



## **DEPARTMENT OF LABOR**

### **Wage and Hour Division**

#### **Establishing a Minimum Wage for Contractors, Notice of Rate Change in Effect as of January 1, 2021**

**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, Establishing a Minimum Wage for Contractors (the Executive Order or the Order), beginning January 1, 2021. Beginning on that date, 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 \$10.95 per hour, while 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 \$7.65 per hour.

**DATES:** These new rates shall take effect on January 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Amy DeBisschop, 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)(2), explain that the applicable minimum wage determined by the Secretary for each calendar year shall be:

- Not less than the amount in effect on the date of such determination;

- 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
- 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;<sup>1</sup> 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.*

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<sup>1</sup> In 2019, WDOL.gov moved to beta.SAM.gov and is now known as Wage Determinations. The beta.SAM.gov website is the authoritative and single location for obtaining appropriate Service Contract Act and Davis-Bacon Act wage determinations for each official contract action.

The Executive Order minimum wage and the cash wage required for tipped employees are currently \$10.80 and \$7.55 per hour, respectively. The Department announced these rates on September 19, 2019, 84 FR 49345, and the rates took effect on January 1, 2020.

## II. *The 2021 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, 2021, 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 2020 and the last two quarters of 2019 (*i.e.*, July 2019 through June 2020). The Department then compared that data to the average CPI-W for the preceding year, which consists of the first two quarters of 2019 and the last two quarters of 2018 (*i.e.*, July 2018 through June 2019). 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 1.432 percent. The Department then applied that annual percentage increase of 1.432 percent to the current

Executive Order hourly minimum wage rate of \$10.80, which resulted in a wage rate of \$10.955 ( $(\$10.80 \times 0.01432) + \$10.80$ ); 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, 2021 is therefore \$10.95 per hour.

### III. *The 2021 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 \$10.95 is \$7.67. 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, 2021 is therefore \$7.65 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, 2021. *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 25, 2020.

**Cheryl M. Stanton,**  
*Administrator,*  
*Wage and Hour Division.*

Appendix A: Data Used to Determine Executive Order 13658 Minimum Wage Rate Effective January 1, 2021.

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
2018Q3 to 2019Q2	246.155	246.336	246.565	247.038	245.933	244.786	245.133	246.218	247.768	249.332	249.871	249.747	247.0735
2019Q3 to 2020Q2	250.236	250.112	250.251	250.894	250.644	250.452	251.361	251.935	251.375	249.515	249.521	251.054	250.6125
Annual Percentage Increase													1.432%

Appendix B: Updated Version of the Executive Order 13658 Poster

# WORKER RIGHTS UNDER EXECUTIVE ORDER 13658

## FEDERAL MINIMUM WAGE FOR CONTRACTORS

# \$10.95

 PER HOUR

EFFECTIVE JANUARY 1, 2021 – DECEMBER 31, 2021

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, 2021 through December 31, 2021 is \$10.95.

**TIPS** Covered tipped employees must be paid a cash wage of at least \$7.65 per hour effective January 1, 2021 through December 31, 2021. If a worker's tips combined with the required cash wage of at least \$7.65 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 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/flsa/eo13658](http://www.dol.gov/whd/flsa/eo13658).



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243  
TTY: 1-877-889-5627  
[www.dol.gov/whd](http://www.dol.gov/whd)



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