New York State Department of Labor
W. Averell Harriman State Office Campus
Building 12, Room 440, Albany, NY 12240
www.labor.ny.gov

Workforce Development System
Technical Advisory #15-6.1
October 06, 2015

To: **Workforce Development Community**

Subject: **Policy and Processes regarding Initial Certification and Biennial Recertification of Local Workforce Development Boards**

Purpose

The purpose of this Workforce Development System Technical Advisory is to establish New York State Department of Labor (NYSDOL) policy and procedure necessary to administer the Workforce Innovation and Opportunity Act of 2014 (WIOA).

Action

After consultation with the Local Workforce Development Area (LWDA) Chief Elected Official (CEO) and the current Local Workforce Investment Board (LWIB), LWIB Directors must submit initial board certification documents via email no later than June 15, 2015.

NYSDOL will receive board certification documents on behalf of the Governor and verify them for compliance with WIOA board membership requirements. Those boards that have been verified will be initially certified as Local Workforce Development Boards (LWDBs) by NYSDOL on behalf of the Governor. Those boards that cannot be verified will not be initially certified, and must take steps to adjust board membership accordingly. NYSDOL will notify Board Directors, CEOs, and Board Chairs of the result of this compliance verification shortly after receipt of board certification documents. LWDB rosters will be posted publicly on the NYSDOL website.

Beginning on January 1, 2017 and thereafter on a biennial basis, subsequent certification criteria detailed below will be evaluated, and LWDB Directors may be required to submit further documentation as directed by NYSDOL to maintain certification.

Local areas will also be responsible for maintaining the accuracy of the local board roster by communicating any changes to NYSDOL in a timely manner. Directors should

submit updated board membership documents as soon as board members have left or been newly appointed to the LWDB.

Policy

The Governor is required to certify LWDBs in every LWDA within the state at least once every two years. Boards unable to provide evidence of compliance with certification criteria will not be certified and may not conduct business to perform required functions other than to move toward compliance with certification criteria. Should the LWDB remain uncertified for 180 days or more, NYSDOL reserves the authority to require a corrective action plan and/or the appointment of another local board for the LWDA.

Initial LWDB Certification

Boards will be initially certified as LWDBs once local board membership composition is WIOA compliant. Boards providing evidence of WIOA compliance by June 15, 2015 will be certified by NYSDOL on the Governor's behalf prior to July 1, 2015. Boards that do not present verifiable compliance documentation by this date will be certified once they provide evidence of compliance.

LWDB membership requirements are summarized in Attachment A – Local Board Membership Criteria. In general, the majority of an LWDB's members must represent business and at least 20% of the members must represent the interests of the local workforce, with the remainder of members representing training providers, education, and economic development entities. In New York State, the Governor has established the following additional requirements and guidelines for CEOs in the appointment of LWDB members:

- Business members must represent businesses having at least two employees, consistent with the requirement that represented businesses have employment opportunities including high quality, work relevant training and development in in-demand industry sectors or occupations. Sole proprietorships would not be expected to provide significant employment opportunities.
- NYSDOL will designate the required governmental member on each local board representing Wagner-Peyser programs, and take steps to ensure their active board participation.
- Only one representative per business entity should be appointed. This guideline is established to promote diversity of business representation on each local board, but may be reconsidered for local areas that can provide strong justification otherwise.
- The State encourages CEOs to appoint business members that align with the Regional Economic Development Council's (REDC) target industries and/or who are REDC members. Cross membership will foster and support regional planning goals.

Please note that individuals may fulfill multiple representation categories on LWDBs, and the appointment of such individuals may be an effective method of reducing LWDB size while maintaining necessary board representation. CEOs wishing to appoint such individuals must ensure they meet all of the criteria of each representation category.

Member nominations for business, certain workforce members, higher education providers (if more than one exist in the local area) and some Title II Adult Education providers must be made pursuant to a nomination by the corresponding local counterpart(s) (e.g., an industry organization).

WIOA also contains a provision for the "grandfathering "of some LWIBs as LWDBs. However, Training and Employment Notice (TEN) 10-15, dated September 17, 2015 clarifies that the "alternative entity" to be grandfathered in as the LWDB must have been in existence on the day before the enactment of WIA, not WIOA.

USDOL's stated intent is to avoid the retention of local area boards that had been authorized under WIA but which might not have incorporated WIOAs intended reforms.

Subsequent Board Certification

Subsequent certification of LWDBs will be performed thereafter on a biennial basis beginning on January 1, 2017. In addition to board membership, subsequent certification criteria will include: successful performance, sustained fiscal integrity and maintenance of a current CEO agreement as detailed in TA # 15–5 Initial Designation of Local Areas under the Workforce Innovation and Opportunity Act (WIOA).

Procedures

LWDB Directors must submit documents via email (LWDB@Labor.ny.gov) to indicate compliance with certification criteria. The subject line of the email shall read "2015 LWDB Documentation," and the LWDA CEOs and current LWDB Chair must be copied on the transmittal. A template for the board membership document is included as Attachment B to this technical advisory.

Initial Board Certification

LWDB Directors should list board membership on the template provided and have it signed by the LWDA CEOs and the Chair of the current LWIB. The first page of Attachment B is a master list that will help to calculate minimum membership requirements under WIOA. Following the master list, submissions should include a detail page for each member, as well as the signed attestation from the current Board Chair and the CEO provided as Attachment C. Those seeking to "grandfather" LWIBs that had already achieved WIOA compliance as of July 22, 2014 should indicate so in their email and check appropriate boxes on Attachment B.

NYSDOL will review submitted board membership documents and approve certifications on behalf of the Governor for LWDBs that comply with membership criteria provided in Attachment A. If the LWDB does not meet board composition criteria, it will not be certified and the LWDB will be required to take appropriate action to bring membership into compliance.

Subsequent Board Certification

Beginning January 1, 2017, NYSDOL will assess through an administrative review of board membership changes, annual performance assessments, submitted CEO agreements and NYSDOL fiscal monitoring staff reports to determine if each LWDB complies with:

- Board composition;
- Successful performance;
- Sustained fiscal integrity; and
- Maintenance of a current CEO agreement.

LWDBs in compliance with all four criteria will be certified by NYSDOL on behalf of the Governor.

- If the board composition is not in compliance, the board will no longer be certified, will not be able to conduct business and may only act to address membership compliance.
- If the board does not have successful common measures performance, NYSDOL will not recertify the board until it submits and gains approval of a performance improvement plan.
- If the board has not sustained fiscal integrity, it will not be recertified until corrective actions necessary to achieve fiscal integrity to NYSDOL's satisfaction.
- If the board does not have a current CEO agreement, it will not be certified until a current, signed agreement is submitted.

Any LWDB which is not in compliance with any of these four criteria will be duly notified by NYSDOL at least 90 days prior to the date of recertification, and will work with LWDBs to take steps to avoid losing board certification.

Ongoing Board Membership Updates

In order that NYSDOL be kept aware of any changes to LWDB constituency, continuing WIOA compliance, and to enable updates of public posting of local board membership, Board Directors must submit any changes resulting from member resignations, term expirations, or new appointments. Board membership changes should be submitted via email (LWDB@Labor.ny.gov) with copies sent to the Board Chair and CEO, explaining Board membership changes clearly in the body of the message. Directors should use Attachment B to summarize their new LWDB membership including a detail page for any new members.

Background

The Governor is required to initially certify each New York State LWDB as of July 1, 2015 and recertify each LWDB at least every two years thereafter.

References

- Workforce Innovation and Opportunity Act of 2014 Technical Advisory # 15-5: Initial Designation of Local Areas under the Workforce Innovation and Opportunity Act (WIOA) http://labor.ny.gov/workforcenypartners/ta/TA15-5-LWDA-Designation-Under-WIOA.pdf

- Workforce Innovation and Opportunity Act of 2014 Technical Advisory # 13-10: New York State Policy on Program Year 2013 Common Measures/Customer Service indicator for Local Workforce Investment Area Performance for the Workforce Investment Act Title 1B Program and the Wagner-Peyser Act Program: http://www.labor.ny.gov/workforcenypartners/ta/TA13-10.pdf
- Technical Advisory #01-19.1: Governance Issues for Local Workforce Investment Boards: http://www.labor.ny.gov/workforcenypartners/ta/TA01191LocalGovernance.pdf
- Regional Economic Development Council website: www.regionalcouncils.ny.gov
- NYSDOL Local Board Membership Criteria: http://labor.ny.gov/workforcenypartners/ta/TA15-6-WIOA-LWDB-Criteria-AttA.pdf
- http://wdr.doleta.gov/directives/attach/TEN/TEN_10-15_Acc.pdf

Inquiries

Questions regarding Initial Certification and Biennial Recertification for Local Workforce Development Boards may be directed to: LWDB@labor.ny.gov

Attachments

Attachment A: Local Board Membership Criteria

Attachment B: LWDB Certification and Membership Roster

Attachment C: Board Chair and CEO Attestation