

<b>Policy Area:</b> Operations	
<b>Title of Policy:</b> Designation of Local Workforce Development Areas	<b>Number:</b> 200-01 change 1
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**I. Purpose**

The purpose of this issuance is to provide guidance to chief elected officials (CEOs) and Virginia one-stop system stakeholders regarding the process to be followed when a unit or a combination of units of general local government, such as a county or group of counties, requests initial or subsequent designation of local workforce development areas under the Workforce Innovation and Opportunity Act (WIOA).

**II. Summary**

Under the Workforce Innovation and Opportunity Act (Pub. L. 113-128), the Governor must designate local workforce development areas after consultation with (1) the State Workforce Board and (2) Chief Elected Officials (CEOs) and Local Workforce Development Boards. In turn, the WIOA 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.

The 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.”

The 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).

This policy provides the steps for consideration of initial and subsequent designation of workforce development areas under the WIOA.

### III. References

- Workforce Innovation and Opportunity Act (Pub. L. 113-128)
- United States Department of Labor, *Workforce Innovation and Opportunity Act; Final Rule*, 20 CFR, Part 679, Subpart B, and 20 CFR Part 683 Subpart F Workforce Innovation and Opportunity Act Local Governance
- Training and Guidance Letter No. 19-14, *Vision for the Workforce System and Initial Implementation of the Workforce Innovation and Opportunity Act of 2014*

### IV. Policy

Consistent with WIOA section 106(b)(4), the Virginia Board of Workforce Development, in consultation with Local Boards and CEOs, reviews all requests for local workforce development area designation using established policies and procedures, and makes a recommendation to the Governor. In reviewing initial designation requests, the Virginia Board of Workforce Development shall evaluate the extent that requested areas meet the following:

1. Are consistent with labor market areas in the state;
2. Are consistent with regional economic development areas in the state; and
3. Have available the federal and non-federal resources necessary to effectively administer activities under provisions of the WIOA, including whether the areas have the appropriate education and training providers, such as institutions of higher education and career and technical education schools.

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. Even under an application for Initial Designation, the CEOs shall utilize a public consultation process and outline how the local workforce development area follows the three criteria outlined above.

### V. 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), the Governor shall approve a request for designation as a local workforce development 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.

**Subsequent Designation:** After the period of Initial Designation, the Governor shall approve a request for Subsequent Designation as a local workforce development 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 of local planning regions outlined in the WIOA.

**Performed Successfully Defined:** For subsequent local area designation the term

“performed successfully” means that the local workforce development area met or exceeded the levels of performance the Governor negotiated with the Local Workforce Development Board and CEO for core indicators of performance as described at 20 CFR 677.155(a)(1)(i) through (vi) for the two most recently completed program years, and that the local area has not failed any individual measure for the last two consecutive program years (Reference 20 CFR 679.260(b)).

**Fiscal Integrity Defined:** The term “sustained fiscal integrity” means that the USDOL 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 2-year period preceding the determination. (Reference 20 CFR 679.260(c)).

**Requirements of Local Planning Regions:** The policy and procedures for the designation of regions and planning requirements may be found in VBWD Policy 200-06.

### **VIRGINIA LOCAL WORKFORCE DEVELOPMENT AREA INITIAL DESIGNATION PROCESS**

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

**Step 1.** The local government unit(s) seeking designation of an initial local workforce development area(s) should coordinate and consult with the CEOs of the local areas (county commission for a single county local area or the consortium for multi-county local areas) and existing local workforce development boards.

**Step 2.** If a decision is made by the local government unit(s), in coordination with the CEOs, to seek initial designation under the 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 development 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 initial designation of a local workforce development area under the WIOA shall include the following information:

1. How the proposed local workforce development area is aligned with labor market areas including information on growth industries and occupations in the local labor market.
2. How the proposed local workforce development area is aligned with a regional economic development area within the Commonwealth of Virginia.
3. How the proposed local workforce development area can effectively administer activities under provisions of the WIOA with available federal and non-federal resources, including a description of area education and training providers, a description of how the available resources will be made available for training activities, and a description of the percentage of overall resources administered by the local area that will be dedicated to training activities.

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

#### **VIRGINIA LOCAL WORKFORCE DEVELOPMENT AREA SUBSEQUENT DESIGNATION PROCESS**

Subsequent designation occurs every four years, consistent with the submission of the State's Combined Plan and Local and Regional Plans. **Local Areas seeking subsequent designation as a WIOA local area do not need to submit an application per 20 CFR 679.250 (e).**

Virginia Works will review the Local Workforce Development Area to determine if the Local Area performed successfully, sustained fiscal integrity, and if in a planning region, the local area met the regional planning requirements and make a recommendation to the Governor. The Governor must approve the request if the criteria are met for the 2 most recent program years. The Governor may review a local area designation at any time to evaluate whether that the area continues to meet the requirements for subsequent designation.

**State Appeal Procedures:** Pursuant to WIOA section 106(b)(5), a unit(s) of local government may submit an appeal to the Virginia Board of Workforce Development. The appeal shall be in writing in a letter addressed to Virginia's Secretary of Labor with a copy sent to the Executive Director of the Virginia Board of Workforce Development. The letter shall describe the reasons why the decision by the Governor should be reconsidered, with specific data being provided to back-up the appeal and be signed by the CEOs for each county involved in the appeal.

As specified in 20 CFR 683.630(a)(2), the Virginia Board of Workforce Development must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal. The Virginia Board of Workforce Development must conduct a hearing and make a determination of designation within 90 calendar days of receipt of the request. At least 10 calendar days prior to the hearing, the designated local contact person shall electronically receive a notice of the hearing.

The notice shall inform the local contact/board of the following:

- Date, time, and place of the hearing;
- The reason that the WIOA local workforce development area designation was denied, including the pertinent sections of the WIOA and any federal regulations involved;
- That the affected parties may be represented at the hearing by an attorney or other representative;
- That the parties are entitled to a written decision of findings to be issued within 30 calendar days after the date of the hearing; and
- That the local area has the right to appeal to the Secretary of the United States Department of Labor (USDOL)

**Federal Appeal Procedures:** If the state level appeal does not result in a designation, the unit(s) of local government or grant recipient may request a review by the Secretary of USDOL 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 appeal must be filed no later than 30 days after receipt of written notification of the denial from the Virginia Board of Workforce Development. The appeal must be submitted according to the details and requirements outline in 20 CFR 683.640. As a result, the US DOL Secretary may require that the area be designated as a local area. A written decision of the final determination will be issued to the Governor and the appellant.