

**Wage and Hour Division**

# Final Rule: Tip Regulations under the Fair Labor Standards Act (FLSA)

NOTICE: The “Tip Regulations Under the Fair Labor Standards Act (FLSA)” final rule (2020 Tip final rule) was published on December 30, 2020, with an effective date of March 1, 2021. See [85 FR 86756](#). On February 26, 2021, the Department issued a final rule delaying the effective date until April 30, 2021, in order to allow the Department the opportunity to review issues of law, policy, and fact raised by the 2020 Tip final rule. See [86 FR 11632](#).

On April 28, 2021, the Department announced a final rule (Partial Delay final rule) delaying the effective date of three portions of the 2020 Tip final rule for eight months, until December 31, 2021. These three delayed portions are related to the assessment of civil money penalties (CMPs) under the FLSA and the application of the FLSA tip credit to tipped employees who perform tipped and non-tipped duties (dual jobs). See [86 FR 22597](#). The remainder of the 2020 Tip final rule—consisting of those portions addressing the keeping of tips and tip pooling, recordkeeping, and minor technical changes made to update the regulations to reflect the new statutory language and citations added by the CAA amendments—will become effective on April 30, 2021.

This Partial Delay final rule allows the Department time to complete a separate notice of proposed rulemaking (CMP NPRM) that proposes to withdraw and repropose the two portions of the 2020 Tip final rule related to the assessment of CMPs. See “Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal” [86 FR 15817](#), March 25, 2021. The CMP NPRM also seeks comments on whether to revise one other portion of the 2020 Tip final rule addressing “managers and supervisors” who cannot keep employee’s tips. It also asks questions about how the Department might improve the recordkeeping requirements outlined in the 2020 Tip final rule in a future rulemaking.

The Department encourages interested parties to submit comments on the CMP NPRM by 11:59 pm ET on May 24, 2021. To comment on the CMP NPRM, visit [www.regulations.gov](http://www.regulations.gov). Anyone who submits a comment (including duplicate comments) should understand and expect that the comment, including any personal information provided, will become a matter of public record and will be posted without change to [www.regulations.gov](http://www.regulations.gov). WHD posts comments gathered and submitted by a third-party organization as a group under a single document ID number on [www.regulations.gov](http://www.regulations.gov).

The eight-month delay finalized in the Partial Delay final rule also provides the Department additional time to conduct another rulemaking to potentially revise the portion of the 2020 Tip final rule addressing the application of the FLSA’s tip credit provision to tipped employees who perform both tipped and non-tipped duties.

On December 22, 2020, the Department of Labor announced a final rule revising its tipped employee regulations to address amendments made to section 3(m) of the Fair Labor Standards Act (FLSA) by the Consolidated Appropriations Act of 2018 (CAA). That amendment prohibits employers from keeping tips received by their employees, regardless of whether the employer takes a tip credit. It also prohibits employers from allowing managers or supervisors to keep any portion of employee’s tips. In addition, the final rule codifies the Department’s guidance regarding the tip credit—how that credit applies to employees who perform tipped and non-tipped duties and which non-tipped duties are related to a tip-producing occupation.



The CAA did not affect longstanding regulations that apply to employers that take a tip credit under the FLSA. For example, employers that claim a tip credit must ensure that a mandatory “traditional” tip pool includes only workers who customarily and regularly receive tips. This means, for example, that employees such as cooks or dishwashers cannot be part of such a tip pool. However, the CAA removed the regulatory restrictions on an employer’s ability to require tip pooling when it does not take a tip credit; those employers may now implement mandatory, “nontraditional” tip pools, which may include employees such as cooks and dishwashers.

In this final rule, the Department:

- removes the portions of the regulations that prohibited employers that do not take a tip credit from implementing mandatory “nontraditional” tip pools—that is, tip pools that include employees who do not customarily and regularly receive tips;
- explicitly prohibits employers—regardless of whether they take a tip credit—from keeping employees’ tips for any purpose, which includes prohibiting managers and supervisors from keeping tips received by employees;
- amends its regulations to state that an employer that collects tips to facilitate a mandatory tip pool must fully redistribute the tips no less often than when it pays wages to avoid “keep[ing]” the tips in violation of section 3(m)(2)(B);
- incorporates the CAA’s new requirements regarding civil money penalties (CMP) into its regulations and revises additional portions of its CMP regulations to address courts decisions that have raised concerns;
- incorporates a new recordkeeping requirement for employers that do not take a tip credit but collect employees’ tips to operate a mandatory tip pool;
- codifies recent guidance explaining that an employer may take a tip credit for time that an employee in a tipped occupation performs related non-tipped duties either contemporaneously with or for a reasonable time immediately before or after performing tipped duties; the final rule also states that, in addition to the examples listed in the regulation, a non-tipped duty is presumed to be related to a tip-producing occupation if it is listed as a task of the tip-producing occupation in O\*NET;
- amends the regulations that address the payment of tipped employees under Executive Order 13658 (Establishing a Minimum Wage for Contractors) to reflect the corresponding changes in the FLSA regulations and to otherwise align those regulations with the Executive Order.

## Additional Information

- NPRM: [Tip Regulations Under the Fair Labor Standards Act \(FLSA\); Delay of Effective Date](#)
- NPRM: [Tip Regulations under the Fair Labor Standards Act \(FLSA\); Partial Withdrawal](#)
- [Tip NPRMS Published March 25, 2021: Proposed Effective Date of Specific Tip Regulations and Links to Public Comment](#)
- [Press Release \[03/23/2021\]: US Department of Labor announces proposed rulemakings to further consider, review tipped workers’ regulations](#)
- [Final Rule: Tip Regulations under the FLSA](#)
  - [Appendix: Data Tables and Regression Results](#)
- [Frequently Asked Questions](#)
- [Press Release \[12/22/2020\]: U.S. Department of Labor Issues Final Rule to Amend Tipped Employee Regulations](#)

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