



## News & Trending

PUBLICATIONS & ALERTS

### ETRENDS - DOL WAGE AND HOUR DIVISION FINDS MORTGAGE LOAN OFFICERS ARE NOT EXEMPT ADMINISTRATIVE EMPLOYEES UNDER FLSA IN NEWLY-ISSUED “ADMINISTRATOR INTERPRETATION”

04.01.2010

On March 24, 2010, the U.S. Department of Labor’s Wage and Hour Division (“WHD”) issued its first “Administrator Interpretation,” concluding that the administrative exemption from the minimum wage and overtime provisions of the Fair Labor Standards Act (“FLSA”) does not apply to employees who perform the typical job duties of a mortgage loan officer. The issuance of this first Administrator Interpretation marks a significant departure from the WHD’s previous practice of providing fact-specific guidance in response to requests for opinion letters submitted by individuals and organizations. Going forward, the WHD intends to provide, at the Wage and Hour Administrator’s discretion, generalized legal interpretations about the FLSA and its regulations, and will respond to requests for opinion letters by providing references to relevant statutes, regulations, interpretations and cases without analysis of specific facts.

#### **March 24, 2010 Administrator Interpretation**

In its March 24, 2010 Administrator Interpretation, the WHD focused on whether the primary duty of employees who perform the typical job duties of a mortgage loan officer is “office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers.” 29 C.F.R. § 541.200. To be directly related to the management or general business operations of the employer, the employee’s work must be “directly related to assisting with the running or servicing of the business, as distinguished, for example, from . . . selling a product in a retail or service establishment.” 29 C.F.R. § 541.201(a).

The WHD found that the primary duty of mortgage loan officers is to sell loan products to customers. Typical job duties of mortgage loan officers—such as collecting customer’s financial information, determining which loan products may be offered to customers, and matching customers’ needs to the employer’s loan products—are undertaken to sell the employer’s loans to customers and not to provide advice that the customer could use elsewhere. Because their primary duty is making sales, mortgage loan officers are performing the “production work” of their employer, not “servicing the business itself,” and, therefore, they are not within the administrative exemption.

The WHD also concluded that, because the typical customers of mortgage loan officers are individuals seeking home mortgages in a personal capacity, such customers do not have “management or general business operations.” Therefore, the mortgage loan officers’ primary duty could not directly relate to the management or general business operations of their customers within the meaning of the FLSA. However, the WHD acknowledged that mortgage loan officers’ primary duty may constitute administrative work when they handle loans for business clients involving business facilities.

### **Prior WHD Opinion Letters Withdrawn**

In the newly-issued Administrator Interpretation, the WHD withdrew two prior opinion letters—Wage and Hour Opinion Letter, FLSA2006-31 (Sept. 8, 2006) and Wage and Hour Opinion Letter, 2001 WL 1558764 (Feb. 16, 2001). According to the WHD, Wage and Hour Opinion Letter FLSA2006-31 had provided a “misleading assumption and selective and narrow analysis” on the application of the administrative exemption to employees in the financial services industry.

### **Conclusion**

In light of the WHD’s recent Administrator Interpretation, employers in the mortgage and banking industry are well-advised to examine their current exempt or non-exempt classifications for mortgage loan officers. Employers reviewing FLSA classifications for such employees should look beyond job titles to consider the employees’ primary duty.

View [The WHD’s March 24, 2010 Administrator Interpretation](#).

Please contact **Susan Parrott** with any questions.

### **Employment, Labor and Human Resources**

- **Zebulon D. Anderson** [zanderson@smithlaw.com](mailto:zanderson@smithlaw.com)
- **Megan P. Black** [mblack@smithlaw.com](mailto:mblack@smithlaw.com)
- **Sarah W. Fox** [sfox@smithlaw.com](mailto:sfox@smithlaw.com)
- **Blake S. Fricks** [bfricks@smithlaw.com](mailto:bfricks@smithlaw.com)
- **Susan H. Hargrove** [shargrove@smithlaw.com](mailto:shargrove@smithlaw.com)
- **Jamison H. Hinkle** [jhinkle@smithlaw.com](mailto:jhinkle@smithlaw.com)
- **J. Travis Hockaday** [thockaday@smithlaw.com](mailto:thockaday@smithlaw.com)
- **Rosemary G. Kenyon** [rkenyon@smithlaw.com](mailto:rkenyon@smithlaw.com)
- **Kimberly J. Korando** [kkorando@smithlaw.com](mailto:kkorando@smithlaw.com)
- **Isaac A. Linnartz** [ilinnartz@smithlaw.com](mailto:ilinnartz@smithlaw.com)
- **Susan Milner Parrott** [sparrott@smithlaw.com](mailto:sparrott@smithlaw.com)
- **Kerry A. Shad** [kshad@smithlaw.com](mailto:kshad@smithlaw.com)

### **Employee Benefits and Compensation**

- **Jamison H. Hinkle** [jhinkle@smithlaw.com](mailto:jhinkle@smithlaw.com)
- **Caryn Coppedge McNeill** [cmcneill@smithlaw.com](mailto:cmcneill@smithlaw.com)
- **Susan Milner Parrott** [sparrott@smithlaw.com](mailto:sparrott@smithlaw.com)
- **Craig B. Wheaton** [cwheaton@smithlaw.com](mailto:cwheaton@smithlaw.com)
- **Katherine Young Biegler** [kbiegler@smithlaw.com](mailto:kbiegler@smithlaw.com)



### Environmental Health and Safety

- Caroline N. Belk [cbelk@smithlaw.com](mailto:cbelk@smithlaw.com)
- **David W. Berry** [dberry@smithlaw.com](mailto:dberry@smithlaw.com)
- **Stephen T. Parascandola** [sparascandola@smithlaw.com](mailto:sparascandola@smithlaw.com)

### Government Contracting

- **J. Mitchell Armbruster** [marmbruster@smithlaw.com](mailto:marmbruster@smithlaw.com)
- **David B. Clement** [dclement@smithlaw.com](mailto:dclement@smithlaw.com)
- **David L. Hayden** [dhayden@smithlaw.com](mailto:dhayden@smithlaw.com)
- **Lee M. Kirby, Jr.** [lkirby@smithlaw.com](mailto:lkirby@smithlaw.com)
- **Kimberly J. Korando** [kkorando@smithlaw.com](mailto:kkorando@smithlaw.com)
- H. Martin Lancaster [mlancaster@smithlaw.com](mailto:mlancaster@smithlaw.com)
- **Wayne K. Maiorano** [wmaiorano@smithlaw.com](mailto:wmaiorano@smithlaw.com)
- **Peter J. Marino** [pmarino@smithlaw.com](mailto:pmarino@smithlaw.com)
- **Jackson W. Moore** [jmoore@smithlaw.com](mailto:jmoore@smithlaw.com)
- **Susan Milner Parrott** [sparrott@smithlaw.com](mailto:sparrott@smithlaw.com)
- **Jeffrey J. Truitt** [jtruitt@smithlaw.com](mailto:jtruitt@smithlaw.com)
- **Kirk G. Warner** [kwarnar@smithlaw.com](mailto:kwarnar@smithlaw.com)
- Jeffrey R. Wolfe [jwolfe@smithlaw.com](mailto:jwolfe@smithlaw.com)

### Privacy

- **Alicia A. Gilleskie** [agilleskie@smithlaw.com](mailto:agilleskie@smithlaw.com)
- Frederick R. Zufelt [fzufelt@smithlaw.com](mailto:fzufelt@smithlaw.com)

*Smith Anderson publishes eTrends periodically as a service to clients and friends. The purpose of this eTrends is to provide general information about a significant legal development in the field of employment law. Readers should be aware that the facts may vary from one situation to another, so the conclusions stated herein may not be applicable to the reader's particular circumstances.*

Reproduction in whole or in part is permitted when credit is given to Smith Anderson.

©Copyright Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P. 2012

<http://www.smithlaw.com>

## PROFESSIONALS

**Susan Milner Parrott**

## PRACTICE AREAS

Employment, Labor and Human Resources

