

114TH CONGRESS
1ST SESSION

H. R. 3432

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

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2015

Mr. YOUNG of Indiana (for himself and Mr. POLIS) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide the legal framework and income tax treatment 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 AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Investing in Student Success Act of 2015”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.

TITLE I—TAX TREATMENT OF INCOME-SHARE AGREEMENTS

- Sec. 101. Definition of “income-share agreement”.
 Sec. 102. Tax treatment of proceeds and payments of future income.
 Sec. 103. Terms and conditions of income-share agreement contracts.
 Sec. 104. Rulemaking; model disclosure forms.

TITLE II—TREATMENT OF INCOME-SHARE AGREEMENTS UNDER STATE LAW

- Sec. 201. Purpose; lawfulness of contracts; preemption of State law.
 Sec. 202. Preemption of State law with respect to usury.
 Sec. 203. Definitions.

TITLE III—QUALIFIED EDUCATION LOAN

- Sec. 301. Qualified Education loan.

TITLE IV—FEDERAL INDIVIDUAL ASSISTANCE TREATMENT OF INCOME-SHARE AGREEMENTS

- Sec. 401. Proceeds not treated as income in calculation of financial need under the higher education act of 1965.

TITLE V—INVESTMENT COMPANY TREATMENT

- Sec. 501. Businesses making income-share agreements excluded from investment company treatment.

1 TITLE I—TAX TREATMENT OF 2 INCOME-SHARE AGREEMENTS

3 SEC. 101. DEFINITION OF “INCOME-SHARE AGREEMENT”.

4 For purposes of this title, the term “income-share
 5 agreement” means an agreement between an individual
 6 and any other person under which the individual commits
 7 to pay a specified percentage of the individual’s future in-
 8 come, for a specified period of time, in exchange for pay-
 9 ments to or on behalf of such individual for use only for
 10 costs associated with postsecondary education, as the reg-
 11 ulations issued pursuant to section 104(a) shall provide
 12 and which shall include the costs of any items and ex-

1 penses included as costs of attendance under section 472
2 of the Higher Education Act of 1965 (20 U.S.C. 1087ll).

3 **SEC. 102. TAX TREATMENT OF PROCEEDS AND PAYMENTS**
4 **OF FUTURE INCOME.**

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

16 (b) TREATMENT OF PAYMENTS OF FUTURE IN-
17 COME.—Payments of future income received by another
18 person under an income-share agreement that complies
19 with the requirements of section 103 shall be treated for
20 purposes of the Internal Revenue Code of 1986—

21 (1) first, with respect to so much of such pay-
22 ments as does not exceed the amount of the pay-
23 ments to which subsection (a) applies with respect to
24 such agreement, as a repayment of investment in the

1 contract which reduces the holder's basis in such
2 agreement, and

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

5 **SEC. 103. TERMS AND CONDITIONS OF INCOME-SHARE**
6 **AGREEMENT CONTRACTS.**

7 (a) **TERMS AND CONDITIONS.**—An income-share
8 agreement complies with the requirements of this section
9 only if the contract complies with each of the following
10 conditions:

11 (1) **SPECIFIED PERCENTAGE OF INCOME.**—The
12 income-share agreement shall specify the percentage
13 of future income that the individual subject to the
14 agreement will be obligated to pay, except that the
15 agreement shall provide that for any year covered by
16 such agreement during which the individual has an
17 income that is less than \$18,000 (as such amount
18 is adjusted pursuant to paragraph (8)) the indi-
19 vidual shall not be required to pay for such year any
20 portion of the individual's income.

21 (2) **DEFINITION OF INCOME.**—The income-
22 share agreement shall specify the definition of in-
23 come to be used for purposes of calculating an indi-
24 vidual's obligation to pay under the agreement.

1 (3) ANNUAL LIMITATION ON OBLIGATION.—The
2 percentage of income required under the income-
3 share agreement to be paid by the individual subject
4 to the agreement may not exceed a percentage such
5 that, when multiplied by \$15,000 (as such amount
6 is adjusted pursuant to paragraph (8)), the product
7 exceeds the aggregate amount of periodic payments
8 of principal and interest that would be required to
9 be paid during a 12-month period under a com-
10 parable loan that bears interest at a fixed annual
11 rate of 20 percent.

12 (4) AGGREGATE LIMITATION ON OBLIGATION.—
13 The income-share agreement may not provide for the
14 individual subject to the agreement to pay under the
15 agreement an amount of the future income of such
16 individual that, when added to any other amounts of
17 future income that such individual has agreed to pay
18 under any other income-share agreements to which
19 such individual is subject, equals a sum that at any
20 time exceeds 15 percent of the future income of such
21 individual.

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

24 (A) LIMITATION.—The income-share
25 agreement may not provide for the individual

1 subject to the agreement to assume a commit-
2 ment to pay future income having a commit-
3 ment factor, that when added to the commit-
4 ment factors for any other income-share agree-
5 ments to which such individual is subject,
6 equals a sum that exceeds the maximum com-
7 mitment factor.

8 (B) COMMITMENT FACTOR.—As used in
9 this paragraph, the term “commitment factor”
10 means, with respect to an income-share agree-
11 ment, the product of—

12 (i) the percentage (expressed as a dec-
13 imal) of such future income required to be
14 paid during such period; and

15 (ii) the remaining number of years
16 under the agreement that future income is
17 required to be paid at such percentage.

18 (C) MAXIMUM COMMITMENT FACTOR.—As
19 used in this paragraph, the term “maximum
20 commitment factor” means, with respect to an
21 income-share agreement, 2.25 (which figure is
22 the product of 7.5 percent and the number of
23 years in the longest allowable contract under
24 paragraph (6)(A)).

1 (6) SPECIFIED DURATION; EXTENSION OF PE-
2 RIOD.—

3 (A) DURATION.—The income-share agree-
4 ment shall specify the maximum period of time
5 during which the individual will be obligated to
6 pay a portion of the individual's future income
7 which may not, except as provided in subpara-
8 graph (B), exceed 360 months.

9 (B) EXTENSION OF PERIOD.—The income-
10 share agreement may provide that such period
11 may be extended by a number of years that is
12 equal to the number of years during which the
13 agreement is in force for which the individual's
14 annual income is below the dollar amount speci-
15 fied in paragraph (3)(A) (as such amount is ad-
16 justed pursuant to paragraph (8)).

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

1 (8) ADJUSTMENT FOR INFLATION.—A dollar
2 amount adjusted in accordance with this paragraph
3 shall be adjusted each year to reflect changes in the
4 Consumer Price Index for All Urban Consumers
5 published by the Bureau of Labor Statistics of the
6 Department of Labor for the most recent 12-month
7 period for which such data are available.

8 (b) REQUIRED DISCLOSURES.—An income-share
9 agreement does not comply with the requirements of this
10 section unless the individual who is committing under the
11 agreement to pay future income is provided, before enter-
12 ing into such agreement, a written document that clearly
13 and simply discloses—

14 (1) that the agreement is not a debt instru-
15 ment, and that the amount the individual will be re-
16 quired to pay under the agreement—

17 (A) may be more or less than the amount
18 provided to the individual pursuant to the
19 agreement; and

20 (B) will vary in proportion to the individ-
21 ual's future income;

22 (2) that the obligations of the individual under
23 the agreement are not dischargeable under bank-
24 ruptcy law, except in a case that would impose an

1 undue hardship on the debtor and the debtor's de-
2 pendants;

3 (3) whether the obligations of the individual
4 under the agreement may be extinguished by accel-
5 erating payments, and, if so, under what terms;

6 (4) the duration of the individual's obligations
7 under the agreement (absent such accelerating pay-
8 ments), including any circumstances under which
9 the duration of the agreement would be extended;

10 (5) the percentage of income the individual is
11 committing to pay under the agreement and the
12 minimum amount of annual income that, pursuant
13 to subsection (b)(1), triggers the individual's obliga-
14 tion under the agreement to make payments for
15 such year;

16 (6) the definition of income to be used for pur-
17 poses of calculating the individual's obligation under
18 the agreement; and

19 (7) a comparison of—

20 (A) the amounts an individual would be re-
21 quired to pay under the income-share agree-
22 ment at a range of annual income levels, which
23 income levels shall correspond to the levels the
24 individual might reasonably be expected to
25 make given the intended use of the funds pro-

1 vided under the agreement, as determined in
2 accordance with guidance issued by the Sec-
3 retary of the Treasury; to

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

7 (c) NON-INTERFERENCE.—An income-share agree-
8 ment represents an obligation by the individual pay the
9 specific percentage of future income, but shall not be con-
10 strued to give the contract holder any rights over an indi-
11 vidual’s actions.

12 (d) COMPARABLE LOAN.—For purposes of this sec-
13 tion, the term “comparable loan” means, with respect to
14 an income-share agreement, a loan that—

15 (1) has the same original principal amount as
16 the total amount of the payment or payments made
17 under the income-share agreement to or on behalf
18 the individual subject to the agreement;

19 (2) has the same term to maturity as the dura-
20 tion of the income-share agreement; and

21 (3) is fully amortized over such term with
22 monthly payments of principal and interest.

23 **SEC. 104. RULEMAKING; MODEL DISCLOSURE FORMS.**

24 (a) IN GENERAL.—The Secretary of the Treasury, in
25 consultation with such other agency heads as the Sec-

1 retary considers appropriate, may issue such regulations
2 as may be necessary to carry out this title.

3 (b) MODEL DISCLOSURE FORMS.—

4 (1) IN GENERAL.—Not later than the end of
5 the 180-day period beginning upon the date of the
6 enactment of this Act, the Secretary of the Treas-
7 ury, after consultation with such other agency heads
8 as the Secretary considers appropriate, shall promul-
9 gate a model disclosure form for the disclosures re-
10 quired under section 103(b).

11 (2) SAFE HARBOR.—Any person who uses the
12 model disclosure form promulgated pursuant to
13 paragraph (1) and includes accurate information re-
14 quired under section 103(b) to be disclosed shall be
15 deemed to have satisfied the requirements of section
16 103(b).

17 **TITLE II—TREATMENT OF IN-**
18 **COME-SHARE AGREEMENTS**
19 **UNDER STATE LAW**

20 **SEC. 201. PURPOSE; LAWFULNESS OF CONTRACTS; PRE-**
21 **EMPTION OF STATE LAW.**

22 (a) PURPOSE.—It is the purpose of this title to au-
23 thorize individuals to enter into income-share agreements
24 for the purposes of obtaining funds for postsecondary edu-
25 cation in exchange for agreeing to pay to the holder of

1 the contract a specified percentage of the individual's fu-
 2 ture income for a specified period of time.

3 (b) **LAWFULNESS OF CONTRACTS; PREEMPTION OF**
 4 **STATE LAW.**—Any income-share agreement that complies
 5 with the requirements of section 103 shall be a valid, bind-
 6 ing, and enforceable contract notwithstanding any State
 7 law limiting or otherwise regulating assignments of future
 8 wages or other income.

9 **SEC. 202. PREEMPTION OF STATE LAW WITH RESPECT TO**
 10 **USURY.**

11 An income-share agreement that complies with the
 12 requirements of section 103 shall not be subject to State
 13 usury laws.

14 **SEC. 203. DEFINITIONS.**

15 As used in this title:

16 (1) **STATE.**—The term “State” includes, in ad-
 17 dition to the several States of the Union, the Com-
 18 monwealth of Puerto Rico, the District of Columbia,
 19 Guam, American Samoa, the Virgin Islands, the
 20 government of the Northern Mariana Islands, and
 21 the Trust Territory of the Pacific Islands.

22 (2) **STATE LAW.**—The term “State law” means
 23 any law, decision, rule, regulation, or other action
 24 having the effect of a law of any State or any polit-
 25 ical subdivision of a State, or any agency or instru-

1 mentality of a State or political subdivision of a
 2 State, except that a law of the United States appli-
 3 cable only to the District of Columbia shall be treat-
 4 ed as a State law (rather than a law of the United
 5 States).

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

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

9 (a) IN GENERAL.—Paragraph (1) of section 221(d)
 10 of the Internal Revenue Code of 1986 is amended by add-
 11 ing at the end the following: “Such term includes any in-
 12 come-share agreement (as such term is defined in section
 13 101 of the Investing in Student Success Act of 2015) that
 14 complies with the requirements of section 103 of such Act,
 15 except that payments made by the taxpayer during the
 16 taxable year to meet an income-share agreement obligation
 17 shall not be taken into account under subsection (a).”.

18 (b) INFORMATION REPORTING NOT REQUIRED.—
 19 Subsection (e) of section 6050S of such Code is amended
 20 by inserting “(without regard to the last sentence there-
 21 of)” after “section 221(d)(1)”.

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

4 **SEC. 401. PROCEEDS NOT TREATED AS INCOME IN CAL-**
 5 **CULATION OF FINANCIAL NEED UNDER THE**
 6 **HIGHER EDUCATION ACT OF 1965.**

7 No portion of any amounts received by an individual
 8 for entering into an income-share agreement (as such term
 9 is defined in section 101 of this Act) that complies with
 10 the requirements of section 103 of this Act shall be in-
 11 cluded as income or assets in the computation of expected
 12 family contribution for any program funded in whole or
 13 in part under the Higher Education Act of 1965 (20
 14 U.S.C. 1001 et seq.).

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

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

20 Section 3(c) of the Investment Company Act of 1940
 21 (15 U.S.C. 80a-3(c)) is amended—

22 (1) in paragraph (4), by inserting after “indus-
 23 trial banking,” the following: “income-share agree-
 24 ments (as such term is defined in section 101 of the
 25 Investing in Student Success Act of 2015),”; and

1 (2) in paragraph (5), by inserting “, including
2 income-share agreements” after “services” each
3 place such term appears.

○