

**Written Testimony for SB0959, Maryland 529 Program Reform**  
**March 15, 2023**

I would like to inform the committee of the serious problems I have been having with the Maryland Prepaid College Trust, run by Maryland 529, an independent state agency.

I originally purchased a contract on with the Maryland Prepaid College Trust on behalf of my daughter, Cate, in November 2004, only one month after she was born. I purchased what is known as a 2+2 plan, which prepaid two years of in county community college tuition and fees and two years of in state college tuition and fees in advance, payable in installments. The contract also allowed me to rollover my account to another 529 plan. The disclosure statement and enrollment form allowed a rollover as follows:

Transfers to Other Eligible Programs. Upon notification in writing to the Board, you may transfer the 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 transferrable 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 transferrable amount will equal the contributions to the Prepaid 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.” (See Article VII, page 18 of the 2003-2004 Maryland Prepaid College Trust and Enrollment Form, emphasis added.)

Another section of the contract reads:

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 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 notice. (See Article IX, page 19 of the 2003-2004 Maryland Prepaid College Trust and Enrollment Form, emphasis added.)

After making some installment payments, I used some of the proceeds from the sale of my house in Greenbelt to pay off the balance of the contract, \$20,216.58, in August 2007.

In a letter dated August 2021, Maryland 529 changed the calculation of the Rollovers and Refunds by amending the disclosure statement as follows:

**Article VI, Rollovers and Refunds (p. 10)**

In an effort to simplify the Benefits available under the MPCT and create an ease of understanding and used by Account Holders, one calculation will be used for the Minimum Benefit, rollovers, and refunds. Contracts held less than 3 years will receive 50% of the earnings. Contracts held greater than 3 years will receive 100% of the earnings from the calculation.

**Earnings for Rollovers and Refunds**

**Accounts in existence on October 31, 2021:**

For accounts in existence on October 31, 2021, contributions in your account prior to November 1, 2021 will earn 6% on balances, compounded monthly, until benefits are withdrawn, or your Contract is terminated.

Maryland 529 issued my account statement in January 2022 stating the FAFSA value of our account (the rollover value) was \$63,559.62. In April 2022 Maryland 529 froze the earning portions all the Maryland Prepaid College Trust accounts. In September 2022 they began informing the public that a “calculation error” had occurred and account holders would need to submit a support form to receive a manual calculation of the rollover value of their accounts. Because my daughter is planning to start college this August, I immediately requested a manual calculation in order to determine both my “minimum benefit” and my potential rollover amount.

In January 2023 I received my manual calculation from Maryland 529. The manual calculation from Maryland 529 says my account balance is only \$29,134.90 as of December 15, 2022. That is a reduction of \$34,424.72 from the January 2022 statement. According to the manual calculation, my account received zero interest from December 2008 through July 2017, a period when interest rates for Treasury Bills were extremely low. The 6% interest rate did not start accruing until November 2021.

In my manual calculation Maryland 529 inappropriately used the methodology of the minimum benefit calculation in my contract to calculate earnings for the rollover calculation for periods prior to November 2021. The minimum benefit calculation in my contract reads as follows:

**Minimum Benefits.** Minimum Benefits are defined as payments you make under this Contract plus a reasonable rate of return. This monthly rate of return is equal to a U.S. Government Security with a constant maturity of one year minus 1.2%, but will never be less than zero. Notwithstanding any other provisions of this Contract, in the event that Tuition at an Eligible Institution is less than the payments you make under this Contract plus a reasonable rate of return, you may use the difference for other Qualified Education Expenses such as room and board and books. (See Article IV, page 15 of the 2003-2004 Maryland Prepaid College Trust and Enrollment Form.)

In December 2019 the Maryland Department of Legislative Audits issued an audit report that found many deficiencies on how Maryland 529 operated the Maryland Prepaid College Trust. The audit report made recommendations to change the methodology on how Maryland 529 processes rollover and refund requests.

#### Recommendation 6

Since the purpose of MPCT is to contract for a guaranteed payment of State university or college costs for a specified beneficiary, and not as an investment vehicle, we recommend that the Maryland 529 Board

- a. conduct a documented evaluation of the methodology it uses for calculating refund and rollover payments, including consideration of methodologies used by other states, to ensure that rollover and refund payments are not excessive; and
- b. ensure that future tuition contracts clearly reflect any changes Maryland 529 considers necessary as a result of this evaluation. (See Audit Report from the Department of Legislative Services for the Maryland 529 Plan, December 2019, page 27 emphasis added.)

While the Department of Legislative Audits did criticize Maryland 529 for providing excessive rollover payments, but they did not recommend using the minimum benefit calculation for rollovers, nor did they recommend retroactive changes to any contracts. They criticized Maryland 529 because it computed earnings owed on rollovers by multiplying the principal by the annual since inception interest rate and the years of the contract. The Department of Legislative Audits provided two possible alternative methodologies for earnings calculations that more accurately reflect the earning in each account.

- 1) Multiply the balance at the end of each year for the accounts existence times the annual since inception rate of return; or
- 2) Multiply the balance at the end of each year times the annual return for each year. (See Audit Report from the Department of Legislative Services for the Maryland 529 Plan, December 2019, page 26, Table 2.)

Nowhere did the Department of Legislative Audits find that Maryland 529 had used the minimum benefit calculation for rollovers previously, nor did it suggest that the minimum benefit calculation be used for rollovers. They did seek a more accurate calculation. Nowhere did the Department of Legislative Audits suggest that Maryland 529 change their contracts retroactively to incorporate such a calculation.

I would not have purchased this contract had I thought that I was merely betting that tuition rates would go up. I should be allowed to rollover my account to another 529 based on an accurate calculation of the Maryland Prepaid College Trust investment earnings as allowed in my contract, not the artificially low Treasury Bill rates of much of the last decade. The current method Maryland 529 to calculate rollovers punishes long term Maryland Prepaid College Trust account holders by using the artificially low Treasury Bill interest rates to calculate earnings on our accounts. The erroneous method used by Maryland 529 has restricted my daughter's college choices and will force me to delay my retirement in order to finance her college education.

Please support legislation that will correct these grievous errors and make sure that the state of Maryland honors its contracts.

Sincerely,

Edward Hall