

## LOCAL WORKFORCE DEVELOPMENT AREA DESIGNATION

### WORKFORCE SYSTEM POLICY

Workforce Development System Administration

Effective Date: Effective Upon Publication

Last Revised: May 10, 2022

**Policy Owner:** Pennsylvania Department of Labor & Industry Bureau of Workforce Development Administration

**Policy Contact:** Bureau of Workforce Development Administration Policy & Planning Coordination Services at [RA-LI-BWDA-Policy@pa.gov](mailto:RA-LI-BWDA-Policy@pa.gov)

### **Purpose of the Policy**

This policy provides technical assistance to local workforce development areas, or LWDA's, chief elected officials, or CEOs, and other local workforce system stakeholders in the designation of LWDA's to comply with the requirements of the Workforce Innovation and Opportunity Act of 2014, or WIOA. The policy explains the process for the designation of new LWDA's, subsequent designation of LWDA's, and outlines the appeal process.

### **Policy Statement**

WIOA Section 106 (b)(1)(A) mandates that the governor shall designate LWDA's within the state through consultation with the Pennsylvania Workforce Development Board, or PA WDB, and after consultation with CEOs and LWDBs, and after consideration of comments received through the WIOA state plan public comment process [i.e., WIOA Sec. 102(b)(2)(E)(iii)(II)] except for initial and subsequent designations [i.e., WIOA Section 106 (b)(1)(B)(2) and (3)]. Additionally, WIOA Sec. 106 (b)(1)(A) and 20 Code of Federal Regulations, or C.F.R., Part 679.230 indicate that the state workforce development board shall consult and assist the governor in the designation of LWDA's. Per the U.S. Department of Labor Employment and Training Administration, or ETA, Training and Employment Guidance Letter No. 27-14, the governor must develop a policy for the designation of LWDA's. This policy includes an appeals process should a request result in a denial by the governor and the requesting entity sees the need to appeal the decision.

### **Scope**

This policy informs the activities of the Office of the Governor, Pennsylvania Workforce Development Board, Pennsylvania Department of Labor & Industry, or L&I, local workforce development boards, or LWDBs, LWDB chairs, LWDB executive directors, local elected officials, and other workforce system stakeholders.

### **Audience**

Office of the Governor, PA WDB, L&I Office of the Chief Council, CEOs, LWDB chairs, LWDB members and staff, L&I management and leadership and interested stakeholders of the commonwealth's public workforce development system.

## **Definitions**

**Local workforce development area, or LWDA.** Referred to as a local area, serves as a jurisdiction for the administration of workforce development activities and execution of adult, dislocated worker, and youth funds allocated by the state. Such areas may be aligned with a region identified in WIOA sec.

106(a)(1) or may be components of a planning region, each with its own LWDB. The governor must designate local areas for the state to receive adult, dislocated worker, and youth funding under Title I, subtitle B of WIOA. Local areas are also the areas within which LWDBs oversee their functions, including strategic planning, operational alignment and service-delivery design, and a jurisdiction where workforce system partners align resources at a sub-state level to design and implement overall service-delivery strategies.

**Pennsylvania Workforce Development Board, or PA WDB.** Per WIOA Sec. 101(a), the governor established a private-sector policy advisor on building a strong workforce development system aligned with state education and economic development goals and to help the governor fulfill functions delineated at WIOA sec. 101(d).

**Performed Successfully** per WIOA Section 106(e), “performed successfully” means the LWDA met or exceeded the adjusted levels of performance for primary indicators of performance described in WIOA Section 116(b)(2)(A) for each of the last two (2) consecutive years for which data are available preceding the determination of performance under this paragraph. Expanded definition found at 20 C.F.R. 679.260.

**Sustained Fiscal Integrity** per WIOA Section 106(e), “sustained fiscal integrity” used with respect to a LWDA, means that the U.S. Secretary of Labor has not made a formal determination, during either of the last two (2) consecutive years preceding the determination regarding such integrity, that either the WIOA Title I grant recipient or the administrative entity of the local area misexpended funds provided under Subtitle B due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration. Expanded definition found at 20 C.F.R. 679.260.

**Unit of General Local Government, or UGLG** is any general-purpose political subdivision of a state that has the power to levy taxes and spend funds, as well as general corporate and police powers (WIOA Sec. 3(62)).

**WIOA Title I Grant Recipient.** The chief elected official in a local area shall serve as the local grant recipient for, and shall be liable for any misuse of, the grant funds allocated to the local area under WIOA Title I sections 128 and 133, unless the chief elected official reaches an agreement with the governor for the governor to act as the local grant recipient and bear such liability (WIOA sec. (107)(d)(12)(B)(i)(I)).

## **Background**

With the passing of WIOA in 2014 the commonwealth developed and implemented Workforce System Guidance No. 02-2014, *Process and Timeline for Designation of Pennsylvania’s Local Workforce Development Areas—Initial Implementation of the Workforce Innovation and Opportunity Act of 2014*, June 30, 2015. The policy focused on the initial and subsequent designations of LWDA’s per WIOA statute and its promulgating regulations. As described in WIOA sec. 106(b)(3), LWDA’s that received an initial designation may be granted a subsequent designation for later program years if they have performed successfully, sustained fiscal integrity and, in the case of a local area in a planning region,

met the requirements described in WIOA sec. 106(c)(1). WIOA also provides for units of local government to become a new LWDA. Any unit of local government that desires to become a new LWDA must follow the new area designation requirements below.

Effective July 1, 2015, each of Pennsylvania’s twenty-three (23) existing local workforce investment areas that were operating in accordance with WIA, were automatically granted an initial designation as a local workforce development area with WIOA. Such designation was effective July 1, 2015 through June 30, 2017.

Following this initial designation, CEOs in collaboration with LWDBs and other workforce system stakeholders, rigorously evaluated initially designated LWDAs. The purpose of this evaluation was to ascertain whether the LWDA supported the continuation of the initial local area designation or the formation of a new LWDA would need to be considered. The process to determine which areas were defined as LWDAs was data-driven and pursuant to WIOA Section 106(b). In the latter part of 2017, and because of these evaluations, the governor determined that all LWDAs would subsequently continue to exist as initially designated.

### **Procedures**

#### **Designation of Local Workforce Development Areas.**

- A. Redesignation of a Local Workforce Development Area.** The governor may redesignate a LWDA if a local area has not met the adjusted levels of performance for the primary indicators of performance described in WIOA Section 116(b)(2)(A) for each of the last two (2) consecutive years *or* if the local area has not sustained fiscal integrity as defined herein. More information regarding performance may be found in L&I’s Sanctions Policy.
  
- B. New Area Designation.** At any point in time, the governor will consider a request for a new LWDA designation. If the proposed new LWDA is made up of more than one UGLG, the CEOs representing the governmental units requesting a new LWDA must submit a formal request to L&I for the new LWDA designation to be approved. Any request for a new local area designation must be signed by the CEOs who represent all the UGLGs that will compose the new LWDA to demonstrate that the request is the consensus of all the governmental units involved.

A request for a new LWDA designation must:

- i.** Address, in addition to the required criteria described at WIOA 106(b), the following factors:
  - Consistency with labor market areas;
  - Consistency with regional economic development areas;
  - Existence of education and training providers, such as institutions of higher education and career and technical education schools;
  - Submission of a service delivery plan that includes a description of resources available toward the provision of services;
  - Coordination of multiple resources within areas that are based on labor markets and natural travel patterns of local residents;

- Capacity and access to public/private transportation resources;
  - 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;
  - Local ownership, exhibited by strong involvement of local elected officials and community leaders on the LWDB;
  - Availability of Federal and Non-Federal resources necessary to effectively administer workforce investment activities and other provisions of the Act; to include resources beyond the 10% allowed for administrative expenditures allotted to LWDA's;
  - Strategies to provide enhanced quality services and activities to employers and individuals;
  - Description of community resources and other supportive services meant to help those with barriers to employment;
  - Local capacity to manage funds, provide oversight of programs, and provide for the proper stewardship of public funds;
  - Address how the proposed new local area designation will affect those other workforce areas from which it is withdrawing; and,
  - Provide an analysis that details why the commonwealth and the public workforce delivery system will be better off with the designation of the new LWDA.
- ii. The new area will only secure the formula allocated funds for each WIOA funding stream based on the formula factors as defined by PA's WIOA State plan for the represented geographic area. If the city, county or consortium area in question becomes part of a consortium, the consortium will determine the distribution of WIOA funds within its region(s).
- iii. The following outlines the pathway leading to the governor making a decision on a new LWDA designation request (LWDBs are notified of process progress at each step):
1. A request for a new LWDA is initiated by the CEO(s) and submitted to L&I.
  2. L&I reviews the submitted request to ensure required components of the request are completed and acceptable per the regulations governing appeal and the dictate of this policy.
  3. If the request is deemed accepted L&I provides PA WDB with the submission.
  4. If the request is deemed unacceptable the request is considered rejected. L&I communicates the determination to PA WDB. PA WDB may review the request to verify L&I's determination.
  5. PA WDB reviews the acceptable request per this policy and provides a recommendation to the Governor.
  6. The Governor (or designee) provides the final decision to approve or deny the request.
  7. New LWDA designation information is submitted to U.S. DOL.

- iv. Timeline Expectations: Submitters should allow at least nine (9) months for a final decision to be determined and implemented at the federal and state levels. If the request is granted and fully implemented the new local workforce development area designation will be effective the beginning of the upcoming program year (i.e., July1).
- v. Requests for a new local area designation must be submitted to the following resource account: [RA-LI-BWDA-Policy@pa.gov](mailto:RA-LI-BWDA-Policy@pa.gov). The state and/or PA WDB may contact the submitter and request additional information.

**C. Subsequent Designation.** The requirements for subsequent designation of LWDA's are found in 20 C.F.R. 679.250. The subsequent designation process is identical to the New Area Designation process.

**Rights of an entity to appeal the Governor's Decision rejecting a Request for Designation as a LWDA.** Entities defined under 20 C.F.R. Part 679.240-250 requesting but not granted designation as an LWDA under WIOA Section 106(b), paragraph (2) or (3), may submit an appeal to the PA WDB. As noted earlier in this policy, the Governor reserves the right to make final LWDA designation determinations; this includes instances where an appeal is determined. The appellant must establish that it was not accorded procedural rights under the designation process set forth in Pennsylvania's WIOA Combined Plan or establish that it meets the requirements for designation as denoted at WIOA section 106(b)(2) or 106(b)(3) and 20 C.F.R. Part 679.

**D. Appeal Process.** The appellant may request from the PA WDB a state-level appeal and/or a formal appeal hearing within twenty (20) calendar days of receiving the denial of a request for designation as a LWDA.

**Appeal Request Submission Instructions:** A request for a non-formal appeal and/or a formal appeal hearing must be emailed to [RA-LIBWDA-General@pa.gov](mailto:RA-LIBWDA-General@pa.gov). All such requests must contain:

- i. a subject line identifying the appellant and designating the letter or email, if applicable, as an appeal and/or formal appeal hearing request.
- ii. the submission must include the submitter's point of contact information.
- iii. a specific statement of the grounds upon which the appeal is sought. Identify the basis for the appeal to include full citations from WIOA or the WIOA Final Rules in Title 29 or Title 34 of the Code of Federal Regulations that support the appeal.
- iv. the letter must be signed and dated by appellant. The letter may be mailed or submitted electronically.

L&I responsible for processing of any appeals outlined herein. L&I will acknowledge the appeal request within twenty (20) calendar days of receipt. Thereafter, BWDA will ensure all requirements for state review are met. If the appeal submission is deemed acceptable the appeal submission will be provided to PA WDB for their consideration. L&I will inform PA WDB and the submitter via mail the appeal submission has been provided to the PA WDB for their consideration.

If L&I deems the appeal submission not acceptable and consequently rejected, L&I will inform PA WDB of the appeal submission rejection. PA WDB may agree with the rejection allowing to continue with the process noted in the paragraph above.

PA WDB reserves the right to review the appeal submission to determine if all submission requirements have been met. If PA WDB rejects the appeal submission PA WDB will inform L&I and the submitter via mail the appeal submission was rejected and the reason(s) for the rejection.

In either case, the appeal submitter will be given the option of re-submitting a new appeal that speaks to the reason(s) why the earlier appeal was rejected or choose not to file another appeal.

- E. Non-Formal Appeal Process** If the appellant chooses to file an appeal without requesting a formal appeal hearing, the PA WDB may choose to either decide based solely upon the information included in the appeal and the LWDA's case file or conduct further investigation.

If the PA WDB made a written request for additional information to the appellant or the appellant's authorized representative and no response is provided to PA WDB within twenty (20) calendar days of PA WDB'S request the appeal is considered resolved.

Timeline Expectations:

- i. Appeals must be received by L&I at least 30 calendar days prior to the next regularly scheduled PA WDB quarterly meeting to be presented at that meeting.
- ii. Any appeal not received at least 30 calendar days to the next PA WDB quarterly meeting will be presented at the following WDB quarterly meeting.
- iii. The PA WDB can decide either:
  - During the quarterly meeting when the appeal is heard, or
  - During the subsequent quarterly meeting, if the WDB requests additional information regarding the appeal
- iv. PA WDB may decide that a formal appeal hearing is necessary

In any case, the PA WDB will notify the appellant and named parties in the appeal as to the appeal status within sixty (60) calendar days of receipt of the original appeal request or sixty (60) calendar days after having received additional information from further investigation.

- F. Formal Appeal Hearing Process.** If the appellant initially requested a formal hearing or PA WDB deemed a formal hearing is necessary, the state must notify the parties (in writing) that the matter has been scheduled for a hearing.

If the appellant did not initially request a hearing and is not satisfied with PA WDB's determination, the appellant may request a hearing within twenty (20) days of receipt of PA WDB's determination. The appellant must submit their appeal request as directed previously with the addition of PA WDB's determination and other information the appellant or their designated representative(s) desires to be considered. The state will acknowledge the formal appeal hearing request within twenty (20) calendar days of receipt and will ensure all requirements for state review are met.

A state hearing examiner will conduct the formal hearing on behalf of the PA WDB. The PA WDB, upon receipt of an appeal requesting a formal hearing, or if the PA WDB decides a formal hearing is appropriate, will forward the formal hearing request to the PA Department of State Office of Hearing Examiners, whereupon a hearing examiner will be assigned to hear the case. The state must notify the parties (in writing) that the matter has been scheduled for a hearing.

The notice must inform the parties of the following:

- i. the date, time and location of the hearing.
- ii. instructions that the state will conduct and regulate the course of the hearing to assure full consideration of all relevant issues and those actions necessary to ensure an orderly hearing are followed.
- iii. instruction that the state must rule on the introduction of evidence and afford the parties the opportunity to present, examine, and cross-examine witnesses following the General Rules of Administrative Practice and Procedure.

In conjunction with the hearing process the state may:

- iv. make a recommendation based upon the information included within the appeal request and in the LWDA's case file or investigate further prior to the hearing;
- v. request additional information from participating parties;
- vi. decide to conduct a unified hearing that includes multiple appellants if the issues are related,
- vii. permit the participation of interested parties with respect to specific legal or factual issues relevant to the appeal; and,
- viii. choose to conduct the hearing at a single location convenient to all parties or, if that would represent a hardship for one or more parties, the state hearing examiner may elect to conduct the hearing via Internet or telecommunications conference call.

The state hearing examiner must conduct the hearing and issue a written recommendation to the governor and PA WDB within forty-five (45) days from the date the hearing occurred. The state hearing examiner's written recommendation must include:

- ix. findings of fact;
- x. conclusions of law; and,
- xi. an analysis of the decision upheld.

The PA WDB will provide written notice of the governor's determination to appellant, respondent and any other appeal participating parties.

If the governor's determination allows the requested designation, it will become effective July 1st of the following year.

- G. Federal Appeal Process** A unit of general local government (including a combination of such units) or a WIOA Title I grant recipient whose appeal or denial of a request for initial, subsequent or new designation as a LWDA has not resulted in such designation or the state's determination was not rendered in a timely manner may request a review of the appeal with the Secretary of the U.S. Department of Labor.

The request must be directed to U.S. DOL's Employment and Training Administration, or ETA. The appeal review request must be filed no later than thirty (30) days after receipt of written notification of the denial from the state. The appellant must establish that it was not accorded procedural rights under the appeal process set forth in Pennsylvania's WIOA Combined Plan or establish that it meets the requirements for designation as denoted in WIOA sec. 106(b)(2) or 106(b)(3) and 20 C.F.R. 679.250.

All appeals must be submitted in writing by certified mail, return receipt requested, to:

U.S. Department of Labor  
Employment and Training Administration  
200 Constitution Ave, NW  
Washington, DC 20210  
Attention: ASET

Copies of the appeal must be simultaneously provided to:

ETA Regional Administrators, U.S. Department of Labor  
Employment and Training Administration  
1835 Market Street Mailstop  
ETA/20 Philadelphia PA  
19103-2968

and

Pennsylvania Department of Labor & Industry  
Director, Bureau of Workforce Development Administration  
651 Boas Street, Room 1200  
Harrisburg, PA 17121

Or the appellant may email the federal appeal request and associated information to:

**RA-LIBWDA-General@pa.gov**

U.S. DOL ETA must submit a written determination to the state and the appellant. If the final decision reverses the prior decision, it will become effective July 1st of the following year.

### **Resources**

- Workforce Innovation and Opportunity Act of 2014, or WIOA, Public Law (Pub. L.) 113-128, enacted July 22, 2014
- WIOA’s regulations that include 20 Code of Federal Regulations, or C.F.R., Parts 679 and 683
- Workforce Investment Act of 1998, or WIA, Pub. L. 105-220, *etseq.*
- U.S. Department of Labor Employment and Training Administration, or U. S. DOL ETA, Training and Employment Guidance Letter, or TEG, No. 27-14, *Workforce Innovation and Opportunity Act Transition Authority for Immediate Implementation of Governance Provisions*, April 15, 2015
- U.S. DOL ETA Training and Employment Notice 14-21 *Workforce Innovation and Opportunity Act (WIOA) Core Program Performance Accountability Assessment for Program Years (PY) 2020 and 2021*

### **Policy History**

This policy replaces Workforce System Guidance No. 02-2014, *June 30, 2015*.

### **Public Comment**

This policy was published for public comment from April 15, 2022 through May 2, 2022. Comments received and responses follow.

**Comment:** Training and Employment Notice (TEN) 14-21 states that, for PY2020 and PY2021, the US Department of Labor and US Department of Education “will assess performance only for the Individual Indicator Scores for two indicators – Employment Rate 2nd Quarter after Exit and Median Earnings 2nd



Quarter after Exit – for the WIOA title I and III core programs.” Question: Will the Individual Indicator Scores for *Employment Rate 2<sup>nd</sup> Quarter after Exit* and *Median Earnings 2nd Quarter after Exit* be the only WIOA performance measures from PY2020 and PY2021 considered as a part of local workforce development area redesignation determinations in Pennsylvania?

**Response:** If or when the governor must make a LWDA designation decision, the assessing entities (e.g., PA Workforce Development Board, L&I leadership, other state-level agencies or any assignee) will take into consideration the parameters set forth in the Training and Employment Notice (TEN) 14-21.

**Comment:** A commenter brought to author’s attention the use of two misspelled/misused words.

**Response:** The department appreciates the comment. These instances of misspelled/misused words were corrected.

**Comment:** A commenter recommended including a notification to local workforce development boards as to the results of steps along the pathway leading to the governor making a decision on a new LWDA redesignation request in Section B sub-section iii.

**Response:** The department appreciates the commenter’s suggestion and has incorporated notice to LWDBs regarding process progress in the recommended section.