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Mortgage Loan Officers Not Exempt Administrative Employees

In a reversal of opinion, the Wage-Hour administrator has issued a new Administrator's Interpretation that holds that mortgage loan officers do not qualify as exempt administrative employees under section 13(a)(1) of the FLSA. This Interpretation specifically withdraws two prior Opinion Letters that reached an opposite conclusion. The Administrator based the ruling on the following facts:

The financial services industry assigns a variety of job titles to employees who perform the typical job duties of a mortgage loan officer: mortgage loan representative, mortgage loan consultant, and mortgage loan originator. For purposes of this interpretation the job title of mortgage loan officer will be used. However, as the regulations make clear, a job title does not determine whether an employee is exempt. The employee's actual **job duties and compensation determine whether the employee is exempt or nonexempt**. 29 C.F.R. § 541.2.1

Facts found during Wage and Hour Division investigations and the facts set out in the case law establish that the following are typical mortgage loan officer job duties:

- Receiving internal leads and contacting potential customers or receiving contacts from customers generated by direct mail or other marketing activity.
- Collecting required financial information from customers they contact or who contact them, including information about income, employment history, assets, investments, home ownership, debts, credit history, prior bankruptcies, judgments, and liens.
- Running credit reports.
- Entering the collected financial information into a computer program that identifies which loan products may be offered to customers based on the financial information provided.
- Assessing the loan products identified and discussing with the customers the terms and conditions of particular loans, trying to match the customers' needs with one of the company's loan products.
- Compiling customer documents for forwarding to an underwriter or loan processor, and may finalize documents for closings.

Further, in addition to the job duties described above, the facts set out in the case law demonstrate that historically mortgage loan officers were often compensated entirely by commissions, and that today many mortgage loan officers continue to be paid primarily by commissions, sometimes with a base wage, salary, or draw against the commissions. The commissions are based upon sales that are completed (i.e., loans that actually close), with the commission amount typically based upon the value of the loan.

What This Means for financial institutions:
On these facts, the Administrator concluded that the primary duty of such employees was sales rather than administrative work related to the management and general business operations of the employer. Applying the production-administration dichotomy, the loan officers' sales activity falls on the side of production rather than the running of the business itself. To view a copy of the Interpretation, please click here.

Should you have any questions about this ruling, please feel free to contact any member of Miller & Martin's Financial Institutions practice group.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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