

Left Out in the Cold? The Bipartisan Senate Bill and G-SIBs, Other Large Banks and Foreign Banks

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Does the bipartisan Senate bill described in our [earlier post](#) leave large banks, i.e., banking organizations with \$250 billion or more in total consolidated assets, and foreign banking organizations (FBOs) entirely out in the cold? No, but the relief it provides to large banking organizations is quite limited, and it is unclear how FBOs would be treated.

Large Banking Organizations. To begin with the large banking organizations, the bill would provide limited relief relating to Dodd-Frank Act stress testing and the Liquidity Coverage Ratio (LCR):

- **Frequency of Dodd-Frank Act Stress Tests.** The bill would eliminate the statutory requirement for BHCs with \$250 billion or more in total consolidated assets to conduct company-run stress tests on a semi-annual basis and would instead adopt a more flexible standard of periodic company-run stress tests. Supervisory stress tests by the Federal Reserve would still be required on an annual basis.
- **Number of Dodd-Frank Act Stress Test Economic Scenarios.** The bill would reduce the number of economic scenarios from three to two, eliminating the middle-of-the-road adverse scenario and leaving the baseline and severely adverse scenarios. (We assume that the bill's failure to delete the reference to an adverse scenario from the company-run stress testing requirements was an inadvertent omission.)
- **Impact on CCAR?** While the changes above technically apply to the Dodd-Frank Act stress testing requirements rather than the Federal Reserve's CCAR capital planning framework, it is difficult to imagine that the Federal Reserve would not also make corresponding changes to its capital planning regulations.
- **Treatment of Municipal Securities under the LCR.** The U.S. banking agencies would be required to treat certain investment grade municipal securities as Level 2B high quality liquid assets for purposes of the LCR. These changes to the LCR are consistent with H.R. 1624, which passed the House on October 3, as discussed in [a recent Davis Polk blog post](#).
- **Supplementary Leverage Ratio (SLR) for Custody Banks.** The bill would direct the U.S. banking agencies to exclude certain central bank deposits from the total leverage exposure (the SLR denominator) of custody banks—defined as banking organizations with assets under custody of not less than 30 times consolidated assets. Central bank reserves of custody banks would be excluded only to the extent of the value of deposits linked to fiduciary, custody or safekeeping accounts. We note, however, that the bill specifically includes a rule of construction that nothing in this provision would limit the U.S. banking agencies' authority to tailor or adjust the SLR or any other leverage ratio for any bank that is not a custody bank.

The bill underscores the limited nature of its relief for large banking organizations by preventing any G-SIB with less than \$250 billion in total consolidated assets from qualifying for the relief afforded to other banking organizations below that asset threshold. The bill would deem any BHC identified as a G-SIB under the Federal Reserve's capital rules for calculating G-SIB surcharges as having \$250 billion or more in total consolidated assets, regardless of actual asset size, for purposes of the following provisions of the Dodd-Frank Act (DFA) and the Federal Reserve Act (FRA):

- The requirement to provide advance written notice to the Federal Reserve if the G-SIB acquires certain nonbank companies (DFA Section 163(b));

- FSOC and the Federal Reserve’s power to restrict the merger, acquisition and other activities of and to require the break-up of the G-SIB (DFA Section 121(a));
- The prohibition on a management official of the G-SIB serving concurrently as a management official of a nonbank financial company that is supervised by the Federal Reserve (DFA Section 164);
- Enhanced prudential standards (DFA Section 165);
- FSOC’s power, through the Office of Financial Research (OFR), to require the G-SIB to submit certain reports (DFA Section 116(a));
- The G-SIB’s assessments to fund OFR (DFA Section 155(d)); and
- The Federal Reserve’s power to collect assessments, fees and other charges from the G-SIB equal to the Federal Reserve’s estimate of its total supervisory and regulatory expenses relating to the G-SIB (FRA Section 11, Second Subsection (s)).

FBOs. The bill is unfortunately silent on how it would apply to FBOs. At a minimum, we would expect the modifications to the relevant thresholds for the applicability of enhanced prudential standards to apply to any registered BHC that is a subsidiary of an FBO. In our view, the corresponding thresholds for applying enhanced prudential standards to other FBOs that are treated as if they are BHCs under the International Banking Act, and therefore become subject to the Bank Holding Company Act, should also be revised upwards. The policy of national treatment, that is treating FBOs equally with domestic BHCs, means that there can be no policy justification for treating FBOs worse than U.S. BHCs. For example, just as the bill exempts U.S. BHCs with less than \$50 billion in total consolidated assets from the risk committee requirement, it should similarly exempt FBOs with less than \$50 billion in total consolidated assets from the requirement to form a U.S. risk committee. The bill could also authorize the Federal Reserve to make any necessary adjustments to the various total, combined U.S., and combined U.S. non-branch asset thresholds under the enhanced prudential standards of Regulation YY that apply to FBOs.

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