

Kim Reynolds, Governor
Adam Gregg, Lt. Governor
Beth Townsend, Director



December 21, 2017

VIA EMAIL ONLY @ quinn.christine@dol.gov

Christine Quinn, Administrator
U.S. Department of Labor
Employment and Training Administration
REGION 5
John C. Kluczynski Building
230 South Dearborn Street, 6th Floor
Chicago, IL 60604-1505

RE: Implementation of the Workforce Innovation and Opportunity Act (WIOA) in Iowa

Administrator Quinn:

Attached please find Iowa's responses to your letter dated November 8, 2017. While very disappointed in the language and content of the letter (given inaccuracies and failure to recognize those things already accomplished) and despite the significantly different feedback we received in the out brief of the audit in September, we will nonetheless continue with the work that has been well underway for quite some time. We have again provided an updated plan and timeline.

I have never thought that Iowa would be unsuccessful in implementing WIOA and nothing in the most recent correspondence changes my mind. Regardless of whether DOL recognizes it, Iowa has always had one of the most integrated workforce services delivery systems in the country and indeed were the model for the legislation that Senator Harkin recommended when drafting WIOA. We will continue to provide the highest quality of services to our citizens, including those served under the WIOA legislation.

If you have any questions, please contact me at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Beth Townsend". The signature is fluid and cursive, with a large loop at the end.

Beth A. Townsend, Director

Attachments - Iowa's Responses
Iowa's Realignment Plan

Finding 1: Local Areas Not Aligned Appropriately - State

Response:

Iowa complied with WIOA in its initial designation of local areas.

WIOA section 189(i)(1) is entitled, “Special Rule Regarding Designated Areas,” and states:

A State that has enacted, not later than December 31, 1997, a State law providing for the designation of service delivery areas for the delivery of workforce investment activities, may use such areas as local areas under this title, notwithstanding section 106.

Iowa Code section 84B.C, which the Iowa General Assembly enacted on May 2, 1996, states:

A workforce development center, as provided in section 84B.2, shall be located in each service delivery area. Each workforce development center shall also maintain a presence, through satellite offices or electronic means, in each county located within that service delivery area. **For purposes of this section, “service delivery area” means the area included within a merged area, as defined in section 260C.2, realigned to the closest county border as determined by the department of workforce development. However, if the state workforce development board determines that an area of the state would be adversely affected by the designation of the service delivery areas by the department, the department may, after consultation with the applicable local workforce development boards and with the approval of the state workforce development board, make accommodations in determining the service delivery areas, including but not limited to the creation of a new service delivery area. In no event shall the department create more than sixteen service delivery areas.**

(emphasis added).

The Iowa General Assembly enacted Iowa Code section 84B.C on May 2, 1996. It provides for the designation of service delivery areas for the delivery of workforce investment activities. Therefore, under the Special Rule Regarding Designated Areas in WIOA section 189(i)(1), Iowa may use the designated service delivery areas under Iowa Code section 84C.3 as local areas under WIOA Title I, notwithstanding WIOA section 106. Thus, the requirements from WIOA section 106 cited by the Regional Office in Finding No. 1 are not applicable to the designation of local areas under Iowa Code section 84B.3 as a matter of law under WIOA section 189(i)(1).

Even if one takes the position for the sake of argument that the Special Rule Regarding Designated Areas in WIOA section 189(i) (1) does not apply to Iowa the initial designation of local areas in Iowa complies with WIOA section 106, which states:

(1) IN GENERAL.—

(A) PROCESS.—Except as provided in subsection (d), and consistent with paragraphs (2) and (3), in order for a State to receive an allotment under section 127(b) or 132(b), 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 local boards, and after consideration of comments received through the public comment process as described in section 102(b)(2)(E)(iii)(II).

(B) CONSIDERATIONS.—The Governor shall designate local areas **(except for those local areas described in paragraphs (2) and (3))** based on considerations consisting of the extent to which the areas—

- (i) are consistent with labor market areas in the State;
- (ii) are consistent with regional economic development areas in the State; and
- (iii) 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.

(emphasis added).

Thus, under the express text of WIOA section 107(b)(1)(B), WIOA sections 107(b) (2) and (3) create an exemption to the local area designation process and considerations contained in WIOA section 107(b)(1). Section 107(b)(2) applies to initial designation and states:

(2) INITIAL DESIGNATION.—During the first 2 full program years following the date of enactment of this Act, the Governor shall approve a request for initial designation as a local area from any area that was designated as a local area for purposes of the Workforce Investment Act of 1998 for the 2-year period preceding the date of enactment of this Act, performed successfully, and sustained fiscal integrity.

Iowa considered the criteria in WIOA section 107(b)(2) when performing initial designation of local areas. Because each of Iowa’s 15 local areas were designated as a local area for the purposes of WIA for the two-year period preceding the date of WIOA’s enactment and requested initial designation as a local area, Iowa applied the “performed successfully” and “sustained fiscal integrity” criteria. After that process, all 15 of Iowa’s incumbent local areas under WIA were given initial designation under WIOA. This process was described in Iowa’s Unified State Plan, which DOL and the U.S. Department of Education approved in 2016.

Because WIOA expressly authorizes a State to use service delivery areas designated under a qualifying state law (such as Iowa Code section 84B.C), notwithstanding Section 106, and WIOA section 107(b)(1) contains an express exception to its process and considerations for designating local areas that were designated as such for the two-period before the date of WIOA's enactment (such as each of Iowa's 15 current local areas), the Regional Office's conclusion that "the current local services areas in Iowa do not align with the characteristics around which WIOA intends a [local area] to be aligned, such as local labor market areas and/or economic development areas" is off base. Why would the Regional Office base a finding on noncompliance with what "WIOA intends" when WIOA exists in text form and that text (as quoted above) expressly authorizes States like Iowa to use as local areas that are not necessarily aligned with local labor market areas and/or economic development areas?

IWD's response to this component of Finding No. 1 is:

- 1) WIOA section 189(i)(1) expressly authorizes Iowa to use services delivery areas designated under Iowa Code section 84B.3, notwithstanding WIOA section 106.
- 2) Even if we assume for the sake of argument that WIOA section 106 applies to local area designation in Iowa, WIOA section 106(b)(1) creates an express exception to its process and considerations that applies to Iowa's 15 local areas.
- 3) Iowa designated its 15 local areas in compliance with WIOA sections 189(i)(1) and 106(1).
- 4) DOL and the U.S. Department of Education approved the initial designation of local areas in Iowa when they approved Iowa's Unified State Plan.

Even under the Special Rule in WIOA section 108(i)(1), the part of Finding No. 1 that Iowa's WIOA allotments cannot support 15 local areas is accurate and compelling. Iowa does not have enough WIOA funds to support the competitive procurement of 15 one-stop operators, as required under the DOL interpretation of WIOA section 121(d). Nor does Iowa have enough WIOA funds to support a full-time local board support staff person for each of the 15 local boards, which means that Iowa's local boards are not providing all of their required functions under WIOA section 107(d) and those functions that are being performed are being performed by WIOA Title I service provider staff, which makes independent oversight by the local boards of Title I service providers difficult if not impossible. IWD has developed the attached plan to address Finding No. 1, as well as other findings in the Monitoring Report to create administrative efficiency that allows each local area to have the resources necessary to meet all WIOA requirements.

Finding 2: Improper Disbursement of Local WIOA Funds - State

Response:

On or before April 2018, the CEO in each of Iowa's 15 local areas will designate a local fiscal agent. Because Iowa's 15 local areas will be reduced via realignment, IWD has included as part of the realignment plan training and technical assistance for the local board and chief elected official(s) in each of the new local areas to ensure that the local fiscal agent function is appropriately fulfilled under WIOA. This is outlined in the plan developed in response to Finding No. 1.

Finding 3: Non-Compliant State Monitoring and Oversight of Local System - State

Response:

IWD has developed the attached policies, procedures, and templates for WIOA Title I program monitoring that:

- 1) Requires annual on-site visits to all local areas in Iowa;
- 2) Ensures that all major grants and programs are monitored in any given year, as appropriate;
- 3) Results in the issuance of a report that identifies any needed corrective action; and
- 4) Provides for the provision of follow-up or technical assistance, as needed.

Further, the Realignment Committee and State Board will consider IWD's limited WIOA resources for monitoring during the realignment process to ensure that IWD can meet all WIOA monitoring requirements while acting within its limited budget with respect to the new local areas.

Finding 4: Lack of CEO Agreements - State

Response:

The plan submitted in response to Finding No. 1 includes the establishment of new CEO agreements in each of the new local areas that result from the realignment process.

Finding 5: Non-Compliant State Board - State

Response:

Iowa's State Board membership structure is set forth in the Iowa Code. In June 2015, in accordance with section 101(e) of WIOA, Iowa sought to have its State Board recognized as an alternative entity via a letter from the Governor to the U.S. Secretary of Labor. The letter reflected Governor Branstad's decision in evaluation of the options available under the WIOA legislation and after consideration of what was in the best interests of the state of Iowa. Iowa did not receive a response until June 29, 2016, when the Departments of Labor and Education (Departments) rejected Iowa's State Board membership structure in Iowa's Unified State Plan (USP). In the June 29, 2016 letter, the USP was conditionally approved on the receipt of additional information and changes. The Departments' letter was the first indication that the alternative entity would not be recognized.

Since that time, as the Regional Office is aware, IWD has been working diligently to constitute a WIOA-compliant State Board within the confines of the Iowa Constitution and Iowa Code. First, Iowa legislation had to be amended. Immediately after the Departments' conditional letter of approval for Iowa's USP, IWD drafted a legal memorandum that detailed the membership structure requirements in WIOA section 101(b) and distributed it to the State Board, Governor's office, legislators, partner agencies, and other stakeholders. After that, IWD met with stakeholders, including members of the Governor's office, the State Board, legislators from both parties and chambers, business organizations, and labor organizations. IWD advised all stakeholders of the requirements for State Board membership under WIOA section 101(b). Additionally, IWD kept the Regional Office updated on these efforts.

Based on conversations with stakeholders and public officials, IWD drafted legislation to amend the Iowa Code to change Iowa's State Board membership structure to comply with WIOA section 101(b). IWD legislative liaisons shepherded this legislation through both chambers of the Iowa General Assembly. The bill passed the Iowa House by an 88-9 vote and the Iowa Senate by a 49-0 vote. Former Gov. Branstad signed IWD's State Board membership structure bill into law on April 13, 2017.

In April, the United States Senate confirmed former Gov. Branstad as Ambassador to China and, at the end of May, then-Lt. Gov. Reynolds became Gov. Reynolds. IWD has brought new gubernatorial staff up to speed on the State Board membership requirements. The Governor's office has changed the State Board's webpage information on the website for Iowa boards and commissions to reflect the new WIOA-compliant membership requirements. Further, IWD has assisted the Governor's office in recruiting new members to the State Board. This is an effort that is complicated by Iowa Code provisions that limit the share of members on a board with respect to political affiliation and that require gender balance. Gov. Reynolds appointed members to a WIOA-compliant State Board and the first meeting of Iowa's fully transitioned State Board took place on November 20, 2017. IWD has previously provided the Regional Office with the membership roster.

Finding 6: Non-Compliant Local Board Membership - Regions 5, 10 and 12

Response:

The establishment of a local board in each of the local areas that result from realignment with a membership structure that complies with WIOA section 107(b) is included in the realignment plan submitted in response to Finding No. 1.

Finding 7: Local Workforce Development Boards (LWDBs) Are Not Performing WIOA Required Functions - State

Response:

One of the focuses of the State Board Realignment Committee is ensuring that Iowa's new local areas will have sufficient resources so that each local board can hire full-time support staff to ensure that all of the WIOA-required functions for local boards are performed by support staff employed directly by the local board and not a Title I service provider. While IWD is unable to commit the Committee to a specific course of action, IWD anticipates that the Committee will make a recommendation with respect to local realignment that allows each local area to meet this requirement. Therefore, the realignment plan attached in response to Finding No. 1 includes the hiring and orientation of local board support staff in each of the new local areas that results from realignment.

Finding 8: Nominal Funding Levels in One Stop Operator (OSO) Request for Proposals (RFPs) - State

Response:

Neither WIOA nor its implementing regulations require funding that is more than "nominal." This is a standard that DOL conjured out of thin air and, instead of including in a regulation, put on a FAQ webpage on its website. When IWD asked if DOL would define the term "nominal," DOL refused. This standard does not exist under the law and what makes it all the worst is that DOL has refused to define it, which means it is subject to differing and arbitrary interpretations.

Further, the Regional Office misreads its own implementing regulations. The DOL implementing regulations for one-stop operator create two alternative procurement standards, based on the level at which the competitive selection occurs:

State	All Other Non-Federal Entities
20 CFR section 678.605(b)	20 CFR section 678.605
In instances in which a State is conducting the competitive process described in paragraph (a) of this section, the State must follow the same policies and procedures it uses for procurement with non-Federal funds.	All other non-Federal entities, including subrecipients of a State (such as local areas), must use a competitive process based on local procurement policies and procedures and the principles of competitive procurement in the Uniform Guidance set out at 2 CFR 200.318 through 200.326. All references to “noncompetitive proposals” in the Uniform Guidance at 2 CFR 200.320(f) will be read as “sole source procurement” for the purposes of implementing this section.

In Iowa, the State was performing one-stop operator selection until the Regional Office directed us to stop. This means that “the same policies and procedures” that the State “uses for procurement with non-Federal funds” governed the procurement under 20 CFR section 678.605(b) and not the standards that apply to “[a]ll other non-Federal entities” under 20 CFR section 678.605(c). Put otherwise, the Regional Office has inappropriately applied its undefined “nominal” standard to Iowa’s one-stop operator procurement because 2 CFR section 200.319(a) and 29 CFR section 97.36(c)(1)(iii) do not apply under 20 CFR section 678.605(b).

IWD agrees that, if one-stop operator procurement is performed by a non-Federal entity other than the State such as a local board, then the procurement must comply with 20 CFR section 678.605(c) and the standards incorporated therein. However, if the one-stop operator procurement is performed by the State, “the State must follow the same policies and procedures it uses for procurement with non-Federal funds,” as required by 20 CFR section 678.605(b).

As the Regional Office notes in Finding No. 1, Iowa has insufficient WIOA funds to meet the one-stop operator requirement in each of its 15 current local areas. Ensuring sufficient WIOA funds to allow each local area to competitive select a one-stop operator in accordance with WIOA section 121(d) is one of the areas of emphasis in the work of the Realignment Committee of the State Board. While IWD is unable to commit the Committee to a specific course of action, IWD anticipates that the Committee will make a recommendation with respect to local realignment that allows each local area to meet the one-stop operator requirement even if WIOA funds are reduced in the coming years. Therefore, the realignment plan attached in response to Finding No. 1 includes the competitive designation or certification of a one-stop operator in accordance with WIOA section 121(d) in each of the new local areas that result from realignment.

Finding 9: Non-Compliant Memoranda of Understanding (MOUs) - Regions 5, 10 and 12

Response:

The creation and execution of MOUs that comply with WIOA section 121(c) in each new local area that results from realignment is included in the realignment plan submitted in response to Finding No. 1.

Finding 10: Stand-Alone Wagner-Peyser (W-P) Offices Not Allowable - State

Response:

The Webster City office and the staff that work in it are funded by State of Iowa General Fund dollars, not federal Wagner-Peyser Employment Service funds. In a conversation with Regional Office staff during the fall of 2016 WIOA implementation assessment, Regional Office staff stated that having traveling staff provide Wagner-Peyser services to rural communities on a part-time basis was allowable. IWD is disappointed at the Regional Office's apparent about-face on this question, since it could mean fewer services in rural Iowa.

IWD intends to work with legislators during the appropriations process to create a state workforce services program for traveling staff in order to remove such traveling services from federal interference. Iowa has a part-time legislature and the Iowa General Assembly begins its session on the second Tuesday in January. IWD anticipates a legislative resolution by the end of May 2018 that will make IWD traveling staff persons that are not funded by Federal money insulated from unnecessary Federal interference that intends to reduce services to Iowans.

Finding 11: One-Stop Certification Not Completed - State

Response:

DOL has no legal authority to direct a State or local area to revise its one-stop certification tool if it meets the requirements under 20 CFR section 678.800. The Regional Office makes no finding that the one-stop certification tool for Iowa does not comply with 20 CFR section 678.800. Presumably, that's because the one-stop certification tool complies with 20 CFR section 678.800. Given the legal reality that the one-stop certification meets all legal requirements under WIOA, what authority does the Regional Office have in attempting to dictate what is in a State's one-stop certification standards? IWD has recommended that local areas hold off on completing one-stop certification after discussions with the Regional Office. Nonetheless, many local areas have completed one-stop certification.

In the realignment plan submitted in response to Finding No. 1, completion of one-stop certification is included for each new local area that results from realignment. That one-stop certification will comply WIOA and its implementing regulations, including the provisions on “conflict of interest.” Further, an effect of the realignment will be ensuring that independent local board support staff is performing one-stop certification, and not local provider staff.

The Regional Office need not provide examples of other states’ one-stop certification assessments to IWD. Previous examples provided by the Regional Office did not comply with the requirements in 20 CFR section 678.800, so they are of little use.

REALIGNMENT PLAN: Establishing WIOA-Compliant Local Areas

KEY	
To Complete	Complete

PLAN			
	Task(s)	Deadline	Completed
1.	Notify the directors of the service providers of WIOA Title I programs of the DOL directive	11/9/17	X
2.	Notify Local Workforce Development Board (LWDB) members, chief elected officials (CEOs), and State Workforce Development Board (Stat Board) members of DOL Mandate	11/13/17	X
3.	IWD reviews current monitoring policy, process, and templates	11/14/17	X
4.	First Meeting of WIOA-compliant State Board	11/20/17	X
5.	Establish State Board Realignment Committee	11/20/17	X
6.	WFS Operations team creates a new draft monitoring policy, processes, and templates to address all DOL recommendations	12/8/17	X
7.	LMI collects data regarding labor markets, economic development areas, commuting patterns, and one-stop center customer distribution	Date of Realignment Committee Meeting	X
8.	First Realignment Committee Meeting	12/25/17 (Occurred on 12/13/17)	X
9.	Provide to Realignment Committee the data regarding labor markets, economic development areas, commuting patterns, and one-stop center customer distribution	12/25/17 (Occurred on 12/13/17)	X
10.	Response to DOL Regional Office Monitoring Report (with Realignment Plan and new monitoring policy, procedures, and templates)	12/22/17	X
11.	Collect budget information from Iowa's current 15 local areas	12/29/17	

PLAN			
	Task(s)	Deadline	Completed
12.	Collect budget information for local areas in neighboring states	12/29/17	
13.	2nd Realignment Committee Meeting	1/4/18	
14.	Additional consultation with CEOs and current LWDBs on realignment	1/5/18 – 4/30/18	
15.	Additional Realignment Committee Meetings	TBD	
16.	Realignment Committee Recommendation	2/18/18	
17.	IWD drafts template CEO agreement	2/28/18	
18.	Outreach and consultation with current LWDBs and CEOs	11/20/17 – 4/30/18	
19.	Outreach to and orientation for CEOs on role and responsibilities under WIOA	1/2/18 – 6/30/18	
20.	CEOs designate fiscal agent for 15 current local areas	3/31/18	
21.	IWD drafts template CEO agreement	1/2/18	
22.	Comment period for local boards and CEOs on realignment	4/30/18	
23.	Iowa General Assembly enacts WIOA conformity legislation	4/30/18	
24.	State Board votes on Local Area configuration	5/31/18	
25.	Governor consults with State Board on new, WIOA-compliant LWDB membership criteria	5/31/18	
26.	Governor establishes new membership criteria for new WIOA-compliant LWDBs	6/30/18	
27.	CEOs execute CEO agreements for new WIOA-compliant Local Areas	9/1/18	
28.	CEOs establish WIOA-compliant bylaws for the new WIOA-compliance LWDBs	9/1/18	
29.	CEOs appoint members to WIOA-compliant LWDBs for each new Local Area	9/1/18	
30.	CEOs appoint one of the WIOA-compliant LWDB members representing business as chairperson of the LWDB	9/1/18	
31.	Orientation for WIOA-compliant LWDB members	9/1/18	
32.	LWDBs establish budget	9/1/18	
33.	CEOs designate fiscal agent(s) for new WIOA-compliant Local Areas	9/1/18	
34.	LWDBs hire support staff	10/1/18	
35.	LWDBs procure local service providers for Title I programs	TBD	

PLAN			
	Task(s)	Deadline	Completed
36.	Transfer duties from current WIOA Title I service providers to the WIOA Title I service providers selected by the new LWDBs for the new Local Areas	TBD	
37.	Dissolve current Local Areas and LWDBs	TBD	
38.	Fiscal Agents distribute funds to service providers for WIOA Title I programs	TBD	
39.	LWDBs procure One -Stop Operators	TBD	
40.	LWDBs distribute funds to One-Stop Operators	TBD	
41.	LWDBs complete WIOA-compliant MOU's	TBD	
42.	LWDBs complete one-stop certification	TBD	
43.	LWDBs complete WIOA-compliant local workforce development plan	3/1/20	