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# BEST PRACTICES FOR RESIDENTIAL COVERED BONDS

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**UNITED STATES DEPARTMENT OF THE TREASURY  
BEST PRACTICES FOR RESIDENTIAL COVERED BONDS**



**July 2008**

**Henry M. Paulson, Jr.**  
Secretary of the Treasury

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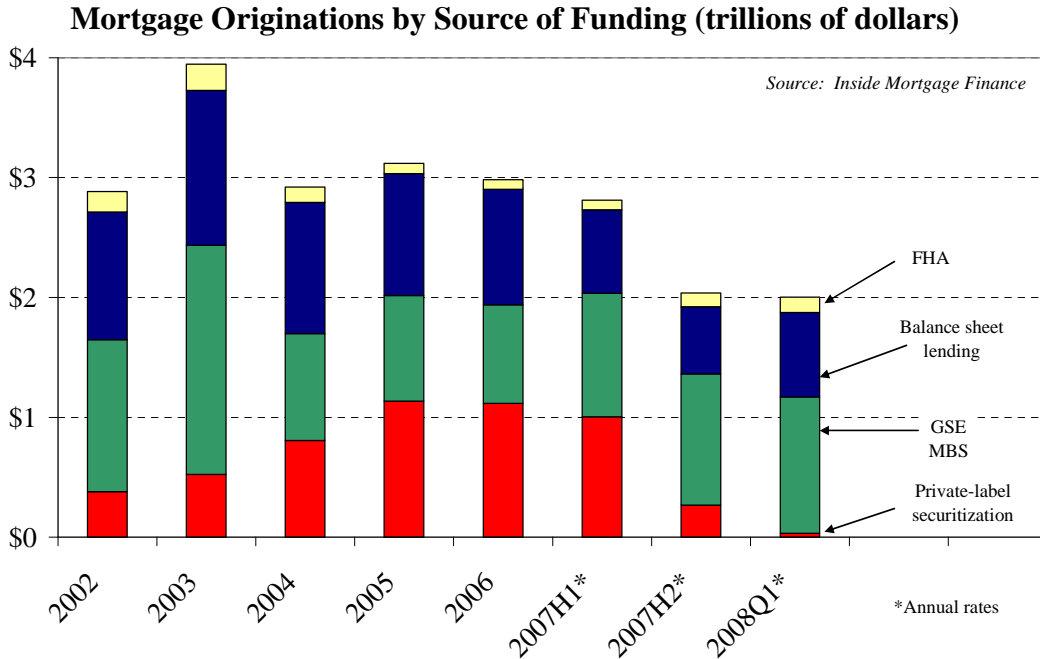
## **I. Background**

This Best Practices guide has been prepared by the Department of the Treasury (“Treasury”) in order to encourage the growth of the Covered Bond market in the United States. Treasury believes that Covered Bonds represent a potential additional source of financing that could reduce borrowing costs for homeowners, improve liquidity in the residential mortgage market, and help depository institutions strengthen their balance sheets by diversifying their funding sources.

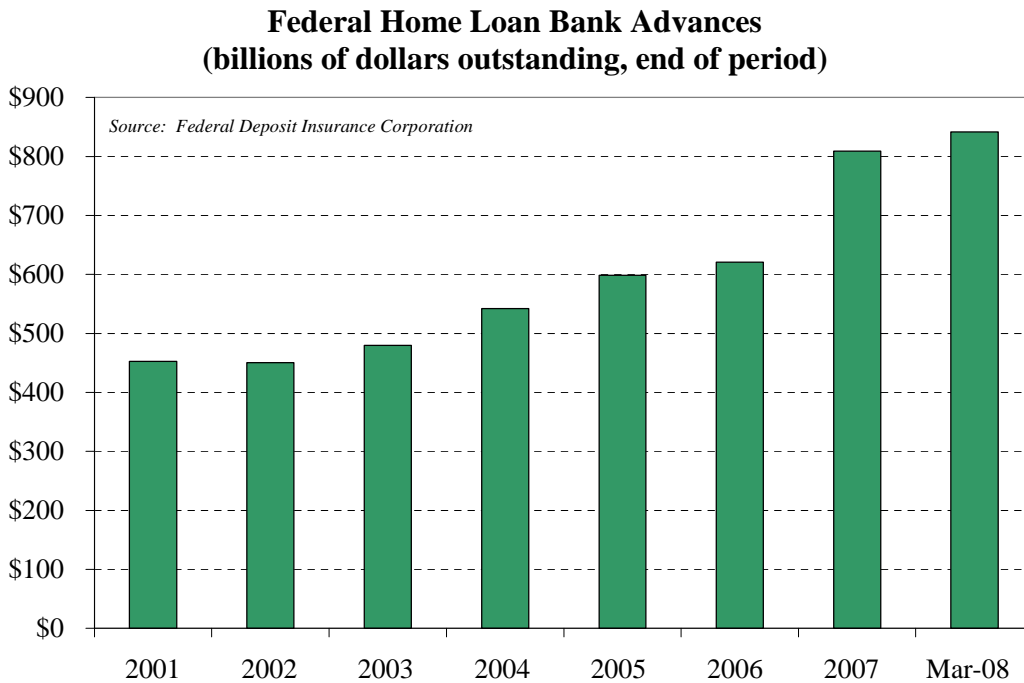
U.S. depository institutions have historically utilized several different funding sources to originate new residential mortgage loans, both for sale to investors and for their own portfolios. For loans sold into the market, depository institutions’ funding options included selling the loans directly to investors, Fannie Mae, or Freddie Mac, and via private-label securitization. For loans retained on their balance sheets, depository institutions’ funding options included utilizing their customers’ deposits, issuing unsecured debt, and pledging their mortgages as collateral for advances from the Federal Home Loan Banks.

Recent market turmoil has severely limited the ability of depository institutions to sell loans to investors via private-label securitization. Consistent with their important public policy mission, the government-sponsored enterprises, Fannie Mae, Freddie Mac and the Federal Home Loans Banks, as well as the Federal Housing Administration have been playing a critical role by providing mortgage finance during this strained period. Even so, many depository institutions are keeping more mortgage loans on their balance sheets and are therefore seeking new sources of on-balance sheet financing. Many U.S. depository institutions are examining the potential of Covered Bonds to provide this financing while at the same time diversifying their overall funding portfolio.

Private-label securitization has become strained. The GSEs, FHA and balance sheet lending have expanded in response. Nonetheless, total mortgage originations have fallen.

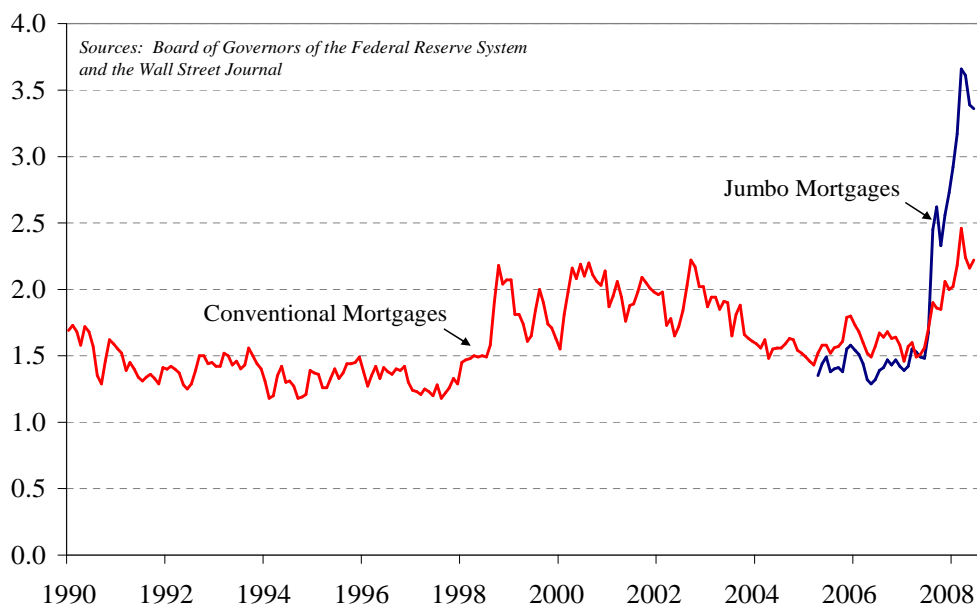


The Federal Home Loan Banks are playing an important and expanded role funding lenders' balance sheets.



Even with the expanded roles of Fannie Mae, Freddie Mac, the Federal Home Loan Banks and the Federal Housing Administration, mortgage spreads are increasing for all classes of mortgage loans.

### Mortgage Rate Spreads to 10-Year Treasury (percent)



Covered Bonds present an alternative source of funding for institutions that can complement other sources of financing for a wide range of high-quality assets. In Europe, Covered Bonds are highly liquid instruments which are typically sold to rate-product investors rather than credit-product investors. While a Covered Bond market is already well-established in Europe, to date only two U.S. depository institutions have issued Covered Bonds. Given current challenges in other financing markets, U.S. institutions may find Covered Bonds to be an attractive source of funding for mortgage loans.

Treasury expects private-label securitization to return to the U.S. mortgage market, enabling homeowners to benefit from a broad, global investor base. Given the size of the U.S. residential mortgage market, Treasury believes there will be a role for all sources of mortgage funding in the future.

## **II. Objective**

In preparing this report, Treasury seeks to bring increased clarity and homogeneity to the United States Covered Bond market by developing a series of Best Practices. Although the United States does not have dedicated Covered Bond legislation, Treasury believes these Best Practices may serve as a starting-point for the market, by encouraging issuers to use a common and simplified structure with high quality collateral for Covered Bond issuances. However, this document does not imply that Treasury favors Covered Bonds over other financing options available to depository institutions. Instead, Treasury views Covered Bonds as an additional, complementary funding source for the \$11 trillion residential mortgage market.

Treasury has limited these Best Practices specifically to Covered Bonds backed by collateral consisting of high quality residential mortgage loans for two reasons. First, a liquid Covered Bond market based on residential mortgages may provide additional funding for the housing market, in turn lowering mortgage rates for homeowners. Second, focusing on one type of collateral while the market is nascent will provide simplicity for market participants. However, Treasury expects that the Covered Bond market to develop over time and the collateral securing Covered Bonds may eventually include other asset classes.

It should be noted that these Best Practices serve as a complement to the Federal Deposit Insurance Corporation's *Final Covered Bond Policy Statement* dated July 15, 2008 (see Appendix B). This statement specifies actions that the FDIC will take during an insolvency or receivership if the Covered Bond meets certain minimum requirements.

Finally, while these Best Practices have been developed to facilitate the growth of the Covered Bond market, they should not constrain the market in the future. Treasury fully expects the structure, collateral and other key terms of Covered Bonds to evolve with the growth of this market in the United States.

In preparing this Best Practices document, Treasury discussed the potential development of the U.S. Covered Bond market with both U.S. and European regulators, as well as numerous market participants, including potential issuers, investors, underwriters, rating agencies, law firms, financial counterparties, service providers and trade associations.

### **III. Covered Bond Definition**

For the purposes of this document, a Covered Bond is defined as follows:

A Covered Bond is a debt instrument secured by a perfected security interest in a specific pool of collateral (“Cover Pool”). A Covered Bond provides funding to a depository institution (“issuer”) that retains a Cover Pool of residential mortgage assets and related credit risk on its balance sheet. Interest on the Covered Bond is paid to investors from the issuer’s general cash flows, while the Cover Pool serves as secured collateral. This Cover Pool consists of a portfolio of performing residential mortgage loans that meet specified underwriting criteria and are actively managed by the issuer to meet certain characteristics. If assets within the Cover Pool become non-performing, they must be replaced with performing assets. Finally, the issuer must maintain a Cover Pool in excess of the notional value of the Covered Bond (“overcollateralization”) at all times. Multiple issuances for a depository institution may utilize a common Cover Pool.

In the event of an issuer default, Covered Bond investors first have recourse to the Cover Pool. In the event the Cover Pool returns less than par in liquidation, investors retain an unsecured claim on the issuer ranking pari passu with other unsecured creditors. Hence, Covered Bonds provide dual recourse to both the Cover Pool and the issuer, and the overcollateralization of the Cover Pool helps to mitigate the risk that investors would receive less than par in the event of an issuer default.

#### *Comparison to Unsecured Debt*

Unsecured debt differs significantly from Covered Bonds because of the absence of secured collateral underlying the obligation of the issuer. While unsecured debt investors retain an unsecured claim on the issuer in the event of issuer default, Covered Bond investors possess dual recourse to both the underlying collateral of a Covered Bond and to the individual issuer. Accordingly, Covered Bonds provide investors with additional protection on their investment compared with unsecured debt.

#### *Comparison to Mortgage-Backed Securities*

Although both mortgage-backed securities (“MBS”) and Covered Bonds are a potential source of long-term funding for residential mortgage loans, there are several essential differences between Covered Bonds and MBS that make each attractive to different types of investors:

- Mortgages that secure a Covered Bond remain on the issuer’s balance sheet, unlike MBS where mortgages are packaged and sold to investors.



- The cash flow from the mortgages and credit enhancements in MBS are generally the only source of principal and interest payments to the MBS investors. In a Covered Bond, principal and interest are paid by the issuer's cash flows, while the mortgages in the Cover Pool only serve as collateral for investors.
- The collateral underlying Covered Bonds is dynamic and non-performing (or prepaying) assets within the Cover Pool must be substituted with performing mortgages. Mortgages underlying MBS are static and remain in each MBS until maturity.
- In the case of an issuer default, Covered Bonds are structured to avoid prepayment prior to the date of maturity. This is accomplished through swap agreements and deposit agreements (e.g., guaranteed investment contracts). MBS investors, in contrast, are exposed to prepayment risk in the case of a mortgage default or prepayment.
- In the event that the Covered Bonds do accelerate and repay investors at an amount less than the principal and accrued interest, investors retain an unsecured claim on the issuer. MBS investors generally do not retain any claim on the issuer in the event of repayment at an amount less than the principal and interest owed.

#### **IV. History of the Covered Bond Market**

The Covered Bond market has a long and extensive history in Europe, dating back more than 230 years to the initial Prussian issuance in 1770. Covered Bonds were initially used to finance agriculture and later became focused on residential and commercial real estate markets. While Covered Bonds remained popular throughout the 19<sup>th</sup> century, during the 20<sup>th</sup> century they were somewhat eclipsed given other advances in the inter-bank financing markets. However, in 1995 the first German jumbo Covered Bond was issued, meeting investor demand for increasingly liquid products.<sup>1</sup> Since that time, the Covered Bond market has accelerated in Europe, partly due to the fact that Europe does not have government-sponsored enterprises such as Fannie Mae, Freddie Mac or the Federal Home Loan Banks. Furthermore, the collateral behind European Covered Bonds includes residential and commercial mortgages as well as public sector debt. At the end of 2007, the Covered Bond market stood at over EUR 2.11 trillion.<sup>2</sup> To date, two U.S. institutions have issued Covered Bonds.

Nearly all European countries have adopted Covered Bonds into their financial system. Depending on the jurisdiction, Covered Bonds may be governed by legislation (i.e. a “legislative framework”) or by contract (i.e. a “structured framework”). Typically, a legislative framework exists in nations with a long history of Covered Bonds while nations with a relatively young Covered Bond market, such as Canada and Japan have a structured framework. In countries with a legislative framework there is often a dedicated regulator that governs the issuance and repayment of Covered Bonds. Moreover, a legislative framework helps to standardize Covered Bonds, providing homogeneity and simplicity to the market. This Best Practices document seeks to offer such structure to the U.S. market.

## **V. Important Considerations**

The purpose of this document is to present a standardized model for Covered Bonds issued in the United States in the absence of dedicated legislation. Investors should recognize that like all investments, Covered Bonds carry risk. Investors should perform their own due diligence and review risk factors and associated disclosure before investing in any Covered Bond. These Best Practices only serve as a template for market participants and do not in any way provide or imply a government guarantee of any kind. It should also be understood that these Best Practices do not attempt to address requirements arising from federal securities laws or any other legal framework.

## **VI. Best Practices Template**

For a Covered Bond program to be consistent with this Best Practices Template, the program's documentation must conform to the following provisions throughout the life of the program, not only at the time of issuance. *Italics indicate provisions that are specified in the final FDIC policy statement*<sup>3</sup>.

<b>Issuer</b>	<p><i>The issuer may be:</i></p> <ul style="list-style-type: none"><li>▪ <i>A newly created, bankruptcy-remote SPV (“SPV Structure”)</i><sup>4</sup></li><li>▪ <i>A depository institution and/or a wholly-owned subsidiary of a depository institution (“Direct Issuance Structure”)</i></li></ul>
<b>Security</b>	<p>Under the current SPV Structure, the issuer's primary assets must be a mortgage bond purchased from a depository institution. The mortgage bond must be secured at the depository institution by a dynamic pool of residential mortgages.</p> <p>Under the Direct Issuance Structure, the issuing institution must designate a Cover Pool of residential mortgages as the collateral for the Covered Bond, which remains on the balance sheet of the depository institution.</p> <p>In both structures, the Cover Pool must be owned by the depository institution. Issuers of Covered Bonds must provide a first priority claim on the assets in the Cover Pool to bond holders, and the assets in the Cover Pool must not be encumbered by any other lien. The issuer must clearly identify the Cover Pool's assets, liabilities, and security pledge on its books and records.</p>
<b>Maturity</b>	<p><i>The maturity for Covered Bonds shall be greater than one year and no more than thirty years.</i> While the majority of early issuances will likely have maturities between one and ten years, we expect longer dated issuances may develop over time.</p>

**Eligible Cover  
Pool Collateral**

The collateral in the Cover Pool must meet the following requirements at all times:

- *Performing mortgages on one-to-four family residential properties*
- *Mortgages shall be underwritten at the fully-indexed rate<sup>5</sup>*
- *Mortgages shall be underwritten with documented income*
- *Mortgages must comply with existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such additional guidance applicable at the time of loan origination*
- *Substitution collateral may include cash and Treasury and agency securities as necessary to prudently manage the Cover Pool*
- Mortgages must be current when they are added to the pool and any mortgages that become more than 60-days past due must be replaced
- Mortgages must be first lien only
- Mortgages must have a maximum loan-to-value (“LTV”) of 80% at the time of inclusion in the Cover Pool
- A single Metro Statistical Area cannot make up more than 20% of the Cover Pool
- Negative amortization mortgages are not eligible for the Cover Pool
- Bondholders must have a perfected security interest in these mortgage loans.

**Over-  
collateralization**

Issuers must maintain an overcollateralization value at all times of at least 5% of the outstanding principal balance of the Covered Bonds (see “Asset Coverage Test”).

For the purposes of calculating the minimum required overcollateralization in the Covered Bond, only the 80% portion of the updated LTV will be credited. If a mortgage in the Cover Pool has a LTV of 80% or less, the full outstanding principal value of the mortgage will be credited. If a mortgage has a LTV over 80%, only the 80% LTV portion of each loan will be credited (see Appendix A for examples).

Issuers must update the LTV of mortgages in the Cover Pool on a quarterly basis using a nationally-recognized, regional housing price index or other comparable measurement.

**Currency**

Covered Bonds may be issued in any currency.

**Interest Type**

Covered Bonds may either be fixed or floating instruments.

**Interest Payment Swaps**

Issuers may enter into one or more swap agreements or similar contractual arrangements at the time of issuance. The purpose of such agreements include:

- To provide scheduled interest payments on a temporary basis in the event the issuer becomes insolvent
- To mitigate any timing mismatch, to the extent applicable, between interest payments and interest income

These swap agreements must be with financially sound counterparties and the identity of the counterparties must be disclosed to investors.

**Currency Swap**

If a Covered Bond is issued in a different currency than the underlying Cover Pool (or Mortgage Bond, if applicable), the issuer shall employ a currency swap.

**Specified Investment Contract**

Issuers must enter into a deposit agreement, e.g., guaranteed investment contract, or other arrangement whereby the proceeds of Cover Pool assets are invested (any such arrangement, a “Specified Investment”) at the time of issuance with or by one or more financially sound counterparties. Following a payment default by the issuer or repudiation by the FDIC as conservator or receiver, the Specified Investment should pay ongoing scheduled interest and principal payments so long as the Specified Investment provider receives proceeds of the Cover Pool assets at least equal to the par value of the Covered Bonds.

The purpose of the Specified Investment is to prevent an acceleration of the Covered Bond due to the insolvency of the issuer.

<b>Cover Pool Disclosure</b>	<p>Issuers must make available descriptive information on the Cover Pool with investors at the time an investment decision is being made and on a monthly basis after issuance. The SEC’s Regulation AB provides a helpful template for preparing pool level information, such as presenting summary information in tabular or graphical format and using appropriate groups or ranges.</p> <p>Issuers must make this information available to investors no later than 30 days after the end of each month.</p> <p>As the Covered Bond market develops, issuers should consider disclosing metrics on the Cover Pools from their prior Covered Bonds whenever a new issuance occurs.</p>
<b>Substitution</b>	<p>If more than 10% of the Cover Pool is substituted within any month or if 20% of the Cover Pool is substituted within any one quarter, the issuer must provide updated Cover Pool information to investors.</p>
<b>Issuer Disclosure</b>	<p>The depository institution and the SPV (if applicable) must disclose information regarding its financial profile and other relevant information that an investor would find material.</p>
<b>Asset Coverage Test</b>	<p>The issuer must perform an Asset Coverage Test on a monthly basis to ensure collateral quality and the proper level of overcollateralization and to make any substitutions that are necessary to meet the provisions of this template. The results of this Asset Coverage Test and the results of any reviews by the Asset Monitor must be made available to investors.</p>
<b>Asset Monitor</b>	<p>The issuer must designate an independent Asset Monitor to periodically determine compliance with the Asset Coverage Test of the issuer.</p>
<b>Trustee</b>	<p>The issuer must designate an independent Trustee for the Covered Bonds. Among other responsibilities, this Trustee must represent the interest of investors and must enforce the investors’ rights in the collateral in the event of an issuer’s insolvency.</p>

<b>Treatment of Covered Bond Proceeds</b>	In the event of a default, any losses must be allocated pro rata across Covered Bond issuances that utilize a common Cover Pool, irrespective of the maturity of the individual issuances.
<b>SEC Registration</b>	Covered Bonds may be issued as registered securities or may be exempt from registration under securities laws. This template is not meant to address disclosure and other requirements for a security registered with the Securities and Exchange Commission.
<b>Regulatory Authorization</b>	<i>Issuers must receive consent to issue Covered Bonds from their primary federal regulator.</i> Upon an issuer's request, their primary federal regulator will make a determination based on that agencies policies and procedures whether to give consent to the issuer to establish a Covered Bond program. Only well-capitalized institutions should issue Covered Bonds.  As part of their ongoing supervisory efforts, primary federal regulators monitor an issuer's controls and risk management processes.
<b>Issuance Limitations</b>	<i>Covered Bonds may account for no more than four percent of an issuers' liabilities after issuance.</i>
<b>Event of Breach of the Asset Coverage Test</b>	If the Asset Coverage Test of the Covered Bond program is breached, the issuer has one month to correct such breach. If, after one month, the breach remains, the Trustee may terminate the Covered Bond program and principal and accrued interest will be returned to investors. While such a breach exists, the issuer may not issue any additional Covered Bonds.



## **Insolvency Procedures**

*As conservator or receiver for an insured depository institution (IDI), the FDIC has three options in responding to a properly structured Covered Bond transaction of the IDI:*

- 1) continue to perform on the Covered Bond transaction under its terms;*
- 2) pay-off the Covered Bonds in cash up to the value of the pledged collateral; or*
- 3) allow liquidation of the pledged collateral to pay-off the Covered Bonds.*

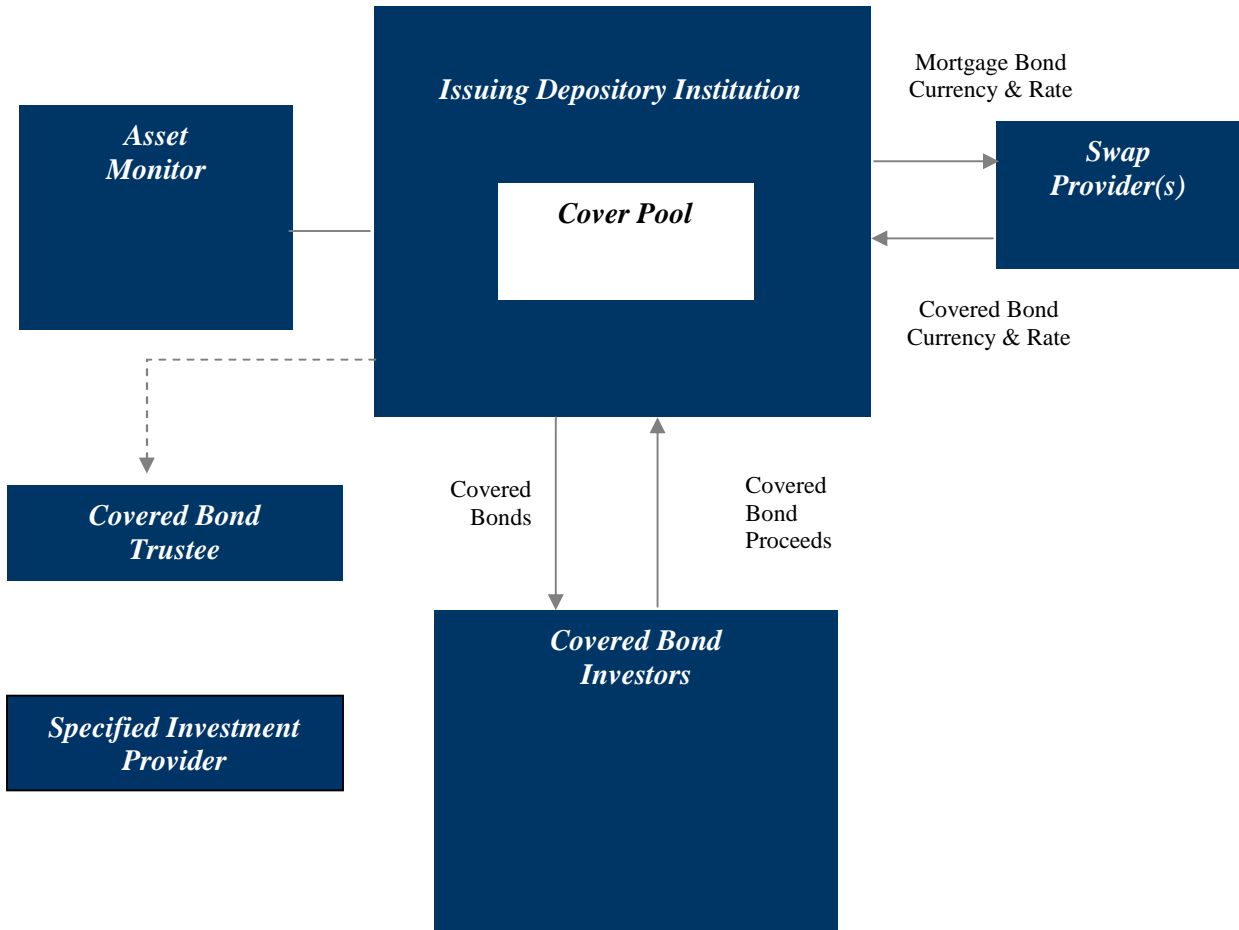
*If the FDIC adopts the first option, it would continue to make the Covered Bond payments as scheduled. The second or third options would be triggered if the FDIC repudiated the transaction or if a monetary default occurred. In both cases, the par value of the Covered Bonds plus interest accrued to the date of the appointment of the FDIC as conservator or receiver would be paid in full up to the value of the collateral.*

*If the value of the pledged collateral exceeded the total amount of all valid claims held by the secured parties, this excess value or over collateralization would be returned to the FDIC, as conservator or receiver, for distribution as mandated by the Federal Deposit Insurance Act.*

*If there were insufficient collateral pledged to cover all valid claims by the secured parties, the amount of the claims in excess of the pledged collateral would be unsecured claims in the receivership.*

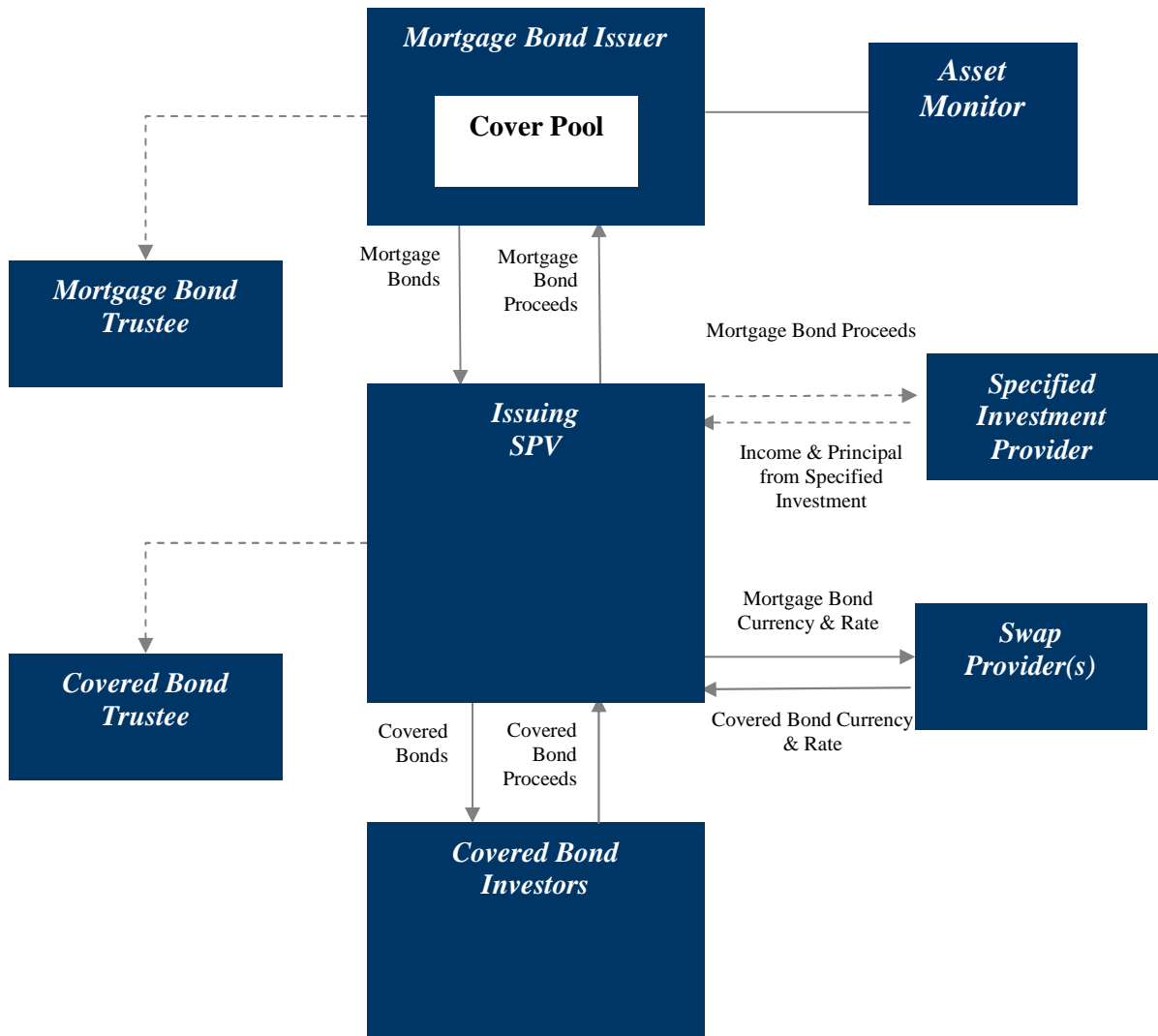
## VII. Illustrative Direct Issuance

This diagram is meant to show what a potential structure could look like if the issuer of a Covered Bond were a depository institution. It is not intended to endorse a specific structure but rather serves an illustrative purpose. Issuers may develop other structures that are consistent with the template.



**VIII. Illustrative SPV Issuance**

This diagram is meant to show what a potential structure could look like if the issuer of a Covered Bond were a SPV. It is not intended to endorse a specific structure but rather serves an illustrative purpose. Issuers may develop other structures that are consistent with the template.



## **Endnotes**

<sup>1</sup> European Covered Bond Council, December 2007.

<sup>2</sup> Ibid

<sup>3</sup> The FDIC's Final Covered Bond Policy Statement dated July 15, 2008 outlines specific actions that the FDIC will take during an insolvency or receivership if certain conditions are met. Italicized terms indicate provisions that are part of both the FDIC's statement and this Best Practices Template. However, these italicized terms are not meant to cover all of the provisions of the FDIC statement. Market participants should independently review the FDIC's statement to ensure conformity with all provisions.

<sup>4</sup> In addition to SPV programs with a single issuer, multiple depository institutions could potentially utilize a joint SPV to pool assets. Each issuer would be responsible for meeting appropriate requirements and receiving consent from its primary federal regulator.

<sup>5</sup> The fully indexed rate equals the index rate prevailing at origination plus the margin to be added to it after the expiration of an introductory interest rate. For example, assume that a loan with an initial fixed rate of 7% will reset to the six-month London Interbank Offered Rate (LIBOR) plus a margin of 6%. If the six-month LIBOR rate equals 5.5%, lenders should qualify the borrower at 11.5% (5.5% + 6%), regardless of any interest rate caps that limit how quickly the fully indexed rate may be reached.

## **Appendix A: Cover Pool Collateralization Calculation**

As stated in Section VI., a minimum overcollateralization of 5% of the principal value of the Covered Bond must be maintained. Furthermore, mortgages must have a maximum LTV of 80% at the time of inclusion in the Cover Pool.

For the purposes of calculating the overcollateralization, 80% of the updated LTV will be credited towards the Cover Pool. For mortgages with an LTV of 80% or less, the full outstanding principal value will be credited. For mortgages with an LTV over 80%, only the 80% LTV portion of each loan will be credited.

This appendix provides examples of how loans may be credited against the required collateral of the Cover Pool.

### **ILLUSTRATIVE ASSUMPTIONS:**

- \$1,000 Covered Bond issuance
- Minimum overcollateralization of 5%
- Updated maximum LTV of 80% credited toward overcollateralization
- \$1,050 of required collateral ( $\$1,000 \times 1.05$ )

#### **Scenario A:**

- Pool of \$80 loans on homes with an updated value of \$100
- $\$1,050 / (\$80 \times 1.0) = 13.125$  loans required in Cover Pool

#### **Scenario B:**

- Pool of \$60 loans on homes with an updated value of \$100
- $\$1,050 / (\$60 \times 1.0) = 17.500$  loans required in Cover Pool

#### **Scenario C:**

- Pool of \$80 loans on homes with an updated value of \$80
- $\$1,050 / (\$80 \times 0.8) = 16.406$  loans required in Cover Pool

## **Appendix B: Final FDIC Covered Bond Policy Statement**

FEDERAL DEPOSIT INSURANCE CORPORATION

Covered Bond Policy Statement

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final Statement of Policy

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**SUMMARY:** The Federal Deposit Insurance Corporation (the FDIC) is publishing a final policy statement on the treatment of covered bonds in a conservatorship or receivership. This policy statement provides guidance on the availability of expedited access to collateral pledged for certain covered bonds after the FDIC decides whether to terminate or continue the transaction. Specifically, the policy statement clarifies how the FDIC will apply the consent requirements of section 11(e)(13)(C) of the Federal Deposit Insurance Act (FDIA) to such covered bonds to facilitate the prudent development of the U.S. covered bond market consistent with the FDIC's responsibilities as conservator or receiver for insured depository institutions (IDI). As the U.S. covered bond market develops, future modifications or amendments may be considered by the FDIC.

**FOR FURTHER INFORMATION CONTACT:** Richard T. Aboussie, Associate General Counsel, Legal Division (703) 562-2452; Michael H. Krimminger, Special Advisor for Policy (202) 898-8950.

### **SUPPLEMENTARY INFORMATION**

#### **I. Background**

On April 23, 2008, the FDIC published the Interim Final Covered Bond Policy Statement for public comment. 73 FR 21949 (April 23, 2008). After carefully reviewing and considering all comments, the FDIC has adopted certain limited revisions and clarifications to the Interim Policy Statement (as discussed in Part II) in the Final Policy Statement.<sup>1</sup>

Currently, there are no statutory or regulatory prohibitions on the issuance of covered bonds by U.S. banks. Therefore, to reduce market uncertainty and clarify the application of the FDIC's statutory authorities for U.S. covered bond transactions, the FDIC issued an Interim Policy Statement to provide guidance on the availability of expedited access to collateral pledged for certain covered bonds by IDIs in a conservatorship or a receivership. As discussed below, under section 11(e)(13)(C) of the FDIA, any liquidation of collateral of an IDI placed into

conservatorship or receivership requires the consent of the FDIC during the initial 45 days or 90 days after its appointment, respectively. Consequently, issuers of covered bonds have incurred additional costs from maintaining additional liquidity needed to insure continued payment on outstanding bonds if the FDIC as conservator or receiver fails to make payment or provide access to the pledged collateral during these periods after any decision by the FDIC to terminate the covered bond transaction. The Policy Statement does not impose any new obligations on the FDIC, as conservator or receiver, but does define the circumstances and the specific covered bond transactions for which the FDIC will grant consent to expedited access to pledged covered bond collateral.

Covered bonds are general, non-deposit obligation bonds of the issuing bank secured by a pledge of loans that remain on the bank's balance sheet. Covered bonds originated in Europe, where they are subject to extensive statutory and supervisory regulation designed to protect the interests of covered bond investors from the risks of insolvency of the issuing bank. By contrast, covered bonds are a relatively new innovation in the U.S. with only two issuers to date: Bank of America, N.A. and Washington Mutual. These initial U.S. covered bonds were issued in September 2006.

In the covered bond transactions initiated in the U.S. to date, an IDI sells mortgage bonds, secured by mortgages, to a trust or similar entity ("special purpose vehicle" or "SPV").<sup>2</sup> The pledged mortgages remain on the IDI's balance sheet, securing the IDI's obligation to make payments on the debt, and the SPV sells covered bonds, secured by the mortgage bonds, to investors. In the event of a default by the IDI, the mortgage bond trustee takes possession of the pledged mortgages and continues to make payments to the SPV to service the covered bonds. Proponents argue that covered bonds provide new and additional sources of liquidity and diversity to an institution's funding base.

The FDIC agrees that covered bonds may be a useful liquidity tool for IDIs as part of an overall prudent liquidity management framework and within the parameters set forth in the Policy Statement. While covered bonds, like other secured liabilities, could increase the costs to the deposit insurance fund in a receivership, these potential costs must be balanced with diversification of sources of liquidity and the benefits that accrue from additional on-balance sheet alternatives to securitization for financing mortgage lending. The Policy Statement seeks to balance these considerations by clarifying the conditions and circumstances under which the FDIC will grant automatic consent to access pledged covered bond collateral. The FDIC believes that the prudential limitations set forth in the Policy Statement permit the incremental development of the covered bond market, while allowing the FDIC, and other regulators, the opportunity to evaluate these transactions within the U.S. mortgage market. In fulfillment of its responsibilities as deposit insurer and receiver for failed IDIs, the FDIC will continue to review the development of the covered bond marketplace

in the U.S. and abroad to gain further insight into the appropriate role of covered bonds in IDI funding and the U.S. mortgage market, and their potential consequences for the deposit insurance fund. (For ease of reference, throughout this discussion, when we refer to "covered bond obligation," we are referring to the part of the covered bond transaction comprising the IDI's debt obligation, whether to the SPV, mortgage bond trustee, or other parties; and "covered bond obligee" is the entity to which the IDI is indebted.)

Under the FDIA, when the FDIC is appointed conservator or receiver of an IDI, contracting parties cannot terminate agreements with the IDI because of the insolvency itself or the appointment of the conservator or receiver. In addition, contracting parties must obtain the FDIC's consent during the forty-five day period after appointment of FDIC as conservator, or during the ninety day period after appointment of FDIC as receiver before, among other things, terminating any contract or liquidating any collateral pledged for a secured transaction.<sup>3</sup> During this period, the FDIC must still comply with otherwise enforceable provisions of the contract. The FDIC also may terminate or repudiate any contract of the IDI within a reasonable time after the FDIC's appointment as conservator or receiver if the conservator or receiver determines that the agreement is burdensome and that the repudiation will promote the orderly administration of the IDI's affairs.<sup>4</sup>

As conservator or receiver for an IDI, the FDIC has three options in responding to a properly structured covered bond transaction of the IDI: 1) continue to perform on the covered bond transaction under its terms; 2) pay-off the covered bonds in cash up to the value of the pledged collateral; or 3) allow liquidation of the pledged collateral to pay-off the covered bonds. If the FDIC adopts the first option, it would continue to make the covered bond payments as scheduled. The second or third options would be triggered if the FDIC repudiated the transaction or if a monetary default occurred. In both cases, the par value of the covered bonds plus interest accrued to the date of the appointment of the FDIC as conservator or receiver would be paid in full up to the value of the collateral. If the value of the pledged collateral exceeded the total amount of all valid claims held by the secured parties, this excess value or over collateralization would be returned to the FDIC, as conservator or receiver, for distribution as mandated by the FDIA. On the other hand, if there were insufficient collateral pledged to cover all valid claims by the secured parties, the amount of the claims in excess of the pledged collateral would be unsecured claims in the receivership.

While the FDIC can repudiate the underlying contract, and thereby terminate any continuing obligations under that contract, the FDIA prohibits the FDIC, as conservator or receiver from avoiding any legally enforceable or perfected security interest in the assets of the IDI unless the interest was taken in



contemplation of the IDI's insolvency or with the intent to hinder, delay, or defraud the IDI or its creditors.<sup>5</sup> This statutory provision ensures protection for

the valid claims of secured creditors up to the value of the pledged collateral. After a default or repudiation, the FDIC as conservator or receiver may either pay resulting damages in cash up to the value of the collateral or turn over the collateral to the secured party for liquidation. For example, if the conservator or receiver repudiated a covered bond transaction, as discussed in Part II below, it would pay damages limited to par value of the covered bonds and accrued interest up to the date of appointment of the conservator or receiver, if sufficient collateral was in the cover pool, or turn over the collateral for liquidation with the conservator or receiver recovering any proceeds in excess of those damages. In liquidating any collateral for a covered bond transaction, it would be essential that the secured party liquidate the collateral in a commercially reasonable and expeditious manner taking into account the then-existing market conditions.

As noted above, existing covered bond transactions by U.S. issuers have used SPVs. However, nothing in the Policy Statement requires the use of an SPV. Some questions have been posed about the treatment of a subsidiary or SPV after appointment of the FDIC as conservator or receiver. The FDIC applies well-defined standards to determine whether to treat such entities as "separate" from the IDI. If a subsidiary or SPV, in fact, has fulfilled all requirements for treatment as a "separate" entity under applicable law, the FDIC as conservator or receiver has not applied its statutory powers to the subsidiary's or SPV's contracts with third parties. While the determination of whether a subsidiary or SPV has been organized and maintained as a separate entity from the IDI must be determined based on the specific facts and circumstances, the standards for such decisions are set forth in generally applicable judicial decisions and in the FDIC's regulation governing subsidiaries of insured state banks, 12 C.F.R. § 362.4.

The requests to the FDIC for guidance have focused principally on the conditions under which the FDIC would grant consent to obtain collateral for a covered bond transaction before the expiration of the forty-five day period after appointment of a conservator or the ninety day period after appointment of a receiver. IDIs interested in issuing covered bonds have expressed concern that the requirement to seek the FDIC's consent before exercising on the collateral after a breach could interrupt payments to the covered bond obligee for as long as 90 days. IDIs can provide for additional liquidity or other hedges to accommodate this potential risk to the continuity of covered bond payments but at an additional cost to the transaction. Interested parties requested that the FDIC provide clarification about how FDIC would apply the consent requirement with respect to covered bonds. Accordingly, the FDIC has determined to issue this Final Covered Bond Policy Statement in order to provide covered bond issuers with final guidance on how the FDIC will treat covered bonds in a conservatorship or receivership.

## II. Overview of the Comments

The FDIC received approximately 130 comment letters on the Interim Policy Statement; these included comments from national banks, Federal Home Loan Banks, industry groups and individuals.

Most commenters encouraged the FDIC to adopt the Policy Statement to clarify how the FDIC would treat covered bonds in the case of a conservatorship or receivership and, thereby, facilitate the development of the U.S. covered bond market. The more detailed comments focused on one or more of the following categories of issues: (1) the FDIC's discretion regarding covered bonds that do not comply with the Policy Statement; (2) application to covered bonds completed prior to the Policy Statement; (3) the limitation of the Policy Statement to covered bonds not exceeding 4 percent of liabilities; (4) the eligible collateral for the cover pools; (5) the measure of damages provided in the event of default or repudiation; (6) the covered bond term limit; and (7) federal home loan bank advances and assessments.

Certain banks and industry associations sought clarification about the treatment of covered bonds that do not comply with the Policy Statement by the FDIC as conservator or receiver. Specifically, commenters asked the FDIC to clarify that if a covered bond issuance is not in conformance with the Policy Statement, the FDIC retains discretion to grant consent prior to expiration of the 45 or 90 day period on a case-by-case basis. Under Section 11(e)(13)(C) of the FDIA, the exercise of any right or power to terminate, accelerate, declare a default, or otherwise affect any contract of the IDI, or to take possession of any property of the IDI, requires the consent of the conservator or receiver, as appropriate, during the 45-day period or 90-day period after the date of the appointment of the conservator or receiver, as applicable. By the statutory terms, the conservator or receiver retains the discretion to give consent on a case-by-case basis after evaluation by the FDIC upon the failure of the issuer.

Comments from banks who issued covered bonds prior to the Policy Statement requested either 'grandfathering' of preexisting covered bonds or an advance determination by the FDIC before any appointment of a conservator or receiver that specific preexisting covered bonds qualified under the Policy Statement. After carefully considering the comments, the FDIC has determined that to 'grandfather' or otherwise permit mortgages or other collateral that does not meet the specific requirements of the Policy Statement to support covered bonds would not promote stable and resilient covered bonds as encompassed within the Policy Statement. If preexisting covered bonds, and their collateral, otherwise qualify under the standards specified in the Policy Statement, those covered bonds would be eligible for the expedited access to collateral provided by the Policy Statement.

A number of commenters requested that the limitation of eligible covered bonds to no more than 4 percent of an IDI's total liabilities should be removed or increased. Commenters also noted that other countries applying a cap have based the limitation on assets, not liabilities. The Policy Statement applies to covered bond issuances that comprise no more than 4 percent of an institution's total liabilities since, in part, as the proportion of secured liabilities increases the unpledged assets available to satisfy the claims of the Deposit Insurance Fund, uninsured depositors and other creditors decreases. As a result, the FDIC must focus on the share of an IDI's liabilities that are secured by collateral and balance the additional potential losses in the failure of an IDI against the benefits of increased liquidity for open institutions. The 4 percent limitation under the Policy Statement is designed to permit the FDIC, and other regulators, an opportunity to evaluate the development of the covered bond market within the financial system of the United States, which differs in many respects from that in other countries deploying covered bonds. Consequently, while changes may be considered to this limitation as the covered bond market develops, the FDIC has decided not to make any change at this time.

A number of commenters sought expansion of the mortgages defined as "eligible mortgages" and the expansion of collateral for cover pools to include other assets, such as second-lien home equity loans and home equity lines of credit, credit card receivables, mortgages on commercial properties, public sector debt, and student loans. Other commenters requested that "eligible mortgages" should be defined solely by their loan-to-value (LTV) ratios. After considering these comments, the FDIC has determined that its interests in efficient resolution of IDIs, as well as in the initial development of a resilient covered bond market that can provide reliable liquidity for well-underwritten mortgages, support retention of the limitations on collateral for qualifying covered bonds in the Interim Policy Statement. Recent market experience demonstrates that many mortgages that would not qualify under the Policy Statement, such as low documentation mortgages, have declined sharply in value as credit conditions have deteriorated. Some of the other assets proposed are subject to substantial volatility as well, while others would not specifically support additional liquidity for well-underwritten residential mortgages. As noted above, certain provisions of the Policy Statement may be reviewed and reconsidered as the U.S. covered bond market develops.

With regard to the comments that LTV be used as a guide to determine an "eligible mortgage," the FDIC does not believe that LTV can substitute for strong underwriting criteria to ensure sustainable mortgages. In response to the comments, and the important role that LTV plays in mortgage analysis, the Policy Statement will urge issuers to disclose LTV for mortgages in the cover pool to enhance transparency for the covered bond market and promote stable cover pools. However, no specific LTV limitation will be imposed.

Two commenters suggested that the Policy Statement should be clarified to permit the substitution of cash as cover pool collateral. The Policy Statement has been modified to allow for the substitution of cash and Treasury and agency securities. The substitution of such collateral does not impair the strength of the cover pool and may be an important tool to limit short-term strains on issuing IDIs if eligible mortgages or AAA-rated mortgage securities must be withdrawn from the cover pool.

A number of commenters requested guidance on the calculation of damages the receiver will pay to holders of covered bonds in the case of repudiation or default. Under 12 USC § 1821(e)(3), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract is limited to "actual direct compensatory damages" and determined as of the date of appointment of the conservator or receiver. In the repudiation of contracts, such damages generally are defined by the amount due under the contract repudiated, but excluding any amounts for lost profits or opportunities, other indirect or contingent claims, pain and suffering, and exemplary or punitive damages. Under the Policy Statement, the FDIC agrees that "actual direct compensatory damages" due to bondholders, or their representative(s), for repudiation of covered bonds will be limited to the par value of the bonds plus accrued interest as of the date of appointment of the FDIC as conservator or receiver. The FDIC anticipates that IDIs issuing covered bonds, like other obligations bearing interest rate or other risks, will undertake prudent hedging strategies for such risks as part of their risk management program.

Many commenters suggested that the 10-year term limit should be removed to permit longer-term covered bond maturities. After reviewing the comments, the FDIC agrees that longer-term covered bonds should not pose a significant, additional risk and may avoid short-term funding volatility. Therefore, the FDIC has revised the Interim Policy Statement by increasing the term limit for covered bonds from 10 years to 30 years.

A number of the Federal Home Loan Banks, and their member institutions, objected to the inclusion of FHLB advances in the definition of "secured liabilities," any imposed cap on such advances, and any change in assessment rates. Under 12 C.F.R. Part 360.2 (Federal Home Loan Banks as Secured Creditors), secured liabilities include loans from the Federal Reserve Bank discount window, Federal Home Loan Bank (FHLB) advances, repurchase agreements, and public deposits. However, the Policy Statement does not impose a cap on FHLB advances and has no effect on an IDI's ability to obtain FHLB advances or its deposit insurance assessments. The Policy Statement solely addresses covered bonds.

However, as noted above, where an IDI relies very heavily on secured liabilities to finance its lending and other business activities, it does pose a greater risk of loss to the Deposit Insurance Fund in any failure. Should the covered bond market develop as a significant source of funding for IDIs, and should that development create substantial increases in an IDI's reliance on secured funding, it would increase the FDIC's losses in a failure and perhaps outweigh the benefits of improved liquidity. As a result, it is appropriate for the FDIC to consider the risks of such increased losses. Consideration of these risks may occur in a possible future request for comments on secured liabilities, but they are not addressed in this Policy Statement.

### III. Final Statement of Policy

For the purposes of this final Policy Statement, a "covered bond" is defined as a non-deposit, recourse debt obligation of an IDI with a term greater than one year and no more than thirty years, that is secured directly or indirectly by a pool of eligible mortgages or, not exceeding ten percent of the collateral, by AAA-rated mortgage bonds. The term "covered bond obligee" is the entity to which the IDI is indebted.

To provide guidance to potential covered bond issuers and investors, while allowing the FDIC to evaluate the potential benefits and risks that covered bond transactions may pose to the deposit insurance fund in the U.S. mortgage market, the application of the policy statement is limited to covered bonds that meet the following standards.

This Policy Statement only applies to covered bond issuances made with the consent of the IDI's primary federal regulator in which the IDI's total covered bond obligations at such issuance comprise no more than 4 percent of an IDI's total liabilities. The FDIC is concerned that unrestricted growth while the FDIC is evaluating the potential benefits and risks of covered bonds could excessively increase the proportion of secured liabilities to unsecured liabilities. The larger the balance of secured liabilities on the balance sheet, the smaller the value of assets that are available to satisfy depositors and general creditors, and consequently the greater the potential loss to the Deposit Insurance Fund. To address these concerns, the policy statement is limited to covered bonds that comprise no more than 4 percent of a financial institution's total liabilities after issuance.

In order to limit the risks to the deposit insurance fund, application of the Policy Statement is restricted to covered bond issuances secured by perfected security interests under applicable state and federal law on performing eligible mortgages on one-to-four family residential properties, underwritten at the fully indexed rate and relying on documented income, a limited volume of AAA-rated mortgage securities, and certain substitution collateral. The Policy Statement provides that the mortgages shall be underwritten at the fully indexed rate relying on

documented income, and comply with existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency

Statement on Subprime Mortgage Lending, July 10, 2007, and such additional guidance applicable at the time of loan origination. In addition, the Policy Statement requires that the eligible mortgages and other collateral pledged for the covered bonds be held and owned by the IDI. This requirement is designed to protect the FDIC's interests in any over collateralization and avoid structures involving the transfer of the collateral to a subsidiary or SPV at initiation or prior to any IDI default under the covered bond transaction.

The FDIC recognizes that some covered bond programs include mortgage-backed securities in limited quantities. Staff believes that allowing some limited inclusion of AAA-rated mortgage-backed securities as collateral for covered bonds during this interim, evaluation period will support enhanced liquidity for mortgage finance without increasing the risks to the deposit insurance fund. Therefore, covered bonds that include up to 10 percent of their collateral in AAA-rated mortgage securities backed solely by mortgage loans that are made in compliance with guidance referenced above will meet the standards set forth in the Policy Statement. In addition, substitution collateral for the covered bonds may include cash and Treasury and agency securities as necessary to prudently manage the cover pool. Securities backed by tranches in other securities or assets (such as Collateralized Debt Obligations) are not considered to be acceptable collateral.

The Policy Statement provides that the consent of the FDIC, as conservator or receiver, is provided to covered bond obligees to exercise their contractual rights over collateral for covered bond transactions conforming to the Interim Policy Statement no sooner than ten (10) business days after a monetary default on an IDI's obligation to the covered bond obligee, as defined below, or ten (10) business days after the effective date of repudiation as provided in written notice by the conservator or receiver.

The FDIC anticipates that future developments in the marketplace may present interim final covered bond structures and structural elements that are not encompassed within this Policy Statement and therefore the FDIC may consider future amendment (with appropriate notice) of this Policy Statement as the U.S. covered bond market develops.

#### IV. Scope and Applicability:

This Policy Statement applies to the FDIC in its capacity as conservator or receiver of an insured depository institution.

This Policy Statement only addresses the rights of the FDIC under 12 U.S.C. § 1821(e)(13)(C). A previous policy statement entitled "Statement of Policy on Foreclosure Consent and Redemption Rights," August 17, 1992, separately addresses consent under 12 U.S.C. § 1825(b), and should be separately consulted.

This Policy Statement does not authorize, and shall not be construed as authorizing, the waiver of the prohibitions in 12 U.S.C. § 1825(b)(2) against levy, attachment, garnishment, foreclosure or sale of property of the FDIC, nor does it authorize or shall it be construed as authorizing the attachment of any involuntary lien upon the property of the FDIC. The Policy Statement provides that it shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically mentioned, including but not limited to any rights, powers or remedies of the FDIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

The Board of Directors of the FDIC has adopted a final Covered Bond Policy Statement. The text of the Covered Bond Policy Statement follows:

## COVERED BOND POLICY STATEMENT

### Background

Insured depository institutions ("IDIs") are showing increasing interest in issuing covered bonds. Although covered bond structures vary, in all covered bonds the IDI issues a debt obligation secured by a pledge of assets, typically mortgages. The debt obligation is either a covered bond sold directly to investors, or mortgage bonds which are sold to a trust or similar entity ("special purpose vehicle" or "SPV") as collateral for the SPV to sell covered bonds to investors. In either case, the IDI's debt obligation is secured by a perfected first priority security interest in pledged mortgages, which remain on the IDI's balance sheet. Proponents argue that covered bonds provide new and additional sources of liquidity and diversity to an institution's funding base. Based upon the information available to date, the FDIC agrees that covered bonds may be a useful liquidity tool for IDIs as part of an overall prudent liquidity management framework and the parameters set forth in this policy statement. Because of the increasing interest IDIs have in issuing covered bonds, the FDIC has determined to issue this policy statement with respect to covered bonds.

### (a) Definitions.

(1) For the purposes of this policy statement, a "covered bond" shall be defined as a non-deposit, recourse debt obligation of an IDI with a term greater than one year and no more than thirty years, that is secured directly or indirectly by perfected

security interests under applicable state and federal law on assets held and owned by the IDI consisting of eligible mortgages, or AAA-rated mortgage-backed securities secured by eligible mortgages if for no more than ten percent of the collateral for any covered bond issuance or series. Such covered bonds may permit substitution of cash and United States Treasury and agency securities for the initial collateral as necessary to prudently manage the cover pool.

(2) The term "eligible mortgages" shall mean performing first-lien mortgages on one-to-four family residential properties, underwritten at the fully indexed rate<sup>6</sup> and relying on documented income, and complying with existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such additional guidance applicable at the time of loan origination. Due to the predictive quality of loan-to-value ratios in evaluating residential mortgages, issuers should disclose loan-to-value ratios for the cover pool to enhance transparency for the covered bond market.

(3) The term "covered bond obligation," shall be defined as the portion of the covered bond transaction that is the insured depository institution's debt obligation, whether to the SPV, mortgage bond trustee, or other parties.

(4) The term "covered bond obligee" is the entity to which the insured depository institution is indebted.

(5) The term "monetary default" shall mean the failure to pay when due (taking into account any period for cure of such failure or for forbearance provided under the instrument or in law) sums of money that are owed, without dispute, to the covered bond obligee under the terms of any bona fide instrument creating the obligation to pay.

(6) The term "total liabilities" shall mean, for banks that file quarterly Reports of Condition and Income (Call Reports), line 21 "Total liabilities" (Schedule RC); and for thrifts that file quarterly Thrift Financial Reports (TFRs), line SC70 "Total liabilities" (Schedule SC).

(b) Coverage. This policy statement only applies to covered bond issuances made with the consent of the IDI's primary federal regulator in which the IDI's total covered bond obligation as a result of such issuance comprises no more than 4 percent of an IDI's total liabilities, and only so long as the assets securing the covered bond obligation are eligible mortgages or AAA-rated mortgage securities on eligible mortgages, if not exceeding 10 percent of the collateral for any covered bond issuance. Substitution for the initial cover pool collateral may include cash and Treasury and agency securities as necessary to prudently manage the cover pool.



(c) Consent to certain actions. The FDIC as conservator or receiver consents to a covered bond obligee's exercise of the rights and powers listed in 12 U.S.C. § 1821(e)(13)(C), and will not assert any rights to which it may be entitled pursuant to 12 U.S.C. § 1821(e)(13)(C), after the expiration of the specified amount of time, and the occurrence of the following events:

(1) If at any time after appointment the conservator or receiver is in a monetary default to a covered bond obligee, as defined above, and remains in monetary default for ten (10) business days after actual delivery of a written request to the FDIC pursuant to paragraph (d) hereof to exercise contractual rights because of such monetary default, the FDIC hereby consents pursuant to 12 U.S.C. § 1821(e)(13)(C) to the covered bond obligee's exercise of any such contractual rights, including liquidation of properly pledged collateral by commercially reasonable and expeditious methods taking into account existing market conditions, provided no involvement of the receiver or conservator is required.

(2) If the FDIC as conservator or receiver of an insured depository institution provides a written notice of repudiation of a contract to a covered bond obligee, and the FDIC does not pay the damages due pursuant to 12 U.S.C. § 1821(e) by reason of such repudiation within ten (10) business days after the effective date of the notice, the FDIC hereby consents pursuant to 12 U.S.C. § 1821(e)(13)(C) for the covered bond obligee's exercise of any of its contractual rights, including liquidation of properly pledged collateral by commercially reasonable and expeditious methods taking into account existing market conditions, provided no involvement of the receiver or conservator is required.

(3) The liability of a conservator or receiver for the disaffirmance or repudiation of any covered bond issuance obligation, or for any monetary default on, any covered bond issuance, shall be limited to the par value of the bonds issued, plus contract interest accrued thereon to the date of appointment of the conservator or receiver.

(d) Consent. Any party requesting the FDIC's consent as conservator or receiver pursuant to 12 U.S.C. § 1821(e)(13)(C) pursuant to this policy statement should provide to the Deputy Director, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, 550 17th Street, NW, F-7076, Washington DC 20429-0002, a statement of the basis upon which such request is made, and copies of all documentation supporting such request, including without limitation a copy of the applicable contract and of any applicable notices under the contract.

(e) Limitations. The consents set forth in this policy statement do not act to waive or relinquish any rights granted to the FDIC in any capacity, pursuant to any other applicable law or any agreement or contract. Nothing contained in this policy

alters the claims priority of collateralized obligations. Nothing contained in this policy statement shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of an insured depository institution, provided such interest is not taken in contemplation of the institution's insolvency, or with the intent to hinder, delay or defraud the IDI or its creditors. Subject to the provisions of 12 U.S.C. § 1821(e)(13)(C), nothing contained in this policy statement shall be construed as permitting the conservator

or receiver to fail to comply with otherwise enforceable provisions of a contract or preventing a covered bond obligee's exercise of any of its contractual rights, including liquidation of properly pledged collateral by commercially reasonable methods.

(f) No waiver. This policy statement does not authorize, and shall not be construed as authorizing the waiver of the prohibitions in 12 U.S.C. § 1825(b)(2) against levy, attachment, garnishment, foreclosure, or sale of property of the FDIC, nor does it authorize nor shall it be construed as authorizing the attachment of any involuntary lien upon the property of the FDIC. Nor shall this policy statement be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically mentioned, including but not limited to any rights, powers or remedies of the FDIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

(g) No assignment. The right to consent under 12 U.S.C. § 1821(e)(13)(C) may not be assigned or transferred to any purchaser of property from the FDIC, other than to a conservator or bridge bank.

(h) Repeal. This policy statement may be repealed by the FDIC upon 30 days notice provided in the Federal Register, but any repeal shall not apply to any covered bond issuance made in accordance with this policy statement before such repeal.

By order of the Board of Directors  
Dated at Washington, DC this \_\_\_\_\_ day of \_\_\_\_\_, 2008.  
Federal Deposit Insurance Corporation

Robert E. Feldman  
Executive Secretary

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1 For ease of reference, the Interim Final Covered Bond Policy Statement, published on April 23, 2008, will be referred to as the Interim Policy Statement. The Final Covered Bond Policy Statement will be referred to as the Policy Statement.

2 The FDIC understands that certain potential issuers may propose a different structure that does not involve the use of an SPV. The FDIC expresses no opinion about the appropriateness of SPV or so-called "direct issuance" covered bond structures, although both may comply with this Statement of Policy.

3 See 12 U.S.C. § 1821(e)(13)(C).

4 See 12 U.S.C. §§ 1821(e)(3) and (13). These provisions do not apply in the manner stated to "qualified financial contracts" as defined in Section 11(e) of the FDI Act. See 12 U.S.C. § 1821(e)(8).

5 See 12 U.S.C. §1821(e) (12).

6 The fully indexed rate equals the index rate prevailing at origination plus the margin to be added to it after the expiration of an introductory interest rate. For example, assume that a loan with an initial fixed rate of 7% will reset to the six-month London Interbank Offered Rate (LIBOR) plus a margin of 6%. If the six-month LIBOR rate equals 5.5%, lenders should qualify the borrower at 11.5% (5.5% + 6%), regardless of any interest rate caps that limit how quickly the fully indexed rate may be reached.

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Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

*[www.treasury.gov](http://www.treasury.gov)*