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

IN THE HOUSE OF REPRESENTATIVES

Mr. GARRETT of New Jersey introduced the following bill; which was referred to the Committee on ____________________

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “United States Covered Bond Act of 2010”.

SEC. 2. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:
(1) ANCILLARY ASSET.—The term “ancillary asset” means, with respect to any cover pool—

   (A) any interest rate or currency swap associated with any eligible asset, substitute asset, or other ancillary asset in the cover pool;

   (B) any credit enhancement or liquidity arrangement associated with any eligible asset, substitute asset, or other ancillary asset in the cover pool;

   (C) any guarantee, letter-of-credit right, or other secondary obligation that supports any payment or performance on an eligible asset, substitute asset, or other ancillary asset in the cover pool; and

   (D) any proceeds of, or other property incident to, any eligible asset, substitute asset, or other ancillary asset in the cover pool.

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

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

   (A) 1 or more eligible assets from a single eligible asset class;
(B) substitute assets, without limitation;

and

(C) ancillary assets, without limitation.

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

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

(B) is secured directly or indirectly by a perfected security interest in a cover pool which is owned directly or indirectly by the issuer of the obligation;

(C) is issued under a covered bond program that has been approved by the covered bond regulator and is identified in a register of covered bonds maintained by the covered bond regulator; and

(D) is not a deposit (as defined in section 3 of the Federal Deposit Insurance Act).

(5) COVERED BOND PROGRAM.—The term “covered bond program” means any of the programs of an eligible issuer under which, on the security of a single cover pool, 1 or more series or tranches of covered bonds may be issued.
(6) COVERED BOND REGULATOR.—The term “covered bond regulator” means the Secretary of the Treasury or any officer of the Department of the Treasury designated by the Secretary for purposes of this Act.

(7) ELIGIBLE ASSET.—The term “eligible asset” means any of the following assets within a particular eligible asset class:

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

(i) any first-lien mortgage loan that is secured by 1-to-4 family residential property and that is in compliance with supervisory guidance applicable at the time of loan origination;

(ii) any mortgage loan insured under the National Housing Act or any loan guaranteed, insured, or made under chapter 37 of title 38, United States Code; and

(iii) any residential mortgage-backed security of the highest investment grade that is backed by first-lien mortgage loans and any ancillary property (including any residential mortgage-backed security that is sponsored or issued by, or backed by
first-lien mortgage loans originated or acquired by, the issuer of the covered bonds or any affiliate of such issuer), to the extent such securities do not exceed an amount equal to 20 percent of the outstanding principal amount of the assets in a cover pool.

(B) In the case of the home equity asset class—

(i) any home equity loan that is secured by 1-to-4 family residential property and that is in compliance with supervisory guidance applicable at the time of loan origination; and

(ii) any asset-backed security of the highest investment grade that is backed by home equity loans and any ancillary property (including any asset-backed security that is sponsored or issued by, or backed by home equity loans originated or acquired by, the issuer of the covered bonds or any affiliate of such issuer), to the extent such securities do not exceed an amount equal to 20 percent of the out-
standing principal amount of the assets in a cover pool.

(C) In the case of the commercial mortgage asset class—

(i) any commercial mortgage loan (including any multifamily mortgage loan) that is in compliance with supervisory guidance applicable at the time of loan origination; and

(ii) any commercial mortgage-backed security of the highest investment grade that is backed by commercial mortgage loans (including multifamily mortgage loans) and any ancillary property (including any commercial mortgage-backed security that is sponsored or issued by, or backed by commercial mortgage loans originated or acquired by, the issuer of the covered bonds or any affiliate of such issuer), to the extent such securities do not exceed an amount equal to 20 percent of the outstanding principal amount of the assets in a cover pool.

(D) In the case of the public sector asset class—
(i) investment-grade securities issued by 1 or more States or municipalities;

(ii) loans (excluding securities) made to 1 or more States or municipalities; and

(iii) loans, securities, or other obligations that are insured or guaranteed, in full or substantially in full, by the full faith and credit of the United States (whether or not such loans, securities, or other obligations are also part of another eligible asset class).

(E) In the case of the auto asset class—

(i) any auto loan or lease that is in compliance with supervisory guidance applicable at the time of loan or lease origination; and

(ii) any asset-backed security of the highest investment grade that is backed by auto loans or leases and any ancillary property (including any asset-backed security sponsored or issued by, or backed by loans or leases originated or acquired by, the issuer of the covered bonds or any affiliate of such issuer), to the extent such securities do not exceed an amount equal
to 20 percent of the outstanding principal amount of the assets in a cover pool.

(F) In the case of the student loan asset class—

   (i) any student loan (whether guaranteed or nonguaranteed) that is in compliance with supervisory guidance applicable at the time of loan origination; and

   (ii) any asset-backed security of the highest investment grade that is backed by student loans and any ancillary property (including any asset-backed security sponsored or issued by, or backed by loans originated or acquired by, the issuer of the covered bonds or any affiliate of such issuer), to the extent such securities do not exceed an amount equal to 20 percent of the outstanding principal amount of the assets in a cover pool.

(G) In the case of the credit or charge card asset class—

   (i) any credit or charge card loan that is in compliance with supervisory guidance applicable at the time of loan origination; and
(ii) any asset-backed security of the highest investment grade that is backed by credit or charge card loans and any ancillary property (including any asset-backed security sponsored or issued by, or backed by loans originated or acquired by, the issuer of the covered bonds or any affiliate of such issuer), to the extent such securities do not exceed an amount equal to 20 percent of the outstanding principal amount of the assets in a cover pool.

(H) In the case of the small business asset class—

(i) any loan made under a program established by the Small Business Administration (whether guaranteed or non-guaranteed); and

(ii) any asset-backed security of the highest investment grade that is backed by loans made under 1 or more programs established by the Small Business Administration and any ancillary property (including any asset-backed security sponsored or issued by, or backed by loans originated or acquired by, the issuer of the covered
bonds or any affiliate of such issuer), to the extent such securities do not exceed an amount equal to 20 percent of the outstanding principal amount of the assets in a cover pool.

(I) In the case of any other eligible asset class designated by the covered bond regulator, the assets designated by the covered bond regulator for such class.

(8) **ELIGIBLE ASSET CLASS.**—The term “eligible asset class” means each of the following classes of assets:

(A) Residential mortgage asset class.

(B) Home equity asset class.

(C) Commercial mortgage asset class.

(D) Public sector asset class.

(E) Auto asset class.

(F) Student loan asset class.

(G) Credit or charge card asset class.

(H) Small business asset class.

(I) Such other eligible asset classes as may be designated by the covered bond regulator.

(9) **ELIGIBLE ISSUER.**—The term “eligible issuer” means—
(A) any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) and any subsidiary of any such institution;

(B) any bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956) or any savings and loan holding company (as defined in section 10 of the Home Owners’ Loan Act); and

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

(10) OVERSIGHT PROGRAM.—The term “oversight program” means the covered bonds regulatory oversight program established under section 3(a).

(11) SUBSTITUTE ASSET.—The term “substitute asset” means—

(A) cash;

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

(C) any direct obligation of a United States Government corporation or Government-
sponsored enterprise of the highest investment grade, and any other security or other obligation of the highest investment grade whose full principal and interest are insured or guaranteed by any such corporation or enterprise (including any mortgage-backed security issued, insured, or guaranteed by any such corporation or enterprise);

(D) any overnight investment in Federal funds; and

(E) any deposit account or securities account into which only substitute assets may be deposited or credited.

the following classes of assets:

SEC. 3. REGULATORY OVERSIGHT OF COVERED BOND PROGRAMS ESTABLISHED.

(a) Establishment.—

(1) In general.—The covered bond regulator shall issue regulations establishing a covered bond regulatory oversight program that meets the requirements of this section and that provides for covered bond programs to be maintained in a manner consistent with safe and sound banking practices.

(2) Approval of each covered bond program.—
(A) Approval by Covered Bond Regulator.—A covered bond shall be subject to this Act only if such covered bond is issued by an eligible issuer under a covered bond program that is approved by the covered bond regulator. An eligible issuer may have 1 or more covered bond programs. The covered bond regulator may approve a covered bond program that is already in existence, and upon such approval, all covered bonds under such covered bond program shall be subject to this Act regardless of when the covered bonds are issued.

(B) Consultation with Any Federal Primary Regulator.—Before approving any covered bond program of any eligible issuer, the covered bond regulator shall consult with the primary Federal regulator, if any, of such issuer.

(3) Registry.—Under the oversight program, the covered bond regulator shall maintain a registry on a Web site available to the public containing the name of each approved covered bond program and information on all outstanding covered bonds issued under each approved covered bond program.
(4) FEES.—The covered bond regulator shall levy fees on issuers of covered bonds in an amount, in the aggregate, equal to the costs of the covered bond regulator in carrying out the provisions of this Act.

(b) MINIMUM OVER-COLLATERALIZATION REQUIREMENTS.—

(1) ESTABLISHMENT REQUIRED.—The covered bond regulator from time to time shall establish minimum over-collateralization requirements for covered bonds backed by each of the eligible asset classes based on the credit, collection, and interest-rate risks, but not the liquidity risks, associated with such eligible asset class.

(2) RELIANCE ON FEDERAL RESERVE SYSTEM STANDARDS.—In establishing requirements under paragraph (1), the covered bond regulator may rely on over-collateralization levels required for the same or similar asset classes by the Board of Governors of the Federal Reserve System when extending credit to depository institutions under the Federal Reserve Act.

(3) TESTING.—Each cover pool securing covered bonds shall be required at all times to satisfy an asset-coverage test. The asset-coverage test shall
measure (as such term is defined by the covered bond regulator) whether the eligible assets and the substitute assets in a cover pool satisfy the minimum over-collateralization requirements established by the covered bond regulator for covered bonds backed by the applicable eligible asset class. Each issuer of covered bonds shall be required to perform the asset-coverage test monthly on each of its cover pools and to disclose the results to the primary Federal regulator of such issuer, if any, the covered bond regulator, and the applicable covered bondholders. Each issuer of covered bonds also shall be required to appoint the indenture trustee for such covered bonds or another unaffiliated entity as an independent asset monitor for the applicable cover pool, and such asset monitor shall be required, on an annual or more frequent basis, to verify whether such cover pool satisfies the asset-coverage test and to disclose the results to the primary Federal regulator of such issuer, if any, the covered bond regulator, and the applicable covered bondholders.

(4) NO LOSS OF STATUS.—Covered bonds shall remain subject to this Act regardless of whether the applicable cover pool ceases to satisfy the asset-coverage test at any time after issuance. If a cover pool
securing covered bonds fails to satisfy the asset-coverage test and if such failure is not cured within the time specified in the related transaction documents, such failure shall constitute a default that results in the creation of an estate under section 4.

(c) Eligibility Requirements.—

(1) Single Eligible Asset Class.—No cover pool may include eligible assets from more than one eligible asset class.

(2) Ineligible Assets.—A loan shall not qualify as an eligible asset while such loan is delinquent for more than 60 consecutive days. A security shall not qualify as an eligible asset while such security does not meet any investment-grade requirement under this Act.

(d) Other Requirements.—

(1) Books and Records of Issuer.—Each issuer of covered bonds shall clearly mark its books and records to identify the assets that comprise the applicable cover pool.

(2) Schedule of Eligible Assets and Substitute Assets.—Each issuer of covered bonds shall deliver to the applicable indenture trustee, on at least a monthly basis, a schedule of all eligible as-
sets and substitute assets in the applicable cover pool.

SEC. 4. DEFAULT AND INSOLVENCY.

(a) DEFAULT ON COVERED BONDS PRIOR TO CONSERVATORSHIP, RECEIVERSHIP, LIQUIDATION, OR BANKRUPTCY.—

(1) CREATION OF SEPARATE ESTATE.—If an unsecured default occurs with respect to a covered bond before the issuer of such covered bond enters conservatorship, receivership, liquidation, or bankruptcy, an estate shall be automatically created by operation of law and shall exist separate and apart from such issuer or any subsequent conservatorship, receivership, liquidating agency, or estate in bankruptcy for such issuer or any of its other assets.

(2) ASSETS AND LIABILITIES OF ESTATE.—Any estate created under paragraph (1) shall be comprised of the applicable cover pool, which shall be automatically released to and held by such estate free and clear of any right, title, interest, or claim of the issuer or any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any of its other assets, and such estate shall be fully liable on all covered bonds and related obligations of the issuer (including obligations under related deriv-
ative transactions) that are secured by such cover pool.

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

(4) RESIDUAL INTEREST.—Upon the creation of an estate under paragraph (1), a residual interest in such estate shall be automatically issued by operation of law to the issuer. The residual interest shall—

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

(B) represent the right to any surplus from the cover pool after the applicable covered bonds and all other liabilities of such estate have been paid in full; and

(C) be evidenced by a certificate executed by the covered bond regulator as trustee of such estate.

(5) OBLIGATION OF ISSUER.—After the creation of an estate under paragraph (1), the issuer shall be obligated to cooperate in effecting a transfer
to the covered bond regulator or its designee of all tangible or electronic books, records, files, and other documents or materials relating to the assets and liabilities of such estate and, at the election of the covered bond regulator, shall continue servicing the cover pool for 120 days after the creation of such estate in return for a fair-market-value fee.

(6) Trustee, Servicer, and Administrator.—

(A) In General.—The covered bond regulator shall—

(i) act as the trustee of any estate created under paragraph (1); and

(ii) appoint 1 or more servicers or administrators for the cover pool held by such estate.

(B) Powers and Duties of Servicer or Administrator.—Any servicer or administrator appointed for an estate—

(i) shall collect, realize on (by liquidation or other means), and otherwise manage the cover pool held by such estate;

(ii) may borrow or otherwise procure funds for the benefit of such estate on a secured or unsecured basis;
(iii) shall invest and use the proceeds and funds received to make all remaining interest and principal payments on the applicable covered bonds according to their terms (or, if an acceleration or similar event occurs under the related transaction documents, at the times specified in such transaction documents) and to satisfy any other liabilities of such estate; and

(iv) shall, 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.

(C) **SUPERVISION OF SERVICER OR ADMINISTRATOR.**—The covered bond regulator shall supervise any servicer or administrator that is appointed for an estate and, if in the best interests of the estate, may remove or replace any servicer or administrator. Each servicer or administrator for an estate, as and when required by the covered bond regulator, shall deliver reports that describe its activities on behalf of such estate and the performance of the cover pool held by such estate. All fees and expenses
of any servicer or administrator for an estate shall be approved by the covered bond regulator and shall be paid from such estate.

(b) Default on Covered Bonds Upon Conservatorship, Receivership, Liquidation, or Bankruptcy.—

(1) FDIC Conservatorship or Receivership.—

(A) In General.—If the Corporation is appointed as conservator or receiver for an issuer of covered bonds before an unsecured default results in the creation of an estate under subsection (a), the Corporation as conservator or receiver shall have an exclusive right, for 15 days from the date of such appointment, to transfer any cover pool owned by such issuer in its entirety together with all covered bonds and related obligations secured by such cover pool to another eligible issuer that meets all conditions and requirements specified in the related transaction documents.

(B) Obligations During 15-Day Period.—During the 15-day period described in subparagraph (A), the Corporation as conservator or receiver shall satisfy all monetary and
nonmonetary obligations of the issuer under the covered bonds and the related transaction documents until any transfer to another eligible issuer is completed.

(C) ASSUMPTION BY TRANSFEREE.—If the Corporation as conservator or receiver effects a transfer described in subparagraph (A) within the 15-day period, the transferee shall take ownership of the applicable cover pool and shall become fully liable on all covered bonds and related obligations of the issuer that are secured by such cover pool.

(2) OTHER CIRCUMSTANCES.—If—

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

(B) in the case an issuer of covered bonds for which the Corporation is appointed as conservator or receiver as described in paragraph (1)(A), no transfer by the Corporation as conservator or receiver is completed within the 15-day period as described in such paragraph, an
estate shall be automatically created by operation of law and shall exist separate and apart from such issuer and the conservatorship, receivership, liquidating agency, or estate in bankruptcy for such issuer or any of its other assets.

(3) Assets and Liabilities of Estate.—Any estate created under paragraph (2) shall be comprised of the applicable cover pool, which shall be automatically released to and held by such estate free and clear of any right, title, interest, or claim of the issuer or any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any of its other assets, and such estate shall be fully liable on all covered bonds and related obligations of the issuer (including obligations under related derivative transactions) that are secured by such cover pool.

(4) Contingent Claim.—Any contingent claim for a deficiency with respect to a covered bond or related obligation for which an estate has been created under paragraph (2) shall be estimated by the conservator, receiver, liquidating agent, or bankruptcy court for purposes of allowing such claim as a provable claim if awaiting the fixing of that contingent
(5) **Residual Interest.**—Upon the creation of an estate under paragraph (2), and regardless of whether any contingent claim described in paragraph (4) becomes fixed or is estimated, a residual interest in such estate shall be automatically issued by operation of law to the conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer. The residual interest shall—

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

(B) represent the right to any surplus from the cover pool after the applicable covered bonds and all other liabilities of such estate have been paid in full; and

(C) be evidenced by a certificate executed by the covered bond regulator as trustee of such estate.

(6) **Obligation of Issuer.**—After the creation of an estate under paragraph (2), the issuer and its conservator, receiver, liquidating agent, or trustee in bankruptcy shall transfer to the covered bond regulator or its designee all tangible or elec-
tronic books, records, files, and other documents or materials relating to the assets and liabilities of such estate and, at the election of the covered bond regulator (but subject to any right of repudiation or rejection held by such conservator, receiver, liquidating agent, or trustee in bankruptcy), shall continue servicing the cover pool for 120 days after the creation of such estate in return for a fair-market-value fee.

(7) TRUSTEE, SERVICER, AND ADMINISTRATOR.—

(A) IN GENERAL.—The covered bond regulator shall—

(i) act as the trustee of any estate created under paragraph (2); and

(ii) appoint 1 or more servicers or administrators for the cover pool held by such estate.

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

(i) shall collect, realize on (by liquidation or other means), and otherwise manage the cover pool held by such estate;
(ii) may borrow or otherwise procure funds for the benefit of such estate on a secured or unsecured basis;

(iii) shall invest and use the proceeds and funds received to make all remaining interest and principal payments on the applicable covered bonds according to their terms (or, if an acceleration or similar event occurs under the related transaction documents, at the times specified in such transaction documents) and to satisfy any other liabilities of such estate; and

(iv) shall, 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.

(C) Supervision of Servicer or Administrator.—The covered bond regulator shall supervise any servicer or administrator that is appointed for an estate and, if in the best interests of the estate, may remove or replace any servicer or administrator. Each servicer or administrator for an estate, as and when required by the covered bond regulator, shall deliver re-
ports that describe its activities on behalf of such estate and the performance of the cover pool held by such estate. All fees and expenses of any servicer or administrator for an estate shall be approved by the covered bond regulator and shall be paid from such estate.

SEC. 5. SECURITIES LAW PROVISIONS.

(a) Registration.—

(1) Applicability to bank issuers.—Covered bonds that are offered and sold to the public by a bank (or a subsidiary of a bank) shall be—

(A) subject to—

(i) securities regulations issued by the primary Federal regulator of such bank; and

(ii) applicable antifraud rules; and

(B) exempt from all other Federal securities laws.

(2) Applicability to issuers sponsored by 1 or more banks with same regulator.—Covered bonds that are offered and sold to the public by an issuing entity that is sponsored only by 1 or more banks with the same primary Federal regulator shall be—

(A) subject to—
(i) securities regulations issued by such primary Federal regulator; and

(ii) applicable antifraud rules; and

(B) exempt from all other Federal securities laws.

(3) OTHER ISSUERS.—For covered bonds that are offered and sold to the public by any other eligible issuer and that are not otherwise exempted securities, the Securities and Exchange Commission shall develop a streamlined registration scheme.

(4) EXTENSION OF EXEMPTIONS TO SEPARATE ESTATES.—Each exemption described in paragraph (1) or (2) shall continue to apply to any estate created under subsection (a) or (b) of section 4 and to any residual interest in such estate.

(b) DISCLOSURE AND REPORTING.—

(1) APPLICABILITY TO BANK ISSUERS.—At a reasonable time before the initial sale of a covered bond by a bank or a subsidiary of a bank, such bank or subsidiary shall make available to investors the information required by the securities regulations issued by such bank’s primary Federal regulator and applicable antifraud rules.

(2) APPLICABILITY TO ISSUERS SPONSORED BY 1 OR MORE BANKS WITH SAME REGULATOR.—At a
reasonable time before the initial sale of a covered bond by an issuing entity that is sponsored only by 1 or more banks with the same primary Federal regulator, such issuing entity shall make available to investors the information required by the securities regulations issued by such primary Federal regulator and applicable antifraud rules.

(3) OTHER ISSUERS.—At a reasonable time before the initial sale of a covered bond that is not an exempted security by any other eligible issuer, such issuer shall make available to investors the information required under the streamlined approach established by the Securities and Exchange Commission under paragraph (a)(3) and applicable antifraud rules.

(4) STANDARDS.—For each of the issuers described in paragraphs (1) to (3), the content and frequency of reports to investors shall be determined according to the same standards that govern the initial information delivery requirement.

SEC. 6. MISCELLANEOUS PROVISIONS.

(a) DOMESTIC SECURITIES.—Section 106(a)(1) of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r–1(a)(1)) is amended—
(1) in subparagraph (C), by striking “or” at the end;

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

(3) by inserting after subparagraph (D) the following:

“(E) covered bonds (as defined under section 2(3) of the United States Covered Bond Act of 2010),”.

(b) **Real Estate Mortgage Investment Conduits.**—Section 860G(a)(3) of the Internal Revenue Code of 1986 is amended—

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

(2) in subparagraph (C), by striking the period and inserting a comma; and

(3) by inserting after subparagraph (C) the following:

“(D) covered bonds secured by eligible assets from the residential mortgage asset class, the home equity asset class, or the commercial mortgage asset class (within the meaning of section 2 of the United States Covered Bond Act of 2010).”.
(c) **TAX PROVISIONS.**—Any estate created under subsection (a) or (b) of section 4 shall not be taxable as a separate entity. No transfer of any asset or liability to an estate under such subsections shall be a taxable event. The acquisition of any covered bond shall be treated as an acquisition of a security, and not as an interest in a loan or a lending transaction, for purposes of determining the character of any related trade or business activity of the acquirer or any asset held by such acquirer.