

TESTIMONY OF  
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BEFORE THE  
Subcommittee on Labor, Health and Human Services, Education, and Related Agencies  
Committee on Appropriations  
United States House of Representatives

HEARING ON  
Labor and Education Priorities/ESEA Reauthorization

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Good morning Chairman Obey, Ranking Member Tiahrt and Members of the Subcommittee. I am Brian Johnson and I am the Executive Director of the Alliance for Worker Freedom. I appreciate the opportunity to appear before the Subcommittee today to discuss the Department of Labor's priorities.

Since the era of the New Deal, the United States has been ransacked with federal laws and regulations that promote the Labor agenda. Yet surprisingly, America has turned a blind eye to this sector of society in which the freedom to say "no" has been long forgotten. Far too often, union leaders have operated under the assumption that forced membership through coercion and intimidation for the purpose of compulsory dues collection is par for the course. This power to compel workers to pay for union services guarantees a steady income stream for union leaders whom use these funds for political activity or personal gain. Since this stream of free and constant flowing income is guaranteed, union officials know they can act with impunity concerning the requests of their "members". They can invest members' pension money in high-risk ventures to try and capitalize on high rewards where the workers would never willingly sink a penny.

To this end, the recent efforts of the Department of Labor (DOL) to rescind three sets of union reporting and financial disclosure rules not only undermine worker freedom, but serve as indicators of this Administration's labor priorities. Additionally, the lack of willingness to provide increased transparency and access to union managed multi-employer defined benefit pension plans is a grave misuse of Department funds. Finally, continuing to allow the proven statistically flawed methodology implemented by the Wage and Hour Division at DOL to continue calculating prevailing wages promulgates market distortion and is detrimental to our economy.

With the passage of the Labor-Management Reporting and Disclosure Act (LMRDA) of 1959, Congress was awarded the task of ensuring basic standards of democracy and financial responsibility occur in unions. Eventually, in 1984, the agency in charge of this task became officially known as the Office of Labor Management Standards (OLMS). This agency enforces union standards of financial integrity by monitoring fiscal disclosure reporting through forms such as the LM-2, the LM-3, and the LM-4. Potential conflicts of interest must be reported in the Form LM-30 and the status of union trusts must be disclosed in the Form T-1. To date, the OLMS has convicted over 929 union officials on charges ranging from corruption to embezzlement and has restored over \$93 million in dues to union members. OLMS is the transparency and accountability watch-dog within the Labor Department.

Despite the Obama Administration's claims to be the "most transparent Presidency in history," their actions speak louder than words. It is clear this Department of Labor's priorities are to protect organized labor at the expense of worker freedom. Forms that require labor unions to identify from whom they were buying and selling assets, the status of largely unregulated financial trusts, and any conflicting deal-making were retracted under this Department of Labor.

Unions were previously required to submit forms designed to monitor union financial activity and ensure financial accountability of union officials. However, despite the success of OLMS in identifying union malfeasance, this Administration's largest donor was given the green-light to operate in the shadows.

In late January, White House Chief of Staff Rahm Emanuel issued a memorandum to all federal departments and agencies delaying implementation of many recently finalized regulations that were slated to go into effect in 2009, including the LM-2 rule.

The LM-2 is the most detailed of the forms and was enhanced in 2003. The first fillings under this new form would have been due later this year. However, last year the Obama Administration announced they wanted to delay implementation and formally withdrew the rules in October. The LM-2 was monumental in increasing union accountability and fiscal transparency. The LM-2 required completing 21 information items, 47 financial items, and 20 supporting schedules. This report was to be filed by unions with total annual receipts of \$250,000 or more (\$200,000 or more for fiscal years beginning before July 1, 2004) and those in trusteeship. The LM-3 is less detailed than the LM-2 and may be filed by unions with total annual receipts of less than \$250,000 (less than \$200,000 for fiscal years beginning before July 1, 2004) if not in trusteeship. Form LM-3 requires the completion of 23 information and 32 financial items and is still in effect. The least detailed report in this series is the LM-4 and is also still applicable. This abbreviated annual report may be filed by unions with less than \$10,000 in total annual receipts if not in trusteeship. The LM-4, because of the small amount of receipts, only requires completion of 13 information and 5 financial items.

The next reporting requirement retracted by this Administration and supported by Secretary of Labor Solis is the conflict of interest form, the LM-30. This rule was at the core of a lawsuit that the AFL-CIO filed against the Labor Department. One of the union attorneys in the case, Deborah Greenfield, is now a high-ranking deputy at the Labor Department, who also worked on the Obama transition team on labor issues.

Labor officials declined to say whether she played a role in the new policy, noting that Greenfield is abiding by all government ethics rules. In court filings, she and other union attorneys called the rules "onerous." The LM-30 was published Jan. 21, 2009 and was scheduled to take effect Feb. 20, 2009 until the Obama Administration rescinded this rule deeming the reporting of conflicts of interest unnecessary.

The establishment of the LM-2 was intended to create an additional level of transparency, however all are missing trust fund and pension management reporting. This was addressed through the creation of the Form T-1 and would have been the last piece in the transparency puzzle. However, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) sued the Department of Labor in 2004 to prevent this form from being required and won significant changes and delayed its' implementation.

The T-1 is a trust disclosure form that unions would have been required to follow if they met the following conditions. For fiscal years beginning on or after January 1, 2007, a labor organization with total annual receipts of \$250,000 or more must file Form T-1 for each trust in which it is interested, if the union's financial contribution to the trust, or a contribution made on the union's behalf or as a result of a negotiated agreement to which the union is a party, was \$10,000 or more during the reporting year and the trust had \$250,000 or more in annual receipts. A trust in which a labor organization is interested is a trust or other fund or organization (1) which was created or established by a labor organization or one or more of the trustees or one or more members of the governing body of which is selected by a labor organization and (2) a primary purpose of which is to provide benefits for the members of the labor organization or their beneficiaries.

The first T-1 reports would have been due at the end of this month if President Obama had not rescinded this rule.

According to Secretary Chao, this additional report was, “necessary to discourage circumvention or evasion of the reporting requirements...and would impose minimal burden.” Indeed, but the AFL-CIO had a different opinion and filed suit. The court ruled that the Secretary (Chao), and her request to implement the T1 filing form, “exceeded her authority by requiring general trust reporting.” This was a huge blow to the success of the OLMS and in union accountability. The labor world was shocked as Secretary Chao’s justification to require unions to report on trusts, which are financial assets, seemed clearly justified under the Labor Management Reporting and Disclosure Act of 1959 (LMRDA), which states:

Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year – (1) assets and liabilities at the beginning and end of the fiscal year. (LMRDA 29 U.S.C. §§ 201(b))

Trusts are assets. This ruling, while still questioned, was seen by Labor, as a chance to capitalize on trust acquisition as an effort to turn their “stream of dues,” into a rushing rapid of unreported, undisclosed money.

In 2007 during the United Auto Workers (UAW) Union strike against the auto-giant General Motors (GM), trusts and union disclosure with respect to these large sums of money have been brought back into the spotlight. On September 26, 2007, following a three day strike, GM and UAW reached a landmark agreement and the strike ended. What made this agreement so paramount, and relevant to the discussion on union financial transparency, is a key provision of the new contract which establishes the creation of a health-care trust known as a Voluntary Employee’s Beneficiary Association or VEBA. A VEBA is essentially a trust that GM will fund (thus getting about \$50 billion in liability off their books), and the UAW will manage. This money and this fund will largely go unreported due to the lack of transparency enforcement at DOL and their complacency with the Obama Administrations rollbacks.

By dissolving LM-2 forms, the Department of Labor has lost sight of arguably its’ most important responsibility – protecting rank-and-file union members against corruption. Last year between January and October, OLMS reports obtaining indictments and convictions in

cases that total nearly \$3 million in theft from union accounts. There is no reason to think that removing all forms of accountability and oversight would improve the already embarrassing levels of corruption present in union finances.

The LM-2 rollback was a calculated decision. In fact, the Department of Labor issued their notification to Congress on the Friday before a three-day-weekend to avoid massive political blowback and to ensure this issue was buried.

Clearly LM-2 forms were working, they consistently allowed the OLMS to investigate and convict wrongdoers who in many cases would have never been questioned. Cancelling LM-2s is a step backwards. In fact, not all unions are required to file financial statements with OLMS, only ones that meet annual threshold amounts.

Financial transparency is especially crucial during the current economic crisis. Failed transparency leaves citizens vulnerable for financial instability. Financial transparency is necessary to protect unions against fraud and corruption and to enhance responsibility among union officials. Transparency is necessary for union members to effectively engage in union-self governance, and that membership dues should be used to provide services for the members – not for other purposes prohibited by law. In rescinding these forms, this Labor Department has done a great disservice to all rank-and-file union members.

However, the lack of transparency does not stop there. The Department of Labor is complacent in covering up the status of union managed defined benefit multi-employer pension plans (MEPP). The status of union members' MEPPs is reported on a Form 5500. These forms are collected by the Department of Labor but are largely unavailable to union members. In order to access these forms, you must go to the basement of the Department of Labor in Washington, D.C. – this is not convenient for a rank-and-file union worker in Oklahoma.

Members of Congress have requested that Secretary Solis and her agency immediately begin posting to the internet a collection of pension disclosures that would help workers better understand the health and viability of their defined benefit retirement plans. That request has largely fallen on deaf ears and this information is not widely accessible.

Currently, less than one in every 160 workers is covered by a union MEPP with required assets. The Pension Benefit Guarantee Corporation (PBGC) already supports upwards of 30,000 pension plans. PBGC, the governmental pension insurer, will assume \$86.7 billion in liabilities by 2015. However in 2007, the PBGC reported a deficit of \$955 million, a \$216 million increase from the previous year. Due to their shortcomings, the PBGC limits the benefits in multi-employer plans to \$13,000 a year per retiree, compared with roughly \$52,000 for single-employer plans.

The risk associated with sponsors entering into MEPPs, specifically with their funding in such jeopardy, is extremely high. Just as the risk on the employer side is high, workers should have a transparent avenue within the Department of Labor to obtain the status of their pension plans. This avenue under the current Administration does not exist.

Additional waste and lack of accountability occur within the Wage and Hour Division (WHD) at DOL. There is a prevailing wage law currently known as the Davis-Bacon Act that WHD calculates for federal construction projects that is grossly inaccurate and irresponsibly managed.

The Davis-Bacon Act is a Depression-era wage subsidy law enacted in 1931, when the federal government was the largest construction contractor, to prevent the government's purchasing power from driving down wages. This is no longer the case and its time has run out. In the 21st Century, especially in the new competitive global economy, it is essential to allow the free market system to determine wages. Command-and-control government regulations do not foster a free and open society.

It is irresponsible to continue to pass laws which extend Davis-Bacon coverage to private sector construction projects before the survey problems identified by the Department of Labor, the Government Accountability Office, and the Office of Inspector General are fixed.

The Davis-Bacon survey is not a statistically random sample like the Bureau of Labor Statistics' unemployment or wage surveys. Rather, the survey results indicate that the prevailing wage is most often equal to the union wage. This means unionized construction companies can decide the rate of any federal project. The federal government and many state governments use various voluntary surveys to determine the wage that "prevails" in the field of construction.

These voluntary surveys reflect a national wage disparity as unionized contractors and construction crews have an exceptionally high incentive to respond to those surveys. By contrast, nonunion and small, independent contractors have a lack of resources and time to respond to these voluntary surveys that determine wages.

As a result, even though only a small share of construction workers are union members, most of the contractors responding to the surveys report paying union scale, and thus union scale is determined to be the prevailing wage.

This decision-making power intrudes on the mechanisms of the free market and artificially drives up the cost of construction. Further, current WHD methods raise public construction costs by \$8.6 billion per year and inflate wages by an average of 22 percent.

Additionally, investigators from the Office of the Inspector General found that "one or more errors existed in 100 percent of the wage reports they reviewed."

Furthermore, timely survey processing and other delays can result in contractors paying a prevailing wage that is several years out of date. According to the Office of Inspector General, the average time it takes the Department of Labor to issue a prevailing wage determination, prior to the completion of the survey period, is 2.3 years.

Inaccurate and out of date self-reported surveys, with an error rate of 100 percent, hardly reflect true prevailing wages. With overwhelming evidence for reform, allowing these distorting practices to continue does nothing more than skew the labor market directly in favor of Big Labor unions and against the average American worker and business owner.

According to James Sherk of the Heritage Foundation, "In almost every case, the prevailing wages do not resemble the actual market wages. Davis-Bacon wages vary from 38 percent below market wages for electricians in Tampa Bay to 73 percent above market wages for plumbers in San Francisco." This outdated, Depression-era wage subsidy system is forcing the burden on taxpayers in one city and altering market wages in another – reform or repeal, not status quo, are the only options.

Wages paid to contracts covered under the McNamara-O'Hara Service Contract Act (SCA) are determined using BLS data and wage methodology. Additionally, the certification of foreign workers, such as those seeking high-tech H-1B Visas, adheres to wages determined by the BLS to ensure American worker's wages are not undercut.

Other federal agencies and work programs that determine prevailing wages use data based on BLS, not WHD. If the government wishes to continue issuing a prevailing wage, the data and methodologies should be universal.

Rather than broadening the scope of the Davis-Bacon Act and prevailing wage laws, as seen in the recent energy legislation, the Department of Labor should calculate prevailing wages using data from the Bureau of Labor Statistics, which utilizes proper statistical techniques.

By using larger geographical areas, rather than civil divisions, the BLS data generates valid random samples that will reflect a true market wage.

This Congress has already given enough concessions to Big Labor. In reforming the Davis-Bacon Act, the Department of Labor will send the message that their priorities support the free market allocation of wages and not specialized preference to union-labor.

Unions once represented more than 35 percent of the American work force in the mid-1950s. By 2008, that had plummeted to 12.4 percent, and last year it ticked downward again to 12.3 percent. But that doesn't quite capture an accurate picture, because there are really two different union movements. In 2009, private-sector unionization fell to 7.2 percent from 7.6 percent in 2008. But the unions' glimmer of hope remains in an ever-expanding public sector and with the drones of government employees that are increasingly joining their ranks.

There were 15.3 million total union members in the United States in 2009, down 770,000 from the 16.1 million in 2008. Private-sector union membership fell 834,000, but public-sector union membership actually grew by 64,000 in 2009 to 7.9 million. This means 52 percent of all union members work for the government. But what does this mean for the future of organized labor, its influence on public policy decisions and its role in state and local economies?

That growing government union membership is at war with the idea of shrinking government or even delivering today's level of government services with the same tax rates in the future. The inflated cost of government unionization, by artificially raising wages and increasing bureaucracy, results in higher taxes and fewer non-unionized government services.

It is important that the Department of Labor's priorities lie in protecting worker freedom and increasing union transparency and accountability. Funding should be given to the Department to increase efficiency and accuracy in wage determination and strengthen union reporting and financial disclosure requirements. Instead, this Administration has turned a blind-eye to worker freedom.

Thank you again for the opportunity to speak to you today and I look forward to answering any questions.

## Witness Disclosure Form

**Clause 2(g) of rule XI of the Rules of the House of Representatives requires non-governmental witnesses to disclose to the Committee the following information. A non-governmental witness is any witness appearing on behalf of himself/herself or on behalf of an organization other than a federal agency, or a state, local or tribal government.**

Your Name, Business Address, and Telephone Number:

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**202-785-0266**

1. Are you appearing on behalf of yourself or a non-governmental organization? Please list organization(s) you are representing.

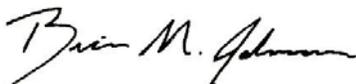
**Non-governmental organizations – Alliance for Worker Freedom, a special project of Americans for Tax Reform. ATR is a nonprofit, 501(c)(4) lobbying organization.**

2. Have you or any organization you are representing received any Federal grants or contracts (including any subgrants or subcontracts) since October 1, 2007?

**No.**

3. If your response to question #2 is “Yes”, please list the amount and source (by agency and program) of each grant or contract, and indicate whether the recipient of such grant or contract was you or the organization(s) you are representing.

**n/a**

Signature: 

Date: 03/16/10

Please attach a copy of this form, along with your curriculum vitae (resume) to your written testimony.

Brian M Johnson serves as a Federal Affairs Manager of Americans for Tax Reform ([www.atr.org](http://www.atr.org)). ATR was founded by Grover Norquist at the request of President Ronald Regan in 1985 and opposes all tax increases as a matter of principle.

He is also the Executive Director of the Alliance for Worker Freedom ([www.workerfreedom.org](http://www.workerfreedom.org)), an organization that combats anti-worker legislation and promotes free and open markets.

Mr. Johnson is the author of the forthcoming *Index of Worker Freedom: A National Report Card*, and the previous 2007 edition. He is also a contributor to the American Spectator, The Examiner, and RedState.com Johnson also helped develop the first interactive union-based video game called “Card Checked: The Game” where players experience a real life union organizing campaign ([www.WhatIsCardCheck.com](http://www.WhatIsCardCheck.com)).

Mr. Johnson’s op-eds and efforts have been featured in the Wall Street Journal, the New York Times, the Washington Times and several other national and state newspapers. He has appeared on several local and national television programs including Fox News, Fox Business News, The Glenn Beck Show, the Lou Dobbs Show on CNN and CSPAN.

Prior to joining ATR, Johnson was the 2004 Bush/Cheney North Carolina grassroots campaign manager and a contributor to the John Locke Foundation, a free-market think tank in North Carolina.

Mr. Johnson has undergraduate degrees in Political Science, International Affairs and English, as well as a Certificate of Specialization in International Political Economics & International Trade from ICHEC in Brussels, Belgium. He also holds a Masters in Public Administration from The George Washington University.

Brian Johnson is a registered federal lobbyist and resides in Washington, D.C.