

F.V.

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
WASHINGTON, D.C. 20210

JUN 30 1970

This is in further reply to your letter of May 20, 1970, requesting an interpretation of the exemption status under section 13(a)(1) of the Fair Labor Standards Act of the positions of systems programmer and programmer analyst which have been newly instituted within your data processing department.

We cannot, based on the information you have furnished, make a definite determination with respect to the positions you have described. The following information may, however, be of assistance to you in making your own determination.

Where a systems programmer or programmer analyst exceeds the special high salary or "upset" proviso of \$200 per week, the normal 20% limitation on performance of nonexempt work would not be applicable. At that salary level it is required only that the employee's "primary duty" consist of exempt type work. Primary duty normally means more than 50% of the employee's time in a particular workweek.

The description you have furnished of the duties and responsibilities of the programmer analyst indicates that a substantial amount of that employee's time will apparently be spent in performing exempt supervisory or "executive" type functions within the meaning of section 541.1 of our Regulations, Part 541. If performance of such supervisory functions constitutes more than 50% of the employee's working time, and if the employee is paid at least \$200 per week, the employee may qualify for exemption as a bona fide "executive".

The systems programmer appears to be primarily responsible for providing your installation with appropriate and up-to-date hardware and software through vendor contacts, and in providing in-house training to non-NBP staff members. Such functions appear to be "administrative" type functions under section 541.2 of our regulations. Whether such administrative functions constitute exempt work depends to what extent, if any, the employee exercises "discretion and independent judgment" within the meaning of section 541.207 of our regulations. If in the course of his vendor contacts or other functions the employee has the authority to independently make

2

decisions with respect to matters of significance which commit the company in substantial respects financially or otherwise, he would be exercising the appropriate discretion and judgment. Since this employee clearly exceeds the \$200 per week high salary proviso of our regulations, the earlier discussion of limitations on nonexempt work would be applicable.

The "professional" exemption under section 541.3 of our regulations generally requires, among other things, a "prolonged course of specialized intellectual instruction and study." Therefore, it would not be appropriate to discuss that aspect of the exemption since your job descriptions provide no information relative to the background, training, or experience necessary for these positions.

If either of the employees involved, in addition to his primary duty, also performs exempt work which falls within any of the other sections of the regulations, the two or more types of exempt work may be combined (see section 541.600 of Regulations, Part 541).

Sincerely,

ROBERT D. MORAN

Robert D. Moran
Administrator

Enclosure

WH-46

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