ALABAMA WORKFORCE INVESTMENT SYSTEM

Department of Commerce
Workforce Development Division
401 Adams Avenue
Post Office Box 304103
Montgomery, Alabama 36130-4103

March 21, 2016

GOVERNOR'S WORKFORCE INNOVATION DIRECTIVE NO. PY2015-15

SUBJECT: Training and Employment Guidance Letter (TEGL) WIOA – On-the-Job (OJT) Wage Caps and Reimbursement Rate Waivers

1. Purpose. This transmits the following TEGL WIOA:

Number	Date	Subject
13-15	02/23/16	On-the-Job Training (OJT) Wage Caps and Reimbursement Rate Waivers for Job Driven, Dislocated Worker Training, and Sector Partnership National Emergency Grants (NEGs)

2. Discussion. The purpose of TEGL WIOA No. 13-15 is to provide updated hourly State Wage Cap data for OJT under the Workforce Innovation and Opportunity Act (WIOA). The U.S. Department of Labor (USDOL) 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.

The wage cap is set at the average hourly wage rate for each State. The current average hourly wage rate for Alabama is $19.66. (Note this rate will be updated annually and is provided by the Bureau of Labor Statistics.) If an OJT participant's wage rate exceeds this rate, the training reimbursement percentage must be applied against the average hourly wage rate. The USDOL / Employment and Training Administration (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. However, State and local areas also have the flexibility to increase the reimbursement level 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.

Please note that this cap policy does not apply to 2013 Dislocated Worker Training (DWT) NEGs, 2014 Job Driven (JD) NEGs, and 2015 Sector Partnership (SP) NEGs. The OJT reimbursement wage cap policy outlined in TEGL 4-10 applies to these grants and will remain in place through the end of these grants. In addition, if a higher rate than the one allowed under WIOA was included in the grant terms of a DWT NEG or JD NEG, these rates apply for both obligated and unobligated PY2013 and PY2014 funds awarded through these grants.

Additionally, please note that the OJT waiver awarded to the State of Alabama under the Workforce Investment Act (WIA) allowing employer reimbursement on a sliding scale according to number of employees does not apply to unobligated PY2013 and PY2014 funds, which are subject to WIOA requirements effective July 1, 2015. However, the waiver does continue to apply through June 30, 2017 for funds obligated prior to July 1, 2015.

3. **Action.** This Directive should be distributed accordingly to local areas, workforce staff, and partners. Local area staff should review and use the guidance provided in TEGL WIOA No. 13-15 to provide OJT services.

4. **Contact.** Questions or comments concerning this Directive should be referred to Lorilei Sanders, State Programs, Planning, and Divisional Budget Management Section at (334) 353-1632 or lorilei.sanders@commerce.alabama.gov.

Steve Walkley, Division Director
Workforce Development Division
Alabama Department of Commerce

3/21/2016
Date

Attachment
TEGL WIOA No. 13-15

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WIOA
	CORRESPONDENCE SYMBOL OWI - OJT
	DATE 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
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)

1. **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

RESCISSIONS None	EXPIRATION DATE Continuing

system on how to begin the important planning and organizational work necessary to comply with the WIOA statutory requirements. The Operating Guidance TEGLs will provide a framework for program activities until the regulations are finalized. This TEGL 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 TEGL 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

Attachment I:

References

- WIOA (Pub. L. 113-128) Title I;
- TEGL No. 19-14, *Vision for the Workforce System and Initial Implementation of the Workforce Innovation and Opportunity Act* dated February 19, 2015 http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7353;
- WIA (Pub. L. 105-220), Title I;
- TEGL No. 1-15, *Operations Guidance Regarding the Impact of Workforce Innovation and Opportunity Act Implementation on Waivers Approved Under the Workforce Investment Act* dated July 1, 2015 https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4678;
- TEGL No. 38-14, *Operational Guidance to Support the Orderly Transition of Workforce Investment Act Participants, Funds, and Subrecipient Contracts to the Workforce Innovation and Opportunity Act* dated June 8, 2015 https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5093;
- TEGL No. 16-12, *On-the-Job Training and National Emergency Grants (OJT NEGs) Funded with Workforce Investment Act Dislocated Worker Reserve Funds* dated March 7, 2013 https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4248;
- TEGL No. 4-10, *On-the-Job Training National Emergency Grants (OJT NEGs) Funded with American Recovery and Reinvestment Act of 2009 Resources* dated August 6, 2010 https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2930;
- TEN 38-09, *American Recovery and Reinvestment Act of 2009 On the Job Training National Emergency Grants* dated April 12, 2010 https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2882;
- The American Recovery and Reinvestment Act of 2009 (P.L. 1115);
- WIA regulations at 20 CFR Part 661, 663 and 671;
- TEGL No. 16-03 and Changes 1 through 5, , *National Emergency Grant (NEG) Policy Guidance* dated January 26, 2004; Changes Issued on August 18, 2004; May 24, 2005; October 14, 2005; July 13, 2006; April 27, 2007 https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=1544;
- TEGL No. 17-05 , *Common Measures Policy for the Employment and Training Administration's (ETA) Performance Accountability System and Related Performance Issues* dated February 17, 2006 https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2195;
- TEGL No. 19-08, *National Emergency Grants Funded with American Recovery and Reinvestment Act of 2009 Resources* dated April 30, 2009 https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2748.

Attachment II:

2014 Average Hourly Wage Rates

2014 Average Hourly Wage Rates Across All Occupations			
State	**Average Hourly Rate**	**State**	**Average Hourly Rate**
Alabama	$19.66	Nebraska	$19.75
Alaska	$25.98	Nevada	$20.34
Arizona	$21.43	New Hampshire	$22.63
Arkansas	$18.24	New Jersey	$25.92
California	$25.91	New Mexico	$20.31
Colorado	$23.97	New York	$26.75
Connecticut	$26.47	North Carolina	$20.81
Delaware	$23.81	North Dakota	$21.20
District of Columbia	$37.78	Ohio	$21.11
Florida	$20.11	Oklahoma	$19.64
Georgia	$21.48	Oregon	$22.53
Hawaii	$22.23	Pennsylvania	$22.00
Idaho	$19.12	Rhode Island	$23.83
Illinois	$23.45	South Carolina	$19.03
Indiana	$19.94	South Dakota	$17.93
Iowa	$19.77	Tennessee	$19.55
Kansas	$20.20	Texas	$21.79
Kentucky	$19.25	Utah	$20.94
Louisiana	$19.32	Vermont	$21.41
Maine	$20.26	Virginia	$24.40
Maryland	$25.70	Washington	$25.26
Massachusetts	$27.70	West Virginia	$18.21
Michigan	$21.70	Wisconsin	$20.62
Minnesota	$23.23	Wyoming	$21.60
Mississippi	$17.67	Guam	$16.00
Missouri	$20.57	Puerto Rico	$13.23
Montana	$19.17	Virgin Islands	$16.81
Source: Bureau of Labor and Statistics 2014 Occupational Employment Statistics			