

Will 2020 see further regulation of income share agreements?

February 10, 2020

Income share agreements (ISAs) continue to draw interest from schools, policymakers, and other stakeholders searching for solutions to the issue of rising student debt. Last summer, we published a primer outlining some of the legal and compliance considerations for university general counsels, which can be found by [clicking here](#). By way of update, we provide here an overview of key ongoing federal and state efforts related to ISAs.

Congress

There are currently two bills before Congress that provide a legal framework for ISAs, one in the House and one in the Senate. Each is bipartisan and covers such issues as:

- How ISAs should be treated under key state and federal consumer financial services laws.
- Tax treatment.
- Disclosure requirements.
- Individual affordability and income thresholds.
- State preemption (unless state law is passed to specifically regulate ISAs).

The ISA Student Protection Act (S. 2114) has been referred to the Senate Finance Committee. As of February 10, 2020, the Senate Finance Committee has not scheduled a hearing on S. 2114. The Banking and the Education Committees will also likely need to hold hearings on the bill and gain a support from a majority of each committee's members before the bill could be considered on the Senate floor. This seems unlikely at this point considering the limited Senate floor schedule remaining in this term. (A companion bill to S. 2114 has not been introduced in the House.)

Over in the House, the Kids to College Act (H.R. 1810) currently only has two co-sponsors, but last Congress, under a different name and bill number, it had the support of 18 co-sponsors. Presently, it is unclear whether or not the Education and Labor Committee will take action on this legislation in the House. Considering that the Republicans control the Senate and the Democrats control the House, passing ISA legislation acceptable to both chambers may prove difficult. In addition, presidential candidate Sen. Elizabeth Warren, D-Mass., has come out strongly against ISAs and pledged to pursue an investigation of them if elected president. Despite such election year posturing, Republicans and Democrats have expressed urgency in addressing the student

loan crisis. If they agree that ISAs could help achieve that end, it is at least possible that ISA legislation could develop as part of a Higher Education Act or tax package, or a must-pass legislative vehicle (e.g., an appropriations bill).

But given the current status of S. 2114 and H.R. 1810, meaningful ISA legislation seems unlikely in the near future. Passage of any such bill will require extensive efforts from stakeholders.

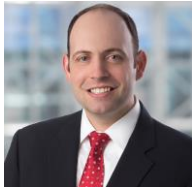
States

As indicated in [our prior alert](#), in the absence of federal legislation, we expect more legislation or regulation relating to ISAs at the state level. Last year, staff at the Bureau of Private Postsecondary Education (BPPE), which has jurisdiction over private schools in California, opined that ISAs were "incompatible" with BPPE's licensure requirements. More recently, the BPPE sanctioned a coding "boot camp" severely in part for offering unapproved ISAs. While it is unclear whether BPPE has the authority to block ISAs, it does have the ability to make life very difficult for schools that seek to offer them. Given the lack of clarity in state law, as well as the hostility towards ISAs demonstrated by consumer activists, California seems likely to consider ISAs further in the 2020 legislative session.

BPPE's move highlights the need for institutions considering offering ISAs to carefully consider applicable state law as well as the potential value of seeking federal legislation.

Our Education, Financial Services, and Government Relations teams are pleased to assist with these issues.

Contacts



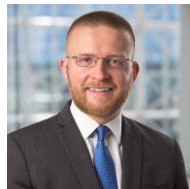
Joel D. Buckman
Counsel, Washington, D.C.
T +1 202 637 6408
joel.buckman@hoganlovells.com



Greg Ferenbach
Counsel, Washington, D.C.
T +1 202 637 6457
greg.ferenbach@hoganlovells.com



Ashley Hutto-Schultz
Senior Associate, Washington, D.C.
T +1 202 637 5409
ashley.huttoschultz@hoganlovells.com



Kevin Wysocki
Specialist, Washington, D.C.
T +1 202 637 4887
kevin.wysocki@hoganlovells.com

www.hoganlovells.com

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