

FLSA-316

June 23, 1975

This is in reply to your letter of May 20, 1975, in which you request an opinion on the application of section 13(a)(1) of the Fair Labor Standards Act to certain employees of one of your corporate clients. You ask if they can be considered as "administrative" employees and exempt from the overtime pay requirements of the Act.

You state the employees are classified as "outside collection adjustors" whose primary duty is to contact delinquent customers (who have borrowed money and secured repayment by pledging personal property, including automobiles) for the purpose of collecting outstanding balances due or repossessing the collateral which had been pledged by the customers. The employees devote 95% of their time to such functions. You feel the job requires the exercise of discretion as the employees must make a decision to immediately retake possession of the collateral, or accept the customer's promise to pay the delinquency in the immediate future. If the employee determines that the customer is a good credit risk, he has the authority to set up a schedule of repayments with regard to delinquent installments. In addition, the adjustor reviews the corporation's records on the delinquent customer to determine his past delinquencies, if any, and the history of his loan transactions.

The requirements for this exemption are discussed in the enclosed copy of Regulations Part 541, which define and delimit the term "administrative" employee, in section 541.2. On the basis of the information in your letter, we are of the opinion that the "outside collection adjustors" do not qualify for this exemption.

The performance of the duties you have outlined depends primarily upon the skill and experience of the "adjustors" and the procedures employed, rather than on the exercise of discretion and independent judgement, within the meaning of section 541.207 of Regulations Part 541. In addition, these activities are in the nature of "production" work, as distinguished from duties directly related to management policies or general business operations, within the meaning of section 541.206. The function of an organization, branch or unit engaged in this type of activity, is to settle delinquent accounts by more or less prescribed means, and employees engaged in making collections, adjustments or compromises in settlement of the accounts generally do not qualify for exemption as administrative employees.

We might point out, however, the qualification for exemption depends upon the facts in specific cases and there may be instances in which an employee in this type of work is performing other functions meeting the requirements for exemption. The Wage and Hour Division has an Area Office in Miami, Florida which is located in Room 202, 1150 S. W. 1st Street, Telephone: 350-5767. Officials there are in a better position to determine applicability of the exemption based on the actual facts and your client may wish to obtain a determination from that source.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division

Enclosure