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## Labor Department Sends 'Persuader' Rule To OMB

Share us on: By **Aaron Vehling**

Law360, New York (December 8, 2015, 7:53 PM ET) -- The [U.S. Department of Labor](#) has ushered into the final stages its long-simmering proposed “persuader” rule that narrows the exemption for what union-related communications between employers and attorneys remain confidential, submitting it to the [Office of Management and Budget](#) for review.

Activity on the 2011 rule proposal, which would narrow the “advice” exemption in a section of the Labor-Management Reporting and Disclosure Act, largely ceased for years, but the DOL recently signaled it intended to finalize the rule by March 2016. Under the proposed rule, lawyers who both provide legal advice to employers and engage in activities designed to influence the labor organizing process would have to file periodic reports, even if they do not have contact with the client's employees.

The OMB’s review is a necessary part of that process, and on Tuesday a DOL spokesman confirmed that the agency had submitted the rule for the OMB to take a look.

The roots of the rule date back to June 2011, when the DOL initially made its proposal.

The regulations would narrow the “advice” exemption in Section 203(c) of the LMRDA. The law requires employers and legal consultants to report any arrangement to persuade employees directly or indirectly regarding the right to organize or bargain collectively, but the exemption currently carves out an exception for advice, saying no employer or consultant has to file a report covering the services of a consultant if that consultant just gives advice to the employer.

The DOL's proposed regulations would limit the definition of "advice" to oral or written recommendations, which would subject more types of arrangements to the law's disclosure requirements.

The DOL's push to shrink the carveout attracted the scorn of the American Bar Association and others who said it raises serious concerns about attorney-client privilege.

“By expressing concerns over the proposed rule and urging the department to reconsider, the ABA is not taking sides on a union-versus-management dispute, but rather is defending the confidential client-lawyer relationship and urging the department not to impose an unjustified and intrusive burden on lawyers, law firms and their clients,” the ABA's then- president Bill Robinson III wrote at the time.

The vocal opposition to the persuader regulation had some observers thinking the DOL had dropped it — activity appeared to pause after the extended comment period concluded in September 2011. However, in May, the wheels began turning again and it appeared that the rule would be finalized in December.

As of Tuesday, the OMB's Office of Information and Regulatory Affairs reported that the rule will be finalized in March.

The rule is Employer and Labor Relations Consultant Reporting Under the LMRDA, rule number 1245-AA03.

--Additional reporting by Ben James and Abigail Rubenstein. Editing by Emily Kokoll.

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The opposition of the then President of the American Bar Association, Bill Robinson, to the "persuader rule" was ultra vires, based on a zombie resolution the ABA House of Delegates had passed fifty years previously in a completely different context. Valid ABA policies are adopted only by the House of Delegates, and the House was not consulted on Mr. Robinson's position. I wrote a letter to the editor of the ABA Journal discussing the irregularities of this usurpation of the ABA House of Delegates, which I will be happy to send to anyone requesting it from me. Contact me at Rick@RickSeymourLaw.net.

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