

From: Brian Savoie, Silver Spring, Maryland (District 20)  
To: Maryland House of Delegates, Appropriations Committee  
Regarding: Testimony in Support of HB1290  
Date: March 20, 2023

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Dear Chairman Barnes and Appropriations Committee:

I recommend that the Appropriations Committee return a favorable recommendation for this bill. While this bill does not do enough to solve the problems that parents are facing today, it does put a process in place that may help families.

To be clear – every day that this issue continues brings continual harm to families: we are borrowing from our retirements, refinancing our homes, borrowing from family, and taking on debt with high interest rates. None of this would have occurred if Maryland529 had not retroactively changed the terms of our contracts in ways that detrimentally impacted all of us.

In this document, I will lay out how this has impacted my family, how the actions of Maryland 529 have been inappropriate in the extreme, and suggested amendments that could make this bill stronger.

### **IMPACT ON OUR FAMILY**

In 2011, when my son Caleb was seven, I bought a contract with the Prepaid Program paying more than \$57,000 over 125 payments. Tuition for four year in-state tuition was anticipated to be \$85,000 by 2022. Those increases never materialized, but the trust has earned significant returns while holding my funds.

In the Fall 2021, we began Caleb’s college search which included finalizing financial preparation. I received a statement from Maryland 529 in December 2021 indicating that the FAFSA value of our account was approximately \$76,000. I utilized this number when filling out the FAFSA to qualify for student aid for Caleb. On March 31<sup>st</sup>, I called up the program servicer who indicated that the value of the account was now \$78,735. I relied on these figures to determine if my son’s dream school, Purdue, was in our budget. I did not make this assumption based on one data point – I made it based on two.

In July 2022, I went to file for my first semester of benefits on my son Caleb’s behalf. I discovered that the payment of earnings had been frozen since sometime in April 2022. This was not communicated to account holders until the end of August 2022. I had to pay to go on a payment plan – and had to shift funds from other sources. I was told repeatedly that my interest was only delayed, not denied. I actually said as much in television interviews. I

thought my money was fine, because officials with Intuition stated I was not a “problem account”.

What has followed is repeated promises and repeated delays.

Maryland 529 indicated that the issue was that the calculation had been applied to historical balances that had already been distributed. Since I had never received a distribution prior to this issue, I could not conceive that I would be an account holder that the board and staff were trying to fix.

However, the issue changed dramatically on Friday evening, January 6 and over subsequent days. Maryland529 began issuing manual calculation reports that showed a dramatic devaluation of account value – not only for account holders who had previously taken distributions, but also for plan holders who had never taken a distribution. During an October 2022 board meeting, Maryland 529’s board retroactively changed the disclosure statement back to November 2021. The changes appeared very technical and focused on accounting rules. Parents had no idea of the real impact of this accounting rule change until these manual reports began to be distributed. This retroactive change meant that instead of receiving \$78,735.00 – my accounts new estimated value was \$59,593.73.

That difference would pay for an entire year of college at Purdue – so this is not a trifle. Some families are losing as much as 60% of their account value in this process.

Because of Maryland529’s difficulties, I have moved money around in ways that have caused us to lose interest on our principal. Even though I have not had to take on additional debt yet, the repositioning of my son’s fund has cost us hundreds of dollars in additional earnings every single month.

I have stopped counting the number of hours that I have spent working on this issue, but it is easily in the hundreds of hours. I have used vacation time to come to Annapolis to advocate on my own behalf – and for parents unable to take time off. I typically work a ten hour day for work, but have used every lunch hour for this issue for months.

## **HOW DID THIS HAPPEN AND WHY IS MARYLAND529 TO BLAME**

While Maryland529 claims this was a technical calculation error, nothing could be further from the truth. This may have been a misunderstanding of the overall impact of business rules developed and voted on in June 2021, but that is not a calculation error. Maryland529’s actions since discovery of this issue have sought to cover up the true nature of this problem – and their intended fix is a further part of that cover up.

For the entire history of the Maryland529 plan, there were two separate calculations for how to receive your benefits distribution – through a Weighted Average Tuition payment OR through a Rollover to another qualified 529 plan.

The Weighted Average Tuition (hereafter, WAT) is the average cost of tuition and mandatory fees at in-state colleges and universities. While the WAT for four years was projected to be \$85,000 when I signed up in 2011, the cost of tuition has not kept pace with those estimates.

The calculation for a rollover was determined to be your principal multiplied by 100% of the earnings of the fund. This was about 5.8% APR prior to a rule change in June 2021.

As part of a move to an outside servicer and in alignment with a 2019 OLA audit, Maryland529 sought to equalize the treatment of those using the WAT – and those using the rollover method. They standardized the calculation at 6% APR on contributions and balances prior to November 2021. For new contributions and balances after that date, the calculation was tied to a 10-year treasury note updated annually.

In August 2021, Maryland529 sent a notice to all plan participants in accordance with Article IX of our contracts. Plan participants viewed this change as beneficial to all, because it was an upgrade and a standardization of the interest rate. For students going to school in-state, they would now receive additional benefits that had not been afforded to them before. For those rolling over their accounts (because their children were going out of state), the benefits would not be materially different.

However, something happened in the intervening months. Even though Maryland529 developed a 92-page set of business rules that was voted on by their board, reviewed by their actuaries (GRS), and implemented as written by their servicer (Intuition College Savings Solutions), Maryland529 stated that they saw irregularities. By sometime in April or May, they froze the payment of earnings claiming this was a technical error.

What we have learned is that this was no technical error, the board voted on October 27, 2022 to make further material changes to the Maryland529 contract in ways that detrimentally impact account holders. These contract changes devalued student account by between \$300 and \$500 million across all impacted accounts. Technical fixes do not require board votes, but contract changes do.

Maryland529 had myriad ways to fix this problem, but the methodology that has been cooked up by Nelson Mullins, a law firm with a reputation of brutal mistreatment of consumers, aids their coverup. Maryland529 is attempting to claim that the board vote in October 2022 is not a contract change – and that all of the changes were just little tweaks to the accounting rules. So this point is not missed, those tweaks to the accounting rules have devalued accounts by between \$300 and \$500 million across all impacted accounts.

As you can see, Maryland529 has not kept the interest of Maryland families at the top of their mind. They are in violation of their fiduciary responsibilities to plan participants and their beneficiaries. They have sought to repeatedly insulate themselves (and their reputations) from blame. They have attempted to state that parents just don't understand the contracts that we

agreed to. This board is either unwilling or unable to act in the best interests of our children. That is why you must step in today.

## **SUGGESTED AMENDMENTS**

It may seem like the amendments that parents are suggesting change over time. However, the core of our needs have not changed one iota: 1) the trust needs to pay out our earnings at approximately the "from inception rate of return on our accounts" and 2) reimburse parents for the significant financial hardships that they have taken on due to this issue. Everything else merely explains how to accomplish exactly that.

The General Assembly created Maryland529 and does have a clear responsibility to correct this issue. While this bill is favorable it does require trust of families that their interests will be protected.

During the hearing for SB959, Treasurer Davis called on the legislature to define the method, amount, and source of funding to make families whole. He stated specifically that this was above his paygrade.

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 in the Maryland Prepaid College 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.

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.

Respectfully submitted,

Brian Savoie