September 19, 2011

Mr. Andrew R. Davis
Chief of 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

Comments to Proposed DOL Regulations **– RIN 1215-AB79** and 1245-AA03

Dear Mr. Davis:

I am writing on behalf of MRA – The Management Association and a member of the Employer Associations of America (EAA).

Our employers association's purpose is to collectively advance the success of the employers we serve by providing a dynamic forum for collaboration, leadership, and knowledge.

Today, associations promote positive relations between worker and employer by offering a myriad of programs and resources that assist employers with government compliance, develop supervisory and management skills, and promote positive employer/employee relations. Organizations join employer associations to benefit from these programs and (in some cases) to also help themselves remain union free.

From the beginning and up to this day, employer associations have provided seminars, roundtable networking events and other programs and resources that address employee relations issues. The lessons learned from these programs, if applied and practiced properly, remove the kind of adverse employment practices cause employees to seek a union or that or that unions may leverage into an employee collective bargaining organization drive.

Further, and specific to our objection to the narrowing of the LMRDA advice exception, employer associations provide daily support to union-free employers that, under the old regulations, were clearly considered to be simple advice; that would no longer be the case if the proposed regulations are implemented. Information provided by employers associations is arguably information and explanation of law, regulation and practice that is intended to develop and maintain positive employer employee

relations. But it could also be used to promote a union free environment and, ergo, be also considered reportable "persuader" activity under the proposed regulations. The narrowing of the advice exception to include the work of employers associations is incompatible with all employers' right to freely associate in order to protect themselves from any quarter, including unionization.

We do not agree with this change to advice exception rules. But absent the actual elimination of the proposed rules, we seek an exception for employer associations based upon the chilling effect the narrowed advice exception will have on employers' right to associate as protected by the U.S. Constitution.

Interference with Freedom of Association and Speech

Employer associations deliver the above-described services and resources to management, not to rank and file employees. If direct persuasion by an employer association is requested by management and provided, the appropriate LM-10 AND lm-20 forms are submitted as required under the long standing "persuader regulation". Advice on union free policy and practice would now be covered by the new interpretation of the LMRDA , thereby imposing burdensome reporting requirements on employers using their associations for these programs. Every time an employee of a member firm attends a roundtable or other informational program sponsored by its employers association, both the employee and the association would arguably have to complete LM-10 and LM-20 forms.

For example, consider the employer association that discusses simple employee handbook policies such as No Solicitation and Distribution of Literature or Outside Employment policies with a member employer covered under the proposed rule. Arguably, that discussion would compel the same burdensome reporting that would be required if the association's representative were sent out to the shop floor to talk directly to the workers.

As another example, any time an association's newsletter addresses a union-free issue, arguably it could be deemed advice to management on what to do or not to do to remain or become union free, and thus also trigger DOL reporting requirements.

We believe that this expansion of the DOL reporting rules to include indirect advice to employers on union free practices would ultimately impede our members' right to free association for their mutual protection. It would also curtail their freedom of speech as practiced through networking, information sharing and promotion of the benefits of remaining union free.

We further believe that by creating such a heavy reporting burden on the employer through, and by way of, its membership in said associations, member firms would likely choose to leave their associations

rather than take on the multiple reporting responsibilities required by these new government regulations.

We also believe non-member employers would choose to not join an association or form one of their own, because of 1) the immediate prospect of an increased administrative burden surrounding reporting, and 2) the even more onerous prospect of civil and criminal penalties for erroneously failing to report.

Lastly, those employers would justifiably fear that their membership in an employers association, by itself, would be used against them by unscrupulous labor organizers who would erroneously label their association as anti-worker and as a human rights violator. As has been well documented in the press, the label *human rights violator* has been used as a threat by certain union leaders against employers who, when targeted for an organizing drive, have refused to step aside and allow unionization to occur without response or argument against unionization.

The power of a union to defame an employer that chooses to exercise its right of association as a member of an employers association would in turn invite derision, retribution and, with certainty, the subsequent loss of business opportunities by that employer.

We ask the DOL to review this threat accordingly and consider it as foundation for an exception to the proposed advice rule for employers associations.

There are other equally compelling reasons for the DOL to consider this exception:

The Constructive Collection of Membership Lists

We argue that the act of requiring association members to complete and submit reports to the government for simple discussion that amounts to technical advice is a constructive collecting of membership lists. This is because it can be argued that any members of an employers association would necessarily be exposed to persuader activity as members *per se*.

Employer associations would like the DOL to note for consideration that the collection of membership lists has been struck down by the Supreme Court as overreaching by the government, absent a compelling state interest (strict scrutiny test). The DOL has yet to state such a compelling state interest that the restriction of the advice rule and the subsequent burden of reporting by employers and employers associations that would no doubt curtail association and speech would entail.

It is our position, and we assert it for the case at hand, that the networking and information exchange activity inherent in employer association membership is a legal activity. The new reporting requirement seeks to characterize such legal activity as unfair labor practices and to suppress them as such.

Further, some of the information provided to employers is intended to educate workers on their right *not* to associate—a constitutional right that would be "chilled" by 1) the new rules, and 2) the DOL's constructive publication of association membership lists that this requirement will bring about. How does the DOL propose to avoid curtailing potential infringement on workers' and employers constitutionally protected freedom of association rights?

Underestimation of Reporting Burden

The employer associations lastly point out that when you factor in all the ongoing educational seminars and roundtable meetings that associations sponsor, the DOL's proposed regulations fail to anticipate the sheer volume of reporting they will compel employers to do. As the undersigned are members of the Employer Associations of America (EAA) we know that there are 37 associations that conduct any number of programs, monthly and yearly, that could arguably be regarded as persuader activities. These programs are typically open to member and non-member firms alike. At an average attendance of 100 participants, a single such program would cause more than 3,700 reportable persuader events every time it is presented.

Further, consider that the EAA as a group reflects only a fraction of the number of employer and management associations that currently conduct, or would conduct, programs that fall under the persuader activity definition. The DOL's burden analysis far underestimates the reporting activity that will result.

For all the reasons cited above, MRA as an employers association respectfully asks the DOL to 1) reconsider its narrowing of the advice exception or 2) alternatively provide an exception to the proposed advices rule for employer associations.

Signed,

Susan Fronk
President/CEO
MRA – The Management Association