

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: September 15, 2016.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

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## DEPARTMENT OF LABOR

### Office of the Secretary

#### Establishing a Minimum Wage for Contractors, Notice of Rate Change in Effect as of January 1, 2017

**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 to be paid to workers performing work on or in connection with Federal contracts covered by Executive Order 13658, beginning January 1, 2017.

Executive Order 13658, Establishing a Minimum Wage for Contractors (the Executive Order or the Order), was signed by President Barack Obama on February 12, 2014, and raised the hourly minimum wage paid by contractors to workers performing work on covered Federal contracts to: \$10.10 per hour, beginning January 1, 2015; and beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary of Labor (the Secretary) in accordance with the methodology set forth in the Order. *See* 79 FR 9851. The Secretary's determination of the Executive Order minimum wage rate also affects the minimum hourly cash wage that must be paid to tipped employees performing work on or in connection with covered contracts. *See* 79 FR 9851-52. The Secretary is required to provide notice to the public of the new minimum wage rate at least 90 days before such rate is to take effect. *See* 79 FR 9851. The applicable minimum wage under Executive Order 13658 is currently \$10.15 per hour, in effect since January 1, 2016. *See* 80 FR 55646. The applicable minimum cash wage that generally must be paid to tipped employees performing work on or in connection with covered contracts

is currently \$5.85 per hour, in effect since January 1, 2016. *Id.*

Pursuant to Executive Order 13658 and its implementing regulations at 29 CFR part 10, notice is hereby given that beginning January 1, 2017, 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 \$10.20 per hour. Notice is also hereby given that, beginning January 1, 2017, 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 \$6.80 per hour.

**DATES:** This notice is effective on September 20, 2016.

**FOR FURTHER INFORMATION CONTACT:**

Robert Waterman, 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

Executive Order 13658 was signed by President Barack Obama on February 12, 2014, and raised the hourly minimum wage paid by contractors to workers performing work on or in connection with covered Federal contracts to \$10.10 per hour, beginning January 1, 2015; and beginning January 1, 2016, and annually thereafter, 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 to be paid to 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. In order 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, in order "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 to be paid to workers performing work on or in connection with covered contracts, 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 is to take 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 is to take 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.*

On September 16, 2015, the Administrator published a notice in the **Federal Register** informing the public that, effective January 1, 2016, the Executive Order minimum wage and the minimum cash wage required to be paid to tipped employees covered by the Executive Order would be \$10.15 and \$5.85 per hour, respectively. *See* 80 FR 55646.

## II. The 2017 Executive Order Minimum Wage Rate

In accordance with 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 in order to determine the new Executive Order minimum wage rate. In calculating the annual percentage increase in the CPI, 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 current Executive Order minimum wage rate must then be increased by the resulting annual percentage change and rounded to the nearest multiple of \$0.05.

In order to determine the Executive Order minimum wage rate beginning January 1, 2017, 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 2016 and the last two quarters of 2015 (*i.e.*, July 2015 through June 2016). The Department then compared that data to the average CPI–W for the preceding year, which consists of the first two quarters of 2015 and the last two quarters of 2014 (*i.e.*, July 2014 through June 2015). 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 0.278%. The Department then applied that annual percentage increase of 0.278% to the current Executive Order hourly minimum wage rate of \$10.15, which resulted in a wage rate of \$10.18 ( $(\$10.15 \times .00278) + \$10.15$ ); 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, 2017 is therefore \$10.20 per hour.

## III. The 2017 Executive Order Minimum Cash Wage for Tipped Employees

As noted above, 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 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). Section 3 of the Executive Order also provides a methodology to be utilized each year in determining the amount of the minimum hourly cash wage that must be paid to tipped employees performing on or in connection with covered contracts. Pursuant to the Order, in each succeeding year, beginning January 1, 2016, the required cash wage increases by \$0.95 (or a lesser amount if necessary) until it reaches 70 percent of the Executive Order minimum wage rate. For subsequent years, the cash wage for tipped employees will be 70 percent of the Executive Order minimum wage rate rounded to the nearest \$0.05.

In order to determine the minimum hourly cash wage that must be paid to tipped employees performing on or in connection with covered contracts beginning January 1, 2017, the Department first calculated that 70 percent of the new Executive Order minimum wage rate of \$10.20 is \$7.14. The Executive Order provides that the current minimum hourly cash wage of \$5.85 must increase by the lesser of \$0.95 or the amount necessary for the hourly cash wage to equal 70 percent of the applicable Executive Order minimum wage. Because \$0.95 is less than \$1.29 (the amount necessary for the hourly cash wage to reach 70 percent of \$10.20), the hourly cash wage must increase by \$0.95.

The new minimum hourly cash wage that must generally be paid to tipped workers performing on or in connection with covered contracts beginning January 1, 2017 is therefore \$6.80 per hour.

## IV. Appendices

Appendix A to this notice provides a comprehensive chart of the CPI–W data published by BLS that the Department utilized 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 13658 poster that the Department published with its Final Rule, reflecting the updated wage rates that will be in effect beginning January 1, 2017. *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:

# WORKER RIGHTS UNDER EXECUTIVE ORDER 13658

## FEDERAL MINIMUM WAGE FOR CONTRACTORS

# \$10.20

 PER HOUR

EFFECTIVE JANUARY 1, 2017 – DECEMBER 31, 2017

- MINIMUM WAGE** On February 12, 2014, the President signed Executive Order 13658, Establishing a Minimum Wage for Contractors. The Executive Order requires that parties who contract with the Federal Government pay workers performing work on or in connection with covered Federal contracts at least: (1) \$10.10 per hour beginning January 1, 2015; and (2) beginning January 1, 2016, and annually thereafter, an inflation adjusted amount determined by the Secretary of Labor in accordance with the Executive Order and appropriate regulations. The Executive Order hourly minimum wage in effect from January 1, 2017 through December 31, 2017 is \$10.20.
- TIPS** Covered tipped employees must be paid a cash wage of at least \$6.80 per hour effective January 1, 2017 – December 31, 2017. If a worker's tips combined with the required cash wage of at least \$6.80 per hour paid by the contractor do not equal the hourly minimum wage for contractors (noted above), the contractor must increase the cash wage paid to make up the difference. Certain other conditions must also be met.
- ENFORCEMENT** The U.S. Department of Labor's Wage and Hour Division (WHD) has offices across the country to help. 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, including debarment. 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 Executive Order. If you are unable to file a complaint in English, WHD will accept the complaint in any language.
- ADDITIONAL INFORMATION**
- Executive Order 13658 establishes that the Order 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 receive no less than the full minimum wage rate as established by the Executive Order.
  - Some workers are excluded. For example, 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 Executive Order minimum wage. Certain full-time students, learners, and apprentices who are employed under subminimum wage certificates are not entitled to the Executive Order minimum wage. Certain occupations are also exempt from the Executive Order minimum wage.
  - Some state or local laws may provide greater worker protections. Employers need to comply with both.



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243  
TTY: 1-877-889-3627  
[www.dol.gov/whd](http://www.dol.gov/whd)



WHD-09 REV 06/16

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**DEPARTMENT OF LABOR****Office of the Secretary****Agency Information Collection Activities; Submission for OMB Review; Comment Request; Model Employer Children's Health Insurance Program Notice****ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Model Employer Children's Health Insurance Program Notice," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before October 20, 2016.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201608-1210-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201608-1210-001) (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

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

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Model Employer Children's Health Insurance Program Notice information collection. Employee Retirement Income Security Act (ERISA) section 701(f)(3)(B)(i)(I), Public Health Service Act (PHSA) section 2701(f)(3)(B)(i)(I), and Internal Revenue Code (Code) section 9801(f)(3)(B)(i)(I) require an employer maintaining a group health plan in a State that provides medical assistance under a State Medicaid plan under Social Security Act (SSA) title XIX or child health assistance under a State child health plan under SSA title XXI in the form of premium assistance for the purchase of coverage under a group health plan to make certain disclosures. Specifically, the employer is required to notify each employee of potential opportunities currently available in the State in which the employee resides for premium assistance under Medicaid and Children's Health Insurance Program (CHIP) for health coverage of the employee or the employee's dependents. ERISA section 701(f)(3)(B)(i)(II) requires the DOL to provide employers with model language for the CHIP notice. The model includes information on how an employee may contact the State in which the employee resides for additional information regarding potential opportunities for premium assistance, including how to apply for such assistance. ERISA section 701(f)(3)(B), PHSA section 2701(f)(3)(B), and Code section 9801(f)(3)(B) authorize this information collection. See 29 U.S.C. 1181(f)(3)(b), 42 U.S.C. 300gg-3(f)(3)(B), 26 U.S.C. 9801(f)(3)(B).

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 1210-0137.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on October 31, 2016. 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 May 26, 2016 (81 FR 33550).

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 1210-0137. 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:* Model Employer Children's Health Insurance Program Notice.

*OMB Control Number:* 1210-0137.

*Affected Public:* Private Sector—businesses or other for-profits, farms, and not-for-profit institutions; and State, Local, and Tribal Governments.

*Total Estimated Number of Respondents:* 5,897,699.

*Total Estimated Number of Responses:* 175,973,641.

*Total Estimated Annual Time Burden:* 706,828 hours.

*Total Estimated Annual Other Costs Burden:* \$16,963,859.