

EXERCISING YOUR CORPORATE RIGHTS: SELF-INCORPORATION AS AN EQUITY ALTERNATIVE TO STUDENT LOANS

Abstract: In the United States, student indebtedness is prevalent and will become even more so after the Biden Administration's temporary pause on student loan repayments ceases. With total outstanding student loan debt at a peak of roughly \$1.7 trillion, the market for student education requires an alternative to alleviate the need for students to assume more debt to finance education costs. In the past several years, income share agreements emerged as a popularly suggested solution to supplant federal aid. Given the Consumer Financial Protection Bureau's recent consent order, however, income share agreements have become merely another form of debt. Furthermore, bargaining power in the income share agreement relationship lies completely in the hands of investors. One hypothetical alternative is to allow students to self-incorporate and offer shares to the universities, limiting voting power and restricting the power of shareholders through the certificate of incorporation. The legal approach to income share agreements reflects leniency with respect to an individual's signing away future rights, indicating that the regulatory framework for self-incorporation, at least at the start, would be similar. By utilizing state corporate law, students can take control while seeking active buyers of shares from university to university as each endowment fund would serve as an accredited investor for the purposes of private placement. This alternative presents an equity option as students seek to limit their debt levels when pursuing higher education. This Note seeks to explore this alternative.

INTRODUCTION

In 2008, one man, Mike Merrill, organized a stock exchange for equity in himself.¹ Merrill sold shares and disclosed that the shares would not have dividends.² Instead, the stock would only make money if demand increased for

¹ Rob Walker, *How One Man Turned Himself into a Publicly Owned Company*, THE ATLANTIC (Apr. 2013), <https://www.theatlantic.com/magazine/archive/2013/04/putting-the-i-in-ipo/309255/> [<https://perma.cc/R6HE-PKRM>]. Merrill was a part-time entrepreneur and customer service representative residing in Portland, Oregon. Joshua Davis, *Meet the Man Who Sold His Fate to Investors at \$1 a Share*, WIRED (Mar. 28, 2013), <https://www.wired.com/2013/03/ipo-man/> [<https://perma.cc/P56Z-F58P>]. Traditionally, raising equity allows a small business or entrepreneur to grow by providing additional funding. *Understanding Capital Markets*, FED. RESRV. BANK ST. LOUIS, <https://www.stlouisfed.org/education/tools-for-enhancing-the-stock-market-game-invest-it-forward/episode-1-understanding-capital-markets> [<https://perma.cc/6Y9G-XRYV>].

² Walker, *supra* note 1. A dividend is a fraction of a company's profits that is distributed to shareholders. *Dividend*, SEC, <https://www.investor.gov/introduction-investing/investing-basics/glossary/dividend> [<https://perma.cc/596H-TAVJ>].

owning a portion of Merrill, thereby creating a higher resale value.³ Despite first limiting the sale of his stock to friends, Merrill expanded his shareholder base with a second stock offering in which he auctioned equity online at one dollar per share.⁴ The dynamics of the stock ownership became more complicated, however, when Merrill sought to move in with his girlfriend.⁵ When Merrill reported to stockholders that he had moved in with her, one stockholder said this act could negatively impact the future value of his stock.⁶ Out of curiosity, Merrill then began putting major decisions up for a vote with the stockholders.⁷ For instance, he sought their opinion on whether to get a vasectomy, which political party to register with, and if a “relationship agreement” was an appropriate next step in a serious romantic relationship.⁸ In a way, Merrill’s experience can help reframe the way society thinks about raising capital and financing the costs of life.⁹

Much like Merrill’s experiment, income share agreements (ISAs) have been viewed as a creative form of financing.¹⁰ Despite recently being characterized as a credit product, an ISA is essentially selling stock in oneself.¹¹ An

³ Walker, *supra* note 1. Between 2008, the initial public offering date, and 2017, the share price of Merrill’s shares traded between \$0.99 and \$18. Zachary Crockett, *The Man Who Sold Shares of Himself*, THE HUSTLE (Nov. 21, 2017), <https://thehustle.co/mike-merrill-shares/> [<https://perma.cc/H74G-XXYM>].

⁴ Walker, *supra* note 1.

⁵ See *id.* (reporting that investors first started voicing their opinions regarding Merrill’s lifestyle when Merrill announced his move).

⁶ *Id.* One investor expressed frustration because Merrill’s “creative output” could be negatively affected by moving in with his girlfriend, in turn jeopardizing the value of shares. *Id.*

⁷ *Id.*

⁸ *Id.* Merrill still posts and receives feedback on decisions, but his experiment has lessened to a degree. Crockett, *supra* note 3.

⁹ See Walker, *supra* note 1 (acknowledging how the initial idea of raising capital quickly became more of an experiment for Merrill as the offering developed); *Understanding Capital Markets*, *supra* note 1 (highlighting that equity offerings provide an important opportunity for small companies to raise capital in order to expand operations); see also Alison Flood, *Author Cathal Morrow to Float Himself on the Stock Exchange*, THE GUARDIAN (Dec. 19, 2010), <https://www.theguardian.com/books/2010/dec/19/author-floats-on-stock-exchange> [<https://www.theguardian.com/books/2010/dec/19/author-floats-on-stock-exchange>] (describing how an author planned to offer shares of himself on the London Stock Exchange). Cathal Morrow sought to offer shares at ten pounds per share to investors looking to share in earnings from a potential book deal stemming from the IPO. Flood, *supra*. Investors would not own Morrow but instead would receive an autographed picture and free shares in the future profits. *Id.*

¹⁰ See Kathryn Flynn, *Income-Share Agreement (ISA)*, INVESTOPEDIA (July 26, 2021), <https://www.investopedia.com/income-share-agreement-isa-definition-5181445> [<https://perma.cc/2Q6J-S2QL>] (indicating that ISAs are an alternative way to finance higher education based on students’ future stream of income).

¹¹ See *In re Better Future Forward, Inc.*, CFPB No. 2021-CFPB-0005, at 1–2 (Sept. 7, 2021) (determining that ISAs are debt instruments and therefore subject to federal lending laws); see also Michelle Goodman, *Short on Cash? Sell Some Stock in Yourself*, BBC (July 24, 2013), <https://www.bbc.com/worklife/article/20130724-crowdfund-your-career> [<https://perma.cc/MK2X-KZPF>] (characterizing agreements that guarantee a future percentage of income as selling stock in oneself);

ISA is a contractual agreement between two parties that allows one party to obtain a claim to a percentage of future revenues in exchange for an upfront capital investment.¹² Owning equity and the formation of a contract guaranteeing a right to future earnings are similar.¹³ When one possesses equity in a corporation, that person holds stock.¹⁴ By holding stock, that individual is entitled to the rights that accompany such stock.¹⁵ These rights are established in the certificate of incorporation of that corporation.¹⁶ The certificate of incorporation permits companies to stipulate the ways in which they sell shares in their corporation, the rights of those shares, and their transferability.¹⁷ In many ways, it touches on contingencies similar to those set forth in an ISA.¹⁸ Therefore, if a student was to self-incorporate, that student could theoretically recre-

Jason Fernando, *Equity*, INVESTOPEDIA, <https://www.investopedia.com/terms/e/equity.asp> [<https://perma.cc/Y3AD-K2YG>] (July 5, 2022) (defining equity as the money to be returned to shareholders after all other creditors have been paid if the company were to be sold). A credit product is a written instrument of debt, such as bonds, loans, and various other debt agreements. *Credit Instrument*, MERIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/credit%20instrument> [<https://perma.cc/6WAR-HTAZ>].

¹² See Flynn, *supra* note 10 (explaining the main facets of an ISA and how the market for these contracts has exploded as of late).

¹³ See Shu-Yi Oei & Diane Ring, *Human Equity? Regulating the New Income Share Agreements*, 68 VAND. L. REV. 681, 721 (2015) (analogizing ISAs to corporate equity). Professors Oei and Ring discuss the similarities between ISAs and corporate equity before offering a case-by-case regulatory approach to ISAs. See generally *id.* at 729–35 (articulating that a case-based regulatory scheme for ISAs is proper given the unique and new nature of the financing arrangement at the time).

¹⁴ See Adam Hayes, *Stock Definition*, INVESTOPEDIA, <https://www.investopedia.com/terms/s/stock.asp> [<https://perma.cc/QPW2-2AVS>] (July 6, 2022) (defining stock as the ownership of a portion of a company through the holding of securities).

¹⁵ See *id.* (explaining that stock ownership is accompanied by certain rights, such as voting rights, rights to the residual value of the corporation, and more).

¹⁶ See, e.g., DEL. CODE ANN. tit. 8, § 102(a)(4) (2022) (establishing that all rights and powers of the stock must be written into the corporation's certificate of incorporation). Businesses originally moved to Delaware due to the state's flexibility on the need to have a presence or meetings in the state and the state's desire to have the least restrictive corporate law in the country. See Elaine Zelby, *How Delaware Became the State Where Companies Incorporate*, MEDIUM (Jan. 30, 2019), <https://medium.com/useless-knowledge-daily/why-most-companies-incorporate-in-delaware-b8eae1e528a3> [<https://perma.cc/5KTC-H5XJ>] (discussing the importance of Delaware in company formation). At the start of 2019, most publicly listed U.S. companies, and over one million businesses in total, were incorporated in Delaware. *Id.* Moreover, the Delaware Chancery Court is considered an expert on the internal affairs of corporations and broader corporate law issues. See *Courts of Chancery*, DEL. CTS., <https://courts.delaware.gov/chancery/> [<https://perma.cc/B5WD-GACM>] (discussing the impact and organization of the Delaware Chancery Courts).

¹⁷ See DEL. CODE ANN. tit. 8, § 151(a) (outlining the potential rights a series of stock can have in corporations incorporated in the state of Delaware); see also Flynn, *supra* note 10 (describing the mechanics of an ISA).

¹⁸ See *Why ISAs?*, STRIDE, <https://www.stridefunding.com/students> [<https://perma.cc/E79U-L5HH>] (giving an in depth look at the potential terms of an ISA); see also DEL. CODE ANN. tit. 8, § 151(a)–(b) (permitting corporations to determine, for example, the rights of a stockholder to transfer shares, vote on matters, and redeem shares for capital).

ate an ISA through the certificate of incorporation and sell shares to raise capital.¹⁹

This hypothetical student is likely a borrower already.²⁰ Today, American students are saddled with more debt than ever before, a byproduct of numerous factors.²¹ The legislature has consistently sought to create a way to evade such a crisis.²² For example, in March 2020, the CARES Act suspended student loan payments as a product of the hardships created by the COVID-19 pandemic.²³ Since the passage of the Act, the Trump and Biden Administrations have extended the pause several times, with the most recent extension lasting through May 2022.²⁴ These pauses sought to help struggling student loan borrowers.²⁵ According to the interim director of the National Consumer Law Center's Student Loan Borrower Assistance Project, the latest freeze removed

¹⁹ See generally DEL. CODE ANN. tit. 8, § 102 (listing the requirements for a certificate of incorporation and the rights that can be given to holders of stock in a corporation); *infra* notes 232–310 and accompanying text (explaining the process by which a student could theoretically recreate an ISA using Delaware General Corporation Law and federal securities law).

²⁰ See *Borrowing*, URB. INST., <http://collegeaffordability.urban.org/covering-expenses/borrowing/> [<https://perma.cc/HYY2-6TBZ>] (indicating that thirty to forty percent of undergraduate students have federal loans, and nearly seventy percent have some amount of debt by graduation).

²¹ See Jacqueline Jedrych, Anshu Siripurapu, Mia Speier & Steven Markovich, *Is Rising Debt Harming the U.S. Economy?*, COUNCIL ON FOREIGN RELS. (Apr. 13, 2021), <https://www.cfr.org/backgrounder/rising-student-debt-harming-us-economy> [<https://perma.cc/X6QM-7L42>] (attributing rising debt in part to the increasing cost of tuition and the growing number of students enrolling in universities); see also Matthew S. Farina, Note, *Schoolbooks and Shackles: The Undue Hardship Standard and Treatment of Student Debt at Bankruptcy*, 62 B.C. L. REV. 1621, 1624 (2021) (discussing the “alarming” rise of student debt in the United States after 2012).

²² See Abigail Hess, *What's Still Up for Debate When It Comes to Student Debt Forgiveness*, CNBC (Apr. 6, 2021), <https://www.cnbc.com/2021/04/06/what-the-student-debt-forgiveness-debate-is-about.html> [<https://perma.cc/VMX7-GU6N>] (discussing that the legislature is struggling with the concept of debt forgiveness and is still considering whether there is an alternative to financing education through high amounts of debt); see also Abigail Hess, *The U.S. Has a Record-Breaking \$1.73 Trillion in Student Debt—Borrowers from These States Owe the Most on Average*, CNBC (Sept. 9, 2021), <https://www.cnbc.com/2021/09/09/america-has-1point73-trillion-in-student-debt-borrowers-from-these-states-owe-the-most.html> [<https://perma.cc/5XDE-LVBG>] [hereinafter Hess, *Record-Breaking \$1.73 Trillion in Student Debt*] (showing that the Federal Reserve estimates indicate a yearly increase in outstanding student debt of roughly three percent from 2020). At the end of the second quarter of 2021, the Federal Reserve projected that outstanding student debt totaled \$1.73 trillion. Hess, *Record-Breaking \$1.73 Trillion in Student Debt*, *supra*.

²³ CARES Act, Pub. L. No. 116-136, § 3513, 134 Stat. 281, 404–05 (2020); see Meghan Lustig, *Update on Coronavirus Student Loan Relief*, U.S. NEWS & WORLD REP. (Dec. 28, 2021), <https://www.yahoo.com/entertainment/coronavirus-relief-student-loan-borrowers-144739209.html> [<https://perma.cc/4WXC-J6ME>] (explaining that one portion of the CARES Act suspended loan repayments for student borrowers during the COVID-19 pandemic).

²⁴ Lustig, *supra* note 23.

²⁵ See Michael D. King, Neil Bennett & Lindsay M. Monte, *Student Debt Weighed Heavily on Millions Even Before Pandemic*, U.S. CENSUS BUREAU (Aug. 18, 2021), <https://www.census.gov/library/stories/2021/08/student-debt-weighted-heavily-on-millions-even-before-pandemic.html> [<https://perma.cc/D4RN-6CUT>] (highlighting that student debt had drastically risen and the pandemic worsened conditions with the increase in unemployment).

the possibility that students would have to choose between an education and rent, food, or other necessities.²⁶

Students still need a long-term solution regarding debt.²⁷ Roughly twenty percent of all borrowers are in default.²⁸ Now that ISAs have been characterized as a debt product, students have no equity alternative to raising capital for school.²⁹ Nevertheless, it is possible to create a solution through incorporation.³⁰ Viewing corporate charters as a creative solution to help society evolve is not new.³¹ With the flexibility currently permitted under state law regarding corporate charters and their ability to establish stockholder rights, it is possible to both protect students (issuers) and create allure for investors.³² As students, educators, and investors explore ISAs as a popular alternative to student loans,

²⁶ See Lustig, *supra* note 23 (providing a quote from the interim director regarding the loan pause extension in February).

²⁷ See King et al., *supra* note 25 (discussing that although COVID-19 created additional problems with loan repayment, there already existed a significant debt problem). The pauses created by the government on loan repayments are only temporary, and it is likely that groups sufficiently burdened by debt before the pandemic are not receiving enough support from temporary policies. See *id.* (indicating that those laden with student debt might be particularly affected by the financial problems associated with the pandemic).

²⁸ See Sarah Sattelmeyer, *A Path Forward for the One in Five Student Loan Borrowers in Default*, BARRON'S (Nov. 5, 2021), <https://www.barrons.com/articles/a-path-forward-for-the-one-in-five-student-loan-borrowers-in-default-51636123063> [<https://perma.cc/NPT5-92F4>] (reporting that roughly eight million student borrowers of the forty-three million are currently in default). A default is the inability to meet an obligation or satisfy a covenant within a loan agreement. *Default*, MERRIAM-WEBSTER, *supra* note 11.

²⁹ See Elizabeth R. Brusa & Kelley J. Hails, *CFPB Action Against Student Loan Originator Sends Message to Income Share Agreement Industry*, NAT'L L. REV. (Nov. 16, 2021), <https://www.natlawreview.com/article/cfpb-action-against-student-loan-originator-sends-message-to-income-share-agreement> [<https://perma.cc/FP82-ZQVC>] (explaining that the consent decree issued by the Consumer Finance Protection Bureau (CFPB) classified ISAs as credit and therefore would subject ISAs to increased scrutiny).

³⁰ See *infra* notes 38–290 and accompanying text.

³¹ See generally STANLEY I. KUTLER, PRIVILEGE AND CREATIVE DESTRUCTION: THE CHARLES RIVER BRIDGE CASE 5 (1971) (emphasizing how corporate law in early American society accommodated “the process of creative destruction wrought by technological and economic change”). Kutler wrote these words in the context of the Supreme Court case, *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, a case regarding the development of a second bridge across the Charles River in Boston and the extent to which a corporate charter issued by the state government entitled a corporation to a monopoly. *Id.* In *Proprietors of Charles River Bridge*, the Supreme Court held that the state had a right to issue a permit to the Proprietors of the Warren Bridge for the purpose of building a second bridge. See 36 U.S. (1 Pet.) 420, 421, 423 (1837) (holding that the certificate of incorporation did not create an exclusive contract between the Proprietors of the Charles River Bridge and Massachusetts). The Court’s limited view of the Charles River Bridge charter helped Boston and its surrounding areas grow. See *id.* at 420–22 (detailing the events leading up to the case and the belief of the Proprietors of the Charles River Bridge that they were entitled to make a profit that was not to be limited by a second bridge).

³² See generally DEL. CODE ANN. tit. 8, § 102 (2022) (enumerating only a couple of requirements for a certificate of incorporation to be valid and indicating that the incorporator has flexibility when it comes to many of the provisions).

it is time to explore the true offering of equity in a student through incorporation and private placement.³³ This Note seeks to explore that alternative.³⁴

Part I of this Note analyzes the current student debt crisis and the implementation of ISAs as a solution.³⁵ Part II discusses the implications of the Consumer Financial Protection Bureau's (CFPB) ruling classifying ISAs as debt and the differences between debt and equity.³⁶ Part III suggests that allowing students to incorporate and permitting higher educational institutions to invest through private placements could provide a safer solution for consumers.³⁷

I. THE INCOME SHARE AGREEMENT AS A SOLUTION TO STUDENT DEBT

The costs of attending college have skyrocketed over the last half century.³⁸ In fact, from 1980–2014, the cost of college tuition increased 260%.³⁹ Meanwhile, the consumer price index increased roughly 120%.⁴⁰ Coupled with an expansion of costs, enrollment has steadily increased over the same period.⁴¹ A recent study showed that college graduates earn 80% more on average

³³ See Robert Farrington, *Beyond Student Loans: Real Alternatives to Help You Pay for College*, FORBES (Feb. 25, 2019), <https://www.forbes.com/sites/robertfarrington/2019/02/25/beyond-student-loans-real-alternatives-to-help-you-pay-for-college/?sh=610d45c3e2cf> [<https://perma.cc/PQ5A-8QSW>] (describing different ways that students can acquire funds to help pay for their education); see also Flynn, *supra* note 10 (discussing the attraction and growth of ISAs).

³⁴ See *infra* notes 38–332 and accompanying text.

³⁵ See *infra* notes 38–162 and accompanying text.

³⁶ See *infra* notes 163–222 and accompanying text.

³⁷ See *infra* notes 223–332 and accompanying text.

³⁸ See generally Abby Jackson, *This Chart Shows How Quickly College Tuition Has Skyrocketed Since 1980*, BUS. INSIDER (July 20, 2015), <https://www.businessinsider.com/this-chart-shows-how-quickly-college-tuition-has-skyrocketed-since-1980-2015-7> [<https://perma.cc/DZC8-RSYJ>] (describing the increase in the costs associated with attending college since 1980).

³⁹ *Id.* (highlighting the increase in college tuition relative to other economic indicators). In 1980, the average cost of tuition, board, and fees was \$9,438, compared to \$23,872 in 2015. *Id.* Jackson wrote the article in response to an op-ed from Senator Lamar Alexander who stipulated that “paying for college never is easy, but it’s easier than most people think.” See *id.* (quoting Lamar Alexander, *College Too Expensive? That’s a Myth*, WALL ST. J. (July 6, 2015), <https://www.wsj.com/articles/college-too-expensive-thats-a-mythcollege-too-expensive-thats-a-myth-1436212158> [<https://perma.cc/DU7L-9AYM>]) (criticizing Senator Alexander’s stance on rising tuition costs).

⁴⁰ *Id.* The U.S. Bureau of Labor Statistics defines the consumer price index as “the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services.” *Consumer Price Index*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/cpi/home.htm> [<https://perma.cc/MEV2-E3MV>].

⁴¹ See Jackson, *supra* note 38 (indicating that enrollment in higher education has increased from 1980–2014); see also *School Enrollment, Tertiary (% Gross) – United States*, WORLD BANK, <https://data.worldbank.org/indicator/SE.TER.ENRR?locations=US> [<https://perma.cc/G8F6-N9SQ>] (Oct. 24, 2022) (showing that from 1980–2019 the percentage of the U.S. population enrolled in tertiary education had increased from 52.644% to 87.889%). Tertiary education includes “public and private universities, colleges, technical training institutes, and vocational schools.” *Higher Education*, WORLD BANK, <https://www.worldbank.org/en/topic/tertiaryeducation#1> [<https://perma.cc/AZM6-ZH7Q>] (Oct. 22, 2021).

than those with merely a high school diploma.⁴² This reiterates the importance that society places on attending a college prior to entering the workforce.⁴³ Public universities and colleges, however, are contributing less to education.⁴⁴ From 2003–2012, state funding as a percent of total revenue of public higher education institutions decreased from thirty-two percent to twenty-three percent.⁴⁵ All of these factors contribute toward the need for more financial aid to students.⁴⁶ Most of this aid has come in the form of federal student loans.⁴⁷

Since the 2008–2009 financial crisis, student loan debt has exploded.⁴⁸ Along with the aforementioned factors, broader access to federal aid is a significant reason for the sharp increase in student loan debt.⁴⁹ Federal student debt has increased by 144% in a little more than a decade.⁵⁰ Even more concerning is the failure of many borrowers, i.e., students, to repay their loans.⁵¹

⁴² Abigail J. Hess, *How Student Debt Became a \$1.6 Trillion Crisis*, CNBC (June 12, 2020), <https://www.cnbc.com/2020/06/12/how-student-debt-became-a-1point6-trillion-crisis.html> [<https://perma.cc/36LE-EH5Y>] (citing *Is College Still Worth It?*, FRED (July 9, 2018), https://fredblog.stlouisfed.org/2018/07/is-college-still-worth-it/?utm_source=series_page&utm_medium=related_content&utm_term=related_resources&utm_campaign=fredblog [<https://perma.cc/B8EQ-ERZK>]).

⁴³ See Hess, *supra* note 42 (emphasizing that the discrepancy between salaries of those who attended college and those who did not makes college more important than in previous years).

⁴⁴ See Danielle Douglas-Gabriel, *Students Now Pay More of Their Public University Tuition Than State Governments*, WASH. POST (Jan. 5, 2015), <https://www.washingtonpost.com/news/get-there/wp/2015/01/05/students-cover-more-of-their-public-university-tuition-now-than-state-governments/> [<https://perma.cc/43MY-U6MV>] (analyzing that the amount of money contributed by the states to their public higher educational institutions has decreased as a percentage of total revenue to the university).

⁴⁵ *Id.*

⁴⁶ See Sean Ruddy, Shai Akabas & Kevin Miller, *Student Debt and the Federal Budget: How Student Loans Impact the U.S. Fiscal Outlook*, BIPARTISAN POL'Y CTR. 1, 16–17 (2021) (providing an overview of the key drivers to the growth in student loan debt). The primary drivers to the increase in debt have been increasing costs, broader access to student loans, uncapped borrowing, and poor accountability. *Id.*

⁴⁷ See *id.* at 5 (showing that federal student loans account for sixty-two percent of all federal student aid).

⁴⁸ See *id.* at 4 (breaking down the increase in borrowing from the recession in 2008–2009 and 2020–2021). From 2007–2020, the total amount of federal student loan debt grew from \$642 billion to \$1.566 trillion. *Id.* During that same period, the debt per student rose from \$22,680 to \$36,510. *Id.*; see Timothy R. Ulbrich & Loren M. Kirk, *It's Time to Broaden the Conversation About the Student Debt Crisis Beyond Rising Tuition Costs*, 81 AM. J. PHARM. EDUC. 1, 1 (2017) (indicating that the average pharmaceutical student's amount borrowed grew from \$101,892 to \$163,494 from 2009–2017). Meanwhile, the average starting salary for a pharmacist was \$120,270 in 2016. Ulbrich & Kirk, *supra*.

⁴⁹ See Ruddy et al., *supra* note 46, at 7–8 (articulating how the federal government began supplying direct loans during the Great Recession in order to increase availability, leading to a sharp increase in federal student loan debt).

⁵⁰ *Id.* at 4.

⁵¹ See *id.* (noting that borrowers are struggling to repay as they are crippled by an increasing amount of debt). Because of the rising cost of education, students are forced to be more and more leveraged, leading to their inability to repay the lender. *Id.*

In 2019–2020, the total amount of federal student aid was \$146 billion.⁵² The total amount of outstanding federal student loan debt, however, is \$1.566 trillion.⁵³ Before COVID-19, twenty percent of borrowers were in default.⁵⁴

As a product of the overwhelming amount of debt, students and investors have sought to capitalize on alternative methods of financing.⁵⁵ From this search, the ISA emerged.⁵⁶ Section A of this Part discusses the basics of ISAs and their implementation.⁵⁷ Section B discusses the regulation of ISAs and other current developments.⁵⁸ Finally, Section C introduces the basic concepts of forming a corporation in Delaware.⁵⁹

A. Income Share Agreements

There are many ways for students to finance education beyond student loans.⁶⁰ Some examples include working through college, receiving a private loan, or applying for a scholarship.⁶¹ Likewise, financing one's education can require a piecemeal approach, incorporating many different sources of capital.⁶² ISAs, however, have been one popularly discussed solution for students.⁶³ ISAs are creations of contract.⁶⁴ An ISA is an agreement between two parties whereby one party agrees to provide a percentage of future earnings in exchange for an upfront capital investment.⁶⁵ The agreements typically have an

⁵² *Id.* at 5.

⁵³ *Id.* at 4.

⁵⁴ *See id.* (citing U.S. DEP'T OF EDUC., FEDERAL STUDENT LOAN PORTFOLIO SUMMARY (2020)).

⁵⁵ *See id.* at 34 (acknowledging that students are exploring alternatives to federal aid in order to finance higher education); *see also* Mitch Daniels, *Opinion: Here Is a Powerful Alternative to Student Loans*, WASH. POST (Nov. 28, 2019), https://www.washingtonpost.com/opinions/income-share-agreements-are-a-powerful-alternative-to-student-loans/2019/11/27/5290d0ee-0be3-11ea-97ac-a7ccc8dd1ebc_story.html [<https://perma.cc/KL7R-VPPH>] (arguing that ISAs provide a promising alternative financing method for students and attacking the lack of knowledge regarding the product by its critics).

⁵⁶ *See* Daniels, *supra* note 55 (articulating that, in the midst of the student debt crisis, the ISA provides a method of financing an education that is not borrowing).

⁵⁷ *See infra* notes 60–113 and accompanying text.

⁵⁸ *See infra* notes 114–147 and accompanying text.

⁵⁹ *See infra* notes 148–162 and accompanying text.

⁶⁰ *See* Farrington, *supra* note 33 (describing different ways that students can acquire funds to help pay for their education).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *See, e.g.,* Daniels, *supra* note 55 (noting that ISAs have been implemented by universities as an alternative to borrowing).

⁶⁴ *See What Are Income Share Agreements (ISAs)?*, VEMO EDUC., <https://vemoeducation.com/about-income-share-agreements/> [<https://web.archive.org/web/20220923151911/https://vemoeducation.com/about-income-share-agreements/>] (defining ISAs as agreements reached between colleges and students whereby the school advances capital in consideration for a student's pledge of a portion of future income for a "defined, finite period of time").

⁶⁵ *See* Flynn, *supra* note 10 (providing an explanation for ISAs and the typical agreement between investor and student).

interest rate between two and ten percent.⁶⁶ The standard term over which the student would pay is between two and ten years.⁶⁷ In 2019, the deal value of ISAs totaled roughly \$250 million.⁶⁸

Despite the recent popularity of ISAs, these agreements are not new.⁶⁹ Subsection 1 of this Section discusses the creation of ISAs.⁷⁰ Subsection 2 discusses the details of ISAs and their adoption in the educational setting.⁷¹

1. The Idea for the Income Share Agreement

Renowned economist Milton Friedman first proposed ISAs in 1955.⁷² In his essay, *The Role of Government in Education*, Friedman argued that there was too much dependency on the state to intervene in higher learning.⁷³ Instead, Friedman envisioned a “free market approach,” whereby students would finance the upfront costs of education through private lending.⁷⁴ The students would then pay back the lenders with their future earnings.⁷⁵ The government would act solely as enforcers of the agreement.⁷⁶ Subsequent to Friedman’s essay, the federal government created the first federal loan program under the Na-

⁶⁶ See *id.* (giving a detailed breakdown of the standard return rates promised by a student after graduation).

⁶⁷ See Ryan Lane & Colin Beresford, *Income Share Agreements: What Are They, and How Do They Work?*, NERDWALLET (Oct. 26, 2021), <https://www.nerdwallet.com/article/loans/student-loans/income-share-agreements-what-students-should-know-before-borrowing> [https://perma.cc/ZB2Y-6U4A] (giving the standard industry metrics based on ISA providers).

⁶⁸ See Flynn, *supra* note 10 (explaining the main facets of an ISA and how the market for these contracts has exploded as of late).

⁶⁹ See *id.* (describing how the appetite for ISAs has increased lately as an alternative to debt financing); see also Wade T. Millward, *Income Share Agreements Dominate Y Combinator’s Latest Education Graduates*, EDSURGE (Aug. 19, 2019), <https://www.edsurge.com/news/2019-08-19-income-share-agreements-dominate-y-combinator-s-latest-education-graduates> [https://perma.cc/PKR9-BA9U] (reporting a surge of educational startups focused on ISAs). See generally MILTON FRIEDMAN, *The Role of Government in Education*, in *ECONOMICS AND THE PUBLIC INTEREST* 123 (Robert A. Solo ed., 1955) (introducing the concept of a contract between two parties in which one provides upfront capital for another’s guarantee of a percentage of future revenue).

⁷⁰ See *infra* notes 72–80 and accompanying text.

⁷¹ See *infra* notes 81–113 and accompanying text.

⁷² See FRIEDMAN, *supra* note 69, at 135 (presenting the idea of a human capital contract whereby an investor would provide capital for a share of future earnings); Josh Reini, *ISAs: The Friedman Solution to the Student Loan Crisis*, FOUND. FOR ECON. EDUC. (Sept. 6, 2019), <https://fee.org/articles/isas-the-friedman-solution-to-the-student-loan-crisis/> [https://perma.cc/6JYD-CMPC] (discussing Friedman’s proposition of sharing future income as a possible alternative during the student debt crisis).

⁷³ See generally FRIEDMAN, *supra* note 69 (arguing that there was a need for education to adopt the same principles as the free market economy by moving away from a near-complete dependency on government funding).

⁷⁴ See *id.* (advocating for private lenders to supplant government funds).

⁷⁵ See *id.* (creating the idea of the ISA by proposing the exact arrangement). Friedman, however, does not use the term “income share agreement” in the essay. *Id.*

⁷⁶ *Id.*

tional Defense Education Act of 1958.⁷⁷ Although the government acted on Friedman's essay, it did not formulate the actual agreement he proposed.⁷⁸ Nevertheless, his hypothetical proposition has become a reality.⁷⁹ The arrangement where an individual guarantees future earnings for an upfront investment is now known as an ISA.⁸⁰

2. The Functionality of Income Share Agreements

Despite Friedman's idea that ISAs offered an alternative method of financing for students, ISAs have expanded beyond education.⁸¹ Fernando Tatis Jr., a young MLB all-star, who in 2021 signed the "longest deal in baseball history" valued at \$340 million, entered into an ISA in the minor league.⁸² Tatis agreed to an upfront sum of money while playing in the minor leagues, guaranteeing a portion of his future revenue if he were to make it in the major league.⁸³ ISAs, like the one Tatis entered into, are creatures of contract.⁸⁴

In the educational context, ISAs allow students to receive capital to finance their education in exchange for a portion of their income post-gradua-

⁷⁷ See Sheila Blair & Preston Cooper, *The Future of Income-Share Agreements: Policy and Politics*, MANHATTAN INST. (Mar. 12, 2019), <https://www.manhattan-institute.org/future-income-share-agreements-to-finance-higher-education> [<https://perma.cc/H2XJ-FB43>] (explaining that the government created a federal loan program shortly after Friedman's essay in 1958); see also *Student Loan History*, NEW AM., <https://www.newamerica.org/education-policy/topics/higher-education-funding-and-financial-aid/federal-student-aid/federal-student-loans/federal-student-loan-history/> [<https://perma.cc/EN7K-Z9NE>] (outlining the history of federal student loans in the United States). Over time, both the system and the way the funds are organized have changed. See *Student Loan History*, *supra* (explaining that the Department of Treasury organized the original federal loan program but that now the Department of Education guarantees these funds).

⁷⁸ Compare *Student Loan History*, *supra* note 77 (describing that the United States implemented a loan program to provide assistance to students), with FRIEDMAN, *supra* note 69, at 133 (advocating for a private funding solution for students to pursue higher education).

⁷⁹ See generally Flynn, *supra* note 10 (outlining the modern uses of ISAs in the context of education).

⁸⁰ *Id.*

⁸¹ See Brendan Coffey, *Tatis Jr.: The Latest, Greatest and Maybe Last Example of Athlete Income Sharing*, SPORTICO (Oct. 9, 2020), <https://www.sportico.com/business/finance/2020/tatis-jr-the-greatest-and-perhaps-last-in-athlete-income-sharing-1234614566/> [<https://perma.cc/MS9D-866A>] (detailing the ISA that Fernando Tatis, Jr., signed prior to entering the Major League).

⁸² *Id.*; see Padres, *Fernando Tatis Jr. Sign 14-Year 'Statue Contract'*, U.S. NEWS & WORLD REP. (Feb. 22, 2021), <https://www.usnews.com/news/sports/articles/2021-02-22/fernando-tatis-340m-14-year-deal-finalized-by-padres> [<https://web.archive.org/web/20210301225808/https://www.usnews.com/news/sports/articles/2021-02-22/fernando-tatis-340m-14-year-deal-finalized-by-padres>] (providing the details on the contract between the Padres and Tatis).

⁸³ See Padres, *Fernando Tatis Jr. Sign 14-Year 'Statue Contract'*, *supra* note 82 (describing that Big League Advance, an ISA investor, is entitled to a portion of Tatis's deal with the Padres for the entire duration of the contract).

⁸⁴ Flynn, *supra* note 10.

tion.⁸⁵ A student will agree to a percentage and a duration.⁸⁶ Just as ISAs have been deployed with varying success in athletics, the arrangements have also been experimented with in education, as Friedman originally envisioned.⁸⁷

In 1971, Yale implemented a program entitled Yale's Tuition Postponement Plan.⁸⁸ The program allowed for students to delay paying tuition.⁸⁹ Upon entering the workforce, the student would be required to pay 0.4% per every \$1,000 of gross income to the university for a maximum period of thirty-five years or until the principal was paid back in full.⁹⁰ In the first year of the program, nearly twenty-five percent of the undergraduate students enrolled.⁹¹ The issue, however, is that the students were grouped as a cohort; therefore, the entire cohort was responsible for the principal, meaning that high earning students shouldered the burden of low earners.⁹² An early study of the program conducted in 1975 concluded that those enrolled in the program were three times as likely to have below average wages.⁹³ As a product of the economics of the program, Yale terminated the Tuition Postponement Plan in 1978, but the university continued accepting payments from participants until 2001.⁹⁴

In 2016, Purdue University introduced its own ISA service: the Back-a-Boiler Program.⁹⁵ According to Purdue, the typical repayment period was ten years.⁹⁶ The percentage of future earnings owed to the University depended on the student's major and the reported earnings of alumni currently in that field.⁹⁷ There also existed an upper cap of fifteen percent placed on future earnings

⁸⁵ *What Is an Income Share Agreement?*, OUTCOME GRP., <https://outcomegroup.org/what/> [<https://perma.cc/4RUV-5W5N>].

⁸⁶ *Id.*

⁸⁷ See FRIEDMAN, *supra* note 69, at 133 (explaining Friedman's belief that private funding was important in the realm of education for the future of society); see also *Invest in U*, UNIV. OF UTAH, <https://isa.utah.edu> [<https://perma.cc/XYW4-LDAH>] (describing the University of Utah's ISA offering for future students).

⁸⁸ MARY CLARE AMSELEM, HERITAGE FOUND., INCOME SHARE AGREEMENTS HAVE THE POTENTIAL TO REVOLUTIONIZE COLLEGE FINANCING 1 (2018), <https://www.heritage.org/sites/default/files/2018-10/IB4910.pdf> [<https://perma.cc/9M6G-RXM3>].

⁸⁹ E.G. West, *The Yale Tuition Postponement Plan in the Mid-seventies*, 5 HIGHER EDUC. 169, 169 (1976).

⁹⁰ *Id.*

⁹¹ *Id.* at 170.

⁹² See AMSELEM, *supra* note 88, at 1–2 (highlighting that the Yale Tuition Postponement Program did not work largely because of its cohort base system, as high earners were expected to carry the burden for all borrowers in the cohort).

⁹³ West, *supra* note 89, at 172–73.

⁹⁴ AMSELEM, *supra* note 88, at 1–2.

⁹⁵ Emily Primm, *Back-a-Boiler Student Financing Program Draws Praise, Controversy, Uncertainty*, THE EXPONENT (Oct. 21, 2021), https://www.purdueexponent.org/campus/article_f6f62e1c-1343-5d34-a4c6-6881d77b049c.html [<https://perma.cc/RCY9-SAR8>].

⁹⁶ *Id.*

⁹⁷ See *id.* (explaining that the percentage of income for repayment after graduation is determined based on a given student's study area and projected future earnings in the field).

payments and a six-month grace period after graduation.⁹⁸ Students did not have to satisfy academic standards, did not have to fully repay the capital, and did not face an accrual of interest.⁹⁹ Although the program sounded promising, it was not without criticism.¹⁰⁰ For example, the program's funding was not meant to replace federal aid, meaning that students had to pay the University on top of existing federal loans.¹⁰¹ Likewise, the total payment amount for most borrowers exceeded the principal.¹⁰² Although Purdue ultimately discontinued this program as a result of the CFPB's ruling that ISAs are debt instruments, the University was not alone in its effort.¹⁰³ The University of Utah, Colorado Mountain College, and others implemented similar ISA programs.¹⁰⁴

Universities, however, are not the only institutions experimenting with ISAs for students.¹⁰⁵ The rise of student debt has created an opportunity for businesses to also enter this space.¹⁰⁶ One such company is Outcome Finance.¹⁰⁷ Outcome Finance helps facilitate the creation of ISAs between educators and students as well as investors and students.¹⁰⁸ The platform uses data to project potential career earnings and assists educational institutions and in-

⁹⁸ *Id.*

⁹⁹ *Back a Boiler™ Program Overview*, PURDUE UNIV., <https://www.purdue.edu/backaboiler/overview/index.html> [https://perma.cc/NQU8-B7SU].

¹⁰⁰ See Primm, *supra* note 95 (acknowledging the criticism of ISA programs in general by Democratic politicians Elizabeth Warren, Ayanna Pressley, and Katie Porter).

¹⁰¹ *FAQ About Back a Boiler—ISA Fund*, PURDUE UNIV., <https://www.purdue.edu/backaboiler/FAQ/index.html> [https://perma.cc/FP9M-8L7J].

¹⁰² *Id.*

¹⁰³ See Steven Yoder, *Twilight of Income-Share Agreements to Pay for College?*, HECHINGER REP. (Aug. 12, 2022), <https://hechingerreport.org/twilight-of-income-share-agreements-to-pay-for-college/> [https://perma.cc/LX9V-VSV7] (indicating that Purdue University has suspended its ISA program in light of the CFPB ruling deeming ISAs a form of debt); see also Blair, *supra* note 77 (providing examples of other universities that have implemented ISA programs). Interestingly, as of 2019, Purdue was the only university to implement an ISA program where the percentage of revenue repayment factored in the student's major. Yoder, *supra*. The more lucrative the major, the lower the burden in terms of both percentage of future salary and the duration of the ISA. See *id.* (showing that English majors would owe a higher interest rate for a longer duration than that of chemical engineering majors, which have substantially higher starting salaries on average). Purdue's President Mitchell Daniels indicated that this could signal to undergraduates that they should pick more lucrative careers. *Id.* (citing Mitchell E. Daniels, Jr., *Could Income-Share Agreements Help Solve the Student Debt Crisis?*, WASH. POST (Aug. 20, 2015), https://www.washingtonpost.com/opinions/a-different-solution-to-student-debt/2015/08/20/d2e140b8-37bb-11e5-9d0f-7865a67390ee_story.html [https://perma.cc/FW7P-26VY]).

¹⁰⁴ Blair, *supra* note 77.

¹⁰⁵ See *id.* (stipulating that, although most players in the ISA space are colleges, private lenders, such as Lumni, have entered the market).

¹⁰⁶ See *Three Income Share Agreement Startups Changing the Way We Fund Education*, MEDIUM (Nov. 23, 2020), <https://medium.com/meratas-income-share-agreements/3-income-share-agreement-startups-changing-the-way-we-fund-education-6e439b990fb7> [https://perma.cc/6KJP-2NBF] (naming Defynance, Outcome Finance, and Meratas as firms trying to attack the ISA space in different ways).

¹⁰⁷ *Id.*

¹⁰⁸ *What Is an Income Share Agreement?*, *supra* note 85.

vestors in evaluating student funding.¹⁰⁹ The company markets the product as a fixed income asset, much like a bond.¹¹⁰ Outcome Finance markets ISAs as a way for students to finance tuition, for educators to increase enrollment and offload a burden, and for investors to make a return and diversify their portfolio.¹¹¹ Outcome Finance is not the only ISA startup in the market.¹¹² In fact, the rise of student debt has created a large amount of interest with more and more businesses entering the field.¹¹³

B. Regulation of Income Share Agreements

Until 2021, regulation posed a large issue for ISAs.¹¹⁴ To date, this product has largely been unregulated in part because investors and politicians have struggled with how to properly characterize the agreements.¹¹⁵ The designation of this instrument as either equity or debt would have long-term implications for availability and restrictions.¹¹⁶ As is often the case with an unregulated

¹⁰⁹ *General FAQs*, OUTCOME GRP., <https://outcomegroup.org/faq/> [<https://perma.cc/E83P-B89F>].

¹¹⁰ *See Investor Benefits of an Outcome-Based Model*, OUTCOME GRP., <https://outcomegroup.org/why-isas/#1595222424386-f04eca9a-915e> [<https://perma.cc/2655-98PE>] (comparing an ISA with a “fixed income asset that offers stable returns”). A fixed income asset is a type of financial product that offers a fixed interest rate until maturity. James Chen, *Guide to Fixed Income*, INVESTOPEDIA (Oct. 22, 2020), <https://www.investopedia.com/terms/f/fixedincome.asp> [<https://perma.cc/84VX-SL9E>]. Maturity is reached when the balance of the note or bond is due. *Maturity Date*, BLACK’S LAW DICTIONARY (11th ed. 2019).

¹¹¹ *See Investor Benefits of an Outcome-Based Model*, *supra* note 110 (arguing that the returns generated by an ISA do not mirror those of other fixed income assets, meaning that you will diversify your risk and limit exposure to one asset class).

¹¹² *See* Millward, *supra* note 69 (indicating the prevalence of educational startups implementing ISAs at Y Combinator).

¹¹³ *Id.* In 2019, at Y Combinator, a prominent startup accelerator, the majority of educational startups utilized ISAs to fund their services. *Id.* Y Combinator makes seed investments in startup companies and then uses its vast network to create relationships with other venture capitalists. *About Y Combinator*, Y COMBINATOR, <https://www.ycombinator.com/about/> [<https://perma.cc/C8A7-3QZM>].

¹¹⁴ *See* Jon Marcus, *Students’ Futures as Investments: The Promise and Challenges of Income-Share Agreements*, AM. ENTER. INST. 1, 10 (2016) (emphasizing that a factor impeding the prevalence of ISAs is clear regulatory standards).

¹¹⁵ *See id.* (indicating that investors view ISAs as non-debt instruments, but tax and usury laws could be interpreted as treating ISAs more like debt). In 2015, the United States Court of Appeals for the Second Circuit found that usury laws could apply to non-bank investors, a category which could include ISAs. *See* *Madden v. Midland Funding, LLC*, 786 F.3d 246, 250–51 (2d Cir. 2015) (holding that state usury laws could apply to non-banks); Archie Hall, *Shares in Students: Nifty Finance or Indentured Servitude?*, FIN. TIMES (Nov. 11, 2019), <https://www.ft.com/content/46827e2a-f990-11e9-a354-36acbbb0d9b6> [<https://perma.cc/JB85-M8FT>] (discussing the potential for ISAs to be viewed as nothing more than indentured servitude); Rubio, *Young Reinroduce Innovative Bill to Make College More Attainable*, MARCO RUBIO (Feb. 2, 2017), <https://www.rubio.senate.gov/public/index.cfm/2017/2/rubio-young-reinroduce-innovative-bill-to-make-college-more-attainable> [<https://perma.cc/82GL-Z89S>] (announcing the plan for Senators Rubio and Young to revive the Investing in Student Success Act, an act advocating for regulation of ISAs at the federal level).

¹¹⁶ *See* Marcus, *supra* note 114 (highlighting the argument for why these instruments should be treated as equity over debt). *See generally* Kyle Peterdy, *Debt vs Equity Financing*, CORP. FIN. INST.,

market, insiders seek clarity in order to form a proper course of action.¹¹⁷ An executive at Lumni, Inc., a provider of ISAs for education purposes, suggests that the reason the instrument has not been more widely adopted is the lack of clarity, advocating for regulatory changes to “ramp up” the market for ISAs.¹¹⁸ Subsection 1 of this Section describes the progress made by the legislature with respect to ISAs.¹¹⁹ Subsection 2 discusses the recent consent order of the CFPB that addressed ISAs directly.¹²⁰ Subsection 3 then surveys the impending litigation in this area.¹²¹

1. Legislative Progress

In 2014, United States Representative Thomas Petri introduced the Investing in Student Success Act.¹²² The bill attempted to set federal regulatory standards for ISAs.¹²³ In order to constitute a binding and enforceable contract by law, the ISA had to meet certain specifications.¹²⁴ The bill, however, failed to pass.¹²⁵ Senator Marco Rubio reintroduced the bill in 2015, again to no avail.¹²⁶ In 2017, Senators Todd Young and Marco Rubio introduced the Investing in Student Success Act alongside Purdue President Mitch Daniels.¹²⁷

<https://corporatefinanceinstitute.com/resources/knowledge/finance/debt-vs-equity/> [<https://perma.cc/45BL-8LN8>] (Mar. 10, 2023) (giving a broad description of the advantages and disadvantages of both raising debt and equity and the implications of each on the future of a company).

¹¹⁷ See Marcus, *supra* note 114 (describing that some executives within the industry believe that regulation is the single greatest factor preventing widespread adoption).

¹¹⁸ *Id.*

¹¹⁹ See *infra* notes 122–132 and accompanying text.

¹²⁰ See *infra* notes 133–141 and accompanying text.

¹²¹ See *infra* notes 142–146 and accompanying text.

¹²² Investing in Student Success Act of 2014, H.R. 4436, 113th Cong. (2014).

¹²³ See *generally id.* (implementing certain required terms and disclosures for all ISAs). The Act defined “income share agreement” as “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.” *Id.* § 102.

¹²⁴ See *generally id.* (outlining the proposed federal restrictions and mandatory disclosures for ISAs).

¹²⁵ See *id.* (noting that, although referred to the Subcommittee on Higher Education and Workforce Training, the bill never made it to the House floor).

¹²⁶ See *Rubio Legislation Would Give Students Access to Innovative College Financing Option*, MARCO RUBIO (Oct. 20, 2015), <https://www.rubio.senate.gov/public/index.cfm/2015/10/rubio-legislation-would-give-students-access-to-innovative-college-financing-option> [<https://perma.cc/S3FX-7NRV>] (promoting the legislation and explaining how ISAs offer more help to students in financing higher education).

¹²⁷ *Sens. Young and Rubio Introduce Investing in Student Success Act*, TODD YOUNG (Feb. 2, 2017), <https://www.young.senate.gov/newsroom/press-releases/sens-young-and-rubio-introduce-investing-in-student-success-act> [<https://perma.cc/5BDD-FW7B>].

They pitched the legislation to substantially help students finance their futures, yet the bill failed once again.¹²⁸

In 2019, under the Trump Administration, the Department of Education began investigating ISAs with the idea of developing a federal program for the financing mechanism.¹²⁹ The principal deputy undersecretary of the Department, Diane Auer Jones, expressed an interest in looking at ways to implement ISAs at experimental sites.¹³⁰ Shortly thereafter, Senator Elizabeth Warren, alongside Representatives Ayanna Pressley and Katie Porter, wrote a letter to colleges and the Department of Education asking for clarification on ISAs.¹³¹ The group expressed concern regarding the experimentation with what they described as “novel forms of student debt.”¹³²

2. The CFPB Now Classifies ISAs as Credit Instruments

In September 2021, the CFPB determined that ISAs constitute credit products.¹³³ The CFPB has the jurisdiction to enforce and make rulings on the Consumer Financial Protection Act.¹³⁴ Pursuant to that authority, the CFPB issued a consent order to Better Future Forward, Inc., an ISA provider, stipulating that the company had “misrepresented its product” to students.¹³⁵

¹²⁸ *Id.*; see Investing in Student Success Act of 2017, S. 268, 115th Cong. (2017) (showing that the bill was introduced in the Senate but made no further progress).

¹²⁹ Andrew Kreighbaum, *Education Department May Offer Income-Share Plans*, INSIDE HIGHER EDUC. (Apr. 12, 2019), <https://www.insidehighered.com/quicktakes/2019/04/12/education-department-may-offer-income-share-plans> [<https://perma.cc/T6WR-63V4>].

¹³⁰ *Id.*

¹³¹ *Senator Warren, Reps. Pressley and Porter Investigate Reports That Education Department Seeks to Develop Income Share Agreements in Risky New Student Debt Experiments*, ELIZABETH WARREN (June 4, 2019), <https://www.warren.senate.gov/oversight/letters/senator-warren-reps-pressley-and-porter-investigate-reports-that-education-department-seeks-to-develop-income-share-agreements-in-risky-new-student-debt-experiments> [<https://perma.cc/C7A4-M5Z4>] (detailing the letter that three congresswomen sent to the Department of Education and colleges expressing concerns over ISAs and their potential to only worsen the student debt crisis).

¹³² Letter from Sen. Elizabeth Warren, Rep. Ayanna Pressley & Rep. Katie Porter, to Betsy DeVos, Sec’y of Educ. (June 4, 2019).

¹³³ See Brusa & Hails, *supra* note 29 (explaining that the consent decree issued by CFPB classified ISAs as credit and therefore subjected them to increased scrutiny).

¹³⁴ *Enforcement Actions*, CFPB, <https://www.consumerfinance.gov/enforcement/actions/> [<https://perma.cc/B2ZY-NCUW>]; see *Building the CFPB*, CFPB, <https://www.consumerfinance.gov/data-research/research-reports/building-the-cfpb/> [<https://perma.cc/V3CM-MSCT>] (describing how the CFPB was established by the passage of the Consumer Financial Protection Act in 2010).

¹³⁵ *CFPB Takes Action Against Student Lender for Misleading Borrowers About Income Share Agreements*, CFPB, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-student-lender-for-misleading-borrowers-about-income-share-agreements/> [<https://perma.cc/5XWF-B58Q>] (Jan. 9, 2022); *In re Better Future Forward, Inc.*, CFPB No. 2021-CFPB-0005, at 1–2 (Sept. 7, 2021).

Better Future Forward is a nonprofit that facilitates the formation of ISAs.¹³⁶ Specifically, it connects lenders and students to help individuals finance higher education.¹³⁷ In the CFPB's consent order, the Bureau determined that the company's ISAs were *credit*, as defined in the Consumer Financial Protection Act.¹³⁸ According to the CFPB, the organization thus violated the Consumer Financial Protection Act by advertising that "ISAs are not loans and do not create debt."¹³⁹

Furthermore, as a lender, the company needed to provide disclosures and certain information regarding its services and products.¹⁴⁰ The consent order required the organization to provide these disclosures, reorganize its contracts, and no longer defraud customers with respect to the nature of its ISAs.¹⁴¹

3. The Judicial Perspective: *Aguocha v. Make School, Inc.*

In July 2021, forty-seven students sued Make School, Inc., a for-profit company offering a computer science program, and Vemo Education, Inc., an ISA provider, in California Superior Court.¹⁴² Among other things, the complaint alleged that Make School, Inc. defrauded its students by trying to form ISAs in order to merely package and resell them to investors.¹⁴³ The school claimed that its incentives aligned with students because of these ISAs, as fu-

¹³⁶ *Opportunity Awaits*, BETTER FUTURE FORWARD, <https://www.betterfutureforward.org/> [https://perma.cc/MBE3-LZ5D].

¹³⁷ *Our Mission*, BETTER FUTURE FORWARD, <https://www.betterfutureforward.org/our-mission> [https://perma.cc/6ZQJ-SB2Y].

¹³⁸ *See In re Better Future Forward, Inc.*, CFPB No. 2021-CFPB-0005, at 8 (holding that Better Future Forward's ISAs constituted credit under the Consumer Financial Protection Act); *see also* 12 U.S.C. § 5481(7) (defining credit as "the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase").

¹³⁹ *CFPB Takes Action Against Student Lender for Misleading Borrowers About Income Share Agreements*, *supra* note 135.

¹⁴⁰ *See id.* (indicating that because the ISAs were credit, Better Future Forward failed to disclose adequate information under the Truth in Lending Act and Consumer Financial Protection Act).

¹⁴¹ *Id.*

¹⁴² *Lawsuit Against Coding Academy and ISA Provider Alleges Illegal Lending and Deceptive Practices*, STUDENT BORROWER PROT. CTR., <https://protectborrowers.org/lawsuit-against-coding-academy-and-isa-provider-alleges-illegal-lending-and-deceptive-practices/> [https://perma.cc/CV8F-RAAQ].

¹⁴³ *See* Complaint at 2–3, *Aguocha v. Make School, Inc.*, No. CGC-21-592710 (Cal. Super. Ct. June 25, 2021) (alleging that Make School misrepresented that its incentives were aligned when it was only forming ISAs to sell in a secondary market). Oftentimes, assets are packaged into pools and then shares are sold within these pools and the purchaser of the shares is then entitled to the interest paid out from the original pooled assets. Andreas Jobst, *What Is Securitization?*, IMF (Sept. 2008), <https://www.imf.org/external/pubs/ft/fandd/2008/09/pdf/basics.pdf> [https://web.archive.org/web/20221227043729/https://www.imf.org/external/pubs/ft/fandd/2008/09/pdf/basics.pdf]. This process is called securitization and allows for the underwriters of the debt agreements (i.e., the ISAs) to offload risk by selling the assets at a discount to the total value of the interest. *Id.*

ture profits would be the form of repayment.¹⁴⁴ Furthermore, the plaintiffs alleged that the school did not provide adequate disclosure of the implications and terms of the agreements, arguing that the total cost of repayment would be drastically higher than the education's market value.¹⁴⁵ The school also supposedly encouraged students to enter into riskier ISAs as their time at the school progressed, thereby increasing the students' repayment burden.¹⁴⁶ As of January 2023, the parties were trying to finalize a settlement agreement.¹⁴⁷

C. The Process of Forming a Corporation

As a precursor to understanding how a new solution could fill the place of ISAs, it is important to understand the logistics of forming a corporation under Delaware state law.¹⁴⁸ Any person or corporation can form a corporation under state law.¹⁴⁹ In this capacity, the person or corporation serves as the "incorporator."¹⁵⁰ The incorporator must file a certificate of incorporation with the Secretary of State of Delaware.¹⁵¹

Under Delaware state law, the certificate of incorporation must set out the corporation's name, address, purpose, authorized stock, the name and mailing address of the incorporator, and the powers of the incorporator.¹⁵² The certificate can contain various other provisions, but that is all that is required within the document.¹⁵³ The requirements vary in the levels of specificity required.¹⁵⁴ For instance, the corporation does not need any specific purpose so long as this purpose is legal under Delaware law.¹⁵⁵ Nevertheless, with respect to the authorized stock, the certificate must set out the total number of shares that the

¹⁴⁴ Complaint, *supra* note 143, at 2–3.

¹⁴⁵ See *id.* (arguing that the long-term cost of the agreements was at least four times greater than the market value of the services provided).

¹⁴⁶ Court Docket, *Aguocha*, No. CGC-21-592710.

¹⁴⁷ See Order Continuing Case Management Conference, *Aguocha*, No. CGC-21-592710 (scheduling another case management conference as both parties seek to agree on terms of settlement).

¹⁴⁸ See generally DEL. CODE ANN. tit. 8, § 102 (2022) (codifying the Delaware requirements to form a corporation).

¹⁴⁹ See *id.* § 101(a) (giving a list of who or what can form a corporation in the state of Delaware).

¹⁵⁰ *Id.* An incorporator is "[s]omeone who takes part in the formation of a corporation, usu[ally] by executing the articles of incorporation." *Incorporator*, BLACK'S LAW DICTIONARY, *supra* note 110.

¹⁵¹ DEL. CODE ANN. tit. 8, § 101(a); see *id.* § 103 (outlining the process for filing a certificate of incorporation with the state).

¹⁵² See generally *id.* § 102(a) (setting out the required elements for a certificate of incorporation).

¹⁵³ See generally *id.* § 102(b) (providing a list of various other possible provisions within the certificate that are not required under state law).

¹⁵⁴ Compare *id.* § 101(b) (permitting the business to "conduct or promote any lawful business or purposes"), with *id.* § 102(a)(4) (describing the requirements for authorized stock and the provision of rights under the certificate of incorporation).

¹⁵⁵ *Id.* § 101(b).

corporation may issue as well as the rights which the stock possesses.¹⁵⁶ The certificate can designate a variety of rights and powers to stockholders, including the right to vote or limitations on the ability to transfer the shares.¹⁵⁷ Moreover, Delaware law permits corporations to create multiple classes of stock, each with a different set of rights.¹⁵⁸

After crafting the certificate, the incorporator must then sign and deliver this document to the Secretary of State.¹⁵⁹ The incorporator must also pay an assessment fee of twenty-four dollars for the first page of the document and nine dollars for each additional page.¹⁶⁰ The incorporator must also pay a municipality fee of twenty dollars.¹⁶¹ After the provision of fees and the filing of a signed certificate of incorporation, the certificate becomes effective, creating a state-endorsed corporation.¹⁶²

II. WEIGHING THE IMPACT OF THE CFPB RULING

The CFPB ruling classifies the ISA as a debt instrument.¹⁶³ As discussed previously, this has broader implications for the providers, such as compliance with federal and state lending requirements.¹⁶⁴ The ISA remains intriguing because it often does not require a co-signor, collateral supplied by the student, or a credit history.¹⁶⁵

The implications of the CFPB ruling are that ISAs will now become synonymous with student loans, thus explaining Purdue's decision to cease offering the product.¹⁶⁶ Consumer lending protections are much higher than those of a simple private contract.¹⁶⁷ Although such protections may be important, they could also lessen the degree to which ISAs are available to students based

¹⁵⁶ *Id.* § 102(a)(4).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* § 103(a)(1).

¹⁶⁰ *Id.* § 103(c)(6).

¹⁶¹ *Id.* § 103(c)(7).

¹⁶² *Id.* § 103(d).

¹⁶³ See *In re Better Future Forward, Inc.*, CFPB No. 2021-CFPB-0005, at 8 (Sept. 7, 2021) (holding that Better Future Forward's ISAs constituted credit under the Consumer Financial Protection Act).

¹⁶⁴ See *supra* notes 133–141 and accompanying text; *Regulations Implementing Consumer Financial Protection Laws*, CFPB, <https://www.consumerfinance.gov/rules-policy/final-rules/code-federal-regulations/> [<https://perma.cc/2XVK-L78K>] (listing every regulation that is placed on consumer lenders).

¹⁶⁵ See Lane & Beresford, *supra* note 67 (comparing student loans with ISAs).

¹⁶⁶ See *id.* (suggesting that additional disclosures would add more parity between student loans and ISAs); see also Yoder, *supra* note 103 (indicating that the ISA offerings have been drastically impacted by the CFPB ruling).

¹⁶⁷ See *Regulations Implementing Consumer Financial Protection Laws*, *supra* note 164 (listing each regulation that is placed on consumer lenders).

on a variety of factors, including credit history.¹⁶⁸ In 2015–2016, private student loan debt accounted for roughly six percent of all student debt in the United States.¹⁶⁹ When considering the outstanding debt at the federal level, it is important to find a way to supplement the federal lending operations as the deficit continues to grow substantially.¹⁷⁰

When ISAs began to grow off the back of the 2008–2009 crisis, traditional providers were hesitant to lend, giving rise to what people believed to be an equity alternative.¹⁷¹ Accordingly, it is important to understand the difference between debt and equity and why some may prefer to raise equity rather than taking on more loans at an early stage in life.¹⁷² Section A of this Part discusses capital raising and the implications of debt versus equity.¹⁷³ Section B discusses the specific implications of characterizing ISAs as credit.¹⁷⁴

A. The Important Differences Between Debt and Equity

Companies must constantly consider how to best raise capital.¹⁷⁵ Traditionally, this boils down to the decision to raise debt versus equity.¹⁷⁶ There are benefits and drawbacks to each, including fixed charge implications and future cash flows.¹⁷⁷ The important part is recognizing that the decision and the

¹⁶⁸ See *Do Student Loans Affect My Credit Score?*, CFPB (June 23, 2021), <https://www.consumerfinance.gov/ask-cfpb/do-student-loans-affect-my-credit-score-en-581/> [<https://perma.cc/PA72-KFYS>] (explaining that student loans affect your credit score in the same way as other loans, creating implications for future purchases and decisions).

¹⁶⁹ *Private Loans*, STUDENT LOAN BORROWER ASSISTANCE, <https://www.studentloanborrowerassistance.org/private-loans/> [<https://perma.cc/UY8V-NQRE>].

¹⁷⁰ See Chris Gaetano, *Some Students Turning to Equity Financing for College Over Debt*, NYSSCPA (Apr. 9, 2019), <https://www.nysscpa.org/news/publications/nextgen/nextgen-article/some-students-turning-to-equity-financing-for-college-over-debt-040919> [<https://perma.cc/5DS2-XAKY>] (indicating that the Federal Reserve expressed concern over the economic impact of the outstanding and delinquent student debt in the United States).

¹⁷¹ See *The Potential Market for Income Share Agreements Among Low-Income Undergraduates*, AM. INST. FOR RSCH. (Sept. 2015), <https://www.air.org/sites/default/files/downloads/report/Income-Share-Agreements-ISAs-Potential-Among-Low-Income-Undergraduates-Sept-2015.pdf> [<https://perma.cc/KMK7-PF4V>] (arguing that the U.S. market for ISAs saw an increase in interest after the financial crisis in 2008). In 2009, Lumni, a third-party ISA provider, entered the U.S. market. *Id.*

¹⁷² See Gaetano, *supra* note 170 (demonstrating that the funding decisions one makes for school have powerful implications on whether that person is able to purchase a home or finance a certain lifestyle down the road).

¹⁷³ See *infra* notes 175–208 and accompanying text.

¹⁷⁴ See *infra* notes 209–222 and accompanying text.

¹⁷⁵ See *Why Would a Company Choose Equity Financing Over Debt Financing?*, CFA J., <https://www.cfajournal.org/equity-financing-over-debt-financing/> [<https://perma.cc/YNE2-X39Y>] (describing the importance of the decision between equity and debt).

¹⁷⁶ See *id.* (acknowledging the critical juxtaposition of debt and equity).

¹⁷⁷ See *id.* (showing that equity and debt affect capital structure, future cash flows, and various other financial metrics in different ways).

amount of capital raised implicate future decisions.¹⁷⁸ For instance, a debt raise right now could impact credit history and the ability to borrow in the future.¹⁷⁹ A highly leveraged company will not have the same ability to borrow as one that earlier chose to raise money through equity.¹⁸⁰

A student, like a company, has traditionally had the choice of how to raise capital for school.¹⁸¹ Unlike a company, this student is not tapping the capital markets but is seeking out federal loans, private loans, scholarships, grants, or ISAs.¹⁸² It is important to recognize that prior to the CFPB's ruling, the ISA offered a very powerful alternative to a debt instrument.¹⁸³

Debt is attractive for a variety of reasons—one of the largest being the tax deduction for interest payments on debt.¹⁸⁴ Student loans offer a tax deduction on income based on interest payments.¹⁸⁵ This deduction is capped at \$2,500 per year.¹⁸⁶ The aggregate amount of federal direct subsidized loans for an undergraduate student is capped at \$23,000.¹⁸⁷ Likewise, this total does not include the amount that the school itself may provide out of need-based aid.¹⁸⁸

¹⁷⁸ See *id.* (describing that financing decisions today will ultimately impact the ways in which a corporation is able to raise capital in the future); see also Gaetano, *supra* note 170 (highlighting the impact of today's financial decisions on many future choices).

¹⁷⁹ See *Why Would a Company Choose Equity Financing Over Debt Financing?*, *supra* note 175 (describing how taking on more debt increases one's leverage ratio, creating issues for a company seeking debt financing in the future and potentially affecting credit history).

¹⁸⁰ *Id.*

¹⁸¹ See, e.g., *Types of Financial Aid*, BOS. COLL., <https://www.bc.edu/content/bc-web/offices/student-services/financial-aid/undergraduate/types-of-financial-aid.html> [<https://perma.cc/NUT9-5P5P>] (giving an overview of the potential financial aid opportunities at Boston College, including scholarships, federal loans, federal grants, and more).

¹⁸² *Id.*; see *What Is an Income Share Agreement?*, *supra* note 85 (providing private ISAs for college students).

¹⁸³ See Oei & Ring, *supra* note 13, at 721–23 (arguing that there are many ways in which ISAs are similar to equity and in some instances should be regulated as such).

¹⁸⁴ See *Why Would a Company Choose Equity Financing Over Debt Financing?*, *supra* note 175 (listing several ways that debt financing might be preferred over equity); Julia Kagan, *Student Loan Interest Deduction*, INVESTOPEDIA, <https://www.investopedia.com/terms/s/slaid.asp> [<https://perma.cc/YVW2-DJGM>] (Dec. 1, 2022) (explaining the tax deduction available based on interest loan payments).

¹⁸⁵ Kagan, *supra* note 184; see 26 U.S.C. § 221(a) (permitting an allowance of deduction for interest on student loans paid within the year).

¹⁸⁶ 26 U.S.C. § 221(b)(1).

¹⁸⁷ *Federal Student Loans for College or Career School Are an Investment in Your Future*, U.S. DEP'T OF EDUC., <https://studentaid.gov/understand-aid/types/loans> [<https://perma.cc/F2A5-YNAY>].

¹⁸⁸ See *id.* (indicating that loans are based off cost of attendance and financial aid provided by the school). Even so, there is a limited amount that students can borrow. *Id.* Clearly, there is a market for additional private sources of funding. See *Private Loans*, *supra* note 169 (demonstrating that at private nonprofit and public four-year colleges, twelve and eight percent of all undergraduate students respectively have private loans as of 2015–2016). Moreover, in times of economic crisis, like in 2008–2009, participation in the private loan market is higher. *Id.*

Student loans do not come without drawbacks.¹⁸⁹ Student loans often have a fixed interest rate.¹⁹⁰ Furthermore, the ability to repay has critical impacts on credit history, affecting one's ability to rent an apartment, purchase a car, and make many other pivotal purchases.¹⁹¹ Beyond repayment, students are limited in the amount they can borrow from both private and federal sources by the cost of attendance.¹⁹² Although traditionally used as a supplemental form of funding due to their flexibility, ISAs might now find themselves subject to the same restrictions, and the government already offers a similar debt product as an additional source of funding for students.¹⁹³

The ISAs, however, will now forego the benefits of equity.¹⁹⁴ Equity's payout is determined by the actual profits of the corporation or individual, even dividend payments.¹⁹⁵ Equity does not affect a credit score.¹⁹⁶ It is also an investment in the individual corporation.¹⁹⁷ Perhaps the biggest benefit is that equity derives its value from the cash flows of the issuer.¹⁹⁸ This means that

¹⁸⁹ See *Federal Student Loans for College or Career School Are an Investment in Your Future*, *supra* note 187 (acknowledging how borrowing can affect one's financial future).

¹⁹⁰ See Jennifer Calonia, *Student Loan Interest Rates in March 2022*, BANKRATE, <https://www.bankrate.com/loans/student-loans/current-interest-rates/#interest-rates-work> [<https://perma.cc/BF2R-P23Q>] (describing the method by which interest rates are determined for federal loans). Federal loan interest rates are set every spring based on the ten-year U.S. Treasury Note. *Id.* After the federal loan interest rate market is set, the private loan interest rate is usually only moderately higher. *Id.* Private lenders are more versatile, offering fixed and variable rate loans. *Id.* Currently, federal loans, which account for ninety percent of all student loans, have an interest rate range of 3.73–6.28%. *Id.*

¹⁹¹ See *How Your Credit Score Impacts Your Financial Future*, FINRA, <https://www.finra.org/investors/personal-finance/how-your-credit-score-impacts-your-financial-future> [<https://perma.cc/F6WG-RDHU>] (establishing the credit score's importance in all financing decisions). In determining a credit score, the individual's payment history accounts for thirty-five percent and the amount owed is weighted at thirty percent. *Id.* Both factors can directly be impacted by loans taken out for school. *Id.* Additionally, new credit impacts the score. *Id.* For those looking to return to school, the mere overhang of the debt that will have to be assumed in order to reenter school is worrisome to creditors. *Id.*

¹⁹² *Federal Student Loans for College or Career School Are an Investment in Your Future*, *supra* note 187.

¹⁹³ See *Higher Education Finance FAQ*, JAIN FAM. INST., <https://www.jainfamilyinstitute.org/faq/faq-higher-education-finance/#doesnt-the-federal-government-offer-something-like-income-share-agreements> [<https://perma.cc/LJ2T-J2YL>] (suggesting that ISAs and income-driven repayment plans are similar). The federal government currently offers income-driven repayment (IDR) plans. *Id.* These feature payment rates tied to a student's income, making them more flexible. *Id.* Currently, they are offered with ten percent, fifteen percent, or twenty percent of discretionary income. *Id.*

¹⁹⁴ See *In re Better Future Forward, Inc.*, CFPB No. 2021-CFPB-0005, at 8 (Sept. 7, 2021) (defining ISAs as a credit product).

¹⁹⁵ *Dividend*, SEC, <https://www.investor.gov/introduction-investing/investing-basics/glossary/dividend> [<https://perma.cc/6BBH-8L5J>].

¹⁹⁶ See *How Your Credit Score Impacts Your Financial Future*, *supra* note 191 (showing the calculation that produces one's credit score).

¹⁹⁷ See Fernando, *supra* note 11 (explaining that owning stock is holding ownership in a corporation and that stock is a form of equity).

¹⁹⁸ See *id.* (indicating that investing in a firm's equity allows one to enjoy the benefits of a firm's rising profits).

the investors' success is directly tied to that of the issuer.¹⁹⁹ Therefore, any investor buying equity is incentivized to assist the student in achieving his or her goals.²⁰⁰ If the student fails, the equity is worthless.²⁰¹

Taking this to a broader level, in the market, investors require an equity risk premium.²⁰² An equity risk premium is the value over the market return that an investor requires in order to justify the risk of holding equity instead of other financial instruments.²⁰³ For example, debt is largely less risky than equity on the whole; therefore, debt investors for the most part require a lower rate of return.²⁰⁴ Here, investors will be incentivized by the upside provided that the student can mitigate the risk.²⁰⁵ This risk can be mitigated by extra effort on behalf of the investor, such as seeking career advice, counseling, or tutoring.²⁰⁶ Provided that the costs of overseeing the process are lower than potential returns, this arrangement can be more beneficial for each student and in-

¹⁹⁹ See *id.* (highlighting that, in the event of a sale of the corporation, a stockholder would receive the residual value left over after payment of the liabilities).

²⁰⁰ See Amy Dittmar & Anjan Thakor, *Why Do Firms Issue Equity?*, 62 J. FIN. 1, 3 (2007) (arguing that issuing equity actually aligns the goals of both managers and stockholders in order to maximize value). Meanwhile, debtholders might actually have a different investment goal than that of shareholders. *Id.*

²⁰¹ See *Bankruptcy: What Happens When Public Companies Go Bankrupt*, SEC (Feb. 3, 2009), <https://www.sec.gov/reportspubs/investor-publications/investorpubsbankrupt.htm> [<https://perma.cc/YW2W-2PZ9>] (indicating that although stock might not immediately be worthless if a company is forced to declare bankruptcy, there is a high likelihood of that ultimately occurring).

²⁰² See Aziza Kasumov, *US Equity Valuations Questioned as Risk Premium Sinks*, FIN. TIMES (May 5, 2021), <https://www.ft.com/content/773261d2-c68e-41de-93c8-2d76c1528559> [<https://perma.cc/UPE5-A6QW>] (defining the equity risk premium as the “extra return investors can expect for buying U.S. stocks instead of risk-free government bonds”).

²⁰³ CFI Team, *What Is the Market Risk Premium?*, CORP. FIN. INST., <https://corporatefinanceinstitute.com/resources/knowledge/finance/market-risk-premium/> [<https://perma.cc/Z8ND-58QQ>] (Dec. 6, 2022).

²⁰⁴ See CFI Team, *Capital Asset Pricing Model (CAPM)*, CORP. FIN. INST., <https://corporatefinanceinstitute.com/resources/knowledge/finance/what-is-capm-formula/> [<https://perma.cc/H8MJ-2N5K>] (Nov. 24, 2022) (suggesting that, when calculating the expected return of a particular security, the market risk premium is the risk needed to attract investors based on the particular riskiness of the asset, i.e., the higher the risk, the higher the necessary reward).

²⁰⁵ See DEL. CODE ANN. tit. 8, § 170(a) (2022) (permitting a student to potentially promise a dividend in order to ensure that investors get a return on their equity investment). Likewise, that return is only capped by the amount of profit generated by a corporation, meaning that there is no dollar amount limit. *Id.*

²⁰⁶ See Megan Leonhardt, *Nearly 1 in 5 College Grads Expect to Earn \$85,000 in Their First Job This Year*, CNBC (May 13, 2021), <https://www.cnbc.com/2021/05/13/many-college-grads-expect-to-earn-85000-in-their-first-job-this-year.html> [<https://perma.cc/4LM9-45AF>] (demonstrating that seven-teen percent of college graduates expect to earn \$85,000 in their first year out of college). In 2019, the average starting salary was \$53,889. *Id.* Dividends operate in that they are connected to earnings, meaning that an investor that has purchased equity in a student would be incentivized to help that student get a job with a starting salary of \$85,000. See DEL. CODE ANN. tit. 8, § 170(a) (outlining how dividends work under the law).

vestor than a debt agreement between a lender and borrower.²⁰⁷ Now that ISAs are more similar to the latter, and will now be subject to additional restrictions, there could be an opportunity for a new kind of offering in the market.²⁰⁸

B. The Implications of Income Share Agreements Being Treated as Credit

Now that the CFPB has determined that ISAs are credit products, they will be subject to many more federal and state regulations.²⁰⁹ Because ISAs now qualify as a form of consumer lending at the federal level, the CFPB will serve as the federal regulator for any entity offering such a product.²¹⁰ Additionally, the ISA provider must comply with the Consumer Financial Protection Act and the Truth in Lending Act.²¹¹ These Acts mandate increased transparency and disclosures when it comes to the basics of the product.²¹² As an example, the Truth in Lending Act requires consumer lenders to present the annual percentage rate (APR) in a comprehensible manner so that borrowers fully understand the costs associated with loans, and now, these disclosures will have to be present in every ISA advertisement.²¹³

²⁰⁷ See CFI Team, *Equity Risk Premium*, CORP. FIN. INST., <https://corporatefinanceinstitute.com/resources/knowledge/finance/equity-risk-premium/> [<https://perma.cc/C3RN-B8RM>] (Feb. 1, 2023) (indicating that the traditional return from an equity investment, although riskier, has a higher potential return than that of a debt investment). The concept of equity risk premium is that the investor gets an excess return for assuming risk associated with the rate “guaranteed” by government securities. *Id.*

²⁰⁸ See *Regulations Implementing Consumer Financial Protection Laws*, *supra* note 164 (listing every single regulation that is placed on consumer lenders); see also *In re Better Future Forward, Inc.*, CFPB No. 2021-CFPB-0005, at 10–11 (Sept. 7, 2021) (listing the new requirements imposed on ISAs now that they are considered debt instruments).

²⁰⁹ *In re Better Future Forward, Inc.*, CFPB No. 2021-CFPB-0005, at 1–2 (finding that the products offered by Better Future Forward were in violation of the Consumer Financial Protection Act and Truth in Lending Act).

²¹⁰ *Id.* at 8 (outlining the CFPB’s reasoning for why ISAs are a credit product); see *Institutions Subject to CFPB Supervisory Authority*, CFPB, <https://www.consumerfinance.gov/compliance/supervision-examinations/institutions/> [<https://perma.cc/YH5R-HXSN>] (indicating that the CFPB has jurisdiction over all student lenders, regardless of size).

²¹¹ See *In re Better Future Forward, Inc.*, CFPB No. 2021-CFPB-0005, at 1–2 (finding that Better Future Forward, Inc.’s ISAs violated provisions of the Consumer Financial Protection Act and Truth in Lending Act); see also Consumer Financial Protection Act of 2010, Pub. L. No. 111-203, § 1031, 124 Stat. 1955 (2010) (codifying the CFPB’s role in eliminating deceptive and unfair practices in relation to the offering of financial services to consumers); Truth in Lending Act, 15 U.S.C. §§ 1601–1667f (requiring certain disclosures to inform consumers regarding the terms of financial products).

²¹² See 15 U.S.C. § 1601(a) (codifying rules that help inform consumers about credit products and the terms of credit agreements they are signing).

²¹³ See *id.* at §§ 1661–1664 (dictating the terms by which credit products may be advertised); see also Bill Fay, *Truth in Lending Act—Consumer Rights and Protections*, DEBT.ORG, <https://www.debt.org/credit/your-consumer-rights/truth-lending-act/> [<https://perma.cc/6T5C-29U8>] (Dec. 16, 2021) (highlighting the requirements set forth in the Truth in Lending Act).

At the state level, the offerors will have to comply with state consumer protection requirements.²¹⁴ This can involve credit reporting, stringent oversight of deceptive practices, and strict civil penalties for violations.²¹⁵ Although additional regulations and protections may seem like a positive, and in many ways are, a major issue exists in that the credit products will be offered to students from residents of every state, meaning that providers will bear the backbreaking task of complying with consumer lending regulations in each jurisdiction.²¹⁶

The ISAs will also have to comply with federal and state usury laws.²¹⁷ This will cap the return for investors.²¹⁸ Although the average ISA already complies with laws regarding interest rates, this is one example of how regulation will increase and could suppress returns in comparison to an equity offering.²¹⁹

Although these new protections might not seem dramatically more invasive, the resulting compliance costs could shrink the market, and the liability of noncompliance creates certain new risks.²²⁰ Therefore, a new alternative in equity could be attractive for investors still looking to capture a portion of the student finance market.²²¹ With a little legal creativity, students could address the problem directly and make sure that the capital they receive could not be construed as anything but equity for the foreseeable future.²²²

²¹⁴ See, e.g., MASS. GEN. LAWS ch. 93A, § 2 (2021) (imposing restrictions on consumer lending with respect to unfair and deceptive operations). Every state has consumer protection laws in order to protect residents. Carolyn L. Carter, *Consumer Protection in the States: A 50-State Report on Unfair and Deceptive Acts and Practices Statutes*, NAT'L CONSUMER L. CTR., <https://www.nclc.org/resources/how-well-do-states-protect-consumers/> [<https://perma.cc/HU5G-SM76>] (Mar. 1, 2018).

²¹⁵ Carter, *supra* note 214.

²¹⁶ *Id.*

²¹⁷ Usury, NAT'L CONSUMER L. CTR., <https://www.nclc.org/issues/high-cost-small-loans/usury.html> [<https://perma.cc/W837-DHLC>].

²¹⁸ *Id.* Usury laws regulate the maximum amount of interest that can be charged on loans. *Id.* On the other hand, a dividend is only regulated by the amount of profits generated. DEL. CODE ANN. tit. 8, § 170(a) (2022).

²¹⁹ See Lane & Beresford, *supra* note 67 (indicating that the typical ISA requires a commitment of between two and ten percent of future revenues). Prior to the CFPB's decision, however, there was no limit on the percentage of future revenues to be paid. *Id.*

²²⁰ See *In re Better Future Forward, Inc.*, CFPB No. 2021-CFPB-0005, at 1–2 (Sept. 7, 2021) (stipulating that ISAs must comply with consumer financial protection laws).

²²¹ See Maryanna Abdo, Svava Bjarnason & Ashwin Assomull, *Student Finance: A New Frontier for Impact Investing?*, STAN. SOC. INNOVATION REV. (May 30, 2014), https://ssir.org/articles/entry/student_finance_a_new_frontier_for_impact_investing [<https://perma.cc/H5JY-8D9U>] (proposing that investors could enter the space of student finance as impact investors seeking to create social change). Impact investing is a form of investing in which investors deploy capital to positively impact the environment and society while also generating returns. James Chen, *Impact Investing*, INVESTOPEDIA (Feb. 24, 2022), <https://www.investopedia.com/terms/i/impact-investing.asp> [<https://perma.cc/6678-DYGY>].

²²² See generally DEL. CODE ANN. tit. 8, § 102 (outlining the process by which an incorporator forms a corporation and authorizes shares).

III. A WAY TO RECREATE THE INCOME SHARE AGREEMENT

In 2010, in *Citizens United v. FEC*, the United States Supreme Court held that corporations had a First Amendment right and that their political speech could not be stifled.²²³ The holding was controversial and remains so today.²²⁴ It plays on the idea of corporate personhood.²²⁵ It was not long after when Senator Mitt Romney, at the Iowa State Fair, asserted that corporations were people.²²⁶ While this may seem odd, it has been a part of the U.S. legal system for quite a while.²²⁷ In the 1800s, corporations were first afforded the right to sue and be sued.²²⁸ The corporation has long been treated as a separate entity under the law.²²⁹ In *Citizens United*, however, the assertion goes beyond mere separation to attributing the rights of the citizens within the corporation to that of the corporation.²³⁰ This is described as reverse piercing the corporate veil.²³¹

²²³ See *Citizens United v. FEC*, 558 U.S. 310, 372 (2010) (indicating that corporations must be allowed to express ideas through a variety of channels). In the opinion, the Court held that “the Government may not suppress political speech based on the speaker’s corporate identity.” *Id.* at 315.

²²⁴ See Alex Gangitano, *Citizens United Decision Weathers 10 Years of Controversy*, THE HILL (Jan. 21, 2020), <https://thehill.com/business-a-lobbying/business-a-lobbying/478852-citizens-united-decision-weather-10-years-of> [<https://perma.cc/BW62-NT3U>] (outlining the decade of controversy surrounding the holding in *Citizens United*).

²²⁵ See Nikolas Bowie, *Corporate Personhood v. Corporate Statehood*, 132 HARV. L. REV. 2009, 2009–10 (2019) (indicating that the holding in *Citizens United* helped contribute to the broader notion of corporate personhood).

²²⁶ See Frank James, *Romney’s ‘Corporations Are People’ a Gift to Political Foes*, NPR (Aug. 11, 2011), <https://www.npr.org/sections/itsallpolitics/2011/08/11/139551684/romneys-corporations-are-people-getting-lots-of-mileage> [<https://perma.cc/PPQ2-QEXA>] (taking a stance against Senator Mitt Romney’s assertion on corporate personhood). At an Iowa State Fair in 2011, Senator Romney famously remarked, “Corporations are people, my friend.” *Id.* The political left reacted very adversely to the sentiment given the implications for corporate rights and the negative perception of corporate America. See *id.* (highlighting the more prominent negative responses to Senator Romney’s statement).

²²⁷ See *A Conversation with ‘We the Corporations’ Author Adam Winkler*, FILMS ON DEMAND (June 2, 2020), https://fod-infobase-com.eu1.proxy.openathens.net/p_ViewVideo.aspx?xtid=207071 [<https://perma.cc/2EGJ-XNV2>] (discussing Adam Winkler’s book *We the Corporations* in which he proposes that corporate personhood is not a new concept but one that has been ingrained in the legal system for the better part of two centuries).

²²⁸ See Nina Totenberg, *When Did Companies Become People? Excavating the Legal Evolution*, NPR (July 28, 2014), <https://www.npr.org/2014/07/28/335288388/when-did-companies-become-people-excavating-the-legal-evolution> [<https://perma.cc/N6D3-KTKM>] (giving a detailed history of corporations’ treatment as individuals by the American legal system). In many ways, the rise of large railroad corporations led to the development of corporate rights and personhood. See *id.* (arguing that the railroads sought the protections of incorporation in order to facilitate investment and expand).

²²⁹ See *id.* (indicating that the Catholic Church could buy and sell property even in medieval times, but that the industrialization of the 1800s necessitated more rights for corporations).

²³⁰ See *Citizens United v. FEC*, 558 U.S. 310, 372 (2010) (importing First Amendment rights to that of the corporation). Reverse corporate veil piercing refers to the concept of blurring the lines between corporate entity and shareholders by allowing shareholders’ rights to be afforded to the corporation. See Michael J. Gaertner, *Reverse Piercing the Corporate Veil: Should Corporation Owners Have It Both Ways?*, 30 WM. & MARY L. REV. 667, 677 (1989) (describing the elements of reverse corporate veil piercing).

Reverse piercing the corporate veil is the idea that shareholders' rights are imputed to that of the corporation.²³² Decisions such as these blur the lines between corporation and person.²³³

With the blurring of these lines, it is conceivable that a person, a student in this case, should be able to incorporate himself.²³⁴ By filing a certificate of incorporation, that person should be able to attribute the corporation's rights to his own existence in society.²³⁵ He should be able to offer a dividend on his profits in the same way a corporation is able to do so.²³⁶ This would be similar to the idea of piercing the corporate veil in that the obligations of the corporation are now his obligations.²³⁷ Using the Delaware General Corporation Law, students could self-incorporate, and because self-incorporation could protect students while allowing for them to raise money through issuance of equity, the process would effectively render ISAs useless.²³⁸ Section A of this Part discusses the process by which a student could incorporate and recreate an ISA.²³⁹ Section B discusses the offering of shares and how students could raise capital.²⁴⁰ Finally, Section C acknowledges some of the shortcomings of self-incorporation and highlights a few more strengths of the proposed solution.²⁴¹

A. The Process of Self-Incorporation

The best way to illustrate the process by which a student could raise equity as an alternative to student debt is through a hypothetical student: John

²³¹ Gaertner, *supra* note 230.

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.* Under that guise, a student incorporating himself would merely blur the lines in a similar fashion by enabling the rights of the corporation to pass on to him. See DEL. CODE ANN. tit. 8, § 102 (2022) (outlining the requirements and options for a certificate of incorporation, the document that outlines the powers of the corporation). *But see Citizens United*, 558 U.S. at 372 (holding that the corporation could adopt the rights of an individual).

²³⁵ See DEL. CODE ANN. tit. 8, §§ 101–102 (outlining the process by which incorporation must occur and the requirements for the certificate of incorporation). Under this portion of the Delaware Code, leeway is given to incorporators making rights of stocks and other characteristics of the company contingent on outside factors, hypothetically allowing a corporation to function based on an individual. See *id.* § 151(a) (permitting a stock's rights to be made dependent on outside events).

²³⁶ See *id.* § 170(a) (permitting corporations to issue a dividend subject to certain circumstances).

²³⁷ See Nikki Nelson, *How to Avoid Piercing the Corporate Veil*, WOLTERS KLUWER (Dec. 29, 2020), <https://www.wolterskluwer.com/en/expert-insights/how-to-avoid-piercing-the-corporate-veil> [<https://perma.cc/C5VH-SH9N>] (explaining that piercing the corporate veil is the process by which the obligations of a corporation are passed on to the shareholders if certain conditions are met).

²³⁸ See DEL. CODE ANN. tit. 8, §§ 101–102 (creating substantial leniency for those attempting to incorporate).

²³⁹ See *infra* notes 245–290 and accompanying text.

²⁴⁰ See *infra* notes 291–310 and accompanying text.

²⁴¹ See *infra* notes 311–332 and accompanying text.

Doe.²⁴² John Doe is an entering freshman at Boston College.²⁴³ Doe has already received financial aid in the form of student loans.²⁴⁴ Doe, however, needs more capital to afford the costs of an undergraduate degree and living expenses.²⁴⁵ Boston College does not offer ISAs, and even if it did, Doe does not want to take on more debt.²⁴⁶ Doe needs an alternative.²⁴⁷

John Doe decides to form a corporation and get investors.²⁴⁸ Doe incorporates under John Doe, Inc. in the State of Delaware.²⁴⁹ In order to incorporate, he must file a certificate of incorporation with the state.²⁵⁰ Under the laws of Delaware, he constructs a certificate.²⁵¹ He writes down the name of the corporation: John Doe, Inc.²⁵² He lists the name of the corporation's registered office in the state and the registered agent's name and address.²⁵³ Doe must then list a

²⁴² See Henry Weihofen, *Education for Law Teachers*, 43 COLUM. L. REV. 423, 443 (1943) (suggesting that the best way for law professors to teach is from “the concrete to the general” and that the study of actual cases is what truly helps students understand the material).

²⁴³ See generally *Boston College Admissions*, BOS. COLL., <https://www.bc.edu/bc-web/admission.html> [<https://perma.cc/V7F2-DVJX>] (describing the admissions process for prospective students).

²⁴⁴ See *Affordability*, BOS. COLL., <https://www.bc.edu/content/bc-web/admission/affordability.html#typesofaid> [<https://perma.cc/H8F9-LLWK>] (highlighting the different ways that Boston College can help students afford the cost of attendance).

²⁴⁵ See Melanie Hanson, *How Do People Pay for College?*, EDUC. DATA INITIATIVE, <https://educationdata.org/how-do-people-pay-for-college> [<https://perma.cc/GB8J-NDP2>] (Apr. 23, 2022) (indicating that students have to rely on sources of funding outside of scholarships, grants, and loans). Parental contribution and student income or savings account for nearly fifty percent of all funding for students. *Id.* This likely contributes to the statistic that only thirty-one percent of undergraduate students come from low-income households. *Id.*

²⁴⁶ *Types of Financial Aid*, *supra* note 181. Boston College lists a variety of opportunities for student funding including grants, loans, scholarship, and work-study opportunities. *Id.*

²⁴⁷ See DEL. CODE ANN. tit. 8, § 101 (2022) (allowing any individual to form a corporation so long as a certificate of incorporation is filed with the state).

²⁴⁸ See *id.* § 103 (explaining that filing a certificate of incorporation and paying the fee will lead to formation of a corporation if the certificate meets the requirements set forth in Delaware General Corporation Law).

²⁴⁹ *Id.* § 101.

²⁵⁰ See *id.* (requiring the filing of a certificate of incorporation with the Secretary of State).

²⁵¹ *Id.* § 102(a)(1).

²⁵² *Id.* The name must include a word indicating that the entity is a corporation, such as “incorporated.” *Id.*

²⁵³ *Id.* § 102(a)(2). The corporation's registered office is merely the address of the registered agent who is entitled to receive service of process and other documents in the state of incorporation. *Registered Office*, WESTLAW PRAC. L. GLOSSARY, [https://l.next.westlaw.com/Document/10f9fe739ef0811e28578f7ccc38dcbec/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&fromAnonymous=true&bhcp=1](https://l.next.westlaw.com/Document/10f9fe739ef0811e28578f7ccc38dcbec/View/FullText.html?transitionType=Default&contextData=(sc.Default)&firstPage=true&fromAnonymous=true&bhcp=1) [<https://perma.cc/NY32-9AL8>]; see *How to Find the Best Registered Agent in Delaware*, CHAMBER OF COM., <https://www.chamberofcommerce.org/best-registered-agent-delaware> [<https://perma.cc/R4TN-DBH6>] (explaining the importance of a registered agent in Delaware and providing examples of companies that solely act as registered agents for other companies). The registered agent is merely important as a contact for the state of Delaware as this individual or corporation will accept services of process in the state. See *How to Find the Best Registered Agent in Delaware*, *supra*. The requirements for serving as a registered agent are minimal, and although some corporations are their own registered agents in the state, many rely on outside corporations who offer such services. *Id.*

proper business purpose.²⁵⁴ To satisfy this requirement, he can simply list the purpose as “any lawful business under the laws of Delaware.”²⁵⁵

Next, and most critical for the purposes of John Doe, he must list the stock that the corporation is authorized to issue and the rights this stock will carry.²⁵⁶ Pursuant to Delaware General Corporation Law, a stock may be given certain rights and powers, and the corporation may issue more than one class of stock, entitled to different rights and powers.²⁵⁷ Here, for best practice, Doe may issue two different classes of stock: Class A shares and Class B shares.²⁵⁸ Class A shares would afford voting rights and would only be held by Doe.²⁵⁹ This would allow Doe to have complete control over his own life.²⁶⁰ This overcomes a primary concern raised by politicians and academics who likened selling equity in oneself via an ISA to indentured servitude.²⁶¹ Meanwhile, Class B shares would have no votes, and these shares would be issued to investors.²⁶²

In order to incentivize investors, there must be a return.²⁶³ This would come in the form of a dividend.²⁶⁴ Under Delaware General Corporation Law,

²⁵⁴ DEL. CODE ANN. tit. 8, § 102(a)(3).

²⁵⁵ See Eleventh Amended and Restated Certificate of Incorporation, FACEBOOK, INC. 1 (Oct. 1, 2010) (describing the purpose of Facebook as “to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law”).

²⁵⁶ DEL. CODE ANN. tit. 8, § 102(a)(4).

²⁵⁷ *Id.*

²⁵⁸ *Id.*; see Eleventh Amended and Restated Certificate of Incorporation, *supra* note 255, at 1–21 (establishing different classes of stock). Class A Common Stock and Class B Common Stock are given different voting rights by the incorporator of Facebook. Eleventh Amended and Restated Certificate of Incorporation, *supra* note 255, at 1–21.

²⁵⁹ See Eleventh Amended and Restated Certificate of Incorporation, *supra* note 255, at 1–21 (describing the voting rights of the stock). Specifically, Preferred Stock has ten votes for every vote of Class B Common Stock. *Id.*

²⁶⁰ See Katie Canales, ‘The Most Powerful Person Who’s Ever Walked the Face of the Earth’: How Mark Zuckerberg’s Stranglehold on Facebook Could Put the Company at Risk, BUS. INSIDER (Oct. 13, 2021), <https://www.businessinsider.com/mark-zuckerberg-control-facebook-whistleblower-key-man-risk-2021-10> [<https://perma.cc/Z7M3-H3SV>] (providing an example of the power of voting shares in that they give the person with a controlling vote the right to make every decision).

²⁶¹ See Hall, *supra* note 115 (discussing the potential for ISAs to be viewed as nothing more than indentured servitude). David Klein, a chief executive of an online lender, said that research conducted by his team indicated that those who were applying for ISAs were largely those who knew they would make less and were therefore submitting themselves to a form of indentured servitude. *Id.* Returning to Mike Merrill, Merrill let investors vote on major life decisions. Walker, *supra* note 1. In order to avoid something like this, it would be better to remove the vote from investors through the certificate of incorporation. See Certificate of Incorporation, SNAP, INC. 2–11 (May 24, 2012) (demonstrating how a corporation can designate a class of shares that has zero votes).

²⁶² See Certificate of Incorporation, *supra* note 261 (laying out, in detail, the different classes of stock). Pursuant to the certificate of incorporation, Class A Common Stock in Snap, Inc. has no voting rights. *Id.*

²⁶³ See Definition of ‘Required Rate of Return,’ ECON. TIMES, <https://economictimes.indiatimes.com/definition/required-rate-of-return> [<https://perma.cc/9FR2-9A9M>] (defining the required rate of

the board of directors of a corporation “may declare and pay dividends” so long as such is established in the certificate of incorporation.²⁶⁵ Similar to the payment of future earnings established by an ISA, John Doe may establish in the certificate that investors would be entitled to receive a dividend.²⁶⁶ In the case of John Doe, Inc., a dividend would need to be established subject to the net profits of John Doe.²⁶⁷ Dividends may be made contingent on the occurrence of outside events, and this would be such a case.²⁶⁸ In the event that John Doe makes a net profit on the year, John Doe, Inc. would pay out a dividend of X percent.²⁶⁹ This creates a structure whereby John Doe is protected if he is operating at a loss similar to the threshold earnings requirement under an ISA.²⁷⁰ Granted, it also sets a percentage of future earnings that will go to investors.²⁷¹ Beyond a dividend, one of the primary ways to limit the duration of the investment and to help guarantee a return of capital is to make the Class B shares issued to investors redeemable.²⁷² Redeemability of stock ensures that the issuer can repurchase outstanding shares for a specified price upon the occurrence of a predetermined event or date.²⁷³ In this case, John Doe could lay out that John Doe, Inc. may repurchase any and all outstanding shares at a ten percent premium from the cost of issuance starting five years after his graduation from college.²⁷⁴ These terms can be determined and are negotiable, as the certificate of incorporation can be changed in accordance with a vote.²⁷⁵

return as the minimum return an investor would require to invest a given amount of capital in an opportunity).

²⁶⁴ DEL. CODE ANN. tit. 8, § 170 (2022).

²⁶⁵ *Id.* § 170(a).

²⁶⁶ *See id.* (permitting a corporation’s directors to declare a dividend so long as it complies with the limitations in the statute and certificate of incorporation).

²⁶⁷ *See id.* (stating that the dividend must be given either out of a corporation’s surplus or net profits).

²⁶⁸ *See id.* (emphasizing that the dividend can be limited by the certificate of incorporation); *see also id.* § 151(a) (permitting rights of a class of stock to be contingent on events outside of the corporation).

²⁶⁹ *See id.* § 170(a)(2) (allowing the dividend to be paid out of the corporation’s net profits).

²⁷⁰ *See Back a Boiler™ Program Overview*, *supra* note 99 (providing details on a given ISA and how the percentage of future profits to be paid out varies based on a variety of factors).

²⁷¹ *See* DEL. CODE ANN. tit. 8, § 170 (describing the way dividends operate in the context of Delaware law).

²⁷² *See* Motley Fool Staff, *What Is the Difference Between Redeemable Shares and Convertible Shares?*, MOTLEY FOOL (Dec. 27, 2016), <https://www.fool.com/knowledge-center/redeemable-shares-vs-convertible-shares.aspx> [<https://perma.cc/B3KD-DKBC>] (indicating that redeemable shares are shares which can be purchased back by the company at a predetermined price and time).

²⁷³ *Id.*

²⁷⁴ *See* DEL. CODE ANN. tit. 8, § 151(b) (codifying that any corporation may make any class of stock redeemable for cash or an alternative form of consideration). The only limitation is that the stock outstanding after redemption have voting rights, but the only class that would be redeemable would have no voting rights and therefore would comply. *Id.*

²⁷⁵ *Id.* § 242 (announcing that a certificate of incorporation may be amended by a majority vote of the outstanding shares of stock).

The certificate of incorporation must also list the name and mailing address of the incorporator.²⁷⁶ In this case, the incorporator will be John Doe.²⁷⁷ Furthermore, he will serve as the sole director of the corporation and should enumerate this in the certificate of incorporation.²⁷⁸

The above lists all the required elements in the certificate of incorporation under Delaware General Corporation Law.²⁷⁹ Although this is all that is explicitly required by statute, John Doe will want additional protections, and it is highly likely that investors will require more in order to justify the purchase price of shares.²⁸⁰ An example of what else could be introduced is preemptive rights.²⁸¹ Preemptive rights allow for current holders of the stock to have the first right to purchase any additional shares being offered.²⁸² Another likely necessity is the establishment of personal liability of John Doe for outstanding debts of the corporation, and perhaps, a limitation on the ability to initiate a bankruptcy proceeding.²⁸³ This can be achieved using section 102(b)(6) of the Delaware General Corporation Law.²⁸⁴

After filing this document with the state and paying the related fee, John Doe will have successfully incorporated, thus completing the required step before issuing stock to investors.²⁸⁵ More importantly, after taking these steps, John Doe has recreated an ISA that is indisputably an arrangement for equity.²⁸⁶ Like an ISA, the stock pays out a percentage of future earnings, it has no voting rights, and it caps how high or how low (at least as a percentage of profits) the payment will be from year-to-year.²⁸⁷ Unlike an ISA, though, this arrangement allows the investor an unlimited time to recover the initial investment plus a re-

²⁷⁶ *Id.* § 102(a)(5).

²⁷⁷ *Id.*

²⁷⁸ *Id.* § 102(a)(6).

²⁷⁹ *See id.* § 102(a) (explaining that only the terms listed in this section are required in the certificate of incorporation).

²⁸⁰ *See id.* § 102(b) (outlining optional provisions in the certificate of incorporation that can be agreed upon by shareholders).

²⁸¹ *Id.* § 102(b)(3).

²⁸² *Id.*

²⁸³ *See id.* § 102(b)(6) (permitting the certificate of incorporation to impose personal liability for the debts of the corporation either generally or based upon a certain event); *see also What a Corporate Bankruptcy Means for Shareholders*, FINRA (Nov. 16, 2021), <https://www.finra.org/investors/insights/what-corporate-bankruptcy-means-shareholders> [<https://perma.cc/JKV8-7BYU>] (emphasizing that shareholders typically do not receive any compensation when a corporation declares bankruptcy).

²⁸⁴ DEL. CODE ANN. tit. 8, § 102(b)(6) (2022).

²⁸⁵ *See id.* § 103 (detailing the process by which the filing and incorporation occur).

²⁸⁶ *Compare id.* § 102 (codifying the options and powers that may be afforded both stock and corporations under the Delaware General Corporations Law), with *Back a Boiler™ Program Overview*, *supra* note 99 (providing an overview of what the standard ISAs offered by Purdue University entailed).

²⁸⁷ *See generally* DEL. CODE ANN. tit. 8, § 102 (allowing one to achieve all these things through the certificate of incorporation).

turn in the event that the issuer does not redeem the stock.²⁸⁸ Moreover, this method of self-incorporation allows the issuer the chance to repurchase much faster than a traditional ISA, allowing the issuer to reduce liability early.²⁸⁹ It also opens an opportunity to attract more investors by issuing a greater number of shares to various parties so long as the issuer complies with federal securities laws.²⁹⁰

B. Issuing Equity in Oneself

In regard to issuing shares, if the certificate of incorporation authorizes the number of shares, the board (i.e., John Doe in this matter) may issue less than or equal to that number of shares.²⁹¹ Here, John Doe would seek to issue Class A shares to himself and Class B shares to outside investors.²⁹² The best way for a program like this to work is to have schools invest in their students using a portion of the endowment.²⁹³ Working in coordination with the financial aid office, the endowment would purchase shares in students, creating an incentive to actually help students seek employment and in turn create value for the university.²⁹⁴ This would function similarly to other existing ISA pro-

²⁸⁸ See *id.* § 151(a)–(b) (codifying the rights of stock and stipulating that redeemability must be established in the certificate of incorporation). Investors could require the ability for them to force redemption of shares. See Jelmer Kalisvaart, *Redemption Rights at SPACs*, GREENBERG TRAURIG, LLP (June 28, 2021), <https://www.gtlaw.com/en/insights/2021/6/published-articles/redemption-rights-bij-spacs> [<https://perma.cc/5JNA-QLU3>] (discussing the ability for investors in special purpose acquisition companies (SPACs) to redeem their shares with the company and receive the full amount paid for the stock at any point prior to the acquisition of a company). A SPAC is a company that exists solely for the purpose of acquiring another company, and recently, these companies served as mechanisms to take companies public in an alternative to an IPO. Julie Chen, *Special Purpose Acquisition Company (SPAC)*, INVESTOPEDIA (Mar. 1, 2022), <https://www.investopedia.com/terms/s/spac.asp> [<https://perma.cc/XGX8-NWMW>].

²⁸⁹ See *Why ISAs?*, *supra* note 18 (indicating that the standard duration for a Stride ISA is five years).

²⁹⁰ See DEL. CODE ANN. tit. 8, § 102(a)(4) (limiting the number of shares issued only to the number of authorized shares specified in the certificate of incorporation).

²⁹¹ *Id.*

²⁹² See Eleventh Amended and Restated Certificate of Incorporation, *supra* note 255 (specifying the respective voting powers of different classes of shares).

²⁹³ See *Back a Boiler™ Program Overview*, *supra* note 99 (providing an example of how universities could back an alternative form of financing).

²⁹⁴ See RICHARD PRICE, CHRISTENSEN INST., UNLOCKING THE POTENTIAL OF ISAS TO TACKLE THE STUDENT DEBT CRISIS 1, 3 (2019), <https://files.eric.ed.gov/fulltext/ED603097.pdf> [<https://perma.cc/3VQN-KH7U>] (positing ISAs as an innovative tool because they help align the interests of students and educational institutions); see also V.G. Narayanan & Ananth Raman, *Aligning Incentives in Supply Chains*, HARV. BUS. REV. (Nov. 2004) (describing how supply chains optimize performance when incentives are properly aligned). Albeit not in the context of education, when supply chains focus on aligning incentives, the total production and in turn the total revenue grow, demonstrating the value in ensuring that goals are aligned in a network. Narayanan & Raman, *supra*.

grams but would be particularly effective in that the university endowment would qualify as an institutional investor.²⁹⁵

One of the largest hurdles with treating any financial product as a security is the accompanying federal and state regulations.²⁹⁶ At the federal level, the Securities Act of 1933 lists rules with which issuers have to comply, including a requirement to include various disclosures.²⁹⁷ In this case, John Doe, Inc. would provide an offer to purchase shares in the accompanying document to John Doe's application to Boston College.²⁹⁸ Similar to financial aid, John Doe having already incorporated will have laid out the terms of the offering, but this might still not meet the strict requirements of federal law.²⁹⁹ Although the burden of compliance could be intellectually and financially taxing on John Doe, there is an exemption under section 4(a)(2) of the Act that allows issuers not to comply in the context of a private placement.³⁰⁰ Because the school's endowment is an accredited investor—pursuant to Rule 506(b) of Regulation D, the issuer, John Doe, Inc., need not comply with the traditional registration and disclosure standards established in the Act.³⁰¹

Federal securities laws are not the only concern.³⁰² There is the matter of the state blue sky securities laws.³⁰³ These are relatively uniform among the

²⁹⁵ See *Back a Boiler™ Program Overview*, *supra* note 99 (providing an example of how universities could back an alternative form of financing); see also *Institutional Investor*, NASDAQ, <https://www.nasdaq.com/glossary/i/institutional-investors> [<https://web.archive.org/web/20220425192819/https://www.nasdaq.com/glossary/i/institutional-investors>] (classifying an endowment fund as an institutional investor).

²⁹⁶ See 15 U.S.C. §§ 77a–77bbbb, 78a–78qq (outlining the major federal regulations for securities and exchanges in the United States). In addition to federal protections, each state has anti-fraud statutes and securities statutes governing issuers in the state. *State Blue-Sky Laws*, PACE UNIV. L. SCH., <https://libraryguides.law.pace.edu/c.php?g=319368&p=2133675> [<https://perma.cc/XNY8-EJFP>].

²⁹⁷ See generally 15 U.S.C. §§ 77a–77bbbb (outlining all requirements for the sale or issuance of securities).

²⁹⁸ See *id.* § 77d(c) (allowing securities that meet the protocol under Rule 506 to offer securities without registration); DEL. CODE ANN. tit. 8, § 102(a)(4) (2022) (articulating that the certificate of incorporation will set forth the amount of authorized stock that is permitted to be issued); see also *Applying for Aid*, BOS. COLL., <https://www.bc.edu/content/bc-web/offices/student-services/financial-aid/undergraduate/applying-for-aid.html> [<https://perma.cc/9KZB-MMF5>] (listing the process for applying for undergraduate financial aid at Boston College).

²⁹⁹ See DEL. CODE ANN. tit. 8, §§ 101–102 (requiring a certificate of incorporation and that the stock is authorized prior to issuance).

³⁰⁰ See 15 U.S.C. § 77d (permitting certain issuers to forego the restrictions in the Securities Act of 1933 provided that the investors meet certain requirements regarding number and sophistication).

³⁰¹ See *id.* (providing the statutory basis for exemption from the registration requirements under section five of the Securities Act); see also 17 C.F.R. § 230.506(a) (2021) (defining the exemption for a private placement of securities). As the endowment fund would be the only investor, and it is accredited, John Doe's offering would be exempt from the traditional mandates. See 17 C.F.R. § 230.506(c) (exempting offerings made to solely accredited investors from the traditional registration requirements).

³⁰² See *State Blue-Sky Laws*, *supra* note 296 (providing a background of state securities laws).

³⁰³ *Id.*

fifty states, and similar to the federal statutes, they provide exemptions based on certain fact patterns.³⁰⁴ In fact, securities offerings that would meet a standard 506 exemption under the Code of Federal Regulations will be exempt under state law.³⁰⁵ For example, in the case of John Doe, Inc., because the securities are being offered to Massachusetts residents, the corporation would have to comply with the relevant portion of the Massachusetts statutes.³⁰⁶ In this case, John Doe, Inc. could make an offering to every college that John Doe applied to based on state securities laws and not have to properly register because the university endowments would be the ones purchasing shares in the company.³⁰⁷ Although this could work in theory, an issue arises as John Doe, Inc. seeks to have more investors, if it wishes to do so.³⁰⁸ Not all the investors might be institutional.³⁰⁹ At the federal level, so long as it is either only accredited investors or less than thirty-five investors, the exemption stands.³¹⁰

C. Acknowledging the Drawbacks

Self-incorporation is not without its drawbacks, particularly in the student context.³¹¹ One of the most foreseeable pushbacks to this method is the idea that a student must have the requisite legal knowledge or have someone with that knowledge to serve as incorporator to help with this process.³¹² Although this might have been true in the past, today there exists a wealth of resources on the internet to help with the process of incorporation.³¹³ For example, Le-

³⁰⁴ See National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, 110 Stat. 3416 (creating more uniformity among federal and state securities laws).

³⁰⁵ See *id.* (granting an exemption from state blue sky laws if the offering is for a “covered security” that would qualify for the federal private placement exemption). A “covered security” includes a security offered in a private, exempt transaction. *Id.* § 102(b)(4).

³⁰⁶ See MASS. GEN. LAWS ch. 110A, § 101 (2021) (specifying the requirements to sell securities in the Commonwealth of Massachusetts).

³⁰⁷ See 17 C.F.R. § 230.506(c) (allowing an exemption from the requirements in the Securities Act of 1933 for offerings to a single accredited investor).

³⁰⁸ See *id.* § 230.506(b) (permitting an exemption for issuers that offer securities to non-accredited investors but to no more than thirty-five sophisticated investors).

³⁰⁹ See *id.* § 230.501(a) (defining “accredited investor” and limiting it accordingly).

³¹⁰ *Id.* § 230.506(b).

³¹¹ See *A Guide to Incorporating Your Business*, WOLTERS KLUWER (July 31, 2020), <https://www.wolterskluwer.com/en/expert-insights/a-guide-to-incorporating-your-business> [<https://perma.cc/K5SP-NPMH>] (discussing the different forms of businesses and the pros and cons of each type).

³¹² See *New Company Formation*, GOODWIN, <https://www.goodwinlaw.com/services/practices/new-company-formation> [<https://perma.cc/E77J-FMBJ>] (explaining how Goodwin provides legal services for startups and clients looking to form a company).

³¹³ See *A Guide to Start a Business*, CHAMBER OF COM., <https://www.chamberofcommerce.org/starting-a-business/> [<https://perma.cc/YC4Z-PF56>] (providing an overview of how to start a business including basic business law tips on formation); see also *Register Your Business*, U.S. SMALL BUS. ADMIN., <https://www.sba.gov/business-guide/launch-your-business/register-your-business> [<https://perma.cc/MTP4-VPWQ>] (giving a list of the typical information necessary to file a certificate of incorporation and a hyperlink with each state’s government office).

galZoom provides instructions on how to form a corporation.³¹⁴ The site provides different plans based on how a corporation plans to raise capital.³¹⁵ There are a multitude of similar resources that provide examples of how to meet the requirements for classifying as a corporation within a state.³¹⁶

Even more so, this process will directly involve the universities, making the process more similar to financial aid.³¹⁷ Universities can make incorporation part of their application process.³¹⁸ All this would require is a certificate of incorporation and a fee to the state's Secretary of State.³¹⁹ Therefore, if done while applying to schools, the student and university can negotiate the purchase of equity similar to financial aid.³²⁰ By the time shares would be issued, a process that would require legal advice, a university could help the student through the transaction.³²¹ Although this sounds no different than the financial

³¹⁴ See *Start Your Business on the Right Path*, LEGALZOOM, <https://www.legalzoom.com/business/business-formation/inc-overview.html> [<https://perma.cc/SJ2X-MMQQ>] (offering legal services for \$149 and filing fees with respect to the formation of a corporation in the state of the client's choice).

³¹⁵ See *generally Time to Be Your Own Boss*, LEGALZOOM, <https://www.legalzoom.com/> [<https://perma.cc/GW68-GCX5>] (offering "do it yourself" or lawyer-assisted services for simple legal matters in the fields of intellectual property, business formation, and wills and trusts).

³¹⁶ See *Online Legal Services Market Share, Size, Key Players Update, Development History*, MARKETWATCH (Jan. 21, 2022), <https://www.marketwatch.com/press-release/online-legal-services-market-share-size-key-players-update-development-history-by-legalnature-legalzoom-incfile-2022-01-21?tesla=y> [<https://perma.cc/9QRE-WLZU>] (indicating that the number of key players in the online legal services market was in the double digits); see also *Legal Services Global Market Report 2022*, GLOBALNEWswire (Dec. 29, 2021), <https://www.globenewswire.com/news-release/2021/12/29/2358715/0/en/Legal-Services-Global-Market-Report-2022.html> [<https://perma.cc/N5A4-Z6WG>] (reporting that the size of the global legal services market was \$713.12 billion in 2021 and is only expected to increase over the next few years).

³¹⁷ See *supra* notes 245–290 and accompanying text (providing an example of how one would self-incorporate using Delaware General Corporation Law).

³¹⁸ See DEL. CODE ANN. tit. 8, § 102(a) (2022) (outlining the requirements for a certificate of incorporation to be valid and create a corporation); *id.* § 103 (listing the process by which the certificate must be filed with the Delaware Secretary of State in order to be effective and create a corporation).

³¹⁹ *Id.* § 103.

³²⁰ See *Financial Aid Forms*, BOS. COLL., <https://www.bc.edu/content/bc-web/offices/student-services/financial-aid/financial-aid-forms.html> [<https://perma.cc/L5CK-42RA>] (giving students hyperlinks to forms that are required to be filled out in order to seek financial aid at Boston College and indicating that there is additional information on how to properly submit the documents). Similarly, the university could provide a link to a Delaware Certificate of Incorporation form and provide instructions on how to submit to the Secretary of State as required by Delaware General Corporation Law. See DEL. CODE ANN. tit. 8, § 103 (outlining the procedure for filing a certificate of incorporation with the Secretary of State of Delaware).

³²¹ See *Frequently Asked Questions About Exempt Offerings*, SEC, <https://www.sec.gov/small-business/exemptofferings/faq> [<https://perma.cc/GR2H-7G87>] (answering questions about the nuances of exemptions under securities laws for small business offerings). Large law firms have whole practice groups dedicated to helping companies raise money through capital markets. See *Capital Markets*, GOODWIN, <https://www.goodwinlaw.com/services/practices/capital-markets> [<https://perma.cc/4GGB-QG64>] (highlighting that Goodwin has attorneys that solely provide guidance and legal advice in the

aid already available through schools, the concept of future returns might alleviate the financial burden on institutions and render it an investment, potentially helping with liquidity.³²²

Beyond logistics, it is also important to recognize what self-incorporation gives the student: control.³²³ Some have argued that the lenders in ISAs should have the control.³²⁴ The main reasoning behind this ideology is twofold: giving investors control could (1) help eliminate the moral hazard of students being less inclined to pursue lucrative careers when repayment is tied to future salary and (2) allow investors to properly provide support to students as their goals are now aligned.³²⁵ Although these are valid considerations, it is important to protect the free decision making of the students.³²⁶ The incorporation process could ensure that students retain all of their fundamental rights and protect them against an investor forcing them to take drastic action, such as getting a vasectomy.³²⁷ Beyond the risk to students, however, there is a risk to the investor, whether it be students picking non-lucrative majors or the moral hazard mentioned earlier.³²⁸ Investors, here likely the universities, can guard against

context of capital markets); *see also* *Capital Markets: Equity Offerings*, LEGAL 500, <https://www.legal500.com/c/united-states/finance/capital-markets-equity-offerings/> [<https://perma.cc/NP7B-NT4Q>] (listing firms that are prominent advisors in the equity capital markets space).

³²² *See Understanding the Endowment*, BROWN UNIV., <https://investment.brown.edu/endowment/understanding-endowment> [<https://perma.cc/645H-W9ZS>] (explaining the endowment as an investment vehicle that makes yearly distributions to help the school finance its operations and is handled by an investment office which makes decisions to help the fund generate returns and sustain these distributions).

³²³ *See* DEL. CODE ANN. tit. 8, § 101(a) (articulating that the incorporator is the one who organizes the corporation under the laws of Delaware).

³²⁴ *See generally* John Gillespie, *Taking the Reins: The Case for Investor Control in Income Share Agreements*, 72 ALA. L. REV. 259, 278 (2020) (arguing that the best course forward for ISAs is to give investors in the product more control than the students).

³²⁵ *See id.* (concluding that the moral hazard of student nonchalance and the incentive for investors to invest information and time into their investment justify their control over students when lending money).

³²⁶ *See generally* Gilad Feldman, Subramanya Prasad Chandrashekar & Kin Fai Ellick Wong, *The Freedom to Excel: Belief in Free Will Predicts Better Academic Performance*, 90 PERSONALITY & INDIVIDUAL DIFFERENCES 377, 377–82 (2016) (finding that a student's "belief in free will" strongly correlates with stronger performance in school). Students who hold this belief have a stronger ability to establish future goals and survive obstacles during college. *Id.* at 378.

³²⁷ *See* DEL. CODE ANN. tit. 8, § 151 (describing the potential rights of classes of stock, including voting rights); *see also* Walker, *supra* note 1 (noting that Mike Merrill put getting a vasectomy up to a vote of his investors).

³²⁸ *See* MICHAEL BRICKMAN, AM. ENTER. INST., RISK-SHARING INCOME SHARE AGREEMENTS: HOW A NEW FINANCING MECHANISM CAN PROTECT TAXPAYERS AND INCENTIVIZE UNIVERSITIES TO OFFER AFFORDABLE CAREER-ORIENTED PROGRAMS 1, 2–3 (2021), <https://www.aei.org/wp-content/uploads/2021/06/Risk-sharing-income-share-agreements.pdf?x91208> [<https://perma.cc/H8NB-KPHF>] (encouraging adoption of risk-adjusted ISAs based on major and year in school to incentivize students to choose certain programs that pay more and eliminate risk for the government or another investor).

this risk by simply diversifying through proper asset allocation, namely, purchasing equity in a wide and diverse group of students.³²⁹

Either way, it must be understood that the process would be just that, a process.³³⁰ Although many now acknowledge ISAs as a viable funding option, this acceptance took time and, even then, it is not as widespread as it could be.³³¹ Any new option will likely face similar obstacles.³³²

CONCLUSION

The CFPB recently decided that ISAs were most properly classified as another form of credit, merely exacerbating the student debt problem at hand. Now, students have access to another form of lending. Nonetheless, students will not be students forever. They will have to go into the world and purchase homes, support families, and build lives, all with student debt hanging over most of their heads. The beauty of equity is that it lessens the debt burden, and ISAs provided a positive alternative that perhaps aligned the school's mission with the student's goals.

There is still an option to recreate the ISA while denying the CFPB any conclusion that it is a debt product. By using the flexibility of corporate law, it is possible to envision a situation in which a student could self-incorporate and sell shares to raise capital for school. Students could create protections for themselves and perhaps even gain more control as the issuer of the shares. By using the application process as the process by which the student could incorporate, provide disclosure, and issue shares directly to a financial aid office or endowment fund, the process would mirror that of traditional financial aid while helping schools generate higher returns and assisting students in decreasing reliance on financial aid or federal loans.

Although this proposed alternative would require significant legal maneuvering, it is reminiscent of past instances where corporate charters provided a solution. The law can either act as a hindrance or help society evolve to face

³²⁹ See Nick Loudis, *The Importance of Diversification*, INVESTOPEDIA (Nov. 29, 2021), <https://www.investopedia.com/investing/importance-diversification/> [<https://perma.cc/NX38-Z6CK>] (explaining that diversification is the lowering of risk by deploying capital in different areas, sectors, and products while still maximizing returns).

³³⁰ See *supra* notes 245–290 and accompanying text (outlining a hypothetical situation in which a student would self-incorporate to finance higher education).

³³¹ See Marcus, *supra* note 114 (acknowledging the obstacles, such as transparent regulation, still facing ISAs and preventing their adoption); see also AMSELEM, *supra* note 88, at 1–2 (discussing the struggles that Yale's ISA program faced when first adopted in 1971).

³³² See Constantine Yannelis, *A Smarter Way to Solve the Student Debt Problem*, UCHICAGO NEWS (June 22, 2021), <https://news.uchicago.edu/story/research-suggests-smarter-way-solve-student-debt-problem> [<https://perma.cc/38EQ-4Q26>] (arguing for income-driven repayment as an alternative to the current student loan scheme but stipulating that such a scheme would require legislative fixes in order to truly be successful).

the world's problems. Given the nature of this problem, America needs a creative legal solution to help resolve student loan delinquencies.

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