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APPLICATION OF THE ADMINISTRATIVE EXEMPTION TO MORTGAGE LOAN OFFICERS.

Yesterday, the Wage and Hour Division of the United States Department of Labor issued its first Opinion Letter, since the Obama administration took office. In its first Opinion Letter, the agency re-examined whether mortgage loan officers employed in the banking industry would qualify for exempt status. A copy of that Opinion Letter is attached. The new administration's interpretation is very problematic and very troubling.

The agency concludes that most mortgage loan officers will not qualify for exempt status, contrary to the regulations and prior agency guidance. The agency reverts back to a theme developed in the late 1980s, claiming that mortgage loan officers are engaged in "production" work, thereby making the administration exemption inapplicable. The Opinion Letter also provides a very distorted interpretation of the regulatory language that was added to the law five years ago to specifically address exempt status of financial service industry employees. Therefore, this interpretation will likely extend to other lenders, most notably consumer lenders and junior level commercial lenders. This Opinion Letter will likely also gain widespread publicity. That won't be particularly helpful to us either.

We will follow-up on other developments here. We will also be examining the overtime exemption guide, and will likely need to update and refine that product to assist banks satisfy this new reality.

For more information about this or other employment compliance issues, please call us, or visit our website.