



Written by [Joe Wolverton, II, J.D.](#) on October 4, 2012

White House Tells Defense Contractors: Hold Pink Slips Until After Election

On Friday, September 28, officials from the Obama administration informed defense contractors to keep the pink slips to themselves until after the election.

In [a memo from two officials of the Office of Management and Budget](#) to chief financial officers, the White House generously offered to cover “certain liability and litigation costs” incurred by companies who agree to hold off sending out timely layoff notices as mandated by the WARN Act.



The [WARN Act](#) requires employers to “provide notice 60 days in advance of covered plant closings and covered mass layoffs. This notice must be provided to either affected workers or their representatives (e.g., a labor union); to the State dislocated worker unit; and to the appropriate unit of local government.”

Recently the Department of Labor issued similar guidelines instructing Pentagon contractors not to give the required notice to its employees that they might need to look for a new job. The Labor Department’s guidelines are intended to stop Pentagon contractors from warning employees about possible layoffs that may come about because of “sequestering.”

“Any resulting employee compensation costs for WARN Act liability as determined by a court, as well as attorneys’ fees and other litigation costs (irrespective of litigation outcome) would qualify as allowable costs and be covered by the contracting agency, if otherwise reasonable and allocable,” the Office of Management and Budget writes in its report.

In response to the OMB’s directive, Republican senators and reliable war hawks John McCain (R-Ariz.) and Lindsey Graham (R-S.C.) joined the fray in separate statements.

According to [the Washington Times](#),

“President Obama is telling defense contractors to ignore the law so that those layoff notices will not be delivered before the November elections,” Mr. McCain said in a statement. “To incentivize contractors to comply the [White House](#) promises to use taxpayer dollars to pay any costs incurred by [unwarned] layoffs, such as employee salaries and legal fees... “

The Arizona Republican said companies “have a choice whether to rely on [the [White House](#) budget office’s] politically motivated guidance or comply with the law,” he continued. “But I can assure them that I will do everything in my power to ensure that taxpayer dollars are not used to compensate contractors who do not comply with the law.”

For his part, Graham insisted he was standing up for the law, promising to oppose any attempt by President Obama to shield defense contractors from the applicable provisions of the WARN Act.

In [a statement made to The Hill](#), Graham said, “I will do everything in my power to make sure not one taxpayer dollar is spent reimbursing companies for failure to comply with WARN Act. That is so beyond



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the pale — I think it's patently illegal."

These two veteran lawmakers are pretty good at tossing around the political football. [As reported by the Associated Press](#):

Graham and two other Republican senators — McCain and Kelly Ayotte of New Hampshire — spent two days this week in the battleground states of Florida, North Carolina, Virginia and New Hampshire, warning voters of job losses from the automatic cuts.

Regardless of the pandering and the politics, the bottom line is that Democrats on Capitol Hill have failed to pass a budget for over three years and thus they face sequestration in the early days of next year. That's just far enough away to dilute the issue's power to impact the president's re-election effort.

Republicans are not guiltless, however. [An article published in the Washington Times](#) spotlighted the partisan nature of the problem:

Republicans on Tuesday [October 2] accused the White House of trying to "intimidate" defense companies into keeping silent about major job losses if automatic military spending cuts take effect early next year, after the administration said Monday [October 1] that it would be "inappropriate" for employers to warn workers of layoffs.

Defense industry officials were caught in the middle, trying to weigh the requirements of a federal law that says they must give employees 60 days' notice before major layoffs versus the Labor Department, which said Monday that it doesn't believe the law applies in this case.

In an earlier blog post, *The Hill* [summed up](#) the impact of sequestration on the job market:

Lockheed Martin CEO Bob Stevens pressed the issue last month when he threatened to issue layoff notices to all 123,000 of his employees on the Friday before the election due to a provision in U.S. labor law requiring large employers to notify employees 60 days in advance of layoffs caused by a foreseeable event.

Trade groups have claimed 1 million defense jobs could be at risk from the pending cuts, which are known as sequestration and were triggered by the failure of a supercommittee of lawmakers to reach a debt deal last year.

Somehow, in spite of the appearance of the specter of budget cuts, Lockheed Martin [reported](#) net sales in 2011 of \$12.2 billion and "record annual net sales, segment operating profit, and earnings per diluted share from continuing operations."

These record-breaking "continuing operations" are due in no small part to the work of Senators McCain and Graham who always seem to find new wars to wage and new demand for constant supplies of military materiel.

Never wanting to offend his patrons in the military-industrial complex — [three of his top 11 donors are huge Defense Department contractors](#) — Senator Graham blames Democrats for failing to present a budget that can pass the House and the Senate.

"Contractors are not the problem. We're the problem. We created this mess," Graham said, arguing that the notices would force Congress to come up with an alternative to avert the automatic cuts.

Ratcheting up the political pressure, presidential candidate Mitt Romney and fellow Republicans have accused Obama of shirking his duty as commander in chief by failing to negotiate with Congress on a



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way to avoid the cuts. Democrats counter that Republicans, who voted for the cuts, must consider higher taxes on the wealthy as part of an alternative to the reductions.

Fortunately, there is one man in the Senate who understands that none of this would be necessary if his colleagues would stop worshipping the “sacred cow” of defense spending.

In August, Senator Rand Paul (R-Ky.) [pushed for just such a radical move](#) during debate on an increase in the debt limit. Said Paul:

Look at [the idea of] auditing the Pentagon. They’ve been talking about having an audit for 30 years probably. They’ve now said it’s coming in 2017. And my guess is that in 2016 it’s going to be 2024, in 2023 they’ll tell us it’s going to be 2030. But I bet you if we said next year you’ve got to meet this sequester, maybe then all of a sudden they’ll say, “Well why don’t we jettison some of the crap here we’re doing we don’t need?” They’ll never do it unless their top line number is ever reduced.

For now it is clear that President Obama’s respect for the law (a law he pushed for as a senator in 2007) is to be sacrificed in favor of his overwhelming desire to be reelected.

If Congress and the president would faithfully follow the Constitution as they have sworn to do, there would be no need for “sequestration” or for the manipulation of thousands of layoff notices as the Pentagon would not be the money-sucking behemoth it is today. In light of the fight over the threat of sequestration cuts, one can only imagine the outrage that would accompany a wholesale restoration of Constitution principles of limited government.

As it stands, however, the relationship between the billion-dollar defense industry and its lackeys on Capitol Hill and in the White House is as strong as ever and will not be weakened regardless of which party’s candidate wins in November.

If no agreement is made superseding sequestration, mandatory cuts will be made on January 2, 2013.



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