

WORKFORCE INNOVATION NOTICE: 18-09

TO: WORKFORCE DEVELOPMENT AREAS

FROM: Governor's Workforce Board

SUBJECT: Local Workforce Development Area Designation

DATE: Effective: June 5, 2018

- 1. PURPOSE:** The purpose of this policy is to outline the process for new and subsequent area designation for local workforce development boards (LWDBs) under the Workforce Innovation and Opportunity Act (WIOA).
- 2. REFERENCES:** Workforce Innovation and Opportunity Act (Pub. L. 113-128, Section 106, 107 and 116); Training and Employment Guidance Letter (TEGL No. 19-14) ; Training and Employment Guidance Letter (TEGL) No. 27-14 ; Training and Employment Guidance Letter (TEGL) No. 10-16 ; 20 CFR 679.230-679.260 ; 20 CFR 683.630(a) ; 20 CFR 683.640 ; 20 CFR 677.205-677.210
- 3. BACKGROUND:** Under the Workforce Innovation and Opportunity Act, the Governor must designate local workforce development areas after consultation with (1) the State Workforce Board and (2) chief local elected officials (CEOs) and (3) local workforce development boards.

WIOA also requires CEOs to utilize a public comment period and take into consideration comments made during the process as part of their consultative process with the Governor.

WIOA outlines the term "Initial Designation" of local workforce development areas in WIOA section 106(b)(2). WIOA section 106(b)(2) states, "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."

WIOA outlines the term "Subsequent Designation" of local workforce development areas in WIOA section 106(b)(3). WIOA section 106(b)(3) states, "After the period for which a local area is initially designated under paragraph (2), the Governor shall approve a request for subsequent designation as a local area from such local area, if such area:

- A. performed successfully;
- B. sustained fiscal integrity; and
- C. in the case of a local area in a planning region, met the requirements described in subsection (c)(1) [note: Pursuant to WIN [17-01](#); the state plan serves as a regional plan and the regional planning requirement does not apply to local areas].

This policy provides the steps for consideration of workforce development areas under WIOA.

4. INQUIRIES: Questions concerning this issuance may be directed by phone or by email at:

Rhode Island Department of Labor and Training
Governor's Workforce Board RI
1511 Pontiac Avenue, Building 72-3
Cranston, Rhode Island 02920
(401) 462-8860 Phone (401) 462-8865 Fax
www.dlt.ri.gov | www.qwb.ri.gov

5. POLICY: Consistent with WIOA section 106(b)(4), the Governor's Workforce Board, in consultation with Local Boards and chief local elected officials, shall review all requests for local workforce development area designation using the procedures outlined in this policy, and shall make a recommendation to the Governor.

WIOA section 106(b)(2) outlines the criteria by which a Governor must designate a local workforce development area under Initial Designation.

WIOA section 106(b)(3) outlines the criteria by which a Governor must designate a local workforce development area under Subsequent Designation.

In reviewing new designation requests, the State Board shall evaluate the extent that requested areas meet the following:

A. Are consistent with labor market areas in the state:

This criterion includes an analysis of labor market data for the proposed local area and a comparison with surrounding regions. Labor market area is defined as an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence.

B. Are consistent with regional economic development areas in the state:

This criterion includes an analysis of state economic development priorities (if applicable) as well as the unemployment rate, the number of businesses, the types of businesses, and the number of job openings in the proposed local area.

C. Have available the federal and non-federal resources necessary to effectively administer activities under provisions of WIOA:

This criterion includes an analysis of available financial funding within the local government unit (or group of local government units) within the proposed local area, as well as the availability of resources that will assist in the delivery of services such as the location of training providers, 2-year and 4-year institutions of higher education, adult education providers, and career and technical schools. The criterion may also include an analysis of the availability of public transportation options, community and nonprofit service providers, and other resources necessary to effectively administer activities under provisions of WIOA.

6. PROCEDURES: The procedures for designating local workforce development areas are outlined

below:

Initial Designation: For the first two full program year following the date of enactment of WIOA and clarified through the WIOA Final Rule to mean Program Years 2016 and 2017 (July 1, 2016- June 30, 2018), any area that was designated as a local area for the purposes of the Workforce Investment Act of 1998 for the 2-year period preceding the date of enactment of WIOA received initial designation provided they performed successfully, and sustained fiscal integrity.

Subsequent Designation: Per federal regulation - after the period of Initial Designation, the state shall approve a request for Subsequent Designation as a local workforce development area from such local area, if such area:

- a. performed successfully as defined by 20 CFR 679.260;
- b. sustained fiscal integrity as defined 20 CFR 679.260; and
- c. in the case of a local area in a planning region, met the requirements of planning regions outlined in WIOA [note: Pursuant to WIN [17-01](#); the state plan serves as a regional plan and the regional planning requirement does not apply to local areas]

If a local area no longer seeks subsequent designation, the chief elected official(s) shall provide written notice to the State Board no later than July 15, 2018 (and every two years thereafter) indicating their intent to no longer be designated as currently structured. If the State Board does not receive such notification; the local area will be assumed and considered to have requested subsequent designation per section 106 (b)(3) of WIOA and 20 CFR 679.250. Existing local areas are not required to submit requests for subsequent designation.

On or before August 15, 2018 (and every two years thereafter) the State Board will review the criteria for subsequent designation for local workforce development areas seeking such designation. Under section 106 (b)(3) of WIOA, the State shall approve subsequent designation of a local workforce development area which meet the criteria for subsequent designation.

The State will notify the chief elected official(s) within 30 calendar days after the review indicating approval or denial of subsequent designation of the local workforce development area

Designations will become effective on July 1 of the following program year.

New Designation: The process outlined below is to be followed by a unit or units of local government seeking new designation of local workforce development areas under the WIOA:

Step 1. The local government unit(s) seeking designation of a local workforce development area(s) should coordinate and consult with the chief local elected officials of the local areas and existing local workforce investment boards.

Step 2. If a decision is made by the local government unit(s), in coordination with the chief local elected officials, to seek new designation under WIOA, the local government units must undertake a formal public comment period and provide documentation of the results of the formal public comment period with the designation request to partners, including existing local workforce investment boards. The formal comment period must allow for comments by businesses, labor organizations, institutions of higher education, community based organizations, and the public at-large.

Step 3. The request for designation of a local workforce development area under the WIOA shall include the following information:

- a. How the proposed local workforce development area is aligned with labor market areas per the criteria described in this policy.

- b. How the proposed local workforce development area is aligned with regional economic development areas per the criteria described in this policy.
- c. How the proposed local workforce development area can effectively administer activities under provisions of the WIOA per the criteria described in this policy.

Step 4. After submission of the designation request, the Governor's Workforce Board will review the request and provide a recommendation for the Governor. As required by WIOA, the Governor will use the consultation of the Board and consult with chief local elected officials prior to designating local workforce development areas in the state. The Governor may rely on the submissions from the requestor(s) as meeting the requirement for consultation with chief local elected officials, including the public records of meetings and any recorded votes or resolutions regarding the designation request.

Step 5. Pursuant to WIOA section 106(b), the Governor may designate local workforce development areas in Rhode Island for two-year periods, as appropriate.

- 7. PERFORMED SUCCESSFULLY:** For the purpose of determining subsequent local workforce development area designation, the term "performed successfully" means the local workforce development area met or exceeded the adjusted levels of performance for primary indicators of performance for the last two consecutive years for which data are available, and that the local area has not failed the same measure for the last two consecutive program years.
- 8. SUSTAINED FISCAL INTEGRITY:** Sustained Fiscal Integrity for all program years means the Secretary of the United States Department of Labor has not made a formal determination that either the grant recipient or the administrative entity of the area misexpended funds due to willful disregard of the requirements of the provision involved, gross negligence or failure to comply with accepted standards of administration for the two-year period preceding the determination.
- 9. APPEAL:** Pursuant to section 106 (b)(5) of WIOA and 20 CFR 683.630, if the State denies designation of a local area, the chief elected official(s) may appeal the decision through the following appeals process:
 - a. Within 14 days from the date of receipt of the notice of denial, the chief elected official(s) may file an appeal to the State Board by submitting in writing all of the following information:
 - i. a statement that the chief elected official(s) is appealing the denial of designation;
 - ii. the reason(s) why the local area should be designated;
 - iii. signature of the chief elected official(s).
 - b. The appeal shall be submitted in writing.
 - c. Pursuant to 20 CFR 679.290 (b) and 20 CFR 683.630 (a), the State Board will provide the parties with the opportunity for a hearing, review the appeal, and make a ruling on the appeal within 60 days after the submission of the appeal.

The State Board shall notify the chief elected official(s) in writing, of its decision on whether or not to approve designation of an area as a local area under section 106(b)(3) of WIOA and 20 C.F.R. 679.250.

In the event the State Board denies the appeal or fails to issue a decision within 60 days of the date the appeal is submitted, the chief elected official(s) may further appeal the State Board's decision or lack thereof to the U.S. Department of Labor (USDOL). Pursuant to 20 CFR 683.640, appeals made

to USDOL, must be filed no later than 30 days after receipt of written notification of the denial from the State. The appeal must be submitted by certified mail, with return receipt requested, to the following address:

Secretary, U.S. Department of Labor
200 Constitution Ave. N.W.
Washington, D.C. 20210
Attention: ASET

The appellant must establish in its appeal to USDOL that the appellant was not accorded procedural rights under this appeal process, or that it meets the requirements for designation.

The appellant must provide a copy of the appeal to the State Board at the same time that the appellant sends the appeal to USDOL.