United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

September 9, 2008

The Honorable Elaine Chao
Secretary of Labor
United States Department of Labor
200 Constitution Ave, N.W.
Washington, D.C. 20210

Dear Secretary Chao:

We authored the corporate whistleblower provisions of the Corporate and Criminal Fraud Accountability Act, section 806 of the Sarbanes-Oxley Act (SOX). In 2002 and 2003, we corresponded with the Attorney General and the President to express our disagreement with the Administration's overly narrow interpretation of these important whistleblower protections in the corporate accountability legislation.

We are dismayed to learn that the Administration—the Department of Labor in particular—has been using an overly restrictive interpretation of this law to dismiss a majority of the complaints filed by employees of public corporations under this section who assert that they have been fired or treated unfairly because they reported fraud.

The Wall Street Journal reported on September 4 that out of 1,273 complaints filed with the Department of Labor under this whistleblower protection provision since 2002, the government has ruled in favor of the employee only 17 times and has dismissed 841 cases. Many of these cases have apparently been dismissed on the grounds that the employee worked for a corporate subsidiary, because the Department takes the position that subsidiaries are not covered by the statute.

Section 806, now codified as 18 United States Code, Section 1514A, states, "No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company" may discriminate against an employee based on that employee's reporting of fraudulent conduct. We want to point out, as clearly and emphatically as we can, that there is simply no basis to assert, given this broad language, that employees of subsidiaries of the companies identified in the statute were intended to be excluded from its protections.

Moreover, as the authors of this provision, we can clearly state that it was by no means our intention to restrict these important whistleblower protections to a small minority of corporate employees or to give corporations a loophole to retaliate against those who would report corporate fraud by operating through subsidiaries. These protections against abuses were intended as a safety valve, protecting the public, shareholders, and Americans' confidence in the marketplace. Congress enacted SOX as a direct response to the fraud perpetrated by Enron Corporation (now known as Enron Creditors Recovery Corporation)—through the misuse and abuse of its shell corporations and subsidiaries. Consequently, it is unreasonable to argue that subsidiary corporations would not be covered by the whistleblower protection provisions of SOX.

Whistleblowers are vital in promoting accountability and transparency, but they are extremely vulnerable to retaliation. They need and deserve the protection of the law and vigilant application of the law by federal agencies. Accordingly, we request that you explain the basis for taking the position that the SOX whistleblower protection provisions do not apply to employees of subsidiary corporations given our position that the agency's interpretation contradicts the spirit and goals of the statute as well as the intent of Congress. In addition, we request that the Department of Labor temporarily suspend using an interpretation of this provision that exempts employees of subsidiary corporations from the SOX whistleblower protections until we have received your response and supporting documentation.

We look forward to your reply.

Sincerely,

Patrick Leahy

PATRICK LEAHY
Chairman

Chuck Grassley

CHARLES E. GRASSLEY
United States Senator