



## FLSA Fact Sheet #7: Criteria for Qualifying as an Academic Administrator in the UNC System

### Introduction

Regulations implementing the federal Fair Labor Standards Act (FLSA) allow certain employees in higher education (“academic administrators”) to qualify as exempt even if they earn a salary below the generally required threshold.

This Fact Sheet provides guidance on applying the criteria for the academic administrator exemption in the UNC system.

### Academic Administrator Test

In order to qualify as an exempt academic administrative employee, the employee must meet the following criteria:

- 1) The employee must either be paid on a salary or fee basis of not less than the salary level (\$684 per week, or \$35,568 per year), or **be paid on a salary basis at least equal to the entrance salary for teachers in the same educational establishment**; and
- 2) The employee must have the primary duty of performing administrative functions directly related to academic instruction or training in an educational establishment or department or similar division thereof.<sup>1</sup>

### Parameters for Determining the Appropriate Entrance Salary for Teachers in the UNC system

Based on conversations with HR and legal professionals across the UNC system, and as explained in more detail in this Fact Sheet, the following parameters should be used by each constituent institution to determine the relevant entrance salary for teachers at each constituent institution:

- The classification used to select the lowest paid educator must be a **faculty classification**;
- The classification should represent a **campus-wide classification**;
- The classification must be **represented by a job that is considered full-time benefits eligible**, with at least a 9 month recurring appointment period; and
  - NOTE: Part-time and/or adjunct faculty classifications should not be used in determining the lowest paid educator.

A detailed analysis of the issue follows.

### Using a System-Level Entrance Salary or Constituent Institution Entrance Salary

There is also some question or concern about how DOL would define “the same educational establishment,” particularly if DOL would consider the UNC system as the “educational establishment,” rather than a constituent institution. The FLSA regulations define “educational establishment” to be an

---

<sup>1</sup> 29 C.F.R. § 541.204.

"elementary or secondary school system, an institution of higher education or other educational institution."<sup>2</sup>

DOL has previously stated that “[t]he ordinary meaning of the phrase ‘institutions of higher education’ is that they are institutions above the secondary level, such as colleges or universities . . . . The term is not defined in the Fair Labor Standards Act, but generally an institution of higher education is an educational institution which admits as regular students only individuals having a certificate of graduation from a high school . . . and is legally authorized within a State to provide a program of education beyond high school. The educational program of an institution of higher education normally awards a bachelor’s degree . . . .”<sup>3</sup>

Given this definition that has been in place for more than 40 years, it seems unlikely that DOL would interpret an institution of higher education to be the entire UNC system, rather than a constituent institution. Further, in its May 2016 white paper, DOL provides an example of an administrator at a community college receiving a salary equal to the entrance salary at that institution (**not a community college system**) when illustrating the requirements of Section 541.204.

In light of the guidance, as well as DOL definitions, each constituent UNC institution should determine its own entry level salary for teachers using the parameters previously listed.

#### **Guidance for ‘average’ entrance salary’**

In reaching the above criteria, we have been informed from a variety of sources. As an initial matter, the DOL’s academic administrator exemption does not require that the salary be equal to the institution’s “average” entrance salary. The employee must only be paid "on a salary basis at least equal to the entrance salary for teachers in the same educational establishment."<sup>4</sup>

The College and University Professional Association for Human Resources (CUPA-HR) weighed in on this issue with regard to a proposed FLSA overtime exemption revision in 2016, noting that “DOL has not provided specific guidance on the term ‘minimum salary for teachers,’ [so] the prudent course of action would be to use as the baseline the salary paid to those full-time, entry level individuals who qualify for the teacher exemption. This should be the minimum salary of a teaching position that is regularly hired for a continuing appointment.”<sup>5</sup>

Using the criteria set forth above, each constituent institution should therefore document whether it is (1) using the lowest salary in the approved salary range for the faculty classification selected; (2) using

---

<sup>2</sup> *Id.* § 541.204(b).

<sup>3</sup> See U.S. Department of Labor, “Institutions of Higher Education under the Fair Labor Standards Act,” February 1972, p. 2, <http://files.eric.ed.gov/fulltext/ED066108.pdf>.

<sup>4</sup> 29 C.F.R. § 541.204.

<sup>5</sup> Alex Passantino, Seyfarth Shaw LLP, *The Impact of the Department of Labor’s Exempt Salary Increase on Higher Education Employers: White Paper Prepared for Member Institution of the College and University Professional Association for Human Resources*, <http://www.cupahr.org/knowledgecenter/files/toolkits/Impact-of-DOL-Exempt-Salary-Increase-on-Higher-Education-Employers-Whitepaper.pdf>.

the lowest salary actually paid to a faculty member in the appropriate classification; (3) using the average salary for all those faculty members in the classification at the constituent institution; or (4) using a more specific department, school, or discipline-specific salary range and the extenuating circumstances justifying that determination.

**Using the Lowest Paid Educator Salary for 12-month Employees**

It is acceptable for a constituent institution to apply the lowest paid educator salary to 12-month academic administrators even if the lowest paid educator salary was derived from a 9-month appointment. As an example: if the constituent institution has established that the lowest paid educator salary is \$30,000 based on the guidance provided in this Fact Sheet, and if that salary is based on a 9-month faculty appointment, then \$30,000 is the salary threshold for a 12-month academic administrator without any further 9-to-12 month salary conversion required.

**Partial-Year Employment**

There is a related question about how to determine exemptions for employees who have partial-year appointments (e.g., 9-month or 10-month appointments). In those situations, if no other exemptions apply, the FLSA’s annual salary threshold may be prorated for partial-year employees whose salary is paid throughout the year. This means that if an employee has a 9-month appointment, but receives paychecks over a 12-month period, then the amount of the checks may be prorated over the actual period of work (i.e., 9 months) to determine whether the employee is paid at least the salary threshold. As an example, if a 9-month employee earns \$30,000 for nine months, but is paid over 12 months, that employee would meet the salary requirement because the 9-month weekly salary is \$7,69.23 (\$30,000/39 weeks), even though the weekly paycheck is \$576.92 (\$30,000/52 weeks). It is, however, critical that the employee perform no work outside of the defined appointment period. Any additional work performed outside of the appointment period may require recalculating the salary and may jeopardize any exemption.

**Guidance on Classifications that Qualify as “Academic Administrators” in the UNC System**

As noted above, the Academic Administrator exemption can be used when an employee has the primary duty of performing administrative functions directly related to academic instruction or training at the constituent institution, or in a department or subdivision at the constituent institution. The following classifications will generally be deemed to meet this requirement, although it is prudent for each constituent institution to review the duties associated with particular positions to assure that the work being performed aligns with these requirements:

JCAT	JCAT Name	CUPA	CUPA Name
194-005	Deputy Chief Athletics Officer	194050	Deputy Chief Athletics Officer
194-017	Deputy Chief Administrator, Other	999999	No CUPA Match
196-000	Chief Administrators, Division/Department AD	999999	No CUPA Match
196-003	Chief Campus Continuing Education Administrator	196030	Chief Campus Continuing Education Administrator
196-004	Chief Campus Distance Education Administrator	196040	Chief Campus Distance Education Administrator

196-005	Chief Campus International Education Administrator	196050	Chief Campus International Education Administrator
196-016	Chief Campus Training & Development Administrator	196160	Chief Campus Training & Development Administrator
196-032	Chief Campus Academic Advising Administrator	196320	Chief Campus Academic Advising Administrator
196-033	Chief Campus Career Services Administrator	196330	Chief Campus Career Services Administrator
196-049	Chief Campus Study-Abroad Administrator	196490	Chief Campus Study-Abroad Administrator
196-050	Chief Campus Workforce/Career Development Administrator	196500	Chief Campus Workforce/Career Development Administrator
196-051	Chief Campus Disability Services Administrator	423100	Head, Campus Disability Services
196-052	Chief Division / Dept Administrator, Other	999999	No CUPA Match
400-000	Academic Services Professional	999999	No CUPA Match
400-010	Academic Services Professional, Asst/Assoc Dean, Undergrad	304400	Assoc/Asst Dean, Undergraduate Programs
400-011	Academic Services Professional, Study Abroad Advisor	400110	Study Abroad Advisor
400-012	Academic Services Professional, Support Center Coordinator	400120	Academic Support Center Coordinator
400-013	Academic Services Professional, Director Learning Resources Center	400130	Head Campus Learning Resources Center
400-014	Academic Services Professional, Credential Specialist	400140	Credential Specialist
400-015	Academic Services Professional, Academic Evaluator	400150	Academic Evaluator
400-016	Academic Services Professional, Director Foreign Students	400160	Head Foreign Student Services
400-017	Academic Services Professional, Asst/Assoc Athletic Director	400170	Head, Athletics Academic Affairs
401-000	Academic Advising Professional	999999	No CUPA Match
401-013	Academic Advising Professional, Advisor/Coordinator	401130	Academic Advisor/Counselor
405-000	Distance Education Professional	999999	No CUPA Match
405-010	Distance Education Professional, Faculty Support Mgr	406050	Instructional Technology, Faculty Support Manager
405-011	Distance Education Professional, Network Operations Manager	464120	IT Network Operations Manager
405-012	Distance Education Professional, Online Instructional Designer	406120	Online Instructional Designer, Entry
405-013	Distance Education Professional, Online Instructional Designer, Senior	406130	Online Instructional Designer, Senior
406-000	Instructional Design / Instructional Media Professional	999999	No CUPA Match
406-010	Instructional Design / Instructional Media Professional, Web Content Developer	406100	Web Content Developer
406-011	Instructional Design / Instructional Media Professional, Specialist	406110	Instructional Technology, Specialist

406-012	Instructional Design / Instructional Media Professional, Online Designer	406120	Online Instructional Designer, Entry
406-013	Instructional Design / Instructional Media Professional, Online Designer Sr.	406130	Online Instructional Designer, Senior
406-014	Instructional Design / Instructional Media Professional, Director Media Services	406140	Head, Campus Educational Media Services
407-000	Training Delivery Professional	999999	No CUPA Match
407-010	Training Delivery Professional, Executive Director, Executive Education	407100	Head, Executive Education
407-011	Training Delivery Professional, Director, Business Devel, Exec Education	999999	No CUPA Match
407-012	Training Delivery Professional, Program Director, Exec Education	999999	No CUPA Match
409-000	Faculty Affairs / Faculty Development Professional	999999	No CUPA Match
410-010	Student Affairs / Student Services Professional, Disability Srvs Coordinator	423110	Disability Services Coordinator
412-010	Student Career Services Professional, Counselor	412100	Student Career Counselor
468-000	Athletics Professional	999999	No CUPA Match
468-012	Athletics Professional, Mens Programs Asst/Assoc Athletic Director	468120	Head, Men's Athletic Programs
468-013	Athletics Professional, Senior Women's Administrator	468130	Head, Women's Athletics Programs

**Summary**

Given the wide range of variables pertaining to teachers and academic administrators across the UNC system, including significant salary differences, job descriptions, and organizational structures, it is clear that each constituent institution must review its “teacher” entrance salary parameters and its academic administrator classifications to make good-faith determinations in using this exemption