

FLSA EXEMPTION DETERMINATION CHECKLIST

Creative Professional Exemption Checklist

| | | YES | NO |
|----|--|--------------------------|--|
| 1. | SALARY THRESHOLD: The annual rate of basic pay for this position is equal to or greater than \$23,660 for learned professionals other than professional legal positions, physician positions, or teacher positions. Rate of basic pay includes any locality payments under 5 CFR part 531, Subpart F, and special rate supplements under 5 CFR part 530, Subpart C, or other similar legal authorized payments or supplement, before any deductions. The pay rate does not include any other kinds of pay, such as premium payments, differentials, and allowances. See 5 CFR 551.203. | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. | If the answer to Question 1 is YES, then move on to the remaining questions to determine whether the employees qualify for exemption. If the answer to Question 1 is NO, go to # 6. | If YES, go to # 3 | If NO, go to # 6 |
| 3. | Work requiring invention, imagination, originality, or talent in a recognized artistic field. The <u>primary duty</u> of an employee in this position involves the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor, as described in 5 CFR 551.209. a. INVENTION, IMAGINATION, ORIGINALITY, OR TALENT: The work of an employee in this position requires invention, imagination, originality, or talent. This requirement is <u>not</u> met by work that can be produced by a person with general manual or intellectual ability and training. For example, an employee engaged in the work of newspapers, magazines, television, or other media does <u>not</u> meet this criterion if he/she only collects, organizes, and records information that is routine or already public, or if he/she does not contribute a unique interpretation or analysis to a news product. Work that is subject to substantial control by the organization also does <u>not</u> qualify as exempt creative work. AND: b. RECOGNIZED FIELD OF ARTISTIC OR CREATIVE ENDEAVOR: The work must be in a recognized field of artistic or creative endeavor, which includes music (musicians, composers, conductors and soloists), writing (writers who choose their own subjects and hand in a finished piece of work to their supervisor), acting, and graphic arts. | <input type="checkbox"/> | <input type="checkbox"/> If NO, go to # 6 |
| 4. | If the answers to Question 3a, b, AND c are YES, then move on to the remaining questions to determine whether the employees qualify for exemption. If any answer in Question 3 is NO, go to # 6. | If YES, go to # 5 | If NO, go to # 6 |
| 5. | PRIMARY DUTY: An employee in this position spends more than 50% of his/her work time performing the work indicated above, <u>or</u> a duty constituting less than 50% may be credited if such work: 1) constitutes a substantial, regular part of the work assigned and performed; 2) is the reason for the existence of the position; <u>and</u> 3) is clearly exempt work in terms of the basic nature of the work, the frequency with which the employee must exercise discretion and independent judgment, and the significance of the decisions made. See 5 CFR 551.104. | <input type="checkbox"/> | <input type="checkbox"/> If NO, go to # 6 |

Creative Professional Exemption

The employee meets the definition of FLSA-exempt creative professional and should be marked as exempt only if you answered YES to all questions.

EXEMPT

If you answered NO to any of the questions, then the employee does not meet the definition for the creative professional exemption, and you must mark the employee as non-exempt.

NON-EXEMPT