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Henry McMaster  
Governor

G. Daniel Ellzey  
Executive Director

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## STATE INSTRUCTION NUMBER 20-01

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

**Subject:** Local Workforce Development Area Subsequent Designation and Local Workforce Development Board Subsequent Certification

**Issuance Date:** December 4, 2020

**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).

**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
- State Instruction 14-03, Change 1, *State Criteria for WIOA Local Workforce Development Boards*

**Background:** The Workforce Innovation and Opportunity Act (WIOA) is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. 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. Within LWDAs, LWDBs oversee local area functions, including strategic planning, operational alignment and service delivery design, and LWDAs serve as jurisdictions where partners align resources at a sub-state level to design and implement overall service delivery strategies. WIOA § 106(b) requires that the Governor 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.

The Governor must designate LWDA by considering the extent to which the proposed LWDA:

- Are consistent with labor market areas in the state;
- Have common economic development areas; and
- Have available the federal and non-federal resources necessary to effectively administer activities and provisions required by WIOA, including whether the areas have the 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 the following criteria are met for the two most recent program years of initial designation:

- The local area performed successfully;

Per 20 CFR § 679.260(b)(2), the term “performed successfully” means the LWDA met all six of the WIOA indicators of performance as described at 20 CFR § 677.155(a)(1)(i)-(iv) for the most recently completed program years.

- The local area sustained fiscal integrity; and

Per 20 CFR § 679.260(c), the term “sustained fiscal integrity” means that 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.

- In the case of a local area in a planning region, 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). See State Instruction 14-03, Change 1, *State Criteria for WIOA Local Workforce Development Boards*. Per WIOA §

107(c)(2), the Governor shall, once every two years, certify one LWDB for each LWDA in the state. Such certification shall be based on criteria established in WIOA § 107(b).

Subsequent certification shall be based on WIOA § 107(b) and the 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 and achieve sustained fiscal integrity, as defined above.

Failure to achieve certification shall result in appointment by the CEO(s) of the LWDA and certification of a new LWDB for the LWDA in accordance with State Instruction 14-03, Change 1, *State Criteria for WIOA Local Workforce Development Boards*.

Note: the Governor must decertify a LWDB at any time after providing notice and an opportunity for comment, for fraud or abuse, or failure to carry out the functions specified for the LWDB 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, included as an attachment to this document, must be used to request LWDA subsequent designation. The petition will include:

- A consortium agreement (if applicable);
- For existing workforce areas, certification that the area performed successfully and sustained fiscal integrity for the preceding two-year period;
- A list of LWDB members, to include composition categories and contact information;
- Identification of grant recipient/fiscal agent and a signature of lead official;
- Signatures of CEOs from petitioning counties;
- Documentation that public input was solicited and 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; and
- 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 this document.

### **Timeline**

- All formal LWDA Subsequent Designation Petitions must be submitted to [workforcesupport@dew.sc.gov](mailto:workforcesupport@dew.sc.gov) by February 15, 2021.
- Petitions will be reviewed by the executive committee of the SWDB and voted on by the full board. LWDA recommendations will then be made to the Governor.
- Final subsequent designation of LWDA's for the program years 2020 and 2021 will be made by June 30, 2021.

### **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 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:

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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.

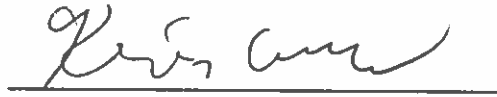
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**Inquiries:** Questions may be directed to [PolnPro@dew.sc.gov](mailto:PolnPro@dew.sc.gov).



Kevin Cummings, Director

Technical Services, Policies and Reporting

**Attachments:**

- 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

State of South Carolina  
Workforce Innovation and Opportunity Act

**Local Workforce Development Area Subsequent Designation Petition**

This Petition must be used by any entity requesting subsequent designation as a Local Workforce Development Area pursuant to Public Law 113-128, the Workforce Innovation and Opportunity Act (WIOA).

**Section I. Petitioning Jurisdiction(s)**

A. Designation as a Workforce Development Area is requested for the following county(ies).

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B. Specify the name of the proposed Workforce Development Area.

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C. List the names of the chief elected officials (CEOs) representing the units of general local government on whose behalf this petition is being submitted.

<u>County</u>	<u>Name</u>
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<hr/>	<hr/>
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D. List the name, title, mailing address, telephone number, fax number and e-mail address of the primary contact person regarding this petition.

Name:	
Title:	
Mailing Address:	
Telephone Number:	
Fax Number:	
E-Mail Address:	

**Section II. Consortium Agreement**

If the local area includes more than one unit of general local government, the chief elected officials must negotiate a consortium agreement in order to establish a workforce development area to deliver WIOA funded services. Such agreement must be included as an attachment to this subsequent designation petition.

**Section III. Existing Workforce Area**

A. In the tables below, provide the final WIOA performance data for each of the last two (2) consecutive years.



# Attachment A

## WIOA Local Workforce Development Board Membership

Total Seats                      Seats Occupied                      Seats Vacant

Business (per Section 107(b)(2)(A))				
No.	Name	Affiliation and Title	Contact Phone and Email	Address
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				

Not Less Than 20% (per Section 107(b)(2)(B))				
No.	Name	Affiliation and Title	Contact Phone and Email	Address
1				
2				
3				

4				
5				
6				
7				
8				

**Education & Training (per Section 107(b)(2)(C))**

No.	Name	Affiliation and Title	Contact Phone and Email	Address
1				
2				
3				
4				
5				

**Governmental, Economic, and Community Development (per Section 107(b)(2)(D))**

No.	Name	Affiliation and Title	Contact Phone and Email	Address
1				
2				
3				
4				
5				
6				

**Others as Chief-Elected Officials Determine Appropriate (per Section 107(b)(2)(E))**

No.	Name	Affiliation and Title	Contact Phone and Email	Address
1				
2				
3				

Denote multiple representation with an asterisk (\*).

Total Number of Seats Filled	
Number of Seats Filled Representing Business	
Percentage of Seats Filled Representing Business	
Number of Seats Filled Representing Not Less than 20%	
Percentage of Seats Filled Representing Not Less than 20%	
Number of Seats Filled Representing Education & Training	
Number of Seats Filled Representing Gov't, Economic & Comm. Dev.	
Number of Seats Filled Representing Others by Chief Elected Officials	

**Attachment B**

**(Enter name) Local Workforce Development Area**

**Designation of Grant Recipient/Fiscal Agent**

The Chief Elected Officials of the \_\_\_\_\_ *name* \_\_\_\_\_ Local Workforce Development Area hereby designate \_\_\_\_\_ *grant recipient/fiscal agent* \_\_\_\_\_ as the grant recipient and fiscal agent pursuant to the Workforce Innovation and Opportunity Act (WIOA).

While WIOA permits the local Chief Elected Officials (CEOs) to designate an entity to serve on their behalf as grant recipient and fiscal agent, the CEOs understand that this designation does not relieve them of their liability for any misuse of grant funds. The use of electronic signatures is permissible.

<u>County</u>	<u>Authorized Signature</u>	<u>Date</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

As the authorized signatory official of \_\_\_\_\_, \_\_\_\_\_ *name* \_\_\_\_\_ I accept the responsibilities as WIOA grant recipient and fiscal agent for the \_\_\_\_\_ *name* \_\_\_\_\_ Workforce Development Area.

_____	_____	_____
Name and Title	Signature	Date

**Attachment B**

<b>Program Year 2018 (July 1, 2018 – June 30, 2019)</b>			
<b>Performance Measure</b>	<b>Goal</b>	<b>Actual</b>	<b>Percent of Goal</b>
Youth Education and Employment Rate – Second Quarter After Exit Quarter			
Youth Education and Employment Rate – Fourth Quarter After Exit Quarter			
Youth Median Earnings	BASELINE		
Youth Credential Attainment Rate			
Youth Measurable Skill Gains	BASELINE		
Adult Employment Rate – Second Quarter After Exit Quarter			
Adult Employment Rate – Fourth Quarter After Exit Quarter			
Adult Median Earnings			
Adult Credential Attainment Rate			
Adult Measurable Skill Gains	BASELINE		
Dislocated Worker Employment Rate – Second Quarter After Exit Quarter			
Dislocated Worker Employment Rate – Fourth Quarter After Exit Quarter			
Dislocated Worker Median Earnings			
Dislocated Worker Credential Attainment Rate			
Dislocated Worker Measurable Skill Gains	BASELINE		

<b>Program Year 2019 (July 1, 2019 – June 30, 2020)</b>			
<b>Performance Measure</b>	<b>Goal</b>	<b>Actual</b>	<b>Percent of Goal</b>
Youth Education and Employment Rate – Second Quarter After Exit Quarter			
Youth Education and Employment Rate – Fourth Quarter After Exit Quarter			
Youth Median Earnings	BASELINE		
Youth Credential Attainment Rate			
Youth Measurable Skill Gains	BASELINE		
Adult Employment Rate – Second Quarter After Exit Quarter			
Adult Employment Rate – Fourth Quarter After Exit Quarter			
Adult Median Earnings			
Adult Credential Attainment Rate			
Adult Measurable Skill Gains	BASELINE		

Dislocated Worker Employment Rate – Second Quarter After Exit Quarter			
Dislocated Worker Employment Rate – Fourth Quarter After Exit Quarter			
Dislocated Worker Median Earnings			
Dislocated Worker Credential Attainment Rate			
Dislocated Worker Measurable Skill Gains	BASELINE		

For each measure, the US Department of Labor defines performance as follows:

- Meet = actual performance is above 50% of goal for each individual performance indicator
- Did not meet = actual performance is less than 50% of goal

If any measure was not met in either program year, address the reasons, corrective action measures taken, and current status.

B. Address fiscal integrity regarding funds provided under WIOA.

Has the Secretary made a formal determination, during either of the last 2 consecutive years, that WIOA funds provided to the area were misexpended due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration?

#### **Section IV. Local Board Information**

Using Attachment A, provide a list of local board members, to include composition categories and contact information.

#### **Section V. Grant Recipient/Fiscal Agent**

Using Attachment B, designate the grant recipient/fiscal agent for the area. Signature of the lead official is required. Signatures of each chief elected official are also required. The use of electronic signatures is permissible.

#### **Section VI. Public Comment**

Attach documentation that public input was solicited and provide all comments received.





Submit Petition to: [WorkforceSupport@dew.sc.gov](mailto:WorkforceSupport@dew.sc.gov)

Submit by: 5:00 p.m., February 15, 2020