WHEN THE AMERICAN Dialect Society tallied votes for its 19th annual “word of the year,” the clear victor for 2008 was “bailout.” Not since the Great Depression have we experienced such a severe economic downturn affecting virtually all sectors of the economy. The current crisis has led even those who are ordinarily free-market purists to concede the need for government intervention.

Over the past year, the federal government has engaged in extraordinary and varied types of intervention in otherwise private markets. In March 2008, Secretary Paulson, Federal Reserve Board Chairman Ben Bernanke, and other officials participated in emergency meetings to assist in brokering Bear Stearns’ acquisition by J.P. Morgan—a deal that would not have closed without the New York Federal Reserve’s guarantee to absorb $29 billion in losses on Bear Stearns’ riskiest assets. These events were quickly followed by federal regulators taking control of several major failed banks. By September 2008, the federal government held Fannie Mae and Freddie Mac in conservatorship and had, itself, become a preferred shareholder. At about the same time, the Federal Reserve extended an $85 billion loan to stave off imminent collapse of AIG and took warrants that, if converted into common stock, could give the government an approximately 80 percent interest in the nation’s largest insurance company.

As the crisis worsened, the Treasury Department asked Congress for additional emergency authority to purchase troubled assets from struggling financial institutions. Congress responded by creating the Troubled Asset Relief Program (TARP) and establishing the Office of Financial Stability (OFS) to manage $700 billion in emergency relief funds. Congress also authorized the Treasury to purchase other financial instruments deemed necessary to promote market stability. In the end, OFS did not use the funds to acquire troubled assets. Instead, the Treasury created a new program to increase capital in the financial system by purchasing stock in healthy banks. Many banks used the funds to acquire competing financial institutions and later found themselves back at the trough seeking additional TARP funding as economic circumstances deteriorated.

Some accuse the Treasury Department of a “bait and switch.” Others defend the actions as a change in course necessitated by rapidly changing and deteriorating economic circumstances. Whichever view one takes, serious concerns about Treasury Department operation of the bailout program remain. One troubling aspect of early government interventions in the current crisis was the ad hoc nature of life-and-death decisions about individual businesses and the economy. Government powerbrokers were effectively picking winners and losers with little notice, oversight, explanation, or public participation. Many wonder, for example, why Bear Stearns received assistance while Lehman Brothers, one of the nation’s largest investment banks, came away empty-handed.

Congress did address some transparency and accountability concerns with its emergency legislation. TARP funds are now distributed after a formal application process and more public information is available. A congressional oversight committee was established to provide regular reports to Congress. Despite these improvements, serious transparency, accountability, and consistency concerns remain. Treasury Department staff still wield life-and-death power and still make ad hoc decisions at late-night emergency meetings. Moreover, standards applied to pick winners and losers are not apparent. Although the distribution of TARP funds may be within the letter of the law, many have concerns that Treasury Department actions are inconsistent with congressional intent.

OFS surely is faced with extraordinary challenges in implementing the programs authorized by Congress and should have some flexibility to deal with changing circumstances. At the same time, the public has a right to ongoing information about strategies and to a consistent application of decision-making standards on TARP fund applications. For example, the public is entitled to a full explanation of the Treasury’s decision to provide capital to healthy banks with funds originally intended to acquire troubled assets. Congress and the public are also entitled to know why the auto industry successfully received TARP funds from the Treasury Department just days after Congress rejected its pleas for direct bailout relief. In addition, OFS needs to develop reporting requirements to ensure that emergency bailout funds are being used appropriately by recipients.

As one of his first presidential acts, President Obama made a special commitment to transparency and accountability. Hopefully this commitment will translate into more available public information on emergency economic spending and greater public opportunities to participate in developing and critiquing government strategies in response to our economic woes.

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