



## Critics question whistleblower bill

By: [Kasie Hunt](#)

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In a bid to secure a much-needed bipartisan victory, the Obama administration is trying to secure passage of protections for government whistleblowers. But some advocacy groups are complaining that the legislation does not go far enough to protect government employees in the national security field and, in fact, would roll back protections that FBI whistleblowers now have.

“The problem — and there is a problem — is that the new regulations or the modified procedures could be written by the FBI instead of the attorney general and that would allow the FBI to write the rules that could be applied to its own alleged misconduct,” said Tom Devine, legal director of the Government Accountability Project. “That’s a conflict of interest, and it’s not acceptable.”

But bill sponsor Sen. Daniel Akaka (D-Hawaii) maintains the legislation would add to current protections. “Currently, if a courageous FBI employee risks their career to report fraud or abuse, he or she only has access to an internal [Department of Justice] process for whistleblower claims,” spokesman Jesse Broder Van Dyke said. “Sen. Akaka ensured that the Senate bill preserves the existing agency process, while giving FBI whistleblowers an additional recourse: the right to appeal their case” to an independent appeals board created by the bill specifically to handle complaints from within intelligence agencies, including the FBI, the CIA and the National Security Agency.

Devine and other advocates have been pushing legislation to strengthen protections for government whistleblowers for years. In President Barack Obama and a Democratic Senate, they thought they had found partners willing to give government employees who are illegally fired access to jury trials for the first time — and to acknowledge that national security officials, currently exempt from the federal whistleblower process, have certain rights within the system.

But critics say the administration let national security officials write the sections that would govern how to protect a CIA or FBI agent who gets fired. If the Senate’s bill becomes law, intelligence community agency heads would be able to dismiss complaints without judicial review. Employees could appeal to the new Intelligence Community Whistleblower Protection Board made up of people appointed by the agencies it oversees. The board would not have the power to give a whistleblower his or her job back and could award only up to \$300,000 in damages.

“A lot of federal workers will benefit from the bill, but national security whistleblowers will be harmed,” said Stephen Kohn, who runs the National Whistleblowers Center. “Our position is, you cannot use the Whistleblower Enhancement Act as a vehicle to give the national security establishment more power.”

The national security provisions would apply to the FBI because it’s part of the intelligence

community. But FBI whistleblowers are protected under current law that doesn't apply to other agencies. FBI employees file complaints to the Justice Department, and allegations are investigated by the inspector general or the Office of Professional Responsibility. If the Senate bill becomes law, complaints from FBI whistleblowers would be handled within the agency, Kohn said.

Devine said both Senate staff and the White House have insisted they don't intend to roll back the current FBI protections. "We've explained that to the committee staff. They thought they had solved the problem; they thought that they were retaining the current rights," he said.

But since the Senate Homeland Security Committee approved the legislation last July, the promised changes haven't come. "This language hasn't changed in months. I had thought that there was a possibility that it had changed, but it hasn't changed," said Danielle Brian, executive director of the Project on Government Oversight.

A bipartisan group of Senate staffers are due to meet this week to try to strike a deal that would allow leaders to send the bill to the Senate floor in coming months.

Kohn's group breaks with other whistleblower advocates, including POGO and GAP, because he's willing to try to hold up the entire bill over the national security provisions. The others — many of whom have been working for decades to earn federal whistleblowers the right to a jury trial — said killing a good bill will set back the cause for years.

"I have all kinds of issues with the structuring of the national security provisions of the bill. But my perspective is that [it] was a hard fight to get as far as they got in the Senate, and I understand that the perfect is the enemy of the good. You need to be able to get something in front of the Senate that they're going to pass," Brian said. "Before this year, the Senate had not acknowledged that national security whistleblowers should be protected at all, and they did not acknowledge that any whistleblowers should have access to trials."

"If we don't get this bill out of the Senate, there could be nothing. ... Our only chance to get credible national security whistleblower rights is a compromise between a weak due process provision coming out of the Senate and full due process — access to court — coming out of the House," Devine said.

The House bill would allow national security whistleblowers access to federal courts if they charged that they were illegally fired or refused a promotion. Reps. Chris Van Hollen (D-Md.) and Todd Platts (R-Pa.) tried unsuccessfully to attach the House legislation to the stimulus package passed last year.

Both minority and majority staff from the Senate Intelligence, Judiciary and Homeland Security committees will huddle this week. But it's fairly unlikely they will address changing rules for the FBI. Instead, they're working to assuage concerns from Missouri Sen. Kit Bond, the top Republican on the Intelligence Committee, who has been holding up the bill because he doesn't think it does enough to protect classified information.

"Sen. Bond is committed to passing stronger protections and is working to resolve troublesome provisions in the current draft to ensure both whistleblowers and our classified information is protected," spokeswoman Shana Marchio said.

Brian said she doesn't anticipate increased protections for national security whistleblowers. "My understanding is, the only thing that's going to change is a reflection of the negotiations that they're making with Sen. Bond," she said.

"The administration has worked with the Senate to produce bipartisan legislation that would increase the rights and protections available to whistleblowers — legislation that had been stalled in Congress in prior years," said White House spokesman Ben LaBolt. "The administration will continue to work with the Senate to ensure that the legislation strengthens protections for whistleblowers across the government."

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