American SECURITIZATION FORUM®

June 23, 2008

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Interim Final Covered Bond Policy Statement

Dear Mr. Feldman:

The American Securitization Forum is grateful for this opportunity to comment on the Interim Final Covered Bond Policy Statement that was published by the Federal Deposit Insurance Corporation on April 23, 2008.[1]

As we have highlighted in past discussions with the FDIC, a critical need exists for the kind of liquidity that U.S. covered bonds can supply. From the perspective of U.S. banks, they offer a distinct and largely untapped source of funding that is stable and cost-effective and that encourages fiscal discipline, strong underwriting, and sound risk management. From the perspective of consumers and depositors, they hold the promise of alleviating liquidity constraints that might preclude banks from providing loans and other financial products on affordable terms. And from the perspective of regulators and the banking system more broadly, they have the potential to complement recent policy initiatives designed to keep the capital markets liquid without putting an undue strain on government-sponsored enterprises, the Federal Home Loan Banks, and similar institutions.

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[1] The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization markets advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 365 firms, including investors, issuers, financial intermediaries, servicers, trustees and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars, training programs and similar initiatives. This letter was developed principally in consultation with ASF's Covered Bonds Task Force, which includes major issuing banks, dealers, law firms and other ASF members that are active in the U.S. and international covered bond markets. Additional information about ASF, its members and activities is available at www.americansecuritization.com. ASF is an adjunct forum of the Securities Industry and Financial Markets Association (SIFMA).

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We applaud, therefore, the FDIC's decision to issue a statement of policy that directly addresses U.S. covered bonds and that excepts them from the automatic stay recently imposed by Section 11(e)(13)(C) of the Federal Deposit Insurance Act. This, in our view, is a crucial step on the path toward developing a deeper and more mature market for the covered bonds that are issued by U.S. banks.

Yet, we are concerned that the Policy Statement is much too narrow in its present form. For instance, we doubt whether a single covered bond that is now outstanding would fall within the scope that it delineates. In addition, we believe that it does not go far in leveling the playing field for U.S. banks in this market. They remain at a decided disadvantage both in the kinds of covered bonds that can be issued and in the kinds of assurances that can be given to investors about the outcome of any insolvency proceeding. With the credit crisis at a tipping point, we are convinced that only a holistic and flexible regulatory framework will allow U.S. banks to effectively tap this source of liquidity.

In the global market for covered bonds, the need for absolute certainty cannot be overstated. Participants are expecting a rate – not a credit – product, and as a result, they are counting on a clear and unambiguous outcome if the sponsoring bank were to become insolvent. To the extent that the FDIC retains discretion to proceed in a way that could disadvantage covered bondholders – for instance, by reserving the right to argue that the actual direct compensatory damages for repudiation would be less than principal plus accrued interest – capital will be shifted to secured and unsecured debt, and other markets where a premium is paid for increased uncertainty and risk. This will force U.S. banks either to depend more heavily on these costlier sources of funding or else to diversify further into repo and similar markets where greater clarity exists about the treatment of counterparties in the case of insolvency.

We firmly believe that the FDIC's mission to protect the deposit insurance fund would be furthered by enabling U.S. banks to access the deep pool of liquidity that is offered by covered bonds, even if commitments are required from the FDIC in advance about its treatment of those securities in a conservatorship or receivership. We therefore urge the FDIC to broaden the reach of the Policy Statement and the relief that it provides and to give U.S. banks an opportunity to bring their covered bonds to market on a truly competitive basis.

Critical Assurances

In our view, U.S. banks will not have competitive access to a deep and liquid covered bond market unless the following assurances are provided in the Policy Statement:

- *Confirming that actual direct compensatory damages are equal at least to principal plus accrued interest* – In Europe, even after a sponsoring bank becomes insolvent, covered bondholders are entitled to payment in full at the originally scheduled times and to the benefit of their entire cover pool (including any overcollateralization). Investors in U.S. covered bonds, in contrast, do not have comparable certainty around the actual direct compensatory damages to which they would be entitled under 12 U.S.C. § 1821(e)(3). We believe that, in order for a viable market to emerge for the covered bonds that are issued by U.S. banks, this must be rectified in the Policy Statement. In particular, we urge the FDIC to confirm that the actual direct compensatory damages for any repudiation or default would be equal at least to the outstanding principal amount of the covered bonds when the FDIC is appointed as conservator or receiver plus all accrued interest that remains unpaid at that time. We also recommend that the FDIC clarify that those damages could include as well any related costs that arise through the date of its appointment, including the cost of any arrangement for investing the proceeds of the cover pool.

- *Preserving and maximizing the value of the cover pool* – The recent credit crisis has heightened concerns that, if the FDIC were to repudiate a bank's covered bonds but were to refrain from paying actual direct compensatory damages in cash, the indenture trustee would be forced to conduct a fire sale of the cover pool in a market that is unstable or dislocated. In this case, even if the assets in the cover pool are performing, covered bondholders could experience a loss on the principal amount of their investment and reduced payments of interest.

This risk threatens to impede U.S. banks from gaining competitive access to the global market for covered bonds. It could be mitigated, however, if the Policy Statement were to permit – consistent with structures that are common in the United Kingdom and elsewhere – a special-purpose entity to hold the cover pool and, until the market normalized, to service the assets and make scheduled payments to investors. To facilitate this kind of structural solution, we request that the FDIC agree to respect the separate existence of such a special-purpose entity (even if it is a subsidiary of the bank) and to refrain from seeking to reclaim or recover any part of the cover pool until a liquidation that maximizes its value can be conducted.

- *Relaxing the definition of eligible mortgage* – We are concerned that the existing definition of eligible mortgage is so restrictive that the Policy Statement could turn out to do more harm than good for U.S. covered bonds. It has the effect of regulating in a new and substantive way the standards under which banks originate mortgage loans, and if its current form is retained, covered bond programs would likely need to be put on hold until sufficient qualifying loans are produced to support new issuances. Its retroactive application also would have the effect of depriving covered bonds that are currently outstanding of any protection under the Policy Statement.

The language used in this definition, moreover, does not seem entirely clear. For example, it is not apparent whether "fully indexed rate" could mean the maximum rate under products like well-established 10/1 or 7/1 adjustable-rate mortgage loans or whether the

FDIC is focused instead on products like negative-amortizing loans. Similarly, "documented income" may be susceptible to a number of different interpretations that could raise questions about whether the Policy Statement will be applicable in the event of an insolvency. Of equal concern, the definition appears to go so far as to require that covered bonds be backed solely by mortgage loans that were originated in compliance with supervisory guidance that may not have even existed at the time that the loans were made but that are in place when the covered bonds are issued.

If the FDIC is inclined to further regulate mortgage lending, we request that this be done directly through rulemaking designed for that purpose rather than indirectly through a definition in the Policy Statement. Here, we believe, the FDIC should require only a maximum loan-to-value ratio and a condition that separate rules on loan origination were followed.

- *Grandfathering existing covered bonds* – If covered bonds that already have been issued by U.S. banks are not expressly included within the scope of the Policy Statement, we are concerned that existing programs would be unfairly disadvantaged and that market disruptions may occur. As a result, we recommend that the FDIC be explicit in conferring the benefits of the Policy Statement on covered bonds that are currently outstanding.

For each of these points, we have proposed amended language for the Policy Statement that can be found in *Exhibit A* to this letter.

Other Important Considerations

In addition to the critical assurances that have been requested, we believe that other revisions to the Policy Statement are important to the emergence of a deep and liquid market for U.S. covered bonds. In each case, we again have proposed specific text in *Exhibit A*.

The Definition of Covered Bonds

We believe that the FDIC should expand the universe of assets that are eligible for inclusion in a cover pool and bring the Policy Statement more in line with the regulatory frameworks that are found in Europe. Covered bonds that are issued there fund not only loans secured by residential properties but commercial mortgage loans and public-sector loans as well. We can discern no countervailing policy that justifies a more restrictive scope for U.S. covered bonds. To the contrary, the liquidity that they could supply is already needed to abate severe dislocations in the municipal bond and student loan markets – not to mention the still turbulent markets for residential and commercial real estate. In addition, to maintain the efficacy of the Policy Statement as the covered bond market evolves, the Chairman of the FDIC should be afforded discretion to expand the types of permissible collateral in real-time as innovations occur. And to ensure basic functionality, cover pools must have room for short-term investments, derivatives, and other assets that are incident to the primary collateral that has been posted.

We also believe that the tenor of covered bonds should not be capped. One of their singular benefits is an uncommonly long maturity that allows banks to secure funds from investors who have a time horizon that is often measured in decades. With stable, long-term borrowings in place, U.S. banks can be deliberate in growing their businesses and managing their risks, which profits not only their shareholders but their depositors and other customers as well. In Europe, maturities of 15 years or more have become less and less unusual, and the market has absorbed covered bonds with terms as long as 50 years. Curbing such extraordinary flexibility, in our view, is not warranted.

Finally, we believe that language in the Background that clarifies the FDIC's use of the term "covered bond" should be brought forward into the Policy Statement itself. In the only structure that is currently being used in the U.S., the debt obligation of the bank is called a mortgage bond, and that of the special-purpose entity is called the covered bond. Although we agree that a single, structurally neutral term should be used to mean the bank's obligation and that the term "covered bond" properly fills this role, we suggest that the explanatory text be added to its definition so that no ambiguity lingers.

Other Definitions

Turning to other definitions in the Policy Statement, we recommend that the term "monetary default" be deleted. Relief under the Policy Statement should turn, in our view, on any material default under a covered bond or a related transaction document – including a failure to satisfy asset-coverage tests – and not solely on a monetary default of the kind contemplated by the current definition. The condition of materiality would insulate the FDIC from any risk that its rights will be surrendered based on an inadvertent and inconsequential breach, and with that safeguard in place, we believe that investors should be entitled to the benefit of their bargain.

Further, we propose that any limit on issuance be measured by reference to a bank's assets and that a definition of total assets be substituted for that of total liabilities. This is the common practice in other jurisdictions, and where at all possible, we believe that U.S. covered bonds should conform to the model that is already in place. Using a percentage of assets, moreover, seems to be more consistent with the FDIC's stated aim of monitoring the degree to which a bank's property has been encumbered.

Lastly, we found the term "covered bond obligation" confusing. It seems to convey no meaning distinct from "covered bond," and particularly in light of the clarifying text that we have proposed in the definition of that term, we suggest that any potential here for ambiguity be eliminated.

Coverage of the Policy Statement

In designing the Policy Statement's coverage, we believe that the FDIC has a unique opportunity to take advantage of the long experience with covered bonds in Europe and, in particular, the lessons that regulators there have learned over the last decade.

For instance, hard caps on a bank's total outstanding covered bonds have not been embraced, and we believe that they should not be used here unless further issuances would constitute an unsafe and unsound practice that existing law targets for remediation. Disconnecting restraints on a covered bond program from the sponsoring bank's own circumstances, in our view, only will result in the kind of artificial barrier that inevitably creates more of a problem than it solves. Hard caps also would be inconsistent with all other forms of secured funding available to U.S. banks, including advances from Federal Home Loan Banks and financings effected through the repo market.

In a related vein, requiring regulatory consent before each issuance of covered bonds imposes a framework that we fear is too cumbersome to be workable. Instead, we believe that approval from a bank's primary federal regulator should be needed only when a covered bond program is first established and that, for each issuance, advance notice should suffice. This still would provide regulators with the power to act as gatekeepers but would not unduly hinder banks from accessing the market in a timely and efficient manner.

On a more technical point, we are not sure of the purpose for repeating in this part of the Policy Statement some but not all of the boundaries that have been established on cover pools. Those are properly set out in the definition of covered bond, and we are concerned that reproducing them here without doing so in full and using the exact same words invites unwanted ambiguity.

Operative Provisions

In reviewing the language that is used in Paragraph (c) of the Policy Statement, we had a number of questions about the FDIC's intent. Some examples include: Can only the covered bond obligee – and not a trustee or other party acting on behalf of covered bondholders – exercise the rights and powers that are identified in Section 11(e)(13)(C)? To what period does "the specified amount of time" in the introductory clause refer? Do references to the conservator or receiver being in default in Clause (1) also include a default by the IDI that occurred prior to the conservatorship or receivership and that remains unremedied? Is the "effective date of the notice" in Clause (2) the actual date of the notice, or is the FDIC free to give notice of its intent to repudiate and then choose a later effective date and retain control of the cover pool until that time?

On a conceptual level, we are concerned that a burdensome and time-consuming process has been devised in Paragraph (c) to procure what should be a more automatic consent to the exercise of remedies. We note too that the revolving and dynamic nature of a cover pool increases the likelihood that electronic files and other records will be under the control of the IDI when the FDIC is appointed, and so conditioning relief on "no involvement of the conservator or receiver" seems problematic. In addition, thinking particularly about foreclosure proceedings that may have been commenced but not completed prior to conservatorship or receivership, we believe that protection under Section 11(d)(12) should be afforded as well. Confirmation that the claims process need not be followed also would be welcome.

Response to Questions Posed

In addition to commenting on the Policy Statement's content, we also appreciate the opportunity to respond to two specific lines of inquiry raised by the FDIC – (1) whether the Policy Statement should be open to future innovations in the covered bond market and (2) whether the Policy Statement should tie a bank's covered bonds or its secured debt more generally to its assessment rate or assessment base and whether a cap should be set on its total secured liabilities.

On the first question, as our previous comments have indicated, we strongly urge the FDIC to put the Policy Statement in a form that can accommodate the evolution of covered bonds. No market is – or should be – static, and in our view, no regulatory regime that is incapable of adapting to the natural development of a market will function effectively for very long. We therefore have proposed that the Policy Statement be flexible enough to govern a variety of covered-bond structures – for instance, by addressing special-purpose entities that may become involved if a bank were to issue covered bonds directly to third-party investors. We also have requested that the Chairman of the FDIC be given discretion to approve new types of eligible collateral without needing to amend the Policy Statement. We encourage the FDIC as well to implement a process to review, on an annual or other recurring basis, whether existing regulatory policies are inhibiting U.S. banks from competing on an equal footing in the global market for covered bonds.

As for the second question, we do not view the Policy Statement as the proper vehicle for regulating assessment rates, assessment bases, or secured debt generally. Those are more properly the subject of a separate rulemaking where any proposal can be informed by all affected constituencies, not just those who are focused on covered bonds. As reflected in our comment on the definition of eligible mortgage, we have significant concerns – both as a matter of process and on a substantive level – about the Policy Statement being used to indirectly regulate other matters.

Subjects for Future Dialogue and Collaboration

In our view, the FDIC has one of the most pivotal roles to play in the growth and maturation of the U.S. covered bond market, and we are deeply appreciative of the leadership that Chairman Bair and her staff have exhibited during the last two years.

In the near future, we expect that dialogue and collaboration with other regulators will be necessary on an even broader range of subjects that affect covered bonds – including preferential risk-weighting under capital adequacy guidelines, distinct treatment at each Federal Reserve Bank's Discount Window, and clarity on directly issued covered bonds under the securities laws. In each of these efforts, we would welcome the FDIC's continuing leadership and involvement.

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Once more, we want to express our gratitude for this opportunity to comment on the Interim Final Covered Bond Policy Statement. If you have questions about any view expressed in this letter, please do not hesitate to contact the undersigned at 212.313.1116, or Scott Stengel of Orrick, Herrington & Sutcliffe LLP, ASF's special outside counsel in this matter, at 202.339.8484.

Sincerely,

George P. Miller
Executive Director

cc: Hon. Ben S. Bernanke
Hon. John C. Dugan
Hon. Henry M. Paulson, Jr.
Hon. John M. Reich

Exhibit A
to the American Securitization Forum's Comment Letter
on the FDIC's Interim Final Covered Bond Policy Statement

(a) *Definitions.*

(1) "Covered bond" means a direct or indirect recourse debt obligation that is owed by an IDI and that is secured (or guaranteed or jointly owed by a special-purpose entity whose obligation is secured) directly or indirectly by a perfected security interest in a pool of assets comprised of (A) eligible mortgages, (B) eligible guaranteed loans, (C) eligible government obligations, (D) other property of a type that is approved by the Chairman of the FDIC, (E) substitute assets, although these may not comprise more than 20% of the pool, (F) securities that are backed primarily by any of the foregoing types of assets and that are rated at the time of acquisition in one of the two highest categories assigned to long-term debt or in an equivalent short-term category by at least one nationally recognized statistical rating organization, although these may not comprise more than 15% of the pool, (G) swaps or other derivatives relating to any of the foregoing assets that are included in the pool, (H) credit enhancement or liquidity arrangements relating to any of the foregoing assets that are included in the pool, (I) other property that is incident to any of the foregoing, or (J) any combination of the foregoing. An obligation will not fail to qualify as a covered bond under this Policy Statement solely because an immaterial amount of property in the related pool does not qualify as one of the foregoing types. The covered bonds that are addressed in this Policy Statement are obligations of an IDI, and depending on the structure of the IDI's covered bond program, those obligations may be issued by the IDI to third-party investors directly, to a special-purpose entity that in turn issues to third-party investors bonds that are backed by the IDI's obligations, or to other entities.

(2) "Eligible government obligation" means a security, loan, or other obligation (A) that is issued, owed, or fully guaranteed by the United States of America or any individual State, any political subdivision, agency, or instrumentality of the United States of America or any individual State, the Federal National Mortgage Association or any successor entity, or the Federal Home Loan Mortgage Corporation or any successor entity and (B) that is originated or acquired by the IDI in material compliance with applicable law and supervisory guidance that are in effect at that time.

(3) "Eligible guaranteed loan" means (A) an educational loan (i) that is originated under the Federal Family Education Loan Program or any successor or similar program and (ii) that is originated or acquired by the IDI in material compliance with applicable law and supervisory guidance that are in effect at that time or (B) a small business loan (i) that is originated under a program that is administered by the United States Small Business Administration or any successor agency and (ii) that is originated or acquired by the IDI in material compliance with applicable law and supervisory guidance that are in effect at that time.

(4) "Eligible mortgage" means a loan (A) that is secured primarily by residential or commercial real property, (B) that, when originated or acquired by the IDI and if combined

with all other outstanding loans that are known by the IDI to be primarily secured by liens with a higher priority on that real property, has a loan-to-value ratio not greater than 80% or, if private-mortgage insurance exists, 90%, and (C) that is originated or acquired by the IDI in material compliance with applicable law and supervisory guidance that are in effect at that time.

(5) "Final effective date" means the date on which this Policy Statement is published as final in the Federal Register.

(6) "Substitute asset" means (A) cash, (B) a security, loan, or other obligation that is issued, owed, or fully guaranteed by the United States of America or by any political subdivision, agency, or instrumentality of the United States of America whose obligations are fully guaranteed by the United States of America, (C) a federal funds obligation, a certificate of deposit or other time deposit, a bankers acceptance, or an obligation under a repurchase agreement that, in each case, has a maturity not longer than 365 days and is due from a bank whose short-term debt obligations are rated in the highest category by at least one nationally recognized statistical rating organization, (D) a demand deposit that is fully insured by the FDIC, (E) commercial paper that has a maturity not longer than 365 days and that is rated at the time of acquisition in the highest category by at least one nationally recognized statistical rating organization, or (F) an obligation that is due from a money market fund and that is rated at the time of acquisition in the highest category by at least one nationally recognized statistical rating organization.

(7) "Total assets" means (A) for an IDI that files Reports of Condition and Income, the "Total Assets" that are reported on Line 12 of Schedule RC to the applicable Report of Condition and Income or any successor line, or (B) for an IDI that files Thrift Financial Reports, the "Total Assets" that are reported on Line SC60 of Schedule SC to the applicable Thrift Financial Report or any successor line.

(b) *Coverage*. This Policy Statement applies (1) for an IDI that issued covered bonds prior to the final effective date, (A) to any covered bonds that were issued by the IDI prior to the final effective date, and (B) to any covered bonds that are issued by the IDI on or after the final effective date if, at least ten days prior to their issuance, the IDI has notified its primary federal regulator of its intent to issue them, and (2) for an IDI that did not issue covered bonds prior to the final effective date, to any covered bonds that are issued by the IDI if (A) its primary federal regulator has given prior approval to the IDI's covered bond program and (B) at least ten days prior to their issuance, the IDI has notified its primary federal regulator of its intent to issue them. Within 30 days after an IDI's total outstanding covered bonds exceed 4% of its total assets, the IDI must notify its primary federal regulator and the FDIC of that development and must provide them with any requested data or other information about its covered bond program.

(c) *Treatment of Covered Bonds*. If the FDIC as conservator or receiver for an IDI (1) provides notice of its intent to repudiate or its repudiation of any of the IDI's obligations under a covered bond or a related transaction document and fails to pay actual direct compensatory damages within ten days of that notice or (2) fails to perform any of the IDI's material obligations under a covered bond or a related transaction document and does not remedy that failure within ten days after the Executive Secretary of the FDIC is notified in writing of that failure, the FDIC as conservator or receiver automatically and without further action:

(A) consents to the exercise at any time of all rights, powers, and remedies that are identified in 12 U.S.C. § 1821(e)(13)(C) or any successor provision and that are available under contract or applicable law, including the right to dispose of any collateral in a commercially reasonable manner;

(B) waives all of its rights, powers, and remedies that arise under 12 U.S.C. §§ 1821(d)(12) or 1821(e)(13)(C) or any successor provisions and that otherwise could be asserted by the FDIC as conservator or receiver to affect the exercise of a right, power, or remedy under clause (A);

(C) agrees, under 12 U.S.C. § 1821(e)(3) or any successor provision, that actual direct compensatory damages determined as of the date of the appointment of the conservator or receiver equal the sum of (i) the outstanding principal amount of the covered bond on that date, (ii) all interest that had accrued on the covered bond through that date but that had not been paid, (iii) the cost on that date of a guaranteed investment contract, deposit agreement, or other instrument that would provide for scheduled payments to be made on the covered bond until its originally scheduled maturity date, and (iv) the costs (including reasonable fees of attorneys) incurred through that date that arise from or relate to the exercise of any right, power, or remedy under the covered bond or a related transaction document;

(D) agrees (i) to respect the separate existence of any related special-purpose entity whose corporate formalities are observed, (ii) not to seek to manage, consolidate, dissolve, or otherwise exercise control over such a special-purpose entity if that control is not expressly permitted by its governing documents, the covered bond, or a related transaction document, (iii) not to seek to reclaim, recover, or recharacterize as property of the IDI or the receivership any property that has been sold, contributed, or otherwise transferred to such a special-purpose entity if that reclamation, recovery, or recharacterization is not expressly permitted by its governing documents, the covered bond, or a related transaction document, and (iv) to promptly deliver to such a special-purpose entity, its agent or representative, or its transferee all tangible or electronic files and other records relating to any property that has been transferred to or is owned by that special-purpose entity;

(E) agrees that the FDIC's Statement of Policy on Foreclosure Consent and Redemption Rights (June 16, 1992), its Advisory Opinion 89-49 (December 15, 1989), and its Statement of Policy Regarding Treatment of Security Interests After Appointment of the FDIC as Conservator or Receiver (March 23, 1993) apply to the exercise of any right, power, or remedy under clause (A), with the following additions, clarifications, and exceptions:

(i) any limit on relief that otherwise would be triggered because the IDI entered into a transaction with an insider or affiliate will not apply to any transaction between an IDI and a related special-purpose entity whose corporate formalities are observed;

(ii) the FDIC as conservator or receiver (a) promptly will deliver to the covered bond obligee, its agent or representative, or its transferee all tangible or electronic files and other records relating to any property that is the subject of any exercise of a right, power, or remedy under clause (A) and (b) will cooperate with reasonable requests made in connection with any exercise of a right, power, or remedy under clause (A);

(iii) even if judicial action is required or the FDIC as conservator or receiver must be involved in any exercise of a right, power, or remedy under clause (A), the claims process will not need to be followed if the only claim being made under the covered bond or a related transaction document is a claim for actual direct compensatory damages calculated under clause (C);

(iv) the FDIC as conservator or receiver will not seek to avoid or recover any transfer of property that was made under the covered bond or a related transaction document if that transfer was not made in contemplation of the IDI's insolvency or with the intent to hinder, delay, or defraud the IDI or its creditors; and

(v) the FDIC as conservator or receiver will not seek to invalidate an otherwise legally enforceable agreement solely because that agreement does not meet the "contemporaneous" requirement under 12 U.S.C. §§ 1821(d)(9), 1821(n)(4)(I), or 1823(e).

[In light of these suggested revisions to Paragraph (c), we propose that Paragraph (d) of the Policy Statement be deleted as no longer necessary.]

(e) *Limitations*.

[We propose replacing the first sentence of Paragraph (e) with the following sentence.] This Policy Statement does not waive or relinquish any right of the FDIC in any capacity under any other applicable law or any agreement, except as expressly provided in this Policy Statement.

[To ensure that Paragraph (e) does not imply that Section 11(e)(13)(C) supplies the FDIC with a power to breach enforceable agreements that is independent of its power to repudiate, we propose that the final sentence of Paragraph (e) be split into the following two sentences.] Nothing in this Policy Statement or 12 U.S.C. § 1821(e)(13)(C) may be construed as excusing a conservator or receiver from performing or complying with otherwise enforceable provisions of an agreement. Subject to 12 U.S.C. § 1821(e)(13)(C) as supplemented by this Policy Statement, nothing in this Policy Statement may be construed as preventing a covered bond obligee, its agent or representative, or its transferee from exercising any right, power, or

remedy under contract or applicable law, including the right to dispose of collateral in a commercially reasonable manner.

[We have no proposed textual revisions to the other parts of Paragraph (e).]

(f) *No waiver*.

[For clarity, we propose replacing the first sentence of Paragraph (f) with the following two sentences.] Except as provided in Paragraph (c), nothing in this Policy Statement may be construed as authorizing a waiver of the prohibitions in 12 U.S.C. § 1825(b)(2) against levy, attachment, garnishment, foreclosure, or sale of property of the FDIC. Nothing in this Policy Statement may be construed as authorizing the attachment of any involuntary lien on property of the FDIC.

[We have no proposed textual revisions to the other parts of Paragraph (f).]