FOR IMMEDIATE RELEASE: March 25, 2010

SCHUMER, KYL—JOINED BY 15 SENATE COLLEAGUES—UNVEIL 'PONZI VICTIMS' TAX BILL OF RIGHTS' - MEASURE AIMS TO PROVIDE EXPANDED TAX RELIEF TO SMALL INVESTORS WHO LOST EVERYTHING AT HANDS OF SCAM ARTISTS

Thousands of Smaller Investors Who Trusted Their Money To Disgraced Financiers Like Madoff And Stanford Have Little Legal Recourse To Recoup Any Of Their Losses

Bipartisan Proposal Would Allow for Expanded Income Tax Relief, Deductions Based On Losses From Their IRA Accounts, and Accelerated, Tax-Free Contributions to Retirement Accounts to Make Up for Losses

WASHINGTON, DC—U.S. Senators Charles E. Schumer (D-NY) and Jon Kyl (R-AZ)—joined by 15 Senate colleagues—today announced bipartisan legislation that will provide tax relief to victims of Ponzi schemes so that small investors can recoup some of their losses from these scams. The measure will assist victims of frauds such as those run by disgraced financiers Bernie Madoff and Alan Stanford. Many of these victims were retired senior citizens who lack a monthly income to rely on day-to-day. The new legislation would extend certain benefits that are already available to larger investors to smaller investors as well. It would allow victims to take a deduction for funds lost from their IRA accounts, allow for accelerated and increased contributions to tax-free retirement accounts to make up for losses, and allow for penalty-free early withdrawals from retirement accounts for investors in dire need of cash.

The legislation is co-sponsored by Senators Robert Menendez (D-NJ), Roger Wicker (R-MS), John Kerry (D-MA), Thad Cochran (R-MS), Mary Landrieu (D-LA), Richard Burr (R-NC), Kirsten Gillibrand (D-NY), Kit Bond (D-MO), Bill Nelson (D-FL), George LeMieux (R-FL), Blanche Lincoln (D-AR), Arlen Specter (D-PA), Joe Lieberman (I/D-CT), Christopher Dodd (D-CT), and Maria Cantwell (D-WA).

“The fact that Bernie Madoff swindled so many investors is outrageous, but the fact that so many of the smaller investors are not receiving the same assistance as direct investors is simply unfair,” **Senator Schumer** said. “This proposal would finally give those smaller investors, many of whom lost everything, the tax relief they need and deserve."

"This bill is a bipartisan effort to help victims of investment fraud," **Senator Kyl** said. "It's important to understand that these investors' money was not lost as a result of investment risk. It was stolen. Many of the victims of the Madoff and Sanford schemes are either near or in retirement and have no ability to recoup the losses they have incurred after a lifetime of saving and investing by returning to work. Their prime working years are behind them."

While many famous names lost much of their fortunes through the Ponzi schemes run by Madoff and Sanford, thousands of smaller investors were also left with nothing. Some of these smaller investors were indirect investors, meaning that they typically invested through feeder funds or other brokers and tended to have a lower net worth. Typically, these smaller investors gave money to an investment advisor and didn't even know that their money was with Madoff. The proposals in the "Ponzi Victims' Tax Bill of Rights" are designed to help both direct and indirect investors.

The IRS originally issued rules in March 2009 allowing a direct investor to take a "theft loss" deduction for their Ponzi scheme losses. The rule said that theft losses could be treated as net operating losses (NOLs), as if the individual investors were small businesses. Direct investors were allowed to "carry back" their losses for 5 years instead of 3, and carry forward any remaining losses for up to 20 years. A longer carryback is important because it puts cash in your pocket by providing refunds for taxes paid in past year.

However, even with the NOL relief afforded to thousands of victims, a number of tax problems remain unaddressed; hence the need for today's legislation, which was developed with the assistance of Ponzi scheme victims' representatives from around the country. In order to expand relief available to Madoff's smaller investors, the Schumer-Kyl legislation would increase the amount a victimized investor can carry back on his income taxes; allow victims who lost money within an IRA to recoup some of the losses for the first time by allowing a theft loss for their basis in the account, or half their total losses; raise the limit on tax-free contributions to retirement accounts so investors can replenish losses quicker; and waive penalties for withdrawing from retirement accounts to increase daily cash flow.

The legislation announced Thursday was praised by the leading organizations that represent Ponzi scheme victims.

“This legislation from Senators Schumer and Kyl will be a tremendous help to many investors victimized by investment fraud,” said **Ron Stein, President of the Network for Investor Action and Protection and Founder of Madoff-Help.com**. “Unquestionably, Senators Schumer and Kyl have taken a courageous and compassionate stand to help those desperately in need and to help bolster investor confidence. By providing or extending relief to defrauded investors in IRAs, indirect investors, and widows and widowers, both Senators have demonstrated remarkable leadership and a commitment to the average investor. On behalf of so many of these struggling victims, we heartily say ‘thank you.’”

“Most of the 6,000 U.S. victims of the Stanford Financial Group Ponzi scheme have lost their entire life savings, which took decades to build," said **Angela Shaw, Director and Founder of the Stanford Victims Coalition**. "These victims are middle-class Americans living in 46 states who played by the rules, paid their taxes, and saved most of their lives to have a comfortable retirement, only to see it disappear practically overnight. The ‘Ponzi Victims Tax Bill of Rights’[is desperately needed by these honest, hard-working Americans who have lost so much. This reform will make a significant difference in the lives of so many people and I applaud Sens. Schumer and Kyl for their continued leadership and sympathy for the thousands of victims of these unprecedented Ponzi schemes."

A breakdown of the legislation’s provisions appears below:

- The bill will define a qualified fraudulent investment loss. This definition will be based on the definitions included in the March 2009 IRS guidance.

- The bill will allow both direct and indirect investors with qualified fraudulent investment losses to carry back eligible losses to up to 6 prior taxable years, essentially doubling the period that existed prior to March 2009. Thus, under the bill the same rules with respect to NOL carrybacks of qualified fraudulent investment losses will apply to both direct and indirect investors.

- Many victims, particularly a number of the smaller investors, held Ponzi-related assets in an Individual Retirement Account (IRA), with the result that these retirement savings are totally gone. Under current law, no tax relief is available for losses resulting from the theft of assets held in an IRA. Thus, an individual that lost a $250,000 investment in a taxable account as a result of the Ponzi-scheme theft has received a deduction for the loss, but an individual that lost a $500,000 investment in an IRA has received no relief. Fixing this inequity is the highest priority for many victims.

Because taxes have not been paid on the majority of retirement savings (i.e., most retirement accounts are funded with pre-tax money), the amount of the allowable tax loss must be adjusted. Under the bill, victims will be allowed to claim a loss deduction for the qualified fraudulent investment loss in an IRA in an amount equal to the GREATER of (1) 100 percent of their individual and employer contributions (provided the contributions are substantiated), or (2) 50 percent of the IRA theft loss. The maximum loss that may be claimed under this provision is $1.5 million. Under the bill, the IRA loss deduction maybe carried back to up to 6 taxable years and carried forward up to 20 years.

For IRAs that contain money rolled over from other retirement accounts, the amount of the rollover is not itself considered to be an "employee contribution." Instead, an individual must substantiate the portion of the rollover that is attributable to employee and employer contributions.

- For all provisions of the bill, the amount of any qualified fraudulent investment loss is reduced by any expected recovery, through the Securities Investor Protection Corporation, legal action, or other sources.

- For any eligible individual (including a spouse) who turned 65 by December 31 of the year that the theft was discovered, the bill increases the maximum NOL carryback period for qualified fraudulent investment losses (whether held directly or indirectly or through an IRA) to 7 years.

- The bill will allow a waiver of the 10 percent tax penalty for withdrawals from retirement plans for an individual who is under age 59½ and who suffered a loss related to the Ponzi scheme. Penalty-free withdrawals will be permitted for up to 10 years from the date of the discovery of the fraud, or until a taxpayer has withdrawn the amount of the loss, whichever comes first. An individual will still be required to pay the income taxes on the withdrawn funds; the bill will simply waive the 10 percent penalty on early withdrawals in these circumstances.

- Under current law, a surviving spouse may not be able to fully utilize the loss carryback if the deceased spouse was the breadwinner and all of the assets were in the deceased spouse's name. The surviving spouse cannot use the deceased spouse's income in a year prior to death to offset losses –losses can only offset the surviving spouse's income in those years. Thus, if the Ponzi scheme account was the only asset then there is no future income against which the surviving spouse can apply the loss carryforward.

  Under the bill, when there has been a change of marital status due to death, the surviving spouse will be able to carry back a qualified fraudulent investment loss to a prior joint return year (up to 7 years, in the case of someone who turned 65 by December 31st of the year that the theft was discovered) and offset the joint income, rather than just the income of the surviving spouse.

- To help restore an individual's IRA savings in the event of a qualified fraudulent investment loss, the bill will include a special "catch-up" contribution provision allowing an individual to contribute up to an additional 100 percent of the current contribution limits to any IRA account for a period of up to 10 years. This special "catch-up" contribution will be available for any individual who owns an IRA that lost at least 50 percent of its value as a result of a qualified fraudulent investment loss. For an individual with multiple IRAs, the bill allows the catch-up contribution for each eligible IRA.

- Many victims filed estate or gift tax returns reporting investments in Ponzi-scheme assets. Thus, the value of the assets reflected on these returns was overstated. The bill will allow a period of time to file amended estate and gift tax returns to obtain a refund of transfer taxes paid or to adjust the lifetime gift tax or generation skipping transfer tax exemptions to reflect the lower value of the assets transferred. The effect of the bill will be to permit certain estate or gift taxes paid on Ponzi-scheme assets, or lifetime gift tax or generation skipping tax exemptions that have been utilized with respect to Ponzi-scheme assets, to be appropriately refunded or restored.

The bill will allow an individual to amend returns, as necessary, for reportable gifts made in the year the theft is discovered, and the 6 taxable years prior to the theft discovery. An individual would have up to four taxable years after the discovery of the fraud to amend his gift tax returns. Thus, for example, a victim of the Madoff Ponzi scheme will have until December 31, 2012 to file amended gift tax returns for gifts made in tax years beginning January 1, 2002, and subsequent years through the date of discovery of the theft.

For estate taxes, the bill will allow estate tax returns for decedents dying after December 31, 2007 to be amended to account for Ponzi scheme assets. For decedents dying before January 1, 2008, consistent with present law, beneficiaries who inherited assets that became worthless after inheritance as a result of a Ponzi scheme will be able to utilize the NOL treatment and other benefits afforded to all victims.

- All provisions in the bill will only apply to qualified fraudulent investment losses discovered in calendar years 2008 or 2009.

###