

111TH CONGRESS
2D SESSION

H. R. 5823

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

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2010

Mr. GARRETT of New Jersey (for himself, Mr. KANJORSKI, and Mr. BACHUS) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To establish 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 2010”.

6 **SEC. 2. DEFINITIONS.**

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

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

1 (A) any interest rate or currency swap as-
2 sociated with an eligible asset, substitute asset,
3 or other asset in a cover pool;

4 (B) any credit enhancement or liquidity ar-
5 rangement associated with an eligible asset,
6 substitute asset, or other asset in a cover pool;

7 (C) any guarantee, letter-of-credit right, or
8 other secondary obligation that supports any
9 payment or performance on an eligible asset,
10 substitute asset, or other asset in a cover pool;
11 and

12 (D) any proceeds of, or other property in-
13 cident to, an eligible asset, substitute asset, or
14 other asset in a cover pool.

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

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

20 (A) eligible assets from a single eligible
21 asset class; and

22 (B) any substitute assets or ancillary as-
23 sets.

1 (4) COVERED BOND.—The term “covered
2 bond” means any senior recourse debt obligation of
3 an eligible issuer that—

4 (A) has an original term to maturity of not
5 less than 1 year;

6 (B) is secured by a perfected security in-
7 terest in a cover pool that is owned directly or
8 indirectly by the issuer of the obligation;

9 (C) is issued under a covered bond pro-
10 gram that has been approved by the covered
11 bond regulator and is identified in a register of
12 covered bonds maintained by the covered bond
13 regulator; and

14 (D) is not a deposit.

15 (5) COVERED BOND PROGRAM.—The term
16 “covered bond program” means any program of an
17 eligible issuer under which 1 or more series or
18 tranches of covered bonds may be issued.

19 (6) COVERED BOND REGULATOR.—The term
20 “covered bond regulator” means the Comptroller of
21 the Currency.

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

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

1 (i) any first-lien mortgage loan that is
2 secured by 1-to-4 family residential prop-
3 erty and that is in compliance with any
4 rule or supervisory guidance of a Federal
5 agency that is applicable to the loan at the
6 time of loan origination;

7 (ii) any mortgage loan insured under
8 the National Housing Act (12 U.S.C. 1701
9 et seq.), or any loan guaranteed, insured,
10 or made under chapter 37 of title 38,
11 United States Code; and

12 (iii) rural housing loans;

13 (B) in the case of the home equity asset
14 class, any home equity loan that is secured by
15 1-to-4 family residential property and that is in
16 compliance with any rule or supervisory guid-
17 ance of a Federal agency that is applicable to
18 the loan at the time of loan origination;

19 (C) in the case of the commercial mortgage
20 asset class, any commercial mortgage loan (in-
21 cluding any multifamily mortgage loan) that is
22 in compliance with any rule or supervisory guid-
23 ance of a Federal agency that is applicable to
24 the loan at the time of loan origination;

1 (D) in the case of the public sector asset
2 class—

3 (i) any security issued by a State or
4 municipality;

5 (ii) any loan made to a State or mu-
6 nicipality; and

7 (iii) any loan, security, or other obli-
8 gation that is insured or guaranteed, in
9 full or substantially in full, by the full faith
10 and credit of the United States Govern-
11 ment (whether or not such loan, security,
12 or other obligation is also part of another
13 eligible asset class);

14 (E) in the case of the auto asset class, any
15 auto loan or lease that is in compliance with
16 any rule or supervisory guidance of a Federal
17 agency that is applicable to the loan or lease at
18 the time of loan or lease origination;

19 (F) in the case of the student loan asset
20 class, any student loan (whether guaranteed or
21 nonguaranteed) that is in compliance with any
22 rule or supervisory guidance of a Federal agen-
23 cy that is applicable to the loan at the time of
24 loan origination;

1 (G) in the case of the credit or charge card
2 asset class, any extension of credit to a person
3 under an open-end credit plan that is in compli-
4 ance with any rule or supervisory guidance of a
5 Federal agency that is applicable to the exten-
6 sion of credit at the time the extension is made;

7 (H) in the case of the small business asset
8 class, any loan made or guaranteed under a
9 program of the Small Business Administration;
10 and

11 (I) in the case of any other eligible asset
12 class, any asset designated by the covered bond
13 regulator, by rule and in consultation with the
14 applicable primary financial regulatory agen-
15 cies, as an eligible asset for purposes of such
16 class.

17 (8) ELIGIBLE ASSET CLASS.—The term “eligi-
18 ble asset class” means—

19 (A) a residential mortgage asset class;

20 (B) a commercial mortgage asset class;

21 (C) a public sector asset class;

22 (D) a small business asset class; or

23 (E) any other eligible asset class, as deter-
24 mined by the covered bond regulator by rule

1 and in consultation with the applicable primary
2 financial regulatory agencies.

3 (9) ELIGIBLE ISSUER.—The term “eligible
4 issuer” means—

5 (A) any insured depository institution and
6 any subsidiary of such institution;

7 (B) any bank holding company and any
8 savings and loan holding company;

9 (C) any nonbank financial company that is
10 approved as an eligible issuer by the primary fi-
11 nancial regulatory agency for the nonbank fi-
12 nancial company and the covered bond regu-
13 lator; and

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

17 (10) NONBANK FINANCIAL COMPANY.—The
18 term “nonbank financial company” has the meaning
19 given such term under section 102(a)(4) of the
20 Dodd-Frank Wall Street Reform and Consumer Pro-
21 tection Act.

22 (11) OVERSIGHT PROGRAM.—The term “over-
23 sight program” means the covered bond regulatory
24 oversight program established under section 3(a).

1 (12) PRIMARY FINANCIAL REGULATORY AGEN-
2 CY.—The term “primary financial regulatory agen-
3 cy” has the meaning give such term under section
4 2(12) of the Dodd-Frank Wall Street Reform and
5 Consumer Protection Act.

6 (13) SUBSTITUTE ASSET.—The term “sub-
7 stitute asset” means—

8 (A) cash;

9 (B) any direct obligation of the United
10 States Government, and any security or other
11 obligation, the full principal and interest of
12 which are insured or guaranteed by the full
13 faith and credit of the United States Govern-
14 ment;

15 (C) any direct obligation of a United
16 States Government corporation or Government-
17 sponsored enterprise of the highest credit qual-
18 ity, and any other security or other obligation
19 of the highest credit quality whose full principal
20 and interest are insured or guaranteed by any
21 such corporation or enterprise, except that the
22 outstanding principal amount of these obliga-
23 tions in any cover pool may not exceed an
24 amount equal to 20 percent of the outstanding
25 principal amount of all assets in the cover pool

1 without the approval of the covered bond regu-
2 lator;

3 (D) any overnight investment in Federal
4 funds;

5 (E) any other substitute asset, as deter-
6 mined by the covered bond regulator by rule
7 and in consultation with the applicable primary
8 financial regulatory agencies; and

9 (F) any deposit account or securities ac-
10 count into which only an asset described in sub-
11 paragraphs (A), (B), (C), (D), or (E) may be
12 deposited or credited.

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

15 (a) ESTABLISHMENT.—

16 (1) IN GENERAL.—Not later than 180 days
17 after the date of the enactment of this Act, the cov-
18 ered bond regulator shall, by rule and in consulta-
19 tion with the applicable primary financial regulatory
20 agencies, establish a covered bond regulatory over-
21 sight program that provides for—

22 (A) covered bond programs to be evaluated
23 according to reasonable and objective standards
24 in order to be approved under paragraph (2),
25 including eligibility standards for eligible assets;

1 (B) covered bond programs to be main-
2 tained in a manner consistent with this Act and
3 safe and sound financial practices; and

4 (C) any estate created under section 4 to
5 be administered in a manner that is consistent
6 with maximizing the value and the proceeds of
7 the related cover pool in a resolution under this
8 Act.

9 (2) APPROVAL OF EACH COVERED BOND PRO-
10 GRAM.—

11 (A) IN GENERAL.—A covered bond shall be
12 subject to this Act only if the covered bond is
13 issued by an eligible issuer under a covered
14 bond program that is approved by the covered
15 bond regulator.

16 (B) EXISTING COVERED BOND PRO-
17 GRAMS.—The covered bond regulator may ap-
18 prove a covered bond program that is in exist-
19 ence on the date of enactment of this Act. Upon
20 such approval, each covered bond under the
21 covered bond program shall be subject to this
22 Act, regardless of when the covered bonds were
23 issued.

24 (C) CONSULTATION WITH ANY PRIMARY
25 REGULATOR.—Before approving any covered

1 bond program of any eligible issuer, the covered
2 bond regulator shall consult with the primary
3 financial regulatory agency, if any, of the eligi-
4 ble issuer and shall confirm with such agency,
5 if any, that the covered bond program is con-
6 sistent with safe and sound financial practices.

7 (D) MULTIPLE COVERED BOND PROGRAMS
8 PERMITTED.—An eligible issuer may have more
9 than 1 covered bond program.

10 (3) REGISTRY.—Under the oversight program,
11 the covered bond regulator shall maintain a registry
12 on a Web site available to the public that contains—

13 (A) the name of each approved covered
14 bond program; and

15 (B) information on all outstanding covered
16 bonds issued under each approved covered bond
17 program, (including the reports described under
18 paragraphs (3) and (4) of subsection (b).

19 (4) FEES.—The covered bond regulator may
20 levy fees on the issuers of covered bonds in an
21 amount the covered bond regulator determines is
22 necessary or appropriate to defray, in the aggregate,
23 the costs of the covered bond regulator in carrying
24 out the provisions of this Act.

1 (b) MINIMUM OVER-COLLATERALIZATION REQUIRE-
2 MENTS.—

3 (1) REQUIREMENTS ESTABLISHED.—

4 (A) IN GENERAL.—The covered bond regu-
5 lator, from time to time, shall establish min-
6 imum over-collateralization requirements for
7 covered bonds backed by each of the eligible
8 asset classes, which are designed to ensure that
9 sufficient assets exist in the cover pool to sat-
10 isfy all principal and interest due on the cov-
11 ered bonds and which are based on the credit,
12 collection, and interest rate risks (excluding the
13 liquidity risks) associated with the eligible asset
14 class.

15 (B) RELIANCE ON OTHER OVER-
16 COLLATERALIZATION STANDARDS.—In estab-
17 lishing requirements under subparagraph (A),
18 the covered bond regulator may rely on over-
19 collateralization levels required for the same or
20 similar asset classes by—

21 (i) any Federal reserve bank when ex-
22 tending credit to depository institutions
23 under the Federal Reserve Act (12 U.S.C.
24 221 et seq.);

- 1 (ii) any Federal home loan bank when
2 extending credit to member institutions
3 under the Federal Home Loan Bank Act
4 (12 U.S.C. 1421 et seq.); or
5 (iii) any other comparable lenders in
6 substantially similar transactions.

7 (2) ASSET COVERAGE TEST.—The eligible as-
8 sets and the substitute assets in each cover pool that
9 secures covered bonds shall, in the aggregate, at all
10 times, meet the applicable minimum over-
11 collateralization requirements established under
12 paragraph (1).

13 (3) MONTHLY REPORTING.—Every month, each
14 issuer of covered bonds shall submit a report on
15 whether the cover pool that secures the covered
16 bonds meets the applicable minimum over-
17 collateralization requirements established under
18 paragraph (1) to—

19 (A) the primary financial regulatory agen-
20 cy of the issuer, if any;

21 (B) the covered bond regulator; and

22 (C) the applicable covered bondholders.

23 (4) INDEPENDENT ASSET MONITOR.—

24 (A) APPOINTMENT OF INDEPENDENT
25 ASSET MONITOR.—Each issuer of covered bonds

1 shall appoint the indenture trustee for the cov-
2 ered bonds, or another unaffiliated entity, as an
3 independent asset monitor for the applicable
4 cover pool.

5 (B) DUTIES.—The independent asset mon-
6 itor appointed under subparagraph (A) shall, on
7 a semiannual or other more frequent periodic
8 basis determined by the covered bond regu-
9 lator—

10 (i) verify whether the cover pool that
11 secures the covered bonds meets the appli-
12 cable minimum over-collateralization re-
13 quirements established under paragraph
14 (1); and

15 (ii) disclose to the primary financial
16 regulatory agency of the issuer, if any, the
17 covered bond regulator, and the applicable
18 covered bond holders whether the cover
19 pool that secures the covered bonds meets
20 the applicable minimum over-collateraliza-
21 tion requirements established under para-
22 graph (1).

23 (5) NO LOSS OF STATUS.—Covered bonds shall
24 remain subject to this Act regardless of whether the
25 applicable cover pool ceases to meet the applicable

1 minimum over-collateralization requirements estab-
2 lished under paragraph (1) at any time after the
3 covered bonds are issued.

4 (6) FAILURE TO MEET REQUIREMENTS.—If a
5 cover pool securing covered bonds fails to meet the
6 applicable minimum over-collateralization require-
7 ments established under paragraph (1), and if such
8 failure is not cured within the time specified in the
9 transaction documents related to the covered
10 bonds—

11 (A) such failure shall be deemed to be an
12 uncured default for purposes of section 4(a);
13 and

14 (B) the issuer shall notify the covered bond
15 regulator of such failure.

16 (c) REQUIREMENTS FOR ELIGIBLE ASSETS.—

17 (1) LOANS.—A loan shall not qualify as an eli-
18 gible asset for so long as the loan is delinquent for
19 more than 60 consecutive days.

20 (2) SECURITIES.—A security shall not qualify
21 as an eligible asset for so long as the security does
22 not meet any credit-quality requirement under this
23 Act.

24 (3) NO DOUBLE PLEDGE.—An asset shall not
25 qualify as an eligible asset for so long as the asset

1 is subject to a prior perfected security interest that
2 has been granted in an unrelated transaction. Noth-
3 ing in this Act shall affect such a prior perfected se-
4 curity interest.

5 (4) SINGLE ELIGIBLE ASSET CLASS.—No cover
6 pool may include eligible assets from more than 1 el-
7 igible asset class.

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 that secures the covered bonds.

13 (2) SCHEDULE OF ELIGIBLE ASSETS AND SUB-
14 STITUTE ASSETS.—Each issuer of covered bonds
15 shall deliver to the indenture trustee for the covered
16 bonds, on at least a monthly basis, a schedule of all
17 eligible assets and substitute assets in the cover pool
18 that secures the covered bonds.

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

20 (a) UNCURED DEFAULT.—In this section, the term
21 “uncured default”, when used with respect to a covered
22 bond, means a default on the covered bond that has not
23 been cured within the time, if any, required by the trans-
24 action documents related to the covered bond.

1 (b) DEFAULT ON COVERED BONDS PRIOR TO CON-
2 SERVATORSHIP, RECEIVERSHIP, LIQUIDATION, OR BANK-
3 RUPTCY.—

4 (1) CREATION OF SEPARATE ESTATE.—If an
5 uncured default occurs with respect to a covered
6 bond before the issuer of such covered bond enters
7 conservatorship, receivership, liquidation, or bank-
8 ruptcy, an estate shall be automatically created by
9 operation of law and shall exist and be administered
10 separate and apart from the issuer or any subse-
11 quent conservatorship, receivership, liquidating agen-
12 cy, or estate in bankruptcy for the issuer or any
13 other assets of the issuer. A separate estate shall be
14 created for each affected covered bond program.

15 (2) ASSETS AND LIABILITIES OF ESTATE.—Any
16 estate created under paragraph (1) shall be com-
17 prised of the cover pool that secures the covered
18 bond, which shall be automatically released to and
19 held by the estate free and clear of any right, title,
20 interest, or claim of the issuer or any conservator,
21 receiver, liquidating agent, or trustee in bankruptcy
22 for the issuer or any other assets of the issuer. The
23 estate created under paragraph (1) shall be fully lia-
24 ble on the covered bond and all other covered bonds
25 and related obligations of the issuer (including obli-

1 gations under related derivative transactions) that
2 are secured by the cover pool. The estate shall not
3 be liable on any obligation of the issuer that is not
4 secured by the cover pool.

5 (3) RETENTION OF CLAIMS.—Any holder of a
6 covered bond or related obligation secured by a cover
7 pool for which an estate has been created under
8 paragraph (1) shall retain a claim against the issuer
9 for any deficiency with respect to the covered bond
10 or related obligation.

11 (4) RESIDUAL INTEREST.—

12 (A) ISSUANCE OF RESIDUAL INTEREST.—

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

17 (B) NATURE OF RESIDUAL INTEREST.—

18 The residual interest under subparagraph (A)
19 shall—

20 (i) be an exempted security as de-
21 scribed in section 5;

22 (ii) represent the right to any surplus
23 from the cover pool after the covered bonds
24 and all other liabilities of the estate have
25 been paid in full; and

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

3 (5) OBLIGATION OF ISSUER.—After the cre-
4 ation of an estate under paragraph (1), the issuer
5 shall—

6 (A) transfer to the covered bond regulator,
7 or a designee of the covered bond regulator, all
8 tangible or electronic books, records, files, and
9 other documents or materials relating to the as-
10 sets and liabilities of the estate; and

11 (B) at the election of the covered bond reg-
12 ulator, continue servicing the cover pool for 120
13 days after the creation of the estate in return
14 for a fair-market-value fee, as determined by
15 the covered bond regulator, that shall be pay-
16 able from the estate as an administrative ex-
17 pense.

18 (c) DEFAULT ON COVERED BONDS UPON CON-
19 SERVATORSHIP, RECEIVERSHIP, LIQUIDATION, OR BANK-
20 RUPTCY.—

21 (1) CORPORATION CONSERVATORSHIP OR RE-
22 CEIVERSHIP.—

23 (A) IN GENERAL.—If the Corporation is
24 appointed as conservator or receiver for an
25 issuer of covered bonds before an uncured de-

1 fault results in the creation of an estate under
2 subsection (b), the Corporation as conservator
3 or receiver shall have an exclusive right, during
4 the 180-day period beginning on the date of the
5 appointment, to transfer any cover pool owned
6 by the issuer in its entirety, together with all
7 covered bonds and related obligations secured
8 by the cover pool, to another eligible issuer that
9 meets all conditions and requirements specified
10 in the transaction documents related to the cov-
11 ered bonds.

12 (B) OBLIGATIONS DURING 180-DAY PE-
13 RIOD.—During the 180-day period described in
14 subparagraph (A), the Corporation as conser-
15 vator or receiver shall satisfy all monetary and
16 nonmonetary obligations of the issuer under the
17 covered bonds and the related transaction docu-
18 ments until the earlier of—

19 (i) the transfer of the covered bond
20 program to another eligible issuer;

21 (ii) the repudiation of further per-
22 formance by the Corporation as conser-
23 vator or receiver under the covered bond
24 program; or

1 (iii) the failure of the Corporation as
2 conservator or receiver to timely cure a de-
3 fault (other than the issuer's conservator-
4 ship or receivership) under the covered
5 bond program.

6 (C) ASSUMPTION BY TRANSFEREE.—If the
7 Corporation as conservator or receiver effects a
8 transfer described in subparagraph (A) within
9 the 180-day period described in subparagraph
10 (A), the transferee shall take ownership of the
11 cover pool and shall become fully liable on all
12 covered bonds and related obligations of the
13 issuer that are secured by the cover pool.

14 (2) OTHER CIRCUMSTANCES.—An estate shall
15 be automatically created by operation of law and
16 shall exist and be administered separate and apart
17 from an issuer of covered bonds and the conservator-
18 ship, receivership, liquidating agency, or estate in
19 bankruptcy for the issuer or any other assets of the
20 issuer, if—

21 (A) a conservator, receiver, liquidating
22 agent, or trustee in bankruptcy, other than the
23 Corporation, is appointed for the issuer before
24 an uncured default results in the creation of an
25 estate under subsection (b); or

1 (B) in the case of the appointment of the
2 Corporation as conservator or receiver as de-
3 scribed in paragraph (1)(A), the Corporation as
4 conservator or receiver—

5 (i) does not complete the transfer of
6 the related covered bond program to an-
7 other eligible issuer within the 180-period
8 described in paragraph (1)(A);

9 (ii) repudiates the Corporation's fur-
10 ther performance under the related covered
11 bond program; or

12 (iii) fails to timely cure a default
13 (other than the issuer's conservatorship or
14 receivership) under the related covered
15 bond program.

16 A separate estate shall be created for each af-
17 fected covered bond program.

18 (3) ASSETS AND LIABILITIES OF ESTATE.—Any
19 estate created under paragraph (2) shall be com-
20 prised of the cover pool that secures the covered
21 bonds, which shall be automatically released to and
22 held by the estate free and clear of any right, title,
23 interest, or claim of the issuer or any conservator,
24 receiver, liquidating agent, or trustee in bankruptcy
25 for the issuer or any other assets of the issuer. The

1 estate created under paragraph (2) shall be fully lia-
2 ble on the covered bonds and all other covered bonds
3 and related obligations of the issuer (including obli-
4 gations under related derivative transactions) that
5 are secured by the cover pool. The estate shall not
6 be liable on any obligation of the issuer that is not
7 secured by the cover pool.

8 (4) CONTINGENT CLAIM.—Any contingent claim
9 for a deficiency with respect to a covered bond or re-
10 lated obligation for which an estate has been created
11 under paragraph (2) shall be estimated by the con-
12 servator, receiver, liquidating agent, or bankruptcy
13 court for purposes of allowing the claim as a prov-
14 able claim if awaiting the fixing of that contingent
15 claim would unduly delay the resolution of the con-
16 servatorship, receivership, liquidating agency, or
17 bankruptcy case.

18 (5) RESIDUAL INTEREST.—

19 (A) ISSUANCE OF RESIDUAL INTEREST.—
20 Upon the creation of an estate under paragraph
21 (2), and regardless of whether any contingent
22 claim described in paragraph (4) becomes fixed
23 or is estimated, a residual interest in the estate
24 shall be automatically issued by operation of

1 law to the conservator, receiver, liquidating
2 agent, or trustee in bankruptcy for the issuer.

3 (B) NATURE OF RESIDUAL INTEREST.—

4 The residual interest under subparagraph (A)
5 shall—

6 (i) be an exempted security as de-
7 scribed in section 5;

8 (ii) represent the right to any surplus
9 from the cover pool after the covered bonds
10 and all other liabilities of the estate have
11 been paid in full; and

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

14 (6) OBLIGATION OF ISSUER.—After the cre-
15 ation of an estate under paragraph (2), the issuer
16 and its conservator, receiver, liquidating agent, or
17 trustee in bankruptcy shall—

18 (A) transfer to the covered bond regulator,
19 or a designee of the covered bond regulator, all
20 tangible or electronic books, records, files, and
21 other documents or materials relating to the as-
22 sets and liabilities of the estate; and

23 (B) at the election of the covered bond reg-
24 ulator (but subject to and notwithstanding any
25 right of repudiation or rejection held by the

1 conservator, receiver, liquidating agent, or
2 trustee in bankruptcy), continue servicing the
3 cover pool for 120 days after the creation of the
4 estate in return for a fair-market-value fee, as
5 determined by the covered bond regulator, that
6 shall be payable from the estate as an adminis-
7 trative expense.

8 (d) ADMINISTRATION AND RESOLUTION OF ES-
9 TATES.—

10 (1) TRUSTEE, SERVICER, AND ADMINIS-
11 TRATOR.—

12 (A) IN GENERAL.—The covered bond regu-
13 lator shall—

14 (i) act as or appoint the trustee of
15 any estate created under subsection (b)(1)
16 or (c)(2); and

17 (ii) appoint 1 or more servicers or ad-
18 ministrators for the cover pool held by the
19 estate.

20 (B) POWERS AND DUTIES OF SERVICER OR
21 ADMINISTRATOR.—Any servicer or adminis-
22 trator appointed for an estate—

23 (i) shall—

24 (I) collect, realize on (by liquida-
25 tion or other means), and otherwise

1 manage the cover pool held by the es-
2 tate; and

3 (II) invest and use the proceeds
4 and funds received to make all re-
5 maining interest and principal pay-
6 ments on the applicable covered bonds
7 according to their terms (or, if an ac-
8 celeration or similar event occurs
9 under the related transaction docu-
10 ments, at the times specified in the
11 transaction documents) and to satisfy
12 any other liabilities of the estate; and

13 (ii) may borrow or otherwise procure
14 funds for the benefit of the estate on a se-
15 cured or unsecured basis and on a priority,
16 pari passu, or subordinated basis.

17 (C) SUPERVISION OF SERVICER OR ADMIN-
18 ISTRATOR BY THE COVERED BOND REGU-
19 LATOR.—

20 (i) IN GENERAL.—The covered bond
21 regulator shall supervise any servicer or
22 administrator that is appointed for an es-
23 tate created under subsection (b)(1) or
24 (c)(2).

1 (ii) REMOVAL AND REPLACEMENT.—

2 If the covered bond regulator determines
3 that it is in the best interests of an estate,
4 the covered bond regulator may remove or
5 replace any servicer or administrator for
6 the estate.

7 (iii) REPORTS.—Each servicer or ad-
8 ministrator for an estate shall, at such
9 times and in such manner as the covered
10 bond regulator shall require, submit to the
11 covered bond regulator, the owner of the
12 residual interest, and any other person
13 designated by the covered bond regulator,
14 reports that describe the activities of the
15 servicer or administrator on behalf of the
16 estate and the performance of the cover
17 pool held by the estate.

18 (iv) FEES AND EXPENSES.—All fees
19 and expenses of a servicer or administrator
20 for an estate shall be approved by the cov-
21 ered bond regulator and shall be paid from
22 the estate as an administrative expense.

23 (D) JUDICIAL OR ADMINISTRATIVE AC-
24 TIONS.—Any servicer or administrator ap-
25 pointed for an estate may commence or con-

1 tinue judicial or administrative actions, in its
2 own name on behalf of the estate, for the pur-
3 pose of collecting, realizing on, or otherwise
4 managing the cover pool held by the estate or
5 exercising its other powers or duties on behalf
6 of the estate. No covered bondholder, indenture
7 trustee, or other person to whom an estate is or
8 is alleged to be liable may commence or con-
9 tinue any judicial or administrative action
10 against the estate, the trustee, or any servicer
11 or administrator, except for an action to compel
12 the release of funds that are available to the es-
13 tate, that are permitted to be distributed under
14 this Act and regulations promulgated by the
15 covered bond regulator, and that are permitted
16 and required to be distributed under the related
17 transaction documents and any contracts exe-
18 cuted by or on behalf of the estate after its cre-
19 ation under this Act. No court may issue an at-
20 tachment or execution on the assets of an es-
21 tate. Except at the request of the covered bond
22 regulator or as otherwise provided in this sub-
23 paragraph, no court may take any action to re-
24 strain or affect the resolution of an estate
25 under this Act. The covered bond regulator

1 shall be entitled to sovereign immunity in car-
2 rying out the provisions of this Act.

3 (E) CLOSING OF ESTATE.—After an estate
4 has been fully administered, the covered bond
5 regulator shall close the estate and, to the ex-
6 tent determined appropriate by the covered
7 bond regulator, may retain or destroy records of
8 the estate.

9 (2) STUDY ON LIQUIDITY ADVANCES.—The
10 Board of Governors shall conduct a study on wheth-
11 er Federal reserve banks should be empowered to
12 make advances to an estate created under subsection
13 (b)(1) or (c)(2) solely for the purpose of providing
14 liquidity in the case of timing mismatches among the
15 assets and the liabilities of the estate. The Board of
16 Governors shall submit a report to the Committee on
17 Banking, Housing, and Urban Affairs of the Senate
18 and the Committee on Financial Services of the
19 House of Representatives on the results of such
20 study not later than 180 days after the date of en-
21 actment of this Act.

22 **SEC. 5. SECURITIES LAW PROVISIONS.**

23 (a) COVERED BONDS ISSUED OR GUARANTEED BY
24 BANKS.—Any covered bond issued or guaranteed by a
25 bank is a security issued or guaranteed by a bank under

1 Section 3(a)(2) of the Securities Act of 1933, Section
2 3(c)(3) of the Investment Company Act of 1940, and Sec-
3 tion 304(a)(4)(A) of the Trust Indenture Act of 1939. No
4 covered bond issued or guaranteed by a bank is an asset-
5 backed security, as defined in section 3 of the Securities
6 and Exchange Act of 1934 (15 U.S.C. 78c).

7 (b) EXEMPTIONS FOR ESTATES AND RESIDUAL IN-
8 TERESTS.—Any estate that is or may be created under
9 subsection (b) or (c) of section 4 shall be exempt from
10 all securities laws but shall be subject to the reporting re-
11 quirements established by the covered bond regulator
12 under subsection (d)(1)(C)(iii) of section 4 and shall suc-
13 ceed to any requirement of the issuer to file such periodic
14 information, documents, and reports in respect of the cov-
15 ered bonds as specified in section 13(a) of the Securities
16 Exchange Act of 1934 (15 U.S.C. 78m(a)) and any other
17 rule established by Federal Government banking agencies.
18 Any residual interest in an estate that is or may be created
19 under subsection (b) or (c) of section 4 shall be exempt
20 from all securities laws.

21 **SEC. 6. MISCELLANEOUS PROVISIONS.**

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

1 (1) in subparagraph (C), by striking “or” at
2 the 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 under sec-
8 tion 2(3) of the United States Covered Bond
9 Act of 2010),”.

10 (b) NO CONFLICT.—The provisions of this Act shall
11 apply, notwithstanding any provision of the Federal De-
12 posit Insurance Act (12 U.S.C. 1811 et seq.), title 11,
13 United States Code, or any other provision of Federal law
14 with respect to conservatorship, receivership, liquidation,
15 or bankruptcy. No provision of the Federal Deposit Insur-
16 ance Act (12 U.S.C. 1811 et seq.), title 11, United States
17 Code, or any other provision of Federal law with respect
18 to conservatorship, receivership, liquidation, or bank-
19 ruptcy may be construed or applied in a manner that de-
20 feats or interferes with the purpose or operation of this
21 Act.

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