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**WIOA Guidance Notice No. 01-15**  
**Designation/Re-Designation**

**TO:** WorkForce Development Boards

**FROM:** Russell Fry, Acting Executive Director  
WorkForce West Virginia

**CATEGORY:** WorkForce Innovation and Opportunity Act

**SUBJECT:** Designation/Re-Designation of Workforce Development Areas and the Appeals Process

**SOURCE:** Federal/State

**DISTRIBUTION:** Managers, Workforce Development Programs Staff, Workforce Region Directors and Staff

**EFFECTIVE DATE:** July 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 West Virginia along with the process for appealing designation decisions.

**III. BACKGROUND:**

The Workforce Innovation and Opportunity Act (WIOA) mandates that the West Virginia Workforce Development Board (SWDB) 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:

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112 California Avenue  
Charleston, West Virginia 25305

## WIOA Guidance Notice No. 01-15 Designation / Re-Designation

- (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, 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

## WIOA Guidance Notice No. 01-15 Designation / Re-Designation

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 Development 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 B.

- 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
  
- B. 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 West Virginia SWDB no later than February 15<sup>th</sup> through email. The SWDB 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

## WIOA Guidance Notice No. 01-15 Designation / Re-Designation

request for designation as Local Workforce Development Area (“local area”) must include the following components and steps: Submit the request in writing to the Chairperson of the West Virginia Workforce Development Board through email to [Angela.M.Fry@wv.gov](mailto:Angela.M.Fry@wv.gov). Receipt of the request must be documented by electronic return confirmation. **If the requestor does not receive confirmation, it is their responsibility to contact WorkForce West Virginia 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.

## **WIOA Guidance Notice No. 01-15 Designation / Re-Designation**

- 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 with 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 the concerns and questions at the hearing, and all comments will be recorded and used to inform the SWDB'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 SWDB Chair.
6. The 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 SWDB.
7. The SWDB will submit its recommendation to the Governors 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 29<sup>th</sup>, four weeks prior to the beginning of the fiscal and program year (July 1<sup>st</sup>).

### **VI. APPEALS PROCESS POLICY:**

## **WIOA Guidance Notice No. 01-15 Designation / Re-Designation**

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 West Virginia Workforce Development Board.

1. An appeal must be in writing and filed with the West Virginia Workforce Development Board within fourteen (14) days after notification of the decision. Submit the appeal to the Chairperson of the West Virginia Workforce Development Board by sending an email to [Angela.M.Fry@wv.gov](mailto:Angela.M.Fry@wv.gov).
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.  
Washing, DC 20210

A copy of the appeal must be simultaneously provided to the:

## WIOA Guidance Notice No. 01-15 Designation / Re-Designation

ETA Regional Administrators  
U.S. Department of Labor  
The Curtis Center, Suite 825 East  
170 South Independence Mall West  
Philadelphia PA 19106-3315

In addition, a copy must be sent to WorkForce West Virginia at 112 California Avenue,  
Charleston, WV 25305.

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

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

**VII. IMPLEMENTATION DATE:**

Immediately upon receipt.

**VIII. INQUIRIES:**

Please direct all inquiries to: