THE U.S. COVERED BOND ACT
SECTION-BY-SECTION ANALYSIS

Section 2. Definitions.

- Contains various definitions used under the Act.

Section 3. Regulatory Oversight of Covered Bond Programs Established.

- Provides the covered bond regulator with authority to approve, in consultation with any applicable primary federal regulator, the covered bond programs of eligible issuers.
- Requires the covered bond regulator to maintain a public registry of approved covered bond programs.
- Authorizes the covered-bond regulator to levy such fees and charges as are needed to cover its expenses
- Empowers the covered bond regulator to establish minimum over-collateralization requirements for covered bonds backed by each of the different eligible asset classes.
- Requires each cover pool securing covered bonds to satisfy an asset-coverage test, and obligates the issuer and an independent asset monitor to confirm on a periodic basis whether the asset-coverage test is satisfied.
- Specifies eligibility criteria for cover pools.

Section 4. Default and Insolvency.

- Creates, if covered bonds default before the eligible issuer enters conservatorship, receivership, liquidation, or bankruptcy, a separate estate that is comprised of the applicable cover pool and that assumes liability for the covered bonds and any related obligations secured by that cover pool.
- Preserves deficiency claims against the issuer.
- Creates for the issuer a residual interest that represents the right to any surplus from the cover pool.
- Obligates the issuer to transfer applicable books, records, and files and, at the election of the covered bond regulator, to continue servicing the cover pool for 120 days.
- Appoints the covered bond regulator as the trustee of the estate.
- Directs the covered bond regulator to appoint a servicer and administrator for the cover pool held by the estate.
- Requires the servicer and administrator to collect, realize on, and procure funds using the cover pool and to use the proceeds and funds received to make required payments on the covered bonds and to satisfy other liabilities of the estate.

- Permits the servicer and administrator, in the event of a liquidity constraint caused by a timing mismatch among the assets and the liabilities of an estate, pursue private market alternatives to provide the needed liquidity.
- If the FDIC is appointed as conservator or receiver for an eligible issuer before a default on its covered bonds results in the creation of an estate, provides the FDIC with an exclusive right for 15 days to transfer the issuer's covered bond program to another eligible issuer.
- Requires the FDIC as conservator or receiver, during the 15-day period, to perform all monetary and non-monetary obligations of the issuer under the covered bond program.
- Creates, if another conservator, receiver, liquidator, or bankruptcy trustee is appointed for an eligible issuer before a default on its covered bonds results in the creation of an estate or if the FDIC as conservator or receiver does not transfer a covered bond program to another eligible issuer within the 15-day period, a separate estate that is comprised of the applicable cover pool and that assumes liability for the covered bonds and any related obligations secured by that cover pool.
- Requires the conservator, receiver, liquidating agent, or bankruptcy court to estimate and allow any contingent deficiency claim against the issuer.
- Creates for the conservator, receiver, liquidating agent, or bankruptcy trustee a residual interest that represents the right to any surplus from the cover pool.
- Obligates the conservator, receiver, liquidating agent, or bankruptcy trustee to transfer applicable books, records, and files and, at the election of the covered bond regulator but subject to any right of repudiation or rejection, to continue servicing the cover pool for 120 days.
- Appoints the covered bond regulator as the trustee of the estate.
- Directs the covered bond regulator to appoint a servicer and administrator for the cover pool held by the estate.
- Requires the servicer and administrator to collect, realize on, and procure funds using the cover pool and to use the proceeds and funds received to make required payments on the covered bonds and to satisfy other liabilities of the estate.
- Permits the servicer and administrator, in the event of a liquidity constraint caused by a timing mismatch among the assets and the liabilities of an estate, pursue private market alternatives to provide the needed liquidity.

Section 5. Securities Law Provisions.

- Provides for covered bonds that are offered and sold to the public by a bank or a bank subsidiary to be subject to securities regulations issued by the primary federal regulator of that bank and applicable anti-fraud rules.
- Provides for covered bonds that are offered and sold to the public by an issuing entity sponsored by one or more banks with the same primary federal regulator to be subject to securities regulations issued by that regulator and applicable anti-fraud rules.

- Directs the Securities and Exchange Commission to develop a streamlined registration scheme for other covered bonds that are not otherwise exempted securities.
- Provides for disclosure and reporting standards to be governed by the same applicable regulations and rules.

Section 6. Miscellaneous Provisions.

- Expands the Secondary Mortgage Market Enhancement Act of 1984 to encompass covered bonds.
- Provides for covered bonds that are backed by the residential mortgage asset class, the home equity asset class, or the commercial mortgage asset class to be qualified mortgages for Real Estate Mortgage Investment Conduits.
- Specifies that an estate will not be a taxable entity and that no transfer of assets or liabilities to an estate will be a taxable event.
- Clarifies that the acquisition of a covered bond will be treated as the acquisition of a security, and not as a lending transaction, for tax purposes.