Treasury Releases Report To The President On Orderly Liquidation Authority

February 21, 2018

Washington –The U.S. Department of the Treasury today released a report regarding its review and recommendations on the Orderly Liquidation Authority (OLA). The report responds to the Presidential Memorandum directing Treasury to propose recommendations to align OLA with the Core Principles for Financial Regulation and determine whether the Bankruptcy Code should be reformed to better enable resolution of financial companies. Treasury's recommendations ensure that taxpayers are protected by strengthening the bankruptcy procedure for a failed financial company and retaining OLA in very limited circumstances with significant reforms.

"Treasury recommendations seek to ensure that our financial system is resilient while protecting taxpayers and promoting market discipline," said Secretary Steven T. Mnuchin. "The bankruptcy reforms that we propose will make the shareholders, management, and creditors of a financial company bear any losses from its failure. The policy of this Administration is clear: we will not tolerate taxpayer-funded bailouts."

In the report, Treasury recommends a new Chapter 14 of the Bankruptcy Code for distressed financial companies. Treasury recommends significant reforms to make bankruptcy a more effective option for financial companies. The Chapter 14 framework would preserve the key advantage of the existing bankruptcy process—clear, predictable, impartial adjudication of competing claims—while adding procedural features tailored to the unique challenges posed by large, interconnected financial companies. These enhancements to the Bankruptcy Code would make the likelihood of having to use OLA even more remote.

Since the bankruptcy of a large, complex financial company may not be feasible in some circumstances, Treasury also recommends retaining OLA as an emergency tool for use under extraordinary circumstances. Treasury recommends making significant reforms to the OLA process to eliminate opportunities for ad hoc disparate treatment of similarly situated creditors, reinforce existing taxpayer protections, and strengthen judicial review.

The report includes the following recommendations to reform OLA:

- Treasury recommends eliminating the FDIC's authority to treat similarly situated creditors differently on an ad hoc basis.
- Treasury recommends repeal of the tax-exempt status of the bridge company.
- With respect to use of the Orderly Liquidation Fund (OLF), Treasury recommends, to the extent possible, that guarantees of private sector lending be used as opposed to direct loans, and that premium rates of interest or guarantee fees, as applicable, be charged to encourage a prompt return to reliance on private-sector credit markets.
- Treasury recommends the backstop assessment be imposed as soon as reasonably possible if an OLF loan is not repaid.
- Treasury recommends reforms to the judicial review provisions related to use of the OLA to provide additional assurance that the government's decision to appoint the FDIC as receiver of a financial company is the product of reasoned and well-supported analysis.

Read the full recommendations.

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