

March 16, 2021

**AGENDA ITEM 1
Action ITEM**

CALIFORNIA ABLE ACT BOARD

Approval of Minutes from November 17, 2020 and February 2, 2021 Meetings

Attachments

- Attachment #1 - CalABLE Board November 17, 2020 Meeting Minutes
- Attachment #2 - CalABLE Board February 2, 2021 Meeting Minutes

Recommended Action—Approve meeting minutes

CALIFORNIA ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACT BOARD

Minutes

November 17, 2020 – 1:30 PM

915 Capitol Mall, Room 587, Sacramento, CA 95814

Public Participation Call-In Number* (877)-810-9415 and Participant Code: 653-5126

Board members present:

Fiona Ma, CPA, California State Treasurer

Elena Gomez for the Department of Rehabilitation

Kathleen Barajas for the State Independent Living Council (via teleconference)

David Oppenheim for the State Controller

Gayle Miller for the Department of Finance (via teleconference)

Carla Castaneda for the Department of Developmental Services (via teleconference)

CalABLE Board Staff:

Dante Allen, Executive Director, CalABLE

Anne Osborne, Manager, CalABLE

Sandra Kent, AGPA, CalABLE

Alyssa Delacruz, Office Tech, CalSavers

Ravinder Kapoor, Senior Attorney

CalABLE Board Consultants present:

Andrea Feirstein, Managing Director, AKF Consulting (via teleconference)

Mark Chapleau, AKF Consulting (via teleconference)

Dr. Tamu Nolfo Green, CEO, Equity Wellness LLC (via teleconference)

CalABLE Board Program Manager, Tuition Financing, Inc. (TFI), staff present:

Linda English, Senior Director of Relationship Management (via teleconference)

Glenn Friedman, Manager, TIAA Tuition Financing Inc. (via teleconference)

Eric White, Principal, Meketa Investment Group, Inc. (via teleconference)

John Cheshire, Nuveen (via teleconference)

Chairwoman Ma called the meeting to order at 1:34 pm.

Anne Osborne announces public comment directions for phone participants.

Item # 1 – Action Item

Approval of Minutes

Motion to approve the minutes of the August 18, 2020, meeting of the California ABLE Act Board.

MOTION:	Gayle Miller	SECONDED:	Elena Gomez
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AYES:	Fiona Ma, David Oppenheim, Gayle Miller, Elena Gomez, Carla Castaneda, Kathleen Barajas
NOES:	None
ABSTAIN:	None
RECUSE:	None
Not Present:	Sandra Aldana for the State Council on Developmental Disabilities
ACTION:	Motion Passes

Chairwoman Ma asked if there were any public comments/phone comments – None

Item #2 – Information Item

Executive Director’s Report by Dante Allen

- **NAST Update**

State Treasurer and CalABLE Board Chair Fiona Ma has agreed to serve for another year as the chairperson for the National Association of State Treasurers ABLE subcommittee. This role positions CalABLE as a leader in national discussions related to federal opportunities for improvements to ABLE. Most recently, CalABLE has taken a lead role in continuing to promote the passage of the ABLE Age Adjustment Act. Additionally, CalABLE has led the discussion to incorporate final IRS ABLE regulations, which represent several enhancements, including the ability for Social Security rep payees to now become authorized legal representatives. The new regulations also allow for ABLE accounts to include sub-accounts, and CalABLE will soon be working on a way to implement this.

- **Budget Overview**

CalABLE has submitted a Budget Change Proposal that mirrors the dollar amount requested in the previous fiscal year. However, the request was made for an annual budget appropriation rather than general fund loans that have sustained the program since the beginning. This approach was taken as part of an effort to reach self-sustainability as quickly as possible and comes with the support of the Legislative Analyst Office. If the final budget will not support this request as an appropriation, CalABLE has requested additional loan funding as a backup.

- **Outreach/Marketing**

At the August board meeting, the Board voted to approve the issuance of an RFP for marketing services. Submissions were due by 4:00 p.m. on November 17, 2020. CalABLE staff responded to numerous questions that were submitted by potential responders.

CalABLE presented at 16 outreach events with 1,488 attendees and hosted three webinars. Topics included special needs trusts, qualified disability expenses, and

how to maximize CalABLE account contributions using eGifting and 529 rollovers. The webinars featured the CalABLE Ambassadors as guest speakers and are available in replay on CalABLE's YouTube channel. The most popular replay is CalABLE 101, which has more than 2,000 views. CalABLE continues to receive virtual presentation requests and presentation survey link is available online from which CalABLE receives feedback from our audience. The CalABLE Quarterly Newsletter produced by TIAA has shown increasing interest with each edition for a total of 1027 views.

- **Financial Literacy**

CalABLE staff is currently exploring a new initiative to provide financial literacy education as a means of attracting potential account holders and informing them of the benefits of a CalABLE account. CalABLE has entered into discussions with the World Institute on Disability to partner in the development of video vignettes that teach the basics of financial literacy, including setting a budget, paying down debt, understanding credit. Each of these vignettes will promote CalABLE as a tool to help place account holders on a path to financial wellness.

- **Account Holder Survey**

CalABLE has worked with TFI to issue our first ever account owner survey to learn the motivations of account holders who choose the FDIC-insured portfolio. CalABLE is also exploring opportunities to improve marketing and promotional efforts by directing a number of survey questions to inform our approach. Preliminary results show that CalABLE has engendered significant trust among our community, and these early results have not supported any significant changes to the FDIC portfolio.

- **2021 Board Meeting Calendar**

CalABLE has proposed the following dates for the 2021 board meeting calendar:

- Tuesday, March 16 at 1:30 p.m.
- Wednesday, June 23 at 10:00 a.m.
- Tuesday, September 14 at 10:00 a.m.
- Tuesday, December 14 at 1:30 p.m.

CalABLE has also been working on a dashboard. Enrollment data and assets are monitored on a weekly basis. Last quarter, CalABLE exceeded \$30 million in assets under management. The average account balance is now around \$7,400 per account, which is pretty high within the ABLE industry. Among independent ABLE programs, CalABLE ranks 6th in total enrollments and 6th in total assets as of 2Q 2020.

- **Mr. Oppenheim** asked if the Board should send a letter in support of the new IRS regulations. **Mr. Allen** responded that it was definitely something CalABLE could explore.
- **Mr. Oppenheim** also asked whether CalABLE had spoken to any of the large financial firms to make them aware of ABLE accounts so that they might recommend them as suitable alternatives for some of their clients. **Mr. Allen** responded that CalABLE is beginning to have those conversations. Because the program administrator TIAA-CREF is also a financial firm, some may think of the program as a competitor's proprietary product and therefore be reluctant to promote it. **Mr. Oppenheim** added that since CalABLE is a service of the State of California, he would like it if financial firms would mention it to their clients.

Chairwoman Ma asked if there were any public comments/phone comments – None

Item #3 - Information Item

- **Review, Analysis and Performance Monitoring of Investment Portfolios for CalABLE**
- **Glenn Friedman from TIAA:** During the 3rd quarter, GDP increased 38 percent compared to the 2nd quarter, when there was a 32 percent decline. Also, unemployment stood at just under 8%, which is an improvement from June, when it was 11%. Many broad based risk markets in the U.S. have recouped the losses they sustained earlier in the year and then some. In the CalABLE program, there is a diversified fund that tracks a broad-based index that includes many different companies, which gives it exposure to a very broad based equity market to capture returns. International developed stocks had returns of nearly 5%. Emerging market stocks outperformed the U.S. with just over 9.5% return. Treasury yields were static throughout the quarter. The broad based bond market in the U.S. returned 0.62%. Inflation linked bonds outperformed the broad market because inflation picked up a bit. High yield was actually the best performing segment in fixed income.

At the end of quarter the CalABLE program stood at \$27.5 million, and each investment portfolio increased throughout the quarter. The FDIC-Insured Portfolio had 36% of the assets. For the third quarter, the more risk that you took, the higher your returns and that reflects what happened in the capital market.

July and August were positive months, but in September a lot of risk markets took a step back. The cumulative three-month period was still a very positive quarter for a lot of risk markets.

All of the underlying funds that comprise the four investment options have a favorable or positive rating and are all delivering on the objective as outlined. To make sure that each of the underlined funds are delivering on their objectives, the returns over a longer period of time are reviewed. This shows that the 5-year and 10-year returns are capturing the returns of the broad based market index.

Chairwoman Ma asked if there were any public comments/phone comments – None

- **Eric White from Meketa:** All the underlying funds were either positive or acceptable for the current quarter and the prior quarter. The funds are performing very well across the board relative to their monitoring guidelines. However, due to limited availability, the Inflation Linked Bond Fund contains a little more tracking error than is normally present in other investment markets.

The Aggressive Portfolio had very strong returns for the quarter, up 6.6% for the quarter despite the huge sell off that we saw at the beginning of the year. The fund is up just under 3% year to date. The portfolio is up 13.5% since inception. The Moderate Portfolio was up roughly 4.5% for the quarter, 4% year to date, and 11.1% since inception. The Conservative Portfolio has less equity market exposure and is safer, but it still has positive returns across the board.

For the Aggressive Growth Portfolio, volatility is slightly over 15% percent, with a nearly 15% return. Risk for the Moderate portfolio is slightly over 10%. The Conservative Portfolio is approx. 4.5% This means that the plan is very well structured, offering participants the ability to match their personal risk profile to an option within the program.

Chairwoman Ma asked if there were any public comments/phone comments – None

Item #4 - Information Item

- **Strategic Planning Report and 2020 Annual Report**
- **Mr. Allen:** CalABLE started its strategic planning process at the beginning of the year by seeking an opportunity to chart a path toward self-sustainability. CalABLE contracted with the Equity Wellness Institute
- **Dr. Tamu Nolfo Green:** The process involved going through background information on CalABLE and doing research into other ABLE programs around the country. A staff input session and a SWOT analysis were conducted, as well as key informant interviews. From the conversations, it was noted that CalABLE is a consumer-friendly, transparent organization that is building its credibility and trust and filling a gap within the disability community.

- **Outreach and enrollment:** There are good partnerships in place, and the webinar series has allowed CalABLE to reach people virtually and expand their reach. Because the program is new, there are challenges yet to be worked out. The team is still learning and cultural competence is an area where CalABLE can strive to improve. There are also some misconceptions and misinformation about the program.
- **Finance and enrollment structure:** The COVID-19 stimulus checks allowed some to use those funds to open a CalABLE account. Some challenges involve CalABLE's need to repay loans and the inability to offer financial inducements. Other concerns are the fees associated with an account and the instability of the economy. There are opportunities with the ABLA Age Adjustment Act and legislation at the state and federal level.
- **Compliance and competitive positioning:** The areas that caught attention are the annual fees and program awareness. Recommendation is to ensure that fees remain competitive nationally, to work towards offering financial inducements, to enhance search engine optimization, and to create a partnership with the asset building community.
- **Enrollment growth and self-sustainability:** Some of the attention was given to partnership networks, the benefits of being a well-established early adopter, having a target audience and tailoring marketing accordingly. Recommendations are to train staff in customer service, to build CalABLE as an employee benefit, and to include teens and college students by capitalizing on social media. It is also recommended that CalABLE develop a partner training toolkit to counter the misinformation that is out there. CalABLE should move from education into marketing and expand staff to include a marketing specialist.
- **Regulations and legislation:** Recommendations include preparing a marketing and outreach plan for the ABLA Age Adjustment Act, having a plan for veterans, pursuing legislation allowing more than one account per beneficiary and allowing incentives for investments.
- **Strategic partnerships:** The areas of attention are around diversity, education and knowledge, and skills and assets. Recommendations include diversifying partnerships, ensuring staff at partner organizations are well-trained, and leveraging partner skills. A list of suggested partners was provided.
- **Operational and/or other program controls:** Areas included best practices and linkages with the State Treasurer's Office, a need for transparent reporting, and leadership in cultural competency, among others. Recommendations are

to create dashboards to tell the CalABLE story, take advantage of systems at the STO, invest in tech, create an operations manual, and track staff growth needs.

Measurable goals: Recommendations include initiating a bi-monthly learning exchange series, doing a financial literacy campaign kickoff, doing a strategic partner campaign kickoff in the summer, and developing an operation policy manual by the fall, and by the end of next year expanding marketing to external partnerships.

- **Chairwoman Ma** suggested adding CalSavers, AARP, and Special Olympics to the list of potential partner organizations. She also pointed out that each of the 120 members of the legislature has a newsletter that might include a paragraph on the program. The DMV might also be an opportunity. **Mr. Allen** added he had approached the DMV through their public affairs department to suggest that those renewing their disability placards might be given information on CalABLE. However, the feedback was that they focus on DMV or Department of Transportation issues rather than programs or services that are outside their scope. **Chairwoman Ma** suggested that once the DMV re-opens there may be an opportunity to place flyers in the offices. **Mr. Allen** responded that he had talked about that with them as well.
- **Mr. Oppenheim** suggested reaching out to the California State Association of Counties as a way to coordinate with counties statewide. He also commented that despite being a nascent organization, CalABLE has done great things and should not take the attention off of recruiting clients, increasing assets under management, and continuing the acceleration.
- **Ms. Miller** suggested providing technical assistance via webinars or Zoom to show people how to sign up online. She also reminded staff to be cognizant making contacts on social media and other platforms accessible to our audience given that some of them may not be able to hear or read them. **Ms. Castaneda** added that opening meetings up to conversation helps in building a relationship.
- **Mr. Allen** read from the meeting chat where someone suggested reaching out to Medi-Cal centers that serve the disability populations. Mr. Allen reiterated that staff have spent some time establishing a voice, and the next step would be to amplify it through a partnership network.

Chairwoman Ma asked if there were any public comments/phone comments – None

- **Mr. Allen** added that each year, an independent audit of the program is performed. This year, it showed that the program is adhering to the Generally Accepted

Accounting Principles and no material defects were found. A copy of the report can be found on the CalABLE website.

Chairwoman Ma asked if there were any public comments/phone comments – None

Item #5 - Action Item

- **Resolution No. 2020-04: Approval of Amendment to extend consulting services contract with AKF Consulting LLC, dba AKF Consulting Group for the amount of \$337,050.00**
- **Mr. Allen:** The AKF team has been instrumental in just about every operational aspect of the CalABLE program. They assisted CalABLE through the process of selecting a program administrator and in the development of the Disclosure Statement, and have offered insight into the IRS regulations. This item is being brought as an action item because the addition of terms exceeds Mr. Allen’s signature authority. Staff recommends continuing to work with AKF as they provide information and analysis of the industry as a whole.

Chairwoman Ma asked if there were any public comments/phone comments – None

MOTION:	Elena Gomez	SECONDED:	David Oppenheim
AYES:	Fiona Ma, David Oppenheim, Gayle Miller, Elena Gomez, Carla Castaneda, Kathleen Barajas		
NOES:	None		
ABSTAIN:	None		
RECUSE:	None		
Not Present:	Sandra Aldana for the State Council on Developmental Disabilities		
ACTION:	Resolution Passes		

Item #6 – Information Item

- **Review of Board Fiduciary and Governance Training Rescheduled from August 18, 2020**
- **Andrea Feirstein:** The goal is to provide a framework for best practices in the normal course of business. The Internal Revenue Code places the authority for ABLÉ plans within each state, and the state legislation determines where that ABLÉ plan sits within the government. Governance and program oversight varies by the end that the plan sits within. About 2/3 of all the programs in the country are under the purview of the state’s treasurer’s office, and about 34 percent of those programs are structured the way CalABLE is, where the treasurer serves as the board chair. One of the hallmarks of ABLÉ has been the development of collaborative or partnership structures. CalABLE is one of the few states that run a plan without a partnership and is primarily oriented towards constituents.

Fiduciary duty is to act in the best interest of the investors. Other individuals within CalABLE's orbit may also be considered fiduciaries based on the work that they do. Meketa and AKF are examples of this.

- **Mark Chapleau:** Attorneys and auditors are not considered fiduciaries. Fiduciary duty is determined by whether an individual has discretion over the program administration or the management of assets. There are four sources of fiduciary duty: state law, common law, federal law and program documents. Courts will often look at trust law principles to interpret actions taken by a board, so trust laws are the basis for the duty of prudence. The common law underpinnings of fiduciary duty are: duty of care, duty of loyalty and the duty of obedience. You must act in good faith, participants' interests must come above your own, and you must follow the rules set by the program as well as the law.

The exclusive benefit rule means that any action you take, even your deliberations, must be made with undivided loyalty, fair dealing, and no self-dealing or conflicts. While you owe fiduciary duty to the Beneficiaries, there are those to whom you do not owe a fiduciary duty – you do not owe a fiduciary duty to whoever appointed you, the local business community, or the taxpayers of the state, for example.

Some of the additional duty that's flow from the three basic ones include the duty to diversify, which goes to investments; the concept of prohibited transactions addresses the need to avoid conflicts of interest; and finally the duty to delegate since boards do not always have the expertise they need and may hire experts to fill the underlying duty of skill.

- **Andrea Feirstein:** First and foremost, ERISA does not apply to ABLE, but it establishes the prudent expert standard. This is important because courts could look to this standard to determine the prudence of a board action. ERISA makes clear that some of your advisors are not fiduciaries. The '40 Act on Governance Duties is important because without an explicit exemption that exists for the states and the definition of municipal fund securities, what you are doing at CalABLE with respect to the investments you are creating, you would be viewed as an investment company, and CalABLE would be viewed as a mutual fund. At the end of the day, CalABLE is an issuer of municipal securities, and subject to anti-fraud provisions of the '33 and '34 Acts. CalABLE is also liable for disclosures and advertising.
- **Mark Chapleau:** Breaches of fiduciary duty by any one board member can lead to personal liability for all board members. You are your colleague's keeper. You should understand the duty and know where a board can go wrong. Have a clear defined decision-making process and stick to it. Engage help when it's needed.

Make informed decisions and finally, really understand what is being delegated and monitor that work. A board with clearly-defined roles and processes, accountability, and continued oversight should mitigate the risk of breaching fiduciary responsibility.

Governance is about setting objective and goals. It is not about the day to day execution of the objectives. The elements of good governance include the concept of working with other board members, being collaborative and respectful.

- **Andrea Feirstein:** Four ways to exhibit good governance: 1) procurement processes must be transparent, fair and open; 2) set and abide by your investment policy; 3) set performance benchmarks and be accountable; and 4) monitor activities continuously.

Chairwoman Ma asked if there were any public comments/phone comments – None

Public Comment

Chairwoman Ma asked if there were any additional public comments/phone comments not related to items on the agenda – None

Ambassador Program Video

- **Mr. Allen:** Earlier in the year, CalABLE asked for volunteers to become ambassadors for the CalABLE program. We decided to put together a video where can you hear from these ambassadors, who are inspirational and a great representation of why CalABLE is doing what we are doing.

The video was presented to the board.

Meeting Adjourned at 3:35pm

CALIFORNIA ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACT BOARD

Minutes

February 02, 2021 – 2:00 PM

915 Capitol Mall, Room 587, Sacramento, CA 95814

Public Participation Call-In Number* (877)-810-9415 and Participant Code: 653-5126

Board members present:

Audrey Noda for the California State Treasurer, Fiona Ma, CPA (via teleconference)
Elena Gomez for the Department of Rehabilitation (via teleconference)
Kathleen Barajas for the State Independent Living Council (via teleconference)
David Oppenheim for the State Controller Betty T. Yee (via Teleconference)
Gayle Miller for the Department of Finance (via teleconference)
Sandra Aldana for the State Council on Developmental Disabilities (via teleconference)
Carla Castañeda for the Department of Developmental Services (via teleconference)

CalABLE Board Staff:

Dante Allen, Executive Director, CalABLE
Anne Osborne, Manager, CalABLE
Sandra Kent, AGPA, CalABLE
Alyssa Delacruz, Office Tech, CalSavers
Ravinder Kapoor, Senior Attorney

Chairwoman Noda called the meeting to order at 2:00 pm.

Ms. Osborne announced the public comment directions for phone participants.

Item # 1 – Action Item

Resolution 2021- 01 – RFP Marketing Services

Mr. Allen, Executive Director presents the action item for Marketing Services to the CalABLE Act Board for approval. The Board approved RFP for Marketing Services at the August 18, 2020 meeting since the contract for the previously approved RFP expires on February 28, 2021. CalABLE would like to reissue the RFP for marketing services. CalABLE restructured the RFP to include an interview and a recommended deliverable component as part of the RFP proposal. The new Marketing Services contract to begin by May 2021 causing a three-month delay of paid media services.

- **Mr. Allen** asks if there are any questions.
- **Mr. Oppenheim** asked “How many bidders did we have last time? Do we anticipate having a full slate of bidders. Since we are doing this a second time?” Secondly, do you think the new criteria will create any undue burden for those who want to bid a second time.

- **Mr. Allen** responded, that CalABLE received 21 bids, a significant number of proposals given the length, time, and effort that is required to both develop a proposal and review it. The changes CalABLE made should not alter one’s ability to submit given the experience and history of these organizations and the added page limit.
- **Ms. Aldana** asked a question about requesting a recommended deliverable schedule with the RFP. She suggested removing the word “recommended” deliverable to “*proposed*” deliverable, thus making the proposal clear on the bidders marketing strategy.
- **Mr. Allen** responded to Ms. Aldana and would change the word “recommended” to “*proposed*”. CalABLE’s marketing budget is limited and we are looking for innovative approaches that will allow us to have the most impact with the current amount of resources. The RFP contains the standard agreement language used in state contracts.

Chairwoman Noda asked if there were any public comments/phone comments – None

- **Mr. Allen** responded, “We have a question in the Q&A from the public.”
- **Chairwoman Noda** read the question from the Q&A “Who qualifies for the proposal?” – Jenny Zargarra
- **Mr. Allen** responded, “The RFP has a list of minimum qualifications and targets marketing services organizations that have a minimum within the industry with marketing towards difficult to reach populations. The Secretary of State must approve each bidder in order to conduct business with the State of California. They must agree to meet all of the minimum qualifications listed in the RFP.”

Chairwoman Noda asked if there were any public comments/phone comments – None

- **Mr. Oppenheim** asked for the RFP to be amended and change the word “recommended” to “*proposed*”.

MOTION:	Sandra Aldana	SECONDED:	Gayle Miller
AYES:	Audrey Noda, David Oppenheim, Gayle Miller, Sandra Aldana, Elena Gomez, Carla Castañeda, Kathleen Barajas.		
NOES:	None		
ABSTAIN:	None		
RECUSE:	None		
Not Present:	None		
ACTION:	Motion Passes		

Meeting Adjourned at 2:23pm