

107TH CONGRESS  
1ST SESSION

# H. R. 3451

To enable the use of human capital investment contracts for the purposes of financing postsecondary education, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 11, 2001

Mr. GRAHAM introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Ways and Means, Financial Services, and the Judiciary, 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

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## A BILL

To enable the use of human capital investment contracts for the purposes of financing 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 “Student Success Act  
5 of 2001”.

1 **TITLE I—AUTHORIZATION OF**  
2 **HUMAN CAPITAL INVEST-**  
3 **MENT CONTRACTS**

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

6 (a) **PURPOSE.**—It is the purpose of this title to au-  
7 thorize individuals to enter into contracts for the purposes  
8 of obtaining funds for the payment of tuition and other  
9 related expenses of postsecondary education by agreeing  
10 to pay to the holder of the contract a specified percentage  
11 of the individual’s future earned income.

12 (b) **LAWFULNESS OF CONTRACTS; PREEMPTION.**—  
13 Any human capital investment contract that complies with  
14 the requirements of section 102 shall be a valid, binding,  
15 and enforceable contract notwithstanding any State law  
16 limiting or otherwise regulating assignments of future  
17 wages or other income.

18 **SEC. 102. TERMS AND CONDITIONS OF HUMAN CAPITAL IN-**  
19 **VESTMENT CONTRACTS.**

20 (a) **DEFINITION OF HUMAN CAPITAL INVESTMENT**  
21 **CONTRACT.**—For purposes of this title, the term “human  
22 capital investment contract” means an agreement between  
23 an eligible student and any other person under which the  
24 eligible student sells and assigns specified percentages of  
25 the eligible student’s future income, for a specified period

1 of time, in exchange for payments to or on behalf of such  
2 student for—

3 (1) the tuition and related expenses of attend-  
4 ance by the student at an eligible institution, and

5 (2) any income taxes owed by the student as a  
6 consequence of the receipt of such payments.

7 (b) TERMS AND CONDITIONS OF AGREEMENTS.—A  
8 human capital investment contract complies with the re-  
9 quirements of this section if the contract complies with  
10 each of the following conditions:

11 (1) SPECIFIED PERCENTAGE OF EARNED IN-  
12 COME.—A human capital investment contract shall  
13 specify the percentages of future earned income  
14 which the student will be obligated to pay, except  
15 that the contract—

16 (A) shall specify the maximum amount of  
17 earned income for each year to which such  
18 specified percentage shall apply;

19 (B) shall provide a schedule of reductions  
20 in such percentage if the student's earned in-  
21 come from full-time employment is less than  
22 amounts specified in the contract; and

23 (C) may specify a schedule of increases in  
24 such percentage if the student obtains a defer-

1           ral under paragraph (6), subject to the limita-  
2           tion in paragraph (2).

3           (2) AGGREGATE LIMITATION ON OBLIGATION.—

4           No eligible student may enter into any human cap-  
5           ital investment contract if the total percentage of  
6           such student's future earned income that the stu-  
7           dent agrees to pay under that contract, and any  
8           other human capital investment contracts of such  
9           student, exceeds 20 percent of such future earned  
10          income.

11          (3) SPECIFIED DURATION; EXTENSION OF PE-

12          RIOD FOR DEFERRALS.—A human capital invest-  
13          ment contract shall specify the maximum period of  
14          time during which the student will be obligated to  
15          pay a portion of the student's future earned income  
16          from full-time employment, except that—

17                 (A) except as provided in subparagraph

18                 (B), such period may not exceed 180 months;

19                 and

20                 (B) such contract may provide that such

21                 period may be extended by the number of

22                 months during which the student obtains a de-

23                 ferral of payments under paragraph (5) or (6).

24          (4) COMMENCEMENT OF REPAYMENT.—A

25          human capital investment contract shall provide that

1 the student is not obligated to commence payments,  
2 and that the deferral period in paragraph (5) does  
3 not begin to toll, until the student—

4 (A) ceases to carry at an eligible institu-  
5 tion at least the minimum academic workload  
6 set forth in the contract; or

7 (B) ceases to be eligible to meet the defer-  
8 ral requirements set forth in paragraph (6).

9 (5) DEFERRAL FOR UNDER-EMPLOYMENT OR  
10 UNEMPLOYMENT.—A human capital investment con-  
11 tract shall provide that the student may obtain a de-  
12 ferral of the obligation to make payments under the  
13 contract during any period in which the student is  
14 unemployed, except that the contract may provide  
15 that, if the student is unemployed for longer than a  
16 maximum period specified in the contract, the stu-  
17 dent agrees to extinguish obligations under the con-  
18 tract by payment of—

19 (A) the amounts determined in accordance  
20 with paragraph (7), and

21 (B) any related administrative costs of col-  
22 lecting such amounts, including attorney's fees.

23 (6) DEFERRAL DURING PERIODS OF GRADUATE  
24 STUDY.—A human capital investment contract shall  
25 provide that a student who is enrolled or accepted

1 for enrollment in a postgraduate degree program is  
2 not obligated to commence payments under the con-  
3 tract until the student ceases to carry a full-time  
4 academic workload leading to such a degree at an el-  
5 igible institution, except that the contract may pro-  
6 vide that the maximum period for which payments  
7 may be deferred pursuant to this paragraph shall  
8 not exceed 48 months.

9 (7) ACCELERATED REPAYMENT.—A human  
10 capital investment contract shall specify the terms  
11 and conditions by which the student may extinguish  
12 the student’s obligations under the contract before  
13 the end of the payment period specified in the  
14 human capital investment contract, based on the re-  
15 maining term of such period.

16 (c) REQUIRED DISCLOSURES.—A human capital in-  
17 vestment contract does not comply with the requirements  
18 of this section unless the eligible student is provided, be-  
19 fore entry into agreement, a disclosure document that  
20 clearly and simply discloses that—

21 (1) the agreement is not a debt instrument, and  
22 that the amount the student will be required to pay  
23 under the agreement—

24 (A) may be more or less than the amount  
25 provided to the student; and

1 (B) will vary in proportion to the student's  
2 future earned income;

3 (2) the obligations of the student under the  
4 agreement are not dischargeable under bankruptcy  
5 law;

6 (3) the obligations of the student under the  
7 agreement may be extinguished by accelerating pay-  
8 ments, as specified in the agreement; and

9 (4) the duration of the student's obligations  
10 under the agreement (absent such accelerating pay-  
11 ments).

12 **SEC. 103. DEFINITIONS.**

13 As used in this title—

14 (1) **EARNED INCOME.**—

15 (A) The term “earned income” means  
16 compensation and self-employment income.

17 (B) The term “compensation” means the  
18 gross amount of salaries, wages, and other re-  
19 munerations earned by the student as an em-  
20 ployee, not taking into account any deferred  
21 compensation arrangements or any payments to  
22 any retirement, pension, or other benefit plan.

23 (C) The term “self-employment income”  
24 means the net earnings from self-employment,  
25 as defined in section 1402 of the Internal Rev-

1            enue Code of 1986, and regulations prescribed  
2            thereunder.

3            (2) ELIGIBLE STUDENT.—The term “eligible  
4            student” means any person—

5                    (A) who is a citizen or national of the  
6            United States, a permanent resident of the  
7            United States, able to provide evidence from the  
8            Immigration and Naturalization Service that he  
9            or she is in the United States for other than a  
10           temporary purpose with the intention of becom-  
11           ing a citizen or permanent resident, or perma-  
12           nent resident of the Trust Territory of the Pa-  
13           cific Islands, Guam, the Northern Mariana Is-  
14           lands;

15                    (B) who is enrolled or accepted for enroll-  
16           ment in a degree, certificate, or other program  
17           (including a program of study abroad approved  
18           for credit by the eligible institution at which  
19           such student is enrolled) leading to a recognized  
20           educational credential at an eligible institution  
21           of higher education; and

22                    (C) who is not enrolled in an elementary or  
23           secondary school.

24            (3) ELIGIBLE INSTITUTION.—The term “eligi-  
25           ble institution” means an institution of higher edu-



1 cation as such term is defined in section 481(a) of  
2 the Higher Education Act of 1965 (20 U.S.C.  
3 1088(a)).

4 (4) FULL-TIME EMPLOYMENT; PERIOD OF NO  
5 EMPLOYMENT.—Determinations of full-time employ-  
6 ment in a given calendar year shall be based on an  
7 average employment of 35 hours (or more) per week  
8 during such year (a total of 1,820 hours or more for  
9 the year). Determinations of period of no employ-  
10 ment of a student shall be determined separately for  
11 each calendar year and expressed as a whole number  
12 of weeks and shall be based on the excess, if any,  
13 of 1,820 over the total number of hours of employ-  
14 ment of the student during the year, divided by 35,  
15 and rounded down to the nearest whole number.

16 (5) STATE LAW.—

17 (A) The term “State law” means any law,  
18 decision, rule, regulation, or other action having  
19 the effect of a law of any State or any political  
20 subdivision of a State, or any agency or instru-  
21 mentality of a State or political subdivision of  
22 a State, except that a law of the United States  
23 applicable only to the District of Columbia shall  
24 be treated as a State law (rather than a law of  
25 the United States).

1           (B) The term “State” includes, in addition  
 2           to the several States of the Union, the Com-  
 3           monwealth of Puerto Rico, the District of Co-  
 4           lumbia, Guam, American Samoa, the Virgin Is-  
 5           lands, the government of the Northern Mariana  
 6           Islands, and the Trust Territory of the Pacific  
 7           Islands.

8   **TITLE II—TAX TREATMENT OF**  
 9   **HUMAN CAPITAL INVEST-**  
 10 **MENT CONTRACTS**

11 **SEC. 201. TAX TREATMENT OF HUMAN CAPITAL INVEST-**  
 12 **MENT CONTRACTS.**

13       (a) IN GENERAL.—Section 7701 of the Internal Rev-  
 14 enue Code of 1986 is amended by redesignating subsection  
 15 (m) as subsection (n) and by inserting after subsection  
 16 (l) the following new subsection:

17       “(m) HUMAN CAPITAL INVESTMENT CONTRACTS.—  
 18 A human capital investment contract (as defined in sec-  
 19 tion 102 of the Student Success Act of 2001) shall not  
 20 be treated as a debt instrument for purposes of this title,  
 21 and amounts received by the student for entering into  
 22 such a contract shall be includible in such student’s gross  
 23 income for purposes of subtitle A.”

24       (b) DEPRECIATION.—Section 167 of the Internal  
 25 Revenue Code of 1986 (relating to depreciation) is amend-

1 ed by redesignating subsection (h) as subsection (i) and  
2 by inserting after subsection (g) the following new sub-  
3 section:

4 “(h) HUMAN CAPITAL INVESTMENT CONTRACTS.—  
5 If a depreciation deduction is allowable under subsection  
6 (a) with respect to any human capital investment contract  
7 (as defined in section 102 of the Student Success Act of  
8 2001), such deduction—

9 “(1) shall be allowable beginning with the tax-  
10 able year during which the student is first obligated  
11 to begin payments under the contract, and

12 “(2) shall be computed by using the straight-  
13 line method and a useful life equal to the shorter  
14 of—

15 “(A) 15 years, or

16 “(B) the maximum period the student is  
17 obligated to make payments under the contract  
18 (determined without regard to any extension of  
19 such period by reason of a deferral).”

20 (c) DEDUCTION FOR PAYMENTS.—

21 (1) IN GENERAL.—Part VII of subchapter B of  
22 chapter 1 of such Code is amended by redesignating  
23 section 221 as section 222 and by inserting after  
24 section 220 the following new section:

1 **“SEC. 221. PAYMENTS UNDER HUMAN CAPITAL INVEST-**  
2 **MENT CONTRACTS.**

3 “In the case of an individual who is obligated to make  
4 payments under a human capital investment contract (as  
5 defined in section 102 of the Student Success Act of  
6 2001), there shall be allowed as a deduction the amount  
7 of such payments made during the taxable year.”

8 (2) DEDUCTION ALLOWABLE IN DETERMINING  
9 ADJUSTED GROSS INCOME.—Subsection (a) of sec-  
10 tion 62 of such Code is amended by inserting after  
11 paragraph (16) the following new paragraph:

12 “(17) HUMAN CAPITAL INVESTMENT CONTRACT  
13 PAYMENTS.—The deduction allowed by section 221.”

14 (3) CLERICAL AMENDMENT.—The table of sec-  
15 tions for part VII of subchapter B of chapter 1 of  
16 such Code is amended by striking the last item and  
17 inserting the following new items:

“Sec. 221. Payments under human capital investment contracts.  
“Sec. 222. Cross reference.”

18 (d) QUALIFYING INCOME OF PUBLICLY TRADED  
19 PARTNERSHIPS.—Paragraph (1) of section 7704(d) of  
20 such Code is amended by striking “and” at the end of  
21 subparagraph (F), by striking the period at the end of  
22 subparagraph (G) and inserting “, and”, and by inserting  
23 after subparagraph (G) the following new subparagraph:

1           “(H) income derived from, or gain from  
 2           the sale or other disposition of any human cap-  
 3           ital investment contract (as defined in section  
 4           102 of the Student Success Act of 2001).”

5           (e) EFFECTIVE DATE.—The amendments made by  
 6 this section shall apply to taxable years ending after the  
 7 date of the enactment of this Act.

8       **TITLE     III—SECURITIES     LAW**  
 9       **TREATMENT OF HUMAN CAP-**  
 10      **ITAL     INVESTMENT     CON-**  
 11      **TRACTS**

12      **SEC. 301. POOLING OF HUMAN CAPITAL INVESTMENT CON-**  
 13                              **TRACTS INTO INVESTMENT COMPANIES.**

14           Section 2(a)(36) of the Investment Company Act of  
 15 1940 (15 U.S.C. 80a-2) is amended by inserting “human  
 16 capital investment contracts (as such term is defined in  
 17 section 102 of the Student Success Act of 2001),” after  
 18 “relating to foreign currency,”.

19      **TITLE     IV—BANKRUPTCY     LAW**  
 20      **TREATMENT OF HUMAN CAP-**  
 21      **ITAL     INVESTMENT     CON-**  
 22      **TRACTS.**

23      **SEC. 401. EXCEPTION TO DISCHARGE.**

24           Section 523(a) of title 11, United States Code, is  
 25 amended—

1           (1) in paragraph (17) by striking “and” at the  
2 end,

3           (2) in paragraph (18) by striking the period at  
4 the end and inserting “; and”, and

5           (3) by adding at the end the following:

6           “(19) for a payment owed by the debtor as a  
7 result of a payment made to or for the benefit of the  
8 debtor, under a human capital investment contract  
9 (as defined in section 102 of the Student Success  
10 Act of 2001 unless—

11                   “(A) such payment owed by the debtor  
12 first became due more than 7 years (exclusive  
13 of any applicable suspension of the debtor’s  
14 payment period) before the date of the filing of  
15 the petition; or

16                   “(B) excepting such debt from discharge  
17 under this paragraph will impose an undue  
18 hardship on the debtor and the debtor’s de-  
19 pendents.”.

1 **TITLE V—FEDERAL STUDENT AS-**  
2 **SISTANCE TREATMENT OF**  
3 **HUMAN CAPITAL INVEST-**  
4 **MENT CONTRACTS.**

5 **SEC. 501. AMOUNTS RECEIVED NOT TREATED AS INCOME**  
6 **IN CALCULATION OF FINANCIAL NEED.**

7 Section 480(a) of the Higher Education Act of 1965  
8 (20 U.S.C. 1087vv(a)) is amended—

9 (1) in paragraph (1), by striking “paragraph  
10 (2)” and inserting “paragraphs (2) and (3)”; and

11 (2) by adding at the end the following new  
12 paragraph:

13 “(3) No portion of any amounts received by a student  
14 for entering into a human capital investment contract (as  
15 defined in section 102 of the Student Success Act of 2001)  
16 shall be included as income or assets in the computation  
17 of expected family contribution for any program funded  
18 in whole or in part under this Act.”.

○