



U.S. Supreme Court Upholds Department of Labor's Interpretation on Mortgage Loan Officer Exemption from Overtime and Minimum Wage

In 2010, the U.S. Department of Labor (DOL) issued an interpretation which clarified that employees engaged in duties that are typical of a mortgage loan officer are not exempt administrative employees. Administrator's Interpretation No. 2010-1. Shortly after the 2010 interpretation was issued, the Mortgage Bankers Association brought a lawsuit challenging the 2010 interpretation on the grounds that the DOL failed to follow official rulemaking procedures under the Administrative Procedures Act (APA). While the lower court upheld the 2010 interpretation, the U.S. Court of Appeals for the District of Columbia vacated the interpretation, holding that the DOL did not follow proper rulemaking procedures. *Mortgage Bankers Ass'n v. Harris*, 720 F.3d 966 (D.C. Cir. 2013).

The court of appeals ruling was appealed to the U.S. Supreme Court, and last month the Supreme Court handed down its ruling, siding with the DOL. The high court struck down the appeals court decision vacating the DOL's "administrator interpretation" on mortgage loan officers' overtime status. The Supreme Court justices found that the text of the APA "clearly" says that unless a notice or hearing is required by statute, the law's notice-and-comment requirement does not apply to interpretative rules. Accordingly, the DOL interpretation under the Fair Labor Standards Act (and implementing regulations) that mortgage loan officers do not qualify for the administrative exemption, may be reinstated by the DOL.

As a result of the Supreme Court's ruling, financial institutions that employ mortgage loan officers should consider them as non-exempt and entitled to both minimum wage and overtime pay. Based on the substance of the DOL interpretive letter, a similar finding may apply to other employees of financial institutions, including business development officers and commercial loan officers.

For specific advice regarding the implications of the U.S. Supreme Court's ruling and the DOL's interpretive letter, clients should contact Eric G. Baron at EBaron@ABLawyers.com, or 949-474-1044.