

**FLSA-689**

May 9, 1988

This is in further response to your letter requesting an opinion as to whether home teachers employed by the\*\*\* may be exempted from the overtime requirements of the Fair Labor Standards Act (FLSA). We regret the delay in responding to your inquiry.

The FLSA is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid not less than the minimum wage of \$3.35 an hour and not less than one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The provisions of FLSA apply to all employees of State and local governments except to those who are specifically excluded in section 3(e)(2)(c) of FLSA and those who may qualify for exemption from the minimum wage and/or overtime pay provisions of FLSA.

You indicate that home teachers provide foster care for mentally retarded adults or children who reside with the home teacher. The home teacher is responsible for providing care and supervision in his/her own residence. The home teacher therefore performs all \*\*\* work at home. The total amount of time a retarded adult or child resides with the home teacher is typically in excess of 40 hours per week. Accordingly, you seek to know whether or not the "reasonable agreement" clause contained in section 785.23 of 29 CFR, Part 785 would apply in this case.

The situation which you describe is generally discussed in the regulation interpreting hours worked under the FLSA which, inter alia, notes the difficulty in determining the work hours of someone who is employed at home. Consequently, "any reasonable agreement of the parties which takes into consideration all pertinent facts will be accepted, "(29 CFR section 785.23).

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith  
Administrator