AMENDMENT TO
RULES COMMITTEE PRINT 115–39
OFFERED BY MR. MESSER OF INDIANA

At the end of the bill, insert the following:

TITLE VI—INVESTING IN
STUDENT ACHIEVEMENT

SEC. 6001. SHORT TITLE.
This title may be cited as the “Investing in Student
Achievement Act of 2017” or the “ISA Act of 2017”.

SEC. 6002. DEFINITIONS.
For purposes of this title:

(1) COMPARABLE LOAN.—The term “com-
parable loan” means, with respect to an income-
share agreement, a loan that—

(A) has an original principal amount such
that, after any origination fees on the loan are
paid, the amount of loan financing received by
the individual is equal to the total amount of
funding provided under the income-share agree-
ment to or on behalf of the individual subject
to the agreement;

(B) has the same term to maturity as the
duration of the income-share agreement; and
(C) is fully amortized over such term with monthly payments of principal and interest.

(2) **INCOME-SHARE AGREEMENT.**—The term “income-share agreement” means an agreement—

(A) between an individual and an ISA funder;

(B) which meets the requirements of section 6102; and

(C) under which—

(i) the ISA funder pays amounts to, or on behalf of, such individual for costs associated with a postsecondary training program, or any other program designed to increase the individual’s human capital, employability, or earning potential (and not limited to programs eligible to participate in programs under title IV of the Higher Education Act of 1965), as well as any personal expenses (such as books, supplies, transportation, and living costs) incurred by the individual while enrolled in such a program, or for the refinancing of debt used for these purposes (hereinafter in this title referred to as “income-share funding”); and
(ii) such individual pays to such ISA funder (or the ISA funder’s successor in interest) amounts equal to a specified percentage of the individual’s future income, for a defined term (hereinafter in this title referred to as “income-share payments”).

(3) ISA FUNDER.—With respect to an income-share agreement, the term “ISA funder” means the party to such agreement who—

(A) pays amounts to, or on behalf of, an individual solely for the purposes specified in paragraph (2)(C)(i); and

(B) has the right to receive a specified percentage of the individual’s future income.

(4) QUALIFIED ISA.—The term “Qualified ISA” means an income-share agreement that complies with the following:

(A) AFFORDABILITY FOR LOW AFTER-SCHOOL INCOME.—The income-share agreement provides that when an individual subject to the agreement has an income that is equal to or below the amount that is 150 percent of the poverty line for a single person (as defined in section 673 of the Community Services Block Grant Act (42 U.S.C. 9902)), the percentage of
income obligation for the individual is zero. The preceding sentence may not be interpreted to preclude the charging of fees or nominal payments (as described under section 6102(a)(5)) during this period.

(B) LIMIT ON PERCENTAGE OF INCOME.—

The maximum percentage of income an individual would be required to pay under the agreement does not exceed 20 percent, and the product of such percentage and the number of years of the agreement does not exceed 2.25 (which figure is the product of 7.5 percent and the number of years in the longest allowable contract under section 6102(a)(3)).

(C) APPROPRIATE RISK SHARING.—The payments required under such agreement for an individual with income during the payment term equal to 175 percent of the poverty line for a single person (as defined in section 673 of the Community Services Block Grant Act (42 U.S.C. 9902)) would not exceed the payments on a comparable loan that bears interest at a rate equal to the annual percentage rate of interest limitation under section 987(b) of title 10, United States Code.
(5) **State.**—The term “State” means 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.

(6) **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).

**Subtitle A—Tax Treatment of Income-Share Agreements**

**SEC. 6101. TAX TREATMENT OF PROCEEDS AND PAYMENTS OF FUTURE INCOME.**

For purposes of the Internal Revenue Code of 1986—

(1) **Funding excluded from gross income.**—In the case of an individual, gross income shall not include the amount of any income-share
funding which is paid to or on behalf of such individual under an income-share agreement.

(2) **Difference in Repayment Not Included as Gross Income.**—In the case of an income-share agreement under which the income-share funding exceeds the total income-share payments (in any period over the life of the contract), the individual’s gross income shall not include the amount of such excess.

(3) **Treatment of Payments of Future Income.**—The amount of any income-share payments under an income-share agreement shall be treated—

(A) first, with respect to so much of such amount as does not exceed the income-share funding under such agreement, as a recovery of investment (with a corresponding reduction in basis) in the contract; and

(B) second, as income on the contract which is includible in gross income.

**SEC. 6102. TERMS AND CONDITIONS OF INCOME-SHARE AGREEMENT CONTRACTS.**

(a) **Terms and Conditions.**—An income-share agreement shall not be treated as meeting the requirements of this section unless:
(1) Specified percentage of income.—The agreement specifies the percentage of future income required to be paid.

(2) Definition of income.—The income-share agreement specifies the definition of income to be used for purposes of calculating an individual’s obligation to pay under the agreement, which shall not in any case include the income of the individual’s children.

(3) Specified duration; extension of period.—

(A) Duration.—The agreement specifies the maximum period of time during which the individual will be obligated to pay a percentage of the individual’s future income (excluding periods when just a nominal payment (as described under paragraph (5)) is required), which may not (except as provided in subparagraph (B)) exceed 360 months.

(B) Extension of period.—The agreement may provide for the extension of such period by a number of months during which the individual’s percentage of income obligation (excluding nominal payments and fees) was zero, either because of further enrollment in edu-
cation or training or the individual’s income was below the level at which payments are required in the agreement.

(4) EARLY TERMINATION.—The agreement specifies the terms and conditions under which the individual subject to the agreement may terminate the agreement.

(5) NOMINAL PAYMENTS.—The agreement specifies any nominal monthly payment that is required during periods when the individual subject to the agreement has no percentage of income obligation, except that such nominal monthly payment shall not exceed twenty-five dollars per month (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 the data are available).

(b) REQUIRED DISCLOSURES.—An income-share agreement does not comply with the requirements of this section unless the individual who is committing under the agreement to pay future income is provided, before entering into such agreement, a written document that clearly and simply discloses—
(1) that 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 pursuant to the agreement; and

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

(2) that the obligations of the individual under the agreement are not dischargeable under bankruptcy law, except in a case that would impose an undue hardship on the debtor and the debtor’s dependents;

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

(4) the duration of the individual’s obligations under the agreement (absent such prepayments), including any circumstances under which the duration of the agreement would be extended or discharged;

(5) the percentage of income the individual is committing to pay under the agreement, including whether the percentage of income is fixed or variable under the agreement, and the minimum amount of annual income that triggers the individual’s obliga-
tion under the agreement to make payments for such year;

(6) the definition of income to be used for purposes of calculating the individual’s obligation under the agreement;

(7) a comparison of—

(A) the amounts an individual would be required to pay under the income-share agreement at a range of annual income levels, which income levels shall correspond to the levels the individual might reasonably be expected to make given the intended use of the funds provided under the agreement, as determined in accordance with guidance issued by the Director of the Bureau of Consumer Financial Protection; to

(B) the amounts required to be paid under one or more comparable loans, including a loan at an interest rate determined by the Director of the Bureau of Consumer Financial Protection to be an approximation of the interest rate available to student loan borrowers in the private marketplace and, where applicable, a Federal Stafford loan;
(8) income verification documentation, including personal tax records submitted to the Internal Revenue Service, that the individual may be required to provide under the agreement;

(9) intent to conduct annual reconciliation relating to obligations owed by the individual under the agreement; and

(10) any nominal payments required under the agreement.

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

(d) EFFECT OF FAILURE TO PROVIDE DOCUMENTATION.—

(1) IN GENERAL.—Absent income documentation from an individual under an income-share agreement, the ISA funder of such agreement (or the funder’s successor in interest) may assume a certain income level for the individual, up to the level that would create an obligation equal to the maximum payment amount under the agreement.

(2) TREATMENT UNDER STATE LAW.—Any obligation resulting from an assumed income level under
paragraph (1) shall not be considered to be imposing
an unlawful fee under a State law unless such State
law was issued after the date of the enactment of
this Act and such State law expressly states that it
is intended to apply to income-share agreements.

(3) VERIFICATION OF INCOME.—If an indi-
vidual supplies an ISA funder (or its successor in in-
terest) with their income verification information
within 180 days of the ISA funder (or its successor
in interest) assuming an income level for such indi-
vidual under paragraph (1), the individual shall be
entitled to have any payments that were made in ex-
cess of their actual obligation under the contract ei-
ther refunded to them or credited to future obliga-
tions under the contract.

SEC. 6103. RULEMAKING; MODEL DISCLOSURE FORMS.

(a) No Bureau General Rulemaking Author-
ity.—Except as provided under subsection (b) and section
6102(b)(7), the Director of the Bureau of Consumer Fi-
nancial Protection may not issue regulations under this
title.

(b) Model Disclosure Forms.—

(1) In general.—Not later than 180 days
after the date of the enactment of this Act, the Di-
rector of the Bureau of Consumer Financial Protec-
tion, after engaging in appropriate consumer testing of such forms, shall promulgate a model disclosure form for the disclosures required under section 6102(b).

(2) **SAFE HARBOR.**—Any person who uses the model disclosure form promulgated pursuant to paragraph (1) and includes accurate information required under section 6102(b) shall be deemed to be in compliance with the disclosure requirements under section 6102(b).

**SEC. 6104. TRUTH IN LENDING ACT.**

Any income-share agreement that complies with the disclosure requirements of section 6102(b) shall be deemed to be in compliance with the Truth in Lending Act.

**SEC. 6105. CONSENT TO CONTINUING RELEASE OF TAX-PAYER INFORMATION UNDER INCOME SHARE AGREEMENT.**

The Secretary of the Treasury shall modify Treasury Regulations and guidance to provide for continuing consent to disclosure of an individual’s return information to an ISA funder (or the funder’s successor in interest) under an income-share agreement, but only for periods relevant to, and only to the extent the Secretary determines
is necessary and appropriate in carrying out the terms of, such agreement.

Subtitle B—Treatment of Income-Share Agreements Under State Law

SEC. 6201. LAWFULNESS OF CONTRACTS; PREEMPTION OF STATE LAW.

Any income-share agreement that complies with the requirements of section 6102 shall be a valid, binding, and enforceable contract notwithstanding any State law limiting or otherwise regulating assignments of future wages or other income.

SEC. 6202. PREEMPTION OF STATE LAW WITH RESPECT TO USURY.

A Qualified ISA shall not be subject to State law with respect to usury, unless such State law was issued after the date of the enactment of this Act and such State law expressly states that it is intended to apply to income-share agreements.

SEC. 6203. PREEMPTION PRE-EXISTING STATE LAWS WITH RESPECT TO ABILITY-TO-REPAY AND LICENSING LAWS.

A Qualified ISA shall not be subject to a State law with respect to “ability-to-repay” requirements, and an ISA funder issuing a Qualified ISA shall not be subject
to any State law with respect to licensing or registration, unless such State law was issued after the date of the enactment of this Act and such State law expressly states that it is intended to apply to income-share agreements.

Subtitle C—Federal Individual Assistance Treatment of Income-Share Agreements

SEC. 6301. PROCEEDS 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 that complies with the requirements of section 6102 of this title 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 (20 U.S.C. 1001 et seq.).

Subtitle D—Treatment Under Securities Laws

SEC. 6401. INCOME-SHARE AGREEMENTS NOT TREATED AS SECURITIES.

An income-share agreement shall not be treated as a security for purposes of the securities laws (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))), any similar State law, or any State
law that directly or indirectly prohibits, limits, or imposes conditions, based on the merits of an offering or issuer of securities, upon the offer or sale of any security. Nothing in the preceding sentence shall be construed to prevent an instrument that is collateralized by, or serviced by the cash flows of, an income-share agreement from being treated as a security for purposes of any law described in such sentence.

SEC. 6402. 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 in section 6002 of the Investing in Students Act of 2017),”; and

(2) in paragraph (5)—

(A) by inserting “, including purchasing or otherwise acquiring income-share agreements (as defined in section 6002 of the Investing in Students Act of 2017)” after “services” the first place it appears; and
(B) by inserting “, including making income-share agreements (as so defined)” after “services” the second place it appears.

Subtitle E—Treatment Under Federal Consumer Finance Laws

SEC. 6501. INCOME-SHARE AGREEMENT ANTI-DISCRIMINATION PROTECTIONS.

Section 702 of the Equal Credit Opportunity Act (15 U.S.C. 1691a) is amended—

(1) in subsection (d), by inserting before the period the following: “, or the right granted under an income-share agreement (as defined in section 6002 of the Investing in Students Act of 2017)”;

(2) in subsection (e)—

(A) by striking “or any assignee” and inserting “any assignee”; and

(B) by inserting before the period the following: “; or any person who regularly extends, renews, or continues funding under an income-share agreement (as defined in section 6002 of the Investing in Students Act of 2017)”.

SEC. 6502. PROHIBITION ON REQUIRING PREAUTHORIZED ELECTRONIC FUND TRANSFERS.

Section 913(1) of the Electronic Fund Transfer Act (15 U.S.C. 1693k(1)) is amended by inserting after “a
consumer” the following: “or the entering into of an income-share agreement (as defined in section 6002 of the Investing in Students Act of 2017) with a consumer”.

SEC. 6503. TREATMENT UNDER THE FAIR CREDIT REPORTING ACT.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by adding at the end the following:

“(i) INCOME-SHARE AGREEMENT INFORMATION.—

With respect to an income-share agreement (as defined in section 6002 of the Investing in Students Act of 2017), a consumer report made by a consumer reporting agency—

“(1) may include a description of the contract terms of the income-share agreement and, subject to subsection (a), information with respect to amounts that are owed under such agreement; and

“(2) may not include any speculation about future amounts that may be owed under the income-share agreement.”.

SEC. 6504. APPLICATION OF THE MILITARY LENDING ACT.

Section 987 of title 10, United States Code, is amended—

(1) by redesignating subsection (i) as subsection (j); and
(2) by inserting after subsection (h) the following:

“(i) Treatment of Income-Share Agreements.—The Secretary of Defense shall issue regulations to apply this section to income-share agreements (as defined in section 6002 of the Investing in Students Act of 2017), and an income-share agreement shall be deemed to meet the annual percentage rate of interest limitation under subsection (b) if such agreement would meet the requirements of section 6002(4)(C) of the Investing in Student Achievement Act of 2017 (related to appropriate risk sharing) but with reference to the rate specified in subsection (b).”.

SEC. 6505. APPLICATION OF THE SERVICEMEMBERS CIVIL RELIEF ACT.

Section 207 of the Servicemembers Civil Relief Act (50 U.S.C. 3937) is amended by adding at the end the following:

“(f) Treatment of Income-Share Agreements.—The Secretary of Defense shall issue regulations to apply this section to income-share agreements (as defined in section 6002 of the Investing in Students Act of 2017), specifically by stating that an income-share agreement shall be considered to have met the requirements of this section if the agreement would meet the requirements
of section 6002(4)(C) of the Investing in Student Achievement Act of 2017 (relating to appropriate risk sharing) but with reference to the rate specified in subsection (a)(1).”.

SEC. 6506. RULEMAKING.

Not later than 180 days after the date of enactment of this Act—

(1) the Director of the Bureau of Consumer Financial Protection shall issue regulations to carry out the amendments made by section 6501 and 6502; and

(2) the Secretary of Defense shall issue regulations to carry out the amendment made by section 6504 and 6505.

Subtitle F—Treatment Under Other Laws

SEC. 6601. INSURANCE AND WAGERING.

Income-share agreements shall not be treated as a contract for insurance or a betting or wagering contract under any Federal or State law.

SEC. 6602. PAYMENTS NOT CONSIDERED PREPAYMENTS.

With respect to an income-share agreement, any requirement that an individual pay an amount greater than the income-share funding in order to extinguish the income-share agreement obligation earlier than the end of
the term shall not be considered a prepayment penalty for purposes of any Federal or State law with respect to prepayment penalties.