

Nevada Department of Employment, Training and Rehabilitation
Employment Security Division
Workforce Programs

Workforce Innovation and Opportunity Act (WIOA)
State Compliance Policy (SCP)

Policy Number: 1.1

Originating Office: DETR; Workforce Programs

Subject: WIA to WIOA: Identification of Regions, Designation of Local Workforce Development Areas, Appointment and Certification of the Local Workforce Development Board (LWDB) and Appeals Process

Issued: New July 2015 replacing Workforce Investment Act (WIA); Approved Governor's Workforce Development Board (GWDB) Executive Committee June 21, 2018; Ratified Governor's Workforce Development Board date July 17, 2018

Purpose: To establish policy and procedure for the identification of regions, designation of local workforce development areas and the process for appealing designation decisions in compliance with the Workforce Innovation and Opportunity Act (WIOA) – Public Law 113-128, enacted on July 22, 2014

State Imposed Requirements: This directive may contain some state-imposed requirements. These requirements are printed in ***bold, italicized*** type.

Authorities/References: Workforce Innovation and Opportunity Act P.L. 113-128; U.S. Department of Labor's TEGL 27-14; 20 CFR§679.250; 20 CFR§679.290; 20 CFR §679.390; 29 U.S.C. 3122; Nevada SCPs

ACTION REQUIRED: Upon issuance bring this guidance to the attention of GWDB, LWDB members and any other parties concerned. Any LWDB policies, procedures, and or contracts affected by this guidance are required to be updated accordingly.

Background:

WIOA Sec. 106 delineates the requirements and process for the determination of regions and local areas including: Identification, types of regions, initial designation, subsequent designation, process, considerations, designation on recommendation by the GWDB, and the appeal process. Further guidance regarding this requirement is outlined in the U.S. Department of Labor's Training and Employment Guidance Letter (TEGL) 27-14, 5(B), issued on April 15, 2015.

Definitions: In addition to the definitions of '*performed successfully*' and '*sustained fiscal integrity*' in WIOA, Sec. 106(e), the following definitions apply for the purposes of determining initial local

area designations in accordance with TEGL 27-14, Section 5.C:

Performed successfully: The local area met or exceeded the levels of performance the Governor negotiated with the LWDB and chief elected local official (CEO), and the local area has not failed any individual performance measures for the last two (2) consecutive program years prior to the enactment of WIOA (TEGL 25-13).

- ***Exceeded:*** When the actual performance achieved against an individual performance measure is in excess of 100 percent of the negotiated level of performance for the measure.
- ***Met:*** When the actual performance achieved against an individual performance measure falls in the range of 90-100 percent of the negotiated level of performance for the measure.
- ***Failed:*** When the actual performance achieved against an individual performance measure is less than 90 percent of the negotiated level of performance for the measure.

Sustained fiscal integrity: The Secretary of the U.S. Department of Labor has not made a *formal* determination that either the grant recipient or the administrative entity of the area misspent funds due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administrations for the two years preceding the determination (TEGL 27-14).

Process:

The Governor of the State shall designate local workforce development areas within the State:

- A. Through consultation with the GWDB; and
- B. After consultation with chief elected officials and after consideration of comments received through the public comment process as described in section 102(b)(2)(E)(iii)(II).

WIOA further states that the considerations should include the following:

- A. The extent to which the areas are consistent with the labor market areas in the State;
- B. The extent to which the areas are consistent with regional economic development areas in the State; and
- C. The extent to which the areas have available the Federal and non-Federal resources necessary to effectively administer activities under subtitle B and other applicable provisions of WIOA, including whether the areas have the appropriate education and training providers, such as institutions of higher education and area career and technical education schools.

WIOA states that a unit of general local government (including a combination of such units) or grant recipient that requests, but is not granted designation of an area as a local area, may submit an appeal to the GWDB under an appeal process established in the State plan and as detailed further in this policy.

Policy:

Designation and Re-designation Policy:

WIOA requires that existing federally recognized workforce areas are designated during the first two program years, which is referred to as Initial Designation, and again after the first two program years, which is referred to as Subsequent Designation. Units of general local government that desire to become a new local workforce area should follow the New Area designation requirements in TEGL 27-14, 5(C).

- A. INITIAL WIOA DESIGNATION FOR EXISTING REGIONS:** Existing workforce regions operating in accordance with the Workforce Investment Act of 1998 may request initial designation as a Local Workforce Development Area if they have performed successfully and sustained fiscal integrity. A request for initial designation must be submitted by June 30, 2015 to the Governor's Workforce Development Board (aka Governor's Workforce Investment Board), through the Nevada Department of Employment, Training and Rehabilitation (DETR) for consideration for the next program year (July 1 – June 30).

An area seeking initial designation must address the following:

1. Submit the request in writing to the Chairperson of the Governor's Workforce Development Board (GWDB) by sending an email to: the GWDB Liaison ajfeijoo@gov.nv.gov, or via U.S. mail to: 555 East Washington Avenue, Suite 4900, Las Vegas, Nevada, 89101. Receipt of the request must be documented by electronic return confirmation and/or USPS return/receipt requested. **If the requestor does not receive confirmation before 5:00 PM two months prior to the due date given in guidance from Department of Labor (DOL), it is their responsibility to contact the GWDB Liaison at (702) 486 - 8080 to ensure that the notice has been received.**
2. The respective LWDB must be a WIOA-compliant board per WIOA Title I, Section 107 in conflict of interest and transparency and as defined by SCP 4.6. Members must ensure the integrity of their pursuits by taking steps to avoid conflict of interest or even the appearance of conflict of interest per State and Board policy. ANY conflict of interest by ANY board member must be declared and then abstained from voting on that agenda item. Reference SCP 4.6 Conflict of Interest.
3. Provide evidence that the area, in the two most consecutive program years, met or exceeded the agreed upon adjusted levels of performance for the Common Measures, as defined by existing performance agreements, and was not subject to the sanctions process resulting from missing the same measure two years in a row. Said evidence must be demonstrated, documented and included in the request.
4. Provide assurance that during the two most consecutive program years, the U.S. Secretary of Labor, or the State in place of the Secretary, has not made a formal determination that the grant recipient or administrative entity for the local area has mis-expended funds due to willful disregard, gross negligence, or failure to comply with accepted standards of administration.
5. Provide evidence that the area, in the two most consecutive program years, was

committed to providing quality service through continuous improvement efforts and implemented plans that supported sector partnerships or career pathways; or enhanced services to employers or outreach efforts to the local community. Progress reports submitted to the GWDB on annual plans for these years will serve as sufficient data.

6. The Local Workforce Development Board/One-Stop Operator will be on the State's case management system at the time of certification. The State may issue a six-month waiver should said system be in development.

If the request meets all requirement criteria, the GWDB will recommend approval to the Governor of a local area's request that satisfies these requirements in accordance with WIOA Sec. 106(b)(2). Initial designation as a local area will remain valid until June 30, 2017.

B. SUBSEQUENT WIOA DESIGNATION: Local areas that receive initial designation may request subsequent designation as a Local Workforce Development Area if they have performed successfully, sustained fiscal integrity, and met the requirements for involvement in WIOA regional planning for the two most recent program years of initial designation. Consistent with 20 CFR 679.250(e) for the purposes of subsequent designation under paragraphs (b) and (d) of that section, the local area and CEOs must be considered to have requested continued designation unless the local area and the CEOs notify the Governor that they no longer seek designation.

An area seeking subsequent designation must address the following:

1. Submit the request in writing to the Chairperson of the GWDB and to the Liaison of the GWDB by sending an email to: ajfeijoo@gov.nv.gov, or via U.S. mail to: 555 East Washington Avenue, Suite 4900, Las Vegas, Nevada, 89101. Receipt of the request must be documented by electronic return confirmation and/or USPS return/receipt requested. **If the requestor does not receive confirmation before 5:00 PM two months prior to the due date given in guidance from DOL, it is their responsibility to contact the GWDB Liaison at (702)486-8080 to ensure that the notice has been received.**
2. The respective Local Workforce Development Board must be a WIOA-compliant board per WIOA, Sec. 107, in conflict of interest and transparency. Members must ensure the integrity of their pursuits by taking steps to avoid conflict of interest or even the appearance of conflict of interest per State and Board policy. ANY conflict of interest by ANY board member must be declared and then abstained from voting on that agenda item. Reference SCP 4.6 Conflict of Interest.
3. Evidence that the area, in the two most consecutive program years, met or exceeded the adjusted levels of performance for the Common Measures and was not subject to the sanctions process resulting from missing the same measure two years in a row. Said evidence must be demonstrated, documented and included in the request.
4. Assurance that during the two most consecutive program years, the U.S. Secretary of Labor, or the State in place of the Secretary, has not made a formal determination that the grant recipient or administrative entity for the local area has misspent funds due to willful disregard, gross negligence, or failure to comply with accepted standards of administration.
5. Evidence that the area, if a part of a WIOA planning region, has fulfilled its

obligations to engage in regional planning efforts during the two most consecutive program years. Regional plans can be submitted to demonstrate fulfillment of obligations.

6. Provide evidence that the area, in the two most consecutive program years, was committed to providing quality service through continuous improvement efforts and implemented plans that supported sector partnerships or career pathways; or enhanced services to employers or outreach efforts to the local community. Progress reports submitted to the GWDB on annual plans for these years will serve as sufficient data.
7. The LWDB/One-Stop Operator will be on the State's case management system at the time of certification. The State may issue a six-month waiver should said system be in development.

The GWDB will recommend approval to the Governor of a local area's request that satisfies these requirements in accordance with WIOA section 106(b)(2).

C. WIOA DESIGNATION FOR NEW AREAS: Any unit of general local government may request designation as a Local Workforce Development Area under WIOA. New local area designations will only become effective on July 1 of the subsequent program year. An area seeking new designation must perform the following:

1. A statement of intent to request designation **must be submitted to the GWDB no later than February 15th to be considered for the subsequent program year through email to the GWDB Liaison at ajfeijoo@gov.nv.gov or via U.S. mail to: 555 East Washington Avenue, Suite 4900, Las Vegas, Nevada, 89101.**
2. The GWDB will work with the requesting area to determine the deadline for the full request. Submitted materials will be made available for **public comment** as a part of the review process. The full request for designation as a Local Workforce Development Area must include the following components and steps:
 - i. Submit the request in writing to the Chairperson of the GWDB and to the Liaison of the GWDB through email to: ajfeijoo@gov.nv.gov or via U.S. mail to: 555 East Washington Avenue, Suite 4900, Las Vegas, Nevada, 89101. Receipt of the request must be documented by electronic return confirmation. If the requestor does not receive confirmation, it is their responsibility to contact the Liaison of the GWDB to ensure that the notice has been received.
3. The respective LWDB/One-Stop operator must be WIOA-compliant per WIOA Sec. 107 in conflict of interest and transparency. Members must ensure the integrity of their pursuits by taking steps to avoid conflict of interest or even the appearance of conflict of interest per Board policy. ANY conflict of interest by ANY board member must be declared and then abstained from voting on that agenda item. Reference SCP 4.6 Conflict of Interest.
4. The request must clearly state the circumstances for the request of local area designation.
5. The request must also address and clarify how the following criteria are to be met:
 - Consistency with the labor market areas in the State.
 - Consistency with regional economic development areas in the States.

- Existence of education and training providers, such as institutions of higher education and career and technical education schools in the area.
 - Submission of a service delivery plan that includes a description of resources that would be available to the area to provide services.
 - Coordination of multiple resources within areas that are based on labor markets and natural travel patterns of local residents.
 - Local support of the implementation strategies to provide quality services to employers and individuals by county commissioners, municipal elected officials including mayors and/or city council members where appropriate, and business or community leaders within the area as demonstrated by letters of support or a vote of support by a city council or other applicable board.
 - Local ownership, exhibited by strong involvement of local elected officials and community leaders on the LWDB.
 - Local capacity to manage funds, provide oversight of programs, and provide for the proper stewardship of public funds.
6. The request must address how the proposed new area designation will impact those other workforce areas from which it is withdrawing, if applicable. It should be understood by any unit of general local government or combination of such seeking designation, that the new area will only secure the formula allocated funds for each WIOA funding stream based on the formula factors as defined by WIOA. If the area in question becomes part of a consortium, the consortium will determine the distribution of WIOA funds within its region(s).
 7. If opposition to the request is voiced by municipalities or counties within the area seeking designation, then the requesting entity will address their request at a public hearing. The requesting entity will have the opportunity to respond to concerns and questions at the hearing, and all comments will be recorded and used to inform the GWDB's action on the request. If a hearing is necessary, it will be held within 45 days of receipt of the request. Time and place is to be determined by the GWDB Liaison. The GWDB Liaison and Chair will take the request and comments from the public as well as from a public hearing, if applicable, and determine a recommendation.
 8. The GWDB will submit its recommendation to the Governor within five (5) business days following the GWDB's vote. The final decision resides with the Governor and shall be made prior to May 29th, i.e., four weeks prior to July 1 beginning of the respective fiscal and program year.
 9. The LWDB/One-Stop operator will be integrated into and utilizing the State's case management system at the time of certification. The State may issue a six-month waiver should said system be in development.

Appointment and Certification of the LWDB (WIOA Sec. 107(c)(2))

CERTIFICATION.—

(A) IN GENERAL.—The Governor shall, once every 2 years, certify 1 local board for each local area in the State.

(B) CRITERIA.—Such certification shall be based on criteria established under subsection (b), and for a second or subsequent certification, the extent to which the local board has ensured that workforce investment activities carried out in the local area have enabled the local area to meet the corresponding performance accountability measures and achieve sustained fiscal integrity, as defined in section 106(e)(2).

(C) FAILURE TO ACHIEVE CERTIFICATION.—Failure of a local board to achieve certification shall result in appointment and certification of a new local board for the local area pursuant to the process described in paragraph (1) and this paragraph.

(3) DECERTIFICATION.—

(A) FRAUD, ABUSE, FAILURE TO CARRY OUT FUNCTIONS.—

Notwithstanding paragraph (2), the Governor shall have the authority to decertify a local board at any time after providing notice and an opportunity for comment, for—

(i) fraud or abuse; or

(ii) failure to carry out the functions specified for the local board in subsection (d).

(B) NONPERFORMANCE.—Notwithstanding paragraph (2), the Governor may decertify a local board if a local area fails to meet the local performance accountability measures for such local area in accordance with section 116(c) for 2 consecutive program years.

(C) REORGANIZATION PLAN.—If the Governor decertifies a local board for a local area under subparagraph (A) or (B), the Governor may require that a new local board be appointed and certified for the local area pursuant to a reorganization plan developed by the Governor, in consultation with the chief elected official in the local area and in accordance with the criteria established under subsection (b).

Appeals Process Policy

Local area(s) seeking to be designated or re-designated, as a local workforce development area, which have been denied, may appeal the decision to the GWDB by performing the following: (20 CFR §679.290)

1. An appeal must be submitted in writing and filed with the GWDB ***within fourteen (14) working days after notification of the decision.*** Submit the appeal to the Chairperson of the GWDB and to the Liaison of the GWDB by sending an email to: ajfeijoo@gov.nv.gov or via U.S. mail to: 555 East Washington Avenue, Suite 4900, Las Vegas, Nevada, 89101.
2. The appeal must contain a specific declaration of the grounds upon which the appeal is sought. The GWDB will review the appeal at its next scheduled meeting, and make a recommendation to the Governor. The review will take into account the information in the original request and supplemental information provided in the appeal to determine if the criteria set in this policy have been met.
3. The final decision and authority resides with the Governor, and shall be made within a timely manner.
4. If the appeal is connected to a request for initial or subsequent designation as prescribed in this policy, and if the appeal does not result in designation, the entity may request review by the Secretary of Labor to determine if procedural rights were granted or if the minimum criteria of WIOA Section 106(b)(2) or Section 106(b)(3) were met. (20 CFR §683.640)

This second level of appeal must be sent within 30 days to:

Assistant Secretary of Employment and Training
U.S. Department of Labor
200 Constitution Avenue, N.W. Washington, DC 20210

cc: ETA Regional Administrator, U.S. Department of Labor
90 7th Street, Suite 17-300 San Francisco, CA 94103-1516

Governor's Workforce Development Board
c/o State Board Liaison
555 East Washington Avenue, Suite 4900, Las Vegas, Nevada, 89101.

If the final decision of any appeal reverses the prior decision, it will become effective July 1st of the following year.