

DIRECTIVE

WORKFORCE SERVICES

Number: WSD14-10

Date: February 20, 2015
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TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: INITIAL LOCAL AREA DESIGNATION AND LOCAL BOARD
CERTIFICATION UNDER WIOA

EXECUTIVE SUMMARY

Purpose

This directive communicates policy and procedures regarding the initial designation of Local Workforce Development Areas (local areas) and the initial certification of Local Workforce Development Boards (local boards) under the Workforce Innovation and Opportunity Act (WIOA).

Scope

This directive applies to all current local areas interested in receiving designation and local board certification under the new WIOA.

Effective Date

This directive is effective on the date of its issuance.

REFERENCES

- WIOA (Public Law 113-128) Sections 106 and 107
- *Workforce Investment Act* (WIA) Section 116
- Title 2 *Code of Federal Regulations* (CFR) Chapter I, Chapter II, Part 200, et al., "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;" Final Rule (Uniform Guidance)
- Title 2 CFR Part 2900 et al., "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance)
- Title 29 CFR Part 95: "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"

The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

- Title 29 CFR Part 97: “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”
- Title 20 CFR Part 652 et. al: WIA; Final Rules
- *California Unemployment Insurance Code* Section 14202(c)
- Workforce Services Directive WSD12-14, Subject: *Program Year (PY) 2013-17 Local Plans and Board Certification (Biennial and High Performing)* (May 22, 2013)
- WIA Directive WIAD06-10, Subject: *Local Area Nonperformance Policy* (November 14, 2006)
- WIA Directive WIAD02-6, Subject: *Subsequent Designation of Temporary and State Board Recommended Local Areas* (September 18, 2002)
- Workforce Services Information Notice WSIN12-62, Subject: *Late Monthly, Quarterly, Closeout, Audit and Participant Reports* (May 23, 2013)

STATE-IMPOSED REQUIREMENTS

This directive contains some State-imposed requirements. These requirements are indicated by ***bold, italic*** type.

FILING INSTRUCTIONS

This directive finalizes Workforce Services Draft Directive WSDD-111, issued for comment on January 16, 2015. The Workforce Services Division received 61 comments during the draft comment period. These comments resulted in substantive changes to the directive which can be viewed as highlighted text. The highlighted text will remain on the Internet for 30 days from the issuance date. A summary of the comments is provided as Attachment 3. Retain this directive until further notice.

BACKGROUND

The WIOA Sections 106 and 107 provide the criteria for the initial designation of local areas and initial certification of local boards. Specifically, the WIOA Section 106 requires the Governor to designate local areas within the state, while Section 107 requires the Governor to certify one local board for each local area in the state. The California Workforce Investment Board (State Board) and the Employment Development Department (EDD), acting under the authority of the Governor, have established policies and procedures within this directive for the initial designation of local areas and the initial certification of local boards. These policies are intended to provide maximum flexibility to local areas so they may have sufficient time to prepare for and fully comply with the new WIOA requirements for subsequent local area designation and local board recertification.

POLICY AND PROCEDURES

Initial Local Area Designation

As stated in WIOA Section 106, the Governor shall approve a request made for initial designation by any local area if the area did the following during PYs 2012-13 and 2013-14:

- Was designated as a local area under WIA
- Performed successfully
- Sustained fiscal integrity

Initial designation is effective July 1, 2015, through June 30, 2017. Local areas must apply for initial designation using the process included in this directive. Local areas that would like to modify their current geographical boundaries are eligible to apply under their new structure.

Subsequent designation will be effective July 1, 2017. Local areas should be planning and preparing to meet the WIOA requirements for subsequent designation (i.e., perform successfully, sustain fiscal integrity, and in the case of a local area in a planning region, meet the regional planning requirements in WIOA Section 106[c][1]) during the initial designation period. Additionally, local areas should be preparing to meet the new Office of Management and Budget (OMB) and Department of Labor Uniform Guidance in 2 CFR 200 and 2 CFR 2900, which applies to new awards and additional funding (funding increments) to existing awards made after December 26, 2014 (i.e., the youth allocations beginning April 1, 2015, and all subsequent allocations).

Local areas will be expected to develop new services, enter new collaborative partnerships, and/or create innovative workforce development strategies in alignment with WIOA during the initial designation period. The EDD and the State Board will provide technical assistance and guidance to local boards implementing WIOA activities and assess the extent to which local boards are designing a better system for customers. The assessment of local performance goals during the initial designation period will consider the extent to which local boards implement WIOA, and the potential impact on customer outcomes. During local area performance negotiations, the State Board will work with local boards who undertake activities that result in new services, partnerships, and/or service redesign or other WIOA transitional activities to ensure that local areas have the opportunity to set goals that enable them to perform successfully.

Definitions

Performed Successfully - a local area has achieved at least 80 percent of their local performance goal on each performance measure for PYs 2012-13 and 2013-14. (WIOA Section 106[e][1]).

The state has provided the following flexibility to the definition of performed successfully, for purposes of initial local area designation only. This flexibility is in

alignment with WIA Directive [WIA06-10](#) and the local board recertification criteria in Workforce Services Directive [WSD12-14](#).

A local area is still eligible for initial designation if it achieved at least 80 percent of its local performance goal on seven or more of the performance measures during either PY 2012-13 or PY 2013-14. To remain eligible, the local area must attach a Corrective Action and Technical Assistance Plan (as required in WIA Directive WIA06-10) to its initial local area designation and initial local board certification application.

A local area is ineligible for initial designation if it did not achieve at least 80 percent of its local performance goal on two or more performance measures during both PY 2012-13 and 2013-14.

Sustained fiscal integrity – the local area has not been found in violation of one or more of the following during PYs 2012-13 or 2013-14:

- Final determination of significant finding(s) from audits, evaluations, or other reviews conducted by state or local governmental agencies or the Department of Labor identifying issues of fiscal integrity or misexpended funds due to the willful disregard or failure to comply with any WIA requirement, such as failure to grant priority of service or verify participant eligibility.
- Gross Negligence - defined as a conscious and voluntary disregard for the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both.
- Failure to observe accepted standards of administration. Local areas must have adhered to the applicable uniform administrative requirements set forth in Title 29 CFR Parts 95 and 97, appropriate Office of Management and Budget circulars or rules, WIA regulations, and state guidance. Highlights of these responsibilities include the following:
 - Timely reporting of WIA participant and expenditure data
 - Timely completion and submission of the required annual single audit
 - **Have not been placed on cash hold for longer than 30 days**

(In alignment with WIOA Section 106[e][2])

Existing Local Area – A local area that was designated as a local area under WIA.

Modified Local Area – A local area that is considering local area modification as part of its initial designation application. Examples include the following: two areas proposing to merge into a new combined single local area, various local areas that will be combined in a new single local area, or a local area that will be expanded to include part or parts of another current local area.

effective July 1, 2015, through June 30, 2017. If denied, the local CEO may contest the decision using the appeal process below.

Appeal Process for Initial Designation

A unit of local government (or combination of units) which has requested and been denied initial designation as a local area under WIOA may appeal the denial to the State Board, in accordance with WIOA Section 106.

An entity which has been denied initial designation may appeal the decision and request a hearing. An appeal and request for hearing must be mailed to the State Board within 20 calendar days from the mailing date of the notice of denial of initial designation. The appeal must (1) be in writing and state the grounds for the appeal, and (2) state the reasons why the appellant should be initially designated.

The State Board will contact the appellant to schedule a hearing date within five calendar days of the receipt of the appeal. The State Board will conduct the appeal hearing process and provide a written decision to the appellant no later than five calendar days after the hearing.

Appeal of State Board Decision

A unit or combination of units of general government whose appeal has not resulted in designation as a local area may also appeal the denial to the Department of Labor. (WIOA Section[b][5])

Initial Local Board Certification

The WIOA Section 107 requires the Governor to certify one local board for each local area in the state. Local boards will be initially certified as follows, in order to provide local areas an opportunity to restructure their local boards in accordance with WIOA requirements:

- Local Boards within Existing Local Areas
Complete the [Existing Local Area - Application for Initial Local Area Designation and Initial Local Board Certification Program Year 2015-16](#) (Attachment 1). Note that this application is used for both initial local area designation and initial local board certification.
The existing local board will be automatically initially certified through PY 2015-16 upon approval of initial designation of a local area.
- Local Boards for Local Areas requesting designation as new, modified, Local Areas
Complete the [Modified Local Area - Application for Initial Local Area Designation and Initial Local Board Certification Program Year 2015-16](#) (Attachment 2). Note that this application is used for both initial local area designation and initial local board certification.

The local CEO will be notified in writing by May 10, 2015, regarding the approval or denial of its initial local board certification.

Initial local board certification will be effective July 1, 2015, through June 30, 2016.

Local board recertification will be effective July 1, 2016. Therefore, local boards will be expected to complete all necessary tasks to meet the local board recertification requirements during the initial certification period. These recertification requirements will include the recertification criteria under WIOA (i.e., meet WIOA local board membership requirements, meet or exceed performance requirements, and sustain fiscal integrity), and an assessment of the local board's progress on key WIOA implementation tasks (e.g., new youth service requirements, procurement of one-stop operators unless granted an exemption under WIOA Section 107[g][2]). The assessment of local performance goals during the certification period will consider the extent to which local boards implement WIOA, and the potential impact on local performance levels.

ACTION

Please bring this directive to the attention of the local CEO, local board, and other relevant parties.

INQUIRIES

Contact your assigned [Regional Advisor](#) if you have questions concerning this directive.

/S/ JOSÉ LUIS MÁRQUEZ, Chief
Central Office Workforce Services Division

Attachments are available on the Internet:

1. [Existing Local Area - Application for Initial Local Area Designation and Initial Local Board Certification Program Year 2015-16](#)
2. [Modified Local Area - Application for Initial Local Area Designation and Initial Local Board Certification Program Year 2015-16](#)
3. [Summary of Comments](#)