

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

---

## 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.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “TARP Recipient Own-  
5       ership Trust Act of 2009”.

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

3 Section 106(b) of the Emergency Economic Stabiliza-  
4 tion Act of 2008 (12 U.S.C. 5216(b)) is amended by in-  
5 serting before the period at the end the following: “, and  
6 the Secretary may delegate such management authority  
7 to a private entity, as the Secretary determines appro-  
8 priate, with respect to any entity assisted under this Act”.

9 **SEC. 3. CREATION OF MANAGEMENT AUTHORITY FOR DES-**  
10 **IGNATED TARP RECIPIENTS.**

11 (a) **FEDERAL ASSISTANCE LIMITED.**—Notwith-  
12 standing any provision of the Emergency Economic Sta-  
13 bilization Act of 2008, or any other provision of law, no  
14 funds may be expended under the Troubled Asset Relief  
15 Program, or any other provision of that Act, on or after  
16 the date of enactment of this Act, until the Secretary  
17 transfers all voting, nonvoting, and common equity in any  
18 designated TARP recipient to a limited liability company  
19 established by the Secretary for such purpose, to be held  
20 and managed in trust on behalf of the United States tax-  
21 payers.

22 (b) **APPOINTMENT OF TRUSTEES.**—

23 (1) **IN GENERAL.**—The President shall appoint  
24 3 independent trustees to manage the equity held in  
25 the trust, separate and apart from the United States  
26 Government.

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

3           (A) may not be elected or appointed Gov-  
4 ernment officials;

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

9           (C) shall each be paid at a rate equal to  
10 the rate payable for positions at level III of the  
11 Executive Schedule under section 5311 of title  
12 5, United States Code.

13       (c) DUTIES OF TRUST.—Pursuant to protecting the  
14 interests and investment of the United States taxpayer,  
15 the trust established under this section shall, with the pur-  
16 pose of maximizing the profitability of the designated  
17 TARP recipient—

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

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

22           (3) have a fiduciary duty to the American tax-  
23 payer for the maximization of the return on the in-  
24 vestment of the taxpayer made under the Emergency  
25 Economic Stabilization Act of 2008, in the same

1 manner and to the same extent that any director of  
2 an issuer of securities has with respect to its share-  
3 holders under the securities laws and all applications  
4 of State law.

5 (d) LIQUIDATION.—

6 (1) IN GENERAL.—The trustees shall liquidate  
7 the trust established under this section, including  
8 the assets held by such trust, not later than Decem-  
9 ber 24, 2011, unless—

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

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

19 (2) CONTENTS OF JOINT RESOLUTION.—For  
20 purposes of this subsection, the term “joint resolu-  
21 tion” means only a joint resolution—

22 (A) that is introduced not later than 3 cal-  
23 endar days after the date on which the report  
24 referred to in paragraph (1)(A) is received by  
25 the Congress;

1 (B) which does not have a preamble;

2 (C) the title of which is as follows: “Joint  
3 resolution relating to the disapproval of the liq-  
4 uidation of the TARP management trust”; and

5 (D) the matter after the resolving clause of  
6 which is as follows: “That Congress disapproves  
7 the liquidation of the TARP management trust  
8 established under the TARP Recipient Owner-  
9 ship Trust Act of 2009.”.

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

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

19 (B) REPORTING AND DISCHARGE.—Any  
20 committee of the House of Representatives to  
21 which a joint resolution is referred shall report  
22 it to the House not later than 5 calendar days  
23 after the date of receipt of the report described  
24 in paragraph (1)(A). If a committee fails to re-  
25 port the joint resolution within that period, the

1 committee shall be discharged from further con-  
2 sideration of the joint resolution and the joint  
3 resolution shall be referred to the appropriate  
4 calendar.

5 (C) PROCEEDING TO CONSIDERATION.—

6 After each committee authorized to consider a  
7 joint resolution reports it to the House or has  
8 been discharged from its consideration, it shall  
9 be in order, not later than the sixth day after  
10 Congress receives the report described in para-  
11 graph (1)(A), to move to proceed to consider  
12 the joint resolution in the House. All points of  
13 order against the motion are waived. Such a  
14 motion shall not be in order after the House  
15 has disposed of a motion to proceed on the joint  
16 resolution. The previous question shall be con-  
17 sidered as ordered on the motion to its adoption  
18 without intervening motion. The motion shall  
19 not be debatable. A motion to reconsider the  
20 vote by which the motion is disposed of shall  
21 not be in order.

22 (D) CONSIDERATION.—The joint resolu-  
23 tion shall be considered as read. All points of  
24 order against the joint resolution and against  
25 its consideration are waived. The previous ques-

1           tion shall be considered as ordered on the joint  
2           resolution to its passage without intervening  
3           motion except two hours of debate equally di-  
4           vided and controlled by the proponent and an  
5           opponent. A motion to reconsider the vote on  
6           passage of the joint resolution shall not be in  
7           order.

8           (4) FAST TRACK CONSIDERATION IN SENATE.—

9           (A) RECONVENING.—Upon receipt of a re-  
10          port under paragraph (1)(A), if the Senate has  
11          adjourned or recessed for more than 2 days, the  
12          majority leader of the Senate, after consultation  
13          with the minority leader of the Senate, shall no-  
14          tify the Members of the Senate that, pursuant  
15          to this subsection, the Senate shall convene not  
16          later than the second calendar day after receipt  
17          of such message.

18          (B) PLACEMENT ON CALENDAR.—Upon in-  
19          troduction in the Senate, the joint resolution  
20          shall be placed immediately on the calendar.

21          (C) FLOOR CONSIDERATION.—

22          (i) IN GENERAL.—Notwithstanding  
23          rule XXII of the Standing Rules of the  
24          Senate, it is in order at any time during  
25          the period beginning on the 4th day after

1 the date on which Congress receives a re-  
2 port of the plan of the Secretary described  
3 in paragraph (1)(A) and ending on the 6th  
4 day after the date on which Congress re-  
5 ceives a report of the plan of the Secretary  
6 described in paragraph (1)(A) (even  
7 though a previous motion to the same ef-  
8 fect has been disagreed to) to move to pro-  
9 ceed to the consideration of the joint reso-  
10 lution, and all points of order against the  
11 joint resolution (and against consideration  
12 of the joint resolution) are waived. The  
13 motion to proceed is not debatable. The  
14 motion is not subject to a motion to post-  
15 pone. A motion to reconsider the vote by  
16 which the motion is agreed to or disagreed  
17 to shall not be in order. If a motion to pro-  
18 ceed to the consideration of the resolution  
19 is agreed to, the joint resolution shall re-  
20 main the unfinished business until dis-  
21 posed of.

22 (ii) DEBATE.—Debate on the joint  
23 resolution, and on all debatable motions  
24 and appeals in connection therewith, shall  
25 be limited to not more than 10 hours,

1 which shall be divided equally between the  
2 majority and minority leaders or their des-  
3 ignees. A motion further to limit debate is  
4 in order and not debatable. An amendment  
5 to, or a motion to postpone, or a motion to  
6 proceed to the consideration of other busi-  
7 ness, or a motion to recommit the joint  
8 resolution is not in order.

9 (iii) VOTE ON PASSAGE.—The vote on  
10 passage shall occur immediately following  
11 the conclusion of the debate on a joint res-  
12 olution, and a single quorum call at the  
13 conclusion of the debate if requested in ac-  
14 cordance with the rules of the Senate.

15 (iv) RULINGS OF THE CHAIR ON PRO-  
16 CEDURE.—Appeals from the decisions of  
17 the Chair relating to the application of the  
18 rules of the Senate, as the case may be, to  
19 the procedure relating to a joint resolution  
20 shall be decided without debate.

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

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

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

4 (i) The joint resolution of the other  
5 House shall not be referred to a com-  
6 mittee.

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

9 (I) the procedure in that House  
10 shall be the same as if no joint resolu-  
11 tion had been received from the other  
12 House; but

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

16 (B) TREATMENT OF JOINT RESOLUTION  
17 OF OTHER HOUSE.—If one House fails to intro-  
18 duce or consider a joint resolution under this  
19 subsection, the joint resolution of the other  
20 House shall be entitled to expedited floor proce-  
21 dures under this subsection.

22 (C) TREATMENT OF COMPANION MEAS-  
23 URES.—If, following passage of the joint resolu-  
24 tion in the Senate, the Senate then receives the  
25 companion measure from the House of Rep-

1           representatives, the companion measure shall not  
2           be debatable.

3           (D) CONSIDERATION AFTER PASSAGE.—

4           (i) IN GENERAL.—If Congress passes  
5           a joint resolution, the period beginning on  
6           the date the President is presented with  
7           the joint resolution and ending on the date  
8           the President takes action with respect to  
9           the joint resolution shall be disregarded in  
10          computing the 15-calendar day period de-  
11          scribed in paragraph (1)(A).

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

14               (I) the period beginning on the  
15               date the President vetoes the joint  
16               resolution and ending on the date the  
17               Congress receives the veto message  
18               with respect to the joint resolution  
19               shall be disregarded in computing the  
20               15-calendar day period described in  
21               paragraph (1)(A); and

22               (II) debate on a veto message in  
23               the Senate under this subsection shall  
24               be 1 hour equally divided between the

1 majority and minority leaders or their  
2 designees.

3 (E) RULES OF HOUSE OF REPRESENTA-  
4 TIVES AND SENATE.—This paragraph, and  
5 paragraphs (2), (3), and (4) are enacted by  
6 Congress—

7 (i) as an exercise of the rulemaking  
8 power of the Senate and House of Rep-  
9 resentatives, respectively, and as such it is  
10 deemed a part of the rules of each House,  
11 respectively, but applicable only with re-  
12 spect to the procedure to be followed in  
13 that House in the case of a joint resolu-  
14 tion, and it supersedes other rules only to  
15 the extent that it is inconsistent with such  
16 rules; and

17 (ii) with full recognition of the con-  
18 stitutional right of either House to change  
19 the rules (so far as relating to the proce-  
20 dure of that House) at any time, in the  
21 same manner, and to the same extent as in  
22 the case of any other rule of that House.

23 **SEC. 4. DEFINITIONS.**

24 As used in this Act—

1           (1) the term “designated TARP recipient”  
2 means any entity that has received, or will receive,  
3 financial assistance under the Troubled Asset Relief  
4 Program or any other provision of the Emergency  
5 Economic Stabilization Act of 2008 (Public Law  
6 110–343), such that the Federal Government holds  
7 or controls, or will hold or control at a future date,  
8 not less than a 10 percent ownership stake in the  
9 company as a result of such assistance;

10           (2) the term “Secretary” means the Secretary  
11 of the Treasury or the designee of the Secretary;  
12 and

13           (3) the terms “director”, “issuer”, “securities”,  
14 and “securities laws” have the same meanings as in  
15 section 3 of the Securities Exchange Act of 1934  
16 (15 U.S.C. 78e).

○