

December 18, 2015

Via Electronic and U.S. Mail

The Honorable Howard Shelanski
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget
1650 Pennsylvania Avenue NW, Room 262
Washington, DC 20503

Re: Request To Consolidate The Proposed Persuader Advice
Exemption Rule (RIN: 1245-AA03) With The Impending Proposal To
Change Form LM-21 (RIN: 1245-AA05)

Dear Administrator Shelanski:

The undersigned represent millions of employers who employ many millions of employees throughout the United States. We write to notify you of serious procedural and substantive concerns that we have with the above-captioned rulemakings. The Department of Labor's (DOL) proposed persuader advice exemption rule is so closely intertwined with DOL's proposal to make changes to the yearly receipts and disbursement report (Form LM-21), that the two rulemakings should proceed concurrently, rather than separately as currently indicated.¹ Accordingly, we respectfully request that the proposed persuader advice exemption rule be returned to DOL in order to be consolidated with DOL's inextricably linked proposal to change Form LM-21.

The most recent Regulatory Agenda (Agenda), published on November 19, 2015, notes that the proposed persuader advice exemption rule is scheduled to be finalized in March, 2016.² The Agenda further notes that a notice of proposed rulemaking to make changes to Form LM-21 is not even scheduled to issue until six months later, in September, 2016. Form LM-21 is the reporting form that the persuader must file which discloses "all receipts from employers in connection with labor relations advice..." Making changes to the persuader advice exemption without

¹ Proposed changes to other applicable forms in the persuader reporting process – Forms LM-10 and LM-20 – were appropriately included in the proposed persuader exemption rule. It follows that the third reporting form, LM-21, should be included, as well.

² The proposed rule was sent to your office for review on December 7, 2015.

making concurrent changes to Form LM-21 renders the form obsolete and potentially undermines the persuader reporting process.

We made Secretary Perez aware of our concerns via the attached letter dated February, 2014, but received no response. While the date on the calendar has fast-forwarded approximately 10 months, the substantive issue still remains: DOL appears to be finalizing its final persuader rule without making the necessary changes to Form LM-21. Proceeding in this manner: (1) will create confusion for “persuaders” who will be forced to speculate as to what type of information must be recorded on Form LM-21; (2) will lead to duplicative costs as consultants will have to modify their reporting systems twice instead of once; (3) will lead to second-guessing by the Office of Labor-Management Standards as to what should be reported on Form LM-21; and (4) will obscure the true economic burden of the two proposals. These rulemaking deficiencies are explained in further detail in the attached February, 2014 letter to Secretary Perez.

Substantively, the proposed narrowing of the “advice” exemption under the Labor Management Reporting and Disclosure Act would remove the “bright-line” reporting test of direct communication with employees and replace it with a confusing subjective test involving the intent of the agreement between the employer and its attorney or consultant. The proposal would also increase the scope of covered “persuader” activity to cover any “protected, concerted activity in the workplace,” the definition of which has expanded greatly under the current National Labor Relations Board. If implemented as proposed, the onerous reporting scheme and penalties will likely lead to a decrease in the labor-related legal services available to employers. Perversely, this may result in an increase in unfair labor practice allegations, as many employers – particularly small employers who do not have labor relations experts on staff – will be forced to navigate the complexities of federal labor law on their own and without legal counsel. These issues are only exacerbated by the current piecemeal approach to the persuader advice exemption and Form LM-21 rulemakings.

DOL should consolidate its proposed persuader rule with its planned changes to Form LM-21. Therefore, we respectfully request that the persuader rulemaking be returned to DOL to allow the Department to undertake an appropriately comprehensive rulemaking. Proceeding in this fashion is sound rulemaking and will provide greater clarity for the regulated community.

Thank you for your attention to this matter. Please do not hesitate to contact us with any questions.

Sincerely,

ACCA-The Indoor Environment & Energy Efficiency Association
American Foundry Society
American Home Furnishings Alliance
American Hotel & Lodging Association
American Rental Association
American Society of Employers
American Staffing Association
AMT- The Association for Manufacturing Technology
Argentum (formerly ALFA)
Arizona Builders Alliance
Arkansas Hospitality Association
Arkansas hospitality association
Arkansas State Chamber of Commerce
ASAE
Associated Builders & Contractors – Central PA Chapter
Associated Builders & Contractors, Inc. - New Orleans/Bayou Chapter
Associated Builders and Contractors
Associated Builders and Contractors of Georgia, Inc.
Associated Builders and Contractors of Iowa
Associated Builders and Contractors of Maine
Associated Builders and Contractors of Metro Washington
Associated Builders and Contractors of the Carolinas
Associated Builders and Contractors of Wisconsin
Associated Builders and Contractors -Pacific Northwest Region
Associated Builders and Contractors, Alabama Chapter
Associated Builders and Contractors, Central California Chapter
Associated Builders and Contractors, Central Florida Chapter
Associated Builders and Contractors, Delaware Chapter
Associated Builders and Contractors, Florida East Coast Chapter
Associated Builders and Contractors, Greater Michigan Chapter
Associated Builders and Contractors, Hawaii Chapter
Associated Builders and Contractors, Illinois Chapter
Associated Builders and Contractors, Indiana/ Kentucky Chapter
Associated Builders and Contractors, Keystone Chapter
Associated Builders and Contractors, Los Angeles/ Ventura Chapter
Associated Builders and Contractors, Mississippi Chapter
Associated Builders and Contractors, New Mexico Chapter

Associated Builders and Contractors, Rocky Mountain Chapter
Associated Builders and Contractors, South Texas Chapter
Associated Builders and Contractors, Southeast Texas Chapter
Associated Builders and Contractors, Virginia Chapter
Associated Builders and Contractors, Western Michigan Chapter
Associated Builders and Contractors, Western Pennsylvania Chapter
Associated Builders and Contractors - Heart of America
Associated General Contractors of America
Auto Care Association
CAWA- Representing the Automotive Parts Industry
Customized Logistics and Delivery Association (CLDA)
Equipment Dealers Association
Farm Equipment Manufacturers Association
Food Marketing Institute
Global Cold Chain Alliance
HR Policy Association
Independent Electrical Contractors
Independent Office Products and Furniture Dealers
International Foodservice Distributors Association
International Franchise Association
International Warehouse Logistics Association
Maryland Chamber of Commerce
Motor & Equipment Manufacturers Association
National Association of Homebuilders
National Association of Manufacturers
National Association of Wholesaler-Distributors
National Automobile Dealers Association
National Club Association
National Council of Chain Restaurants
National Federation of Independent Business
National Grocers Association
National Lumber and Building Material Dealers Association
National Ready Mixed Concrete Association
National Retail Federation
National Roofing Contractors Association
National Small Business Association
National Tooling and Machining Association
Nebraska Chamber of Commerce & Industry
Nebraska Grocery Industry Association
North American Die Casting Association
Pennsylvania Chamber of Business and Industry

Precision Machined Products Association
Precision Metalforming Association
Printing Industries of America
Retail Industry Leaders Association
Snack Food Association
Society for Human Resource Management
SPI: The Plastics Industry Trade Association
Textile Rental Services Association
The Broadmoor
Truck Renting and Leasing Association
U.S. Chamber of Commerce
Virginia Chamber of Commerce
Western Electrical Contractors Association (WECA)

CC: The Honorable Thomas Perez, Secretary of Labor

Andrew R. Davis, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Department of Labor

Sen. Lamar Alexander, Chairman, Senate Committee on Health Education, Labor and Pensions

Rep. John Kline, Chairman, House Committee on Education and the Workforce

Sen. Roy Blunt, Chairman, Senate Committee on Appropriations' Subcommittee on Labor, Health and Human Services, Educations and Related Agencies

Rep. Tom Cole, Chairman, House Committee on Appropriations' Subcommittee on Labor, Health and Human Services, Educations and Related Agencies

Janis Reyes, Assistant Chief Counsel, U.S. Small Business Association, Office of Advocacy