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STATE INSTRUCTION NUMBER 20-01, Change 1

To: Chief Elected Officials
Local Workforce Area Signatory Officials
Local Workforce Area Board Chairs
Local Workforce Area Administrators

Subject: LWDA Subsequent Designation and LWDB Subsequent Certification

Issuance Date: March 16, 2023

Effective Date: Immediately

Purpose: This state instruction provides the requirements and procedures for requesting subsequent designation as a Local Workforce Development Area (LWDA) and subsequent certification as a Local Workforce Development Board (LWDB).

Change 1 Revision: This revision provides submission dates for Program Year 2022 and highlights the language from 20 CFR § 683.710(b)(3), requiring LWDB's to inform new chief elected official(s) of their responsibilities and liabilities in a timely manner. This revision also clarifies the performance metrics required by the US Department of Labor (DOL) when considering LWDA subsequent designation.

References:

- Workforce Innovation and Opportunity Act, Public Law 113-128, §§ 106-107
- 20 CFR Part 679, Subpart B and Subpart C
- 20 CFR §§ 683.630-683.640, 683.710(b)
- State Instruction 14-03, Change 1

Background:

LWDA Designation

Under the Workforce Innovation and Opportunity Act (WIOA), the Governor must designate LWDAs within the state in order to receive adult, dislocated worker, and youth funding under Title I of WIOA. LWDAs administer workforce development activities and execute adult, dislocated worker, and youth funds allocated by the state. The Governor must designate and redesignate LWDAs within the state through consultation with the State Workforce Development

Board (SWDB), Chief Elected Officials (CEOs), and LWDBs, and after consideration of comments received through a public comment process.

For initial LWDA designation, the Governor must consider the following factors when designating LWDA:

- Alignment with labor market areas in the state
- Common economic development areas
- Availability of the federal and non-federal resources necessary to effectively administer activities and provisions required by WIOA, including appropriate education and training providers, such as institutions of higher education and area career and technical education schools

LWDA Subsequent Designation

After the period of initial designation and if requested by the CEO(s) and LWDB in a local area, the Governor must approve the request if all of the following criteria are met for the two most recent program years:

- The local area performed successfully.

Per 20 CFR § 679.260(b)(2), “performed successfully” means the LWDA met each of the following performance measures related to the WIOA indicators of performance described at 20 CFR § 677.155(a)(1) for the two most recently completed program years:

- Individual Indicator Score of 50% or higher
- Overall Program Score of 90% or higher
- Overall Indicator Score of 90% or higher

Nonperformance occurs if one or more of the outcomes listed above are not reached.

- The local area sustained fiscal integrity.

Per 20 CFR § 679.260(c), “sustained fiscal integrity” means the Secretary has not made a formal determination that either the grant recipient or the administrative entity of the area misexpended 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.

- The local area met the regional planning requirements described in WIOA § 106(c)(1).

LWDB Subsequent Certification

The CEO(s) in a LWDA is authorized to appoint the members of the LWDB for such area, in accordance with the state criteria established under WIOA § 107(b). Once every two years, the Governor must certify one LWDB for each LWDA in the state.

Subsequent certification is based on the following factors:

- LWDB membership requirements defined in WIOA § 107(b)
- Extent to which the LWDB has ensured that the workforce investment activities carried out in the LWDA have enabled the LWDA:
 - To meet the corresponding performance accountability measures
 - To achieve sustained fiscal integrity, as defined above

If a LWDB is not certified, the CEO(s) will appoint and certify a new LWDB in accordance with State Instruction 14-03, Change 1, *State Criteria for WIOA Local Workforce Development Boards*.

NOTE: After providing notice and an opportunity for comment, the Governor must decertify a LWDB, at any time, for fraud, abuse, or failure to carry out the LWDB's functions specified in WIOA § 107(d).

Policy: The following procedures will be used in requesting subsequent designation as a LWDA and in requesting subsequent certification as a LWDB.

Formal Designation Petition

The **LWDA Subsequent Designation Petition**, attached to this document, must be used to request LWDA subsequent designation. The petition will include:

- Consortium agreement (if applicable)
- Certification that the area performed successfully and sustained fiscal integrity for the preceding two-year period (for existing LWDAs)
- List of LWDB members, including composition categories and contact information
- Identification of grant recipient/fiscal agent and signature of the lead official
- Signatures of CEOs from petitioning counties
- Documentation that public input was solicited and of any comments received

NOTE: The use of electronic signatures within the petition and related documents is acceptable.

Consortium Agreement

In cases where a local area includes more than one unit of general local government, the chief elected officials (county council chairs) must negotiate a consortium agreement in order to establish a LWDA to deliver WIOA funded services. Such agreement will, at a minimum:

- Determine the distribution of fiscal liability among the CEOs
- Delineate relationships among the CEOs for the purpose of implementing provisions of WIOA
- Address the appointment of individuals to the LWDB
- Designate an entity to serve as the local grant recipient and fiscal agent for the area

NOTE: Designation of a fiscal agent does not relieve the CEOs of the liability for any misuse of grant funds.

LWDB Certification Criteria

In appointing members to the LWDB, the CEO(s) must comply with State Instruction 14-03, Change 1, *State Criteria for WIOA Local Workforce Development Boards*. The Governor will certify local boards based on the state criteria contained in State Instruction 14-03, Change 1.

NOTE: When there is a change in the chief elected official(s), the LWDB is required to inform the new chief elected official(s), in a timely manner, of their responsibilities and liabilities as well as the need to review and update any written agreements among the chief elected official(s).

Timeline

- All formal LWDA Subsequent Designation Petitions must be submitted to workforcesupport@dew.sc.gov by April 30, 2023.
- A review of the petitions will be presented to the executive committee of the SWDB and voted on by the full board. LWDA recommendations will be made to the Governor.
- Final subsequent designation of LWDA's for the program years 2022 and 2023 will be made by June 30, 2023.

Appeals

Appeal to the SWDB

A unit of local government (or combination of units) or a local area which has requested but has been denied its request for subsequent designation as a LWDA under 20 CFR § 679.250 may appeal the decision to the SWDB, in accordance with the State Plan, WIOA § 106(b)(5), and 20 CFR § 683.630(a). The appealing entity must explain why it believes the denial is contrary to the provisions of WIOA § 106(b)(2) or WIOA § 106(b)(3) and 20 CFR § 679.250. No other cause for appeal will be considered under this section.

Such a unit or local area may submit a written appeal to the SC Department of Employment and Workforce (DEW) within thirty calendar days of the local area's being denied subsequent designation. If the thirtieth day falls on a weekend or holiday, the deadline will be extended to the next business day. Appeals must be submitted by registered mail, clearly identified as "Dated Material," and addressed to:

State Workforce Development Board
C/O: SC Department of Employment and Workforce
Attn: Workforce Support—Appeal of Denial of LWDA Designation, Suite 515
P.O. Box 995
Columbia, SC 29202

The following procedures will apply:

- The Chair will designate the Executive Committee or an Ad Hoc Committee of at least three SWDB members to hear the appeal.
- The designated SWDB representatives will hear the appeal and issue a written decision within sixty business days.

Appeal to the Secretary of Labor

A unit of general local government (including a combination of such units) or grant recipient whose appeal of the denial of a request for subsequent designation as a LWDA to the SWDB has not resulted in such designation, may appeal the SWDB's denial to the Secretary of Labor. Appeals must be filed no later than thirty days after receipt of written notification of the denial from the SWDB, and must be submitted by certified mail, return receipt requested, to the Secretary:

U.S. Department of Labor
Attn: ASET
200 Constitution Ave. NW
Washington, DC 20210

The appellant must establish that the petitioning LWDA was not accorded procedural rights under the state appeal process described in the State Plan or establish that the entity meets the requirements of WIOA § 106(b)(2) or WIOA § 106(b)(3) and 20 CFR § 679.250. If the Secretary determines that the appellant has met its burden of establishing one of these allegations, the Secretary may require that the area be designated as a LWDA. In making this determination, the Secretary may consider any comments submitted by the SWDB in response to the appeal. The Secretary will issue a written decision to the Governor and the appellant.

Action: Please ensure that local chief elected officials, board members, and appropriate staff receive and understand this policy.

Inquiries: Questions may be directed to PolnPro@dew.sc.gov.

Nina Stagers

Nina Stagers, Assistant Executive Director
Workforce Development Division

Attachments and Links:

Local Workforce Development Area Subsequent Designation Petition

- Attachment A: Local Workforce Development Board Membership Form
- Attachment B: Designation of Grant Recipient/Fiscal Agent

[State Instruction 14-03, Change 1, State Criteria for Local Workforce Development Boards](#)