

**FLSA-463**

January 15, 1971

This is in further reply to your letter of October 26, 1970, in which you present three situations involving bank employees classified as salesmen who sell the bank's services, e.g., checking accounts, savings accounts, loans, bonds, and credit card business. You ask if these employees can be exempt as outside salesman under section 13(a)(1) of the Fair Labor Standards Act as defined in Regulations, Part 541.5.

An employee who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place of business in making sales within the meaning of section 3(k) of the Act or in obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid and whose hours of work of a nature other than sales work do not exceed 20 percent of the hours worked in the workweek by the nonexempt employees of his employer will qualify for exemption as an outside salesman.

In determining whether the employees in the three situations you describe qualify for this exemption it is first necessary to ascertain what would be exempt type work within the meaning of this exemption.

We would consider that an employee who actually obtains an application for a bond on the payroll savings plan, a checking account, or a loan would be engaged in exempt type work; the consideration in each of these cases being the payment or deduction for the bond, the charges made or the deposit of the minimum amount required for the checking account, and the interest paid for the amount loaned.

The credit card representative would also be considered engaged in exempt work because he is in effect "selling" the bank's services for which a consideration will be paid by the retail merchant or his customers.

However, if the employee does not obtain the order or the agreement but merely leaves instructions or application blanks which are submitted to the bank he would not be engaged in exempt work. Also, obtaining agreements for payroll deductions for savings accounts would not be exempt type work as this is actually the reverse of "selling." He is asking for the potential depositors to give the bank something for which it in turn will pay interest or dividends.

Accordingly, if the employees concerned are engaged in exempt type work and do not exceed the 20 percent tolerance permitted for nonexempt work they would qualify for exemption under Regulations, Part 541.5.

Sincerely,

Robert D. Moran  
Administrator