

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF LABOR-MANAGEMENT STANDARDS

Rescission of Rule Interpreting the
“Advice” Exemption in LMRDA § 203(c)

RIN 1245-AA 07

COMMENTS OF THE AMERICAN FEDERATION OF TEACHERS, AFL-CIO

These comments on behalf of the American Federation of Teachers, AFL-CIO (hereinafter, AFT) are submitted in response to the Department of Labor’s proposed rescission of the final rule interpreting the “advice” exemption to the reporting requirements stated in § 203 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 433, that became effective on April 15, 2016. 82 Fed. Reg. 26877 (June 12, 2017). The AFT strongly opposes the proposed rescission of the rule.

A. The AFT Supports Mandatory Filing by Persuaders Concerning “Behind the Scenes” Activity Undertaken in Support of Employers in Order to Help “Level the Playing Field” for Labor and Management in Labor-Management Relations.

1. Interest of the AFT.

The AFT is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do. The AFT is a private sector labor organization that files LM-2 reports on a yearly basis. Many of the AFT’s affiliates are also private sector affiliates that are subject to LMRDA reporting requirements. The AFT takes a keen interest in the issue of persuader reporting because it is involved in private sector union organizing throughout the United States and it knows the importance of timely, comprehensive, intelligible persuader reporting to the workers who organize on a daily basis with the AFT.

2. The AFT Supports the AFL-CIO's Position on the Rescission of the Rule.

The AFT has been an affiliate of the American Federation of Labor since 1916. It fully supports, without reservation, the Comments filed by the American Federation of Labor – Congress of Industrial Organizations (hereinafter, AFL-CIO) concerning the Rescission of the Rule. The importance of the rule that the Department is now trying to rescind lies in the fact that it restores the focus of section 203 persuader reporting to the actual persuasion work being undertaken by these firms. In the words used in the Rule, itself, this focus, “forecloses an interpretation that allowed non-reporting of most activities simply by avoiding direct contact with employees.” For all of the reasons discussed by the AFL-CIO in their Comments, it is important that workers know the extent to which their employer has engaged outside actors to influence their decision making on questions concerning union representation and the content of their messages to employees. As the AFL-CIO so rightly concludes, “ There is no basis for hiding information from workers about the third parties employers hire to defeat their organizing drives. The Department should not be shielding union-busters; it should give workers the information they deserve to have about who is trying to influence their vote and how much they are being paid to do so.” We could not agree more.

B. Regardless of the Department's Position on the “Advice Exemption,” Accessible, Timely, Electronic Reporting by Persuaders is Important for the Fair Administration of the LMRDA.

While the substantive issue in the rule that is being rescinded involves the so-called “advice exemption,” the procedural changes to the reporting requirements should not get lost in the shuffle. The Rule implemented changes to the LM-20 and LM-21 forms that enhanced readability and implemented electronic filing of these forms. All of these changes will be swept away if the Department adopts a full rescission of the Rule. While, perhaps, reasonable minds

may differ on the application of the advice exemption, one is hard pressed to think of a fair reason why persuaders should not have to file timely, intelligible forms via electronic means – just as unions have had to do for over a decade. This conversion to electronic filing by the Department is widespread and beginning this year all LM forms filed by unions must be submitted electronically, even those filed on behalf of the smallest union locals.

The LM-10, LM-20, and LM-21 reporting forms were last revised in 2003 and they continue to permit hand typed, and even hand written, filings. The filing of paper forms is inefficient and it places the burden to post the forms on OLMS staff. There have been instances, presumably due to staffing issues, in the past in which gaps of as much as two months took place between the posting of LM-20 reports online that were received by OLMS in paper format. This should be contrasted with the posting of unions' LM-2 reports, which is nearly instantaneous. The electronic nature of these forms makes this kind of timely transparency possible.

The Department should take all steps necessary to include the LM-10, LM-20, and LM-21 within the OLMS Electronic Forms System and require that such reports be filed through that system. The Rule being rescinded required that persuaders and employers file Form LM-20 and Form LM-10 reports electronically. There are myriad benefits of electronic filing that would be useful to workers and researchers. As the Department noted in the original Rule, "Electronic reporting contains error checking and trapping functionality, as well as online, context-sensitive help, which improves the completeness of the reporting." Additionally, electronic filing is more efficient for reporting parties, results in more immediate availability of the reports on the agency's public disclosure web site, and improves the efficiency of OLMS in processing the reports and in reviewing them for reporting compliance. Paper reports must be scanned and processed for data entry before they can be posted online for disclosure, which delays their

availability for public review. The LMRDA states, in relevant part:

The contents of the reports and documents filed with the Secretary pursuant to sections 201, 202, 203, and 211 shall be public information, and the Secretary may publish any information and data which he obtains pursuant to the provisions of this title. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate. 29 U.S.C. § 435(a).

Implementation of electronic reporting for LM-10, LM-20, and LM-21 reports can only serve to enable the Department to more efficiently and more helpfully give effect to this statutory mandate. Electronic filing of unions' LM-2 reports has been mandatory for over a decade. During this time, members of the public have set up websites that allow for the collection, aggregation, and analysis of all manner of data collected in these reports. In the interest of transparency and accountability, as well as administration of the LMRDA in a balanced and even-handed way, workers and researchers should be able to have the same kind of access to employer and persuader reports that they have to union reports.

To conclude, the AFT stands in solidarity with the arguments presented by the AFL-CIO concerning the "advice" exemption because the reinterpretation of the advice exemption will help to level the playing field in labor-management relations. However, even if the Department chooses to disregard these arguments, a full repeal of the original Rule does workers, the public, and researchers a real disservice. The Department should consider retaining those parts of the Rule that require mandatory electronic filing of LM-10, LM-20, and LM-21 reports.

Respectfully Submitted,

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