

## **Support Testimony**

Uploaded by: Cheryl Moss Herman

Position: FAV

**From:** [Cheryl Moss Herman](mailto:Cheryl.Moss.Herman)  
**To:** [AA\\_APP](#)  
**Subject:** Fw: SB 959, as amended -- Legislative Intent?  
**Date:** Sunday, April 09, 2023 8:00:34 PM

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----- Forwarded Message -----

**From:** Cheryl Moss Herman <mossherman@verizon.net>  
**To:** ben.barnes@house.state.md.us <ben.barnes@house.state.md.us>;  
maggie.mcintosh@house.state.md.us <maggie.mcintosh@house.state.md.us>;  
mark.chang@house.state.md.us <mark.chang@house.state.md.us>;  
gabriel.acevero@house.state.md.us <gabriel.acevero@house.state.md.us>;  
carl.anderton@house.state.md.us <carl.anderton@house.state.md.us>; tony.bridges@house.state.md.us  
<tony.bridges@house.state.md.us>; mark.edelson@house.state.md.us  
<mark.edelson@house.state.md.us>; catherine.forbes@house.state.md.us  
<catherine.forbes@house.state.md.us>; jeff.ghrist@house.state.md.us <jeff.ghrist@house.state.md.us>;  
shaneka.henson@house.state.md.us <shaneka.henson@house.state.md.us>;  
kevin.harris@house.state.md.us <kevin.harris@house.state.md.us>; jim.hinebaugh@house.state.md.us  
<jim.hinebaugh@house.state.md.us>; julian.ivey@house.state.md.us <julian.ivey@house.state.md.us>;  
marc.korman@house.state.md.us <marc.korman@house.state.md.us>; jazz.lewis@house.state.md.us  
<jazz.lewis@house.state.md.us>; nino.mangione@house.state.md.us  
<nino.mangione@house.state.md.us>; aletheia.mccaskill@house.state.md.us  
<aletheia.mccaskill@house.state.md.us>; susan.mccomas@house.state.md.us  
<susan.mccomas@house.state.md.us>; ric.metzgar@house.state.md.us  
<ric.metzgar@house.state.md.us>; emily.shetty@house.state.md.us <emily.shetty@house.state.md.us>;  
stephanie.smith@house.state.md.us <stephanie.smith@house.state.md.us>;  
jared.solomon@house.state.md.us <jared.solomon@house.state.md.us>;  
joshua.stonko@house.state.md.us <joshua.stonko@house.state.md.us>;  
courtney.watson@house.state.md.us <courtney.watson@house.state.md.us>  
**Cc:** lily.qi@house.state.md.us <lily.qi@house.state.md.us>; david.fraser.hildago@house.state.md.us  
<david.fraser.hildago@house.state.md.us>; linda.foley@house.state.md.us  
<linda.foley@house.state.md.us>; Feldman Brian Senator (District)  
<brian.feldman.district@senate.state.md.us>  
**Sent:** Sunday, April 9, 2023 at 07:55:25 PM EDT  
**Subject:** SB 959, as amended -- Legislative Intent?

Dear Chairman Barnes and Members of the House Appropriations Committee,

Thank you for your significant efforts to address the challenges faced by account holders of the Maryland Prepaid College Trust.

Tomorrow, I understand that you will be considering SB 959, as amended by the Senate. While the bill seems intended to address the management issues and lack of oversight of the independent Maryland 529 agency by dissolving the independent agency and its board and transferring control to the State Treasurer's Office, there is ambiguity related to the claims settlement process and the impact on affected account holders like me.

I have shared previously that the difference between an estimate of my semester minimum benefits that I learned directly in a May 18, 2022 phone call with the then Executive Director of the Maryland 529 Erin Layton and contained in a May 19, 2022 letter versus the manual calculation I received in January 2023 is almost \$50,000. That is \$50,000 that will need to found elsewhere to fund my daughter's four years at an out-of-state college. If SB 959, as amended, becomes law, I intend to file for those funds under the settlement claims process. I would be asking for exactly what my contract provides -- no more, no less.

During the Senate Committee voting sessions last week, the Treasurer's staff said it is waiting for new actuarial reports before committing to giving account holders the earnings rate that will be part of the settlement process. This concerns me because the information within that report could be based on the same poor records and erroneous assumptions that got us to where we are today.

Trust account holders should not be punished for relying on incorrect information. If those documents are wrong, then the state should be held accountable and not put the burden on account holders like me.

The Senate amendment also removed that Work Group that would have provided an opportunity for account holders and members of the MGA to engage with the Treasurer's office and help ensure that the information base is complete and accurate. The need for ensuring accurate information remains and I hope that I will be able to engage to help ensure success of the transition and implementation in the Treasurer's office going forward.

Additionally, to help ensure that the settlement claims process within SB 959, as amended, is successful in meeting the gaps caused by prior Trust actions, it is important that YOUR legislative intent be clear on the record, specifically regarding the following:

- Do you believe that account holders have been harmed or at least affected by the mismanagement of the Trust to date? The existence and potential passage of the legislation seems to indicate so, but a declarative statement would be even better.
- Should all account holders be able to file a claim using the settlement claims process? There seems to be some that view that only account holders who sought distributions would be eligible. Please clarify!
- Does the mere act of requesting a claim mean we accept the final decision of the Treasurer as our settlement, with its forced rollover and limited judicial review? Or, can we request a settlement claim and then reject it? It would be especially good to understand this one as it will affect whether an account holder seeks settlement or goes right to court.
- Do you believe that those of us with emails/letters/notes regarding the retroactive application of the 6% earnings and related estimates of semester minimum benefits should have reasonably relied on that information to make decisions? This goes to the legal concept of detrimental reliance. I think it is reasonable to assume that the methodology described by the Maryland 529 Executive Director directly to account holders could be relied upon.
- Do you believe account holders are entitled to what our contracts state regarding the rollover, that is the "since inception" rate of return, which approximates the 6%? The current approach ignores that contract provision and increases the risk that solutions will be in the courts. This delays the ability to set this program on the right course.

Enacting this bill would be an excellent step in ensuring that the Maryland 529 is again on sound footing to achieve its stated objective to enable families to save for college predictably and make that huge investment more affordable.

But the bill must also honor the contracts of existing account holders and ensure that we share in the prior investment successes of the Trust, rather than bearing significant costs while future account holders benefit from our investments.

Thank you again for your significant efforts and support.

Cheryl Moss Herman  
Maryland 529 Prepaid College Trust account holder  
District 15

# **SB959 Testimony-Afaf Igbaria.pdf**

Uploaded by: Afaf Igbaria

Position: FWA

Greetings Senators,

My husband passed at a young age, when our only son was seven months old. The fear for my son's future had me look to secure his education. I had invested whatever my late husband left us and bought two years plan then few years later I saved enough money to buy him another two years plan.

When I checked both accounts values in 2019 and 2021, I was advised that they had good return, per account value reports I had received from MPCT.

In December 2020, and after receiving 2019 account value reports, I was planning to rollover/refund both accounts, to another account, so that my employer can contribute, but due to emergency heart surgery I had to postpone the rollover or refund. After recovery, I contacted 529, but never got an answer of where my money went! You can imagine the anxiety and stress I have been living through.

I have concerns and fears about some of the amendments added to the SB 959 Bill along with amendments not added to the bill. I am concerned that this Bill does not guarantee restoration of the earnings we received prior to retroactive changes.

1. I would like to know more about the actuary report being done for the Treasurer by mid-April. How do we know this is a legitimate report versus one that Treasurer Davis and AG Brown can hide behind if deciding the Trust can't afford to make families whole.
2. If someone files a claim, are they obligated to accept the settlement at the point of filing, giving up all other rights to sue? Or does that kick in only when they accept the settlement?
3. It feels like this Bill is protecting the politicians in MD versus the account holders who have been severely harmed. The Bill essentially guarantees nothing for the families who have been harmed, while limiting our legal rights to sue if it comes down to that. Why are MD families being treated like adversarial instead of the victims of a rogue agency?
4. Please fight for us! We can't be limited to only what's in the Trust without the option of using money from MD's current surplus! This is just wrong. We've been misled by 529 and how are we to Trust our politicians if they can't back the legislative guarantee of their own program!

I have lost \$22k worth of money for my kid who will join med school next fall and I have no means to cover tuition fees if I don't get the earnings restored. Please help us get our funds and earnings back!

Respectfully,

Afaf Igbaria  
9095607778

**CSantos Written testimony 4-10-23.pdf**

Uploaded by: Cayetano Santos

Position: FWA



April 10, 2023

My name is Cayetano Santos Jr. I am a resident of Montgomery County, MD (District 18) and an account holder with the Maryland Prepaid College Trust (MPCT). In my written and verbal testimony provided for the February 22, 2023, and March 15, 2023, Senate hearings on bills to reform the Maryland 529 program I described the harm done to my family by the Board's recent actions in managing the MD Prepaid College Trust (MPCT). I support the proposed bill to reform the MPCT with the following amendments:

Amendment I: Methodology

Earning Rate: By June 1, 2023, the State Treasurer shall grant and apply account holders a 6% earnings rate compounded monthly on account balances from the date of contribution to the date of the transfer. The State Treasurer shall also provide account holders written statements identifying the true and accurate balance of each account as of June 1, 2023.

Rationale: 6 percent was the "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.

Rationale: The plan can not 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: Establish a Claims Process

Claims can be filed by the 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: 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: Relieves 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 who 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, IRS tax and/or state tax penalty, etc. For those that used Weighted Average Tuition after the investment earning's freeze (April 15, 2022), the excess benefits not accessible shall be calculated and refunded to beneficiaries or account holders.

#### Amendment III: Funding Source(s)

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. The MPCT operating surplus is invested in a Money Market Mutual fund and has been maintained in an account held by Wells Fargo (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 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 (there is precedent to this as the State provided start up loans to the Trust 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 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 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 in order to comply with the IRS rule that only one account rollover is permitted per year.

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

Amendment VII: Notification will be provided to all account holders regarding 529 transfer to Treasurer be mailed, emailed, and stated on 529 website to notify account holders of the change within 15 days of passage of the Bill.

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 by June 1, 2023 and end date to 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.

Thank you.

Cayetano Santos Jr.

# **Loeckenhoff SB959 Testimony - 4-9-2023.pdf**

Uploaded by: Corinna Loeckenhoff

Position: FWA

I'm writing you as the parent of a 15-year-old kid who is ready to go to college in 2.5 years. To prepare for his future, we set up two prepaid accounts with the MPCT, one through myself and one through my husband, to cover 2 years of university each. Both accounts were fully paid off as of 2009.

We opted for MPCT prepaid accounts because the contract clearly stipulated that even if our son did not attend college in Maryland we could always roll over the account into another qualified tuition program.

At the time we opened the accounts, the conditions for rollovers were described in the disclosure statements as follows:

**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 or minus 100% of the Trust Returns applied to the contract payments, less Operating Expenses and any Benefits used.

This specific language was last included in our 2020-2021 Disclosure Statement, page 7, Article VI: Rollovers and Refunds.

All documents leading up to and including the 2020-2021 Disclosure Statement (page 3, Article II: Definitions, §29) defined Trust Returns as follows:

**29. Trust Returns** means the since inception rate of return for the Prepaid College Trust. The date of inception is December 31, 1998 and the since inception rate of return is updated quarterly by the Prepaid College Trust's investment advisor. Trust Returns are used to calculate Rollover Distributions and refunds as described in Article VI of this Disclosure Statement.

Over the years, we carefully monitored the Trust Returns and determined that they were well over 5% in most years with accrued earnings amounting to almost twice our initial investment. Thus, we saw no reason to initiate a rollover before our son had settled on a college.

We were therefore shocked to learn that on November 1, 2021 the MPCT board apparently made a **retroactive change in the calculation of rollovers** that almost completely erased the promised Trust Returns for rollovers without clearly communicating this to families. From what we understand, a rollover might now leave us with LESS than our original investments due to added fees!

We deeply appreciate the efforts of the Maryland General Assembly delegates who realize the actions of the MPCT Board harmed account holders and we support SB959. However, it does not fully solve the problem because it does not specify the earnings rate that should be applied to our accounts.

We therefore ask for the following amendment:

**Any claim submitted through the Treasurer's remedy process will receive no less than the rollover value of the contract as of October 31, 2021, plus accrued interest to the time of the settlement, provided that the account holder's contract was in good standing as of that date.**

Sincerely,

Corinna Loeckenhoff

# **Guimbretiere SB959 Testimony - 4-9-2023.pdf**

Uploaded by: Francois Guimbretiere

Position: FWA

I am the parent of a MPCT account holder who will be going to college in 2025 (and likely attend an out of state college because of our family situation). I applaud all the efforts of the Maryland General Assembly delegates to address the recent harmful changes in the MPCT program. Thanks for trying to make things right for our children!

**I support SB 959 but it does not go far enough because it does not specify the earnings rate that account holders can expect for their accounts.**

Until the MPCT **retroactively changed the calculations for rollovers in November 2021**, account holders were contractually promised a rollover value that “will equal the actual payments made to the Prepaid College Trust plus or minus 100% of the Trust Returns applied to the contract payments, less Operating Expenses and any Benefits used.” This specific language was last included in our 2020-2021 Disclosure Statement, page 7, Article VI: Rollovers and Refunds.

Trust returns were well over 5% in most years. In our case, the resulting earnings, accrued since 2009, meant that our investment had almost doubled in value! The MPCT board’s recent actions completely erased those accrued earnings, potentially costing our family tens of thousands of dollars and jeopardizing our son’s education.

Moreover, the MPCT board apparently didn’t realize what they were doing. At the time of the change in contract (November 1, 2021), the communication to account holders clearly indicated that the 6% earnings rate would be applied to contributions **from inception**, resulting in similar rollover values as under the old contract. If we had any reason to suspect that the earnings would only be applied **from the time of the change in contract**, we would have immediately rolled over our accounts to save our accrued earnings.

Based on this, we ask that account holders are held harmless to the damaging, retroactive contract changes of November 1, 2021. Please include the following amendment:

**Claims submitted through the Treasurer’s remedy process should receive the rollover value of the contract as of October 31, 2021, plus accrued interest to the time of the settlement, provided that the account holder’s contract was in good standing as of that date.**

Thank you for your help,

Francois Guimbretiere