

LCC 9180

**Blue Cross**  
of California



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August 19, 1993

**VIA FACSIMILE: 202/219-3923**

Supplement To  
AOR 1993-16

Mr. Michael Marinelli  
Federal Election Commission  
Office of the General Counsel  
999 E Street NW  
Washington DC 20463

Re: Advisory Opinion Request--Sales  
Force Solicitation  
Telecon August 17, 1993

Dear Mr. Marinelli:

To reiterate the conversation between you, myself and Janine Venable of our Benefits and Compensation department which clarified statements made in our August 4th letter:

Q How is compensation of these individuals apportioned between salary and commission. Give weekly salary; identify which (or both if both) compensation component(s) subject to FICA payroll withholding taxes.

A:	Sales Mix		Weekly Salary	Portion Sales Mix Subject to FICA
	Base	Incentive		
Telemktg Rep	33%	67%	\$ 323	Both
Lead Telemktg Rep	33%	67%	323	Both
Reg'l Sales Mgr	33%	67%	500	Both
FEP Account Rep	Error--these individuals will <u>not</u> be solicited			

---> The figures shown in the "Weekly Salary" column represent weekly base salary only (or 33 percent of total compensation). Please note that the sales mix percentages are approximations based on the mix of total compensation paid in previous years.

Q To what extent is each job category in question exempt from FLSA (29 USC SS 201, et seq.).

A: All three categories in question (Telemarketing Representatives, Lead Telemarketing Representatives and Regional Sales Managers) fall outside sales exemption category as described in the Fair Labor Standards Act.

---> The Regional Sales Manager job classification falls under the "Outside Sales" exemption according to the FLSA. Though inside salespersons, the Telemarketing Representative and the Lead Telemarketing Representative qualify for an overtime (but not minimum wage) exemption under Section 7(i) of the FLSA and Section 3 of Wage Orders 4 and 7. This exemption is available to certain employees who receive more than half their compensation in commissions and whose regular rates of pay exceed one and one half the minimum wage. The exemption from the Federal overtime requirements provided in Section 7(i) is available to employees of retail or service establishments.

Thank you; I appreciate your assistance in working toward an early resolution to this Advisory Opinion request.

Sincerely,

Nora Schwartz  
Constituent Relations  
(818) 712-6462