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What You Need to Know About California's New CalSavers Program

Background

Sacramento's lawmakers have noticed a troubling reality, and they think they have a solution...

Half of California workers are projected to encounter serious economic hardship when they retire because they don't have enough savings. Approximately 7 million private sector workers (roughly 55% of the workforce) does not have access to a company sponsored pension or 401-k. According to multiple studies, low-wage workers, small business employees, and Latinos are also much less likely to have access to a retirement plan. Of course Social Security helps, but it is not enough for most retirees to make ends meet, especially here in California.

In order to address this "retirement crisis", **California enacted SB 1234 in 2016** authorizing implementation of the **California Secure Choice Retirement Savings Program (a.k.a. Secure Choice – which has now been re-branded as "CalSavers")** with the intention of helping millions of workers save for retirement.

Here are the highlights of this grand experiment...

- CalSavers is a state-managed Roth Individual Retirement Account (IRA) system, not an employer-sponsored retirement plan like a 401-k or pension. Lawmakers have tried – to a significant degree – to insulate employers from the costs and legal responsibilities of sponsoring a retirement plan.
- If an employer does not already sponsor their own retirement plan, employer participation is mandatory – in terms of offering CalSavers to eligible employees.
- Employers are NOT permitted to contribute anything to employees' CalSaver accounts.
- Employers are told NOT to discourage, NOR encourage employees to participate in CalSavers.
- Voluntary enrollments are happening now. Deadlines for employers to get on board are staggered, based on employee count:
 - The first enrollment deadline is June 30, 2020 for employers with 100+ employees,
 - For employers with 50 – 99, the deadline is June 30, 2021,
 - For employers with 5 – 49 employees, the deadline is June 30, 2022.

- There is a potential penalty for non-compliant employers. Under Californian’s Unemployment Insurance Code Section 1088.9(c), each eligible employer that, without good cause, fails to allow its eligible employees to participate in CalSavers, on or before 90 days after service of notice of its failure to comply, shall pay a penalty of \$250 per eligible employee, if noncompliance extends 90 days or more after the notice, and if found to be in noncompliance 180 days or more after the notice, an additional penalty of \$500 per eligible employee.
- Employers are required to forward employee payroll data to CalSavers. CalSavers will communicate directly with employees (apparently via email and regular mail).
- Employees will contribute to their CalSavers account via automatic payroll deduction (which obviously needs to be facilitated by the employer’s payroll department).
- Eligible employees are to be “auto-enrolled” with a 5% payroll deduction from their after-tax paychecks, but each employee will be given the opportunity to actively opt out (plus they can increase or decrease their contributions to their account).
- CalSavers also assumes an “auto-escalation” annually of +1% each year (up to a maximum of 8%). The employee can opt-out of this auto-escalation feature, but it requires their pro-active action.
- CalSavers is overseen by the California Secure Choice Retirement Savings Investment Board (CalSavers Board). The Board has named **Ascensus College Savings Recordkeeping Services, LLC (ACRS) as the Program Administrator**. ACRS and its affiliates are responsible for day-to-day program operations.
- Account Owners (i.e., participating employees) own and have control over their Roth IRAs, as provided in the Act, Program Rules and Program Documents.
- The CalSavers Program, the Board members and the State of California do not guarantee any rate of return or any interest rate on any contribution or asset invested in the Program.
- CalSaver accounts are not traditional bank accounts so they are not insured or guaranteed by the State nor the FDIC.
- CalSaver materials make it clear participants might not make any money by investing in CalSavers and, in fact, could lose money. The Program, the Board, and the State will not be held liable for any loss experienced as a result of participating or investing in the Program.
- The State of California, not the employer, sponsors the Program. Employers cannot provide investment or other financial advice. Employers are thereby shielded from liability for any decisions employees make with respect to the Program.
- Since the program is set up to operate as a Roth IRA, employees are encouraged to seek independent tax and legal advice on whether there are eligible to participate in a Roth IRA (according to IRS rules).

Author’s Commentary

CalSavers was not designed with an integrated sense of the realities facing most of this state’s agriculture industry. There does not appear to be any feature that would, for example, allow an employer with a large seasonal workforce – to opt out completely. In fact, since the plan is not technically sponsored by the employer, the employer is prohibited from having any sort of “waiting period” apply to incoming employees. Due to the realities of our agricultural labor market, we see the CalSavers program presenting significant logistical and communication challenges to ag employers.

On the more positive side, judging from what information is currently available, there appears to be no formalized California regulator formally tasked with policing of this program (i.e., no one from our State government is going to be looking to levy fines – at least initially - on non-compliant employers). What has been published so far indicates that the State will only pursue employers who come to their attention (either through employee complaints or some other whistle-blower tip). Also, the fines proposed have a 90 day “opportunity to correct” feature – therefore reluctant employers might have enough time after being identified as non-compliant to make hasty arrangements for entrance into the Program before any fine is actually owed.

For those employers that are not willing to “roll the dice” and hope the State doesn’t come knocking, a more proactive response could be to consider engaging in either of the following two strategies:

- 1) **Consider creating a voluntary “retirement plan” where the employer simply facilitates an auto-enrollment payroll deduction IRA program.** This type of plan appears to be the easiest one to set up and still meet California’s CalSavers requirements. There are particular steps the employer will need to take (and perhaps more importantly, steps the employer must NOT take) in setting up such a plan so that the employer can avoid the added cost, and legal ramifications, of creating a traditional retirement plan (which would come with the full complement of ERISA requirements and fiduciary responsibilities). One important step is to make sure the program does not include employer contributions (matching or otherwise) and instead is simply funded by employee contributions. Having such a plan in place should negate the employer’s need to participate in CalSavers, and thereby allow the employer to maintain control over their employee data (that would otherwise have to be supplied on a regular basis to the CalSavers Program Administrator). It also would permit the employer to document (with an opt out form available in each employee’s new-hire packet) if the employee is not interested in having a certain percentage of their pay deducted and deposited automatically in the employee’s IRA.
- 2) **Investigate and document – via outside, independent resources – an analysis of your employment patterns, with the goal of providing clear and ample evidence why your employment situation would face significant business harm if it complied with the CalSavers program.** Remember, the penalty for employer non-compliance is triggered if the employer cannot show “good cause” for avoiding the program. In many ag employers, the seasonality of the labor drives large numbers of very small potential CalSaver accounts. Not only are wages relatively low, but even more importantly the work lasts only weeks or months. To bolster the overall analysis, one could envision conducting an employee survey “prove” the low level of interest in the CalSavers program. If that survey shows virtually no interest from your workers, and if the majority of the workers document their concerns about their data being supplied to CalSavers, that might be all a labor attorney would require to support the employer’s claim of “good cause” for not participating in CalSavers.

Readers are encouraged to check out the CalSavers website: <https://www.calsavers.com/>

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MORE INFO ON CALSAVERS

By Design, There is Only a Limited Role for Employers

Employers (who do not already offer a SEP / SIMPLE / 401-k or auto-enrollment payroll deduction IRA program) will need to be responsible for the following:

- Providing the following information about employees to the Program Administrator for the establishment of a CalSavers Account in each employee's name:
 - full legal name;
 - Social Security number or taxpayer ID number;
 - date of birth;
 - physical U.S. street address;
 - designated email address; and
 - any other information reasonably required for purposes of administering the Program.
- setting up payroll deductions for remitting the contributed amounts promptly to the Program Administrator; and
- keeping a record of employees' contributions and remittance of payments to the Program Administrator.

Employers will not:

- provide any additional Program benefits or promise any particular investment return on savings;
- contribute to the Program or match your contributions to the Program;
- have any discretionary authority, control, or responsibility under the Program;
- receive any direct or indirect compensation in relation to the Program;
- provide tax, legal, investment, or other financial advice about the Program; or
- manage personal information regarding the Program, including your beneficiary designations.

Employee Eligibility

- Be at least 18 years of age,
- employed by an eligible employer,
- have the status of an employee under Unemployment Insurance Code Sections 621 et seq,
- receive an Internal Revenue Service Form W-2 with California wages from such employer,
- are a sole proprietor or partner in a partnership that is an eligible employer,
- be eligible under IRS rules to participate in a Roth IRAs.

Automatic Enrollment

Eligible employers are required to automatically enroll their eligible employees. Employees hired on or before the date the employer registers with the Program, the employer is required to enroll all employees within 30 days. For new hires, the employer is required to enroll them within 30 days of date of hire or date of eligibility.

If the Program Administrator is unable to process an enrollment for any reason, the Program Administrator will notify the employer immediately with instructions to cease remitting contributions on behalf of that employee. The Program Administrator will subsequently notify the employee. Such communications are said to be held in the strictest confidence and shall not be used for any purpose outside of the Program.

Employees who initially opt out of the Program, may be re-enrolled during a subsequent Open Enrollment Period. Employees may choose to opt into the Program at any time throughout the year by contacting the Program Administrator.

Post-Enrollment

After an employer facilitates employee enrollment into the Program, the Program Administrator will notify eligible employees to confirm the establishment of their CalSavers Account and provide them with instructions on how to access their Program Documents. After notice has been sent by the Program Administrator, the 30-Day Notification Period begins and employees will have 30 days from that date to do any of the following:

1. finalize the set up of their CalSavers Account, establish online access, and manage contribution elections as desired
2. do nothing, and the employer will begin processing payroll contributions on the employees your behalf in accordance with the Default Contribution Elections; or
3. opt out of the Program and not have deductions from your paycheck.

If employees do not take action by the end of the 30-Day Notification Period, a CalSavers Account will be automatically activated, and the employer will begin sending payroll contributions to CalSavers. After the 30-day period, employees will still have the option to set up their CalSavers Account, change your contribution elections, or terminate their participation in the Program.

Steps for Employees to Take to Set-Up their CalSavers Account

Employees can set up their CalSavers Account online at saver.calsavers.com or they can call 855.650.6918 to obtain the necessary documents to set up a CalSavers Account.

Employees will be asked to acknowledge the following:

- they understand the eligibility requirements for the Roth IRA contribution, and that they confirm they qualify to make that contribution;
- They have received a copy of the Program Documents;
- They understand that the terms and conditions that apply to a Roth IRA are contained in the Custodial Account Agreement, and they agree to be bound by those terms and conditions; and
- They understand that they may revoke their Roth IRA without penalty within seven days from the date they receive the Disclosure Statement by mailing or delivering a written notice to the Program Administrator.

This table shows whether your contribution to a Roth IRA is affected by the amount of your *modified AGI* as computed for Roth IRA purpose.

If your filing status is...	And your modified AGI is...	Then you can contribute...
married filing jointly or qualifying widow(er)	< \$189,000	up to the limit
	≥ \$189,000 but < \$199,000	a reduced amount
	≥ \$199,000	zero
married filing separately and you lived with your spouse at any time during the year	< \$10,000	a reduced amount
	≥ \$10,000	zero
single, head of household, or married filing separately and you did not live with your spouse at any time during the year	< \$120,000	up to the limit
	≥ \$120,000 but < \$135,000	a reduced amount
	≥ \$135,000	zero

How Do Employees Opt Out?

Employees can opt out of, or terminate, their participation in the Program at any time online, by phone, or by mail using the appropriate form. If an employee opts out within the 30-Day Notification Period, no payroll deductions will be made on their behalf, and no CalSavers Account will be activated. If someone chooses to end their participation in the Program after the 30-Day Notification Period and payroll deductions have started, future payroll deductions will be terminated within 30 days after the request. If contributions have already been made into a CalSavers Account, the employee may:

- (i) leave the money in the CalSavers Account to grow towards retirement savings;
 - (ii) transfer or roll over the CalSavers Account to another Roth IRA; or
 - (iii) request a distribution at any time, subject to Roth IRA distribution guidelines.
- NOTE: any investment earnings withdrawn may be taxable and subject to “early withdrawal” tax penalties. See DISCLOSURE STATEMENT – Income Tax Consequences of Establishing a Roth IRA for more information or contact your tax advisor for assistance.

What Happens if Employees Don’t Set Up a CalSavers Account or Opt Out of the Program?

Employees who choose to do nothing will be automatically enrolled in the Program and contributions will begin to be deducted from their paycheck no sooner than the end of the 30-Day Notification Period. Contributions will be invested in accordance with the Default Contribution Elections, unless the employee makes Alternate Contribution Elections. For more details on the Default Contribution Elections, see Contributing to Your CalSavers Account – Contribution Elections – Default Contribution Elections. Please note that employees must first set up their CalSavers Account in order to access it. Participants cannot make changes to a CalSavers Account until it has been set it up and acknowledgements of receiving the Program Documents has been documented.

Contribution Elections

Default Investment Elections - the first \$1,000 of contributions will be invested in the CalSavers Money Market Fund and all subsequent contributions will be invested in the CalSavers Target Retirement Fund as determined in the table below based on the participant's age as reported in the Program records and assumed retirement at age 65. Default contribution rates will be 5% of your compensation and will automatically increase 1% on January 1 each year, beginning January 1, 2020, until a maximum of 8% of your Compensation is reached.

Alternate Contribution Elections - during the 30-Day Notification Period, if a participant does not want to enroll using the Default Contribution Elections, they may go online, call the Program Administrator, or mail the appropriate form to the Program Administrator to change their contribution elections. The minimum contribution rate is 1%, and the maximum contribution rate is 100% of available compensation up to the federal annual IRA contribution limits. Contribution rates must be a whole percentage of compensation (e.g., 3%, but not 3.5%).

After enrollment, participants may change their contribution rate by going online, calling the Program Administrator, or mailing the Program Administrator the appropriate form. Employers are required to enter payroll deductions into its payroll system as quickly as administratively practicable, but no later than 30 days from its receipt of a notice of change from the Program Administrator.

Choosing Investment Options

After setting up of a CalSavers Account, participants can choose to change their Investment Options online, by phone, or by mail using the appropriate form, or let their CalSavers Account remain in the Investment Option under the Default Contribution Elections. In any case, their money will be invested in Investment Options that are allocated to Underlying Funds that are managed by professional Investment Managers.

The Program provides participants with several Investment Options that are designed to appeal to varying levels of risk tolerance and return expectations. For more details on the various Investment Options and Underlying Funds, see Investment Choices.

Designating Beneficiaries

Once a CalSavers Account is set up, participants can designate beneficiaries for their CalSavers Account online or by completing the appropriate form. Setting up beneficiaries is an important step, and it is quick and easy to do. Designating beneficiaries helps families avoid probate of these assets in the event of the participant's death and ensures that their CalSavers Account will go to the individuals or entities that they choose.

Auto-Escalation

CalSavers Accounts are designed with an auto-escalation feature, which provides for the automatic increase of employee's payroll contribution percentage by 1% each year beginning January 1, 2020 up to the maximum contribution rate of 8% of the employee's compensation.

Auto-escalation of contributions will occur on or about January 1 of each year if:

- the participant is contributing less than 8% of compensation; and
- has been enrolled in the Program for at least six (6) calendar months.

The Program Administrator will notify participants at least 60 days prior to January 1 of each year. Participants may choose to opt out of auto-escalation at any time by going online, calling 855.650.6918 or mailing in the appropriate form.

CalSavers Account Restrictions

The Program Administrator and/or the Board reserves the right to:

- A) freeze any CalSavers Account and/or suspend a CalSavers Account services if
 - (i) the Program Administrator receives a notice of dispute regarding CalSavers Account assets or CalSavers Account ownership, including notice of death or divorce (until appropriate documentation is received and the Program Administrator reasonably believes that it is lawful to transfer CalSavers Account ownership to the beneficiary or former spouse) or
 - (ii) (ii) the Program Administrator or Board reasonably believes a fraudulent transaction may occur or has occurred;
- B) freeze any CalSavers Account, without participant's permission, in cases of threatening conduct or suspicious, fraudulent or illegal activity;
- C) refuse to establish or close any CalSavers Account if the participant's identity cannot be verified or if it is determined that it is in the best interest of CalSavers or required by law;
- D) close any CalSavers Account if it is determined that a participant is restricted by law from participating in CalSavers; or
- E) reject a contribution for any reason, including contributions to the Program that the Program Administrator or the Board believe are not in the best interests of the participants, the Program or an Investment Option.

The risk of market loss, tax implications, penalties, and any other expenses as a result of the above will be solely the responsibility of the participant.

PROGRAM RISKS

Participants should carefully consider the information in this section, as well as the other information in the Program Disclosure Booklet and the other Program Documents, before making any decisions about setting up a CalSavers Account and before the employer starts making any payroll contributions on behalf of the employee. Employees should consult an attorney or a qualified financial or tax advisor regarding any legal, financial, or tax questions they may have, including whether and how much they are eligible to contribute to a Roth IRA. The information in this Program Disclosure Booklet is not intended to be an investment recommendation or investment advice, nor should the contents of this Program Disclosure Booklet be construed as legal, financial, or tax advice.

CalSavers is an investment program, your CalSavers Account is an investment account, and all investments, including the Investment Options, carry some degree of risk that participants may lose some or all of the money that was contributed. Some Investment Options carry more risk than others. Participants should weigh these risks with the understanding that they could arise at any time during the life of their CalSavers Account. A discussion of the investment risks related to each Investment Option may be found in the Investment Choices section below.

CalSavers Account Owners own Units (or Trust interests) in an Investment Option and do not have a direct beneficial interest in the Underlying Funds or other investment products approved by the Board from time to time and therefore, do not have the rights of an owner or shareholder of those Underlying Funds or other investments.

An investment in CalSavers is not a bank deposit. Investments in their CalSavers Account are not insured or guaranteed by the FDIC or any other government agency, including the State. Investments are not insured or guaranteed by the State, the Board or the Program Administrator. They should strongly consider the level of risk they wish to assume and their investment time horizon prior to selecting an Investment Option.

Principal and Returns Not Guaranteed. Neither their contributions to a CalSavers Account nor any investment returns earned on their contributions are insured or guaranteed. They could lose money (including their contributions) or not make any money by investing in CalSavers.

Market Uncertainties

As with all investments, the overall market value of their CalSavers Account may exhibit volatility and could be subject to wide fluctuations in response to factors such as conditions in the financial markets, regulatory or legislative changes, worldwide political uncertainties, and general economic conditions, including inflation and unemployment rates. All of these factors are beyond the Program's and the Board's control and may cause the value of their CalSavers Account to decrease (realized or unrealized losses) regardless of our performance or any systematic investing of payroll contributions. A plan of regular investment cannot ensure a profit or protect against a loss in a declining market. There is no assurance that any Investment Option will achieve its goals. For additional information on the risks that may affect Investment Option performance, please read the Investment Choices section below.

Securities Laws

Units held by the CalSavers Accounts are considered municipal fund securities. The Units will not be registered as securities with the Securities and Exchange Commission (SEC) or any state securities regulator. In addition, the Investment Options will not be registered as investment companies under the Investment Company Act of 1940. Neither the SEC, the Municipal Securities Rulemaking Board (MSRB), nor any state securities commission has approved or disapproved the Units, or passed upon the adequacy of this Program Disclosure Booklet.

Potential Changes to the Program

They will be given prior notice if the Board makes material changes to the Program or the Investment Options. In the event of unforeseen circumstances, notice will be given as soon as is reasonable under the circumstances. Such material changes could include, but are not limited to:

- a change in the Program's Fees;
- addition or removal of an Investment Option;
- merger or change in the Underlying Funds within the Investment Options;
- the closure of an Investment Option to new Account Owners; or
- a change in the Program Administrator or an Investment Manager.

If changes are made to the Underlying Fund in an Investment Option, the assets in the Investment Option may be reinvested in a different Underlying Fund. The policies, objectives, and guidelines of the Underlying Funds may also change from time to time.

If the Program is terminated, they will receive written notice informing them of their options. Their choices may include: keeping their assets at the IRA Custodian (in which case the Investment Options under the Program may no longer be available and they may need to choose different investments), transferring or rolling over their CalSavers Account to another Roth IRA with a different financial organization, or taking a distribution from their CalSavers Account. If the Program is terminated, they should consult a qualified tax or financial advisor concerning the appropriateness of each of their options.

There is no guarantee that the Investment Managers will continue to manage the Underlying Funds for the Program or manage the Investment Option's assets, as applicable, or that the Board will be able to negotiate their continued services in the future.

Suitability

The Board and Program Administrator make no representation regarding the suitability or appropriateness of the Investment Options for their particular circumstances. If they are automatically enrolled into the Program and subject to

the Default Contribution Elections, their CalSavers Account will be invested in the default Investment Option under the Program, as selected by the Board. Other types of investments may be more appropriate depending upon their financial status, tax situation, risk tolerance, age, investment goals, savings needs, and other factors they determine to be important.

If they have questions about participation in the Program, they should consult their legal or tax advisor based on their individual situation. There are other retirement savings vehicles available. These other options may have different features and tax advantages and other fee or expense consequences including, for example, different Investment Options or Account Owner control. They may wish to consider these alternatives with their tax or investment advisor prior to setting up their CalSavers Account.

Effect of Future Law Changes

It is possible that future changes in applicable federal or state laws or court or interpretive rulings could, on a go-forward basis or retroactively, adversely affect the terms and conditions of the Program or the value of their CalSavers Account. Additionally, the Act and/or Program Rules are subject to change.

Tax Considerations Generally; Income Tax on Earnings

The federal and state tax consequences associated with taking a Roth IRA distribution can be complex. Therefore, they should consult a qualified tax advisor regarding the application of tax laws to their particular circumstances. For example, any earnings they make on their contributions may be subject to federal and state income taxes if they take a nonqualified distribution. Additionally, the early distribution penalty may apply to the earnings on any nonqualified distribution. For more details, see CUSTODIAL ACCOUNT AGREEMENT – Article IX -- 9.12 Withdrawals or Transfers and DISCLOSURE STATEMENT -- Income Tax Consequences of Establishing a Roth IRA.

General Investment Option Risks

Each Investment Option has its own investment strategy, risks and performance characteristics. In choosing the appropriate Investment Option(s) for their CalSavers Account, they should consider their financial status, tax situation, risk tolerance, age, investment goals, savings needs, and other factors they determine to be important.

An Investment Option's risk and potential return are a function of the Investment Option's relative weightings of stock, bond, and money market investments, among other factors. Certain Investment Options carry more and/or different risks than others. In general, the greater an Investment Option's exposure to stock investments, the higher the risk will be (especially short-term volatility). The more exposure an Investment Option has to bond and money market investments, the lower its risk. There are also subcategories with various risk levels within the stock and bond categories.

The Target Indices of Certain Underlying Funds May Change

Certain Underlying Funds may invest to match or track the components of a market index. Such Underlying Funds reserve the right to substitute a different index for the index that it currently tracks. This could happen if the current index is discontinued, if the index fund's agreement with the sponsor of its current index is terminated, or for any other reason determined in good faith by the index fund's

board of trustees. In any such instance, a substitute index would measure substantially the same market segment (e.g., large-, mid-, or small- capitalization) as the current index.

No Indemnification

The Program, the State, the Board and the Program Administrator will not indemnify any Account Owner against losses.

INVESTMENT CHOICES

Overview

CalSavers offers a range of Investment Options in an effort to meet the risk tolerance and investment objectives of most investors. They may choose one or any combination of the following four types of investment strategies:

- Money Market Fund – an Investment Option with the investment objective of maximizing current income, to the extent consistent with the preservation of capital and liquidity, by investing in an Underlying Fund that invests in U.S. dollar-denominated money market securities.
- Target Retirement Funds – Investment Options that correspond with the year closest to when they will be 65 or plan to retire. Each Target Retirement Fund has a specific “target date” (e.g., 2035, 2045, 2055) and invests in an Underlying Fund that is comprised of a mix of stock and bond funds. The Investment Options seek to provide for retirement outcomes based on quantitatively measured risk. The Investment Options will be broadly diversified across global asset allocations becoming more conservative over time as an investor nears target retirement age.
- Core Bond Fund – an Investment Option with the investment objective of tracking as closely as possible, before fees and expenses, the total return of an index composed of the total U.S. investment grade bond market.
- Global Equity Fund – an Investment Option that seeks to provide investment results that, before fees and expenses, correspond generally to the total return performance of a broad-based index of domestic and foreign equity markets over the long term.

Each Investment Option invests their contributions in a single Underlying Fund, except for the CalSavers Global Equity Fund which invests in two Underlying Funds. They are purchasing Units of the Investment Option, not shares of the Underlying Fund.