111TH CONGRESS
1ST SESSION

S. 1723

To authorize the Secretary of the Treasury to delegate management authority over troubled assets purchased under the Troubled Asset Relief Program, to require the establishment of a trust to manage assets of certain designated TARP recipients, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2009

Mr. CORKER (for himself, Mr. WARNER, Mr. BENNET, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To authorize the Secretary of the Treasury to delegate management authority over troubled assets purchased under the Troubled Asset Relief Program, to require the establishment of a trust to manage assets of certain designated TARP recipients, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''TARP Recipient Ownership Trust Act of 2009''.

SEC. 2. AUTHORITY OF THE SECRETARY OF THE TREASURY TO DELEGATE TARP ASSET MANAGEMENT.

Section 106(b) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5216(b)) is amended by inserting before the period at the end the following: '', and the Secretary may delegate such management authority to a private entity, as the Secretary determines appropriate, with respect to any entity assisted under this Act''.

SEC. 3. CREATION OF MANAGEMENT AUTHORITY FOR DESIGNATED TARP RECIPIENTS.

(a) FEDERAL ASSISTANCE LIMITED.—Notwithstanding any provision of the Emergency Economic Stabilization Act of 2008, or any other provision of law, no funds may be expended under the Troubled Asset Relief Program, or any other provision of that Act, on or after the date of enactment of this Act, until the Secretary transfers all voting, nonvoting, and common equity in any designated TARP recipient to a limited liability company established by the Secretary for such purpose, to be held and managed in trust on behalf of the United States taxpayers.

(b) APPOINTMENT OF TRUSTEES.—

(1) IN GENERAL.—The President shall appoint 3 independent trustees to manage the equity held in the trust, separate and apart from the United States Government.

(2) CRITERIA.—Trustees appointed under this subsection—

(A) may not be elected or appointed Government officials;

(B) shall serve at the pleasure of the President, and may be removed for just cause in violation of their fiduciary responsibilities only; and

(C) shall each be paid at a rate equal to the rate payable for positions at level III of the Executive Schedule under section 5311 of title 5, United States Code.

(c) DUTIES OF TRUST.—Pursuant to protecting the interests and investment of the United States taxpayer, the trust established under this section shall, with the purpose of maximizing the profitability of the designated TARP recipient—

(1) exercise the voting rights of the shares of the taxpayer on all core governance issues;

(2) select the representation on the boards of directors of any designated TARP recipient; and

(3) have a fiduciary duty to the American taxpayer for the maximization of the return on the investment of the taxpayer made under the Emergency Economic Stabilization Act of 2008, in the same

manner and to the same extent that any director of an issuer of securities has with respect to its shareholders under the securities laws and all applications of State law.

(d) LIQUIDATION.—

(1) IN GENERAL.—The trustees shall liquidate the trust established under this section, including the assets held by such trust, not later than December 24, 2011, unless—

(A) the trustees submit a report to the Congress that liquidation would not maximize the profitability of the company and the return on investment to the taxpayer; and

(B) within 15 calendar days after the date on which the Congress receives such report, there is enacted into law a joint resolution disapproving the liquidation plan of the Secretary, as described in paragraph (2).

(2) CONTENTS OF JOINT RESOLUTION.—For purposes of this subsection, the term ''joint resolution'' means only a joint resolution—

(A) that is introduced not later than 3 calendar days after the date on which the report referred to in paragraph (1)(A) is received by the Congress;

(B) which does not have a preamble;

(C) the title of which is as follows: "Joint resolution relating to the disapproval of the liquidation of the TARP management trust"; and

(D) the matter after the resolving clause of which is as follows: "That Congress disapproves the liquidation of the TARP management trust established under the TARP Recipient Ownership Trust Act of 2009.".

(3) FAST TRACK CONSIDERATION IN HOUSE OF REPRESENTATIVES.—

(A) RECONVENING.—Upon receipt of a report under paragraph (1)(A), the Speaker, if the House would otherwise be adjourned, shall notify the Members of the House that, pursuant to this subsection, the House shall convene not later than the second calendar day after receipt of such report.

(B) REPORTING AND DISCHARGE.—Any committee of the House of Representatives to which a joint resolution is referred shall report it to the House not later than 5 calendar days after the date of receipt of the report described in paragraph (1)(A). If a committee fails to report the joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

(C) PROCEEDING TO CONSIDERATION.—After each committee authorized to consider a joint resolution reports it to the House or has been discharged from its consideration, it shall be in order, not later than the sixth day after Congress receives the report described in paragraph (1)(A), to move to proceed to consider the joint resolution in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(D) CONSIDERATION.—The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

(4) FAST TRACK CONSIDERATION IN SENATE.—

(A) RECONVENING.—Upon receipt of a report under paragraph (1)(A), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this subsection, the Senate shall convene not later than the second calendar day after receipt of such message.

(B) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(C) FLOOR CONSIDERATION.—

(i) IN GENERAL.—Notwithstanding rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a report of the plan of the Secretary described in paragraph (1)(A) and ending on the 6th day after the date on which Congress receives a report of the plan of the Secretary described in paragraph (1)(A) (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

(ii) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(iii) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

(iv) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(5) RULES RELATING TO SENATE AND HOUSE OF REPRESENTATIVES.—

(A) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of a joint resolution of that House, that

House receives from the other House a joint resolution, then the following procedures shall apply:

(i) The joint resolution of the other House shall not be referred to a committee.

(ii) With respect to a joint resolution of the House receiving the resolution—

(I) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(II) the vote on passage shall be on the joint resolution of the other House.

(B) TREATMENT OF JOINT RESOLUTION OF OTHER HOUSE.—If one House fails to introduce or consider a joint resolution under this subsection, the joint resolution of the other House shall be entitled to expedited floor procedures under this subsection.

(C) TREATMENT OF COMPANION MEASURES.—If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

(D) CONSIDERATION AFTER PASSAGE.—

(i) IN GENERAL.—If Congress passes a joint resolution, the period beginning on the date the President is presented with the joint resolution and ending on the date the President takes action with respect to the joint resolution shall be disregarded in computing the 15-calendar day period described in paragraph (1)(A).

(ii) VETOES.—If the President vetoes the joint resolution—

(I) the period beginning on the date the President vetoes the joint resolution and ending on the date the Congress receives the veto message with respect to the joint resolution shall be disregarded in computing the 15-calendar day period described in paragraph (1)(A); and

(II) debate on a veto message in the Senate under this subsection shall be 1 hour equally divided between the majority and minority leaders or their designees.

(E) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This paragraph, and paragraphs (2), (3), and (4) are enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 4. DEFINITIONS.

As used in this Act—

(1) the term ‘‘designated TARP recipient’’ means any entity that has received, or will receive, financial assistance under the Troubled Asset Relief Program or any other provision of the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), such that the Federal Government holds or controls, or will hold or control at a future date, not less than a 10 percent ownership stake in the company as a result of such assistance;

(2) the term ‘‘Secretary’’ means the Secretary of the Treasury or the designee of the Secretary; and

(3) the terms ‘‘director’’, ‘‘issuer’’, ‘‘securities’’, and ‘‘securities laws’’ have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

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