain to the indicated changes in this notice will be reviewed and responded to by the Board as part of the compilation of the rulemaking file. Please limit your comments to the modifications described in this notice. The Board will only consider and respond to comments regarding the proposed modifications.

Any questions concerning the proposed regulations may be directed to Eric Lawyer, Policy Manager, at either ELawyer@sto.ca.gov or (916) 653-1744.

Description of Method Used to Illustrate Changes to Original Text

In the attached regulations document, deletions of language from the original text are shown with a single strikethrough and additions are shown with underlines.

Note: These regulations are new to the CCR.

California Code of Regulations

Title 10: Investment

Chapter 15: California Secure Choice Retirement Savings Investment Board

Section 10000. Definitions

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

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

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

- u) “Participant” means any person who is or was a Participating Employee, Participating Individual, or Beneficiary.
- v) “Participating Employee” means any person who is an Eligible Employee, is enrolled in the Program, maintains a Program IRA, and is not a Participating Individual.
- w) “Participating Employer” means an Eligible Employer that registered with the Program to provide its Eligible Employees access to the Program.
- x) “Participating Individual” means any person who enrolled in the Program independent of an employment relationship with an Eligible Employer, as further defined in Section 10006, maintains a Program IRA, and is not a Participating Employee.
- y) “Program” means the CalSavers Retirement Savings Program offered by the California Secure Choice Retirement Savings Trust.
- z) “Tax-Qualified Retirement Plan” means a retirement plan that qualifies for favorable federal income tax treatment under Sections 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p) of Title 26 of the United States Code. An employer-provided payroll deduction IRA program that does not provide for automatic enrollment is not a Tax-Qualified Retirement Plan.
- aa) “Tri-Party Employment Relationship” means a relationship in which an Employer enters into a service contract with a third-party entity for services including, but not limited to, payroll, staffing (both temporary and non-temporary), human resources, and Employer compliance with laws and regulations.

Note – Authority Cited: Section 100048, California Government Code.

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

Section 10001. Eligible Employers

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

need not, inform the Program of their exemption from the Program using one of the methods established under Section 10002(e).

- (e) For Employers in a Tri-Party Employment Relationship, the Eligible Employer shall be:
 - (1) For a temporary services Employer or leasing Employer, as defined in California Unemployment Insurance Code Section 606.5(b): the temporary services Employer or leasing Employer.
 - (2) For a professional employer organization described under Section 7705 of Title 26 of the United States Code, without regard to whether the organization is certified under Section 7705, that enters into a contract with a Client Employer: the Client Employer.
 - (3) For a motion picture payroll services company defined under California Unemployment Insurance Code Section 679(f)(4): the motion picture production company defined under California Unemployment Insurance Code Section 679(f)(5).

Note – Authority Cited: Section 100048, California Government Code.

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

Section 10002. Employer Registration

- (a) Each Eligible Employer shall register with the Program no later than:
 - (1) For Eligible Employers employing more than 100 employees, June 30, 2020.
 - (2) For Eligible Employers employing more than 50 employees, June 30, 2021.
 - (3) For all other Eligible Employers, June 30, 2022.
- (b) An Employer that becomes an Eligible Employer after July 1, 2019 shall register with the Program not later than the applicable dates in subsection (a) or within 24 months after the date on which it becomes an Eligible Employer, whichever is later.
- (c) An Employer's number of employees shall be determined under the methodology prescribed in Section 10001(a).
- (d) Exempt Employers are prohibited from participating in the Program.
- (e) An Eligible Employer may register with the Program by providing the information required in subsection (f) using the Program's website (employer.calsavers.com), by phone (855-660-6916), by overnight mail (CalSavers, 95 Wells Avenue, Suite 155, Newton, MA 02459), or by regular mail (CalSavers, P.O. Box 55759, Boston, MA 02205-5759).
- (f) In order to register, an Eligible Employer shall provide the following information to the Administrator through one of the methods listed in subsection (e):
 - (1) Employer name, legal name, and "doing business as" name, if applicable;
 - (2) Federal Employer Identification Number and California Employer Payroll Tax Account Number;
 - (3) Employer mailing address; and
 - (4) Name, title, phone number, and email address of an individual designated by the Employer as the primary contact for the Program.

Note – Authority Cited: Section 100048, California Government Code.

Reference: Sections 100032 and 100043, California Government Code.

Section 10003. Participating Employer Duties

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

Note – Authority Cited: Section 100048, California Government Code.

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

Section 10004. Employee Enrollment

- (a) An Eligible Employee shall be enrolled into the Program if they do not opt out within 30 days after the date the Employee Information Packet is delivered. The information

prescribed in Section 10003(a) will be used by the Administrator to execute the enrollment.

- (1) The Participating Employer shall facilitate Contributions for each Participating Employee no later than the first payroll period following 30 days after notification by the Administrator of the Participating Employee's enrollment.
- (b) An Eligible Employee who does not opt out of the Program is deemed to have read and understood the content in the Employee Information Packet if the Eligible Employee has been furnished a copy of the Employee Information Packet pursuant to Section 10003(c) and has been provided an opportunity to opt out of the Program.
- (c) An Eligible Employee may opt out of the Program at any time. Eligible Employees may opt out either electronically (saver.calsavers.com), by phone (855-650-6918), or by completing the Opt-Out Form and submitting the form by overnight mail (CalSavers, 95 Wells Avenue, Suite 155, Newton, MA 02459) or by regular mail (CalSavers, P.O. Box 55759, Boston, MA, 02205-5759).
 - (1) To opt out by overnight mail or regular mail, Eligible Employees must provide the last four digits of their Social Security Number or Individual Tax Identification Number, date of birth, ZIP Code, and sign the form.
 - (2) To opt out electronically or by phone, Eligible Employees must provide the last four digits of their Social Security Number or Individual Tax Identification Number, date of birth, and ZIP Code.
- (d) Eligible Employees who opt out of the Program may enroll at any time through one of the methods established in subsection (c), by providing the information pursuant to Section 10003(a) to the Administrator.
 - (1) The Participating Employer shall facilitate Contributions for such Participating Employees no later than the first payroll period following 30 days after notification by the Administrator of the Participating Employee's enrollment.
- (e) If the Administrator is unable to enroll an Employee for any reason, the Administrator shall notify the Participating Employer with instructions not to remit Contributions for the Eligible Employee within 15 days after the Administrator's attempt to enroll the Eligible Employee. The Administrator shall also notify the Eligible Employee about the inability to enroll by regular mail or, if the Administrator has the Eligible Employee's email address, by email within 15 days of the Administrator's attempt to enroll the Eligible Employee.
- (f) The Program shall deliver the Employee Information Packet prior to the start of the Open Enrollment Period to all Eligible Employees who opted out of the Program at least one year prior to the Open Enrollment Period through the procedures identified in Section 10003(c).
 - (1) The Open Enrollment Period shall begin November 1 and conclude November 30.
 - (2) Such Eligible Employees shall be enrolled if they do not opt out using one of the methods described in subsection (c) by November 30.
 - (3) The Open Enrollment Period shall be held once every two years for each Participating Employer. The first Open Enrollment Period will begin the second November after a Participating Employer registers for the Program.

Note – Authority Cited: Section 100048, California Government Code.
 Reference: Sections 100000, 100012, 100014, 100032, 100043 and 100046, California Government Code.

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

- (a) Upon enrollment, a Participating Employee who has not made an alternative election as specified in this Section shall make Contributions to the Program according to the following default elections:
 - (1) At a Contribution Rate of 5%.
 - (2) Have Contributions subject to Automatic Escalation whereby the Contribution Rate shall increase by an additional 1% of Compensation on each January 1 following the Participating Employee’s enrollment up to a maximum Contribution Rate of 8%.
 - (A) Participating Employees who choose an alternative Contribution Rate shall have Contributions subject to Automatic Escalation unless they choose to opt out of Automatic Escalation by notifying the Program using one of the methods identified in Section 10004(c).
 - (B) A Participating Employee who has not participated in the Program for at least six calendar months during a calendar year shall not have Contributions subject to Automatic Escalation until the January 1 that follows the next calendar year in which the Participating Employee has at least six calendar months of participation.
 - 1. The Administrator shall notify the Participating Employee of the Automatic Escalation increase at least 60 days before January 1 to provide the Participating Employee an opportunity to modify their Contribution Rate if they do not wish the Automatic Escalation provision to apply.
 - (3) Have Contributions made to a Roth IRA, which the Program will establish on behalf of Participating Employees that have not established an IRA for themselves through the Program’s website by providing the information required by Section 10004(c).
 - (4) The first \$1,000 in Contributions shall be invested in a capital preservation investment. All subsequent contributions shall be invested in a Target Date Fund based on the Participating Employee’s age as reported on the Program’s records and an assumed retirement at age 65. The applicable Target Date Fund shall be determined as described in the following table:

<u>Date of Birth</u>	<u>Target Retirement Years</u>	<u>CalSavers Fund Name</u>
12/31/1947 or Earlier	2012 or earlier	CalSavers Target Retirement Fund

1/1/1948 - 12/31/1952	2013 - 2017	CalSavers Target Retirement 2015 Fund
1/1/1953 - 12/31/1957	2018 - 2022	CalSavers Target Retirement 2020 Fund
1/1/1958 - 12/31/1962	2023 - 2027	CalSavers Target Retirement 2025 Fund
1/1/1963 - 12/31/1967	2028 - 2032	CalSavers Target Retirement 2030 Fund
1/1/1968 - 12/31/1972	2033 - 2037	CalSavers Target Retirement 2035 Fund
1/1/1973 - 12/31/1977	2038 - 2042	CalSavers Target Retirement 2040 Fund
1/1/1978 - 12/31/1982	2043 - 2047	CalSavers Target Retirement 2045 Fund
1/1/1983 - 12/31/1987	2048 - 2052	CalSavers Target Retirement 2050 Fund
1/1/1988 - 12/31/1992	2053 - 2057	CalSavers Target Retirement 2055 Fund
1/1/1993 - 12/31/1997	2058 - 2062	CalSavers Target Retirement 2060 Fund
1/1/1998 - 12/31/2002	2063 - 2067	CalSavers Target Retirement 2065 Fund
1/1/2003 or Later	2068 or later	[Funds to be added later - not a valid Participant age]

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

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

- (4) A Participating Employee or Participating Individual may also elect to make non-recurring non-payroll Contributions. Such Contributions may be made ~~electronically~~ through Electronic Fund Transfer or by personal check and must be a minimum of \$50 each.
 - (5) A Participant may elect one or more investment options other than the default investment option by notifying the Administrator using one of the methods established in Section 10004(c) that the Participant wishes to invest future contributions or change investment elections for any portion of their existing balance in their Account directly in another investment alternative or alternatives offered by the Program.
 - (6) Alternative contribution elections (including Contribution Rates, Automatic Escalation and opt out elections) shall be implemented as quickly as administratively practicable but in any event no later than the first payroll period following 30 days after notification by the Administrator of the alternative election.
- (c) Other Contribution and Investment Election Rules
- (1) Participating Employers are prohibited from contributing to a Participating Employee's Account.
 - (2) An individual who is both a Participating Employer and a Participating Employee may make Contributions to their own Account under the same terms and conditions as other Participating Employees.
 - (3) Amounts withheld by the Participating Employer shall not exceed the amount of the Participating Employee's Compensation remaining after any payroll deductions required by law to have higher precedence, including a court order.
 - (4) A Participant may elect, using one of the methods established in Section 10004(c), to make all or some of their Contributions to a Traditional IRA. This option is not yet available. After complying with the Administrative Procedure Act Chapter 3.5, the Administrator shall post notice of the option on the Program's website (saver.calsavers.com).

Note – Authority Cited: Section 100048, California Government Code.
Reference: Sections 100002, 100004, 100008, 100012, 100032 and 100043.

Section 10006. Individual Participation

- (a) An individual who is at least eighteen years of age, and who is not an Eligible Employee may elect to participate in the Program as a Participating Individual outside of an employment relationship with an Eligible Employer. This option may not yet be available. After complying with the Administrative Procedure Act Chapter 3.5, the Administrator shall post notice of the option on the Program's website (calsavers.com).
- (b) Any recurring Contribution by a Participating Individual must be made at least as frequently as quarterly, must be made ~~electronically~~ through Electronic Fund Transfer, and be at least \$10.
- (c) Participating Individuals may make non-recurring Contributions ~~electronically~~ through Electronic Fund Transfer or by personal check in an amount of at least \$50.

- (d) Businesses that use the services of Participating Individuals have not elected to participate in the Program merely because they, at the request of Participating Individuals, choose to facilitate remittance to the Administrator for deposit into a Participant's Account all or a portion of the money owed to such Participating Individuals. Exempt Employers that choose to facilitate deposits to a Participant's Account shall take all steps necessary to ensure their payroll deduction IRA programs shall not be an employee benefit plan regulated under Title 1 of the Employee Retirement Income Security Act (ERISA).

Note – Authority Cited: Section 100048, California Government Code.

Reference: Sections 100002 and 100012, California Government Code.

Section 10007. Contributions and Distributions

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

Note – Authority Cited: Section 100048, California Government Code.

Reference: Sections 100002, 100008 and 100012, California Government Code.