

116TH CONGRESS
2D SESSION

H. R. 6732

To direct the Secretary of the Treasury to modify certain regulations relating to insurance-dedicated exchange-traded funds.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 2020

Mr. WENSTRUP introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To direct the Secretary of the Treasury to modify certain regulations relating to insurance-dedicated exchange-traded funds.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. INSURANCE-DEDICATED EXCHANGE-TRADED**
4 **FUNDS.**

5 (a) IN GENERAL.—Not later than the date which is
6 1 year after the date of the enactment of this Act, the
7 Secretary of the Treasury (or the Secretary’s delegate)
8 shall amend the regulation issued by the Department of
9 the Treasury relating to “Income Tax; Diversification Re-
10 quirements for Variable Annuity, Endowment, and Life

1 Insurance Contracts”, 54 Fed. Reg. 8728 (March 2,
2 1989), and make any necessary corresponding amend-
3 ments to other regulations, in order to facilitate the use
4 of exchange-traded funds as investment options under
5 variable contracts within the meaning of section 817(d)
6 of the Internal Revenue Code of 1986, in accordance with
7 subsections (b) and (c) of this section.

8 (b) DESIGNATE CERTAIN AUTHORIZED PARTICI-
9 PANTS AND MARKET MAKERS AS ELIGIBLE INVESTORS.—
10 The Secretary of the Treasury (or the Secretary’s dele-
11 gate) shall amend Treas. Reg. section 1.817–5(f)(3) to
12 provide that satisfaction of the requirements in Treas.
13 Reg. section 1.817–5(f)(2)(i) with respect to an exchange-
14 traded fund shall not be prevented by reason of beneficial
15 interests in such a fund being held by one or more author-
16 ized participants or market makers.

17 (c) CONFIRM THAT SIMILARITIES TO OTHER FUNDS
18 ARE IRRELEVANT.—The Secretary of the Treasury (or
19 the Secretary’s delegate) shall amend Treas. Reg. section
20 1.817–5(f) to confirm that, for Federal income tax pur-
21 poses, a regulated investment company, partnership, or
22 trust (including an exchange-traded fund) that satisfies
23 the requirements of Treas. Reg. section 1.817–5(f) (2)
24 and (3) shall not be treated as owned by the holder of
25 a variable contract pursuant to the principles of Rev. Rul.

1 81–225, 1981–2 C.B. 12, merely because another regu-
2 lated investment company, partnership, trust, or similar
3 investment vehicle follows the same investment strategy,
4 has the same investment manager, or holds the same in-
5 vestments.

6 (d) DEFINE RELEVANT TERMS.—In amending
7 Treas. Reg. section 1.817–5(f)(3) in accordance with sub-
8 sections (b) and (c) of this section, the Secretary of the
9 Treasury (or the Secretary’s delegate) shall provide defini-
10 tions consistent with the following:

11 (1) EXCHANGE-TRADED FUND.—The term “ex-
12 change-traded fund” means a regulated investment
13 company, partnership, or trust—

14 (A) that is registered with the Securities
15 and Exchange Commission as an open-end in-
16 vestment company or a unit investment trust;

17 (B) the shares of which can be purchased
18 or redeemed directly from the fund only by an
19 authorized participant; and

20 (C) the shares of which are traded
21 throughout the day on a national stock ex-
22 change at market prices that may or may not
23 be the same as the net asset value of the
24 shares.

1 (2) AUTHORIZED PARTICIPANT.—The term
2 “authorized participant” means a financial institu-
3 tion that is a member or participant of a clearing
4 agency registered under section 17A(b) of the Secu-
5 rities Exchange Act of 1934 that enters into a con-
6 tractual relationship with an exchange-traded fund
7 pursuant to which the financial institution is per-
8 mitted to purchase and redeem shares directly from
9 the fund and to sell such shares to third parties, but
10 only if the contractual arrangement or applicable law
11 precludes the financial institution from—

12 (A) purchasing the shares for its own in-
13 vestment purposes rather than for the exclusive
14 purpose of creating and redeeming such shares
15 on behalf of third parties; and

16 (B) selling the shares to third parties who
17 are not market makers or otherwise described
18 in Treas. Reg. section 1.817-5(f) (1) and (3).

19 (3) MARKET MAKER.—The term “market
20 maker” means a financial institution that is a reg-
21 istered broker or dealer under section 15(b) of the
22 Securities Exchange Act of 1934 that maintains li-
23 quidity for an exchange-traded fund on a national
24 stock exchange by being always ready to buy and sell
25 shares of such fund on the market, but only if the

1 financial institution is contractually or legally pre-
2 cluded from selling or buying such shares to or from
3 persons who are not authorized participants or oth-
4 erwise described in Treas. Reg. section 1.817-5(f)
5 (2) and (3).

6 (e) EFFECTIVE DATES, ENFORCEMENT, AND INTER-
7 PRETATIONS.—

8 (1) EFFECTIVE DATES.—

9 (A) Subsection (b), and the definitions
10 under subsection (d), shall apply to segregated
11 asset account investments made on or after the
12 date of enactment of this Act.

13 (B) Subsection (c) shall apply to taxable
14 years beginning after December 31, 1983.

15 (2) ENFORCEMENT AND INTERPRETATIONS.—

16 Prior to the date that the Secretary of the Treasury
17 (or the Secretary's delegate) issues final regulations
18 pursuant to this section—

19 (A) the Secretary (or delegate) shall ad-
20 minister and enforce the law in accordance with
21 this section and the effective dates in paragraph
22 (1) of this subsection; and

1 (B) taxpayers may rely upon their reason-
2 able good faith interpretations of the preceding
3 subsections of this section.

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