

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF WORKFORCE DEVELOPMENT
AND
KENTUCKY WORKFORCE INNOVATION BOARD

POLICY NAME: Identification of Regions and Designation of Local Workforce Development Areas

POLICY NUMBER: 15-004
DATE OF ISSUE: Reissued April 4, 2024
EFFECTIVE DATE: May 14, 2015

APPLIES/OF INTEREST TO: Local Workforce Development Boards (LWDBs), Local Workforce Development Areas (LWDAs) staff, Chief Local Elected Officials (CLEOs) and Local Elected Officials (LEOs)

POINT OF CONTACT: KWIB.projects@ky.gov

HISTORY: Date of issue 05/14/2015; effective date 05/14/2015; reissued April 4, 2024 with no substantive change, the effective date remains.

BACKGROUND: WIOA Title 1, Chapter 2, Section 106 outlines the requirements and process for the determination of regions and local areas, including identification, types of regions, initial designation, subsequent designation, process, considerations, designation on recommendation by the State Board, and appeals.

Per Training and Employment Guidance Letter (TEGL) 27-14¹ issued by the US Department of Labor on April 15, 2015, “the Governor must develop a policy for designation of local workforce development areas. The purpose of a local area is to serve as a jurisdiction for the administration of workforce development activities using Adult, Dislocated Worker, and Youth funds allocated by the State and to coordinate efforts related to the other core programs at a local community level. WIOA Section 106(b) establishes that the Governor must designate local workforce development areas (local areas) in order for the State to receive Adult, Dislocated Worker, and Youth funding under Title I subtitle B. ... The Governor must follow the requirements provided in this guidance until the final regulations take effect.”

By July 1, 2015, the Governor, in consultation with the Kentucky Workforce Investment Board (KWIB) or its successor (State Board), must develop a policy and procedure for the designation of all local areas, as well as a policy for the designation of new local areas. The policy must include:

¹ TEGL 27-14 was canceled as an advisory by the U.S. Department of Labor. The references to this canceled advisory remain to provide historical context.

- a. Consultation with the State Board;
- b. Consultation with the chief elected officials and affected Local Boards; and
- c. Consideration of comments received through a public comment process.

The public comment period must offer adequate time for public comment prior to the designation of the local workforce development area and provide an opportunity for representatives of interested business, education, and labor organizations to have input into the development of the formation of the local area.

PURPOSE: To establish a policy for the identification of regions and designation of local workforce development areas in compliance with the Workforce Innovation and Opportunity Act (WIOA) (Public Law 113-128, July 22, 2014).

DEFINITIONS: In addition to the definitions of “performed successfully” and “sustained fiscal integrity” in WIOA, Section 106(e), the following definitions apply for the purpose of determining initial local area designations:

Performed successfully- the local area met or exceeded the levels of performance the Governor negotiated with the local board and chief elected official, and the local area has not failed any individual measure for the last two consecutive program years before the enactment of WIOA.

Sustained Fiscal Integrity- the Secretary of the US Department of Labor has not made a formal determination that either the grant recipient or the administrative entity of the area mis expended 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.

POLICY:

IDENTIFICATION OF REGIONS

As noted in WIOA Section 106(a)(1) and (2), the Commonwealth shall identify regions:

(a) REGIONS.—

(1) IDENTIFICATION.—Before the second full program year after the date of enactment of this Act, in order for a State to receive an allotment under section 127(b) or 132(b) and as part of the process for developing the State plan, a State shall identify regions in the State after consultation with the local boards and chief elected officials in the local areas and consistent with the considerations described in subsection (b)(1)(B).

(2) TYPES OF REGIONS.—For purposes of this Act, the State shall identify—

- (A) which regions are comprised of 1 local area that is aligned with the region;
 - (B) which regions are comprised of 2 or more local areas that are (collectively) aligned with the region (referred to as planning regions, consistent with section 3);
- and

(C) which, of the regions described in subparagraph (B), are interstate areas contained within 2 or more States, and consist of labor market areas, economic development areas, or other appropriate contiguous subareas of those States.

LOCAL AREAS

As outlined in WIOA Section 106(b)(1) through (5), the Governor must designate local areas in accordance with the following:

(b) LOCAL AREAS.—

(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.

(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.

(3) SUBSEQUENT DESIGNATION.—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, it met the requirements described in subsection (c)(1).

(4) DESIGNATION ON RECOMMENDATION OF STATE BOARD. — The Governor may approve a request from any unit of general local government (including a combination of such units) for the designation of an area as a local area if the State board determines, based on the considerations described in paragraph (1)(B), and recommends to the Governor, that such area should be so designated.

(5) APPEALS.—A unit of general local government (including a combination of such units) or grant recipient that requests but is not granted the designation of an area as a local area under paragraph (2) or (3) may submit an appeal to the State Board under an appeal process established in the State plan. If the appeal does not result in such a designation, the Secretary of Labor, after receiving a request for review from the unit or grant recipient and on determining that the unit or grant recipient was not accorded procedural rights under the appeals process described in the State plan, as specified in section 102(b)(2)(D)(i)(III), or that the area meets the requirements of paragraph (2) or (3), may require that the area be designated as a local area under such paragraph.

Additional DWD Guidance/Clarification for Regions and Local Areas:

In accordance with WIOA, Section 106(b)(4), at any time, the CLEO and LWDB from any unit of general local government or combination of units may submit a request for designation as a workforce development area. The State Board must determine if the request for a new local area meets the considerations required in WIOA section 106(b)(4) and recommend to the Governor approval or denial of the request. The Governor may approve or deny the request, after reviewing the State Board's recommendation and the considerations, and notify in writing the CLEO and LWDB.

As authorized by WIOA, Section 107(c)(1)(C), a Concentrated Employment Program (CEP) grant recipient that requested designation as a local are in accordance with the Workforce Investment Act of 1998, Section 116(a)(2)(B) and which was designated a local area for the two-year period preceding the date of enactment of WIOA may request designation as a local area under WIOA. Any such requests for initial designation are subject to the requirements in WIOA, Section 106(b)(2), that the CEP local area performed successfully and sustained fiscal integrity.

The process for identification of regions and designation of local areas is as follows:

- For a designation of a local area, a request is made to the Governor.
- Establish Steering Committee;
- Steering Committee develops draft recommendations for consideration;
- DWD completes local input and public comment process on recommendations and any other alternatives;

- Steering Committee considers feedback on federal guidance and finalizes recommendations;
- KWIB reviews the input received and the final recommendations from the Steering Committee;
- KWIB makes recommendations to the Governor on region and local area designations;
- Governor issues Executive Order on regions and local area designation/redesignation; and
- Appeals process is initiated for initial and subsequent designation requests.

The appeal process is outlined as follows:

- 1) A unit or combination of units of local government or a rural concentrated employment program grant recipient that requests but is not granted the designation of an area as a local area under WIOA Section 106(b)(2) or (3) by the Governor may submit an appeal to the State Board. 29 U.S.C.A. § 3121(b)(5).
- 2) The appeal shall be filed no later than thirty days after receipt of the denial of designation of an area as a local area by the Governor.
- 3) The appeal shall be conducted pursuant to the administrative hearing requirements in KRS Chapter 13B.
- 4) A unit or combination of units of local government or a rural concentrated employment program grant recipient that is dissatisfied with the decision of the State Board may request a review by the United States Department of Labor Secretary.
- 5) The request for review shall be filed no later than thirty days after receipt of written notification of the denial from the State Board. The request for review shall be submitted by certified mail, with the return receipt requested, to the Secretary, United States Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the request for review shall be simultaneously provided to the State Board in care of the Executive Director, Kentucky Workforce Investment Board, Kentucky Education and Labor Cabinet, 500 Mero Street, 3rd Floor, Frankfort, KY 40601, and the Executive Director, Office of Employment and Training, 500 Mero Street Frankfort, Kentucky 40621.
- 6) On review, the United States Department of Labor Secretary shall consider whether:
 - a. The unit or grant recipient was not accorded procedural rights under the appeal process set forth in the State plan or
 - b. The unit or grant recipient meets the requirements for designation as a local area under 29 USCA § 3121(a)(2) or (a)(3), as appropriate.

- 7) The request for review shall be conducted in accordance with procedures established by the United States Department of Labor Secretary.
- 8) The United States Department of Labor has confirmed that there is no appeal available regarding determinations under WIOA Section 106(b)(4).

Process to Date:

Prior to the issuance of TEGl 27-14, the following activities occurred in accordance with a process adopted by the State Board in November 2014 regarding regional and local area designation based on WIOA Section 106.

A Steering Committee, including State Board members, state partners, local partners, core programs, and stakeholders, was formed to consider requests and regions. The Steering Committee utilized the criteria outlined in Section 106 and other relevant factors to make an initial recommendation on regions and local areas for designation and any redesignation.

Once draft recommendations were formed, a meeting with the current CLEOs was held by the Department of Workforce Development (DWD). Then, DWD conducted a series of three regional convenings in the eastern, western, and central parts of the Commonwealth. The three convenings included a LEOs session, a Local Workforce Investment Board (LWIB) members session, and a Stakeholders session open to system customers, staff, partners, and stakeholders. In addition, the recommendations were posted for public comment at the same time.

After the input sessions were completed by DWD, the Steering Committee met to consider the input received through the multiple forums and insights from State Board WIOA policies and made final recommendations.

The KWIB will review the Steering Committee recommendations and processes. Determinations by the KWIB will then go to the Governor for review and final action.

REFERENCES:

- Workforce Innovation and Opportunity Act Section 106 (29 USC Section 3121).
- USDOL, Training and Employment Guidance Letter 27-14. (This advisory has been canceled by the US Department of Labor. The references to this canceled policy remain to provide historical context.)
- Workforce Innovation and Opportunity Act, Pub. L. 113-128.
- Workforce Innovation and Opportunity Act, Section 106 (29 USC Section 3121)
- Workforce Innovation and Opportunity Act Section 127(b) (29 USC Section 3162) & 132(b) (29 USC Section 3172).
- Workforce Innovation and Opportunity Act Section 102(b) (29 USC Section 3112).
- Workforce Innovation and Opportunity Act Section 106 (29 USC Section 3121).
- Workforce Investment Act of 1998 Section 116 as referenced in the Workforce Innovation

- and Opportunity Act, Section 107(c)(1)(C).
- 29 U.S.C.A. Section 3121(b)(5).
 - Kentucky Revised Statutes (KRS) 13B.
 - 29 U.S.C.A. Section 3121(a).
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