

114TH CONGRESS  
1ST SESSION

# S. 2186

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

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IN THE SENATE OF THE UNITED STATES

OCTOBER 20, 2015

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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 2015”.

1       **TITLE I—AUTHORIZATION OF**  
 2       **INCOME SHARE AGREEMENTS**

3       **SEC. 101. PURPOSE; LAWFULNESS OF INSTRUMENTS; PRE-**  
 4                                   **EMPTION OF STATE LAW.**

5           (a) PURPOSE.—It is the purpose of this title to au-  
 6       thorize individuals to enter into income share agreements  
 7       for the purposes of obtaining funds for postsecondary edu-  
 8       cation in exchange for agreeing to pay to the holder of  
 9       the contract a specified percentage of the individual’s fu-  
 10      ture income.

11          (b) LAWFULNESS OF CONTRACTS; PREEMPTION.—  
 12      Any income share agreement that complies with the re-  
 13      quirements of section 102 shall be a valid, binding, and  
 14      enforceable contract notwithstanding any State law lim-  
 15      iting or otherwise regulating assignments of future wages  
 16      or other income.

17       **SEC. 102. TERMS AND CONDITIONS OF INCOME SHARE**  
 18                                   **AGREEMENT CONTRACTS.**

19          (a) DEFINITION OF INCOME SHARE AGREEMENT.—  
 20      For purposes of this title, the term “income share agree-  
 21      ment” means an agreement between an individual and any  
 22      other person under which the individual commits to pay  
 23      a specified percentage of the individual’s future income,  
 24      for a specified period of time, in exchange for payments

1 to or on behalf of such individual for postsecondary edu-  
2 cation, workforce development, or other purposes.

3 (b) TERMS AND CONDITIONS OF AGREEMENTS.—An  
4 income share agreement complies with the requirements  
5 of this section if the contract complies with each of the  
6 following conditions:

7 (1) SPECIFIED PERCENTAGE OF INCOME.—The  
8 income-share agreement shall specify the percentage  
9 of future income that the individual subject to the  
10 agreement will be obligated to pay, except that the  
11 agreement shall provide for that any year covered by  
12 such agreement during which the individual has an  
13 income that is less than \$15,000 (adjusted each year  
14 to reflect changes in the Consumer Price Index for  
15 All Urban Consumers published by the Bureau of  
16 Labor Statistics of the Department of Labor for the  
17 most recent 12-month period for which such data  
18 are available) the individual shall not be required to  
19 pay for such year any portion of the individual's in-  
20 come.

21 (2) DEFINITION OF INCOME.—An income share  
22 agreement shall specify the definition of income to  
23 be used for purposes of calculating an individual's  
24 obligation under the contract.

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, the product ex-  
6           ceeds the aggregate amount of periodic payments of  
7           principal and interest that would be required to be  
8           paid during a 12-month period under a comparable  
9           loan that bears interest at a fixed annual rate of 20  
10          percent.

11          (4) AGGREGATE LIMITATION ON OBLIGATION.—  
12          No eligible individual may enter into any income  
13          share agreement if the total percentage of such indi-  
14          vidual's future income that the individual agrees to  
15          pay under that contract, and any other income share  
16          agreements of such individual, exceeds 15 percent of  
17          such future income.

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

20                (A) LIMITATION.—The income-share  
21                agreement may not provide for the individual  
22                subject to the agreement to assume a commit-  
23                ment to pay future income having a commit-  
24                ment factor, that when added to the commit-  
25                ment factors for any other income-share agree-

1           ments to which such individual is subject,  
2           equals a sum that exceeds the maximum com-  
3           mitment factor.

4           (B) COMMITMENT FACTOR.—As used in  
5           this paragraph, the term “commitment factor”  
6           means, with respect to an income-share agree-  
7           ment, the product of—

8                   (i) the percentage (expressed as a dec-  
9                   imal) of such future income required to be  
10                  paid during such period; and

11                  (ii) the remaining number of years  
12                  under the agreement that future income is  
13                  required to be paid at such percentage.

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

21           (6) EXTENSION OF PERIOD.—The income-share  
22           agreement may provide that such period may be ex-  
23           tended by a number of years that is equal to the  
24           number of years during which the agreement is in

1 force for which the individual's annual income is  
2 below the dollar amount specified in paragraph (1).

3 (7) EARLY TERMINATION.—The income-share  
4 agreement shall specify the terms and conditions by  
5 which the individual subject to the agreement may  
6 extinguish the individual's obligations under the  
7 agreement before the end of the payment period  
8 specified in the agreement and any application ex-  
9 tension provided for in the agreement pursuant to  
10 paragraph (6)(B).

11 (c) REQUIRED DISCLOSURES.—An income share  
12 agreement does not comply with the requirements of this  
13 section unless the individual who is committing to pay fu-  
14 ture income is provided, before entry into such agreement,  
15 a disclosure document that clearly and simply discloses—

16 (1) that—

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

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

22 (ii) will vary in proportion to the indi-  
23 vidual's future income;

24 (B) that the obligations of the individual  
25 under the agreement are not dischargeable

1 under bankruptcy law, except in a case that  
2 would impose an undue hardship on the debtor  
3 and the debtor's dependents;

4 (C) whether the obligations of the indi-  
5 vidual under the agreement may be extin-  
6 guished by accelerating payments, and, if so,  
7 under what terms;

8 (D) the duration of the individual's obliga-  
9 tions under the agreement (absent such accel-  
10 erating payments), including any circumstances  
11 under which the contract would be extended;

12 (E) the percentage of income the individual  
13 is committing to pay under the agreement and  
14 the minimum amount of annual income that,  
15 pursuant to subsection (b)(1), triggers the indi-  
16 vidual's obligation under the agreement to make  
17 payments for such year; and

18 (F) the definition of income to be used for  
19 purposes of calculating the individual's obliga-  
20 tion; and

21 (2) a comparison of—

22 (A) the amounts an individual would be re-  
23 quired to pay under the income-share agree-  
24 ment at a range of annual income levels, which  
25 income levels shall correspond to the levels the

1 individual might reasonably be expected to  
2 make given the intended use of the funds pro-  
3 vided under the agreement, as determined in  
4 accordance with guidance issued by the Sec-  
5 retary of the Treasury; to

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

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

14 **SEC. 103. 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   **SEC. 104. PREEMPTION OF STATE LAW WITH RESPECT TO**  
7                               **USURY.**

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

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

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

15           (b) MODEL DISCLOSURE FORMS.—

16                       (1) IN GENERAL.—Not later than the end of  
17           the 180-day period beginning upon the date of the  
18           enactment of this Act, the Secretary of the Treas-  
19           ury, after consultation with such other agency heads  
20           as the Secretary considers appropriate, shall promul-  
21           gate a model disclosure form for the disclosures re-  
22           quired under section 102(c).

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 under section 102(c) to be disclosed shall be  
2       deemed to have satisfied the requirements of section  
3       102(c).

## 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 102 to or on behalf of the individual who  
12      commits to pay a specified percentage of such individual's  
13      future income 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 such agreement, as a repayment of investment in the  
2 contract which reduces the holder's basis in such  
3 agreement, and

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

6 (c) INCOME SHARE AGREEMENT.—For purposes of  
7 this title, the term “income share agreement” has the  
8 meaning given such term under title I.

9 **TITLE III—QUALIFIED**  
10 **EDUCATION LOAN**

11 **SEC. 301. QUALIFIED EDUCATION LOAN.**

12 (a) IN GENERAL.—Paragraph (1) of section 221(d)  
13 of the Internal Revenue Code of 1986 is amended by add-  
14 ing at the end the following: “Such term includes any in-  
15 come share agreement (as defined in section 102 of the  
16 Investing in Student Success Act of 2015), except that  
17 payments made by the taxpayer during the taxable year  
18 to meet an income share agreement obligation shall not  
19 be taken into account under subsection (a)”.

20 (b) INFORMATION REPORTING NOT REQUIRED.—  
21 Subsection (e) of section 6050S of such Code is amended  
22 by inserting “(without regard to the last sentence there-  
23 of)” after “section 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 (as such term  
 10 is defined in title I) shall be included as income or assets  
 11 in the computation of expected family contribution for any  
 12 program funded in whole or in part under the Higher  
 13 Education Act of 1965.

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 after “indus-  
 22 trial banking,” the following: “income share agree-  
 23 ments (as defined under section 102 of the Investing  
 24 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.

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