

INSIGHTS

## D.C. Circuit Halts Department of Labor's Reclassification of Loan Officers

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The D.C. Circuit Court of Appeals on Wednesday handed the Mortgage Bankers Association a huge win by refusing to grant a full court review of a panel decision that struck down a 2010 U.S. Department of Labor (DOL) reclassification of mortgage loan officers. The Court's decision not to rehear the case will require the DOL to go through a formal rulemaking process in order to change the status of loan officers under the law.

The Fair Labor Standards Act (FLSA) requires that covered nonexempt employees must receive overtime pay for hours worked over 40 per workweek at a rate not less than one and one-half times the regular rate of pay. However, Section 13(a)(1) of the FLSA provides an administrative exemption from overtime pay for employees who are paid on a salary basis at not less than \$455 per week and whose primary duties are directly related to management operations. A 2006 DOL opinion letter suggested that mortgage loan officers qualify under the administrative overtime exemption to the FLSA. However, a 2010 DOL reclassification of loan officers as nonexempt led the Mortgage Bankers Association to file suit on the grounds that the new interpretation improperly reversed the agency's earlier interpretation without giving interested parties a chance to comment.

The case was appealed to the D.C. Circuit Court of Appeals after a U.S. District Judge sided with the DOL. The Mortgage Bankers Association argued that the Administrative Procedure Act and underlying case law required the DOL to follow notice-and comment rulemaking in order to reinterpret a regulation. The D.C. Circuit agreed, relying on precedent in *Paralyzed Veterans of America v. D.C. Arena L.P.* and *Alaska Professional Hunters Association v. FAA*. There, the Court determined that the Administrative Procedure Act (APA), requires agencies to engage in notice and comment before formulating regulations where an interpretation adopts a new position inconsistent with existing regulations. The D.C. Circuit's refusal to rehear the case upholds the holding that the DOL's attempt to reclassify loan officers constitutes a fundamental modification of its previous interpretation and that it can only formally modify that interpretation through the formal process of notice and comment rulemaking.

### Bottom Line

There are both good-news and bad-news consequences flowing from this decision. On the positive side, the refusal to rehear the case constitutes a major victory for mortgage lenders, who have been flooded with putative class actions by loan officers accusing them of improperly withholding overtime pay. Thus, until the DOL goes through the proper rulemaking process in order to reclassify the status of loan officers under the law, mortgage loan officers remain qualified under the administrative exemption.

On the negative side, the Court took no position on the substance of the DOL's interpretation. As a result, mortgage lenders may face more claims over overtime payment once the DOL properly reclassifies loan officers.

For further information around the DOL's guidance on employees in banking, please click [here](#).