

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	<b>CLASSIFICATION</b> WIOA
	<b>CORRESPONDENCE SYMBOL</b> OWI - OJT
	<b>DATE</b> February 23, 2016

**ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER WIOA NO. 13-15 OPERATING GUIDANCE for the WORKFORCE INNOVATION AND OPPORTUNITY ACT (referred to as WIOA or the Opportunity Act)**

**TO:** STATE AND LOCAL STAKEHOLDERS IN THE WORKFORCE  
INNOVATION AND OPPORTUNITY ACT  
STATE WORKFORCE AGENCIES  
STATE WORKFORCE ADMINISTRATORS  
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS  
LABOR COMMISSIONERS  
AMERICAN JOB CENTERS

**FROM:** PORTIA WU /s/  
Assistant Secretary

**SUBJECT:** On-the-Job Training (OJT) Wage Caps and Reimbursement Rate Waivers for Job Driven, Dislocated Worker Training, and Sector Partnership National Emergency Grants (NEGs)

- Purpose.** Through this guidance, the Department of Labor is providing updated hourly State Wage Cap data for OJT under the Workforce Innovation and Opportunity Act (WIOA). The Department is also providing guidance on the transition of funds from the Workforce Investment Act (WIA) to WIOA as it relates to the OJT wage cap reimbursement rate.

WIOA was signed into law on July 22, 2014. WIOA is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. WIOA supersedes titles I and II of the Workforce Investment Act of 1998, and amends the Wagner-Peyser Act and the Rehabilitation Act of 1973.

The Departments of Labor and Education published a set of regulations for implementing WIOA through the posting of five Notice of Proposed Rulemaking (NPRMs) documents. These NPRMs were open for public comment until June 15, 2015, and many comments were received by both Departments. The Federal agencies will review, analyze and consider the comments received. The Final WIOA rules will be issued in 2016.

In order to continue implementation prior to the final rule, a series of WIOA Operating Guidance documents are being issued in the form of Training and Employment Guidance Letters (TEGLs). These Operating Guidance documents on WIOA will inform the workforce

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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system on how to begin the important planning and organizational work necessary to comply with the WIOA statutory requirements. The Operating Guidance TEGs will provide a framework for program activities until the regulations are finalized. This TEG is one in a series of WIOA Operating Guidance.

2. **References.** See Attachment I.
3. **Background.** The Department of Labor, Employment and Training Administration (ETA) previously established a wage cap policy for OJT reimbursement in TEG 4-10, which was originally applied to the OJT NEGs as a part of the American Recovery and Reinvestment Act (ARRA), announced in Training and Employment Notice (TEN) 38-09. This wage cap policy was continued under the 2013 Dislocated Worker Training (DWT) NEGs, the 2014 Job Driven (JD) NEGs, and the 2015 Sector Partnership (SP) NEGs, and will remain in place through the end of these grants.
4. **State Wage Cap.** A wage cap is an upper limit on the hourly wage rate that is eligible for reimbursement. A reimbursement rate, or reimbursement level, refers to the percentage of the OJT participant's hourly wage or wage cap that can be reimbursed to an employer. The wage cap is set at the average hourly wage rate for each state. The training reimbursement percentage is applied against the participant's wage rate unless the wage rate exceeds the state's average hourly rate. When the latter occurs, the training reimbursement percentage must be applied against the state's average hourly rate. ETA has established a wage cap policy for these grants not to exceed 50 percent of the participant's wage rate or the ETA established wage cap. This is consistent with section 3(44) of WIOA. However, section 134(c)(3)(H) of WIOA allows State and Local areas the flexibility to increase the reimbursement level to up to 75 percent taking into account the following factors:
  - The characteristics of the participants;
  - The size of the employer;
  - The quality of employer-provided training and advancement opportunities; and
  - Other factors the State or local boards may determine appropriate (for example, the number of employees participating in the training, wage and benefit levels of the employees (both pre and post participation earnings), and the relation of the training to the competitiveness of the participant).

This limitation on the training reimbursement provides grantees with latitude in the type of occupations that can be targeted, while maximizing the number of OJT opportunities. Grantees may enter into contracts with employers who elect to pay participants more than the state average wage; however, the employer cannot receive a training reimbursement beyond the percentage (determined by the sliding scale) of the capped level.

The average hourly wage rate for each state is provided by the Bureau of Labor Statistics in the Quarterly Census of Employment and Wages. The attached table (Attachment II) contains the average hourly wage rates for each state and uses the most up-to-date annual data. The average hourly wage rate table will be updated annually according to the most recent data.

It should be noted that employers are required to compensate OJT participants at the same rates as trainees or employees who are situated in similar occupations by the same employer and who have comparable training, experience, and skills (WIOA Sec. 181(a)(1)(A)). Therefore, if the job pays less than the capped level for similar work, the OJT wages and training reimbursement should be based on this lesser level. The OJT employee should not be paid more simply because the state's average wage makes available a higher reimbursement threshold.

Two examples may help to illustrate reimbursement within the wage cap:

- i. A participant in Pennsylvania enters OJT as an insurance underwriter, earning \$36.29, which is above Pennsylvania's average hourly wage cap of \$22.00. The employer can only be reimbursed at some percentage of this wage cap (this percentage is determined by the employer's size and/or the skills gap of the trainee). The employer must compensate the OJT participant at the same earnings level as an actual employee (with similar levels of training, experience, and skills) doing the same job as the OJT participant, or at \$36.26, in spite of receiving wage reimbursement based on the lesser wage cap and not the higher actual wage rate.
- ii. A participant in Pennsylvania enters OJT as a certified nursing assistant earning \$13.52, which is below Pennsylvania's average hourly wage cap of \$22.00. The employer can only compensate the OJT participant at the same earnings level as an actual employee (with similar levels of training, experience, and skills) doing the same job as the OJT participant, or at \$13.52; therefore, the employee must be reimbursed at some percentage of the actual hourly wage (the percentage to be determined by employer's size or skills gaps of the trainee). The employer would not pay the OJT participant a higher hourly wage simply because the State's average hourly wage cap is higher than the employer's wage rate for comparable work.

**5. Transition of Funds and Waiver Applicability.** The transition of OJT wage reimbursement requirements from WIA to WIOA is consistent with TEGL 38-14, which describes the transition of participants, funds, and sub-recipient contracts from WIA to WIOA. For PY 2013 and 2014 funds that are already obligated as of June 30, 2015, grantees may liquidate those obligations in compliance with WIA requirements in place before WIOA was enacted. PY 2013 and PY 2014 NEG funds that have not been obligated by grantees in PY 2013 and PY 2014 (i.e. "carry-in" funds) are subject to WIOA, effective July 1, 2015. This means that the funds will assume the requirements of those portions of WIOA funds that were effective July 1, 2015.

Consistent with TEGL 1-15 this means that, in general, WIA funds flexibility waivers (such as the waiver allowing for sliding employer reimbursement scale for OJT training) will follow these same guidelines, and therefore they do not apply to unobligated PY 2013 and PY2014 funds, which are subject to WIOA requirements effective July 1, 2015. The transition authority in WIOA Sec. 503(b) permits the Department to allow the states that

received the 2013 DWT NEG and the 2014 JD NEG to use the reimbursement level established in the grant agreements, even if this rate is higher than the rate permitted under WIOA, in order to prevent a significant disruption to these grants. Therefore, recipients of these grants can use these higher OJT reimbursement rates for the obligated and unobligated PY 2013 and PY 2014 funds. It is important to note that this flexibility regarding OJT reimbursement rates is limited to DWT NEGs and JD NEGs and does not apply to the SP NEGs.

As described above, states must continue to apply TEGL 38-14 regarding the transition of funds and participants from WIA to WIOA. As of July 1, 2015, the unobligated PY 2013 and PY 2014 WIA funds carried into PY 2015 must only support allowable WIOA activities and conform to WIOA requirements effective July 1, 2015, with the exception of funds used to pay for WIA services for WIA participants who are transitioning to WIOA, and any other requirements issued by DOL via Training and Employment Guidance Letters that are necessary to facilitate transition from WIA to WIOA.

6. **Action Requested.** Please distribute this information to all appropriate state and local officials, including local workforce investment board chairs, administrative entities, chief elected officials, and American Job Centers.
7. **Inquiries.** Questions regarding program and policy issues for OJT wage caps or reimbursement rates should be addressed to the appropriate ETA regional office.
8. **Attachments.**  
Attachment I: References  
Attachment II: 2014 Average Hourly Wage Rates