

Date: March 15, 2023
To: Maryland Senate Budget and Taxation Committee
From: Elliott Stern, Maryland 529 account holder, Potomac, MD
Re: Maryland Senate Bill 959, Higher Education – Maryland 529 Program – Reform

Concerns

I'm writing to express my concerns about the Maryland Prepaid College Trust (MPCT) situation. While I feel empathy for the frustrated MPCT account holders, the account holders and the Maryland taxpayers are fortunate that the program remains able to pay all advertised and contractually promised tuition benefits without invoking the Legislative Guarantee.

I support the pre-November 2021 MPCT account holders in their objective, but that's not my motivation for submitting this testimony.

Senate Bill 959 seeks to dissolve the MPCT. Despite the current challenges facing the MPCT, I believe a prepaid plan is a valuable offering within the Maryland 529 program. The new, post-November 2021 prepaid contract terms correct fundamental flaws inherent in the original prepaid contract design; flaws the Maryland 529 Board sought to fix in response to the 2019 Legislative Audit. Many Marylanders have demonstrated their preference for a defined tuition benefit over the investment-based options in the Maryland College Investment Plan. Simultaneously, the unfortunate reality is that many Marylanders do not have the financial literacy or discipline to meet their objectives using the Maryland College Investment Plan (MCIP).

While the MPCT situation created under the direction of the Maryland 529 Board must be addressed and resolved, it's not a reason to dissolve the Prepaid College Trust. It's not a reason to deprive Maryland families of the newer, better designed, less complicated prepaid tuition option. Please do not dissolve this program.

And a plan

I ask that the post-November 2021 prepaid contracts -- those using the 10-year Treasury note rate and ledger system accounting for minimum benefits, rollovers, and refunds -- be

segregated from the pre-November 2021 prepaid contracts and be permitted to continue on as the new, independent prepaid plan.

For the outstanding pre-November 2021 contracts, I request that account holders be given a final time-bounded rollover window, perhaps 3 months, to conduct rollovers pursuant to their original contract terms at the then-current investment returns. The account holders would have the option to rollover funds (1) into a new or existing MCIP account, (2) into a new post-November 2021 prepaid contract for the same beneficiary and Projected Enrollment Year, or (3) to any other 529 account as permitted by IRS regulations.

Following this one-time rollover window, each account's remaining funds would be automatically rolled over into a new MCIP account and invested in the Enrollment-Based Portfolio closest to the beneficiary's Projected Enrollment Year. Through this method and by the end of the window, all pre-November 2021 contracts will cease to exist.

This strategy represents a compromise, preserving a Maryland 529 prepaid option while giving pre-November 2021 MPCT account holders an exit path with their investment returns intact. The MPCT surplus should be sufficient to support this strategy. The 2022 actuarial soundness valuation letter contained within the 2022 Maryland 529 Annual Report assumed a 6% interest rate applied "for periods both before and after November 1, 2021." The same letter calculated the Trust's funded ratio to be 140.0%.

Please do not deprive Maryland residents of a low risk, defined benefit, prepaid tuition option. Thank you for your consideration.

Conditions and Assumptions

As the above plan was formulated, I kept the following conditions, and assumptions in mind:

- The purpose of the MPCT, per the Enabling Legislation, is that "the prepaid contract will cover the average in-State tuition costs at public institutions of higher education in the State at the time that the benefits are exercised". It is not the MCIP. [MD. Education Code Ann. § 18-1903 (2021)]
- Per the Enabling Legislation, the Trust's fiduciary duty is "Solely in the interest of the participants". The "participants" are recognized collectively. The fiduciary duty is not to each participant individually. The MPCT contract terms must not permit transactions contrary to this duty (i.e. if the "100% investment earnings" rollover provision jeopardizes MPCT solvency) [MD. Education Code Ann. § 18-1907 (2021)]
- In the "Changes to the Contract" clause of the MPCT Contract Article IX, retroactive adverse changes are permitted to assure compliance with Enabling Legislation.
- The MPCT should operate as a deferred, fixed index annuity pegged to the Maryland in-state Weighted Average Tuition.
- Avoiding taxpayer bailouts of MPCT, via the Legislative Guarantee, takes priority over issuing rebates.
- Clawbacks of past distributions are not feasible.