got a phone call early one morning,'' Ellen continued, ''And my husband and I were still in bed. He said, 'Honey, Helen's on the phone and I can't understand a word she's saying.' I got on the phone and it was Helen, and honey, she was just babbling away. I said 'Honey, is Al okay?' Al was her husband, and I thought he was dead the way she was carrying on. I said, 'Helen, calm down.' And she said, 'Sis, I had an encounter with God last night. And I'm going to have that feeding program; I'm going to have a place where people can come and get something to eat.' ''

Ellen looked proudly at her sister. ''And she does,'' she grinned.

The Love Kitchen first opened its doors in 1986 in the basement of a local church. They eventually moved out of that space and into several more before moving into their current location at 2418 Martin Luther King Jr. Ave., in 1994.

The bulk of their ministry involves delivering food to homebound people. The Love Kitchen delivers food each Thursday to approximately 2,200 homes. In addition to the meals they deliver, The Love Kitchen serves breakfast on Wednesday and lunch on Thursday to approximately 40 to 110 people each day. Wednesday afternoons are dedicated to handing out anywhere from 60 to 150 food bags to the homeless or needy in the community. The bags usually contain enough food to last the recipients a week. They also hand out hygiene bags to new patrons at the Kitchen, and recently handed out approximately 300 blankets to the homeless.

If Helen and Ellen are the heart of The Love Kitchen, the volunteers are the lifeblood. Most begin volunteering because they want to help the less fortunate, but wind up staying because they love Helen and Ellen so much. The University of Tennessee's chapter of Phi Gamma Delta Fraternity has been sending volunteers to help pack food bags for the past fifteen years. ''It's good to come here and . . . do something nice for someone less fortunate,'' said volunteer and Phi Gamma Delta Tyler Bowland.

''I like to come to see Helen and Ellen,'' said volunteer and Phi Gamma Delta Matt Baumgartner, then he laughed. ''Seeing what they do here everyday, I think it's a good thing to come and help her out!'' He smiled, ''They have been a blessing to a lot of people.''

RE-INTRODUCTION OF THE EQUITABLE TREATMENT OF INVESTORS ACT

HON. SCOTT GARRETT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 17, 2011

Mr. GARRETT. Mr. Speaker, late in the 111th Congress, I introduced, with co-sponsors, Mr. KING of New York and Ms. ROS-LEHTINEN of Florida, the Equitable Treatment of Investors Act (H.R. 6531). This bill reaffirmed and clarified the key protections for securities investors intended by Congress in the 1970 enactment of the Securities Investor Protection Act (SIPA) and major amendments to that Act in 1978.

Today I reintroduce that legislation with clarifying amendments. The central purpose of the legislation is to reaffirm the original Congressional intent on two key aspects of the administration of SIPA in the liquidation of a bankrupt broker-dealer firm. First, as a general matter, the determination of customer ''net equity'' shall rely on the final account statement received from the debtor prior to closing, plus any additional supporting documents, such as trade confirmations. Second, and again as a general matter, avoidance actions, or ''clawbacks'', to recover property transferred to the customer prior to closing shall be prohibited. While I emphasize these clarifications simply reaffirm current law, the actions and interpretations of SIPA being made by the Securities Investor Protection Corporation (SIPC) and the Trustee appointed for the Bernard L. Madoff Investment Securities LLC (BLMIS) liquidation proceeding make the passage of this legislation important and necessary.

In this legislation, there are important exceptions to those two general customer protections that deny that beneficial treatment to any customer who knew of or was complicit in the fraudulent activity of the debtor and to any customer who, as a registered professional in the securities markets, with the requisite knowledge of these matters, knew or should have known of the debtor's fraudulent activities and failed to notify appropriate regulatory authorities. This portion of the bill's language is meant to assure that SIPC and the receivership Trustee have fully adequate legal powers to act against customers undeserving of SIPA's investor protections.

While this clarifying legislation is intended to have general application to all broker-dealer bankruptcies involving debtor fraud, introduction at this time is directly related to the failure of SIPC and its Trustee to fairly and adequately act to provide statutorily mandated and intended SIPA protections to the several thousand innocent customers defrauded by Bernard Madoff in the operations of his investment advisory and broker-dealer firm, BLMIS. Compounding the grievous shortcomings of SIPC to respond promptly and usefully to these customers' financial plight is the well-documented failures by the SEC and FINRA, the regulatory overseers of BLMIS, to detect and end the Madoff fraud over a period of 25 or more years.

Given the colossal regulatory oversight failure and SIPC neglect in assessing broker-dealer firms at a level commensurate with the dramatic growth of the securities markets and the participating broker-dealer firms, it would be reasonable to expect that SIPC and the SEC would have made exceptional efforts to make a rapid and comprehensive response to the financial needs of the Madoff victims. That has not been the case. Quite the contrary, in fact, has occurred. SIPC has denied protection to over half the accounts at closing, in direct violation of the legal mandates of SIPA as currently in affect; provided full protection to only 25% of accounts; taken nearly two years to pay advances to the limited group deemed eligible; and threatened to claw back funds from roughly 1000 innocent customers.

So that my colleagues may judge for themselves the urgent need for this Congressional intervention, let me highlight key factors supporting this need for action.

The legislative record surrounding the enactments of the 1970 Act and the 1978 amendments is replete with statements from the legislative floor managers, active supporters, committee reports, the Treasury, the SEC, and securities industry spokespeople likening the intended SIPC protection to the bank customer protection offered by the FDIC. Likewise, the legislative history emphasizes protection of all innocent customers from brokerage failure, with particular mention of small, unsophisticated customers, and the need for prompt action by SIPC in payment of advances for relief of individuals, understandably devastated by the sudden loss of key financial assets.

Critically, Congress recognized the need for restoring investor confidence in the financial markets at a time when the financial industry was under tremendous duress and overwhelmed by the paperwork crunch caused by the processing of physical securities. Theft and misplacement of securities, failures of trade executions, and insolvencies were commonplace. Amidst the backdrop of several popular Ponzi schemes and brokerage failures was SIPC born.

For the customer of a bankrupt broker-dealer firm to qualify for SIPC protection, it is necessary for the customer's account at closing to have a positive ''net equity'' determined by subtracting any outstanding obligation of the customer to the firm from the amount the firm ''owed'' the customer. For the forty years of SIPC's existence, it has been the standard practice in making that simple calculation to use the firm's most recent account statement to the customer, usually supported by trade confirmations, if any, relevant to the final statement's presentation of holdings and values. Not surprisingly, this is the outcome required by law. Under the legal regime governing the relationship between brokers and customers, it is indisputable that the broker owes the customer the amount reflected on the customer's account statement. Indeed, in a world where customers and, generally speaking, brokers do not hold physical securities, it could not be any other way.

Given the move away from the possession and trading ownership of actual securities to a ''book entry'' system based on the essential trust of validity of those account statements, no customer would, therefore, have any reason to believe they would not be protected based upon their account statements and confirmations. In the SIPC receivership for the Madoff firm, however, the practices have been inconsistent with the law and quite different and contrary to the repeated assertions of SIPC and its Trustee, never to the ultimate benefit of the innocent individual customer.

Rather than using the customer's final account statement—consistent with ''reasonable expectations'' of a customer—the SIPC Trustee has ignored the statutory requirement of SIPA and has devised a ''cash-in/cash-out'' formulation (CICO) to determine a customer's ''net equity''. To suggest that the Securities Investor Protection Act would have the effect of denying customers their legal right to rely on their account statement is counterintuitive. This formulation was developed from a position of hindsight once the Trustee, his lawyers, and forensic accountants were inside the Madoff firm and learned that no trades had been made by the firm for customers.

Even though customers had regularly received monthly account statements showing trades and holdings in ''real securities'' (often blue chips in the Dow 100) that were supported periodically by trade confirmations in those stocks, the Trustee declared that all transactions were ''fictitious'' and that statutory words such as ''owed'' and ''positions'' had no meaning. He further has asserted that in a Ponzi scheme the customer has no basis for ''reasonable expectation''—a public utterance which will destroy the public's confidence in

our securities markets at odds with SIPA's primary policy objective.

To execute the Trustee's CICO formulation it is necessary to examine every customer account over the entire term of the relationship (for many spanning 20 to 30 years) to sum up total deposits and total withdrawals (without providing any return on investment—even a standard rate). If deposits exceed withdrawals the customer has a ''net equity'' and qualifies for SIPC protection under CICO. If withdrawals exceed deposits over the life of the relationship, the customer is declared ineligible for SIPC relief and may be targeted for ''clawback'' of the net withdrawals.

How, you may ask, could the Trustee ignore the SIPA definition of ''net equity'' and proceed to institute ''clawback'' actions? The answer lies in SIPA's incorporation by reference of provisions and powers under the Federal Bankruptcy Code. However, the Bankruptcy Code does not permit ''clawbacks'' of amounts paid by a broker to a customer to satisfy the broker's legal obligations to the customer—our securities system could not work any other way. Again, SIPC and the Trustee are disregarding the clear body of law to further harm the Madoff victims.

Let us now examine the results of this receivership to date to determine just how equitable its performance has been.

At closing, the approximately 4900 accounts of BLMIS that have filed claims for relief with SIPC had aggregate final statement values of roughly $57 Billion. Of that 4900, well less than half of those accounts (2053) have been determined eligible for SIPA protection under the Trustee's CICO formulation. Only 1207 of those eligible accounts will receive full SIPA relief benefits—advance payment of $500,000 and a priority status to the distribution of recovered ''customer funds'' up to the remaining balance of the CICO-approved claim. 846 of the approved claims will receive advance payments averaging $200,000; and because the advances fully satisfy the CICO claim these accounts have no priority status with respect to customer funds. 2728 accounts receive no relief (advances or priority status) under SIPA.

These numbers, derived from SIPC responses to the House Financial Services Subcommittee on Capital Markets, portray an outcome distressingly out of step with Congress' intent for SIPA protection.

The overall record of performance in providing investment protection in this case is even worse. The bulk of advance payments to eligible accountholders were distributed in the last quarter of 2010, fully two years after the closing of BLMIS. There is absolutely no way to square that performance with the clear mandate in Section 9(a) of SIPA for ''prompt payment'' of advances—a mandate which recognized that most customers, victimized by bankruptcy of their broker-dealer, will be in dire need of urgent financial relief.

Now let us turn our attention to the ''clawback'' suits against innocent customers who over the course of their investment relationship withdrew what they rightly believed to be earnings for normal real life purposes—income to support retirement, payment of Federal, State, and local taxes, helping a child with a home purchase, assisting a grandchild with college costs etc.—only now to find the Trustee demanding a return of some of those disbursements.

What the Trustee now suggests as relief for all the Madoff victims, those who have received no SIPA financial protection (over half) and those receiving inadequate and dilatory relief, is the opportunity to file fraud claims against the ''general'' bankruptcy estate, when and if assets are assigned to it. For most of the innocent customers, now in desperate financial condition and fraught with daily anxiety, such relief is temporally distant with challenging prospects for success. In a general bankruptcy proceeding these individuals, many of them aged, will be competing with claimants (financial institutions and the like) with far greater resources and top-line legal representation.

To his credit, the Trustee, with aid provided by the U.S. Attorney's office, has assembled some significant assets from parties complicit with the debtor. The innocent customers of Madoff should without question have the first and priority claim for relief in the distribution of those assets. That is the clear intent of SIPA in establishing claims to ''customer funds'' before assets move into the general bankruptcy estate. Had the Trustee, at the outset of this receivership, followed historic SIPC practices using customer final statements to determine ''net equity'', then all of these innocent customers would now be eligible for the distribution of ''customer funds'' under some equitable plan devised by the Trustee with the approval of the Bankruptcy Court. Moreover, they would be protected and assisted in their distress by full advances from the SIPC Fund, which has the resources to provide such relief.

Two additional matters need to be understood by my colleagues. Because the use of the CICO methodology reduced dramatically the number of customers qualifying for advances from the SIPC Fund (an entity funded by the broker-dealer community and expressly established for the early relief of customers), that Fund has benefited by a savings of over $1 billion. To make this outcome more unacceptable, the failure to distribute those funds means that customer refund claims to the IRS for ''theft losses'' will be increased by some $300 million. Thus the broker-dealer community's responsibility gets passed on to the American taxpayer.

The conduct of this receivership has been pitifully inadequate in fulfilling the protections of the Madoff victims contemplated by Congress in 1970 and 1978. The processes employed by the Trustee, from the standpoint of the typical customer, have been needlessly time consuming and remarkably expensive. In its most recent response to the Capital Markets Subcommittee, SIPC advises that the Trustee, his law firm, and other consultants have been paid some $288 million over two years and contemplate billing for another $1 billion over the next four years. All the while, many Madoff victims are scrambling to exist.

It is my earnest hope that an overwhelming majority of my colleagues will join me in supporting this legislation, which is so important, not only for the protection of many innocent investors, but also for encouraging investment going forward, which is critical to the economic renewal our country needs.

BAD LANGUAGE: ENGLISH-ONLY BILLS ONCE AGAIN ATTEMPT TO PENALIZE IMMIGRANTS

HON. GENE GREEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 17, 2011

Mr. GENE GREEN of Texas. Mr. Speaker, I would like to submit the following editorial:

BAD LANGUAGE: ENGLISH-ONLY BILLS ONCE AGAIN ATTEMPT TO PENALIZE IMMIGRANTS

[From the Brownsville Herald, Feb. 13, 2011]

Among the various bills offered in Washington and Austin are new efforts to force every US. resident to speak English.

U.S. Rep. Steve King, R–Iowa, has pledged to file an English-only bill in Congress. Similar bills have already been filed in the Texas Legislature.

State Rep. Dennis Bonnen, R–Angleton, has filed legislation to make English the official state language and require that all official business be conducted in that language. Rep. Tim Kleinschmidt, R–Lexington, has offered a bill mandating that driving tests be given only in English.

We doubt that such bills would pass constitutional muster. The First Amendment clearly states that ''Congress shall make no law . . . abridging the freedom of speech. . . .'' That should include laws limiting the language that people choose to speak.

The nativists who support such legislation forget this country's honorable history of accepting troubled refugees, such from Cuba in 1980, Indochina in the 1970s and various defectors from the Soviet bloc countries throughout the Cold War. It's unreasonable and cruel to accept these people, only to impose our oppressive rules on their behavior.

Language restrictions on driver's tests make little sense, especially in a border state like Texas. Many foreign nationals spend significant amounts of time in this state, whether on business or on vacation. Many of them drive on our streets when they're here. With trade pacts calling for greater access to shipments from other countries, we should encourage people to show proficiency and knowledge of our traffic laws; language restrictions will only discourage people from working to get those licenses.

The ability to conduct business in other languages should be evident to all state lawmakers. More than $150 billion in goods are traded between Texas and Mexico each year alone. Greater investment and trade coming from Japan, China, and other countries should inspire officials to expand rather than restrict languages that are accepted for legal documents.

Language is not a major problem for this country. Many immigrants come here unable to speak English but, more than 80 percent of their children are fluent in the language. English is the primary language of some 94 percent of their grandchildren.

However, such bills send a clear message to people in other countries: We don't want you here. As America continues to fall behind other countries academically and is losing trade and commerce to other countries, we might be convincing some of the brightest minds to stay home, and benefit their home countries, not the U.S.

We trust majorities of lawmakers will see the folly in these bills.