

WIOAPL 16-04 (Local Workforce Development Area Subsequent Designation)

Workforce Innovation and Opportunity Act Policy Letter No. 16-04

October 26, 2016

To: Chief Elected Officials, Local Workforce Development Board Chairperson, and
Local Workforce Development Board Director

From: Cynthia C. Dungey, Director

Subject: Local Workforce Development Area Subsequent Designation

I. Purpose

The purpose of this policy is to establish the procedure for the subsequent designation of local workforce development areas.

II. Effective Date

Immediately

III. Background

The Workforce Innovation and Opportunity Act (WIOA) envisions a workforce development system that is customer-focused on both the job seeker and business, and is able to anticipate and respond to the needs of regional economies. Local workforce development areas (local areas) are designated for the purpose of implementing WIOA, establishing the OhioMeansJobs service delivery system, and administering workforce development programs. The local area serves as a jurisdiction for the administration of workforce development activities.

Per section 106 (b)(3) of WIOA, all local areas, which were initially designated by the State, must be subsequently designated as a prerequisite to receiving adult, dislocated worker, and youth funding under Title I, Subtitle B of WIOA. Ohio initially designated all 20 local areas. The period of initial designation applies to program years (PY) 2016 and 2017. Therefore, local workforce development areas may not be subsequently designated prior to July 1, 2018.

To be subsequently designated, the local workforce development area must meet all of the following criteria for the 2 program years of initial designation (PYs 2016 and 2017):

1. Performed successfully;
2. Sustained fiscal integrity; and
3. In the case of a local area in a planning region, met the regional planning requirements per section 106 (c)(1) of WIOA and Workforce Innovation and Opportunity Act Policy Letter (WIOAPL) No. 16-03, Regional and Local Planning .

For subsequent designation determinations made at the conclusion of PY 2017, a finding of whether a local area performed successfully must be limited to having met or exceeded the negotiated levels for "Employment Rate 2nd Quarter after Exit" and the "Median Earnings" indicators of performance for PY 2016 and PY 2017.

For subsequent designation determinations made at the conclusion of PY 2018, or at any point thereafter, a finding of whether a local area performed successfully must be based on all six of the WIOA indicators of performance for the two most recently completed program years.

IV. Definitions

Chief elected official(s) : per section 3(9) of WIOA, the chief elected executive officer (s) of a unit of general local government in a local area and, in the case of a local area that includes more than one unit of general local government, the individual(s) designated under an inter-governmental agreement.

Consultation : a robust conversation in which all parties are given the opportunity to share their thoughts and opinions.

Performed successfully : pursuant to 20 C.F.R 679.260 (b), the local area met or exceeded the levels of performance the State negotiated with the local workforce development board and chief elected official for core indicators of performance and that the local area has not failed any individual measure for the last two consecutive program years in accordance with a State-established definition, provided in the State Plan, of met or exceeded performance.

Planning region : a region comprised of two or more local areas that are collectively aligned with the region.

Sustained fiscal integrity : the Secretary 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.

Uniform administrative requirements : the requirements promulgated in circulars or rules of the Office of Management and Budget for each State, local workforce development area (including the chief elected official for the local area), and provider who has received WIOA funds.

V. Local Workforce Development Area Requirements

Per section 106 (b)(3) of WIOA and 20 CFR 679.250, the chief elected official and local workforce development board must be considered to have requested continued or subsequent designation unless the local area and chief elected official notifies the State indicating that they no longer seek designation. Subsequent designation will be reviewed August 1, 2018.

If a local area no longer seeks subsequent designation, the chief elected official(s) shall e-mail the State at OWDPOLICY@jfs.ohio.gov by July 15, 2018 indicating their intent to no longer be designated as currently geographically structured. The chief elected official(s) and the local workforce development boards will follow WIOAPL No. 16-05, Local Workforce Development Area Re-Designation , for local workforce development area re-designation procedures.

VI. State Requirements

A. Consultation and Comment

When making the decision for subsequent designation, the State must consult and consider comments received through a public comment process which

included the following stakeholders:

1. Local workforce development boards;
2. Local elected officials;
3. Businesses;
4. Institutions of higher education;
5. Labor organizations;
6. Other primary stakeholders; and
7. The general public.

In Ohio, consultation will entail one or more of the following activities:

1. E-mail notification of requested local workforce development area re-designation to the CEOs and local WDB directors with the opportunity to provide comment;
2. Dialogue with one or more of the following associations which provide support and guidance to the CEOs and local WDBs:
 - a. County Commissioner Association of Ohio; and
 - b. Ohio Workforce Association;
3. Collaboration with the Governor's Executive Workforce Board and the Office of Transformation;
4. In-person meetings and/or teleconferences with individual CEOs and local WDB directors;
5. Presentations at training events and/or at local WDB meetings; and
6. The Ohio Department of Job and Family Services (ODJFS) legal public comment process for workforce policies.

B. Review and Approval of Subsequent Designation

The State 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 met 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.

VII. Maintaining Subsequent Designation

The State may evaluate the local workforce development area at any time to ensure the local area continues to meet the requirements of subsequent designation. However, as part of the State planning process, the State shall review all of the requirements of subsequent designation eligibility for each local workforce development area which has been subsequently designated.

If the local workforce development area fails to meet its negotiated levels of performance or does not comply with uniform administrative requirements, the State

retains the authority to take corrective action pursuant to section 5101.241 of the Ohio Revised Code, section 184 of WIOA, and 20 CFR 683.410.

In light of attempts to implement corrective active, the State does not have to approve ongoing subsequent designation for a local area that has failed to maintain the requirements of subsequent designation.

VIII. Appeal

Pursuant to section 106 (b)(5) of WIOA and 20 CFR 683.630, if the State denies subsequent designation of a local area, the chief elected official(s) may appeal the decision through the following appeals process:

- 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: a statement that the chief elected official(s) is appealing the denial of subsequent designation; the reason(s) why the local area should be designated; and signature of the chief elected official(s).
- The written appeal shall be submitted by e-mail to:
OWDPOLICY@jfs.ohio.gov .
- 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 subsequent 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 Ohio's appeal process, or that it meets the requirements for designation in section 106(b)(3) of WIOA and 20 CFR 679.250.

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.

IX. Technical Assistance

Ongoing support, guidance, training and technical assistance on workforce development area designation, subsequent designation, or redesignation requirements, including stakeholder consultation, are available to all local areas.

Requests for technical assistance may be sent to ODJFS, Office of Workforce Development: WIOAQNA@jfs.ohio.gov .

X. References

Workforce Innovation and Opportunity Act, §106, Public Law 113-128.

20 C.F.R. §§ 679.220, 679.250, 679.260, 679.510, 683.630 and 683.640.

Ohio Revised Code Section 5101.241.

ODJFS, [Workforce Innovation and Opportunity Act Policy Letter No. 16-03](#) ,
Regional and Local Planning, (October 21, 2016).

ODJFS, [Workforce Innovation and Opportunity Act Policy Letter No. 16-05](#) .
Local Workforce Development Area Re-Designation, (October 3, 2016).