

## CLIENT ALERT: Federal Court of Appeals Strikes Down U.S. Department of Labor Interpretation on Mortgage Originators

In the latest in a series of recent cases reversing the U.S. Department of Labor Wage and Hour Division's ("DOL") rulemaking, a federal court of appeals has vacated the DOL's 2010 administrative interpretation that found mortgage loan officers were non-exempt from the overtime pay requirement. The DOL's interpretation had been issued in 2010 and had largely reversed, its own prior 2006 opinion that mortgage loan officers were exempt from the overtime requirement under the "administrative" overtime exemption. The 2010 pronouncement "explicitly withdrew the 2006 Opinion Letter." See *MBJ Client Alert, 4/16/2010*.

To qualify for the administrative overtime exemption, an employees must be paid on a salary or fee basis and have as his or her primary duty the performance of office or non-manual work directly related to the management or general business operations of the employer or employer's customers; which primary duties include the exercise of discretion and independent judgment with respect to matters of significance.

In *Mortgage Bankers Ass'n v. Harris*, (July 2, 2013), the U.S. Circuit Court of Appeals for The District of Columbia found that the DOL failed to comply with "straightforward rules" requiring that the DOL follow the federal Administrative Procedures Act. The Court noted that "[w]hen an agency has given its regulation a definitive interpretation, and later significantly revises that interpretation, the agency has in effect amended its rule, something it may not accomplish without notice and comment." Because the DOL had simply issued the 2010 administrative interpretation without advance notice and opportunity for public comment, it had failed to comply with the law.

It remains to be seen whether the DOL will elect to issue new regulations in compliance with required administrative procedures or will remain silent. In the meantime, the 2010 interpretation has been vacated and the prior opinion that some mortgage loan officers may be exempt remains uncertain.

Despite the elimination of the 2010 interpretation, employers in the financial services industry are well-advised to exercise caution when considering classifying mortgage loan officers and others with similar job duties as overtime exempt. Although the 2010 interpretation is now withdrawn, the arguments it made in support of finding loan officers as non-exempt may still be made by plaintiffs and plaintiffs' attorneys. The federal overtime law—the Fair Labor Standards Act of 1938—and its detailed regulations require strict compliance to qualify for the administrative and other overtime exemptions. Employers should consult with their MBJ attorney to discuss any questions concerning wage and hour issues.

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