STATEMENT OF
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BEFORE THE
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COMMITTEE ON EDUCATION AND THE WORKFORCE
UNITED STATES HOUSE OF REPRESENTATIVES
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Good morning, Chairman Walberg, Ranking Member Courtney, and Members of the Subcommittee. I appreciate the opportunity to discuss the Department of Labor's July 30, 2012 guidance to State Dislocated Worker Units on whether, as of that date, the possibility of a January 2, 2013 sequestration would trigger the advance notice requirements of the Worker Adjustment and Retraining Notification (WARN) Act.

The WARN Act was enacted in 1988 with wide, bipartisan support. The law provides protection to workers, their families, and their communities by requiring employers – subject to certain exceptions – to give workers or their representatives 60 days' advance notice of plant closings and mass layoffs. Employers also are required to give notice to local government officials and to State Dislocated Worker Units, so that workers can promptly receive appropriate assistance.

As Representative Robert Garcia explained during the final debates on passage of the WARN Act in 1988, this legislation was fair to both workers and businesses. It was fair to workers, he said, because they deserved more than a day or two of notice of impending closings and layoffs. And it was fair to businesses, he said, because the legislation recognized that companies may not be able to give the full measure of required advance notice if a plant closing

or mass layoff results from circumstances that cannot reasonably be anticipated. Twenty-five years later, Representative Garcia's words continue to resonate.

The Department of Labor does not enforce the WARN Act – that's left up to private parties. We do, however, have statutory authority to issue regulations, which we did soon after the law took effect. Our objective in issuing those rules was to articulate clear principles and guidelines that could be applied in specific circumstances.

These regulations require WARN Act notices to contain specific information. For example, notices to State Dislocated Worker Units must include:

- The name and address of the employment site where the plant closing or layoff will occur;
- A statement as to whether the planned action is expected to be permanent or temporary;
- The expected date of the first separation and the anticipated schedule for making separations;
- The job titles of positions to be affected; and
- The number of affected employees in each job classification.

These requirements are consistent with the WARN Act's primary purpose, which is to give specific workers who are likely to lose their jobs a period of time in which they can find new work or make other arrangements, and can obtain assistance from State and local workforce programs. These requirements are also consistent with the notion that advance notice should not be provided to workers who are not likely to be affected. As the regulation's preamble explains, "it is not appropriate for an employer to provide a blanket notice to workers."

At the time we issued the regulations we recognized that our rules could not address every advance notice issue that might arise under the WARN Act. We have supplemented these regulations with less formal guidance to help State Dislocated Worker Units and employers carry out the law's important purposes. For example, we have a special website for WARN Act compliance assistance materials [www.doleta.gov/layoff/warn.cfm], which contains, among other things, a Worker's Guide, an Employer's Guide, a WARN Fact Sheet, and a set of Frequently Asked Questions and Answers.

Another type of informal guidance we frequently provide to State Workforce Agencies is our Training and Employment Guidance Letters, known as TEGLs. These advisories provide the Department's interpretations of Federal requirements, and they provide direction and information on procedural, administrative, management, and program issues that may arise within the workforce system.

One such issue arose last Spring, when Congress, State Workforce Agencies, the press, government contractors, other Federal agencies, and lawyers began asking whether the possibility of the sequestration on January 2, 2013, mandated by the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended by the Budget Control Act of 2011 (BCA), was a sufficient predicate to require federal contractors to issue WARN Act notices. To answer this legal question and provide clarity to State Workforce Agencies and other interested parties, the Department issued a TEGL.

The TEGL first summarized the relevant WARN Act framework, reiterating the straightforward principle – reflected in the legislative history and the preamble to the regulations – that a blanket notice is neither appropriate nor legally sufficient under the WARN Act. It also explained that, because the law requires notice only for the specific employees who may

reasonably be expected to experience an employment loss as a result of a plant closing or mass layoff, employers have no WARN Act notice obligations when particular employment losses are speculative.

The TEGL then applied (as of July 2012) the WARN Act framework to the potential sequester on January 2, 2013. At the time the TEGL was issued, Members of Congress and the Administration had indicated that their goal was to avoid sequestration, so the TEGL explained that the occurrence of sequestration was not necessarily foreseeable. In addition, the Office of Management and Budget had not directed Federal agencies to begin planning for how they would operate in the event of sequestration, given that such planning, once undertaken, would necessarily divert scarce resources from other important agency activities and priorities. And those same agencies – each of which had some discretion over how to implement any sequestration-related reductions – had not announced which contracts would be affected by sequestration should it occur. Taking into account each of these facts, the TEGL stated that, in the absence of additional information, any potential plant closings or layoffs that might come about through sequestration-related contract terminations or cutbacks were speculative and unforeseeable. WARN Act notices, the TEGL concluded, were not required 60 days in advance of January 2, 2013.

The TEGL also makes clear, though, that the prospect of sequestration was part of a dynamic, ongoing process, and that additional information – such as specific information as to how an agency will implement sequestration – would make the possibility of plant closings or layoffs less speculative and more foreseeable. In that event, employers may be required to provide notice even if it were not possible to give it for the full 60-day period.

It is important to keep in mind that a Training and Employment Guidance Letter is an interpretive aid for State Workforce Agencies and their administrators and liaisons who, on a daily basis, field questions from federal contractors and help workers who are dislocated by plant closings and mass layoffs. The TEGL does not suggest that federal contractors do not need to take the WARN Act into account when considering the consequences of a possible sequestration.

The Labor Department's role under the WARN Act is a modest but important one. WARN Act notices serve an extremely important purpose, and the Department is committed to helping ensure that they are provided in appropriate circumstances, through our regulations and guidance. But we also recognize that WARN Act notices cannot be taken lightly. Providing such notice to workers who are not likely to lose their jobs can have at least three unfortunate consequences:

- It can unnecessarily disrupt the lives of workers and their families;
- It can be disruptive for employers because they risk losing workers who, fearing the immediate loss of work, might look for and find other jobs; and
- It can waste government resources by forcing State Dislocated Worker Units to provide rapid response activities to individuals who do not actually need them.

These are serious consequences that should be avoided. As the Department has previously observed, Congress in enacting the WARN Act did not intend for employers to provide overbroad notice.

Let me close by saying that our analysis and guidance regarding the WARN Act's application to sequestration was and is correct, and workers and the State Workforce System have been well served as a result. Funds were not sequestered on January 2, 2013; nor were contracts terminated, plants shuttered, or, to our knowledge, unnecessary advance notices sent.

Just as important, lives and businesses were not disrupted unnecessarily and resources were not wasted.

Thank you for the opportunity to discuss our guidance. I welcome any questions you may have.