

May 11, 2010

The Honorable Christopher J. Dodd, Chair
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We, the undersigned organizations, support the Leahy amendment (SA 3297) to the Restoring American Financial Stability Act, S. 3217, to replace two dangerous provisions that would unnecessarily limit public access to critical information and place a gag on whistleblowers with language that instead would provide authentic confidentiality and protection of the identity of whistleblowers. We believe that in order to both preserve government accountability and encourage whistleblowers to come forward this amendment must be incorporated into S. 3217.

Tucked inside two provisions to establish whistleblower incentives and protections to rightly encourage the flow of information of wrongdoing to the Securities and Exchange Commission (SEC) and the Commodities Futures Trading Commission (CFTC) are poison pill secrecy measures. Sections 748(h)(2) and 922(h)(2) bar the public and the whistleblower from ever being able to obtain information about investigations if the government never acts. If a whistleblower faces retaliation there would be no access to government records needed to prove status as a whistleblower. If there is no action due to inept bureaucracy, fraud, collusion, or worse, there would be no way to hold the government accountable.

We must preserve the ability of the whistleblower to gain access to the information if retaliation occurs, as well as public access to hold the Commission and other government agencies accountable, especially if there is no investigation or the investigation leads to no further judicial or administrative action. Senator Leahy's amendment would do just that, and would remove the blanket gag orders creating a permanent seal and government secrecy.

Moreover, it is unnecessary to add additional exemptions to the Freedom of Information Act (FOIA) in these whistleblower provisions. Forty years of jurisprudence have proven the FOIA's exemptions (amended in 1986 to expand protection for law enforcement records) have stood the test of time, fairly and effectively balancing the agency's interests in confidentiality and personal privacy rights with the public's right to know.

Investigations occur across the federal government every day and information pertaining to the administrative stages of these investigations is protected. In more than two decades, no agency has expressed concern over unwarranted access to investigative information during an open investigation. We not only see no justification to hide closed investigations of possible wrongdoing in the financial industry, whether or not provided by a whistleblower, but find this to be at cross-purposes with making government regulation of the financial industry more transparent and effective.

We urge you to support the Leahy amendment to preserve whistleblower rights, public access to information, and government accountability. Please ensure these poison pill secrecy provisions are stricken from the final financial reform legislation.

Sincerely,

Project on Government Oversight (POGO)

Citizens for Responsibility and Ethics in Washington (CREW)

Government Accountability Project (GAP)

OpenTheGovernment.org

Public Citizen

Progressive States Network

Common Cause

National Community Reinvestment Coalition

Consumer Action

OMB Watch

National Fair Housing Alliance

Americans for Financial Reform

Cc: Senator Patrick Leahy