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EXCLUSIVE: WH sought to weaken law on whistleblowing

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Despite its pledge to better protect federal employees who expose wrongdoing, the Obama administration privately sought to weaken protections for national security whistleblowers under legislation making its way through Congress, according to correspondence obtained by The Washington Times.

E-mails that documented the White House's intervention show the White House counsel's office provided its own drafts of the proposed legislation in late June and mid-July.

While strengthening protections for some whistleblowers, the drafts weakened protections for FBI employees and reduced access to jury trials for those national security workers who sue for protection from retaliation after blowing the whistle.

"Please find attached the documents the administration transmitted to the committee staff on Friday. Thanks for all your patience and help as we work together on this important legislation," White House counsel's office lawyer Blake Roberts wrote in one such e-mail on June 29 that accompanied marked-up copies of the bill. The e-mail and attachments were obtained by The Times from a congressional source.

Mr. Roberts declined to be interviewed Thursday. But White House spokesman Ben LaBolt described the language in the e-mails as "an early discussion draft that contained ideas advanced by various people involved in the negotiations including the Senate, the House, outside groups and others, which contained a variety of ideas advanced by various people involved in the negotiations."

In fact, the language in the e-mails closely tracks the version of the bill passed out of a Senate committee. Nevertheless, Mr. LaBolt described the bill as a "historic breakthrough" and said, "We were very pleased that the leadership shown by the Senate and the House, not just now but over the years. ... We look forward to working with both bodies of Congress as they continue to move forward on this legislation."

Early this year, the House approved sweeping whistleblower protections similar to those promised by President Obama during his 2008 campaign.

But when the Senate Homeland Security and Governmental Affairs Committee began considering its version of the bill in the spring, the White House proposed a number of changes that were incorporated into a bill passed unanimously by the committee on July 29.

The bill initially was widely praised by whistleblower advocates. But in recent days, as details about the weakened protections emerged, criticisms have been voiced by administration allies both in the House and the private sector.

Rep. Chris Van Hollen, the Maryland Democrat who co-sponsored the House whistleblower bill and serves as liaison to the White House for House Speaker Nancy Pelosi, California Democrat, said the Senate bill "falls short of what is needed to provide whistleblowers the protections they need."

"When it comes to national security whistleblowers, it's still way too limited in the opportunities they have to make their case without fear of retaliation," Mr. Van Hollen told The Times.

Whistleblower groups said they were disappointed by the White House changes.

Tom Devine, legislative director for the Government Accountability Project, said the White

House changes created obstacles that could stymie national security whistleblowers, such as a new review panel to hear complaints from intelligence employees who bring allegations of wrongdoing to light.

"In reality, it just changes the drapes and the window dressing. All the hearings would still be conducted by the agencies," Mr. Devine said.

"We have grave reservations as to what's happening with FBI whistleblowers," said Steve Kohn, executive director of the National Whistleblowers Center and a private lawyer who has successfully sued the government on behalf of several federal whistleblowers and bureau agents over the past two decades.

"The House got it right. Obama pledged to support it and he should keep his promise to every whistleblower. As passed, the Senate bill does not fulfill that promise," Mr. Kohn said.

The House, in a measure co-sponsored by Mr. Van Hollen, voted in January to include broad new whistleblower protections in the \$787 billion economic stimulus bill, but the amendment was stripped out of the bill in subsequent negotiations with the Senate. Mr. Van Hollen and his supporters then formally proposed the whistleblower protections as a separate bill in March.

Under current law, most federal whistleblowers who suffer retaliation can seek redress from an entity called the Merit Systems Protection Board. Those who work in security and intelligence agencies must seek redress within the agencies in which they work.

The House bill would scrap that system and provide all federal workers who have grievances access to the courts. The legislation is likely to be taken up after the August recess.

The Senate bill initially kept most of the current structure intact. After the White House revisions, it provided access to the courts for most federal workers but removed some existing protections from national security workers.

Senate Democratic aides said Thursday they never intended to weaken protections for whistleblowers and will take some form of corrective action when the Senate reconvenes in the fall.

"The intent of the Senate was to keep those protections in effect," said Leslie Phillips, spokeswoman for the Senate Homeland Security and Governmental Affairs Committee.

The language was the product of a compromise between Senate Democrats and Republicans and the White House, Ms. Phillips said, adding that whistleblower groups are "misinterpreting what the Senate intention was."

Mr. DeVine said Thursday he believed the changes proposed in the White House e-mails were sought at the behest of the FBI. "The FBI had all sort of poison pills in there. It was the FBI who was trying to turn the Whistleblower Protection Act into an official secrets act," he said.

But, he said, "It's not fair to say this is anything more than a technicality which is in the process of being corrected."

The FBI did not immediately return requests for comment Thursday evening.

Activists do credit the Obama administration with helping broker the deal providing jury trials for some whistleblowers, a proposal that had long been stalled in the Senate. In a compromise, the provision expires in five years unless lawmakers vote to renew it.

But the Senate version, as amended in talks with the White House, would put jury trials out of reach for the majority of whistleblowers, Mr. Kohn said.

Under the Senate bill, national security workers would have their claims reviewed by managers in the agency for which they work - a measure that advocacy groups say would weaken current protections. At present, national security whistleblowers - including those in the CIA and National Security Agency - can have their cases reviewed by their departments' inspectors general, who enjoy a high degree of independence.

Most directly affected would be FBI employees, who would lose the right to have their cases reviewed by the Justice Department's inspector general's office. They would now have to seek protection from FBI managers.

Protecting federal workers became a major issue in the 2008 campaign after a handful of

high-profile whistleblowers lodged charges of fraud and corruption against the George W. Bush administration.

Mr. Obama latched onto the criticism during the campaign, voting for the broad House whistleblower measure as a senator in 2007 and signing a pledge to support the legislation if he became president.

President-elect Obama's transition Web site stated that the new president would "ensure that federal agencies expedite the process for reviewing whistleblower claims and whistleblowers have full access to [the] courts and due process."

Whistleblower advocates want him to keep his promise.

The Government Accountability Project's Mr. Devine said he supported other measures backed by the Obama administration, and said there's still time to extend protections to national security workers because House and Senate negotiators have yet to work out a final bill.

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