September 21, 2011

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RIN 1215-AB79 and RIN 1245–AA03
Docket No. LMSO-2011-0002

Andrew R. Davis
Chief, 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: Labor-Management Reporting and Disclosure Act; Interpretation of the ''Advice'' Exemption, 76 Fed. Reg. 36178 (June 21, 2011) (RIN 1245–AA03; Dkt. No. LMSO-2011-0002)

Dear Mr. Davis:

The Healthcare Distribution Management Association (HDMA) appreciates this opportunity to comment on the Notice of Proposed Rulemaking of the Office of Labor-Management Standards (OLMS) regarding the Labor-Management Reporting and Disclosure Act; Interpretation of the ''Advice'' Exemption, published in the *Federal Register* 76 Fed. Reg. 36178 (June 21, 2011).

HDMA is the national association representing primary healthcare distributors, the vital link in the healthcare system. Each business day, HDMA member companies ensure that more than nine million prescription medicines and healthcare products are delivered safely and efficiently to 164,000 pharmacies, hospitals, nursing homes, clinics and others nationwide. HDMA and its members work daily to provide value and contain costs, saving the nation's healthcare system an estimated $32 billion per year. For more information, visit www.HealthcareDistribution.org.

HDMA's 34 primary healthcare distributor members operate 189 distribution centers serving all 50 states. HDMA members include large, publicly traded healthcare distributors and regional and specialty distributors. Many of HDMA's members are privately owned small businesses who safely and efficiently deliver healthcare products to independent pharmacies, long-term care facilities, hospitals and physicians in small

and rural communities and other niche markets.

On behalf of its members, many of whom are small, independent businesses, HDMA writes to express the concerns of healthcare distributors regarding the proposed OLMS rule. We believe that the changes being proposed in the OLMS proposed rule, particularly when taken in conjunction with the recent National Labor Relations Board (NLRB) proposed rule,[1] will be particularly onerous for businesses that have little experience with labor matters. The new expansion of "persuader activity" the Department of Labor (DOL) proposes, coupled with the NLRB's proposal to compress the timeframes for conducting a secret ballot election for collective bargaining, will mean that a business owner has very little time to respond to a collective bargaining petition and cannot seek the advice of counsel without triggering complex reporting requirements.

The OLMS' proposed rule reinterprets what constitutes "persuader" activity under the Labor-Management Reporting and Disclosure Act (LMRDA) and what activity was previously exempt from reporting under the LMRDA. Generally, the LMRDA requires employers and employers' labor relations consultants and outside legal counsel to report certain labor-related agreements and arrangements to OLMS. If the proposed rule becomes final, reportable persuader activity could occur in a much wider array of actions. Further, the proposed rule would significantly narrow existing exemptions so that much of the legal advice an employer receives from outside counsel, that is currently exempt from reporting, would have to be reported to the DOL. Additionally, the proposed rule, if final, would require counsel to disclose their clients and their clients' fees under certain circumstances.

The OLMS proposed rule would make it far more difficult for businesses to obtain legal advice about labor relations and union activities. The rules would especially and disproportionally affect small businesses. Such businesses, when confronted with a labor issue for the first time, for example, as a petition for collective bargaining or other employee concerted action, may try to handle the matter on their own, rather than incur the additional cost and difficulty of the OLSM reporting. An employer should not have to waive its right to confidential legal advice due to the cost and difficulty of complying with the OLMS reporting requirements.

HDMA is very concerned with this interference in, and likely chilling of, the relationship between attorney and client. Many businesses cannot invest in an internal office of qualified counsel to see them through every possible legal contingency that might arise. Especially if a business owner has not confronted labor issues before, there would have been no need to retain experienced, knowledgeable labor counsel. This rule, if final, significantly burdens a business owner's right to consult with and confidentially communicate with counsel. The further difficulty is that if the aforementioned NLRB proposed rule is made final, the collective bargaining election process is vastly speeded up, making an employer's need for counsel even more urgent.

[1] National Labor Relations Board, Representation – Case Procedures, Notice of Proposed Rulemaking, 76 Fed. Reg. 36812 (June 22, 2011) (RIN 3142–AA08; Dkt. No. NLRB-2011-0002)

HDMA asks that the OLMS withdraw and revise the rule to avoid establishing requirements that will likely interfere with the attorney-client relationship to the detriment of business owners.

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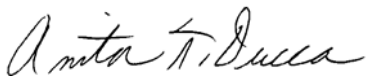
HDMA thanks the NLRB and OLMS for this opportunity to comment.

Sincerely,



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Healthcare Distribution Management Association