

To: MD House of Delegates Appropriations Committee

Fr: Howard Griboff, District 17

Date: March 20, 2023

Re: HB1290, Higher Education - Maryland 529 Program - Reform

What is \$52,000? Could be someone's annual salary. Could be a hospital bill. In my son's case, that's one full year of college tuition missing from his MPCT account as he faces paying for his second of four years at Emerson College in Boston.

The fact is: on official letterhead, the MD529 Trust twice disclosed there were **investment** earnings available in our Trust account via rollover ... once in a letter addressed to me on October 13, 2021 and a second time on the December 31, 2021 Annual Statement.

**I had every reasonable expectation to rely on these documents** in deciding that I could afford to send my son to Emerson.

These funds are gone because the Trust Board is not honoring my contract that called for **investment earnings in rollovers, that is, the investment gains that the Trust made through investing contributors' funds.**

My Trust contract [specifically Article VII of the 2004-05 Contract] entitled me to 100 percent of **investment** earnings or losses from the day of my first investment to the day I would roll over the Trust funds to the MD College Investment Plan.

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## "Rollovers" Page from 2004-05 Contract

### Article VI – Payments to Eligible Institutions

**Time Limits.** The Beneficiary has the number of years purchased in the Contract plus 10 years to use all Benefits. This time can be extended for any active service in the U.S. military. Absent a waiver from the Board, failure of the Beneficiary to use all Benefits within the designated time period will be deemed a decision by the Beneficiary not to attend an Eligible Institution and will result in the termination of the Contract, pursuant to the provisions of Article VII.

In addition to the following requirements, the Board may request other information and/or modify or apply specific due dates.

#### Undergraduate Tuition Payments to Eligible Institutions.

1. No later than March of the Beneficiary's projected enrollment or Initial Eligibility year, the Board will send a confirmation form to you to ensure that the Beneficiary will be using Benefits during that year and to confirm personal information.
2. No later than March of each year after the Beneficiary has begun using Benefits and has existing Benefits remaining in an Account, the Board will send a confirmation form to you to reconfirm personal information about the Beneficiary.
3. Upon receipt of these confirmation forms, the Board will send a Benefits claim form no earlier than June of the same year. This form must be signed by the Account Holder and returned to the Board with an original invoice from an Eligible Institution.

will, without proper claim by the Account Holder, revert to the State.

3. If (a) you fail to make the required payments or supply necessary information, (b) the maximum period in which Benefits can be used has expired, or (c) it is determined that either you or the Beneficiary has made any material misrepresentation related to the Contract, the Board in its sole discretion may terminate the Contract.

**Transfers to Other Eligible Programs.** Upon notification in writing to the Board, you may transfer your Account to another program intended to comply with Section 529 of the Internal Revenue Code. All transfers are subject to the Internal Revenue Code. If this Contract is less than 3 years old, the transferable amount will equal the contributions to the Prepaid College Trust plus or minus 75% of the investment Earnings or losses realized on the contributions, less any administrative fees or Benefits used. If this Contract is over 3 years old, the transferable amount will equal the contributions to the Prepaid College Trust plus or minus 100% of the Investment Earnings or losses realized on the contributions, less any administrative fees or Benefits used.

**Transfers within the College Savings Plans of Maryland.** The transferable amount for transfers from the Prepaid College Trust to the Maryland College Investment Plan will equal the contributions to the Prepaid College Trust plus or minus 100% of the Investment Earnings or losses realized on the contributions, at the time the Account is transferred, regardless of how long the Contract has been in effect.

**Refund.** Refunds are only given at the written request of the Account Holder, with an original signature, for a specific year(s) under the following

The same contract [specifically Article IX of the 2004-05 Contract] says that, although the Board could amend the terms of the contract from time to time, the change “will not retroactively modify existing Contract provisions in a manner adverse to you or your Beneficiary.”

## Contract Changes Page from 2004-05 Contract

VII or transfer the Benefits to another Member of the Family of the original Beneficiary. If you transfer Benefits, all terms and conditions of this Contract continue to apply, even though the original Beneficiary has been substituted.

**New Account Holder.** You may transfer control of the Contract to a new Account Holder. All transfers must be requested in writing and include information as determined by the Board. Your right of control may not be sold, transferred, used as collateral, or pledged or exchanged for money or anything of value. The Board may require affidavits or other evidence to establish that such a transfer is nonfinancial in nature. Your right of control may also be transferred under an appropriate court order as part of divorce proceedings. If you transfer control of the Contract to a new Account Holder, the new Account Holder must agree to be bound by the terms and conditions of this Contract.

**New Custodian.** If the Account has been funded with assets originally held in an UGMA/UTMA account, you may transfer control of the Contract to a new Custodian upon written notice to the Prepaid College Trust. The notice may be from:

- The Custodian, stating that, in accordance with the terms and conditions of the UGMA/UTMA, the Custodian is releasing control of the Contract to the Beneficiary or to another person who has been properly appointed Custodian;

documentation. If acceptable to the Board, notices, changes, options, and elections relating to the Beneficiary will take effect within a reasonable amount of time after the Board has received the document, unless the Board agrees otherwise.

**Changes to the Contract.** The Board may amend the terms of this Contract from time to time to comply with changes in the law or regulations or if the Board determines it is in the College Savings Plans of Maryland's and/or the Prepaid College Trust's best interest to do so. However, the Board will not retroactively modify existing Contract provisions in a manner adverse to you or your Beneficiary, except to the extent necessary to assure compliance with applicable state (including the Enabling Legislation) and federal laws or regulations or to preserve the favorable tax treatment to you, your Beneficiary, the College Savings Plans of Maryland, or the Prepaid College Trust. The Board will promptly notify you of such amendments, and you will be bound thereby unless you notify the Board in writing of your intent to terminate the Contract within 60 days of the date of the notice.

**Guide to Interpretation.** This Contract is intended to qualify for the tax benefits of Internal Revenue Code Section 529. Notwithstanding anything in this Contract to the contrary, this Contract will be interpreted and/or amended to comply with the requirements of that section and applicable regulations.

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However, in the MPCT disclosure statement available on the MD529 website (specifically, Article VI of the 2021-22 Disclosure Statement), the Board removed the word “investment” and left just the vague word “earnings” in its rollover paragraph. And all of a sudden, \$52,000 disappeared from my MPCT account.

### “Rollovers” Page from 2022-2023 Highlights Brochure and MPCT Disclosure Statement

#### Accounts opened on or after November 1, 2021:

- Contributions to Accounts opened on or after November 1, 2021 will accrue regular interest each year, compounded monthly, at a rate equal to the 10-year Treasury note rate. The Treasury note yield applicable to the Account contributions will be updated annually with the June 30th number.

The yield for the 10-year Treasury note will be sourced from the Board of Governors of the Federal Reserve System (US), 10-Year Treasury Constant Maturity Rate [DGS10], as retrieved from FRED, Federal Reserve Bank of St. Louis ([fred.stlouisfed.org/series/DGS10](https://fred.stlouisfed.org/series/DGS10)).

#### **Rollovers from Another Qualified Tuition Program.**

See Article IV, Contract Payments.

**Rollovers to Another Qualified Tuition Program.** Upon notification in writing, you may transfer your Account to another Qualified Tuition Program. Based on IRS regulations, rollovers for the same Beneficiary are restricted to one time in a 12-month period.

- **A Contract in existence for less than three years as measured from the first payment due date.**

The transferable amount will equal the actual payments made to the Prepaid College Trust plus 50% of the Earnings as applied to the contract payments, less Operating Expenses, outstanding fees, and any Benefits used.

- **A Contract in existence for three years or more as measured from the first payment due date.**

The transferable amount will equal the actual payments made to the Prepaid College Trust plus 100% of the Earnings applied to the contract payments, less Operating Expenses, outstanding fees, and any Benefits used.

- **Transfers within Maryland 529.** The transferable amount for transfers from the Prepaid College Trust to the Maryland College Investment Plan will equal the actual payments made to the Prepaid College Trust plus 100% of the Earnings applied to the contract payments, less Operating Expenses, outstanding fees, and any Benefits used, regardless of how long the Contract has been in effect.

#### **Rollovers to a Qualified Achieving a Better Life**

Qualified Tuition Program to an ABLE account take place by December 31, 2025.

**Refund.** Refunds are only given at your authorization under the following circumstances:

- **Death or Disability of the Beneficiary.**

1. **Beneficiary Enrolled at Eligible Institution.** The refund will be the amount that would have otherwise been paid directly to the Eligible Institution, less any Benefits used.
2. **Beneficiary Not Enrolled at Eligible Institution.** If the Beneficiary has not started receiving Benefits and a Disability occurs, the refund will be equal to the Minimum Benefit calculation for the contract.

- **Scholarship, Grant or Tuition Remission.** The refund will be up to the amount that would have otherwise been paid directly to the Eligible Institution.

**Added-tax Refund.** Refunds are given under all other circumstances. The refunds discussed below are subject to a federal surtax required by the Code that is equal to 10% of the earnings portion of a Non-Qualified Distribution that is not due to the Beneficiary's death, Disability, attendance at a U.S. military academy, or receipt of a Scholarship.

- **A Contract in existence for less than three years as measured from the first payment due date.** The refund will equal the actual payments made plus 50% of the Earnings as applied to the contract payments, less Operating Expenses, outstanding fees, and any Benefits used. The reduced Earnings applicable to Accounts in existence for less than three years is a financial penalty assessed by the program in order to maintain the actual soundness of the Prepaid College Trust.

- **A Contract in existence for three years or more as measured from the first payment due date.** The refund will equal the actual payments made plus 100% of the Earnings applied to the contract payments, less Operating Expenses, outstanding fees, and any Benefits used.

**Excess Benefits Available for Refund.** At your authorization, Excess Benefits in an Account will be refunded in accordance with this Article VI.

“investment”  
is removed  
from the  
sentence

This is the heart of the problem: **the Trust Board’s arbitrary recasting of the rollover benefit by removing the word “investment” retroactively modified the existing Contract provisions in a manner adverse to me and my Beneficiary, and materially breaches the terms of my contract.**

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This breach of contract needs to be remedied **now**, because Fall 2023 tuition bills are due in 5 months.

I fully support and thank the General Assembly for proposing to investigate the mismanaged MD529 MPCT.

Although HB1290 and its companion SB959 are a step in the right direction, they do not provide the immediate relief my son and I need to pay out-of-state tuition and avoid significant unexpected debt.

I provide here suggested amendment language that identifies the methodology, process, and funding source to assist the State Treasurer in resolving the dispute between the Maryland 529 Program and Prepaid College Trust account holders, with immediate access to our **contractually relied-upon investment earnings** funds in mind.

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### **Amendment I: Methodology**

Earning Rate: As of June 1, 2023, the State Treasurer shall grant and apply account holders a 6% investment earnings rate compounded monthly on account balances from the date of contribution to the date of the rollover to another qualified tuition plan.

Rationale: 6 percent essentially honors the "Transfers to Other Eligible Programs" article of contracts that called for "100 percent of investment earnings" or losses realized on our contributions. 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 Annual Statement FAFSA value, which was considered binding as of March 1, 2022. Note: Actuaries, 529 staff and others interpreted this 6 percent rate as applying to Trust accounts from the first contribution. This amendment will cure the Article IX contract violations that have caused harm to account holders.

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.



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

### **Amendment II: Claims Process**

Can be filed by account holder or beneficiary (over the age of 18) using either of both of the following options):

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

- 1. Beginning July 1, 2023: 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: Allows account holders that have not been able to pay past expenses to have access to their funds in time to pay fall bills due in August. 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 Compensatory Damages Claims Process for those who have incurred expenses and were unable to access their investment earnings from April 15, 2022 to present.**

Rationale: Account holders should be reimbursed for damages as a result of the frozen investment 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, IRS tax and/or state tax penalty, etc.

**C. For those that needed to access Weighted Average Tuition (WAT) after the investment earnings' freeze, the excess benefits not accessible shall be calculated and refunded to account holders or beneficiaries.**

Rationale: This clause assures that account holders who had no choice but to request WAT to pay 2022-23 tuition are made whole by receiving the investment earnings those funds represent if those WAT payments had been rolled over prior to distribution for tuition.

### **Amendment III: Funding Source**

1. *MD Prepaid College Trust*. The 2022 annual report indicated the Trust had \$1.2B in assets that included a \$355.6M surplus as well as \$321M set aside for accrued earnings.
2. In the case of liquidity shortcoming by the Trust, supplemental funding can be supplied from the Maryland State “rainy day fund” (\$2.9B) and/or The Maryland State General fund (\$2B).
3. If necessary, the State could provide a loan to the Trust up to the full value of the Trust assets to cover account holder requests

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 who it belongs to, the account holders themselves 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 should be considered as other states have done when their Prepaid Trust Plans became insolvent. A State loan to the Trust has precedent as the State provided start up loans to the Trust for both the Prepaid and ABLE plans.

### **Amendment IV: Timelines**

1. Upon passage of the Bill by the General Assembly, close Maryland 529 Prepaid College Trust to new contracts.

Rationale: as a practical matter, it will be challenging to implement the transfer to Treasury, wind down the Trust, and process new contracts simultaneously. Also avoids increasing liability for such contracts.

2. Within 15 days of passage of the Bill, notification will be provided to all account holders regarding the transfer of the MD529 program to the Treasurer by mail, email, and stated on the MD529 website.
3. The work group start date will be June 1, 2023 and the end date will be September 2023. The 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.

4. After December 31, 2023, the Treasurer will establish a rollover option for all Trust accounts that would include all contributions plus investment earnings as calculated in each participant's original contract, with an additional incentive to be determined based on the surplus funds identified in an actuarial audit.

**Amendment V: Statute of Limitations for MPCT contract disputes:**

Extend the statute of limitations for MPCT contract disputes to 1 year after the work group report is made public.

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To summarize: We should not have to wait for the transfer of the Trust responsibilities to the State Treasurer this summer or the outcome of the proposed workgroup's research and recommendations next summer. Whether the contract breach was intentional or inadvertent, it is urgent that the Trust Board be required to respect its contractual obligations. We need our college funds now.

If you were relying on \$52,000 ... how fast would you want it found?

Thank you for your consideration.