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COLORADO WORKFORCE DEVELOPMENT COUNCIL

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Category: Workforce Innovation and Opportunity Act
Subject#: Designation/Re-Designation of Workforce Development Areas and the Appeals Process
Source: Federal/State
Revise/Replace: 12-12-WIA
Contact: Stephanie Steffens, Director, Colorado Workforce Development Council
Distribution: Managers, Workforce Development Programs Staff, Workforce Region Directors and Staff
Colorado One-Stop System Policy Guidance Letter#: 15-04-WIOA
Date: April 1, 2015

I. REFERENCE(S):

Title I of the Workforce Innovation and Opportunity Act (WIOA) of 2014, WIOA Section 106.

II. PURPOSE:

To provide guidance and process for the designation and re-designation of Workforce Development Areas in Colorado, along with the process for appealing designation decisions.

III. BACKGROUND:

The Workforce Innovation and Opportunity Act (WIOA) mandates that the Colorado Workforce Development Council (CWDC) (or “State board”) shall assist the Governor in designation of Workforce Areas, as required in section 106, and that an appeals process is in place.

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

- (i) Through consultation with the State board; and

- (ii) 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:

- (i) The extent to which the areas are consistent with the labor market areas in the State;
- (ii) The extent to which the areas are consistent with regional economic development areas in the State; and
- (iii) 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 this Act, 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 State board under an appeal process established in the State plan.

IV. DEFINITIONS

PERFORMED SUCCESSFULLY.—The term “performed successfully”, used with respect to a local area, means the local area met or exceeded the adjusted levels of performance for primary indicators of performance described in section 116(b)(2)(A) (or, if applicable, core indicators of performance described in section 136(b)(2)(A) of the Workforce Investment Act of 1998, or the Common Measures, as allowed by a USDOL approved waiver of the core indicators of performance, as in effect the day before the date of enactment of this Act) for each of the last 2 consecutive years for which data are available preceding the determination of performance under this paragraph.

SUSTAINED FISCAL INTEGRITY.—The term “sustained fiscal integrity”, used with respect to a local area, means that the Secretary, or the State in place of the Secretary, has not made a formal determination, during either of the last 2 consecutive years preceding the determination regarding such integrity, that either the grant recipient or the administrative entity of the area misexpended funds provided under subtitle B (or, if applicable, title I of the Workforce Investment Act of 1998 as in effect prior to the effective date of such subtitle B) due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration.

BUSINESS LEADER: A business member of the Local Workforce Investment Board or representative of other business organization, such as a chamber of commerce.

COMMUNITY LEADER: An officer or director of an association, community, or civic organization whose focus or activities are related to the services provided by the one-stop delivery system.

V. 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 section 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 to the CWDC by May 1, 2015** 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 Colorado Workforce Development Council (CWDC) and to the Director of the CWDC by sending an email to cwdc@state.co.us. Receipt of the request must be documented by electronic return confirmation. **If the requestor does not receive confirmation before 5:00 PM on May 1, 2015, it is their responsibility to contact the Director of the CWDC to ensure that the notice has been received.**
2. Provide evidence that the area, in program years 2012 and 2013, 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. Please complete and submit **Attachment 1: Performance Reporting Template** to serve as evidence of performance.
3. Provide assurance that during program years 2012 or 2013, 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 misexpended funds due to willful disregard, gross negligence, or failure to comply with accepted standards of administration.
4. Provide evidence that the area, in program years 2012 and 2013, 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 CWDC on annual plans for these years will serve as sufficient data.

The CWDC will recommend approval to the Governor of a local area's request that satisfies these requirements in accordance with WIOA section 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. A request for subsequent designation for those receiving initial designation for July 1, 2015 **must be submitted to the CWDC by March 2, 2017** for consideration for the next program year (July 1 – June 30).

An area seeking subsequent designation must address the following:

1. Submit the request in writing to the Chairperson of the Colorado Workforce Development Council (CWDC) and to the Director of the CWDC by sending an email to cwdc@state.co.us. Receipt of the request must be documented by electronic return confirmation. **If the requestor does not receive confirmation before 5:00 PM on March 2, 2017 it is their responsibility to contact the Director of the CWDC to ensure that the notice has been received.**
2. Evidence that the area, in program years 2014 and 2015, 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. Please complete and submit **Attachment 1: Performance Reporting Template** to serve as evidence of performance.
3. Assurance that during program years 2014 or 2015, 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 misexpended funds due to willful disregard, gross negligence, or failure to comply with accepted standards of administration.
4. Evidence that the area, if a part of a WIOA planning region, has fulfilled its obligations to engage in regional planning efforts during program years 2015 and 2016. Regional plans can be submitted to demonstrate fulfillment of obligations.
5. Provide evidence that the area, in program years 2014 and 2015, 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 CWDC on annual plans for these years will serve as sufficient data.

The CWDC 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 next program year. In order for designation to be approved for the start of the next program year, the following steps and timeline must be met.

1. A statement of intent to request designation **must be submitted to the CWDC no later than February 15th through email to cwdc@state.co.us. The CWDC 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 ("local area") must include the following components and steps: Submit the request in writing to the Chairperson of the Colorado Workforce Development Council (CWDC) and to the Director of the CWDC through email to cwdc@state.co.us. 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 Director of the CWDC to ensure that the notice has been received.**
2. This request must clearly state the circumstances for the request of designation.
3. The request must also address and explain how the following criteria are met:
 - a. Consistency with natural labor market areas
 - b. Consistency with regional economic development areas
 - c. Existence of education and training providers, such as institutions of higher education and career and technical education schools in the area

- d. Submission of a service delivery plan that includes a description of resources that would be available to the area to provide services
 - e. Coordination of multiple resources within areas that are based on labor markets and natural travel patterns of local residents
 - f. 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
 - g. Local ownership, exhibited by strong involvement of local elected officials and community leaders on the Local Workforce Development Board
 - h. Local capacity to manage funds, provide oversight of programs, and provide for the proper stewardship of public funds
 - i. Evidence that the area, in the two program years for which data is available prior to the request, met or exceeded the adjusted levels of performance for primary indicators of performance or the Common Measures and was not subject to the sanctions process resulting from missing the same measure two years in a row, if applicable. Please complete and submit **Attachment 1: Performance Reporting Template**, to serve as evidence of performance.
 - j. Assurance that during the two program years prior to the request, 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 misexpended funds due to willful disregard, gross negligence, or failure to comply with accepted standards of administration, if applicable
4. The request must address how the proposed new area designation will impact those other workforce areas from which it is withdrawing. 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).
 5. 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 CWDC'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 CWDC Director.
 6. The CWDC Director and Chair will take the request and comments from the public as well as from a public hearing, if applicable, and make a recommendation to the full CWDC.
 7. The CWDC will submit its recommendation to the Governor within five (5) business days of the State board vote.
 8. The final decision rests with the Governor and shall be made prior to May 29th, four weeks prior to the beginning of the fiscal and program year (July 1st).

V. APPEALS PROCESS POLICY:

An area or areas seeking to be designated or re-designated, as a Local Workforce Development Area, which has requested but has been denied its request for designation or re-designation as a Local Area, may appeal the decision to the Colorado Workforce Development Council.

1. An appeal must be in writing and filed with the Colorado Workforce Development Council within fourteen (14) days after notification of the decision. Submit the appeal to the Chairperson of the Colorado Workforce Development Council (CWDC) and to the Director of the CWDC by sending an email to cwdc@state.co.us.
2. The appeal must contain a specific statement of the grounds upon which the appeal is sought.
3. The State board will have 60 days to review the appeal 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 has been met.
4. The final decision rests with the Governor.
5. If the appeal is connected to a request for initial or subsequent designation under section V. A. or section V. B. of 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. This second level of appeal must be sent within 14 days to:

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

A copy of the appeal must be simultaneously provided to the:
ETA Regional Administrator
U.S. Department of Labor
525 S. Griffin Street
Dallas, TX 75202

In addition, a copy must be sent to the CWDC at cwdc@state.co.us.

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

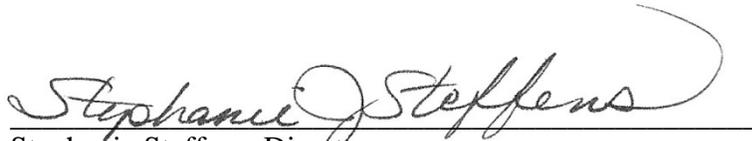
Definition: Where the term “days” appears, it shall be defined as calendar days, not working days.

VI. IMPLEMENTATION DATE:

Immediately upon receipt.

VII. INQUIRIES:

Please direct all inquiries to Colorado Workforce Development Council staff:
cwdc@state.co.us.


Stephanie Steffens, Director
Colorado Workforce Development Council

Attachments:

1. Performance Reporting Template