

August 9, 2017

The Honorable R. Alexander Acosta
Secretary of Labor
Attention: Andrew Davis, Chief
Division of Labor-Management Standards
Office of Labor-Management Standards
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: Notice of Proposed Rulemaking on Rescission of Advice Exemption in Section 203(c)
of the LMRDA, RI 1245-AA

Dear Mr. Secretary:

On behalf of the Texas Association of Business (TAB), I am submitting comments supporting the Department of Labor's proposal to rescind the rule interpreting the "Advice Exemption" in Section 203(c) of the Labor-Management Reporting and Disclosure Act.

In March 2016, TAB joined the Lubbock Chamber of Commerce, the National Federation of Independent Business, National Association of Home Builders, and Texas Association of Builders in filing a lawsuit in Lubbock Federal Court challenging the constitutionality of changes to the Persuader Rule. Civil Action No. 5:16-cv-00066-C; *National Federation of Independent Business, et al. v. Thomas E. Perez, et al.*; In the United States District Court for the Northern District of Texas, Lubbock Division ("Persuader Lawsuit").

Changes to the regulation were permanently stayed in large part because Judge Cummings found the Rule to be defective to its core and to constitute an abuse of discretion. Thus DOL should maintain its prior interpretation of the advice exemption, which it consistently applied from 1962 until the implementation of the Persuader Rule in April 2016.

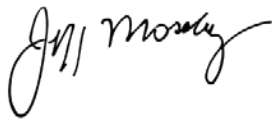
While it may be argued that rescission may not be needed as the Persuader Rule has already been set aside under the Administrative Procedure Act, 5 U.S.C. § 706(2), TAB continues to support rescission to conform DOL policy to the court order. The DOL should also withdraw its appeal from the order enjoining and setting aside the Persuader Rule.

Lastly, TAB supports the DOL rationale for rescission including:

1. Give more consideration to several important effects of the Perez Persuader Rule on the regulated parties, including attorneys and employers seeking legal assistance;
2. Ensure that any future changes to the DOL's interpretation of the advice exemption would reflect additional consideration of possible alternative interpretations of the statute;
3. Address the concerns that have been raised by reviewing courts with respect to the Perez Persuader Rule;
4. Consider the effects of the interaction and effects of the LM-21 and LM-20 together in light of the possible changes to LM-21 resulting from the Perez Persuader Rule; and
5. Consider the impact of shifting priorities and resource constraints since the issuance of the Perez Persuader Rule. 82 FR 26879-81.

Thank you for the opportunity to comment on behalf of our thousands of business and chamber members from across the state of Texas. We look forward to working with your office to implement laws that are balanced and fair for all parties.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Moseley", with a stylized, cursive script.

Jeff Moseley
CEO