

Title 2. Administration
Division 1. Administrative Personnel
Chapter 3. Department of Human Resources
Subchapter 1. General Civil Service Rules
Article 27. 457 Deferred Compensation Plan
Section 599.943 Savings Plus Program Contract Periods

NOTICE OF PROPOSED RULEMAKING

The California Department of Human Resources (CalHR) proposes to amend the regulation described below after considering all comments, objections, and recommendations.

I. PUBLIC HEARING

CalHR has not scheduled a public hearing on this proposed action. However, CalHR will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

II. WRITTEN COMMENT PERIOD

Any Interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to CalHR. Comments may also be submitted by facsimile (FAX) at 916-327-1885 or by e-mail to joseph.mesich@calhr.ca.gov. The written comment period closes at 12:00 a.m. on January 17, 2023. CalHR will only consider comments received at CalHR's office by that time. Submit comments to the following address:

Joseph Mesich, Investment & Project Analyst
California Department of Human Resources
1515 S Street, North Building, Suite 500
Sacramento, CA 95811

III. AUTHORITY AND REFERENCE

Government Code section 19815.4 authorizes CalHR to formulate, adopt, amend, or repeal rules, and regulations affecting the purposes, responsibilities and jurisdiction of the department that are consistent with the law and necessary for administration of its programs. The proposed amendment interprets and makes specific Government Code section 19993 and Public Contracts Code sections 10295(c)(4), 10344.1., and 10430(c).

IV. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Public Contract Code (PCC) section 10430, subdivision (c), provides CalHR flexibility in the competitive bid process for contracts for state employee benefits, including voluntary retirement savings plans for state employees. Specifically, PCC section 10430 provides that Chapter 2, Part 2, Division 2, of the PCC, regarding state acquisition for goods and services does not apply to "any entity exempt from Section 10295." Further, PCC section 10295, subdivision (c)(4) exempts CalHR from obtaining Department of General Services' approval prior to awarding a contract. However, CalHR is required to comply with PCC

section 10344.1, which requires the program to provide “all qualified bidders with a fair opportunity to enter the bidding process” and to follow additional state contracting best practices to the extent feasible.

Despite the flexibility provided by PCC section 10344.1, California Code of Regulations (CCR), title 2, section 599.943 requires the Savings Plus Program to comply with the State’s competitive bidding process when selecting an investment firm for a new contract. Thus, section 599.943 does not align with PCC statutes that provide CalHR a more flexible approach to the competitive bidding requirements.

V. EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

CalHR evaluated whether or not the proposed amendment is inconsistent or incompatible with existing state regulations. These are the only regulations concerning Savings Plus Program Contracting. Therefore, the proposed amendment is not inconsistent nor incompatible with other existing state regulations.

VI. ANTICIPATED BENEFITS FROM THIS PROPOSED REGULATION

The proposed amendment modifies the regulation and recognizes that a different requirement applies to CalHR, which does not specifically follow the state’s standard competitive bid process. This amendment to the regulation allows the Savings Plus Program to comply with the state’s competitive bidding process and for the program to be nimbler when needed. Where there is a high risk of an investment manager losing assets, the Savings Plus Program should be permitted to utilize a modified competitive search process to select a replacement investment manager to manage program assets. This flexibility allows the Savings Plus Program to meet its fiduciary obligations and safeguard program assets.

VII. DISCLOSURES REGARDING THE PROPOSED ACTION

CalHR has made the following initial determinations:

1. Mandate on local agencies and school districts: None.
2. Cost or savings to any state agency: The current regulation does not have any fiscal impact on state agencies, local government, or private sector business. The proposed amendment would not change this assessment.
3. Cost to any local agency or school district, which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
4. Other nondiscretionary cost or savings imposed on local agencies: None.
5. Cost or savings in federal funding to the state: None.
6. Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
7. Cost impacts on representative private person or business: CalHR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
8. Results of the Economic Impact Assessment/Analysis:

Adoption of these regulations will not:

- a. Create or eliminate jobs within California;
- b. Create new businesses or eliminate existing businesses within California; or
- c. Affect the expansion of businesses currently doing business within California.
- d. Create new benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

Adoption of these regulations will:

- e. The proposed amendment modifies the regulation and recognizes that a different requirement applies to CalHR, and not necessarily the state's standard competitive bid process. This amendment allows Savings Plus to comply with the state's competitive bidding process and for the program to be nimbler when needed. In the example above, where there is a high risk of an investment manager losing assets, Savings Plus should be permitted to utilize a modified competitive search process to select a replacement investment manager to manage program assets. This flexibility allows Savings Plus to meet its fiduciary obligations and safeguard program assets.

9. Significant effect on housing costs: None.

10. Small Business Impact: The proposed regulation amendment has no impact on small businesses. This only regulates the internal process by which the state HR departments shall ensure only those who are truly qualified dependents of active employees are receiving benefits, and does not extend in any way to private businesses or the general public.

VIII. CONSIDERATION OF ALTERNATIVES

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

CalHR invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the hearing, if one is requested, or during the written comment period.

IX. CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Joseph Mesich, Investment & Project Analyst
California Department of Human Resources
1515 S Street, North Building, Suite 500
Sacramento, CA 95811
Telephone: 916-324-0519
E-mail: joseph.mesich@calhr.ca.gov

The backup contact person for these inquiries is:

Jodi LeFebre, Legislative Coordinator
California Department of Human Resources
1515 S Street, North Building, Suite 500
Sacramento, CA 95811
Telephone: 916-214-6119
E-mail: jodi.lefebvre@calhr.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Joseph Mesich at the above address.

X. AVAILABILITY OF THE STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

CalHR will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address during normal business hours. As of the date this notice is published, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons.

XI. AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, CalHR may adopt the proposed amendment to the regulation as described in this notice. If CalHR makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) availability to the public, and will submit a copy to anyone who has submitted a written comment, for at least 15 days before CalHR adopts the regulation as revised. Please send requests for copies of any modified regulation to the attention of Joseph Mesich at the address indicated above. CalHR will accept written comments on the modified regulation for 15 days after the date on which they are made available.

XII. AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Joseph Mesich at the above address.

XIII. AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strike out can be accessed through our website at www.calhr.ca.gov.

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