



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 13, 2007
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 985 – Whistleblower Protection Enhancement Act of 2007

(Rep. Waxman (D) CA and 24 cosponsors)

The Administration supports accountability and transparency in the implementation of Federal programs. However, the Administration strongly opposes House passage of H.R. 985 because it could compromise national security, is unconstitutional, and is overly burdensome and unnecessary. Rather than promote and protect genuine disclosures of matters of real public concern, it would likely increase the number of frivolous complaints and waste resources. If H.R. 985 were presented to the President, his senior advisors would recommend that he veto the bill.

H.R. 985 would expand, for the first time, whistleblower protections to employees at national security agencies who disclose classified information to Congress. H.R. 985 would permit an employee to make an individualized determination – without further review and perhaps without all relevant information – to disclose classified information. Such an independent, uncoordinated decision to disclose classified information could jeopardize not only national security programs, but also the security of the people involved in such programs. The President now has the necessary authority to control the circumstances under which others receive classified and national security information to ensure such information is not disclosed or used in a way that would jeopardize national security. By vesting subordinate Executive branch officials with a right to disclose classified information outside of the Executive branch without receiving official authorization from the President or his official designee, the bill would impede the President's necessary coordination function. In addition, in any litigation concerning a whistleblower, if the government invokes the state secrets privilege, H.R. 985 would require that the matter at issue be resolved in favor of the plaintiff. This essentially would require the agency to choose between protecting national security information in court or conceding lawsuits. Finally, H.R. 985 would allow administrative and judicial review of Executive branch security clearance determinations, a prerogative that must be within the Executive branch's discretion for the protection of national security programs and personnel.

The expanded definition of protected disclosures in H.R. 985 also would upset the delicate balance between whistleblower protection and the ability of Federal managers to manage the workforce by permitting employees to bring a whistleblower complaint in response to almost every adverse employment action. The existing protections guaranteed by the Whistleblower Protection Act are sufficient to promote and protect genuine disclosures of matters of public concern by offering protection from adverse personnel actions to employees who report government wrongdoing to those in a position to remedy the problem. The proposed expansive definition has the potential to convert any disagreement over an issue or contrary interpretation of a law between employees, no matter how trivial or frivolous, into a whistleblower disclosure.

The proposed expansive definition also would permit employees to impede legitimate investigations (even those by Inspectors General) by arguing that such investigation itself was an adverse action against the whistleblower. Instead of providing further protection to those with legitimate claims, who are covered by the existing law, the proposed definition likely will increase the number of frivolous claims of whistleblower reprisal, compromise legitimate investigations into wrongdoing, and create protections for disgruntled employees whose jobs would not otherwise be secure.

H.R. 985 also would permit employees to engage in judicial forum shopping in having their claims resolved. Whistleblowers already have the right to seek corrective action for an unlawful personnel action from the Merit Systems Protection Board, and are afforded judicial review before the Federal Circuit. H.R. 985 would allow employees to have their claims heard de novo in any federal district court, which could result in two trials (rather than one) for each employee's complaint, and might result in divergent local district court interpretations and split circuit court decisions.

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