

Recommendations and Policy Options: Defined Benefit 529 Surplus Funds

JLARC staff typically make recommendations to address findings during reviews. Staff also sometimes propose policy options rather than recommendations. The three most common reasons staff propose policy options rather than recommendations are: (1) the action proposed is a policy judgment best made by the General Assembly or other elected officials, (2) the evidence indicates that addressing a report finding is not necessarily required, but doing so could be beneficial, or (3) there are multiple ways in which a report finding could be addressed and there is insufficient evidence of a single best way to address the finding.

Recommendations

RECOMMENDATION 1

The General Assembly may wish to consider directing in statute the removal of actuarial surplus funds from the Defined Benefit 529 fund 1) in annual increments over a period of at least five years, and 2) up to an amount that would maintain an annual funded status of at least 125 percent for the Legacy Prepaid529 and Tuition Track Portfolio programs through FY44 based on the Virginia529 board's approved investment return and tuition increase assumptions. (Chapter 2)

RECOMMENDATION 2

If the General Assembly directs the removal of actuarial surplus funds from the Defined Benefit 529 (DB529) fund in statute, it may wish to consider establishing an independent standing committee that includes members with investment and actuarial expertise to review each planned annual withdrawal using updated actuarial and liquidity modeling and approve each annual withdrawal. Following the planned withdrawals of surplus funds, the General Assembly should direct that the independent standing committee have ongoing responsibility to evaluate the actuarial surplus of the DB529 fund at least every two years for the purpose of determining whether additional surplus funds can be removed subject to maintaining a funded status of at least 125 percent and ensuring adequate fund liquidity. (Chapter 2)

RECOMMENDATION 3

If the General Assembly directs the removal of actuarial surplus funds from the Defined Benefit 529 fund to return surplus funds to Legacy Prepaid529 account holders, it may wish to consider amending the Code of Virginia to provide clear statutory authority and direction to Virginia529 that surplus funds can be used to provide refunds to account holders. (Chapter 3)

RECOMMENDATION 4

If the General Assembly directs the removal of actuarial surplus funds from the Defined Benefit 529 fund to return surplus funds to Legacy Prepaid529 account holders, it may wish to consider requiring Virginia529 to develop a plan for returning surplus funds to account holders. Virginia529 should provide the plan to the House Appropriations Committee, the Senate Finance and Appropriations Committee, and the Joint Legislative Audit and Review Commission prior to implementing it. (Chapter 3)

RECOMMENDATION 5

If the General Assembly directs the removal of actuarial surplus funds from the Defined Benefit 529 (DB529) fund to provide funding for higher education access and affordability programs, it may wish to consider amending §23.1-701.C of the Code of Virginia to specify funding for higher education access and affordability programs as an allowable use of surplus funds derived from administrative fee proceeds allocated by Virginia529 to the DB529 fund. (Chapter 3)

RECOMMENDATION 6

If the General Assembly directs the removal of actuarial surplus funds from the Defined Benefit 529 fund to provide funding for higher education programs, it may wish to consider amending §23.1-701.D of the Code of Virginia to provide Virginia529 board members with immunity from legal liability for disbursing surplus funds. (Chapter 3)

RECOMMENDATION 7

If the General Assembly directs the removal of actuarial surplus funds from the Defined Benefit 529 fund and designates funds for higher education access and affordability, it may wish to consider establishing in statute a dedicated fund for the purpose of annually allocating surplus funds to meet higher education access and affordability needs. (Chapter 4)

RECOMMENDATION 8

If the General Assembly directs the creation of a dedicated higher education fund with actuarial surplus funds from the Defined Benefit 529 fund, it may wish to consider (i) authorizing in statute the types of access and affordability programs that could receive allocations of dedicated funds, (ii) giving the State Council of Higher Education for Virginia (SCHEV) responsibility for making allocations of funds within those statutory guidelines, and (iii) directing SCHEV to establish an advisory committee to advise the council on making allocations of dedicated funds that comprises individuals with higher education experience and includes a representative of the Virginia Community College System and a representative of Virginia's historically black colleges and universities. (Chapter 4)

RECOMMENDATION 9

If the General Assembly directs the creation of a dedicated higher education fund with actuarial surplus funds from the Defined Benefit 529 (DB529) fund, it may wish to consider directing Virginia529 to manage the investment of fund assets together with DB529 funds but to account for them separately. (Chapter 4)

Policy Options to Consider

POLICY OPTION 1

If the General Assembly directs the removal of actuarial surplus funds from the Defined Benefit 529 fund, it could designate 60 percent of removed surplus funds to be returned to Legacy Prepaid529 account holders and 40 percent of removed surplus funds to support higher education access and affordability programs. (Chapter 3)

POLICY OPTION 2

If the General Assembly directs the removal of actuarial surplus funds from the Defined Benefit 529 fund and designates funds for Legacy Prepaid529 account holders, it could direct Virginia529 to return funds to account holders whose beneficiary attended, attends, or will attend a higher education institution with tuition that is less than the weighted average tuition at the time of attendance. (Chapter 3)

POLICY OPTION 3

If the General Assembly directs the removal of actuarial surplus funds from the Defined Benefit 529 fund and designates funds for Legacy Prepaid529 account holders, it could direct Virginia529 to return funds to account holders whose contract price was higher than the weighted average tuition (WAT) for the difference between the contract price paid and WAT at the time. (Chapter 3)

POLICY OPTION 4

If the General Assembly directs the removal of actuarial surplus funds from the Defined Benefit 529 fund and designates funds for Legacy Prepaid529 account holders, it could direct Virginia529 to return to all account holders the same refund for each of the Prepaid529 contracts they purchased. (Chapter 3)

POLICY OPTION 5

If the General Assembly directs the removal of actuarial surplus funds from the Defined Benefit 529 fund and designates funds for Legacy Prepaid529 account holders, it could give the Virginia529 board discretion to determine how best to return funds to account holders. (Chapter 3)

POLICY OPTION 6

If the General Assembly directs the removal of actuarial surplus funds from the Defined Benefit 529 fund and designates funds for higher education access and affordability, it could use the funds to provide additional grants for high financial need or at-risk students. (Chapter 3)

POLICY OPTION 7

If the General Assembly directs the removal of actuarial surplus funds from the Defined Benefit 529 fund and designates funds for higher education access and affordability, it could use the funds to pilot a new state financial aid progression bonus program that requires public higher education institutions to provide bonuses of at least \$1,200 to students who re-enroll for their sophomore, junior, and senior years. (Chapter 3)

POLICY OPTION 8

If the General Assembly directs the removal of actuarial surplus funds from the Defined Benefit 529 fund and designates funds for higher education access and affordability, it could use the funds to establish a state emergency financial aid program that provides public higher education institutions with grant funding for students who are facing a financial emergency that puts them at risk of dropping out. (Chapter 3)

POLICY OPTION 9

If the General Assembly directs the removal of actuarial surplus funds from the Defined Benefit 529 fund and designates funds for higher education access and affordability, the State Council of Higher Education for Virginia could conduct a review to estimate the need for additional support services for at-risk high school and postsecondary students and the annual cost of providing these services. (Chapter 3)

POLICY OPTION 10

The General Assembly could direct Virginia529 to allocate future net administrative fee proceeds to a dedicated fund for higher education access and affordability. The allocation of net fee proceeds could be contingent on the Defined Benefit 529 fund having a funded status of at least 125 percent and having adequate liquidity to meet projected cash flow needs. (Chapter 4)
