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Henry McMaster  
Governor  
  
William H. Floyd, III  
Executive Director

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## STATE INSTRUCTION NUMBER 20-01, Change 2

**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:** August 30, 2024

**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 2 Revision:** This revision provides submission dates for Program Year 2024. Additionally, new Chief Elected Officials (CEOs) must review/update consortium agreements to comply with 20 CFR § 683.710.

**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), 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 CEOs (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.

#### *Review and Update of Consortium Agreements by New CEOs*

In compliance with 20 CFR § 683.710, consortium agreements must be reviewed and updated when there is a change in the CEOs that negotiated and executed the existing agreements. Therefore, new CEOs are required to review and update existing consortium agreements, if appropriate. If changes are necessary to the existing agreement, the new CEO(s) must update the content of the agreements, and all CEOs must sign the new agreement. If no content changes are needed to the existing agreement, the new CEO(s) must sign an addendum to the existing agreements. By signing this addendum to the consortium agreement, the new CEO(s) verifies that 1) they understand their responsibilities under the existing agreement, 2) they consent to comply with the agreement, and 3) they attest that the existing agreement has been reviewed and no changes are needed.

#### **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 CEO(s), the LWDB is required to inform the new CEO, in a timely manner, of their responsibilities and liabilities as well as the need to review and update any written agreements among the CEOs.

#### **Timeline**

- All formal LWDA Subsequent Designation Petitions must be submitted to [WorkforceSupport@dew.sc.gov](mailto:WorkforceSupport@dew.sc.gov) by October 31, 2024.
- A review of the petitions will be presented to the executive committee of the SWDB and voted on by the full SWDB. LWDA recommendations will be made to the Governor.
- Final subsequent designation of LWDA's for the program years 2024 and 2025 will be made by June 30, 2025.

## **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 WIOA § 106(b)(5), 20 CFR § 683.630(a), and the WIOA State Plan. 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 to the SWDB of the denial of a request for subsequent designation as a LWDA failed to result 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 WIOA 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 CEOs, board members, and appropriate staff receive and understand this policy.

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

  
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Nina Stagers, Assistant Executive Director  
Workforce Development Division

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 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>

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 CEOs 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.

Program Year 2023 (July 1, 2023 – June 30, 2024)							
Performance Measure		Employment Rate Q2	Employment Rate Q4	Median Earnings	Credential Rate	Measurable Skill Gains	Overall Program Score
Title I Adult	Goal						
	Actual						
	% of Goal						
Title I DW	Goal						
	Actual						
	% of Goal						
Title I Youth	Goal						
	Actual						
	% of Goal						
Overall Indicator Score							

Program Year 2022 (July 1, 2022 – June 30, 2023)							
Performance Measure		Employment Rate Q2	Employment Rate Q4	Median Earnings	Credential Rate	Measurable Skill Gains	Overall Program Score
Title I Adult	Goal						
	Actual						
	% of Goal						
Title I DW	Goal						
	Actual						
	% of Goal						
Title I Youth	Goal						
	Actual						
	% of Goal						
Overall Indicator Score							

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

- Meets performance =
  - Individual Indicator Score—50% of goal for each individual measure
  - Overall Indicator Score—90% of goal for overall individual measure
  - Overall Program Score—90% of goal for overall program performance
- Does not meet performance =
  - Individual Indicator Score—less than 50% of goal for an individual measure
  - Overall Indicator Score—less than 90% of overall individual measure
  - Overall Program Score—less than 90% of overall program performance

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 two 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 CEO 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.

## Section VII. Assurances and Signatures

### A. Assurances

The CEOs making this designation request assure the following:

- They are duly authorized to participate by and on behalf of the governing bodies of the counties specified and documentation of this authorization can be provided.
- They will comply with the requirements of the Act, all federal regulations implementing the Act, any revisions or amendments thereto; state issued instructions; and any and all applicable federal, state, or local rules and regulations.
- They accept liability for any misuse of grant funds.

### B. Signatures—The use of electronic signatures is permissible.

I/We, the undersigned CEO(s) of the petitioning county(ies), do hereby submit this formal designation petition under the conditions delineated herein and with the assurances specified herein.

County

Signature

Date

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Submit Petition to [WorkforceSupport@dew.sc.gov](mailto:WorkforceSupport@dew.sc.gov) by 5:00 p.m., October 31, 2024.

## WIOA Local Workforce Development Board Membership

Total Seats: \_\_\_\_\_

Seats Occupied: \_\_\_\_\_

Seats Vacant: \_\_\_\_\_

<b>Business (per Section 107(b)(2)(A))</b>				
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:	

**(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