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**APRIL 16, 2024**

**AGENDA ITEM 6  
ACTION ITEM**

**SCHOLARSHARE INVESTMENT BOARD**

*Resolution to Approve Marketing Performance Criteria for the ScholarShare 529*

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***Recommendation***

ScholarShare Investment Board (SIB or Board) staff recommend that the Board adopt Resolution No. 2024-02, approving marketing performance criteria (benchmarks) for ScholarShare 529 (Plan) and authorizing the Executive Director to execute an amendment to Agreement No. SIB 05-21 (Agreement) to include the approved benchmarks.

***Background***

Agreement No. SIB 05-21 (Agreement) for program management services with TIAA-CREF Tuition Financing, Inc. (TFI) outlines growth rate standards (the “Marketing Performance Criteria” or “Benchmarks”) for the ScholarShare 529 Plan (the “Plan”) that will be agreed upon and used to evaluate TFI’s marketing performance. The Agreement also outlines remedies should TFI fail to meet the annual Benchmarks, which include submission of a revised marketing plan and/or an increase in TFI’s annual marketing commitment. In addition, the Agreement allows for TFI to propose and request further modifications to the Benchmarks taking into consideration industry norms and national trends.

In February 2024, SIB staff and TFI discussed and proposed Benchmarks for the Plan. These proposed Benchmarks, as shown in Exhibit A, were reviewed by the Board’s 529 industry consultant, AKF Consulting Group (AKF), who has provided a review of the proposed Benchmarks (Exhibit B). SIB staff concurs with AKF’s conclusion that the proposed Benchmarks provide an acceptable and clear measure of the program manager’s year-over-year marketing performance.

Pending resolution approval by the Board and amendment approval by the California Department of General Services, the effective period for the Benchmarks will be calendar year 2024.

***Presenters***

Julio Martinez, Executive Director, ScholarShare Investment Board  
Stanley Zeto, Deputy Executive Director, ScholarShare Investment Board  
Andrea Feirstein, Managing Director, AKF Consulting Group

**SCHOLARSHARE INVESTMENT BOARD  
RESOLUTION NO. 2024-02**

**RESOLUTION OF THE SCHOLARSHARE INVESTMENT BOARD  
RELATING TO THE APPROVAL OF MARKETING PERFORMANCE  
CRITERIA FOR THE SCHOLARSHARE 529 COLLEGE SAVINGS PLAN  
AND AN AMENDMENT TO AGREEMENT NO. SIB 05-21**

**WHEREAS**, the ScholarShare Investment Board (the “SIB” or “Board”) was created under Education Code section 69980 et seq. (the “Golden State ScholarShare Trust Act” or “Act”);

**WHEREAS**, the Board, pursuant to Education Code Section 69982(b), has authority to contract for goods and services and engage personnel as necessary for the purpose of rendering professional, managerial, and technical assistance and advice to the Board;

**WHEREAS**, the Board, pursuant to Education Code Section 69981(c)(10), may authorize the Executive Director to enter into contracts on behalf of the Board or conduct any business necessary for the efficient operations of the Board;

**WHEREAS**, the Board has previously entered into agreements to receive program management services, and the Board is currently under contract with TIAA-CREF Tuition Financing, Inc. (“TFI”), the program manager, under Agreement No. SIB 05-21 (the “Agreement”);

**WHEREAS**, the Agreement outlines growth rate standards (the “Marketing Performance Criteria” or “Benchmarks”) for the ScholarShare 529 Plan (the “Plan”) will be agreed upon and used to evaluate the program manager’s marketing performance, and also allows for the program manager to propose modifications to the Benchmarks which SIB may accept or reject, or may request further modifications, taking into consideration industry norms and national trends;

**WHEREAS**, the SIB staff and the program manager have provided proposed Benchmarks as outlined in Exhibit A; and

**WHEREAS**, following a review of the Benchmarks analysis provided by the Board’s 529 industry consultant, SIB staff has determined that the proposed Benchmarks provide an acceptable and clear measure of the program manager’s year-over-year marketing performance.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board hereby approves the Benchmarks for the Plan as proposed by SIB staff and the program manager and outlined in Exhibit A and authorizes the Executive Director to execute necessary documents and take whatever steps necessary to obtain all required approvals for an amendment to the Agreement to include the proposed Benchmarks.

Attest: \_\_\_\_\_  
Chairperson

Date of Adoption: \_\_\_\_\_



**MARKETING PERFORMANCE CRITERIA**

| MEASUREMENT                             | PERFORMANCE CRITERIA  |               |   |
|---|---|---------------|---|
| TOTAL NUMBER OF ACCOUNTS                | TOTAL NUMBER OF ACCOUNTS AS OF DECEMBER 31 <sup>ST</sup> IN CURRENT CALENDAR YEAR     | EXCEEDS BY 6% | TOTAL NUMBER OF ACCOUNTS AS OF DECEMBER 31 <sup>ST</sup> IN PRECEDING CALENDAR YEAR |
| TOTAL GROSS NEW CONTRIBUTIONS COLLECTED | TOTAL GROSS NEW CONTRIBUTIONS COLLECTED IN CURRENT CALENDAR YEAR                      | EXCEEDS BY 4% | TOTAL GROSS NEW CONTRIBUTIONS COLLECTED IN PRECEDING CALENDAR YEAR                  |
| TOTAL ROLLOVERS                         | PERCENTAGE OF PLAN ACCOUNTS CLOSED ANNUALLY DUE TO ROLLOVERS TO OTHER STATE 529 PLANS | LESS THAN     | 2% OF TOTAL PLAN ACCOUNTS AT THE END OF THE CURRENT CALENDAR YEAR                   |

***CALIFORNIA SCHOLARSHARE INVESTMENT BOARD***

**MARKETING PERFORMANCE CRITERIA REVIEW**

**APRIL 5, 2024**





## MARKETING PERFORMANCE CRITERIA REVIEW

### I. INTRODUCTION

For over two decades, the ScholarShare Investment Board (the “Board,” “SIB” or “ScholarShare”) has had the benefit of marketing performance criteria agreed upon by the then-applicable ScholarShare Program Manager (generally, the “Marketing Performance Criteria” or the “Criteria”). In 2009 and 2013, AKF Consulting reviewed and recommended the proposed Marketing Performance Criteria to the Board. Staff has again asked AKF to review Marketing Performance Criteria proposed by TIAA-CREF Tuition Financing Inc. (“TFI”) as the current Program Manager in accordance Section 7.3 of the current Standard Agreement, dated November 7, 2021, between TFI and the Board (the “Agreement”).

This memorandum provides an overview of the proposed Marketing Performance Criteria and shares our perspective on marketing benchmarks in the 529 industry. Ultimately, we conclude that the proposed Marketing Performance Criteria is acceptable given TFI’s resource commitments to growing ScholarShare 529 and CalKIDS overall.

### II. PROPOSED MARKETING PERFORMANCE CRITERIA

Since June 2002, the ScholarShare Staff and Board have been able to gauge the performance of its Program Manager by comparison to agreed-upon, contractual Marketing Performance Criteria. The Criteria has evolved over time, as Program Managers have changed:

- In its earliest format (June 2002), the Criteria included absolute levels for annual new accounts and annual total contributions (e.g., contributions from new and existing account owners) over a five-year period.
- In conjunction with the 2006 transition to a new Program Manager, the Marketing Performance Criteria was measured by the number of new accounts and new contributions over a five-year period. The Criteria was amended in 2009 to adjust for market changes resulting from the financial crisis, resulting in comparisons to the national market rather than just the California market.
- In connection with the 2011 transition to a new Program Manager engagement, the Market Performance Criteria was initially tied to annual industry growth. This was amended in 2014 to measure new accounts and contributions compared to the preceding year, and asset growth rates compared to the direct-sold industry nationwide.

In connection with the latest Program Manager engagement (effective November 2021), Section 7.3(a) of the Agreement, *Marketing Performance Criteria*, includes the commitment to establish Marketing Performance Criteria for the initial term, which Criteria “will be agreed upon and used to evaluate the Contractor’s marketing performance under the Agreement. Section 7.3(a) also provides that “the Contractor may propose modifications to the Marketing Performance Criteria, which SIB may accept or reject, or it may request further modification taking into consideration industry norms and national trends.” To this point, Section 7.3(a) implicitly acknowledges the challenges of establishing benchmarks by recognizing that changes in industry conditions may lead to Criteria modifications.



At the request of SIB in February 2024, TFI submitted proposed Marketing Performance Criteria based upon three measurements: (i) Total Number of Accounts (6% increase over prior year), (ii) Gross New Contributions (4% increase over prior year), and (iii) Account rollovers (cannot exceed 2% annually). Considering our observations above regarding Section 7.3(a), it is interesting to note that the proposed Criteria focuses on growth within ScholarShare (as compared to the 529 industry overall) and it focuses on aggregate growth and not just on “new” accounts and “new contributions.” We mention this because the Marketing Performance Criteria established in both 2006 and 2014 included industry comparisons and “new” activity measurements.

In our review of the TFI proposal, the total account benchmark (as opposed to just new accounts) adjusts for uncertainties created by CalKIDS. For example, gross new accounts in 2023 exceeded 2022 accounts by 54% largely due to CalKIDS, but this likely is not a sustainable growth rate. More importantly, total accounts is the better measure for the Program as it demonstrates the durability of the value proposition (as opposed to new accounts that might just be opened but never really grow). Moreover, the funded status of an account is a key factor to consider.<sup>1</sup> With respect to Contributions, CalKIDS similarly would present uncertainties on future account size, depending on a family’s ability and willingness to make additional contributions.<sup>2</sup> With respect to the removal of assets under management, we know that market factors can cause large fluctuations in totals. To that point, we saw great variations in total assets on December 31, 2021, 2022 and 2023, where assets were up 15% in 2021, down approximately 5% in 2022, and up almost 17% in 2023.

In reviewing the Marketing Performance Criteria, we note that Section 7.2 of the Agreement, *Annual Marketing Commitment*, includes firm dollar commitments from TFI to cover (i) annual 529 marketing, (ii) annual “State Initiative Funding” for account support, and (iii) annual “State Initiative Marketing” for CalKIDS itself. The collective funds committed to State Initiatives (\$1,450,000 annually) are noteworthy because the remedies for Marketing underperformance may include adjustments to the contractual Annual Marketing Commitment. We see this provision as key to TFI’s incentive to meet its Marketing Performance standards. The failure to do so may increase their costs overall.

Taking the Marketing Commitment into account, we find the proposed Marketing Performance Criteria to be an acceptable measure of year-over-year performance. The Criteria set expectations for the Program Manager to improve the total number of accounts each year without regard to the source of account growth – the key is that overall, account numbers must increase. From an asset perspective, we believe a standard related to new contributions (as opposed to total assets under management) acknowledges the outreach to new, more moderate-income families – the key is that increased assets from an expanded investor base still reflect positively on overall Program engagement.

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<sup>1</sup> We understand that TFI does not include zero-dollar accounts in its totals; this should be confirmed.

<sup>2</sup> A linked CalKIDS account accrues to the benefit of total accounts, but it may decrease the average account size depending upon additional contributions.



### **III. MARKETING BENCHMARKS IN THE 529 INDUSTRY**

As a general matter, ScholarShare continues to be one of the only 529 Plans we can identify that has implemented contractual marketing performance benchmarks. We believe that the absence of an established industry standard by which to measure marketing performance reflects three key factors, including:

- Program Managers cannot control market conditions and thus will not agree to the concept of asset-related marketing performance standards.
- It is not entirely clear how to measure marketing performance since there is not a uniform growth standard or index in the industry by which to gauge performance.
- Even if there were agreement on a performance standard or how to measure it, the remedies for underperformance would remain unclear.

### **IV. CONCLUSION**

We recommend approval of the proposed Marketing Performance Criteria. We believe the total account and new contribution criteria, together with the continued rollover limits, collectively provide a clear standard by which to judge TFI's performance. We also believe that TFI's Annual Marketing Commitment provides a strong incentive to achieve the targeted growth rates. Additionally, regarding the exclusion of AUM-related Criteria from prior engagements, variable market conditions and uncertainty regarding withdrawal activity as compared to smaller new contributions, combine to make an overall asset standard less meaningful.

Going forward we encourage ScholarShare Staff and TFI to continue to monitor the industry for trends or norms that would lead to an additional review of the Marketing Performance Criteria. We tend to caution against frequent reforecasts, but we acknowledge that market conditions change for reasons that cannot be directly controlled but should be monitored continuously.

Thank you for this opportunity to review the proposed Marketing Performance Criteria. We welcome the opportunity to discuss our review in greater detail.



## AKF LEGAL DISCLOSURE

Pursuant to Municipal Securities Rulemaking Board (“MSRB”) Rule G-42, on Duties of Non-Solicitor Municipal Advisors, Municipal Advisors are required to make certain written disclosures to clients and potential clients which include, among other things, Conflicts of Interest and Legal or Disciplinary events of AKF and its associated persons.

### **Conflicts of Interest** **Compensation**

AKF represents that in connection with the issuance of municipal fund securities, AKF receives compensation from its client issuers for services rendered on an hourly, retainer or fixed fee basis. Consistent with the requirements of MSRB Rule G-42, AKF hereby discloses that such forms of compensation may present a potential conflict of interest regarding AKF’s ability to provide unbiased advice regarding a municipal fund security transaction. This potential conflict of interest will not impair AKF’s ability to render unbiased and competent advice or to fulfill its fiduciary duty.

### **Other Municipal Advisor Relationships**

AKF serves a wide variety of clients that may from time to time have interests that could have a direct or indirect impact on the interests of other AKF clients. For example, AKF serves as Municipal Advisor to other municipal fund securities clients and, in such cases, owes a regulatory duty to such clients just as it will with the entity receiving this memorandum. These other clients may, from time to time and depending on the specific circumstances, have competing interests. In acting in the interests of its various clients, AKF could potentially face a conflict of interest arising from these competing client interests. AKF fulfills its regulatory duty and mitigates such conflicts by dealing honestly and with the utmost good faith with all clients.

If AKF becomes aware of any potential or actual conflicts of interest after this disclosure, AKF will disclose the detailed information in writing to the client or obligated person in a timely manner.

### **Legal or Disciplinary Events**

AKF does not have any legal events or disciplinary history on its Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations, and civil litigation. You may electronically access AKF’s most recent Form MA and each most recent Form MA-I filed with the Securities and Exchange Commission at the following website: [www.sec.gov/edgar/searchedgar/companysearch.html](http://www.sec.gov/edgar/searchedgar/companysearch.html). If any material legal or regulatory action is brought against AKF, AKF will provide complete and detailed disclosure to its clients, thereby allowing each client to evaluate AKF, its management and personnel.