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LABOR PAINS

Mortgage Cos., DOL Clash Over New Compensation Rules

Industry Rushes To Adapt To – And Fight – Hourly Wage Laws

BY LAURA SCHREIER
BANKER & TRADESMAN STAFF WRITER

It's been almost a year since mortgage originators changed – practically overnight – from largely commission-based employees to, essentially, hourly wage earners.

The swift and unexpected decision from the U.S. Department of Labor (DOL) caught the mortgage industry off guard, sowing confusion and frustration. Even now, many in the industry are still either figuring out if the opinion applies to them, or how to make the changes.

In theory, changes to companies' compensation structures should have been applied immediately. But that's logistically impossible, said Jeff Lipes, president of Family Choice Mortgage, a Connecticut-based company with Massachusetts operations. First, mortgage companies and banks had to figure out if the DOL decision applied to them, he said, and then hurry to implement the change – that's not something that can happen right away.

He said he believes plenty of companies have yet to make the alterations.

"You have a large group that's probably not compliant," Lipes told Banker & Tradesman.

Re-thinking Operations

Members of the industry are both struggling to deal with the changes and also trying to get them repealed. The American Bankers Association, for example, is hosting a telephone conference

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Tracking Mortgage Officers' Hours Problematic In Wake Of Revised Law

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session Feb. 8 to explain the new guidelines, but has also filed a lawsuit to reverse the decision entirely.

The Mortgage Bankers Association similarly filed suit in January, claiming the DOL completely reversed itself on previous rulings regarding the employment status of mortgage originators – without grounds to do so.

Altering an employee group's status has major implications, said Christina Lewis, a partner with the Boston office of law firm Hinckley, Allen & Snyder.

CHRISTINA LEWIS

Previously, mortgage originators were considered "exempt" from labor laws governing hourly wage earners – meaning they could have entirely commission-based pay – did not have to track their hours and were not paid overtime. That made sense for the business, mortgage professionals say, which by its nature requires mortgage originators to work irregular hours and often has them traveling outside the office.

But in March, the DOL, with no warning, decided mortgage originators, as a class of employees, did not meet the right qualifications for exemption from those rules. Since they weren't exempt, they'd have to start punching a time clock.

That creates a serious administrative burden. What's more, the mortgage business has occasional "rush" periods where originators work longer hours to keep up with demand. If employers have to pay time-and-a-half for extra hours, it gets costly.

"The industry has been relying on [the old rules] for several years now, so to abruptly change this opinion is going to require an entire industry to rethink how they operate and what their business model looks like," Lewis said.

Tracking Difficulties

To be sure, the opinion has different implications for different companies, she added, depending on their varying business models. Massachusetts acknowledges something called a "highly compensated" exemption, which means that mortgage originators are exempt if they make more than $100,000 – which many do – and also fit certain other qualifications.

That helps some mortgage originators, but certainly not all, Lewis said. Those other qualifications are officially defined by the DOL. An originator can be exempt if, for example, he meets the "executive" qualification by being the direct supervisor of two or more employees.

But the difficulty in meeting those tests means plenty of originators are stuck. And some employers, such as Needham-based Greenpark Mortgage, aren't taking any chances.

Greenpark President Paul Gershkowitz said he thinks it's pretty clear the Department of Labor wants mortgage originators to be hourly employees, so that's what his company is doing.

But that doesn't mean he's happy about it. Tracking an originator's hours is no easy thing, he said. Loan officers divide their time between the office, home offices and remote sales calls, so adding up those hours is a headache.

Lipes said his 17 mortgage originators used to be paid on a commission-only basis. Now, they're making minimum wage plus sizable bonuses for their sales. But they have to carefully monitor their hours to avoid overtime work, which means, for example, they can no longer afford to be as responsive to customers' after-hours questions or requests.

Other logistical problems loom. Lipes said that the pay structure makes it tougher for him to keep lower-producing originators as employees. Before, it wasn't a big deal to employ originators who didn't immediately bring in sales, because he wasn't paying them based on their time.

Now, new employees who take awhile to rack up sales are costing him more money right away, which puts pressure on him to let the lower-producing employees go.

"I could carry them for longer when I didn't have to pay minimum wage," he said. ■

E-mail: lschreier@thewarrengroup.