DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 405 and 406

RIN 1215–AB79
RIN 1245–AA03

Labor-Management Reporting and Disclosure Act; Interpretation of the ''Advice'' Exemption

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Office of Labor-Management Standards of the Department of Labor (Department) is proposing revisions to the Form LM–10 Employer Report and to the Form LM–20 Agreements and Activities Report, which are required under section 203 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), 29 U.S.C. 433. These reports cover agreements or arrangements between employers and labor relations consultants whereby the consultant undertakes activities to persuade employees concerning their rights to organize and bargain collectively. The Department proposes to revise its interpretation of the ''advice'' exemption to such reporting, by limiting the definition of what activities constitute ''advice'' under the exemption, and thus expanding those circumstances under which reporting is required of employer-consultant persuader agreements. The Department also proposes to revise the forms and instructions to make them more user-friendly and require more detailed reporting on employer and consultant agreements, as well as to require that Forms LM–10 and LM–20 be filed electronically. The Department invites comments on any aspect of this proposed rule.

DATES: Comments must be received on or before August 22, 2011.

ADDRESSES: You may submit comments, identified by RIN 1215–AB79 and 1245–AA03. (The Regulatory Information Number (RIN) identified for this rulemaking changed with publication of the Spring 2010 Regulatory Agenda due to an organizational restructuring. The old RIN (1215–AB79) was assigned to the Employment Standards Administration, which no longer exists; a new RIN (1245–AA03) has been assigned to the Office of Labor-Management Standards.) The comments can be submitted only by the following methods:

Internet: Federal eRulemaking Portal. Electronic comments may be submitted through *http://www.regulations.gov*. To locate the proposed rule, use RIN number 1245–AA03. Follow the instructions for submitting comments.

Delivery: Comments should be sent to: Andrew R. Davis, Chief of the 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. Because of security precautions the Department continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments.

The Office of Labor-Management Standards (OLMS) recommends that you confirm receipt of your delivered comments by contacting (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877–8339 (TTY/TDD). Only those comments submitted through *http://www.regulations.gov,* hand-delivered, or mailed will be accepted. Comments will be available for public inspection at *http://www.regulations.gov* and during normal business hours at the above address.

The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters not to include personal information such as Social Security numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become viewable by the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard this information. Comments submitted through *http://www.regulations.gov* will not include the commenter's e-mail address unless the commenter chooses to include that information as part of his or her comment.

FOR FURTHER INFORMATION CONTACT: Andrew R. Davis, Chief of the 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, *olms-public@dol.gov,* (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. History of the LMRDA's Reporting Requirements

The Secretary of Labor administers and enforces the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), Public Law 86–257, 73 Stat. 519–546, codified at 29 U.S.C. 401–531. The LMRDA, in part, establishes labor-management transparency through reporting and disclosure requirements for labor organizations and their officials, employers, labor relations consultants, and surety companies.

In enacting the LMRDA in 1959, a bipartisan Congress expressed the conclusion that in the labor and management fields ''there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.'' 29 U.S.C. 401(b).

The LMRDA was the direct outgrowth of an investigation conducted by the Senate Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, which convened in 1958. Enacted in 1959 in response to the report of the McClellan Committee, the LMRDA addressed various ills identified by the Committee through a set of integrated provisions aimed, among other things, at shedding light on labor-management relations, governance, and management. These provisions include financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies. *See* 29 U.S.C. 431–36, 441.

Among the abuses that prompted Congress to enact the LMRDA was questionable conduct by some employers and their labor relations consultants that interfered with the right of employees to organize labor unions and to bargain collectively under the National Labor Relations Act (''NLRA''), 29 U.S.C. 151 *et seq. See, e.g.,* S. Rep. No. 86–187 (''S. Rep. 187'') at 6, 10–12 (1959), reprinted in 1 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (''LMRDA Leg. Hist.''), at 397, 402, 406–408. Congress was concerned that labor

consultants, acting on behalf of management, worked directly or indirectly to discourage legitimate employee organizing drives and engage in ''union-busting'' activities. S. Rep. 187 at 10, LMRDA Leg. Hist. at 406. Congress concluded that such consultant activities ''should be exposed to public view,'' *id.,* S. Rep. at 11, because they are ''disruptive of harmonious labor relations and fall into a gray area,'' *id.* at 12, even if the consultant's conduct was not unlawful or otherwise constituted an unfair labor practice under the NLRA.

As a result, Congress imposed reporting requirements on employers and their consultants under LMRDA section 203. Under LMRDA section 208, the Secretary of Labor is authorized to issue, amend, and rescind rules and regulations prescribing the form and publication of required reports, as well as ''such other reasonable rules and regulations * * * as [s]he may find necessary to prevent the circumvention or evasion of such reporting requirements.'' 29 U.S.C. 438. The Secretary is also authorized to bring civil actions to enforce the LMRDA's reporting requirements. 29 U.S.C. 440. Willful violations of the reporting requirements, knowing false statements made in a report, and knowing failures to disclose a material fact in a report are subject to criminal penalties. 29 U.S.C. 439.

B. Statutory and Regulatory Requirements for Employer and Labor Relations Consultant Reporting

Section 203(a) of the LMRDA, 29 U.S.C. 433(a), requires employers to report to the Department of Labor:

> Any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing * * * .

29 U.S.C. 433(a)(4).[1] ''[A]ny payment (including reimbursed expenses) pursuant to an agreement or arrangement described in'' this provision must also be reported. 29 U.S.C. 433(a)(5).

The report must be one ''showing in detail the date and amount of each such payment, * * * agreement, or arrangement * * * and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.'' 29 U.S.C. 433. The Department of Labor's implementing regulations require employers to file a Form LM–10 (''Employer Report'') that contains this information in a prescribed form. *See* 29 CFR part 405.

LMRDA section 203(b) imposes a similar reporting requirement on labor relations consultants and other persons. It provides, in part, that:

> Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly—(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing * * * shall file within thirty days after entering into such agreement or arrangement a report with the Secretary * * * containing * * * a detailed statement of the terms and conditions of such agreement or arrangement.

29 U.S.C. 433(b). Section 203(b) also requires persons subject to this requirement to report receipts and disbursements of any kind ''on account of labor relations advice and services.'' The Department of Labor's implementing regulations require labor relations consultants and other persons who have engaged in reportable activity to file a Form LM–20 ''Agreement and Activities Report'' within 30 days of entering into the reportable agreement or arrangement, and a Form LM–21 ''Receipts and Disbursements Report'' within 90 days of the end of the consultant's fiscal year, if during that year the consultant received any receipts as a result of a reportable agreement or arrangement. The consultant must report the required information on a prescribed form. *See* 29 CFR part 406.

LMRDA section 203 creates an exemption from the requirement to report agreements or arrangements to persuade employees for ''advice'' or representation before a court, agency or arbitral tribunal, or in collective bargaining. Section 203(c) provides in pertinent part that:

> Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer * * *.

29 U.S.C. 433(c).

Finally, LMRDA section 204 exempts attorney-client communications from reporting, which is defined as, ''information which was lawfully communicated to [an] * * * attorney by any of his clients in the course of a legitimate attorney-client relationship.'' 29 U.S.C. 434.

II. Authority

The legal authority for this notice of proposed rulemaking is set forth in sections 203 and 208 of the LMRDA, 29 U.S.C. 432, 438. Section 208 of the LMRDA provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under Title II of the Act and such other reasonable rules and regulations as she may find necessary to prevent the circumvention or evasion of the reporting requirements. 29 U.S.C. 438. The Secretary has delegated her authority under the LMRDA to the Director of the Office of Labor-Management Standards and permits re-delegation of such authority. *See* Secretary's Order 8–2009, 74 FR 58835 (Nov. 13, 2009).

III. History of the Department's Interpretation of LMRDA Section 203(c)

The ''advice'' exemption of LMRDA section 203(c) is reflected in the Department's implementing regulations, but the regulations simply track the language of the statute. 29 CFR 405.6(b), 406.5(b). However, the Department has interpreted the ''advice'' exemption in the course of administering the LMRDA, and those interpretations have been communicated primarily in documents intended to guide Department staff in administering the statute. As explained below, interpretations have varied during the years since the LMRDA was enacted.[2] A revised interpretation of the advice exemption, published in 2001 for public notice, 66 FR 2782, was rescinded almost immediately by the successive administration, 66 FR 18864.

A. The Initial Interpretation in 1960

In its earliest approach to the ''advice'' exemption, reflected in a 1960 technical assistance publication to guide employers, the Department took the position that employers were required to report any ''arrangement with a 'labor relations consultant' or other third party

[1] The LMRDA defines a ''labor relations consultant'' as ''any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.'' 29 U.S.C. 402(m).

[2] That the ''advice'' exemption of LMRDA section 203(c) might pose interpretive challenges was quickly clear to at least some observers. *See, e.g.,* Bureau of National Affairs, The Labor Reform Law 36 (1959) (''The exemption applicable to consultants who merely give advice is susceptible of several different interpretations. * * * It is questionable whether the exemption would also cover payments to a consultant who drafted anti-union letters and otherwise mapped out a campaign to combat union organizing'').

to draft speeches or written material to be delivered or disseminated to employees for the purpose of persuading such employees as to their right to organize and bargain collectively.'' Department of Labor, Bureau of Labor-Management Reports,[3] Technical Assistance Aid No. 4: Guide for Employer Reporting at p. 18 (1960).

The Department also took the position, in at least some opinion letters to members of the public, that a lawyer or consultant's revision of a document prepared by an employer was reportable activity. In a 1961 article, a Department of Labor official, after noting that the drafting of speeches or written material by a consultant or lawyer was reportable, addressed the issue of revisions to material prepared by the employer:

> [A]dvice to a client with respect to a speech or letter, drafted by the client, is not reportable. However, if the individual undertakes to revise that speech, this constitutes an affirmative act; it is the undertaking of activities to persuade employees in the exercise of their rights and, comparable to the giving of a speech, requires reporting. The Bureau [Bureau of Labor-Management Reports] takes the position that reporting is required in any situation where it is impossible to separate advice from activity which goes beyond advice. In any situation where an attorney undertakes activities which are more than mere advice for the same employer, the exclusion of [LMRDA] section 203(c) does not apply since the causal relationship is clear.

Benjamin Naumoff, *Reporting Requirements under the Labor-Management Reporting and Disclosure Act,* in Fourteenth Annual Proceedings of the New York University Conference on Labor 129, 140–141 (1961) (italics added).

B. The 1962 Revised Interpretation

In 1962, the Department changed its original view of the ''advice'' exemption, adopting what remained the Department's interpretation, except for the brief period in 2001.

The change is reflected in a February 19, 1962 memorandum from then Solicitor of Labor Charles Donahue to John L. Holcombe, then Commissioner of the Bureau of Labor-Management Reports, in response to a November 17, 1961 memorandum from Commissioner Holcombe. Commissioner Holcombe sought guidance on ''exactly what the Department's position is with respect to the drafting and editing of communications to employees which are intended to persuade employees.'' Holcombe endorsed the view that the initial preparation of a persuasive document by a lawyer or consultant for use by an employer was reportable, but that revising a draft constituted ''advice'' for purposes of Section 203(c).

In response, the Donahue memorandum addressed three situations: (1) Where persuasive material is prepared and delivered by the lawyer or consultant; (2) where an employer drafts the material and intends to deliver it to his employees, and a lawyer or other person provides oral or written advice on its legality; and (3) where a lawyer or consultant prepares an entire speech or document for the employer. The Donahue memorandum concluded that the first activity (preparation and delivery of material) was reportable; that the second activity (legal review of a draft) constituted ''advice''; and that the third activity (preparation of an entire document) ''can reasonably be regarded as a form of written advice where it is carried out as part of a bona fide undertaking which contemplates the furnishing of advice to an employer.'' In discussing the reportability of preparing an entire document, the Donahue memorandum observed:

> [S]uch activity in itself will not ordinarily require reporting unless there is some indication that the underlying motive is not to advise the employer. In a situation where the employer is free to accept or reject the written material prepared for him and there is no indication that the middleman is operating under a deceptive arrangement with the employer, the fact that the middleman drafts the material in its entirety will not in itself generally be sufficient to require a report.

The Donahue memorandum did not explicitly analyze the language of LMRDA section 203 or the statute's legislative history, but asserted that both had been examined.

In a 1962 presentation to the American Bar Association's Section of Labor Relations Law, Solicitor Donahue described the Department's original interpretation of the ''advice'' exemption this way:

> [T]he Department of Labor originally took the position that [the exemptions in LMRDA section 203(b) and section 204] did not extend to drafting or revising speeches, statements, notices, letters, or other materials by attorneys or consultants for the use or dissemination by employers to employees for the purpose of persuading them with respect to their organizing or bargaining rights. This kind of help was not viewed as advice but, instead, was regarded as an affirmative act with the direct or indirect objective of persuading employees in the exercise of their rights.

Charles Donahue, Some Problems under Landrum Griffin in American Bar Association, Section of Labor Relations Law, Proceedings 48–49 (1962). Donahue observed that this position had been ''reviewed in the light of Congressional intent,'' which revealed ''no apparent attempt to curb labor relations advice in whatever setting it might be couched.'' *Id.* at 49. Expert legal advice was often necessary, Donahue suggested, and thus:

> Even where this advice is embedded in a speech or statement prepared by the advisor to persuade, it is nevertheless advice and must be fairly treated as advice. The employer and not the advisor is the persuader.

Id.

The conclusions and language of the 1962 Donahue memorandum appear as current guidance in section 265.005 (''Scope of the Advice Exemption'') of the LMRDA Interpretative Manual (''IM''). The Manual reflects the Department's official interpretations of the LMRDA and is intended to guide the work of the staff of the Office of Labor-Management Standards in the administration and enforcement of the statute. Section 265.005 of the Manual states:

> Section 203(b) provides for reports from every person who pursuant to an agreement or arrangement with an employer undertakes the type of activities described therein. Section 203(c) provides that nothing in section 203 shall be construed to require any person to file a report * * * by reason of his giving or agreeing to give advice to such employer * * *.''
>
> The question of application of the ''advice'' exemption requires an examination of the intrinsic nature and purpose of the arrangement to ascertain whether it essentially calls exclusively for advice or other services in whole or in part. Such a test cannot be mechanically or perfunctorily applied. It involves a careful scrutiny of the basic fundamental characteristics of any arrangement to determine whether giving advice or furnishing some other services is the real underlying motivation for it.
>
> As to specific kinds of activity, it is plain that the preparation of written material by a lawyer, consultant, or other independent contractor which he directly delivers or disseminates to employees for the purpose of persuading them with respect to their organizational or bargaining rights is reportable. Moreover, the fact that such material may be delivered or disseminated through an agent would not alter the result. Such undertakings obviously do not call for the giving of advice to an employer.
>
> However, it is equally plain that where an employer drafts a speech, letter or document which he intends to deliver or disseminate to his employees for the purpose of persuading them in the exercise of their rights, and asks a lawyer or other person for advice concerning its legality, the giving of such advice, whether in written or oral form, is not in itself sufficient to require a report.

[3] The Bureau of Labor-Management Reports is the predecessor agency to OLMS.

Furthermore, we are now of the opinion that the revision of the material by the lawyer or other person is a form of written advice given the employer which would not necessitate a report.

A more difficult problem is presented where the lawyer or middleman prepares an entire speech or document for the employer. We have concluded that such an activity can reasonably be regarded as a form of written advice where it is carried out as part of a bona fide undertaking which contemplates the furnishing of advice to an employer. Consequently, such activity in itself will not ordinarily require reporting unless there is some indication that the underlying motive is not to advise the employer. In a situation where the employer is free to accept or reject the written material prepared for him and there is no indication that the middleman is operating under a deceptive arrangement with the employer, the fact that the middleman drafts the material in its entirety will not in itself generally be sufficient to require a report.

In later years, the Department reiterated the 1962 position, sometimes expressing doubts about its soundness. *See* Subcommittee on Labor-Management Relations, H. Comm. on Education and Labor, *The Forgotten Law: Disclosure of Consultant and Employer Activity Under the L.M.R.D.A.* (Comm. Print 1984) (statement of Richard Hunsucker, Director, Office of Labor-Management Standards Enforcement, Labor-Management Standards Administration, U.S. Department of Labor); Subcommittee on Labor-Management Relations, H. Comm. on Education and Labor, 4 *Pressures in Today's Workplace* 5 (Comm. Print 1980) (statement of William Hobgood, Assistant Secretary of Labor for Labor-Management Relations) (current interpretation ''when stretched to its extreme, * * * permits a consultant to prepare and orchestrate the dissemination of an entire package of persuader material while sidestepping the reporting requirement merely by using the employer's name and letterhead or avoiding direct contact with employees'').

C. The Kawasaki Motor Corporation Litigation: International Union, United Automobile Workers v. Dole [4]

Prior to the interpretive revision announced in January 2001, the Department of Labor's public statements involving the ''advice'' exemption were made in the context of litigation. The Department's position in the litigation was consistent with, and derived from, the interpretation of LMRDA section 203(c) reflected in the Donahue memorandum and section 265.005 of the LMRDA Interpretative Manual.

In 1982, the United Automobile Workers sued the Department, seeking to compel the Department to proceed against the Kawasaki Motor Corporation for failing to report conduct that the union alleged was reportable under LMRDA sections 203(a) and 203(b). One focus of the litigation was Kawasaki's payments to a consultant to devise personnel policies to discourage unionization. The Department took the position that the payments were not reportable, since the consultant's activity constituted ''advice'' under section 203(c). In a statement of its reasons for not proceeding against Kawasaki, the Department cited section 265.005 of the LMRDA Interpretative Manual and stated: ''An activity is characterized as advice if it is submitted orally or in written form to the employer for his use, and the employer is free to accept or reject the oral or written material submitted to him.''

A Federal district court ruled against the Department. *International Union* v. *Secretary of Labor,* 678 F. Supp. 4 (D.D.C. 1988). However, the U.S. Court of Appeals for the District of Columbia Circuit reversed this ruling and deferred to the Department's interpretation of LMRDA section 203 as reasonable in the context of the case, since the statute itself was ''silent or ambiguous with respect to the issues before'' the court. *International Union, United Automobile Workers* v. *Dole,* 869 F.2d 616, 617 (DC Cir. 1989) (Ginsburg, J.) Noting the ''tension between the coverage provisions of the LMRDA, and the Act's exemption for advice,'' the appellate court identified two views of those provisions. 869 F.2d at 618. In the ''overlap area'' of the statute, as the appellate court called it, in which guidance to employers by third-party consultants can theoretically constitute both advice within the meaning of section 203(c) and persuader activity within the meaning of Section 203(b), the interpretive problem involves whether the coverage provision or the exemption controls. *Id.* In the course of the litigation, the appellate court noted, the district court adopted one view and held that the coverage provision prevailed over the advice exemption, while the Secretary adopted the alternate view and concluded through administrative interpretation that the advice exemption trumped the coverage provision. *Id.* The court of appeals upheld the Secretary's long-standing interpretation, recognizing her ''right to shape her enforcement policy to the realities of limited resources and competing priorities.'' 869 F.2d at 620.

Following the decision of the Court of Appeals, OLMS staff was guided by a March 24, 1989 memorandum from then Acting Deputy Assistant Secretary for Labor-Management Standards Mario A. Lauro, Jr. The Lauro Memorandum cited LMRDA Interpretative Manual section 265.005 and stated:

[T]here is no purely mechanical test for determining whether an employer-consultant agreement is exempt from reporting under the section 203(c) advice exemption. However, a usual indication that an employer-consultant agreement is exempt is the fact that the consultant has no direct contact with employees and limits his activity to providing to the employer or his supervisors advice or materials for use in persuading employees which the employer has the right to accept or reject.

The reliance in the 1989 memo on the distinction between a consultant's direct or indirect contact with the employer's employees has origins in the 1962 interpretation.

D. The 2001 Interpretation

In 2001, the Department published a notice of a revised statutory interpretation regarding the advice exemption without request for public comment, which narrowed the category of information exempted from disclosure by consultants. *See* Interpretation of the ''Advice'' Exemption in section 203(c) of the Labor-Management Reporting and Disclosure Act, 66 FR 2782 (Jan. 11, 2001) (stating that the application of the ''advice'' exemption depends on whether an activity can be considered giving ''advice,'' meaning an oral or written recommendation regarding a decision or a course of conduct, as opposed to engaging in direct or indirect persuasion of employees). However, later in 2001, the implementation of the revised interpretation was delayed for sixty days to enable an administration-wide policy review. Interpretation of the ''Advice'' Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act, 66 FR 9724 (Feb. 9, 2001) (temporarily delaying for sixty days the enforcement date of the interpretation).

Then, on April 11, 2001, the Department rescinded the new interpretation and returned to its prior interpretation. *See* Interpretation of the ''Advice'' Exemption in section 203(c) of the Labor-Management Reporting and Disclosure Act, 66 FR 18,864 (Apr. 11, 2001) (rescinding the Clinton administration revision of the ''advice'' exemption of the Labor-Management Reporting and Disclosure Act). In support of the rescission, the April 11 notice cited insufficient evidence to

[4] *International Union, United Automobile Workers* v. *Dole,* 869 F.2d 616, 617 (DC Cir. 1989).

justify the revised interpretation and a lack of notice-and-comment procedures. 66 FR at 18864. The April 11 notice also did not subject its return to the prior interpretation to notice-and-comment procedures. However, because the Department views input from the regulated community as important to the revision of the Department's interpretation, this notice now requests such input.[5]

IV. The Need for a Revised Interpretation

A. Summary of the Proposed Interpretation

We now believe that the Department's current interpretation of the advice exemption may be overbroad, and could sweep within it agreements and arrangements between employers and labor consultants that involve certain persuader activity that Congress intended to be reported under the LMRDA. In its Fall 2009 Regulatory Agenda, the Department announced its intention to initiate notice and comment rulemaking on this matter, and on May 24, 2010, a public meeting was held regarding employer and consultant reporting. *See* 75 FR 27366. At the meeting, the Department heard from interested members of the public, including labor organizations, employer associations, and labor relations consultants.[6] Though rulemaking is not required to revise the interpretation of ''advice,'' the Department has elected to do so in order to obtain broad public consultation in a matter at the heart of current labor-management relations practice.

The Department proposes to adopt the approach of the ''advice'' exemption as set forth in its January 11, 2001 notice, as that approach better effectuates the purpose of section 203 of the LMRDA to secure public disclosure concerning employer-consultant agreements that have a direct or indirect object to persuade employees concerning their rights to organize and bargain collectively and preserves the ''advice'' exemption than the Department's current interpretation.[7] As discussed in more detail below, the proposed addition to the Form LM–20 and LM–10 instructions describing the application of the ''advice'' exemption rejects the current interpretation, which distinguishes between direct and indirect contact and asks whether or not an employer is ''free to accept or reject'' materials provided. Rather, the revised interpretation focuses on the plain meaning of the term ''advice'' in the statute's text, and contrasts that plain meaning with those activities undertaken by consultants, which go beyond mere advice and that have a direct or indirect object to persuade employees with respect to their statutory rights. The revised interpretation defines reportable ''persuader activities'' as all actions, conduct, or communications that have a direct or indirect object to persuade employees, and does not simply address the preparation of persuader materials. The proposed new instructions will state:

> With respect to persuader agreements or arrangements, ''advice'' means an oral or written recommendation regarding a decision or a course of conduct. In contrast to advice, ''persuader activity'' refers to a consultant's providing material or communications to, or engaging in other actions, conduct, or communications on behalf of an employer that, in whole or in part, have the object directly or indirectly to persuade employees concerning their rights to organize or bargain collectively. Reporting is thus required in any case in which the agreement or arrangement, in whole or part, calls for the consultant to engage in persuader activities, regardless of whether or not advice is also given.

See, infra, Sec. V. The proposed instructions also provide examples of reportable and non-reportable agreements or arrangements. *See, infra,* Sec. VI.C. and Appendix A. Reportable agreements include those in which a consultant agrees to plan or orchestrate a campaign or program on behalf of an employer to avoid or counter a union organizing or collective bargaining effort, such as through the specific persuader activities illustrated in the instructions, or otherwise engages on behalf of the employer, in whole or part, in any other actions, conduct, or communications designed to persuade employees. *Id.* A consultant must report if he or she engages in any conduct, actions, or communications that utilize employer representatives to persuade employees. *Id.* For example, a consultant must report if he or she plans, directs, or coordinates the activities of employer representatives (*i.e.,* an employer's managers or supervisors), or provides persuader material to them for dissemination or distribution to employees. *Id.* Further, drafting or implementing policies for the employer that have the object to directly or indirectly persuade employees would also trigger a reporting obligation. No report is required concerning an agreement or arrangement to exclusively provide advice to an employer, such as when a consultant exclusively counsels employer representatives on what they may lawfully say to employees, ensures a client's compliance with the law, or provides guidance on NLRB practice or precedent. *Id.*

As discussed more fully below, support for this revised interpretation is firmly rooted in the plain meaning of the statutory text. In addition, in examining the legislative history of the reporting obligations pertinent here, the Department has concluded that this revised approach better reflects the congressional intent in enacting the LMRDA. Also, the preamble demonstrates that this revised interpretation has been suggested for decades by various Department agency heads and Executive Branch and Congressional observers, and is amply supported by contemporary academic research in the industrial relations and labor-management fields. This body of research and commentary clearly demonstrates that the labor consultant industry has proliferated since the passage of the LMRDA, that employers mount sophisticated responses to the presence of union-related activity among their employees, and that employers rely to a great extent on such consultants to assist with those responses.

In addition, evidence suggests that despite the extraordinary growth in the labor consultant industry and employers' utilization of that industry to respond to protected employee activity, current reporting under the LMRDA about persuader activity is negligible, as a result of the current overly broad interpretation of the advice exemption. The Department views reporting of persuader agreements or arrangements as providing employees with essential information regarding the underlying source of the views and materials being directed at them, as aiding them in evaluating their merit and motivation, and as assisting them in developing independent and well-informed conclusions regarding union representation and collective bargaining. Congress viewed such disclosures as mitigating the disruptive impact of labor relations consultants, or as Congress called them, ''middlemen,'' on peaceful and stable labor relations. Indeed, in the Department's view, full

[5] Agency interpretive rules are excepted from the notice-and-comment procedures of the Administrative Procedures Act. *See* 5 U.S.C. 553(b)(3)(A).

[6] An audio recording of the meeting and a copy of a PowerPoint presentation shown at the meeting are available on the OLMS Web site at: *http://www.dol.gov/olms/regs/compliance/ecrmeeting.htm.*

[7] In focusing on how the ''advice'' exemption applies to the preparation of written material, the 2001 notice articulates principles generally applicable to determining whether any activity may be considered ''advice'' within the meaning of the LMRDA or reportable persuader activity.

disclosure of the participation of outside consultants will lead to a better informed electorate, which invariably produces more reliable and acceptable election results less subject to charges and counter-charges, and thus becomes a less disputed, more stable foundation for subsequent labor-management relations.

The Department also proposes related changes to the employer and consultant reporting standards on the Form LM–10 Employer Report and on the Form LM–20 Agreement and Activities Report. In addition, expanded reporting detail concerning reportable agreements and arrangements is proposed for both forms. The Department also proposes modifications of the layout of the LM–10 and LM–20 forms and instructions to better outline the reporting requirements and improve the readability of the information. Finally, the Department proposes that Form LM–10 and Form LM–20 reports must be submitted to the Department electronically, and provides a process to apply for an electronic filing exemption on the basis of specified criteria.

The Department invites comment on the proposed changes, their advantages and disadvantages, and whether the changes would better implement the LMRDA. The Department invites general and specific comments on any aspect of this proposal; it also invites comment on specific points, as noted throughout the text of this notice.

B. The Textual Basis for the Current Interpretation

Section 203(c) of the statute exempts a consultant's services provided ''by reason of his giving or agreeing to give advice,'' without expressly defining or otherwise giving meaning to the term ''advice.'' As noted above, the Department has employed various interpretations of the term over the past five decades, but those interpretations, excluding the short-lived 1960 and 2001 interpretations, have not provided analytical distinctions between exempt ''advice'' and reportable persuader activity in order to ensure adequate reporting of persuader agreements. In particular, the interpretation of advice currently contained in section 265.005 of the LMRDA Interpretative Manual (IM)—that an activity is characterized as advice if it is submitted orally or in written form to the employer for his use, and the employer is free to accept or reject the oral or written material submitted to him—sets a standard that is not grounded in common or ordinary understanding of the term ''advice'' as used in section 203(c). The focus on whether an employer can ''accept or reject'' the material submitted by a consultant has resulted in an overbroad interpretation of ''advice'' that, in the Department's present view, exempts from reporting agreements and arrangements to persuade employees for which disclosure is appropriate. The interpretation now proposed by the Department better serves the purposes of section 203 to provide the level of disclosure for persuader agreements as described.

''Advice'' ordinarily is understood to mean a recommendation regarding a decision or a course of conduct. *See, e.g.* Merriam-Webster's Collegiate Dictionary, Tenth ed., 18 (2002) (defining ''advice'' as ''recommendation regarding a decision or course of conduct: Counsel''); Black's Law Dictionary (online) (defining ''advice'' as ''guidance offered by one person, esp. a lawyer, to another'') (8th ed. 2004); The Oxford English Dictionary (defining ''advice'' as ''opinion given or offered as to action; counsel. spec. medical or legal counsel'') (2d ed. 1989). Thus, this common construction of ''advice'' does not rely on the advisee's acceptance or rejection of the guidance obtained from the advisor. Indeed, the act of supplying the guidance itself, or supplying a ''recommendation regarding a decision or a course of conduct,'' constitutes the provision of advice, regardless of the advisee's ability or authority to act or not to act on it.

The practical applications of the current interpretation of ''advice'' provide illustrative guidance. The current ''advice'' standard in the IM treats as advice not only the situation in which a lawyer or consultant reviews drafts of persuasive material at the employer's request to determine whether the statements in the material are permissible under the National Labor Relations Act, but also covers a lawyer or consultant's preparation of persuasive material to be disseminated or distributed to employees. Because an employer generally has the authority to accept or reject the work performed for him or her in either case, the Department's current IM interpretation regards both examples as advice and therefore not triggering reporting. However, in the Department's view, the latter example appears to be quintessential persuader activity—one that has an object to persuade employees. This application demonstrates that the current scope of the ''advice'' exemption is overbroad and ultimately does not appear to be the best approach in making the statutory distinctions called for.

In contrast, the common understanding of ''advice'' noted above would not include, for example, the preparation of persuasive material for dissemination or distribution to employees because undertaking such activity is itself more than a recommendation regarding a course of conduct in the ordinary sense. It is the supply of material or communications that have an object to persuade employees. This distinction is further underscored by the deliberate disclosure in this example of material or communications to third parties (the employees), thus waiving any attorney-client privilege that might have attached to the activity. The Department's current view—that preparation of persuasive material or communications is advice so long as the employer is free to accept or reject the material—thus does not appear to provide the best analytical framework for ensuring necessary disclosure.

For purposes of the LMRDA, the distinction between activities properly characterized as ''advice'' and those that go beyond ''advice'' has not been made clear. This is particularly so in the case in which an employer essentially serves as the conduit for persuasive communication or material developed or prepared by an outside consultant or lawyer. The role of the outside consultant in attempting to influence or persuade employees, whether the consultant deals directly with employees or deals with the employer and his or her agents who in turn deal with employees, is the matter required to be disclosed by the statute. To be sure, Congress identified the potential for abuse when employers rely heavily on third parties in the context of union organizing drives and collective bargaining. *See, e.g.,* S. Rep. 187 at 10–11, in LMRDA Leg. Hist. at 406–407 (citing evidence that ''large sums of money are spent in organized campaigns on behalf of some employers'' and stating that such activity ''should be exposed to public view'').

As a result, reporting is essential to fulfill the statutory purpose, and thus is mandated, when the consultant activity goes beyond recommending a course of conduct and either directly or indirectly persuades or influences, or attempts to persuade or influence, employees regarding their protected rights. Thus, the better approach for distinguishing between ''advice'' and ''persuader activity'' should focus on whether an activity calls exclusively for recommendations or guidance for use by the advisee regardless of whether the advisee may accept or reject it.

Furthermore, the Department's most recent approach does not appear to be

the better reading of LMRDA section 203(a)(4), which requires employer reporting of agreements or arrangements with consultants involved in ''activities where an object thereof, directly or indirectly, is to persuade employees,'' or of LMRDA section 203(b), which uses a nearly identical formulation (''activities where an object thereof is, directly or indirectly—to persuade employees''). The direct object, or at least the indirect object, of preparing persuasive material that is intended to be transmitted to employees is to persuade employees, regardless of whether it is the employer or the consultant that disseminates the material. It is reasonable to conclude that Congress envisioned that this type of activity, which goes beyond just giving advice in the ordinary sense, would trigger reporting. It is fair to infer that reporting is required when a person engages in persuader activities, whether or not advice is also given. In such instances, the lawyer or other consultant functions less as an advisor to the employer than as a persuader of employees.

C. The Legislative History Supports Narrowing the Interpretation of ''Advice''

The current IM interpretation seems inconsistent with the legislative history of section 203 of the LMRDA. It is clear from the legislative history that one of the primary purposes behind the enactment of section 203(b) was to promote an employee's freedom of choice by revealing to him or her the real source of persuader activity designed to influence the employee in the exercise of protected rights. Further, it is readily apparent from the history that Congress was most concerned with the so-called ''middleman'' operating under an arrangement with an employer to persuade employees either directly or indirectly through an agent or through some other indirect means.

The problems related to the interference of ''middlemen'' in the labor relations arena were first identified in Congress by the Senate Select Committee on Improper Activities in the Labor or Management Field, which, after the name of its chairman, became known as the McClellan Committee. Among the abuses uncovered by the McClellan Committee was the employment of middlemen by management to spy on employee organizing activity or to otherwise prevent employees from forming or joining a union, or to induce them to form or join company unions through such deceptive devices as ''spontaneous'' employee committees, essentially fronts for the employer's anti-union activity. S. Rep. No. 85–1417 at 255–300 (1958). In particular, the select committee scrutinized the activities of Nathan W. Shefferman and his labor consulting firm, Labor Relations Associates of Chicago, Inc., concluding that this firm indulged in the worst types of deceptive consultant activity, including organizing ''vote no'' committees during union campaigns, designing psychometric employee tests designed to weed out pro-union workers, and negotiating improper ''sweetheart'' contracts with union officials. *Id.; see also* S. Rep. No. 86–1139 at 871. (1960). Having successfully countered 90 percent of the organizing drives he worked to oppose, [Nathan W. Shefferman, *The Man In The Middle* (New York: Doubleday, 1961)], Shefferman can be credited with developing many of the strategies that continue to dominate the field.

In reporting on S. 1555, the Senate version of the bill that ultimately became the LMRDA, the Senate Committee on Labor and Public Welfare adopted one of the central recommendations of the McClellan Committee to ''curb activities of middlemen in labor-management disputes.'' S. Rep. 187 at 2, LMRDA Leg. Hist. at 398. In describing the problem of ''union-busting middlemen,'' the Labor Committee stated that it had:

> Received evidence in prior hearings showing that large sums of money are spent in organized campaigns on behalf of some employers for the purpose of interfering with the right of employees to join or not to join a labor organization of their choice, a right guaranteed by the National Labor Relations Act. Sometimes these expenditures are hidden behind committees or fronts. However the expenditures are made, they are usually surreptitious because of the unethical content of the message itself. The committee believes that this type of activity by or on behalf of employers is reprehensible * * * [W]here they are engaged in they should be exposed to public view, for if the public has an interest in preserving the rights of employees then it has a concomitant obligation to insure free exercise of them.

S. Rep. 187 at 10–11, LMRDA Leg. Hist. at 406–407. The Labor Committee further noted that:

> In almost every instance of corruption in the labor-management field there have been direct or indirect management involvements. The report of the McClellan Committee describes management middlemen flitting about the country on behalf of employers to defeat attempts at labor organization. In some cases they work directly on employees or through committees to discourage legitimate organizational drives or set up company-dominated unions. These middlemen have been known to negotiate sweetheart contracts. They have been involved in bribery and corruption as well as unfair labor practices. The middlemen have acted in fact if not in law as agents of management. Nevertheless, an attorney for the National Labor Relations Board has testified before the McClellan committee that the [National Labor Relations Act] is not adequate to deal with such activities.

S. Rep.187 at 10, LMRDA Leg. Hist. at 406.

Accordingly, the Labor Committee indicated that the provision that ultimately became section 203(b) of the LMRDA was necessary in order to

> requir[e] reports from middlemen masquerading as legitimate labor consultants. The committee believes that if unions are required to report all their expenditures, including expenses in organizing campaigns, reports should be required from employers who carry on, or engage such persons to carry on, various types of activity, often surreptitious, designed to interfere with the free choice of bargaining representatives by employees and to provide the employer with information concerning the activities of employees or a union in connection with a labor dispute.

S. Rep. 187 at 39–40, LMRDA Leg. Hist. at 435–436. Thus, section 203(b) includes a reporting requirement for consultant activity that not only interferes with, restrains, or coerces employees in their protected rights under the NLRA, *i.e.,* constitutes an unfair labor practice, but also requires reporting of activity to persuade employees that involves conduct that is otherwise legal under the NLRA. S. Rep. 187 at 11, 12, LMRDA Leg. Hist. at 406, 407 (reportable expenditures ''may or may not be technically permissible under the National Labor Relations or Railway Labor Acts'').[8]

D. Post-LMRDA Congressional and Executive Branch Observations Regarding Labor Consultant Activity

In 1980 and again in 1984, the Subcommittee on Labor Management Relations of the House Committee on Education and Labor investigated and reported on, among other things, the role of management consultants in employee organizing campaigns and the Department's requirements for reporting that activity. *See* Subcommittee on Labor-Management Relations, H. Comm. on Education and Labor, *Pressures in Today's Workplace* (Comm. Print 1980) (''1980 Subcommittee Report''); Subcommittee on Labor-Management

[8] Labor relations consultants may be held liable by the National Labor Relations Board for unfair labor practices committed on behalf of employers. *See, e.g., Blankenship and Associates, Inc.* v. *N.L.R.B.,* 999 F.2d 248 (7th Cir. 1993), enforcing 306 N.L.R.B. 994 (1992). Employers may also be held liable, based on the actions of their consultants. *See, e.g., Wire Products Manufacturing Corp.,* 326 N.L.R.B. No. 62 (1998).

Relations, H. Comm. on Education and Labor, *The Forgotten Law: Disclosure of Consultant and Employer Activity Under the L.M.R.D.A.* (Comm. Print 1984) (''1984 Subcommittee Report'').

The 1980 Subcommittee Report noted the growth in employers' utilization of labor relations consulting firms to engage in persuader activity. 1980 Subcommittee Report at 28 (''[T]he labor consultant industry has undergone very substantial growth since the [passage of the LMRDA], particularly during the past decade.''). This report also notes the increase in the use of law firms to assist employers in their union avoidance activities:

> Many lawyers no longer confine their practice to traditional services such as representing employers in administrative and judicial proceedings or advising them about the requirements of the law. They also advise employers and orchestrate the same strategies as non-lawyer consultants for union ''prevention,'' union representation election campaigns, and union decertification and de-authorization. Lawyers conduct management seminars, publish widely, and often form their own consulting organizations.

1980 Subcommittee Report at 28–29. In addition to noting the increase in labor consultant activity, the 1980 Subcommittee Report characterizes the extent and effectiveness of employer and consultant reporting under the LMRDA as a ''virtual dead letter, ignored by employers and consultants and unenforced by the Department of Labor.'' 1980 Subcommittee Report at 27. The Subcommittee concluded that the ''current interpretation of the law has enabled employers and consultants to shield their arrangements and activities[,]'' and called upon the Department to ''adopt[] a more reasonable interpretation so the Act can reach consultants who set and control the strategy for employer anti-union efforts but who do not themselves communicate directly with employees.'' *Id.* at 44. This recommendation came about, in part, as the result of testimony before the Subcommittee by Assistant Secretary of Labor for Labor-Management Relations William Hobgood, who ''acknowledged that Department [enforcement] activity had 'declined significantly' since the first few years after the enactment of [the LMRDA].'' 1980 Subcommittee Report at 45. Hobgood testified in 1980 that the Department's interpretation of advice '' 'troubles' him,'' and that the Department was ''reviewing the question of where advice ends and persuasion begins to make sure the Department's position is consistent with the law and adequate to deal with the approaches to persuader activities that have evolved since the law was enacted more than 20 years ago.'' *Id.* at 44.

One commenter describes the 1980 Subcommittee hearings this way:

> Lawmakers learned that little had changed since the enactment of the LMRDA. Although the consulting industry's spokesmen claimed that their firms acted only as industrial 'marriage counselors,' majority members rejected this contention, writing, 'consultants promote a perspective of labor-management relations which exalts the short-run over the long-run, presuming that workers will vote against a union, if management exercises the correct combination of manipulation, persuasion and control during the relatively brief duration of an organizing campaign.' Much of the committee's interest centered on the business community and their mercenaries' reluctance to comply with the Landrum-Griffin Act.

Robert Michael Smith, *From Blackjacks to Briefcases: A History of Commercialized Strikebreaking and Unionbusting in the United States* 115 (Athens, OH: Ohio University Press, 2003)

Subsequent subcommittee hearings, conducted in 1984, also addressed labor relations consultants' and employers' noncompliance with the LMRDA's reporting and disclosure requirements. The 1984 Subcommittee Report further underscored the reduction in the filing of LMRDA consultant and employer reports despite evidence of the continuing growth of the consultant industry. 1984 Subcommittee Report at 15. ''In the 25 years since the enactment of the LMRDA there has been a dramatic increase in management's use of consultants to counter the unionization efforts of employees or to decertify existing unions. This well-documented increase has been most pronounced in the past 10 years.'' 1984 Subcommittee Report at 2. The Subcommittee again admonished the Labor Department for failing to act on its recommendations from 1980 regarding the need for more vigorous enforcement of employer and consultant reporting requirements, 1984 Subcommittee Report at 4, and suggested that lack of robust enforcement of employer and consultant reporting requirements of section 203 ''frustrated Congress' intent that labor-management relations be conducted in the open.'' *Id.* at 18.

Concern about the impact of consultant activity on labor-management relations emanated from the Executive Branch as well. In March, 1993, the Secretaries of Labor and Commerce announced the establishment of the U.S. Commission on the Future of Worker-Management Relations, which was charged with investigating and making recommendations regarding enhancement of workplace productivity and labor-management cooperation, among other things. The Commission, also called the Dunlop Commission after its chairman, Professor John T. Dunlop of Harvard University, held public hearings and took testimony on the state of labor relations in the early 1990s. The Commission issued a fact-finding report in June 1994 and a final report in December of the same year, and the reports provide further support for the need for the revision of the interpretations involving consultant reporting.

In assessing economic costs that labor and management face in the competition surrounding representation elections, the Commission found in its fact-finding report that ''[f]irms spend considerable internal resources and often hire management consulting firms to defeat unions in organizing campaigns at sizable cost.'' Commission on the Future of Worker-Management Relations, Fact-Finding Report at 74 (May 1994) (hereafter ''Dunlop Commission Fact-Finding Report''). Indeed, the Commission concluded, the ''NLRA process of representation elections is often highly confrontational with conflictual activity for workers, unions, and firms that thereby colors labor-management relations.'' *Id.* at 75. The same report observed that ''[s]tudies show that consultants are involved in approximately 70 percent of organizing campaigns,'' but also noted that at the time there were ''no accurate statistics on consultant activity.'' *Id.* at 68. Ultimately, in its final report, the Commission concluded that the ''import of the worst features of political campaigns into the workplaces by managers and unions creates confrontation and is not conducive to achieving the goals'' of enhancing worker productivity and labor-management cooperation. Commission on the Future of Worker-Management Relations, Report and Recommendations, Final Report at p. 36 (December 1994) (hereafter ''Dunlop Commission Final Report'').

E. Current Industrial Relations Research Evidences Proliferation of Consultant Industry and Substantial Use by Employers of Labor Relations Consultants

Contemporary research in the industrial relations arena provides ample support for the conclusion that the consultant industry has mushroomed, and the use of consultants by employers to defeat union organizing efforts has similarly proliferated in recent years. One study estimated that only 100 management consultant firms operated in the 1960s, shortly after the

passage of the LMRDA, and that this number had grown ten times by the mid-1980s. John Logan, *The Union Avoidance Industry in the U.S.A.,* 44 British Journal of Industrial Relations 651, 653 (2006) (hereafter ''Logan, *Union Avoidance Industry''*). In addition, while the 1980 Subcommittee Report estimated that 66% of employers hired consultants during organizing drives to manage their anti-union campaigns, 1980 Subcommittee Report at 27, and the Dunlop Commission estimated in 1994 that 70% of employers utilized labor consultants, Dunlop Fact-Finding Report at 74, more recent studies place the contemporary consultant-utilization rate of employers who face employee organizing drives somewhere between 71% and 87%. *See* Kate L. Bronfenbrenner, *Employer Behavior in Certification Elections and First-Contract Campaigns: Implications for Labor Law Reform,* in Restoring the Promise of American Labor Law 80 (Sheldon Friedman *et al.* eds. ILR Press 1994) (hereafter ''Bronfenbrenner, *Employer Behavior''*) (71% of employers); Logan, *Union Avoidance Industry* at 669 (75% of employers); Kate Bronfenbrenner, Economic Policy Institute, *No Holds Barred: The Intensification of Employer Opposition to Organizing* 13 (2009) (hereafter ''Bronfenbrenner, *No Holds Barred''*) (75% of employers in period 1999–2003); Chirag Mehta and Nik Theodore, American Rights at Work, *Undermining the Right to Organize: Employer Behavior during Union Representation Campaigns* 5 (2005) (hereafter ''Mehta and Theodore, *Undermining the Right to Organize''*) (82% of employers); James Rundle, *Winning Hearts and Minds in the Era of Employee Involvement Programs,* in Organizing to Win: New Research on Union Strategies 213, 219 (Kate Bronfenbrenner, *et al.* eds., Cornell University Press 1998) (hereafter ''Rundle, *Winning Hearts and Minds''*) (87% of employers). Based on this review, there can be no doubt that ''[e]mployer campaigns against unionization have become standardized, almost formulaic, in large part because employers frequently turn to outside consultants and law firms to manage their anti-union efforts * * * [O]utside consultants have become ubiquitous in representation elections.'' Mehta and Theodore, *Undermining the Right to Organize* at 14.

As labor consultants' roles in employer responses to union activity has grown, so too has the role of law firms specializing in union avoidance. *See* Logan, *Union Avoidance Industry* at 658, *citing* Bruce E. Kaufman and Paula E. Stephan, *The Role of Management Attorneys in Union Organizing Campaigns,* 16 Journal of Labor Research 439 (1995); John Logan, Trades Union Congress, *U.S. Anti-Union Consultants: A Threat to the Rights of British Workers* 11 (2008) (hereafter ''Logan, U.S. Anti-Union Consultants''); 1984 Subcommittee Report at 2. As one study reported, attorneys provide employers with a range of services, and have varying degrees of involvement, during union avoidance campaigns:

> Typically at the first sign of union activity at a facility management seeks the advice and counsel of one or more attorneys. In some cases the attorney's role is largely one of providing legal assistance, such as advising supervisors on what constitutes an unfair labor practice under the NLRA, with overall direction of the firm's campaign entrusted to either top management or an outside consultant. In other situations, the attorney not only provides legal counsel but also plays an important (sometimes dominant) role in developing and implementing the company's anti-union strategy and campaign tactics.

Kaufman and Stephan at 440.

Another evolving dimension of the union avoidance industry is its increasingly sophisticated use of technology, including highly produced anti-union videos and the growing use of information technology. These methods permit consultants to more easily locate anti-union media stories and to disseminate persuader communication more quickly and easily. John Logan, *Consultants, Lawyers, and the 'Union Free' Movement,* 33 Industrial Relations Journal 197, 212 (2002) (hereafter ''Logan, *Union Free Movement*''). For example, a prominent labor relations consulting firm presents the following information on its Web site:

> In today's digital and media driven world, messages must be delivered in varied formats. Custom labor videos provide excellent pro-employer messages with hard-hitting facts as well as personal testimonials and perspectives from employees and supervisors. CD/DVD hosted presentations are another format that will enable you to reach the technical savvy of your employee group, allowing employees to browse through information in ''chapters'' and learn at their own pace. Digital communications strengthen critical messages with verbal and visual reinforcement.

Another consultant's Web site promises to ''reinforce your campaign message in a format that preserves employee anonymity, enhances personalization and enables dynamic content solutions. Employees will be able to access current news, organizational communications, union activity data and statistics anywhere, anytime.''

F. The Underreporting Problem Is Significant

Although it is clear that employer-consultant persuader activity has continued since enactment of the LMRDA, evidence suggests that much of this persuader activity goes unreported. Although there is some variation from year to year, the average number of representation cases filed with NMB during the FY 2005–2009 is 38.8; the average number of NLRB representation cases filed during the same period is 3,429.2.[9] Using the median utilization rate of consultants by employers from the studies discussed above, the Department would expect that 75% of the combined NLRB and NMB representation matters would result in 2,601 arrangements or agreements requiring a Form LM–20 consultant report annually during the same five year period.[10] However, the Department received an average of 192.4 LM–20's annually,[11] only 7.4% of those expected. It appears clear that only a small fraction of the organizing campaigns in which consultants were utilized resulted in the filing of a Form LM–20. When such a small proportion of persuader consulting activity is reported, employees are not receiving the information that Congress intended they receive.

Several observers have suggested that persuader reporting has decreased despite the increase in employer utilization of consultants because of the ineffectiveness of the LMRDA. John Logan, *'Lifting the Veil' on Anti-Union Campaigns: Employer and Consultant Reporting under the LMRDA, 1959–2001,* 15 Advances in Industrial and Labor Relations 295, 297(2007) (hereafter ''Logan, *Lifting the Veil*'') (''As the size and sophistication of the consultant industry has grown, the effectiveness of the law on consultant disclosure and reporting has diminished.'') Indeed, the charge is that

[9] *See Seventy-Fourth Annual Report of the National Labor Relations Board for the Fiscal Year Ended September 30, 2009* 10 available at *http://www.nlrb.gov/shared_files/Annual_Reports/NLRB2009.pdf;* 2009 NMB Annual Report, Table 1 at 79, available at *http://www.nmb.gov/documents/2009annual-report.pdf.*

[10] This figure may still under represent the total, as it does not take into account employers who hire multiple consultants or consultants who hire sub-consultants, each of whom would need to file separate Form LM–20 reports.

[11] Information on the number of LM reports received is available through the Department's Electronic Labor Organization Reporting System (e.LORS). The Department also used the FY 2009 total for the number of Form LM–20 reports received in estimating the number of Form LM–20 reports for the last information collection request renewal. *See* the Paperwork Reduction Act analysis in Section VII, C, 1.

''[e]nforcement of the consultant reporting requirements had practically ground to a halt by the mid-1980s—all during a time when, according to organized labor, employers and consultants were ever more actively, boldly, and creatively fighting unionization.'' *Id.* at 311.[12] A former consultant, Martin Jay Levitt, has confirmed this criticism:

> The law states that management consultants only have to file financial disclosures if they engage in certain kinds of activities, essentially attempting to persuade employees not to join a union or supplying the employer with information regarding the activities of employees or a union in connection with a labor relations matter. Of course, that is precisely what anti-union consultants do, have always done. Yet I never filed with Landrum-Griffin in my life, and few union busters do * * * As long as [the consultant] deals directly only with supervisors and management, [the consultant] can easily slide out from under the scrutiny of the Department of Labor, which collects the Landrum-Griffin reports.

Martin Jay Levitt (with Terry Conrow), *Confessions of a Union Buster* 41–42 (New York: Crown Publishers, Inc. 1993). Mr. Levitt describes consultant strategies that he employed to avoid reporting his activities:

> Within a couple of weeks I had identified the few supervisors who were willing to work extra hard for me * * * Through that handful of good soldiers I set to work establishing a network of rank-and-file employees who would serve as spies, informants, and saboteurs. Those so-called loyal employees would be called upon to lobby against the union, report on union meetings, hand over union literature to their bosses, tattle on their co-workers, help spread rumors, and make general pests of themselves within the organizing drive. I rarely knew who my company plants were * * *. It was cleaner that way. Nobody could connect me to the activities, I steered clear of the reporting requirements of Landrum-Griffin, and the workers' 'pro-company' counter campaign was believed to be a grass-roots movement.

Id. at 181. Mr. Levitt's description of the actual practice of labor relations consultants is consistent with prior statements by other consultants. *See* 1980 Subcommittee Report at 44 (quoting testimony of labor relations consultant and stating that the ''current interpretation of the law has enabled employers and consultants to shield their arrangements and activities'').[13]

Considering Mr. Levitt's extensive personal experience in the field, his statements raise concerns about the effectiveness of the LMRDA's reporting provisions. Mr. Levitt is incorrect in suggesting that the LMRDA, by its terms, requires direct contact between a consultant and employees before the statutory duty to report persuader activities is triggered. But the Department's most recent interpretation of LMRDA section 203(c) lends itself to the understanding described by Mr. Levitt, since it views most activity other than direct contact between a consultant and employees as falling within the ''advice'' exemption. If Mr. Levitt's statement is representative of the consulting industry, then the Department's most recent interpretation may be contributing to the substantial under-reporting of persuader activities that Congress wanted disclosed.

The evidence suggests that consultants, in order to avoid reporting under the LMRDA, engage predominantly in indirect persuader activity by directing their activities to the employer's supervisors. The clarification of the distinction between advice and persuader activity is intended to correct this problem, and will result in better information for employees when making decisions about representation.

G. The Proposed Interpretation Would Provide Information That Enables Employees To Make a More Informed Choice Regarding the Exercise of Their Rights To Organize and Bargain Collectively

The reporting of persuader and information-supplying agreements and arrangements enables workers to become more informed as they determine whether to exercise, and the manner of exercising, their protected rights to organize and bargain collectively. As stated above, such disclosure makes employees aware of the underlying source of the information they are receiving, helps them in assessing its content, and assists them in their decision making process regarding union representation. As described above, many employers engage third-party consultants, often attorneys, to conduct ''union avoidance'' or ''counter-organizing'' efforts to prevent workers from successfully organizing and bargaining collectively or otherwise acting concertedly. These efforts include the dissemination of persuader material to workers, whether conveyed verbally or in written or electronic formats, as well as the development and implementation of personnel policies and actions. These campaigns often begin before employees initiate a National Labor Relations Board (NLRB) or National Mediation Board (NMB) representation process. Moreover, third-party consultants and attorneys routinely conduct and direct these activities, as employers often retain their services to orchestrate, in whole or part, these union avoidance and counter-organizing efforts.

While in some cases workers may recognize the presentation of anti-union views as those of the employer, and may be aware of some of the employer's methods used to disseminate those views, employees generally do not know the source of those views or the tactics and strategies chosen to disseminate them. Indeed, to the extent that the employees recognize the presence of a concerted counter-campaign, they typically do not know that a third party has been retained to orchestrate it. *See,* Logan, *Union Free Movement,* at 201. The disclosure of the employer's agreement or arrangement with a third-party consultant provides workers with the true source of the arguments and information presented to them, particularly during union organizing efforts. With this information, employees can better evaluate the merits of the employer's views, and thus are better positioned to make choices regarding their protected rights. Further, workers often do not know that certain actions, such as revisions to personnel policies, are designed and implemented, in whole or part, by a third party, and have an object to persuade them. Nor are they aware whether a consultant or other independent contractor or organization is retained to provide information to the employer concerning the employees or union involved in the labor dispute.

To illustrate the above points, the Department observes that employers often argue to their employees that a union is a ''third party'' that they do not need to further their interests. *See* Logan, *U.S. Anti-Union Consultants,* at 7. However, independent of the merits of this view, employees would benefit from information concerning persuader agreements, which reveal a counter-campaign orchestrated in whole or part by a third-party consultant. Employees are more informed in exercising their protected rights when they know the

[12] *See also* Assistant Secretary Hobgood's testimony, discussed *supra,* ''acknowledg[ing] that Department [enforcement] activity had 'declined significantly' since the first few years after the enactment of [the LMRDA].'' 1980 Subcommittee Report at 45.

[13] *See also* Robert Michael Smith, *supra,* at 112, which states that ''[a]lthough they claimed to tailor their strategy to each client's needs, most modern union busters employed a standardized three-pronged attack. Cognizant of LMRDA guidelines requiring consultants to report their activity only when engaged *directly* in persuading employees in regards to their right to bargain collectively, most consulting teams utilized supervisory personnel as 'the critical link in the communications network.' '' (Italics in original.)

true source of those views and the methods used to disseminate them.

In particular, as discussed in more depth above, union avoidance efforts often utilize supervisors and other lower-level management representatives, as these individuals are generally known and more easily trusted by the employees than is the consultant. See, Logan, *Union Free Movement,* at 201–203. Employees may evaluate their choices differently when they have information concerning persuader agreements that reveal that a third-party consultant is coordinating the activities of the supervisors by, for example, drafting speeches for one-on-one meetings and directing other day-to-day interactions with employees. Indeed, as explained, the current interpretation of the ''advice exemption'' exempts reporting when consultants do not have direct contact with employees, even though the direction of supervisors' persuader activity by third-party consultants is precisely the area about which employees currently lack knowledge.

While employees may or may not otherwise know detailed information concerning their employer, potential union, or the larger labor-management context, the information concerning a persuader agreement with a third-party consultant may provide important clues to the employees that assist them in making decisions. Indeed, employees have a great deal of information available to them concerning unions, such as the annual union financial reporting provided on the Form LM–2, LM–3, and LM–4 pursuant to section 201 of the LMRDA. See submitted reports on the Department's Web site at *http://www.unionreports.gov;* see also S.Rep. 187 at 39–40, LMRDA Leg. Hist. at 435–436, stating, in part, that ''if unions are required to report all their expenditures, including expenses in organizing campaigns, reports should be required from employers who'' use third-party consultants.

The disclosure of consultants' interests in representation and bargaining campaigns promotes the same goals the Department has advanced in regulating unions' financial disclosure, and furthers parity between the two reporting regimes. The overarching purpose of the LMRDA's labor organization reporting requirements is to provide union members with ''all the vital information necessary for them to take effective action in regulating affairs of their organization.'' Labor Organization Annual Financial Reports, 68 FR 58,374, 58,380 (Oct. 10, 2003), quoting S. Rep. 187, 86th Cong., 1st Session, p.9, 1959 U.S.C.C.A.N. 2318, 2325 (1959). By mandating that labor organizations disclose their financial operations to employees they represent, Congress intended to promote union self-government by providing union members with complete and accurate information that would permit them to take effective action in regulating internal union affairs. ''[U]nion financial disclosure regimes are intended to reduce the informational advantages agents [unions] have over principals [members] and permit principals to monitor and assess the performance of agents.'' *Id.* at 58,378. Disclosure of persuader agreements, in addition to the currently required financial disclosure requirements for unions, will provide the contextualized information that will enhance employees' ability to evaluate the information and arguments presented by both the employer and the union. This creates more informed voters and more effective employee participation in election decision-making.

Furthermore, the financial disclosure provided by the Form LM–10 concerning the disbursements to the consultant, and the details of the terms and conditions of the persuader agreement on the Form LM–10 and the Form LM–20, also provides important information to the employees. See S.Rep. 187 at 10–11, LMRDA Leg. Hist. at 406–407, referring to the ''large sums of money'' spent on behalf of some employers to interfere with employee rights guaranteed by the NLRA. For example, as discussed in more detail below, employers have been estimated to spend approximately $200 million per year in direct payments to defeat organizing drives, with the actual value closer to $1 billion when factoring indirect costs, such as management time off to oppose unions. Logan, *Union Free Movement* at 198, *citing* John J. Lawler, *Unionization and Deunionization* (Columbia, SC: University of South Carolina Press 1990). When these persuader expenditures are made to third-party consultants, pursuant to a persuader agreement, employees should have access to information about these payments in order to assess arguments presented to them regarding the merits of organizing a union.

The LMRDA's provisions requiring the disclosure of consultant participation in representation elections have close analogs in Federal election campaign law. *See Buckley* v. *Valeo,* 424 U.S. 1 (1976). Early disclosure laws required the reporting of contributions and expenditures to reveal to voters interests or influence that may be involved in Federal election campaigns. *Buckley,* 424 U.S. at 61–62. By 1972, Congress replaced the early statutes with the Federal Election Campaign Act (FECA), which imposed reporting obligations on political committees and candidates that receive contributions or make expenditures of over a certain amount in a calendar year. *Id.* at 62. In assessing whether these disclosure requirements served a substantial government interest, the Court noted that FECA's disclosure requirements ''provide[] the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate' in order to aid the voters in evaluating those who seek Federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.'' *Id.* at 66–67, quoting H.R.Rep. No. 92–564, p. 4 (1971). This governmental interest, the Court held, was substantial, and met the constitutional requirements imposed on disclosure laws. *Id.* at 68; *see also Citizens United* v. *Federal Election Commission,* 130 S.Ct. 876, 916 (2010) (''disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.'')

The LMRDA's disclosure provisions are not unlike the financial disclosure requirements in the FECA and reviewed in *Buckley.* The LMRDA's requirements are intended to shed light on the financial interests of third parties who have assumed a role in influencing the electorate, which, in the case of the LMRDA, consists of employees making decisions regarding union representation and collective bargaining. Disclosure of the fact that consultants participating in the representation campaign may not be disinterested third parties, but rather are in the business of discouraging union activity, permits employees to better evaluate the arguments presented to them by the consultants. This need for transparency is underscored throughout the statute's legislative history: ''Legislation was needed to control the activities of management middlemen who flitted about the country on behalf of employers interfering with restraining and coercing employees in the exercise

of the right to organize and bargain collectively * * *. The committee believes that employers should be required to report their arrangements with these union-busting middlemen.'' S. Rep. No. 85–1684, 85th Cong., 2d Sess. 7–8. To be sure, disclosure statutes serve to ''[empower] voters so that they use their vote effectively,'' thus increasing voter competence. *See* Garrett, Elizabeth, *The William J. Brennan Lecture in Constitutional Law: The Future of Campaign Finance Reform Laws in the Courts and in Congress,* 27 Okla. City U. L. Rev. 665, 675 (2002). ''Just as disclosure in the corporate realm improves confidence in the economic system and demonstrates values undergirding the economy, disclosure can serve the same function in the political realm.'' *Id.* at 691

The Department contends that this reasoning also applies to workers making a determination regarding a vote in a union representation election or otherwise exercising their rights to organize and bargain collectively. Furthermore, regardless of election outcome, the integrity of the union representation election process is strengthened when voters become better informed—by virtue of union disclosure, as well as by consultant and employer disclosure. In this way, the public can be more confident that the election outcomes reflect the sound and informed intent of the voters. This in turn creates greater confidence and trust in labor-management relations.

Similarly, the NLRB has promoted and protected the value to employees of full and accurate information during representation campaigns in its regulation and maintenance of ''laboratory conditions'' surrounding union elections. *See General Shoe Corp.,* 77 NLRB 124 (1948). The Board's high standard governing the conduct of the parties during representation elections requires the Board ''to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees.'' *Id.* at 127. The Board has held that determining the ''uninhibited desires of employees'' is impeded by ''a lack of information with respect to one of the choices available during the election.'' *Excelsior Underwear,* 156 NLRB 1236, 1240 (1966) (employer must file with NLRB election eligibility list with names and addresses of all eligible voters, which is provided to all parties in election). In adopting the *Excelsior* rule, the Board noted that disclosure of the eligible voter list will maximize the likelihood that all voters will be exposed to arguments for, as well as against, union representation; that it will permit the employees to make a more fully informed and reasoned choice; that it will tend to eliminate challenges to voters based solely on lack of knowledge of their identity; that many objections to elections will be settled well in advance of the election; and that the public interest will be furthered in obtaining more prompt resolutions of questions of representation. *Id.* at 1240–1241.

Further, the Board has promoted the goal of achieving the ''uninhibited desires of employees'' in a multitude of election cases regulating the campaign conduct of the parties. *See, e.g., Peerless Plywood Co.,* 107 NLRB 427, 429 (1954) (forbidding election speeches on company time to assembled employees within 24 hours before election because such speech ''overrides arguments made through other campaign media and gives an unfair advantage to the party, whether employer or union, who in this manner obtains the last most telling word.''); *Milchem, Inc.,* 170 NLRB 362 (1968) (election set aside where parties engage in prolonged conversations with prospective voters waiting to cast their ballots, regardless of the content of the remarks exchanged); *Kalin Construction Co.,* 321 NLRB 649 (1996) (prohibiting employer changes in the paycheck process during the 24-hour period prior to the election because the paycheck is symbol of ''economic dependence of the employees on their employer'' that must not be made part of last-minute campaign).

As with the Board's rules promoting employee free choice, the LMRDA's requirements regarding the disclosure of consultant participation in representation campaigns, and specifically the limitations on the interpretation of ''advice'' proposed here, advance the goals of an informed electorate able to distinguish between well-reasoned and accurate information and campaign pressure. The environment of an NLRB-supervised election is highly competitive and adversarial, and the parties can engage in sophisticated campaign tactics that approach, but may not cross into, objectionable election conduct or unfair labor practices. Pressurized campaign tactics can and do lead to objections regarding the outcome of the election, which results in long periods of litigation before the NLRB about the election conduct. Such disputes heighten the acrimony between the parties, and in the event that the union is ultimately certified, prevent bargaining during the pendency of the election-related litigation. Making transparent the role of consultants during a campaign will permit employees to better evaluate campaign materials and tactics, increase the integrity of the election outcome, and promote reliance on the results of the election. Non-disputatious representation elections thus establish a firm foundation for the bargaining relationship that may ensue following an election.

H. Effects on Contemporary Labor-Management Relations

In enacting section 203 of the LMRDA, Congress was concerned about the effect of consultant activity on peaceful labor relations. The National Labor Relations Act was enacted in 1935 in part to promote industrial peace through establishing and protecting workers' fundamental rights to organize and bargain collectively. *See* 29 U.S.C. 151. By 1959, it had become clear to Congress through the McClellan Committee hearings that activities of consultants, or ''middlemen'' as they were referred to, were interfering with those protected rights. S. Rep.187 at 11, LMRDA Leg. Hist. at 407. Whether or not these activities were lawful under the NLRA, or fall into a ''gray area,'' they were ''not conducive to sound and harmonious labor relations'' and thus should be reported. *Id.* Full disclosure of those activities ensured an employee's freedom of choice by revealing to him the real source of propaganda activity designed to persuade him in the exercise of his protected rights.

As in 1959, there is strong evidence today that the undisclosed activities of labor relations consultants are interfering with worker's protected rights and that this interference is disruptive to effective and harmonious labor relations. For instance, research in the industrial relations arena shows that newly certified unions are much less likely to secure a first contract in cases in which the employer has hired a consultant.[14] *See* Logan, *Union Free*

[14] First-contracts are crucial to newly certified unions. Under section 9(c)(3) of the NLRA, no elections may be held within one year of the election of an incumbent employee representative. 29 U.S.C. 159(c)(3). Employers understand that unions that do not show results in bargaining during that first year are more vulnerable to challenges, including decertification petitions. As a result, employers may adopt strategies, with the assistance of consultants, to stall bargaining and prevent the adoption of a first contract. One year after an election in which employees voted in favor of union representation, only 48% of bargaining units with certified representatives have executed an initial collective bargaining agreement. Bronfenbrenner, *No Holds Barred* at 22. The Department notes that the observed effects may not be entirely attributable to the use of a consultant,

Continued

Movement at 198, *citing* R. Hurd, *Union Free Bargaining Strategies and First Contract Failures,* in Proceedings of the 48th Meeting of the Industrial Relations Research Ass'n 145 (P. Voos ed. IRRA 1996), and G. Pavy, *Winning NLRB Elections and Establishing Collective Bargaining Relationships,* in Restoring the Promise of American Labor Law 110 (Sheldon Friedman *et al.* eds. ILR Press 1994); Bronfenbrenner, *Employer Behavior* at 84 (citing probability of winning first contract declining by 10 to 30 percent in bargaining units in which the employer utilizes a labor relations consultant).

Studies also show that accompanying the proliferation of employers' use of labor relations consultants is the substantial utilization of anti-union tactics that are unlawful under the NLRA. Since the rise of consultant industry in the 1970s and 1980s, ''no-holds-barred counter-organising campaigns'' have become mainstream. Logan, *Union Free Movement* at 207. Some consultants counsel the employer to fire union activists for reasons other than their union activity, or engage in other unfair labor practices, particularly because the penalties for unlawful conduct are typically delayed and may be insignificant, from the employer's viewpoint, compared to the longer-term obligation to deal with employee representatives. Logan, *Union Free Movement* at 207–208 (consultants promote unlawful discharge, surveillance, interrogation, unscheduled pay increases, and threats of dismissal) *see also* Logan, *The Union Avoidance* at 660–661 (allegations of a prominent anti-union law firm assisting employer in engaging in unlawful tactics in an anti-union campaign in which the employer paid the law firm $2.7 million). If not unlawful, consultant tactics may be merely offensive. For instance, a prominent anti-union law firm, utilizing a common approach among such firms, advances ''militant anti-union rhetoric when marketing its services,'' such as pushing employers to regard union organizers as a ''contagious disease'' and to inoculate their employees against the ''union virus.'' The same consultant also has run a seminar titled, ''Union Avoidance War Games.'' Logan, *The Union Avoidance Industry* at 659.

With or without the advice of labor consultants, employers utilize aggressive and even unlawful tactics in opposing unions. Bronfenbrenner found that during the course of an NLRB-supervised election, 14% of employers utilize surveillance, 63% used supervisors to interrogate employees, 54% used supervisors to threaten employees, 47% threatened cuts in benefits or wages, 18% granted unscheduled raises, 46% made promises of improvement, and 41% harassed and disciplined union activists. Bronfenbrenner, *No Holds Barred* at 10–11. She further estimates that employers discharge union-activist employees in 34% of NLRB-supervised elections, with an average of 2.6 employees discharged per election. *Id.*

The acquired expertise of labor consultants in union avoidance has enabled them to request and be granted complete autonomy in conducting employers' responses to union campaigns. Logan, *Union Free Movement* at 200; Logan, *Union Avoidance Industry* at 652. However, given the view of consultants noted above that they need to operate unseen in the background in order to avoid LMRDA reporting requirements, it is more likely today that employers will hide the activities of consultants, whereas in the 1950s it was more likely that consultants were hired to mask the anti-union sentiments of employers. Logan, *Union Avoidance Industry* at 652. For a more detailed discussion of the activities engaged in by consultants during an anti-union campaign, *see* Logan, *Union Free Movement in the U.S.A.,* at 200–212. Moreover, the labor consultant industry has developed into a multi-million dollar enterprise. Employers have been estimated to spend approximately $200 million per year in direct payments to defeat organizing drives, with the actual value closer to $1 billion when factoring indirect costs, such as management time off to oppose unions. Logan, *Union Free Movement* at 198, *citing* John J. Lawler, *Unionization and Deunionization* (Columbia, SC: University of South Carolina Press 1990). As such, workers currently or potentially involved in organizing campaigns, as well as unions, and even other employers and the public need information concerning these expenditures to ensure the free and informed choice of employees and harmonious labor-management relations.

The deleterious effect of labor consultant activity on industrial relations is not a new theme. Thirty years ago, it was noted that consultant-led anti-union campaigns and their resulting disruptions inevitably result in declines in workplace productivity. 1980 Subcommittee Report at 42. Similarly, sixteen years ago, it was noted that the ''worst features'' of political campaigns had been imported into union election campaigns, Dunlop Commission Final Report at 15, resulting in confrontation and conflict that unnecessarily colors labor-management relations. Dunlop Commission Fact-Finding Report at 68. Current research indicates that these observations are as true today as they were in their time.

The Department concludes that, as was true in the 1950s, the undisclosed use of labor relations consultants by employers interferes with employees' exercise of their protected rights to organize and bargain collectively and disrupts labor-management relations. The current state of affairs is clearly contrary to Congressional intent in enacting section 203 of the LMRDA. Congress intended that employees be permitted to know whether employers are using consultants to run anti-union campaigns or otherwise engage in persuader activities. Such information provides employees the ability to assess the underlying source of the information directed at them, aids them in evaluating its merit and motivation, and assists them in developing independent and well-informed conclusions regarding union representation. As noted above, the rise in the use of labor consultants, the increased tension in labor-management relations, and evidence that the Department's interpretation of the ''advice'' exemption has led to the under-reporting of these activities all support revision of the interpretation. The Department must take action to ensure that its interpretation of the provisions of section 203 comports with Congressional intent.

V. Proposed Revised Interpretation of the Section 203(c) ''Advice'' Exemption

As a result of the evidence cited above, the Department considers its current interpretation of the LMRDA section 203(c) ''advice'' exemption as contributing to substantial underreporting of employer-consultant persuader agreements. The Department's current interpretation of ''advice'' does not represent the best reading of the statutory language and Congressional intent.

The application of the ''advice'' exemption depends on whether the activities can fairly be considered as exclusively giving ''advice,'' as opposed to engaging, in whole or part, in any activities that go beyond mere advice and constitute direct or indirect persuasion of employees. For the purposes of the Department's interpretation of section 203(c), ''advice'' means an oral or written

as some employers may be less supportive of unionization and may choose certain tactics and strategies independent of the use a consultant.

recommendation regarding a decision or a course of conduct. A lawyer or other consultant who exclusively counsels employer representatives on what they may lawfully say to employees, ensures a client's compliance with the law, or provides guidance on NLRB practice or precedent, is providing ''advice.'' However, persons who give advice to employers may also engage in activities that must be reported. When a consultant or lawyer, or her agent, communicates directly with employees in an effort to persuade them, the ''advice'' exemption does not apply. The duty to report can be triggered even without direct contact between a lawyer or other consultant and employees, if persuading employees is an object, direct or indirect, of the person's activity pursuant to an agreement or an arrangement with an employer.

As discussed above in the discussion of the textual basis for the interpretation, an essential place to begin to draw the distinction between advice and persuader activity is with regard to the preparation of or revision to persuasive materials by labor relations consultants and other persons. Under the proposed interpretation, when such a person prepares or provides a persuasive script, letter, videotape, or other material or communication, including electronic and digital media, for use by an employer in communicating with employees, the ''advice'' exemption does not apply and the duty to report is triggered. Similarly, a consultant's revision of the employer's material or communications to enhance the persuasive message also triggers the duty to report, unless the revisions exclusively involve advice and counsel regarding the exercise of the employer's legal rights. Material or communications, or revisions thereto, are persuasive if they, for example, explicitly or implicitly encourage employees to vote for or against union representation, to take a certain position with respect to collective bargaining proposals, or refrain from concerted activity (such as a strike) in the workplace.

The concentration on the application of the proposed interpretation to the preparation of persuasive materials and communications, however, does not provide sufficient guidance in view of the array of contemporary practices and tactics of labor consultants. For example, persuader activities may additionally include: Training or directing supervisors and other management representatives to engage in persuader activity; establishing anti-union committees composed of employees; planning employee meetings; deciding which employees to target for persuader activity or discipline; creating employer policies and practices designed to prevent organizing; and determining the timing and sequencing of persuader tactics and strategies.[15] In these instances, the lawyer or labor consultant has gone beyond mere recommendation and has engaged in actions, conduct, or communications with the object to persuade employees, either directly or indirectly, about the employees' protected, concerted activity. As such, these activities, whether or not the consultant is in direct contact with the employees, trigger the duty to report. These persuader actions, conduct, or communications are precisely the type of activities that Congress intended to bring to light through the section 203 disclosure requirements, and they should not be exempt from reporting by an overbroad application of the section 203(c) advice exemption.

The Department has considered whether seminars, webinars, or conferences offered by lawyers or labor consultants to employers and their representatives must be reported. During such events, guidance is offered to attendees, who represent multiple employers on labor-management relations matters, including how to persuade employees concerning their organizing and bargaining rights. In general, to the extent that these meetings involve actions, conduct, or communications that have a direct or indirect object to persuade employees concerning their representation or collective bargaining rights, then the consultant and employer would be required to file the necessary reports. By contrast, in cases in which a seminar or conference involves no persuader activity, then no duty to report is triggered under the LMRDA. For example, if persuader materials, which are intended for presentation, dissemination, or distribution to employees, are provided to employers at such events, then reporting is triggered. Additionally, if, at such events, consultants train supervisors to conduct individual or group employee meetings, then reporting is also triggered. These examples reflect actions, conduct, and communications that have an object to persuade employees. The Department generally views so-called ''union-avoidance'' seminars and conferences offered by lawyers or labor consultants to employers to involve reportable persuader activity. The Department also cautions that employers and consultants cannot avoid the reporting requirements by inappropriately labeling an otherwise reportable persuader agreement or arrangement involving a seminar or conference as ''advice.'' The Department invites specific comment on the nature and scope of such seminars, and the applicability of the section 203 reporting requirements to them.

In the past, the Department has concluded that in cases in which a particular consultant activity involves both advice to the employer and persuasion of employees, the ''advice'' exemption controls. *See, e.g., United Automobile Workers* v. *Dole, supra,* 869 F.2d at 617–618 (Secretary adopted permissible interpretation that ''in the overlap,'' advice exemption took precedence over the coverage provision). Based on its administrative authority and discretion to select the controlling provision—the coverage provision or the advice provision—that applies in cases in which an activity involves among its purposes a direct or indirect object to persuade employees, 869 F.2d at 620, the Department proposes to adopt its initial 1960 interpretation, which held that ''reporting is required in any situation where it is impossible to separate advice from activity that goes beyond advice.'' Where a particular consultant activity has among its purposes an object, direct or indirect, to persuade employees, the duty to report is triggered. Because persons who give advice to employers in the context of a union organizing campaign or labor dispute may frequently also engage in activities that trigger reporting, the Department concludes that the choice to require reporting in such cases better implements Congressional intent. Thus, if a consultant engages in activities constituting persuader services, then the exemption would not apply even if activities constituting ''advice'' were also performed or intertwined with the persuader activities. In such circumstance the activities provided pursuant to the agreement or

[15] Services offered on consultant Web sites may also include: Counter-organizing campaigns, including: Developing a campaign strategy; educating management about the organizing process; developing an employee communications program; training, coaching, or counseling supervisors and managers; directing employees to develop and manage the employer's message; helping businesses avoid union petitions and card signing drives; providing vulnerability assessment; labor contract negotiations; developing corporate campaign strategies; providing labor research and communications, including preparation of customized videos, CDs and DVDs with pro-employer messages, and employee and supervisor testimonials; and developing plans to respond to a strike and employees' return to work.

arrangement with an employer should be reported.[16]

Regarding the application of the advice exemption to attorneys, the Department first notes that, with respect to reports by attorneys,[17] the ''advice'' exemption establishes that so long as the attorney confines him- or herself to advice, he or she need not report, but if the attorney engages in persuader activity, he or she is subject to the reporting requirements. *Humphreys, Hutcheson, and Moseley* v. *Donovan,* 755 F.2d 1211, 1216 (6th Circuit 1985). For example, if a lawyer drafts a speech for a company's top manager to give to workers in a captive audience setting, neither the lawyers' work to ensure its legal sufficiency or implications nor a characterization of the work product as legal advice would alter the reportability of the speech as persuader activity. Section 204 exempts attorneys from reporting ''in any report required to be filed'' any information protected by the attorney-client privilege. 29 U.S.C. 434. By this provision, Congress intended to afford to attorneys the same protection as that provided in the common-law attorney-client privilege, which protects from disclosure communications made in confidence between a client seeking legal counsel and an attorney. *Id.* In general, the fact of legal consultation, clients' identities, attorney's fees and the scope and nature of the employment are not deemed privileged. *Id.; see also* Restatement (Third) of the Law Governing Lawyers § 69. However, in applying the privilege to ''report[s] required to be filed,'' this provision is operative only after the attorney is required to report because he or she has engaged in persuader activity. Therefore, attorneys who engage in persuader activity must file the Form LM–20, which may require information about the fact of the agreement with an employer involving persuader activity, the client's identity, the fees involved and the scope and nature of the employment. To the extent that an attorney's report about his or her agreement or arrangement with an employer may disclose privileged communications, for instance where an attorney provides an employer with both legal advice and engages in persuader activities, the privileged matters are protected from disclosure.

For the foregoing reasons, the Department proposes to revise the Form LM–10 and Form LM–20 instructions to better implement the objectives of section 203. The revisions to the instructions will provide filers with guidance on the use of the ''advice'' exemption of section 203(c).

The Department proposes to amend page 3 of the Form LM–20 instructions to read as follows (the revised language is in *italics*):

GENERAL INSTRUCTIONS FOR AGREEMENTS, ARRANGEMENTS, AND ACTIVITIES

You must file a separate report for each agreement or arrangement made with an employer where the object is, directly or indirectly:

(1) To persuade employees to exercise or not to exercise, or to persuade them as to the manner of exercising, the right to organize and bargain collectively through representatives of their choice. (**Excluded** are agreements or arrangements that cover services relating exclusively to: (1) Giving or agreeing to give advice to the employer; (2) representing the employer before any court, administrative agency, or tribunal of arbitration; and (3) engaging in collective bargaining on the employer's behalf with respect to wages, hours, or other terms or conditions of employment or the negotiation of any agreement or any questions arising under the agreement.)

or

(2) To supply the employer with information concerning activities of employees or a labor organization in connection with a labor dispute involving such employer. (**Excluded** are agreements or arrangements that cover services relating exclusively to supplying the employer with information for use only in conjunction with an administrative, arbitral, or judicial proceeding.)

NOTE: *If the agreement or arrangement provides for any reportable activity, the exemptions do not apply and information must be reported for the entire agreement or arrangement.*

With respect to persuader agreements or arrangements, ''advice'' means an oral or written recommendation regarding a decision or a course of conduct. In contrast to advice, ''persuader activity'' refers to a consultant's providing material or communications to, or engaging in other actions, conduct, or communications on behalf of an employer that, in whole or in part, have the object directly or indirectly to persuade employees concerning their rights to organize or bargain collectively. Reporting is thus required in any case in which the agreement or arrangement, in whole or part, calls for the consultant to engage in persuader activities, regardless of whether or not advice is also given.

Reportable Agreements or Arrangements

An employer and consultant each must file a report concerning an agreement or arrangement pursuant to which the consultant engages in activities that have as a direct or indirect object to, explicitly or implicitly, influence the decisions of employees with respect to forming, joining or assisting a union, collective bargaining, or any protected concerted activity (such as a strike) in the workplace.

Specific examples of persuader activities that, either alone or in combination, would trigger the reporting requirements include but are not limited to: drafting, revising, or providing a persuader speech, written material, website content, an audiovisual or multimedia presentation, or other material or communication of any sort, to an employer for presentation, dissemination, or distribution to employees, directly or indirectly; planning or conducting individual or group meetings designed to persuade employees; developing or administering employee attitude surveys concerning union awareness, sympathy, or proneness; training supervisors or employer representatives to conduct individual or group meetings designed to persuade employees; coordinating or directing the activities of supervisors or employer representatives to engage in the persuasion of employees; establishing or facilitating employee committees; developing employer personnel policies or practices designed to persuade employees; deciding which employees to target for persuader activity or disciplinary action; and coordinating the timing and sequencing of persuader tactics and strategies.

Reportable agreements or arrangements include those in which a consultant plans or orchestrates a campaign or program to avoid or counter a union organizing or collective bargaining effort, such as through the specific persuader activities illustrated above, or otherwise engages on behalf of the employer, in whole or part, in any other actions, conduct, or communications designed to persuade employees. Persuader activities trigger reporting whether or not the consultant performs the activities through direct contact with any employee. For example, a consultant must report if he or she engages in any activities that utilize employer representatives to persuade employees, such as by planning, directing, or coordinating the activities of employer representatives or providing persuader material to them for dissemination or distribution to employees, or in which the consultant drafts or implements policies for the employer that have as an object to directly or indirectly persuade employees.

Exempt Agreements or Arrangements

No report is required concerning an agreement or arrangement to exclusively provide advice to an employer. For example, a consultant who exclusively counsels employer representatives on what they may lawfully say to employees, ensures a client's compliance with the law, or provides

[16] The Department's position has consistently been, and remains, that in those cases in which an agreement or arrangement involves multiple activities, any one persuader activity covered by the agreement will trigger the duty to report all activities covered by the agreement or arrangement. *See* Form LM–20 Instructions at *http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-20_Instructions.pdf* (''If the agreement or arrangement provides for any reportable activity, you must report the information required for the entire agreement or arrangement.'').

[17] The ''advice'' exemption in section 203(c) excuses ''persons''—lawyers and non-lawyers alike—from reporting agreements or arrangements covering the services of such person ''by reason of his giving or agreeing to give'' advice to an employer.

guidance on NLRB practice or precedent, is providing ''advice.'' Reports are not required concerning agreements or arrangements to exclusively provide such advice.

Generally, no report is required for an agreement or arrangement whereby a lawyer or other consultant conducts a group seminar or conference for employers solely to provide guidance to them. However, if a consultant engages in persuader activities at such meetings, such as those activities enumerated above, then the consultant and employer would be required to file reports concerning such agreement or arrangement. The Department cautions that employers and consultants cannot avoid the reporting requirements by inappropriately labeling an otherwise reportable persuader agreement or arrangement as a ''seminar'' or ''conference.''

Additionally, the Department proposes to include the above guidance in the revised Form LM–10 instructions in like manner.[18] The Department seeks comment on its proposed revisions to the Form LM–20 and Form LM–10 instructions.

VI. Proposed Revised Form LM–20, Form LM–10, and Instructions

The Department has not revised the Form LM–20 and Form LM–10 since the advent of the forms in 1963. *See* 28 FR 14381. With today's proposed change to the interpretation of the advice exemption of section 203(c), the Department also proposes revising Form LM–20 and Form LM–10 and their instructions. The Department is also proposing revisions to sections 405.5 and 405.7 of title 29 of the Code of Federal Regulations to update cross-references in those sections to the instructions.

While some of the proposed revisions are minor stylistic and layout modifications (with the exception of the proposed ''advice'' exemption guidance described above), there are four other significant proposed changes: (1) The mandating of electronic filing for each form, with language in each set of instructions depicting such process and guidance concerning the application for a hardship exemption from such electronic filing; (2) the addition of a detailed checklist that Form LM–10 and Form LM–20 filers must complete to disclose the scope of activities that consultants have engaged, or intend to engage, in under a reportable agreement or arrangement; (3) the changes to the Form LM–20 and instructions, including the requirement for filers to report their Employee Identification Number, as applicable, and explanations for terms ''agreement or arrangement'' and ''employer''; and (4) the changes to the Form LM–10 and instructions, including the changes described above to the Form LM–20 and instructions, as well as a revamped layout for the Form LM–10, which divides the report into four parts, each presenting aspects of the reportable transactions, agreements, and arrangements required by sections 203(a)(1)–(5) of the LMRDA, in a more user-friendly manner.

These proposed changes are each discussed in more depth below, and the Department invites comments on each of them, as well as any other aspects regarding the layout of the forms and instructions.

A. Mandatory Electronic Filing for Form LM–20 and Form LM–10 Filers

Currently, only the Form LM–2, Form LM–3, Form LM–4, Labor Organization Annual Reports, can be submitted to OLMS electronically, and only the Form LM–2 must be filed electronically. However, an electronic filing option is planned for all LMRDA reports as part of an information technology enhancement. Electronic reporting contains error-checking and trapping functionality, as well as online, context-sensitive help, which improves the completeness of the reporting. Electronic filing is more efficient for reporting entities, 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. In contrast, 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 Department proposes to mandate that the Form LM–20 and Form LM–10 be filed electronically. Currently, labor organizations that file the Form LM–2 are required by regulation to file electronically, and there has been good compliance with this requirement. Like labor unions, employers and consultants have the information technology resources and capacity to file electronically. Further, OLMS has deployed technology improvements that greatly facilitate its electronic filing process and eliminate the expenses formerly associated with such filing.

The proposed Form LM–20 and Form LM–10 Instructions outline a process for seeking an exemption from the electronic filing requirement that is identical to the Form LM–2 process. *See* Form LM–2 Instructions, Part IV: How to File, located at: *http://www.dol.gov/olms/regs/compliance/erds/LM2Instr2-2-04koREVISED.pdf.* The proposed forms would be completed online, electronically signed, and submitted with any required attachments to the Department using the OLMS Electronic Forms System (EFS). The electronic forms would be downloaded from the OLMS Web site at *http://www.olms.dol.gov.*

A filer will be able to file a report in paper format only if the filer asserts a temporary hardship exemption or applies for and is granted a continuing hardship exemption. The temporary hardship exemption process, which is currently in place for Form LM–2 filing[19] and would be applied to mandatory electronic filing of the Form LM–20 and LM–10, is as follows:

If a filer experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the organization may file the form in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 1.b (Hardship Exempted Report) that the filer is filing under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards, which can be reached at the address below, by e-mail at *OLMS-Public@dol.gov,* by phone at 202–693–0123, or by fax at 202–693–1340.

If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

For a continuing hardship exemption, which is also applicable to Form LM–2 filing[20] and will be applied to mandatory electronic filing of the Form LM–20 and LM–10, a filer may:

(a) Apply in writing for a continuing hardship exemption if it cannot be filed electronically without undue burden or expense. Such written application shall be received at least 30 days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b). The application must be mailed to the following address: U.S. Department of Labor, Office of Labor-Management Standards, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by e-mail at *OLMS-Public@dol.gov,* by phone at 202–693–0123, or by fax at 202–693–1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) The justification for the

[18] The Department also proposes to replace IM entry 265.005 with the proposed text.

[19] *See http://www.dol.gov/olms/regs/compliance/erds/LM2Instr2-2-04koREVISED.pdf at 2.*

[20] *See http://www.dol.gov/olms/regs/compliance/erds/LM2Instr2-2-04koREVISED.pdf* at 2–3.

requested time period of the exemption; (2) the burden and expense that the filer would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the filer shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of union members and so notifies the applicant, the filer shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, the filer shall submit the report(s) in paper format by the required due date. The filer may be required to submit Form LM–20 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 1.b (Hardship Exempted Report) that the filer is filing under the hardship exemption procedures.

If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

The Department seeks comment on its mandatory electronic filing proposal for Form LM–20 and Form LM–10 filers, including any specific comments on the process for obtaining a hardship exemption, and the proposed revisions to the forms and instructions.

B. Detailing the Activities Undertaken Pursuant to a Reportable Agreement or Arrangement

The current instructions to the Form LM–20 and Form LM–10 do not provide detailed guidance to the filer concerning how to report the nature of the activities undertaken by a consultant pursuant to an agreement or arrangement to persuade. For example, the current Form LM–20 Instructions [21] for Item 11, Description of Activities, states:

For each activity to be performed, give a detailed explanation of the following:

11.a. *Nature of Activity.* Describe the nature of the activity to be performed. For example, if the object of the activity is to persuade the employees of Employer X to vote ''no'' on a representation election, so state.

Similarly, the current Form LM–10 Instructions [22] in Item 12, Circumstances of all Payments, states:

[You] must provide a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report. Your explanation must contain a detailed account of services rendered or promised in exchange for promises or payments you have already made or agreed to make. Your explanation must fully outline the conditions and terms of all listed agreements.

In practice, the Department receives only vague descriptions of reportable persuader or information supplying activity, such as, ''employed to give speeches to employees regarding their rights to organize and bargain collectively'' and ''presented informational meetings to company employees relative to the process of unionization, the role of the NLRB, and collective bargaining.''

As the review of the literature above has demonstrated, a wide range of activities and tactics have been utilized by employers, and employees and the public have a need to know in detail the types of activities in which consultants engage.[23] Vague and brief narrative descriptions and characterizations that are permitted on the current Form LM–20 serve little utility, and a checklist of activities is the best way to ensure more complete reporting of such persuader activities. Additionally, filers are provided an ''other'' box on the checklist, and will be required to check this box and separately identify any other persuader or information supplying activities that are not listed in the checklist.

The Department seeks comment on the proposed checklist approach for detailing persuader and information supplying activities, as well as the items on the list itself.

C. Proposed Revised Form LM–20 and Instructions

The Proposed Form LM–20 and Instructions (*see* appendix A) largely follow the layout of the current form and instructions, although the style has been altered. The proposed form is two pages in length and contains 14 items. The first page includes the first five items, which detail contact and identifying information for the consultant: The file number (Item 1.a.) and contact information for the consultant (Item 2), including information detailing alternative locations for records (Item 3), the date the consultant's fiscal year ends (Item 4), and the type of filer (Item 5), *i.e.,* an individual, partnership, or corporation. The proposed new Item 2 would require the consultant to provide, if applicable, its Employer Identification Number (EIN), which would assist the Department and public in identifying and analyzing other filings by the consultant and any individuals and entities reported on the form. The proposed new Items 1.b. and 1.c. are for the filer to indicate if the report is filed pursuant to a hardship exemption from the proposed electronic filing requirement or is amended, respectively. These items are not in the current form.

Additionally, the first page includes three items describing the employer agreement: The employer's contact information (Item 6), which adds the requirement to report the employer's EIN, the date the agreement was entered into (Item 7), and the person(s) through whom the agreement was made (Item 8). Item 8, which currently requires a consultant to report only the employer representative through whom the reported agreement or arrangement has been made, would be amended to require an indirect party to an employer-consultant agreement or arrangement to identify in a new Item 8(b) the consultant with whom he or she entered into the reportable agreement or arrangement. This specificity is added to clarify the reporting now required on the Form LM–20 when such indirect parties, or ''sub-consultants,'' are engaged by a primary consultant to assist in implementing a reportable agreement or arrangement. The primary consultant would report the employer representative in a new Item 8(a). This requirement is now included in the Form LM–20 Instructions in Part II, Who Must File, but its addition on the form itself will enable the Department, employees, and the public to more easily understand the nature of the activities conducted pursuant to the

[21] The current Form LM–20 form and instructions are available on the OLMS Web site at: *http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-20p.pdf* and *http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-20_Instructions.pdf.*

[22] The current Form LM–10 form and instructions are available on the OLMS Web site at: *http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-10p.pdf* and *http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-10_instructions.pdf.*

[23] As one reviewer has demonstrated, various studies show that in response to union organizing campaigns, employers in the U.S. utilize the following tactics: Between 82% and 93% of employers held forced-attendance (''captive audience'') meetings; between 70% and 75% of employers distribute leaflets in the workplace; between 76% and 98% of employers utilize supervisor one-on-one sessions; between 48% and 59% of employers promised improvements; between 20% and 30% of employers granted unscheduled raises; between 25% and 30% of employers fired union supporters; and between 31–50% of employers aided anti-union employees committees. *See* Logan, *U.S. Anti-Union Consultants* at 5, Table 1, compiling and citing results from Bronfenbrenner, *Employer Behavior* at 75–89; Kate Bronfenbrenner, U.S. Trade Deficit Review Commission, *Uneasy Terrain* (2000); Rundle, *Winning Hearts and Minds* at 213–231; and Mehta and Theodore, *Undermining the Right to Organize.* In addition, a 2009 study showed that 41% of employers used anti-union DVDs, videos, or Internet; 14% used surveillance; 28% attempted to infiltrate organizing committees; 64% interrogated workers about union activity, and 63% of supervisors interrogated workers during one-on-one meetings. Bronfenbrenner, *No Holds Barred* at 10–11, Table 3.

agreement or arrangement and determine if additional reports are owed. The front page also includes the signature blocks for the president (Item 13) and the treasurer (Item 14), including the date signed and telephone number.

The second page provides more detail concerning the agreement. Items 9 and 10 would be unchanged. Item 9 requires the filer to indicate if the agreement called for activities concerning persuading employees, supplying the employer with information concerning employees or a labor organization during a labor dispute, or both. Item 10 asks for the terms and conditions of the agreement, and requires written agreements to be attached. Item 11 calls for the provision of certain details concerning any covered agreement or arrangement, and a proposed Item 11.a, as described above in Section VI, B, would require filers to check boxes indicating specific activities undertaken as part of the agreement or arrangement. There is also an ''other'' box, which requires the filer to provide a narrative explanation of any other reportable activities planned or undertaken that are not specifically contained on the list.

Additionally, Items 11.b, 11.c, and 11.d, respectively, require the consultant, as before the proposed revisions, to indicate the period during which activity was performed, the extent of performance, and the name and address of the person(s) through whom the activity was performed. Item 11.d. would be revised to ask filers to specify if the person or persons performing the activities is employed by the consultant or serves as an independent contractor. In the latter scenario, the person or persons performing the activities is an indirect party to an employer-consultant agreement or arrangement, who would owe a separate Form LM–20 report. This requirement is not new, and it has been incorporated in the Form LM–20 Instructions in Part II, Who Must File, but this addition on the form itself will enable the Department, employees, and the public to more easily understand the nature of the activities conducted pursuant to the agreement or arrangement and determine if additional reports are owed. Finally, Items 12.a and 12.b require the consultant to identify the employees that are targets of the persuader activity and the labor organizations that represent or are seeking to represent them, respectively. To achieve more specificity, Item 12.a as proposed would include a description of the department, job classification(s), work location, and/or shift(s) of the employees targeted.

The proposed Form LM–20 instructions are similar to the current version, and they follow the layout of the proposed form. There are four significant modifications. First, a clarification of the term ''agreement or arrangements'' has been added to Part II, Who Must File. As there stated: ''The term 'agreement or arrangement' should be construed broadly and does not need to be in writing.'' Second, as discussed above, the proposed form would be submitted electronically, and the Department has made changes to the instructions describing the signature and submission process, as well as a procedure for filers to apply for an exemption from the electronic filing requirement. This procedure is modeled on the procedure for filers of the Form LM–2, Labor Organization Annual Report. Third, the proposed instructions include guidance on the application of the ''advice'' exemption, in the general guidance on reporting agreements, arrangements, and activities section. Fourth, as discussed, the proposed instructions refer to the new checklist of activities undertaken pursuant to the reportable agreement or arrangement (*see* Item 11.a).

D. Proposed Form LM–10 and Instructions

The proposed Form LM–10 and Instructions (see appendix B) are significantly different in layout and style from the current form and instructions, although the reporting requirements have been altered only in two respects: The interpretation of the ''advice'' exemption is now included, and the form now requires detailed information regarding specific activities undertaken pursuant to the agreement or arrangement.

The proposed form is four pages in length and contains 19 items. The first page includes the first seven items, which provide the contact information for the employer. This information includes the file number (Item 1.a.), fiscal year covered (Item 2), contact information for the employer (Item 3), employer's president or corresponding principal officer (Item 4), and any other address containing records needed to verify the report (Item 5), at which of the listed addresses records are kept (Item 6), and type of organization that the employer is, such as an individual, partnership, or corporation (Item 7). Item 3 would be revised to require the employer to provide its EIN, which will assist the Department and public in identifying the employer and analyzing the employer's filings. Item 1.b.is for the filer to indicate if the report is filed pursuant to a hardship exemption from the proposed electronic filing requirement and Item 1.c. is for the filer to indicate whether the filing is an amended report. These items are not in the current form. The front page also includes the signature blocks, for the president (Item 18) and the treasurer (Item 19), including the date signed and telephone number.

The remainder of the proposed form is divided into four parts: Parts A, B, C, and D. This layout of the form is designed to clarify the Form LM–10 in Item 8, which currently requires the filer to check those box(es) (Items 8.a–8.f) that depict the reportable transaction, arrangement, or agreement, and then fill out a Part B to detail the transaction, arrangement, or agreement. The Department views the steps required by Item 8 as unnecessary and confusing. Part B exacerbates the confusion, because it is a ''one size fits all'' approach to reporting the diverse information required by section 203(a). Instead, the Department proposes to abandon the approach of the current form contained in Item 8 and Part B, and in its place adopt a four part structure that more conveniently presents the required information.

Proposed Part A requires employers to report payments to unions and union officials. The employer must report on the proposed form the contact information of the recipient in Item 8. In Item 9, the employer must report detailed information concerning the payment(s), including: The date of the payment (Item 9.a); the amount of each payment (Item 9.b), the kind of payment (Item 9.c), and a full explanation for the circumstances of the payment (Item 9.d). There are no changes to the substantive reporting requirements for payments in Part A, which are required pursuant to LMRDA section 203(a)(1).

Proposed Part B requires employers to report certain payments to any of their employees, or any group or committee of such employees, to cause them to persuade other employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing. The employer must report the contact information of the recipient of the payment in Item 10. In Item 11, the employer must report detailed information concerning the payment(s): The date of the payment (Item 11.a); the amount of each payment (Item 11.b), the kind of payment (Item 11.c), and a full explanation for the circumstances of the payment (Item 11.d). There are no changes to the substantive reporting requirements in Part B, which are required by LMRDA section 203(a)(2).

Proposed Part C requires employers to detail any agreement or arrangement with a labor relations consultant or other independent contractor or organization in which the consultant, contractor, or organization undertakes activities with the object to persuade employees or supply information regarding employees and labor organizations involved in a labor dispute. The employer must indicate whether the agreement or arrangement involves one or both of the above purposes by checking the appropriate box in Part C. Next, the employer must provide contact information for the consultant in Item 12. A proposed revision to Item 12 would require the employer to provide the consultant's EIN, as appropriate. The date of the agreement or arrangement and its terms and conditions would be reported in Items 13.a and 13.b, respectively. Item 14 calls for detail concerning the agreements undertaken. A proposed Item 14.a, as described above regarding the proposed Form LM–20, would require filers to check boxes indicating specific activities undertaken or to be undertaken. There is also an ''other'' box, which requires the filer to provide a narrative explanation for any activities not specified on the list provided on the form. Items 14.b, 14.c, and 14.d, respectively, require, as before, the employer to indicate the period during which the activity was performed, the extent of performance, and the name and address of persons through whom the activity was performed. As with Item 11.d of the proposed Form LM–20, Item 14.d would require filers to specify whether the person performing the activity is employed by the consultant or serves as an independent contractor. Items 14.e and 14.f require the consultant to identify the employees and any labor organization that are targets of the persuader activity. Item 14.e would require a description of the department, job classification(s), work location, and/or shift of the employees targeted. Finally, the employer must provide detailed information concerning any payment(s) made pursuant to the agreement or arrangement: The date of the payment(s) (Item 15.a); the amount of each payment(s) (Item 15.b); the kind of payment(s) (Item 15.c); and a full explanation for the circumstances of the payment(s) (Item 15.d). Information reported in Part C is required by LMRDA sections 203(a)(4) and (5).

Proposed Part D requires employers to report certain expenditures designed to ''interfere with, restrain, or coerce'' employees regarding their rights to organize or bargain collectively, as well as expenditures to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute involving such an employer. The employer must indicate the object of the expenditure by checking a box. The employer must report the contact information of the recipient of the expenditure in Item 16. In Item 17, the employer must report detailed information concerning the expenditure(s): The date of the expenditure (Item 17.a); the amount of each expenditure (Item 17.b), the kind of expenditure (Item 17.c), and a full explanation for the circumstances of the expenditure (Item 17.d). There are no changes to the substantive reporting requirements in Part D, which are required by LMRDA section 203(a)(3).

The proposed Form LM–10 instructions follow the layout of the proposed form. The proposed instructions contain the following specific revisions: They include the revised advice interpretation presented in the general instructions for Part C; they provide greater detail on how to complete the new checklist of activities undertaken pursuant to the reportable agreement or arrangement (*see* Item 14.a); and they contain the electronic filing and hardship exemption application procedures discussed above. Additionally, the general instructions for Part C—Persuader Agreements and Arrangements with Labor Relations Consultants have been revised to clarify the term ''agreement or arrangement'' and ''employer,'' as explained above for the proposed Form LM–20 and instructions.

VII. Regulatory Procedures

Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

In the Paperwork Reduction Act (PRA) analysis below, the Department estimates that the proposed rule will result in a total recurring burden on employers, labor relations consultants, and other persons of approximately $826,000. This analysis is intended to address the analysis requirements of both the PRA and the Executive Orders.

Unfunded Mandates Reform

This proposed rule will not include any Federal mandate that may result in increased expenditures by State, local, and Tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and has determined that the proposed rule does not have federalism implications. Because the economic effects under the rule will not be substantial for the reasons noted above and because the rule has no direct effect on states or their relationship to the Federal government, the rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Analysis of Costs for Paperwork Reduction Act, Executive Orders 12866 and 13563 and Regulatory Flexibility Act

In order to meet the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* Executive Order 13272, and the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* and the PRA's implementing regulations, 5 CFR part 1320, the Department has undertaken an analysis of the financial burdens to covered employers, labor relations consultants, and others associated with complying with the requirements contained in this proposed

rule. The focus of the RFA and Executive Order 13272 is to ensure that agencies ''review rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the [RFA].'' Executive Order 13272, Sec. 1. The more specific focus of the PRA is ''to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal government.'' 5 CFR 1320.1.

Compliance with the requirements of this proposed rule involves information recordkeeping and information reporting tasks. Therefore, the overall impact to covered employers, labor relations consultants, and other persons, and in particular, to small employers and other organizations that are the focus of the RFA, is essentially equivalent to the financial impact to such entities assessed for the purposes of the PRA. As a result, the Department's assessment of the compliance costs to covered entities for the purposes of the PRA is used as a basis for the analysis of the impact of those compliance costs to small entities addressed by the RFA. The Department's analysis of PRA costs, and the quantitative methods employed to reach conclusions regarding costs, are presented first. The conclusions regarding compliance costs in the PRA analysis are then employed to assess the impact on small entities for the purposes of the RFA analysis, which follows immediately after it.

Paperwork Reduction Act

This statement is prepared in accordance with the PRA, 44 U.S.C. 3501. As discussed in the preamble, this proposed rule would implement an information collection that meets the requirements of the PRA in that: (1) The information collection has practical utility to labor organizations, their members, employees, other members of the public, and the Department; (2) the rule does not require the collection of information that is duplicative of other reasonably accessible information; (3) the provisions reduce to the extent practicable and appropriate the burden on employers, labor relations consultants, and other persons who must provide the information, including small entities; (4) the form, instructions, and explanatory information in the preamble are written in plain language that will be understandable by reporting entities; (5) the disclosure requirements are implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of employers, labor relations consultants, and other persons who must comply with them; (6) this preamble informs reporting entities of the reasons that the information will be collected, the way in which it will be used, the Department's estimate of the average burden of compliance, the fact that reporting is mandatory, the fact that all information collected will be made public, and the fact that they need not respond unless the form displays a currently valid OMB control number; (7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; (8) the Department has explained why the method of collecting information is ''appropriate to the purpose for which the information is to be collected;'' and (9) the changes implemented by this rule make extensive, appropriate use of information technology ''to reduce burden and improve data quality, agency efficiency and responsiveness to the public.'' 5 CFR 1320.9; *see also* 44 U.S.C. 3506(c).

A. Summary of the Rule: Need and Economic Impact

The following is a summary of the need for and objectives of the proposed rule. A more complete discussion of various aspects of the proposal is found in the preamble.

The proposed rule would amend the form, instructions, and reporting requirements for the Form LM–10, Employer Report, and the Form LM–20, Agreements and Activities Report, each of which are filed pursuant to section 203 of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 433. Section 203 establishes reporting and disclosure requirements for employers and persons, including labor relations consultants, who enter into any agreement or arrangement whereby the consultant (or other person) undertakes activities to persuade employees as to their rights to organize and bargain collectively or to obtain certain information concerning the activities of employees or a labor organization in connection with a labor dispute involving the employer. Each party must also disclose payments made pursuant to such agreement or arrangement. An employer, additionally, must disclose certain other payments, including payments to its own employees, to persuade employees as to their bargaining rights and to obtain certain information in connection with a labor dispute. Employers report such information on the Form LM–10, which is an annual report due 90 days after the employer's fiscal year. Consultants file the Form LM–20, which is due 30 days after entering into each agreement or arrangement with an employer to persuade.

The LMRDA was enacted to protect the rights and interests of employees, labor organizations and their members, and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and labor organization officers, employees, and representatives. Provisions of the LMRDA include financial reporting and disclosure requirements for labor organizations, employers, labor relations consultants, and others as set forth in Title II of the Act. *See* 29 U.S.C. 431–36, 441.

In this proposed rule, the Department proposes to narrow its interpretation of the ''advice'' exemption of section 203(c) of the LMRDA, which provides, in part, that employers and consultants are not required to file a report by reason of the consultant's giving or agreeing to give ''advice'' to the employer. Under current policy, as articulated in the LMRDA Interpretative Manual and in a **Federal Register** notice published on April 11, 2001 (66 FR 18864), this so-called ''advice'' exemption has been broadly interpreted to exclude from the reporting any agreement under which a consultant engages in activities on behalf of the employer to persuade employees concerning their bargaining rights but has no direct contact with employees, even where the consultant is orchestrating, planning, or directing a campaign to defeat a union organizing effort.

The Department views its current policy concerning the scope of the ''advice'' exemption as over-broad, and that a narrower construction will result in reporting that more closely reflects the employer and consultant reporting intended by the LMRDA. Strong evidence indicates that since the enactment of the LMRDA in 1959, the use of such consultants by employers to combat union organizing efforts has proliferated. Nevertheless, since it began administering the statute in 1960 the Department has consistently received a small quantity of LM–20 reports relative to the greatly increased employer use of the labor relations consultant industry, which suggests substantial underreporting by employers and consultants. Moreover, evidence indicates that the Department's broad interpretation of the advice exemption has contributed to this underreporting.

The result of the substantial underreporting of employer-consultant agreements and arrangements, as outlined above, is the failure to advance Congressional objectives concerning labor-management transparency. Furthermore, considerable evidence suggests that the lack of reporting from the consultant industry and employers who rely on consultants has had a deleterious effect on labor-management relations, and regulatory action to revise the advice exemption interpretation is needed to provide labor-management transparency for the public, and to provide workers with information critical to their effective participation in the workplace. Specifically, the Department views the lack of reporting and disclosure by consultants and employers as disrupting employee free choice regarding their rights to organize and bargain collectively and permitting the use of unlawful tactics by employers.

Congress intended that employees would be timely informed of their employer's decision to engage the services of consultants in order to persuade them how to exercise their rights. Congress intended that this information, including ''a detailed statement of the terms and conditions'' of the agreement or arrangement would be publicly available no later than 30 days after the employer and consultant entered into such relationship. 29 U.S.C. 433(b)(2). With such information, employees are better able to assess the actions of the employer and the employer's message to them as they are considering whether or not to vote in favor of a union or exercise other aspects of their rights to engage in or refrain from engaging in collective bargaining.

Where persuader activities are not reported, employees may be less able to effectively exercise their rights under Section 7 of the National Labor Relations Act and, in some instances, the lack of information will affect their individual and collective choices on whether or not to select a union as the exclusive bargaining representative or how to vote in contract ratification or strike authorization votes. The public disclosure benefit to the employees and to the public at large cannot reasonably be ascertained due to the uncertainty in knowing whether employees would have participated or not in a representation election or cast their ballots differently if they had timely known of the consultant's persuader activities. The real value of the LMRDA public disclosure of information is in its availability to workers and the public in accordance with Congressional intent. Such information gives employees the knowledge of the underlying source of the information directed at them, aids them in evaluating its merit and motivation, and assists them in developing independent and well-informed conclusions regarding union representation.

The Department also proposes to revise the Form LM–10, the Form LM–20, and the corresponding instructions. These changes include modifications of the layout of the forms and instructions to better outline the reporting requirements and improve the readability of the information. The proposed revised forms also require greater detail about the activities conducted by consultants pursuant to agreements and arrangements with employers.

Finally, the Department proposes that Form LM–10 and LM–20 filers submit reports electronically, but also has provided a process for a continuing hardship exemption, whereby filers may apply to submit hardcopy forms. Currently, labor organizations that file the Form LM–2 Labor Organization Annual Report are required by regulation to file electronically, and there has been good compliance with this submission requirement. Employers and consultants likely have the information technology resources and capacity to file electronically, as well. Moreover, an electronic filing option is also planned for all LMRDA reports as part of an information technology enhancement, including for those forms that cannot now be electronically filed, such as the Form LM–10 and Form LM–20. This addition should greatly reduce the burden on filers to electronically sign and submit their forms.

B. Overview of the Proposed Form LM–10, Form LM–20, and Instructions

1. Proposed Form LM–20 and Instructions

The Proposed Form LM–20 and Instructions (*see* appendix A) are described in section VI. C., above, and this discussion is incorporated here by reference.[24]

2. Proposed Form LM–10 and Instructions

The Proposed Form LM–10 and Instructions (*see* appendix B) are described in section VI. D., above, and this discussion is incorporated here by reference.[25]

C. Methodology for the Burden Estimates[26]

The Department first estimated the number of Form LM–10 and Form LM–20 filers that will submit the revised form, as well as the increase in submissions that result from the proposed rule. Then, the estimated number of minutes that each filer will need to meet the reporting and recordkeeping burden of the proposed forms was calculated, as was the total burden hours. The Department then estimated the cost to each filer for meeting those burden hours, as well as the total cost to all filers. Federal costs associated with the proposed rule were also estimated. Please note that some of the burden numbers included in this PRA analysis will not add perfectly due to rounding. Additionally, the Department notes that the burden figures provided below are intended to be reasonable estimates, for the average filer, and not precise statements of the number of filers and hour and cost burden for every filer. The Department invites general and specific comments on each estimate, assumptions made, and any other aspect of this analysis.

1. Number of Proposed Form LM–20 and Form LM–10 Filers

The Department estimates 2,601 proposed Form LM–20 filers and 3,414 proposed Form LM–10 filers. The Form LM–20 total represents an increase of 2,410 Form LM–20 reports over the total of 191 reports estimated in the Department's most recent Information Collection Request (ICR) submission to the Office of Management and Budget (OMB). The Form LM–10 total represents a 2,484 increase over the average of 930 Form LM–10 reports received during FY 2008 and FY 2009.[27]

a. Form LM–20 Total Filer Estimate

The Department estimates 2,601 proposed Form LM–20 filers, which represents an increase of 2,410 Form LM–20 reports over the total of 191

[24] The current Form LM–20 form and instructions are available on the OLMS website at: *http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-20p.pdf* and *http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-20_Instructions.pdf.*

[25] The current Form LM–10 form and instructions are available on the OLMS website at: *http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-10p.pdf* and *http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-10_instructions.pdf.*

[26] Some of the burden numbers included in both this PRA analysis and regulatory flexibility analysis will not add perfectly due to rounding.

[27] The Department did not utilize the Form LM–10 reports estimate from its recent ICR submission to OMB, because this total did not break the reports out pursuant to subsection of section 203(a), as did the FY 2007 and FY 2008 study explained below, and the total of 930 reports is almost identical to the 938 Form LM–10 reports estimated in the recent ICR submission.

reports estimated in the Department's most recent ICR submission to the OMB. To estimate the total number of proposed Form LM–20 filers, the Department employed the median rate (75%) of employer utilization of consultants to run an anti-union campaign when faced with an organizing effort, which was set out in Section IV. E. above. The Department is aware of no data set that will reflect all instances in which a labor consultant will engage in reportable persuader activity and that there is no ready proxy for estimating the use of employer consultants in contexts other than in election cases, such as employer efforts to persuade employees during collective bargaining, a strike, or other labor dispute. The Department believes, however, that the number of representation and decertification elections supervised by the National Labor Relations Board (NLRB) and the National Mediation Board (NMB), the agencies that enforce private sector labor-management relations statutes, provides an appropriate benchmark for estimating the number of reports that will be filed under the proposed rule. The Department invites comment on this approach.

In order to estimate the number of Form LM–20 reports involving agreements and arrangements to persuade employees, the Department applied the 75% employer utilization rate of consultants to data from the NLRB and NMB. As shown above in Section IV. F., the NLRB received 3,429.2 representation cases in during the fiscal years 2005–2009.[28] The NMB handled an average of 38.8 representation cases in during the same period.[29] Applying the 75% figure to 3,468 (the combined NLRB and NMB representation case total), results in 2,601 Form LM–20 reports. The Department then subtracted out the 191 reports estimated in the Department's most recent ICR submission to the OMB, which results in a Form LM–20 report increase of 2,410.

The Department therefore estimates that the proposed Form LM–20 will generate 2,601 reports, which is an increase of 2,410 over the previous estimate. The Department notes that, pursuant to the terms of the statute and the instructions to the form, sub-consultants who enter into agreements to aid the consultant in its efforts to persuade the employer's employees, are also required to submit Form LM–20 reports. Furthermore, it is possible that an employer could enter into reportable agreements with multiple consultants during an anti-union organizing effort. However, the Department assumes in its estimate that most employers will hire one consultant for each representational or decertification election. The Department invites comment on this assumption, including any data on the use of sub-consultants and multiple agreements or arrangements entered into by employers.

b. Form LM–10 Total Filer Estimate

The Department estimates 3,414 proposed Form LM–10 filers, for a total increase of 2,484 over the average of 930 Form LM–10 reports received during FY 2007 and FY 2008. The Form LM–10 analysis follows the above analysis, although the form has other aspects that are not affected by today's rule. Specifically, an employer must report certain payments to unions and union officials pursuant to section 203(a)(1), as well as other persuader and information gathering related payments pursuant to section 203(a)(2) and 202(a)(3). For these portions of the Form LM–10, the Department utilized data obtained from a review of Form LM–10 submissions in FY 2007 and FY 2008. This analysis revealed that, for the two year period, there were 1,616 forms that revealed information reported pursuant to section 203(a)(1), six reports pursuant to section 203(a)(2), and three for section 203(a)(3). Further, there were a total of 233 Form LM–10 reports filed pursuant to sections 202(a)(4) and (5).

The Department assumes for this calculation that each Form LM–10 report submitted will involve just one of the above statutory provisions, although in practice there may be some overlap. Thus, the Department combines the estimated 2,601agreements and arrangements, calculated for the Form LM–20, with 813 (the average number of Form LM–10 reports in the above two year period indicating that the forms were submitted pursuant to sections 203(a)(1)–(3), the non-consultant agreement or arrangement provisions). This yields a total estimate of 3,414 proposed Form LM–10 reports, which represents a 2,484 increase over the average of 930 Form LM–10 reports received during FY 2007 and FY 2008.

As part of this proposed Form LM–10 estimate, the Department notes that the issues of the number of agreements or arrangements that an employer makes with third parties, as well as the number of potential sub-consultants, are not relevant here, as any number of agreements or arrangements entered into will be reported on one Form LM–10 report per employer.

2. Hours To Complete and File the Proposed Form LM–20 and Form LM–10

The Department has estimated the number of minutes that each Form LM–20 and Form LM–10 filer will need for completing and filing the proposed forms (reporting burden), as well as the minutes needed to track and maintain records necessary to complete the forms (recordkeeping burden). The estimates for the Form LM–20 are included in Tables 1 and 2, and the estimates for the Form LM–10 are included in Tables 3 and 4. The tables describe the information sought by the proposed forms and instructions, where on each form the particular information is to be reported, if applicable, and the amount of time estimated for completion of each item of information. The estimates for the reporting burden associated with completing certain items of the forms and reading the instructions, as well as the related recordkeeping requirements, are based on similar estimates utilized in the recent Form LM–30 Labor Organization Officer and Employee Report rulemaking, pursuant to section 202 of the LMRDA. While the information required to be reported in that form differs from the Form LM–10 and LM–20, and union officers differ from attorneys who complete the employer and consultant forms, the similarities in the forms, particularly the information items and length of the instructions, provide a reasonable basis for these estimates.

Further, the estimates include the time associated with gathering documentation and any work needed to complete the forms. For example, the estimates include reading the instructions, gathering relevant documentation and information, and checking the appropriate persuader or information supplying activities boxes. The Department also notes that there are no calculations required for the Form LM–20, as it does not require the reporting of financial transactions (although Item 10, Terms and Conditions, requires reporting of aspects related to rate of consultant pay). The aspect of the Form LM–10 affected by this rulemaking, concerning the details of persuader agreements, requires the reporting disbursements made to the consultant, without any calculations.

Additionally, the estimates below are for all filers, including first-time filers and subsequent filers. While the Department considered separately estimating burdens for first-time and subsequent filers, the nature of Form

[28] *See* 2009 NLRB Annual Report, Table 1 at 91: *http://www.nlrb.gov/shared_files/Annual_Reports/NLRB2009.pdf.*

[29] *See* 2009 NMB Annual Report, Table 1 at 79 at: *http://www.nmb.gov/documents/2009annual-report.pdf.*

LM–20 and Form LM–10 reporting militates against such a decision. Employers, labor relations consultants, and others may not be required to file reports for multiple fiscal years. In those cases in which the Department has reduced burden estimates for subsequent-year filings, it generally did so with regard to annual reports, specifically labor organization annual reports, Forms LM–2, LM–3, and LM–4. In contrast, the Form LM–20 and Form LM–10, like the Form LM–30, is only required for employers, labor relations consultants, and other filers in years that they engage in reportable transactions. As such, the burden estimates assume that the filer has never before filed a Form LM–20 or Form LM–10.

a. Recordkeeping Burden Hours To Complete the Form LM–20

The recordkeeping estimate of 15 minutes per filer represents a 13 minute increase from the 2 minute estimate for the current Form LM–20, as prepared for the Department's most recent information collection request for OMB #1215–0188. *See also* the current Form LM–20 and instructions. This estimate reflects the Department's reevaluation of the effort needed to document the nature of the agreement or arrangement with an employer, as well as the types of activities engaged in pursuant to such agreement or arrangement. Additionally, the Department assumes that consultants retain most of the records needed to complete the form in the normal course of their business. Finally, the 15 minutes accounts for the 5-year retention period required by statute. *See* section 206, 29 U.S.C. 436.

b. Reporting Burden Hours for the Form LM–20

The reporting burden of 45 minutes per filer represents a 25 minute increase from the 20 minute estimate for the current Form LM–20, as prepared for the Department's most recent information collection request for OMB #1215–0188. *See also* the current Form LM–20 and instructions. This estimate reflects the Department's reevaluation of the effort needed to record the nature of the agreement or arrangement with an employer, as well as the types of activities engaged in pursuant to such agreement or arrangement. It also includes the time required to read the Form LM–20 instructions to discover whether or not a report is owed and determine the correct manner to report the necessary information. The Department estimates that the average filer will need 10 minutes to read the instructions, which includes the time needed to apply the Department's proposed revised interpretation of the ''advice exemption.'' [30]

The Department views the simple data entries required by Items 1.a through 1.c, 4, 5, 7, and 11b-c as only requiring 30 seconds each. These items only require simple data entry regarding dates or file numbers, checking boxes, or, in the case of 11.c, a simple answer regarding the extent or performance for the activities undertaken pursuant to the agreement or arrangement. Additionally, Item 9 includes two boxes to check identifying generally the nature of the activities performed, so the Department estimates that this item will require one minute to complete. The Department estimates that a filer will be able to enter his or her own contact information in only two minutes, including its Employer Identification Number (EIN), if applicable, in Item 2, as well as two minutes for any additional contact information in Item 3. Further, the filer will require two minutes to record in Item 8(a) or Item 8(b) the names of the employer's representatives or officials of the prime consultant with whom the filer entered into the agreement or arrangement, as well as two minutes to identify in Item 11.d the individuals who carried out the activities for the employer. The filer will need four minutes, however, to enter the information for the employer in Item 6, including the EIN, if applicable, as this information may not be as readily available as the filer's own.

The Department estimates that it will take filers five minutes to describe in Item 10 in narrative form the nature of the agreement or arrangement, as well as attach the written agreement (if applicable), and five minutes to complete the checklist in Item 11.a, which illustrates the nature of the activities undertaken pursuant to the agreement or arrangement. It will also take one minute each for Items 12.a and 12.b, in order to identify the subject group of employee(s) and organization(s).

Finally, the Department estimates that a Form LM–20 filer will utilize five minutes to check responses and review the completed report, and will require one minute per official to sign and verify the report in Items 13 and 14 (for two minutes total for these two items). The Department introduced in calendar year 2010 a cost-free and simple electronic filing and signing protocol, which will reduce burden on filers.

As a result, the Department estimates that a filer of the proposed revised Form LM–20 will incur 60 minutes in reporting and recordkeeping burden to file a complete form. This compares with the 22 minutes per filer in the currently approved information collection request. *See* Table 1 below.

TABLE 1—FORM LM–20 FILER RECORDKEEPING AND REPORTING BURDEN

[In minutes]

Burden description	Section of proposed form	Recurring burden hours
Maintaining and gathering records	Recordkeeping Burden	15 minutes.
Reading the instructions to determine applicability of the form and how to complete it.	Reporting Burden	10 minutes.
Reporting LM–20 file number	Item 1.a	30 seconds.
Identifying if report filed under a Hardship Exemption	Item 1.b	30 seconds.[31]
Identifying if report is amended	Item 1.c	30 seconds.[32]
Reporting filer's contact information	Item 2	2 minutes.
Identifying Other Address Where Records Are Kept	Item 3	2 minutes.

[30] Additionally, the Department estimates that those persons who are not required to file the Form LM–20 will spend ten minutes reading the instructions. This burden is not included in the total reporting burden, since these persons do not file and are thus not respondents.

[31] The Department includes this item and an estimated time of completion in an effort to provide a thorough burden analysis. However, the Department does not consider it likely that this item will need to be competed, so it has not been included in the total below.

[32] The Department includes this item and an estimated time of completion in an effort to provide a through burden analysis. However, the Department does not consider it likely that the average filer will need to complete this item, so it has not been included in the total below.

TABLE 1—FORM LM–20 FILER RECORDKEEPING AND REPORTING BURDEN—Continued

[In minutes]

Burden description	Section of proposed form	Recurring burden hours
Date Fiscal Year Ends	Item 4	30 seconds.
Type of Person	Item 5	30 seconds.
Full Name and Address of Employer	Item 6	4 minutes.
Date of Agreement or Arrangement	Item 7	30 seconds.
Person(s) Through Whom Agreement or Arrangement Made	Items 8(a) and (b)	2 minutes.
Object of Activities	Item 9	1 minute.
Terms and Conditions	Item 10	5 minutes.
Nature of Activities	Item 11.a	5 minutes.
Period During Which Activity Performed	Item 11.b	30 seconds.
Extent of Performance	Item 11.c	30 seconds.
Name and Address of Person Through Whom Performed	Item 11.d	2 minutes.
Identify the Subject Group of Employee(s)	Item 12.a	1 minute.
Identify the Subject Labor Organization(s)	Item 12.b	1 minute.
Checking Responses	N/A	5 minutes.
Signature and verification	Items 13–14	2 minutes.
Total Recordkeeping Burden Hour Estimate per Form LM–20 Filer		15 minutes.
Total Reporting Burden Hour Estimate per Form LM–20 Filer		45 minutes.
Total Burden Estimate per Form LM–20 Filer		*60 minutes.*

c. Total Form LM–20 Reporting and Recordkeeping Burden

As stated, the Department estimates that the burden of maintaining and gathering records is 15 minutes and that it will receive 2,601 proposed Form LM–20 reports. Thus, the estimated recordkeeping burden for all filers is 30,855 minutes (15 × 2,601 = 39,015 minutes) or approximately 650 hours (39,015/60 = 650.25). The remaining times (45 minutes) represents the burden involved with reviewing the instructions and reporting the data. The total estimated reporting burden for all filers is 117,045 minutes (45 × 2,601 = 117,045 minutes) or approximately 1,951 hours (117,045/60 = 1950.75 hours). The total estimated burden for all filers is, therefore, 156,060 minutes or 2,601 hours (650 + 1,951 = 2,601). *See* Table 2 below.

The total recordkeeping of 650 hours represents a 644.27 hour increase over the 5.73 hours Form LM–20 recordkeeping estimate presented in the Department's most recent ICR submission to OMB, and the total reporting burden of 1,951 hours represents a 1887.97 hour increase over the 63.03 hours Form LM–20 reporting burden estimate presented in the ICR submission. The total burden of 2,601 hours is a 2,532 hour increase over the estimated 69 hours Form LM–20 burden total in the most recent ICR submission.

TABLE 2—TOTAL REPORTING AND RECORDKEEPING BURDEN FOR THE ESTIMATED 2,601 FORM LM–20 FILERS

[In hours]

Total Recordkeeping Burden	650
Total Reporting Burden	1,951
Total Burden	2,601

d. Recordkeeping Burden Hours To Complete the Form LM–10

The recordkeeping estimate of 25 minutes per filer represents a 20 minute increase from the 5 minute estimate for the current Form LM–10, as prepared for the Department's most recent information collection request for OMB #1215–0188. *See also* the current Form LM–10 and instructions. This estimate reflects the Department's reevaluation of the effort needed to document the nature of the agreement or arrangement with an employer, as well as the types of activities engaged in pursuant to such agreement or arrangement. The Department assumes that employers retain most of the records needed to complete the form in the ordinary course of their business. Furthermore, the 15 minutes accounts for the 5-year retention period required by statute. *See* section 206, 29 U.S.C. 436. Finally, the Department notes that the estimate for the Form LM–10 recordkeeping burden is 10 minutes longer than that for the Form LM–20, which reflects the greater amount of information reported on the Form LM–10.

e. Reporting Burden Hours To Complete the Form LM–10

In proposing these estimates, the Department is aware that not all employers required to file the Form LM–10 will need to complete each Part of the form. However, for purposes of assessing an average burden per filer, the Department assumes that the Form LM–10 filer engages in reportable transactions, agreements, or arrangements in all four of the proposed parts.

The reporting burden of 120 minutes per filer represents an 85 minute increase from the 35 minute estimate for the current Form LM–10, as prepared for the Department's most recent information collection request for OMB #1215–0188. *See also* the current Form LM–10 and instructions. This estimate reflects the Department's reevaluation of the effort needed to record the nature of the agreement or arrangement with a consultant and the types of activities engaged in pursuant to such agreement or arrangement, as well as record and enter each reportable payment or expenditure. It also includes the time required to read the Form LM–10 instructions to discover whether or not a report is owed and determine the correct manner to report the necessary information. The Department estimates that the average filer will need 20 minutes to read the instructions, which includes the time needed to apply the Department's proposed revised interpretation of the ''advice''

exemption.[33] This estimate is ten minutes greater than for the Form LM–20 instructions, as the Form LM–10 is a more complex report.

The Department estimates, as with the Form LM–20, that it will take 30 seconds to complete each item that calls for entering dates, checking appropriate boxes, as well as entering the amount of a payment or expenditure and its type (*see* Items 1.a, 1.b, 1.c, 2, 6, 7, 9.a, 9.b, 9.c, 11.a, 11.b, 11.c, 13.a, 14.b, 15.a, 15.b, 15.c, 17.a, 17.b, and 17.c). Additionally, Parts C and D call for checking multiple boxes, which the Department also estimates will take 30 seconds each, or one minute for Part C and Part D, respectively.

The Department also estimated that it would take one minute to identify the employee and labor organization target of persuader activities, as well as indicating the extent to which the activities have been performed (*see* Items 14.c, 14.e, 14.f, respectively).

Further, the Department estimates, as with the Form LM–20, that it will take two minutes for the employer to complete items calling for its own identifying information (*see* Items 3–5 and 14.d), including its EIN, if applicable and four minutes for items calling for another's identifying information, including EIN, if applicable (*see* Items 8, 10, 12, 14.d, and 16). The Department also estimates that it will take five minutes to detail the circumstances of each payment or expenditure, terms and conditions of any agreement or arrangement, and any activities pursuant to such agreement or arrangement (*see* Items 9.d, 11.d, 13.b, 14.a, 15.d, and 17.d).

Finally, the Department estimates that a Form LM–10 filer will utilize five minutes to check responses and review the completed report, and will require one minute per official to sign and verify the report in Items 18 and 19 (for two minutes total for these two items). The Department introduced in calendar year 2010 a cost-free and simple electronic filing and signing protocol, which will reduce burden on filers.

As a result, the Department estimates that a filer of the proposed revised Form LM–10 will incur 120 minutes in reporting and recordkeeping burden to file a complete form. This compares with the 35 minutes per filer in the currently approved information collection request. *See* Table 3 below.

TABLE 3—FORM LM–10 FILER RECORDKEEPING AND REPORTING BURDEN

[In minutes]

Burden description	Section of proposed form	Recurring burden hours
Maintaining and gathering records	Recordkeeping Burden	25 minutes.
Reading the instructions to determine applicability of the form and how to complete it.	Reporting Burden	20 minutes.
Reporting LM–10 file number	Item 1.a	30 seconds.
Identifying if report filed under a Hardship Exemption	Item 1.b	30 seconds.[34]
Identifying if report is amended	Item 1.c	30 seconds.[35]
Fiscal Year Covered	Item 2	30 seconds.
Reporting employer's contact information	Item 3	2 minutes.
Reporting president's contact information if different than 3	Item 4	2 minutes.
Identifying Other Address Where Records Are Kept	Item 5	2 minutes.
Identifying where records are kept	Item 6	30 seconds.
Type of Organization	Item 7	30 seconds.
Reporting union or union official's contact information (Part A)	Item 8	4 minutes.
Date of Part A payments	Item 9.a	30 seconds.
Amount of Part A payments	Item 9.b	30 seconds.
Kind of Part A payments	Item 9.c	30 seconds.
Explaining Part A payments	Item 9.d	5 minutes.
Identifying recipient's name and contact information	Item 10	4 minutes.
Date of Part B payments	Item 11.a	30 seconds.
Amount of Part B payments	Item 11.b	30 seconds.
Kind of Part B payments	Item 11.c	30 seconds.
Explaining Part B payments	Item 11.d	5 minutes.
Part C: Identifying object(s) of the agreement or arrangement	Part C	1 minute.
Identifying name and contact information for individual with whom agreement or arrangement was made.	Item 12	4 minutes.
Indicating the date of the agreement or arrangement	Item 13.a	30 seconds.
Detailing the terms and conditions of agreement or arrangement	Item 13.b	5 minutes.
Identifying specific activities to be performed	Item 14.a	5 minutes.
Identifying period during which performed	Item 14.b	30 seconds.
Identifying the extent performed	Item 14.c	1 minute.
Identifying name of person(s) through whom activities were performed	Item 14.d	2 minutes.
Identify the Subject Group of Employee(s)	Item 14.e	1 minute.
Identify the Subject Labor Organization(s)	Item 14.f	1 minute.
Indicating the date of each payment pursuant to agreement or arrangement	Item 15.a	30 seconds.
Indicating the amount of each payment	Item 15.b	30 seconds.
Indicating the kind of payment	Item 15.c	30 seconds.
Explanation for the circumstances surrounding the payment(s)	Item 15.d	5 minutes.
Part D: Identifying purpose of expenditure(s)	Part D	1 minute.
Part D: Identifying recipient's name and contact information	Item 16	4 minutes.
Date of Part D payments	Item 17.a	30 seconds.
Amount of Part D payments	Item 17.b	30 seconds.
Kind of Part D payments	Item 17.c	30 seconds.
Explaining Part D payments	Item 17.d	5 minutes.

[33] Additionally, the Department estimates that those persons who are not required to file the Form LM–10 will spend ten minutes reading the instructions. This burden is not included in the total reporting burden, since these persons do not file and are thus not respondents.

TABLE 3—FORM LM–10 FILER RECORDKEEPING AND REPORTING BURDEN—Continued

[In minutes]

Burden description	Section of proposed form	Recurring burden hours
Checking Responses	N/A	5 minutes.
Signature and verification	Items 18–19	2 minutes.
Total Recordkeeping Burden Hour Estimate Per Form LM–10 Filer		25 minutes.
Total Reporting Burden Hour Estimate Per Form LM–10 Filer		95 minutes.
Total Burden Estimate per Form LM–10 Filer		*120 minutes.*

f. Total Form LM–10 Reporting and Recordkeeping Burdens

As stated, the Department estimates that it will receive 3,414 proposed Form LM–10 reports. Thus, the estimated recordkeeping burden for all filers is 85,350 minutes (25 × 3,414 = 85,350 minutes) or approximately 1,423 hours (85,350/60 = 1,422.5). The total estimated reporting burden for all filers is 324,330 minutes (95 × 3,414 = 324,330 minutes) or approximately 5,406 hours (324,330/60 = 5,405.5 hours).

The total estimated burden for all filers is, therefore, approximately 409,680 minutes or 6,828 hours. *See* Table 4 below. The total recordkeeping of 1,423 hours represents a 1,347.96 hour increase over the 75.04 hour Form LM–10 recordkeeping estimate presented in the Department's most recent ICR submission to OMB, and the total reporting burden of 5,406 hours represents a 4,937 hour increase over the 469 hour Form LM–10 reporting burden estimate presented in the ICR request. The total burden of 6,829 hours is a 6,285 hour increase over the 544 hour Form LM–10 burden hour total in the most recent ICR submission.

TABLE 4—TOTAL REPORTING AND RECORDKEEPING BURDEN FOR THE ESTIMATED 3,414 FORM LM–10 FILERS

[In hours]

Total Recordkeeping Burden	1,423
Total Reporting Burden	5,406
Total Burden	6,829

[34] The Department includes this item and an estimated time of completion in an effort to provide a thorough burden analysis. However, the Department does not consider it likely that this item will need to be completed, so it has not been included in the total below.

[35] The Department includes this item and an estimated time of completion in an effort to provide a thorough burden analysis. However, the Department does not consider it likely that the average filer will need to complete this item, so it has not been included in the total below.

3. Cost of Submitting the Form LM–20 and Form LM–10

The total cost imposed by the proposed rule on Form LM–20 and Form LM–10 filers is $825,886.11. *See* Table 5 below. This is a $801,508.11 increase over the $24,378 estimated for the two forms in the most recent ICR submission.

a. Form LM–20

To determine the cost per filer to submit the Form LM–20, the Department assumed that each filer would utilize the services of an attorney to complete the form. This is consistent with past calculations of costs per filer for the Form LM–20, and the assumption also corresponds to the analysis above in which the Department notes that the consultant industry consists in large part of practicing attorneys. The Department also considers non-attorney consultant firms as likely utilizing the services of attorneys to complete the form.

To determine the hourly compensation for attorneys for the purposes of this analysis, the Department first identified the average hourly salary for lawyers, $62.03, as derived from the Occupational Employment and Wages Survey for 2009, Table 1 on page 10, from the Bureau of Labor Statistics (BLS) at *http://www.bls.gov/news.release/pdf/ocwage.pdf.* Next, the Department increased these figures by 41.2% to account for total compensation.[36] Thus, the Department adjusted the $62.03 figure upwards by 41.2% to reach the average hourly compensation for attorneys for the purposes of this analysis: $87.59.

Applying this hourly total compensation to the estimated one hour reporting and recordkeeping burden, yields an estimated cost of $87.59 ($87.59 × one hour) per filer. This is $80.29 greater than the $7.30 estimate in the most recent ICR submission. The total cost for the estimated 2,601 Form LM–20 filers is therefore $227,821.59, which is $226,427.59 greater than the $1,394 total burden estimate for the Form LM–20 in the most recent ICR submission.

[36] *See* Employer Costs for Employee Compensation Summary, from the BLS, at *http://www.bls.gov/news.release/ecec.nr0.htm.* The Department increased the average hourly wage rate for employees ($19.41 in 2009) by the percentage total of the average hourly compensation figure ($8.00 in 2009) over the average hourly wage.

b. Form LM–10

As with the Form LM–20 calculation above, the Department assumed that each filer would utilize the services of an attorney to complete the form. This is consistent with past calculations of costs per filer for the Form LM–10. The Department also considers that consultant firms are likely utilizing the services of attorneys to complete the form.

Applying this hourly total compensation to the estimated two hour reporting and recordkeeping burden, yields an estimated cost of $175.18 ($87.59 × two hours) per filer. This is $150.68 greater than the estimated $24.50 Form LM–10 burden presented in the most recent ICR submission. The total cost for the estimated 3,414 Form LM–10 filers is therefore $598,064.52, which is $575,080.52 greater than the $22,984 estimated for the most recent ICR submission.

c. Federal Costs

In its recent submission for revision of OMB #1215–0188, which contains all LMRDA forms (except the pre-2007 Form LM–30, which was approved under OMB #1215–0205), the Department estimates that its costs associated with the LMRDA forms are $2,710,726 for the OLMS national office and $3,779,778 for the OLMS field offices, for a total Federal cost of $6,490,504. Federal estimated costs include costs for contractors and operational expenses such as equipment, overhead, and printing as well as salaries and benefits for the OLMS staff in the National Office and field offices who are involved with reporting and disclosure activities. These estimates include time devoted

to: (a) Receipt and processing of reports; (b) disclosing reports to the public; (c) obtaining delinquent reports; (d) reviewing reports; (e) obtaining amended reports if reports are determined to be deficient; and (f) providing compliance assistance training on recordkeeping and reporting requirements.

TABLE 5—REPORTING AND RECORDKEEPING BURDEN HOURS AND COSTS FOR FORM LM–20 AND FORM LM–10

Number of filers per form	Reporting hours per filer	Total reporting hours	Recordkeeping hours per filer	Total record-keeping hours	Total burden hours per filer	Total burden hours	Average cost per filer	Total cost
Form LM–20: 2,601	0.75	1,950.75	0.25	650.25	1.00	2,601	$87.59	$227,821.59
Form LM–10: 3,414	1.5833	5,406	0.4166	1,423	2.00	6,829	175.18	598,064.52
Total								825,886.11

5. Request for Public Comment

Currently, the Department is soliciting comments concerning the information collection request (''ICR'') for the information collection requirements included in this proposed regulation at section 405.2, Annual report, and at section 406.2, Agreement and activities report, of title 29, Code of Federal Regulations, which, when implemented will revise the existing OMB control number 1245–0003. A copy of this ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Andrew R. Davis at (202) 693–0123. Please note that comments submitted in response to this notice will be made a matter of public record.

The Department hereby announces that it has submitted a copy of the proposed regulation to the Office of Management and Budget (''OMB'') in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Office of Labor-Management Standards.

Title: Labor Organization and Auxiliary Reports.

OMB Number: 1245–0003.

Affected Public: Private Sector: employers and labor relations consultants.

Number of Annual Responses: 38,570.

Frequency of Response: Annual for most forms.

Estimated Total Annual Burden Hours: 4,420,458.

Estimated Total Annual Burden Cost: $185,719,212.

Potential respondents are hereby duly notified that such persons are not required to respond to a collection of information or revision thereof unless approved by OMB under the PRA and it displays a currently valid OMB control number. *See* 35 U.S.C. 3506(c)(1)(B)(iii)(V). In accordance with 5 CFR 1320.11(k), the Department will publish a notice in the **Federal Register** informing the public of OMB's decision with respect to the ICR submitted thereto under the PRA.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* requires agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make initial analyses available for public comment. 5 U.S.C. 603, 604. If an agency determines that its rule will not have a significant economic impact on a substantial number of small entities, it must certify that conclusion to the Small Business Administration (SBA). 5 U.S.C. 605(b).

1. Statement of the Need for, and Objectives of, the Proposed Rule

See Paperwork Reduction Act, section A, which is incorporated here by reference.

2. Legal Basis for Rule

The legal authority for this proposed rule is section 208 of the LMRDA. 29 U.S.C. 438. Section 208 provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under title II of the Act, and such other reasonable rules and regulations as she may find necessary to prevent the circumvention or evasion of the reporting requirements. 29 U.S.C. 438.

3. Number of Small Entities Covered Under the Proposal

The Department estimates that there are approximately 2,549 small entities affected by the Form LM–20 portion of the proposed rule and 3,404 employers, for a total of 5,953 small entities affected by the proposed rule.

To determine the number of labor relations consultants and similar entities affected by the Form LM–20 portion of the proposed rule, which can be classified as small entities, the Department analyzed data from the U.S. Census Bureau's North American Industry Classification System Codes (NAICS) for ''Human Resources Consulting Services,'' which includes ''Labor Relations Consulting Services.'' [37] Additionally, the Department utilized the Small Business Administration's (''SBA'') ''small business'' standard of $7 million in average annual receipts for ''Human Resources Consulting Services,'' NAICS code 541612.[38]

A review of the above data reveals that there are 13,575 firms within the ''Human Resources Consulting Services'' NAICS category, with 13,307

[37] *See* Statistics of U.S. Businesses: 2007: NAICS 541612—Human resources & executive search consulting services, United States, accessed at: *http://www.census.gov/econ/susb/.*

[38] *See* U.S. Small Business Administration's Table of Small Business Size Standards Matched to the North American Industry Classification System Codes at 32, accessed at: *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

of them (approximately 98% of the total) with less than $7 million in payroll. *See, supra,* Statistics of U.S. Businesses: 2007: NAICS 541612. The Department notes that labor relations consultants are a subset of the total of the ''Human Resources Consulting Category,'' and that total annual receipts of the firms is undoubtedly greater than the total payroll figure listed in the NAICS. However, based on the best available data, the Department has employed the 98% figure to determine the estimated percentage of 2,601 labor relations consultants that qualify as small entities pursuant to the proposed rule. Thus, the Department estimates that there are approximately 2,549 small entities (2,601 × 0.98) affected by the Form LM–20 portion of the proposed rule.

To determine the number of employers that can be classified as small entities, pursuant to the Form LM–10 portion of the proposed rule, the Department notes that the SBA considers 99.7 percent of all employer firms to qualify as small entities.[39] Further, the proposed rule affects all private sector employers. Thus, the Department concludes that approximately 3,404 (3,414 × 0.997) of the employers affected by the proposed rule constitute small entities.

4. Relevant Federal Requirements Duplicating, Overlapping or Conflicting With the Rule

The Department is not aware of any other Federal requirements requiring reporting of the activities, agreements, and arrangements covered by this proposed rule.

5. Differing Compliance or Reporting Requirements for Small Entities

Under the proposed rule, the Form LM–20 reporting and recordkeeping requirements apply equally to all persons required to file a Form LM–20, and the Form LM–10 reporting and recordkeeping requirements apply equally to all employers covered under the LMRDA.

6. Clarification, Consolidation and Simplification of Compliance and Reporting Requirements for Small Entities

The revised format of the Form LM–10, which organizes the material in a more user-friendly manner, will simplify filing by small entity employers. Furthermore, the addition of instructions regarding the ''advice'' exemption into the Form LM–20 and Form LM–10 instructions will improve the ease of filing.

OLMS will provide compliance assistance for any questions or difficulties that may arise from using the electronic filing system. A toll-free help desk is staffed during normal business hours and can be reached by telephone at 1–866–401–1109.

7. Steps Taken To Reduce Burden

The Department proposes that Form LM–10 and LM–20 filers submit reports electronically. Currently, labor organizations that file the Form LM–2 Labor Organization Annual Report are required by regulation to file electronically, and there has been good compliance with these requirements. The Department reasonably expects that employers and consultants will have the information technology resources and capacity to file electronically, as well.

The use of electronic forms helps reduce burden by making it possible to download information from previously filed reports directly into the form; enables most schedule information to be imported into the form; makes it easier to enter information; and automatically performs calculations and checks for typographical and mathematical errors and other discrepancies, which assists reporting compliance and reduces the likelihood that the filer will have to file an amended report. The error summaries provided by the electronic system, combined with the speed and ease of electronic filing, also make it easier for both the reporting organization and OLMS to identify errors in both current and previously filed reports and to file amended reports to correct them.

Moreover, a simplified electronic filing option is also planned for all LMRDA reports as part of an information technology enhancement, including for those forms that cannot currently be filed electronically, such as the Form LM–10 and Form LM–20. This addition should greatly reduce the burden on filers to electronically sign and submit their forms. Further, for those filers unable to submit electronically, they will be permitted to apply for a continuing hardship exemption that permits filers to submit hardcopy forms.

8. Reporting, Recording and Other Compliance Requirements of the Rule

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities. The LMRDA is primarily a reporting and disclosure statute. Accordingly, the primary economic impact will be the cost of retaining and reporting required information. It establishes various reporting requirements for employers, labor relations consultants, and others, pursuant to Title II of the Act. Accordingly, the primary economic impact of the proposed rule will be the cost to reporting entities of compiling, recording, and reporting required information.

The Regulatory Flexibility Act does not define either ''significant economic impact'' or ''substantial'' as it relates to the number of regulated entities. 5 U.S.C. 601. In the absence of specific definitions, ''what is 'significant' or 'substantial' will vary depending on the problem that needs to be addressed, the rule's requirements, and the preliminary assessment of the rule's impact.'' *See* SBA's Office of Advocacy, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act at 17.[40] As to economic impact, one important indicator is the cost of compliance in relation to revenue of the entity. *Id.*

As noted above, the Department estimates that there are approximately 2,549 labor relations consultants and other entities with under $7 million in total annual revenue, thus constituting small entities. Further, the Department estimated that there are 3,404 employer small entities, for a total of 5,953 small entities affected by the proposed rule. As noted in the PRA analysis, *supra,* the Department estimated that a Form LM–20 filer would spend $87.59 completing the form, while a Form LM–10 filer would spend $175.18. The average firm within the ''Human Resources and Consulting Services'' NAICS category spends $780,297 on payroll, and the average firm with between 1 and 4 employees spends $109,394 on payroll. *See, supra,* Statistics of U.S. Businesses: 2007: NAICS 541612. The estimated cost of preparing and submitting a Form LM–20 represents approximately one tenth of one percent (0.0112% or $87.59/$780,297) of the total annual payroll of a small entity in this NAICS category, which would be an even smaller percentage of total revenue. Further, the estimated cost represents approximately 0.08% ($87.59/$109,394) of the total payroll for firms in this NAICS category with between one and four employees.

For all employers, the average payroll cost is $722,757.70, and for employers with between one and four employees, the average payroll cost is $59,723.88. *See* U.S. Census Bureau, Statistics about Business Size (including Small Business), Table 2a. Employment Size of

[39] *See http://web.sba.gov/faqs/faqIndexAll.cfm?areaid=24.*

[40] The Guide may be accessed at *http://www.sba.gov/advo/laws/rfaguide.pdf.*

Employer and Nonemployer Firms, 2004, at *http://www.census.gov/epcd/www/smallbus.html.* The cost of completing the Form LM–10, $175.18, represents only, approximately, 0.02% and 0.29%, respectively for the above two categories ($175.18/$722,757.70 and $175.18/$59,723.88). The Department thus concludes that this economic impact is not significant, as that term is employed for the purpose of this analysis.

The Department estimates that there are approximately 2,549 small entities affected by the Form LM–20 portion of the proposed rule and 3,404 employers, for a total of 5,953 small entities affected by the proposed rule. Based on the compliance cost calculations above, the Department concludes that the proposed rule will not have a significant economic impact on a substantial number of these small entities. Therefore, under 5 U.S.C. 605, the Department certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Electronic Filing of Forms and Availability of Collected Data

Appropriate information technology is used to reduce burden and improve efficiency and responsiveness. The Form LM–20 and Form LM–10 reports now in use can be accessed and completed at the OLMS Web site. OLMS has implemented a system enabling such filers to submit forms electronically with electronic signatures.

The OLMS Online Disclosure Web site at *http://www.unionreports.gov* is available for public use. The Web site contains a copy of each Form LM–20 and Form LM–10 report for reporting years 2000 and thereafter, as well as an indexed computer database of the information in each report that is searchable through the Internet.

Information about this system can be obtained on the OLMS Web site at *http://www.olms.dol.gov.*

List of Subjects

29 CFR Part 405

Labor management relations, Reporting and recordkeeping requirements.

CFR Part 406

Labor management relations, Reporting and recordkeeping requirements.

Accordingly, for the reasons provided above, the Department proposes to amend parts 405 and 406 of Title 29, Chapter IV of the Code of Federal Regulations as set forth below:

PART 405—EMPLOYER REPORTS

1. The authority citation for part 405 is revised to read as follows:

Authority: Labor-Management Reporting and Disclosure Act Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 08–2009, 74 FR 58835 (Nov. 13, 2009).

2. Section 405.5 is amended by remove the phrase ''the second paragraph under the instructions for Question 8A of Form LM–10'' and adding in its place ''the instructions for Part A of the Form LM–10''.

3. Section 405.7 is amended by remove the phrase ''Question 8C of Form LM–10'' and adding in its place ''Part D of the Form LM–10''.

PART 406—REPORTING BY LABOR RELATIONS CONSULTANTS AND OTHER PERSONS, CERTAIN AGREEMENTS WITH EMPLOYERS

4. The authority citation for part 406 is revised to read as follows:

Authority: Labor-Management Reporting and Disclosure Act Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 08–2009, 74 FR 58835 (Nov. 13, 2009).

Signed in Washington, DC, this 6th day of June 2011.

John Lund,

Director, Office of Labor-Management Standards.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices: Proposed Forms and Instructions

BILLING CODE 4510–CP–P

FORM

LM-20 – AGREEMENT & ACTIVITIES REPORT

OMB No. XXXX-XXXX. Expires XX-XX-XXXX.

IMPORTANT: This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440. Required of persons, including Labor Relations Consultants and Other Individuals and Organizations, under Section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA).

Office of Labor-Management Standards
U.S. Department of Labor

OLMS

For Official Use Only

E

▶ *Read the instructions carefully before completing this report.* ◀

1.a. File Number: **C-**	1.b. ☐ Hardship Exemption	1.c. ☐ Amended Report

2. Contact information for person filing:

Name _____

Title _____

Organization _____

Street _____

City _____ State _____

ZIP Code _____ Email Address _____

Employer Identification Number (EIN) _____

3. Other address where records necessary to verify this report are kept:

Name _____

Title _____

Organization _____

Street _____

City _____

State _____ ZIP Code _____

Email Address _____

4. Date fiscal year ends _____
mm/dd/yyyy

5. Type of person

a. ☐ Individual b. ☐ Partnership c. ☐ Corporation d. ☐ Other **[specify]**

6. Full name and address of employer with whom agreement or arrangement was made:

Name _____

Title _____

Organization _____

Street _____

City _____ State _____

ZIP Code _____ Email Address _____

Employer Identification Number (EIN) _____

7. Date agreement or arrangement entered into:_____
mm/dd/yyyy

8. Person(s) through whom agreement or arrangement made:

(a) Employer Representative:

Name and Title _____

(b) Prime Consultant: _____

Name and Title _____

[Continuation button]

Signatures

Each of the undersigned declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. *(See Section VII on penalties in the instructions.)*

13. Signed _____
President (If other title, see instructions.)

On _____ _____
Date (mm/dd/yyyy) Telephone Number

14. Signed _____
Treasurer (If other title, see instructions.)

On _____ _____
Date (mm/dd/yyyy) Telephone Number

Name of person filing:	File Number: **C-**

9. Check the appropriate box(es) to indicate whether an object of the activities undertaken is directly or indirectly:

a. ☐ To persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing.

b. ☐ To supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding.

10. Terms and conditions. (Explain in detail. See instructions. Written agreements must be attached by clicking **here**.)

[Continuation button]

11. Information regarding activities performed or to be performed by the labor relations consultant pursuant to agreement or arrangement. (See instructions.)

a. Nature of activities performed or to be performed by the labor relations consultant pursuant to the agreement or arrangement:

PERSUADER ACTIVITIES: Select each activity performed or to be performed, if the object thereof was, directly or indirectly, to persuade employees concerning their rights to organize or bargain collectively through representatives of their own choosing, or their right to engage in any protected concerted activity in the workplace:

- ☐ Drafting, revising, or providing written materials for presentation, dissemination, or distribution to employees
- ☐ Drafting, revising, or providing a speech for presentation to employees
- ☐ Drafting, revising, or providing audiovisual or multi-media presentations for presentation, dissemination, or distribution to employees
- ☐ Drafting, revising, or providing website content for employees
- ☐ Planning or conducting individual or group employee meetings
- ☐ Developing or administering employee attitude surveys concerning union awareness, sympathy, or proneness
- ☐ Training supervisors or employer representatives to conduct individual or group employee meetings
- ☐ Coordinating or directing the activities of supervisors or employer representatives
- ☐ Establishing or facilitating employee committees
- ☐ Developing personnel policies or practices
- ☐ Deciding which employees to target for persuader activity or disciplinary action
- ☐ Conducting a seminar for supervisors or employer representatives
- ☐ Other

INFORMATION SUPPLYING ACTIVITIES: Select each activity whereby you supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute Involving such employer:

- ☐ Supplying information obtained from:
  - ☐ Research or investigation concerning employees or labor organizations
  - ☐ Supervisors or employer representatives
  - ☐ Employees, employee representatives, or union meetings
  - ☐ Surveillance of employees or union representatives (video, audio, Internet, or in person)
- ☐ Other

[Continuation button]

11.b. Period during which activities performed: _____
mm/dd/yyyy – mm/dd/yyyy

11.c. Extent of performance:

11.d. Name and address of person(s) through whom activities were performed or will be performed:

Name and Title _____

Type of Person: ☐ Employee of Consultant
☐ Independent Contractor

Organization _____

Street _____

City _____State _____ ZIP Code _____

Email Address _____

[Continuation button]

12.a. Identify subject employees:

[Continuation button]

12.b. Identify subject labor organizations:

[Continuation button]

Paperwork Reduction Act Statement. Public reporting burden for this collection of information is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

Revised XX-XX-XXXX

DO NOT SEND YOUR COMPLETED FORM LM-20 TO THE ABOVE ADDRESS.

Instructions for Form LM-20 Agreement and Activities Report

GENERAL INSTRUCTIONS

I. Why File

The Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), requires public disclosure of agreements or arrangements made between any person, including labor relations consultants and other individuals and organizations, and an employer to undertake certain actions, conduct, or communications concerning employees or labor organizations (hereinafter "activities"). Pursuant to Section 203(b) of the LMRDA, every person who undertakes any such activity under an agreement or arrangement with an employer is required to file detailed reports with the Secretary of Labor. The Secretary, under the authority of the LMRDA, has prescribed the filing of the Agreement and Activities Report, Form LM-20, to satisfy this reporting requirement.

These reporting requirements of the LMRDA and of the regulations and forms issued under the Act only relate to the disclosure of specific agreements, arrangements, and/or activities. The reporting requirements do not address whether such agreements or arrangements or activities are lawful or unlawful. The fact that a particular agreement, arrangement, or activity is or is not required to be reported does not indicate whether or not it is subject to any legal prohibition.

II. Who Must File

Any person who, as a direct or indirect party to any agreement or arrangement with an employer undertakes, pursuant to the agreement or arrangement, any activity of the type described in Section 203(b) of the LMRDA, must file a Form LM-20. The term “agreement or arrangement” should be construed broadly and does not need to be in writing. A "person" is defined by the LMRDA Section 3(d) to include, among others, labor relations consultants and other individuals and organizations. A person “undertakes” activities not only when he/she performs the activity but also when he/she agrees to perform the activity or to have it performed.

A “direct or indirect party” to an agreement or arrangement includes (1) persons who have secured the services of another or of others in connection with an agreement or arrangement of the type referred to in Section 203(b) of the LMRDA, and (2) persons who have undertaken activities at the behest of another or of others with knowledge or reason to believe that they are undertaken as a result of an agreement or arrangement between an employer and any other person. However, bona fide regular officers, supervisors, or employees of an employer are exempt from this reporting requirement to the extent that the services they undertook to perform were undertaken as such bona fide regular officers, supervisors, or employees of their employer.

Note: Selected definitions from the LMRDA follow these instructions.

III. What Must Be Reported

The information required to be reported on Form LM-20, as set forth in the form and the instructions below, includes (1) the party or parties to the agreement or arrangement, (2) the object and terms and conditions of the agreement or arrangement, and (3) the activities performed or to be performed pursuant to the agreement or arrangement.

Any person required to file Form LM-20 must also file Form LM-21, Receipts and Disbursements Report. You must file Form LM-21 for each fiscal year during which you made or received payments as a result of any agreement or arrangement described in Form LM-20.

You must file Form LM-21 within 90 days after the end of your fiscal year.

Note: A separate Form LM-20 must be filed for each agreement or arrangement the filer makes with an employer to undertake any activity of the type set forth in LMRDA Section 203(b).

IV. Who Must Sign the Report

Both the president and the treasurer, or the corresponding principal officers, of the reporting organization must sign the completed Form LM-20. A report from a sole proprietor or an individual on his/her own behalf need only bear one signature.

V. When to File

Each person who has entered into any agreement or arrangement to undertake reportable activities must file the report *within 30 days* after entering into such agreement or arrangement. You must file any changes to the information reported in Form LM-20 (excluding matters related to Item 11.c) in a report with Item 1.c checked within 30 days of the change.

VI. How to File

Form LM-20 must be completed online, electronically signed, and submitted along with any required attachments to the Department using the OLMS Electronic Forms System (EFS). The electronic Form LM-20 can be accessed and completed at the OLMS website at **www.olms.dol.gov.**

A Form LM-20 filer will be able to file a report in paper format only if it asserts a temporary hardship exemption or applies for and is granted a continuing hardship exemption.

TEMPORARY HARDSHIP EXEMPTION:

If a Form LM-20 filer experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the filer may file Form LM-20 in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 1.b (Hardship Exempted Report) that the filer is filing under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards, which can be reached at the address below, by email at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

CONTINUING HARDSHIP EXEMPTION:

(a) A filer may apply in writing for a continuing hardship exemption if Form LM-20 cannot be filed electronically without undue burden or expense. Such written application shall be received at least 30 days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b). The application must be mailed to the following address:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5609
Washington, DC 20210

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by email at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) the justification for the requested time period of the exemption; (2) the burden and expense that the filer would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the filer shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and so notifies the applicant, the filer shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, the filer shall submit the report(s) in paper format by the required due date. The filer may be required to submit Form LM-20 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 1.b (Hardship Exempted Report) that the filer is filing under the hardship exemption procedures.

Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

VII. Public Disclosure

Pursuant to the LMRDA, the U.S. Department of Labor is required to make all submitted reports available for public inspection. You may examine the Form LM-20 reports at, and purchase copies from, the Office of Labor-Management Standards (OLMS) Public Disclosure Room at the address listed in Section VI.

Also, in the Online Public Disclosure Room at **www.unionreports.dol.gov**, you may view and print copies of agreement and activities reports, beginning with the year 2000. You may also purchase copies of

agreement and activities reports from the Online Public Disclosure Room for 15 cents per page. Requests for 30 or fewer pages are provided free of charge.

VIII. Responsibilities and Penalties

The individual(s) required to sign Form LM-20 are personally responsible for its filing and accuracy. Under the LMRDA, these individuals are subject to criminal penalties for willful failure to file a required report and/or for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting individual(s) and the reporting organization, if any, are also subject to civil prosecution for violations of the filing requirements. According to Section 210 of the LMRDA, "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

IX. Recordkeeping

The individual(s) required to file Form LM-20 are responsible for maintaining records which will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. You must retain the records for at least 5 years after the date you filed the report. You must retain any record necessary to verify, explain, or clarify the report, including, but not limited to vouchers, worksheets, receipts, and applicable resolutions.

X. Completing Form LM-20

Read the instructions carefully before completing Form LM-20.

Information Entry. Complete Form LM-20 by entering information directly into the fields on the form. If additional space is needed for items that require an explanation, click the "Continuation" button at the bottom of the section. The software automatically adds a continuation page.

General Instructions for Agreements, Arrangements, and Activities

You must file a separate report for each agreement or arrangement made with an employer where the object is, directly or indirectly:

(1) To persuade employees to exercise or not to exercise, or to persuade them as to the manner of exercising, the right to organize and bargain collectively through representatives of their choice. (**Excluded** are agreements or arrangements that cover services relating exclusively to: (1) giving or agreeing to give advice to the employer; (2) representing the employer before any court, administrative agency, or tribunal of arbitration, and (3) engaging in collective bargaining on the employer's behalf with respect to wages, hours, or other terms or conditions of employment or the negotiation of any agreement or any questions arising under the agreement.)

or

(2) To supply the employer with information concerning activities of employees or a labor organization in connection with a labor dispute involving such employer. (**Excluded** are agreements or arrangements that cover services relating exclusively to supplying the employer with information for use only in conjunction with an administrative, arbitral, or judicial proceeding.)

Note: If the agreement or arrangement provides for **any** reportable activity, the exemptions do not apply and information must be reported for the entire agreement or arrangement.

With respect to persuader agreements or arrangements, "advice" means an oral or written recommendation regarding a decision or a course of conduct. In contrast to advice, "persuader activity" refers to a consultant's providing material or communications to, or engaging in other actions, conduct, or communications on behalf of an employer that, in whole or in part, have the object directly or indirectly to persuade employees concerning their rights to organize or bargain collectively. Reporting is thus required in any case in which the agreement or arrangement, in whole or part, calls for the consultant to engage in persuader activities, regardless of whether or not advice is also given.

Reportable Agreements or Arrangements

An employer and consultant each must file a report concerning an agreement or arrangement pursuant to which the consultant engages in activities that have as a direct or indirect object to, explicitly or implicitly, influence the decisions of employees with respect to forming, joining or assisting a union, collective bargaining, or any protected concerted activity (such as a strike) in the workplace.

Specific examples of persuader activities that, either alone or in combination, would trigger the reporting requirements include but are not limited to: drafting, revising, or providing a persuader speech, written material, website content, audiovisual or multimedia presentation, or other material or communication of any sort, to an employer for presentation, dissemination, or distribution to employees, directly or indirectly; planning or conducting individual or group meetings designed to persuade employees; developing or administering employee attitude surveys concerning union awareness, sympathy, or proneness; training supervisors or employer

representatives to conduct individual or group meetings designed to persuade employees; coordinating or directing the activities of supervisors or employer representatives to engage in the persuasion of employees; establishing or facilitating employee committees; developing employer personnel policies or practices designed to persuade employees; deciding which employees to target for persuader activity or disciplinary action; and coordinating the timing and sequencing of persuader tactics and strategies.

Reportable agreements or arrangements include those in which a consultant plans or orchestrates a campaign or program to avoid or counter a union organizing or collective bargaining effort, such as through the specific persuader activities illustrated above, or otherwise engages on behalf of the employer, in whole or part, in any other actions, conduct, or communications designed to persuade employees. Persuader activities trigger reporting whether or not the consultant performs the activities through direct contact with any employee. For example, a consultant must report if he or she engages in any activities that utilize employer representatives to persuade employees, such as by planning, directing, or coordinating the activities of employer representatives or providing persuader material to them for dissemination or distribution to employees, or in which the consultant drafts or implements policies for the employer that have as an object to directly or indirectly persuade employees.

Exempt Agreements or Arrangements

No report is required concerning an agreement or arrangement to exclusively provide advice to an employer. For example, a consultant who exclusively counsels employer representatives on what they may lawfully say to employees, ensures a client's compliance with the law, or provides guidance on NLRB practice or precedent, is providing "advice." Reports are not required concerning agreements or arrangements to exclusively provide such advice.

Generally, no report is required for an agreement or arrangement whereby a lawyer or other consultant conducts a group seminar or conference for employers solely to provide guidance to them. However, if a consultant engages in persuader activities at such meetings, such as those activities enumerated above, then the consultant and employer would be required to file reports concerning such agreement or arrangement. The Department cautions that employers and consultants cannot avoid the reporting requirements by inappropriately labeling an otherwise reportable persuader agreement or arrangement as a "seminar" or "conference."

While Section 203 of the Act does not amend or modify the rights protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA), the LMRDA contains no provision exempting the activities protected by that section from the reporting requirements. Therefore, activities of the type set forth in Section 203(b) of the LMRDA must be reported regardless of whether they are protected by Section 8(c) of the NLRA.

Note: The text of NLRA Section 8(c) is set forth following these instructions.

Items 1–14

1. FILE NUMBER, HARDSHIP EXEMPTION, AND AMENDED REPORT:

1.a. *File Number.* Enter the five-digit file number assigned by OLMS for the reporting individual OR organization. Persons who filed an LM-20 prior to October 2003 were assigned four-digit file numbers. OLMS has now expanded file numbers to five digits. Place a zero in front of your old four-digit file number to meet the new format requirement. For example, if your old file number was 1234, enter 01234 in Item 1 of this year's report. If you have never previously filed the Form LM-20, leave Item 1 blank.

1.b. *Hardship Exemption.* Indicate here if you are filing a hardcopy Form LM-20 pursuant to a hardship exemption.

1.c. *Amended Report*. Indicate here if you are filing an amended Form LM-20.

2. CONTACT INFORMATION FOR PERSON FILING —Enter the full legal name of the reporting individual or organization, a trade or commercial name, if applicable (such as a d/b/a or "doing business as" name), the name and title of the person to whom mail should be directed, and the complete address where mail should be sent and received, including any building and room number. Also enter the Employer Identification Number (EIN) of the filer. If you do not have an EIN, enter "none."

3. OTHER ADDRESS WHERE RECORDS ARE KEPT —If you maintain any of the records necessary to verify this report at an address different from the address listed in Item 2, enter the appropriate name and address in Item 3.

4. DATE FISCAL YEAR ENDS—Enter the date on which the fiscal year ends for the reporting individual or organization in mm/dd/yyyy format.

5. TYPE OF PERSON—If the person reporting is an individual, partnership, or corporation, so indicate by checking the appropriate box. If none of the choices apply, check "Other" and click the "Specify" button to generate more lines and describe the type of person.

6. FULL NAME AND ADDRESS OF EMPLOYER—Enter the full legal name of the employer with whom you made the agreement or arrangement, a trade or commercial name, if applicable (such as a d/b/a or "doing business as" name), the name of the person to whom mail should be directed, and the complete address where mail should be sent and received, including any building and room number. Also enter the Employer Identification Number (EIN) of the employer. If the employer does not have an EIN, enter "none."

7. DATE OF AGREEMENT OR ARRANGEMENT—Enter the date on which you entered into the agreement or arrangement in mm/dd/yyyy format.

8. PERSON(S) THROUGH WHOM AGREEMENT OR ARRANGEMENT MADE—(a) Employer Representative: Enter the name and title of each person, acting on behalf of the employer, making the agreement or arrangement, and state whether that person is an individual employer, partner, corporate officer, employee, or other agent or representative.

(b) Prime Consultant: If you are an indirect party (or sub-consultant), to the reported employer-consultant agreement, enter the name of the organization or person with whom you entered into such agreement or arrangement. If additional space is needed for the explanation, click the "Continuation" button at the bottom of the section.

9. OBJECT OF ACTIVITIES—Check the appropriate box(es) indicating whether the object of the agreement or arrangement is to, directly or indirectly, persuade employees to exercise their bargaining rights ***or*** to supply an employer with information related to a labor dispute. You must check either one or both of the boxes.

10. TERMS AND CONDITIONS—Provide a detailed explanation of the terms and conditions of the agreement or arrangement. If additional space is needed for the explanation, click the "Continuation" button at the bottom of the section. The software automatically adds a continuation page. If any agreement or arrangement is in whole or in part contained in a written contract, memorandum, letter, or other written instrument, or has been wholly or partially reduced to writing, you must refer to that document and attach a copy of it to this report by clicking on the attachment icon on the form.

11. DESCRIPTION OF ACTIVITIES—For each activity to be performed, give a detailed explanation of the following:

11.a. *Nature of Activity.* Select from the list in 11.a. each entry that describes the nature of a particular activity or activities performed or to be performed. The list is divided into two parts: persuader activities and information supplying activities, as identified in Item 9. For persuader activity, select each activity performed or to be performed, if the object thereof was, directly or indirectly, to persuade employees concerning their rights to organize or bargain collectively through representatives of their own choosing, or their right to engage in any protected concerted activity in the workplace. Select all that apply for each part that you identified in Item 9. If none of the items listed accurately describes the nature of a particular activity or activities, select "Other" and click the "Continuation" button at the bottom of the section to generate a continuation page and describe the nature of the activity or activities. You may also click the "Continuation" button to provide further information for any activity selected.

11.b. *Period during which activity performed.* Describe the period during which the activity will be performed. For example, if the performance will begin in June 2011 and will terminate in August 2011, so indicate by stating "06/01/2011 through 08/31/2011."

11.c. *Extent of Performance.* Indicate the extent to which the activity has been performed. For example, you should indicate whether the activity is pending, ongoing, near completion, or completed.

11.d. *Name and Address of person through whom activity performed.* Enter the full legal title and contact information of the person(s) through whom the activities are to be performed or have been performed and indicate if those person(s) are employed by the consultant or serve as an independent contractor. Independent contractors in such cases are sub-consultants, who are required to file a separate Form LM-20 report. If additional space is needed for the explanation, click the "Continuation" button at the bottom of the section. If the address of the organization differs from the business address of the person who performed the activities, or if more than one person performed the activities, click the "Continuation" button to generate an additional page and enter the address of the organization or the additional persons on this continuation page.

12. SUBJECT GROUPS OF EMPLOYEES AND/OR LABOR ORGANIZATIONS—Identify the subject groups of employees and/or labor organizations who are to be persuaded or concerning whose activities information is to be supplied to the employer.

12.a. Identify the subject employee(s) who are to be persuaded or concerning whose activities information is to be supplied to the employer, including a description of the department, job classification(s), work location, and/or shift(s) of the employees targeted, as well as the location of their work. If you need more space for the explanation, click the "Continuation" button in this field to generate a continuation page.

12.b. Identify the subject labor organization(s). If you need more space for the explanation, click the

"Continuation" button in this field to generate a continuation page.

13-14. SIGNATURES—The completed Form LM-20 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the reporting organization. A report from an individual or a sole proprietor, on his/her own behalf, need only bear **one** signature which you should enter in Item 13. Otherwise, this report must bear **two (2)** signatures. To sign the report, an officer will be required to attest to the data on the report and use his or her EFS username and password as the verification mechanism. Once signed, the completed report can be electronically submitted to OLMS.

If the report is from an organization and is signed by an officer other than the president and/or treasurer, enter the correct title in the title field next to the signature.

Enter the telephone number used by the signatories to conduct official business. You do not have to report a private, unlisted telephone number.

SELECTED DEFINITIONS AND RELATED PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

Section 3.

(a) 'Commerce' means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(b) 'State' includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf' Lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

(c) 'Industry affecting commerce' means any activity, business or industry in commerce or in which a labor dispute could hinder or obstruct commerce or the free flow of commerce and includes any activity or Industry 'affecting commerce' within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(d) 'Person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, or receivers.

(e) 'Employer' means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

(f) 'Employee' means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

(g) 'Labor dispute' includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(i) 'Labor organization' means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exits for the purpose, in whole or in part, or dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

(j) A labor organization shall be deemed to be engaged in a industry affecting commerce if it—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry

affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

Section 203.

(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly-

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

Section 204.

Nothing contained In this Act shall be construed to require an attorney who is a member in good standing of the bar of any State, to include In any report required to be filed pursuant to the provisions of this Act any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

National Labor Relations Act

Section 8(c).

The expressing of any views, argument, or opinion, or the discussion thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

If You Need Assistance

The Office of Labor-Management Standards has field offices in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA	Miami, FL
Birmingham, AL	Milwaukee, WI
Boston, MA	Minneapolis, MN
Buffalo, NY	Nashville, TN
Chicago, IL	New Haven, CT
Cincinnati, OH	New Orleans, LA
Cleveland, OH	New York, NY
Dallas, TX	Newark, NJ
Denver, CO	Philadelphia, PA
Detroit, MI	Phoenix, AZ
Grand Rapids, MI	Pittsburgh, PA
Guaynabo, PR	St. Louis, MO
Honolulu, HI	San Francisco, CA
Houston, TX	Seattle, WA
Kansas City, MO	Tampa, FL
Los Angeles, CA	Washington, DC

Consult local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and phone number of your nearest field office.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations (CFR) documents, is available on the OLMS website at **www.olms.dol.gov**.

Copies of labor organization annual financial reports, employer reports, labor relations consultant reports, and union officer and employee reports filed for the year 2000 and after can be viewed and printed at **www.unionreports.gov**. Copies of reports for the year 1999 and earlier can be ordered through the website. For questions on Form LM-20 and/or the instructions, call the Department of Labor National Call Center at: 866-4-USA-DOL (866-487-2365) or email **olms-public@dol.gov.**

If you would like to receive via email periodic updates from the Office of Labor-Management Standards, including information about the LM forms, enforcement results, and compliance assistance programs, you may subscribe to the OLMS Mailing List from the OLMS website: **www.olms.dol.gov.**

FORM

LM-10
EMPLOYER REPORT

OMB No. XXXX-XXXX. Expires XX-XX-XXXX.

IMPORTANT: This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

Office of Labor-Management Standards
U.S. Department of Labor

OLMS

For Official Use Only

E

▶ *Read the instructions carefully before completing this report.* ◀

1.a. File Number **E-**	1.b. ☐ Hardship Exemption	1.c. ☐ Amended Report	2. Fiscal Year Covered: _____ (mm/dd/yyyy) through _____ (mm/dd/yyyy)

3. Name and address of Reporting Employer (including trade name, if any).

Employer _____

Attention To (including title) _____

Street _____

City _____

State _____ ZIP Code _____

Email Address _____

Employer Identification Number (EIN) _____

4. Name of President or corresponding principal officer and address if different from address in Item 3.

Name _____

Title _____

Street _____

City _____

State _____ ZIP Code _____

Email Address _____

5. Any other address where records necessary to verify this report will be available for examination.

Name _____

Title _____

Organization _____

Street _____

City _____

State _____ ZIP Code _____

Email Address _____

6. Indicate by checking the appropriate box or boxes where records necessary to verify this report will be available for examination.

☐ Address in Item 3

☐ Address in Item 4

☐ Address in Item 5

7. Type of organization.

☐ Corporation ☐ Partnership ☐ Individual ☐ Other

(specify) _____

Signatures

Each of the undersigned, duly authorized officers of the above employer declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. *(See Section VIII on penalties in the instructions.)*

18. Signed _____
President (If other title, see instructions.)

On _____ _____
Date (mm/dd/yyyy) Telephone Number

19. Signed _____
Treasurer (If other title, see instructions.)

On _____ _____
Date (mm/dd/yyyy) Telephone Number

PART A – Payments to Unions and Union Officials. You must complete Part A if you made or promised or agreed to make, directly or indirectly, any payment or loan of money or other thing of value (including reimbursed expenses) to any labor organization or to any officer, agent, shop steward, or other representative or employee of any labor organization.

8. Name of Recipient/Contact Name_____ Labor Organization _____

☐ Individual recipient ☐ Labor organization recipient

Street _____ City_____ State _____ ZIP Code _____

Telephone _____ Email Address _____

If the address of the labor organization differs from that of the individual recipient of the payment or the contact person for the labor organization, click here: **[Continuation button]**

9.a. Date of each payment. (mm/dd/yyyy)	9.b. Amount of each payment.	9.c. Kind of payment. (Specify if payment or loan, and if in cash or property.)	9.d. Explain fully the circumstances of the payment, including the terms of any oral agreement or understanding pursuant to which it was made.
(1)			**[Continuation button]**
(2)			**[Continuation button]**
(3)			**[Continuation button]**

[Continuation button]

PART B – Persuader Payments to Employees and Employee Committees. Complete Part B if you made, directly or indirectly, any payment (including reimbursed expenses) to any of your employees, or to any group or committee of your employees, for the purpose of causing them to persuade other employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to other employees.

10. Name of Recipient _____

Type of Recipient: ☐ Employee ☐ Employee Group/Committee
If you checked "Employee Group/Committee" provide contact name and title: _____

Street _____ City_____ State _____ ZIP Code _____

Telephone _____ Email Address _____

If the address of the group or organization differs from that of the individual recipient of the payment or the contact person for the group or organization, click here: **[Continuation button]**

11.a. Date of each payment. (mm/dd/yyyy)	11.b. Amount of each payment.	11.c. Kind of payment. (Specify if payment or loan, and if in cash or property.)	11.d. Explain fully the circumstances of the payment, including the terms of any oral agreement or understanding pursuant to which it was made.
(1)			**[Continuation button]**
(2)			**[Continuation button]**
(3)			**[Continuation button]**

[Continuation button]

PART C – Persuader Agreements/Arrangements with Labor Relations Consultants. Check the box(es) below and complete Part C if you made any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person or organization undertook activities where an object thereof, directly or indirectly, was to:

☐ Persuade employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing.

☐ Furnish you with information concerning activities of employees or of a labor organization in connection with a labor dispute in which you were involved.

12. Name of person with whom (or through) a separate agreement was made _____

Organization _____ Position in Organization _____

Street _____ City _____ State _____ ZIP Code _____

Telephone _____ Email Address _____

Employer Identification Number (EIN) _____

If the address of the consultant or other organization differs from that of the individual with whom the separate agreement was made, click here:

[Continuation button]

13.a. Date of the agreement or arrangement. (mm/dd/yyyy)	13.b. Terms and conditions. (Explain in detail; see instructions. Written agreements must be attached.)
	[Continuation button]

14. Information regarding activities performed or to be performed by the labor relations consultant pursuant to agreement or arrangement.

14.a. Nature of activities performed or to be performed by the labor relations consultant pursuant to agreement or arrangement:

PERSUADER ACTIVITIES: Select each activity performed or to be performed, if the object thereof was, directly or indirectly, to persuade employees concerning their rights to organize or bargain collectively through representatives of their own choosing, or their right to engage in any protected concerted activity in the workplace:

☐ Drafting, revising, or providing written materials for presentation, dissemination, or distribution to employees

☐ Drafting, revising, or providing a speech for presentation to employees

☐ Drafting, revising, or providing audiovisual or multi-media presentations for presentation, dissemination, or distribution to employees

☐ Drafting, revising, or providing website content for employees

☐ Planning or conducting individual or group employee meetings

☐ Developing or administering employee attitude surveys concerning union awareness, sympathy, or proneness

☐ Training supervisors or employer representatives to conduct individual or group employee meetings

☐ Coordinating or directing the activities of supervisors or employer representatives

☐ Establishing or facilitating employee committees

☐ Developing personnel policies or practices

☐ Deciding which employees to target for persuader activity or disciplinary action

☐ Conducting a seminar for supervisors or employer representatives

☐ Other

INFORMATION SUPPLYING ACTIVITIES: Select each activity whereby the labor relations consultant supplies you with information concerning the activities of employees or a labor organization in connection with a labor dispute in which you are involved:

☐ Supplying information obtained from:

- ☐ Research or investigation concerning employees or labor organizations
- ☐ Supervisors or employer representatives
- ☐ Employees, employee representatives, or union meetings
- ☐ Surveillance of employees or union representatives (video, audio, Internet, or in person)

☐ Other

[Continuation button]

14.b. Period during which performed.	14.c. Extent performed.

14.d. Name of person(s) who performed activities _____

Type of Person: ☐ Employee of Consultant ☐ Independent Contractor ☐ Separate Organization

Organization _____ Position in Organization _____

Street _____ City_____ State _____ ZIP Code _____

Telephone _____ Email Address _____

If the address of the organization differs from the business address of the person who performed the activities, or if more than one person performed the activities, click here:

[Continuation button]

[Continuation button]

PART C – Persuader Agreements/Arrangements with Labor Relations Consultants. Continued

14.e. Identify subject employees.	14.f. Identify subject labor organizations.
[Continuation button]	[Continuation button]

15.a. Date of each payment. (mm/dd/yyyy)	15.b. Amount of each payment.	15.c. Kind of payment. (Specify if payment or loan, and if in cash or property.)	15.d. Explain fully the circumstances of the payment(s), including the terms of any oral agreement or understanding pursuant to which it was made.
(1)			[Continuation button]
(2)			[Continuation button]
(3)			[Continuation button]

[Continuation button]

PART D – Expenditures Made to Interfere With, Restrain, or Coerce Employees; Obtain Information Concerning Employees or a Labor Organization.

Check the box(es) below and complete Part D if you made:

☐ Any expenditure where an object thereof, directly or indirectly, was to interfere with, restrain, or coerce employees in the right to organize and bargain collectively through representatives of their own choosing; or

☐ Any expenditure where an object thereof, directly or indirectly, was to obtain information concerning the activities of employees or of a labor organization in connection with a labor dispute in which you were involved.

16. Name of Recipient _____

Type of Recipient: ☐ Employee ☐ Independent Contractor ☐ Business/Organization

If you checked "Business/Organization," provide contact name and title: _____

Street _____ City_____ State _____ ZIP Code _____

Telephone _____ Email Address _____

If the address of the consultant or other organization differs from that of the individual with whom the separate agreement was made, click here:

[Continuation button]

17.a. Date of each expenditure. (mm/dd/yyyy)	17.b. Amount of each expenditure.	17.c. Kind of expenditure (Specify if payment or loan, and if in cash or property.)	17.d. Explain fully the circumstances of the expenditure(s), including the terms of any oral agreement or understanding pursuant to which they were made.
(1)			[Continuation button]
(2)			[Continuation button]
(3)			[Continuation button]

[Continuation button]

Paperwork Reduction Act Statement. Public reporting burden for this collection of information is estimated to average 120 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

Revised XX-XX-XXXX

DO NOT SEND YOUR COMPLETED FORM LM-10 TO THE ABOVE ADDRESS.

Instructions for Form LM-10 Employer Report

GENERAL INSTRUCTIONS

I. Why File

The Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), requires public disclosure of specific financial transactions, agreements, or arrangements made between an employer **and** one or more of the following: a labor organization, union official, employee, or labor relations consultant. Additionally, an employer must disclose expenditures for certain objects relating to activities of employees or a union. Pursuant to Section 203 of the LMRDA, every employer who has engaged in any such transaction, agreement, arrangement, or expenditures during the fiscal year must file a detailed report with the Secretary of Labor. The Secretary, under the authority of the LMRDA, has prescribed the filing of the Employer Report, Form LM-10, for employers to satisfy this reporting requirement.

The reporting requirements of the LMRDA and of the regulations and forms issued under the Act only relate to the disclosure of specified payments. The reporting requirements do not address whether specific payments, expenditures, transactions, agreements, or arrangements are lawful or unlawful. The fact that a particular payment, expenditure, transaction, agreement, or arrangement is or is not required to be reported does not indicate whether it is or is not subject to any legal prohibition.

II. Who Must File

Any employer, as defined by the LMRDA, who has engaged in certain financial transactions, agreements, or arrangements, of the type described in Section 203(a) of the Act, with any labor organization, union official, employee or labor relations consultant, **or** who has made expenditures for certain objects relating to activities of employees or a union, must file a Form LM-10. An employer required to file must complete only one LM-10 each fiscal year that covers all instances of reportable activity even if activity occurs at multiple locations.

Note: Selected definitions from the LMRDA follow these instructions.

III. What Must Be Reported

The types of financial transactions, agreements, arrangements, or expenditures that must be reported are set forth in Form LM-10. The LMRDA states that every employer involved in any such transaction, agreement, or arrangement during the fiscal year must file a detailed report with the Secretary of Labor indicating the following: (1) the date and amount of each transaction, agreement, or arrangement; (2) the name, address, and position of the person with whom the agreement, arrangement, or transaction was made; and (3) a full explanation of the circumstances of all payments made, including the terms of any agreement or understanding pursuant to which they were made.

Form LM-10 is divided into four parts, Part A, Part B, Part C, and Part D.

Part A, pursuant to LMRDA section 203(a)(1), details direct or indirect payment, including loans, to unions or union officials pursuant to LMRDA section 203(a)(1).

Part B, pursuant to LMRDA section 203(a)(2),details direct or indirect payments (including reimbursed expenses) to any of the employer's employees, or to any group or committee of the employer's employees, for the purpose of causing them to persuade other employees to exercise or not exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing without previously or at the same time disclosing such payment to all such other employees.

Part C, pursuant to LMRDA sections 203(a)(4) and (5), details agreements and arrangements, and any payments made pursuant to such agreements or arrangements, between employers and labor relations consultants or other independent contractors or organizations, under which the consultant or independent contractor or organization engages in actions, conduct, or communications where a direct or indirect object thereof is to persuade employees to exercise or not to exercise, or regarding the manner of exercising the right to organize and bargain collectively through representatives of their own choosing, or under which the consultant or independent contractor or organization supplies information regarding employees or a labor organization in connection with a labor dispute involving the employer.

Part D, pursuant to LMRDA section 203(a)(3), details expenditures where an object thereof, directly or indirectly, was to interfere with, restrain, or coerce employees in the right to organize and bargain collectively through representatives of their own choosing; and any expenditure where an object thereof, directly or indirectly, was to obtain information concerning the activities of employees or of a labor organization in connection with a labor dispute involving the employer.

Special Reports. In addition to this report, the Secretary may require employers subject to the LMRDA to submit special reports on relevant information, including but not necessarily confined to reports involving specifically identified personnel on particular matters referred to in the instructions for Part A.

While Section 203 of the LMRDA does not amend or modify the rights protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA), the LMRDA contains no provision exempting the activities protected by that section from the reporting requirements. Therefore, employers must report activities of the type set forth in Item 8, since the LMRDA requires such reports, regardless of whether the activities are protected by Section 8(c) of the NLRA. Note, however, that the information employers are required to report in response to question 8.c does not include expenditures relating exclusively to matters protected by Section 8(c) of the NLRA, because the definition in Section 203(g) of the LMRDA of the term "interfere with, restrain, or coerce," which is used in question 8.c, does not cover such matters.

Note: The text of NLRA Section 8(c) is set forth following these instructions.

IV. Who Must Sign the Report

Both the president and the treasurer, or corresponding officers, of the reporting employer must sign the completed Form LM-10. A report from a sole proprietor need only bear one signature.

V. When to File

Each employer, as defined by the LMRDA, who has engaged in any of the transactions or arrangements set forth in the form must submit a Form LM-10 report *within 90 days* after the end of the employer's fiscal year.

VI. How to File

Form LM-10 must be completed online, electronically signed, and submitted along with any required attachments to the Department using the OLMS Electronic Forms System (EFS). The electronic Form LM-10 can be accessed and completed at the OLMS website at **www.olms.dol.gov**.

A Form LM-10 filer will be able to file a report in paper format only if it asserts a temporary hardship exemption or applies for and is granted a continuing hardship exemption.

TEMPORARY HARDSHIP EXEMPTION:

If a Form LM-10 filer experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the filer may file Form LM-10 in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 1.b (Hardship Exempted Report) that the filer is filing under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards, which can be reached at the address below, by email at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

CONTINUING HARDSHIP EXEMPTION:

(a) A filer may apply in writing for a continuing hardship exemption if Form LM-10 cannot be filed electronically without undue burden or expense. Such written application shall be received at least 30 days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b).
The application must be mailed to the following address:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5609
Washington, DC 20210

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by email at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) the justification for the requested time period of the exemption; (2) the burden and expense that the filer would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the filer shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and so notifies the applicant, the filer shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, the filer shall submit the report(s) in paper format by the required due date. The filer may be required to submit Form LM-10 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 1.b (Hardship Exempted Report)

that the filer is filing under the hardship exemption procedures.

Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

VII. Public Disclosure

Pursuant to the LMRDA, the U.S. Department of Labor is required to make all submitted reports available for public inspection. You may examine the Form LM-10 reports at, and purchase copies from, the OLMS Public Disclosure Room at the address listed in Section VI.

Also, through the Online Public Disclosure Room at **www.unionreports.dol.gov**, you may view and print copies of employer reports, beginning with the year 2000. You may also purchase copies of employer reports from the Online Public Disclosure Room for 15 cents per page. Requests for 30 or fewer pages are provided free of charge.

VIII. Officer Responsibilities and Penalties

The president and treasurer, or corresponding principal officers of the reporting employer required to sign the Form LM-10, are personally responsible for its filing and accuracy. Under the LMRDA, these individuals are subject to criminal penalties for willful failure to file a required report and/or for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting employer and the officers required to sign Form LM-10 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

IX. Recordkeeping

The individuals required to file Form LM-10 are responsible for maintaining records which must provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. You must retain the records for at least 5 years after the date you filed the report. You must retain any record necessary to verify, explain, or clarify the report including, but not limited to, vouchers, worksheets, receipts, and applicable resolutions.

X. Completing Form LM-10

Read the instructions carefully before completing Form LM-10.

Information Entry. Complete Form LM-10 by entering information directly into the fields on the form. If additional space is needed for items that require an explanation, click the "Continuation" button at the bottom of the section. The software automatically adds a continuation page.

Entering Dollars. In all items dealing with monetary values, report amounts in dollars only; do not enter cents. Round cents to the nearest dollar. Enter a single "0" in the boxes for reporting dollars if the employer has nothing to report.

Additional Parts. If you entered into multiple reportable transactions, agreements, or arrangements, then click on the "Continuation" button at the bottom of each Part to attach additional Parts A, B, C, or D.

Information Items (Items 1–7)

1. FILE NUMBER, HARDSHIP EXEMPTION, AND AMENDED REPORT:

1.a. *File Number.* Enter the five-digit file number assigned by OLMS for the reporting employer. Employers who filed an LM-10 prior to October 2003 were assigned four-digit file numbers. OLMS has now expanded file numbers to five digits. Place a zero in front of your old four-digit file number to meet the new format requirement. For example, if your old file number was 1234, enter 01234 in Item 1 of this year's report. If you have never previously filed the Form LM-10, leave Item 1 blank.

1.b. *Hardship Exemption.* Indicate here if you are filing a hardcopy Form LM-10 pursuant to a hardship exemption.

1.c. *Amended Report*. Indicate here if you are filing an amended Form LM-10.

2. FISCAL YEAR—Enter the beginning and ending dates of the fiscal year covered in this report in mm/dd/yyyy format. The report must not cover more than a 12-month period. For example, if the reporting employer's 12-month fiscal year begins on January 1 and ends on December 31, do not enter a date beyond the 12-month period, such as January 1 to January 1; this is an invalid date entry.

3. NAME AND MAILING ADDRESS—Enter the full legal name of the reporting employer, a trade or commercial name, if applicable (such as a d/b/a or "doing business as" name), the name and title of the person to whom mail should be directed, and the complete address where mail should be sent and received, including any building and room number. Enter a valid email address for the employer. Also enter the Employer Identification Number (EIN) of the employer. If the employer does not have an EIN, enter "none."

4. NAME AND ADDRESS OF PRINCIPAL OFFICER—Enter the name and business address of the president or corresponding principal officer if it is different from Item 3. Enter a valid email address for the principal officer.

5. ANY OTHER NAME AND ADDRESS WHERE RECORDS ARE KEPT—If you maintain any of the records necessary to verify this report at an address different from the addresses listed in Items 3 or 4, enter the appropriate name and address in Item 5.

6. WHERE RECORDS ARE AVAILABLE—Select the appropriate box(es) to indicate where the records

necessary to verify this report are available for examination.

7. TYPE OF ORGANIZATION—Select the appropriate box that describes the reporting employer: Corporation, Partnership, or Individual. If none of these choices apply, select "Other" and specify the type of reporting employer filing this report in the space provided.

Part A – PAYMENTS TO UNIONS OR UNION OFFICIALS

Complete Part A if you made or promised or agreed to make, directly or indirectly, any payment or loan of money or other thing of value (including reimbursed expenses) to any labor organization or to any officer, agent, shop steward, or other representative or employee of any labor organization.

In answering Part A, ***exclude*** the following: (1) Payments of the kind referred to in Section 302(c) of the Labor Management Relations Act, 1947, as amended (LMRA); **and** (2) Payments or loans made in the regular course of business as a national or state bank, credit union, insurance company, savings and loan association, or other credit institution. (The text of Section 302(c) of the LMRA is set forth below.)

None of the following situations are required to be reported:

(a) payments made in the regular course of business to a class of persons determined without regard to whether they are, or are identified with, labor organizations and whose relationship to labor organizations is not ordinarily known to or readily ascertainable by the payer, for example, interest on bonds and dividends on stock issued by the reporting employer;

(b) loans made to employees under circumstances and terms unrelated to the employees' status in a labor organization;

(c) payments made to any regular employee as wages or other compensation for service as a regular employee of the employer, or by reason of his service as an employee of such employer, for periods during regular working hours in which such employee engages in activities other than productive work, if the payments for such periods of time are:

(1) required by law or a bona fide collective bargaining agreement, or

(2) made pursuant to a custom or practice under such a collective agreement, or

(3) made pursuant to a policy, custom, or practice with respect to employment in the establishment which the employer has adopted without regard to any holding by such employee of a position with a labor organization;

(d) initiation fees and assessments paid to labor organizations and deducted from the wages of employees pursuant to individual assignments meeting the terms specified in paragraph (4) of Section 302(c) of the LMRA;

(e) sporadic or occasional gifts, gratuities, or favors of insubstantial value, given under circumstances and terms unrelated to the recipients' status in a labor organization; for example, traditional Christmas gifts.

8. Enter the name and title of the recipient/contact name and title (if the recipient was that of a labor organization), name of the labor organization, and specify whether the recipient was an individual or a labor organization by selecting the appropriate box. Enter the address, telephone number, and email address of the recipient or contact person in the space provided. If the address of the labor organization differs from that of the individual recipient of the payment or the contact person for the labor organization, click the "Continuation" button to generate an additional page and enter the address of the labor organization on this continuation page.

9. Enter information for each payment. If additional lines are needed for more payments, click the "Continuation" button at the end of item 9 to generate more lines.

9.a. Enter the date of the payment was made (or promise or agreement was entered into) in mm/dd/yyyy format.

9.b. Enter the amount of the payment.

9.c. Specify if this was a payment or a loan and if it was made by cash or property. If this form of payment was cash, enter the U.S. dollar amount of each payment made during the fiscal year. If the form of payment was property, provide the market value in U.S. dollars of the property at the time of year. If the form of payment was another thing of value, describe the payment.

9.d. Explain fully the circumstances of the payment, including the terms of any oral agreement or understanding under which it was made. Provide a full explanation identifying the purpose and circumstances of the payments made or agreed or promised to be made. The explanation must fully outline the conditions and terms of any agreement or promise. In addition to the above, you must indicate whether the payments or promises reported specifically benefited the person or persons or labor organizations named in Item 8. If you made or promised or agreed to make payments through a person or persons not shown above, you must provide the full name and address of such person or persons. Your explanation must clearly indicate why you must report the payment. Any incomplete responses or unclear explanations will render this report deficient. If you need more space for the explanation, click the "Continuation" button in this field to generate a continuation page.

Part B – PERSUADER PAYMENTS TO EMPLOYEES OR EMPLOYEE COMMITTEES

Complete Part B if you made, directly or indirectly, any payment (including reimbursed expenses) to any of your employees, or to any group or committee of your employees, for the purpose of causing them to persuade other employees to exercise or not to exercise, or as to the

manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees.

In answering Part B, **exclude** payments made to any regular officer, supervisor, or employee as compensation for services as a regular officer, supervisor, or employee.

10. Enter the name of the recipient and specify whether the recipient was an employee or employee group or committee by selecting the appropriate box. If you selected "Employee Group/Committee," provide a contact name and title. Enter the address, telephone number, and email address of the recipient in the space provided. If the address of the group or committee differed from that of the individual recipient of the payment or the contact person for the group or committee, click the "Continuation" button to generate an additional page and enter the address of the group or committee on this continuation page.

11. Enter information for each payment. If additional lines are needed for more payments, click the "Continuation" button at the end of item 11 to generate more lines.

11.a. Enter the date of the payment in mm/dd/yyyy format.

11.b. Enter the amount of the payment.

11.c. Specify if this was a payment or a loan and if it was made by cash or property. If this form of payment was cash, enter the U.S. dollar amount of each payment made during the fiscal year. If the form of payment was property, provide the market value in U.S. dollars of the property at the time of year.

11.d. Explain fully the circumstances of the payment, including the terms of any oral agreement or understanding under which it was made. Provide a full explanation identifying the purpose and circumstances of the payments made or agreed or promised to be made. The explanation must fully outline the conditions and terms of any agreement or promise. In addition to the above, you must indicate whether the payments or promises reported specifically benefited the person or persons named in Item 10. If you made payments through a person or persons not shown above, you must provide the full name and address of such person or persons. Your explanation must clearly indicate why you must report the payment. Any incomplete responses or unclear explanations will render this report deficient. If you need more space for the explanation, click the "Continuation" button in this field to generate a continuation page.

Part C – PERSUADER AGREEMENTS OR ARRANGEMENTS WITH LABOR RELATIONS CONSULTANTS

Check the appropriate box(es) and complete Part C if you made any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person or organization undertook activities where an object thereof, directly or indirectly, was to:

- Persuade employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing.
- Furnish you with information concerning activities of employees or of a labor organization in connection with a labor dispute in which you were involved.

The term "agreement or arrangement" should be construed broadly and does not need to be in writing. A person "undertakes" activities not only when he/she performs the activity but also when he/she agrees to perform the activity or to have it performed.

In answering Part C, **exclude** *a*greements or arrangements covering services related exclusively to the following:

(1) giving or agreeing to give you advice; **or**

(2) agreeing to represent you before any court, administrative agency, or tribunal of arbitration; **or**

(3) engaging in collective bargaining on your behalf with respect to wages, hours, or other terms or conditions of employment or negotiating an agreement or any question arising thereunder.

Note: If the agreement or arrangement provides for **any** reportable activity, the exemptions do not apply and information must be reported for the entire agreement or arrangement.

With respect to persuader agreements or arrangements, "advice" means an oral or written recommendation regarding a decision or a course of conduct. In contrast to advice, "persuader activity" refers to a consultant's providing material or communications to, or engaging in other actions, conduct, or communications on behalf of an employer that, in whole or in part, have the object directly or indirectly to persuade employees concerning their rights to organize or bargain collectively. Reporting is thus required in any case in which the agreement or arrangement, in whole or part, calls for the consultant to engage in persuader activities, regardless of whether or not advice is also given.

Reportable Agreements or Arrangements

An employer and consultant each must file a report concerning an agreement or arrangement pursuant to which the consultant engages in activities that have as a direct or indirect object to, explicitly or implicitly, influence the decisions of employees with respect to forming, joining, or assisting a union, collective bargaining, or any protected concerted activity (such as a strike) in the workplace.

Specific examples of persuader activities that, either alone or in combination, would trigger the reporting requirements include but are not limited to: drafting, revising, or providing a persuader speech, written material, website content, audiovisual or multimedia presentation, or other material or communication of any

sort, to an employer for presentation, dissemination, or distribution to employees, directly or indirectly; planning or conducting individual or group meetings designed to persuade employees; developing or administering employee attitude surveys concerning union awareness, sympathy, or proneness; training supervisors or employer representatives to conduct individual or group meetings designed to persuade employees; coordinating or directing the activities of supervisors or employer representatives to engage in the persuasion of employees; establishing or facilitating employee committees; developing employer personnel policies or practices designed to persuade employees; deciding which employees to target for persuader activity or disciplinary action; and coordinating the timing and sequencing of persuader tactics and strategies.

Reportable agreements or arrangements include those in which a consultant plans or orchestrates a campaign or program to avoid or counter a union organizing or collective bargaining effort, such as through the specific persuader activities illustrated above, or otherwise engages on behalf of the employer, in whole or part, in any other actions, conduct, or communications designed to persuade employees. Persuader activities trigger reporting whether or not the consultant performs the activities through direct contact with any employee. For example, a consultant must report if he or she engages in any activities that utilize employer representatives to persuade employees, such as by planning, directing, or coordinating the activities of employer representatives or providing persuader material to them for dissemination or distribution to employees, or in which the consultant drafts or implements policies for the employer that have as an object to directly or indirectly persuade employees.

Exempt Agreements or Arrangements

No report is required concerning an agreement or arrangement to exclusively provide advice to an employer. For example, a consultant who exclusively counsels employer representatives on what they may lawfully say to employees, ensures a client's compliance with the law, or provides guidance on NLRB practice or precedent, is providing "advice." Reports are not required concerning agreements or arrangements to exclusively provide such advice.

Generally, no report is required for an agreement or arrangement whereby a lawyer or other consultant conducts a group seminar or conference for employers solely to provide guidance to them. However, if a consultant engages in persuader activities at such meetings, such as those activities enumerated above, then the consultant and employer would be required to file reports concerning such agreement or arrangement. The Department cautions that employers and consultants cannot avoid the reporting requirements by inappropriately labeling an otherwise reportable persuader agreement or arrangement as a "seminar" or "conference."

In answering Item Part C, also **exclude** agreements or arrangements for obtaining information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding.

12. Enter the name of the person with whom (or through) a separate agreement was made. Enter the name of the organization, and that person's position in the organization. Enter the address, telephone number, and email address of the person in the space provided. Also enter the Employer Identification Number (EIN) of the person, if applicable. If the address of the consultant or other organization differed from that of the individual with whom the separate agreement was made, click the "Continuation" button to generate an additional page and enter the address of the consultant on this continuation page.

13. Enter details about the agreement or arrangement:

13.a. Enter the date of the agreement or arrangement in mm/dd/yyyy format.

13.b. Explain fully the terms and conditions of the agreement or arrangement. Any incomplete responses or unclear explanations will render this report deficient. If you need more space for the explanation, click the "Continuation" button in this field to generate a continuation page.

14. Enter details about the specific activities performed or to be performed:

14.a. Nature of Activities. Select from the list in 14.a. each entry that describes the nature of a particular activity or activities performed or to be performed. The list is divided into two parts: persuader activities and information supplying activities, as identified in the initial boxes to Part C. For persuader activity, select each activity performed or to be performed, if the object thereof was, directly or indirectly, to persuade employees concerning their rights to organize or bargain collectively through representatives of their own choosing, or their right to engage in any protected concerted activity in the workplace. Select all that apply for each part that you identified in the initial boxes. If none of the items listed accurately describes the nature of a particular activity or activities, select **Other** and then click the "Continuation" button at the bottom of this field to generate a continuation page on which to provide an explanation of the activity or activities. You may also click the "Continuation" button to provide further information for any activity selected.

14.b. Describe the period during which the activity will be performed. For example, if the performance will begin in June 2011 and will terminate in August 2011, so indicate by stating "06/01/2011 through 08/31/2011."

14.c. Indicate the extent to which the activity has been performed. For example, you should indicate whether the activity is pending, ongoing, near completion, or completed.

14.d. Enter the name of the person(s) who performed activities and indicate if those persons are employed by

the consultant or serve as an independent contractor. Independent contractors in such cases are sub-consultants, who are required to file a separate Form LM-20 report. Enter the name of the organization, and that person's position in the organization. Enter the address, telephone number, and email address of the person in the space provided. If the address of the organization differs from the business address of the person who performed the activities, or if more than one person performed the activities, click the "Continuation" button to generate an additional page and enter the address of the organization or the additional persons on this continuation page.

14.e. Identify the subject employees who are to be persuaded or concerning whose activities information is to be supplied to the employer, including a description of the department, job classification(s), work location, and/or shift(s) of the employees targeted, as well as the location of their work. If you need more space for the explanation, click the "Continuation" button in this field to generate a continuation page.

14.f. Identify the subject labor organizations that employees are seeking to join, or whose activities information is to be supplied to the employer. If you need more space for the explanation, click the "Continuation" button in this field to generate a continuation page.

15. Enter information for each payment. If additional lines are needed for more payments, click the "Continuation" button at the end of item 15 to generate more lines.

15.a. Enter the date of the payment in mm/dd/yyyy format.

15.b. Enter the amount of the payment. If this form of payment was cash, enter the U.S. dollar amount of each payment made during the fiscal year. If the form of payment was property, provide the market value in U.S. dollars of the property at the time of year.

15.c. Specify if this was a payment or a loan and if it was made by cash or property.

15.d. Explain fully the circumstances of the payment, including the terms of any oral agreement or understanding under which it was made. Provide a full explanation identifying the purpose and circumstances of the payments made. The explanation must fully outline the conditions and terms of any agreement or promise. In addition to the above, you must indicate whether the payments reported specifically benefited the person or persons named in Item 12. If you made payments through a person or persons not shown above, you must provide the full name and address of such person or persons. Your explanation must clearly indicate why you must report the payment. Any incomplete responses or unclear explanations will render this report deficient. If you need more space for the explanation, click the "Continuation" button in this field to generate a continuation page.

Part D – EXPENDITURES MADE TO INTERFERE WITH, RESTRAIN, OR COERCE EMPLOYEES OR TO OBTAIN INFORMATION CONCERNING EMPLOYEES OR A LABOR ORGANIZATION

Check the appropriate box in Part D and complete this Part if you made:

- Any expenditure where an object thereof, directly or indirectly, was to interfere with, restrain, or coerce employees in the right to organize and bargain collectively through representatives of their own choosing.

  In answering this provision of Part D, **exclude** expenditures relating exclusively to matters protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA).

  Note: The definition set forth in Section 203(g) of the LMRDA for the term "interfere with, restrain, or coerce" excludes matters protected by Section 8(c) of the NLRA. Therefore, expenditures related exclusively to such matters protected by Section 8(c) are not required to be reported in this question. (The text of Section 8(c) of the NLRA is set forth below.)

- Any expenditure where an object thereof, directly or indirectly, was to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute in which you were involved.

  In answering this provision of Part D, **exclude** the following:

  (1) Information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; and
  (2) Expenditures made to any regular officer, supervisor, or employee as compensation for service as a regular officer, supervisor, or employee.

16. Enter the name of the recipient of the expenditure and specify whether the recipient was an employee, an independent contractor or other individual, or a business or organization by selecting the appropriate box. If you selected "Business/Organization," provide a contact name and title. Enter the address, telephone number, and email address of the recipient in the space provided. If the address of the business or other organization differed from that of the individual who received the expenditure or the contact for the business or organization, click the "Continuation" button to generate an additional page and enter the address of the business or other organization on this continuation page.

17. Enter information for each expenditure. If additional lines are needed for more payments, click the

"Continuation" button at the end of item 17 to generate more lines.

17.a. Enter the date of the expenditure in mm/dd/yyyy format.

17.b. Enter the amount of the expenditure.

17.c. Specify if this was a payment or a loan and if it was made by cash or property.

17.d. Explain fully the circumstances of the expenditure, including the terms of any oral agreement or understanding under which it was made. Provide a full explanation identifying the purpose and circumstances of the expenditures made or agreed or promised to be made. The explanation must fully outline the conditions and terms of any agreement or promise. In addition to the above, you must indicate whether the payments or promises reported specifically benefited the person or persons named in Item 16. If you made expenditures through a person or persons not shown above, you must provide the full name and address of such person or persons. Your explanation must clearly indicate why you must report the expenditure. Any incomplete responses or unclear explanations will render this report deficient. If you need more space for the explanation, click the "Continuation" button in this field to generate a continuation page.

18–19. Signatures—The completed Form LM-10 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the reporting employer. A report from a sole proprietor need only bear **one** signature which you should enter in Item 18. Otherwise, this report must bear **two (2)** signatures. To sign the report, an officer will be required to attest to the data on the report and use his or her EFS username and password as the verification mechanism. Once signed, the completed report can be electronically submitted to OLMS.

If the report is signed by an officer other than the president and/or treasurer, enter the correct title in the title field next to the signature.

Enter the telephone number used by the signatories to conduct official business. You do not have to report a private, unlisted telephone number.

SELECTED DEFINITIONS FROM THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

SEC. 3. For the purposes of titles I, II, III, IV, V except section 505), and VI of this Act-

(a) "Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(b) "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

(c) "Industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(d) "Persons" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, or receivers.

(e) "Employer" means any employer or any group or association of employers engaged in an industry affecting commerce
   (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or
   (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

(f) "Employee" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

(g) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(h) Not applicable.

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it:
   (1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees or an employer or employers engaged in an industry affecting commerce;
(3) or has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2) ;
(4) or has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or
(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

(k) Not applicable.
(l) Not applicable.
(m) "Labor relations consultant" means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.
(n) "Officer" means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.
(o) Not applicable.
(p) Not applicable.
(q) "Officer, agent, shop steward, or other representative," when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried non-supervisory professional staff, stenographic, and service personnel.

NATIONAL LABOR RELATIONS ACT, AS AMENDED

Section 8. "(c) The expressing of any views, argument, or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

RELATED PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

Report of Employers
Sec. 203.

(a) Every employer who in any fiscal year made-
(1) any payment or loan, direct or indirect, of money or other thing of value (including reimbursed expenses), or any promise or agreement therefore, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization, except
(a) payments or loans made by any national or State bank, credit union, insurance company, savings and loan association or other credit institution and
(b) payments of the kind referred to in section 302 (c) of the Labor Management Relations Act, 1947, as amended;
(2) any payment (including reimbursed expenses) to any of his employees, or any group or committee of such employees, for the purpose of causing such employee or group or committee of employees to persuade other employees to exercise or not to exercise, or as the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees;
(3) any expenditure, during the fiscal year, where an object thereof, directly or indirectly, is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing, or is to obtain information concerning the activities of employees, or a labor organization in connection with a labor dispute involving such employer, except for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;
(4) any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; or
(5) any payment (including reimbursed expenses) pursuant to an agreement or arrangement described in subdivision(4); shall file with the Secretary a report, in a form prescribed by him, signed by its president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or

labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.

(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly-

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

(c) Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

Nothing contained in this section shall be construed to require an employer to file a report under subsection (a) unless he has made an expenditure, payment, loan, agreement, or arrangement of the kind described therein. Nothing contained in this section shall be construed to require any other person to file a report under subsection (b) unless he was a party to an agreement or arrangement of the kind described therein.

(d) Nothing contained in this section shall be construed to require any regular officer, supervisor, or employee of an employer to file a report in connection with services rendered to such employer nor shall any employer be required to file a report covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation for service as a regular officer, supervisor, or employee of such employer.

(e) Nothing contained in this section shall be construed as an amendment to, or modification of the rights protected by, section 8 (c) of the National Labor Relations Act, as amended.

(f) The term "interfere with, restrain, or coerce" as used in this section means interference, restraint, and coercion which, if done with respect to the exercise of rights guaranteed in section 7 of the National Labor Relations Act, as amended, would, under section 8(a) of such Act, constitute an unfair labor practice.

SECTION 302(c) OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, AS AMENDED

"(c) The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions re made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, which-ever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents) Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident

insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event of the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such dead-lock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of pro-viding pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; or (6) with respect to money or other thing of value paid by any employer to a trust fund established by such a representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal services shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, as amended, or this Act; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959; or (9) with respect to money or other things of value paid by an employer to a plant, area or industry-wide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978."

If You Need Assistance

The Office of Labor-Management Standards has field offices in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA
Birmingham, AL
Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Grand Rapids, MI
Guaynabo, PR
Honolulu, HI
Houston, TX
Kansas City, MO
Los Angeles, CA
Miami, FL
Milwaukee, WI
Minneapolis, MN
Nashville, TN
New Haven, CT
New Orleans, LA
New York, NY
Newark, NJ
Philadelphia, PA
Phoenix, AZ
Pittsburgh, PA
St. Louis, MO
San Francisco, CA
Seattle, WA
Tampa, FL
Washington, DC

Consult local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and phone number of your nearest field office.

Copies of labor organization annual financial reports, employer reports, labor relations consultant reports, and union officer and employee reports filed for the year 2000 and after can be viewed and printed at **www.unionreports.gov**. Copies of reports for the year 1999 and earlier can be ordered through the website. For questions on Form LM-10 and/or the instructions, call the Department of Labor National Call Center at: 866-4-USA-DOL (866-487-2365) or email **olms-public@dol.gov.**

If you would like to receive via email periodic updates from the Office of Labor-Management Standards, including information about the LM forms, enforcement results, and compliance assistance programs, you may subscribe to the OLMS Mailing List from the OLMS website: **www.olms.dol.gov.**

[FR Doc. 2011–14357 Filed 6–20–11; 8:45 am]
BILLING CODE 4510–CP–C