

HR 940

United States Covered Bond Act of 2011

Congress: 112 (2011–2013, Ended)

Chamber: House

Policy Area: Finance and Financial Sector

Introduced: Mar 8, 2011

Current Status: Placed on the Union Calendar, Calendar No. 542.

Latest Action: Placed on the Union Calendar, Calendar No. 542. (Dec 31, 2012)

Official Text: <https://www.congress.gov/bill/112th-congress/house-bill/940>

Sponsor

Name: Rep. Garrett, Scott [R-NJ-5]

Party: Republican • State: NJ • Chamber: House

Cosponsors (1 total)

Cosponsor	Party / State	Role	Date Joined
Rep. Maloney, Carolyn B. [D-NY-14]	D · NY		Mar 8, 2011

Committee Activity

Committee	Chamber	Activity	Date
Financial Services Committee	House	Reported by	May 4, 2011
Ways and Means Committee	House	Discharged From	Jan 1, 2013

Subjects & Policy Tags

Policy Area:

Finance and Financial Sector

Related Bills

Bill	Relationship	Last Action
112 S 1835	Related bill	Nov 9, 2011: Read twice and referred to the Committee on Banking, Housing, and Urban Affairs. (text of measure as introduced: CR S7297-7302)

United States Covered Bond Act of 2011 - (Sec. 3) Directs the Secretary of the Treasury to establish a regulatory oversight program for specified recourse debt obligations of an eligible issuer (covered bonds) that provides for such bonds to be maintained in a manner consistent with safe and sound asset-liability management and other financial practices.

Subjects a covered bond to this Act only if it is issued by an eligible issuer under a covered bond program approved by the applicable bond regulator.

Specifies as a covered bond regulator: (1) the appropriate federal banking agency, for any eligible issuer under its jurisdiction; (2) the Secretary, for any eligible issuer not subject to an appropriate federal banking agency; (3) the covered bond regulator for the sponsor of an issuer if the issuer is not subject to a federal banking agency's jurisdiction; and (4) the covered bond regulator for a sponsor whose covered bonds constitute the largest share of the issuer's cover pool, if the issuer is not subject to a federal banking agency's jurisdiction, and is sponsored by one or more eligible issuers for the sole purpose of issuing covered bonds on a pooled basis.

Prescribes an approval process for a covered bond under which the covered bond regulator must apply standards established by the Secretary pursuant to an oversight program that evaluates covered bond programs. Authorizes the approval of any covered bond program in existence on the date of enactment of this Act.

Permits an eligible issuer to have more than one covered bond program.

Grants covered bond regulators cease and desist authority. Requires such regulators to set, as a percentage of an issuer's total assets, and consistent with safety and soundness principles, the maximum amount of outstanding covered bonds the issuer may issue.

Requires the Secretary to maintain a publicly accessible Web site registry for each covered bond program approved by a covered bond regulator.

Authorizes a covered bond regulator to levy fees upon issuers of covered bonds in order to defray the costs of implementing this Act.

Directs the Secretary to establish minimum over-collateralization requirements for covered bonds designed to ensure that sufficient eligible assets and substitute assets are maintained in the cover pool to satisfy all principal and interest payments on the covered bonds when due through maturity, based upon the credit, collection, and interest rate risks (excluding the liquidity risks) associated with the eligible asset class.

Requires eligible and substitute assets in any cover pool to meet, in the aggregate and at all times, such minimum over-collateralization requirements.

Requires a covered bonds issuer to appoint the indenture trustee for the covered bonds, or another unaffiliated entity, as an independent asset monitor to verify and report to the Secretary and specified persons whether the cover pool meets such minimum over-collateralization requirements.

Treats failure of a covered pool to meet minimum over-collateralization requirements as an uncured default if such failure is not cured within the time specified in related transaction documents.

Requires the issuer of covered bonds to give the Secretary and the applicable covered bond regulator prompt written notice if the cover pool securing the covered bonds fails to meet the applicable minimum over-collateralization requirements.

Prescribes requirements for eligible assets, including loans, originations and double pledges.

Requires an issuer of covered bonds to deliver, at least monthly, a schedule of assets that identifies all eligible assets and substitute assets in the cover pool securing the covered bonds.

(Sec. 4) Prescribes a procedure for automatic creation of two separate estates when an uncured default occurs on a covered bond before its issuer enters conservatorship, receivership, liquidation, or bankruptcy following default or insolvency.

Requires creation by operation of law of a separate estate for each affected covered bond program, to be administered separately and apart from the issuer or any subsequent conservatorship, receivership, liquidating agency, or estate in bankruptcy of the issuer.

Prescribes treatment of the assets and liabilities of each separate estate. States that such estate consists of the cover pool securing the covered bond (including over-collateralization in the cover pool). Releases the cover pool automatically to such an estate free and clear of any claim of either the issuer or any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any other assets of the issuer.

Grants the holder of a covered bond or related obligation for which an estate has become liable a claim against the issuer for any deficiency regarding the covered bond or related obligation.

Grants a residual interest in the separate estate to: (1) the issuer; and (2) the conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer.

Specifies absolute obligations of the issuer, after creation of the separate estate, to: (1) transfer all estate property to the trustee; and (2) continue servicing the applicable cover pool for a certain time, at the election of the trustee or a servicer or administrator of the estate, in return for a fair-market-value fee payable from the estate as an administrative expense.

Sets forth the rights and obligations of the Federal Deposit Insurance Corporation (FDIC), if it is appointed as conservator or receiver for a covered bond issuer before an uncured default results in the creation of an estate.

Prescribes procedures for administration and resolution of estates.

Directs the Comptroller General to study: (1) whether federal reserve banks should be authorized to extend credit to an estate of a covered bond in bankruptcy; and (2) if so, what conditions and limits should be established to mitigate any risk that the U.S. government could absorb credit losses on the cover pool held by the estate.

Declares that taxpayers shall bear no losses from the resolution of an estate under this Act.

(Sec. 5) Treats as a security within the purview of specified securities laws a covered bond issued or guaranteed under this Act by a bank or eligible issuer that is sponsored solely for the sole purpose of issuing covered bonds.

Prohibits such product from being treated as an asset-backed security under the Securities and Exchange Act of 1934. Prescribes reporting and disclosure requirements.

Exempts from all securities laws: (1) the separate estates created under this Act (but subjects them to reporting requirements imposed by the applicable covered bond regulator), and (2) any residual interest in a separate estate created under this Act.

(Sec. 6) Amends the Secondary Mortgage Market Enhancement Act of 1984 to encompass covered bonds within its purview.

Prohibits treatment of the separate estate created under this Act as an entity subject to taxation under the Internal Revenue Code separate from the owner of the residual interest.

Prohibits construction of the transfer or assumption of any asset or liability to or by an estate or an eligible issuer under this Act as causing or constituting an event in which gain or loss is recognized for tax purposes.

Treats as qualified mortgages for purposes of real estate mortgage investment conduits (REMICs) any covered bonds secured by eligible assets from the residential or commercial mortgage asset class. Requires such a bond to be treated as a real estate asset in the same manner as a regular interest in a REMIC.

Treats acquisition of a covered bond as acquisition of an investment security for tax purposes.

Authorizes the Secretary to promulgate regulations precluding state and local taxation if the separate estate is not treated as an entity subject to taxation separate from the owner of the residual interest.

Actions Timeline

- **Dec 31, 2012:** Committee on Ways and Means discharged.
- **Dec 31, 2012:** Placed on the Union Calendar, Calendar No. 542.
- **Dec 21, 2012:** House Committee on Ways and Means Granted an extension for further consideration ending not later than Dec. 31, 2012.
- **Dec 14, 2012:** House Committee on Ways and Means Granted an extension for further consideration ending not later than Dec. 21, 2012.
- **Nov 30, 2012:** House Committee on Ways and Means Granted an extension for further consideration ending not later than Dec. 14, 2012.
- **Nov 16, 2012:** House Committee on Ways and Means Granted an extension for further consideration ending not later than Nov. 30, 2012.
- **Sep 14, 2012:** House Committee on Ways and Means Granted an extension for further consideration ending not later than Nov. 16, 2012.
- **Jun 29, 2012:** House Committee on Ways and Means Granted an extension for further consideration ending not later than Sept. 14, 2012.
- **May 18, 2012:** House Committee on Ways and Means Granted an extension for further consideration ending not later than June 29, 2012.
- **Mar 30, 2012:** House Committee on Ways and Means Granted an extension for further consideration ending not later than May 18, 2012.
- **Mar 5, 2012:** Reported (Amended) by the Committee on Financial Services. H. Rept. 112-407, Part I.
- **Mar 5, 2012:** House Committee on Ways and Means Granted an extension for further consideration ending not later than March 30, 2012.
- **Jun 22, 2011:** Committee Consideration and Mark-up Session Held.
- **Jun 22, 2011:** Ordered to be Reported (Amended) by the Yeas and Nays: 44 - 7 and 3 Present.
- **May 4, 2011:** Subcommittee Consideration and Mark-up Session Held.
- **May 4, 2011:** Forwarded by Subcommittee to Full Committee (Amended) by Voice Vote .
- **May 3, 2011:** Subcommittee Consideration and Mark-up Session Held.
- **Apr 4, 2011:** Referred to the Subcommittee on Capital Markets and Government Sponsored Enterprises.
- **Mar 11, 2011:** Hearings Held by the Subcommittee on Capital Markets and Government Sponsored Enterprises Prior to Referral.
- **Mar 8, 2011:** Introduced in House
- **Mar 8, 2011:** 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.