

[COMMITTEE PRINT]

[Showing H.R. 940 as reported by the Subcommittee on Capital Markets and Government Sponsored Enterprises on May 4, 2011]

112TH CONGRESS
1ST SESSION

H. R. 940

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

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “United States Covered
3 Bond Act of 2011”.

4 **SEC. 2. DEFINITIONS.**

5 For purposes of this Act, the following definitions
6 shall apply:

7 (1) **ANCILLARY ASSET.**—The term “ancillary
8 asset” means—

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

12 (B) any credit enhancement or liquidity ar-
13 rangement associated with 1 or more eligible
14 assets, substitute assets, or other assets in a
15 cover pool;

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

21 (D) any proceeds of, or other property in-
22 cident to, 1 or more eligible assets, substitute
23 assets, or other assets in a cover pool.

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

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

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

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

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

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

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

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

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

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

22 (B) is secured by a perfected security in-
23 terest in or other perfected lien on a cover pool
24 that is owned directly or indirectly by the issuer
25 of the obligation;

1 (C) is issued under a covered bond pro-
2 gram that has been approved by the applicable
3 covered bond regulator;

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

6 (E) is not a deposit (as defined in section
7 3(l) of the Federal Deposit Insurance Act (12
8 U.S.C. 1813(l))).

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

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

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

22 (B) for any eligible issuer that is described
23 in paragraph (9)(D), that is not subject to the
24 jurisdiction of an appropriate Federal banking
25 agency, and that is sponsored by only 1 eligible

1 issuer, the covered bond regulator for the spon-
2 sor;

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

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

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

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

18 (i) any first-lien mortgage loan that is
19 secured by 1-to-4 family residential prop-
20 erty;

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

1 (iii) any loan that is guaranteed, in-
2 sured, or made under chapter 37 of title
3 38, United States Code;

4 (B) in the case of the commercial mort-
5 gage asset class, any commercial mortgage loan
6 (including any multifamily mortgage loan);

7 (C) in the case of the public sector asset
8 class—

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

11 (ii) any loan made to a State, munici-
12 pality, or other governmental authority;

13 and

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

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

23 (E) in the case of the student loan asset
24 class, any student loan (whether guaranteed or
25 nonguaranteed);

1 (F) 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;

4 (G) in the case of the small business asset
5 class, any loan that is made or guaranteed
6 under a program of the Small Business Admin-
7 istration; and

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

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

15 (A) a residential mortgage asset class;

16 (B) a commercial mortgage asset class;

17 (C) a public sector asset class;

18 (D) an auto asset class;

19 (E) a student loan asset class;

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

21 (G) a small business asset class; and

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

1 (9) ELIGIBLE ISSUER.—The term “eligible
2 issuer” means—

3 (A) any insured depository institution and
4 any subsidiary of such institution;

5 (B) any bank holding company, any sav-
6 ings and loan holding company, and any sub-
7 sidiary of any of such companies;

8 (C) any nonbank financial company (as de-
9 fined in section 102(a)(4) of the Dodd-Frank
10 Wall Street Reform and Consumer Protection
11 Act (12 U.S.C. 5311(a)(4))) that is approved as
12 an eligible issuer by the applicable covered bond
13 regulator and any subsidiary of such company;
14 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”
22 means the Secretary of the Department of the
23 Treasury.

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

1 (A) cash;

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

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

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

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

1 (F) any deposit account or securities ac-
2 count into which only an asset described in sub-
3 paragraph (A), (B), (C), (D), or (E) may be de-
4 posited or credited.

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

7 (a) ESTABLISHMENT.—

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

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

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

24 (C) any estate created under section 4 to
25 be administered in a manner that is consistent

1 with maximizing the value and the proceeds of
2 the related cover pool in a resolution under this
3 Act.

4 (2) APPROVAL OF EACH COVERED BOND PRO-
5 GRAM.—

6 (A) IN GENERAL.—A covered bond shall be
7 subject to this Act only if the covered bond is
8 issued by an eligible issuer under a covered
9 bond program that is approved by the applica-
10 ble covered bond regulator.

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

1 order to update the registry under paragraph
2 (3)(A). Each eligible issuer, promptly after
3 issuing a covered bond under an approved cov-
4 ered bond program, shall provide the Secretary
5 with all information reasonably requested by
6 the Secretary in order to update the registry
7 under paragraph (3)(B).

8 (C) EXISTING COVERED BOND PRO-
9 GRAMS.—A covered bond regulator may approve
10 a covered bond program that is in existence on
11 the date of the enactment of this Act. Upon
12 such approval, each covered bond under the
13 covered bond program shall be subject to this
14 Act, regardless of when the covered bond was
15 issued.

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

19 (E) CEASE AND DESIST AUTHORITY.—The
20 applicable covered bond regulator may direct an
21 eligible issuer to cease issuing covered bonds
22 under an approved covered bond program if the
23 covered bond program is not maintained in a
24 manner that is consistent with this Act and the
25 oversight program and if, after notice that is

1 reasonable under the circumstances, the issuer
2 does not remedy all deficiencies identified by
3 the applicable covered bond regulator.

4 (3) REGISTRY.—Under the oversight program,
5 the Secretary shall maintain a registry that is pub-
6 lished on a Web site available to the public and that,
7 for each covered bond program approved by a cov-
8 ered bond regulator, contains—

9 (A) the name of the covered bond program,
10 the name of the eligible issuer, and all other in-
11 formation that the Secretary considers nec-
12 essary to adequately identify the covered bond
13 program and the eligible issuer; and

14 (B) all information that the Secretary con-
15 sidered necessary to adequately identify all out-
16 standing covered bonds issued under the cov-
17 ered bond program (including the reports de-
18 scribed in paragraphs (3) and (4) of subsection
19 (b)).

20 (4) FEES.—Each covered bond regulator may
21 levy, on the issuers of covered bonds under the pri-
22 mary supervision of such covered bond regulator,
23 reasonably apportioned fees that such covered bond
24 regulator considers necessary, in the aggregate, to
25 defray the costs of such covered bond regulator car-

1 rying out the provisions of this Act. Such funds shall
2 not be construed to be Government funds or appro-
3 priated monies and shall not be subject to apporportion-
4 ment for purposes of chapter 15 of title 31, United
5 States Code, or any other provision of law.

6 (b) MINIMUM OVER-COLLATERALIZATION REQUIRE-
7 MENTS.—

8 (1) REQUIREMENTS ESTABLISHED.—The Sec-
9 retary, by rule and in consultation with the covered
10 bond regulators, shall establish minimum over-
11 collateralization requirements for covered bonds
12 backed by each of the eligible asset classes. The min-
13 imum over-collateralization requirements shall be de-
14 signed to ensure that sufficient eligible assets and
15 substitute assets are maintained in the cover pool to
16 satisfy all principal and interest payments on the
17 covered bonds when due through maturity and shall
18 be based on the credit, collection, and interest rate
19 risks (excluding the liquidity risks) associated with
20 the eligible asset class.

21 (2) ASSET COVERAGE TEST.—The eligible as-
22 sets and the substitute assets in any cover pool shall
23 be required, in the aggregate, to meet at all times
24 the applicable minimum over-collateralization re-
25 quirements.

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

6 (A) the Secretary;

7 (B) the applicable covered bond regulator;

8 (C) the applicable indenture trustee;

9 (D) the applicable covered bondholders;

10 and

11 (E) the applicable independent asset mon-
12 itor.

13 (4) INDEPENDENT ASSET MONITOR.—

14 (A) APPOINTMENT.—Each issuer of cov-
15 ered bonds shall appoint the indenture trustee
16 for the covered bonds, or another unaffiliated
17 entity, as an independent asset monitor for the
18 applicable cover pool.

19 (B) DUTIES.—An independent asset mon-
20 itor appointed under subparagraph (A) shall, on
21 an annual or other more frequent periodic basis
22 determined by the Secretary under the over-
23 sight program—

1 (i) verify whether the cover pool meets
2 the applicable minimum over-
3 collateralization requirements; and

4 (ii) report to the Secretary, the appli-
5 cable covered bond regulator, the applica-
6 ble indenture trustee, and the applicable
7 covered bondholders on whether the cover
8 pool meets the applicable minimum over-
9 collateralization requirements.

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

14 (6) FAILURE TO MEET REQUIREMENTS.—

15 (A) IN GENERAL.—If a cover pool fails to
16 meet the applicable minimum over-
17 collateralization requirements, and if the failure
18 is not cured within the time specified in the re-
19 lated transaction documents, the failure shall be
20 an uncured default for purposes of section 4(a).

21 (B) NOTICE REQUIRED.—An issuer of cov-
22 ered bonds shall promptly give the Secretary
23 and the applicable covered bond regulator writ-
24 ten notice if the cover pool securing the covered
25 bonds fails to meet the applicable minimum

1 over-collateralization requirements, if the failure
2 is cured within the time specified in the related
3 transaction documents, or if the failure is not
4 so cured.

5 (c) REQUIREMENTS FOR ELIGIBLE ASSETS.—

6 (1) REQUIREMENTS.—

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

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

14 (C) ORIGINATION.—An asset shall not
15 qualify as an eligible asset if the asset was not
16 originated in compliance with any rule or super-
17 visory guidance of a Federal agency applicable
18 to the asset at the time of origination.

19 (D) NO DOUBLE PLEDGE.—An asset shall
20 not qualify as an eligible asset for so long as
21 the asset is subject to a prior perfected security
22 interest or other prior perfected lien that has
23 been granted in an unrelated transaction. Noth-
24 ing in this Act shall affect such a prior per-

1 perfected security interest or other prior perfected
2 lien.

3 (2) FAILURE TO MEET REQUIREMENTS.—If an
4 asset in a cover pool does not satisfy any applicable
5 requirement described in paragraph (1) or any other
6 applicable standard or criterion described in this
7 Act, the oversight program, or the related trans-
8 action documents, the asset shall not qualify as an
9 eligible asset for purposes of the asset coverage test
10 described in subsection (b)(2). A disqualified asset
11 shall remain in the cover pool unless and until re-
12 moved by the issuer in compliance with the provi-
13 sions of this Act, the oversight program, and the re-
14 lated transaction documents. No disqualified asset
15 may be removed from the cover pool after an estate
16 has been created for the related covered bond pro-
17 gram under section 4(b)(1) or 4(c)(2), except in con-
18 nection with the management of the cover pool
19 under section 4(d)(1)(E).

20 (d) OTHER REQUIREMENTS.—

21 (1) BOOKS AND RECORDS OF ISSUER.—Each
22 issuer of covered bonds shall clearly mark its books
23 and records to identify the assets that comprise the
24 cover pool securing the covered bonds.

1 (2) SCHEDULE OF ELIGIBLE ASSETS AND SUB-
2 STITUTE ASSETS.—Each issuer of covered bonds
3 shall deliver to the applicable indenture trustee and
4 the applicable independent asset monitor, on at least
5 a monthly basis, a schedule that identifies all eligible
6 assets and substitute assets in the cover pool secur-
7 ing the covered bonds.

8 (3) SINGLE ELIGIBLE ASSET CLASS.—No cover
9 pool described in section 2(3)(A) may include eligible
10 assets from more than 1 eligible asset class. No
11 cover pool described in section 2(3)(B) may include
12 covered bonds backed by more than 1 eligible asset
13 class.

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

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

19 (b) DEFAULT ON COVERED BONDS PRIOR TO CON-
20 SERVATORSHIP, RECEIVERSHIP, LIQUIDATION, OR BANK-
21 RUPTCY.—

22 (1) CREATION OF SEPARATE ESTATE.—If an
23 uncured default occurs on a covered bond before the
24 issuer of the covered bond enters conservatorship,
25 receivership, liquidation, or bankruptcy, an estate

1 shall be immediately and automatically created by
2 operation of law and shall exist and be administered
3 separate and apart from the issuer or any subse-
4 quent conservatorship, receivership, liquidating agen-
5 cy, or estate in bankruptcy for the issuer or any
6 other assets of the issuer. A separate estate shall be
7 created for each affected covered bond program.

8 (2) ASSETS AND LIABILITIES OF ESTATE.—Any
9 estate created under paragraph (1) shall be com-
10 prised of the cover pool (including over-
11 collateralization in the cover pool) that secures the
12 covered bond. The cover pool shall be immediately
13 and automatically released to and held by the estate
14 free and clear of any right, title, interest, or claim
15 of the issuer or any conservator, receiver, liquidating
16 agent, or trustee in bankruptcy for the issuer or any
17 other assets of the issuer. The estate shall be fully
18 liable on the covered bond and all other covered
19 bonds and related obligations of the issuer (including
20 obligations under related derivative transactions)
21 that are secured by a perfected security interest in
22 or other perfected lien on the cover pool when the
23 estate is created. The estate shall not be liable on
24 any obligation of the issuer that is not secured by
25 a perfected security interest in or other perfected

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

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

1 (4) RESIDUAL INTEREST.—

2 (A) ISSUANCE OF RESIDUAL INTEREST.—

3 Upon the creation of an estate under paragraph
4 (1), a residual interest in the estate shall be im-
5 mediately and automatically issued by operation
6 of law to the issuer.

7 (B) NATURE OF RESIDUAL INTEREST.—

8 The residual interest under subparagraph (A)
9 shall—

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

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

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

18 (5) OBLIGATIONS OF ISSUER.—

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

21 (i) transfer to or at the direction of
22 the trustee for the estate all property of
23 the estate that is in the possession or
24 under the control of the issuer, including
25 all tangible or electronic books, records,

1 files, and other documents or materials re-
2 lating to the assets and liabilities of the es-
3 tate; and

4 (ii) at the election of the trustee or a
5 servicer or administrator for the estate,
6 continue servicing the applicable cover pool
7 for 120 days after the creation of the es-
8 tate in return for a fair-market-value fee,
9 as determined by the trustee in consulta-
10 tion with the applicable covered bond regu-
11 lator, that shall be payable from the estate
12 as an administrative expense.

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

22 (c) DEFAULT ON COVERED BONDS UPON CON-
23 SERVATORSHIP, RECEIVERSHIP, LIQUIDATION, OR BANK-
24 RUPTCY.—

1 (1) CORPORATION CONSERVATORSHIP OR RE-
2 CEIVERSHIP.—

3 (A) IN GENERAL.—If the Corporation is
4 appointed as conservator or receiver for an
5 issuer of covered bonds before an uncured de-
6 fault results in the creation of an estate under
7 subsection (b), the Corporation as conservator
8 or receiver shall have an exclusive right, during
9 the 180-day period beginning on the date of the
10 appointment, to transfer any cover pool owned
11 by the issuer in its entirety, together with all
12 covered bonds and related obligations that are
13 secured by a perfected security interest in or
14 other perfected lien on the cover pool, to an-
15 other eligible issuer that meets all conditions
16 and requirements specified in the related trans-
17 action documents. The Corporation as conser-
18 vator or receiver may not remove any asset
19 from the cover pool, except to the extent other-
20 wise agreed by a transferee that has assumed
21 the covered bond program pursuant to subpara-
22 graph (C).

23 (B) OBLIGATIONS DURING 180-DAY PE-
24 RIOD.—During the 180-day period described in
25 subparagraph (A), the Corporation as conser-

1 vator or receiver shall fully and timely satisfy
2 all monetary and nonmonetary obligations of
3 the issuer under all covered bonds and the re-
4 lated transaction documents and shall fully and
5 timely cure all defaults by the issuer (other
6 than its conservatorship or receivership) under
7 the applicable covered bond program, in each
8 case, until the earlier of—

9 (i) the transfer of the applicable cov-
10 ered bond program to another eligible
11 issuer as provided in subparagraph (A); or

12 (ii) the delivery to the Secretary, the
13 applicable covered bond regulator, the ap-
14 plicable indenture trustee, and the applica-
15 ble covered bondholders of a written notice
16 from the Corporation as conservator or re-
17 ceiver electing to cease further perform-
18 ance under the applicable covered bond
19 program.

20 (C) ASSUMPTION BY TRANSFEREE.—If the
21 Corporation as conservator or receiver transfers
22 a covered bond program to another eligible
23 issuer within the 180-day period as provided in
24 subparagraph (A), the transferee shall take
25 ownership of the applicable cover pool and shall

1 become fully liable on all covered bonds and re-
2 lated obligations of the issuer that are secured
3 by a perfected security interest in or other per-
4 fected lien on the cover pool.

5 (2) OTHER CIRCUMSTANCES.—An estate shall
6 be immediately and automatically created by oper-
7 ation of law and shall exist and be administered sep-
8 arate and apart from an issuer of covered bonds and
9 any conservatorship, receivership, liquidating agency,
10 or estate in bankruptcy for the issuer or any other
11 assets of the issuer, if—

12 (A) a conservator, receiver, liquidating
13 agent, or trustee in bankruptcy, other than the
14 Corporation, is appointed for the issuer before
15 an uncured default results in the creation of an
16 estate under subsection (b); or

17 (B) in the case of the appointment of the
18 Corporation as conservator or receiver as de-
19 scribed in paragraph (1)(A), the Corporation as
20 conservator or receiver—

21 (i) does not complete the transfer of
22 the applicable covered bond program to an-
23 other eligible issuer within the 180-day pe-
24 riod as provided in paragraph (1)(A);

1 (ii) delivers to the Secretary, the ap-
2 plicable covered bond regulator, the appli-
3 cable indenture trustee, and the applicable
4 covered bondholders a written notice elect-
5 ing to cease further performance under the
6 applicable covered bond program; or

7 (iii) fails to fully and timely satisfy all
8 monetary and nonmonetary obligations of
9 the issuer under the covered bonds and the
10 related transaction documents or to fully
11 and timely cure all defaults by the issuer
12 (other than its conservatorship or receiver-
13 ship) under the applicable covered bond
14 program.

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

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

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

19 (4) CONTINGENT CLAIM.—Any contingent claim
20 against an issuer for a deficiency with respect to a
21 covered bond or related obligation for which an es-
22 tate has become liable under paragraph (3) shall be
23 allowed as a provable claim in the conservatorship,
24 receivership, liquidating agency, or bankruptcy case
25 for the issuer. The contingent claim shall be esti-

1 mated by the conservator, receiver, liquidating
2 agent, or bankruptcy court for purposes of allowing
3 the claim as a provable claim if awaiting the fixing
4 of the contingent claim would unduly delay the reso-
5 lution of the conservatorship, receivership, liqui-
6 dating agency, or bankruptcy case.

7 (5) RESIDUAL INTEREST.—

8 (A) ISSUANCE OF RESIDUAL INTEREST.—

9 Upon the creation of an estate under paragraph
10 (2), and regardless of whether any contingent
11 claim described in paragraph (4) becomes fixed
12 or is estimated, a residual interest in the estate
13 shall be immediately and automatically issued
14 by operation of law to the conservator, receiver,
15 liquidating agent, or trustee in bankruptcy for
16 the 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 fully and irrevocably paid; and

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

3 (6) OBLIGATIONS OF ISSUER.—

4 (A) IN GENERAL.—After the creation of an
5 estate under paragraph (2), the issuer and its
6 conservator, receiver, liquidating agent, or
7 trustee in bankruptcy shall—

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

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

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

10 (d) ADMINISTRATION AND RESOLUTION OF ES-
11 TATES.—

12 (1) TRUSTEE, SERVICER, AND ADMINIS-
13 TRATOR.—

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

17 (i) act as or appoint the trustee for
18 the estate;

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

22 (iii) give the Secretary, the applicable
23 indenture trustee, the applicable covered
24 bondholders, and the owner of the residual

1 interest written notice of the creation of
2 the estate.

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

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

1 (D) POWERS AND DUTIES OF TRUSTEE.—

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

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

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

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

15 (iv) after the estate has been fully ad-
16 ministered, close the estate.

17 (E) POWERS AND DUTIES OF SERVICER OR
18 ADMINISTRATOR.—Any servicer or adminis-
19 trator for an estate—

20 (i) shall—

21 (I) collect, realize on (by liquida-
22 tion or other means), and otherwise
23 manage the cover pool held by the es-
24 tate in compliance with this Act, the
25 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,
11 taking into account the safety of the
12 deposit or investment; and

13 (III) apply, or direct the trustee
14 for the estate to apply, all proceeds
15 and funds received and the net return
16 on any deposit or investment to make
17 distributions 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
4 bondholders, the owner of the residual in-
5 terest, and any other person designated by
6 the covered bond regulator, reports that
7 describe the activities of the servicer or ad-
8 ministrator on behalf of the estate, the
9 performance of the cover pool held by the
10 estate, and distributions made by the es-
11 tate; and

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

15 (F) SUPERVISION OF TRUSTEE, SERVICER,
16 AND ADMINISTRATOR.—The applicable covered
17 bond regulator shall supervise the trustee and
18 any servicer or administrator for an estate. The
19 covered bond regulator shall require that all re-
20 ports submitted under subparagraph (E)(iii) do
21 not contain any untrue statement of a material
22 fact and do not omit to state a material fact
23 necessary in order to make the statements
24 made, in light of the circumstances under which
25 they are 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
5 bond regulator may remove or replace the trust-
6 ee or any servicer or administrator for the es-
7 tate. The removal of the trustee or any servicer
8 or administrator does not abate any pending ac-
9 tion or proceeding involving the estate, and any
10 successor or other trustee, servicer, or adminis-
11 trator shall be substituted as a party in the ac-
12 tion or 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
17 to represent or assist the trustee or the servicer
18 or 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 applica-
25 ble 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,
5 any servicer or administrator, or any profes-
6 sional person employed by the trustee or any
7 servicer or administrator shall be payable from
8 the estate as 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
21 the applicable covered bond regulator or as oth-
22 erwise provided in this subparagraph or sub-
23 paragraph (J), no court may take any action to
24 restrain or affect the resolution of an estate
25 under this Act. No person (including the appli-

1 cable indenture trustee and any applicable cov-
2 ered bondholder) may commence or continue
3 any judicial, administrative, or other action
4 against the estate, the trustee, or any servicer
5 or administrator or take any other act to affect
6 the estate, the trustee, or any servicer or ad-
7 ministrator that is not expressly permitted by
8 this Act, the oversight program, and the related
9 transaction documents, except for a judicial or
10 administrative action to compel the release of
11 funds that—

- 12 (i) are available to the estate;
- 13 (ii) are permitted to be distributed
14 under this Act and the oversight program;
15 and
- 16 (iii) are permitted and required to be
17 distributed under the related transaction
18 documents and any contracts executed by
19 or on behalf of the estate.

20 (L) SOVEREIGN IMMUNITY.—Except in
21 connection with a guarantee provided under
22 paragraph (4) or any other contract executed
23 by the applicable covered bond regulator under
24 this section 4, the Secretary and the covered
25 bond regulator shall be entitled to sovereign im-

1 munity in carrying out the provisions of this
2 Act.

3 (2) BORROWINGS AND CREDIT.—

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

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

24 (i) on terms affording the lender only
25 claims or liens that are fully subordinated

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

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

20 (I) the servicer or administrator
21 certifies to the applicable covered
22 bond regulator that, in the business
23 judgment of the servicer or adminis-
24 trator, the borrowing or credit is in
25 the best interests of the estate and is

1 expected to maximize the value and
2 the proceeds of the cover pool held by
3 the estate; and

4 (II) the applicable covered bond
5 regulator authorizes the borrowing or
6 credit.

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

13 (D) STUDY ON BORROWINGS AND CRED-
14 IT.—The Comptroller General of the United
15 States shall conduct a study on whether the
16 Federal reserve banks should be authorized to
17 lend funds or otherwise extend credit to an es-
18 tate under this paragraph (2) and, if so, what
19 conditions and limits should be established to
20 mitigate any risk that the United States Gov-
21 ernment could absorb credit losses on the cover
22 pool held by the estate. The Comptroller Gen-
23 eral shall submit a report to the Committee on
24 Banking, Housing, and Urban Affairs of the
25 Senate and the Committee on Financial Serv-

1 ices of the House of Representatives on the re-
2 sults of the study not later than 6 months after
3 the date of enactment of this Act.

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

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

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

23 (C) third, to pay—

24 (i) accrued and unpaid claims under
25 the covered bonds and the related trans-

1 action documents according to their terms;
2 and

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

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

7 (4) DISTRIBUTIONS ON RESIDUAL INTEREST.—

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

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

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

1 (5) CLOSING OF ESTATE.—After an estate has
2 been fully administered, the trustee shall close the
3 estate and, except as otherwise directed by the appli-
4 cable covered bond regulator, shall destroy all
5 records of the estate.

6 (6) NO LOSS TO TAXPAYERS.—Taxpayers shall
7 bear no losses from the resolution of an estate under
8 this Act. To the extent that the Secretary and the
9 Corporation jointly determine that the Deposit In-
10 surance Fund incurred actual losses that are higher
11 because the covered bond program of an insured de-
12 pository institution was subject to resolution under
13 this Act rather than as part of the receivership of
14 the institution under the Federal Deposit Insurance
15 Act (12 U.S.C. 1811 et seq.), the Corporation may
16 exercise the powers available under section 7(b) of
17 the Federal Deposit Insurance Act (12 U.S.C.
18 1817(b)) to recover an amount equal to those losses
19 after consulting with the Secretary.

20 **SEC. 5. SECURITIES LAW PROVISIONS.**

21 (a) EXISTING EXEMPTIONS APPLICABLE TO COV-
22 ERED BONDS.—

23 (1) TREATMENT OF CERTAIN BANKS AND
24 OTHER ENTITIES.—Any covered bond issued or
25 guaranteed by a bank or by an eligible issuer de-

1 scribed in section 2(9)(D) and sponsored solely by 1
2 or more banks is and shall be treated as a security
3 issued or guaranteed by a bank under section
4 3(a)(2) of the Securities Act of 1933 (15 U.S.C.
5 77c(a)(2)), section 3(c)(3) of the Investment Com-
6 pany Act of 1940 (15 U.S.C. 80a-3(c)(3)), and sec-
7 tion 304(a)(4)(A) of the Trust Indenture Act of
8 1939 (15 U.S.C. 77ddd(a)(4)(A)). No covered bond
9 issued or guaranteed by a bank or by an eligible
10 issuer described in section 2(9)(D) and sponsored
11 solely by 1 or more banks shall be treated as an
12 asset-backed security (as defined in section 3 of the
13 Securities and Exchange Act of 1934 (15 U.S.C.
14 78c)). Each covered bond regulator for 1 or more
15 banks may adopt, as part of the securities regula-
16 tions of the covered bond regulator, a separate
17 scheme of registration, disclosure, and reporting ob-
18 ligations and exemptions for covered bond programs.

19 (2) TREATMENT OF CERTAIN ASSOCIATIONS
20 AND COOPERATIVE BANKS.—Any covered bond
21 issued by an entity described in section 3(a)(5)(A)
22 of the Securities Act of 1933 (15 U.S.C.
23 77c(a)(5)(A)) or by an eligible issuer described in
24 section 2(9)(D) and sponsored solely by 1 or more
25 such entities is and shall be treated as a security

1 issued by such an entity under section 3(a)(5)(A) of
2 the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)),
3 section 3(c)(3) of the Investment Company Act of
4 1940 (15 U.S.C. 80a-3(c)(3)), and section
5 304(a)(4)(A) of the Trust Indenture Act of 1939
6 (15 U.S.C. 77ddd(a)(4)(A)). No covered bond issued
7 by an entity described in section 3(a)(5)(A) of the
8 Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)) or
9 by an eligible issuer described in section 2(9)(D) and
10 sponsored solely by 1 or more such entities shall be
11 treated as an asset-backed security (as defined in
12 section 3 of the Securities and Exchange Act of
13 1934 (15 U.S.C. 78c)). Each covered bond regulator
14 for 1 or more entities described in section 3(a)(5)(A)
15 of the Securities Act of 1933 (15 U.S.C.
16 77c(a)(5)(A)) may adopt, as part of the securities
17 regulations of the covered bond regulator, a separate
18 scheme of registration, disclosure, and reporting ob-
19 ligations and exemptions for covered bond programs.

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

1 (b) EXEMPTIONS FOR ESTATES.—Any estate that is
2 or may be created under section 4(b)(1) or 4(c)(2) shall
3 be exempt from all securities laws but—

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

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

13 (c) EXEMPTIONS FOR RESIDUAL INTERESTS.—Any
14 residual interest in an estate that is or may be created
15 under section 4(b)(1) or 4(c)(2) shall be exempt from all
16 securities laws.

17 **SEC. 6. MISCELLANEOUS PROVISIONS.**

18 (a) DOMESTIC SECURITIES.—Section 106(a)(1) of
19 the Secondary Mortgage Market Enhancement Act of
20 1984 (15 U.S.C. 77r–1(a)(1)) is amended—

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

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

1 (3) by inserting after subparagraph (D) the fol-
2 lowing:

3 “(E) covered bonds (as defined in section
4 2 of the United States Covered Bond Act of
5 2011),”.

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

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

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

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

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

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

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

19 (e) INVESTMENT TREATMENT FOR TAX PUR-
20 POSES.—The acquisition of any covered bond shall be
21 treated as an acquisition of an investment security, and
22 not as an acquisition of an interest in a loan or otherwise
23 as a lending transaction, for purposes of determining the
24 character of any related trade or business activity of the

1 acquirer or any asset held by the acquirer under the Inter-
2 nal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

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

7 (1) if an estate created under section 4(b)(1) or
8 4(c)(2) is not treated as an entity subject to tax-
9 ation separate from the owner of the residual inter-
10 est for purposes of the Internal Revenue Code of
11 1986 (26 U.S.C. 1 et seq.), no separate taxable enti-
12 ty shall be created with respect to the estate for pur-
13 poses of any State or local law imposing a tax on
14 or measured by income; and

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

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