

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Local Area Designation
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TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE LIAISONS

FROM: JANE OATES 
Assistant Secretary

SUBJECT: Workforce Investment Act (WIA) and Appropriations Act Provisions on the Designation of Local Workforce Investment Areas

1. **Purpose.** To provide information on state flexibility in the designation and redesignation of local workforce investment areas.

2. **References.**

- Wagner-Peyser Act, as amended (29 U.S.C. 49 et seq.);
- Workforce Investment Act of 1998 (WIA), as amended (29 U.S.C. 2801 et seq.);
- WIA Final Rule, 20 CFR parts 660-671;
- Full-Year Continuing Appropriations Act, 2011, Public Law (PL) 112-10;
- Planning Guidance for the Strategic State Plan for Title I of the Workforce Investment Act of 1998 (WIA) and the Wagner-Peyser Act (W-P) [73 FR 72853 Dec. 1, 2008] (OMB No. 1205-0398); and
- State Unified Plan Planning Guidance [73 FR 73730 Dec. 3, 2008] (OMB No. 1205-0398).

3. **Background.** Several states have asked for clarification on their authority to redesignate local workforce investment areas, particularly in light of the language that has been included in DOL Appropriations Acts since FY 2006. The relevant language from the Appropriations Acts is as follows:

The Secretary of Labor shall take no action to amend, through regulatory or administration action, the definition established in section 667.220 of title 20 of the Code of Federal Regulations for functions and activities under title I of the Workforce Investment Act of 1998, or to modify, through regulatory or administrative action, the procedure for redesignation of local areas as specified in subtitle B of title I of that Act (including applying the standards specified in section 116(a)(3)(B) of that Act, but notwithstanding the time limits specified in section 116(a)(3)(B) of that Act), until such time as legislation reauthorizing the Act is enacted. Nothing in the preceding sentence

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shall permit or require the Secretary of Labor to withdraw approval for such redesignation from a State that received the approval not later than October 12, 2005, or to revise action taken or modify the redesignation procedure being used by the Secretary in order to complete such redesignation for a State that initiated the process of such redesignation by submitting any request for such redesignation not later than October 26, 2005.

Under the Full-Year Continuing Appropriations Act, 2011 (PL 112-10), the provisions of the 2010 Appropriations Act remain in effect with regard to amending the “procedure for redesignation of local areas.” This means that the language highlighted above remains in effect during FY 2011 or until WIA is reauthorized.

4. States’ Flexibility to Designate or Redesignate Local Areas. Although the Full-Year Continuing Appropriations Act, 2011, prohibits the Department from changing the procedure for local area redesignation, WIA provisions governing designation still stand. WIA supports the alignment of local areas when needed; Section 116(a)(1)(B)(iii) requires the Governor to take local labor market areas into account when designating local areas. Except as provided in section 5.A. and 5.B. of this TEGL, the governor continues to have authority to designate or redesignate local areas in the state.

A. State Authority to Designate or Redesignate Local Areas: *When can states redesignate local areas?*

1. When a local area, specifically the chief elected official, voluntarily agrees to redesignation. The local area, the state workforce investment board, or the governor may propose a local area redesignation.
2. When the local area was not automatically designated under WIA Section 116(a)(2). The governor has the authority to redesignate such areas as long as the new designations are made in accordance with the general designation requirements of WIA Section 116(a)(1), and the state submits a modification to its State Plan.
3. When the local area was not designated as such under the “temporary and subsequent” designation provisions at WIA Section 116(a)(3). The governor has the authority to redesignate such areas as long as the new designations are made in accordance with the general designation requirements of WIA Section 116(a)(1), and the State requests a modification to its State Plan.
4. When the governor determines a local area has substantially violated any provision of title I of WIA (WIA Section 184(b)).
5. When the governor determines that a local area designated as such under the “temporary and subsequent” designation provisions at WIA Section 116(a)(3) did not substantially meet the local performance measures for the local area, or did not sustain the fiscal integrity of funds used by the area to carry out activities under WIA title I.

B. Local Area Ability to Redesignate: *Can local areas voluntarily redesignate?*

Yes, local chief elected officials can voluntarily agree to redesignation. The local area, the state workforce investment board or the governor may propose a local area redesignation.

C. Process for Designation: *How must states redesignate local areas?*

New designations must be made in accordance with the general designation requirements provided at WIA Section 116(a)(1). The process for designation must include the following:

1. Consultation with the state board;
2. Consultation with chief elected officials;
3. Consideration of comments received through the public comment process as described in WIA Section 112(b)(9), which includes an opportunity for public comment and comment by businesses and representatives of labor organizations;
4. Consideration by the governor of geographic areas served by local education agencies, intermediate education agencies, postsecondary and vocational institutions or schools, and alignment with labor market areas (which could be defined as regional economies); and
5. Consideration by the governor of the distance that individuals must travel to receive services in such local areas and the resources available to effectively administer the activities carried out under WIA title IB.

A change in local area designation, or the redesignation of local areas, is considered a substantial change that requires a modification of the State Strategic Plan. The Planning Guidances, at 73 FR 72853 (Dec. 8, 2008) for the Stand-Alone Guidance and 73 FR 73730 (Dec. 3, 2008) for Unified Planning Guidance, provide the specific action items that the State Plan must address; the Plan must identify the state's designated local workforce investment areas and provide a description of the process used to designate such areas. The WIA regulations at 29 CFR 661.230(d) specify that modifications are subject to the same public review and comment requirements that apply to the development of the original State Plan; the state must provide an opportunity for public comment on and input into the development of the modification before submitting it to ETA.

ETA can approve a redesignation that follows the procedures of 20 CFR 661.250 and complies with WIA Section 116 upon the state's submission of a properly executed modification to its Strategic State Plan.

D. Regional Planning and Cooperation: *How can states encourage local areas to operate in relation to regional economies?*

In cases where a state cannot, or prefers not to, redesignate local areas, the Department encourages, and WIA authorizes, the state to encourage cooperation among local areas that lay within the same regional economy through the following:

1. As part of the process for developing the State Plan, a state may require regional planning by local boards for a designated region (a combination of local areas partly or completely in a single labor market area) in the state (WIA Section 116(c)(1)).
2. A state may also require local boards for a designated region to share, where feasible, labor market data of the regional economy (WIA Section 116(c)(2)).
3. A state may require local boards for a designated region to coordinate the provision of workforce investment activities authorized under WIA title I, including the provision of supportive services (WIA Section 116(c)(3)).

E. Interstate Regions: *How can states encourage local areas to operate in relation to regional economies that cross state boundaries?*

Two or more states that contain an interstate regional economy may name the area as a designated region, and jointly exercise the state functions for planning, information sharing, and coordination of services (WIA Section 116(c)(4)).

5. **Appropriations Act Restrictions on Local Area Designation Provisions**. DOL Appropriations Acts for Fiscal Years 2006-2011 affect certain aspects of local area designation. The following provides clarification for temporary and subsequent designation, single state local workforce area designation, and automatic designation.

A. Temporary and Subsequent Designation: *Does the language in the Department of Labor Appropriations Acts impact the governor's authority with regard to temporary and subsequent designation?*

Yes. The Appropriations Act language has the effect of keeping in place the temporary and subsequent designation provisions of WIA Section 116(a)(3); the rules regarding temporary and subsequent designation at the onset of WIA remain in effect.

Section 116(a)(3) requires the designation of a unit of general local government, including a combination of such units with a population of 200,000 or more, which was a service delivery area under the Job Training Partnership Act on August 6, 1998.

There are three exceptions to the temporary and subsequent designations under WIA Section 116(a)(3). First, local areas designated under this authority may agree to redesignation. Second, the governor may disapprove a request for a temporary and subsequent designation if the governor determines that the local area did not substantially meet, as defined by the state board, the performance measures for the local area or sustain the fiscal integrity of the funds used by the area to carry out activities under title IB of WIA. (WIA Section 116(a)(3)(D)) provides guidance on what it means to perform

successfully and 116(a)(3)(E) provides guidance on what it means to sustain fiscal integrity.) Third, the governor may disapprove a request for a temporary and subsequent designation if the governor determines that the local area has substantially violated any provision of title I of WIA (WIA Section 184(b)).

B. Single State Local Workforce Area: *Are there restrictions on whether a state can be designated as a single local workforce investment area state?*

Yes. As provided at 20 CFR 661.250(d), the “governor of any state that was a single service delivery area state under the Job Training Partnership Act as of July 1, 1998, and only those states, may designate the state as a single local workforce investment area state” (WIA Section 116).

C. Automatic Designation: *Do the automatic designation provisions contained in WIA Section 116(a)(2) remain intact?*

Yes. Governors have the authority to designate local areas or to approve requests for designation from local governments, subject to certain requirements. Local areas may remain designated under the automatic designation provisions at WIA Section 116(a)(2). These provisions require the governor to approve a request for local area designation for: (1) any unit of general local government with a population of 500,000 or more; (2) any area served by a rural concentrated employment program (CEP) grant recipient of demonstrated effectiveness that served (as of August 6, 1998) as a service delivery area or sub-state area under the Job Training Partnership Act; and (3) any area that served as a service delivery area under the Job Training Partnership Act (as of August 6, 1998) in a state that has a population of not more than 1,100,000 and a population density greater than 900 persons per square mile.

There are two exceptions to automatic designation. First, local areas may voluntarily agree to redesignation. Second, the governor may choose not to approve an area’s request for automatic designation if the governor, under WIA Section 184(b), determines a local area has substantially violated any provision of WIA title I.

In determining which local areas qualify for automatic designation as local governments with a population of 500,000 or more, the governor has authority to determine the source of population data to use.

6. **Action Requested.** States are requested to distribute this information to the appropriate state and local staff.
7. **Inquires.** Questions regarding this guidance may be directed to the appropriate Regional Office.