ALABAMA WORKFORCE INVESTMENT SYSTEM

Department of Commerce
Workforce Development Division
401 Adams Avenue
Post Office Box 304103
Montgomery, Alabama 36130-4103

May 27, 2016
GOVERNOR'S WORKFORCE INNOVATION DIRECTIVE NO. PY2014-05, Change 02

SUBJECT: Local Area Designation Policy

1. Purpose. To transmit a revision to the State's Local Area Designation Policy to include information regarding application for local area designation when local area configurations change as well as incorporating information and requirements for Chief Local Elected Official (CLEO) Agreements.

2. Discussion. As of February 24, 2016, Governor Bentley designated the third of Alabama's three local workforce development areas (LWDAs), which sought designation pursuant to Section 106(b)(2), Initial Designation. However, it is the administration's goal to radically re-configure the LWDAs from two "one county" LWDAs and one "65 county" LWDA to a more regionalized approach per Section 106(b)(1)(B), which states that designation of local areas (except initial and subsequent designations) is 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.

The WIOA at Section 106(b)(1) address the process, which requires the Governor to consult with the State Workforce Development Board and to consult with chief local elected officials and local boards as well as consideration of public comments received through the public

comment process as described in Section 102(b)(2)(E)(iii)(II). The designation of newly configured current LWDAs as well as totally new local workforce development areas is subject to the approval process described in Section 106(b)(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 designation of an area as a local area if the State Board determines, based on the considerations described in Section 106(b)(1)(B), and recommends to the Governor, that such area should be so designated.

The previously issued (February 26, 2015) Local Area Designation Policy has been revised to include additional information requirements for the Chief Local Elected Officials Agreement for multi-jurisdictional areas– more than one county and not a balance of state local workforce development area in which the Governor is the Chief Elected Official.

3. **Action.** This policy should be utilized for future "Initial," "Subsequent," and "Recommendation of the State Board and Approval by the Governor" designation requests as applicable.

4. **Contact.** Questions regarding this information should be directed to Bill Hornsby, Supervisor, State Programs, Planning, and Divisional Budget Management Section at (334) 242-5847 or bill.hornsby@commerce.alabama.gov.

Steve Walkley, Division Director
Workforce Development Division
Alabama Department of Commerce

Date 5/27/2016

Attachments

- *Local Area Policy – Attachment No. 1 (Revised 03/14/16)*
- *Application for Local Area Designation – Attachment No. 2 (Revised 03/14/16)*
- *Sample Chief Local Elected Officials Agreement – Attachment No. 3*

Workforce Innovation and Opportunity Act
Local Area Designation Policy

Purpose: To provide Local Elected Officials with the State's procedures for the submission of local area designation requests to the Alabama Department of Commerce, Workforce Development Division (WDD) acting on the behalf of the Governor.

Reference: The Workforce Innovation and Opportunity Act, Chapter 2-Local Provisions, Section 106, Local Workforce Development Areas.

Effective Date: This policy is in effect for Program Year 2015 implementation of the Workforce Innovation and Opportunity Act and subsequent redesignation.

Background: The Workforce Innovation and Opportunity Act requires the Governor to designate local workforce investment areas within the state through consultation with the State Board and after consultation with the chief elected officials and comments received through the public comment process as described in Section 102(b)(2)(E)(ii)(II). In making the designation of local areas, the Governor must give considerations, except for those local areas described in Section 106(b)(2), Initial Designation and 106(b)(3), Subsequent Designation, consisting of the extent to which the areas:

- are consistent with labor market areas in the State (Section 106(b)(1)(B)(i));
- are consistent with regional economic development areas in the State (Section 106(b)(1)(B)(ii)); and
- 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 (Section 106(b)(1)(B)(iii)).

Section 106 of the Act provides for three types of designation: (1) initial designation, (2) subsequent designation, and (3) designation on Recommendation of the State Board. The Governor shall approve requests for initial and subsequent designation submitted by chief elected officials, provided the area under consideration meets the applicable eligibility criteria. Under the third designation type, the Governor may choose to approve such requests from chief elected officials on Recommendation from the State Board.

1. **Initial Designation (Section 106(b)(2)):** During the first two (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 two-year period preceding the date of enactment of this Act, performed successfully, and sustained fiscal integrity.

   A. "The term "**performed successfully**," as defined in Training and Employment Guidance Letter (TEGL) Number 27-14, dated April 15, 2105 means "that 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 (2) consecutive program years before the enactment of WIOA. The terms "met or exceeded" and "failure" must be defined by the Governor in the State's policy consistent with how those terms were defined at the time the performance levels were negotiated. When designating local areas, the Governor may not retroactively apply any higher WIOA threshold to performance negotiated and achieved under WIA." (This means the same measure for two years in a row, not any measure in the two-year period.)

   - **Exceeds –** When the actual performance achieved against an individual performance measure is in excess of 100 percent of the negotiated level of performance for the measure (per TEGL 25-13).

   - **Met –** When the actual performance achieved against an individual performance measure falls in the range of 80 to 100 percent of the negotiated level of performance for the measure (per TEGL 25-13).

   - **Fails –** When the actual performance achieved against an individual performance measure is less than 80 percent of the negotiated level of performance (per TEGL 25-13).

   B. "The term "**sustained fiscal integrity**", per Section 106(e)(2) is used with respect to a local area, means that the Secretary has not made a formal determination, during either of the last two (2) consecutive years preceding the determination regarding such integrity, that either the grant recipient or the administrative 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."

2. **Subsequent Designation (Section 106(b)(3))**: After the period for which a local area is initially designated per Section 106(b)(2), the Governor shall approve a request for subsequent designation as a local area from such local area, if such area – performed successfully (Section 106(b)(3)(A)); sustained fiscal integrity (Section 106(b)(3)(B)); and in the case of a local area in a planning region, met the requirements described at Section 106(c)(1).

3. **Duration and Subsequent Designation**: An initial designation shall be for a period of not more than two full program yeas, after which the designation shall be extended, if requested and if the Governor determines that, during the designation period, the area:

   A. performed successfully;
   B. sustained fiscal integrity; and
   C. in the case of a local area in a planning region, met the requirements in Section 106 (c)(1) if the Act.

4. **Designation on Recommendation of State Board and Approval of Governor:** Designation under this category is at the Governor's discretion. The Governor **may** approve (per Section 106 (b)(4)) a request for a local area designation from any unit of general local government or combination of such units if the State Board recommends to the Governor, taking into account the general considerations previously outlined under the "Background" of this policy, that such area should be so designated from applications submitted through the process described below:

Information on Applying Under the State Board Recommendation and Approval of the Governor (Item Number 4 Above)

Any unit of local government or a combination of such units requesting designation under this category per Section 106(b)(4) must at a minimum address the following as related to the proposed local workforce development area:

1. Name, title, and original signature of Chief Local Elected Official(s) representing the unit(s) of local government filing the petition for WIOA local workforce development area designation with the State Board.

2. Specific indication of the geographic area (Alabama counties) to be served by the proposed local workforce development area.

3. Identification of existing education and training providers, such as institutions of higher education and area career and technical education schools within the proposed local workforce development area. Additionally, indicate, for each identified local education agency, the counties primarily served by such agencies.

4. Indication that the proposed local workforce development area is consistent "...with labor market areas..." means the proposed local workforce development area will not "break-up" an existing labor market area.

5. Provide assurance that the existing and prospective career employment opportunities and educational/technical educational resources within the proposed local workforce development area will be enhanced.

6. Indication of public/private transportation resources and transportation arteries within the proposed local workforce development area are sufficient to accommodate the commuting requirements of individuals seeking to obtain educational/technical educational services assistance under the Workforce Innovation and Opportunity Act.

7. Indication of education leaders, business leaders, and local government officials prepared to actively participate in the conduct of local workforce development board administrative activities related to planning, execution, and management of activities within the proposed local workforce development area.

8. Indication of the administrative capacity of the proposed local workforce development area to adequately safeguard funds, which it may be awarded, and to conduct workforce development activities, pending the finalization of such designation.

9. Indication of the available Federal and non-Federal resources necessary to effectively administer activities under Subtitle B and other applicable provisions of the Act. Resources beyond the ten (10) percent allowed for administrative expenditures allotted to local areas.

10. Indication that the proposed local workforce development area is "consistent with the regional economic development areas in the state."

11. The local area plans to adhere to the restriction on the local board not directly providing training services, or being certified as a One-Stop Operator. If plans include requesting a waiver or the necessary approvals to perform these functions, an outline is needed for the basis of making either request.

12. Any endorsements or opposing statements to this application from WIOA required partners or other interested parties.

13. Other information the applicant would like the State Board to consider.

Duration

Duration is at the recommendation of the State Board and the discretion of the Governor. Initial designation under this category shall be for a period of not more than two years, which is consistent with other types of designation.

Assessment of the Application

Once a completed application is received, the State Board, in collaboration with the appropriate staff from the Workforce Development Division (WDD), will verify the information provided in the application. The State Board will use the results of this assessment to determine whether to recommend approval or denial of the application.

The Local Chief Elected Official will be notified in writing regarding the approval or denial of its initial designation application. If denied, the Local Chief Elected Official may contest the decision using the appeal process below.

State Appeals Process

WIOA Section 106(b)(5) states that a unit of general local government (including a combination of such units) or grant recipient that requests but is not granted designation as a local area under WIOA Section 106(b)(2) (initial designation) or Section 106(b)(3) (subsequent designation) 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 appeal may be submitted to the Secretary of Labor. A decision by the State Board and Governor to deny a request from a unit of general local government or a combination of such units, that does not meet the criteria for initial designation, under Section 106(b)(2), or for subsequent designation, under Section 106(b)(3), e.g. a request to be designated per "Designation on Recommendation of State Board and Approval of Governor" per Section 106(b)(4), is not appealable.

- Within ten working days of providing notice of their intent to file an appeal, the appellant must submit their rebuttal package stating the grounds for the appeal and state the reasons why the appellant should be initially designated via certified mail to the Alabama Department of Commerce, Workforce Development Division, State Workforce Development Board, Post Office Box 304103, Montgomery, Alabama 36130-4103. This rebuttal package should address all issues raised or questions asked by the State Board in rendering their decision and indicate if a formal hearing is requested. The appellant may be asked to provide additional information/documentation.

- The WDD staff will work in conjunction with the State Board to expedite review of a designation appeal and to schedule a formal hearing, if requested, before the State

Board. Efforts will be made by WDD staff to enable Board members to review the appeal informally, i.e., via e-mail or mail outs, or, if the situation warrants, the Board may be convened by the Governor in advance of a scheduled meeting date in order that the appeal might be heard.

- The goal is for any appeal to be resolved within 30 days of the filing of such appeal with the Board, through the WDD (Alabama Department of Commerce).

- If the appeal to the State Board does not result in designation, the appellant, if appealing an initial designation under WIOA Section 106(b)(2) or subsequent designation under Section 106(b)(3), may request review by the Secretary of Labor. An appeal to the Secretary must be submitted by the appellant or grant recipient no later than 30 days after receipt of written notification from the State Board that the appeal has been denied. Appeals must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: Assistant Secretary, Employment and Training Administration. A copy of the appeal must be simultaneously provided to the State Board.

- If the Secretary determines that the appellant was not accorded procedural rights under the appeal process established under the above section, or that the area meets the requirements for initial or subsequent designation in WIOA Section 106(b)(2) or 106(b)(3), the Secretary may require that the area be designated as a workforce development area. The Secretary must issue a written decision to the Governor.

Regional Planning and Cooperation

Pursuant to Section 106(a) Regions – Before the second full program year after the date of enactment of the Act (July 22, 2014), 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 Section 106(b)(1)(B).

Additionally, the State may require information sharing among local areas to improve their performance in the designated regions on local performance measures and to coordinate programs and activities under WIOA Title I. The State may also require regional coordination in service delivery.

State of Alabama
Workforce Innovation and Opportunity Act
Application for Local Workforce Development Area Designation

Applicant Information:

1. **Chief Elected Official(s)***

   Name: _____

   Title: _____

   Name of Local Governmental Unit(s): _____
   (Designated Grant Recipient per completed Chief Local Elected Officials Agreement)

   Address: _____

   Phone Number/Fax Number: _____

2. **Administrative Contact**

   Name: _____

   Title: _____

   Organization: _____

   Address: _____

   Phone Number/Fax Number: _____

   E-Mail Address: _____

3. **Proposed Local Area and Contact Information:**

   a. Identify the proposed local area: _____

   _____

   _____

**Attach additional sheets if necessary.*

b. Contact name, title, phone and fax numbers, and e-mail address:

_____

_____

_____

_____

4. For combination of units, identify your governance structure (e.g. Joint Agreements or Memorandum of Agreement between units). NOTE: In the case in which a proposed local area includes more than one (1) unit of general local government, the Chief Elected Officials of such units should all sign the Local Elected Officials Agreement (Attachment 3) that specifies the respective roles of the individual Chief Elected Officials. A fully executed copy should be attached to the application.

_____

_____

_____

5. Category Under Which Designation is Being Requested:

Please check one of the boxes below:

☐ Initial Designation (Two years maximum duration)
☐ Subsequent Designation (proceed to #7)
☐ State Board Recommendation and Governor Approval (proceed to #7)

6. For Initial and Subsequent Designation

Local areas requesting designation under this category must satisfy the following requirements:

- 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, as in effect the day before the date of enactment of this Act) for each of the last two (2) consecutive years for which data are available preceding the determination of performance under this paragraph (Section

106(e)(1)). This pertains to successful performance for Program Years 2012 and 2013 for Initial Designation and to appropriate program years for Subsequent Designation. (This means a local area has achieved at least 80 percent of their local performance goal on each performance measure for Program Year 2012 and Program Year 2013 as stated in Section 106(e)(1) of the WIOA.)

- Sustained financial integrity for the last two (2) consecutive years for which data are available (Program Years 2012 and 2013 for Initial Designation and to appropriate program years for Subsequent Designation.). See the WIOA Section 106(e)(2) for details.

Note: The signature of the chief elected official on this application certifies that the local area has met the performance and fiscal integrity requirements for this category. Compliance with these requirements will be independently verified by the State prior to designation under this category. (Proceed to 8.)

7. For State Board Recommendation and Governor's Approval Only

Local areas requesting designation under this category must provide information on the following:

a. Geographic areas served by local educational agencies and intermediate educational agencies.

b. Geographic areas served by post-secondary educational institutions and area career and technical education schools per Section 106(b)(1)(B)(iii).

c. The extent to which such local areas are consistent with labor market areas.

d. The distance that individuals will need to travel to receive services provided in such local areas.

e. Identify resources and plans to effectively administer the activities discussed in Title I, Subtitle B, of the WIOA including:

1) Have available the Federal and non-Federal resources available to support WIOA Title I, Subtitle B, activities beyond the ten (10) percent allowed for administrative expenditures allotted to local areas per Section 106(b)(1)(B)(iii).

2) Identify the labor market area(s) within the local area and indicate the local area's consistency with the labor market area(s) per Section 106(b)(1)(B)(i).

3) Identify the required economic development area(s) within the local area and indicate the local area's consistency with the required economic development area(s) per Section 106(b)(1)(B)(ii).

4) The local area has the appropriate education and training providers such as institutions of higher education and area career and technical education schools per Section 106(b)(1)(B)(iii).

8. Signature of Chief Elected Official(s)*

_____ _____

Signature Date

_____

Printed Name and Title

Please submit the completed application and completed CLEO Agreement if applicable to:

Alabama Department of Commerce
Workforce Development Division
Attention: State Workforce Development Board
Post Office Box 304103
Montgomery, Alabama 36130-4103

**Attach additional sheets if necessary.*

(SAMPLE)

Chief Local Elected Officials Agreement

Request for Initial Designation of Local Workforce Development Area: _____

(Name)

The Chairperson or President of X County Commission and the Chairperson or President of Y County Commission, acting on their authority as the Chief Elected Officials, enter into this agreement in accordance with the Workforce Innovation and Opportunity Act (herein referred to as WIOA) § 107(c)(1)(B). The X County Commission Chairperson or President and the Y County Commission Chairperson or President are Chief Elected Officials, as defined in WIOA § 3(9), and enter into this agreement to organize and implement activities pursuant to WIOA and as proposed by the Governor of the State of Alabama for the purpose of administering WIOA in X and Y counties.

Part 1 – Designation of the Chief Elected Officials

1. For purposes of administering WIOA and for entering into and implementing agreements in accordance with the Act, the Chief Elected Officials shall be designated from the respective counties in the following manner: The Chairperson or President of the County Commission of X County and the Chairperson or President of the County Commission of Y County.

2. Non-concurrence between the Counties shall be resolved as expeditiously as possible. Representatives of the two Counties shall meet and confer with one another to resolve issues of non-concurrence. If concurrence cannot be reached within a reasonable amount of time, steps shall be taken towards resolution through the State.

Part 2 – Designation of Grant Recipient and Local Governmental Grant Subrecipient / Incorporated Fiscal Agent

1. The Chief Elected Officials recognize they are jointly responsible for WIOA Funds and agree to the appointment of _____ (Select One Chief Elected Official) as the Grant Recipient who bears the fiduciary responsibility for these funds with the Alabama Department of Commerce.

2. The Grant Recipient designates _____ to be the local grant subrecipient/fiscal agent to assist the Grant Recipient with the administration of the grant funds.

3. The local grant subrecipient/fiscal agent shall disburse such funds for grant activities at the direction of the local board.

4. The Chief Elected Officials agree that the designated local governmental grant subrecipient/fiscal agent has reliable internal controls for financial management and disbursement of funds.

5. The name of the area is the "X-Y Local Workforce Development Area."

6. This Agreement becomes effective upon the concurrent acceptance by the Counties and subsequent signature by the Chief Elected Officials of X and Y Counties. This Agreement (including any subsequent amendments) shall stay in effect until such time as: (1) both parties act to rescind the Agreement; or (2) federal or state authority ceases for the X-Y Workforce Development Area to serve as the local implementation means for job-training programs. Should either party wish to rescind this Agreement, formal action seeking a rescission must be taken at least six months prior to the conclusion of the program year. The effective date of the rescission would then be the close of that program year.

7. No unilateral alteration of this agreement shall be made. Modification to the agreement by either County must be mutually negotiated and all requests to modify the agreement must be presented in writing to the Chief Elected Officials.

Part 3 – Composition of and Designation of Local Workforce Development Board (LWDB)

1. The Chief Elected Officials, as set forth in Part 1.1 above, will establish and appoint a Workforce Development Board (WDB) to assist and carry out provisions of WIOA §§ 107(a) & (b).

2. Every effort will be made to balance the selection geographically throughout the X-Y Workforce Development Area as well as balance the selection of large and small business, and other related factors to (as accurately as possible) reflect the landscape of the X-Y Workforce Investment Area.

Modification of membership may be completed at any time by the LWDB once established subject to the confirmation and concurrence of the Chief Elected Officials, as set forth in Part 1.1 above.

Part 4 – Designation of One Stop Services and other responsibilities

1. As required by Section 121(a) of WIOA, the Chief Elected Officials in cooperation with the Local Workforce Development Board, shall develop, administer, and approve the appropriate Memoranda of Understanding in establishing no less than one facility known as One Stop Career Center in the X-Y Workforce Investment Area.

2. The Chief Elected Officials shall also:

   - Review and approve the 4-year local plan developed by the local board, as required by WIOA § 108(a);
   - Review and approve actions taken by the board to designate One Stop Career Center Operators as required by WIOA § 121(d)(1);
   - Review and approve monitoring activities by the board as required by WIOA § 121(a)(3);
   - Review and approve the budget of the local board, as required by WIOA § 107(d)(12)(A); and
   - Negotiate and reach agreement on local performance accountability measures with the local board and the Governor as required under WIOA § 107(d)(9).

Part – 5 Financial Liability

In accordance with Section 116, the Workforce Innovation and Opportunity Act (WIOA), CLEOs are liable and responsible for WIOA and other directly administered funds expended under the Workforce Innovation and Opportunity Act.

In the event that any expenditure of funds under WIOA is disallowed by the State of Alabama or the United States Department of Labor, the following process will be used.

A. The LWDB shall attempt to recover the disallowed expenditure from funds available to subgrantees or vendors causing the disallowance.

B. The LWDB shall cover the disallowed expenditure from any funds it may have or be able to obtain, which are eligible to be used for the purpose.

C. If the disallowed expenditure of funds cannot be recovered under A or B above, but are eligible for recoupment in one or more future years, at the absolute discretion of the CLEOs such disallowed expenditure of funds shall be recouped in one or more future years.

D. If the disallowed expenditure of funds cannot be recovered under A, B, or C above, then liability for repayment of those funds shall be distributed equally to the Counties, which comprise the Local Workforce Development Area.

Signatures:

_____ _____
Signature **Date**

_____ _____
Printed Name **Title**

_____
County Name

_____ _____
Signature **Date**

_____ _____
Printed Name **Title**

_____
County Name

Note: This is a sample CLEO Agreement based on two counties, which contains all of the clauses and requirements. The actual agreement should name each county, provide local area information, etc.