

Testimony Before the
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Michael A. Olivas
William B. Bates Distinguished Chair in Law and
Director, Institute for Higher Education Law & Governance,
University of Houston Law Center
100 Law Center
Houston, Tx 77204-6060
molivas@uh.edu
(713) 743-2078

Chairman Baker, Representative Hinojosa, and members of the Subcommittee: I am Michael

A. Olivas, Professor of Law at the University of Houston Law Center, where I direct the Institute for Higher Education Law and Governance, the country's only university research center devoted to the study of college law and finance issues. Thank you for the opportunity to present testimony this morning and to share research on prepaid plans and college savings plans, which I have been studying since they began. In a series of books and articles, I have been tracking these plans before and since they were accorded 529 status, and I am a true believer in the efficacy of these plans and the need for parents and family members to contribute to their children's college education expenses. Because I have outlined my views elsewhere on the overall issues of equity and other public policy dimensions of these plans,¹ I will concentrate this morning upon the consumer information/transparency/complexity issues-concerns that this subcommittee, its parent committee, and other public officials and citizens have expressed about related financial instruments, such as mutual funds, annuities, and complex commercial transactions.²

The Problem of System Complexity

A good way to appreciate the complexity of 529 plans is to consider traditional retirement plans or 401K programs, and then make them more complicated. Virtually no state operates its prepaid or savings plans the same way as does another state. For example, Joseph H. Hurley, whose annual book, *The Best Way to Save for College*,³ rates state plans, records the following criteria for each:

- * Eligibility, or who can open an account
- * Time or age limitations on beneficiary or on use of account assets
- * Age-based investment options
- * Static investment options
- * Underlying investments
- * Fees and expenses (annual/enrollment/withdrawal)
- * Broker distribution
- * Contributions (maximum/minimum)
- * Account changes (beneficiary changes, transfer ownership, successor owners, rollover/transfer assets, investment options)
- * Full Faith and Credit

- * State income tax deductibility
- * Exemptions from creditors
- * Subject to involuntary transfer or alienation
- * Reciprocity with other state plans

In addition, there are many other complicated features, such as whether programs involve a state's private colleges (Texas); whether a state plan's withdrawal provisions conform to federal law (California, Arkansas); where there is a cancellation penalty (Illinois); whether a beneficiary can move from the state and maintain residency status (Texas); whether payroll deductions are permitted (Idaho); whether tuition alone is covered, or tuition and college fees (Virginia); whether receipt of a scholarship provides special refund provisions (Texas); whether there are special provisions for death, military service, disability, state financial aid eligibility, and a myriad of other conditions.

Of course, these many options reflect the maturity of investment markets and make the various plans extremely popular with parents and other investors, especially those plans that offer enhanced portability and tax benefits as program choices. Additionally, investors have many choices among investment funds, especially in state savings plans: Alaska offers eight age-based options and four static portfolios, while Tennessee and Vermont offer eleven age-

based funds, all managed by TIAA-CREF. Texas maintains thirteen fund options. Each state also maintains at least one major diversified investment portfolio for its base funds. California even offers a “social investment” portfolio, one that invests only in stocks considered socially and environmentally progressive, such as not including alcohol or tobacco interests.

As attractive as these choices are, an observer cannot help but question whether a state program really requires thirteen or more investment choices for contract purchasers, each with a different fee structure, investment mix, and track record. The marginal advantages may not be evident in any annual review, while the state’s supervisory role is made more complicated by the extremely complex bid and review process, especially in states with intricate procurement and investment regulations. This lack of transparency is the clear disadvantage, held up to the mirror of enhanced investor choice. In my judgment, there are likely too many choices for most investors, the system’s complexity rendering comparable choice shopping too complicated for most investors, particularly for those who participate because they are risk-averse and do not feel comfortable simply investing in traditional instruments and beating the markets. I have a law degree and a PhD, have studied these state programs since their early versions, have written two books on the subject, own contracts in five states, and still cannot compare the plans across various states. There is almost too much dynamism in the plans, as states vie with other

to offer more plans and more complex options so as to attract more contract purchasers. A system can have too many choices, and can intimidate or paralyze unsophisticated buyers, especially in such churning markets.

This system complexity can become a barrier to market entry for some. The early state prepaid programs did not pose this issue, as purchasers simply bought into a contract that either performed well or did not, and in states with guaranteed state FF&C, the investment results literally made no difference to the purchasers (save for their concern about overall program efficacy, as in the Wyoming case).⁴ Consumers of state savings and trust plans, however, invest both for the substantial state and federal tax advantages, and for enhancing their investment returns. The lack of transparency is another result of system complexity and too many choices.

Yet another issue is that the range of investment options may have unintended consequences. Diverse plan options may encourage purchasers to place all their eggs in one basket. I have been concerned about the rise of single mutual funds as state options, both with and without brokers, in several state plans, such as those in Utah, Texas, and Nebraska. My concern is that many people in traditional marketplaces might choose mutual funds due to their broadly-based mix of stocks (or bonds, in some instances), when individual contract purchaser

needs may be poorly suited for such vehicles. For example, a mutual fund will likely track the performance of the Dow-Jones or Standard & Poor markets, when an investor with a teenaged or middle school child will need to better today's disappointing market performance. Use of a single mutual fund, which might be right for retirement planning, may not be a well balanced choice for some college going plans: college attendance will likely come soon after high school, whereas retirement age is subject to many features and can be postponed in real life. Joseph Hurley made this point dramatically in an October, 2002 editorial to his service subscribers to the Savings College Plan Network,⁵ when he noted a similar concern in his Utah Educational Savings Plan, a single 100% equity mutual fund option, offered by the private Vanguard Institutional Index Fund. While he notes that he is, in principle, for "greater investment choice," he is also concerned that such options will lead parents to place all their CSP eggs in one basket, rather than diversifying across several options, especially age-based ones that shift their investment mix as the beneficiary approaches college age. No doubt, he was also influenced by the mutual fund's poor performance in 2001-2002, when it lost over 30%, but his overall point is a good one, a situation exacerbated by system complexity.

Whenever information, such as how to best allocate and invest in state programs, is at a premium, the persons least likely to participate or prosper are the less-well educated, the poor,

immigrants, and minorities. Thus, system complexity in state prepaid and savings programs -- even in states with low barriers to entry and monthly payment options -- attract and reward the most advantaged and knowledgeable participants, much like the college application process itself, which so clearly serves the interests of advantaged and wealthier students. If information and investor savvy are needed for these dynamic investments, state prepaid and savings will widen the gap between wealthy and poor, majority and minority, street-smart and average persons.⁶

Finally, although the focus of this Subcommittee is on a more specific topic, I must point out that a number of issues remain to be resolved or addressed by the state or by Congress.

These include:

- interaction of state and federal taxation of the plans, including the 1997 Tax payer Relief Act College provisions and those of the Economic Growth and Tax Relief Reconciliation Act of 2001;
- effect of other federal programs upon financial aid (Hope, Lifetime Learning Credits, etc.);

- how to count applicable funds (such as Medicaid's "countable resources" or the "self help" provisions that can be gamed by families with access to sophisticated legal and accounting expertise;
- the differential treatment of income and assets in Expected Family Contribution (EFC) terms;
- the sunset provision of December 31, 2010 Sword of Damocles hanging over the heads of QTP participants.

Finally, I note that my earlier concerns about the viability of these programs have largely been met by the emergence of legislation and favorable tax treatment, including legal developments. However, as in any other public program, it is clear that the wealthy have more options and the poor cannot afford to avail themselves of the various tax vehicles or savings programs - although they value higher education for their children every bit as much as do the wealthy.

I urge you to facilitate truly comparable disclosure requirements, full and open participation data, usable program investment performance, and comprehensive eligibility and enrollment information. Because of unique state conditions and political considerations, each state has fashioned its own plan (or plans), and maybe we should just rejoice in the thousand

flowers blooming. But I fear that the program complexity has made this generous and useful universe off-putting to many parents and would-be contributors.

I have attached a copy of the various state plans, taken from a recent article. I hope this starting point will be useful to readers. If I may answer any questions or elaborate upon my views, I would be pleased to do so. Thank you for this opportunity to share my research and thoughts with you.

References

1. See, e.g., Michael A. Olivas, ed. *Prepaid Tuition Plans: Promise and Problems* (NY: College Bound, 1993); Barbara F. Jennings and Michael A. Olivas, *Prepaying and Saving for College, Opportunities and Issues* (DC: College Board, 2000).
2. There is a virtual library of such pieces: A sampling includes: Leonard Wiener, "Taxing Choices for Investors," *U.S. News & World Report*, May 3, 2004, p. 50; Kim Clark, "Vanguard Gets an Earful," *U.S. News & World Report*, May 3, 2004, 48; Jeff D. Opdyke, *College Savings 101: How We Chose*, *Wall Street Journal* Feb. 22, 2003, 2; Mark Schwanhausser, *Puzzling Tax Credits for College are Worth Study*, *Philadelphia Inquirer*, Mar. 24, 2003, C1; Hilary Appleman, *College Savings Plans: You'll Need a Scorecard*, *N.Y. Times*, Feb. 16, 2003, § 3, 16.
3. Joseph Hurley, *The Best Way to Save for College, A Complete Guide to 529 Plans* (Pittsford, NY: Savingforcollege.com Publications, 2003).
4. Wyoming, one of the earlier prepaid plans, closed in 1995, less than a decade after its 1986 start.
5. Joseph Hurley, *Whither Individual Funds?*, 529 E-ditorial (Oct. 17, 2002), at www.savingforcollege.com (last visited May 31, 2003). See also http://www.tia-crefinstitute.org/Data/statistics/tf_latest.htm (last visited May 20, 2004).
6. For a review of how these plans affect household savings and individual investor preferences, see Jennifer Ma, Mark Warshawsky, John Ameriks, and Julia Blohm, *An Economic Approach To Setting the Contribution Limits in Qualified State-sponsored Tuition Savings Plans* (Houston: IHELG Monograph 00-09, 2000) and Julia L. Coronado and Susan H. McIntosh, *The Impact of Qualified Tuition Savings Programs on Household Saving* (Houston: IHELG Monograph 00-10, 2000). These studies were published by my Institute with support from the Ford Foundation and Andrew W. Mellon Foundation, although neither funding source endorses the publications.

Tables adapted from Michael A. Olivas, *State College Savings and Prepaid Tuition Plans: A Reappraisal and Review*, 32 *J. L. & EDUC.* 474 (2003)

Table of State 529 Plans

State Prepaid/ Start Administrative Website

Savings Date Agency

Alabama Prepaid Affordable College Tuition (PACT)	P	1990	Alabama State Treasurer	www.treasury.state.al.us
Alabama Higher Education 529 Fund	S	2002	Alabama State Treasurer	www.treasury.state.al.us
Alaska University of Alaska College Savings Plan	S	2001	University of Alaska & the Alaska Trust	www.uacollegesavings.com
T. Rowe Price College Savings Plan	S	2001	University of Alaska and the Alaska Trust	www.troweprice.com/collegesavings
Manulife College Savings	S	2001	University of Alaska and the Alaska Trust	www.manulifecollegesavings.com
Arizona Arizona Family College Savings Program (CSB)	S	1999	The Arizona Commission for Postsecondary Education	http://arizona.collegesavings.com
Arizona Family College Savings Program (SMR)	S	1999	The Arizona Commission for Postsecondary Education	www.smrinvest.com

Waddell & Reed InvestEd Plan	S	2001	The Arizona Commission for Postsecondary Education	www.waddell.com
Arkansas GIFT College Investing Plan	S	1999	Arkansas Tax Deferred Tuition Savings Program Investment Committee & Executive Director of the Arkansas Teacher Retirement System	www.thegiftplan.com
California Golden State Scholar Share College Savings Trust	S	1999	ScholarShare Investment Board	www.scholarshare.com
Colorado CollegeInvest-Prepaid Tuition Fund	P	1997	Colorado Student Obligation Bond Authority and State Treasurer	www.collegeinvest.org
CollegeInvest - Scholars Choice College Savings Plan	S	1999	Colorado Student Obligation Bond Authority and State Treasurer	www.collegeinvest.org (Colorado Residents); www.scholars-choice.com (national)
Connecticut The Connecticut Higher Education Trust Program	S	1999	The Connecticut State Treasurer	www.aboutchet.com
Delaware Delaware College Investment Plan	S	1998	Delaware College Investment Board	www.fidelity.com/delaware

Florida Florida Prepaid College Program	P	1987	Florida Prepaid College Board	www.floridaprepaidcollege.com
Florida College Investment Program	S	2002	Florida Prepaid College Program Board	www.floridaprepaidcollege.com
Georgia Georgia Higher Education Savings Plan	S	2002	Georgia Office of the Treasury and Fiscal Services and Georgia Higher Education Savings Plan	www.gacollegesavings.com
Hawaii Hawaii College Savings Program Tuition Edge	S	2002	The Hawaii Department of Budget and Finance	www.state.hi.us/budget/college/college.htm
Idaho Idaho College Savings Program (IDeal)	S	2001	Idaho College Savings Program Board	www.idsave.org
Illinois College Illinois!	P	1998	Illinois Student Assistance Commission	www.collegeillinois.com
Bright Start College Savings Program	S	2000	Office of the State Treasurer	www.brightstartsavings.com
Indiana College Choice 529 Investment Plan	S	1997	Indiana Education Savings Authority chaired by the State Treasurer	www.collegechoiceplan.com

Iowa College Savings Iowa	S	1998	State Treasurer	www.collegesavingsiowa.com
Kansas Learning Quest Education Savings Program	S	2000	Kansas State Treasurer	www.learningquestssavings.com
Kentucky Kentucky Education Savings Plan Trust	S	1990	Kentucky Higher Education Assistance Authority	www.kentuckytrust.org
Kentucky's Affordable Prepaid Tuition (KAPT)	P	2001	KAPT Board of Directors & the Office of the State Treasurer	www.getkapt.com
Louisiana Student Tuition Assistance and Revenue Trust (START) Savings Program	S	1997	Louisiana Office of Student Financial Assistance, Louisiana Tuition Trust Authority, and State Treasurer	www.osfa.state.la.us/start.htm
Maine NextGen College Investing Plan	S	1999	Finance Authority of Maine and State Treasurer	www.nextgenplan.com
Maryland Maryland College Investment Plan	S	2001	Maryland Higher Education Investment Board	www.collegesavingsmd.org

Maryland Prepaid College Trust	P	1998	Maryland Higher Education Investment Board	www.collegesavingsmd.org
Massachusetts U.Fund College Investing Plan	S	1999	Massachusetts Educational Financing Authority	www.fidelity.com/ufund
U.Plan	P	1995	Massachusetts Educational Financing Authority	www.mefa.org
Michigan Michigan Education Trust	P	1988	MET Board of Directors and Department of Treasury	www.michigan.gov/treasury
Michigan Education Savings Program	S	2000	Michigan Department of Treasury	www.misaves.com
Minnesota Minnesota College Savings Plan	S	2001	Minnesota State Board of Investment and Minnesota Higher Education Services Office	www.mnsaves.org
Mississippi Mississippi Prepaid Affordable College Tuition (MPACT) Program	P	1997	Mississippi Treasury Dep't	http://www.treasury.state.ms.us/mpact.htm

Mississippi Affordable College Savings (MACS) Program	S	2001	Mississippi Treasury Dep't	www.collegesavingsms.com
Missouri Missouri Saving for Tuition (MO\$T) Program	S	1999	Missouri Higher Education Savings Program Board, chaired by State Treasurer	www.missourimost.org
Montana Montana Family Education Savings Program	S	1998	The Montana Board of Regents of Higher Education	http://montana.collegesavings.com
Nebraska College Savings Plan of Nebraska	S	2001	State Treasurer and Nebraska Investment Council	www.PlanForCollegeNow.com
AIM College Savings Plan	S	2001	State Treasurer and Nebraska Investment Council	www.aiminvestments.com
Nevada Nevada Prepaid Tuition Program	P	1998	Bd of Trustees of the College Savings Plan of Nevada and the State Treasurer's Office	http://nevadatreasurer.com/prepaid
America's College Savings Plan	S	2001	Bd of Trustees of the College Savings Plan of Nevada chaired by state treasurer	www.americas529plan.com

American Skandia College Savings Program	S	2002	Bd of Trustees of the College Savings Plan of Nevada chaired by state treasurer	www.americanskandia.com
New Hampshire UNIQUE College Investing Plan	S	1998	State Treasurer	www.fidelity.com/unique
The Advisor College Investing Plan	S	2001	State Treasurer	www.advisorxpress.com
New Jersey New Jersey Better Educational Savings Trust (NJBEST)	S	1998	Higher Education Student Assistance Authority & the New Jersey Dep't of the Treasury, Division of Investment	www.hesaa.org/students/njbest
New Mexico The Education Plan's Prepaid tuition Program	P	2000	The Education Trust Board of New Mexico	www.tepnm.com
The Education Plan's College Savings Program	S	2000	The Education Trust Board of New Mexico	www.theeducationplan.com

CollegeSense	S	2001	The Education Trust Board of New Mexico	www.collegesense.com
Scholar'sEdge	S	2001	Education Trust Board of New Mexico	www.scholarsedge529.com
New York New York's College Savings Program	S	1998	Office of the State Comptroller and NYS Higher Education Services Corporation	www.nysaves.org
North Carolina North Carolina's National College Savings Program	S	1998	North Carolina State Education Assistance Authority	www.cfnc.org/savings
Seligman College Horizon Funds	S	2001	North Carolina State Education Assistance Authority	www.seligman529.com
North Dakota College Save	S	2001	Bank of North Dakota	www.collegesave4u.com
Ohio CollegeAdvantage Savings Plan	S	1989	Ohio Tuition Trust Authority	www.collegeadvantage.com

Putnam CollegeAdvantage Savings Plan	S	2000	Ohio Tuition Trust Authority	www.putnaminvestments.com
Oklahoma Oklahoma College Savings Plan	S	2000	Board of Trustees, Chaired by State Treasurer	www.ok4saving.org
Oregon Oregon College Savings Plan	S	2001	Oregon Qualified Tuition Savings Board, chaired by State Treasurer	www.oregoncollegesavings.com
Pennsylvania Tuition Account Guaranteed Savings Program (TAP)	S	1993	Pennsylvania State Treasury	www.patap.org
Rhode Island CollegeBoundfund	S	1998	Rhode Island Higher Education Assistance Authority and the State Investment Commission	www.collegeboundfund.com
South Carolina South Carolina Tuition Prepayment Program (SCTPP)	P	1998	State Treasurer	www.scgrad.org
FUTUREScholar 529 College Savings Plan	S	2002	Office of State Treasurer	www.futurescholar.com

South Dakota CollegeAccess	S	2002	South Dakota Investment Council	www.collegeaccess529.com
Tennessee Tennessee's BEST Prepaid College Tuition Plan	P	1997	Treasury Department and 9 member Board chaired by State Treasurer	www.treasury.state.tn.us/best.htm
Tennessee's BEST Savings Plan	S	2000	Tennessee's Baccalaureate Education System Trust & State Treasurer	www.tnbest.org
Texas Texas Tomorrow Fund	P	1996	State Comptroller's Office and the Texas Prepaid Higher Education Tuition Board	www.texastomorrowfunds.org
Tomorrow's College Investment Plan	S	2002	Texas Prepaid Higher Education Tuition Board	www.enterprise529.com
Utah Utah Educational Savings Plan Trust (UESP)	S	1997	Utah Higher Education Assistance Authority and State Treasurer	www.uesp.org

Vermont Vermont Higher Education Investment Plan	S	1999	Vermont Student Assistance Corp.	www.vsac.org
Virginia Virginia Prepaid Education Program	P	1996	Virginia College Savings Plan Board and its Executive Director	www.virginia529.com
Virginia Education Savings Trust (VEST)	S	1999	Virginia College Savings Plan Board and its Executive Director	www.virginia529.com
CollegeAmerica	S	2002	Virginia College Savings Plan Board and its Executive Director	www.americanfunds.com
Washington Guaranteed Education Tuition (GET)	P	1998	Washington State Higher Education Coordinating Board	www.get.wa.gov
West Virginia West Virginia Prepaid College Plan	P	1998	State Treasurer's Office under the authority of the West Virginia College Prepaid Tuition and Savings Program Board of Trustees	www.wvtreasury.com

SMART 529	S	2002	State Treasurer's Office	www.wvtreasury.com
Wisconsin EdVest College Savings Program	S	1997	Wisconsin College Savings Program Board and the Office of the State Treasurer	www.edvest.com
Tomorrow's Scholar	S	2001	Wisconsin College Savings Program Board and the Office of the State Treasurer	www.tomorrowsscholar.com
Wyoming College Achievement Plan	S	2000	State Treasurer	www.collegeachievementplan.com