

**Congress of the United States**  
Washington, DC 20510

June 4, 2019

The Honorable Betsy DeVos  
Secretary of Education  
U.S. Department of Education  
400 Maryland Ave., S.W.  
Washington, D.C. 20202

Dear Secretary DeVos:

We write to express concern about reports that the U.S. Department of Education (“the Department”) is exploring an experiment with Income Share Agreements (ISAs) in federal higher education programs, and to learn more about the Department’s plans in order to evaluate whether these plans are in the best interest of students and within the Department’s authority under the law.<sup>1</sup>

Last month, during the Reagan Institute Summit on Education, Diane Auer Jones, the Principal Deputy Under Secretary at the Department, revealed that the Department is “thinking about how we use the federal programs to do an experiment with income share agreements.”<sup>2</sup> Jones further asserted that “[w]e love income share agreements,” but did not elaborate on the Department’s plans.<sup>3</sup> These revelations raise urgent questions about the Department’s plans and support for a new student debt product. At a time when student debt stands at more than \$1.5 trillion, it is deeply disturbing to see a Department official boosting novel forms of student debt instead of trying to stem the tide of indebtedness – and even more disturbing to hear the official propose using federal taxpayer dollars to do so.

ISAs are contracts between students struggling to afford college and a funder – sometimes a college or other organization, but often private investors – that require students to commit to pay a portion of their income to the funder for a number of years after the students leave school in exchange for higher education financing. ISAs are financial products, drafted by lawyers, often structured to provide an attractive return on the investment of funders or private investors. They carry many common pitfalls of traditional private student loans – with the added danger of deceptive rhetoric and marketing that obscure their true nature.

There is a small but vocal group of investors, financial institutions, education providers, and advocates touting ISAs as a panacea for our nation’s student debt crisis. Advocates call

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<sup>1</sup> Inside Higher Ed, “Education Department May Offer Income-Share Plans,” Andrew Kreighbaum, April 12, 2019, <https://www.insidehighered.com/quicktakes/2019/04/12/education-department-may-offer-income-share-plans>

<sup>2</sup> Politico, “DeVos, Cruz targeting Democrats for ‘Education Freedom’ support,” Nicole Gaudiano, April 12, 2019, <https://www.politico.com/newsletters/morning-education/2019/04/12/devos-cruz-targeting-democrats-for-education-freedom-support-424348>

<sup>3</sup> *Ibid.*

ISAs “free education,”<sup>4</sup> claim there is no balance<sup>5</sup> or interest,<sup>6</sup> and most of all, emphatically state that ISAs are *not* loans.<sup>7</sup> Given this rhetoric, it is vital to set aside the hype and look at ISAs for what they really are: a form of student debt.

Like private student loans and many other types of debt, the terms of an ISA contract can be predatory and dangerous for students. Institutions market ISAs as low risk to borrowers because ISAs often do not require payment unless the borrower meets a specific income threshold. There is no evidence, however, that these income thresholds actually shield borrowers from having to make payments they cannot afford.

Purdue University’s “Back-a-Boiler” ISA program, for example, requires no payment for those with earned incomes of less than \$20,000.<sup>8</sup> Yet, a student who makes just over that threshold could be required to pay 5% or more of her income toward the ISA – a precarious situation for anyone, particularly someone with children or other obligations like medical expenses. Moreover, the consequences of default in the “Back-a-Boiler” ISA program belie the notion that their ISA is preferable to a federal student loan. According to Purdue’s sample ISA contract, a borrower who defaults or attempts to exit their ISA early could be required to pay *two and a half times* the amount originally borrowed – in other words, the ISA conversion costs more than some of the most burdensome, predatory, and costly private student loans.<sup>9</sup>

ISAs also include some of the most exploitative terms in the private student loan industry, including mandatory arbitration agreements and class action bans.<sup>10</sup> Unlike private student loans, however, these risky contracts have virtually no transparency and have experienced little to no oversight from federal regulators. In addition, it is unclear that ISA funders are currently complying with existing regulatory frameworks.

Although both state and federal laws contain protections meant to prevent discrimination and grossly unfair terms, we are still deeply concerned that ISAs create significant opportunities for discriminatory practices. ISAs are premised on the promise that higher education produces financial returns to graduates when they enter the labor market, which can then be used to pay back the cost of financing those degrees and credentials. Students of color often need more debt to finance higher education,<sup>11</sup> yet due to discrimination in the labor market often see lower financial returns from the same levels of education.<sup>12</sup> This reality suggests that ISAs will

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<sup>4</sup> Leif, “Investing In Your Future,” <https://leif.org/students>

<sup>5</sup> Forbes, “Three Myths About Income-Share Agreements That Won’t Die,” Preston Cooper, January 10, 2019, <https://www.forbes.com/sites/prestoncooper2/2019/01/10/three-myths-about-income-share-agreements-that-wont-die/#6c3b719a4005>

<sup>6</sup> Clarkson University, “Lewis Income Share Agreement Program,” <https://www.clarkson.edu/isa>

<sup>7</sup> San Diego Workforce Partnership, “Workforce Income Share Agreement Fund,” <https://workforce.org/ISA/>; Purdue University, “Back A Boiler – ISA Fund,” <https://www.purdue.edu/backaboiler/>

<sup>8</sup> Purdue University, “ISA Sample Contract,” <https://www.purdue.edu/backaboiler/disclosure/contract.html>

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Letter from Senator Elizabeth Warren to Secretary DeVos, June 18, 2018 <https://www.warren.senate.gov/newsroom/press-releases/warren-harris-takano-adams-espallat-colleagues-press-education-secretary-for-action-on-student-loan-borrowers-of-color>

<sup>12</sup> *Ibid.*

inherently have a discriminatory impact on students of color, both in terms of students' reliance on them and their difficulty paying their monthly obligations.

Compounding this baseline opportunity for discrimination is the fact that ISA funders may flout existing federal consumer protection and anti-discrimination laws, including the Equal Credit Opportunity Act (ECOA).<sup>13</sup> ISAs do not all offer the same terms and conditions to all students at a college or university—they can offer better terms to students enrolled in programs expected to generate higher incomes. ISAs' eligibility criteria and pricing, therefore, raise serious questions about whether they comply with the ECOA and other federal laws that prohibit discrimination on the basis of certain protected classes like race, sex, or age.

Unequal ISA terms based on program of study or other student characteristics can obviously have a clear discriminatory effect because some programs are highly correlated with gender or race, as are the fields that graduates would generally enter after college. An ISA that offers unfavorable terms to students enrolled in an early childhood education program, for example, would likely have a discriminatory impact because students in these programs tend to be overwhelmingly female. In contrast, ISAs that offer terms that are more generous for programs like engineering, which tend to graduate students in fields dominated by white men,<sup>14</sup> would again produce disparate outcomes that contribute to our country's structural inequalities.

An ISA is simply a debt that must be repaid. By design, ISAs often require students to pay much more money to funders than they originally received to finance their education. The opportunity for private investors to profit from ISAs – and even sell their investments on Wall Street, just like private student loans – demonstrates the core misalignment between the interests of ISA funders and investors and the best interests of students. It also creates an incentive for funders and private investors to generate as much profit as possible from ISAs—a dangerous scenario for students.

We were, therefore, alarmed to hear the Department is considering providing federal support to spread the use of debt of such dubious benefit and obvious risks. While the Administration purports to support policies that would “address rising debt,” “encourage responsible borrowing,” and “limit and manage [students'] loan borrowing,”<sup>15</sup> the Department is simultaneously exploring new ways to shove students into debt. The Department should instead focus on pursuing real solutions to the student debt crisis that help student borrowers avoid and escape debt, like fully discharging the loans of defrauded borrowers and improving the abysmal administration of the Public Service Loan Forgiveness program.

In order to understand whether the Department has taken appropriate steps to evaluate whether ISAs are in the best interest of students, and whether the Department has properly explored its legal authorities under the law, we request answers to the following questions by June 25, 2019:

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<sup>13</sup> 15 U.S.C. § 1691 et seq.

<sup>14</sup> DataUSA, “Engineering,” <https://datausa.io/profile/cip/engineering#demographics>

<sup>15</sup> White House, “Proposals to Reform the Higher Education Act,” March, 2019, <https://www.whitehouse.gov/wp-content/uploads/2019/03/HEA-Principles.pdf>

1. Please provide specific detail about the Department's plans to "use the federal programs to do an experiment with income share agreements," including an explanation of:
  - a. the authority under which the Department plans to execute its plans;
  - b. a detailed description of what such ISA experiments and contracts would look like;
  - c. the number of schools the Department expects to participate;
  - d. how much the program would cost taxpayers;
  - e. how the Department would evaluate the program;
  - f. any guidelines the Department would establish for the terms of these ISAs;
  - g. whether these ISAs would involve private investors; and,
  - h. the company or entity the Department expects would service the ISAs.
2. Has the Department's Office of General Counsel completed a legal analysis of the Department's authority to "use the federal programs to do an experiment with income share agreements"? If so, please provide any relevant legal memoranda.
3. What guidance would the Department release to ensure the use of "federal programs to do an experiment with income share agreements" would not violate the Equal Credit Opportunity Act or any other relevant federal consumer protection or anti-discrimination law? If so, please provide any relevant legal memoranda.
4. Has the Department's Office of Civil Rights completed an analysis of whether the use of "federal programs to do an experiment with income share agreements" would risk violating federal civil rights laws, including Title IX of the Education Amendments Act of 1972, the Civil Rights Act of 1965, or any other relevant federal civil rights law? If so, please provide any relevant analysis.
5. Does the Department plan to initiate an experimental site authorized under section 487A(b) of the Higher Education Act for ISAs? If so, please provide:
  - a. a justification for the experiment, including why it is in the best interest of students;
  - b. a justification for how the Department plans to protect against predatory and deceptive contractual terms for students, including how the Department will ensure that students can easily exit the experiment;
  - c. any Department Office of General Counsel legal memo analyzing the Department's legal authority to establish such an experiment;
  - d. the research goals and objectives for any such experiment, including the metrics the Department plans to use to evaluate the success of the experiment;
  - e. any other memoranda, analyses, or recommendations regarding ISAs prepared by Department officials or Department contractors.

Sincerely,



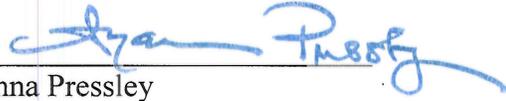
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Elizabeth Warren  
United States Senator



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Katie Porter  
Member of Congress



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Ayanna Pressley  
Member of Congress