

**Make the Department of Labor Work Again:
Congress Must Increase Funding for OLMS and Allow Recess
Appointments**



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Introduction

The U.S. Department of Labor (DOL) has done some good work rolling back harmful Obama Era regulations, but much work remains to be done at the Department. To enable DOL to do its job, Congress must address the inadequate levels of staffing and funding at the Office of Labor-Management Standards (OLMS), which fights union corruption and helps ensure that union elections are free and fair. In addition, because far too many senior DOL positions are either vacant or filled with an acting official, the Senate must immediately end the filibuster of adjournment resolutions and take a ten day recess to allow President Trump to make recess appointments before the new Congress is sworn in. Currently, Democrats can filibuster such resolutions forcing the Senate to hold pro forma sessions every three days to prevent the President from making recess appointments.

The Office of Labor Management Standards, an agency within the U.S. Department of Labor, has oversight of more than 20,000 unions. One of the major tasks of OLMS is conducting union compliance audits. Yet its meager funding does not even allow it to audit 300 unions a year. If these audits rarely found criminal wrongdoing, auditing such a tiny fraction of unions might be acceptable, but that is not the case at all. In fact, nearly 20% of audits result in criminal charges.

The Trump Administration requested over \$46 million ¹ for OLMS for FY 2019, but even that is short of the funding necessary to enable the agency to conduct as many audits as the agency did during the latter part of the George W. Bush Administration. Instead of appropriating more funding for OLMS than was requested, Congress appropriated less – only a little more than \$41 million. But while Congress appropriated less than requested for OLMS, it appropriated more than a billion dollars more for the entire Labor Department than the Administration requested.

During the Obama Administration, trained OLMS auditors were transferred to the Wage and Hour Division. To save time and training costs, DOL could shift those employees back to OLMS. Doing so would allow the agency to ramp up its audit program more rapidly.

It is understandable why union-backed Democrats would want to sabotage a law enforcement agency that polices unions; but it makes no sense for a Republican Congress not to appropriate sufficient funds for OLMS to carry out its important mission. Disappointingly, Congressional Republicans seem not to realize the importance of this vital agency; and, perhaps, that is why they do not fight hard enough to ensure that it is adequately funded. Of course, if Congressional Democrats cared about union members, they, too, would support increased efforts to find and prosecute those who embezzle union funds.

¹ <https://www.dol.gov/sites/dolgov/files/legacy-files/budget/2019/CBJ-2019-V2-11.pdf>

In June, the Americans for Limited Government Foundation (ALGF) released a report calling on Congress to increase funding for OLMS and calling for DOL to reinstate union transparency rules that were rescinded during the Obama years. Now that the elections are over and Congress has passed an appropriations bill that inadequately funds OLMS, ALGF is releasing this follow-up report with updated recommendations.

Explanation

While some might question why a limited government organization would support increasing the size of the government, there are several reasons for this. First of all, law enforcement is a core function of government. ALGF believes that union transparency rules should be enforced, along with laws against embezzlement, fraud, and racketeering. Individual union members typically lack the time and resources necessary to force corrupt union leadership to follow the law.

Secondly, under President Obama, OLMS was deprioritized, and the agency's budget was cut. Big Labor was very generous to Obama, and he repaid his labor allies by defanging the union watchdog. Now is the time to reverse those budget cuts and boost funding to offset the years of lax enforcement. According to Don Todd, the former Deputy Assistant Secretary for the Office of Labor-Management Standards, "When agency resources are cut too deeply, it's not possible for the agency to accomplish much of its mission. That's a serious problem for a law-enforcement agency like OLMS. If there's no cop on the beat, dishonest union officials will be more likely to steal from their members knowing that their chances of getting caught are low."

Thirdly, with decades of experience, OLMS is uniquely qualified to audit unions. Some unions are so powerful that they might be able to keep a state or local prosecutor from examining their books too closely. Even if they wanted to do so, local or state authorities might lack the resources or authority to properly investigate corruption in a union, especially a large one spanning multiple states. Of course, only the federal government can enforce federal law; and if the federal government does not aggressively search for union corruption, it may never be discovered.

Fourthly, the OLMS budget is a miniscule portion of the \$12.1 billion ² DOL budget, and the needed increase in funding could easily be offset by reducing the amount of grants awarded by the Department.

Broad Mandate

² <https://www.appropriations.senate.gov/news/minority/labor-health-and-human-services-education-and-related-agencies?peek=bdXSzalP1TgisJtcZ6q1txkMkbACQbQReNvfxejUaK7bDG>

OLMS oversees tens of thousands of unions that collectively have millions of members and collect billions of dollars in dues each year. In fact, OLMS received annual reports from over 23,000³ unions in FY 2017; and several years ago, it was reported that unions disclosed to DOL that they had received more than \$9.3 billion⁴ in dues, agency fees, and assessments.

With less funding, less staffing, and lowered goals,⁵ the number of audits, investigations, indictments, and convictions declined during the Obama years.

OLMS Funding

In 2007, OLMS had a budget of over \$47.7 million; in today's money, that is over \$59.7 million. Last month, Congress approved a pathetic \$41.2 million⁶ budget for OLMS -- \$5.4 million⁷ less than requested. By so doing, Congress ensured the agency would be unable to do much more than tread water for yet another year.

While Congress skimmed on funding for OLMS, it appropriated over \$1.7 billion⁸ for Job Corps, a residential educational and training program for young people. This appropriation exceeds the Administration's request by over \$400 million.⁹ Congress also appropriated over \$3.5 billion¹⁰ for training and employment services. This amount is over \$280 million¹¹ more than the Administration requested. In addition, Congress appropriated over \$337 million¹² for Departmental Management, which is over \$77 million¹³ above the Administration's request. With such generous sums being appropriated for training programs and management, there is no reason for OLMS to be underfunded.

³ https://www.dol.gov/olms/regs/compliance/annualreports/highlights_2017.htm

⁴ <http://www.nilrr.org/2012/03/31/unions-rake-in-over-14-9-billion-in-dues-per-year-from-cbas/>.

⁵ https://edworkforce.house.gov/uploadedfiles/03.31.11_mehrens.pdf.

⁶ <https://www.congress.gov/congressional-report/115th-congress/house-report/952/1?overview=closed>

⁷ <https://www.dol.gov/sites/dolgov/files/legacy-files/budget/2019/CBJ-2019-V2-11.pdf>

⁸ <https://www.congress.gov/bill/115th-congress/house-bill/6157/text>

⁹ <https://www.dol.gov/sites/dolgov/files/legacy-files/budget/2019/FY2019PresidentsBudgetWithAddbacks.pdf>

¹⁰ <https://www.congress.gov/bill/115th-congress/house-bill/6157/text>

¹¹ <https://www.dol.gov/sites/dolgov/files/legacy-files/budget/2019/FY2019PresidentsBudgetWithAddbacks.pdf>

¹² <https://www.congress.gov/bill/115th-congress/house-bill/6157/text>

¹³ <https://www.dol.gov/sites/dolgov/files/legacy-files/budget/2019/FY2019PresidentsBudgetWithAddbacks.pdf>

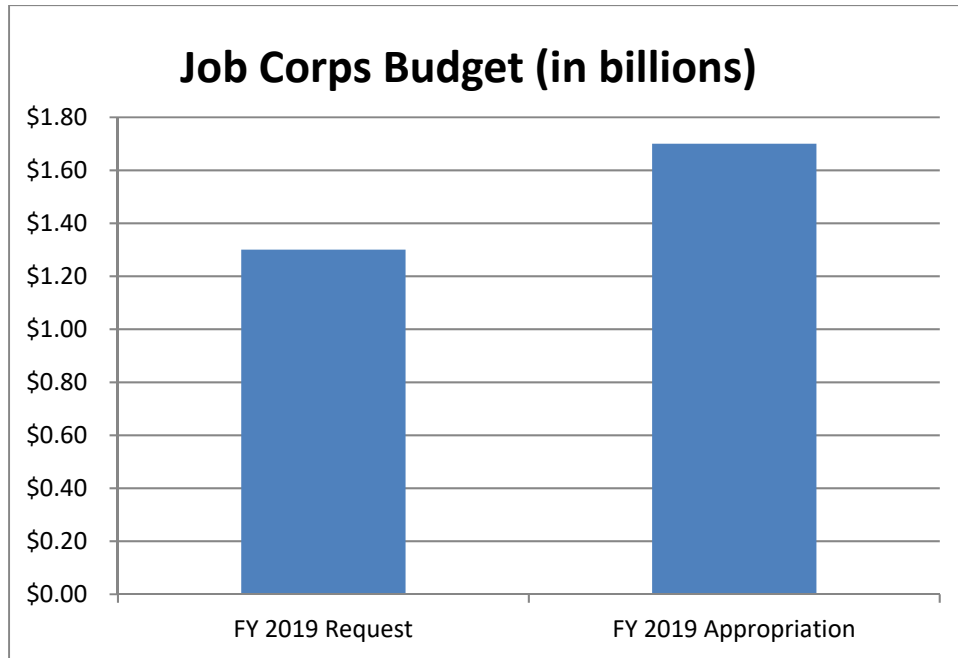


Figure 1. The FY 2019 Congressional appropriation for the Jobs Corps was considerably more than requested.

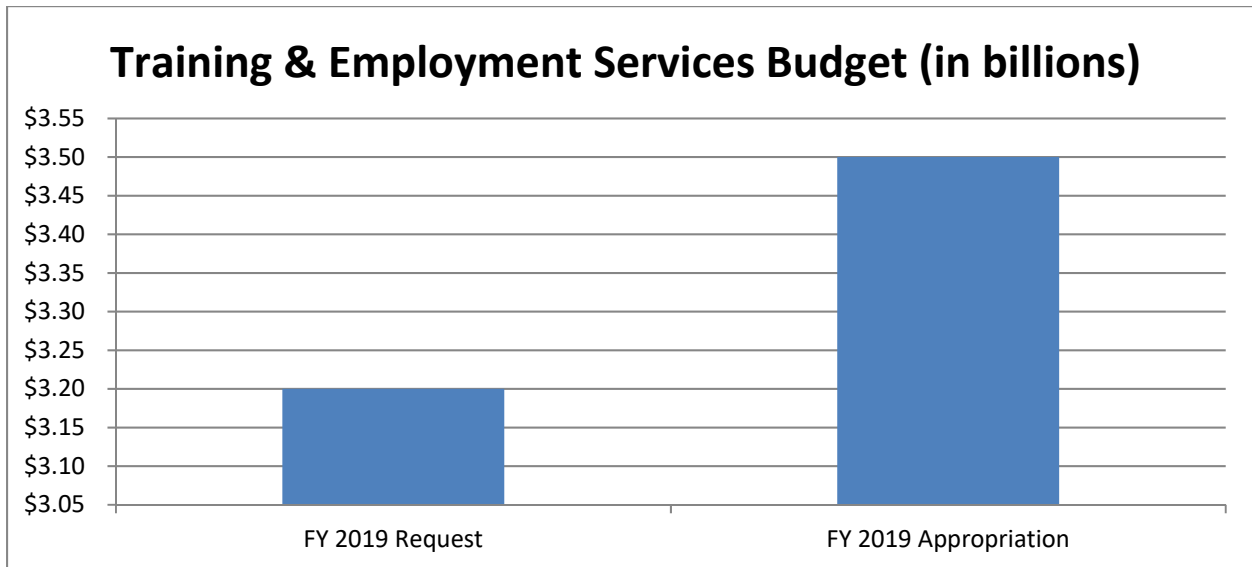


Figure 2. The FY 2019 Congressional appropriation for training and employment services was significantly more than requested.

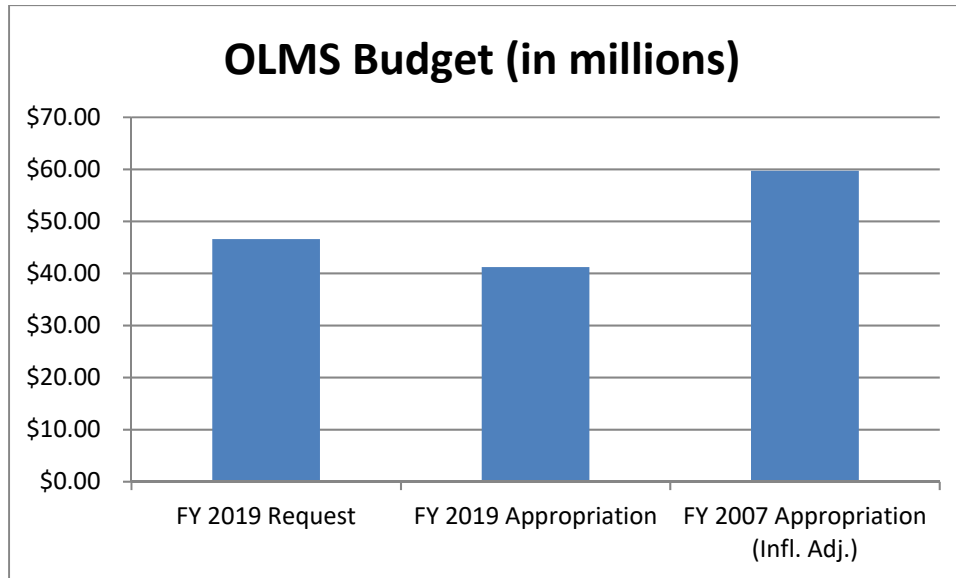


Figure 3. The FY 2019 Congressional appropriation for OLMS was less than requested and a dramatic reduction from the FY 2007 appropriation when adjusted for inflation.

OLMS Staffing

During the Obama Administration, OLMS was hollowed out with a significant number of its employees diverted to the Wage and Hour Division, and OLMS still has not recovered. Those OLMS-trained employees who were sent to the Wage and Hour Division should be transferred back to OLMS as soon as possible.

In the 1980s, OLMS had over 400 employees.¹⁴ As recently as 2008, the agency had over 300 full-time equivalents (FTEs); but earlier this year, the agency had only 189 employees.¹⁵

OLMS Compliance Audits

Under Obama, union audits declined dramatically. Fewer audits resulted in fewer crimes being prosecuted. This dereliction is part of the reason why it is so important for the Trump Administration to quickly increase the number of audits it conducts.

OLMS had planned to conduct 360 compliance audits of local and intermediate unions and 10 ICAP audits in FY 2019.¹⁶ Of course, since the requested level of funding was not approved, that goal may be lowered. But even if it were not lowered, the total number of audited unions would amount to less than 1.6% of the unions filing annual

¹⁴ <http://nlpc.org/2004/07/05/dol-planning-overdue-audits-intl-unions/>

¹⁵ <https://www.fedscope.opm.gov/ibmcognos/cgi-bin/cognosisapi.dll>

¹⁶ <https://www.dol.gov/sites/dolgov/files/legacy-files/budget/2019/CBJ-2019-V2-11.pdf>

reports with the agency. At that glacial pace, it would take over 60 years for the agency to audit each union just once, and generations of embezzlers could go undiscovered.

While 360 audits would be a major increase over the numbers of audits conducted in that latter years of the Obama Administration, it would still be far short of the 798 audits conducted in FY 2008. As impressive as that FY 2008 figure might seem, it is dwarfed by the 1,583 audits ¹⁷ that Sen. Phil Gramm (R-Texas) noted the agency conducted in 1984. Of course, the agency was much larger at that time.

I-CAP Audits

International Union Compliance Audit Program (I-CAP) audits are compliance audits of the national and international unions headquartered in the country. I-CAP audits were ended under Obama so not a single one of the 150 or so unions in this category has been audited since 2010. It should be noted that this group of unions has annual revenues of \$8 billion and assets of \$10 billion. ¹⁸ Even the Clinton Administration, which was also friendly to unions, went to the trouble of auditing these unions.

I-CAP audits are costly and time-consuming so only a few were conducted each year even before the Obama Administration shut down the program. In other words, it is completely possible for a national or international union to have gone decades without an audit. This is completely unacceptable.

Human nature being what it is, it is important for even entrenched union bosses and long-time union staffers to know that an audit could be just around the corner thereby helping to dissuade them from misusing their members' funds. Instead, it has been the case that insiders have known for several years that no I-CAP audit was about to be conducted.

OLMS Investigations

OLMS also wanted to conduct 300 criminal investigations ¹⁹ in FY 2019. But even if the agency had sufficient resources and met this goal, it would still fall far short of the more than 400 criminal investigations it conducted during several of the George W. Bush years.

Expected Regulatory Action

DOL is expected to soon reinstate a transparency rule that the Obama Administration rescinded. The rule required public-sector intermediate bodies, such as district, state or

¹⁷ <https://congress.gov/congressional-record/2002/07/09/senate-section/article/S6491-1>.

¹⁸ <https://www.dol.gov/sites/dolgov/files/legacy-files/budget/2019/CBJ-2019-V2-11.pdf>

¹⁹ <https://www.dol.gov/sites/dolgov/files/legacy-files/budget/2019/CBJ-2019-V2-11.pdf>

regional union organizations, to file financial reports with OLMS if the parent union organization had any private-sector members. Without this rule, many union members may be kept in the dark about how their dues money is being spent. But how will OLMS enforce this rule if it lacks sufficient resources to enforce the rules as they stand now?

Budget and Staffing Comparisons

To see how ridiculously small the OLMS budget is, consider the fact that the Labor Department's Office of Inspector General has a budget more than twice the size of OLMS - over \$80 million.²⁰ The IG's office also had nearly 350 employees earlier this year, which is 83% more than OLMS had.²¹ Of course, the DOL IG has an important role to play helping to ensure that the Department, its contractors, and its grantees follow the rules, but so does OLMS.

Looking beyond DOL, consider the similarities and differences between the Federal Election Commission (FEC) and OLMS. Like OLMS, the FEC enforces transparency rules and oversees billions of dollars in assets. The FEC receives reports from over 12,000²² filers in an average fiscal year; and for the 2015-2016 election cycle, the FEC reported that presidential candidates, Congressional candidates, political parties, and PACs collected less than \$9 billion.²³

For some unknown reason, however, the FEC has a much larger budget and staff than OLMS has. In fact, the FEC has a budget of over \$71 million²⁴ and had 315 staffers earlier this year.²⁵ These numbers translate into over 70% more funding and over 65% more staff than OLMS.

Fallout Rate

Nearly 19%²⁶ of OLMS audits result in criminal charges; OLMS calls this rate the fallout rate. With such a high rate, should there not be more audits conducted? While it is true that the fallout rate might drop a bit with more audits, it is also likely that more audits would uncover more criminal activity. For the sake of comparison, the IRS examined

²⁰ <https://www.congress.gov/bill/115th-congress/house-bill/6157/text>

²¹ <https://www.fedscope.opm.gov/ibmcognos/cgi-bin/cognosisapi.dll>

²² https://www.fec.gov/resources/cms-content/documents/FEC_FY_2019_Congressional_Budget_Justification.pdf

²³ <https://www.fec.gov/updates/statistical-summary-24-month-campaign-activity-2015-2016-election-cycle/>

²⁴ <https://www.congress.gov/115/bills/hr1625/BILLS-115hr1625enr.xml>

²⁵ <https://www.fedscope.opm.gov/ibmcognos/cgi-bin/cognosisapi.dll>

²⁶ https://www.dol.gov/olms/regs/compliance/annualreports/highlights_2017.htm

over 1 million tax returns ²⁷ in FY 2017, but criminal charges were filed in fewer than 2300 cases. ²⁸

OLMS Enforcement Cases

Here are a few recent examples of the malfeasance that OLMS has investigated. As one can see from this short list, the agency investigates serious crimes that span the country; and most of those charged, convicted, and sentenced are union officers or union staffers – people in positions of trust.

“On January 9, 2018, in the United States District Court for the Southern District of New York, five individuals were indicted for Racketeering Conspiracy (18 U.S.C. 1962): Frank Cagnetta, Secretary-Treasurer of United Food and Commercial Workers (UFCW) Local 1D (located in Brooklyn, N.Y.), Vincent D’Acunto, Jr., Secretary-Treasurer of UFCW Local 2D (located in Brooklyn, N.Y.), as well as Vincent Esposito, Steven Arena, and Frank Giovinco. Cagnetta was also charged with Bribery in Connection with Employee Benefit Plans (18 U.S.C. 1954) and Honest Services Fraud (18 U.S.C. 1346). D’Acunto, Jr., Esposito, and Arena were also charged with Extortion Conspiracy (18 U.S.C. 1951)....

“On January 22, 2018, in the United States District Court for the Northern District of Texas, Matthew Smith, former Treasurer of Transport Workers Union (TWU) Local 576 (located in Hurst, Tex.), was sentenced to 10 months in prison and one year of supervised release. He was also ordered to pay \$300,848 in restitution and a \$100 special assessment. On October 4, 2017, Smith pleaded guilty to embezzling union funds from Local 576, in violation of 29 U.S.C. 501(c)....

“On February 12, 2018, in the United States District Court for the Western District of Pennsylvania, Raymond C. Ventrone, former Business Manager of International Brotherhood of Boilermakers Local 154 (located in Pittsburgh, Pa.) was sentenced to 41 months incarceration followed by 3 years of supervised released and ordered to pay \$2,391,183 in restitution to Boilermakers Local 154 and \$500,000 restitution to Zurich Surety for embezzlement of union funds. Additionally, he was ordered to pay \$223,881 to the Internal Revenue Service for tax

²⁷ <https://www.irs.gov/pub/irs-soi/17databk.pdf>

²⁸ <https://www.irs.gov/pub/irs-soi/17databk.pdf>

evasion. On September 14, 2017, Ventrone pleaded guilty to one count of embezzling union funds in violation of 29 U.S.C. 501(c) and one count of tax evasion in violation of 26 U.S.C. 7201....

“On March 26, 2018, in the U.S. District Court in Newark, New Jersey, Paul Moe Sr., a former general foreman and member of the International Longshoremen's Association (ILA), Local 1804-1 (located in North Bergen, N.J.) was sentenced to 24-months in prison followed by three years of supervised release. Moe was also ordered to pay restitution in the amount of \$749,000. On October 31, 2017, after a seven-day trial, a jury found Moe guilty on one count of conspiracy to commit wire fraud and 13 substantive counts of wire fraud, in violation of 29 U.S.C. 1343, stemming from his no-show job at the Port of Elizabeth terminal in New Jersey, with an annual salary of \$500,000....

“On April 12, 2018, in the United States District Court for the Eastern District of Michigan, Mervin Hawk, former president of American Federation of State, County and Municipal Employees (AFSCME) Local 1640 (located in Detroit, Mich.), was charged in a one-count information with embezzling over \$600,000 in union funds, in violation of 29 U.S.C. 501(c)....

“On July 13, 2018, in the United States District Court for the Western District of Washington, Gregory Normand, former Secretary-Treasurer of International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART) Local 324 (located in Everett, Wash.), pleaded guilty to one count of embezzling over \$248,000 in union funds, in violation of 29 U.S.C. 501(c), and two (2) counts of making false statements, in violation of 18 U.S.C. 1001....”²⁹

Recess Appointments

Senate Democrats have obstructed and even thwarted the confirmation of senior DOL nominees. Due, in part, to this obstruction, DOL still lacks a full complement of political officials to direct the Department. Incredibly, nearly two years into the Administration, more than a dozen senior positions at DOL are either vacant or filled with an acting official.³⁰ Consequently, too many DOL decisions are still being made by career

²⁹ https://www.dol.gov/olms/regs/compliance/enforce_2018.htm

³⁰ <https://www.dol.gov/general/contact/contact-phonekeypersonnel>

bureaucrats who may well oppose President Trump's agenda. To address this situation, the President must be enabled to make recess appointments.

In the 2014 *Noel Canning* case, the Supreme Court restricted the ability of presidents to make recess appointments; for a recess appointment to be valid, the general rule is that the Senate must be in recess for at least ten days. For Congress to take a long recess, an adjournment resolution must be passed by both chambers of Congress. Unfortunately, current Senate rules allow Democrats to filibuster such resolutions, and getting 60 votes to end a filibuster in the current toxic political environment would be difficult or impossible.

Previous presidents have made numerous recess appointments, but the Senate has not taken a single recess of ten days or more since President Trump was inaugurated. Furthermore, when Democrats take over the House, they will, no doubt, refuse to allow the Senate to adjourn for more than three days, thereby blocking recess appointments. That is why Senate Republicans must nuke the filibuster of adjournment resolutions during the lame-duck session of Congress. The Senate, along with the House, should then vote to take a ten-day recess.

Once the Senate adjourns for ten days, the President should seize the opportunity to fill his Administration with his appointees. Although the recess appointments would expire at the end of the next session of the Senate late next year, they would make it easier for the President to implement his policies in the meantime. Furthermore, the Senate might be able to confirm the appointees before the end of the session allowing them to remain in office.

Emergency Funding

To address the funding problem at OLMS, Congress should attach an additional \$20 million to the next piece of must-pass legislation. To offset the increase, Congress should slash the wasteful DOL grant programs. (With more than full employment and businesses willing to train unskilled employees, it is very difficult to justify continuing to dump endless amounts of taxpayer funds into training programs.)

Conclusion

Union members should not have to worry about their own union officials stealing from them; and union members – and union bosses and staffers -- should know that the federal government has an effective law enforcement agency working hard to wring the corruption out of the labor movement. Such knowledge should discourage bad behavior while encouraging law-abiding union members and officials to report suspicious behavior. While there will always be corrupt individuals in the labor movement looking to enrich themselves illegally, they should know that there is a real

risk of jail time as a result. Furthermore, those union officials who would not normally misuse funds but suddenly find themselves in a financial bind might be discouraged from embezzling money by the knowledge that an audit could be just around the corner.

Former President Obama presided over the decline of OLMS, and Senate Democrats have obstructed the confirmation of DOL nominees making it more difficult for the Trump Administration to reverse the labor policies of the previous administration. Senate Republicans must end the ability of Democrats to filibuster adjournment resolutions and take a recess of at least ten days, which would allow the President to make recess appointments to fill the disturbing number of vacancies at DOL. Finally, Congress must vote to restore funding and staffing as soon as possible so OLMS can properly do its job. With nearly 1 in 5 union audits leading to criminal charges, the number of audits conducted simply must be substantially increased.