



August 26, 2005

FLSA2005-6NA

Dear *Name**,

This is in response to your letter concerning the application of the Fair Labor Standards Act (FLSA) to a group of "Peer Reviewers" who volunteer their services to your client, a private, national, not-for-profit, religious-based membership organization (the Organization) that operates an accreditation program (the Program). It is our opinion that the Peer Reviewers qualify as volunteers under the FLSA.

You describe the Program as a "private, voluntary, self-assessment and peer review process developed by the Organization to promote, pursue and recognize excellence in Christian ministry and mission." The Program uses Peer Reviewers to conduct on-site accreditation evaluations for other not-for-profit organizations that wish to obtain or retain membership in the Organization. You mention that the accreditation process, which may take as long as 18 months to complete, has no bearing on whether a facility may be eligible for government funding.

The Organization provides Peer Reviewers with mandatory training initially and then follow-up training every three years, but the Peer Reviewers are not supervised in any way by the Organization as they perform their review duties. The Peer Reviewers review a facility's application prior to the site visit and, while on site, they observe the facility's environment, interview employees and review facility documents. They then submit a final written report and recommendation to the Organization. On average, a Peer Reviewer spends one to six business days per year in this process.

The Peer Reviewers work in three-person teams. One is a "prominent leader of the Organization's Church." Another you describe as an "experienced health and welfare executive serving as either an administrator or assistant administrator, controller, corporate financial director, director of nursing or other major management position of a member organization." The third, or lead, member of the review team is "an administrator or senior level management staff member of a health or welfare organization which itself is a member of the Organization, with at least five years of experience in such a level of leadership, and must have professional licensure or equivalent credentials." You say that the Peer Reviewers' "primary employers" continue the reviewers' regular salaries for the time they spend in the review process and Peer Reviewers volunteer their time without expectation of pay from the Organization. They receive only reimbursement for reasonable expenses incurred while conducting the visits, such as airfare, lodging, and meal costs. The facility under review then reimburses the Organization for these costs. You describe the peer reviewers as experts in their fields. A small number of them are retired professionals. You describe a mixed motivation on the part of the Peer Reviewers: they learn how other professionals in their field function; they "study the 'success secrets' of other high quality health care and human services facilities and ministries;" but also they volunteer for "religious, charitable, and humanitarian reasons." However, they use what they learn "to gain a competitive advantage in their respective fields."

As a practical matter, you ask whether the peer reviewers are exempt from the FLSA either as volunteers or independent contractors or, alternatively, if any minimum wage requirements are satisfied by their salaries paid by their primary employers who "derive a great benefit" from this service. The FLSA's minimum wage requirements apply to non-exempt employees who either work for an employer that is a covered enterprise or who engage in work that is individually covered.

The FLSA applies only if an employee-employer relationship exists. See Opinion Letter dated July 18, 1996, copy enclosed. The determination of whether an employee-employer relationship exists can be complex. The nature of such relationship depends upon the economic realities of the whole activity, as disclosed by all the surrounding circumstances and not upon isolated facts. See NLRB v. Hearst Publications, Inc., 322 U.S. 111, 128-9 (1944). The FLSA defines the term "employ" as



including “to suffer or permit to work.” FLSA §3(g), copy enclosed. The Supreme Court has made it clear that the FLSA does not cover individuals who, “without promise or expectation of compensation, but solely for his personal purpose or pleasure, worked in activities carried on by other persons either for their pleasure or profit.” Tony and Susan Alamo Foundation v. Sec’y of Labor, 471 U.S. 290, 295 (1985) *quoting* Walling v. Portland Terminal Co., 330 U.S. 148, 152 (1947). See also Opinion Letter dated July 31, 2001 and Field Operations Handbook § 10b03, copies enclosed. In administering the FLSA, the Department of Labor follows this judicial guidance in the case of individuals serving as unpaid volunteers in various community services.

The economic realities demonstrate that the Peer Reviewers, who are not paid for their services and perform their services without contemplation of pay from the Organization, are volunteers and not covered by the terms of the FLSA. The fact that Peer Reviewers continue to receive their regular salaries from their primary employers does not jeopardize their volunteer status and convert them into employees of the Organization. See Opinion Letter dated April 14, 2003, copy enclosed.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to a pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust the above information is responsive to your inquiry.

Sincerely,

Barbara R. Relerford
Office of Enforcement Policy
Fair Labor Standards Team

Enclosures:
FLSA § 3(g)
Opinion Letters dated 7/18/1996, 7/31/2001, and 4/14/2003
Field Operations Handbook § 10b03

** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*