John Logan, Professor and Director of Labor and Employment Studies, San Francisco State University: Testimony on Union Transparency and Accountability under the Bush and Obama OLMS

In the testimony that follows, I will stress four main points: First, the Bush DoL revisions have failed to promote the goals of greater financial transparency and disclosure, and have failed to provide any real benefit to ordinary union members. Second, if anyone has benefited from these revisions it has been not been rank-and-file union members, the public or the government, but external organizations hostile to unions and collective bargaining on ideological grounds. Third, while they have failed to advance accountability and transparency, the Bush revisions have imposed a significant compliance burdens on unions, and ordinary union members have borne the financial and administrative costs of those burdens. Fourth, by any significant measure, the current OLMS is fully committed to and has effectively enforced the goals of the LMRDA, and has provided ordinary union members with more useful information in a more useable form than did its predecessor.

1. Have the Bush-era revisions improved transparency and accountability?

There is no evidence of increased transparency and accountability. A brief examination of the rule changes introduced by the Bush DoL makes clear the absence of any evidence of real benefit to ordinary union members, the public or the government.

- 2003 LM-2 Revisions: The 2003 revisions – which have <u>not</u> been rescinded by the current OLMS -- made the LM-2 form considerably longer and more complex. But, as discussed below, these more detailed LM-2s have neither exposed or deterred corrupt practices nor provided ordinary union members with greater transparency and accountability.

- 2009 LM-2 revisions: The substantial last-minute 2009 revisions to the LM-2s significantly increased the reporting burden over the already complex 2003 revisions with no attempt to determine if there would be any benefit to ordinary union members, the government or the public. The stated rationale, to expose cases of embezzlement, has not been achieved by the 2003 LM-2 revisions and would not have been achieved by these even more extreme revisions.

- 2009 LM-3 revisions revoking authorization for reasons of untimely or deficient compliance: The 2009 proposal to make small organizations that had trouble filing the more simple and straightforward LM-3 forms on time, often due to a lack or resources, lack or expertise or lack of experience, file the more complicated and onerous LM-2 forms simply makes no sense – the Bush DoL itself stated that the rule "may appear counterintuitive" -- unless of course the true purpose behind this new rule is to force small organizations into criminal refusals to file. That is certainly likely to be the most common outcome of this revision, as it would be virtually impossible for most small organizations to comply with the complex LM-2 requirements if they are unable to comply with the simpler LM-3 requirements. Indeed, prior to the enactment of the LMRDA, Congress recognized that smaller

organizations might face difficulty meeting the financial reporting requirements of the law. If transparency and accountability were really the goals of the revision, the logical solution to untimely or deficient compliance would not be to impose more onerous reporting requirements, but for OLMS to increase its compliance assistance for officers of small organizations. Rather than chose this logical option, the Bush DoL opted to take arbitrary and punitive measures that would cripple the ability of these organizations to represent effectively ordinary union members.

- T-1 Revision on reporting for union trust funds: The Bush DoL T-1 report was, from the very beginning, a failure. The courts have twice struck down this revision – the D.C. Court of Appeals struck down the 2003 T-1 rule in 2005, and the D.C. District Court struck down the revised 2006 T-1 rule in 2007. The Courts would almost certainly have struck down the Bush DoL's final 2008 iteration of the T-1 rule also, if only because it requires reporting on trust funds that unions do not finance or control. If the Bush T-1 had ever gone into effect, moreover, it would have covered subsidiary organizations, but not in as much detail as the LM-2 amendment adopted by the current OLMS. The OLMS has incorporated this reporting requirement into the LM-2 reports. The agency has reduced the threshold of gross annual receipts from $250,000 to $200,000, and requires disclosure of expenditures of $5,000 or more, where the Bush T-1 had a reporting threshold of $10,000. Thus, in several respects, the current OLMS has actually extended and improved reporting in this area compared with that proposed by the Bush DoL.

- LM-30 2009 Revision: The Bush rule – which, in a sweeping departure from 40 years of past practice, introduced longer and more complex LM-30 forms – may as well have been designed to <u>discourage</u> rank-and-file participation in unions. The Bush rule extends reporting requirements to a variety of workplace positions not on the union payroll – such as shop stewards and safety committee members – thereby greatly expanding the number of ordinary union members required to report personal financial information. This revision would affect at least 100,000 ordinary union members. The Bush LM-30 would require union members who are neither officers nor paid employees of the union to report, because it treats shop stewards and safety committee members as union employees if their employers do not dock their pay for time spent on grievances or safety matters. The Bush LM-30 also expands the reportable financial interests to require these union members to report on personal financial information, such as loans at commercial rates from a union-affiliated credit union or mortgages and other personal loans at commercial rates from any bank that did any business with the union or a union benefit fund or substantial business with any unionized employer. The potential filer must inquire of any lender how much business it does with unionized employers and keep records of the response in order to avoid criminal prosecution for willful failure to file.

- Additional and Unnecessary Complexity in Revised LM-30: The Bush LM-30 is vastly more complicated than the form that had been used successfully for the first four-and-a-half decades of the LMRDA. The old LM-30 was a clear and straightforward two-page form, while the revised Bush LM-30 is a complex and confusing nine-page form. The Bush DOL quickly acknowledged the extent of the

confusion caused by its revised form. After releasing the revised LM-30, the Bush OLMS immediately issued 83 FAQs to explain the new form – which works out at almost 10 questions per page! -- and then had to follow those FAQs with numerous additional clarifications. This revision is obviously contrary to sound and clear accounting standards, and has likely discouraged, not encouraged, rank-and-file participation in the effective governance of unions.

- Overall impact of revisions: It is clear from OLMS annual reports that all of the additional reporting requirements implemented throughout the Bush-era DoL – and still mandated by the current DoL – has resulted in only a minor increase in enforcement actions. The number of union audits increased greatly under the Bush DoL, but the number of enforcement actions barely increased, suggesting that the 2003 revisions had not assisted OLMS in enforcing the law more effectively. In sum, these revisions have not furthered the OLMS mission of protecting the interests of ordinary union members through greater transparency and accountability, and have most likely achieved exactly the opposite – less transparency, less accountability, and unions less able to serve the best interests of their ordinary members.

Has more detail and complex financial reporting under the revised LM-2s resulted in greater transparency and accountability? Not only does the answer to this appear to be "no," but it seems more likely that they have resulted in less transparency and accountability in union financial affairs than existed before. Nor does the legislative history suggest that Congress had ever intended this level of detailed and burdensome scrutiny, even though it enacted the 1959 Labor Management Reporting and Disclosure Act (LMRDA) at a time when union corruption and embezzlement was a far more significant and newsworthy issue than it is today.[1] The Bush DoL failed to demonstrate a significant need in this area. There is no evidence of more cases of union embezzlement and corruption being exposed as a result of the far more detailed reporting required by the Bush DoL rules. Indeed, it is highly improbable that significant cases of embezzlement would be exposed because of more detailed, complex and sometimes trivial information on the revised LM-2s. Crooks are unlikely to self-report their own embezzlement, and while some ordinary union members may believe that they would be able to uncover cases of corruption with detailed and complex information, this is highly unlikely. Significant cases of embezzlement are likely to be highly complex cases that will not be uncovered by these reporting revisions.

So what is the most effective way to uncover corruption, if not through complex and burdensome financial reporting requirements? OLMS conducts union audits, as it has always done, and if it finds something irregular, these may result in criminal cases. Moreover, the

[1] Even one of the harshest critics of unions who runs a business advising employers on how to remain union free and who has twice testified in Congress about the need for greater union financial accountability, Philip Wilson, concedes that the detailed financial reporting required by Bush DoL rules may have exceeded what Congress had intended when it passed the LMRDA. "If you dig around in the congressional history," Wilson writes, "there is certainly some question as to the amount of detail some members of congress thought was appropriate." http://lrionline.com/lm-2-reform-appeal

intelligence that forms the basis of union corruption cases often comes from the national union itself, as no one has a greater interest in dealing with cases of local corruption and embezzlement than the leadership of national unions. Many national unions now have detailed codes of conduct that cover not only the ethics of union officials but also financial misdeeds, and extensive internal controls to prevent and detect embezzlement. These kinds of controls, not more detailed but less transparent LM-2s, are most likely to deter and expose cases of fraud and theft.

If the more detailed financial information and complex reporting requirements imposed by the Bush DoL have been ineffective when it comes to exposing cases of union corruption, one has to ask, what is the true motivation behind these rules? If the answer is really to go after the "bad apples" among union officials, then the current OLMS is doing this and doing it vigorously. If not, then it appears that, instead of finding a "significant need," the Bush DoL imposed more burdensome and confusing reporting requirements for purely partisan political reasons -- in order to misuse LM-2s to, in the words of then Republican Whip Newt Gingrich, "weaken our opponents and encourage our allies."[2]

More Detailed Information and Greater Complexity is Not the Same Thing as Increased Transparency: These revisions greatly increased the length and complexity of the LM-2 forms that large unions are required to submit. But the OLMS annual reports from 2005-2009 provide no evidence of any real benefit to union members produced by the 2003 revisions. Providing rank-and-file members with more detailed information in a more complex form is not the same thing as providing them with greater transparency and accountability. As a result of the Bush DoL 2003 revisions, LM-2s have increased enormously in size -- forms can now be several hundred pages in length -- and are not organized in an easily understandable form. Few ordinary union members have the time to read such long reports and make sense of them. Fewer still would know what is important and what is not, or know how to act upon on this detailed information. The 2003 revisions requirements for itemized disbursements – which had never existed previously – has likely made the reports much less easy for union members to understand and use. In instances such as this, less information, restricted to what is most important and presented in an accessible and useable form, really is more.

The 2009 revisions introduce even greater complexity in LM-2s. The 2003 and 2009 LM-2 revisions do not improve standards of financial accounting and reporting. Indeed, they do the opposite -- they will produce greater confusion and obfuscation, not greater clarity. The more detailed reporting requirements under the Bush DoL have failed to provide ordinary union members with the kind of information they are likely to want, and has failed to provide information in a form they can easily make use of. One has to question whether the intention of the Bush reporting requirements was to assist and inform ordinary union members, or a politically motivated attempt to impose burdensome reporting requirements on unions and make available detailed union financial information that could then be used, including in misleading ways, by outside groups hostile to unions and their members.

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[2] New Gingrich (Republican Whip), letter to Lynn Martin (Secretary of Labor) and Clayton Yeutter, February 19, 1992.

What kind of financial transparency and accountability do ordinary union members want? We have a dearth of empirical data when it comes to the financial literacy of union members, but based on the academic literature and my experience of running a university-based Labor and Employment Studies program that has connections with the practitioner community, I believe that they are interested in information in the following order of importance: first and foremost, they want access to salary information for officers in their local and national unions. Second, they want to know whether or not their union's revenues are greater than its expenditures. Third, they want information, in a general and understandable form, on where the union's money is coming from and where it goes. This financial information is currently available to union members, and was available prior to the Bush revisions. This information is most likely to be of interest during internal union election campaigns, and that is the way this information has always been used.

2. Who Has Really Benefited from the Bush DoL Revisions?

If not ordinary union members, then who has benefitted most from the detailed and complex financial information on the revised LM-2s? While we have little or no evidence of ordinary union members requesting or using this more detailed financial information, we have many examples of so-called "union avoidance consultants" using the information, charging employers for it, and encouraging them to use it to discourage employees from exercising their right to form a union. Like Newt Gingrich, they encourage the use of detailed LM-2s "to weaken our enemies and encourage our allies." A large number of union avoidance consultants and law firms have promoted the use of information on Bush LM-2s in this way. Below I cite only a few such examples.

One of the largest union avoidance firms in the nation, Labor Relations Institute, Inc. (LRI), tells employers that, "Facts drawn from these documents (LM-2s)… will help convince your employees to vote 'No' on election day."[3] In its publication, "Union Free: 5 Keys To Winning Your Union Election," LRI tells employers that revised LM-2s "contain a lot of valuable – and surprising – evidence to use against the union's arguments during a campaign."[4] The firm customizes it counter-organizing campaigns to oppose specific unions, and advertises LM-2s as a key component of, for example, the "Complete 'Operating Engineers Exposed' Package," which costs employers $2,300. Another important union avoidance firm, Labor Relations Services, which provides "Union Free Solutions for Employers," states that when faced with an organizing campaign, employers must "use high grade union avoidance materials such as videos, LM-2 reports," in order to defeat the union.[5] Several other union avoidance firms – often large and sophisticated operations -- charge employers for (publicly available) LM-2s, advising them that the information in these forms is an essential part of the tool kit they require to remain union-free. Highly-price union avoidance seminars, which promise to teach employers the tactics needed to defeating

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[3] http://lrionline.com/union_avoidance/operating_engineers.htm. Another major union avoidance firm --Adam, Nash, Haskell & Sheridan -- charges employers for each LM-2 financial report and recommends them for use in fighting union organizing campaigns.
[4] LRI, "Union Free: 5 Keys To Winning Your Union Election," http://www.slideshare.net/pbwilson/5-keys-to-winning-your-union-election
[5] http://proemployer.net/FAQ.aspx

organizing campaigns, frequently include discussions of how to use the information in the more detailed LM-2s to oppose employee efforts to form unions.[6] And the revised Bush LM-2 reports are also widely used by a several organizations dedicated to opposing all unions and collective bargaining on ideological grounds. For example, Union Free South Carolina, which is committed to keeping unions out of the Palmetto state, has a link to "Union LM-2 Information" from its homepage.[7]

The Opposite of What Congress Intended when enacting the LMRDA: These union avoidance firms, and their clients who are determined to operate union free, have benefitted more from the detailed and readily available financial information contained in the revised LM-2s than have ordinary union members. When Congress enacted the LMRDA, it intended to ensure not only transparency in internal union affairs, but also transparency when employers hire outside consultants for the purpose of dissuading their employees from supporting unionization. However, this critical part of the law is rarely enforced, and as a result employees and other stakeholders usually have no idea how much money employers are spending on efforts to defeat organizing campaigns, and whom they are paying for this service. Indeed, this is perhaps a more pressing topic for a congressional hearing than the one under consideration today. Thus, not only does the multi-million dollar industry of union avoidance consultants and lawyers benefit from the Bush LM-2s, it also benefits from the one-sided enforcement of the LMRDA in general.[8]

3. The Burdens of Compliance: Who Pays?

Have the Bush DoL rules imposed an onerous burden on unions? According to research conduct by three of the nation's pre-eminent employment relations scholars at Cornell and Penn State Universities,[9] the answer appears to be "yes." These scholars have conducted the most extensive and credible survey to date of the actual impact of these new rules on unions' financial and administration resources. Their results are based on empirical evidence, not on unsubstantiated or anecdotal statements or speculation. It is important to note that prior to the 2009 revisions, the Bush DoL made no real effort to assess the impact of the 2003 revisions on the actual experience of union officers, despite having had the opportunity to study four years of compliance with the new LM-2s. These scholars have investigated what the Bush DoL chose to ignore, and their findings demonstrate that the Bush DOL underestimated the burden of compliance. Based on a detailed survey of the administrative practices of 62 national unions, these academics concluded the following:

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[6] See, for example, the union avoidance seminar, "Not Your Father's Union Movement," at http://www.japantypeset.com/scope_newsletter/pdf/union-campaign-seminar.pdf

[7] See http://www.unionfreesc.org/mx/hm.asp?id=home

[8] On this point, see John Logan, "Lifting the Veiling on Anti-Union Activities: Employer and Consultant Reporting Under the LMRDA, 1959-2001," *Advances in Industrial and Labor Relations*, Vol. 15 (2007), pp. 295-332.

[9] Professor Paul Clark, Penn State University, Professor Lois Gray, Cornell University, and Professor Paul Whitehead, Penn State University, "Survey of Administrative Practices in American Unions," Fall 2010

- 83% of unions responding reported that existing staff were required to spend more time on LM-2 compliance and less time on other duties to comply with the new LM-2 requirements

- 38% of unions responding reported that they had to significantly change their accounting practices in order to comply with the new LM-2 requirements

- 29% of unions responding reported that the union had to hire consultants to comply with the new LM-2 requirements

- 9% of unions responding reported hiring additional staff to comply with the new LM-2 requirements

This striking evidence of a significantly increased recordkeeping and reporting burden – in terms of increased administrative time and effort to comply with the revised LM-2s -- is based on an academic survey of national unions. One would expect to find an even greater impact on the recordkeeping and accounting practices of smaller unions with fewer resources and less expertise and experience in financial compliance. Thus, there is no doubt the Bush LM-2 revisions have had a significant impact on union resources and finances. Even if these new requirements had improved union transparency and accountability, one would need to weigh the financial and administrative costs of complying with the new rules. Part of the job of OLMS is to balance its mission of promoting transparency with the burden of compliance. Those who have had to pay for the greater investment in time, money and administrative resources to meet the new, complex reporting requirements are ordinary union members. Their membership fees that pay for the hiring of additional staff and external consultants, new recordkeeping and accounting systems, and existing staff time devoted to compliance with detailed, itemized financial reports. However, absent any evidence of real benefits to ordinary union members – as is the case here -- the excessive burden of complying with these new rules seems completely unjustified.

4. Has the OLMS Backed Off From Its Enforcement Duties?

Strong Record on and Commitment to Enforcement: In the area of internal union transparency and accountability, the OLMS is currently doing exactly what it is supposed to do – providing an invaluable service to rank-and-file union members, the general public and the government. Not only has the agency not retreated for its historic enforcement mission, but there is considerable evidence that it is now carrying out the mission more effectively – that it is achieving "more with less," which in this tough budgetary environment is something we commend. The current director of the OLMS, Dr. John Lund, recently stated his belief that, "strong enforcement [of the LMRDA] is necessary." Having spent much of professional career teaching local and national union officers how to improve the management of their financial affairs, Lund has impeccable credentials to fulfill this role. Lund is the country's leading scholarly and practitioner expert in this area – indeed, he is an internationally-recognized expert who has advised on union transparency and accountability throughout the world -- and has published several articles on union financial transparency and accountability in leading peer-reviewed academic journals. His publications have consistently stressed the need for strong rules and effective enforcement on union

transparency and accountability.[10] In contrast, the head of the Bush-era OLMS had no background and no qualifications in an area that requires both a knowledge of labor-management relations and technical expertise in financial reporting and transparency for non-profit organizations. Indeed, it appears that the background of the Director of the Bush OLMS, Don Todd, was largely in the area of campaigning against political "adversaries" of the Republican Party.[11] In sum, it appears that both Todd and Lund were chosen to carry out their assigned roles – one to use the agency for political purposes, the other to bring professional expertise and balance to union financial reporting rules.

Actions speak louder than words, of course, and a direct comparison of OLMS activities in fiscal years 2008 and 2009 also demonstrates the commitment of the current OLMS to vigorous enforcement of the law. In the area of internal union elections, the record is stable. In 2009 the agency investigated 129 complaints about union elections, compared with 130 in 2008; it supervised 32 rerun union elections in 2009, compared with 35 rerun elections in 2008; and it filed 32 voluntary compliance election agreements or suits in 2009, compared with 35 in 2009.[12] The current OLMS also has a strong record in the area of investigations, indictments, and convictions. OLMS has increased slightly the number of criminal investigations – 404 in 2009 versus 393 in 2008; it won 122 indictments in 2009 versus 131 in 2008; and it increased slightly the number of convictions – 120 in 2009 versus 103 in 2008. Finally, it completed 754 compliance audits in 2009, compared with 798 in 2008.[13] Thus, convictions (Figure A) and indictments (Figure B) – important measures of OLMS activity, though not the only ones – have increased or held steady in number compared with the rate under the latter years of the previous administration, while compliance audits (Figure C) are down slightly only because the fall-out rate has increased. In short, the current OLMS has both a strong commitment to and good record on enforcement, and has promoted greater, not less, transparency and accountability in union affairs more generally.

Is OLMS currently providing ordinary union members with useful information? An examination of the OLMS website illustrates that the agency is producing more useful information in a more usable form than during previous administrations. The current OLMS site has, for example, uploaded and made available audit letters, internal union election information, union trusteeship information, and historical conviction and indictment information dating back to the late 1990s. Improving on past practice, moreover, the website now defines clearly the terminology on indictments and convictions, making it much more

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[10] On Lund's publications in this area, see, for example, John Lund and John McLuckie, "Labor Organization Financial Transparency and Accountability: A Comparative Analysis," *Labor Law Journal*, 58:4 (Winter 2007), pp. 251-266; John Lund, "Financial Reporting and Disclosure Requirements for Trade Unions: A Comparison of UK and US Public Policy," *Industrial Relations Journal*, 40:2 (March 2009), pp. 122-139.

[11] On Don Todd's extensive background in Republican Party politics, see Scot Lily, *Beyond Justice: Bush Administration's Labor Department Abuses Labor Union Regulatory Authorities* (Center for American Progress, December 2007), pp. 4-6.

[12] *Daily Labor Report*, "OLMS Rethinks and Rescinds Bush-Era Rules but Retains Enforcement Role," January 19, 2010.

[13] *Daily Labor Report*, "OLMS Rethinks and Rescinds Bush-Era Rules but Retains Enforcement Role," January 19, 2010.

understandable and usable for ordinary union members. Much of this information is now available in an accessible form to ordinary union members for the first time. Thus, it appears that the record of the current OLMS when it comes to promoting real accountability and transparency is better than that of its predecessor.

Conclusion: Who Benefits and Who is Hurt?

When analyzing the impact of the Bush financial reporting requirements, one should ask the question: who has benefited from the revisions and whom have they hurt? As mentioned above, there is no reliable evidence that the new reporting requirements have benefited ordinary union members, either by exposing or discouraging corrupt practices, or by making union officials more accountable to their membership. But certain people have profited from the Bush DoL's significant departure from previous long-standing and well-functioning union financial reporting rules – just not the ones intended by those who passed the legislation. Perhaps the most obvious beneficiaries of the Bush rules have been external financial experts hired by unions seeking to comply with the complex new reporting requirements – between one quarter and one third of international unions have hired external experts -- and the "union avoidance" consultants who have charged employers seeking to oppose employee organizing efforts thousands of dollars for the LM-2 reports, repackaging the information in these public reports as sophisticated anti-union ammunition.

Those hurt by the Bush DoL revisions have not been corrupt union officials or those seeking to hide information from their membership. Rather, those most damaged by the rules are the ordinary union members themselves. Their money has paid for the increased costs of compliance and they most likely have experienced worse representation at work. Instead of providing their members with effective services, union officers have spent time and resources on reporting rules that provide no discernable benefit to their members. To restate the survey findings of the scholars from Cornell and Penn State: under the Bush DoL reporting requirements, 82% of national unions reported that existing staff were required to spend more time on LM-2 compliance and less time on "other duties." The impact on local unions is likely even greater. These other duties include contract negotiations, grievance handling, and a variety of other essential union activities. In sum, the Bush DOL reporting revisions have hurt the very people whom the LMRDA is intended to protect.

Figure A: Convictions by Fiscal Year (data from DoL)

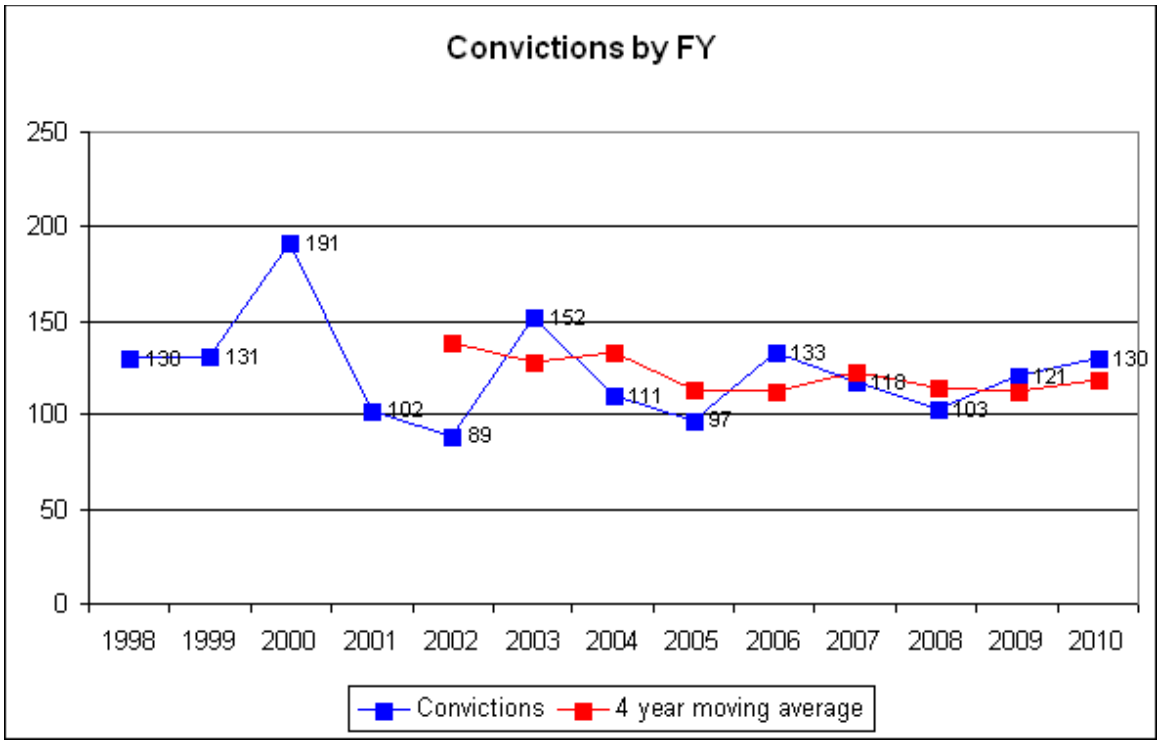

Figure B: Indictments by Fiscal Year (data from DoL)

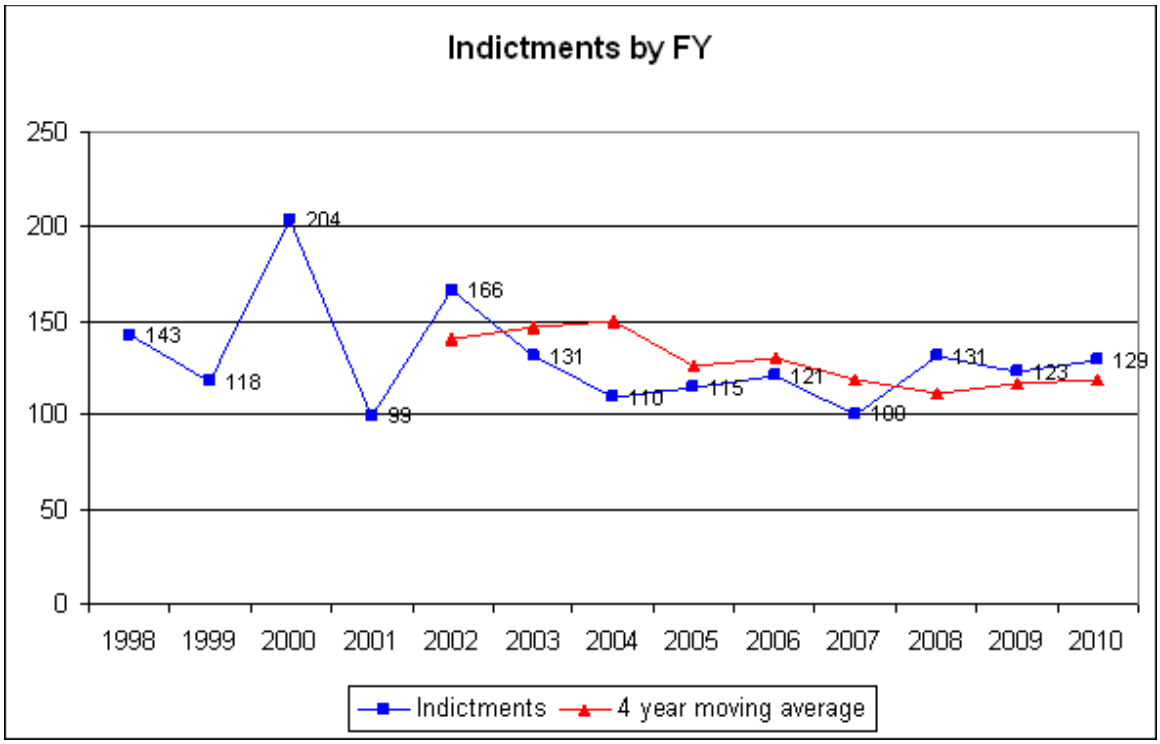

Figure C: CAP Audits vs. Fall-out rate by Fiscal Year (data from DoL)