

## DOL Moves to Rescind Persuader Rule

Last November, a Texas District Court permanently blocked the DOL from implementing and enforcing the Obama administration’s final “persuader” rule. The final rule would have required employers and their labor relations advisors to disclose publicly agreements and arrangements that had long been exempt from reporting under the Labor-Management Reporting and Disclosure Act. Last week, the DOL began the process of rescinding the rule. While this action does not affect the disclosure requirements currently in effect, the agency has indicated that it may consider future rulemaking and invited public comments until August 11.

### Background

The Labor-Management Reporting and Disclosure Act (LMRDA) requires unions, employers and labor relations consultants to publicly disclose information about certain financial transactions, agreements and arrangements related to union organizing and collective bargaining. Under the LMRDA’s so-called “advice exemption,” reportable activities carved out the services of a labor relations consultant who gives, or agrees to give, advice to an employer. For decades, reporting of fees and arrangements was required only if the employer’s labor relations consultants and attorneys communicated directly with the employer’s non-supervisory employees.

On March 24, 2016, the Obama administration issued a final persuader rule altering the DOL’s long-standing interpretation of the advice exemption. The final rule expanded disclosure requirements to include both direct and indirect persuader activity and cover arrangements, agreements and payments made on or after July 1, 2016. Although the final rule technically went into effect on April 15, a Texas federal judge issued a nationwide preliminary injunction blocking its enforcement before it could be applied.

On November 16, the judge [converted](#) the preliminary injunction to a permanent one. (See our *FYI Alert* from [November 17, 2016](#).)

Since then, the DOL has continued to enforce the longstanding and pre-existing interpretation of the advice exemption.

**Comment.** The Obama DOL appealed the Texas court’s decision blocking the persuader rule to the U.S. Court of Appeals for the 5<sup>th</sup> Circuit, and that appeal is still pending. Rather than simply withdrawing it and letting the injunction stand, the Trump DOL informed the 5<sup>th</sup> Circuit on June 2 that it



was beginning the process of rescinding the persuader rule, and asked the court to put the appeal on hold for six months or until 30 days after a new rule is issued, whichever is earlier.

## **DOL Proposes Rescission of Advice Exemption Interpretation**

On June 12, the DOL took the first step in the rulemaking process to rescind the rule that would have required employers and their labor relations advisors to disclose publicly agreements and arrangements that had long been exempt from reporting under the LMRDA. The DOL issued a [Notice of Proposed Rulemaking](#) to formally roll back the regulations established in the final rule titled “Interpretation of the ‘Advice’ Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act.” While this action does not affect the disclosure requirements currently in effect, the agency left the door open to future changes in the scope of reportable activity and reporting requirements under the LMRDA. The DOL has invited public comment on or before August 11.

## **In Closing**

While the DOL has begun the process of rescinding the Obama administration’s persuader rule, it indicated that it may consider future rulemaking and has invited public comment until August 11, 2017.

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