

Workforce Innovation and Opportunity Act

Nebraska Department of Labor
Office of Employment & Training

Interim Policy on Designation of Local Areas

Reference:

Workforce Innovation and Opportunity Act (WIOA) Sections 102, 106, and 116; WIOA Notice of Proposed Rulemaking, 20 CFR §§ 679.250, 679.260, and 679.510; TEGL 25-13; TEGL 27-14.

Background:

The Workforce Innovation and Opportunity Act (WIOA) mandates that the Nebraska Workforce Development Board (NWDB) assist the Governor in designation of local workforce development areas (local areas).¹

The Governor will designate local areas:

1. Through consultation with the NWDB; and
2. After consultation with chief elected officials and local boards, and after consideration of comments received through the public comment process.²

The period of **initial designation** of local areas in Nebraska applies to Program Years 2015 and 2016. The period of subsequent designation will take effective on July 1, 2017. A procedure for initial and subsequent designation has been established under this policy.

Action:

After a 10 day review period, this Policy will be considered final. Questions and comments should be submitted in writing to the WIOA Policy Mailbox: ndol.wioa_policy@nebraska.gov.

The Chief Elected Official and local board must complete and submit a “Request for Initial Local Area Designation” form (Attachment A) **by December 31, 2015**.

Policy:

Definitions

Chief Elected Official (CEO) – The term “chief elected official” means: (A) the chief elected executive officer of a unit of general local government in a local area; and (B) in a case in which a local area includes more than one unit of general local government, the individuals designated under the agreement described in 29 U.S. Code § 2832 (c)(1)(B).³

Labor Market Area – The term “labor market area” means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such an area will be identified in accordance with criteria used by the Bureau of Labor Statistics of the Department of Labor in defining such areas or similar criteria established by the Governor.⁴

Local Board – The term “local board” means a local workforce development board established under WIOA Section 107, subject to WIOA Section 107(c)(4)(B)(i).⁵

¹ WIOA Section 106(b)(1)(B)

² WIOA Section 102(b)(2)(E)(iii)(II) and 106(b)(1)(A)

³ 29 U.S. Code § 2801

⁴ WIOA Section 3(30)

⁵ WIOA Section 3(33)

Performed Successfully – The term “performed successfully”, for the purpose of initial and subsequent local area designation, means that the local area:

- met or exceeded all performance levels the Governor negotiated with local board and CEO under the Workforce Investment Act (WIA) Section 136(c) for the two (2) program years prior to the enactment of WIOA; and⁶
- has had no failures of any individual measure for two (2) consecutive program years prior to the enactment of WIOA.⁷

Standards of “met,” “exceeded,” and “failure” must be consistent with how they were defined at the time the performance levels were negotiated and based on the following criteria:

- “met” means the local area having met performance levels when the actual performance achieved against an individual performance measure falls within the eighty (80) percent to one hundred (100) percent range of the negotiated level of performance;
- “exceeded” means the local area exceeded performance levels when the actual performance achieved against an individual performance measure is in excess of one hundred (100) percent of the negotiated level of performance;
- “failure” means the local area failed to meet performance measures when the actual performance achieved against an individual performance measure is less than eighty (80) percent of the negotiated level of performance;⁸ and
- a higher standard may not be retroactively applied.⁹

Sustained Fiscal Integrity – The term “sustained fiscal integrity” means that the Secretary has not made a formal determination that either the grant recipient or the administrative entity of the area misexpended funds due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration for the two-year period preceding the determination.¹⁰

Purpose of a Local Area

The purpose of a local area is to serve as a jurisdiction for the administration of workforce development activities using Adult, Dislocated Worker, and Youth funds allocated by the state and to coordinate efforts related to the other core programs at the local community level.¹¹ Significantly, local areas are areas within which local boards oversee their functions, including strategic planning, operational alignment and service delivery design, and a jurisdiction where partners align resources at a sub-state level to design and implement overall service delivery strategies.¹²

Requirements for a Local Area Designation

The Governor must designate local workforce development areas in order for Nebraska to receive Adult, Dislocated Worker, and Youth funding under Title I, Subtitle B.¹³

⁶ 20 CFR § 679.260(a)

⁷ 20 CFR § 679.260(a)

⁸ TEGL 25-13

⁹ 20 CFR § 679.260(a)(1)&(2)

¹⁰ 20 CFR § 679.260(c)

¹¹ TEGL 27-14

¹² 20 CFR § 679.220(a)

¹³ WIOA Section 106(b)(1)(A); TEGL 27-14

More specifically, the Governor must designate local areas within the state: ¹⁴

1. through consultation with the NWDB;
2. after consultation with CEOs and local boards; and
3. after consideration of comments received through the public comment process. The public comment period must offer adequate time for public comment prior to designation of the local areas and provide an opportunity for representatives of interested business, education, and labor organizations to have input into the development of the formation of the local area.

The Governor will designate local areas based on following criteria: ¹⁵

1. the areas are consistent with labor market and regional development areas in Nebraska; and
2. the areas have the necessary federal and non-federal resources for effective administration of Title I-B activities (and other applicable provisions of WIOA), including whether the areas have appropriate education and training providers, such as institutions of higher education and area career and technical education schools.

Requirements for Initial Designation of Local Areas Previously Designated under WIA¹⁶

A local area previously designated under WIA may request to continue as a local area under WIOA. If the CEO and local board in a local area submit a request for initial designation, the Governor must approve the request if the local area was designated as a local area under WIA and performed successfully and sustained fiscal integrity for two (2) program years prior to enactment of WIOA (July 1, 2012 through June 30, 2014). The period of initial designation applies to Program Years 2015 and 2016.

Requirements for Designation of New Local Areas¹⁷

At any time, the CEO and local board from any unit of general local government or combination of units may submit a request for designation as a local workforce development area. The NWDB must determine if the proposed new local area meets the criteria for local area designation established in this policy. The Governor may approve or deny the request for designation, in accordance with this established policy.

Subsequent Designation of Local Areas

Following the initial designation period, the CEO and local board may submit a written request for subsequent designation, which the Governor must approve, provided that the local area performed successfully, sustained fiscal integrity, and met regional planning requirements if the local area is included in a planning region during the two (2) year period of initial designation.¹⁸ For any local area designated under subsequent designation, the Governor:

- may review a local area at any time to determine whether the local area continues to meet the requirements for subsequent designation;

¹⁴ WIOA Section 106(b)(1)(B); TEGL 27-14

¹⁵ WIOA Section 106(b)(1)(B)

¹⁶ TEGL 27-14; 20 CFR § 679.250

¹⁷ TEGL 27-14

¹⁸ WIOA Section 106(b)(3); 20 CFR § 679.250(c)

- must review a local area during each four-year state planning cycle to determine whether the local area continues to meet the requirements for subsequent designation prior to the submission of the state plan; and
- may assume the CEO and local board to have requested continued designation unless notified otherwise in writing.¹⁹

Designation Procedures

The procedure for any entity seeking designation as a WIOA local area, whether an initial designation or otherwise, is as follows:

1. The CEO and local board completes and submits a “Request for Local Area Designation” form (Attachment A) **by December 31, 2015**.
2. The Governor reviews the request to ensure the local area meets the requirements of WIOA Sections 106(b)(1) (B).
3. The Governor forwards the request to the NWDB and all other CEOs and local boards for review and public comment and makes the request available to the public for comment through the public comment process. NDOL will post each designation request on its website with information about the NWDB meeting where the designation request will be discussed. The NWDB meeting is open to the public, and comments about the designation request will be allowed.
4. Upon receipt of a recommendation of the NWDB and following consideration of comments from CEOs, local boards, and the public, the Governor approves or denies the request and notifies the NWDB, all CEOs, local boards, and all other entities seeking designation as a local area.

Appeal Process Relating to Designation of Local Areas

CEOs and local boards or any other entity seeking designation as a local area may appeal a denied request for local area designation. The appeal must be submitted to the NWDB under the appeal process described below. If a timely decision on the appeal is not rendered or if the appeal does not result in the entity’s designation as a local area, the appealing entity may request review by the Secretary of Labor. The Secretary of Labor may require that the appealing entity be designated as a local area if the Secretary determines that the entity was not afforded procedural rights under the state’s appeal process or if the entity meets the initial designation requirements established under WIOA Section 106(b)(2). Appeals brought pursuant to WIOA Section 106(b)(5) will be conducted in accordance with the Nebraska Administrative Procedures Act (R.R.S. Neb. § 84-917). Nebraska’s Commissioner of Labor may conduct hearings on behalf of the Governor and make findings and recommendations to the Governor on the merits of the appeal. In the case of an appeal by an entity not granted designation as a local area, NWDB will review the findings and recommendations of the commissioner and advise the Governor as to whether the appeal should be granted or denied.

Disclaimer:

This policy is based on NDOL’s reading of the statute along with the Notice of Proposed Rulemaking released by USDOL. This policy may be subject to change as additional federal regulations and TEGLs are released. This policy is not intended to be permanent and should be viewed as a placeholder until final federal regulations are released in early 2016.

¹⁹ 20 CFR § 679.250(e)

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ATTACHMENT A

State of Nebraska Workforce Innovation and Opportunity Act

Request for Initial Local Area Designation

This request may be used by any entity requesting designation as a Local Workforce Development Area (Local Area) pursuant to Public Law 113-128, the Workforce Innovation and Opportunity Act (WIOA). **This form must be completed and submitted by December 31, 2015.** Submit this form to John H. Albin, Commissioner of Labor, Nebraska Department of Labor, P.O. Box 94600, Lincoln, NE 68509-4600; or email to John.Albin@nebraska.gov.

Designation as a Local Area is requested for the following counties (attach a separate sheet if necessary):

Specify the name of the Local Area:

List the names of the chief elected official (CEO) or chief elected officials board (CEOB) representing the local area (attached a separate sheet if necessary).

Provide the name, title, mailing address, phone number, fax number, and email address of the primary contact person regarding this request.

Name: _____
Title: _____
Mailing Address: _____
Phone Number: _____
Fax Number: _____
Email Address: _____

Existing Local Workforce Development Areas:

In the tables below, provide the final WIA performance data for each of the last two consecutive years.

Program Year 2012 (July 1, 2012 – June 30, 2013)			
Performance Measure	Goal	Actual	Percent of Goal
Youth Placement in Employment/Education			
Youth Attainment of Degree/Certificate			
Youth Literacy or Numeracy Gains			
Adult Entered Employment Rate			
Adult Employment Retention Rate			
Adult Average Six-Month Earnings			
Dislocated Worker Entered Employment Rate			
Dislocated Worker Employment Retention Rate			
Dislocated Worker Average Six-Month Earnings			

Program Year 2013 (July 1, 2013 – June 30, 2014)			
Performance Measure	Goal	Actual	Percent of Goal
Youth Placement in Employment/Education			
Youth Attainment of Degree/Certificate			
Youth Literacy or Numeracy Gains			
Adult Entered Employment Rate			
Adult Employment Retention Rate			
Adult Average Six-Month Earnings			
Dislocated Worker Entered Employment Rate			
Dislocated Worker Employment Retention Rate			
Dislocated Worker Average Six-Month Earnings			

For each measure, the US Department of Labor defines performance as follows:

- Exceed = actual performance is greater than 100% of the goal
- Meet = actual performance is 80-100% of the goal
- Did not meet = actual performance is less than 80% of the goal

If any measure was not met in either program year, address the reasons, corrective action measures taken, and current status (attach a separate sheet if necessary).

Address fiscal integrity regarding funds provided under the Workforce Investment Act of 1998 (WIA).

Has the Secretary of Labor made a formal determination, during either of the last two consecutive years, that WIA funds provided to the area were misexpended due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration?

Assurances

The CEO(s) making this local area designation request assure the following:

- that they have been duly authorized to participate by and on behalf of the governing bodies of the counties specified and documentation of this authorization can be provided;
- that they will comply with the requirements of WIOA, all federal regulations implementing WIOA, and any and all applicable federal, state, or local rules and regulations; and
- that they accept liability for any misuse of grant funds.

I, the undersigned CEO(s) of the requesting local area, do hereby submit this formal designation petition under the conditions delineated herein and with the assurances specified herein.

Chief Elected Official

Local Board Chair

Date

Date