WINE & SPIRITS
WHOLESALERS
OF AMERICA

805 15TH STREET, NW, SUITE 430
WASHINGTON, DC 20005

OFFICE: (202) 371 9792
FAX: (202) 789 2405

WWW.WSWA.ORG

September 19, 2011

Andrew R. Davis, Chief of the Division of Interpretations and Standards
Office of Labor-Management Standards
U.S. Department 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 Wine & Spirits Wholesalers of America (WSWA) respectfully submits the following comment on the Labor Department's proposal, published in the Federal Register on June 21, 2011, reinterpreting the "advice" exemption under the Labor-Management Reporting and Disclosure Act, and to urge the Department to immediately withdraw the proposal.

WSWA is a national trade organization and the voice of the wholesale branch of the wine and spirits industry. Founded in 1943, WSWA represents nearly 330 companies that hold state and federal licenses to act as wine and/or spirits wholesalers and/or brokers. WSWA's members operate in all 50 States and the District of Columbia and distribute more than 70% of all wine and spirits sold at wholesale in the United States.

The proposal to reinterpret the "advice" exemption would vastly expand the types of activities that employers and consultants would need to disclose. Many activities undertaken today and considered routine legal services would no longer be eligible for the advice exemption and would thus be subject to disclosure under the "persuader" regulations.

For more than 50 years, the Labor Department has used a standard that is much easier to apply and makes far more sense. A consultant does not trigger the persuader disclosure requirements unless he or she interacts directly with employees or provides materials directly to employees. By contrast, the proposal would consider any communications by a consultant or lawyer to be reportable persuader activity if any purpose for which the advice may be used would be to persuade employees.

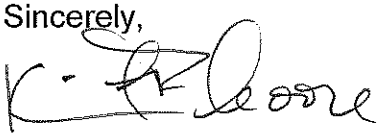
This will have serious practical consequences. First, it will make it significantly harder for employees to obtain legal advice. As I understand it, most law firms that consult with

employers about matters related to union organizing refuse to engage in persuader work because of the required disclosures. This means that if the Department's proposal is implemented, many law firms can be expected to stop offering labor relations advice to employers. It will thus be considerably harder for employers to learn of their rights and responsibilities during union campaigns and collective bargaining. It also increases the chance that employers, without adequate counsel, will make a mistake and potentially violate the very complicated and nuanced precedents establish through the National Labor Relations Board's case law.

Alternatively, many employers seeking to ensure that they do not violate the law and without adequate access to counsel can be expected to muzzle themselves and give up their federally protected right to discuss unionization with their employees. This means that employees will only hear one side of the story: that of organized labor.

The Labor Department does not have the authority to eliminate employer free speech rights, but its proposed regulations would use disclosure law to bully employers from exercising those rights. The Labor Department should withdraw the proposal immediately and instead focus on policies that will help foster an environment allowing economic growth and job creation.

Sincerely,



Karin F.R. Moore
Vice President & Co-General Counsel