

- SUBJECT:** **Designation as a Local Area under the Workforce Investment Act of 1998**
- REFERENCE:** Workforce Investment Act of 1998, Sec. 116; Federal Register/Vol. 65, No. 156/Aug. 11, 2000; Full-Year Continuing Appropriations Act, 2011; Nebraska Workforce Investment Act; and TEGL 37-10.
- BACKGROUND:** Governors have the authority to designate local areas or to approve requests for designation from local governments, subject to certain requirements. When WIA was implemented in Nebraska, the temporary and subsequent designation criteria at Section 116(a)(3) were met. Local areas may become designated under the automatic designation provisions at Section 116(a)(2). Some States have used the provision that allowed the “Governor of any State that was a single service delivery area State under the Job Training Partnership Act as of July 1, 1998, and only those States, to designate the State as a single local workforce investment area State.” [20 CFR 61.250(d)] The Governor may approve a request for designation as a workforce investment area from any unit of general local government, including a combination of such units, if the State board determines that the area meets the requirements of WIA section 116(a)(1)(B) and recommends designation.
- On August 27, 1999, the Governor approved the temporary designation of three Local Workforce Investment Areas:
- Greater Omaha serving Douglas, Sarpy and Washington Counties;
 - Greater Lincoln serving Lancaster and Saunders Counties; and
 - Greater Nebraska serving the remaining eighty-eight counties in Nebraska.
- These areas have received subsequent designation over the years and were recently given continued designation through the end of the current State Plan period. This policy shall provide clarification on designation issues.
- POLICY:** The Governor with a few exceptions (identified below) may designate or redesignate local areas under certain circumstances including:
1. When a local area, specifically the chief elected official, voluntarily agrees to redesignation. The local area, the state workforce investment board, or the Governor may propose a local area redesignation.

2. When the local area was not automatically designated under WIA Section 116(a)(2). The Governor has the authority to redesignate such areas as long as the new designations are made in accordance with the general designation requirements of WIA Section 116(a)(1), and the state submits a modification to its State Plan.
3. When the local area was not designated as such under the “temporary and subsequent” designation provisions at WIA Section 116(a)(3). The Governor has the authority to redesignate such areas as long as the new designations are made in accordance with the general designation requirements of WIA Section 116(a)(1), and the State requests a modification to its State Plan.
4. When the Governor determines a local area has substantially violated any provision of title I of WIA [WIA Section 184(b)].
5. When the Governor determines that a local area designated as such under the “temporary and subsequent” designation provisions at WIA Section 116(a)(3) did not substantially meet the local performance measures for the local area, or did not sustain the fiscal integrity of funds used by the area to carry out activities under WIA title I.

Temporary and Subsequent Designation

Section 116(a)(3)(A) Criteria—“Notwithstanding paragraph (2)(A), the Governor shall approve any request, made not later than the date of submission of the initial State plan under this subtitle, for temporary designation as a local area from any unit of general local government (including a combination of such units) with a population of 200,000 or more that was a service delivery area under the Job Training Partnership Act on the day before the date of enactment of this Act if the Governor determines that the area—

- (i) performed successfully, in each of the last 2 years prior to the request for which data are available, in the delivery of services to participants under part A of title II and title III of the Job Training Partnership Act (as in effect on such day); and
- (ii) has sustained the fiscal integrity of the funds used by the area to carry out activities under such part and title.”

(B) Duration and Subsequent Designation

“A temporary designation under this paragraph shall be for a period of not more than 2 years, after which the designation shall be extended until the end of the period covered by the State plan if the Governor determines that, during the temporary designation period, the area substantially met (as defined by the State board) the local performance measures for the local area and sustained the fiscal integrity of the funds used by the area to carry out activities under this subtitle.”

“In this paragraph, the term ‘sustained the fiscal integrity’, used with respect to funds used by a service delivery area or local area, means that the Secretary has not made a final determination during any of the last 3 years for which data are available, prior to the date of the designation request involved, that either the grant recipient or the administrative entity of the area misexpended the funds due to willful disregard of the requirements of the Act involved, gross negligence, or failure to observe accepted standards of administration.” [Section 116(a)(3)(E)]

The Appropriations Act language has the effect of keeping in place the temporary and subsequent designation provisions of WIA Section 116(a)(3). Relevant language has been included in U.S. Department of Labor Appropriations Acts since FY 2006 and includes: “The Secretary of Labor shall take no action to amend, through regulatory or administrative action, the definition established in section 667.220 of title 20 of the Code of Federal Regulations for functions and activities under title I of the Workforce Investment Act of 1998, or to modify, through regulatory or administrative action, the procedure for redesignation of local areas as specified in subtitle B of title I of that Act (including applying the standards specified in section 116(a)(3)(B) of that Act, but notwithstanding the time limits specified in section 116(a)(3)(B) of that Act), until such time as legislation reauthorizing the Act is enacted. Nothing in the preceding sentence shall permit or require the Secretary of Labor to withdraw approval for such redesignation from a State that received the approval not later than October 12, 2005, or to revise action taken or modify the redesignation procedure being used by the Secretary in order to complete such redesignation for a State that initiated the process of such redesignation by submitting any request for such redesignation not later than October 26, 2005.”

There are three exceptions to the temporary and subsequent designations under WIA Section 116(a)(3):

1. Local areas designated under this authority may agree to redesignation.
2. The Governor may disapprove a request for a temporary and subsequent designation if the Governor determines that the local area did not substantially meet, as defined by the state board, the performance measures for the local area or sustain the fiscal integrity of the funds used by the area to carry out activities under title IB of WIA.
3. The Governor may disapprove a request for a temporary and subsequent designation if the Governor determines that the local area has substantially violated any provision of title I of WIA [WIA Section 184(b)].

Automatic Designation

“The Governor shall approve any request for designation as a local area –
(A) from any unit of general local government with a population of 500,000 or more;
(B) of the area served by a rural concentrated employment program grant recipient of demonstrated effectiveness that served [as of August 6, 1998] as a service delivery area or substate area under the Job Training Partnership Act; and
(C) of an area that served as a service delivery area under the Job Training Partnership Act [as of August 6, 1998] in a State that has a population of not more than 1,100,000 and a population density greater than 900 persons per square mile.”
Section 116(a)(2).

There are two exceptions to automatic designation.

1. Local areas may voluntarily agree to redesignation.
2. The Governor may choose not to approve an area’s request for automatic designation if the Governor, under WIA Section 184(b), determines a local area has substantially violated any provision of WIA title I.

In determining which local areas qualify for automatic designation as local governments with a population of 500,000 or more, the Governor has authority to determine the source of population data to use.

Process for Designation

New designations must be made in accordance with the general designation requirements provided at WIA Section 116(a)(1). The process for designation must include the following:

1. Consultation with the State board;
2. Consultation with chief elected officials;
3. Consideration of comments received through the public comment process as described in WIA Section 112(b)(9), which includes an opportunity for public comment and comment by businesses and representatives of labor organizations;
4. Consideration by the Governor of geographic areas served by local education agencies, intermediate education agencies, postsecondary and vocational institutions or schools, and alignment with labor market areas (which could be defined as regional economies); and
5. Consideration by the Governor of the distance that individuals must travel to receive services in such local areas and the resources available to effectively administer the activities carried out under WIA title IB.

When a change is made in the local area designation, it is considered a substantial change and the State Strategic Plan shall need to be modified. The Plan must identify the State's designated local workforce investment areas and provide a description of the process used to designate such areas. The WIA regulations at 29 CFR 661.230(d) specify that modifications are subject to the same public review and comment requirements that apply to the development of the original State Plan.

Regional Planning

In cases where a state cannot, or prefers not to, redesignate local areas, WIA authorizes the state to encourage cooperation among local areas that lay within the same regional economy through the following:

1. As part of the process for developing the State Plan, a State may require regional planning by local boards for a designated region (a combination of local areas partly or completely in a single labor market area) in the State [WIA Section 116(c)(1)].
2. A State may also require local boards for a designated region to share, where feasible, labor market data of the regional economy [WIA Section 116(c)(2)].
3. A State may require local boards for a designated region to coordinate the provision of workforce investment activities authorized under WIA title I, including the provision of supportive services [WIA Section 116(c)(3)].

In addition, States may encourage local areas to operate in relation to regional economies that cross state boundaries. Two or more States that contain an interstate regional economy may name the area as a designated region, and jointly

exercise the State functions for planning, information sharing, and coordination of services.

Appeal Process

“Appeals – 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 under paragraph (2) or (3) [includes subsequent designation] may submit an appeal to the State board under an appeal process established in the State plan. If the appeal does not result in such a designation, the Secretary, after receiving a request for review from the unit or grant recipient and on determining that the unit or grant recipient was not accorded procedural rights under the appeal process established in the State plan or that the area meets the requirements of paragraph (2) or (3), as appropriate, may require that the area be designated as a local area under such paragraph.” Section 116(a)(5)

“Appeals; procedure. (1) Except as otherwise provided in this section, or the federal Workforce Investment Act and the regulations adopted pursuant thereto, appeals brought pursuant to sections 116(a), 122(g), and 136(h)(2)(B) of the federal Workforce Investment Act, 29 U.S.C. 2831(a), 29 U.S.C. 2842(g), and 29 U.S.C. 2871(h)(2)(B), shall be conducted in accordance with the Administrative Procedure Act. The commissioner may conduct hearings on behalf of the Governor and make findings and recommendations to the Governor on the merits of the appeal. (2) In the case of an appeal by an entity which was not granted designation as a local area, the State board shall review the findings and recommendations of the commissioner and advise the Governor as to whether the appeal should be granted or denied.” [Nebraska Workforce Investment Act §48-1627]