National Roofing Contractors Association
Washington, D.C. Office
324 Fourth Street, N.E.
Washington, D.C. 20002
202/546-7584
Fax: 202/546-9289
http://www.nrca.net

August 5, 2011

Andrew R. Davis
Chief of the Division of Interpretations and Standards
Office of Labor-Management Standards
U.S. Dept. of Labor
200 Constitution Avenue, NW, Room N-5609
Washington, DC 20210

RE: RIN 1245-AA03, Proposed Rules Interpreting the "Advice" Exemption

Dear Mr. Davis,

The National Roofing Contractors Association (NRCA) wishes to submit comments on the Department of Labor's (DOL) proposed rule, published in the *Federal Register* on June 21, 2011, which will significantly expand certain disclosure requirements for employers and consultants under federal labor laws. NRCA strongly urges the DOL to withdraw this proposed regulation immediately.

Established in 1886, NRCA is one of the nation's oldest trade associations and the voice of professional roofing contractors worldwide. NRCA has approximately 4,000 contractors in all 50 states who are typically small, privately held companies, with the average member employing 45 people and attaining sales of about $4.5 million per year. NRCA represents both union and non-union contractors and supports policies that maintain an equitable balance in labor-management relations.

NRCA is concerned that the DOL's proposed regulation, if implemented, would dramatically curtail the ability of employers to communicate with employees during union organizing campaigns. It is extremely important that opportunities for informed communication between employers and employees with respect to the pros and cons of union representation, in accord with the National Labor Relations Act (NLRA), be maintained. However, the proposal would limit this communication between by greatly expanding disclosure requirements under the 1959 Labor-Management Reporting and Disclosure Act (LMRDA).

The LMRDA requires employers to disclose to the DOL any arrangements with consultants where the object is to persuade employees "to exercise, not to exercise, or persuade employees as to the manner of exercising" their collective bargaining rights. Consultants performing such work must file a similar report with the DOL, and these reports must include all clients and fees for whom any labor relations advice has been provided, not merely those clients who have received persuader services.

However, the LMRDA exempts from the above referenced disclosure requirements any services related to "giving or agreeing to give advice." Under the DOL's interpretation since 1962, this "advice exemption" has been interpreted to exclude those arrangements where a law firm or other consultant provides material to employers that management is free to use, not use, or use in modified form in the employer's communications with employees. In other words, advice provided to employers that does not involve direct contact between the consultant and employees is not required to be disclosed to the government.

The proposed regulation virtually eliminates the "advice exemption" that has been in existence for decades. Thus, it would greatly expand the types of activity that employers and consultants would need to disclose to the DOL. Many activities currently considered routine legal services would no longer be included in the advice exemption and therefore would be subject to disclosure.

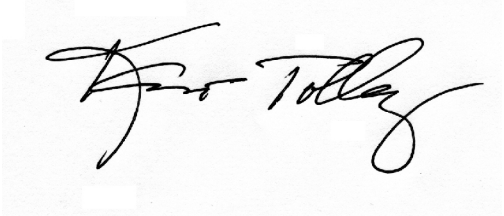
NRCA is very concerned this proposed rule will severely limit the ability of employers, especially small businesses, to utilize the advice of qualified attorneys and other consultants to help them navigate and comply with federal laws during union organizing campaigns. Many law firms that consult with employers with respect to union organizing refuse to engage in any activity that must be disclosed. If the proposed regulation is implemented, many law firms that now provide advice to employers will cease to do so due to the new disclosure requirements.

This will make it much more difficult for employers to find and retain counsel during union organizing campaigns and collective bargaining. Employers who are unable or chose not to obtain legal counsel are much more likely to inadvertently violate the very complicated laws and precedents established under the NLRA. Moreover, employers who act without legal counsel may effectively give up their rights due to fear of violating the Act. Ultimately, it will be more likely that employers will not be able to communicate effectively with employees and that employees will hear only one side of the story during a union organizing campaign.

The DOL's proposal to greatly expand disclosure requirements effectively restricts the free speech rights of employers and is in no way a balanced approach to labor-management relations. Moreover, expanding disclosure requirements will increase costs on employers, which will make it even more difficult for businesses to create jobs at this critical time.

NRCA strongly urges the DOL to withdraw the proposed regulation. If you have questions or need more information, please contact Duane Musser, NRCA's vice president of government relations, at 202-546-7584 or dmusser@nrca.net.

Sincerely,



Kent Tolley, Quality Tile Roofing, Boise, ID
President, NRCA