

116TH CONGRESS  
2D SESSION

# H. R. 5746

To amend the Internal Revenue Code of 1986 to provide special rules for purposes of determining if financial guaranty insurance companies are qualifying insurance corporations under the passive foreign investment company rules.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 2020

Ms. MOORE (for herself and Mr. SMITH of Nebraska) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide special rules for purposes of determining if financial guaranty insurance companies are qualifying insurance corporations under the passive foreign investment company rules.

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

1 **SECTION 1. TREATMENT OF FINANCIAL GUARANTY INSUR-**  
2 **ANCE COMPANIES AS QUALIFYING INSUR-**  
3 **ANCE CORPORATIONS UNDER PASSIVE FOR-**  
4 **EIGN INVESTMENT COMPANY RULES.**

5 (a) IN GENERAL.—Section 1297(f)(3) of the Internal  
6 Revenue Code of 1986 is amended by adding at the end  
7 the following new subparagraph:

8 “(C) SPECIAL RULE FOR FINANCIAL GUAR-  
9 ANTY INSURANCE COMPANIES.—

10 “(i) IN GENERAL.—Notwithstanding  
11 subparagraphs (A)(ii) and (B), the applica-  
12 ble insurance liabilities of a financial guar-  
13 anty insurance company shall include its  
14 unearned premium reserves if—

15 “(I) such company is prohibited  
16 under generally accepted accounting  
17 principles from reporting on its appli-  
18 cable financial statements reserves for  
19 losses and loss adjustment expenses  
20 with respect to a financial guaranty  
21 insurance or reinsurance contract ex-  
22 cept to the extent that such reserve  
23 amounts are expected to exceed the  
24 unearned premium reserves on the  
25 contract,

1                   “(II) the applicable financial  
2                   statement of such company reports fi-  
3                   nancial guaranty exposure of at least  
4                   15-to-1, and

5                   “(III) such company includes in  
6                   its insurance liabilities only its un-  
7                   earned premium reserves relating to  
8                   insurance written or assumed that is  
9                   within the single risk limits set forth  
10                  in subsection (D) of section 4 of the  
11                  Financial Guaranty Insurance Guide-  
12                  line (modified by using total share-  
13                  holder’s equity as reported on the ap-  
14                  plicable financial statement of the  
15                  company rather than aggregate of the  
16                  surplus to policyholders and contin-  
17                  gency reserves).

18                  “(ii) FINANCIAL GUARANTY INSUR-  
19                  ANCE COMPANY.—For purposes of this  
20                  subparagraph, the term ‘financial guaranty  
21                  insurance company’ means any insurance  
22                  company the sole business of which is writ-  
23                  ing or reinsuring financial guaranty insur-  
24                  ance (as defined in subsection (A) of sec-  
25                  tion 1 of the Financial Guaranty Insurance

1 Guideline) which is permitted under sub-  
2 section (B) of section 4 of such Guideline.

3 “(iii) FINANCIAL GUARANTY EXPO-  
4 SURE.—For purposes of this subpara-  
5 graph, the term ‘financial guaranty expo-  
6 sure’ means the ratio of—

7 “(I) the net debt service out-  
8 standing insured or reinsured by the  
9 company that is within the single risk  
10 limits set forth in the Financial Guar-  
11 anty Insurance Guideline (as reported  
12 on such company’s applicable financial  
13 statement), to

14 “(II) the company’s total assets  
15 (as so reported).

16 “(iv) FINANCIAL GUARANTY INSUR-  
17 ANCE GUIDELINE.—For purposes of this  
18 subparagraph, the term ‘Financial Guar-  
19 anty Insurance Guideline’ means the Octo-  
20 ber 2008 model regulation that was adopt-  
21 ed by the National Association of Insur-  
22 ance Commissioners on December 4,  
23 2007.”.

1 (b) REPORTING OF CERTAIN ITEMS.—Section  
2 1297(f)(4) of such Code is amended by adding at the end  
3 the following new subparagraph:

4 “(C) CLARIFICATION THAT CERTAIN ITEMS  
5 ON APPLICABLE FINANCIAL STATEMENT BE  
6 SEPARATELY REPORTED WITH RESPECT TO  
7 CORPORATION.—An amount described in para-  
8 graph (1)(B) or clause (i)(II), (i)(III), (iii)(I),  
9 or (iii)(II) of paragraph (3)(C) shall not be  
10 treated as reported on an applicable financial  
11 statement for purposes of this section unless  
12 such amount is separately reported on such  
13 statement with respect to the corporation re-  
14 ferred to in paragraph (1).

15 “(D) AUTHORITY OF SECRETARY TO RE-  
16 QUIRE REPORTING.—

17 “(i) IN GENERAL.—Each United  
18 States person who owns an interest in a  
19 specified non-publicly traded foreign cor-  
20 poration and who takes the position that  
21 such corporation is not a passive foreign  
22 investment company shall report to the  
23 Secretary such information with respect to  
24 such corporation as the Secretary may re-  
25 quire.

1                   “(ii) SPECIFIED NON-PUBLICLY TRAD-  
2                   ED FOREIGN CORPORATION.—For purposes  
3                   of this subparagraph, the term ‘specified  
4                   non-publicly traded foreign corporation’  
5                   means any foreign corporation—

6                                 “(I) which would be a passive  
7                                 foreign investment company if sub-  
8                                 section (b)(2)(B) did not apply, and

9   “(II) no interest in which is trad-  
10                                        ed on an established securities mar-  
11                                       ket.”.

12                   (c) EFFECTIVE DATE.—

13                                 (1) IN GENERAL.—Except as otherwise pro-  
14                                 vided in this subsection, the amendments made by  
15                                 this section shall take effect as if included in section  
16                                 14501 of Public Law 115–97.

17                                 (2) REPORTING.—The amendment made by  
18                                 subsection (b) shall apply to reports made after the  
19                                 date of the enactment of this Act.

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