

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



February 26, 2021

Ms. Rhonda Suda
Chief Executive Officer
Southwest Wisconsin Workforce Development Board, Inc.
P.O. Box 656
Platteville, WI 53818

Dear Ms. Suda:

The U.S. Department of Labor (Department or USDOL), Employment and Training Administration (ETA) received an appeal on October 30, 2020, from the Southwest Wisconsin Workforce Development Board (SWWDB) regarding a purported error in the State of Wisconsin's Workforce Innovation and Opportunity Act (WIOA) formula allocation.

In your appeal, you stated that you believed SWWDB was denied \$2 million of WIOA formula funds stemming from the use of an incorrect formula and sought recompense from the State. Specifically, you contended the following:

- In the spring of 2016, the Wisconsin Department of Workforce Development (DWD) changed the area of substantial unemployment formula factor threshold, which was in conflict with the State's WIOA State Plan, Training and Employment Guidance Letter No. 27-16, and 20 CFR 683.120;
- DWD made the aforementioned change without consultation with local workforce development boards and chief local elected officials;
- SWWDB review revealed that the State made the change in 2015, and, thus, the error applied to SWWDB's allotments from 2015 to 2019; and
- The hold harmless provision artificially decreases the SWWDB allocation for years into the future.

Scope of USDOL Review

20 CFR 683.610 authorizes the Secretary of Labor (Secretary) to investigate allegations arising through the grievance procedures described in 20 CFR 683.600 when:

- A decision on a grievance or complaint under § 683.600(d) has not been reached within 60 days of receipt of the grievance or complaint or within 60 days of receipt of the request for appeal of a local level grievance and either party appeals to the Secretary; or
- A decision on a grievance or complaint under § 683.600(d) has been reached and the party to which such decision is adverse appeals to the Secretary.

The Secretary must make a final decision on an appeal under paragraph (a) of this section no later than 120 days after receiving the appeal.

Determination

The Department has considered the evidence and has determined that the State did follow its internal appeals policy. The Department notes that the State did not use excess unemployment data correctly for its WIOA Title I within-state allocation formula during the timeframe described in the appeal. The State originally acknowledged its error in May of 2019 and adjusted its within-state allocation formula accordingly for Program Year (PY) 2019 and since. The Department has determined that since Wisconsin has confirmed that the PY 2019 and PY 2020 within-state allocations included corrections for the error and other local areas have spent much of their PY 2018 allocations, it is not feasible for Wisconsin to re-calculate those funds. The Department will not require any retroactive compensatory actions by the State. In the State's determination letter, the Department encouraged the State to consider unmet needs in the local area and determine how to use existing funding to address those needs.

Please also note that, upon receipt of this appeal, the Department conducted an additional review of the State's WIOA Title I allocation formula and, on January 29, 2021, met with the State to share a few minor adjustments that needed to be made to the calculation/rounding process. The Department has required the State to make these minor adjustments. These minor adjustments did not affect the allocation amounts to be distributed.

Therefore, the Department upholds the State's appeal determination, including the ruling by the administrative law judge consulted during the state-level appeal. The State must notify the local areas of any changes to formula allocations. The State must also include any formula changes in the WIOA State Plan modification in PY 2022. This is the Department's final determination on the appeal.

Sincerely,

 Digitally signed by
LAURA WATSON
Date: 2021.02.26
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Laura P. Watson
Administrator
Office of Grants Management

cc: Rose Zibert, Acting Administrator, ETA Chicago Regional Office