

Note: These regulations are new to the CCR.

California Code of Regulations

Title 10: Investments

Division 1: California Secure Choice Retirement Savings Investment Board

Chapter 15: California Secure Choice Retirement Savings Program

Section 10000. Existing Definitions

All meanings of the words or terms defined in Sections 1798 et seq., California Civil Code; Sections 7290 et seq., California Government Code; Sections 100000-100050, California Government Code; Sections 606.5, 621, 679, and 1088.9, California Unemployment Insurance Code; Section 12302.2, California Welfare and Institutions Code; Sections 401(a), 401(k), 403(a), 403(b), 408(a), 408(b), 408(k), 408(p), 408A, 414(b-c), Title 26 of the United States Code (“Internal Revenue Code”); and Section 7705, Internal Revenue Code shall apply wherever the same words or terms are used throughout this Chapter.

NOTE – Authority Cited: Sections 1798 et seq., California Civil Code; Sections 7290 et seq., California Government Code; Sections 100000-100050, California Government Code; Section 606.5, California Unemployment Insurance Code; Section 621, California Unemployment Insurance Code; Section 679, California Unemployment Insurance Code; Section 1088.9, California Unemployment Insurance Code; Section 12302.2, California Welfare and Institutions Code; Section 401(a), Internal Revenue Code; Section 401(k), Internal Revenue Code; Section 403(a), Internal Revenue Code; Section 403(b), Internal Revenue Code; Section 408(a), Internal Revenue Code; Section 408(b), Internal Revenue Code; Section 408(k), Internal Revenue Code; Section 408(p), Internal Revenue Code; Section 408A, Internal Revenue Code; Sections 414(b-c), Internal Revenue Code; and Section 7705, Internal Revenue Code.

Section 10001. Additional Definitions

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

- a) “Account” means a Participating Employee’s or Participating Individual’s Individual Retirement Account (“IRA”) held within the Program.
- b) “Administrator” means the third-party administrator selected by the Board to operate the Program.
- c) “Automatic Escalation” means an automatic annual increase in a Participating Employee’s Contribution Rate as set forth in Section 10009 of these regulations.
- d) “Board” means the California Secure Choice Retirement Savings Investment Board.
- e) “Client Employer” means an Employer that is involved in a Tri-Party Employment Relationship due to obtaining the services of a third-party entity.

- f) "Compensation" means a Participating Employee's wages from his or her Covered Employer reportable as wages, tips, or other compensation on an Internal Revenue Service Form W-2 ("W-2").
- g) "Contribution" means any monies contributed to an Account.
- h) "Contribution Rate" means the percentage or amount of a Participating Employee's Compensation to be withheld and contributed to his or her Account via payroll deduction under the Program.
- i) "Covered Employer" means an Employer that has five or more employees, as determined under the methodology described in Section 10003(b) of these regulations; that does not maintain a Tax-Qualified Retirement Plan for at least one Eligible Employee; and that is not the federal government or any state, county, municipal corporation, foreign government, or other government entity, unit, or instrumentality.
- j) "Eligible Employee" means any employee of a Covered Employer who: is at least eighteen years of age; has the status of an employee under Unemployment Insurance Code Sections 621 et seq; and who receives a W-2 with California wages.
- k) "Employee Information Packet" means the packet of information provided by the Program that includes the Opt-Out Form and other forms and information determined to be appropriate by the Program, further specified in Section 10005 of these regulations.
- l) "Employer" means a sole proprietor, partnership, corporation, or other entity, whether for profit or not for profit, that is an employer under common law rules.
- m) "Enrollment Date" means the date by which a Participating Employer shall offer Eligible Employees the opportunity to enroll in the Program.
- n) "Exempt Employer" means an Employer that either (i) has fewer than five employees, as determined under the methodology described in Section 10003(b) of these regulations; (ii) maintains a Tax-Qualified Retirement Plan for at least one Eligible Employee; or (iii) is the federal government, the state, any of the state's units or instrumentalities, any county, any municipal corporation, or any other government entity, unit, or instrumentality.
- o) "Implementation Date" means the date established by the Board in accordance with Government Code Section 100043(b)(1) et seq. that is the first date on which a Covered Employer may register for the Program.
- p) "IRA" means either a Roth IRA or a Traditional IRA.

- q) "Open Enrollment Period" means the period during which Eligible Employees who are not Participating Employees shall be given the opportunity to enroll in the Program, as prescribed in California Government Code Section 100032(f).
- r) "Opt-Out Form" means the form through which Eligible Employees can note their decision to opt out of participation in the Program.
- s) "Participating Employee" means an Eligible Employee who is enrolled in the Program.
- t) "Participating Employer" means a Covered Employer that registers with the Program to provide its Eligible Employees access to the Program.
- u) "Participating Individual" means an individual who is enrolled in the Program independent of an employment relationship, as further defined in Section 10008 of these regulations.
- v) "Program" means the California Secure Choice Retirement Savings Program.
- w) "Roth IRA" means an IRA established under Internal Revenue Code Section 408A.
- x) "Tax-Qualified Retirement Plan" means a retirement plan that qualifies for favorable federal income tax treatment under Internal Revenue Code Sections 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p), including a multiemployer plan, Simplified Employee Pension, Savings Incentive Match Plan for Employees IRA, and an Employer-provided automatic enrollment payroll deduction IRA.
- y) "Traditional IRA" means an IRA established under Internal Revenue Code Section 408.
- z) "Tri-party Employment Relationship" generally 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.

Section 10002. Administration

Consistent with Sections 1798 et seq., California Civil Code; Sections 7290 et seq., California Government Code; Sections 100000-100050, California Government Code; Section 12302.2, California Welfare and Institutions Code; and Section 1088.9, California Unemployment Insurance Code; the Program shall be operated, and these regulations be construed, in a manner consistent with applicable regulations and guidance provided by the U.S. Department of Labor relating to payroll deduction IRA programs that are not pension plans under Title I of the Employee Retirement Income Security Act.

Section 10003. Covered Employers

- (a) An Employer shall be a Covered Employer if:
 - (1) The Employer employs at least five employees;

- (2) The Employer does not maintain a Tax-Qualified Retirement Plan for at least one Eligible Employee; or
 - (3) The Employer is not the federal government; the state; any county; any municipal corporation; any of the state's units or instrumentalities; or any other government entity, unit, or instrumentality.
- (b) The number of employees for purposes of determining whether an Employer is a Covered Employer, and to determine the date by which the Covered Employer must register with Program under Section 10004(b) of these regulations, shall be determined based on the average number of employees as reported on the Employment Development Department Form DE 9C for the quarter ending December 31 and the previous three quarters of available data from the Employer's DE 9C reports.
 - (c) A Covered Employer shall be deemed an Exempt Employer only if its average number of employees drops below five for a calendar year.
 - (d) For purposes of determining the number of employees, and whether an Employer maintains a Tax-Qualified Retirement Plan, all entities in the Employer's "controlled group of corporations" or under "common control" under Internal Revenue Code Sections 414(b) and (c) shall be considered to be a single Employer.
 - (e) An Employer shall cease to be a Covered Employer and Participating Employer as of the effective date of its adoption of or participation in a Tax-Qualified Retirement Plan for at least one Eligible Employee.
 - (f) Each Employer that ceases to be a Covered Employer shall promptly notify the Program.
 - (g) By the Implementation Date, and annually thereafter, the Program will notify Employers which, based on available information, appear to be Covered Employers and provide such Employers with methods—including electronically, via mail, or by phone—through which Covered Employers shall certify their eligibility for the Program and Exempt Employers may certify their exemption from the Program. Participating Employers shall not be required to annually certify eligibility.
 - (h) For Employers in a Tri-Party Employment Relationship, the Covered Employer shall be:
 - (1) For a temporary services employer or leasing employer, as defined in California Unemployment Insurance Code Section 606.5(b), the temporary services employer or leasing employer.
 - (2) For a professional employer organization described under Internal Revenue Code Section 7705(e)(2)(A)-(E), without regard to the word "certified" in subparagraph (C), that enters into a contract with a Client Employer, the Client Employer.
 - (3) For a motion picture payroll services company defined under California Unemployment Insurance Code Section 679(f)(4), the motion picture production company defined under California Unemployment Insurance Code Section 679(f)(5).

Note – Authority Cited: Section 100000, California Government Code; Section 100010, California Government Code; Section 100012, California Government Code; Section 100032, California Government Code; Section 100043, California Government Code; Section 100048, California Government Code; Section 606.5, California Unemployment Insurance Code; Section 679, California Unemployment Insurance Code; Section 414(b-c), Internal Revenue Code; and Section 7705, Internal Revenue Code.

Section 10004. Employer Registration

- (a) Any Covered Employer may register with the Program at any time on or after the Implementation Date and shall register no later than the date specified in paragraph (b) below. However, if a Covered Employer registers before the deadline specified in paragraph (b) below, the Program may delay the enrollment of such Covered Employer's Eligible Employees for purposes including, but not limited to, testing the Program platform among a limited set of Participating Employers, if the Program determines such a delay to be in the best interests of Program administration.
- (b) Each Covered Employer shall register with the Program no later than:
 - (1) For Covered Employers employing 100 or more employees, the date 12 months following the Implementation Date.
 - (2) For Covered Employers employing 50 or more employees, the date 24 months following the Implementation Date.
 - (3) For Covered Employers employing 5 or more employees, the date 36 months following the Implementation Date.
- (c) An Employer's number of employees for the purposes of this Section shall be determined under the methodology established under Section 10003(b) of these regulations.
- (d) An Employer that becomes a Covered Employer after the Implementation Date shall register with the Program within the later of 24 months after the date it becomes a Covered Employer, or the date specified in paragraph (b) above.
- (e) A Covered Employer may register with the Program using the Program's internet portal or by non-electronic means.
- (f) Upon registration, a Participating Employer shall provide the following information to the Administrator:
 - (1) Employer name and Doing Business As name, if applicable;
 - (2) Federal Employer Identification Number or California Employer Payroll Tax Account Number;
 - (3) Employer mailing address; and
 - (4) Name, title, telephone number, and email address of an individual designated by the Employer as the primary contact for the Program.
- (g) Upon registration with the Program, a Covered Employer is a Participating Employer.
- (h) A Covered Employer who lacks access to the internet may request to register with the Program by alternative means established by the Administrator. Such Covered Employers shall make the request to the Administrator no later than 30 days prior to the date by which they must register with the Program.

Note – Authority Cited: Section 100002, California Government Code; Section 100010, California Government Code; Section 100012, California Government Code; Section 100014, California Government Code; Section 100032, California Government Code; Section 100043, California Government Code; Section 100048, California Government Code; Section 1088.9, California Unemployment Insurance Code.

Section 10005. Employee Information Packet

The Employee Information Packet shall be prepared by the Program and include the Opt-Out Form and any other form and such information deemed to be appropriate by the Program in

accordance with Government Code Section 100014. The Employee Information Packet shall be made available to Participating Employers in accordance with Government Code Section 100014.

Note – Authority Cited: Section 100002, California Government Code; Section 100010, California Government Code; Section 100012, California Government Code; Section 100014, California Government Code; Section 100032, California Government Code; Section 100043, California Government Code; Section 100046, California Government Code; Section 100048, California Government Code; and Section 1088.9, California Unemployment Insurance Code.

Section 10006. Participating Employer Duties

- (a) After a Covered Employer registers with the Program and becomes a Participating Employer, and for each individual who becomes an Eligible Employee after such registration, the Participating Employer shall provide to the Administrator within thirty days, the following information for each employee reportable on a DE 9C:
 - (1) Employee’s full legal name;
 - (2) Employee’s Social Security Number or Individual Taxpayer Identification Number;
 - (3) Employee’s date of birth;
 - (4) Employee’s mailing address;
 - (5) Employee’s phone number, if available; and
 - (6) Employee’s email address(es), if available.
- (b) Participating Employers shall ensure the Employee Information Packet is delivered to all Eligible Employees within 30 days of the initial date of registration.
 - (1) After the date an Employer registers with the Program, Participating Employers shall ensure the Employee Information Packet is delivered to all new Eligible Employees within 30 days.
 - (2) Participating Employers shall generally deliver the Employee Information Packet electronically, however the Employer may deliver the Employee Information Packet in hard copy form, either by requesting copies from the Administrator or printing their own copies.
 - (A) Covered Employers may request hard copies of the Employee Information Packet from the Administrator no later than 30 days prior to the date by which they must deliver the Employee Information Packet.
 - (3) Participating Employers shall facilitate enrollment of Eligible Employees that do not opt out of the Program by making a notation on the Opt-Out Form.
- (c) During the annual Open Enrollment Period, Participating Employers shall ensure the Employee Information Packet is delivered to all Eligible Employees who are not Participating Employees by the start of the Open Enrollment Period and facilitate enrollment of any Eligible Employees who did not complete an Opt-Out Form.
- (d) Participating Employers shall remit Contributions for each Participating Employee each payroll period to the Administrator at the applicable Contribution Rate.
 - (1) Participating Employers shall remit all Compensation withheld to the Administrator within 15 business days after the end of the payroll period during which the amounts were withheld.

- (e) Participating Employers shall remain neutral about the Program. Participating Employers shall not:
 - (1) Require, endorse, or discourage employee participation in the Program.
 - (2) Provide Participating Employees advice or direction on investment choices, Contribution Rates, participation in Automatic Escalation, or any other employee decision about the Program.
 - (3) Remit any Contributions for any Eligible Employee who completed an Opt-Out Form.
 - (4) Exercise any authority, control, or responsibility regarding the Program other than as set forth in this Section.
- (e) A Participating Employer is not a fiduciary of the Program, is not a sponsor of the Program, and shall not be liable as a fiduciary or plan sponsor.
 - (1) A Participating Employer shall have no civil liability for acting in accordance with these regulations.

Note – Authority Cited: Section 100000, California Government Code; Section 100002, California Government Code; Section 100008, California Government Code; Section 100010, California Government Code; Section 100012, California Government Code; Section 100014, California Government Code; Section 100032, California Government Code; Section 100034, California Government Code; Section 100043, California Government Code; Section 100046, California Government Code; and Section 100048, California Government Code.

Section 10007. Employee Enrollment

- (a) The initial Enrollment Date for each Eligible Employee shall be a date that is not more than 30 days after the date a Covered Employer registers with the Program.
- (b) The Enrollment Date for an Eligible Employee hired by a Participating Employer after it begins participating in the Program, or an employee who becomes an Eligible Employee after an Employer begins to participate in the Program, shall be the date 30 days following his or her hire date or date of eligibility.
- (c) An Eligible Employee shall be enrolled in the Program if he or she does not opt out of the Program by making a notation on the Opt-Out Form.
- (d) If the Administrator is unable to enroll an employee due to inability to verify the employee identity, the Administrator shall notify the employee directly to notify them that a problem occurred during enrollment and notify the Participating Employer to cease remitting Contributions for the employee. Such communications shall be held in the strictest confidence and shall not be used for any purpose outside of the Program.
- (e) After a Participating Employer has registered with the Program, the Participating Employer shall ensure the Employee Information Packet is delivered to all Eligible Employees who are not Participating Employees annually during the Open Enrollment Period.
 - (1) The Open Enrollment Period shall begin October 1 and conclude November 30.
 - (2) Eligible Employees who are not Participating Employees shall be enrolled in the Program if they do not return a completed Opt-Out Form received during the Open Enrollment Period.
 - (3) Other than new or newly-eligible Employees, non-participating Eligible Employees may only enroll in the Program during the Open Enrollment Period.

Note – Authority Cited: Section 100002, California Government Code; Section 100010, California Government Code; Section 100012, California Government Code; Section 100014, California Government Code; Section 100032, California Government Code; Section 100043, California Government Code; Section 100046, California Government Code; Section 100048, California Government Code; and Section 1088.9, California Unemployment Insurance Code.

Section 10008. Individual Participation

- (a) An individual who is a California resident, eighteen years of age, and who is not an Eligible Employee may choose to participate in the Program as a Participating Individual outside of an employment relationship.
- (b) Any Contribution made by a Participating Individual must be at least \$10.
- (c) Participating Individuals may not make Contributions to the Program through deductions from a non-participating Employer.

Note – Authority Cited: Section 100002, California Government Code; Section 100010, California Government Code; Section 100012, California Government Code; and Section 100048, California Government Code.

Section 10009. Default Program options and alternative elections for Contributions, Automatic Escalation, and investment options for Participating Employees

- (a) Default Elections
 - 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 initial 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.
 - (B) A Participating Employee who has not participated in the Program for at least 180 days during the calendar year shall not have Contributions subject to Automatic Escalation until the January 1 that occurs after 180 days of participation.
 - 1. It shall be the responsibility of the Administrator to determine if a Participating Employee shall have Contributions subject to Automatic Escalation and to notify the Participating Employee and Participating Employer at least 90 days before the Automatic Escalation is scheduled to take effect.
 - (3) Contributions shall be made to a Roth IRA.
 - (4) Contributions shall be invested in the investment option selected by the Board.
- (b) Alternative Elections

- (1) A Participating Employee may elect a Contribution Rate other than the default Contribution Rate between 0% and 100% of Compensation, or represented as whole dollar amounts.
- (2) A Participating Employee may opt out of Automatic Escalation at any time by notifying the Administrator.
- (3) A Participating Employee may elect an alternative Automatic Escalation amount at any time.
- (4) A Participating Employee may choose to make all or some of his or her Contributions to a Traditional IRA.
- (5) Alternative elections shall be implemented as quickly as practicable and no later than the nearest payroll period 30 days following notification by the Administrator of the alternative election.

Note – Authority Cited: Section 100002, California Government Code; Section 100010, California Government Code; Section 100012, California Government Code; Section 100032, California Government Code; Section 100034, California Government Code; Section 100043, California Government Code; Section 100048, California Government Code; and Section 408A, Internal Revenue Code.

Section 10010. Contributions and Investments

- (a) A Participating Employee may elect to make non-payroll Contributions of at least \$10 directly to his or her Account.
- (b) Participating Employers are prohibited from contributing to a Participating Employee's Account.
 - (1) An individual who is both a Participating Employer and a Participating Employee may make Contributions to his or her own Account under the same terms and conditions as other Participating Employees.
 - (2) Amounts withheld by the Participating Employer under this Section 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.
- (c) The Administrator shall promptly process all Participating Employee Contribution and opt-out elections (including default elections and Automatic Escalation and any election changes) and notify the Participating Employer of the appropriate Contribution Rate or opt-out.
- (d) Each Account holder (including a current or former Participating Employee or Individual) may designate one or more death beneficiaries and contingent death beneficiaries for his or her Account.
- (e) The Program may determine to allow Participating Employees and Participating Individuals to invest their Accounts among a menu of investment options as may be selected by the Program in accordance with Government Code Section 100002 and other applicable law.

Note – Authority Cited: Section 100002, California Government Code; Section 100010, California Government Code; Section 100012, California Government Code; Section 100043, California Government Code; Section 100048, California Government Code; and Section

408A, Internal Revenue Code.

Section 10011. Withdrawals and Transfers

A Participating Employee or Participating Individual may request a full or partial withdrawal or transfer to another retirement vehicle from his or her Account at any time by submitting a properly-completed request to the Administrator in a manner as may be established by the Program in accordance with federal laws and regulations, including the Internal Revenue Code.

Note – Authority Cited: Section 100002, California Government Code; Section 100010, California Government Code; Section 100012, California Government Code; Section 100043, California Government Code; Section 100048, California Government Code; and Section 408A, Internal Revenue Code.

Section 10012. Confidentiality

- (a) The Board will treat Account information as confidential, including, without limitation, names, addresses, telephone numbers, personal identification information, Contributions, earnings, and any issues related to verification of identity for an Eligible Employee.
- (b) Any information compiled pursuant to the operations of the Program shall be maintained by the Board and protected consistent with the requirements of the Information Practices Act of 1977 (Civil 20 Code Section 1798 et seq.)
- (c) A written authorization to release information is valid indefinitely, unless a specific end date is provided in the written statement.

Note – Authority Cited: Sections 1798 et seq., California Civil Code; Section 100002, California Government Code; Section 100010, California Government Code; and Section 100014, California Government Code.

Section 10013. Disclosure

The Board may disclose anonymized data in accordance with applicable California law and procedures reasonably designed to exclude information identifiable to an individual employee or Participating Employer. The Board will disclose information that it is required to disclose under the California Public Records Act. The Board will disclose Account information to the Administrator, the providers of investments for the Program, regulatory agencies to the extent disclosure is required by law, and may release information to other persons or entities under contract to the Board to the extent the Board determines disclosure is necessary to administer the Program. The collection, storage, use, and disclosure of data by the Program and its contractors shall be administered consistent with Section 100012(b) of these regulations.

Note – Authority Cited: Section 6250 et seq., California Government Code; Section 100010, California Government Code; and Section 100048, California Government Code.