

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

NOTICE OF PROPOSED RULEMAKING ACTION

AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 15,  
REGARDING THE CALSAVERS RETIREMENT SAVINGS PROGRAM

Notice published March 1, 2019

The California Secure Choice Retirement Savings Investment Board ("Board") proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board will hold a public hearing beginning at 1:00 PM on April 15, 2019, at 915 Capitol Mall, Room 587, Sacramento, CA.

The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may be submitted by email at [CalSavers@sto.ca.gov](mailto:CalSavers@sto.ca.gov), or by either mailing or delivery address listed below:

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

The written comment period will close at **5:00 p.m. on** April 15, 2019. The Board will only consider comments received by that time. All written comments received by the Board are subject to disclosure under the Public Records Act.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the board makes modifications which are sufficiently related to the original proposed text, it will make the modified text (with the changes clearly indicated) available to the public at <https://www.treasurer.ca.gov/scib/regulations/index.asp> for at least 15 days before the Board

adopts the regulations as revised. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## AUTHORITY AND REFERENCE

Authority: Section 100048 of California Government Code provides the California Secure Choice Retirement Savings Investment Board the authority to adopt regulations to implement Title 21 of the California Government Code.

Reference: Sections 100000, 100002, 100004, 100008, 100010, 100012, 100014, 100032, 100034, 100043, 100046, and 100048, California Government Code.

## INFORMATIVE DIGEST

In 2012, the California Legislature enacted and the Governor signed Senate Bills (SB) 1234 and (Chapter 734, Statutes of 2012) and 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 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 laws relating to the Program include Title 21 of the California Government Code, Section 1088.9 of the Unemployment Insurance Code. Almost all state laws relating to the Program are included in Title 21 of the California Government Code. Section 1088.9 of the Unemployment Insurance Code establishes some of the duties of the Employment Development Department relating to enforcement of employer compliance with the requirements of Title 21 of the California Government Code.

This rulemaking action implements, interprets, and makes specific the policies, procedures, and operating structure of the CalSavers Retirement Savings Program (“CalSavers” or “the Program”) as established by Title 21 of the California Government Code. Specifically, these regulations would accomplish the following:

- 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. Many of the regulations directly address questions of eligibility, processes, and duties received from members of the regulated community. The regulations will further define and make specific sections of statute that either explicitly require regulatory definition or address sections of statute that could benefit from further clarification. The regulations would make permanent the emergency regulations that took effect November 19, 2019.

### Pre-Rulemaking Activity

The process for developing the proposed regulations began in the summer of 2017 with a series of meetings with informal working groups composed of representatives from employer and business organizations in the state, organizations representing employees, non-profit organizations focused on financial empowerment and economic inclusion, and others. Staff conducted several program design feedback meetings with these informal working groups through the fall of 2017.

Staff began providing regular updates on the development of regulations at public Board meetings beginning with the August 28, 2017 Board meeting, focusing the initial [presentations](#) on the input of the informal working groups. Staff provided a [second update](#) on the input of the informal working groups at the September 25, 2017 Board meeting, summarizing the input of working group members on design elements of the Program, including development of regulations. Staff provided an in-depth [presentation](#) on options and recommendations for regulations at the October 23, 2017 Board meeting. To prepare the materials for the meeting, staff consulted with stakeholder organizations, program consultants, policymakers at the state and federal level, non-profit organizations, and peer-reviewed research. Each of these meetings were open to the public and informal public comment periods were established. Copies of each comment letter were shared with the Board during the meeting.

At the November 27, 2017 Board meeting, [staff presented the Board](#) with a preliminary draft of the regulations. Following that meeting, staff solicited comments from the public on the draft regulations in writing and invited members of the public to participate in two workshops on the draft regulations held [December 5 and December 7, 2017](#). Members of the public could participate in the December 5, 2017 meeting in-person or by phone. The December 7, 2017 workshop had been scheduled to be held in a public setting in Los Angeles and by phone, but the in-person workshop was cancelled due to wildfires spreading in the area. Instead, staff conducted that workshop entirely by phone. [Written comments](#) were posted publicly on the Program website.

At the December 18, 2017 Board meeting, staff presented a [summary of comments received](#), as well as copies of all written comment letters. Following that meeting, staff incorporated direction given by the Board to develop a set of [proposed regulations](#), presented to the Board at the February 26, 2018 Board meeting. At the meeting, the Board approved the content of the regulations and authorized the Executive Director of the Program to initiate the emergency rulemaking process. The Board ultimately decided to wait to initiate rulemaking until it had hired a third-party administrator to operate the Program. The hiring of a third-party administrator in August 2018 allowed the Board to refine regulations to add specific details regarding the processes and timeframes under which employers and participants can comply with the regulations. During August and September, staff consulted with stakeholders about certain changes to the draft regulations that were proposed as a result of operational discussions with the newly hired third-party administrator. Stakeholder feedback was considered.

On September 24, 2018, the California Secure Choice Retirement Savings Investment Board (“Board”) approved the proposed regulations and authorized Program staff to initiate the rulemaking process. The Board filed regulations October 12, 2018 and withdrew the proposed regulations October 26, 2018 to make edits to the regulations.

The Board posted a Notice of Emergency Rulemaking October 30, 2018. At the November 6, 2018 meeting, the Board approved a revised set of proposed regulations and authorized the Executive Director of the Program to initiate the emergency rulemaking process. Those regulations were approved by the Office of Administrative Law (OAL) and took effect November 19, 2019.

On January 18, 2019, the Board posted these proposed regulations and their agenda item on its website and distributed notice to members of the public who subscribed to the Program's Listserv. The Program also shared the proposed regulations with stakeholders who indicated an interest in being updated about the regulations and notified them about the pending Board action. At the January 28, 2019 meeting, the Board adopted these proposed regulations and granted staff the authority to conduct the formal rulemaking process.

*Anticipated Benefits of the Proposed Regulations:*

About half of working Californians are on track to live at or near poverty upon reaching retirement age. Without the ease and simplicity of regular payroll contributions through a workplace retirement savings arrangement, many simply do not save for retirement. While the problem of retirement insecurity has many causes, including low wages and rising costs of living, research shows access to a retirement savings vehicle makes individuals fifteen times more likely to save for retirement. CalSavers will ensure a majority of California workers have access to a workplace retirement savings vehicle by mandating that employers either sponsor their own plan or register for CalSavers.

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 and how they choose to invest their contributions, and investment performance.

The operation of the Program will result in some indirect benefits for participating employers and employees. For participating employers, the Program will provide employers with 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 access to a retirement savings vehicle to their employees, the Program should help some smaller employers improve their value in the labor market.

The benefits of the proposed regulations also include consistent application and interpretation of the laws, rules, and procedures for the CalSavers Retirement Savings Program.

*Evaluation of Inconsistency/Incompatibility with Existing State Regulations:*

The Board evaluated whether or not there are any other regulations that may be adversely impacted by adoption of these proposed regulations. Because these regulations are solely for the purpose of operating the CalSavers Retirement Savings Program, and no other regulations exist in the California Code of Regulations pertaining to the operation of the CalSavers Retirement Savings Program, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

**DISCLOSURES REGARDING THE PROPOSED ACTION**

*The Board has made the following initial determinations:*

The proposed regulations do not require a report to be made.

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: Statute indicates a role for the Employment Development Department (EDD) to enforce employer compliance, market the Program to employers, and distribute materials to employers. If EDD assumes these duties, or some portion of these duties, they may require up to \$13,769,676 in one-time costs and \$6,337,063 in ongoing costs. Any costs incurred by EDD would be reimbursed through an interagency agreement between EDD and the Board.

Other nondiscretionary cost or savings imposed on local agencies: none.

Costs or savings in federal funding to the state: none.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: none.

Cost impacts on a representative person or business: For participating employers, the Program will require no direct costs or fees to participate. Although their role in facilitating the Program requires minimal activities, employers will be required to perform some duties upon initial registration and ongoing maintenance to facilitate payroll deductions and assist with enrollment of new employees. For those duties, the Board estimates approximately \$157 in opportunity costs for the staff time necessary to register and annual ongoing opportunity costs of \$135. Additional information on how the Board determined these estimates is included in the Standardized Regulatory Impact Assessment (SRIA).

Participation in the Program is completely voluntary for eligible employees. Participating employees will pay an administrative fee out of their contributions and investment interest. At Program launch and for the first two years at least, those fees will range between 0.82 and 0.95 percent depending on the investment option selected by the participant. All fees will decline as the Program's assets rise and reach breakpoints defined in the contract with the program administrator. The lowest fees range would be 0.22 to 0.35 if Program assets exceed \$35 billion within the term of the contract. The fees may be offset by investment interest earned depending on investment performance.

Small Business Determination: The Board has determined the proposed regulations affect small business. These impacts are estimated to be the same as the cost impacts on a representative business detailed above.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: none.

Significant effects on housing costs: none.

#### Statement of the Results of the Standardized Regulatory Impact Assessment

In accordance with California Code of Regulations, Title 1, Section 2002(a)(1), the Board submitted the SRIA to the Department of Finance August 31, 2018. The Department of Finance (DOF) provided comments on the SRIA October 8, 2018 requesting the Board to incorporate additional data elements for early withdrawals of retirement savings into the analysis. The Board responded to DOF's comments November 7, 2018. The Board estimated the impact of a variety of assumptions to model impacts of early withdrawals of retirement savings on both an individual's savings and its aggregate impact on the Program's ability to reduce its administrative fees.

The SRIA estimated economic and fiscal impacts due to the operation of the CalSavers Retirement Savings Program. The SRIA used estimates of the number of participating employers, employees,

annual contributions from participants, total savings accrued by participants, withdrawals, and fiscal and economic impacts related to the new savings by participating employees and the impacts of new investment on the state economy.

The SRIA relied on a series of assumptions and estimates that may differ significantly from experience. The SRIA represents the best estimates of potential impact of the Program. These estimates are based on commonly accepted methodologies in the state's regulatory review framework, the experiences of similar programs, peer-reviewed research, and publicly available data. Throughout the SRIA, the authors attempt to show the rationale for the assumptions used and describe the causes and scope of the impacts considered

The SRIA estimated the program could result in significant new savings resulting from participation in the program. This new saving will have the short-term impact of reducing consumption, leading to some indirect economic impact and some related impacts on sales and use tax revenue. Long-term, the savings accrued by participants could have a beneficial economic impact due to increased consumption and have the related impact of increasing sales and use tax revenue. Additionally, the Program could provide other fiscal benefits related to a decreased reliance on social benefits due to the accrual of retirement savings by Participants.

The adoption of these regulations could have an indirect impact on the creation or elimination of jobs within the state through changes to consumption and new investment resulting from new savings by CalSavers participants.

As a direct result of the adoption of these regulations, new businesses will not be created and current businesses will not be eliminated within the state. In the short term, new investment by participating individuals will result in new investment in some California businesses. In the long term, the the operation of the Program should result in increased consumption for participants than a baseline scenario due to accumulation of retirement savings and investment interest. Additionally, neither benefits nor detriments are expected to worker safety or the state's environment due to adoption of these regulations.

The Program may result in added incentives for innovation in retirement savings vehicles for small businesses. The Program may also result in incentives for innovation in the industries of payroll platforms and third-party human resources providers.

Adoption of these regulations should not create any significant competitive advantage or disadvantage for California businesses. There may be some benefit to eligible employers in the labor market, particularly smaller employers, as the Program may provide some benefits to employee recruitment and retention. There may also be some impact for covered employers due to compliance, but this should not be significant enough to negatively impact competitiveness. The authors estimate both impacts should be marginal.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has been otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Eric Lawyer, Policy Manager  
California Secure Choice Retirement Savings Investment Board  
915 Capitol Mall, Suite 105  
Sacramento, CA 95814  
Telephone: (916) 653-1748  
Email: [Eric.Lawyer@sto.ca.gov](mailto:Eric.Lawyer@sto.ca.gov)

Please direct any inquiries regarding the regulatory process to Mr. Lawyer at the above address. The designated backup contact person is Katie Selenski, who can be reached at [Katie.Selenski@sto.ca.gov](mailto:Katie.Selenski@sto.ca.gov) or by phone at (916) 653-1744.

## AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board will have the rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address and online at <https://www.treasurer.ca.gov/scib/regulations/index.asp>. Materials published on the Board's website may also be accessed at:

915 Capitol Mall, Suite 105  
Sacramento, CA 95814

As of the date of this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and a copy of the SRIA. Copies may be obtained by contacting Eric Lawyer at the email address, physical address, or by calling the phone number listed above.

To obtain a copy of the Final Statement of Reasons after it has been completed, please make a request in writing to the contact person identified above.

## AVAILABILITY OF THE FINAL STATEMENT OF REASONS

After it is completed, you may obtain a copy of the Final Statement of Reasons by submitting a written request to the contact person identified above.