

## WARNIng Sign Part 2

Written by Nick Sanders

Tuesday, 23 October 2012 00:00

---



At the request of our old friend, “Cajun CPA,” we put together some thoughts on the ongoing WARN Act controversy. In Part 1, we brought readers up to speed on the Dept. of Labor opinion that contractors should not issue WARN Act notices to their employees simply based on the speculative notion that sequestration might occur and, if it did occur, that the contractor would be affected by sequestration immediately and, if the contractor was affected immediately, that it immediately would need to lay off employees and, if it did immediately need to lay off employees, then it would know (in early November) which ones it would need to lay off in early January. We also reported on the OMB Memo which offered some comfort to those contractors who were still worried about potential liability under the WARN Act, promising them that they would be covered in the event of legal entanglement.

And then we pointed out how thin that promise of coverage might really be.

Regardless of our opinion, the Dept. of Labor opinion plus the OMB liability coverage promise seemed to successfully signal to contractors that they really didn’t need to issue WARN Act notices to their employees just before the Presidential election.

Which (predictably) upset those politicians who thought it would be beneficial to their election

## WARNIng Sign Part 2

Written by Nick Sanders  
Tuesday, 23 October 2012 00:00

---

chances to have as voters those people who had just received layoff notices from their employers. Those most upset by the lack of WARN Act notices were Republicans.

Go figure.

For example, the House of Representatives' Education and the Workforce Committee (John Kline, R-Minnesota, Chair) sent [a letter](#) to OMB Acting Director Zients that offered concerns about both the Dept. of Labor opinion and OMB's promise to contractors. The Committee was "greatly concerned" about the situation and "respectfully" requested lots and lots of information, documents, and internal communication to help understand how OMB reached such problematic conclusions.

Senators Chuck Grassley (R-Iowa) and Ayotte (R-New Hampshire) were also [concerned](#), writing—

We are concerned about the authority of the executive branch to instruct private employers not to comply with federal law and to promise to pay the monetary judgments and litigation costs that arise out of the lawsuits that may follow ... The administration's new guidance tells employers to willfully ignore the law and stay silent about looming layoffs until after the election — and promises them a taxpayer-funded bailout for their legal expenses if they do so ... The administration must explain its legal basis for this interpretation of the Warn Act that leaves taxpayers on the hook, American workers in the dark, and our national security in jeopardy.

Not being able to do much to the President or his employees, several members of Congress decided to "[grill](#)" contractor executives instead. Congressman Darrell Issa (R-California) seemed to be at the forefront of the inquisition, according to what we read, telling companies that "The guidance seems intended to invite federal contractors to flout the law, and in doing so places a large contingent financial liability on the shoulders of American taxpayers in order to indemnify those contractors who follow the administration's direction." As Chair of the House's Committee on Oversight and Government Reform, Issa signed [a letter to OMB](#) that was very similar to the one signed by Kline.

One key difference between the Kline and Issa letters was that Issa's Committee requested that—

## WARning Sign Part 2

Written by Nick Sanders

Tuesday, 23 October 2012 00:00

---

... the Defense Contract Audit Agency—the agency charged with administering cost accounting standards and guidelines—intervene to examine OMB’s guidelines to ascertain whether those costs incurred by contractors who have been found to violate layoff law should be deemed to be ‘allowable costs’ for purposes of the Cost Accounting Standards.

Now that’s *comedy gold*, right there.

Readers, how many errors can you find in that single sentence? We found three right off the bat. But the true humor is to be found in the irony of asking DCAA to audit OMB on its compliance with Cost Accounting Standards ... when OMB is the organizational home of the Cost Accounting Standards Board—the *only entity authorized by law to issue Standards and interpretations thereof* .

Readers, we just cannot make this stuff up.

So where are we on this?

First, we don’t think sequestration will be as devastating as many—including us!—have previously predicted. We’ve done some math and it looks like the defense budgets may take a \$70 - \$80 Billion hit. Yes, that’s a huge immediate reduction, but it’s not unsurvivable, either. It will mean program stretch-outs and some terminations, but it’s not like every defense worker in the United States is going to be laid-off. And the reality is that many were going to be retiring in the next couple of years, in any case. We don’t mean to trivialize this issue by any means, but we’re starting to believe that it will be ultimately manageable, if painful in the short term.

We think the real impact is going to be felt on the [government side](#) . It is likely that as many as 200,000 Executive Branch employees could be furloughed or laid-off in some sequestration scenarios—though President Obama has promised to protect military service personnel from cuts. If programs are going to be terminated, who’s going to be left to administrate the termination or to process the Termination Settlement Proposals? Who’s going to be left to audit contractors’ claimed costs? Who’s going to be exercising oversight on the remaining contract obligations?

We are mindful of [this article](#) at Federal Times, which reported that Federal employee

## WARning Sign Part 2

Written by Nick Sanders

Tuesday, 23 October 2012 00:00

---

retirements are surging just as the hiring of new employees “plummets”—and that’s the situation *before* sequestration is implemented. The article reported—

The long-delayed retirement wave is here. For years, experts have predicted large numbers of baby boomers would retire and take years of experience and institutional knowledge with them. ... Retirements for all of 2011 were up 24 percent over 2010 levels, according to OPM statistics. And in the first nine months of 2012, OPM recorded another nearly 8 percent increase. Meanwhile, new hires in the first quarter of 2012 plunged 32 percent over the same period in 2010.

Now, there are many who consider the foregoing bit of news to be happy tidings. They argue that the Federal government is already too large and it’s past time to downsize it. But if we’ve learned anything over the past couple of decades, it’s that workforce cuts need to be handled with a scalpel and not with a meat-axe. If you cut heads to the point where services can no longer be provided, then you’ve gone too far. Government contractors are very much reliant on their government contracting officers and quality assurance inspectors. If the Government can’t inspect, then it can’t accept. And if it can’t accept, you can’t get paid. If there is no Contracting Officer to obligate funds in MOCAS (or whatever system they’re using these days), then DFAS isn’t going to issue any payments. And if there are no DFAS payment clerks, there will be nobody to process contractor invoices and issue payments. So you may have a contractor with authorized funding, even after sequestration—but you still may not get paid.

How do you like those Federal cutbacks now?

Contractor executives and politicians are (perhaps rightly) concerned with the effects of sequestration on contractor workforces. But perhaps we all ought to be thinking about trying to be a government contractor when there’s not enough Federal employees to keep up the Government’s side of the contracting bargain.