

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

At the end of the bill, insert the following:

1 **TITLE VI—INVESTING IN**
2 **STUDENT ACHIEVEMENT**

3 **SEC. 6001. SHORT TITLE.**

4 This title may be cited as the “Investing in Student
5 Achievement Act of 2017” or the “ISA Act of 2017”.

6 **SEC. 6002. DEFINITIONS.**

7 For purposes of this title:

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

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

18 (B) has the same term to maturity as the
19 duration of the income-share agreement; and

1 (C) is fully amortized over such term with
2 monthly payments of principal and interest.

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

5 (A) between an individual and an ISA
6 funder;

7 (B) which meets the requirements of sec-
8 tion 6102; and

9 (C) under which—

10 (i) the ISA funder pays amounts to,
11 or on behalf of, such individual for costs
12 associated with a postsecondary training
13 program, or any other program designed to
14 increase the individual’s human capital,
15 employability, or earning potential (and
16 not limited to programs eligible to partici-
17 pate in programs under title IV of the
18 Higher Education Act of 1965), as well as
19 any personal expenses (such as books, sup-
20 plies, transportation, and living costs) in-
21 curred by the individual while enrolled in
22 such a program, or for the refinancing of
23 debt used for these purposes (hereinafter
24 in this title referred to as “income-share
25 funding”); and

1 (ii) such individual pays to such ISA
2 funder (or the ISA funder's successor in
3 interest) amounts equal to a specified per-
4 centage of the individual's future income,
5 for a defined term (hereinafter in this title
6 referred to as "income-share payments").

7 (3) ISA FUNDER.—With respect to an income-
8 share agreement, the term "ISA funder" means the
9 party to such agreement who—

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

13 (B) has the right to receive a specified per-
14 centage of the individual's future income.

15 (4) QUALIFIED ISA.—The term "Qualified ISA"
16 means an income-share agreement that complies
17 with the following:

18 (A) AFFORDABILITY FOR LOW AFTER-
19 SCHOOL INCOME.—The income-share agreement
20 provides that when an individual subject to the
21 agreement has an income that is equal to or
22 below the amount that is 150 percent of the
23 poverty line for a single person (as defined in
24 section 673 of the Community Services Block
25 Grant Act (42 U.S.C. 9902)), the percentage of

1 income obligation for the individual is zero. The
2 preceding sentence may not be interpreted to
3 preclude the charging of fees or nominal pay-
4 ments (as described under section 6102(a)(5))
5 during this period.

6 (B) LIMIT ON PERCENTAGE OF INCOME.—
7 The maximum percentage of income an indi-
8 vidual would be required to pay under the
9 agreement does not exceed 20 percent, and the
10 product of such percentage and the number of
11 years of the agreement does not exceed 2.25
12 (which figure is the product of 7.5 percent and
13 the number of years in the longest allowable
14 contract under section 6102(a)(3)).

15 (C) APPROPRIATE RISK SHARING.—The
16 payments required under such agreement for an
17 individual with income during the payment
18 term equal to 175 percent of the poverty line
19 for a single person (as defined in section 673
20 of the Community Services Block Grant Act
21 (42 U.S.C. 9902)) would not exceed the pay-
22 ments on a comparable loan that bears interest
23 at a rate equal to the annual percentage rate of
24 interest limitation under section 987(b) of title
25 10, United States Code.

1 (5) STATE.—The term “State” means the sev-
2 eral States of the Union, the Commonwealth of
3 Puerto Rico, the District of Columbia, Guam, Amer-
4 ican Samoa, the Virgin Islands, the government of
5 the Northern Mariana Islands, and the Trust Terri-
6 tory of the Pacific Islands.

7 (6) STATE LAW.—The term “State law” means
8 any law, decision, rule, regulation, or other action
9 having the effect of a law of any State or any polit-
10 ical subdivision of a State, or any agency or instru-
11 mentality of a State or political subdivision of a
12 State, except that a law of the United States appli-
13 cable only to the District of Columbia shall be treat-
14 ed as a State law (rather than a law of the United
15 States).

16 **Subtitle A—Tax Treatment of** 17 **Income-Share Agreements**

18 **SEC. 6101. TAX TREATMENT OF PROCEEDS AND PAYMENTS** 19 **OF FUTURE INCOME.**

20 For purposes of the Internal Revenue Code of
21 1986—

22 (1) FUNDING EXCLUDED FROM GROSS IN-
23 COME.—In the case of an individual, gross income
24 shall not include the amount of any income-share

1 funding which is paid to or on behalf of such indi-
2 vidual under an income-share agreement.

3 (2) DIFFERENCE IN REPAYMENT NOT IN-
4 CLUDED AS GROSS INCOME.—In the case of an in-
5 come-share agreement under which the income-share
6 funding exceeds the total income-share payments (in
7 any period over the life of the contract), the individ-
8 ual's gross income shall not include the amount of
9 such excess.

10 (3) TREATMENT OF PAYMENTS OF FUTURE IN-
11 COME.—The amount of any income-share payments
12 under an income-share agreement shall be treated—

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

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

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

22 (a) TERMS AND CONDITIONS.—An income-share
23 agreement shall not be treated as meeting the require-
24 ments of this section unless:

1 (1) SPECIFIED PERCENTAGE OF INCOME.—The
2 agreement specifies the percentage of future income
3 required to be paid.

4 (2) DEFINITION OF INCOME.—The income-
5 share agreement specifies the definition of income to
6 be used for purposes of calculating an individual's
7 obligation to pay under the agreement, which shall
8 not in any case include the income of the individ-
9 ual's children.

10 (3) SPECIFIED DURATION; EXTENSION OF PE-
11 RIOD.—

12 (A) DURATION.—The agreement specifies
13 the maximum period of time during which the
14 individual will be obligated to pay a percentage
15 of the individual's future income (excluding pe-
16 riods when just a nominal payment (as de-
17 scribed under paragraph (5)) is required),
18 which may not (except as provided in subpara-
19 graph (B)) exceed 360 months.

20 (B) EXTENSION OF PERIOD.—The agree-
21 ment may provide for the extension of such pe-
22 riod by a number of months during which the
23 individual's percentage of income obligation (ex-
24 cluding nominal payments and fees) was zero,
25 either because of further enrollment in edu-

1 cation or training or the individual's income
2 was below the level at which payments are re-
3 quired in the agreement.

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

8 (5) NOMINAL PAYMENTS.—The agreement
9 specifies any nominal monthly payment that is re-
10 required during periods when the individual subject to
11 the agreement has no percentage of income obliga-
12 tion, except that such nominal monthly payment
13 shall not exceed twenty-five dollars per month (ad-
14 justed each year to reflect changes in the Consumer
15 Price Index for All Urban Consumers published by
16 the Bureau of Labor Statistics of the Department of
17 Labor for the most recent 12-month period for
18 which the data are available).

19 (b) REQUIRED DISCLOSURES.—An income-share
20 agreement does not comply with the requirements of this
21 section unless the individual who is committing under the
22 agreement to pay future income is provided, before enter-
23 ing into such agreement, a written document that clearly
24 and simply discloses—

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

4 (A) may be more or less than the amount
5 provided to the individual pursuant to the
6 agreement; and

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

9 (2) that the obligations of the individual under
10 the agreement are not dischargeable under bank-
11 ruptcy law, except in a case that would impose an
12 undue hardship on the debtor and the debtor's de-
13 pendents;

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

17 (4) the duration of the individual's obligations
18 under the agreement (absent such prepayments), in-
19 cluding any circumstances under which the duration
20 of the agreement would be extended or discharged;

21 (5) the percentage of income the individual is
22 committing to pay under the agreement, including
23 whether the percentage of income is fixed or variable
24 under the agreement, and the minimum amount of
25 annual income that triggers the individual's obliga-

1 tion under the agreement to make payments for
2 such year;

3 (6) the definition of income to be used for pur-
4 poses of calculating the individual's obligation under
5 the agreement;

6 (7) a comparison of—

7 (A) the amounts an individual would be re-
8 quired to pay under the income-share agree-
9 ment at a range of annual income levels, which
10 income levels shall correspond to the levels the
11 individual might reasonably be expected to
12 make given the intended use of the funds pro-
13 vided under the agreement, as determined in
14 accordance with guidance issued by the Direc-
15 tor of the Bureau of Consumer Financial Pro-
16 tection; to

17 (B) the amounts required to be paid under
18 one or more comparable loans, including a loan
19 at an interest rate determined by the Director
20 of the Bureau of Consumer Financial Protec-
21 tion to be an approximation of the interest rate
22 available to student loan borrowers in the pri-
23 vate marketplace and, where applicable, a Fed-
24 eral Stafford loan;

1 (8) income verification documentation, includ-
2 ing personal tax records submitted to the Internal
3 Revenue Service, that the individual may be required
4 to provide under the agreement;

5 (9) intent to conduct annual reconciliation re-
6 lating to obligations owed by the individual under
7 the agreement; and

8 (10) any nominal payments required under the
9 agreement.

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

15 (d) EFFECT OF FAILURE TO PROVIDE DOCUMENTA-
16 TION.—

17 (1) IN GENERAL.—Absent income documenta-
18 tion from an individual under an income-share
19 agreement, the ISA funder of such agreement (or
20 the funder's successor in interest) may assume a
21 certain income level for the individual, up to the
22 level that would create an obligation equal to the
23 maximum payment amount under the agreement.

24 (2) TREATMENT UNDER STATE LAW.—Any obli-
25 gation resulting from an assumed income level under

1 paragraph (1) shall not be considered to be imposing
2 an unlawful fee under a State law unless such State
3 law was issued after the date of the enactment of
4 this Act and such State law expressly states that it
5 is intended to apply to income-share agreements.

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

16 **SEC. 6103. RULEMAKING; MODEL DISCLOSURE FORMS.**

17 (a) NO BUREAU GENERAL RULEMAKING AUTHOR-
18 ITY.—Except as provided under subsection (b) and section
19 6102(b)(7), the Director of the Bureau of Consumer Fi-
20 nancial Protection may not issue regulations under this
21 title.

22 (b) MODEL DISCLOSURE FORMS.—

23 (1) IN GENERAL.—Not later than 180 days
24 after the date of the enactment of this Act, the Di-
25 rector of the Bureau of Consumer Financial Protec-

1 tion, after engaging in appropriate consumer testing
2 of such forms, shall promulgate a model disclosure
3 form for the disclosures required under section
4 6102(b).

5 (2) SAFE HARBOR.—Any person who uses the
6 model disclosure form promulgated pursuant to
7 paragraph (1) and includes accurate information re-
8 quired under section 6102(b) shall be deemed to be
9 in compliance with the disclosure requirements
10 under section 6102(b).

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

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

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

19 The Secretary of the Treasury shall modify Treasury
20 Regulations and guidance to provide for continuing con-
21 sent to disclosure of an individual's return information to
22 an ISA funder (or the funder's successor in interest)
23 under an income-share agreement, but only for periods rel-
24 evant to, and only to the extent the Secretary determines

1 is necessary and appropriate in carrying out the terms of,
2 such agreement.

3 **Subtitle B—Treatment of Income-**
4 **Share Agreements Under State**
5 **Law**

6 **SEC. 6201. LAWFULNESS OF CONTRACTS; PREEMPTION OF**
7 **STATE LAW.**

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

13 **SEC. 6202. PREEMPTION OF STATE LAW WITH RESPECT TO**
14 **USURY.**

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

20 **SEC. 6203. PREEMPTION PRE-EXISTING STATE LAWS WITH**
21 **RESPECT TO ABILITY-TO-REPAY AND LICENS-**
22 **ING LAWS.**

23 A Qualified ISA shall not be subject to a State law
24 with respect to “ability-to-repay” requirements, and an
25 ISA funder issuing a Qualified ISA shall not be subject

1 to any State law with respect to licensing or registration,
2 unless such State law was issued after the date of the en-
3 actment of this Act and such State law expressly states
4 that it is intended to apply to income-share agreements.

5 **Subtitle C—Federal Individual As-**
6 **sistance Treatment of Income-**
7 **Share Agreements**

8 **SEC. 6301. PROCEEDS NOT TREATED AS INCOME IN CAL-**
9 **CULATION OF FINANCIAL NEED UNDER THE**
10 **HIGHER EDUCATION ACT OF 1965.**

11 No portion of any amounts received by an individual
12 for entering into an income-share agreement that complies
13 with the requirements of section 6102 of this title shall
14 be included as income or assets in the computation of ex-
15 pected family contribution for any program funded in
16 whole or in part under the Higher Education Act of 1965
17 (20 U.S.C. 1001 et seq.).

18 **Subtitle D—Treatment Under**
19 **Securities Laws**

20 **SEC. 6401. INCOME-SHARE AGREEMENTS NOT TREATED AS**
21 **SECURITIES.**

22 An income-share agreement shall not be treated as
23 a security for purposes of the securities laws (as defined
24 in section 3(a) of the Securities Exchange Act of 1934
25 (15 U.S.C. 78c(a))), any similar State law, or any State

1 law that directly or indirectly prohibits, limits, or imposes
2 conditions, based on the merits of an offering or issuer
3 of securities, upon the offer or sale of any security. Noth-
4 ing in the preceding sentence shall be construed to prevent
5 an instrument that is collateralized by, or serviced by the
6 cash flows of, an income-share agreement from being
7 treated as a security for purposes of any law described
8 in such sentence.

9 **SEC. 6402. BUSINESSES MAKING INCOME-SHARE AGREE-**
10 **MENTS EXCLUDED FROM INVESTMENT COM-**
11 **PANY TREATMENT.**

12 Section 3(c) of the Investment Company Act of 1940
13 (15 U.S.C. 80a-3(c)) is amended—

14 (1) in paragraph (4), by inserting after “indus-
15 trial banking,” the following: “income-share agree-
16 ments (as defined in section 6002 of the Investing
17 in Students Act of 2017),”; and

18 (2) in paragraph (5)—

19 (A) by inserting “, including purchasing or
20 otherwise acquiring income-share agreements
21 (as defined in section 6002 of the Investing in
22 Students Act of 2017)” after “services” the
23 first place it appears; and

1 (B) by inserting “, including making in-
2 come-share agreements (as so defined)” after
3 “services” the second place it appears.

4 **Subtitle E—Treatment Under**
5 **Federal Consumer Finance Laws**

6 **SEC. 6501. INCOME-SHARE AGREEMENT ANTI-DISCRIMINA-**
7 **TION PROTECTIONS.**

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

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

14 (2) in subsection (e)—

15 (A) by striking “or any assignee” and in-
16 serting “any assignee”; and

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

22 **SEC. 6502. PROHIBITION ON REQUIRING PREAUTHORIZED**
23 **ELECTRONIC FUND TRANSFERS.**

24 Section 913(1) of the Electronic Fund Transfer Act
25 (15 U.S.C. 1693k(1)) is amended by inserting after “a

1 consumer” the following: “or the entering into of an in-
2 come-share agreement (as defined in section 6002 of the
3 Investing in Students Act of 2017) with a consumer”.

4 **SEC. 6503. TREATMENT UNDER THE FAIR CREDIT REPORT-**
5 **ING ACT.**

6 Section 605 of the Fair Credit Reporting Act (15
7 U.S.C. 1681c) is amended by adding at the end the fol-
8 lowing:

9 “(i) **INCOME-SHARE AGREEMENT INFORMATION.**—
10 With respect to an income-share agreement (as defined in
11 section 6002 of the Investing in Students Act of 2017),
12 a consumer report made by a consumer reporting agen-
13 cy—

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

18 “(2) may not include any speculation about fu-
19 ture amounts that may be owed under the income-
20 share agreement.”.

21 **SEC. 6504. APPLICATION OF THE MILITARY LENDING ACT.**

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

24 (1) by redesignating subsection (i) as subsection
25 (j); and

1 (2) by inserting after subsection (h) the fol-
2 lowing:

3 “(i) TREATMENT OF INCOME-SHARE AGREE-
4 MENTS.—The Secretary of Defense shall issue regulations
5 to apply this section to income-share agreements (as de-
6 fined in section 6002 of the Investing in Students Act of
7 2017), and an income-share agreement shall be deemed
8 to meet the annual percentage rate of interest limitation
9 under subsection (b) if such agreement would meet the
10 requirements of section 6002(4)(C) of the Investing in
11 Student Achievement Act of 2017 (related to appropriate
12 risk sharing) but with reference to the rate specified in
13 subsection (b).”.

14 **SEC. 6505. APPLICATION OF THE SERVICEMEMBERS CIVIL**
15 **RELIEF ACT.**

16 Section 207 of the Servicemembers Civil Relief Act
17 (50 U.S.C. 3937) is amended by adding at the end the
18 following:

19 “(f) TREATMENT OF INCOME-SHARE AGREE-
20 MENTS.—The Secretary of Defense shall issue regulations
21 to apply this section to income-share agreements (as de-
22 fined in section 6002 of the Investing in Students Act of
23 2017), specifically by stating that an income-share agree-
24 ment shall be considered to have met the requirements of
25 this section if the agreement would meet the requirements

1 of section 6002(4)(C) of the Investing in Student Achieve-
2 ment Act of 2017 (relating to appropriate risk sharing)
3 but with reference to the rate specified in subsection
4 (a)(1).”.

5 **SEC. 6506. RULEMAKING.**

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

8 (1) the Director of the Bureau of Consumer Fi-
9 nancial Protection shall issue regulations to carry
10 out the amendments made by section 6501 and
11 6502; and

12 (2) the Secretary of Defense shall issue regula-
13 tions to carry out the amendment made by section
14 6504 and 6505.

15 **Subtitle F—Treatment Under**
16 **Other Laws**

17 **SEC. 6601. INSURANCE AND WAGERING.**

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

21 **SEC. 6602. PAYMENTS NOT CONSIDERED PREPAYMENTS.**

22 With respect to an income-share agreement, any re-
23 quirement that an individual pay an amount greater than
24 the income-share funding in order to extinguish the in-
25 come-share agreement obligation earlier than the end of

1 the term shall not be considered a prepayment penalty for
2 purposes of any Federal or State law with respect to pre-
3 payment penalties.

