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**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** Loan Officer Overtime Pay Requirements Decided by U.S. Supreme Court

In an opinion issued March 9, 2015, in *Perez v. Mortgage Bankers Ass'n*, 2015 WL 998535 (U.S. Mar 09, 2015), [click here](#), the United States Supreme Court provided an answer to the ongoing dispute between the mortgage banking industry and the U.S. Labor Department (DOL) regarding the status of mortgage loan officers under federal labor law for minimum wage and overtime compensation requirements.

Recall that in 1999 and 2001, the DOL issued opinion letters stating that mortgage loan officers do not qualify for the administrative exemption to overtime pay requirements under the Fair Labor Standards Act. In 2004, the DOL issued new regulations regarding the exemption. In 2006, the DOL issued an opinion letter finding that mortgage loan officers fell within the administrative exemption under the 2004 regulations. In 2010, the DOL again altered its interpretation of the administrative exemption when it withdrew the 2006 opinion letter and issued an Administrator's Interpretation (referred to in the *Perez* opinion as an "interpretive rule") that mortgage loan officers do not qualify for the administrative exemption from the Fair Labor Standards Act minimum wage and overtime compensation requirements.

The MBA filed suit contending that this new interpretation violated the notice and comment rule making requirements of the federal Administrative Procedures Act (APA). In its *Perez* decision, the Supreme Court held that section 4 of the APA (5 U.S.C. §553) specifically exempts interpretive rules from notice and comment requirements and because an agency is not required to use notice and comment procedures to issue an initial interpretive rule, it is also not required to use those procedures to amend or repeal that interpretive rule. This means that the DOL's 2010 Administrator's Interpretation now stands as written that mortgage loan officers do not qualify for the administrative exemption from the Fair Labor Standards Act minimum wage and overtime compensation requirements. The *Perez* decision is based on procedural grounds and does not prevent the unlikely event of the DOL issuing a future interpretive rule amending or reversing the 2010 Administrator's Interpretation.

That in summary is the *Perez* decision although the opinion discusses the Court's administrative law jurisprudence in arriving at this decision. As one well respected legal scholar succinctly summarized the *Perez* decision, "We lost."

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