

To: MD Senate Budget and Taxation Committee

MD Senate Education, Energy, and the Environment Committee

Fr: Howard Griboff, District 17

Date: March 14, 2023

Written Testimony on SB959

Higher Education - Maryland 529 Program - Reform

The following testimony expands upon the one being presented orally by my son Ezra Griboff at the March 15, 2023 hearing on SB949, with added details regarding the MD529 contracts and disclosure statements.

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.**

## Howard Griboff: Written Testimony on SB959 (March 14, 2023)

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.

### "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 Experience (“ABLE”) Program.

Upon notification in writing, you may transfer your Account to a qualified ABLE Program established pursuant to Section 529A of the Internal Revenue Code allowing Eligible Individuals to save for Qualified Disability Expenses. Based on IRS regulations, rollovers for the same Beneficiary are restricted to one time in a 12-month period. The amount of the Rollover to a qualified ABLE program 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. Please note that the receiving ABLE account is subject to an annual contribution limit, currently \$15,000. Federal law requires that rollovers from a

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.

**Board's Right to Delay.** In order to preserve the actuarial soundness of the Prepaid College Trust, we reserve the right to delay a rollover or refund for a period of time not to exceed one year. To date, we have not delayed any refunds.

“investment”  
is removed  
from the  
sentence

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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 breaches the terms of my contract.**

This breach of contract needs to be remedied now, because Fall 2023 tuition bills are due in less than 6 months.

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

Although Senate Bill 959 is a step in the right direction, it does not provide the immediate relief my son and I need to pay out-of-state tuition and avoid significant unexpected debt.

I suggest an amendment that leaves no ambiguity on the definitions and calculations of interest rates, investment earnings, distributions, rollovers and refunds.

And I suggest a further amendment that provides immediate rollover access to our contributions and **contractually relied-upon investment earnings**, most recently disclosed on our December 2021 MPCT Annual Statements.

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.