

### 3/21/2023- HB1290 Testimony

Dear members of the Committee, my name is Robert Dyer, and what follows is our story about my daughter Nadia's MD 529 account issues.

When our daughter was a toddler, we paid a lump sum of 25,500 dollars into the pre-paid Maryland 529 Trust. Fast forward to November 2021 when we had to pay for our daughter's out of country school and called the MD 529 prepaid Trust to get the process started. At that time, they said we could not take a distribution until August of 2022. Our December 2021 MD529 statement showed her account had a FASFA value of \$60,101. We paid her first semester out of pocket with the plan of getting reimbursed in August of 2022.

When we called back in August of 2022, we were told that the earnings on the account were frozen and that they would be fixed by the end of September. That deadline was never met, and we were told they were not sure when it would be fixed. Several subsequent deadlines were also missed.

We were becoming very concerned about what was happening with the account and the decision was made to rollover the money to a Franklin Templeton 529 plan. Our thought was we could reimburse ourselves for tuition and housing to cover our 2022 expenses and avoid tax penalties. When we asked to do the rollover, we were told that we could only rollover the principal because the earnings were still frozen.

The rollover process was a nightmare from start to finish. We started the process in early October. It was supposed to be a three-week process. We told them it was imperative that we get the money as soon as possible so we could get reimbursed before the end of the year. We filled out the paperwork with a MD 529 representative and our financial advisor over the phone. The MD 529 representative told us what to include on the paperwork. We called back three weeks later only to be told the paperwork was incorrect and we had to fill it out again which we did with our financial advisor present and the MD 529 representative telling us what to change. We once again emphasized the importance of getting the money as soon as possible. Now we are in early November, and we call back again only to find out they still need additional paperwork. We demand to speak to a supervisor and are told our case has now been expedited. We contact MD 529 in early December and no progress has been made. Again, we demand a supervisor, and she told us she did not understand why the rollover was taking so long. We are guaranteed a tracking number by the end of the week which did not happen. This process happened 3 times in a row. The check was not cut until December 22, but was not sent out until December 27. The funds could not be accessed until the check cleared which was the first week of January 2023. We spoke to our accountant and were informed that the funds had to be withdrawn in the year that they occurred. Because the check did not clear until January 2023, we were out of luck, and could not get reimbursed for tuition and housing that we had paid for out of pocket. This has caused a financial hardship for our family as we have had to dip into our retirement emergency funds, as well as many sleepless nights, anxiety and increased stress on a daily basis.

We now have less money than what we put into the fund due to an administrative fee of 700 dollars. Even though we did a rollover, we received a confirmation letter from MD 529 full of errors stating that our refund was complete. We never requested a refund, nor did we take a refund. We called to inquire about the confirmation letter and were told that it was a generic letter and that our earnings would be added later (the letter stated earnings were \$0 (zero)). Our fear is that we are not going to see any of the

earnings as our online account now has a status of cancelled. We fear we may have lost \$34,600 because we elected to do a rollover before our manual calculation was done.

We are requesting that for those of us who have already executed a rollover restricted by MD 529 to our principal only that the bill include provisions that we receive the earnings we are entitled to, that we are made whole again, and receive earnings accrued over the past year and beyond when our account earnings being frozen.

We have now come to realize that this was not a calculation error at all, but a breach of contract of article 4 of the disclosure. This is not a computer error or a calculation error that needs to be fixed. MD 529 Leadership and Board members changed how rollovers are paid out by retroactively reversing investment earnings. From 1998-2021, the contract has **always** had a rollover option which includes plus or minus 100% of investment earnings.

We want our rollover to be carried out based on the written contract and disclosure we signed, and based on how rollovers were calculated prior to November 2021. We want our earnings to be restored to the FAFSA value on our 12/31/2021 statement plus the earnings accrued in 2022 and 2023.

Governor Moore's motto is "Leave No One Behind". This same motto is now on the Maryland welcome sign. Please don't leave our children behind!

**The following are the Amendments we are requesting for this bill:**

"If the General Assembly would like STO to resolve the dispute between the Maryland 529 Program and account holders, the legislation will need to identify the methodology, process, and funding source for such resolution."

**Amendment I:**

**Methodology:**

Earning Rate: As of 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.

Rationale: 6 percent was then "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:**

**Claims Process:**

Can be filed by 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 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:**

**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 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.

Sincerely,

Robert and Valerie Dyer, District 4