

UNITED STATES SENATOR • IOWA

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Note: Sen. Chuck Grassley, ranking member of the Committee on Finance, made the following statement about the need for more oversight of corporate accounting and parties responsible for recent corporate accounting scandals. He made the statement when offering his amendment to create a team of oversight auditors. He did not get consent to offer the amendment.

From the Congressional Record, Statement of Sen. Chuck Grassley
on Corporate Scandals and Oversight
Monday, July 15, 2002

Mr. GRASSLEY. Mr. President, I have five amendments I filed: (i) An amendment providing for a team of oversight auditors, (ii) an amendment providing for prebankruptcy bonuses paid to top executives be pulled back into the bankrupt corporation's estate, (iii) an amendment providing the Securities Exchange Commission with disgorgement remedies, (iv) an amendment providing that auditors who sell tax shelter products cannot opine on the financial effects of the tax shelter deal; and, (v) last, an amendment providing whistleblower protection to the accountants and others who want to disclose financial statement misconduct.

I am pleased, in regard to the last amendment I just announced about whistleblowers, Senators LEAHY and HATCH accepted that proposal as part of their amendment which has been adopted.

I am not going to speak about the other four. I am just going to speak about one of those. It is the first amendment I put on my list, an amendment providing for a team of oversight auditors.

As I said, I congratulate my colleagues, Senators SARBANES and ENZI on their hard work in moving S. 2673 out of Committee and bringing the bill to the floor for further debate. The reform bill is a great step in the right direction for tackling some of the difficult accounting problems our Nation currently faces. Nevertheless, I believe the reform bill isn't quite tough enough on several issues and should be strengthened further, consequently, the amendment.

In my view, the recent rash of accounting scandals did not result from incompetency or lack of rigorous training of accounting professionals. Neither has the problem lied principally with misguided auditing standards known as GAAS or ill-considered accounting rules known as GAAP.

The WorldCom debacle, among others, further demonstrated that the problem does not rest entirely with a company's external auditors--whose best efforts may not detect financial misrepresentations if fraud is repeatedly covered up by corporate insiders or contrived to defeat established internal controls. Instead, each of the most recent corporate accounting scandals appear to have arisen from egregiously bad behavior of corporate insiders and internal accountants--with varying degrees of complicity by those companies' external auditors.

Thus, as a matter of principle, I agree with the "bad apples" theory being offered by many. However, I believe addressing those bad apples requires additional oversight--and not just of a company's external accountants but of the internal accounting function itself.

To that end, I further respond to the President's call for increased oversight and would like to offer an amendment that would strengthen the provisions Sarbanes-Enzi bill by expanding the powers of the oversight board to require the performance of "spot audits." The underlying bill which focuses on monitoring external auditors would be amended to provide additional board oversight of internal corporate accounting.

Specifically, my amendment would charge the board with responsibility for conducting oversight audits or "spot audits" of public companies. The board would serve in a role analogous to the Internal Revenue Service or the Federal Bank Examiner. The IRS, for example, achieves voluntary public compliance through review of a very limited number of federal tax returns each year. The IRS does not verify each and every tax return. Similarly, the Federal Bank Examiner sporadically and randomly audits various banks throughout the country. Such "spot auditing" has been an extremely effective oversight tool for the banking industry and one which has resulted in higher levels of regulatory compliance. In similar fashion, I believe that accountants and corporate America will prepare more carefully their financial statements if exposed to the risk of compliance review by the board's oversight auditors.

Even in self-regulated form, the accounting industry has long recognized the need for a second level of review. To that end, 24 years ago the ACIPA established the peer review process by which one accounting firm would review audit work of another accounting firm. For example, Deloitte & Touche was for many years the assigned peer reviewer of Arthur Andersen. Industry-wide self-checking on top of industry self-regulation seems ill-conceived and has been widely criticized for its effectiveness by lawmakers and the SEC.

Over the past 25 years, a Big Five accounting firm has never issued a qualified report against another Big Five accounting firm at the end of any peer review despite the subsequent discovery of numerous irregularities including numerous conflicts of interest from stock ownership in audit clients. This recognized need for a second level of review is longstanding although the mechanism originally established by the accounting industry seems to have proven largely inadequate.

Some may ask why the board should be granted powers which may be exercised currently by the SEC. The answer is simply resources. Providing an effective mechanism for spot checking the books of various issuers requires a dedicated audit staff to carry out those purposes. Having resources dedicated to a regulatory review process would allow the oversight board to take a proactive approach in reviewing for accounting irregularities and take the SEC out of a purely reactive posture with respect to corporate accounting fraud. The SEC has done a great job of investigating corporate scandals once detected. Unfortunately, by the time many of the recent scandals were discovered, things had progressed too far. We were unable to salvage the companies and the life savings of thousands of employees and shareholders. I believe the oversight auditor would provide a deterrent to committing fraud when coupled with tougher criminal sanctions. I further believe that earlier detection could prevent the absolute destruction of companies in which fraud remains uncovered for too long a period of time.

I note that the concept of an oversight auditor within the public oversight board was rejected in the accounting reform proposal offered by the SEC and Harvey Pitt on June 20. The draft emphasized that the SEC's vision of a newly created public oversight board reassured corporate

America that the newly-created oversight board would require the cooperation of audited corporations ``only to the extent necessary to further reviews or proceedings regarding the [audit corporation's] accountant." The draft further promised that the new oversight board would not conduct ``roving investigations" of audited corporations nor would the board sanction those corporations. It occurs to me that by shifting exclusive focus and responsibility to accounting firms, we ignore the underlying behavior of corporate wrongdoers who have principal responsibility for fair and accurate financial reporting to corporate shareholders.

Under my proposal, the newly created oversight board would be charged with reviewing the financial statements of issuers and focusing its resources on highest-risk audit areas and questionable accounting practices of which it is aware from the SEC Division of Enforcement or other sources such as whistleblowers under provisions I heartily supported.

Upon discovery, the board would refer findings of possible accounting or auditing irregularity to the Division of Enforcement with respect to issuers or other appropriate federal and state enforcement officials such as the President's newly-created Fraud Task Force within the Department of Justice. This referral mechanism would ensure that those agencies continue to have primary authority and responsibility for conducting comprehensive corporate investigations of possible wrongdoing. The oversight board, of course, would have authority to conduct investigations of possible wrongdoing with respect to the involvement of accounting firms within its jurisdiction.

That is a basic summary of what this amendment would accomplish. I urge my colleagues to support establishment of an oversight auditor as a means of improving the compliance of corporate issuers and their external accounting firms and detecting irregularities at a much earlier point in the system when a shareholder value remains salvageable.

It seems to me that my amendment comes down to just a simple case of common sense. As I think proven so many times before, auditors need to be audited in the same way the IRS does it for tax returns and in the same way bank examiners do it in the case of bank audits. If auditors know their work will itself be audited, they will think twice about looking the other way on shady deals, as we have seen.

My amendment would put some very specific teeth in the Sarbanes-Enzi bill.

At this point, I was hoping the Senator from Texas was going to be here because I have done so much for him on a lot of Finance Committee bills. I'm referring to tax bills, including the recent CARE bill and the recent energy bill. I have helped him with so many amendments that he wanted. I was sure he would be willing to help me get unanimous consent to get my amendment up, particularly in light of the fact that last week I was assured when it wasn't on the list that it would be on the list. Then I came back and found that it meant being last on the list.

Now we are getting down to the end. I would like to have what I consider kind of a commitment, although it probably is not an ironclad commitment, that I be on the list, and, obviously, I would be able to get a vote on my amendment.

At this point, I ask unanimous consent that the pending amendment be laid aside for the purpose of taking up my amendment just described, which is amendment No. 4232.

The PRESIDING OFFICER. Is there objection?

Mr. ENZI. In light of the discussions, I have to object.

Mr. GRASSLEY. Was the President going to put my unanimous consent before the Senate?

The PRESIDING OFFICER. I did.

Mr. GRASSLEY. I did not hear the President do that.

The PRESIDING OFFICER. The Senator from Wyoming objects.

Mr. GRASSLEY. Mr. President, before I yield the floor, I would like to have just a short discussion of something that bothers me. In the Senate we have a right to be, and a responsibility to be, intellectually honest about these issues with which we are faced here.

I have heard so much during this debate--not so much during the debate, because that wouldn't be fair, but more probably in news conferences held by Senators on the other side of the aisle -- about the Democrats wishing to use Enron and WorldCom events very much as, I think, political issues. I think maybe the Democrats are hoping for a "November storm" in which our economy is weak and no progress is made on accounting reforms.

As this bill goes through the Senate, through conference, and comes back, I hope we will realize that there is enough blame to go around. But, most importantly, I think it is wrong. For instance, the distinguished majority leader on "Face the Nation" recently attributed the current crisis to the alleged "permissive" attitude in the Bush administration towards business. I didn't see any "permissiveness" in the President's speech last week. I don't think very many people did.

But I think we also need to remember, while a lot of this mischief was going on by corporations, that during the decades of the 1990s and now in the 21st century there were 2 years in which Democrats controlled Congress. In those two years, we had a Republican President. That was the first Bush Presidency. There was a period of time when the Democrats controlled both Houses of Congress and the White House. That was 1993-1994. Then there were 6 years that Republicans controlled the Congress--1994-2000, and the Democrats controlled the Presidency. Then there were 135 days last year that Congress was controlled by Republicans, and the President of the United States, but only 135 days out of a 12-year period of time, if you want to use the 1990s plus now. And what has happened has happened on the watch of both Republicans and Democrats.

I think that to say a President has been President 18 months and this crisis before us is because of a "permissive" attitude in the Bush administration towards business just doesn't hold water. I have a chart behind me. I hope I am very clear in making this more accurate than what I just said. The yellow is the 2 years of the Bush administration going back to 1994, and the other color covers the Clinton administration.

But let's forget about the Bush administration and the Clinton administration. Let's just realize what the facts are. In the case of Enron, it became public in the year 2001, but the restated earnings and the mischief went on all the way back to at least the beginning of 1997 because 1997, 1998, 1999, 2000, and the first two quarters of 2001 were restated earnings.

Adelphia: Half of 1998, all of 1999, all of 2000--before they were public in 2001--but restated earnings for all those.

Go down to Xerox. It was found by the end of the year 2000 everything that was done wrong in Xerox. The restated earnings of 1997, 1998, 1999, and 2000 came before there was ever a President George Bush.

There were restated earnings for Rite Aid for 1998, 1999, and 2000. You can go down the list. What the chart says, better than I can say, is that it is not a permissive attitude by this President that has put us in this position. It is because of the lack of transparency that was implied in what the accounting profession and audit committees and boards of directors, who ought to be watching management, were doing, and the Securities Exchange Commission under the spirit of the 1933 law of what they should have been doing. I suppose there are a lot of others as well.

But now politics should be put to the side. We should not be making these statements. We ought to be correcting the situation so that people have confidence and so that the crooks who are running our corporations and doing these things that are evidenced here. When I say "crooks running our corporations," I mean the ones who would do this sort of thing to their stockholders and to the country and to the economy – so that they cannot get away with that in the future.

That is what this bill is all about. I complimented Senator Sarbanes and Senator Enzi about this bill. I think it would have been improved with my amendment. But, quite obviously, that is not the way the game is being played. So I am sorry that my amendment could not be put to a vote.