

MARYLAND STATE TREASURER
Dereck E. Davis

July 10, 2023

Dear Marylanders,

Shortly after taking office, I learned that our prepaid college savings plan was in trouble. At the time, as the newly elected State Treasurer serving on 25 boards and commissions, I had no frame of reference for how my role on the Maryland 529 Board would transform a year later. While I could not have envisioned the changes to my relationship with the Maryland 529 Program, from my very first briefing on the Maryland Prepaid College Trust (MPCT) issues, I feared what was explained as a limited and solvable problem could end up being far more complex. The arc of history, unfortunately, has proven that my instincts after almost 30 years in public life were well founded.

The enclosed Decision Memorandum explains my Office's current understanding of how the MPCT issues arose and how efforts to resolve the issues unfolded. It is my hope that after reading the full document, account holders will understand why I have continued to ask for patience.

Looking back, it has taken a great deal of time to determine the scope of the MPCT issues. The State's understanding of the extent and complexity of the issues related to MPCT has evolved, but the public is still unaware of many of the details. To fill in those details, my team and I have had to first educate ourselves on the details of what transpired. If asked to characterize this process, I can think of no better analogy than the comparison that one of my deputies drew to peeling an onion. As soon as we believe we understand or resolve one set of problems, we uncover a deeper set beneath it. We know from experience that there may be other historical issues yet to be unearthed.

Rest assured that we will continue doing all that we can to address issues as they arise and safeguard against future issues. My staff and I believe that the programmatic policy changes that we are making in **four phases** ensure that MPCT will join the Maryland College Investment Plan and Maryland ABLE as a plan that serves as a source of pride for the State. The decisions that I announce today should provide certainty and some sense of relief to account holders and the public about the next chapter.

In particular, based on the best-available data from MPCT's actuary, I have decided to establish an earnings rate that reflects the past, present, and future of the Program. This earnings rate decision comprises **Phase 1** of programmatic policy changes.

- First, for contributions made prior to November 1, 2021, the annual earnings rate will be 6%, compounded monthly, applied retroactively to the date of contribution and effective until the earlier of: (1) the Zero Earnings Effective Date (as defined below), (2) the date benefits are withdrawn, or (3) the date of contract termination. This earnings rate decision only applies to accounts that were open and active on the automated recordkeeping system on November 1, 2021.
- Second, for contributions that posted to an account on or after November 1, 2021, the annual earnings rate will be a rate equal to the 10-year Treasury note, compounded monthly, and effective until the earlier of: (1) the Zero Earnings Effective Date, (2) the date benefits are withdrawn, or (3) the date of contract termination.
- Third, beginning on a date no later than July 1, 2024 (the "Zero Earnings Effective Date"), all contributions and all balances in an account will earn zero percent interest. At least 60 days prior to the Zero Earnings Effective Date, notice will be given to account holders of this change.

Looking ahead, Phase 2 will focus on updating the automated recordkeeping system to reflect these new earnings rates and the other programmatic policy changes discussed in the Decision Memorandum. We believe we have taken every possible step to prepare for the implementation of this decision, but there are forces beyond our control that affect the timing of deployment. I have worked to verify that account holders who have beneficiaries attending school in the fall will be prioritized within our internal systems. I have also communicated with leadership overseeing every in-state institution, private and public, to request grace in the event of any delays in processing payments. Next week, I will make available, upon request, a letter for account holders to provide to out-of-state institutions seeking the same consideration.

Despite these efforts, there will still be a period of time before the automated recordkeeping system reflects updated balances for all 31,000-plus MCPT accounts. In the meantime, the manual calculation process, already familiar to some account holders, remains in place and will provide account holders the necessary information to evaluate whether they would like to remain an MPCT account holder or proceed with a rollover to another qualified state tuition program like the Maryland College Investment Plan. The manual calculations will provide account values as of June 15, 2023. Account holders who were dissatisfied with the account values on prior manual calculations should take heart that, moving forward, the manual calculations will be updated to include the new earnings rate. To jump-start the next phase of this process, we have begun work on manual calculations for over 11,000 account holders who are likely to have beneficiaries

attending school in the fall. For the time being, those are the only accounts for which the State will process a manual calculation. My staff and I will provide as much guidance as possible on the next steps so that account holders can adequately prepare for what is to come.

Implementing the claims process, Phase 3 of programmatic policy changes, will require more time and patience. An actuarial soundness evaluation of the Trust using the updated automated recordkeeping system will provide a fuller picture of the cost of the new earnings rate, which will give me, as the Trust's sole fiduciary, the information needed to determine the criteria for a claims process that the Trust can financially support. I have focused my decision today on the earnings rate because it is the most efficient way to give account holders access to earnings. The individual-level review that a claims process requires will take time. Throughout all of this, I remain committed to honoring my fiduciary duties to account holders and the Trust, but as such, I need to renew my call for patience.

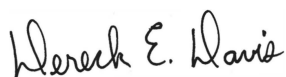
On behalf of the State, I acknowledge that account holders have already been asked to be patient for too long. Approximately 200 account holders shared their stories with the General Assembly and the State Treasurer's Office and I understand patience is not an unending resource. The feedback from account holders has helped to shape the changes that I am making to improve communication and increase transparency. The input also guided my decision to establish a new earnings rate that both reflects the past and plots a new path forward.

Beginning at some point in 2024, we will reach the final phase – **Phase 4** of programmatic policy change – where prepaid accounts will no longer accrue earnings on balances. Account holders will receive notice at least 60 days prior to the effective date of this change. While prior earnings will remain available, new earnings will not accrue after a certain future date. Taking this action is necessary to afford the retroactive earnings rate, a ledger system, the claims process, and the anticipated cost of future benefit payments. The change will also bring Maryland in line with the majority of other states that offer prepaid plans and will align MPCT with what I believe to be the General Assembly's original intent of having a defined benefit plan. After the challenges of the last year, I firmly believe that the best way to manage MPCT is to get back to the basics.

With this announcement, we are collectively opening a new chapter for MPCT and Maryland 529. I am optimistic that with continued patience, account holders will have their faith restored in this important public program. Under my watchful eye, performance will improve. There is no acceptable alternative.

Thank you in advance for your support of this endeavor as well as your continued patience.

Sincerely,

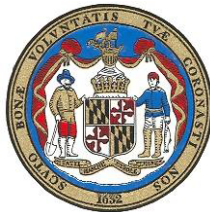


Dereck Davis
State Treasurer

DECISION MEMORANDUM

**With Respect to the
Maryland Prepaid College Trust**

Dated: July 10, 2023



MARYLAND STATE TREASURER

Dereck E. Davis

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INTRODUCTION

“The legitimate object of government,” declared President Abraham Lincoln, “is to do for a community of people whatever they need to have done, but can not do at all, or can not so well do, in their separate and individual capacities.”¹ The State of Maryland has endeavored to serve this objective by establishing the Maryland 529 Program (“Maryland 529”) to “enhance the accessibility and affordability of higher education for all citizens of the State...by establishing a method to provide for the prepayment of tuition at eligible institutions of higher education.”² The recent lack of clarity over the value of accounts in the Maryland Prepaid College Trust (“MPCT,” “Trust,” or “Prepaid Trust”)³ has diminished public confidence in Maryland 529, but it does not lessen the State’s responsibility to serve this legitimate objective.⁴ All three components of the Maryland 529 – MPCT, the Maryland College Investment Plan (“MCIP”) and Maryland Achieving a Better Life Experience (“ABLE”) – stand to benefit from a full discussion of how the MPCT issues arose and what changes have been made to restore public confidence going forward.

This decision memorandum (the “Decision Memorandum”) will undertake to provide that full discussion. The structure and content of this Decision Memorandum reflect the Treasurer’s desire to provide account holders, policymakers, the press and the public with a transparent view of the decision-making process. Nothing in this Decision Memorandum should be construed as an admission of liability of the State, its employees or agents.

The Earnings Calculation Issues

On April 15, 2022, Maryland 529 requested that the earnings rate on MPCT accounts be set to zero⁵ because of concerns about how earnings were being calculated in the Prepaid Trust’s new automated recordkeeping system. Since that date, Maryland 529 identified various issues related to the calculation of earnings.⁶ Many calculation issues seem to stem from efforts to assign earnings to prepaid units of college semesters for accounts that were not supported by the infrastructure of a ledger system like traditional, interest-earning investment accounts.

On top of the structural issues that made updating the automated recordkeeping system’s calculations a difficult and complex undertaking, there have been differences of interpretation with respect to the MPCT contract changes that went into effect on November 1, 2021. As set forth in its March 2023 statement, the Maryland 529 Board “intended that *beginning on November 1, 2021*, a 6% earnings rate would be applied on *balances* in accounts as of October 31, 2021, with earnings compounded monthly.”⁷ Account holders instead maintain that Maryland 529 staff explained the contract changes as applying 6% earnings on historical account balances since the date of contribution.⁸ Testimony from account holders confirms that assurances of this understanding came in the form of phone calls and e-mails from executives.⁹ Some account holders state that their families relied on these assurances when making college choices for the 2022-2023 school year.¹⁰ Other families assert that they remained in a state of uncertainty as they weighed their options for the 2023-2024 school year.¹¹

Legislative Mandate

Chapter 113 of the 2023 Laws of Maryland (“Chapter 113”) transferred administrative oversight of Maryland 529 to the State Treasurer’s Office.¹² It also established a claims process

for resolving disputes with respect to the administration of the Prepaid Trust and designated the Treasurer as the sole fiduciary of the Prepaid Trust.

By passing the bill that became Chapter 113, the Maryland General Assembly (the “General Assembly”) asked the Treasurer to “step into the gulf and take on [the] big challenge of trying to fix a program that has lost its way.”¹³ This Decision Memorandum attempts to contextualize the earnings rate determination made by the Treasurer.¹⁴

Treasurer’s Actions to Date

As part of the process leading to this decision, the State Treasurer’s Office (“STO”) has examined Maryland 529’s history and the actions of the Maryland 529 Board. Since the enactment of Chapter 113, STO worked each day to prepare for the management of Maryland 529, to determine an earnings rate that will address account holders’ concerns while maintaining the actuarial soundness of the Trust, and to establish a process for handling claims. Among other actions, the Treasurer and staff have:

- Established a transition team;
- Held numerous meetings with 529 Program staff, former Board members, and vendors, including the Prepaid Trust program manager, the provider of the MPCT’s actuarial audit, Maryland 529’s investment adviser and special counsel;
- Established an e-mail address to correspond with account holders;
- Reviewed testimony submitted to the General Assembly;
- Requested and reviewed written comments submitted by account holders to supplement testimony submitted to the legislature;
- Held a listening session to receive oral testimony regarding Maryland 529;
- Shared implementation updates with account holders and the General Assembly;
- Reviewed and supplemented disclosure statements for the Prepaid Trust, MCIP and the ABLE program in consultation with the Office of the Attorney General;
- Reviewed existing trust documentation and issued updates to trust documentation to reflect the abolishment of the Maryland 529 Board and the transfer of oversight of Maryland 529 to the Treasurer;
- Reviewed existing Maryland 529 contracts and amendments and provided vendors with notice of changes;

- Worked to develop an online claims submission portal and workflow;
- Prepared a procurement for a third-party claim administrator to assist in claim processing; and
- Taken steps to expedite the process for account holders to receive disbursements for the fall 2023 semester.¹⁵

BACKGROUND

Legislative History

Section 529 of the Internal Revenue Code (“Section 529”),¹⁶ which governs tax-advantaged education savings plans in the United States, was created as part of the Small Business Job Protection Act of 1996.¹⁷

While federal law authorizes 529 plans, states are the entities that sponsor and operate the plans.¹⁸ In response to the codification of Section 529, the General Assembly passed legislation in 1997 creating Maryland 529.¹⁹ The General Assembly stated that its intent when passing the legislation was to “enhance the accessibility and affordability of higher education for all citizens of the State by establishing a method to provide for the prepayment of tuition at institutions of higher education in the State.”²⁰ As suggested by the General Assembly’s statement of intent, Maryland 529 initially only allowed for the creation of prepaid trust contracts. Over time, Maryland 529 was broadened to allow for the creation of MCIP²¹ and, eventually, the ABLE program.²²

Maryland 529 Board

The General Assembly established a board to oversee Maryland 529. The name and composition of that board has evolved throughout the years.²³ Its most recent name, the Maryland 529 Board, was adopted in July 2016.²⁴

Prior to its dissolution,²⁵ the Maryland 529 Board (the “Board”) was comprised of 11 members: five public members were appointed to four-year terms by the Governor and six members served *ex officio*, i.e., because of their official position.²⁶ The *ex officio* members included the Secretary of the Maryland Higher Education Commission, the State Superintendent of Schools, the State Treasurer, the State Comptroller, the Chancellor of the University System of Maryland, and the Secretary of Disabilities. The five members appointed by the Governor were required to have “significant experience in finance, accounting, investment management, or other areas that can be of assistance to the Board.”²⁷ Board members were not paid for their service, although they were permitted to receive reimbursement for expenses under the Standard State Travel Regulations.²⁸ Typically, the Board met seven to 10 times a year to make decisions on Board matters. Maryland 529 staff were delegated authority to make day-to-day decisions.²⁹

Types of 529 Plans

The current incarnation of Section 529 authorizes two types of qualified tuition programs: one commonly referred to as a “prepaid plan” and the other as a “savings plan.”³⁰

Prepaid Plans Generally

The basic premise of prepaid plans is that parents, grandparents and others can buy “units or credits at participating colleges and universities . . . for future tuition and mandatory fees at current prices.”³¹ The prepaid plan acts as a hedge against future tuition increases.³² Prepaid plans give account holders “the assurance that [their] investment will keep up with the rate of college tuition inflation.”³³ Account holders “generally know ahead of time what [their] payout value will be, rather than worrying about the ups and downs of investment markets.”³⁴ This type of plan does not carry a higher, more traditional investment risk because there is no direct market exposure. In turn, there is also no direct exposure to significant market gains. A prepaid plan’s “value is based on tuition and fees rates” and “[t]he main reason to open a prepaid tuition plan is to guarantee that you have saved enough to pay for a certain type of college for your child.”³⁵

Education Savings Plans Generally

Education savings plans are the more common type of 529 plan.³⁶ Under an education savings plan:

The account holder contributes money to the plan. That money is invested in a pre-set selection of investment options. Account-holders can choose the investment (usually mutual funds) that they want to invest in. How those investments perform will determine how much the account value grows over time.³⁷

In essence, education savings plans “work much like a Roth 401(k) or Roth IRA,” where account holders make investment choices, and their account balances fluctuate based on investment returns.³⁸ In sum, while a prepaid plan’s “value is based on tuition and fee rates,”³⁹ an education savings plan’s “value is based on contributions plus earnings.”⁴⁰

Maryland’s Prepaid College Trust

The Maryland Prepaid College Trust, like prepaid plans in other states, allows the account holder to “lock in” tuition costs at current contract rates and avoid the risk that subsequent tuition increases would exceed their tuition savings.⁴¹ Also like other prepaid plans, account contributions are pooled and invested together to yield an investment return for the overall Trust.⁴² Maryland 529, not the account holder, picks the overall Trust investments.⁴³ The goal of the investments is to “grow” the Trust funds faster than the increase in tuition expenses. The investment return earned in the overall Trust is used to pay the anticipated tuition benefits for beneficiaries in future years.⁴⁴

Unlike most prepaid plans,⁴⁵ MPCT offers account holders interest earnings on their contract payments in certain situations.⁴⁶

MPCT account holders also benefit from the “Legislative Guarantee,” which is not applicable to MCIP. As described in the 2021-2022 MPCT Disclosure Statement (as amended and supplemented, the “MPCT Disclosure Statement”):

The Enabling Legislation provides that in the event that funds in the Prepaid College Trust are insufficient to pay full Benefits in any given year, the Governor is required to include an amount in the following year’s State budget to fully pay Benefits. As with the entire State budget, the Maryland General Assembly determines the final amount of the appropriation. If the Maryland General Assembly does not fully fund the budget request, [Maryland 529] may adjust the terms of subsequent or current Contracts to ensure continued actuarial soundness of the Prepaid College Trust. Subject to the rights of Account Holders, any amount paid to the Prepaid College Trust from the State must be repaid to the State without interest in equal amounts over the following two fiscal years.⁴⁷

This means that if the Trust ever experiences a shortfall rendering it unable to pay tuition benefits, the Governor must include the amount necessary to cover those costs in the annual budget bill, subject to the General Assembly’s final approval.

Legislative Audit

Every four years, the Maryland 529 plans are audited by the Office of Legislative Audits in the Maryland Department of Legislative Services (“OLA”). In December 2019, OLA issued its Maryland 529 audit (the “OLA Audit”).⁴⁸ In addition to finding “significant management and Board oversight issues at Maryland 529,”⁴⁹ the OLA Audit also “questioned the appropriateness” of MPCT’s method for calculating the amount due upon an account holder’s request for a refund or a rollover⁵⁰ to another qualified tuition program, like MCIP.⁵¹ In particular, the OLA Audit provided:

MPCT account holders generally make contract payments over a period of years to cover beneficiaries’ future higher education costs. MPCT benefits, under normal circumstances, are limited to these costs; however, when a refund or rollover is requested, the account holder is entitled to interest earnings using the method specified in the tuition contract. *We believe that the method used to calculate interest earnings resulted in excessive payments.*

Specifically, interest credited was not based on the account holder’s balance (contract payments to date) at the end of each year, but on the account holder’s final balance at the time of the rollover or refund.⁵²

OLA demonstrated its view that Maryland 529’s method to calculate interest earnings resulted in excessive payments by showing how three different methodologies impacted the total rollover amount.⁵³

Methodology 1: Maryland 529’s then-current method of calculating earnings for rollovers, which applied interest as if the account balance at the time of the rollover request had been the same since the account was opened. The interest rate applied was equal to the then-most recent rate of return on MPCT investments since the Trust’s inception (the “Since Inception Rate”).⁵⁴

Methodology 2: Using the Since Inception Rate but applying that rate to the estimated year-end balances in the account.⁵⁵

Methodology 3: Determining the Prepaid Trust’s actual annual rate of return for each year and applying that rate to the corresponding year’s estimated year-end balances in the account.⁵⁶

Applying these three methodologies to a sample account holder’s rollover request produced the following results, which OLA included in its Audit Report.⁵⁷

Exhibit 1
OLA Audit Schedule of Interest Earnings for Rollover Example Comparing Different Interest Calculation Methodologies

Year	Fiscal Year	Account Balance	Interest Earning Calculations		
			Methodology 1	Methodology 2	Methodology 3
			Since Inception Rate Applied to Final Balance for Each Year the Account Was in Existence	MPCT Since Inception Rate Applied to Account’s Estimated Year-End Balances	MPCT Actual Annual Rate Applied to Account’s Estimated Year-End Balances
1	2006	\$3,454	\$2,470	\$190	\$276
2	2007	6,908	2,470	380	1,071
3	2008	10,362	2,470	570	(601)
4	2009	13,816	2,470	760	(2,818)
5	2010	17,270	2,470	950	2,418
6	2011	20,724	2,470	1,140	4,352
7	2012	24,178	2,470	1,330	387
8	2013	27,632	2,470	1,520	2,957
9	2014	31,086	2,470	1,710	5,751
10	2015	34,540	2,470	1,900	836
11	2016	37,994	2,470	2,090	(266)
12	2017	41,448	2,470	2,280	5,098
13	2018	44,902	2,470	2,470	3,188
Total Earnings:			\$32,110	\$17,290	\$22,649

OLA concluded its analysis of the Maryland Prepaid College Trust’s rollover and refund methodologies with the following finding:

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.⁵⁸

OLA’s request that Maryland 529 review the methodologies used by other states was likely driven by its own outreach to other states that offer prepaid plans. OLA stated that it had contacted five other states with prepaid plans and was “informed by officials in four states that they generally limited rollover and refund payments to the current value of the college benefits available to the account beneficiary at the time of the account holder’s request for rollover or refund.”⁵⁹

Board Response to Legislative Audit

Forensic Review of MPCT by Grant Thornton

Based on OLA’s finding of “significant management and Board oversight issues,”⁶⁰ the Board engaged Grant Thornton Public Sector LLC (“Grant Thornton”) to conduct a forensic audit of MPCT.

Following completion of the audit, Grant Thornton wrote in its report that Maryland 529 had taken steps to address the OLA findings. These steps included, among other things, updating Maryland 529’s Banner System⁶¹ to reflect actual disbursements and improving its “processes, policies and procedures to mitigate the risk of these issues recurring in the future.”⁶²

Grant Thornton also “observed instances in which current [Maryland 529] management and the Board decided not to update the Banner system to reflect historical overpayments or rollovers to certain MPCT account holders because the accounts had already been depleted and closed.”⁶³ Grant Thornton did not find any “evidence of account irregularities” in accounts held by Maryland 529 staff.⁶⁴

Hiring of Intuition

On December 10, 2020, Maryland 529 engaged a third-party program manager, Intuition College Savings Solutions, LLC (“Intuition”) to manage the day-to-day operations of the Maryland Prepaid College Trust, which had been operated in-house by the agency.

As part of the conversion to Intuition’s automated recordkeeping process, the records maintained by Maryland 529 had to be transferred and “mapped” to the new Intuition system. Over the next year, Maryland 529 staff worked with Intuition to transition program records and

operations. Maryland 529 and Intuition worked together to develop the business rules that would govern the calculation of account balances.⁶⁵

In addition, Intuition worked with Maryland 529 staff to create an online customer service portal that would allow MPCT account holders to see up-to-date information about their accounts. The completed automated recordkeeping system would calculate amounts available to beneficiaries for tuition benefits, rollovers, and refunds. Intuition's account portal would also include an entry for each account's Free Application for Federal Student Aid value (the "FAFSA Value"). Previously, Maryland 529 did not calculate a FAFSA Value. In addition, the Banner System used by Maryland 529 for recordkeeping did not perform calculations. All rollover, refund and minimum benefit calculations were performed "by hand" using a spreadsheet. Generally, these calculations were performed by Maryland 529 staff only upon the request of an account holder.

Following almost a year of planning by Maryland 529 staff and Intuition, effective November 9, 2021, the day-to-day management of Maryland Prepaid College Trust, including tuition benefit processing, distributions, and customer service, was moved to Intuition.

Board Consideration of Changes to MPCT Contract Provisions

In conjunction with the move to a new MPCT program manager,⁶⁶ and in response to the findings in the Legislative Audit,⁶⁷ the Board and Maryland 529 staff reviewed potential changes to the MPCT business rules in the spring of 2021.

The disclosure statements for the Trust outline how contract changes can be made. The 2020-2021 MPCT Disclosure Statement provided:

Changes to the Statute and Regulations. The General Assembly of the State may, from time to time, pass legislation, which may directly or indirectly affect Maryland 529, including the terms and conditions of the Maryland 529 Prepaid College Trust and this Disclosure Statement.

Changes to the Contract. We may amend the terms of this Contract from time to time to comply with changes in the law or regulations or if we determine it is in Maryland 529's and/or the Prepaid College Trust's best interest to do so. However, we 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, Maryland 529, or the Prepaid College Trust. *We will promptly notify you of such amendments, and you will be bound thereby unless you notify us in writing of your intent to terminate the Contract within 60 days of the date of the notice.*⁶⁸

On June 25, 2021, the Board approved contract changes that went into effect November 1, 2021.⁶⁹ These changes were made "to make the formula for calculating earnings consistent

throughout the various types of transitions, i.e., rollovers, distributions, and refunds.”⁷⁰ Specifically, the Board approved the following language:

RESOLVED, the Board endorses the rate of return calculation for minimum benefits, rollovers, and refunds to be the Trust since-inception rate of return as of 6/30/21 for balances held prior to November 1, 2021. Contributions received on/after November 1, 2021 would receive the 10-year Treasury rate, as of June 30. These rates and calculation changes would go into effect on November 1, 2021.⁷¹

In addition, the Board considered and approved updated language to the MPCT Disclosure Statement as presented by Maryland 529 staff, which was a summary of modifications to the 2020-2021 Disclosure Statement.⁷² The June 25, 2021, Board meeting minutes noted the following:

The Plan is required to notify account holders 60 days before the transition that they have the right to reject the changes. These notices will be mailed out in mid-August with the assistance of Intuition. The Trust is hoping not to see a large number of rollovers, but this is the unknown variable in the transition. There being no discussion other than a typographical correction and upon motion duly made and seconded, it was unanimously

RESOLVED, that the Board approves the adoption of the new language in the Prepaid College Trust Disclosure Statement, as presented.⁷³

In essence, the contract terms were “simplified”⁷⁴ to tie benefits paid to beneficiaries receiving rollover, refunds or tuition benefits for private or out-of-state eligible institutions to a calculation of minimum benefits. Furthermore, using the same earnings formulas meant that account holders requesting tuition benefits were now on an even playing field with account holders requesting rollovers or refunds.

The contract changes were announced in August 2021 and went into effect on November 1, 2021.⁷⁵

The Current Situation

In early 2022, as a result of account holder inquiries, Maryland 529 staff discovered that accounts whose holders had requested distributions were receiving significantly larger distributions than anticipated. Maryland 529 staff informed Intuition that they believed there was an error in how benefit calculations were being performed by the automated recordkeeping system.⁷⁶

Access to Earnings Frozen

To protect Trust assets while the calculation issue was investigated, at Maryland 529's request, Intuition set the earnings rate on Trust accounts to zero percent on April 15, 2022.⁷⁷

Calculation Issues Brought to Board

The Board first discussed the calculation issue at its April 28, 2022 meeting. Erin Layton, Executive Director of Maryland 529 at the time, is referenced in the minutes, which state:

She has been in contact with the Board Officers regarding an MPCT earnings calculation error... that requires correction. There was an account holder issue that brought this to her attention. Actions taken so far include calculations on earnings being stopped. Account Holders are still able to receive distributions, but any earnings attributable are being withheld until this issue is resolved.⁷⁸

Resignation of Executive Director and Appointment of Interim Executive Director

Effective June 28, 2022, Erin Layton, resigned after serving as Executive Director since 2018. The Board appointed Bernadette Benik as interim Executive Director to serve until a replacement Executive Director could be found.

Attempts to Resolve Calculation Issue

Maryland 529 staff worked with Intuition and an external auditor for months in an attempt to fix the calculation errors.⁷⁹ The interim Maryland 529 Executive Director reported to Board members that she was having daily meetings with Intuition to check on their progress.⁸⁰ Following several months of setbacks and complications in trying to bring the online system's calculations in line with the Disclosure Statement contract language, the Board concluded that it required outside expertise to investigate the problem, manage communications with account holders and recommend solutions.

Hiring of New Executive Director

On September 1, 2022, Anthony Savia was appointed the Executive Director of Maryland 529.

Hiring of Nelson Mullins

At its September 9, 2022 meeting, the Board authorized Maryland 529 staff "to move forward to work with the Office of the Attorney General to engage outside counsel to assist with the resolution of the Maryland Prepaid College Trust issues."⁸¹

The Office of Attorney General entered into a Special Counsel Contract with Nelson Mullins Riley & Scarborough, LLP ("Nelson Mullins") on September 13, 2022, to assist Maryland 529 in managing and resolving the calculation issues.

The Nelson Mullins contract was amended on October 13, 2022, to allow for the retention of an accounting firm, Elliott Davis, LLP (“Elliott Davis”), by Nelson Mullins to assist in the “management and resolution of the ongoing calculation issues” related to the Trust.⁸² Elliott Davis was specifically employed to perform manual account balance calculations while the Nelson Mullins team assisted Maryland 529 and Intuition with the resolution of the automated calculations.

Chief Financial Officer of Maryland 529 Resigns

On September 23, 2022, Janaki Kannan, the Maryland 529 Chief Financial Officer since 2016, resigned.

Board Approves Clarifications to MPCT Contracts at October 27, 2022 Meeting

Following a review by Nelson Mullins and Elliott Davis of the business rules established by Maryland 529 and Intuition to program the automated recordkeeping system, the Board, following Nelson Mullins’ presentation of its review, approved the following items:

1. Clarification of Minimum Maturity Period: For contracts from August 1 to December 31, beneficiaries can obtain benefits in the fall semester once a full three-year period has elapsed from the contract date and that the fall semester will be treated as occurring as early as August 1 of each year.
2. Clarification of Termination Date: A contract’s termination date is as of December 31 of the year that is 10 years after the Beneficiary’s projected enrollment year plus the number of years purchased in the Contract.
3. Clarification of when to attribute earnings (interest) to an account: Interest accrues as of the 15th of each month.
4. Clarification of downgrades: Downgrades will be applied literally within a given plan and will not shift between plans except as noted below:
 - a. If University plan is not fully paid, keeps dropping within plan until no more university plan is available. Then a refund is issued.
 - b. If Community College plan is not fully paid, keeps dropping within plan until no more Community College plan is available. Then a refund is issued.
 - c. The only time a downgrade could switch plans is with 2+2 plan. If not paid in full, it can reduce to Community College plan and keeps dropping until plan is not available. Then a refund is issued.

5. Clarification of ledger balance system: Accounting for Prepaid College trust accounts should reflect a ledger system instead of a “net contribution” system.

The new Maryland 529 Executive Director commented at the meeting that these changes “were on key details that will allow Maryland 529 to move forward to correct the MPCT calculation errors.”⁸³ The clarification regarding the ledger system was especially important as Maryland 529 staff had come to believe that calculation issues arose primarily due to the assignment of monetary values for earnings on prepaid semester units of tuition – a challenging exercise for accounts that were never set up to be traditional, interest-earning investment accounts.⁸⁴

A supplement to the MPCT Disclosure Statement summarizing these clarifications was sent to account holders in December 2022.

Approval of Manual Calculation Process

The Board approved the use of manual calculations on a case-by-case basis as the automated recordkeeping system calculation issues were resolved.⁸⁵ Maryland 529 staff worked with Nelson Mullins and Elliott Davis to develop an interim process to manually calculate earnings outside of the automated recordkeeping system.

Lack of Clarity About Retroactive Application of 6% Earnings Rate Becomes Apparent

As a result of the development of the manual calculation process, it became apparent that, in addition to the calculation issues related to programming of the Intuition system, there appeared to be confusion over the meaning of the updated terms of the MPCT contract.

As the Board confirmed in a vote held in a closed session of its December 19, 2022 meeting, its intent in voting on the contract changes in June 2021 was that the 6% earnings rate be applied *prospectively*, beginning on November 1, 2021, to all balances in accounts on October 31, 2021, with earnings compounded monthly.⁸⁶ The Board also confirmed its intent that any account balance prior to November 1, 2021 was to accrue earnings under the old contract terms, *i.e.*, a monthly rate of return of a U.S. Government Security with a constant maturity of one year minus 1.2 percent, with the rate never being less than zero.⁸⁷

The automated recordkeeping system that went live on November 9, 2021, however, reflected the application of a 6%⁸⁸ earnings rate to all balances in accounts on October 31, 2021, *retroactive* to the date of contribution.

Differing Interpretations of Contract Changes

While it is not the purpose of this document to apportion blame for the current situation, it should be noted that it appears that the Board and at least some members of Maryland 529 staff had different interpretations of the contract changes. Communications exist from Maryland 529 staff to account holders stating the 6% rate should be applied retroactively to the date of contribution.⁸⁹ In addition, Maryland 529’s former actuarial firm, Gabriel, Roeder, Smith & Company (“GRS”), issued actuarial reports on October 26, 2022 and November 14, 2022 wherein

GRS stated that, in calculating the funded status, it applied the 6% to all contributions for periods “both before and after November 1, 2021.”⁹⁰

Manual Calculations Commence Reflecting Board Interpretation of Contract Changes

Following the Board’s confirmation of its intent with respect to the contract changes in December 2022, the processing of requests for manual calculations commenced in January 2023. The manual calculations resolved the calculation issues related to the lack of a ledger system. However, the difference between the application of the earnings rate prior to the contract changes and the retroactive application of a 6% earnings rate amounted to substantial dollar value discrepancies for some account holders, particularly those that contributed significantly before the date the account’s beneficiary planned to begin college.⁹¹

Account Holders Dispute Results of Manual Calculations

Many account holders dispute the results of the manual calculations and have pushed for the higher account values reported to them on their 2021 year-end statements.⁹² When resolution did not come quickly, “parents with accounts in its Maryland Prepaid College Trust turned to legislators for help.”⁹³

Legislative Response to Situation

Transfer of Maryland 529 to State Treasurer

In response to the public outcry, the General Assembly passed Senate Bill 959. The Governor signed the bill on April 24, 2023, and it became fully effective on June 1, 2023. Senate Bill 959, once signed into law, became Chapter 113 of the 2023 Laws of Maryland (“Chapter 113”). Chapter 113 abolished the Board and transferred administration of Maryland 529 to the State Treasurer on June 1, 2023.⁹⁴ Pursuant to Chapter 113, on June 1, 2023, the State Treasurer assumed sole fiduciary responsibility with respect to the MPCT.⁹⁵ However, Chapter 113 allows the State Treasurer to delegate, wholly or partly, the exercise of fiduciary duties with respect to the Prepaid Trust and contract for support services necessary to carry out those fiduciary duties.⁹⁶

Phase-Out of the Maryland Prepaid College Trust

Under Chapter 113, beginning June 1, 2023, neither the establishment of any new prepaid contracts nor the extension or upgrade of any existing prepaid contracts is permitted.⁹⁷ Furthermore, as of that date, funds may only be transferred into a Prepaid Trust account for the purpose of contributing funds toward an existing contractual obligation.⁹⁸ Prepaid Trust accounts may still be rolled over to any other qualified state tuition program, including MCIP.⁹⁹

Remedy for Account Holder Disputes – Establishment of Claims Process

Chapter 113 requires the State Treasurer to establish a claims resolution process and procedures to implement the claims process, as well as provide notice to account holders of the establishment of the procedures within 10 days.¹⁰⁰ Claims relating to the November 1, 2021 contract changes are required to be filed no sooner than the date the State Treasurer notifies account holders of the procedures established for such claims and no later than December 31, 2023.¹⁰¹ The

claims process serves as the exclusive remedy for a claim against the Maryland Prepaid College Trust and any claim arising from the administration of the Trust must be made solely against the assets of the Trust.¹⁰²

Pursuant to Chapter 113, acceptance of a settlement of a claim must “be conditioned on an agreement of the account holder to transfer all funds in the account to any other qualified state tuition program.”¹⁰³ All settlements are final and a complete release of each claim arising from the administration of the Prepaid Trust against the State, each of its units, all State personnel, and the Trust.¹⁰⁴ The State Treasurer may delegate fiduciary duties relevant to claims so long as any delegate making final determinations is a fiduciary.¹⁰⁵ The State Treasurer must prioritize the processing of claims for account holders who have sought distributions for qualified higher education expenses before June 1, 2023, or are expected to seek distributions in the fall of 2023.¹⁰⁶

SUMMARY OF CONTRACT CHANGES

Contract Changes Effective November 1, 2021

In relevant part, the August 2021 Disclosure Statement Update¹⁰⁷ read as follows:

This supplement amends the Maryland Senator Edward J. Kasemeyer Prepaid College Trust Disclosure Statement, dated December 2020 and amended April 2021. You should review this information carefully and keep it with your current copy of the Prepaid Trust Disclosure Statement. These changes are effective November 1, 2021 . . .

Article V - Benefits (p. 8-9)

Minimum Benefit means payments duly made under this Contract, minus Operating Expenses, plus a certain rate of return.

Accounts in existence on October 31, 2021:

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

Contributions made 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 . . .

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 . . .

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 use 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.

Contributions made 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 . . .

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 . . .

Contract Clarifications

In relevant part, the December 2022 update¹⁰⁸ to the Disclosure Statement read as follows:

Clarification of Contract Termination Date

Article V – Benefits (p. 10) and Article VIII – Termination (pp. 12-13)

The section on time limits has been clarified to make clear that an Account Holder has until the end of the applicable calendar year to use all benefits.

Benefits (p. 10)

Time Limits. The Beneficiary has the number of years purchased in the Account plus 10 years to use all Benefits, (Benefits period). This period runs through December 31 of the applicable year. This time can be extended for any active service in the U.S. military. Absent a waiver, 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 Account, pursuant to the provisions of Article VIII. In addition to the requirements of this Article, we may request other information and/or modify or apply specific due dates.

Termination (pp. 12-13; note: the first and last two paragraphs of this section remain the same)

Termination. ...

This Contract will terminate on the December 31st of the year that is 10 years after your PEY¹⁰⁹ plus the number of years purchased in the Contract (termination date). This time can be extended for any active service in the U.S. military. Upon termination, you will have the option to:

- Request a waiver to extend the time period allowed to use Benefits. Any waiver request is subject to Board approval, in our sole discretion; or
- As described below:
 - Rollover or transfer your Account to the Maryland College Investment Plan or another Qualified Tuition Program; or

– Take a refund.

Earnings Attributable to Minimum Benefits, Rollovers and Refunds

Article V – Benefits (p. 9) and Article VI – Rollovers and Refunds (p. 10)

These sections have been updated to clarify that the applicable earnings are attributable to an account on the 15th of the month as well as to explain that accounting for Prepaid College Trust accounts will reflect a ledger system. These updates are effective as of November 1, 2021.

Minimum Benefits (p. 9; note: the first paragraph is updated as follows. All other provisions of this section remain the same.)

Minimum Benefits. Minimum Benefits are defined as payments duly made under this Contract, minus Operating Expenses, plus a certain rate of return. Attributable earnings accrue on the 15th of every month and are accounted for using a ledger system.

Rollovers and Refunds (p. 10; note: a new paragraph is added following the heading for Earnings Attributable for Rollovers and Refunds. All other provisions of this section remain the same.)

Earnings Attributable for Rollovers and Refunds

Attributable earnings accrue on the 15th of every month and are accounted for using a ledger system.

What the Contract Changes and Clarifications Mean to Account Holders

As described in the chart below, the tuition benefit provided by the Maryland Prepaid College Trust is the greater of (i) either payment of in-state Tuition (if the beneficiary attends a Maryland public college or university) or the weighted average of in-state Tuition (if the beneficiary attends a non-public or out-of-state institution) and (ii) the account's Minimum Benefit. This framework has been consistent for at least 20 years. However, the contract changes impacted how the Minimum Benefit¹¹⁰ is calculated and the value of refunds and rollovers.

Exhibits 2, 3 and 4 attempt to demonstrate the impact of the contract changes to the Tuition Benefit and rollover and refund calculations. There is a key following the exhibits that contains a summary of the definitions for terms used in the exhibits. Terms used and not defined in the exhibits or the key have the meaning provided in the applicable Disclosure Statement.

Please note that these exhibits and the key following the exhibits are intended as visual aids for illustrative purposes only and are not to be used as a replacement for the MPCT Disclosure Statement. The materials presented serve as a tool for understanding how the contract terms changed. Account holders should refer to the full MPCT Disclosure Statement for the terms applicable to their accounts. Any differences in the materials provided here and the Disclosure Statement should be construed in favor of the Disclosure Statement.

Exhibit 2
Contract Benefits Prior to November 1, 2021¹¹¹

Tuition Benefit	Maryland Public College						
	Greater of:	Full in-state Tuition	and	Minimum Benefit			
	Private or Out of State						
	Greater of:	Actual Tuition (up to WAT)	and	Minimum Benefit			
Rollover	Transfer to other Maryland 529 Plan (and all transfers for contracts in existence for three years or more):						
	Contract Payments	+/-	100% of Trust Return	less	Operating Expenses	less	Benefits used
	Transfer Outside of Maryland 529 (for contracts in existence for less than three years):						
	Contract Payments	+/-	75% of Trust Return	less	Operating Expenses	less	Benefits used
Refunds	Scholarship, Grant, or Tuition Remission						
	Up to the amount that would have otherwise been paid directly to the Eligible Institution						
	Upon Death or Disability of Beneficiary (if Beneficiary enrolled at Eligible Institution):						
	Amount that would have otherwise been paid directly to the Eligible Institution, less any Benefits used.						
	Upon Death or Disability of Beneficiary (if Beneficiary has graduated high school but is not enrolled at Eligible Institution):						
	WAT						
	Upon Death or Disability of Beneficiary (if Beneficiary has not yet graduated from high school or the death or Disability occurs prior to the year of Initial Benefit Eligibility):						
	Contract Payments	+/-	100% of Trust Return	less	Operating Expenses		
	All Other Circumstances (for contracts in existence for less than three years):						
	Contract Payments	+/-	50% of Trust Return	less	Operating Expenses	less	Benefits used
	All Other Circumstances (for contracts in existence for three years or more):						
Contract Payments	+/-	90% of Trust Return	less	Operating Expenses	less	Benefits used	

Exhibit 3
Contract Benefits as Described in 2021-2022 MPCT Disclosure Statement

Tuition Benefit	Maryland Public College					
	Same (but calculation of Minimum Benefit changed)					
	Private or Out of State					
	Same (but calculation of Minimum Benefit changed)					
Rollover	Transfers to other Maryland 529 Plan (and all transfers for contracts in existence for three years or more):					
	Contract Payments	+/-	100% of Contract Earnings	less	Operating Expenses (and fees)	less Benefits used
	Transfer Outside of Maryland 529 (for contracts in existence for less than three years):					
	Contract Payments	+/-	50% of Contract Earnings	less	Operating Expenses (and fees)	less Benefits used
Refunds	Scholarship, Grant or Tuition Remission					
	Same					
	Upon Death or Disability of Beneficiary (if Beneficiary enrolled at Eligible Institution):					
	Same					
	Upon Death or Disability of Beneficiary (if Beneficiary has graduated high school but is not enrolled at Eligible Institution):					
	Minimum Benefit					
	Upon Death or Disability of Beneficiary (if Beneficiary has not yet graduated from high school or the death or Disability occurs prior to the year of Initial Benefit Eligibility):					
	Minimum Benefit					
	All Other Circumstances (for contracts in existence for less than three years):					
	Contract Payments	+/-	50% of Contract Earnings	less	Operating Expenses (and fees)	less Benefits used
	All Other Circumstances (for contracts in existence for three years or more):					
	Contract Payments	+/-	100% of Contract Earnings	less	Operating Expenses (and fees)	less Benefits used

Exhibit 4
Key of Defined Terms for Contract Benefits Described in Exhibits 2 and 3

PRE-2021		AS DESCRIBED IN 2021-2022 MPCT DISCLOSURE STATEMENT	
Beneficiary	Beneficiary means a person who is entitled to receive Benefits under a Contract and who meets eligibility criteria at the time the Account Holder completes the online process. Under certain circumstances, the Beneficiary and the Account Holder may be the same.	Substantively the same.	
Benefits	Payments by the Trust under the Contract	Same.	
Contract Earnings	Term not used.	Rate of Return as applied to contract payments.	
Eligible Institution	An “eligible educational institution” as defined in Section 529(e) of the Code except that the definition is limited to any institution of higher education that offers an associate, bachelor, or graduate degree program and is eligible to participate in federal financial aid programs.	Same.	
Initial Benefit Eligibility	Year in which a Beneficiary may begin to use Benefits due to the three-year minimum maturity period.	Same.	
Minimum Benefit	Payments duly made under Contract, minus Operating Expenses, plus Rate of Return.	Same except (i) definition of Rate of Return has changed and (ii) December 2022 update to MPCT Disclosure Statement clarified that attributable earnings accrue on the 15 th of every month and are accounted for using a ledger system.	
Operating Expenses	2.5% of Contract payments duly made under this Contract and the \$4 payment processing fee for each scheduled payment	A certain percentage of Contract payments duly made under this Contract. The percentage is determined annually and can be found in the Schedule of Fees. Currently that percentage is 2.5%.	
Rate of Return	Monthly rate of return of a U.S. Government Security with a constant maturity of one year minus 1.2%. The rate of return will never be less than zero.	AS INTENDED BY BOARD	AS IMPLEMENTED PRIOR TO EARNINGS FREEZE:
		Contributions prior to 11/1/21¹¹²: 6% on balances, compounded monthly, [<i>beginning 11/1/21</i>], until Benefits are withdrawn, or Contract is terminated.	Contributions prior to 11/1/21¹¹³: 6% on balances, compounded monthly, [<i>retroactive to date of contribution</i>], until Benefits are withdrawn, or Contract is terminated.
		Contributions made on or after 11/1/21: Rate equal to 10-year Treasury note rate (updated each June 30) and compounded monthly.	Contributions made on or after 11/1/21: Rate equal to 10-year Treasury note rate (updated each June 30) and compounded monthly.
Trust Return	Trust Return means the since inception rate of return for the Trust (updated quarterly), as applied to contract payments.	Term no longer used.	
Tuition	Actual Tuition and Mandatory Fees assessed to all students by an Eligible Institution as a condition of enrollment at the institution. Tuition does not include any fee that is assessed by the Eligible Institution for a particular course taken, year of enrollment, academic status, course of study, residency status, or any other distinguishing factor used by the Eligible Institution to determine a specific fee.	Same.	
WAT	Weighted Average Tuition within the applicable tuition plan (see Disclosure Statement for full definition of Weighted Average Tuition).	Same.	

SUMMARY OF CURRENT UNDERSTANDING OF CALCULATION ISSUES

As discussed above,¹¹⁴ in early 2022, as a result of an account holder inquiry, Maryland 529 staff believed that accounts whose holders had requested distributions were receiving significantly larger distributions than anticipated. Maryland 529 staff informed Intuition that they believed there was an issue with how benefit calculations were being performed by the automated recordkeeping system. In the interest of transparency, this section will endeavor to explain STO's current understanding of the issues with the calculations related to the 2021 year-end statements.

While this summary outlines the current understanding of STO with respect to the calculation issues, until updated programming of the automated recordkeeping system has been completed and tested, there is no guarantee that this discussion is exhaustive of all historical calculation issues. The various attorneys, accountants and advisors continue to work to identify any calculation issues as they manually reconcile accounts. The explanation in this section is the product of STO's best efforts to understand the universe of historical calculation issues. These efforts have proven especially challenging and time-consuming as STO's fundamental understanding has changed an unsettling number of times. The complexity of the issues and the lack of staff remaining at Maryland 529 from the time these issues arose has slowed the speed of STO's review and hampered the certainty of STO's understanding.

STO notes that the agency's lack of confidence in its current understanding of the historical calculation issues does not diminish its confidence in the manual calculations implementing the Treasurer's decision and the updated version of the automated recordkeeping system.

From STO's review, it appears that most of the calculation issues are the result of the lack of a ledger system supporting the MPCT accounts. In addition, there are some fundamental flaws in how the term "Minimum Benefit" is defined and interpreted in the original business rules¹¹⁵ established for the automated recordkeeping system (the "Original Business Rules").¹¹⁶ Those flaws are discussed in more detail below.

In the MPCT Disclosure Statement, "Minimum Benefit" is defined as "[p]ayments duly made under this Contract, minus Operating Expenses, plus a certain Rate of Return."¹¹⁷ The Rate of Return for contributions prior to October 31, 2021 is set forth in the MPCT Disclosure Statement as "6% on balances, compounded monthly, until Benefits are withdrawn, or your Contract is terminated."¹¹⁸

STO currently believes that the "until Benefits are withdrawn" portion of the definition was interpreted to mean that once *any* Benefits are withdrawn, *all* earnings cease. While it is not entirely clear, STO has reason to believe that, as a result of the literal interpretation of the "until Benefits are withdrawn" language, the Original Business Rules directed the accrual of earnings to cease once a beneficiary had reached their projected enrollment year. This interpretation, rather than what STO believes is a more appropriate interpretation — that once benefits are withdrawn, the amount withdrawn will no longer accrue earnings, *i.e.*, the interest earning balance is reduced — had two effects. First, all earnings ceased accruing on accounts in the automated recordkeeping system once a beneficiary reached their projected enrollment year. Second, the calculation of

Minimum Benefit in accordance with the Original Business Rules does not account for distributions.

Another source of confusion in the definition of Minimum Benefit concerns the use of the term “on balances.” The meaning of that term was not explained in the MPCT Disclosure Statement. In an accounting and banking context, as explained by Nelson Mullins to STO, the term “on balances” means that periodic interest is applied on a balance on a given accrual date – in the same way loan balances or bank account balances are calculated. Each time earnings are applied, it increases the balance, and earnings continue to accrue on the new, higher balance – compounding the earnings. As funds are withdrawn, it reduces the balance and earnings are applied on the new, lower balance – reflecting the distribution. The use of this term necessarily implies the use of a ledger system. Despite the use of the term “on balances” in the definition of Minimum Benefit, a ledger system was not instituted in connection with the contract changes effective on November 1, 2021.¹¹⁹

As described herein under “Lack of Clarity About Retroactive Application of 6% Earnings Rate Becomes Apparent,” the issues described to this point in this section were not the only calculation issues.¹²⁰

The remainder of this section will address the various attempts to resolve the calculation issues which will help to explain how the State’s understanding and efforts to resolve the issues have evolved, and continues to evolve, over time.

Summary of Change Orders

A variety of change orders to the Original Business Rules were drafted and abandoned as additional calculation issues were uncovered. Ultimately, Maryland 529 approved three change orders – Change Request Number 2 (“Change Order 2”) was executed by Maryland 529 on March 4, 2022, Change Request Number 4 (“Change Order 4”) was executed by Maryland 529 on April 27, 2022, and Change Request Number 6 (Change Order 6”) was executed by Maryland 529 on April 20, 2023.¹²¹

Change Order 2 and Change Order 4, while executed, were never implemented in the automated recordkeeping system at the direction of Maryland 529 once it was determined that a ledger system was needed to address all the calculation issues. A discussion of the substance of all three change orders will, nevertheless, give insight into the universe of calculation issues.

Change Order 2 made several changes to the rollover, refund, and Minimum Benefit calculators within the automated recordkeeping system, including (i) adding the concept of “Prior Usage” to the calculators within the system to have amounts already disbursed taken into account when calculating a Minimum Benefit, and (ii) clarifying that a semester minimum benefit calculation would equal the full Minimum Benefit divided by the number of semester units remaining on the contract.¹²²

Change Order 4 specified that “[o]n March 30, 2022, MD529 discovered additional modifications needed for the Minimum Benefit calculation.” It continued by providing that:

Given there are interdependencies and impacts between the requested modifications and the changes necessary for Change Order Number 2, all such modifications must be implemented in parallel . . . [c]onsequently, [Change Request Number 4] includes all requested modifications by reference.¹²³

It appears the intent at the time of the execution of Change Order 4 by Maryland 529 was for Change Order 4 to supplant Change Order 2.

The modifications to the Original Business Rules for the automated recordkeeping system in Change Order 4 include the incorporation of an example calculator to be used by the automated recordkeeping system to calculate the Minimum Benefit. Without the creation of a ledger system, this calculator attempted to address already-distributed amounts in the calculation of the Minimum Benefit. The calculator was designed to reduce each contract payment—beginning with the first—by an amount equal to each benefit distribution until all payments were depleted. This calculation method treated the “spending” as occurring the same day as the contract payment and was described as a “net contribution” system.

The Original Business Rules reflected the application of a 5.5% earnings rate rather than the 6.0% earnings rate approved by the Board and set forth in the MPCT Disclosure Statement. Change Order 4 would have appeared to correct that error.

Change Order 4 made other technical changes to the automated recordkeeping system’s calculations. These include: (i) implementing a “First In, First Out” or “FIFO” accounting methodology that would use the funds accruing earnings at 6% first, before the Beneficiary could spend the funds accruing interest at the 10-Year Treasury note rate; and (ii) clarifying that the payment processing fee (\$4.00 each payment) should be deducted based on payments actually made instead of on the number of payments that were originally anticipated under the Contract.

Following review of accounts by Nelson Mullins and Elliott Davis,¹²⁴ the Board clarified certain contract provisions on October 27, 2022, including, most importantly, that accounting for MPCT accounts should have reflected a ledger system instead of the “net contribution” system imposed (but never implemented) by Change Order 4.

On April 20, 2023, Maryland 529 executed and submitted Change Order 6 to update the automated recordkeeping system to a ledger system, among other changes.¹²⁵ The programming of Change Order 6 is underway. It is anticipated that the Original Business Rules will be further amended to update the automated recordkeeping system to (1) reflect the earnings rate decision set forth herein, (2) confirm that earnings will continue to accrue following the first payment of benefits until all benefits are used or the contract is terminated and (3) address any additional historical calculation issues that are not resolved by the implementation of the ledger system.¹²⁶ The manual calculation process will also be updated to reflect the Treasurer’s earnings rate decision.

SUMMARY OF TESTIMONY FROM ACCOUNT HOLDERS

Since becoming aware of the earnings rate issue, account holders have consistently raised similar questions, concerns and requests of the 529 Program staff and Board. To understand and characterize this input, STO has reviewed testimony submitted to the General Assembly during the 2023 session, as well as written statements sent to MD529@treasurer.state.md.us during the May submission period and oral statements shared at the Treasurer's Listening Session on May 24, 2023. The viewpoints of approximately 200 account holders informed the Treasurer's policy decisions and reinforced the State's moral imperative to correct past errors.

To acknowledge the many frustrations of account holders who submitted testimony and statements about the earnings calculation issues to the General Assembly and STO, excerpts of these submissions are included in this Decision Memorandum. The views expressed in these statements are solely those of the account holders. Inclusion of these account holder statements in this Decision Memorandum does not constitute endorsement, agreement or adoption of those statements by the State or by STO.

Common Themes

Common themes emerged from the questions and concerns of account holders. Account holders continually sought clarification on why the earnings portion of their accounts was in question and when access to their full account balances would be restored. Concerns regarding poor communication, mismanagement of the Program and allegations regarding the failure of Maryland 529 to honor its contractual obligations were often coupled with a range of concerns about the impact of these deficiencies on account holders' personal finances.

Management

The earnings calculation issue appears to have increased public visibility into staffing challenges over Maryland 529's history. Many account holders shared concerns regarding management, with one couple writing:

As Maryland residents and prepaid fund account holders, we are horrified that the Fund has for many years been mismanaged, leading to the problems it has today. In the past few months, we have learned how the Fund has had a slew of Executive Directors who have quit after a short time.

According to some account holders, self-imposed deadlines for restoring access to the earnings portion of accounts came and went, prompting them to write about the challenges they faced in getting answers from Maryland 529 staff. One account holder wrote:

For my specific case, I called MPCT in the Spring of 2022 to find out what was available and how to access the funds in my 529 account as my grandson was going to be a Freshman in Fall 2022 and it was the first time I interacted with MPCT...I was advised to

keep waiting for the interest to be added which was supposed to be ‘June 30,’ ‘July 30,’ and finally ‘we have no idea when.’

Similarly, another account holder explained:

I submitted the rollover request in April of 2022 and was told to expect the turnover to require two weeks to process. After numerous phone calls I was notified that the fund rollover was on hold due to a software upgrade and the funds would be rolled over in July, following their end of fiscal year. I contacted Maryland 529 at the end of July and was notified that there was a problem with the software upgrade and they were expecting it to be resolved and the rollover fund request processed in August 2022. I am still waiting.

A number of account holders reported receiving errant cancellation notices following rollovers. For example, one account holder of 15 years stated he “received a confirmation letter from MD 529 which was full of errors stating that our refund was complete. We never requested a refund, nor did we take a refund. We fear that we have lost roughly \$34,600 because we did a rollover. Our online MD529 account shows [as] cancelled.”

Communication

As an extension of Maryland 529’s management challenges, the Program’s communication regarding unmet internal deadlines presented as a common source of concern in the public testimony. Due to what was perceived as infrequent updates from Maryland 529, some account holders expressed that they did not feel properly informed about their own finances. One family’s testimony to the General Assembly in March 2023 exemplifies the type of communication concerns that account holders raised:

In the summer of 2022, we were told by representatives that MD529 was working on processing minimum benefits and we would be given an update soon. We continued to make frustrating calls, only to speak with representatives that could not or did not know answers to all our questions. We are now past the date when tuition was due for the Fall 2022. In November 2022, we were told that we could escalate our issue to “account support” and request a manual calculation since our child was currently enrolled in college. Despite weekly calls, I could not reach a manager and no one would return my calls. In December 2022, another tuition payment was due and we still had no answers or access to our funds. An email was sent to...[the Executive Director] in December 2022 and he suggested that we request the minimum distribution and we could get our excess funds when this situation was resolved. This was done on 12/28/22; however, if this action jeopardizes our ability to receive the full value of our account, I will only assume that this option was suggested...to harm us further. We finally received a manual calculation on only one of our two accounts in the form of a

microscopic, erroneous excel spreadsheet that listed all our contributions, along with the many fees that were deducted. The value of our account is barely the same as our initial investment 15 years ago, and no one is available to help interpret this drastic reduction.

One account holder wrote to STO that she submitted the Request for Account Support form on September 29, 2022, the same day that Maryland 529 staff held a meeting with account holders to outline the process for requesting a manual calculation. From early October 2022 through mid-May 2023, she stated that she had received approximately six e-mails confirming that the calculation was being worked on, but she had still not received a response at the time of comment submittal.

Questions of Intent

A subset of testimony reflects concerns about alleged “shady conduct” on the part of the Board, Maryland 529, and the State. But, one account holder complained, “Suffice it to say, had I known now how poorly the Prepaid Maryland plan has been managed, we would have not invested in it. As a result of the misinformation and lack of accountability from the plan, we have lost (or should I say the 529 board has stolen from me?), by my calculations, \$75,000 on the combined accounts.” Additionally, some account holders raised concerns about the hiring of various vendors to manage the crisis: “What the MPCT board has done is no better than a snake oil salesman with a bait & switch, essentially picking my daughter’s pocket of \$22,981.67!”

Another account holder wrote to the General Assembly: “We discovered that 50% of the account value disappeared and have been frantically calling on a weekly basis without any understanding of this the true situation. Due to such shady behavior, we feel that fraudulent practices have occurred, and this is not a miscalculation as we have been led to believe. NOW is the time we need distributions from her account. Where are our earnings?”

Account Valuation

Another common issue that account holders wrote and spoke about relates to account valuation. In January 2022, account holders received statements from Maryland 529 indicating the FAFSA Value of their accounts. As discussed separately in the Background section of this Decision Memorandum, these account values present a number of issues.¹²⁷ Some account holders reported in public testimony that they relied on these values to their detriment. One account holder explained, writing:

As for the FAFSA reporting, we reported the MD529 value provided in writing, believing that was truly what we had in our MD529 account, and that money would be paid to us for our son’s education. The MPCT annual statement states: ‘*FAFSA VALUES REPRESENT THE REFUND VALUE TO BE USED WHEN REPORTING PREPAID TUITION PLANS AS AN ASSET OF THE PARENT ON THE FREE APPLICATION FOR FEDERAL STUDENT AID (FAFSA).’ As you may be aware, this value is used

by universities in deciding what financial aid package to offer. This FAFSA value directly impacts a family's finances. Why is it acceptable for MD529 to provide an overestimated and incorrect account value for families to report to FAFSA that negatively impacts a family's opportunity for financial aid? This is leading Maryland families to financial hardships. We are in this situation because of MD529's mismanagement of this plan.

Another account holder noted:

We have a student that made her college list and other decisions based on what we as a family could afford. A large portion of that decision relied on the annual statement on December 31, 2021, that included the 'total FAFSA reporting value,' defined as the 'refund value' of our accounts. This total tracked with the since inception rate of return as described above, which was about 6 percent.

A substantial portion of the public testimony drew comparisons between the 2021 FAFSA values and the manual calculation or 2022 statement values that account holders received. The examples that follow illustrate the differences between these values.

- Account holder purchased plan in 2004 for his one-month-old daughter – “Maryland 529 issued my account statement in January 2022 stating the FAFSA value of our account (the rollover value) was **\$63,559.62**...In January 2023 I received my manual calculation from Maryland 529...[which] 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.”
- Account holder paid a lump sum of \$39,048 in 2011 for her granddaughter – “The FAFSA reporting value of **\$72,289** for my account in the December 31, 2021 MPCT Annual Statement is consistent with the new changes as stated in the August 21, 2021 Disclosure Statement to go into effect on November 1, 2021. My grand-daughter aspires to be an audiologist, and she decides to go to an in-state university for her undergraduate studies in Fall 2022, knowing that she will have money for the graduate program in audiology in the future. In 7/2022, just before her Fall 2022 semester, according to MPCT her account value is **\$40,875**. What happen[ed] to \$31,000? MPCT claims a calculation error; it is NOT a calculation error. The December 2021 account value of \$72,289 corresponds with the principal balance of \$39,048 with about 6% investment return since 2011 as the original contract states.”

- Account holder contributed a lump sum of \$31,221 over 20 years ago for his daughter – “As of my December 2021 statement, the value [in] my account had grown to \$81,344.96...In January of 2022 I took my first and only draw on the account to pay for qualified educational expenses incurred on behalf of my daughter. That withdraw was for \$22,927.22. So, post withdraw, my account was worth **\$58,417.74**. However, my December 2022 statement reflects an account value of only **\$8,218.78**. Over \$50,000 of my account had been illegally eliminated.”
- Account holder purchased two accounts in 2012 – “As an example, the two MPCT lumpsum accounts which I opened in the summer of 2012 for \$80,000, had accrued earnings of over \$70,000, for a total of over **\$150,000**. The email which was just released by the MPCT board now indicates that my children's educational nest egg is somehow now worth only **\$86,000**, a reduction of \$64,000.”
- Account holder opened an account in 2006 for her one-year-old son – “I purchased a 4- year university plan. I put down a 25% down payment and made annual payments each year. I paid off my remaining balance 3 years early in 2020. I, like others, received a letter about the 6% earnings since inception in 2021. I received the end of year statement in 2021 showed a FAFSA value of **\$88,452.64** after paying a contract price of \$52,284.25. I listened in on a Zoom meeting last Fall that discussed the calculation error discovery. I applied to have a manual calculation done in January which states my account’s minimum benefit is only **\$4,000 more than what I invested.**”

Allegations Regarding Miscalculated Earnings

Account holders who submitted testimony often noted that they had diligently and faithfully made contributions towards their accounts while alleging the State failed to honor its obligations. In March 2023, an account holder noted to the General Assembly: “This is the heart of the problem: the Trust Board’s arbitrary recasting of the rollover benefit...retroactively modified the existing Contract provisions in a manner adverse to me and my Beneficiary.”

As a baseline expectation of earnings, some account holders compared the Trust’s historic earnings to those included in the FAFSA Values communicated in the 2021 year-end statements. One account holder wrote that “The FAFSA/refund value provided in my statement was in line with earning [sic] of the [T]rust over the past 17 years (it was actually a little lower than 6% compounded but since I couldn’t get details on how they calculated, it was reasonable).” Similarly, an account holder wrote that “the 6% rate should be used for rollovers as it is near what is and has always been in our contracts – the since inception earnings rate. I requested and received a manual calculation (requested in October 2022, received in late January 2023). That ‘manual calculation’ shows a refund value with earnings rates prior to November 1, 2021 that are not specified in any contract related to rollover or refund value.”

Another account holder retained her MPCT account after moving out of state because she believed the earnings appeared consistent with contract terms. That account holder explained:

Over the years, we carefully monitored the Trust Returns and determined that they were well over 5% and at least as favorable as the returns that we saw in the NY 529 College Saving plan that we had set up for our son's younger sibling. Our December 2021 statement values were consistent with these contractual terms and showed a FAFSA value of more than twice our original 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 the Prepaid College Trust apparently made a retroactive change in the calculation of rollovers that completely erased the promised Trust Returns for rollovers without clearly communicating this to families. From what we understand, a rollover would now leave us with LESS than our original investments due to added fees!

Impact of Earnings Issues

Account holders reported that they relied on the FAFSA Value included in the 2021 year-end statement when choosing which college to attend. They stated that the difference in value between the 2021 year-end statements and the manual calculations prepared prior to this decision created a shortfall. Public testimony reflects loans, forgone vacations and other personal sacrifices that some account holders reported having made to cover that shortfall. A number of account holders received verification from Maryland 529 that their FAFSA Value was correct, such as the account holder who wrote that “[t]he information provided by the MPCT to us regarding our account benefits was a critical factor in our decision as to where our son would attend college.” He went on to say:

I must emphasize that we exercised due diligence by reading the information provided to us in contract updates, letters, and annual statements and then confirming our understanding of this information with customer service representatives of the MPCT.... For us, our account value dropped by over \$17,000 dollars [sic] for a 2-year plan. If the MPCT is allowed to make disbursements based on these lower recalculated account balances, we will not be able to use the full benefits that we relied on. We fulfilled our part of the contract; the MPCT needs to live up to their obligations. Now that our son is in college, we urgently need access to our full benefits that we are owed.

Another account holder wrote that her daughter “was accepted to many colleges both in and out of state” and that an account valuation statement from April 2021 “was a critical piece in our decision on where [she] would attend college.” The beneficiary decided to enroll at Princeton University, which she stated later gave rise to a \$12,744.22 shortfall. The account holder reported

that she has taken out a loan on her life insurance policy to help pay for tuition for the fall semester and subsequently borrowed money to cover costs for the spring 2023 semester.

In March 2023, an account holder submitted testimony to the General Assembly stating that he would not have purchased a MPCT contract if he had thought that he was “merely betting that tuition rates would go up.” He continued, saying that “[t]he 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.”

One account holder indicated that “Despite our planning and efforts, as a direct result of MPCT’s abysmal failure to perform, I was forced to wipe out my personal savings in 2022 – expending more than \$20,000 out-of-pocket to avoid defaulting on payments of expenses wholly qualified to be funded through 529’s rollover option.” Similarly, another account holder shared that “our family cancelled vacations over the holidays because we were uncertain of it and how much money we would have access to and if we would have to empty our savings account to cover payments that should be coming from our MPCT account.” Other account holders utilized emergency savings, such as the one who wrote to STO in May 2023: “The rollover process was a nightmare from start to finish. We did not get access to the funds until the beginning of January 2023. We ended up having to dip into our emergency fund to pay all of 2022 out of our pocket. This has caused financial hardship for our family, as well as many sleepless nights, and high levels of stress.”

An account holder who purchased two plans in 2006 wrote about the need to refinance her home. “Today, our older son...is attending Cornell University after transferring from Howard Community College. We counted on the earnings on his account to help pay for his education at this revered institution. As you have already heard from so many of my new MD529 DisTrust friends, we were unable to do that. Consequently, we had to refinance our home, trading in our historically low mortgage rate for a much higher one to pay his fall tuition. We are now paying his Spring tuition on a payment plan, out of our very limited savings. We need his account earnings NOW.”

One account holder submitted a written comment to STO describing how her son made the “gut-wrenching” decision to turn down a “rather large merit scholarship” of \$82,000 to Louisiana State University because they did not know the value of their account. She went on to explain that the in-state school’s room and board cost an additional \$14,000 per year above the tuition and fees covered by the MPCT, so he is also commuting from home to save money.

Requests

Just as how common themes emerged in the form of questions and concerns, a few distinct requests came through in the public testimony. More than anything else, account holders requested what they describe as restoration of their earnings. Some requested the FAFSA Value from calendar year 2021 while others requested 6% interest on contributions since inception. For example, one account holder wrote: “Dear Treasurer Davis, [t]he attached statement and supporting documents are our family’s request that you honor the 6% rollover and refund value on investments for all participants currently in Maryland 529. Our family and others have been damaged enough by this entire incident and look to your office to make us whole. Thank you for

hearing us and I am hopeful that you will do the right thing for Maryland families.” Another account holder wrote to the General Assembly:

I respectfully request that the Maryland General Assembly require the State Treasurer to honor the December 2021 annual statement balances provided to account holders, plus all appropriate interest accrued after December 31, 2021. The funds used to credit these accounts should be taken from the program’s surplus...(as of June 30, 2022). This should be done in time to allow families to receive their full benefits before Fall 2023 tuition payments are due. If the program’s surplus funds are insufficient, the Governor should include in the state budget the remaining amount needed to reimburse the account holders and the General Assembly should approve this appropriation.

Support for the Program

In addition to the complaints received from account holders, the General Assembly and STO received enough comments in support of retaining the MPCT program for future beneficiaries to warrant coverage in this Decision Memorandum. Within the testimony, the hallmark feature of the program – the guarantee of tuition payments – garnered support from account holders. For example, during legislative session, one account holder expressed concern over phasing out the program:

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.

Closing

The foregoing is a sampling of the testimony and statements received from MPCT account holders. Careful review of the public testimony has laid bare past management and communication

shortcomings of Maryland 529. In an effort to improve program performance, Treasurer Davis will continue to prioritize transparency and communication with account holders going forward.

ADDITIONAL CONSIDERATIONS IN MAKING EARNINGS RATE DECISIONS

Treasurer's Fiduciary Duties

Any decision on an earnings rate must consider the Trustee's fiduciary duties under statute. The Maryland 529 Law¹²⁸ provides that the Treasurer, as a fiduciary of the Maryland Prepaid College Trust, is required to discharge his fiduciary duties with respect to the Trust:

- (1) Solely in the interest of the participants;
- (2) For the exclusive purposes of providing benefits to the participants and providing reasonable expenses of administering the Trust;
- (3) With the care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims;
- (4) By diversifying the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;
- (5) In accordance with the laws governing the Trust; and
- (6) In accordance with the documents and instruments governing the Trust to the extent that the documents and instruments are consistent with this subtitle.¹²⁹

In addition to the affirmative duties imposed on a fiduciary of the Trust, the Maryland 529 Law states that in "exercising authority, control or discretion with respect to the Trust," a fiduciary may not:

- (1) Use the assets of the Trust for the fiduciary's own interest or account;
- (2) Act in a transaction involving the Trust on behalf of a person, or represent a person, if the interests of the person are adverse to the interests of the Trust or the interests of participants;

(3) Receive any consideration for the fiduciary's own account from a person dealing with the Trust in connection with a transaction involving the assets of the Trust; or

(4) Become an endorser or surety or, in any manner, an obligor, for money lent to or borrowed from the State Treasurer.¹³⁰

Actuarial Soundness of the Trust

Any decision on an earnings rate must also allow the Trust to remain actuarially sound.¹³¹ Defining actuarial soundness is a complex undertaking. As discussed by the Virginia College Savings Plan:

“Actuarial soundness” is not a precise concept and there is no generally accepted understanding of the meaning of this phrase within the actuarial profession, especially with respect to prepaid tuition plans. . . . [W]e have assumed that the phrase “actuarially sound,” . . . means that the [prepaid trust] has sufficient assets (including the value of future installment payments due under current contracts) to cover the actuarially estimated value of the tuition obligations under those contracts (including any administrative costs associated with those contracts).¹³²

Any analysis as to actuarial soundness necessarily requires that assumptions be made as to how future events will unfold. To determine whether the Trust has sufficient assets to cover the actuarially estimated value of the tuition obligations under MPCT contracts, the primary assumptions that need to be made relate to the future investment earnings of the Trust and the rate of increases for in-state tuition and fees.¹³³ Because those assumptions may not correspond to how future events actually unfold, the industry standard is for prepaid plans to aspire to a funded ratio of assets to obligations of 130%.

DECISION OF THE STATE TREASURER

While Chapter 113 established a process to address claims relating to the contract changes that went into effect on November 1, 2021, the most efficient and expedient way to give account holders access to earnings for the fall 2023 semester is through the implementation of a retroactive earnings rate. For that reason, Treasurer Davis has prioritized making the earnings rate decisions discussed below.

Prior to any decision being made, the Treasurer needed to assess the impact of any decision on the actuarial soundness of the Trust. Initially, there was universal optimism that STO would be able to quickly gain a clear understanding of the actuarial impact of any earnings rate decision on the Trust. Despite working for months leading up to and following the Maryland 529 transition to STO on June 1, the State encountered data issues that made coming to that understanding difficult. The Trust is a complicated program with over 31,000 individual accounts set up with one of three tuition plans and one of five payment options. Benefits can be paid under different formulas for

in-state public colleges, in-state private colleges, and out-of-state colleges. The value of benefits is impacted by a variety of factors, including how long an account has been in existence and whether a beneficiary has received a scholarship, grant, or tuition remission. The business rules that establish programming guidelines for the automated recordkeeping system are almost 100 pages long. Understanding the calculation issues and the impact of accounting changes on all 31,000 accounts requires patience and precision.

The Treasurer has worked with the MPCT actuary to run decision scenarios using data received from the automated recordkeeping system. Unfortunately, until the programming for the automated recordkeeping system is updated,¹³⁴ the available data suffers from the same issues that caused the current situation. While making determinations as to actuarial soundness always involves making assumptions that may not bear out in the future, the actuarial analysis in this case was further complicated by these data issues. STO has worked with the actuary to develop assumptions for the performance of actuarial calculations using the data provided. The actuarial calculations using those assumptions have provided assurance that the following decisions of the Treasurer are affordable.

Notwithstanding the lack of a final actuarial analysis using data from the updated automated recordkeeping system, Treasurer Davis has made three decisions based on the best-available data.

- First, for contributions made prior to November 1, 2021, the annual earnings rate will be 6%, compounded monthly, applied retroactively to the date of contribution and effective until the earlier of: (1) the Zero Earnings Effective Date (as defined below), (2) the date benefits are withdrawn,¹³⁵ or (3) the date of contract termination. This decision only applies to accounts that were open and active on the automated recordkeeping system on November 1, 2021.
- Second, for contributions that posted to an account on or after November 1, 2021, the annual earnings rate will be a rate equal to the 10-year Treasury note,¹³⁶ compounded monthly, and effective until the earlier of: (1) the Zero Earnings Effective Date, (2) the date benefits are withdrawn,¹³⁷ or (3) the date of contract termination.
- Third, beginning on a date no later than July 1, 2024 (the “Zero Earnings Effective Date”), all contributions and all balances in an account will earn zero percent interest. At least 60 days prior to the Zero Earnings Effective Date, notice will be given to account holders of this change.

Beginning on the Zero Earnings Effective Date, accounts will no longer accrue new earnings, however earnings existing on the Zero Earnings Effective Date will continue to be reflected in account values. This decision, along with the implementation of a ledger system, will address issues raised about MPCT in the OLA Audit and will ensure certainty in the prospective management of Maryland 529.

Decision to Transition to Zero Earnings

The decision to transition to contributions no longer accruing earnings no later than July 1, 2024, was not one which Treasurer Davis made lightly. This section will explain why, as the sole fiduciary of the Trust, the Treasurer believes that it is the correct decision.

Transition to Zero Earnings Provides Assurance that Trust will Remain Actuarially Sound

As discussed above, until the programming is updated and the ledger system is implemented,¹³⁸ it is impossible to have a true and complete understanding of the impact of any decision on the actuarial soundness of the Trust. While the decision to provide an earnings rate of 6% retroactive to date of contribution is affordable, the move to zero earnings no later than July 1, 2024, will ensure that the Trust remains actuarially sound in future years.

Transition to Zero Earnings is Consistent with Legislative Intent of MPCT

There is substantial evidence that the intent of the General Assembly was for the Prepaid Trust to be a defined benefit plan where the primary benefit to an account holder is the ability to lock in the value of tomorrow's tuition at today's price.¹³⁹ As of the Zero Earnings Effective Date, the Trust will more closely resemble and conform to the original intent of the legislature.

Zero Earnings is Consistent with Benefits Provided by Other States

While many prepaid tuition plans throughout the country have been shuttered,¹⁴⁰ STO has undertaken a review of the prepaid plan documentation from the states that have retained prepaid tuition plans. Only Virginia, whose plan is closed to new enrollees, and Massachusetts, whose plan is structured drastically differently than MPCT, offer any rate of return on contract payments in excess of the prepaid tuition defined benefit. Florida, Illinois, Michigan, Nevada, Pennsylvania, Texas, and Washington have defined benefit plans where the only contract benefit is the receipt of prepaid tuition credits.¹⁴¹ The decision to change the earnings rate to zero percent as of the Zero Earnings Effective Date, will bring Maryland's prepaid plan in line with the majority of jurisdictions that have a prepaid plan.

Earnings Rate Decisions are Permitted under Terms of Contract

The terms of the MPCT contract that relate to contract changes are set forth in the MPCT Disclosure Statement and read as follows:

Changes to the Contract. We may amend the terms of this Contract from time to time to comply with changes in the law or regulations or if we determine it is in Maryland 529's and/or the Prepaid College Trust's best interest to do so. However, we 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, Maryland 529, or the Prepaid College Trust. We will promptly notify you of such

amendments, and you will be bound thereby unless you notify us in writing of your intent to terminate the Contract within 60 days of the date of the notice.

Treasurer Davis has determined that the earnings rate decisions discussed herein are in the best interest of the Trust. Furthermore, this decision does not retroactively modify any existing contract provision in an adverse manner, either from the contract provisions in effect as of November 1, 2021, or from the contract provisions in effect prior to November 1, 2021.¹⁴² The move to no earnings will occur at some future date much more than 60 days from now and at least 60 days' notice will be provided when that date is determined. Account holders that do not wish to be bound by these new contract terms may request a rollover to another qualified state tuition program.

Difference in Value as Compared with FAFSA Values from 2021 Year-End Statement

Even with the imposition of a 6% earnings rate retroactive to the date of contribution, it is unlikely the manual calculations will precisely match the 2021 year-end statements provided to account holders. As noted in "Summary of Current Understanding of Calculation Issues," there were multiple issues that impacted the accuracy of the 2021 year-end statements. The manual calculations will reflect the utilization of a ledger system to properly calculate earnings on contributions.

CONCLUSION

After conducting a comprehensive review of the history of the Prepaid Trust and taking into consideration the feedback received from account holders, Treasurer Davis has reached a decision that balances fiduciary responsibilities and account holders' needs. This decision provides account holders with the benefit of their interpretation of the contract changes. This decision also moves forward with the original intent of the plan – to be a prepaid trust that offers a defined benefit rather than a market-sensitive plan with benefits driven by earnings.

STO will continue to provide information to account holders and answer as many questions as possible. It will take time to communicate with each account holder about the impact of this decision on an individual level, but STO will do so as quickly as possible. Additional updates on the claims process and next steps will continue to be provided to account holders.

Before concluding, it is important to emphasize that, despite any misinformation to the contrary:

- The Trust's investments are safe and accounted for and are not impacted by the earnings calculation issues;
- The Trust's records of principal contributions and distributions are not impacted by the earnings calculation issues; and

- The earnings calculation issues of the Trust do not impact MCIP or the ABL program in any way.

More information will be forthcoming about the implementation of the Treasurer’s Decision including information regarding how to access account earnings and make payments of fall tuition. In addition, the Treasurer will be providing additional guidance on refunds, rollovers and the timing of the claims process established by the General Assembly.

ENDNOTES

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- ¹ “Fragment on Government,” Collected Works of Abraham Lincoln, Volume 2, found at the University of Michigan website: Collected Works of Abraham Lincoln. Volume 2: <https://quod.lib.umich.edu/l/lincoln/lincoln2/1:261?rgn=div1;view=fulltext>, accessed on June 7, 2023.
- ² Annotated Code of Maryland, Education Article § 18-1902.
- ³ The Maryland Prepaid College Trust may be referred to herein as the “Trust,” “MPCT,” or the “Prepaid Trust.”
- ⁴ *See infra* “Background – The Current Situation.”
- ⁵ Email from Janaki Kannan of Maryland 529 to Heather Chisholm at Intuition, dated April 15, 2022, 11:09 a.m.
- ⁶ *See infra* “Background – Summary of Current Understanding of Calculation Issues.”
- ⁷ *See* Statement from the Maryland 529 Board in March 2, 2023 Update posted to the Maryland 529 website (emphasis added), <https://maryland529.com/Account-Holders/Maryland-Prepaid-College-Trust/MPCT-Earnings-Calculation-Updates>.
- ⁸ Written Comment to STO, May 19, 2023 (includes attachments from account holder corresponding with Maryland 529 staff).
- ⁹ *Id. See also infra* “Summary of Testimony from Account Holders.”
- ¹⁰ Testimony for Senate Bill 959, Senate Budget and Taxation Committee, March 14, 2023. (SB 959 - BT Testimony page 52). *See also infra* “Summary of Testimony from Account Holders.”
- ¹¹ Written Comment to STO, May 20, 2023. *See also infra* “Summary of Testimony from Account Holders.”
- ¹² Senate Bill 959 (Chapter 113 of the 2023 Acts of Maryland), found at the General Assembly’s website: https://mgaleg.maryland.gov/2023RS/chapters_noln/Ch_113_sb0959E.pdf, accessed on June 7, 2023.
- ¹³ Hannah Gaskill, *Senate to Consider moving Maryland 529 college savings agency under treasurer to ‘fix a program that has lost its way’*, BALTIMORE SUN (Feb. 24, 2023)(quoting State Senate President Bill Ferguson) <https://www.baltimoresun.com/politics/bs-md-pol-ferguson-529-phase-out-20230224-busp7wstpvpgopjdmkrpwc47m-story.html> .
- ¹⁴ *See infra* “Decision of the Treasurer.”

15 *See infra* “Decision of the Treasurer.”

16 26 U.S.C. § 529.

17 The Taxpayer Relief Act of 1997 expanded the scope of Section 529 by introducing “Higher Education Savings Entities.” Taxpayer Relief Act, Pub. L. No. 105-34111 Stat. 788, 810-13 (1997), Small Business Jobs Act, Pub. L. No. 104-188, 110 STAT. 1755, 1895-1901 (1996).

18 SHARMILA MANN, EDUC. COMM’N OF THE STATES, 529 EDUCATION SAVINGS PLANS: FEDERAL ACTION AND STATE POLICY TRENDS 1 (Feb. 2019).

19 1997 Md. Laws 1609.

20 1997 Md. Laws 1609, §18–1902.

21 MCIP was established by the General Assembly in 2000 in accordance with Chapter 494, Acts of 2000. *See* 2000 Md. Laws 2625.

22 The ABLE Program was established by the General Assembly in 2016 in accordance with Chapter 39, Acts of 2016. *See* 2016 Md. Laws 626. ABLE plans are authorized under Section 529A of the Internal Revenue Code. 26 U.S.C. § 529A.

23 The board overseeing Maryland 529 was originally called the Board of the Maryland Higher Education Investment Program. 1997 Md. Laws 1611, § 18–1901(b). It was renamed the Maryland Higher Education Investment Board in July 2000, 2000 Md. Laws 2627, § 18–1901(b), and the College Savings Plans of Maryland Board in July 2003, 2003 Md. Laws 2746, § 18–1901(b). The board’s final name, the Maryland 529 Board, was changed effective July 2016. 2016 Md. Laws 629, § 18–1901(d).

24 2016 Md. Laws 629, § 18–1901(d).

25 *See infra* Legislative Response to Situation for a discussion of the legislation that abolished the Board.

26 MD. CODE ANN., EDUC. §§ 18-1901 to -1916 (amended in part and repealed in part 2023).

27 MD. CODE ANN., EDUC. § 18-1904(c) (repealed 2023).

28 MD. CODE ANN., EDUC. § 18-1905(c) (repealed 2023).

29 *See* revised “Maryland 529 - Delegation of Authority List” approved by the Board on June 23, 2022.

30 Section 529 describes two kinds of programs:

(1) In general. -- The term “qualified tuition program” means a program established and maintained by a State or agency or instrumentality thereof or by 1 or more eligible educational institutions--

(A) under which a person—

(i) may purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary, or

(ii) in the case of a program established and maintained by a State or agency or instrumentality thereof, may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account, and

(B) which meets the other requirements of this subsection.

31 *An Introduction to 529 Plans* (May 29, 2018) <https://www.sec.gov/about/reports-publications/investor-publications/introduction-529-plans>.

32 Reyna Gobel, *How Parents Can Hedge Against Rising Tuition Prices*, FORBES (Sept. 24, 2014) <https://www.forbes.com/sites/reynagobel/2014/09/24/how-parents-can-hedge-against-rising-tuition-prices/?sh=72ed5b806773>.

33 Charlotte Frank, *A Primer on Prepaid 529 Plans*, MORNINGSTAR (Sept. 28, 2019) <https://www.morningstar.com/personal-finance/primer-prepaid-529-plans>.

34 Betty Lochner, *5 Things You May Not Know About Prepaid Tuition Plans*, COLLEGE SAVINGS PLAN NETWORK (Oct. 15, 2012) <https://www.collegesavings.org/5-things-you-may-not-know-about-prepaid-tuition-plans/>.

35 Reyna Gobel, Brianna McGurran, *529 Prepaid Tuition Plan: Is It Right for You?*, FORBES (May 27, 2021) <https://www.forbes.com/advisor/student-loans/529-prepaid-tuition-plan/>.

36 Julia Kagan et al., *529 Plan: What It is, How It Works, Pros and Cons*, INVESTOPEDIA (Apr. 30, 2023) <https://www.investopedia.com/terms/1/529plan.asp>.

37 *Id.*

38 *What is a 529 Plan?*, SAVING FOR COLLEGE (Jan. 31, 2023) <https://www.savingforcollege.com/intro-to-529s/what-is-a-529-plan>.

39 Reyna Gobel, Brianna McGurran, *529 Prepaid Tuition Plan: Is It Right for You?*, FORBES (May 27, 2021) <https://www.forbes.com/advisor/student-loans/529-prepaid-tuition-plan/>.

40 *Id.*

41 When an account holder enrolls in the Prepaid Trust, they select one of three programs:

The University Plan: Options of (a) one semester or (b) one, two, three, or four years of university tuition prepaid;

The Community College Plan: One or two years of community college tuition prepaid; or

The Two-Plus-Two Plan: Two years of community college, plus two years of university tuition prepaid.

See MPCT Disclosure Statement, p.6. The contract payments are based on projections of the future cost of tuition and account holders can choose between the following choices of how to pay the contract price.

Lump-Sum Payment: One-time payment for the full Contract Price;

Annual Payment: Equal yearly payments for a set number of years;

Five-Year Monthly Payment: 60 equal payments over five years; or

Extended Monthly Payment: Equal monthly payments that end on the December before the Beneficiary is expected to enroll.

See MPCT Disclosure Statement, p.7.

42 *See* MPCT Disclosure Statement, p.17, “Payments into the Prepaid College Trust.”

43 *See* MPCT Disclosure Statement, p.18, “Comprehensive Investment Plan.”

44 *See* MPCT Disclosure Statement, p.15, “Discretion of the Board.”

45 *See infra* “Decision of the Treasurer -- Transition to Strictly Defined Benefit Plan is Consistent with Benefits Provided by Other States” for a discussion of the terms of other states’ prepaid plans.

46 *See* SUMMARY OF CONTRACT CHANGES *infra* for a description of these situations.

47 *See* MPCT Disclosure Statement, p.14, “Legislative Guarantee”; *see also* MD. CODE ANN., EDUC. § 18-1906.1(a)-(b) (if the “current prepaid contract obligations of the Trust exceed the market value of Trust assets, at the request of the Board, the Governor shall include in the annual budget bill submitted to the General Assembly an appropriation in the amount ... equal [to] the difference between the current prepaid contract obligations and the market value of Trust assets); but *see also* Md. Code Ann., Educ. § 18-1903 (“Money remaining in the Trust at the end of the fiscal year shall remain in the Trust and may not revert to the General Fund of the State” and “The debts, contracts, and obligations of the Trust are not the contracts, debts, or obligations of the State and neither the faith and credit nor taxing power of the State is pledged directly or indirectly or contingently, morally or otherwise, to the payment of the debts, contracts, and obligations”).

48 OFFICE OF LEGISLATIVE AUDITS, MARYLAND 529 AUDIT REPORT (2019).

49 OFFICE OF LEGISLATIVE AUDITS, MARYLAND 529 AUDIT REPORT 1 (2019).

50 Refunds allow an account holder to “cash out” contributions, subject to any penalties imposed by the Internal Revenue Service. Rollovers allow an account holder to transfer benefits to MCIP or another qualified state tuition program.

51 OFFICE OF LEGISLATIVE AUDITS, MARYLAND 529 AUDIT REPORT 2 (2019).

52 *Id.*

53 OFFICE OF LEGISLATIVE AUDITS, MARYLAND 529 AUDIT REPORT 24-26 (2019).

54 *Id.*

55 *Id.*

56 *Id.*

57 *Id.*

58 OFFICE OF LEGISLATIVE AUDITS, MARYLAND 529 AUDIT REPORT 27 (2019) (emphasis added).

59 OFFICE OF LEGISLATIVE AUDITS, MARYLAND 529 AUDIT REPORT 27 (2019).

60 OFFICE OF LEGISLATIVE AUDITS, MARYLAND 529 AUDIT REPORT 1 (2019).

61 The Banner System was “an enterprise resource planning software system that Maryland 529 had used to record account holder transactions since 2001.” *See* Grant Thornton Forensic Audit, page 3, n. 8. STO review indicates that by the summer of 2021 the Banner System had become antiquated and was functioning without consistent and necessary IT support.

62 REPORT OF FINDINGS AND OBSERVATIONS: FORENSIC REVIEW BASED ON CERTAIN FINDINGS AND
RECOMMENDATIONS RELATED TO MPCT DESCRIBED IN THE AUDIT REPORT PREPARED FOR MARYLAND 529
BY THE MARYLAND OFFICE OF LEGISLATIVE AUDITS DATED DECEMBER 3, 2019 at 3 (2021).

63 *Id.*

64 REPORT OF FINDINGS AND OBSERVATIONS: FORENSIC REVIEW BASED ON CERTAIN FINDINGS AND
RECOMMENDATIONS RELATED TO MPCT DESCRIBED IN THE AUDIT REPORT PREPARED FOR MARYLAND 529
BY THE MARYLAND OFFICE OF LEGISLATIVE AUDITS DATED DECEMBER 3, 2019 at 3-5 (2021).

65 Report of UHY LLP, Certified Public Accountants to the Board dated November 2, 2022.

66 Administration, Personnel & Finance Committee Minutes (Feb. 3, 2021).

67 Maryland 529 Board Meeting Minutes, p.6-7 (June 25, 2021).

68 Prepaid College Trust Disclosure Statement & Enrollment Form 12-13 (2020-2021) (emphasis added).

69 Maryland 529 Board Meeting Minutes, p.7 (June 25, 2021); *see also infra* “Summary of Contract Changes.”

70 Administration, Personnel & Finance Committee Minutes, p.1 (Feb. 3, 2021).

71 Maryland 529 Board Meeting Minutes, p.7 (June 25, 2021).

72 *Id.*

73 *Id.*

74 From the March 17, 2021, minutes of the Administration, Personnel & Finance Committee:

[Then 529 Executive Director] also provided background on the potential changes to the MPCT calculations to make the formula for calculating earnings consistent throughout the various types of transitions, i.e., rollovers, distributions, and refunds. She noted [the then actuary] *supports simplifying the calculations* and has provided estimates on the impact of these proposed changes on the funded status of the Trust.

(emphasis added).

75 *See* Update to Account Holders dated August 29, 2021 and MPCT Disclosure Statement. *See also infra* “Summary of Contract Changes” below for a description of how the contract changes were disclosed to account holders and how the contract changes impacted benefits for account holders.

76 *See infra* “Summary of Calculation Issues” for a description of STO’s current understanding of the calculation issues.

77 Email from Janaki Kannan of Maryland 529 to Heather Chisholm at Intuition, dated April 15, 2022, 11:09 a.m.

78 Maryland 529 Board Meeting Minutes, p.4 (Apr. 28, 2022).

79 Maryland 529 Board Meeting Minutes (July 15, 2022); Maryland 529 Board Meeting Minutes (Aug. 19, 2022).

80 Audit and Governance Committee Meeting Minutes (July 14, 2022).

81 Maryland 529 Board Meeting Minutes, p.1 (Sept. 9, 2022).

82 Second Addendum to September 12, 2022 Special Counsel Contract between the Office of the Attorney
General of Maryland and Nelson Mullins Riley & Scarborough, LLP effective as of October 13, 2022.

83 Maryland 529 Board Meeting Minutes, p.2 (Oct. 27, 2022).

84 *See infra* “Summary of Calculation Issues” and “Summary of Business Rule Changes” herein for more
information.

85 *See* Maryland 529 Board Meeting Minutes, p.2 (Oct. 27, 2022).

86 From the minutes of the closed session of the December 19, 2022 Board meeting:

RESOLVED, that the Board hereby confirms that it was the intention of the Board
in June 2021 to approve a 6% rate of return calculation for minimum benefits,
rollovers and refunds for balances held in accounts as of October 31, 2021, but
only moving forward beginning November 1, 2021 and not retroactively applying
the 6% earnings rate to the date of the prior contributions. Moreover, the Board
hereby clarifies its intent that any contributions received on or after November 1,
2021 would receive the June 30th 10-year Treasury Note rate, to be updated
annually. For further clarification, any account balance prior to November 1, 2021
will earn interest under the old contract terms, any balance on November 1, 2021
will earn a 6% interest and any contributions after November 1, 2021 will receive
interest at the 10-year Treasury Rate established on June 30th.

RESOLVED, the previous Resolution was to confirm a previous vote taken on
June 25, 2021 and not a change to the Board’s prior intentions or current
understanding of how the calculations should apply.

87 *But cf.*, for rollovers and refunds, the contract terms prior to November 1, 2021 provided an earnings rate
equal to the since inception rate of return for the Trust.

88 It should be noted that there is some evidence that the automated recordkeeping system may have actually
used a 5.5% earnings rate rather than the 6% earnings rate approved by Board at its June 25, 2021 meeting.

89 Danielle Douglas-Gabriel, *Moore signs Md. bill to transfer control of troubled 529 savings agency*, THE
WASHINGTON POST (April 24, 2023) [https://www.washingtonpost.com/education/2023/04/24/maryland-529-
college-savings-treasurers-office/](https://www.washingtonpost.com/education/2023/04/24/maryland-529-college-savings-treasurers-office/).

90 GRS, MARYLAND PREPAID COLLEGE TRUST: ACTUARIAL SOUNDNESS VALUATION REPORT AS OF JUNE 30,
2022 (Nov. 14, 2022).

91 *See infra* “Summary of Testimony from Account Holders.”

92 *See infra* “Summary of Testimony from Account Holders” for a summary of account holder complaints.

93 Lia Russell, *Delegates, Senate president pledge to pass Maryland 529 overhaul in session’s final weeks*,
BALTIMORE SUN (March 21, 2023) [https://www.baltimoresun.com/politics/bs-md-pol-ga-529-agency-
house-delegates-20230321-7kfzzawlzshb5o6ifw6epp3eie-story.html](https://www.baltimoresun.com/politics/bs-md-pol-ga-529-agency-house-delegates-20230321-7kfzzawlzshb5o6ifw6epp3eie-story.html).

94 S.B. 959, 443d Leg., Reg. Sess. §§ 2-3 (Md. 2023).

95 MD. CODE ANN., EDUC. § 18-1907.

96 MD. CODE ANN., EDUC. § 18-1905(d).

97 MD. CODE ANN., EDUC. § 18-1909(a).

98 MD. CODE ANN., EDUC. § 18-1909(g)(1).

99 MD. CODE ANN., EDUC. § 18-1909(g)(2).

100 MD. CODE ANN., EDUC. § 18-1917.

101 MD. CODE ANN., EDUC. § 18-1917(b).

102 MD. CODE ANN., EDUC. § 18-1917(h)-(i). *See also* MPCT Disclosure Statement, p.14, “Claims” (“Any claim by you or your Beneficiary against the Board pursuant to this Contract shall be made solely against the assets of the Prepaid College Trust”).

103 MD. CODE ANN., EDUC. § 18-1917(f)(1).

104 MD. CODE ANN., EDUC. § 18-1917(f)(2).

105 MD. CODE ANN., EDUC. § 18-1917(d)(2).

106 MD. CODE ANN., EDUC. § 18-1917(d)(3).

107 A link to the updated MPCT Disclosure Statement was sent to account holders by email on August 17, 2021 and a disclosure update was also mailed to account holders in August 2021.

108 A link to the updated MPCT Disclosure Statement was sent to account holders by email on December 12, 2022.

109 PEY means Projected College Enrollment Year under the MPCT contract.

110 If a Minimum Benefit is greater than a Tuition Benefit, a Beneficiary can use the difference for any other qualified higher education expenses—such as room and board or books.

111 As described in the Maryland Senator Edward J. Kasemeyer Prepaid College Trust Disclosure Statement & Enrollment Form for the December 1, 2020-June 30, 2021 enrollment period.

112 Note the definition of Minimum Benefit on page 4 of the MPCT Disclosure Statement states that this earnings rate applies to contributions in an account prior to October 31, 2021 while the description of the Minimum Benefit on page 9 of the MPCT Disclosure Statement states that this earnings rate applies to contributions in an account prior to November 1, 2021. STO believes, given the context, that November 1, 2021 should be interpreted as the correct date.

113 *Id.*

114 *See supra* “The Current Situation.”

115 The Intuition College Savings Solutions Business Rules for the Maryland Prepaid College Trust Program dated June 3, 2021 and approved and accepted by Maryland 529 on June 4, 2021.

116 In addition to the issues discussed more fully in this section, the definition of Minimum Benefit in the Disclosure Statement does not reflect the different usage of the term with respect to tuition benefits, rollovers and refunds; *i.e.*, the Minimum Benefit that would be available for a tuition distribution would be different than the Minimum Benefit available for a rollover or refund. A Minimum Benefit calculation for a tuition distribution would need to be calculated to reflect the number of units/semesters of tuition purchased under

the Contract whereas a rollover or refund calculation would not. Fortunately, the Original Business Rules do take this difference into account.

117 *See* MPCT Disclosure Statement, p. 4.

118 *See* MPCT Disclosure Statement, p. 4.

119 As discussed herein, STO is now in the process of implementing a ledger system that will reflect the actual dates and amounts of contributions and distributions.

120 The Original Business Rules for the automated recordkeeping system state that the “Minimum Benefit is defined as the payments made under the Contract (minus operating expenses) plus a flat annual rate compounded monthly.” Appendix A to Original Business Rules, p. 80 (the “Original Business Rules”). The Original Business Rules set forth the “flat annual rate of return” to be 5.5% (applied monthly) for the period from 2009 to July 1, 2021 and 2.5% (also applied monthly), thereafter. At this time, the derivation of these rates of return and whether the 2021 year-end statements employed these rates is unclear to STO.

121 Change Request Number 1, Change Request Number 3 and Change Request Number 5 were never executed by Maryland 529.

122 Change Order 2.

123 Change Order 4.

124 As discussed herein under “Background -- Board Approves Clarifications to MPCT Contracts at October 27, 2022 Meeting.”

125 Change Order 6 (i) confirms that the basis for each payment that will be attributed earnings in the ledger system is the result of the 2.5% Operating Expenses being applied to the difference of the contract payment less the \$4.00 payment processing fee; (ii) confirms that historical payments are reduced by applicable fees in the ledger system; (iii) confirms that any contributions made prior to November 1, 2021 had earnings attributed in accordance with the Board’s intent as expressed at its December 19, 2022 meeting; (iii) establishes a subledger system that will implement the FIFO system referred to in Change Order 4; (iv) confirms that payments received on or after November 1, 2021 should accrue earnings as set forth in the MPCT Disclosure Statement and establishes the methodology for calculating that earnings rate; (v) confirms that the calculation of refunds upon the death or disability of a beneficiary enrolled at an eligible institution is performed as set forth in the MPCT Disclosure Statement; and (vi) confirms that the calculation of refunds in the case of a scholarship, grant or tuition remission is performed as set forth in the MPCT Disclosure Statement.

126 *See infra* “Decision of the Treasurer.”

127 *See supra* “Summary of Current Understanding of Calculation Issues” herein.

128 MD. CODE ANN., EDUC. §§ 18-1901 through 18-1916.

129 MD. CODE ANN., EDUC. § 18-1907(b). These fiduciary duties were unchanged by the legislation transferring administration of Maryland 529 to the Treasurer. The same duties that applied to the Maryland 529 Board, as fiduciaries prior to June 1, 2023, now apply to the Treasurer, as current fiduciary of the Prepaid Trust.

130 MD. CODE ANN., EDUC. § 18-1907(c).

131 MD. CODE ANN., EDUC. § 18-1906(g) requires the Treasurer to review the Trust’s investment plan “at least annually to assure that the Trust remains actuarially sound.”

132 Actuarial Valuation of the Virginia529 prePAID as of June 30, 2015, p. 2;
<https://rga.lis.virginia.gov/Published/2015/RD489/PDF>.

133 Additional assumptions relate to, among other things, the timing of contract payments and distributions.

134 The MPCT Program Manager is currently working to make this change to its system and as of the time of
this decision work continues.

135 The language “the date benefits are withdrawn” should be interpreted as meaning that amounts withdrawn
should not accrue earnings rather than all earnings cease once any benefits are withdrawn.

136 This rate has not changed from the rate set forth in the MPCT Disclosure Statement for contributions made
after November 1, 2021. The Treasury note yield applicable to contributions will be updated annually each
June 30 and that yield will apply from July 1 of that year until June 30th of the following year. 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.

137 The language “the date benefits are withdrawn” should be interpreted as meaning that amounts withdrawn
should not accrue earnings rather than all earnings cease once any benefits are withdrawn.

138 The MPCT Program Manager is currently implementing this change to its system in accordance with Change
Order 6. *See supra* “Summary of Current Understanding of Calculation Issues.”

139 *See, e.g.*, OFFICE OF LEGISLATIVE AUDITS, MARYLAND 529 AUDIT REPORT 2 (2019) (“[T]he 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”). *See also* Fiscal and Policy Note for SB 959, page 6, and Fiscal and Policy
Note for SB 475, page 2, where the Department of Legislative Services summarized Maryland 529’s plans
the same way during its 2023 Session:

Maryland 529 currently offers three savings plans: one savings plan for
individuals with disabilities; and two savings plans for higher education
expenses. . . . *Of the two savings plans for higher education, one is a
defined benefit plan called the Maryland Prepaid College Trust, and the
other is an investment plan called the Maryland College Investment Plan.*

(emphasis added). *See also* Maryland Prepaid College Trust Application Booklet for the enrollment period
ending June 30, 1998 (“If I purchase a contract, do I own a ‘piece’ of the Program? The existence of a contract
creates the right to a future contract benefit. It does not create an ownership interest in any portion of the
Program or the Trust’s assets or earnings.”)

140 Alabama, Alaska, Colorado, Illinois, Kentucky, Ohio, South Carolina, Tennessee, Texas and West Virginia
have all closed their prepaid plans. *See* chart titled “Prepaid Plan Statistics (as of June 30, 2021 unless
otherwise noted)” prepared by the College Savings Plans Network ([https://www.collegesavings.org/wp-
content/uploads/2022/02/FINAL-CSPN-Mini-Con-Prepaid-One-Pager-Data-updated-2-24-22.pdf](https://www.collegesavings.org/wp-content/uploads/2022/02/FINAL-CSPN-Mini-Con-Prepaid-One-Pager-Data-updated-2-24-22.pdf)).

141 *See* Florida Prepaid College Program Master Contract
(<https://www.itppv.com/documents/pdf/prepaid/prepaid-master-contract.pdf>); College Illinois! 529 Prepaid
Tuition Program Disclosure Statement and Master Agreement (closed to new enrollments)
(<https://www.collegeillinois.org/Downloads/disclosure-statement-master-agreement2016-17.pdf>); Program
Description and Offering Statement relating to the U.Plan: The Massachusetts Tuition Prepayment Program
as of April 29, 2019, as supplemented by Supplement dated as of August 1, 2022
(<https://www.mefa.org/uploads/U.Plan-Offering-Statement.pdf>); Michigan Education Trust Enrollment Kit
for open enrollment period December 2022-January 2024 ([https://www.michigan.gov/-
/media/Project/Websites/setwithmet/documents/5354_MET_Enrollment_Kit.pdf?rev=097ff232adb1414ba6
0cfaa8170f2c50](https://www.michigan.gov/-/media/Project/Websites/setwithmet/documents/5354_MET_Enrollment_Kit.pdf?rev=097ff232adb1414ba60cfaa8170f2c50)); Office of the State Treasurer, Mississippi Prepaid Affordable College Tuition Program,

Master Contract for Horizon Contracts (Contracts purchased since 2014) (https://macsprogram.wpengine.com/wp-content/uploads/2019/08/Horizon_Master_Contract.pdf); Nevada Prepaid Tuition Program Description and Master Agreement ([https://www.nevadatreasurer.gov/uploadedFiles/nevadatreasurergov/content/Prepaid_Tuition/Features/NPT%202023%20Progam%20Description\(1\).pdf](https://www.nevadatreasurer.gov/uploadedFiles/nevadatreasurergov/content/Prepaid_Tuition/Features/NPT%202023%20Progam%20Description(1).pdf)); PA529 (A Section 529 Qualified Tuition Program) Guaranteed Savings Plan Disclosure Statement, April 2022 (<https://www.pa529.com/pdf/gsp/GSP-Disclosure-Statement.pdf>); Texas Tuition Promise Fund Plan Description and Master Agreement dated September 2014, as amended January 2015 and supplemented May 2016. (<https://geminifund.com/RegulatoryDocumentCenter/PublicDocuments/Current.aspx?FundFamily=Texas529Plan&DocType=TTPF-016&DisplayCommon=False&Fund=TTPF%20Literature>); Virginia529's prepaid529 Benefits Guide V2.0 1/1/2023 (closed to new enrollments) (https://www.virginia529.com/uploads/files/prepaid_benefits_guide.pdf); and 2022-23 Enrollment Guide for Washington State's 529 Prepaid College Tuition Program (<https://529.wa.gov/sites/default/files/2021-10/GET-Enrollment-Guide.pdf>).

142

Some account holders have contended that the changes to the calculation of rollover values as described *supra* under “Summary of Contract Changes” constitutes an adverse retroactive change to their contract. Prior to 2021, the rollover calculation used the quarterly since inception rate of return on the Trust as the rate of return. Since the earnings freeze in April 2022, the manual calculations have used a rate of zero percent to determine rollover value. Following implementation of the Treasurer’s decision, contributions prior to November 1, 2021 in accounts that were open and active on the automated recordkeeping system on November 1, 2021, will accrue earnings at a rate of 6%. The available quarterly since inception rates of return on the Trust applicable for the period from November 1, 2021, to the date of this Decision Memorandum are as follows:

Exhibit 5
MPCT Quarterly Since Inception Rate Since

Quarter Ended	Rate
9/30/2021	5.9%
12/31/2021	6.0
3/31/2022	5.7
6/30/2022	5.3
9/30/2022	5.1
12/31/2022	5.2
3/31/2023	5.3