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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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WASHINGTON, DC 20515-6143

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STAFF DIRECTOR

October 11, 2012

Mr. W. James McNerney, Jr.
Chairman, President and Chief Executive Officer
Boeing Company
100 North Riverside
Chicago, Illinois 60606

Dear Mr. McNerney:

The Committee on Oversight and Government Reform is conducting oversight of the Administration's recent executive guidance¹ advising government contractors that they should not adhere to the requirements of the Worker Adjustment and Retraining Notification (WARN) Act² in the face of the potential budget sequestration scheduled to take effect on January 2, 2013. The guidance seems intended to invite federal contractors to flout the law, and in so doing places a large contingent financial liability on the shoulders of American taxpayers in order to indemnify those contractors who follow the Administration's direction.

The WARN Act offers protection to American workers, their families and communities from being laid off without proper notice and time to adjust. The Act mandates a minimum notice of 60 days before any mass lay off. Only three exceptions exist to this critical workforce protection: when the company is "faltering"; unforeseeable business circumstances; and natural disasters. Violations of the WARN Act can be severe. An employer who violates the WARN Act is liable to each aggrieved employee for an amount including back pay and benefits for a period of violation, up to 60 days. Civil penalties are also available.

On July 30, 2012, Assistant Secretary of Labor Jane Oates, an Administration political appointee, issued putative "guidance" claiming that layoff notices prior to the election were not necessary because the triggering event – sequestration and its resultant layoffs – was not a "foreseeable" business circumstance. Despite the Department of Labor's guidance, press reports indicate that several major contractors still intended to send out WARN Act notices 60 days in advance of possible across-the-board cuts to the federal budget on January 2, 2013, to ensure compliance with the law.³

¹ Memorandum for the Chief Financial Officers and Senior Procurement Executives of Executive Departments and Agencies; Subject: Guidance on Allowable Contracting Costs Associated with the Worker Adjustment and Retraining Notification (WARN) Act; M-12-19 (September 28, 2012).

² 29 U.S.C. Sections 2101-2109.

³ Jeremy Herb, "Obama administration tells contractors again: Don't issue layoff notices," The Hill (Sept. 28, 2012).

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However, since OMB issued its September 28, 2012, policy memorandum, many contractors appear to have changed course and now intend to ignore the law, per the Administration's guidance, and refrain from issuing WARN notices. The Administration's guidance has the effect of committing American taxpayer funds to pay for workers claims and damages cause by WARN act violations, but only for contractors that have "followed a course of action consistent with DOL (Labor Department) guidance."

To assist in the Committee's oversight of this matter, please provide the following information:

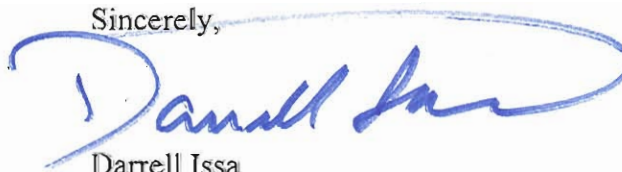
1. Has your firm sought external legal advice, or has your firm's in-house counsel offered any opinion on whether it should be providing advanced notice to employees pursuant to the WARN Act in anticipation of a possible budgetary sequestration beginning in January 2013? If so, please provide all such legal analysis.
2. Has any official from the Department of Labor, the Office of Management and Budget, or any other Administration or Executive Branch official contacted you or any other employee of your firm regarding your firm's compliance with the WARN Act or the timing of issuance of WARN Act notices as it relates to the potential budgetary sequestration scheduled to begin in January 2013? If so, please provide the name of any such official, the date of the contact and the substance of what was conveyed.
3. Please provide all documents and communications between any Administration official and any employee or representative of your firm referring or related to your firm's compliance with the WARN Act as it relates to the potential sequestration.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Please provide the requested responses as soon as possible, but no later than 12:00 p.m. on Wednesday, October 24, 2012. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions, please contact Rich Beutel of the Committee staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

2012-10-11 DEI to 10 Contractors - WARN Act due 10-24 sent to:

Mr. Robert J. Stevens
Chairman and Chief Executive Officer
Lockheed Martin Corporation

Mr. Wesley G. Bush
Chairman, Chief Executive Officer and President
Northrop Grumman Corporation

Mr. W. James McNerney, Jr
Chairman, President and Chief Executive Officer
Boeing Company

Mr. John P. Jumper
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Science Applications International Corporation

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Ms. Meg Whitman
President and Chief Executive Officer
Hewlett-Packard Company

Dr. Ralph Shrader
Chairman and Chief Executive Officer
Booz Allen Hamilton

Mr. Mike Lawrie
President and Chief Executive Officer
Computer Sciences Corporation

Mr. Steven F. Gaffney
Chairman and CEO
DynCorp International