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113TH CONGRESS
2D SESSION

H. R. 4436

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 HOUSE OF REPRESENTATIVES

APRIL 9, 2014

Mr. PETRI 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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Investing in Student Success Act of 2014''.

TITLE I—AUTHORIZATION OF INCOME SHARE AGREEMENTS

SEC. 101. PURPOSE; LAWFULNESS OF INSTRUMENTS; PREEMPTION OF STATE LAW.

(a) PURPOSE.—It is the purpose of this title to authorize individuals to enter into income share agreements for the purposes of obtaining funds in exchange for agreeing to pay to the holder of the contract a specified percentage of the individual's future income.

(b) LAWFULNESS OF CONTRACTS; PREEMPTION.—Any income share agreement that complies with the requirements of section 102 shall be a valid, binding, and enforceable contract notwithstanding any State law limiting or otherwise regulating assignments of future wages or other income.

SEC. 102. TERMS AND CONDITIONS OF INCOME SHARE AGREEMENT CONTRACTS.

(a) DEFINITION OF INCOME SHARE AGREEMENT.—For purposes of this title, the term ''income share agreement'' means an agreement between an individual and any other person under which the individual commits to pay a specified percentage of the individual's future income, for a specified period of time, in exchange for payments to or on behalf of such individual for postsecondary education, workforce development, or other purposes.

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

(1) SPECIFIED PERCENTAGE OF INCOME.—An income share agreement shall specify the percentage of future income which the individual will be obligated to pay, except that the contract shall exempt, at a minimum, the first $10,000 (adjusted each year to reflect changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor for the most recent 12-month period for which such data are available) of an individual's income when determining the individual's obligation for a given year.

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

(3) AGGREGATE LIMITATION ON OBLIGATION.—No eligible individual may enter into any income share agreement if the total percentage of such individual's future income that the individual agrees to pay under that contract, and any other income share

agreements of such individual, exceeds 15 percent of such future income.

(4) SPECIFIED DURATION; EXTENSION OF PERIOD.—An income share agreement shall specify the maximum period of time during which the individual will be obligated to pay a portion of the individual's future income, except that—

(A) except as provided in subparagraph (B), such period may not exceed 360 months; and

(B) such contract may provide that such period may be extended by the number of years during which the individual's income is below the exemption amount specified in the agreement under paragraph (1).

(5) EARLY TERMINATION.—An income share agreement shall specify the terms and conditions by which the individual may extinguish the individual's obligations under the contract before the end of the payment period specified in the agreement, based on the remaining term of such period.

(c) REQUIRED DISCLOSURES.—An income share agreement does not comply with the requirements of this section unless the individual who is committing to pay future income is provided, before entry into such agreement,

a disclosure document that clearly and simply discloses that—

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

(A) may be more or less than the amount provided to the individual; and

(B) will vary in proportion to the individual's future income;

(2) the obligations of the individual under the agreement are not dischargeable under bankruptcy law;

(3) whether the obligations of the individual under the agreement may be extinguished by accelerating payments, and, if so, under what terms;

(4) the duration of the individual's obligations under the agreement (absent such accelerating payments), including any circumstances under which the contract would be extended;

(5) the percentage of income the individual is committing to pay and the amount of income that is exempt from the calculation of the individual's obligation; and

(6) the definition of income to be used for purposes of calculating the individual's obligation.

(d) NON-INTERFERENCE.—An income share agreement shall not be construed to give the contract holder any rights over an individual's actions—it simply represents an obligation by the individual pay the specific percentage of future income.

SEC. 103. DEFINITIONS.

As used in this title:

(1) STATE.—The term ''State'' includes, in addition to the several States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the government of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) STATE LAW.—The term ''State law'' means any law, decision, rule, regulation, or other action having the effect of a law of any State or any political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State, except that a law of the United States applicable only to the District of Columbia shall be treated as a State law (rather than a law of the United States).

SEC. 104. PREEMPTION OF STATE LAW WITH RESPECT TO USURY.

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

TITLE II—TAX TREATMENT OF INCOME SHARE AGREEMENTS

SEC. 201. TAX TREATMENT OF INCOME SHARE AGREEMENTS.

(a) EXCLUSION FROM GROSS INCOME OF INCOME SHARE AGREEMENT PROCEEDS.—Payments made under an income share agreement to or on behalf of the individual who commits to pay a specified percentage of such individual's future income to another person under such agreement shall not be includible in the gross income of such individual for purposes of the Internal Revenue Code of 1986.

(b) TREATMENT OF PAYMENTS OF FUTURE INCOME.—Payments of future income received by another person under an income share agreement shall be treated for purposes of the Internal Revenue Code of 1986—

(1) first, with respect to so much of such payments as does not exceed the amount of the payments to which subsection (a) applies with respect to such agreement, as a repayment of investment in the contract which reduces the holder's basis in such agreement, and

(2) second, as interest which is includible in gross income.

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

TITLE III—QUALIFIED EDUCATION LOAN

SEC. 301. QUALIFIED EDUCATION LOAN.

(a) IN GENERAL.—Paragraph (1) of section 221(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following: ''Such term includes any income share agreement (as defined in section 102 of the Investing in Student Success Act of 2014), except that payments made by the taxpayer during the taxable year to meet an income share agreement obligation shall not be taken into account under subsection (a).''.

(b) INFORMATION REPORTING NOT REQUIRED.—Subsection (e) of section 6050S of such Code is amended by inserting ''(without regard to the last sentence thereof)'' after ''section 221(d)(1)''.

TITLE IV—FEDERAL INDIVIDUAL ASSISTANCE TREATMENT OF INCOME SHARE AGREEMENTS

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

No portion of any amounts received by an individual for entering into an income share agreement (as such term is defined in title I) shall be included as income or assets in the computation of expected family contribution for any program funded in whole or in part under the Higher Education Act of 1965.

TITLE V—INVESTMENT COMPANY TREATMENT

SEC. 501. BUSINESSES MAKING INCOME SHARE AGREEMENTS EXCLUDED FROM INVESTMENT COMPANY TREATMENT.

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

(1) in paragraph (4), by inserting after ''industrial banking,'' the following: ''income share agreements (as defined under section 102 of the Investing in Student Success Act of 2014),''; and

(2) in paragraph (5), by inserting ", including income share agreements" after "services" each place such term appears.

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