

## Fixing the Fix

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Treasury Secretary Henry Paulson has asked Congress for \$700 billion without a clear description of how it would be disbursed or a mechanism for effective oversight. The last official that Congress so entrusted was General George C. Marshall. The Army chief of staff ultimately received the current purchasing power equivalent of \$28 billion for the Manhattan Project, which built the atom bomb and ended World War II.

This precedent sets the bar for a no-strings-attached authorization of significant funds at the appropriate, Olympian height.

This Treasury secretary, or his successor in next year's administration, might not cast as long a shadow in the history books as the "Organizer of Victory," to use Winston Churchill's description of General Marshall. Just in case, though, Congress would be well advised to add four protections to the legislation now being considered.

First, a lesson repeated in history is that, to paraphrase another general, bureaucracies neither die nor fade away. They soldier on, even after their original tasks are finished. The draft legislation authorizes the Treasury to sell \$700 billion of debt to support the acquisition of assets. That authority could be interpreted in net terms so that the Treasury could churn its portfolio by selling assets it acquired in early rounds to get room to buy more in the future. To ensure a graceful end to this program, the legislation should cap the gross acquisition of assets, instead of net funding capacity, at \$700 billion.

Second, the government is always at a decided information disadvantage when it tries to trade one-on-one with private parties. If the Treasury opens its purchases to individual mortgages, it will flow those scraped from the bottom of the barrel. This process would be repeated if the Treasury tried to negotiate the lifting of complicated collateralized obligations from the books of large institutions.

Appropriately, most of the government funds are likely to be spent on mortgage-related securities in secondary markets. However, the Treasury could purchase individual mortgages or complicated securities on a case-by-case basis if it tilted the information discrepancy back toward its favor. To do so, it could require that warrants on the firm's equity be attached to any complicated asset that was offered. The draft bill might be read as already giving the Treasury such scope. More explicit language should make clear that it is the will of Congress that it do so.

Secretary Paulson has offered some reassurance that the ongoing strains in financial markets provide a buying opportunity for distressed mortgage assets. This investment advice came for free, which presumably was a bargain compared to the advice he gave in his previous career at Goldman Sachs, where he made more than half a billion dollars.

Legislators might remember, though, that in July, the secretary assured us that handing a blank check to him to deal with the two government sponsored enterprises, Fannie Mae and Freddie Mac, was the surest way to make sure that no government funds would be spent.

With that background, a third change to the draft legislation would be to include outside oversight. The simplest means would be for the secretary to allow other people into the deals that he now advertises as promising. In advance of blocks of secondary-market transactions or reverse auctions, the Treasury could invite tenders of funds in the same manner it now lets individual investors into its bills, notes and bonds at auctions.

True, those private investors will add a bit to administrative costs. But by looking over the Treasury's shoulder in the acquisition, retention and disbursal of assets, those private investors will also provide a healthy discipline.

Lastly, greater oversight would also be helpful in another part of the legislation. Quite understandably, the secretary prefers that his decisions "... may not be reviewed by any court of law ..." Hobbling class-action lawyers is a consummation devoutly to be desired, but that should be done more systematically and in a way respectful of the Constitution in another bill on another day. The arbitrariness of the protections the secretary seeks can only raise suspicions about what should be an open process clearly governed by the rule of law.

The window for legislative action is narrow, and the stakes in financial markets are high. Accordingly, the Treasury should offer a draft that makes plain its intention on the acquisition of assets and sufficient assurances that the job will be done well.

Decisions on the treatment of assets brought into the Treasury's portfolio, and their subsequent disposition, can await the new president and Congress. That includes issues concerning mortgage relief and the governance of bankruptcy courts. Those items put aside, the Congress can get the important job at hand done quickly and well.

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