

be included in each type of notice and further authorize the Secretary of Labor to prescribe (1) how notice to participants and beneficiaries must be given and (2) any additional reporting requirements deemed necessary.

ERISA Technical Release 91-1 provides guidance on how to satisfy the subject ERISA notice requirements. The Release made two changes in the statutory requirements for the second type of notice. First, it required the notice to include a filing date and the intended asset transfer date. The Release also simplified the statutory filing requirements by providing that filing with the DOL would be deemed sufficient notice to both the DOL and the Department of the Treasury. ERISA section 101(e) authorizes this information collection. *See* 29 U.S.C. 1021(e).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210-0084.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 11, 2018 (83 FR 15635).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210-0084. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL-EBSA.

Title of Collection: Employee Retirement Income Security Act of 1974 Technical Release 1991-1.

OMB Control Number: 1210-0084.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 4.

Total Estimated Number of Responses: 26,966.

Total Estimated Annual Time Burden: 422 hours.

Total Estimated Annual Other Costs Burden: \$6,917.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: August 27, 2018.

Michel Smyth,

Departmental Clearance Officer.

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BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Wage and Hour Division

Establishing a Minimum Wage for Contractors, Notice of Rate Change in Effect as of January 1, 2019

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Wage and Hour Division (WHD) of the U.S. Department of Labor (the Department) is issuing this notice to announce the applicable minimum wage rate for workers performing work on or in connection with federal contracts covered by Executive Order 13658, beginning January 1, 2019.

Executive Order 13658, Establishing a Minimum Wage for Contractors (the Executive Order or the Order), was signed on February 12, 2014, and raised the hourly minimum wage for workers performing work on or in connection

with covered federal contracts to \$10.10 per hour, beginning January 1, 2015, with annual adjustments thereafter as determined by the Secretary of Labor (the Secretary) in accordance with the methodology set forth in the Order. The Secretary's determination of the Executive Order minimum wage rate also affects the minimum hourly cash wage for tipped employees performing work on or in connection with covered contracts. The Secretary is required to provide notice to the public of the new minimum wage rate at least 90 days before the rate takes effect. The applicable minimum wage under the Executive Order is currently \$10.35 per hour, in effect since January 1, 2018.

Pursuant to the Executive Order and its implementing regulations in the Code of Federal Regulations, notice is hereby given that beginning January 1, 2019, the Executive Order minimum wage rate that generally must be paid to workers performing work on or in connection with covered contracts will increase to \$10.60 per hour. Notice is also hereby given that, beginning January 1, 2019, the required minimum cash wage that generally must be paid to tipped employees performing work on or in connection with covered contracts will increase to \$7.40 per hour.

DATES: These new rates shall take effect on January 1, 2019.

FOR FURTHER INFORMATION CONTACT:

Melissa Smith, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693-0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693-0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889-5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Executive Order 13658 Background and Requirements for Determining Annual Increases to the Minimum Wage Rate

The Executive Order was signed on February 12, 2014, and raised the hourly minimum wage for workers performing work on or in connection with covered federal contracts to \$10.10 per hour, beginning January 1, 2015, with annual adjustments thereafter in an amount determined by the Secretary pursuant to the Order. *See* 79 FR 9851. The Executive Order directed the Secretary

to issue regulations to implement the Order's requirements. See 79 FR 9852. Accordingly, after engaging in notice-and-comment rulemaking, the Department published a Final Rule on October 7, 2014 to implement the Executive Order. See 79 FR 60634. The final regulations, set forth at 29 CFR part 10, established standards and procedures for implementing and enforcing the minimum wage protections of the Order.

The Executive Order and its implementing regulations require the Secretary to determine the applicable minimum wage rate for workers performing work on or in connection with covered contracts on an annual basis, beginning January 1, 2016. See 79 FR 9851; 29 CFR 10.1(a)(2), 10.5(a)(2), 10.12(a). Sections 2(a) and (b) of the Order establish the methodology that the Secretary must use to determine the annual inflation-based increases to the minimum wage rate. See 79 FR 9851. These provisions, which are implemented in 29 CFR 10.5(b), explain that the applicable minimum wage determined by the Secretary for each calendar year shall be:

- (i) Not less than the amount in effect on the date of such determination;
- (ii) Increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics (BLS); and
- (iii) Rounded to the nearest multiple of \$0.05.

Section 2(b) of the Executive Order further provides that, in calculating the annual percentage increase in the CPI-W for purposes of determining the new minimum wage rate, the Secretary shall compare such CPI-W for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage is in effect) with the CPI-W for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively. See 79 FR 9851. To calculate the annual percentage increase in the CPI-W, the Department elected in its Final Rule implementing the Executive Order to compare such CPI-W for the most recent year available with the CPI-W for the preceding year. See 29 CFR 10.5(b)(2)(iii). In its Final Rule, the Department explained that it decided to compare the CPI-W for the most recent year available (instead of using the most recent month or quarter, as allowed by the Order) with the CPI-W for the preceding year, "to minimize the impact

of seasonal fluctuations on the Executive Order minimum wage rate." 79 FR 60666.

Once a determination has been made with respect to the new minimum wage rate, the Executive Order and its implementing regulations require the Secretary to notify the public of the applicable minimum wage rate on an annual basis at least 90 days before any new minimum wage takes effect. See 79 FR 9851; 29 CFR 10.5(a)(2), 10.12(c)(1). The regulations explain that the Administrator of the Department's Wage and Hour Division (the Administrator) will publish an annual notice in the **Federal Register** stating the applicable minimum wage rate at least 90 days before any new minimum wage takes effect. See 29 CFR 10.12(c)(2)(i). Additionally, the regulations state that the Administrator will provide notice of the Executive Order minimum wage rate on Wage Determinations OnLine (WDOL), <http://www.wdol.gov>, or any successor site; on all wage determinations issued under the Davis-Bacon Act (DBA), 40 U.S.C. 3141 *et seq.*, and the Service Contract Act (SCA), 41 U.S.C. 6701 *et seq.*; and by other means the Administrator deems appropriate. See 29 CFR 10.12(c)(2)(ii)-(iv).

Section 3 of the Executive Order requires contractors to pay tipped employees covered by the Order performing on or in connection with covered contracts an hourly cash wage of at least \$4.90, beginning on January 1, 2015, provided the employees receive sufficient tips to equal the Executive Order minimum wage rate under section 2 of the Order when combined with the cash wage. See 79 FR 9851-52; 29 CFR 10.28(a). The Order further provides that, in each succeeding year, beginning January 1, 2016, the required cash wage must increase by \$0.95 (or a lesser amount if necessary) until it reaches 70 percent of the Executive Order minimum wage. *Id.* For subsequent years, the cash wage for tipped employees will be 70 percent of the Executive Order minimum wage rounded to the nearest \$0.05. *Id.* At all times, the amount of tips received by the employee must equal at least the difference between the cash wage paid and the Executive Order minimum wage; if the employee does not receive sufficient tips, the contractor must increase the cash wage paid so that the cash wage in combination with the tips received equals the Executive Order minimum wage. *Id.*

The Executive Order minimum wage and the cash wage required for tipped employees are currently \$10.35 and \$7.25 per hour, respectively. The Department announced these rates on

September 15, 2017, 82 FR 43408, and the rates took effect on January 1, 2018.

II. The 2019 Executive Order Minimum Wage Rate

Using the methodology set forth in the Executive Order and summarized above, the Department must first determine the annual percentage increase in the CPI-W (United States city average, all items, not seasonally adjusted), as published by BLS, to determine the new Executive Order minimum wage rate. In calculating the annual percentage increase in the CPI-W, the Department must compare the CPI-W for the most recent year available with the CPI-W for the preceding year. The Department therefore compares the percentage change in the CPI-W between the most recent year (*i.e.*, the most recent four quarters) and the prior year (*i.e.*, the four quarters preceding the most recent year). The Department then increases the current Executive Order minimum wage rate by the resulting annual percentage change and rounds to the nearest multiple of \$0.05.

In order to determine the Executive Order minimum wage rate beginning January 1, 2019, the Department therefore calculated the CPI-W for the most recent year by averaging the CPI-W for the four most recent quarters, which consist of the first two quarters of 2018 and the last two quarters of 2017 (*i.e.*, July 2017 through June 2018). The Department then compared that data to the average CPI-W for the preceding year, which consists of the first two quarters of 2017 and the last two quarters of 2016 (*i.e.*, July 2016 through June 2017). Based on this methodology, the Department determined that the annual percentage increase in the CPI-W (United States city average, all items, not seasonally adjusted) was 2.337 percent. The Department then applied that annual percentage increase of 2.337 percent to the current Executive Order hourly minimum wage rate of \$10.35, which resulted in a wage rate of \$10.592 ($(\$10.35 \times 0.02337) + \10.35); however, pursuant to the Executive Order, that rate must be rounded to the nearest multiple of \$0.05.

The new Executive Order minimum wage rate that must generally be paid to workers performing on or in connection with covered contracts beginning January 1, 2019 is therefore \$10.60 per hour.

III. The 2019 Executive Order Minimum Cash Wage for Tipped Employees

As noted above, section 3 of the Executive Order provides a methodology to determine the amount

of the minimum hourly cash wage that must be paid to tipped employees performing on or in connection with covered contracts. Because the cash wage for tipped employees reached 70 percent of the Executive Order minimum wage beginning on January 1, 2018 (*i.e.*, \$7.25 per hour compared to \$10.35 per hour), future updates to the cash wage for tipped employees must continue to set the rate at 70 percent of the full Executive Order minimum wage. Seventy percent of the new Executive Order minimum wage rate of \$10.60 is \$7.42. Because the Executive Order provides that the rate must be rounded to the nearest \$0.05, the new minimum hourly cash wage for tipped workers performing on or in connection with covered contracts beginning

January 1, 2019 is therefore \$7.40 per hour.

IV. Appendices

Appendix A to this notice provides a comprehensive chart of the CPI-W data published by BLS that the Department used to calculate the new Executive Order minimum wage rate based on the methodology explained herein. Appendix B to this notice sets forth an updated version of the Executive Order poster that the Department published with its Final Rule, reflecting the updated wage rates that will be in effect beginning January 1, 2019. *See* 79 FR 60732–33. Pursuant to 29 CFR 10.29, contractors are required to notify all workers performing on or in connection with a covered contract of the applicable minimum wage rate under

the Executive Order. Contractors with employees covered by the Fair Labor Standards Act who are performing on or in connection with a covered contract may satisfy the notice requirement by displaying the poster set forth in Appendix B in a prominent or accessible place at the worksite.

Dated: August, 22, 2018.

Bryan Jarrett,

Acting Administrator, Wage and Hour Division.

Appendix A: Data Used To Determine Executive Order 13658 Minimum Wage Rate Effective January 1, 2019

Data Source: Consumer Price Index for Urban wage Earners and Clerical Workers (CPI-W) (United States city average, all items, not seasonally adjusted).

	Quarter 3			Quarter 4			Quarter 1			Quarter 2			Annual Average
2016Q3 to 2017Q2	234.771	234.904	235.495	235.732	235.215	235.390	236.854	237.477	237.656	238.432	238.609	238.813	236.6123
2017Q3 to 2018Q2	238.617	239.448	240.939	240.573	240.666	240.526	241.919	242.988	243.463	244.607	245.770	246.196	242.1427
Annual Percent-age Increase .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2.337%

Appendix B: Updated Version of the Executive Order 13658 Poster

BILLING CODE 4510-27-P

WORKER RIGHTS UNDER EXECUTIVE ORDER 13658

FEDERAL MINIMUM WAGE FOR CONTRACTORS

\$10.60

 PER HOUR

EFFECTIVE JANUARY 1, 2019 – DECEMBER 31, 2019

The law requires certain employers to display this poster where employees can readily see it.

MINIMUM WAGE Executive Order 13658 (EO) requires that federal contractors pay workers performing work on or in connection with covered contracts at least (1) \$10.10 per hour beginning January 1, 2015, and (2) beginning January 1, 2016, and every year thereafter, an inflation-adjusted amount determined by the Secretary of Labor in accordance with the EO and appropriate regulations. The EO hourly minimum wage in effect from January 1, 2019 through December 31, 2019 is \$10.60.

TIPS Covered tipped employees must be paid a cash wage of at least \$7.40 per hour effective January 1, 2019–December 31, 2019. If a worker's tips combined with the required cash wage of at least \$7.40 per hour paid by the contractor do not equal the EO hourly minimum wage for contractors, the contractor must increase the cash wage paid to make up the difference. Certain other conditions must also be met.

EXCLUSIONS

- Some workers who provide support "in connection with" covered contracts for less than 20 percent of their hours worked in a week may not be entitled to the EO minimum wage.
- Certain full-time students, learners, and apprentices who are employed under subminimum wage certificates are not entitled to the EO minimum wage.
- Workers employed on contracts for seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands, except when the workers are performing associated lodging and food services, are not entitled to the EO minimum wage.
- Certain other occupations and workers are also exempt from the EO.

ENFORCEMENT The U.S. Department of Labor's Wage and Hour Division (WHD) is responsible for enforcing the EO. WHD can answer questions, in person or by telephone, about your workplace rights and protections. We can investigate employers, recover wages to which workers may be entitled, and pursue appropriate sanctions against covered contractors. All services are free and confidential. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the EO. If you are unable to file a complaint in English, WHD will accept the complaint in any language. You can find your nearest WHD office at <https://www.dol.gov/whd/local/>.

ADDITIONAL INFORMATION

- The EO applies only to new federal construction and service contracts, as defined by the Secretary in the regulations.
- Workers with disabilities whose wages are governed by special certificates issued under section 14(c) of the Fair Labor Standards Act must also receive no less than the full EO minimum wage rate.
- Some state or local laws may provide greater worker protections; employers must comply with both.
- More information about the EO is available at: www.dol.gov/whd/fisa/EO13658.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/whd



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