

The BLACK C o M M e n t a t o r

An independent weekly internet magazine
dedicated to the movement for economic justice,
social justice and peace - Providing commentary,
analysis and investigations on issues affecting
African Americans and the African world.

www.BlackCommentator.com

February 19, 2009 - Issue 312

[Contents of Issue Menu](#)

[Click Here](#)

[Home](#)

**More on the Madoff Mess:
Possible Legislative Action in Congress
National Affairs
By Lawrence R. Velvel, JD
BlackCommentator.com Columnist**

Click on the back button of your browser to return to non printer friendly page of this article

[Click here](#) to get helpful hints for viewing and printing this printer friendly plain text page

To date there has been little discussion in the MSM - actually, there seems to have been no discussion there - of a variety of possible legislative steps to ease the pain and suffering of thousands of people. I am not speaking here of what is generally called a bailout, which shall be discussed below.

I am speaking here, rather, of lesser steps, such as increasing the number of years for which victims can obtain refunds for income tax paid on phantom income, of extending those years back to 2000 when the SEC first began ignoring Markopolos' warnings and thereby allowed disaster to continue, or back to 1992 when the SEC complicitously sucked people into Madoff by announcing that all was well, that there was no fraud. I am speaking here of allowing the defrauded to take theft deductions now instead of requiring them - requiring people in their 70s and 80s, no less - to wait five or ten years into the future, when many of them will be dead, before taking theft deductions, as is now the law. I am speaking here of increasing the amount recoverable from SIPC, which was set in 1970 at \$500,000 for lost securities and \$100,000 for lost cash - even SIPC personnel concede that other governing financial rules established in the 1970s are not adequate today, after the vast inflation of the last 39 years, and should be increased by roughly 300 percent. I am speaking here of allowing people who invested through a feeder fund to have individual SIPC claims, which they do not now have because now only the feeder fund has a claim (and only for \$500,000).

These rule changes, made necessary by the gross failure of the SEC, as well as by the gross failure of an organization which was established by Congress though it is a private membership body, FINRA, and perhaps by a failure of the IRS too, would alleviate much of the present misery. But Congress has not been discussing them because, in the main, it has been focusing simply on the regulatory failure and ignoring the human wreckage caused by the regulators and by its own failure to effectively oversee the regulators.

There are a variety of reasons why Congress has not focused much on the human problems. The immediate, overwhelming shock at the degree of regulatory failure and incompetence is one. A second is anti New Yorkism - read anti-Semitism if you want the real truth. A third is the celebrity-worshipping mass media's focus on the losses of the hugely wealthy, the focus which makes it appear to the average guy on the street that the Madoff problem is one involving only the hugely wealthy who deserve no sympathy. (The average man in the street in Arkansas is often used to supposedly exemplify this attitude because of that state's poverty, which has led to the bitter joke that the state motto is "Thank God for Mississippi".) But the mass media's portrayal is extensively false just as is so often the case in other matters (e.g., its treatment of WMDs in the run up to the Iraq War).

In prior commentaries, I have spoken to or dealt with a lot of persons who were ripped off by Madoff, and would venture to guess that many of them, maybe far and away most of them, have their roots in the working class or the lower middle class of this country; that many of them, maybe even all or nearly all of them, are either the first generation, or are children of the first generation, to escape poverty in this country. They are not your Citibanks, or your Lehman Brothers, or your Merrill Lynchs, or your Goldman Sachs - they emphatically are not your minion of enormous wealth for 80 or 100 or 150 years. Nor are they the many-millions-of-dollars-per-year - scores and even hundreds of millions or even billions of dollars per year - Wall Street types who greedily caused the current economic disaster, have caused there to be a need for a trillion dollar bailout, and have now paid themselves nearly 20 billion dollars in bonuses for doing so, have apparently paid themselves these bonuses from about 400 billion dollars in bailout funds already passed out to them, and who, despite receiving the bailouts, are still not lending money.

So many Madoff victims are none of that. They are persons who worked their asses off for scores of years to rise from poverty or the lower middle class, who invested for their old age in a way that seemed safe and prudent, and that gave them a far smaller return than people were getting from stocks and stock-buying mutual funds, but who were screwed over by the incredible negligence, the defacto complicity, of the government that was supposed to protect them, of the very agency, the SEC, that was set up specifically to protect people like them and who now find themselves penniless and having to sell their homes in their old age because this agency is the gang that couldn't shoot straight.

You would not know this about Madoff investors from the mass media. Nor does the MSM have the faintest idea of another salient fact. I have been interviewed by various members of the MSM, including producers of major national TV shows, and all of them are shocked to learn a fact so basic as to be primitive. Falsely thinking and portraying

Madoff victims to all be a bunch of wealthy capitalists, the MSM is completely ignorant, and never mentions, that Madoff investors did not pay tax at the rate of 15 percent applicable to the long term capital gains which provide so much of the income of fat cats. Madoff investors did not pay tax at the low rates applicable to the hedge fund manager who made \$1.3 or \$1.7 billion a year, or by the capitalists who make their money in stocks and real estate. Rather, Madoff people paid tax at the roughly 35 or 36 percent rate applicable to what in tax law is known as "ordinary income;" they paid at the same rate as is paid on salaries, or as is paid, because they are salaried people, by most of the folks who are losing their houses because of Wall Street's greed-driven subprime mortgage fiasco, folks who, unlike the greed-driven banks, have not been bailed out so far and who, like the Madoff investors, are so far getting screwed over by the government. The capital gains made by Madoff investors, you see, were not long term capital gains taxed at a rate of 15 percent. They were short term capital gains, plus (to a much lesser extent) dividends and interest, all of which, including the short term capital gains, is taxed at roughly 35 or 36 percent rather than at the 15 percent applicable to the gains of the fat cats who give Congressmen and Presidents millions of dollars.

Lastly, let me briefly discuss a bailout. I have discussed before, in an earlier commentary, the concept of a staggered-percentage bailout, which provides a higher percentage of recovery to those who are most in need and lower percentages to those not in the same need. Whether it were to use a staggered percentage bailout or a full bailout, the Congress should use a bailout. Right now, legislators' views are widely thought to be viscerally against one, because the Madoff victims are supposedly just a bunch of "wealthy Jews" - which is both grossly anti-Semitic and false, because there is no real appreciation for what happened to victims, because Congress has not yet come to grips with the fact that a mass of human wreckage has been caused by the gross - and complicitous - failure of the SEC to stop a horrendous crime even though warned of it to a fare thee well, and because of Congress' own failure of oversight.

Nor has Congress focused on the fact that a bailout would write finis to what already is known to be a fantastic legal mess in which nobody knows which end is up and that will provide a lawyers' relief bill until somewhere between 2015 and 2020. Questions whose answers are currently unknown but are likely to be litigated for years into the future, in the absence of Congressional action obviating the whole mess, include theories for obtaining tax refunds for many more than three years, for obtaining immediate theft deductions, for suing the government for its own incredible negligence, for suing FINRA and forcing it to assess the entire brokerage industry for billions of dollars in damages owed to victims, for allowing persons who invested through IRAs to recover, to require SIPC to pay every victim \$500,000 no matter what he or she withdrew from Madoff, to obtain billions of dollars in recoveries from funds and banks because of their failure of due diligence, and more.

If Congress wants this kind of a years-long mess to be avoided, as well as the human misery that will prevail in the meanwhile, it should provide a bailout. It is said, of course, that people are sick of bailouts and they haven't been shown to work. Hundreds of billions have already been thrown at banks (and AIG) and they are still not lending. They instead use the money to buy other banks, to give out billions in bonuses, to try to shore up what bids fair to be unshorable capital bases. More billions are going to be thrown at Wall Street - whose fat cat lobbyists spend every waking

moment lobbying for the gigantic sums - and even then there may be no societal benefit, but rather just a waste of money.

You know, I agree with all of that. I surely do. The disasters brought upon us by the scions of Wall Street and their representatives in the past and/or present Executive - Rubin, Summers, Paulson, Greenspan, Geithner, Weil et. al. - are beyond belief, beyond greed, and may be beyond fixing by any conceivable bailout of the banks. But none of that is any excuse for failing to help the people who are not responsible for the Madoff mess - which is most of the people who have lost or will lose their homes - nor for failing to help innocent victims of a scam that succeeded only because of the gross, complicitous failure of the very agency that was set up to protect people against such scams, the SEC.

Nor are we talking here about a bailout on the order of the trillion dollars that will be thrown at the banks (plus the auto companies whose horrible decisions are responsible for their plight). Using a concept thought of by a gentleman in California, a bailout of Madoff victims could be accomplished for, I would estimate, about two billion dollars per year, which is one-fifth of one percent of the trillion dollar bailout, and which, unlike the monies received by the banks, will be spent for the intended purposes - here to enable people to live. Under the Californian's idea, people would receive government bonds, whose principal would not be payable for ten years unless, and only to the extent that, the principal is needed for living or medical expenses. During the ten years, the government would pay bondholders interest of seven percent tax free. This would minimize the government's annual cost, which I would estimate, for various reasons, would not be more than about two billion dollars a year until it has to pay off the bonds ten years from now. (It could create a sinking fund in the meanwhile to cover the payment of principal - or is this sensible idea too much to ask from the government?) Two billion dollars a year for ten years is a lot less than the trillion dollars the government will have thrown at the banks in a total of just a year or two, and unlike the money thrown at the banks, will accomplish its purpose, here the purpose of allowing people to live.

You know, it is time that Congress and the Executive started paying attention to and helping out with the real, true human disaster caused by things like people being thrown out of their homes because of subprime mortgages and the Madoff scam, instead of being primarily worried only about abstract economic concerns like bank capitalization or the sufficiency of obviously incompetent regulators.

[Click here to comment on any article
in this issue or see what others are saying in the](#)
The BlackCommentator Readers' Corner Blog

BlackCommentator.com Columnist, *Lawrence R. Velvel, JD*, is the Dean of [Massachusetts School of Law](#). He is the author of [Blogs From the Liberal Standpoint: 2004-2005](#) (Doukathsan Press, 2006). Click [here](#) to contact Dean Velvel, or you may, post your comment on his website, [VelvelOnNationalAffairs.com](#)

[Contents of Issue Menu](#)

[Click Here](#)

[Home](#)



Your comments are always welcome.

e-Mail re-print notice

If you send us an e-Mail message we may publish all or part of it, unless you tell us it is not for publication. You may also request that we withhold your name.

Thank you very much for your readership.

Website Design and Hosting provided by



Copyright © 2002-2009
www.BlackCommentator.com
All Rights Reserved