

**R65G**  
**State Higher Education Labor Relations Board**

***Operating Budget Data***

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(\$ in Thousands)

	<u>FY 02</u>	<u>FY 03</u>	<u>FY 04</u>	<u>FY 02-04</u> <u>Change</u>	<u>FY 05</u>	<u>FY 04-05</u> <u>Change</u>
Operations	\$193	\$268	\$316	\$123	\$305	-\$11
Contractual Services	34	87	83	49	94	11
Grants	0	0	0	0	0	0
Contingent & Back of Bill Reductions	0	0	0	0	-1	-1
<b>Adjusted Grand Total</b>	<b>\$227</b>	<b>\$355</b>	<b>\$399</b>	<b>\$172</b>	<b>\$398</b>	<b>-\$1</b>
 Reimbursable Funds	 227	 355	 399	 \$172	 398	 -1
<b>Adjusted Grand Total</b>	<b>\$227</b>	<b>\$355</b>	<b>\$399</b>	<b>\$172</b>	<b>\$398</b>	<b>-\$1</b>
 <b>Annual % Change</b>		<b>56.4%</b>	<b>12.4%</b>		<b>-0.3%</b>	

- While costs have been contained in other State agencies in recent fiscal years, the State Higher Education Labor Relations Board has not experienced an adverse budgetary impact to date.
- The State Higher Education Labor Relations Board is totally supported by reimbursable funds, charged to the State's public institutions of higher education. Specific apportionments are found in **Appendix 4**.
- Deferred compensation contribution funding (\$1,044) or the State's match of up to \$600 in 401(k)/403(b)/457 contributions will be withdrawn in back-of-the-bill language contingent upon enactment of budget reconciliation legislation.

Note: Numbers may not sum to total due to rounding.

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## Personnel Data

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	<u>FY 02</u>	<u>FY 03</u>	<u>FY 04</u>	<u>FY 02-04</u> <u>Change</u>	<u>FY 05</u>	<u>FY 04-05</u> <u>Change</u>
Regular Positions	3.0	3.0	3.0	0.0	3.0	0.00
Contractual FTEs	0.3	0.5	0.4	0.1	0.4	0.00
<b>Total Personnel</b>	<b>3.3</b>	<b>3.5</b>	<b>3.4</b>	<b>0</b>	<b>3.4</b>	<b>0.0</b>

### *Vacancy Data: Regular Positions*

Turnover Expectancy	0.07	2.47%
Positions Vacant as of 12/31/03	0.00	0.00%

- The State Higher Education Labor Relations Board’s turnover rate is very low since, in the event that it experiences any resignations, it is not expected that a new hire will be offered significantly less than the resigning staff member. The 2.5% that has been budgeted is intended to accommodate any delay in hiring replacement staff, in the event of a resignation.

## Analysis in Brief

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### Major Trends

**Focus on Unfair Labor Practices:** While focused on representation election activity during the first two fiscal years of its existence, the State Higher Education Labor Relations Board is currently almost exclusively focused on unfair labor practices.

### Issues

**Potential Impact of Changes to Federal Fair Labor Standard Act:** The board is asked to comment on the implications for the board, higher education institutions, and bargaining units resulting from possible changes to the federal Fair Labor Standards Act.

**Unused Reimbursable Fund Balance:** A reimbursable fund balance of over \$250,000 has accumulated.

### Recommended Actions

1. Reduce public higher education institution assessments by \$250,000 of the reimbursable fund balance.

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**State Higher Education Labor Relations Board**

***Operating Budget Analysis***

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**Program Description**

The State Higher Education Labor Relations Board (SHELRB or “board”) administers Title 3, the State Personnel and Pensions Article, §3-101 through §3-602. This legislation permits certain employees of State higher education institutions to determine whether they wish to elect an exclusive representative and enter into collective bargaining with their employers. The legislation also provides protections to both employees and the State through elections, collective bargaining, and the administration of memoranda of understanding. The board:

- conducts representation elections;
- certifies results and elected exclusive representatives;
- adopts regulations for elections and for unfair labor practices;
- receives petitions and hears complaints; and
- on a voluntary basis, may assist parties in pursuing memoranda of understanding through negotiations.

SHELRB is a very small independent agency with three regular employees. The regular staff, with assistance from contractual employees and consultants, including the Office of Administrative Hearings, provide ongoing services as indicated in the program description and provide support to the five-person board.

In accomplishing their responsibilities, the board and staff have developed a number of performance goals. Three of those goals are to:

- respond to petitions by unions for representation elections in a timely and efficient manner;
- receive and process petitions and complaints and address controversies in a timely and efficient manner; and
- adopt regulations to implement statutory authority and monitor and add to or amend regulations on an ongoing basis.

## **Performance Analysis: Managing for Results**

The board's Managing for Results (MFR) submission focuses primarily on the efficient functioning of its office and the timely completion of the tasks involved in reaching its performance goals. It has submitted ample evidence that it has reached its objectives and requests funding at the same level provided for in fiscal 2004.

Specific objectives of the board include a number related to the efficient functioning of representation elections: approving petitions and certifying election candidates in a timely manner, meeting with parties to discuss orders and issuing final orders, and holding elections within 90 days of the original petition. Facilitating high election turnout has been one of the results of the efficient accomplishment of these goals: 71% of the 6,483 employees qualified to participate in elections held to date actually did participate. All elections resulted in union representation; information on the exclusive representative chosen by individual bargaining units can be found in **Appendix 3**. Most of this election activity took place prior to fiscal 2004; during the first half of fiscal 2004, there has been one entry in the board's election log, certification of a runoff election between the Maryland Classified Employees Association and the American Federation of State, County, and Municipal Employees.

Within its MFR submission, the board has projected a moderate level of increased election activity for fiscal 2004, based on the possibility that there may be decertification petitions or election challenges of already-existing units. There is also some possibility that there may be elections in as yet unorganized units. However, the incidence of decertification elections or election challenges, which are permissible two years after an initial election, is difficult to predict this early in the history of the SHELRB. As a result, MFR projections of increased election activity are highly speculative; however, many of the budgetary reductions taken by the board are predicated on a *reduction* in election activity. **Accordingly, the Department of Legislative Services (DLS) urges the board to revisit in the next budget cycle the assumptions used to establish the level of projected election activity; DLS also urges the board to establish a nexus between budget decisions and MFR performance indicators.**

## **Governor's Proposed Budget**

SHELRB, established during the 2001 session in the legislation granting collective bargaining rights to higher education employees, is funded at \$399,369 in the Governor's fiscal 2005 allowance with reimbursable funds from higher education institutions. The budget is funded at the same level as during fiscal 2004 but reflects economies in some areas to provide for increased expenditures in others. The administration has indicated that it plans to apportion the actual expenditures among institutions, using the proportional distribution indicated in **Appendix 4**.

The changes in the allowance over the working appropriation in SHELRB can be largely attributed to two things: reduced expenditures related to elections and a budget shift to the use of the Office of Administrative Hearings (OAH) for longer, more complicated hearings, as indicated in **Exhibit 1**.

**Exhibit 1**  
**Governor's Proposed Budget**  
**State Higher Education Labor Relations Board**  
(\$ in Thousands)

	<u>FY 03</u> <u>Actual</u>	<u>FY 04</u> <u>Approp.</u>	<u>FY 05</u> <u>Allowance</u>	<u>FY 04-05</u> <u>Change</u>	<u>FY 04-05</u> <u>% Change</u>
Reimbursable Funds	\$355	\$399	\$399	\$0	0.0%
Contingent & Back of Bill Reductions	0	0	-1	-1	
<b>Adjusted Reimbursable Funds</b>	<b>\$355</b>	<b>\$399</b>	<b>\$398</b>	<b>-\$1</b>	<b>-0.3%</b>
<b>Adjusted Grand Total</b>	<b>\$355</b>	<b>\$399</b>	<b>\$398</b>	<b>-\$1</b>	<b>-0.3%</b>

**Where It Goes:**

**Personnel Expenses**

Increments and other compensation .....	\$5
Employee and retiree health insurance .....	2
Turnover adjustments.....	-1

**Decrease in Representation Election-related Activity**

Reduction in contractual employment .....	-12
Reduction in printing/reproduction contractual services .....	-7
Reduction in non-dataprocessing contractual services .....	-22

**Increase in Non-representation Election Activity**

Increase in Office of Administrative Hearing Costs.....	40
Other .....	-6

**Total** **-\$1**

Note: Numbers may not sum to total due to rounding.

**Fiscal 2005 Cost Containment**

Deferred compensation contribution funding (\$1,044) or the State's match of up to \$600 in 401(k)/403(b)/457 contributions will be withdrawn in back-of-the-bill language contingent upon enactment of budget reconciliation legislation.

**Impact of Planned Reduced Representation Election Activity**

The reduction in special payments payroll (-\$12,325), or salaries for contractual employees, reflects the fact that the board currently anticipates fewer representation elections, when contractual employees were most often used, during fiscal 2005. Savings in postage (-\$1,542), telephone (-\$1,000), and printing services (-\$7,000), as well as other non-data processing contractual services (-\$22,248) are also attributed by the board to a decline in election activity.

**Office of Administrative Hearings**

Election-related reductions are offset by an increase of \$40,000 in administrative hearing contractual services. These monies are to be paid to the OAH for help with lengthy, complicated cases. SHELRB consists of five persons who serve part-time to conduct board business and adjudicate cases. Board members receive small stipends for regular meetings and hearings, but many cases require more consideration than can be accomplished in the monthly members' meeting. When cases are particularly complicated and would require multi-day fact-finding and legal argument hearings, the board relies upon the OAH to provide conclusions of law and possible remedies. The OAH has reported that they will charge SHELRB \$175 per hour for its services, including services related to pre-hearings, hearings, research, and writing of proposed findings by the administrative law judges. The board then reviews the reports provided and publishes decisions, orders, and opinions based in part on these OAH services. Since the board does not have a long history of use of OAH's services, the adequacy of the \$40,000 budgeted to cover necessary OAH services is indeterminate.

## *Issues*

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### **1. Potential Impact of Changes to Federal Fair Labor Standard Act**

The federal Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments. The overtime pay provision provides that workers, unless exempt from the requirement, are paid time and one half their regular salary for hours worked over 40 in a week. Exemptions from this provision are made for specific types of business or to specific kinds of work. This standard has an impact on the work of SHELRB in that it has applicability in disputes over application of the standard and in the determination of appropriate bargaining units' composition.

When the board certifies the appropriateness of a bargaining unit, it has to decide if a unit is exclusively composed of (State Personnel and Pensions, Section 3-403(d)(3)):

- all eligible nonexempt employees, as described in the federal Fair Labor Standards Act, except eligible sworn police officers;
- all eligible exempt employees, as described in the federal Fair Labor Standards Act; or
- all eligible sworn police officers.

Placing employees who are not sworn police officers in either the nonexempt or exempt category followed the standards established by the federal Department of Labor in place at the time individual Maryland higher education collective bargaining units were established. These regulations are lengthy and, in some cases, confusing to employers. To alleviate employer confusion, the DOL is seeking to simplify requirements for exemption from the FLSA. Current regulations and proposed modifications are outlined in **Appendix 5**. If these proposed federal changes take place, there is the potential in Maryland higher education institutions for calls for unit clarifications in 22 of the 31 units already certified. This would generate potentially time-consuming determinations of the appropriateness of current unit composition. Changes in unit composition could also disrupt current and future memoranda of understanding negotiations, create new potential for unfair labor practice claims, or generate election challenges. **The board is asked to comment on the potential impact of changes in the FLSA on SHELRB activity and on labor relations in Maryland higher education institutions.**

### **2. Unused Reimbursable Fund Balance**

SHELRB is a fairly new agency. The relative uniqueness of its function in the State makes it difficult to look to similar agencies for budgeting precedent and guidance. The result of this is that, although the board has budgeted conservatively, actual expenditures over the three years of its existence have been less than anticipated. In fact, the board has a cumulative reimbursable fund

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balance of \$279,899. The administration has reported that it intends to “true up” expenditures and assessments of higher education institutions in the fourth quarter of fiscal 2004 by using \$250,000 of this balance to offset the year’s expenditures. While DLS recognizes the value of using these funds to offset current year expenditures, reflecting the reduction in the fiscal 2005 general fund contributes to the goal of limiting increased spending to the Spending Affordability Committee limit of 4.37%. **Accordingly, DLS recommends offsetting the full anticipated fiscal 2005 assessment of public higher education institutions by \$250,000 with each institution receiving a proportional offset commensurate with its share of the full apportionment (Appendix 4). DLS also recommends reducing fiscal 2005 general funds by the same amounts in each institution: \$227,250 in the University System of Maryland, \$6,500 in Baltimore City Community College, \$4,750 in St. Mary’s College of Maryland, and \$11,500 in Morgan State University.**

## ***Recommended Actions***

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1. Add the following language:

, provided that the State Higher Education Labor Relations Board return \$227,250 to the University System of Maryland, \$6,500 to Baltimore City Community College, \$4,750 to St. Mary's College of Maryland, and \$11,500 to Morgan State University from the accumulated reimbursable fund balance.

**Explanation:** These funds represent \$250,000 of the \$279,899 in accumulated reimbursable funds which are to be used to offset fiscal 2005 expenditures. Fiscal 2005 assessments will be adjusted accordingly.

## ***Current and Prior Year Budgets***

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### **Current and Prior Year Budgets State Higher Education Labor Relations Board (\$ in Thousands)**

	<b><u>General Fund</u></b>	<b><u>Special Fund</u></b>	<b><u>Federal Fund</u></b>	<b><u>Reimb. Fund</u></b>	<b><u>Total</u></b>
<b>Fiscal 2003</b>					
Legislative Appropriation	\$0	\$0	\$0	\$355	\$355
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	0	0	0	0	0
Cost Containment	0	0	0	0	0
Reversions and Cancellations	0	0	0	0	0
<b>Actual Expenditures</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$355</b>	<b>\$355</b>
<b>Fiscal 2004</b>					
Legislative Appropriation	\$0	\$0	\$0	\$399	\$399
Cost Containment	0	0	0	0	0
Budget Amendments	0	0	0	0	0
<b>Working Appropriation</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$399</b>	<b>\$399</b>

Note: Numbers may not sum to total due to rounding.

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**Object/Fund Difference Report  
State Higher Education Labor Relations Board**

<u>Object/Fund</u>	<u>FY03 Actual</u>	<u>FY04 Working Appropriation</u>	<u>FY05 Allowance</u>	<u>FY04 - FY05 Amount Change</u>	<u>Percent Change</u>
<b>Positions</b>					
01 Regular	3.00	3.00	3.00	0	0%
02 Contractual	0.50	0.40	0.40	0	0%
<b>Total Positions</b>	<b>3.50</b>	<b>3.40</b>	<b>3.40</b>	<b>0</b>	<b>0%</b>
<b>Objects</b>					
01 Salaries and Wages	\$ 217,573	\$ 227,224	\$ 235,792	\$ 8,568	3.8%
02 Technical & Spec Fees	4,016	42,086	29,802	-12,284	-29.2%
03 Communication	2,467	8,116	5,925	-2,191	-27.0%
04 Travel	13,505	15,000	11,105	-3,895	-26.0%
06 Fuel & Utilities	1,104	0	0	0	0.0%
08 Contractual Services	87,114	83,248	93,000	9,752	11.7%
09 Supplies & Materials	5,696	4,000	4,000	0	0%
10 Equip - Replacement	2,200	0	1,000	1,000	N/A
11 Equip - Additional	7,071	3,000	1,000	-2,000	-66.7%
13 Fixed Charges	14,644	16,695	17,745	1,050	6.3%
<b>Total Objects</b>	<b>\$ 355,390</b>	<b>\$ 399,369</b>	<b>\$ 399,369</b>	<b>\$ 0</b>	<b>0%</b>
<b>Funds</b>					
09 Reimbursable Fund	\$ 355,390	\$ 399,369	\$ 399,369	\$ 0	0%
<b>Total Funds</b>	<b>\$ 355,390</b>	<b>\$ 399,369</b>	<b>\$ 399,369</b>	<b>\$ 0</b>	<b>0%</b>

Note: Fiscal 2004 appropriations and fiscal 2005 allowance do not include deficiencies, cost containment, and contingent reductions.

## Maryland State Higher Education Labor Relations Board Election Status Report

	Exempt	Nonexempt	Sworn Police	Petitions <sup>1</sup>
Baltimore City Community College	AFSCME	AFSCME	AFSCME	3
Bowie State University	AFSCME	AFSCME	MCEA	6
Coppin State College	AFSCME	AFSCME	AFSCME	6
Frostburg State University	AFSCME	AFSCME	MCEA	5
Morgan State University	no election	AFSCME	no election	2
St. Mary's College	AFSCME	AFSCME	AFSCME	6
Salisbury University	no election	MCEA	MCEA	4
Towson University	no election	no election	no election	
University of Baltimore	AFSCME	AFSCME	AFSCME	6
University of Maryland, Baltimore	no election	AFSCME	no election	1
University of Maryland, Baltimore County	no election	AFSCME	no election	2 (1wd)
University of Maryland Biotechnology Institute	no election	no election	no unit	
University of Maryland Center for Environmental Science	no election	MCEA	no unit	1
University of Maryland, College Park	AFSCME	AFSCME	FOP	3
University of Maryland, Eastern Shore	AFSCME	AFSCME	AFSCME	7 (1wd)
University of Maryland University College	no election	AFSCME	no unit	2 (1wd)
University System of Maryland Office	no election	no election	no unit	
17 institutions, 48 units, 54 petitions				

Unit Type	Units	Elections	Representatives
Exempt	17	8	AFSCME, 8
Nonexempt	17	14	AFSCME, 12; MCEA, 2
Sworn	13	9	AFSCME, 5; FOP, 1; MCEA, 3

AFSCME = American Federation of State, County, and Municipal Employees  
MCEA = Maryland Classified Employees Association  
FOP = Fraternal Order of Police

<sup>1</sup> Total number of petitions (originating and intervening) handled; withdrawals indicated.

**Higher Education Labor Relations Board  
Institutional Apportionment Fiscal 2005**

<b>Institution</b>	<b>Proportion of Total Positions<sup>1</sup></b>	<b>Anticipated SHELRB Apportionment</b>	<b>Reimbursable Fund Offset/General Fund Reduction</b>	<b>Net Anticipated Reimbursable Fund Obligation</b>
University of Maryland, Baltimore	16.6%	\$66,295		
University of Maryland, College Park	35.1%	\$140,180		
Bowie State University	2.1%	\$8,387		
Towson University	7.8%	\$31,151		
University of Maryland Eastern Shore	3.1%	\$12,380		
Frostburg State University	3.2%	\$12,780		
Coppin State College	1.8%	\$7,189		
University of Baltimore	2.6%	\$10,384		
Salisbury State University	4.0%	\$15,975		
University of Maryland University College	3.3%	\$13,179		
University of Maryland, Baltimore County	8.2%	\$32,748		
University of Maryland Center for Environmental Science	1.1%	\$4,393		
University of Maryland Biotechnology Institute	1.5%	\$5,991		
University System of Maryland Office	0.5%	\$1,997		
<b>University System of Maryland</b>	<b>90.9%</b>	<b>\$363,029</b>	<b>\$227,250</b>	<b>\$135,779</b>
Baltimore City Community College	2.6%	\$10,384	\$6,500	\$3,884
St. Mary's College of Maryland	1.9%	\$7,588	\$4,750	\$2,838
Morgan State University	4.6%	\$18,371	\$11,500	\$6,871
<b>Total</b>	<b>100.0%</b>	<b>\$399,372</b>	<b>\$250,000</b>	<b>\$149,372</b>

Source: Maryland FY 2004 Budget Book

<sup>1</sup> Based on fiscal 2004 distribution of positions.

## Current Exemption and Proposed Exemption Standards Under the FLSA

### Executive Employees

	<u>Current Long Test</u>	<u>Current Short Test</u>	<u>Proposed Standard Test</u>
<b>Salary<sup>1</sup></b>	\$155 per week	\$250 per week	\$425 per week
<b>Duties</b>	<p>Primary duty of the management of the enterprise or a recognized department or subdivision.</p> <p>Customarily and regularly directs the work of two or more other employees</p> <p>Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion, or other change of status of other employees are given particular weight).</p> <p>Customarily and regularly exercises discretionary powers.</p> <p>Does not devote more than 20% (40% in retail or service establishments) of time to activities that are not directly and closely related to exempt work.</p>	<p>Primary duty of the management of the enterprise or a recognized department or subdivision.</p> <p>Customarily and regularly directs the work of two or more other employees.</p>	<p>Primary duty of the management of the enterprise or a recognized department or subdivision.</p> <p>Customarily and regularly directs the work of two or more other employees.</p> <p>Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion, or other change of status of other employees are given particular weight).</p>

<sup>1</sup> The salary is the minimum threshold to meet the exemption standard. Please note that the short and long tests were last revised in 1975. The long test, in fact, currently requires a salary below the minimum wage for a 40 hour work week. The minimum wage is \$5.15 or \$206 for 40 hours of work. Thus, an employee making at least the minimum allowable \$206 is subject to the long test and an employee making \$250 is subject to the short test. The proposed changes combine elements of both tests.

## Current Exemption and Proposed Exemption Standards Under the FLSA

### Administrative Employees

	<u>Current Long Test</u>	<u>Current Short Test</u>	<u>Proposed Standard Test</u>
<b>Salary</b>	\$155 per week	\$250 per week	\$425 per week
<b>Duties</b>	<p>Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer of the employer’s customers.</p> <p>Customarily and regularly exercises discretion and independent judgment.</p> <p>Regularly and directly assists a proprietor, or exempt executive or administrative employee; or performs specialized or technical work requiring special knowledge under only general supervision; or executes special assignments under only general supervision.</p> <p>Does not devote more than 20% (40% in retail or service establishments) of time to activities that are not directly and closely related to exempt work.</p>	<p>Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer’s customers.</p> <p>Customarily and regularly exercises discretion and independent judgment.</p>	<p>Primary duty of performing office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers.</p> <p>Holds a “position of responsibility” with the employer, defined as either (1) performing work of substantial importance or (2) performing work requiring a high level of skill or training.</p>

## Current Exemption and Proposed Exemption Standards Under the FLSA

### Learned Professional Employees

	<u>Current Long Test</u>	<u>Current Short Test</u>	<u>Proposed Standard Test</u>
<b>Salary</b>	\$170 per week	\$250 per week	\$425 per week
<b>Duties</b>	<p>Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.</p> <p>Consistently exercises discretion and judgment.</p> <p>Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.</p> <p>Does not devote more than 20% of time to activities that are not an essential part of and necessarily incident to exempt work.</p>	<p>Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.</p> <p>Consistently exercises discretion and judgment</p>	<p>Primary duty of performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as an equivalent combination of intellection instruction and work experience.</p>

## Current Exemption and Proposed Exemption Standards Under the FLSA

### Creative Professional Employees

	<u>Current Long Test</u>	<u>Current Short Test</u>	<u>Proposed Standard Test</u>
<b>Salary</b>	\$170 per week	\$250 per week	\$425 per week
<b>Duties</b>	<p>Primary duty of performing work that is original and creative in character in a recognized field of artistic endeavor, and the result of which depends primarily on the invention, imagination, or talent of the employee.</p> <p>Consistently exercises discretion and judgment.</p> <p>Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.</p> <p>Does not devote more than 20% of time to activities that are not directly and closely related to exempt work.</p>	<p>Performs work requiring invention, imagination, or talent in a recognized field of artistic endeavor.</p>	<p>Primary duty of performing work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.</p>

## Current Exemption and Proposed Exemption Standards Under the FLSA

### Computer Employees

	<u>Current Long Test</u>	<u>Current Short Test</u>	<u>Section 13(a)(17) Test</u>	<u>Proposed Standard Test</u>
<b>Salary</b>	\$170 per week	\$250 per week	\$27.63 an hour	\$425 per week or \$27.63 an hour
<b>Duties</b>	<p>Primary duty of performing work requiring theoretical and practical application of highly specialized knowledge in computer systems analysis, programming, and software engineering.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.</p> <p>Consistently exercises discretion and judgment.</p> <p>Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.</p> <p>Does not devote more than 20% of time to activities that are not directly and closely related to exempt work.</p>	<p>Primary duty of performing work requiring theoretical and practical application of highly specialized knowledge in computer systems analysis, programming, and software engineering.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.</p> <p>Consistently exercises discretion and judgment.</p>	<p>Primary duty of (A) application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional applications; or (B) design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or (C) design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or (D) a combination of duties described in (A), (B), and (C), the performance of which requires the same level of skills.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field.</p>	<p>Primary duty of (A) application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional applications; or (B) design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or (C) design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (D) a combination of duties described in (A), (B), and (C), the performance of which requires the same level of skills.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field.</p>

## Current Exemption and Proposed Exemption Standards Under the FLSA

### Outside Sales Employees

	<u>Current Long Test</u>	<u>Current Short Test</u>	<u>Proposed Standard Test</u>
<b>Salary</b>	None required.	None required.	None required.
<b>Duties</b>	<p>Employed for the purpose of and customarily and regularly engaged away from the employer's place of business in making sales; or in obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.</p> <p>Does not devote more than 20% of the hours worked by nonexempt employees of the employer to activities that are not incidental to and in conjunction with the employee's own outside sales or solicitations.</p>	No separate "short" test.	<p>Primary duty of making sales; or of obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.</p> <p>Customarily and regularly engaged away from the employer's place or places of business.</p>

Source: U.S. Department of Labor

