

112TH CONGRESS
1ST SESSION

S. 1835

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 9, 2011

Mrs. HAGAN (for herself, Mr. CORKER, Mr. SCHUMER, and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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”.

6 **SEC. 2. DEFINITIONS.**

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

1 (1) ANCILLARY ASSET.—The term “ancillary
2 asset” means—

3 (A) any interest rate or currency swap as-
4 sociated with 1 or more eligible assets, sub-
5 stitute assets, or other assets in a cover pool;

6 (B) any credit enhancement or liquidity ar-
7 rangement associated with 1 or more eligible
8 assets, substitute assets, or other assets in a
9 cover pool;

10 (C) any guarantee, letter-of-credit right, or
11 other secondary obligation that supports any
12 payment or performance of 1 or more eligible
13 assets, substitute assets, or other assets in a
14 cover pool; and

15 (D) any proceeds of, or other property in-
16 cident to, 1 or more eligible assets, substitute
17 assets, or other assets in a cover pool.

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

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

23 (A) in the case of any eligible issuer de-
24 scribed in subparagraph (A), (B), (C), (D), or
25 (E) of paragraph (9)—

1 (i) 1 or more eligible assets from a
2 single eligible asset class; and

3 (ii) 1 or more substitute assets or an-
4 cillary assets; and

5 (B) in the case of any eligible issuer de-
6 scribed in paragraph (9)(F)—

7 (i) the covered bonds issued by each
8 sponsoring eligible issuer; and

9 (ii) 1 or more substitute assets or an-
10 cillary assets.

11 (4) COVERED BOND.—The term “covered
12 bond” means any recourse debt obligation of an eli-
13 gible issuer that—

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

16 (B) is secured by a perfected security in-
17 terest in or other perfected lien on a cover pool
18 that is owned directly or indirectly by the issuer
19 of the obligation;

20 (C) is issued under a covered bond pro-
21 gram that has been approved by the applicable
22 covered bond regulator;

23 (D) is identified in a register of covered
24 bonds that is maintained by the Secretary; and

1 (E) is not a deposit (as defined in section
2 3(l) of the Federal Deposit Insurance Act (12
3 U.S.C. 1813(l))).

4 (5) COVERED BOND PROGRAM.—The term
5 “covered bond program” means any program of an
6 eligible issuer under which, on the security of a sin-
7 gle cover pool, 1 or more series of covered bonds
8 may be issued.

9 (6) COVERED BOND REGULATOR.—The term
10 “covered bond regulator” means—

11 (A) for any eligible issuer that is subject to
12 the jurisdiction of an appropriate Federal bank-
13 ing agency (as defined in section 3(q) of the
14 Federal Deposit Insurance Act (12 U.S.C.
15 1813(q))), the appropriate Federal banking
16 agency;

17 (B) for any eligible issuer that is described
18 in paragraph (9)(F), that is not subject to the
19 jurisdiction of an appropriate Federal banking
20 agency, and that is sponsored by only 1 eligible
21 issuer, the covered bond regulator for the spon-
22 sor;

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

1 agency, and that is sponsored by more than 1
2 eligible issuer, the covered bond regulator for
3 the sponsor whose covered bonds constitute the
4 largest share of the cover pool of the issuer;
5 and

6 (D) for any other eligible issuer that is not
7 subject to the jurisdiction of an appropriate
8 Federal banking agency, the Board of Gov-
9 ernors of the Federal Reserve System.

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

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

14 (i) any first-lien mortgage loan that is
15 secured by 1-to-4 family residential prop-
16 erty;

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

20 (iii) any loan that is guaranteed, in-
21 sured, or made under chapter 37 of title
22 38, United States Code;

23 (B) in the case of the commercial mort-
24 gage asset class, any commercial mortgage loan
25 (including any multifamily mortgage loan);

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

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

5 (ii) any loan made to a State, munic-
6 ipality, or other governmental authority;

7 and

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

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

17 (E) in the case of the student loan asset
18 class, any student loan (whether guaranteed or
19 nonguaranteed);

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

23 (G) in the case of the small business asset
24 class, any loan that is made or guaranteed

1 under a program of the Small Business Admin-
2 istration; and

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

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

10 (A) a residential mortgage asset class;

11 (B) a commercial mortgage asset class;

12 (C) a public sector asset class;

13 (D) an auto asset class;

14 (E) a student loan asset class;

15 (F) a credit or charge card asset class;

16 (G) a small business asset class; and

17 (H) any other eligible asset class des-
18 igned by the Secretary, by rule and in con-
19 sultation with the covered bond regulators.

20 (9) ELIGIBLE ISSUER.—The term “eligible
21 issuer” means—

22 (A) any insured depository institution and
23 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 broker or dealer that is registered
5 under section 15 of the Securities Exchange
6 Act of 1934 (15 U.S.C. 78o) and is a member
7 of the Securities Investor Protection Corpora-
8 tion, and any subsidiary of such broker or deal-
9 er;

10 (D) any insurer that is supervised by a
11 State insurance regulator, and any subsidiary
12 of such insurer;

13 (E) any nonbank financial company (as de-
14 fined in section 102(a)(4) of the Dodd-Frank
15 Wall Street Reform and Consumer Protection
16 Act (12 U.S.C. 5311(a)(4))) that is supervised
17 by the Board of Governors of the Federal Re-
18 serve System under section 113 of the Dodd-
19 Frank Wall Street Reform and Consumer Pro-
20 tection Act (12 U.S.C. 5323), including any in-
21 termediate holding company supervised as a
22 nonbank financial company, and any subsidiary
23 of such a nonbank financial company; and

1 (F) any issuer that is sponsored by 1 or
2 more eligible issuers for the sole purpose of
3 issuing covered bonds on a pooled basis.

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

7 (11) SECRETARY.—The term “Secretary”
8 means the Secretary of the Department of the
9 Treasury.

10 (12) SUBSTITUTE ASSET.—The term “sub-
11 stitute asset” means—

12 (A) cash;

13 (B) any direct obligation of the United
14 States Government, and any security or other
15 obligation whose full principal and interest are
16 insured or guaranteed by the full faith and
17 credit of the United States Government;

18 (C) any direct obligation of a United
19 States Government corporation or Government-
20 sponsored enterprise of the highest credit qual-
21 ity, and any other security or other obligation
22 of the highest credit quality whose full principal
23 and interest are insured or guaranteed by such
24 corporation or enterprise, except that the out-
25 standing principal amount of these obligations

1 in any cover pool may not exceed an amount
2 equal to 20 percent of the outstanding principal
3 amount of all assets in the cover pool without
4 the approval of the applicable covered bond reg-
5 ulator;

6 (D) any other substitute asset designated
7 by the Secretary, by rule and in consultation
8 with the covered bond regulators; and

9 (E) any deposit account or securities ac-
10 count into which only an asset described in sub-
11 paragraph (A), (B), (C), or (D) may be depos-
12 ited 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 Sec-
18 retary shall, by rule and in consultation with the
19 covered bond regulators, establish a covered bond
20 regulatory oversight program that provides for—

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

1 appropriate by the Secretary to further the pur-
2 poses of this Act;

3 (B) covered bond programs to be main-
4 tained in a manner that is consistent with this
5 Act and safe and sound asset-liability manage-
6 ment and other financial practices; and

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

12 (2) APPROVAL OF EACH COVERED BOND PRO-
13 GRAM.—

14 (A) IN GENERAL.—A covered bond shall be
15 subject to this Act only if the covered bond is
16 issued by an eligible issuer under a covered
17 bond program that is approved by the applica-
18 ble covered bond regulator.

19 (B) APPROVAL PROCESS.—Each covered
20 bond regulator shall apply the standards estab-
21 lished by the Secretary under the oversight pro-
22 gram to evaluate a covered bond program that
23 has been submitted by an eligible issuer for ap-
24 proval. Each covered bond regulator also shall
25 take into account relevant supervisory factors,

1 including safety and soundness considerations,
2 in evaluating a covered bond program that has
3 been submitted for approval. Each covered bond
4 regulator, promptly after approving a covered
5 bond program, shall provide the Secretary with
6 the name of the covered bond program, the
7 name of the eligible issuer, and all other infor-
8 mation reasonably requested by the Secretary in
9 order to update the registry under paragraph
10 (3)(A). Each eligible issuer, promptly after
11 issuing a covered bond under an approved cov-
12 ered bond program, shall provide the Secretary
13 with all information reasonably requested by
14 the Secretary in order to update the registry
15 under paragraph (3)(B).

16 (C) EXISTING COVERED BOND PRO-
17 GRAMS.—A covered bond regulator may approve
18 a covered bond program that is in existence on
19 the date of the 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 bond was
23 issued.

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

4 (E) CEASE AND DESIST AUTHORITY.—The
5 applicable covered bond regulator may direct an
6 eligible issuer to cease issuing covered bonds
7 under an approved covered bond program if the
8 covered bond program is not maintained in a
9 manner that is consistent with this Act and the
10 oversight program and if, after notice that is
11 reasonable under the circumstances, the issuer
12 does not remedy all deficiencies identified by
13 the applicable covered bond regulator.

14 (F) CAP ON THE AMOUNT OF OUT-
15 STANDING COVERED BONDS.—

16 (i) IN GENERAL.—With respect to
17 each eligible issuer that submits a covered
18 bond program for approval, the applicable
19 covered bond regulator shall set, consistent
20 with safety and soundness considerations
21 and the financial condition of the eligible
22 issuer, the maximum amount, as a percent-
23 age of the eligible issuer's total assets, of
24 outstanding covered bonds that the eligible
25 issuer may issue.

1 (ii) REVIEW OF CAP.—The applicable
2 covered bond regulator may, not more fre-
3 quently than quarterly, review the percent-
4 age set under clause (i) and, if safety and
5 soundness considerations or the financial
6 condition of the eligible issuer has
7 changed, increase or decrease such per-
8 centage. Any decrease made pursuant to
9 this clause shall have no effect on existing
10 covered bonds issued by the eligible issuer.

11 (3) REGISTRY.—Under the oversight program,
12 the Secretary shall maintain a registry that is pub-
13 lished on a Web site available to the public and that,
14 for each covered bond program approved by a cov-
15 ered bond regulator, contains—

16 (A) the name of the covered bond program,
17 the name of the eligible issuer, and all other in-
18 formation that the Secretary considers nec-
19 essary to adequately identify the covered bond
20 program and the eligible issuer; and

21 (B) all information that the Secretary con-
22 siders necessary to adequately identify all out-
23 standing covered bonds issued under the cov-
24 ered bond program (including the reports de-

1 scribed in paragraphs (3) and (4) of subsection
2 (b)).

3 (4) FEES.—Each covered bond regulator may
4 levy, on the issuers of covered bonds under the pri-
5 mary supervision of such covered bond regulator,
6 reasonably apportioned fees that such covered bond
7 regulator considers necessary, in the aggregate, to
8 defray the costs of such covered bond regulator car-
9 rying out the provisions of this Act. Such funds shall
10 not be construed to be Government funds or appro-
11 priated monies and shall not be subject to apportion-
12 ment for purposes of chapter 15 of title 31, United
13 States Code, or any other provision of law.

14 (b) MINIMUM OVER-COLLATERALIZATION REQUIRE-
15 MENTS.—

16 (1) REQUIREMENTS ESTABLISHED.—The Sec-
17 retary, by rule and in consultation with the covered
18 bond regulators, shall establish minimum over-
19 collateralization requirements for covered bonds
20 backed by each of the eligible asset classes. The min-
21 imum over-collateralization requirements shall be de-
22 signed to ensure that sufficient eligible assets and
23 substitute assets are maintained in the cover pool to
24 satisfy all principal and interest payments on the
25 covered bonds when due through maturity and shall

1 be based on the credit, collection, and interest rate
2 risks (excluding the liquidity risks) associated with
3 the eligible asset class.

4 (2) ASSET COVERAGE TEST.—The eligible as-
5 sets and the substitute assets in any cover pool shall
6 be required, in the aggregate, to meet at all times
7 the applicable minimum over-collateralization re-
8 quirements.

9 (3) MONTHLY REPORTING.—On a monthly
10 basis, each issuer of covered bonds shall submit a re-
11 port on whether the cover pool that secures the cov-
12 ered bonds meets the applicable minimum over-
13 collateralization requirements to—

14 (A) the Secretary;

15 (B) the applicable covered bond regulator;

16 (C) the applicable indenture trustee;

17 (D) the applicable covered bondholders;

18 and

19 (E) the applicable independent asset mon-
20 itor.

21 (4) INDEPENDENT ASSET MONITOR.—

22 (A) APPOINTMENT.—Each issuer of cov-
23 ered bonds shall appoint the indenture trustee
24 for the covered bonds, or another unaffiliated

1 entity, as an independent asset monitor for the
2 applicable cover pool.

3 (B) DUTIES.—An independent asset mon-
4 itor appointed under subparagraph (A) shall, on
5 an annual or other more frequent periodic basis
6 determined by the Secretary under the over-
7 sight program—

8 (i) verify whether the cover pool meets
9 the applicable minimum over-
10 collateralization requirements; and

11 (ii) report to the Secretary, the appli-
12 cable covered bond regulator, the applica-
13 ble indenture trustee, and the applicable
14 covered bondholders on whether the cover
15 pool meets the applicable minimum over-
16 collateralization requirements.

17 (C) REMOVAL AND REPLACEMENT.—The
18 independent asset monitor appointed under sub-
19 paragraph (A) may be removed and replaced—

20 (i) by a covered bond regulator in any
21 case in which such action is in the best in-
22 terest of the covered bond investors; and

23 (ii) by covered bond holders who own
24 a majority of the outstanding principal

1 amount of the covered bonds secured by
2 the applicable cover pool, at any time.

3 (5) NO LOSS OF STATUS.—Covered bonds shall
4 remain subject to this Act regardless of whether the
5 applicable cover pool ceases to meet the applicable
6 minimum over-collateralization requirements.

7 (6) FAILURE TO MEET REQUIREMENTS.—

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

14 (B) NOTICE REQUIRED.—An issuer of cov-
15 ered bonds shall promptly give the Secretary
16 and the applicable covered bond regulator writ-
17 ten notice if the cover pool securing the covered
18 bonds fails to meet the applicable minimum
19 over-collateralization requirements, if the failure
20 is cured within the time specified in the related
21 transaction documents, or if the failure is not
22 so cured.

23 (c) REQUIREMENTS FOR ELIGIBLE ASSETS.—

24 (1) REQUIREMENTS.—

1 (A) LOANS.—A loan shall not qualify as an
2 eligible asset for so long as the loan is delin-
3 quent for more than 60 consecutive days.

4 (B) SECURITIES.—A security shall not
5 qualify as an eligible asset for so long as the se-
6 curity does not meet any credit-quality require-
7 ment under this Act.

8 (C) ORIGINATION.—An asset shall not
9 qualify as an eligible asset if the asset was not
10 originated in compliance with any rule or super-
11 visory guidance of a Federal agency applicable
12 to the asset at the time of origination.

13 (D) NO DOUBLE PLEDGE.—An asset shall
14 not qualify as an eligible asset for so long as
15 the asset is subject to a prior perfected security
16 interest or other prior perfected lien that has
17 been granted in an unrelated transaction. Noth-
18 ing in this Act shall affect such a prior per-
19 fected security interest or other prior perfected
20 lien, and the rights of such lien holders.

21 (2) FAILURE TO MEET REQUIREMENTS.—Sub-
22 ject to paragraph (1)(D), if an asset in a cover pool
23 does not satisfy any applicable requirement de-
24 scribed in paragraph (1) or any other applicable
25 standard or criterion described in this Act, the over-

1 sight program, or the related transaction documents,
2 the asset shall not qualify as an eligible asset for
3 purposes of the asset coverage test described in sub-
4 section (b)(2). A disqualified asset shall remain in
5 the cover pool unless and until removed by the issuer
6 in compliance with the provisions of this Act, the
7 oversight program, and the related transaction docu-
8 ments. No disqualified asset may be removed from
9 the cover pool after an estate has been created for
10 the related covered bond program under section
11 4(b)(1) or 4(c)(2), except in connection with the
12 management of the cover pool under section
13 4(d)(1)(E).

14 (d) OTHER REQUIREMENTS.—

15 (1) BOOKS AND RECORDS OF ISSUER.—Each
16 issuer of covered bonds shall clearly mark its books
17 and records to identify the assets that comprise the
18 cover pool securing the covered bonds.

19 (2) SCHEDULE OF ELIGIBLE ASSETS AND SUB-
20 STITUTE ASSETS.—Each issuer of covered bonds
21 shall deliver to the applicable indenture trustee and
22 the applicable independent asset monitor, on at least
23 a monthly basis, a schedule that identifies all eligible
24 assets and substitute assets in the cover pool secur-
25 ing the covered bonds.

1 (3) SINGLE ELIGIBLE ASSET CLASS.—No cover
2 pool described in section 2(3)(A) may include eligible
3 assets from more than 1 eligible asset class. No
4 cover pool described in section 2(3)(B) may include
5 covered bonds backed by more than 1 eligible asset
6 class.

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

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

12 (b) DEFAULT ON COVERED BONDS PRIOR TO CON-
13 SERVATORSHIP, RECEIVERSHIP, LIQUIDATION, OR BANK-
14 RUPTCY.—

15 (1) CREATION OF SEPARATE ESTATE.—If an
16 uncured default occurs on a covered bond before the
17 issuer of the covered bond enters conservatorship,
18 receivership, liquidation, or bankruptcy, an estate
19 shall be immediately and automatically created by
20 operation of law and shall exist and be administered
21 separate and apart from the issuer or any subse-
22 quent conservatorship, receivership, liquidating agen-
23 cy, or estate in bankruptcy for the issuer or any
24 other assets of the issuer. A separate estate shall be
25 created for each affected covered bond program.

1 (2) ASSETS AND LIABILITIES OF ESTATE.—Any
2 estate created under paragraph (1) shall be com-
3 prised of the cover pool (including over-
4 collateralization in the cover pool) that secures the
5 covered bond. The cover pool shall be immediately
6 and automatically released to and held by the estate
7 free and clear of any right, title, interest, or claim
8 of the issuer or any conservator, receiver, liquidating
9 agent, or trustee in bankruptcy for the issuer or any
10 other assets of the issuer. The estate shall be fully
11 liable on the covered bond and all other covered
12 bonds and related obligations of the issuer (including
13 obligations under related derivative transactions)
14 that are secured by a perfected security interest in
15 or other perfected lien on the cover pool when the
16 estate is created. The estate shall not be liable on
17 any obligation of the issuer that is not secured by
18 a perfected security interest in or other perfected
19 lien on the cover pool when the estate is created. No
20 conservator, receiver, liquidating agent, or trustee in
21 bankruptcy for the issuer may charge or assess the
22 estate for any claim of the conservator, receiver, liq-
23 uidating agent, or trustee in bankruptcy or the con-
24 servatorship, receivership, liquidating agency, or es-
25 tate in bankruptcy and may not obtain or perfect a

1 security interest in or other lien on the cover pool
2 to secure such a claim.

3 (3) RETENTION OF CLAIMS.—Any holder of a
4 covered bond or related obligation for which an es-
5 tate has become liable under paragraph (2) shall re-
6 tain a claim against the issuer for any deficiency
7 with respect to the covered bond or related obliga-
8 tion. If the issuer enters conservatorship, receiver-
9 ship, liquidation, or bankruptcy, any contingent
10 claim for such a deficiency shall be allowed as a
11 provable claim in the conservatorship, receivership,
12 liquidating agency, or bankruptcy case. The contin-
13 gent claim shall be estimated by the conservator, re-
14 ceiver, liquidating agent, or bankruptcy court for
15 purposes of allowing the claim as a provable claim
16 if awaiting the fixing of the contingent claim would
17 unduly delay the resolution of the conservatorship,
18 receivership, liquidating agency, or bankruptcy case.

19 (4) RESIDUAL INTEREST.—

20 (A) ISSUANCE OF RESIDUAL INTEREST.—

21 Upon the creation of an estate under paragraph
22 (1), a residual interest in the estate shall be im-
23 mediately and automatically issued by operation
24 of law to the issuer.

1 (B) NATURE OF RESIDUAL INTEREST.—

2 The residual interest under subparagraph (A)
3 shall—

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

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

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

12 (5) OBLIGATIONS OF ISSUER.—

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

15 (i) transfer to or at the direction of
16 the trustee for the estate all property of
17 the estate that is in the possession or
18 under the control of the issuer, including
19 all tangible or electronic books, records,
20 files, and other documents or materials re-
21 lating to the assets and liabilities of the es-
22 tate; and

23 (ii) at the election of the trustee or a
24 servicer or administrator for the estate,
25 continue servicing the applicable cover pool

1 for 120 days after the creation of the es-
2 tate in return for a fair-market-value fee,
3 as determined by the trustee in consulta-
4 tion with the applicable covered bond regu-
5 lator, that shall be payable from the estate
6 as an administrative expense.

7 (B) OBLIGATIONS ABSOLUTE.—Neither
8 the issuer, whether acting as debtor in posses-
9 sion or in any other capacity, nor any conser-
10 vator, receiver, liquidating agent, or trustee in
11 bankruptcy for the issuer or any other assets of
12 the issuer may disaffirm, repudiate, or reject
13 the obligation to turn over property or to con-
14 tinue servicing the cover pool as provided in
15 subparagraph (A).

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

19 (1) CORPORATION CONSERVATORSHIP OR RE-
20 CEIVERSHIP.—

21 (A) IN GENERAL.—If the Corporation is
22 appointed as conservator or receiver for an
23 issuer of covered bonds before an uncured de-
24 fault results in the creation of an estate under
25 subsection (b), the Corporation as conservator

1 or receiver shall have an exclusive right, during
2 the 1-year period beginning on the date of the
3 appointment, to transfer any cover pool owned
4 by the issuer in its entirety, together with all
5 covered bonds and related obligations that are
6 secured by a perfected security interest in or
7 other perfected lien on the cover pool, to an-
8 other eligible issuer that meets all conditions
9 and requirements specified in the related trans-
10 action documents. The Corporation as conser-
11 vator or receiver may not remove any asset
12 from the cover pool, except to the extent other-
13 wise agreed by a transferee that has assumed
14 the covered bond program pursuant to subpara-
15 graph (C).

16 (B) OBLIGATIONS DURING 1-YEAR PE-
17 RIOD.—During the 1-year period described in
18 subparagraph (A), the Corporation as conser-
19 vator or receiver shall fully and timely satisfy
20 all monetary and nonmonetary obligations of
21 the issuer under all covered bonds and the re-
22 lated transaction documents and shall fully and
23 timely cure all defaults by the issuer (other
24 than its conservatorship or receivership) under

1 the applicable covered bond program, in each
2 case, until the earlier of—

3 (i) the transfer of the applicable cov-
4 ered bond program to another eligible
5 issuer as provided in subparagraph (A); or

6 (ii) the delivery to the Secretary, the
7 applicable covered bond regulator, the ap-
8 plicable indenture trustee, and the applica-
9 ble covered bondholders of a written notice
10 from the Corporation as conservator or re-
11 ceiver electing to cease further perform-
12 ance under the applicable covered bond
13 program.

14 (C) ASSUMPTION BY TRANSFEREE.—If the
15 Corporation as conservator or receiver transfers
16 a covered bond program to another eligible
17 issuer within the 1-year period as provided in
18 subparagraph (A), the transferee shall take
19 ownership of the applicable cover pool and shall
20 become fully liable on all covered bonds and re-
21 lated obligations of the issuer that are secured
22 by a perfected security interest in or other per-
23 fected lien on the cover pool.

24 (2) OTHER CIRCUMSTANCES.—An estate shall
25 be immediately and automatically created by oper-

1 ation of law and shall exist and be administered sep-
2 arate and apart from an issuer of covered bonds and
3 any conservatorship, receivership, liquidating agency,
4 or estate in bankruptcy for the issuer or any other
5 assets of the issuer, if—

6 (A) a conservator, receiver, liquidating
7 agent, or trustee in bankruptcy, other than the
8 Corporation, is appointed for the issuer before
9 an uncured default results in the creation of an
10 estate under subsection (b); or

11 (B) in the case of the appointment of the
12 Corporation as conservator or receiver as de-
13 scribed in paragraph (1)(A), the Corporation as
14 conservator or receiver—

15 (i) does not complete the transfer of
16 the applicable covered bond program to an-
17 other eligible issuer within the 1-year pe-
18 riod as provided in paragraph (1)(A);

19 (ii) delivers to the Secretary, the ap-
20 plicable covered bond regulator, the appli-
21 cable indenture trustee, and the applicable
22 covered bondholders a written notice elect-
23 ing to cease further performance under the
24 applicable covered bond program; or

1 (iii) fails to fully and timely satisfy all
2 monetary and nonmonetary obligations of
3 the issuer under the covered bonds and the
4 related transaction documents or to fully
5 and timely cure all defaults by the issuer
6 (other than its conservatorship or receiver-
7 ship) under the applicable covered bond
8 program.

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

11 (3) ASSETS AND LIABILITIES OF ESTATE.—Any
12 estate created under paragraph (2) shall be com-
13 prised of the cover pool (including over-
14 collateralization in the cover pool) that secures the
15 covered bonds. The cover pool shall be immediately
16 and automatically released to and held by the estate
17 free and clear of any right, title, interest, or claim
18 of the issuer or any conservator, receiver, liquidating
19 agent, or trustee in bankruptcy for the issuer or any
20 other assets of the issuer. The estate shall be fully
21 liable on the covered bonds and all other covered
22 bonds and related obligations of the issuer (including
23 obligations under related derivative transactions)
24 that are secured by a perfected security interest in
25 or other perfected lien on the cover pool when the

1 estate is created. The estate shall not be liable on
2 any obligation of the issuer that is not secured by
3 a perfected security interest in or other perfected
4 lien on the cover pool when the estate is created. No
5 conservator, receiver, liquidating agent, or trustee in
6 bankruptcy for the issuer may charge or assess the
7 estate for any claim of the conservator, receiver, liq-
8 uidating agent, or trustee in bankruptcy or the con-
9 servatorship, receivership, liquidating agency, or es-
10 tate in bankruptcy and may not obtain or perfect a
11 security interest in or other lien on the cover pool
12 to secure such a claim.

13 (4) CONTINGENT CLAIM.—Any contingent claim
14 against an issuer for a deficiency with respect to a
15 covered bond or related obligation for which an es-
16 tate has become liable under paragraph (3) shall be
17 allowed as a provable claim in the conservatorship,
18 receivership, liquidating agency, or bankruptcy case
19 for the issuer. The contingent claim shall be esti-
20 mated by the conservator, receiver, liquidating
21 agent, or bankruptcy court for purposes of allowing
22 the claim as a provable claim if awaiting the fixing
23 of the contingent claim would unduly delay the reso-
24 lution of the conservatorship, receivership, liqui-
25 dating agency, or bankruptcy case.

1 (5) RESIDUAL INTEREST.—

2 (A) ISSUANCE OF RESIDUAL INTEREST.—

3 Upon the creation of an estate under paragraph
4 (2), and regardless of whether any contingent
5 claim described in paragraph (4) becomes fixed
6 or is estimated, a residual interest in the estate
7 shall be immediately and automatically issued
8 by operation of law to the conservator, receiver,
9 liquidating agent, or trustee in bankruptcy for
10 the issuer.

11 (B) NATURE OF RESIDUAL INTEREST.—

12 The residual interest under subparagraph (A)
13 shall—

14 (i) be an exempted security as de-
15 scribed in section 5;

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

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

22 (6) OBLIGATIONS OF ISSUER.—

23 (A) IN GENERAL.—After the creation of an
24 estate under paragraph (2), the issuer and its

1 conservator, receiver, liquidating agent, or
2 trustee in bankruptcy shall—

3 (i) transfer to or at the direction of
4 the trustee for the estate all property of
5 the estate that is in the possession or
6 under the control of the issuer or its con-
7 servator, receiver, liquidating agent, or
8 trustee in bankruptcy, including all tan-
9 gible or electronic books, records, files, and
10 other documents or materials relating to
11 the assets and liabilities of the estate; and

12 (ii) at the election of the trustee or a
13 servicer or administrator for the estate,
14 continue servicing the applicable cover pool
15 for 120 days after the creation of the es-
16 tate in return for a fair-market-value fee,
17 as determined by the trustee in consulta-
18 tion with the applicable covered bond regu-
19 lator, that shall be payable from the estate
20 as an administrative expense.

21 (B) OBLIGATIONS ABSOLUTE.—Neither
22 the issuer, whether acting as debtor in posses-
23 sion or in any other capacity, nor any conser-
24 vator, receiver, liquidating agent, or trustee in
25 bankruptcy for the issuer or any other assets of

1 the issuer may disaffirm, repudiate, or reject
 2 the obligation to turn over property or to con-
 3 tinue servicing the cover pool as provided in
 4 subparagraph (A).

5 (d) ADMINISTRATION AND RESOLUTION OF ES-
 6 TATES.—

7 (1) TRUSTEE, SERVICER, AND ADMINIS-
 8 TRATOR.—

9 (A) IN GENERAL.—Upon the creation of
 10 any estate under subsection (b)(1) or (c)(2), the
 11 applicable covered bond regulator shall—

12 (i) appoint the trustee for the estate;

13 (ii) appoint 1 or more servicers or ad-
 14 ministrators for the cover pool held by the
 15 estate; and

16 (iii) give the Secretary, the applicable
 17 indenture trustee, the applicable covered
 18 bondholders, and the owner of the residual
 19 interest written notice of the creation of
 20 the estate.

21 (B) TERMS AND CONDITIONS OF APPOINT-
 22 MENT.—All terms and conditions of any ap-
 23 pointment under paragraph (1), including the
 24 terms and conditions relating to compensation,
 25 shall conform to the requirements of this Act

1 and the oversight program and otherwise shall
2 be determined by the applicable covered bond
3 regulator.

4 (C) QUALIFICATION.—The applicable cov-
5 ered bond regulator may require the trustee or
6 any servicer or administrator for an estate to
7 post in favor of the United States, for the ben-
8 efit of the estate, a bond that is conditioned on
9 the faithful performance of the duties of the
10 trustee or the servicer or administrator. The
11 covered bond regulator shall determine the
12 amount of any bond required under this sub-
13 paragraph and the sufficiency of the surety on
14 the bond. A proceeding on a bond required
15 under this subparagraph may not be com-
16 menced after two years after the date on which
17 the trustee or the servicer or administrator was
18 discharged.

19 (D) POWERS AND DUTIES OF TRUSTEE.—
20 The trustee for an estate is the representative
21 of the estate and, subject to the provisions of
22 this Act, has capacity to sue and be sued. The
23 trustee shall—

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

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

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

10 (iv) after the estate has been fully ad-
11 ministered, close the estate.

12 (E) POWERS AND DUTIES OF SERVICER OR
13 ADMINISTRATOR.—Any servicer or adminis-
14 trator for an estate—

15 (i) shall—

16 (I) collect, realize on (by liquida-
17 tion or other means), and otherwise
18 manage the cover pool held by the es-
19 tate in compliance with this Act, the
20 oversight program, and the related
21 transaction documents and in a man-
22 ner consistent with maximizing the
23 value and the proceeds of the cover
24 pool;

1 (II) deposit or invest all proceeds
2 and funds received in compliance with
3 this Act, the oversight program, and
4 the related transaction documents and
5 in a manner consistent with maxi-
6 mizing the net return to the estate,
7 taking into account the safety of the
8 deposit or investment; and

9 (III) apply, or direct the trustee
10 for the estate to apply, all proceeds
11 and funds received and the net return
12 on any deposit or investment to make
13 distributions in compliance with para-
14 graphs (3) and (4);

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

20 (iii) shall, at the times and in the
21 manner required by the applicable covered
22 bond regulator, submit to the covered bond
23 regulator, the Secretary, the applicable in-
24 denture trustee, the applicable covered
25 bondholders, the owner of the residual in-

1 terest, and any other person designated by
2 the covered bond regulator, reports that
3 describe the activities of the servicer or ad-
4 ministrators on behalf of the estate, the
5 performance of the cover pool held by the
6 estate, and distributions made by the es-
7 tate; and

8 (iv) shall assist the trustee in pre-
9 paring the final report and the final ac-
10 count of the administration of the estate.

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

22 (G) REMOVAL AND REPLACEMENT OF
23 TRUSTEE, SERVICER, AND ADMINISTRATOR.—If
24 the covered bond regulator determines that it is
25 in the best interests of an estate, the covered

1 bond regulator may remove or replace the trust-
2 ee or any servicer or administrator for the es-
3 tate. The removal of the trustee or any servicer
4 or administrator does not abate any pending ac-
5 tion or proceeding involving the estate, and any
6 successor or other trustee, servicer, or adminis-
7 trator shall be substituted as a party in the ac-
8 tion or proceeding.

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

22 (I) APPROVED FEES AND EXPENSES.—Un-
23 less otherwise provided in the applicable terms
24 and conditions of appointment or employment,
25 all approved fees and expenses of the trustee,

1 any servicer or administrator, or any profes-
2 sional person employed by the trustee or any
3 servicer or administrator shall be payable from
4 the estate as administrative expenses.

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

14 (K) ACTIONS AGAINST ESTATE.—No court
15 may issue an attachment or execution on any
16 property of an estate. Except at the request of
17 the applicable covered bond regulator or as oth-
18 erwise provided in this subparagraph or sub-
19 paragraph (J), no court may take any action to
20 restrain or affect the resolution of an estate
21 under this Act. No person (including the appli-
22 cable indenture trustee and any applicable cov-
23 ered bondholder) may commence or continue
24 any judicial, administrative, or other action
25 against the estate, the trustee, or any servicer

1 or administrator or take any other act to affect
2 the estate, the trustee, or any servicer or ad-
3 ministrator that is not expressly permitted by
4 this Act, the oversight program, and the related
5 transaction documents, except for a judicial or
6 administrative action to compel the release of
7 funds that—

8 (i) are available to the estate;

9 (ii) are permitted to be distributed
10 under this Act and the oversight program;

11 and

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

16 (L) SOVEREIGN IMMUNITY.—Except in
17 connection with a guarantee provided under
18 paragraph (4) or any other contract executed
19 by the applicable covered bond regulator under
20 this section 4, the Secretary and the covered
21 bond regulator shall be entitled to sovereign im-
22 munity in carrying out the provisions of this
23 Act.

24 (2) BORROWINGS AND CREDIT.—

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

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

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

1 against and interests in the estate, except
2 for the residual interest, if the servicer or
3 administrator certifies to the applicable
4 covered bond regulator that, in the busi-
5 ness judgment of the servicer or adminis-
6 trator, the borrowing or credit is in the
7 best interests of the estate and is expected
8 to maximize the value and the proceeds of
9 the cover pool held by the estate; or

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

17 (I) the servicer or administrator
18 certifies to the applicable covered
19 bond regulator that, in the business
20 judgment of the servicer or adminis-
21 trator, the borrowing or credit is in
22 the best interests of the estate and is
23 expected to maximize the value and
24 the proceeds of the cover pool held by
25 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
7 otherwise obtaining credit under this paragraph
8 (2) unless the servicer or administrator acted in
9 bad faith or in willful disregard of its duties.

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

1 (3) DISTRIBUTIONS BY ESTATE.—All payments
2 or other distributions by an estate shall be made at
3 the times, in the amounts, and in the manner set
4 forth in the covered bonds, the related transaction
5 documents, and any contracts executed by or on be-
6 half of the estate in compliance with this Act and
7 the oversight program. To the extent that the rel-
8 ative priority of the liabilities of the estate are not
9 specified in or otherwise ascertainable from their
10 terms, distributions shall be made on each distribu-
11 tion date under the covered bonds, the related trans-
12 action documents, or any contracts executed by or
13 on behalf of the estate—

14 (A) first, to pay accrued and unpaid super-
15 priority claims under paragraph (2)(B)(ii);

16 (B) second, to pay accrued and unpaid ad-
17 ministrative expense claims under paragraph
18 (1)(I), paragraph (2)(B)(ii), section 4(b)(5)(A),
19 or section 4(c)(6)(A);

20 (C) third, to pay—

21 (i) accrued and unpaid claims under
22 the covered bonds and the related trans-
23 action documents according to their terms;
24 and

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

3 (D) fourth, to pay accrued and unpaid
4 subordinated claims under paragraph (2)(B)(i).

5 (4) DISTRIBUTIONS ON RESIDUAL INTEREST.—

6 After all other claims against and interests in an es-
7 tate have been fully and irrevocably paid or
8 defeased, the trustee shall or shall cause a servicer
9 or administrator to distribute the remainder of the
10 estate to or at the direction of the owner of the re-
11 sidual interest. No interim distribution on the resid-
12 ual interest may be made before that time, unless
13 the applicable covered bond regulator—

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

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

23 (5) CLOSING OF ESTATE.—After an estate has
24 been fully administered, the trustee shall close the
25 estate and, except as otherwise directed by the appli-

1 cable covered bond regulator, shall destroy all
2 records of the estate.

3 (6) NO LOSS TO TAXPAYERS.—Taxpayers shall
4 bear no losses from the resolution of an estate under
5 this Act. To the extent that the Secretary and the
6 Corporation jointly determine that the Deposit In-
7 surance Fund incurred actual losses that are higher
8 because the covered bond program of an insured de-
9 pository institution was subject to resolution under
10 this Act rather than as part of the receivership of
11 the institution under the Federal Deposit Insurance
12 Act (12 U.S.C. 1811 et seq.), the Corporation may
13 exercise the powers available under section 7(b) of
14 the Federal Deposit Insurance Act (12 U.S.C.
15 1817(b)) to recover an amount equal to those losses
16 after consulting with the Secretary.

17 **SEC. 5. SECURITIES LAW PROVISIONS.**

18 (a) SECURITIES LAWS TREATMENT OF COVERED
19 BONDS.—

20 (1) TREATMENT OF CERTAIN BANKS AND
21 OTHER ENTITIES.—

22 (A) SECURITIES LAWS COVERAGE.—A cov-
23 ered bond described in subparagraph (C) is and
24 shall be treated as a security issued or guaran-
25 teed by a bank under section 3(a)(2) of the Se-

1 securities Act of 1933 (15 U.S.C. 77c(a)(2)), sec-
2 tion 3(c)(3) of the Investment Company Act of
3 1940 (15 U.S.C. 80a-3(c)(3)), and section
4 304(a)(4)(A) of the Trust Indenture Act of
5 1939 (15 U.S.C. 77ddd(a)(4)(A)), as applica-
6 ble.

7 (B) SECURITIES EXCHANGE ACT OF 1934
8 EXEMPTION.—No covered bond described in
9 subparagraph (C) shall be treated as an asset-
10 backed security, as that term is defined in sec-
11 tion 3 of the Securities Exchange Act of 1934
12 (15 U.S.C. 78c), or a structured finance prod-
13 uct, as that term is defined in section 939F of
14 the Dodd-Frank Wall Street Reform and Con-
15 sumer Protection Act (15 U.S.C. 78o-9).

16 (C) APPLICABILITY.—A covered bond de-
17 scribed in this subparagraph is a covered bond
18 that is—

- 19 (i) issued or guaranteed by a bank; or
20 (ii) issued by an eligible issuer de-
21 scribed in section 2(9)(F) and sponsored
22 solely by 1 or more banks for the sole pur-
23 pose of issuing covered bonds.

24 (D) REGULATIONS.—Each covered bond
25 regulator for 1 or more banks shall adopt, as

1 part of the securities regulations of the covered
2 bond regulator, a separate scheme of registra-
3 tion, disclosure, and reporting obligations and
4 exemptions for offers or sales of covered bonds
5 described in subparagraph (C), which regula-
6 tions shall—

7 (i) provide for uniform and consistent
8 standards for such covered bond issuers,
9 with respect to any such covered bonds, to
10 the extent possible; and

11 (ii) be consistent with existing regula-
12 tions governing offers or sales of non-
13 convertible debt.

14 (2) TREATMENT OF CERTAIN ASSOCIATIONS
15 AND COOPERATIVE BANKS.—

16 (A) SECURITIES LAWS COVERAGE.—A cov-
17 ered bond described in subparagraph (C) is and
18 shall be treated as a security issued by an enti-
19 ty under section 3(a)(5)(A) of the Securities
20 Act of 1933 (15 U.S.C. 77c(a)(5)(A)), section
21 3(c)(3) of the Investment Company Act of 1940
22 (15 U.S.C. 80a-3(c)(3)), and section
23 304(a)(4)(A) of the Trust Indenture Act of
24 1939 (15 U.S.C. 77ddd(a)(4)(A)), as applica-
25 ble.

1 (B) SECURITIES EXCHANGE ACT OF 1934
2 EXEMPTION.—No covered bond described in
3 subparagraph (C) shall be treated as an asset-
4 backed security, as that term is defined in sec-
5 tion 3 of the Securities Exchange Act of 1934
6 (15 U.S.C. 78c), or a structured finance prod-
7 uct, as that term is defined in section 939F of
8 the Dodd-Frank Wall Street Reform and Con-
9 sumer Protection Act (15 U.S.C. 78o–9).

10 (C) APPLICABILITY.—A covered bond de-
11 scribed in this subparagraph is a covered bond
12 that is—

13 (i) issued by an entity described in
14 section 3(a)(5)(A) of the Securities Act of
15 1933 (15 U.S.C. 77c(a)(5)(A)); or

16 (ii) issued by an eligible issuer de-
17 scribed in section 2(9)(F) and sponsored
18 solely by 1 or more such entities for the
19 sole purpose of issuing covered bonds.

20 (D) REGULATIONS.—Each covered bond
21 regulator for 1 or more entities described in
22 section 3(a)(5)(A) of the Securities Act of 1933
23 (15 U.S.C. 77c(a)(5)(A)) shall adopt, as part of
24 the securities regulations of the covered bond
25 regulator, a separate scheme of registration,

1 disclosure, and reporting obligations and ex-
2 emptions for offers or sales of covered bonds
3 described in subparagraph (C), which regula-
4 tions shall—

5 (i) provide for uniform and consistent
6 standards for such covered bond issuers,
7 with respect to any such covered bonds, to
8 the extent possible; and

9 (ii) shall be consistent with regula-
10 tions governing offers or sales of non-
11 convertible debt.

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

17 (b) EXEMPTIONS FOR ESTATES.—Any estate that is
18 or may be created under section 4(b)(1) or 4(c)(2) shall
19 be exempt from all State and Federal securities laws, ex-
20 cept that such estate—

21 (1) shall be subject to all anti-fraud provisions
22 of such securities laws;

23 (2) shall be subject to the reporting require-
24 ments established by the applicable covered bond
25 regulator under section 4(d)(1)(E)(iii); and

1 (3) shall succeed to any requirement of the
2 issuer to file such periodic information, documents,
3 and reports in respect of the covered bonds, as speci-
4 fied in section 13(a) of the Securities Exchange Act
5 of 1934 (15 U.S.C. 78m(a)) or rules established by
6 an appropriate Federal banking agency.

7 (c) EXEMPTIONS FOR RESIDUAL INTERESTS.—Any
8 residual interest in an estate that is or may be created
9 under section 4(b)(1) or 4(c)(2) shall be exempt from all
10 State and Federal securities laws.

11 **SEC. 6. MISCELLANEOUS PROVISIONS.**

12 (a) DOMESTIC SECURITIES.—Section 106(a)(1) of
13 the Secondary Mortgage Market Enhancement Act of
14 1984 (15 U.S.C. 77r-1(a)(1)) is amended—

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

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

19 (3) by inserting after subparagraph (D) the fol-
20 lowing:

21 “(E) covered bonds (as defined in section
22 2 of the United States Covered Bond Act of
23 2011),”.

24 (b) NO CONFLICT.—The provisions of this Act shall
25 apply, notwithstanding any provision of the Federal De-

1 posit Insurance Act (12 U.S.C. 1811 et seq.), title 11,
2 United States Code, title II of the Dodd-Frank Wall
3 Street Reform and Consumer Protection Act (12 U.S.C.
4 5381 et seq.), or any other provision of Federal law with
5 respect to conservatorship, receivership, liquidation, or
6 bankruptcy. No provision of the Federal Deposit Insur-
7 ance Act (12 U.S.C. 1811 et seq.), title 11, United States
8 Code, title II of the Dodd-Frank Wall Street Reform and
9 Consumer Protection Act (12 U.S.C. 5381 et seq.), or any
10 other provision of Federal law with respect to conservator-
11 ship, receivership, liquidation, or bankruptcy may be con-
12 strued or applied in a manner that defeats or interferes
13 with the purpose or operation of this Act.

14 (c) ANNUAL REPORT TO CONGRESS.—The covered
15 bond regulators shall, annually—

16 (1) submit a joint report to the Congress de-
17 scribing the current state of the covered bond mar-
18 ket in the United States; and

19 (2) testify on the current state of the covered
20 bond market in the United States before the Com-
21 mittee on Financial Services of the House of Rep-
22 resentatives and the Committee on Banking, Hous-
23 ing, and Urban Affairs of the Senate.

○