

MAJORITY MEMBERS:

JOHN KLING, MINNESOTA, Chairman

THOMAS E. PETRI, WISCONSIN  
HOWARD P. "BUCK" McKEON, CALIFORNIA  
JUDY BIGGERT, ILLINOIS  
TODD RUSSELL PLATTS, PENNSYLVANIA  
JOE WILSON, SOUTH CAROLINA  
VIRGINIA FOXX, NORTH CAROLINA  
BOB GOODLATTE, VIRGINIA  
DUNCAN HUNTER, CALIFORNIA  
DAVID P. ROE, TENNESSEE  
GLENN THOMPSON, PENNSYLVANIA  
TIM WALBERG, MICHIGAN  
SCOTT DesJARLAIS, TENNESSEE  
RICHARD L. HANNA, NEW YORK  
TODD ROKITA, INDIANA  
LARRY BUCSHON, INDIANA  
TREY GOWDY, SOUTH CAROLINA  
LOU BARLETTA, PENNSYLVANIA  
KRISTI L. NOEM, SOUTH DAKOTA  
MARTHA ROBY, ALABAMA  
JOSEPH J. HECK, NEVADA  
DENNIS A. ROSS, FLORIDA  
MIKE KELLY, PENNSYLVANIA



COMMITTEE ON EDUCATION  
AND THE WORKFORCE  
U.S. HOUSE OF REPRESENTATIVES

2181 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6100

MINORITY MEMBERS:

GEORGE MILLER, CALIFORNIA  
Senior Democratic Member

DALE E. KILDEE, MICHIGAN, Vice Chairman  
ROBERT E. ANDREWS, NEW JERSEY  
ROBERT C. "BOBBY" SCOTT, VIRGINIA  
LYNN C. WOOLSEY, CALIFORNIA  
RUBEN HINOJOSA, TEXAS  
CAROLYN McCARTHY, NEW YORK  
JOHN F. TIERNEY, MASSACHUSETTS  
DENNIS J. KUCINICH, OHIO  
RUSH D. HOLT, NEW JERSEY  
SUSAN A. DAVIS, CALIFORNIA  
RAUL M. GRIJALVA, ARIZONA  
TIMOTHY H. BISHOP, NEW YORK  
DAVID LOEBSACK, IOWA  
MAZIE HIRONO, HAWAII  
JASON ALTMIRE, PENNSYLVANIA  
MARCIA L. FUDGE, OHIO

August 2, 2012

The Honorable Hilda L. Solis  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, Northwest  
Washington, D.C. 20210

Dear Secretary Solis:

We are greatly concerned the Employment and Training Administration's (ETA) July 30, 2012, Training and Employment Guidance Letter (the guidance)<sup>1</sup> is misleading and incomplete with respect to federal contractors' obligations under the Worker Adjustment and Retraining Notification Act (WARN Act) and the department's role in enforcing the act. In short, the department creates the false impression that the guidance confers blanket immunity from the WARN Act, when in reality a contractor's failure to issue 60-day notices regarding sequestration-caused layoffs could result in costly private litigation. To ensure contractors and other interested parties do not misinterpret the guidance or inappropriately regard it as giving blanket WARN Act immunity, we respectfully request information, documents, and communications related to the guidance.

The guidance is intended to "provide[] clarity about the WARN Act responsibilities of Federal contractors" whose contracts may be terminated or reduced in the event of sequestration, and "prevent the inefficient use of resources that are deployed in response to WARN Act notices."<sup>2</sup> It advises that contractors preparing for sequestration are not required to provide WARN Act notices to their workers alerting them of a plant closing or mass layoff, adding, "[T]o provide such notice would be inconsistent with the purpose of the WARN Act."<sup>3</sup> This guidance suggests federal contractors can set aside consideration of the WARN Act in the context of sequestration. Unfortunately, that is not the case.

<sup>1</sup> *Guidance on the Applicability of the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C., 2010-2109, to layoffs that may occur among Federal Contractors, including in the Defense Industry as a Result of Sequestration, Employment and Training Administration, U.S. Dep't of Labor (July 30, 2012), available at [http://wdr.doleta.gov/directives/attach/TEGL/TEGL\\_3a\\_12\\_acc.pdf](http://wdr.doleta.gov/directives/attach/TEGL/TEGL_3a_12_acc.pdf) [hereinafter TEGL].*

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.*

The WARN Act's "unforeseeable business circumstances" exception should have broad applicability if sequestration budget cuts cause contractors to implement workforce reductions. However, the guidance inaccurately suggests that the WARN Act prohibits contractors from giving employees advance information about potential workforce reductions, if and when sequestration forces contractors to drastically curtail operations. Further, while the guidance indicates the unforeseeable business circumstances exception applies broadly to sequestration-caused reductions, it does not clearly state that WARN Act notices *must still be issued* for the exception to be available.

More disconcerting, the guidance fails to state that the department plays no role in the WARN Act's enforcement. To be clear, the WARN Act's regulations state: "*The Department of Labor has no legal standing in any enforcement action and, therefore, will not be in a position to issue advisory opinions on specific cases.*"<sup>4</sup> Enforcement of the WARN Act is the sole responsibility of the federal courts. Therefore, a contractor who does not issue 60-day notices regarding sequestration-caused layoffs could still be forced to defend him or herself in WARN Act litigation, notwithstanding the guidance and the applicability of the act's unforeseeable business circumstances exception.

Finally, we note the WARN Act provides, "[A]n employer who is not required to comply with the notice requirements . . . should, to the extent possible, provide notice to its employees about a proposal to close a plant or permanently reduce its workforce."<sup>5</sup> The act's regulations also allow for notices to be sent conditionally upon the occurrence or nonoccurrence of an event,<sup>6</sup> even though the department has indicated such conditional notices are optional.<sup>7</sup> In fact, the regulations generally encourage employers to voluntarily notify their employees about a proposal to reduce their workforce.<sup>8</sup> Contrary to these explicit provisions that permit and encourage notices even when not required, the guidance denounces such notices as "wast[ing] the states' resources" and causing "unnecessary uncertainty and anxiety."<sup>9</sup>

The guidance adds greater uncertainty to the many questions surrounding sequestration. To assist the committee in clarifying the guidance and federal contractors' WARN Act obligations, please provide the following documents and communications and respond to the following inquiries **no later than August 16, 2012**.<sup>10</sup>

1. All documents and communications relating to the July 30, 2012, guidance.
2. All documents from and communications with OMB, other federal and state agencies, and members of Congress relating to the applicability of the WARN Act to sequestration.

---

<sup>4</sup> 20 C.F.R. § 639.1 (emphasis added).

<sup>5</sup> 29 U.S.C. § 2106.

<sup>6</sup> 20 C.F.R. § 639.7.

<sup>7</sup> See 54 Fed. Reg. 16042, 16059 (1989).

<sup>8</sup> See 20 C.F.R. § 639.1.

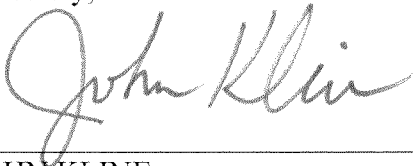
<sup>9</sup> TEGL, *supra* note 1, at 4.

<sup>10</sup> If you are unable to provide the requested information by said date, please inform the committee in writing why the deadline cannot be met and the date by which you will provide the requested information.

3. All documents from and communications with outside parties, including federal contractors, relating to the applicability of the WARN Act to sequestration.
4. All Training and Employment Guidance Letters or other guidance or materials issued by the department relating to the WARN Act since its enactment into law in 1988.
5. Identify and explain the level of deference, if any, the department expects federal courts to accord the guidance.

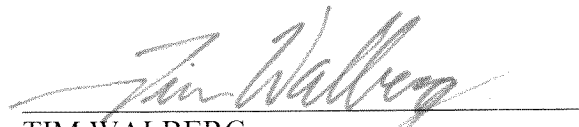
If you have questions, please contact Donald McIntosh or Molly Conway of the committee staff at (202) 225-7101.

Sincerely,



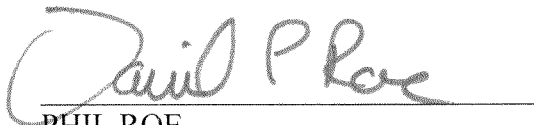
---

JOHN KLINE  
Chairman  
Committee on Education and the Workforce



---

TIM WALBERG  
Chairman  
Subcommittee on Workforce Protections



---

PHIL ROE  
Chairman  
Subcommittee on Health, Employment,  
Labor, and Pensions

Enclosure

CC: The Honorable George Miller, Senior Democratic Member, Committee on Education and the Workforce  
The Honorable Lynn Woolsey, Senior Democratic Member, Subcommittee on Workforce Protections