

115TH CONGRESS
1ST SESSION

S. 268

To provide the legal framework necessary for the growth of innovative private financing options for students to fund postsecondary education, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 2017

Mr. YOUNG (for himself and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide the legal framework necessary for the growth of innovative private financing options for students to fund postsecondary education, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Investing in Student
5 Success Act of 2017”.

6 **SEC. 2. DEFINITION.**

7 In this Act, the term “income share agreement”
8 means an agreement between an individual and any other
9 person under which the individual commits to pay a speci-

1 fied percentage of the future income of the individual, for
 2 a specified period of time, in exchange for payments to
 3 or on behalf of the individual for postsecondary education,
 4 workforce development, or other purposes.

5 **TITLE I—AUTHORIZATION OF** 6 **INCOME SHARE AGREEMENTS**

7 **SEC. 101. DEFINITIONS.**

8 In this title:

9 (1) STATE.—The term “State” includes, in ad-
 10 dition to the several States of the Union, the Com-
 11 monwealth of Puerto Rico, the District of Columbia,
 12 Guam, American Samoa, the Virgin Islands, the
 13 government of the Northern Mariana Islands, and
 14 the Trust Territory of the Pacific Islands.

15 (2) STATE LAW.—The term “State law” means
 16 any law, decision, rule, regulation, or other action
 17 having the effect of a law of any State or any polit-
 18 ical subdivision of a State, or any agency or instru-
 19 mentality of a State or political subdivision of a
 20 State, except that a law of the United States appli-
 21 cable only to the District of Columbia shall be treat-
 22 ed as a State law (rather than a law of the United
 23 States).

1 **SEC. 102. PURPOSE; LAWFULNESS OF INSTRUMENTS; PRE-**
 2 **EMPTION OF STATE LAW.**

3 (a) PURPOSE.—The purpose of this title is to author-
 4 ize individuals to enter into income share agreements for
 5 the purposes of obtaining funds for postsecondary edu-
 6 cation in exchange for agreeing to pay to the holder of
 7 the contract a specified percentage of the future income
 8 of the individual.

9 (b) LAWFULNESS OF CONTRACTS; PREEMPTION.—
 10 Any income share agreement that complies with the re-
 11 quirements of section 103 shall be a valid, binding, and
 12 enforceable contract notwithstanding any State law lim-
 13 iting or otherwise regulating assignments of future wages
 14 or other income.

15 **SEC. 103. TERMS AND CONDITIONS OF INCOME SHARE**
 16 **AGREEMENT CONTRACTS.**

17 (a) TERMS AND CONDITIONS OF AGREEMENTS.—An
 18 income share agreement complies with the requirements
 19 of this section if the contract complies with each of the
 20 following conditions:

21 (1) SPECIFIED PERCENTAGE OF INCOME.—The
 22 income share agreement shall specify the percentage
 23 of future income that the individual subject to the
 24 agreement will be obligated to pay, except that the
 25 agreement shall provide for that any year covered by
 26 the agreement during which the individual has an

1 income that is less than \$15,000 (adjusted each year
2 to reflect changes in the Consumer Price Index for
3 All Urban Consumers published by the Bureau of
4 Labor Statistics of the Department of Labor for the
5 most recent 12-month period for which the data are
6 available) the individual shall not be required to pay
7 for that year any portion of the income of the indi-
8 vidual.

9 (2) DEFINITION OF INCOME.—An income share
10 agreement shall specify the definition of income to
11 be used for purposes of calculating the obligation of
12 the individual under the contract.

13 (3) ANNUAL LIMITATION ON OBLIGATION.—The
14 percentage of income required under the income
15 share agreement to be paid by the individual subject
16 to the agreement may not exceed a percentage such
17 that, when multiplied by \$15,000, the product ex-
18 ceeds the aggregate amount of periodic payments of
19 principal and interest that would be required to be
20 paid during a 12-month period under a comparable
21 loan that bears interest at a fixed annual rate of 20
22 percent.

23 (4) AGGREGATE LIMITATION ON OBLIGATION.—
24 No eligible individual may enter into any income
25 share agreement if the total percentage of the future

1 income of the individual that the individual agrees to
2 pay under that contract, and any other income share
3 agreements of the individual, exceeds 15 percent of
4 the future income.

5 (5) TIME-BASED LIMITATION ON OBLIGA-
6 TION.—

7 (A) LIMITATION.—The income share
8 agreement may not provide for the individual
9 subject to the agreement to assume a commit-
10 ment to pay future income having a commit-
11 ment factor, that when added to the commit-
12 ment factors for any other income share agree-
13 ments to which the individual is subject, equals
14 a sum that exceeds the maximum commitment
15 factor.

16 (B) COMMITMENT FACTOR.—As used in
17 this paragraph, the term “commitment factor”
18 means, with respect to an income share agree-
19 ment, the product of—

20 (i) the percentage (expressed as a dec-
21 imal) of the future income required to be
22 paid during the period covered by the in-
23 come share agreement; and

1 (ii) the remaining number of years
2 under the agreement that future income is
3 required to be paid at such percentage.

4 (C) MAXIMUM COMMITMENT FACTOR.—As
5 used in this paragraph, the term “maximum
6 commitment factor” means, with respect to an
7 income share agreement, 2.25 (which figure is
8 the product of 7.5 percent and the number of
9 years in the longest allowable contract under
10 paragraph (6)).

11 (6) EXTENSION OF PERIOD.—The income share
12 agreement may provide that the period covered by
13 the income share agreement may be extended by a
14 number of years that is equal to the number of years
15 during which the agreement is in force for which the
16 annual income of the individual is below the dollar
17 amount specified in paragraph (1).

18 (7) EARLY TERMINATION.—The income share
19 agreement shall specify the terms and conditions by
20 which the individual subject to the agreement may
21 extinguish the obligations of the individual under the
22 agreement before the end of the payment period
23 specified in the agreement and any application ex-
24 tension provided for in the agreement pursuant to
25 paragraph (6).

1 (b) REQUIRED DISCLOSURES.—An income share
2 agreement does not comply with the requirements of this
3 section unless the individual who is committing to pay fu-
4 ture income is provided, before entry into the agreement,
5 a disclosure document that clearly and simply discloses—

6 (1) that—

7 (A) the agreement is not a debt instru-
8 ment, and that the amount the individual will
9 be required to pay under the agreement—

10 (i) may be more or less than the
11 amount provided to the individual; and

12 (ii) will vary in proportion to the fu-
13 ture income of the individual;

14 (B) that the obligations of the individual
15 under the agreement are not dischargeable
16 under bankruptcy law, except in a case that
17 would impose an undue hardship on the debtor
18 and the dependents of the debtor;

19 (C) whether the obligations of the indi-
20 vidual under the agreement may be extin-
21 guished by accelerating payments, and, if so,
22 under what terms;

23 (D) the duration of the obligations of the
24 individual under the agreement (absent such ac-
25 celerating payments), including any circum-

1 stances under which the contract would be ex-
2 tended;

3 (E) the percentage of income the individual
4 is committing to pay under the agreement and
5 the minimum amount of annual income that,
6 pursuant to subsection (a)(1), triggers the obli-
7 gation of the individual under the agreement to
8 make payments for such year; and

9 (F) the definition of income to be used for
10 purposes of calculating the obligation of the in-
11 dividual; and

12 (2) a comparison of—

13 (A) the amounts an individual would be re-
14 quired to pay under the income share agree-
15 ment at a range of annual income levels, which
16 income levels shall correspond to the levels the
17 individual might reasonably be expected to
18 make given the intended use of the funds pro-
19 vided under the agreement, as determined in
20 accordance with guidance issued by the Sec-
21 retary of the Treasury; and

22 (B) the amounts required to be paid under
23 a comparable loan that bears interest at a fixed
24 annual rate of 10 percent.

1 (c) NON-INTERFERENCE.—An income share agree-
 2 ment—

3 (1) represents an obligation by the individual to
 4 pay the specific percentage of future income; and

5 (2) shall not be construed to give the contract
 6 holder any rights over the actions of an individual.

7 **SEC. 104. PREEMPTION OF STATE LAW WITH RESPECT TO**
 8 **USURY.**

9 Income share agreements shall not be subject to
 10 State usury laws.

11 **SEC. 105. RULEMAKING; MODEL DISCLOSURE FORMS.**

12 (a) IN GENERAL.—The Secretary of the Treasury, in
 13 consultation with such other agency heads as the Sec-
 14 retary considers appropriate, may issue such regulations
 15 as may be necessary to carry out this title.

16 (b) MODEL DISCLOSURE FORMS.—

17 (1) IN GENERAL.—Not later than 180 days
 18 after the date of enactment of this Act, the Sec-
 19 retary of the Treasury, after consultation with such
 20 other agency heads as the Secretary considers ap-
 21 propriate, shall promulgate a model disclosure form
 22 for the disclosures required under section 103(b).

23 (2) SAFE HARBOR.—Any person who uses the
 24 model disclosure form promulgated pursuant to
 25 paragraph (1) and includes accurate information re-

1 quired to be disclosed under section 103(c) shall be
2 deemed to have satisfied the requirements of section
3 103(b).

4 **TITLE II—TAX TREATMENT OF** 5 **INCOME SHARE AGREEMENTS**

6 **SEC. 201. TAX TREATMENT OF INCOME SHARE AGREE-** 7 **MENTS.**

8 (a) EXCLUSION FROM GROSS INCOME OF INCOME
9 SHARE AGREEMENT PROCEEDS.—Payments made under
10 an income share agreement that complies with the require-
11 ments of section 103 to or on behalf of the individual who
12 commits to pay a specified percentage of the future income
13 of the individual to another person under such agreement,
14 and any difference in value of the payments to or on behalf
15 of such individual and the total amount paid by such indi-
16 vidual, shall not be includible in the gross income of such
17 individual for purposes of the Internal Revenue Code of
18 1986.

19 (b) TREATMENT OF PAYMENTS OF FUTURE IN-
20 COME.—Payments of future income received by another
21 person under an income share agreement shall be treated
22 for purposes of the Internal Revenue Code of 1986—

23 (1) first, with respect to so much of such pay-
24 ments as does not exceed the amount of the pay-
25 ments to which subsection (a) applies with respect to

1 the agreement, as a repayment of investment in the
 2 contract which reduces the basis of the holder in the
 3 agreement; and

4 (2) second, as income on the contract which is
 5 includible in gross income.

6 **TITLE III—QUALIFIED** 7 **EDUCATION LOAN**

8 **SEC. 301. QUALIFIED EDUCATION LOAN.**

9 (a) IN GENERAL.—Section 221(d)(1) of the Internal
 10 Revenue Code of 1986 is amended by adding at the end
 11 the following: “Such term includes any income share
 12 agreement (as defined in section 2 of the Investing in Stu-
 13 dent Success Act of 2017), except that payments made
 14 by the taxpayer during the taxable year to meet an income
 15 share agreement obligation shall not be taken into account
 16 under subsection (a)”.

17 (b) INFORMATION REPORTING NOT REQUIRED.—
 18 Section 6050S(e) of such Code is amended by inserting
 19 “(without regard to the last sentence thereof)” after “sec-
 20 tion 221(d)(1)”.

1 **TITLE IV—FEDERAL INDIVIDUAL**
 2 **ASSISTANCE TREATMENT OF**
 3 **INCOME SHARE AGREEMENTS**

4 **SEC. 401. AMOUNTS RECEIVED NOT TREATED AS INCOME**
 5 **IN CALCULATION OF FINANCIAL NEED**
 6 **UNDER THE HIGHER EDUCATION ACT OF**
 7 **1965.**

8 No portion of any amounts received by an individual
 9 for entering into an income share agreement shall be in-
 10 cluded as income or assets in the computation of expected
 11 family contribution for any program funded in whole or
 12 in part under the Higher Education Act of 1965 (20
 13 U.S.C. 1001 et seq.).

14 **TITLE V—INVESTMENT**
 15 **COMPANY TREATMENT**

16 **SEC. 501. BUSINESSES MAKING INCOME SHARE AGREE-**
 17 **MENTS EXCLUDED FROM INVESTMENT COM-**
 18 **PANY TREATMENT.**

19 Section 3(c) of the Investment Company Act of 1940
 20 (15 U.S.C. 80a–3(c)) is amended—

21 (1) in paragraph (4), by inserting “income
 22 share agreements (as defined in section 2 of the In-
 23 vesting in Student Success Act of 2017),” after “in-
 24 dustrial banking,”; and

1 (2) in paragraph (5), by inserting “, including
2 income share agreements (as defined in section 2 of
3 the Investing in Student Success Act of 2017)” after
4 “services” each place that term appears.

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