



State Policy

Workforce Innovation and Opportunity Act (WIOA)

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Local Areas and Planning Regions

REFERENCE

Federal and state laws, regulations, rules, and other guidance and documentation relied upon for the development of this policy are cited in footnotes.

BACKGROUND

The Governor must designate local areas and assign them to identified planning regions to receive WIOA¹ Title IB Youth, Adult, and Dislocated Worker funding.²

ACTION

This policy supersedes and cancels the State's:³

- policy on Local Area Designation (effective date June 2, 2017); and
- Interim Policy on Designation of Regions (Rev. 11/18/2015).

¹ WIOA refers to the Workforce Innovation and Opportunity Act of 2014.

² 20 CFR §§ 679.210(a) and 679.220(b)

³ The term "State" refers to the Nebraska Workforce Development Board and the Nebraska Department of Labor (acting on the Governor's behalf pursuant to the Governor's Executive Order No. 15-03).

The State provides a thirty (30) day review period for this policy, during which questions and comments may be submitted in writing to the WIOA policy mailbox at ndol.wioa_policy@nebraska.gov.

POLICY

This policy identifies requirements and establishes procedures for local area designation and identification of planning regions. This policy is organized into two (2) sections and one (1) appendix.

Section I. Local Areas	2
Section II. Planning Regions	7
APPENDIX I. Definitions.....	8

Section I. Local Areas

(a) Designation⁴

(1) Initial designation

If a local board and CEO request initial designation for a local area, the request must be approved if the local area, for the two (2) program years preceding the date of enactment of WIOA (Program Years 2012 and 2013):

- was designated as a local area under the Workforce Investment Act of 1998 (WIA);
- performed successfully; and
- sustained fiscal integrity.

(2) Subsequent designation

If a local board and CEO request subsequent designation for a local area, the request must be approved if the local area, for the two (2) most recent program years of initial designation:

- performed successfully; and
- sustained fiscal integrity.

In addition, if the local area is part of a planning region, the local board and CEO must have participated in a regional planning process that resulted in all of the following activities:

- preparation of a regional plan;⁵
- establishment of regional service strategies, including use of service delivery agreements;

⁴ 20 CFR § 679.250

⁵ For more information, refer to the State's policy on regional and local plans.

- development and implementation of sector initiatives for in-demand industry sectors or occupations for the region;
- collection and analysis of regional labor market data in conjunction with the state;⁶
- establishment of administrative cost arrangements for the region, including pooling of funds for administrative costs;
- coordination of transportation and other supportive services for the region, as appropriate;
- coordination of activities with regional economic development providers; and
- establishment of an agreement concerning how the planning region will:
 - collectively negotiate and reach agreement with NDOL on local levels of performance; and
 - report on the performance accountability measures described in WIOA Sec. 116(c) for the local areas or the planning region.

IMPORTANT. Determination of subsequent designation must not be made before the conclusion of Program Year 2017.

(3) Procedures

General procedural requirements for initial and subsequent designation and redesignation⁷ of local areas include:⁸

- consultation with the state board;
- consultation with local boards and CEOs; and
- consideration of comments received through a public comment process observed by NDOL, which must:
 - offer adequate time for public comment prior to designation or redesignation of local areas; and
 - provide an opportunity for comment by representatives of local boards, CEOs, businesses, institutions of higher education, labor organizations, other local area stakeholders, and the public regarding designation or redesignation of local areas.

(A) Initial designation

All local areas in Nebraska received initial designation prior to the effective date of this policy according to the state's policy.

⁶ Regional labor market information is available through the NDOL Office of Labor Market Information.

⁷ Refer to [Section I\(c\)](#) for information on redesignation.

⁸ 20 CFR § 679.230

(B) Subsequent designation

Procedures for requesting subsequent designation as a local area are provided through an Employment and Training Notice issued by NDOL.

(4) Local area review

NDOL must review a designated local area during each four (4) year state planning cycle to evaluate whether the local area continues to meet the requirements for subsequent designation. The review must occur before the state submits its state plan. NDOL may review a designated local area at any time to evaluate whether the local area continues to meet the same requirements.

(b) Appeal⁹

A local board and CEO may appeal a denied request for designation as a local area. The appeal must be made first to the state board. If a decision on the appeal is not rendered within a reasonable amount of time *or* if the appeal does not result in designation, the local board and CEO may request review by the Secretary of the US Department of Labor (the Secretary).

(1) Appeal to the state board

The local board and CEO must submit a written request for a hearing to the chair of the state board within fifteen (15) calendar days of the date of notification of denial of the request for designation. The written request must include a description of the basis for the appeal and must be submitted by certified mail, return receipt requested, to:

Chair, Nebraska Workforce Development Board
Attention: Director, Office of Employment and Training
Nebraska Department of Labor
550 South 16th Street
Lincoln, NE 68508

IMPORTANT. A copy of the appeal must be submitted by email to NDOL at ndol.wioa_policy@nebraska.gov.

Absent extenuating circumstances, the chair will assign a hearing officer and a hearing will take place within fifteen (15) calendar days of the chair's receipt of the written request for a hearing. The hearing will include:

- a statement of the reason(s) for denial of the request for designation; and
- an appeal by the local board and CEO describing why the decision should be reversed or a compromise established.

The chair will render a decision within fifteen (15) calendar days of the date of the hearing.

⁹ 20 CFR §§ 679.290 and 683.640

(2) Appeal to the Secretary

As stated above, if a decision on the appeal is not rendered by the state board within a reasonable amount of time *or* if the appeal does not result in designation, the local board and CEO may request review by the Secretary of the US Department of Labor (the Secretary).

If appealing to the Secretary, the local board and CEO must file the appeal no later than thirty (30) calendar days after receipt of written notification of denial from the state board. In its appeal to the Secretary, the local board and CEO must establish that:

- procedural rights under the appeal process set forth in this policy were not afforded; or
- the local area meets the requirements for local area designation provided under WIOA Sec. 106(b)(2) or 106(b)(3) and 20 CFR § 679.250.

The appeal to the Secretary must be submitted by certified mail, return receipt requested, to:

Secretary
US Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: ASET

In addition, a copy of the appeal to the Secretary must be submitted simultaneously by certified mail, return receipt requested, to:

Chair, Nebraska Workforce Development Board
Attention: Director, Office of Employment and Training
Nebraska Department of Labor
550 South 16th Street
Lincoln, NE 68508

IMPORTANT. A copy of the appeal to the Secretary must be submitted by email to NDOL at ndol.wioa_policy@nebraska.gov.

In making a determination, the Secretary may consider any comments submitted by the state board in response to the appeal. The Secretary must issue a written decision to the Governor and the appellant.

(c) Redesignation¹⁰

Local boards and CEOs within a planning region may make a joint written request for redesignation of their respective local areas as a single local area. If the Governor approves the request, the state board must authorize use of WIOA Title IB (Youth, Adult, and Dislocated Worker) statewide funds to facilitate redesignation activities. Activities that may be carried out by local areas approved for redesignation include:

- convening sessions and conferences on the topic of redesignation;

¹⁰ 20 CFR §§ 679.240(c) and 679.280

- renegotiating contracts and agreements impacted by redesignation; and
- other activities directly associated with redesignation deemed appropriate by the state board.

If statewide funds are not available, funds for redesignation activities may be provided in the next program year.

(1) Procedure

General procedural requirements for redesignation of local areas are described in [Section I\(a\)\(3\)](#). The specific procedure for requesting redesignation is described below.

1. The local boards and CEOs of the planning region must:
 - a. submit a joint written request by email to NDOL at ndol.wioa_policy@nebraska.gov requesting redesignation of their respective local areas as a single local area; and
 - b. provide written documentation that describes reasonable projected costs for redesignation activities.
2. NDOL reviews the request and documentation to ensure the request meets the requirements of 20 CFR § 679.280 and this policy and verifies the availability of WIOA Title IB statewide funds for the current program year.
3. NDOL provides the request and documentation to the state board for review and consideration.
4. Following the state board's review and consideration of the request, NDOL forwards the request and documentation to the Governor with the state board's recommendation.
5. The Governor reviews the request, documentation, and the state board's recommendation.
6. NDOL notifies the local boards and CEOs of the Governor's decision on the request.
7. If the Governor approves the request, the state board authorizes use of statewide funds at its next regularly scheduled meeting, provided that:
 - a. projected costs for redesignation activities are reasonable and verifiable; and
 - b. statewide funds are available for the current program year.
8. If statewide funds are not available for the current program year, funds from the next program year may be provided.

Section II. Planning Regions

Planning regions are identified after consultation with local boards and CEOs and based on the extent to which the local areas in a region:¹¹

- share a single labor market;
- share a common economic development area; and
- possess Federal and non-Federal resources, including appropriate education and training institutions, to administer activities authorized under WIOA Title I.

In addition, other factors are considered, including:

- population centers;
- commuting patterns;
- labor force conditions; and
- geographic boundaries.

Planning regions must consist of:

- one (1) local area;
- two (2) or more contiguous local areas in a single state; or
- two (2) or more contiguous local areas in two (2) or more states.

Planning regions are subject to regional planning requirements.¹²

DISCLAIMER

This policy is based on NDOL's reading of the applicable statutes, regulations, rules, and guidance released by the U.S. Government and the State of Nebraska. This policy is subject to change as revised or additional statutes, regulations, rules and guidance are issued.

¹¹ 20 CFR § 679.210

¹² For more information, refer to 20 CFR § 679.510 and the State's current policy on regional and local plans.

APPENDIX I. Definitions

PURPOSE. Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

1. chief elected official (CEO)

The term *chief elected official* (or CEO) means:¹³

- the chief elected executive officer of a unit of general local government in a local area; and
- in the case of a local area that includes multiple units of general local government, the individuals designated under the agreement executed among the chief elected officials of the local area in accordance with WIOA Sec. 107(c)(1)(B).

CEO also refers to a chief elected officials board (CEOB) established in accordance with WIOA Sec. 107(c)(1)(B).

2. consultation

Consultation means the process by which state or local stakeholders convene to discuss changes to the public workforce system and constitutes a robust conversation in which all parties are given an opportunity to express thoughts and opinions.¹⁴

3. in-demand industry sector or occupation¹⁵

The phrase *in-demand industry sector or occupation* means:

- an industry sector that:
 - has a substantial current or potential impact on the state's economy or regional or local economies, including positions that lead to economic self-sufficiency and opportunities for advancement; and
 - contributes to the growth or stability of other supporting businesses or the growth of other industry sectors;
- an occupation that currently has or is projected to have a number of positions, including positions that lead to economic self-sufficiency and opportunities for advancement, within an industry sector and has or will have a significant impact on the state's economy or regional or local economies.

¹³ WOA Sec. 3(9)

¹⁴ 20 CFR § 675.300

¹⁵ WIOA Sec. 3(23)

The determination of whether an industry sector or occupation is in-demand is made by the state board or local board, as appropriate, using state and regional business and labor market projections and information.

4. performance standards

The standard of *exceeded*, in relation to local area performance, means the local area exceeded negotiated performance levels when actual performance on an individual performance measure is in excess of one hundred (100) percent of the negotiated level of performance.¹⁶

The standard of *met*, in relation to local area performance, means the local area met negotiated performance levels when actual performance on an individual performance measure falls within the eighty (80) percent to one hundred (100) percent range of the negotiated level of performance.¹⁷

The standard of *failed*, in relation to local area performance, means the local area failed to meet negotiated performance measures when actual performance on an individual performance measure is less than eighty (80) percent of the negotiated level of performance.¹⁸

5. performed successfully

The standard of *performed successfully* varies in meaning in relation to the applicable program year.

a. For initial designation

For purposes of initial designation of local areas for Program Years 2016 and 2017, the term *performed successfully* means the local area:¹⁹

- *met* or *exceeded* all negotiated performance levels under WIA Sec. 136(c) for the two (2) full program years prior to the enactment of WIOA (Program Years 2012 and 2013); and
- has not failed to meet any individual measure during the two (2) consecutive program years prior to the enactment of WIOA (Program Years 2012 and 2013).

b. For subsequent designation after PY 2017

For purposes of subsequent designation of local areas after the conclusion of Program Year 2017,²⁰ the term *performed successfully* means the local area *met* or *exceeded* negotiated levels of performance for Program Years 2016 and 2017 for the following performance indicators:²¹

- employment rate second (2nd) quarter after program exit; and

¹⁶ TEGL 25-13

¹⁷ TEGL 25-13

¹⁸ Ibid.

¹⁹ 20 CFR § 679.260(a)

²⁰ Determination of subsequent designation must not be made before the conclusion of Program Year 2017 [20 CFR § 679.250(c)].

²¹ 20 CFR § 679.260(b)(1). As of the effective date of this policy, the date on which local area performance data will be available for PY16 and PY17 is not known.

- median earnings second (2nd) quarter after program exit.

c. For subsequent designation after the conclusion of PY 2018 and later

For purposes of subsequent designation of local areas after the conclusion of Program Year 2018, or any point thereafter, the term *performed successfully* means the local area *met* or *exceeded* negotiated levels of performance for the two (2) most recently completed program years for the following performance indicators:²²

- employment rate second (2nd) quarter after program exit;
- employment rate fourth (4th) quarter after program exit;
- median earnings second (2nd) quarter after program exit;
- effectiveness in serving employers;
- credential attainment rate; and
- measurable skills attainment rate.

6. sustained fiscal integrity

For purposes initial and subsequent designation determinations, the term *sustained fiscal integrity* means the Secretary of the US Department of Labor has not made a formal determination that either the grant recipient or the administrative entity for the local area, for the two (2) year period preceding the date of a request for designation as a local area, misexpended funds due to:²³

- willful disregard of the requirements of applicable regulations;
- gross negligence; or
- failure to comply with accepted standards of administration.

7. unit of general local government

The term *unit of general local government* means any general-purpose political subdivision of a state that has the power to levy taxes and spend funds and has general corporate and police powers.²⁴

²² 20 CFR § 679.260(b)(2). As of the effective date of this policy, negotiated levels of performance are not available for the state and local areas.

²³ 20 CFR § 679.260(c)

²⁴ WIOA Sec. 3(62)