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SEPTEMBER 10, 2008

Senators Protest Whistleblower Policy

By JENNIFER LEVITZ

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Two U.S. senators accused the Department of Labor of violating the "spirit and goals" of a federal law aimed at protecting employees who report corporate wrongdoing, and called on the agency to stop rejecting claims from workers at subsidiary companies.



Charles E. Grassley

In a letter to Secretary of Labor Elaine Chao, Sen. Patrick Leahy, a Vermont Democrat who is chairman of the Judiciary Committee, and Sen. Charles Grassley, an Iowa Republican who also is on the committee, wrote that they were dismayed that the "administration --

the Department of Labor in particular -- has been using overly restrictive interpretation of this law to dismiss a majority of the complaints" filed under the whistleblower-protection provisions of the 2002 Sarbanes-Oxley Act.

Sen. Leahy and Sen. Grassley, who wrote those provisions, said that "there is simply no basis to assert" that employees of the subsidiaries of publicly traded companies aren't covered under the act, as the department has asserted in numerous recent cases.

The letter cited an article in The Wall Street Journal last week that reported on the department's stance. Department records show the government has ruled in favor of corporate whistleblowers 17 times out of 1,273 complaints filed since 2002. An additional 841 cases have been dismissed, the records show, with many of the dismissals made on subsidiary-exclusion grounds. The rest of the cases are either pending, withdrawn, or were settled.

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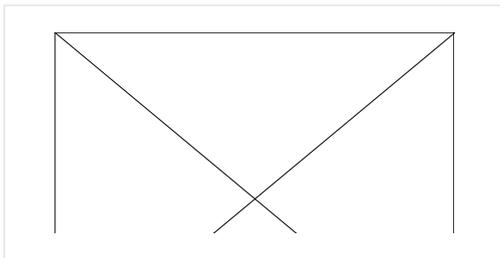
Read the letter sent by Sen. Patrick Leahy and Sen. Charles Grassley to Secretary of Labor Elaine Chao.

and do not believe the text of Sarbanes-Oxley as written supports the broader reading that employees of subsidiaries are automatically covered."

Tom Devine, legal director of the Government Accountability Project, a nonprofit group that promotes whistleblower rights, called the department's stance "dysfunctional," saying: "This one is a no-brainer. There is nothing in the law that allows for that type of loophole."

The senators asked the department to supply documentation and a response supporting the agency's position -- and until that time, to suspend its interpretation that exempts employees of subsidiaries.

The department's Occupational Safety and Health Administration



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Patrick Leahy

enforces the whistleblowers' provisions, which prohibit publicly traded companies or "any other officer, employee, contractor, subcontractor, or agent of such company" from retaliating against employees who provide information or assist in investigations related to alleged fraud.

In their letter, the legislators wrote that the whistleblower provision was a direct response to fraud perpetrated by Enron Corp., "through the misuse and abuse of its shell corporations and subsidiaries."

Cases dismissed on the subsidiary-exclusion rule include whistleblower complaints against the German manufacturing conglomerate Siemens AG, London media titan WPP Group PLC; ING Groep NV of the Netherlands; Alabama insurer Torchmark Corp.; and Florida investment firm Raymond James Financial Inc. The companies have declined to

comment on the cases.

Another pending case involves UBS AG, the Swiss bank. An attorney says the Labor Department has asked him to show that the UBS unit that employed his client is covered under the act. UBS declined to comment.

Write to Jennifer Levitz at jennifer.levitz@wsj.com

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