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The Three Federal Banking Agencies Propose Long-Term Debt Requirement for All Large Banking Organizations

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The Federal Deposit Insurance Corporation ("FDIC"), Federal Reserve Board ("FRB") and Office of the Comptroller of the Currency ("OCC") (together, the "Agencies") issued a proposed rule (the "LTD NPR") to require large banks (generally defined as those with $100 billion or more in assets) to issue and maintain minimum amounts of long-term debt ("LTD").

The issuance of the LTD NPR had been at least mentioned as a policy possibility since at least last April with Acting Comptroller of the Currency Michael Hsu's remarks at the Wharton Conference on Financial Regulation in April (which we discussed at the time). The FRB and FDIC then issued an Advanced Notice of Proposed Rulemaking ("ANPR") titled "Resolution-Related Resource Requirements for Large Banking Organizations" in October of last year (which we discussed at the time as well). FDIC Vice Chair Travis Hill mentioned the idea in the wake of the three regional bank failures in March and April of this year. FRB Vice Chair of Supervision Michael Barr included an LTD requirement for large banking organizations in his report following his holistic capital review last month, and most recently, FDIC Chair Martin Gruenberg discussed the LTD requirement two weeks ago.

The LTD NPR, if finalized, would require large banking organizations that are not already subject to the total loss-absorbing capacity ("TLAC") requirements for U.S. global systemically important banks ("GSIBs") to maintain a minimum amount of LTD to serve as an additional layer of protection to absorb losses. The Agencies assert that had this LTD requirement been in place this spring, it likely would have given the FDIC more options in resolving the three large regional banks, and reduced costs to the Deposit Insurance Fund.

Under the LTD NPR, the LTD requirement is calibrated as requiring a minimum amount of eligible long-term debt equal to the greater of 6% of risk-weighted assets, 3.5% of average total consolidated assets, and for banks subject to the supplementary leverage ratio, 2.5% of total leverage exposure under the supplementary leverage ratio. Much like the TLAC requirements, the LTD NPR would require that the LTD be “plain vanilla” so that, among other things, it is subordinated to depositors and other unsecured credits, has a maturity of more than a year (with a 50% haircut for instruments with a maturity between one and two years), has minimal acceleration or credit-sensitive features.

Comments on the proposal are due by November 30. That is the same day that comment are due on the Basel III Endgame rules the Agencies proposed a month ago (as well as a number of other proposals the FDIC Board considered Tuesday). FRB Governor Michelle Bowman noted the multiple outstanding proposals as one of her concerns with the proposal she mentioned in her statement. Trade groups such as the Bank Policy Institute and the American Bankers Association aren’t waiting until November 30 to air some of their criticism of the proposal. They criticize the proposal as being too costly without providing worthwhile benefits, and for not following the tailoring regimes that have been established.

With so many proposals with a November 30 comment deadline, it’s looking like many of the proponents of a friendly neighborhood bank regulatory policy might be working through Thanksgiving this year.
