Issue Brief: The Failure of the Maryland 529 Prepaid College Trust

Maryland 529, an independent state agency, broke the terms of its contracts with thousands of hard-working families who entrusted it to help make college affordable for their students. This issue has gone on for 11 months, leaving desperate parents unable to pay their students' college bills. The 529 Board has acted in secrecy, hiding behind a law firm, retroactively changing policies, and failing to disclose material facts, management turnover, questionable audit findings, and more, all while account holders trusted that their investments were protected by a legislative guarantee. These account holders need a solution now.

Overview

The state of Maryland has two 529 plans to help save money for college. One is a traditional 529 investment plan (the College Investment Plan), and the other is a prepaid tuition plan (the Prepaid College Trust), which is at the center of this issue. Both are overseen by the Maryland 529 Board. The Prepaid Trust, which had 27,680 accounts as of June 2022, is backed by a legislative guarantee. Under Maryland state law, the board members have a fiduciary duty to account holders.

Many parents relied on the Trust's December 2021 account values to decide whether they could afford expensive private or out-of-state schools. Those December documents for the first time revealed the "refund value" of accounts, a value that is required by the U.S. Department of Education on financial aid applications known as FAFSA. While other states freely give out the refund value, Maryland had never disclosed it to all account holders. The values tracked with the principal balances, plus about a 5.5 percent investment return from inception, which matched how the Trust paid out refunds and rollovers for decades. Parents had 60 days to challenge the statements before they became binding. Submitting inaccurate information to FAFSA is a crime.

More than a year later, the Trust now claims those FAFSA refund values were wrong, even though they mathematically made sense with the contracts parents had signed, were in line with the Trust's entrenched policies, and were verified repeatedly by 529 agents when parents wrote or called.

Frozen earnings

The Trust froze access to earnings in April 2022 after it said it discovered a calculation error when switching to its new software vendor and program manager, Intuition College Savings Solutions, LLC, which is based in Florida. Rather than alert families who relied on that money, the 529 Board kept the news quiet. (The board minutes were not even approved until July 2022). This was a breach of its fiduciary duty.

As fall tuition and other bills came due, parents slowly discovered they no longer had access to the money they had been promised. One family had to refinance their house. Others have used their credit cards or dipped into retirement accounts. Some students say they may have to drop out of school. Others have incurred (or are about to incur) student debt they never anticipated.

On Aug. 29, 2022, the board finally notified some account holders via email that there was a problem with "certain interest earnings." But executive director Anthony Savia has since acknowledged that the agency only has emails for about half of all account holders. And the email was misleading, saying that "some" accounts that needed to take a distribution were affected, when in fact, the issue has ramifications for every account holder. The email made no mention of the FAFSA statements and promised something it has yet to deliver: "Once all issues have been resolved, Account Holders will have access to their interest earnings."

Spring tuition bills have come and gone without a resolution. Will account holders see their money before the fall 2023 bills are due? How can the state expect families of high school seniors to select which colleges they will attend without knowing how much money they have to spend? The longer this takes, the more families across Maryland are negatively affected. Rather than helping students pay for college, the 529 Board is essentially contributing to the student debt crisis in America.

If this were a private investment firm, rather than a state of Maryland agency, government investigators would be swarming.

Hiring lawyers, not helping families

Account holders using the prepaid plan only for in-state college tuition can still use the plan to pay tuition bills, as the Trust officials like to point out. But many of those parents also relied on earnings for room and board at in-state schools. That's now off the table.

And about 43 percent of account holders in 2022 used the plan for private and out-of-state tuition and other expenses. "Save here. Go anywhere," the plan promised. Those families are now limited to the weighted average tuition, which at today's inflation rate is far less than what they put into the plan.

Consider a family that invested $9,600 for a year of tuition in 2006. With inflation, that would be worth $13,400 today, compared with the $10,600 weighted average tuition the Trust is now allotting. That's a loss of $4,300, even without counting the earnings that should have accumulated.

Eliminating the investment earnings is a huge change in the agreements that account holders signed. As anyone who has ever signed a contract knows, you can't go back and retroactively change the terms to harm the other party. Yet, that is precisely what has happened. To date, account holders have not received the proper notification that their contracts were changed.

When word of the frozen earnings issue began trickling out in August 2022, worried parents, led by Brian Savoie, set up a Facebook Group to help share information and potential solutions. The grassroots group has more than 800 increasingly frustrated members, some who have spent hundreds of hours organizing, researching, and strategizing on how best to solve a crisis that never should have happened. Most account holders in the prepaid plan began saving for college at least a decade ago. They put their money in the plan to ensure that they would not have to scramble to pay their kids' college bills. They did everything right. And the state of Maryland failed them.

Rather than help account holders and be honest about what happened, the 529 Board spent $1 million to hire Nelson Mullins, a national law firm known for litigation. From the beginning, the 529 Board has treated account holders like adversaries, rather than partners with a shared interest in resolving the situation to make college affordable for students. This is not how state government should work. The board has also spent $50,000 to hire a crisis communications firm, tens of thousands more for a Nelson Mullins "call center," and hundreds of thousands on auditors. And yet, families still aren't getting straight answers to their questions.

Documenting how this mess unfolded

2019

The Prepaid Trust's problems began in December 2019 when the Office of Legislative Audits completed a fiscal compliance audit of the fund from 2014 through 2018. During that time, the auditors wrote, the agency was rife with management issues. Four different people served as the agency's executive director (now it's been seven) and four others have served as CFO. Auditors questioned whether the board had adequate oversight of the fund, noting documentation errors, a mysterious bank account, boxes of unopened mail, and potential overpayment to account holders who wanted rollovers and refunds.

Auditors wrote that "when a rollover or refund is requested, Maryland 529's determination of the amount to be transferred or refunded to the account holder will include interest earnings as specified in the tuition contract."

The 2019 audit also concluded that "consistent with its methodology, Maryland 529 used a 'since inception' rate of 5.5 percent for calculating each year's interest, which was the current rate at the time of the rollover." The auditors questioned whether some rollover calculations were leading to excessive payments because of the methodology the Trust used.

Auditors suggested the 529 Board review the rollover policy and "ensure that future tuition contracts clearly reflect any changes Maryland 529 considers necessary as a result of this evaluation."

Under the contracts that account holders signed, funds could be rolled over to another qualifying plan, and if a contract had been in existence for at least 3 years, the rollover would include "100 percent of the investment earnings." This language has been in contracts for more than a decade. Disclosures from 2016 through 2021 specifically define a trust return as "the since inception rate of return for the Prepaid College Trust" and note that "trust returns are used to calculate Rollover Distributions and refunds."

The contracts also stipulate that the board cannot make any changes that would retroactively harm beneficiaries.

The auditors also told the 529 Board to hire a forensic auditor. Among other things, it wanted to know whether the trust had overpaid any account holders.

Although Maryland prides itself on transparency, the 529 Board never sent out notice of the critical audit to account holders.

2020

The board did not begin the forensic audit for months. Board minutes show that it hired the national firm of Grant Thornton in September 2020, which pulled more than 275 boxes to try to determine if any account holders had been overpaid. Only six accounts were in question. But the 529's records were in such a mess that the board voted in December 2020 that it would be an unfair burden to try to claw back money from account holders "and agency records cannot confirm without a doubt that such distributions resulted in overpayment."

Grant Thornton's forensic audit also did not show any errors in calculations, Maryland 529 marketing director [Michele Winner told the Washington Post](). The forensic audit has not been released publicly. Details of it have been drawn from board minutes and contracts.

The board also sent out an RFP for a new "program manager" to improve its software and recordkeeping. Among the responsibilities for the vendor would be handling rollovers and refunds. By November, the board had selected Intuition and was finalizing its contract, which was signed in December. A previous attempt in 2017 to move to a new platform ended in failure.

Beyond the forensic audit, the board also used Gabriel, Roeder, Smith & Company (GRS) out of Chicago for its actuarial studies. The company, which has more than 1,000 public sector clients, had provided those analyses since 2012, always declaring the Trust to be sound.

2021

The board spent 2021 getting ready for the transition to Intuition. In February, it reviewed "business rule changes" that would be necessary for coding the new system.

In April, the board got sidetracked by yet another snafu: The wrong annual statements had been mailed to the majority of prepaid tuition plan holders who had two accounts. Account holders not only received their own statement, but that of someone else. At the same time, "calculation issues" in the legacy Banner system emerged, so the board turned to GRS "to write the logic for those calculations."

In June, the board for the first time revealed that it was considering one "rate of return" for calculation of minimum benefits, rollovers and refunds. Based on an evaluation from GRS, which analyzed the impact of various scenarios, the board voted to "use the Trust's since-inception rate of return, as of 6/30/21, for balances held prior to November 1, 2021." Contributions after November 1 would receive the 10-year Treasury rate.

"The Plan is required to notify account holders 60 days before the transition that they have the right to reject the changes. These notices will be mailed out in mid-August with the assistance of Intuition. The Trust is hoping not to see a large number of rollovers, but this is the unknown variable in the transition," the board minutes state.

The subsequent disclosure statement revealed that earnings for minimum benefits, rollovers and refunds in accounts that were in existence before October 31, 2021, will "earn 6% on balances, compounded monthly, until benefits are withdrawn, or your Contract is terminated." It said the earnings were attributable to contributions made before November 1, 2021.

A letter from GRS in the 2021 annual report echoed that policy: "Beginning November 1, 2021, and first reflected in the actuarial valuation results as of June 30, 2021, the same interest crediting will be used in calculations performed for the Minimum Benefit, rollovers and refunds. Interest will be credited through October 31, 2021 on account balances at the Trust since inception rate of return as of June 30, 2021 (6.00 percent). Interest credited after October 31, 2021 will be based on the 10-year Treasury note rate as of June 30, compounded monthly," the letter read.

So, when parents received the December 2021 FAFSA values, they were in line with the policy the board had announced. The board chose the dates with care—they coincided with Intuition making its new program live. Parents and their accountants and financial advisors, as well as the board's own actuaries, all read the new policy the same: Accounts would earn 6 percent in earnings from inception when they rolled over or were refunded. For parents who needed the money for expenses beyond tuition, or for private or out-of-state schools, those earnings made all the difference.

2022

Everything changed in 2022. The April 28, 2022, board minutes state that an "earnings calculation error" was discovered by an account holder. That same date, the board amended the GRS actuarial contract to give it more money to conduct a "rollback/rebate analysis." Flush with funds—the Trust reported that it had a $525 million surplus in 2021 and a $325 million surplus in 2022—the board was contemplating giving back some of that money to account holders.

Executive director Erin Layton stepped down at the end of June. So did a board member, the first of three who would eventually leave without explanation. The board signed on with a new auditor, UHY, which had offices in Columbia, MD.

Account holders had still not received any notifications that their earnings had been frozen. But word had spread that there was a problem, and delegates, senators and account holders began calling the 529 interim executive director. She said the external auditors believed the problem would be solved by August.

But in August, UHY partner Jack Reagan told the board that his team had found "overpayments, underpayments, and non-fiscally related unit adjustments." Reagan said he thought the issues stemmed from "initial data transfer errors, missing fields and the staff's work with ICSS's business rules from the disclosure statements."

By the end of the month, the board finally notified those account holders with emails. It said it was "working to address earnings calculations" that were affecting some account holders "who need to take a distribution." It explained that it had suspended the earnings "to protect the Trust as a whole."

A background document provided by Maryland 529 to the General Assembly that summer had a different version of the issue: It said that the new earnings calculations were being applied to "historical account balances that had long-since been distributed."

When new executive director Savia came on board in September, he authorized the hiring of Nelson Mullins as special counsel. The Nelson Mullins contract is with the Attorney General's Office, not the 529. It calls for the firm to evaluate "liability issues" surrounding the so-called calculation error and the frozen earnings, and to provide help in resolving the problems, according to the Sept. 13, 2022 contract.

A subsidiary of the law firm also set up a call center to manage hotline calls from prepaid trust account holders. Any information given to that call center is "protected by the attorney-client and/or work -product privilege," according to a contract addendum. Shouldn't any customer service center be working to help account holders first, rather than feed information to lawyers? Has the 529 Board and the Attorney General's Office forgotten that its fiduciary duty is to Trust participants?

Savia said affected account holders could request a manual calculation to gain the true value of their accounts. But the timeline for when the problem would be resolved kept changing. Even now, not every account holder who has requested a manual calculation has received one. And manual calculations, which are supposedly valid for rollovers, are using interest rate calculations that cannot be found in any contract to date. No appeals process has been set up.

How important was this issue to Savia and the 529 Board? While board minutes do not reflect many in-depth discussions of how to solve the frozen earnings problem, the December 1, 2022 minutes reveal that Savia and since-resigned board chairman Peter Tsirigotis were planning a board retreat for possibly March 31, 2023, to look at "long-term plans for the agency."

In mid-December, account holders received a "special meeting notice" email from Maryland 529, indicating there was a virtual meeting in about two hours. Hundreds of parents responded, only to find out that the board meeting was closed to the public. Fortunately, the 529 officials left the phone lines open, and parents began exchanging stories. For many, it was the first realization that they were not alone in trying to get access to their funds.

Here's a sample of the dialogue from attendees:

"Anyone have trouble accessing funds for Spring 2023?"
"I need funds to pay for housing that I haven't received yet."
"I'm trying to cover costs from January 2022. No response."
"When will the problem be resolved?"
"Why does it take six months to make an interest calculation? My daughter is locked out of spring registration."

"FAFSA calculations were based on the number we had in winter, not the amount the Trust is saying we have. This definitely impacted the financial aid we were given."
"We chose an out-of-state school, assuming we'd have the initial payment, plus interest. But of a $22,000 bill, so far, we've gotten $5,000."
"I am prepaid and cannot get any money."
"I tried to roll over in May, so I could withdraw funds for January 2022 expenses, and couldn't do it, because they can't calculate interest. I just want to pull all my money out. Can't do it. Called, and they said someone would call me. No call. Filled out the forms twice. Everything is ignored."
"Same thing I am getting."
"I may not be able to pursue my Master's degree because of this."

Parents began organizing on the call. The Facebook group doubled in size, then doubled again, and again. Angry parents reached out to the media and lawmakers. Some wanted to bring in lawyers. Parents began sharing financial documents and contracts with one another, showing that for years the Trust had paid investment earnings on accounts, all in line with the December 2021 FAFSA values.

2023

On January 6, 2023, the news got even worse. The 529 Board changed its methodology yet again, claiming that the June 2021 vote, which had been approved by auditors and documented in two subsequent annual reports and disclosure statements, was wrong. The 6 percent interest would begin on October 31, 2021, the 529 Board now contended, and not apply to balances from inception.

Account holders with students attending college – or about to enter school – effectively had their earnings wiped out when they needed them the most. Yet those who contributed their money years later stood to be rewarded with much higher returns, even though the long-time account holders' investments were what made the Trust so profitable.

This change contradicted everything that was previously communicated to account holders. In an [October 26, 2022 letter from GRS] published in the annual report, the actuarial auditors repeated what they had said in 2021:

"Beginning November 1, 2021, the same interest crediting will be used in calculations performed for the Minimum Benefit, rollovers and refunds. Interest will be credited on contract payments made to the Trust prior to November 1, 2021 at the inception rate of return as of June 30, 2021 (6.00 percent) for periods both before and after November 1, 2021. Contract payments made after November 1, 2021 will be credited interest based on the 10-year Treasury note rate as of June 30, compounded monthly."

Undoing the 2021 change would necessitate an Article IX letter to account holders. But none arrived. The manual calculations suddenly began pouring in. And as expected, they showed little to no earnings. Some parents who contested the manual calculations are being told that the auditors and everyone else misread the board's intentions, even though the board voted to accept their findings and include them in reports and disclosure statements.

Lawmakers have heard from Savia and then-board chairman Tsirigotis, a Greenberg Traurig financial services lawyer, who told the House appropriations committee that the board's fiduciary duty was "to the plan." He resigned the next day. A review of board minutes going back years shows that board members were repeatedly told their duty was "solely in the interest of the participants."

The Prepaid College Trust lured account holders into the trust through inaccurate and misleading marketing. For years, it said tuition rates would increase by 6 or 7 percent every year, even though annual reports disclose that actual increases were less than half that. "And don't worry, if Tuition does not rise as projected, you are eligible for a Minimum Benefit equal to the payments you make plus a reasonable rate of return," its 2011 brochures stated.

This, again, flies in the face of testimony from Savia, who suggested that parents did not know what they were purchasing. "They were never set up as interest accounts," he said to the House Appropriations Committee in January. He doubled down on this claim at the Joint Senate Committee briefing, saying that the Prepaid Trust was a 'defined benefit' plan, providing only the weighted average tuition.

The breakdown of where Trust participants go to college shows why that testimony is questionable. From 2011 to 2015, less than half the account holders went to public Maryland schools. The majority used the Trust to pay for out-of-state and private schools, where tuition has skyrocketed. Without a rollover option with an earnings component, those schools might not be in financial reach for many of the Trust's participants, a fact borne out when the Trust froze earnings last year, putting many families in financial crisis.

529 updates adding to the problem

Beyond Savia's public testimony, the 529 Board has distributed misleading and inaccurate information about the all-important FAFSA value of prepaid accounts. It claims on its website that the "value" of an account "at this time is the total amount you contributed minus the total amount of distributions, if any." Yet that does not match FAFSA guidelines, which require the additional earnings any refund would accrue.

In March, the 529 Board sent out a note that was rife with misinformation. Rather than acknowledge that rollovers had always earned investment returns, the note referred instead to the calculations for minimum benefits– a type of benefit that was rarely used, as former executive director Erin Layton testified to the Maryland Legislature in 2018.

The March 2023 email does get one thing half right. It says that the FAFSA values delivered in 2021 were inaccurate and "did not represent the Minimum Benefit." What's true is that the FAFSA values reflected the refund value of accounts – a completely different calculation.

The March note also claimed three different reasons for why the 2021 changes were made: a response to the critical 2019 audit, a simplification of the program, and a way "to distribute the Trust's actuarial surplus to account holders."

Account holders can see through the double talk. We know what our contracts provide. We read annual reports, auditors reports, disclosure statements, and more. We know the difference between investment returns and interest rates. What we didn't know was that anything we said to the 529 customer service hotline could be used against us.

Conclusion

Lawmakers have heard from parents about the emotional and financial hardship this debacle has caused. Many families are also facing tax issues because they aren't using their money (since they can't access it) in the same tax year the expenses were incurred. Earnings on 1099-Qs appear to be questionable, if not false. Intuition customer service agents are largely useless, and all communications to parents are vetted (or written) by Nelson Mullins or its agents.

This travesty has gone on long enough.

The bill before this committee is on the right track. Putting the agency under the Treasury Department is a better alternative than having it mismanaged by a 529 Board more interested in liability than solutions.

Below are suggested amendments to HB 1290 and SB 959 from a working group of parents involved in the grassroots effort to restore frozen earnings and remedy the breach of contracts by the Maryland Prepaid Trust.

Amendment I:

Methodology:

Earning Rate: As of June 1, 2023, the State Treasurer shall grant and apply to account holders a 6 percent earnings rate compounded monthly on account balances from the date of contribution to the date of the transfer or withdrawal of the funds.

Rationale: 6 percent was then "since inception return rate" that existed at the time of the April 2022 earnings freeze. This rate essentially honors the "Termination, Transfer and Refund" article of contracts that called for "100 percent of investment earnings" or losses on contributions from inception. It also corresponds with the 6 percent compounded monthly rate that the Board voted on in 2021 and that was reflected on the December 2021 FAFSA refund values, which were considered binding as of March 1, 2022. Account holders relied on those "refund value" statements to make financial decisions for beneficiaries. Note: Actuaries, 529 staff, Intuition and others all interpreted this 6 percent rate as applying to contributions in an account from inception. This amendment will eliminate the Article IX contract violations that have caused harm to account holders. That provision of the contracts said that the board could not retroactively modify contracts in a manner adverse to beneficiaries, and that any such change required prompt notification so account holders could cancel their contracts.

Who Calculates: Intuition will reinstate the correct earnings calculation for account holders to comply with the contract terms that resulted in the December 2021 statement FAFSA values. New statements should be given to account holders that include both principal and earnings as of the statement date. All future statements should always reflect earnings.

Rationale: The plan cannot be migrated to another platform in a financially responsible and timely manner. Intuition has already set up the correct calculation formulas as evidenced by its production of the December 2021 FAFSA statements. Its business is administering prepaid plan contracts in states across the U.S.

Amendment II:

Claims Process:

Can be filed by account holder or beneficiary (over the age of 18) using any of the following options (options can be done as separate claims if more than one type is needed):

Types of Claims:

A. **Accept and process Rollover, Refund, Tuition, and other Qualified Educational Expenses on priority system as follows:**

1. Beginning July 1, 2023, or sooner:

Priority Group 1: Account holders or beneficiaries that have incurred college expenses from the time of the earning freeze to the present and those that will be attending college in the Fall of 2023.

2. Beginning September 1, 2023:

Priority Group:2 All other account holders or beneficiaries.

Rationale: Gives relief to account holders that have not been able to pay past expenses first and allows those that will have fall bills due in August to have access to their funds. Prevents further damages to account holders that are incurring IRS penalties due to trust payments being made in years after expenses were incurred.

B. Establish a Damages Claims Process for those who have incurred expenses and were unable to access their funds from April 15, 2022 to present

Rationale: Account holders should be reimbursed for damages as a result of the frozen earnings. Examples of harm can include but are not limited to the following: loans with interest, interest from credit cards, penalty for using retirement accounts, refinancing a house at higher interest, using personal savings, IRS tax and/or state tax penalty, etc. For those that used Weighted Average Tuition after the investment earnings freeze (April 15, 2022), the excess benefits not accessible shall be calculated and refunded to beneficiaries or account holders.

Amendment III:

Funding Source:

1. MD Prepaid College Trust. The 2022 529 annual report indicated the Trust had $1.2B in assets, which included a $355.6M surplus as well as $321M set aside for accrued earnings.

2. **The MPCT operating surplus**, which is invested in a Money Market Mutual fund and has been maintained in an account held by Wells Fargo, according to the 2022 annual report. (As of June 30, 2022, the amount invested in this account was $13,321,779).

3. If necessary, the **Maryland State rainy day fund** ($2.9B) and/or the Maryland State General fund ($2B); as other states have done when their Prepaid Trust Plans became insolvent. Additionally, in the case of a liquidity shortcoming by the Trust, the State could provide a loan to the Trust up to the full value of the Trust assets to cover account holder requests. (As precedent, the State provided start-up loans to the Maryland 529 for both the Prepaid and ABLE plans).

Rationale: The funds in the Trust belong to the account holders and consist solely of contributions made from the account holders' personal funds and the investment earnings made on those contributions. All fund expenses have been borne by the account holders via fees paid per account holder contracts. There is no taxpayer money in this fund; therefore, it should be returned to the account holders for the intended benefit of the education of their children. The rainy day fund should not be needed if the MPCT audits and actuary reports are correct, but it needs to be available if they are not, per the legislative guarantee.

Amendment IV:

Add subpoena power so the work group can call on people to provide information.

Amendment V:

Provide a mechanism to combine multiple accounts of a beneficiary so it is in one account to comply with IRS rules that only one account rollover is permitted per year. (Some account holders have 1 or 2 multiple-year contracts for one beneficiary).

Amendment VI:

Extend statute of limitations for contract disputes to one year after the work group report is made public.

Amendment VII:

Notification to all account holders regarding the 529 transfer to Treasurer should be mailed, emailed, and stated on the 529 website within 15 days of passage of the Bill. Establish an appeals process for claim handling that mandates a response from the Treasurer (or plan administrator) within 10 business days.

Amendment VIII:

Upon passage of the Bill, close Maryland 529 Prepaid College Trust to new contracts. Rationale is that practically, it will be challenging to implement the transfer to Treasury and process new contracts simultaneously. Also avoids increasing liability for such contracts.

Amendment IX:

Start date of work group should be June 1, 2023, and end date should be September 2023. Work group should include 2 appointed Senators, 2 appointed Delegates, 4 MD 529 account holders who have experienced issues accessing their funds, and the Treasurer.

Amendment X:

After December 31, 2023, the Treasurer will establish a rollover option with an additional incentive to be determined based on the surplus funds identified in the actuarial audit.