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Record Type: Record

To: John Morrall@EOP

cc:

Subject: Suggestion for Regulatory Reform

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Name of Guidance:

Regulating Agency:

Dept. of Labor

Subagency (if any):

Wage and Hour Division

Citation (Code of Federal Regulation):

29 C.F.R. Section 541

Authority (Statute/Regulation):

Fair Labor Standards Act

Description of Problem (Nature of Impact and on Whom):

I am writing to recommend that the Fair Labor Standards Act FLSA regulations governing exempt and non-exempt employees be revised. The regulations, 29 C.F.R. Section 541, are out of date and difficult to apply in the modern workplace. In addition, the regulations were developed prior to their application to the public sector. The FLSA did not apply to the public sector until the mid 1980s, the regulations were developed following passage of the law in 1938.

Because they are out dated and not designed for the public sector, a great deal of confusion has ensued. Under the regulations, certain employees will be exempt from the laws overtime and minimum wage requirements if they

meet a salary basis and a duties test. The salary basis test interferes with the progressive disciplinary policies often required by public sector employers. According to the regulations, suspensions of less than one workweek will defeat exempt status. However, exemptions of more than one workweek are fine. An employer could discipline an employee by skipping from a written warning to a full week suspension, but a written warning followed by a one-day suspension would violate the regulations. This is but one of myriad problems with the regulations.

The duties test defines certain exempt categories - executive, administrative, and professional, computer professionals and outside salesmen. A 1999 General Accounting Office report to Congress summed up the problem nicely:

Finally, employers complained that the parts of the regulatory duties tests that call for independent judgment and discretion on the part of those classified as administrators and professionals led to confusing and inconsistent results in classifications of similarly situated employees. Our discussions with DOL investigators and review of compliance cases indicated that this part of the duties test involved difficult and sometimes subjective determinations, and that it was a source of contention in DOL audits. GAO/HEHS-99-164, FLSA: White Collar Exemptions in the Modern Work Place, September 1999.

The seasonal operation and seasonal receipts test that defines the recreational exemption is not pragmatic and fundamentally out of date.

Employees must also be paid a certain minimum amount in order to be classified as exempt. The highest base amount referred to in the regulations is 250 per week - about 13,000 per year. This dollar figure is certainly not representative of a professional or managerial employee in today's economy. The entire regulation needs to be brought up to date.

Proposed Solution:

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Estimate of Economic Impacts (Quantified Benefits and Costs if possible / Qualified description as needed):

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