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**Letter to The Honorable Douglas Shulman
National Affairs**

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BlackCommentator.com Columnist**

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The Honorable Douglas Shulman
Commissioner, Internal Revenue Service
1111 Constitution Avenue, N.W.
Department of Treasury
Washington, DC 20224

Dear Commissioner Shulman:

I do not know whether you are aware that in July of 2004, in the midst of Harry Markopolos' revelations to the SEC that Bernard Madoff was operating a Ponzi scheme, the Internal Revenue Service placed its imprimatur on Madoff by approving his company as a non-bank custodian for IRAs. I am writing to request that you inquire into, inform me, and make public how this happened.

As you may know, when it enacted the Employment Retirement Income Security Act of 1974, Congress was deeply concerned over the safety of citizens' retirement savings. It wished to insure that those who "participate in [retirement] plans actually receive benefits." To insure that Americans' retirement monies were safeguarded, Congress put the IRS in charge of insuring that fiduciary standards were met by custodians of retirement plans, IRAs and similar monies. Congress felt the IRS had previously done well in overseeing fiduciary standards, and this experience would aid it in future. To assist the IRS in doing this job in future, Congress authorized appropriations of 70 million dollars per year.

Congress further provided that the IRS could authorize non banks to be the custodian

of IRAs and similar accounts if the non bank provided "substantial evidence" that "the way in which he will administer" accounts will be "within accepted rules of fiduciary conduct with respect to the handling of other people's money."

To carry out Congress' intent, the IRS has regulations requiring that, to be an approved non-bank custodian of IRAs, a company has to have a separate trust department; the assets of different accounts cannot be commingled; continuity of the company has to be insured by diversified ownership under which no one individual can own more than fifty percent of its shares; the company has to keep customers' assets in a vault; and the company's fiduciary records have to be kept separate from other records. The IRS also ruled that, in order to carry out its function of safeguarding the owners of IRAs, pension funds and similar monies, it has a right to inspect the books and records of any company that wishes to become or already is an approved non-bank custodian.

Despite Congress' intent that it safeguard retirement monies, and despite its own regulations, in 2004 the IRS approved Madoff as a non-bank custodian of IRAs *even though he was fraudulently stealing retirement monies from IRAs and even though he was in violation of the IRS' own regulations*. Among the violations of the IRS' regulations were these: Madoff had no separate trust department. One man, Bernard Madoff, owned 90 to 100 percent of the company rather than less than fifty percent. (The Trustee, Irving Picard, has said in a complaint that Bernard Madoff's company was "wholly owned" by him.) There was no vault - and an inspection would have shown there also were no securities to put in a vault. All the customers' assets were commingled since Madoff stole them all for his own use instead of keeping securities in separate accounts. And had the IRS done its job, it also would have learned that, for *at least* fifteen years or so, Madoff had previously operated as a *non*-approved non-bank custodian for tens or scores of IRAs and as a non-approved non-bank subcustodian for hundreds of others. *These discoveries would have necessarily caused the IRS to uncover and blow the whistle on Madoff's fraudulent conduct instead of approving him as a non-bank custodian of IRAs in 2004.*

The question which arises, of course, is how did this occur. How did the IRS come to approve Madoff in 2004? Did it conduct no investigation, but simply rubber stamp his application to be a non-bank custodian? Were there bribes or other criminal conduct involved? Was the IRS influenced somehow or other by the SEC. It seems inconceivable that the IRS could have approved Madoff. Yet it did. How did this happen?

As said, I request that you conduct an investigation of this, let me know the answer(s), and make the answer(s) public. It is no trifling matter when the Internal Revenue Service seems to have abetted the largest fraud in history by approving Madoff to be a non-bank custodian of retirement monies. It is no trifling matter when the IRS did this in violation of the intent of Congress and its own regulations. Those who lost money, the Congress, and the entire country have a right to be told the answer(s) to the question of how did this awful thing happen.

Sincerely yours,

Lawrence R. Velvel


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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](#).

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