

## Supreme Court Authorizes the DOL to Change its Interpretative Guidance without Public Input

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On March 9, 2015, the U.S. Supreme Court unanimously held in *Perez v. Mortgage Bankers Association*, that the Department of Labor (DOL) may issue its interpretations of wage and hour regulations without seeking input from the public. This case concerned the procedures required when federal agencies — here, the DOL — issue guidance to the public on existing regulations. Specifically, the issue was whether the DOL could unilaterally alter its interpretative rules without first giving notice to the public and an opportunity to comment. The Supreme Court held that it could.

The interpretive rules at issue in this case concern the classes of employees who are exempt from the overtime requirements of the Fair Labor Standards Act (FLSA). In particular, the FLSA regulations provide that certain administrative employees are exempt from minimum wage and overtime requirements based on the nature of their duties and the basis of their pay. In 1999 and 2001, the DOL issued opinion letters providing that mortgage-loan officers do not qualify for this exemption. In 2006, following amendments to the FLSA regulations, the DOL issued a new opinion letter stating that mortgage-loan officers could qualify for the exemption. Then in 2010, the DOL again changed course and withdrew its 2006 opinion letter. The plaintiffs in this case, relying on the Administrative Procedure Act (APA), argued that the DOL could not act on its own to change its interpretations of the law; instead, it needed to follow the notice-and-comment process before reversing course. The Supreme Court disagreed, finding that Section 4 of the APA expressly permits the DOL, as well as other federal agencies, to modify its interpretative guidance on its own.

This decision makes clear that the DOL may reverse itself or modify guidance interpreting its own regulations. While such guidance is not legally binding, courts tend to defer to the agency's interpretations when resolving disputes under the law. The effect, then, is that the DOL will have great flexibility in interpreting its own regulations, particularly in the context of the overtime exemptions. As the dispute over mortgage-loan officers demonstrates, changes by the DOL to its own interpretive guidance create challenges for employers who are looking to classify employees appropriately.

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