

Union Calendar No. 542

112TH CONGRESS
2ND SESSION

H. R. 940

[Report No. 112–407, Part I]

To establish standards for covered bond programs and a covered bond regulatory oversight program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2011

Mr. GARRETT (for himself and Mrs. MALONEY) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

MARCH 5, 2012

Reported from the Committee on Financial Services with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

MARCH 5, 2012

Referral to the Committee on Ways and Means extended for a period ending no later than March 30, 2012

MARCH 30, 2012

Referral to the Committee on Ways and Means extended for a period ending no later than May 18, 2012

MAY 18, 2012

Referral to the Committee on Ways and Means extended for a period ending no later than June 29, 2012

JUNE 29, 2012

Referral to the Committee on Ways and Means extended for a period ending no later than September 14, 2012

SEPTEMBER 14, 2012

Referral to the Committee on Ways and Means extended for a period ending
no later than November 16, 2012

NOVEMBER 16, 2012

Referral to the Committee on Ways and Means extended for a period ending
no later than November 30, 2012

NOVEMBER 30, 2012

Referral to the Committee on Ways and Means extended for a period ending
no later than December 14, 2012

DECEMBER 14, 2012

Referral to the Committee on Ways and Means extended for a period ending
no later than December 21, 2012

DECEMBER 21, 2012

Referral to the Committee on Ways and Means extended for a period ending
no later than December 31, 2012

DECEMBER 31, 2012

The Committee on Ways and Means discharged; committed to the Committee
of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on March 8, 2011]

A BILL

To establish standards for covered bond programs and a
covered bond regulatory oversight program, and for other
purposes.

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. SHORT TITLE.**

4 *This Act may be cited as the “United States Covered*
5 *Bond Act of 2011”.*

6 **SEC. 2. DEFINITIONS.**

7 *For purposes of this Act, the following definitions shall*
8 *apply:*

9 (1) *ANCILLARY ASSET.*—*The term “ancillary*
10 *asset” means—*

11 (A) *any interest rate or currency swap asso-*
12 *ciated with 1 or more eligible assets, substitute*
13 *assets, or other assets in a cover pool;*

14 (B) *any credit enhancement or liquidity ar-*
15 *rangement associated with 1 or more eligible as-*
16 *sets, substitute assets, or other assets in a cover*
17 *pool;*

18 (C) *any guarantee, letter-of-credit right, or*
19 *other secondary obligation that supports any*
20 *payment or performance of 1 or more eligible as-*
21 *sets, substitute assets, or other assets in a cover*
22 *pool; and*

23 (D) *any proceeds of, or other property inci-*
24 *dent to, 1 or more eligible assets, substitute as-*
25 *sets, or other assets in a cover pool.*

1 (2) *CORPORATION.*—*The term “Corporation”*
 2 *means the Federal Deposit Insurance Corporation.*

3 (3) *COVER POOL.*—*The term “cover pool” means*
 4 *a dynamic pool of assets that is comprised of—*

5 (A) *in the case of any eligible issuer de-*
 6 *scribed in subparagraph (A), (B), or (C) of*
 7 *paragraph (9)—*

8 (i) *1 or more eligible assets from a sin-*
 9 *gle eligible asset class; and*

10 (ii) *1 or more substitute assets or an-*
 11 *cillary assets; and*

12 (B) *in the case of any eligible issuer de-*
 13 *scribed in paragraph (9)(D)—*

14 (i) *the covered bonds issued by each*
 15 *sponsoring eligible issuer; and*

16 (ii) *1 or more substitute assets or an-*
 17 *cillary assets.*

18 (4) *COVERED BOND.*—*The term “covered bond”*
 19 *means any recourse debt obligation of an eligible*
 20 *issuer that—*

21 (A) *has an original term to maturity of not*
 22 *less than 1 year;*

23 (B) *is secured by a perfected security inter-*
 24 *est in or other perfected lien on a cover pool that*

1 *is owned directly or indirectly by the issuer of*
2 *the obligation;*

3 *(C) is issued under a covered bond program*
4 *that has been approved by the applicable covered*
5 *bond regulator;*

6 *(D) is identified in a register of covered*
7 *bonds that is maintained by the Secretary; and*

8 *(E) is not a deposit (as defined in section*
9 *3(l) of the Federal Deposit Insurance Act (12*
10 *U.S.C. 1813(l))).*

11 (5) *COVERED BOND PROGRAM.*—*The term “cov-*
12 *ered bond program” means any program of an eligi-*
13 *ble issuer under which, on the security of a single*
14 *cover pool, 1 or more series or tranches of covered*
15 *bonds may be issued.*

16 (6) *COVERED BOND REGULATOR.*—*The term*
17 *“covered bond regulator” means—*

18 *(A) for any eligible issuer that is subject to*
19 *the jurisdiction of an appropriate Federal bank-*
20 *ing agency (as defined in section 3(q) of the Fed-*
21 *eral Deposit Insurance Act (12 U.S.C. 1813(q))),*
22 *the appropriate Federal banking agency;*

23 *(B) for any eligible issuer that is described*
24 *in paragraph (9)(D), that is not subject to the*
25 *jurisdiction of an appropriate Federal banking*

agency, and that is sponsored by only 1 eligible issuer, the covered bond regulator for the sponsor;

(C) for any eligible issuer that is described in paragraph (9)(D), that is not subject to the jurisdiction of an appropriate Federal banking agency, and that is sponsored by more than 1 eligible issuer, the covered bond regulator for the sponsor whose covered bonds constitute the largest share of the cover pool of the issuer; and

(D) for any other eligible issuer that is not subject to the jurisdiction of an appropriate Federal banking agency, the Secretary.

(7) *ELIGIBLE ASSET*.—The term “eligible asset” means—

(A) in the case of the residential mortgage asset class—

(i) any first-lien mortgage loan that is secured by 1-to-4 family residential property;

(ii) any mortgage loan that is insured under the National Housing Act (12 U.S.C. 1701 et seq.); and

(iii) any loan that is guaranteed, insured, or made under chapter 37 of title 38, United States Code;

1 (B) in the case of the commercial mortgage
2 asset class, any commercial mortgage loan (in-
3 cluding any multifamily mortgage loan);

4 (C) in the case of the public sector asset
5 class—

6 (i) any security issued by a State, mu-
7 nicipality, or other governmental authority;

8 (ii) any loan made to a State, munici-
9 pality, or other governmental authority;
10 and

11 (iii) any loan, security, or other obli-
12 gation that is insured or guaranteed, in full
13 or substantially in full, by the full faith and
14 credit of the United States Government
15 (whether or not such loan, security, or other
16 obligation is also part of another eligible
17 asset class);

18 (D) in the case of the auto asset class, any
19 auto loan or lease;

20 (E) in the case of the student loan asset
21 class, any student loan (whether guaranteed or
22 nonguaranteed);

23 (F) in the case of the credit or charge card
24 asset class, any extension of credit to a person
25 under an open-end credit plan;

1 (G) *in the case of the small business asset*
 2 *class, any loan that is made or guaranteed under*
 3 *a program of the Small Business Administra-*
 4 *tion; and*

5 (H) *in the case of any other eligible asset*
 6 *class, any asset designated by the Secretary, by*
 7 *rule and in consultation with the covered bond*
 8 *regulators, as an eligible asset for purposes of*
 9 *such class.*

10 (8) *ELIGIBLE ASSET CLASS.—The term “eligible*
 11 *asset class” means—*

12 (A) *a residential mortgage asset class;*

13 (B) *a commercial mortgage asset class;*

14 (C) *a public sector asset class;*

15 (D) *an auto asset class;*

16 (E) *a student loan asset class;*

17 (F) *a credit or charge card asset class;*

18 (G) *a small business asset class; and*

19 (H) *any other eligible asset class designated*
 20 *by the Secretary, by rule and in consultation*
 21 *with the covered bond regulators.*

22 (9) *ELIGIBLE ISSUER.—The term “eligible*
 23 *issuer” means—*

24 (A) *any insured depository institution and*
 25 *any subsidiary of such institution;*

1 (B) any bank holding company, any sav-
2 ings and loan holding company, and any sub-
3 sidiary of any of such companies;

4 (C) any nonbank financial company (as de-
5 fined in section 102(a)(4) of the Dodd-Frank
6 Wall Street Reform and Consumer Protection
7 Act (12 U.S.C. 5311(a)(4))) that is supervised by
8 the Board of Governors of the Federal Reserve
9 System under section 113 of the Dodd-Frank
10 Wall Street Reform and Consumer Protection
11 Act (12 U.S.C. 5323), including any inter-
12 mediate holding company supervised as a
13 nonbank financial company, and any subsidiary
14 of such a nonbank financial company; and

15 (D) any issuer that is sponsored by 1 or
16 more eligible issuers for the sole purpose of
17 issuing covered bonds on a pooled basis.

18 (10) OVERSIGHT PROGRAM.—The term “over-
19 sight program” means the covered bond regulatory
20 oversight program established under section 3(a).

21 (11) SECRETARY.—The term “Secretary” means
22 the Secretary of the Department of the Treasury.

23 (12) SUBSTITUTE ASSET.—The term “substitute
24 asset” means—

25 (A) cash;

1 (B) any direct obligation of the United
2 States Government, and any security or other
3 obligation whose full principal and interest are
4 insured or guaranteed by the full faith and cred-
5 it of the United States Government;

6 (C) any direct obligation of a United States
7 Government corporation or Government-spon-
8 sored enterprise of the highest credit quality, and
9 any other security or other obligation of the
10 highest credit quality whose full principal and
11 interest are insured or guaranteed by such cor-
12 poration or enterprise, except that the out-
13 standing principal amount of these obligations
14 in any cover pool may not exceed an amount
15 equal to 20 percent of the outstanding principal
16 amount of all assets in the cover pool without the
17 approval of the applicable covered bond regu-
18 lator;

19 (D) any overnight investment in Federal
20 funds;

21 (E) any other substitute asset designated by
22 the Secretary, by rule and in consultation with
23 the covered bond regulators; and

24 (F) any deposit account or securities ac-
25 count into which only an asset described in sub-

1 paragraph (A), (B), (C), (D), or (E) may be de-
2 posited or credited.

3 **SEC. 3. REGULATORY OVERSIGHT OF COVERED BOND PRO-**
4 **GRAMS ESTABLISHED.**

5 (a) *ESTABLISHMENT.*—

6 (1) *IN GENERAL.*—Not later than 180 days after
7 the date of the enactment of this Act, the Secretary
8 shall, by rule and in consultation with the covered
9 bond regulators, establish a covered bond regulatory
10 oversight program that provides for—

11 (A) covered bond programs to be evaluated
12 according to reasonable and objective standards
13 in order to be approved under paragraph (2), in-
14 cluding any additional eligibility standards for
15 eligible assets and any other criteria determined
16 appropriate by the Secretary to further the pur-
17 poses of this Act;

18 (B) covered bond programs to be main-
19 tained in a manner that is consistent with this
20 Act and safe and sound asset-liability manage-
21 ment and other financial practices; and

22 (C) any estate created under section 4 to be
23 administered in a manner that is consistent with
24 maximizing the value and the proceeds of the re-
25 lated cover pool in a resolution under this Act.

1 (2) *APPROVAL OF EACH COVERED BOND PRO-*
2 *GRAM.*—

3 (A) *IN GENERAL.*—*A covered bond shall be*
4 *subject to this Act only if the covered bond is*
5 *issued by an eligible issuer under a covered bond*
6 *program that is approved by the applicable cov-*
7 *ered bond regulator.*

8 (B) *APPROVAL PROCESS.*—*Each covered*
9 *bond regulator shall apply the standards estab-*
10 *lished by the Secretary under the oversight pro-*
11 *gram to evaluate a covered bond program that*
12 *has been submitted by an eligible issuer for ap-*
13 *proval. Each covered bond regulator also shall*
14 *take into account relevant supervisory factors,*
15 *including safety and soundness considerations,*
16 *in evaluating a covered bond program that has*
17 *been submitted for approval. Each covered bond*
18 *regulator, promptly after approving a covered*
19 *bond program, shall provide the Secretary with*
20 *the name of the covered bond program, the name*
21 *of the eligible issuer, and all other information*
22 *reasonably requested by the Secretary in order to*
23 *update the registry under paragraph (3)(A).*
24 *Each eligible issuer, promptly after issuing a*
25 *covered bond under an approved covered bond*

1 *program, shall provide the Secretary with all in-*
2 *formation reasonably requested by the Secretary*
3 *in order to update the registry under paragraph*
4 *(3)(B).*

5 *(C) EXISTING COVERED BOND PROGRAMS.—*

6 *A covered bond regulator may approve a covered*
7 *bond program that is in existence on the date of*
8 *the enactment of this Act. Upon such approval,*
9 *each covered bond under the covered bond pro-*
10 *gram shall be subject to this Act, regardless of*
11 *when the covered bond was issued.*

12 *(D) MULTIPLE COVERED BOND PROGRAMS*

13 *PERMITTED.—An eligible issuer may have more*
14 *than 1 covered bond program.*

15 *(E) CEASE AND DESIST AUTHORITY.—The*

16 *applicable covered bond regulator may direct an*
17 *eligible issuer to cease issuing covered bonds*
18 *under an approved covered bond program if the*
19 *covered bond program is not maintained in a*
20 *manner that is consistent with this Act and the*
21 *oversight program and if, after notice that is*
22 *reasonable under the circumstances, the issuer*
23 *does not remedy all deficiencies identified by the*
24 *applicable covered bond regulator.*

1 (F) *CAP ON THE AMOUNT OF OUTSTANDING*
2 *COVERED BONDS.*—

3 (i) *IN GENERAL.*—*With respect to each*
4 *eligible issuer that submits a covered bond*
5 *program for approval, the applicable cov-*
6 *ered bond regulator shall set, consistent with*
7 *safety and soundness considerations and the*
8 *financial condition of the eligible issuer, the*
9 *maximum amount, as a percentage of the*
10 *eligible issuer's total assets, of outstanding*
11 *covered bonds that the eligible issuer may*
12 *issue.*

13 (ii) *REVIEW OF CAP.*—*The applicable*
14 *covered bond regulator may, not more fre-*
15 *quently than quarterly, review the percent-*
16 *age set under clause (i) and, if safety and*
17 *soundness considerations or the financial*
18 *condition of the eligible issuer has changed,*
19 *increase or decrease such percentage. Any*
20 *decrease made pursuant to this clause shall*
21 *have no effect on existing covered bonds*
22 *issued by the eligible issuer.*

23 (3) *REGISTRY.*—*Under the oversight program,*
24 *the Secretary shall maintain a registry that is pub-*
25 *lished on a Web site available to the public and that,*

1 *for each covered bond program approved by a covered*
2 *bond regulator, contains—*

3 *(A) the name of the covered bond program,*
4 *the name of the eligible issuer, and all other in-*
5 *formation that the Secretary considers necessary*
6 *to adequately identify the covered bond program*
7 *and the eligible issuer; and*

8 *(B) all information that the Secretary con-*
9 *siders necessary to adequately identify all out-*
10 *standing covered bonds issued under the covered*
11 *bond program (including the reports described in*
12 *paragraphs (3) and (4) of subsection (b)).*

13 *(4) FEES.—Each covered bond regulator may*
14 *levy, on the issuers of covered bonds under the pri-*
15 *mary supervision of such covered bond regulator, rea-*
16 *sonably apportioned fees that such covered bond regu-*
17 *lator considers necessary, in the aggregate, to defray*
18 *the costs of such covered bond regulator carrying out*
19 *the provisions of this Act. Such funds shall not be*
20 *construed to be Government funds or appropriated*
21 *monies and shall not be subject to apportionment for*
22 *purposes of chapter 15 of title 31, United States Code,*
23 *or any other provision of law.*

24 *(b) MINIMUM OVER-COLLATERALIZATION REQUIRE-*
25 *MENTS.—*

1 (1) *REQUIREMENTS ESTABLISHED.*—The Sec-
 2 retary, by rule and in consultation with the covered
 3 bond regulators, shall establish minimum over-
 4 collateralization requirements for covered bonds
 5 backed by each of the eligible asset classes. The min-
 6 imum over-collateralization requirements shall be de-
 7 signed to ensure that sufficient eligible assets and sub-
 8 stitute assets are maintained in the cover pool to sat-
 9 isfy all principal and interest payments on the cov-
 10 ered bonds when due through maturity and shall be
 11 based on the credit, collection, and interest rate risks
 12 (excluding the liquidity risks) associated with the eli-
 13 gible asset class.

14 (2) *ASSET COVERAGE TEST.*—The eligible assets
 15 and the substitute assets in any cover pool shall be re-
 16 quired, in the aggregate, to meet at all times the ap-
 17 plicable minimum over-collateralization requirements.

18 (3) *MONTHLY REPORTING.*—On a monthly basis,
 19 each issuer of covered bonds shall submit a report on
 20 whether the cover pool that secures the covered bonds
 21 meets the applicable minimum over-collateralization
 22 requirements to—

23 (A) the Secretary;

24 (B) the applicable covered bond regulator;

25 (C) the applicable indenture trustee;

1 (D) the applicable covered bondholders; and

2 (E) the applicable independent asset mon-
3 itor.

4 (4) *INDEPENDENT ASSET MONITOR.*—

5 (A) *APPOINTMENT.*—Each issuer of covered
6 bonds shall appoint the indenture trustee for the
7 covered bonds, or another unaffiliated entity, as
8 an independent asset monitor for the applicable
9 cover pool.

10 (B) *DUTIES.*—An independent asset mon-
11 itor appointed under subparagraph (A) shall, on
12 an annual or other more frequent periodic basis
13 determined by the Secretary under the oversight
14 program—

15 (i) verify whether the cover pool meets
16 the applicable minimum over-
17 collateralization requirements; and

18 (ii) report to the Secretary, the appli-
19 cable covered bond regulator, the applicable
20 indenture trustee, and the applicable cov-
21 ered bondholders on whether the cover pool
22 meets the applicable minimum over-
23 collateralization requirements.

24 (5) *NO LOSS OF STATUS.*—Covered bonds shall
25 remain subject to this Act regardless of whether the

1 applicable cover pool ceases to meet the applicable
2 minimum over-collateralization requirements.

3 (6) *FAILURE TO MEET REQUIREMENTS.*—

4 (A) *IN GENERAL.*—If a cover pool fails to
5 meet the applicable minimum over-
6 collateralization requirements, and if the failure
7 is not cured within the time specified in the re-
8 lated transaction documents, the failure shall be
9 an uncured default for purposes of section 4(a).

10 (B) *NOTICE REQUIRED.*—An issuer of cov-
11 ered bonds shall promptly give the Secretary and
12 the applicable covered bond regulator written no-
13 tice if the cover pool securing the covered bonds
14 fails to meet the applicable minimum over-
15 collateralization requirements, if the failure is
16 cured within the time specified in the related
17 transaction documents, or if the failure is not so
18 cured.

19 (c) *REQUIREMENTS FOR ELIGIBLE ASSETS.*—

20 (1) *REQUIREMENTS.*—

21 (A) *LOANS.*—A loan shall not qualify as an
22 eligible asset for so long as the loan is delinquent
23 for more than 60 consecutive days.

24 (B) *SECURITIES.*—A security shall not
25 qualify as an eligible asset for so long as the se-

1 *curity does not meet any credit-quality require-*
2 *ment under this Act.*

3 (C) *ORIGINATION.*—*An asset shall not qual-*
4 *ify as an eligible asset if the asset was not origi-*
5 *nated in compliance with any rule or super-*
6 *visory guidance of a Federal agency applicable*
7 *to the asset at the time of origination.*

8 (D) *NO DOUBLE PLEDGE.*—*An asset shall*
9 *not qualify as an eligible asset for so long as the*
10 *asset is subject to a prior perfected security in-*
11 *terest or other prior perfected lien that has been*
12 *granted in an unrelated transaction. Nothing in*
13 *this Act shall affect such a prior perfected secu-*
14 *rity interest or other prior perfected lien, and the*
15 *rights of such lien holders.*

16 (2) *FAILURE TO MEET REQUIREMENTS.*—*Subject*
17 *to paragraph (1)(D), if an asset in a cover pool does*
18 *not satisfy any applicable requirement described in*
19 *paragraph (1) or any other applicable standard or*
20 *criterion described in this Act, the oversight program,*
21 *or the related transaction documents, the asset shall*
22 *not qualify as an eligible asset for purposes of the*
23 *asset coverage test described in subsection (b)(2). A*
24 *disqualified asset shall remain in the cover pool un-*
25 *less and until removed by the issuer in compliance*

1 *with the provisions of this Act, the oversight program,*
 2 *and the related transaction documents. No disquali-*
 3 *fied asset may be removed from the cover pool after*
 4 *an estate has been created for the related covered bond*
 5 *program under section 4(b)(1) or 4(c)(2), except in*
 6 *connection with the management of the cover pool*
 7 *under section 4(d)(1)(E).*

8 *(d) OTHER REQUIREMENTS.—*

9 *(1) BOOKS AND RECORDS OF ISSUER.—Each*
 10 *issuer of covered bonds shall clearly mark its books*
 11 *and records to identify the assets that comprise the*
 12 *cover pool securing the covered bonds.*

13 *(2) SCHEDULE OF ELIGIBLE ASSETS AND SUB-*
 14 *STITUTE ASSETS.—Each issuer of covered bonds shall*
 15 *deliver to the applicable indenture trustee and the ap-*
 16 *plicable independent asset monitor, on at least a*
 17 *monthly basis, a schedule that identifies all eligible*
 18 *assets and substitute assets in the cover pool securing*
 19 *the covered bonds.*

20 *(3) SINGLE ELIGIBLE ASSET CLASS.—No cover*
 21 *pool described in section 2(3)(A) may include eligible*
 22 *assets from more than 1 eligible asset class. No cover*
 23 *poll described in section 2(3)(B) may include covered*
 24 *bonds backed by more than 1 eligible asset class.*

1 **SEC. 4. RESOLUTION UPON DEFAULT OR INSOLVENCY.**

2 (a) *UNCURED DEFAULT DEFINED.*—For purposes of
3 this section, the term “uncured default” means a default
4 on a covered bond that has not been cured within the time,
5 if any, specified in the related transaction documents.

6 (b) *DEFAULT ON COVERED BONDS PRIOR TO CON-*
7 *SERVATORSHIP, RECEIVERSHIP, LIQUIDATION, OR BANK-*
8 *RUPTCY.*—

9 (1) *CREATION OF SEPARATE ESTATE.*—If an
10 uncured default occurs on a covered bond before the
11 issuer of the covered bond enters conservatorship, re-
12 ceivership, liquidation, or bankruptcy, an estate shall
13 be immediately and automatically created by oper-
14 ation of law and shall exist and be administered sep-
15 arate and apart from the issuer or any subsequent
16 conservatorship, receivership, liquidating agency, or
17 estate in bankruptcy for the issuer or any other assets
18 of the issuer. A separate estate shall be created for
19 each affected covered bond program.

20 (2) *ASSETS AND LIABILITIES OF ESTATE.*—Any
21 estate created under paragraph (1) shall be comprised
22 of the cover pool (including over-collateralization in
23 the cover pool) that secures the covered bond. The
24 cover pool shall be immediately and automatically re-
25 leased to and held by the estate free and clear of any
26 right, title, interest, or claim of the issuer or any con-

1 servator, receiver, liquidating agent, or trustee in
2 bankruptcy for the issuer or any other assets of the
3 issuer. The estate shall be fully liable on the covered
4 bond and all other covered bonds and related obliga-
5 tions of the issuer (including obligations under re-
6 lated derivative transactions) that are secured by a
7 perfected security interest in or other perfected lien on
8 the cover pool when the estate is created. The estate
9 shall not be liable on any obligation of the issuer that
10 is not secured by a perfected security interest in or
11 other perfected lien on the cover pool when the estate
12 is created. No conservator, receiver, liquidating agent,
13 or trustee in bankruptcy for the issuer may charge or
14 assess the estate for any claim of the conservator, re-
15 ceiver, liquidating agent, or trustee in bankruptcy or
16 the conservatorship, receivership, liquidating agency,
17 or estate in bankruptcy and may not obtain or perfect
18 a security interest in or other lien on the cover pool
19 to secure such a claim.

20 (3) *RETENTION OF CLAIMS.*—Any holder of a
21 covered bond or related obligation for which an estate
22 has become liable under paragraph (2) shall retain a
23 claim against the issuer for any deficiency with re-
24 spect to the covered bond or related obligation. If the
25 issuer enters conservatorship, receivership, liquida-

tion, or bankruptcy, any contingent claim for such a deficiency shall be allowed as a provable claim in the conservatorship, receivership, liquidating agency, or bankruptcy case. The contingent claim shall be estimated by the conservator, receiver, liquidating agent, or bankruptcy court for purposes of allowing the claim as a provable claim if awaiting the fixing of the contingent claim would unduly delay the resolution of the conservatorship, receivership, liquidating agency, or bankruptcy case.

(4) *RESIDUAL INTEREST.*—

(A) *ISSUANCE OF RESIDUAL INTEREST.*—

Upon the creation of an estate under paragraph (1), a residual interest in the estate shall be immediately and automatically issued by operation of law to the issuer.

(B) *NATURE OF RESIDUAL INTEREST.*—The

residual interest under subparagraph (A) shall—

(i) be an exempted security as described in section 5;

(ii) represent the right to any surplus from the cover pool after the covered bonds and all other liabilities of the estate have been fully and irrevocably paid; and

1 (iii) be evidenced by a certificate exe-
2 cuted by the trustee of the estate.

3 (5) OBLIGATIONS OF ISSUER.—

4 (A) IN GENERAL.—After the creation of an
5 estate under paragraph (1), the issuer shall—

6 (i) transfer to or at the direction of the
7 trustee for the estate all property of the es-
8 tate that is in the possession or under the
9 control of the issuer, including all tangible
10 or electronic books, records, files, and other
11 documents or materials relating to the as-
12 sets and liabilities of the estate; and

13 (ii) at the election of the trustee or a
14 servicer or administrator for the estate, con-
15 tinue servicing the applicable cover pool for
16 120 days after the creation of the estate in
17 return for a fair-market-value fee, as deter-
18 mined by the trustee in consultation with
19 the applicable covered bond regulator, that
20 shall be payable from the estate as an ad-
21 ministrative expense.

22 (B) OBLIGATIONS ABSOLUTE.—Neither the
23 issuer, whether acting as debtor in possession or
24 in any other capacity, nor any conservator, re-
25 ceiver, liquidating agent, or trustee in bank-

1 *ruptcy for the issuer or any other assets of the*
 2 *issuer may disaffirm, repudiate, or reject the ob-*
 3 *ligation to turn over property or to continue*
 4 *servicing the cover pool as provided in subpara-*
 5 *graph (A).*

6 (c) *DEFAULT ON COVERED BONDS UPON CON-*
 7 *SERVATORSHIP, RECEIVERSHIP, LIQUIDATION, OR BANK-*
 8 *RUPTCY.—*

9 (1) *CORPORATION CONSERVATORSHIP OR RE-*
 10 *CEIVERSHIP.—*

11 (A) *IN GENERAL.—If the Corporation is ap-*
 12 *pointed as conservator or receiver for an issuer*
 13 *of covered bonds before an uncured default results*
 14 *in the creation of an estate under subsection (b),*
 15 *the Corporation as conservator or receiver shall*
 16 *have an exclusive right, during the 1-year period*
 17 *beginning on the date of the appointment, to*
 18 *transfer any cover pool owned by the issuer in*
 19 *its entirety, together with all covered bonds and*
 20 *related obligations that are secured by a per-*
 21 *fected security interest in or other perfected lien*
 22 *on the cover pool, to another eligible issuer that*
 23 *meets all conditions and requirements specified*
 24 *in the related transaction documents. The Cor-*
 25 *poration as conservator or receiver may not re-*

1 *move any asset from the cover pool, except to the*
 2 *extent otherwise agreed by a transferee that has*
 3 *assumed the covered bond program pursuant to*
 4 *subparagraph (C).*

5 *(B) OBLIGATIONS DURING 1-YEAR PE-*
 6 *RIOD.—During the 1-year period described in*
 7 *subparagraph (A), the Corporation as conser-*
 8 *vator or receiver shall fully and timely satisfy*
 9 *all monetary and nonmonetary obligations of the*
 10 *issuer under all covered bonds and the related*
 11 *transaction documents and shall fully and time-*
 12 *ly cure all defaults by the issuer (other than its*
 13 *conservatorship or receivership) under the appli-*
 14 *cable covered bond program, in each case, until*
 15 *the earlier of—*

16 *(i) the transfer of the applicable cov-*
 17 *ered bond program to another eligible issuer*
 18 *as provided in subparagraph (A); or*

19 *(ii) the delivery to the Secretary, the*
 20 *applicable covered bond regulator, the ap-*
 21 *plicable indenture trustee, and the applica-*
 22 *ble covered bondholders of a written notice*
 23 *from the Corporation as conservator or re-*
 24 *ceiver electing to cease further performance*
 25 *under the applicable covered bond program.*

1 (C) *ASSUMPTION BY TRANSFEREE.*—If the
2 Corporation as conservator or receiver transfers
3 a covered bond program to another eligible issuer
4 within the 1-year period as provided in subpara-
5 graph (A), the transferee shall take ownership of
6 the applicable cover pool and shall become fully
7 liable on all covered bonds and related obliga-
8 tions of the issuer that are secured by a perfected
9 security interest in or other perfected lien on the
10 cover pool.

11 (2) *OTHER CIRCUMSTANCES.*—An estate shall be
12 immediately and automatically created by operation
13 of law and shall exist and be administered separate
14 and apart from an issuer of covered bonds and any
15 conservatorship, receivership, liquidating agency, or
16 estate in bankruptcy for the issuer or any other assets
17 of the issuer, if—

18 (A) a conservator, receiver, liquidating
19 agent, or trustee in bankruptcy, other than the
20 Corporation, is appointed for the issuer before an
21 uncured default results in the creation of an es-
22 tate under subsection (b); or

23 (B) in the case of the appointment of the
24 Corporation as conservator or receiver as de-

scribed in paragraph (1)(A), the Corporation as conservator or receiver—

(i) does not complete the transfer of the applicable covered bond program to another eligible issuer within the 1-year period as provided in paragraph (1)(A);

(ii) delivers to the Secretary, the applicable covered bond regulator, the applicable indenture trustee, and the applicable covered bondholders a written notice electing to cease further performance under the applicable covered bond program; or

(iii) fails to fully and timely satisfy all monetary and nonmonetary obligations of the issuer under the covered bonds and the related transaction documents or to fully and timely cure all defaults by the issuer (other than its conservatorship or receivership) under the applicable covered bond program.

A separate estate shall be created for each affected covered bond program.

(3) ASSETS AND LIABILITIES OF ESTATE.—Any estate created under paragraph (2) shall be comprised of the cover pool (including over-collateralization in

1 *the cover pool) that secures the covered bonds. The*
2 *cover pool shall be immediately and automatically re-*
3 *leased to and held by the estate free and clear of any*
4 *right, title, interest, or claim of the issuer or any con-*
5 *servator, receiver, liquidating agent, or trustee in*
6 *bankruptcy for the issuer or any other assets of the*
7 *issuer. The estate shall be fully liable on the covered*
8 *bonds and all other covered bonds and related obliga-*
9 *tions of the issuer (including obligations under re-*
10 *lated derivative transactions) that are secured by a*
11 *perfected security interest in or other perfected lien on*
12 *the cover pool when the estate is created. The estate*
13 *shall not be liable on any obligation of the issuer that*
14 *is not secured by a perfected security interest in or*
15 *other perfected lien on the cover pool when the estate*
16 *is created. No conservator, receiver, liquidating agent,*
17 *or trustee in bankruptcy for the issuer may charge or*
18 *assess the estate for any claim of the conservator, re-*
19 *ceiver, liquidating agent, or trustee in bankruptcy or*
20 *the conservatorship, receivership, liquidating agency,*
21 *or estate in bankruptcy and may not obtain or perfect*
22 *a security interest in or other lien on the cover pool*
23 *to secure such a claim.*

24 (4) *CONTINGENT CLAIM.—Any contingent claim*
25 *against an issuer for a deficiency with respect to a*

1 *covered bond or related obligation for which an estate*
 2 *has become liable under paragraph (3) shall be al-*
 3 *lowed as a provable claim in the conservatorship, re-*
 4 *ceivership, liquidating agency, or bankruptcy case for*
 5 *the issuer. The contingent claim shall be estimated by*
 6 *the conservator, receiver, liquidating agent, or bank-*
 7 *ruptcy court for purposes of allowing the claim as a*
 8 *provable claim if awaiting the fixing of the contin-*
 9 *gent claim would unduly delay the resolution of the*
 10 *conservatorship, receivership, liquidating agency, or*
 11 *bankruptcy case.*

12 (5) *RESIDUAL INTEREST.—*

13 (A) *ISSUANCE OF RESIDUAL INTEREST.—*

14 *Upon the creation of an estate under paragraph*
 15 *(2), and regardless of whether any contingent*
 16 *claim described in paragraph (4) becomes fixed*
 17 *or is estimated, a residual interest in the estate*
 18 *shall be immediately and automatically issued*
 19 *by operation of law to the conservator, receiver,*
 20 *liquidating agent, or trustee in bankruptcy for*
 21 *the issuer.*

22 (B) *NATURE OF RESIDUAL INTEREST.—The*

23 *residual interest under subparagraph (A) shall—*

24 (i) *be an exempted security as de-*
 25 *scribed in section 5;*

1 (ii) represent the right to any surplus
 2 from the cover pool after the covered bonds
 3 and all other liabilities of the estate have
 4 been fully and irrevocably paid; and

5 (iii) be evidenced by a certificate exe-
 6 cuted by the trustee of the estate.

7 (6) OBLIGATIONS OF ISSUER.—

8 (A) IN GENERAL.—After the creation of an
 9 estate under paragraph (2), the issuer and its
 10 conservator, receiver, liquidating agent, or trust-
 11 ee in bankruptcy shall—

12 (i) transfer to or at the direction of the
 13 trustee for the estate all property of the es-
 14 tate that is in the possession or under the
 15 control of the issuer or its conservator, re-
 16 ceiver, liquidating agent, or trustee in bank-
 17 ruptcy, including all tangible or electronic
 18 books, records, files, and other documents or
 19 materials relating to the assets and liabil-
 20 ities of the estate; and

21 (ii) at the election of the trustee or a
 22 servicer or administrator for the estate, con-
 23 tinue servicing the applicable cover pool for
 24 120 days after the creation of the estate in
 25 return for a fair-market-value fee, as deter-

1 mined by the trustee in consultation with
 2 the applicable covered bond regulator, that
 3 shall be payable from the estate as an ad-
 4 ministrative expense.

5 (B) *OBLIGATIONS ABSOLUTE*.—Neither the
 6 issuer, whether acting as debtor in possession or
 7 in any other capacity, nor any conservator, re-
 8 ceiver, liquidating agent, or trustee in bank-
 9 ruptcy for the issuer or any other assets of the
 10 issuer may disaffirm, repudiate, or reject the ob-
 11 ligation to turn over property or to continue
 12 servicing the cover pool as provided in subpara-
 13 graph (A).

14 (d) *ADMINISTRATION AND RESOLUTION OF ES-*
 15 *TATES*.—

16 (1) *TRUSTEE, SERVICER, AND ADMINISTRATOR*.—

17 (A) *IN GENERAL*.—Upon the creation of
 18 any estate under subsection (b)(1) or (c)(2), the
 19 applicable covered bond regulator shall—

20 (i) appoint the trustee for the estate;

21 (ii) appoint 1 or more servicers or ad-
 22 ministrators for the cover pool held by the
 23 estate; and

24 (iii) give the Secretary, the applicable
 25 indenture trustee, the applicable covered

1 bondholders, and the owner of the residual
2 interest written notice of the creation of the
3 estate.

4 (B) *TERMS AND CONDITIONS OF APPOINT-*
5 *MENT.*—All terms and conditions of any ap-
6 pointment under paragraph (1), including the
7 terms and conditions relating to compensation,
8 shall conform to the requirements of this Act and
9 the oversight program and otherwise shall be de-
10 termined by the applicable covered bond regu-
11 lator.

12 (C) *QUALIFICATION.*—The applicable cov-
13 ered bond regulator may require the trustee or
14 any servicer or administrator for an estate to
15 post in favor of the United States, for the benefit
16 of the estate, a bond that is conditioned on the
17 faithful performance of the duties of the trustee
18 or the servicer or administrator. The covered
19 bond regulator shall determine the amount of
20 any bond required under this subparagraph and
21 the sufficiency of the surety on the bond. A pro-
22 ceeding on a bond required under this subpara-
23 graph may not be commenced after two years
24 after the date on which the trustee or the servicer
25 or administrator was discharged.

(D) *POWERS AND DUTIES OF TRUSTEE.—*

The trustee for an estate is the representative of the estate and, subject to the provisions of this Act, has capacity to sue and be sued. The trustee shall—

(i) administer the estate in compliance with this Act, the oversight program, and the related transaction documents;

(ii) be accountable for all property of the estate that is received by the trustee;

(iii) make a final report and file a final account of the administration of the estate with the applicable covered bond regulator; and

(iv) after the estate has been fully administered, close the estate.

(E) *POWERS AND DUTIES OF SERVICER OR ADMINISTRATOR.—Any servicer or administrator for an estate—*

(i) shall—

(I) collect, realize on (by liquidation or other means), and otherwise manage the cover pool held by the estate in compliance with this Act, the oversight program, and the related

1 *transaction documents and in a man-*
2 *ner consistent with maximizing the*
3 *value and the proceeds of the cover*
4 *pool;*

5 *(II) deposit or invest all proceeds*
6 *and funds received in compliance with*
7 *this Act, the oversight program, and*
8 *the related transaction documents and*
9 *in a manner consistent with maxi-*
10 *mizing the net return to the estate, tak-*
11 *ing into account the safety of the de-*
12 *posit or investment; and*

13 *(III) apply, or direct the trustee*
14 *for the estate to apply, all proceeds and*
15 *funds received and the net return on*
16 *any deposit or investment to make dis-*
17 *tributions in compliance with para-*
18 *graphs (3) and (4);*

19 *(ii) may borrow funds or otherwise ob-*
20 *tain credit, for the benefit of the estate, in*
21 *compliance with paragraph (2) on a se-*
22 *cured or unsecured basis and on a priority,*
23 *pari passu, or subordinated basis;*

24 *(iii) shall, at the times and in the*
25 *manner required by the applicable covered*

1 *bond regulator, submit to the covered bond*
2 *regulator, the Secretary, the applicable in-*
3 *denture trustee, the applicable covered bond-*
4 *holders, the owner of the residual interest,*
5 *and any other person designated by the cov-*
6 *ered bond regulator, reports that describe*
7 *the activities of the servicer or adminis-*
8 *trator on behalf of the estate, the perform-*
9 *ance of the cover pool held by the estate, and*
10 *distributions made by the estate; and*

11 *(iv) shall assist the trustee in pre-*
12 *paring the final report and the final ac-*
13 *count of the administration of the estate.*

14 *(F) SUPERVISION OF TRUSTEE, SERVICER,*
15 *AND ADMINISTRATOR.—The applicable covered*
16 *bond regulator shall supervise the trustee and*
17 *any servicer or administrator for an estate. The*
18 *covered bond regulator shall require that all re-*
19 *ports submitted under subparagraph (E)(iii) do*
20 *not contain any untrue statement of a material*
21 *fact and do not omit to state a material fact nec-*
22 *essary in order to make the statements made, in*
23 *light of the circumstances under which they are*
24 *made, not misleading.*

1 (G) *REMOVAL AND REPLACEMENT OF*
2 *TRUSTEE, SERVICER, AND ADMINISTRATOR.—If*
3 *the covered bond regulator determines that it is*
4 *in the best interests of an estate, the covered bond*
5 *regulator may remove or replace the trustee or*
6 *any servicer or administrator for the estate. The*
7 *removal of the trustee or any servicer or admin-*
8 *istrator does not abate any pending action or*
9 *proceeding involving the estate, and any suc-*
10 *cessor or other trustee, servicer, or administrator*
11 *shall be substituted as a party in the action or*
12 *proceeding.*

13 (H) *PROFESSIONALS.—The trustee or any*
14 *servicer or administrator for an estate may em-*
15 *ploy 1 or more attorneys, accountants, apprais-*
16 *ers, auctioneers, or other professional persons to*
17 *represent or assist the trustee or the servicer or*
18 *administrator in carrying out its duties. The*
19 *employment of any professional person and all*
20 *terms and conditions of employment, including*
21 *the terms and conditions relating to compensa-*
22 *tion, shall conform to the requirements of this*
23 *Act and the oversight program and otherwise*
24 *shall be subject to the approval of the applicable*
25 *covered bond regulator.*

1 (I) *APPROVED FEES AND EXPENSES.*—Un-
2 less otherwise provided in the applicable terms
3 and conditions of appointment or employment,
4 all approved fees and expenses of the trustee, any
5 servicer or administrator, or any professional
6 person employed by the trustee or any servicer or
7 administrator shall be payable from the estate as
8 administrative expenses.

9 (J) *ACTIONS BY OR ON BEHALF OF ES-*
10 *TATE.*—The trustee or any servicer or adminis-
11 trator for an estate may commence or continue
12 judicial, administrative, or other actions, in the
13 name of the estate or in its own name on behalf
14 of the estate, for the purpose of collecting, real-
15 izing on, or otherwise managing the cover pool
16 held by the estate or exercising its other powers
17 or duties on behalf of the estate.

18 (K) *ACTIONS AGAINST ESTATE.*—No court
19 may issue an attachment or execution on any
20 property of an estate. Except at the request of the
21 applicable covered bond regulator or as otherwise
22 provided in this subparagraph or subparagraph
23 (J), no court may take any action to restrain or
24 affect the resolution of an estate under this Act.
25 No person (including the applicable indenture

1 trustee and any applicable covered bondholder)
2 may commence or continue any judicial, admin-
3 istrative, or other action against the estate, the
4 trustee, or any servicer or administrator or take
5 any other act to affect the estate, the trustee, or
6 any servicer or administrator that is not ex-
7 pressly permitted by this Act, the oversight pro-
8 gram, and the related transaction documents, ex-
9 cept for a judicial or administrative action to
10 compel the release of funds that—

11 (i) are available to the estate;

12 (ii) are permitted to be distributed
13 under this Act and the oversight program;
14 and

15 (iii) are permitted and required to be
16 distributed under the related transaction
17 documents and any contracts executed by or
18 on behalf of the estate.

19 (L) SOVEREIGN IMMUNITY.—Except in con-
20 nection with a guarantee provided under para-
21 graph (4) or any other contract executed by the
22 applicable covered bond regulator under this sec-
23 tion 4, the Secretary and the covered bond regu-
24 lator shall be entitled to sovereign immunity in
25 carrying out the provisions of this Act.

1 (2) *BORROWINGS AND CREDIT.*—

2 (A) *IN GENERAL.*—Any servicer or adminis-
3 trator for an estate created under subsection
4 (b)(1) or (c)(2) may borrow funds or otherwise
5 obtain credit, on behalf of and for the benefit of
6 the estate, from any person in compliance with
7 this paragraph (2) solely for the purpose of pro-
8 viding liquidity in the case of timing
9 mismatches among the assets and the liabilities
10 of the estate. Except with respect to an under-
11 writer, section 5 of the Securities Act of 1933,
12 the Trust Indenture Act of 1939, and any State
13 or local law requiring registration for an offer or
14 sale of a security or registration or licensing of
15 an issuer of, underwriter of, or broker or dealer
16 in a security does not apply to the offer or sale
17 under this paragraph (2) of a security that is
18 not an equity security.

19 (B) *CONDITIONS.*—A servicer or adminis-
20 trator may borrow funds or otherwise obtain
21 credit under subparagraph (A)—

22 (i) on terms affording the lender only
23 claims or liens that are fully subordinated
24 to the claims and interests of the applicable
25 indenture trustee and the applicable covered

1 *bondholders and all other claims against*
2 *and interests in the estate, except for the re-*
3 *sidual interest, if the servicer or adminis-*
4 *trator certifies to the applicable covered*
5 *bond regulator that, in the business judg-*
6 *ment of the servicer or administrator, the*
7 *borrowing or credit is in the best interests*
8 *of the estate and is expected to maximize the*
9 *value and the proceeds of the cover pool held*
10 *by the estate; or*

11 *(ii) on terms affording the lender*
12 *claims or liens that have priority over or*
13 *are pari passu with the claims or interests*
14 *of the applicable indenture trustee or the*
15 *applicable covered bondholders or other*
16 *claims against or interests in the estate,*
17 *if—*

18 *(I) the servicer or administrator*
19 *certifies to the applicable covered bond*
20 *regulator that, in the business judg-*
21 *ment of the servicer or administrator,*
22 *the borrowing or credit is in the best*
23 *interests of the estate and is expected to*
24 *maximize the value and the proceeds of*
25 *the cover pool held by the estate; and*

1 (II) *the applicable covered bond*
2 *regulator authorizes the borrowing or*
3 *credit.*

4 (C) *LIMITED LIABILITY.—A servicer or ad-*
5 *ministrator shall not be liable for any error in*
6 *business judgment when borrowing funds or oth-*
7 *erwise obtaining credit under this paragraph (2)*
8 *unless the servicer or administrator acted in bad*
9 *faith or in willful disregard of its duties.*

10 (D) *STUDY ON BORROWINGS AND CREDIT.—*
11 *The Comptroller General of the United States*
12 *shall conduct a study on whether the Federal re-*
13 *serve banks should be authorized to lend funds or*
14 *otherwise extend credit to an estate under this*
15 *paragraph (2) and, if so, what conditions and*
16 *limits should be established to mitigate any risk*
17 *that the United States Government could absorb*
18 *credit losses on the cover pool held by the estate.*
19 *The Comptroller General shall submit a report to*
20 *the Committee on Banking, Housing, and Urban*
21 *Affairs of the Senate and the Committee on Fi-*
22 *nancial Services of the House of Representatives*
23 *on the results of the study not later than 6*
24 *months after the date of enactment of this Act.*

(3) *DISTRIBUTIONS BY ESTATE.*—All payments or other distributions by an estate shall be made at the times, in the amounts, and in the manner set forth in the covered bonds, the related transaction documents, and any contracts executed by or on behalf of the estate in compliance with this Act and the oversight program. To the extent that the relative priority of the liabilities of the estate are not specified in or otherwise ascertainable from their terms, distributions shall be made on each distribution date under the covered bonds, the related transaction documents, or any contracts executed by or on behalf of the estate—

(A) first, to pay accrued and unpaid superpriority claims under paragraph (2)(B)(ii);

(B) second, to pay accrued and unpaid administrative expense claims under paragraph (1)(I), paragraph (2)(B)(ii), section 4(b)(5)(A), or section 4(c)(6)(A);

(C) third, to pay—

(i) accrued and unpaid claims under the covered bonds and the related transaction documents according to their terms; and

(ii) accrued and unpaid *pari passu* claims under paragraph (2)(B)(ii); and

1 (D) fourth, to pay accrued and unpaid sub-
2 ordinated claims under paragraph (2)(B)(i).

3 (4) DISTRIBUTIONS ON RESIDUAL INTEREST.—
4 After all other claims against and interests in an es-
5 tate have been fully and irrevocably paid or defeased,
6 the trustee shall or shall cause a servicer or adminis-
7 trator to distribute the remainder of the estate to or
8 at the direction of the owner of the residual interest.
9 No interim distribution on the residual interest may
10 be made before that time, unless the applicable cov-
11 ered bond regulator—

12 (A) approves the distribution after deter-
13 mining that all other claims against and inter-
14 ests in the estate will be fully, timely, and irrev-
15 ocably paid according to their terms; and

16 (B) provides an indemnity, for the benefit
17 of the estate, assuring that all other claims
18 against and interests in the estate will be fully,
19 timely, and irrevocably paid according to their
20 terms.

21 (5) CLOSING OF ESTATE.—After an estate has
22 been fully administered, the trustee shall close the es-
23 tate and, except as otherwise directed by the applica-
24 ble covered bond regulator, shall destroy all records of
25 the estate.

1 (6) *NO LOSS TO TAXPAYERS.*—*Taxpayers shall*
2 *bear no losses from the resolution of an estate under*
3 *this Act. To the extent that the Secretary and the Cor-*
4 *poration jointly determine that the Deposit Insurance*
5 *Fund incurred actual losses that are higher because*
6 *the covered bond program of an insured depository*
7 *institution was subject to resolution under this Act*
8 *rather than as part of the receivership of the institu-*
9 *tion under the Federal Deposit Insurance Act (12*
10 *U.S.C. 1811 et seq.), the Corporation may exercise the*
11 *powers available under section 7(b) of the Federal De-*
12 *posit Insurance Act (12 U.S.C. 1817(b)) to recover an*
13 *amount equal to those losses after consulting with the*
14 *Secretary.*

15 **SEC. 5. SECURITIES LAW PROVISIONS.**

16 (a) *EXISTING EXEMPTIONS APPLICABLE TO COVERED*
17 *BONDS.*—

18 (1) *TREATMENT OF CERTAIN BANKS AND OTHER*
19 *ENTITIES.*—*Any covered bond issued or guaranteed by*
20 *a bank or by an eligible issuer described in section*
21 *2(9)(D) and sponsored solely by 1 or more banks for*
22 *the sole purpose of issuing covered bonds is and shall*
23 *be treated as a security issued or guaranteed by a*
24 *bank under section 3(a)(2) of the Securities Act of*
25 *1933 (15 U.S.C. 77c(a)(2)), section 3(c)(3) of the In-*

1 *vestment Company Act of 1940 (15 U.S.C. 80a-*
 2 *3(c)(3)), and section 304(a)(4)(A) of the Trust Inden-*
 3 *ture Act of 1939 (15 U.S.C. 77ddd(a)(4)(A)). No cov-*
 4 *ered bond issued or guaranteed by a bank or by an*
 5 *eligible issuer described in section 2(9)(D) and spon-*
 6 *sored solely by 1 or more banks for the sole purpose*
 7 *of issuing covered bonds shall be treated as an asset-*
 8 *backed security (as defined in section 3 of the Securi-*
 9 *ties and Exchange Act of 1934 (15 U.S.C. 78c)). Each*
 10 *covered bond regulator for 1 or more banks shall*
 11 *adopt disclosure and reporting regulations for offers*
 12 *or sales of covered bonds by a bank or an eligible*
 13 *issuer described in this paragraph. Such regulations*
 14 *shall provide for uniform and consistent standards for*
 15 *such covered bond issuers, to the extent possible, and*
 16 *shall be consistent with existing regulations governing*
 17 *offers or sales of nonconvertible debt.*

18 (2) *TREATMENT OF CERTAIN ASSOCIATIONS AND*
 19 *COOPERATIVE BANKS.—Any covered bond issued by*
 20 *an entity described in section 3(a)(5)(A) of the Secu-*
 21 *rities Act of 1933 (15 U.S.C. 77c(a)(5)(A)) or by an*
 22 *eligible issuer described in section 2(9)(D) and spon-*
 23 *sored solely by 1 or more such entities for the sole*
 24 *purpose of issuing covered bonds is and shall be treat-*
 25 *ed as a security issued by such an entity under sec-*

1 *tion 3(a)(5)(A) of the Securities Act of 1933 (15*
2 *U.S.C. 77c(a)(5)(A)), section 3(c)(3) of the Investment*
3 *Company Act of 1940 (15 U.S.C. 80a-3(c)(3)), and*
4 *section 304(a)(4)(A) of the Trust Indenture Act of*
5 *1939 (15 U.S.C. 77ddd(a)(4)(A)). No covered bond*
6 *issued by an entity described in section 3(a)(5)(A) of*
7 *the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)) or*
8 *by an eligible issuer described in section 2(9)(D) and*
9 *sponsored solely by 1 or more such entities for the sole*
10 *purpose of issuing covered bonds shall be treated as*
11 *an asset-backed security (as defined in section 3 of the*
12 *Securities and Exchange Act of 1934 (15 U.S.C.*
13 *78c)). Each covered bond regulator for 1 or more enti-*
14 *ties described in section 3(a)(5)(A) of the Securities*
15 *Act of 1933 (15 U.S.C. 77c(a)(5)(A)) shall adopt, as*
16 *part of the securities regulations of the covered bond*
17 *regulator, a separate scheme of registration, disclo-*
18 *sure, and reporting obligations and exemptions for of-*
19 *fers or sales of covered bonds that are described in this*
20 *paragraph. Such regulations shall provide for uni-*
21 *form and consistent standards for such covered bond*
22 *issuers, to the extent possible, and shall be consistent*
23 *with regulations governing offers or sales of similar*
24 *securities.*

1 (3) *CONSTRUCTION.*—No provision of this Act,
 2 including paragraph (1) or (2), may be construed or
 3 applied in a manner that impairs or limits any other
 4 exemption that is available under applicable securi-
 5 ties laws.

6 (b) *EXEMPTIONS FOR ESTATES.*—Any estate that is or
 7 may be created under section 4(b)(1) or 4(c)(2) shall be ex-
 8 empt from all securities laws but—

9 (1) shall be subject to the reporting requirements
 10 established by the applicable covered bond regulator
 11 under section 4(d)(1)(E)(iii); and

12 (2) shall succeed to any requirement of the issuer
 13 to file such periodic information, documents, and re-
 14 ports in respect of the covered bonds as specified in
 15 section 13(a) of the Securities and Exchange Act of
 16 1934 (15 U.S.C. 78m(a)) or rules established by an
 17 appropriate Federal banking agency.

18 (c) *EXEMPTIONS FOR RESIDUAL INTERESTS.*—Any re-
 19 sidual interest in an estate that is or may be created under
 20 section 4(b)(1) or 4(c)(2) shall be exempt from all securities
 21 laws.

22 **SEC. 6. MISCELLANEOUS PROVISIONS.**

23 (a) *DOMESTIC SECURITIES.*—Section 106(a)(1) of the
 24 Secondary Mortgage Market Enhancement Act of 1984 (15
 25 U.S.C. 77r–1(a)(1)) is amended—

1 (1) in subparagraph (C), by striking “or” at the
2 end;

3 (2) in subparagraph (D), by adding “or” at the
4 end; and

5 (3) by inserting after subparagraph (D) the fol-
6 lowing:

7 “(E) covered bonds (as defined in section 2 of the
8 United States Covered Bond Act of 2011),”.

9 (b) NO TAX IMPLICATIONS.—Any estate created under
10 section 4(b)(1) or 4(c)(2) shall not be treated as an entity
11 subject to taxation separate from the owner of the residual
12 interest for purposes of the Internal Revenue Code of 1986
13 (26 U.S.C. 1 et seq.), including by reason of the taxable
14 mortgage pool provisions of section 7701(i) of the Internal
15 Revenue Code of 1986 (26 U.S.C. 7701(i)), but instead shall
16 be treated as a disregarded entity that is owned by the
17 owner of the residual interest for such purposes as described
18 in applicable regulations of the Secretary, as in effect on
19 the date of the enactment of this Act. No transfer or assump-
20 tion of any asset or liability to or by an estate or an eligible
21 issuer under section 4(b) or 4(c) shall cause or constitute
22 an event in which gain or loss shall be recognized under
23 section 1001 of the Internal Revenue Code of 1986 (26
24 U.S.C. 1001).

1 (c) *REAL ESTATE MORTGAGE INVESTMENT CON-*
 2 *DUITS.*—Section 860G(a)(3) of the Internal Revenue Code
 3 of 1986 (26 U.S.C. 860G(a)(3)) is amended—

4 (1) in subparagraph (B), by striking “and” at
 5 the end;

6 (2) in subparagraph (C), by striking the period
 7 and inserting “, and”; and

8 (3) by inserting after subparagraph (C) the fol-
 9 lowing:

10 “(D) covered bonds that are secured by eli-
 11 gible assets from the residential mortgage asset
 12 class or the commercial mortgage asset class, as
 13 such terms are defined in section 2 of the United
 14 States Covered Bond Act of 2011.”.

15 (d) *REAL ESTATE INVESTMENT TRUSTS.*—To the ex-
 16 tent provided by regulations that may be promulgated by
 17 the Secretary, a covered bond described in section
 18 860G(a)(3)(D) of the Internal Revenue Code of 1986 shall
 19 be treated as a real estate asset in the same manner as a
 20 regular interest in a REMIC for purposes of section
 21 856(c)(5)(E) of such Code.

22 (e) *INVESTMENT TREATMENT FOR TAX PURPOSES.*—
 23 The acquisition of any covered bond shall be treated as an
 24 acquisition of an investment security, and not as an acqui-
 25 sition of an interest in a loan or otherwise as a lending

1 *transaction, for purposes of determining the character of*
2 *any related trade or business activity of the acquirer or any*
3 *asset held by the acquirer under the Internal Revenue Code*
4 *of 1986 (26 U.S.C. 1 et seq.).*

5 (f) *STATE AND LOCAL TAXES.—The Secretary may*
6 *promulgate regulations under this Act that are similar to*
7 *the provisions of section 346 of title 11, United States Code,*
8 *including regulations to provide that—*

9 (1) *if an estate created under section 4(b)(1) or*
10 *4(c)(2) is not treated as an entity subject to taxation*
11 *separate from the owner of the residual interest for*
12 *purposes of the Internal Revenue Code of 1986 (26*
13 *U.S.C. 1 et seq.), no separate taxable entity shall be*
14 *created with respect to the estate for purposes of any*
15 *State or local law imposing a tax on or measured by*
16 *income; and*

17 (2) *if a transfer or assumption of an asset or li-*
18 *ability to or by an estate or an eligible issuer under*
19 *section 4(b) or 4(c) does not cause or constitute an*
20 *event in which gain or loss is recognized under sec-*
21 *tion 1001 of the Internal Revenue Code of 1986 (26*
22 *U.S.C. 1001), the transfer or assumption shall not*
23 *cause or constitute a disposition for purposes of any*
24 *provision assigning tax consequences to a disposition*

1 *in connection with any State or local law imposing*
2 *a tax on or measured by income.*

3 (g) *NO CONFLICT.*—*The provisions of this Act shall*
4 *apply, notwithstanding any provision of the Federal De-*
5 *posit Insurance Act (12 U.S.C. 1811 et seq.), title 11,*
6 *United States Code, title II of the Dodd-Frank Wall Street*
7 *Reform and Consumer Protection Act (12 U.S.C. 5381 et*
8 *seq.), or any other provision of Federal law with respect*
9 *to conservatorship, receivership, liquidation, or bankruptcy.*
10 *No provision of the Federal Deposit Insurance Act (12*
11 *U.S.C. 1811 et seq.), title 11, United States Code, title II*
12 *of the Dodd-Frank Wall Street Reform and Consumer Pro-*
13 *tection Act (12 U.S.C. 5381 et seq.), or any other provision*
14 *of Federal law with respect to conservatorship, receivership,*
15 *liquidation, or bankruptcy may be construed or applied in*
16 *a manner that defeats or interferes with the purpose or op-*
17 *eration of this Act.*

18 (h) *ANNUAL REPORT TO CONGRESS.*—*The covered*
19 *bond regulators shall, annually—*

20 (1) *submit a joint report to the Congress describ-*
21 *ing the current state of the covered bond market in the*
22 *United States; and*

23 (2) *testify on the current state of the covered*
24 *bond market in the United States before the Com-*
25 *mittee on Financial Services of the House of Rep-*

- 1 *representatives and the Committee on Banking, Housing,*
- 2 *and Urban Affairs of the Senate.*

Union Calendar No. 542

112TH CONGRESS
2ND Session

H. R. 940

[Report No. 112-407, Part I]

A BILL

To establish standards for covered bond programs and a covered bond regulatory oversight program, and for other purposes.

DECEMBER 31, 2012

The Committee on Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed