

 <p>POLICY</p>	<p>POLICY NAME: Workforce Innovation and Opportunity Act (WIOA) – Local Workforce Development Board (LWDB) Member Nomination Guidelines, Office of Employment and Training (OET/agency) Confirmation Process and Board Certification</p> <p>Policy Number: 15-001 Effective Date: March 31, 2017 [July 1, 2015] Contact: OET Division Director, 502-782-3147</p>
	<p>Applies /Of Interest To: Local Workforce Development Boards (LWDBs), LWDB Staff, Local Workforce Development Areas (LWDAs) staff, State Workforce Investment Board, Chief Elected Officials (CEOs) and Chief Local Elected Officials (CLEOs)</p>

Subject	Policy on Local Workforce Development Board Member Nominations and Appointments process, OET confirmation process, and Board Certification
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Purpose	This policy provides guidance and clarification to LWDBs regarding local board membership, OET board confirmation process and board certification.
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Definitions	<u>See Attachment 1 for most relevant definitions relating to this topic.</u>
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Background	Replaces Workforce Investment Act (WIA) guidance, policies and processes relating to Local Workforce Investment Boards (LWIBs) - referred to as “Local Workforce Development Boards” in WIOA.
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Definitions	<u>See Attachment 1 for most relevant definitions relating to this topic.</u>
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Attachments:	Attachment 1, A and B
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Policy	<p><u>LOCAL WORKFORCE DEVELOPMENT BOARDS (Sec. 107) and 20 CFR 679 Subpart C.</u></p> <p><u>ESTABLISHMENT</u> (WIOA Sec. 107 (a)); Except as provided in subsection (c)(2)(A), there shall be established, and certified by the Governor of the State, a local workforce development board in each local area of a State to carry out the functions described in subsection (d) (and any functions specified for the local board under this Act or the provisions establishing a core program) for such area.</p> <p><u>MEMBERSHIP</u> (WIOA Sec. 107(b)(1) (2) (3) (4)(5) (6)), <u>20 CFR 679.320</u></p> <p><u>(1) STATE CRITERIA.</u>— The Governor, in partnership with the State board, shall establish criteria for use by chief elected officials in the</p>
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local areas for appointment of members of the local boards in such local areas in accordance with the requirements of paragraph (2).

(2) COMPOSITION.—Such criteria shall require that, at a minimum—

(A) BUSINESS REPRESENTATIVES- A majority [51%] of the members of each local board shall be representatives of business in the local area, who—(i) are owners of businesses, chief executives or operating officers of businesses, or other business executives or employers with optimum policymaking or hiring authority; (ii) represent businesses, including small businesses, or organizations representing businesses described in this clause, that provide employment opportunities that, at a minimum, include high-quality, work-relevant training and development in in-demand industry sectors or occupations in the local area; and (iii) are appointed from among individuals nominated by local business organizations and business trade associations.

Additional OET Guidance/Clarification

- Representatives from private not-for-profit entities that operate as businesses and are employers may be considered business sector members on the local WDB. The not-for-profit entities should align with the key industry sectors for the state and the local area, as identified in the WDB local plan.
- Representatives from proprietary schools cannot be considered a business sector member.
- **MINIMUM** number of business representatives: Ten (10). At a minimum, two (2) members must represent small business as defined by the U.S. Small Business Administration. 20 CFR 679.320(b)

(B) WORKFORCE REPRESENTATIVES (Labor, Community Based Organization and Youth Serving Organizations) - Not less than 20 percent of the members of each local board shall be representatives of the workforce within the local area, who—(i) shall include two (2) or more representatives of labor organizations (for a local area in which employees are represented by labor organizations), who have been nominated by local labor federations, or (for a local area in which no employees are represented by such organizations) other representatives of employees; (ii) shall include at least one (1) [a] representative, who shall be a member of a labor organization or a training director, from a joint labor-management apprenticeship program, or if no such joint program exists in the area, such a representative of an apprenticeship program in the area, if such a program exists; (iii) may include representatives of community based organizations that have demonstrated experience and expertise in addressing the employment needs of individuals with barriers to employment, including organizations that serve veterans or that

provide or support competitive integrated employment for individuals with disabilities; and (iv) may include representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth. [;]

Additional OET Guidance/Clarification

- **MINIMUM** number of workforce representatives: Four (4)
- Where possible, align membership with designated state and/or local sectors.

(C) EDUCATION AND TRAINING REPRESENTATIVES - Each local board shall include representatives of entities administering education and training activities in the local area, who— (i) shall include at least one (1) [a] representative of eligible providers administering adult education and literacy activities under title II; (ii) shall include at least one (1) [a] representative of institutions of higher education providing workforce investment activities (including community colleges); (iii) may include representatives of local educational agencies, and of community-based organizations with demonstrated experience and expertise in addressing the education or training needs of individuals with barriers to employment. [;]

Additional OET Guidance/Clarification

- **MINIMUM** number of education and training representatives: Two (2)

(D) GOVERNMENT AND ECONOMIC DEVELOPMENT

REPRESENTATIVES - Each local board shall include representatives of governmental and economic and community development entities serving the local area, who—(i) shall include at least one (1) [a] representative of economic and community development entities; (ii) shall include at least one (1) [an appropriate] representative from the State employment service office under the Wagner-Peyser Act (29 U.S.C. 49 et seq.) serving the local area; (iii) shall include at least one (1) [an appropriate] representative of the programs carried out under Title [title] I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.), other than section 112 or part C of that title (29 U.S.C. 732, 741), serving the local area; (iv) may include representatives of agencies or entities administering programs serving the local area relating to transportation, housing, and public assistance; and (v) may include representatives of philanthropic organizations serving the local area.

Additional OET Guidance/Clarification

- **MINIMUM** number of government and economic development representatives: Three (3)

E) OTHER MEMBERS - Each local board may include such other individuals or representatives of entities as the chief elected official in the local area may determine to be appropriate.

(3) CHAIRPERSON.—The members of the local board shall elect a chairperson for the local board from among the representatives described in paragraph (2)(A) [BUSINESS]

4) STANDING COMMITTEES —

A) IN GENERAL— The local board may designate and direct the activities of standing committees to provide information and to assist the local board in carrying out activities under this section. Such standing committees shall be chaired by a member of the local board, may include other members of the local board, and shall include other individuals appointed by the local board who are not members of the local board and who the local board determines have appropriate experience and expertise. At a minimum, the local board may designate each of the following: (i) A standing committee to provide information and assist with operational and other issues relating to the one-stop delivery system, which may include members that are representatives of the one-stop partners; [-] (ii) A standing committee to provide information and to assist with planning, operational, and other issues relating to the provision of services to youth, which shall include community- based organizations with a demonstrated record of success in serving eligible youth; [-] (iii) A standing committee to provide information and to assist with operational and other issues relating to the provision of services to individuals with disabilities, including issues relating to compliance with section 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) regarding providing programmatic and physical access to the services, programs, and activities of the one-stop delivery system, as well as appropriate training for staff on providing supports for or accommodations to, and finding employment opportunities for, individuals with disabilities.

(B) ADDITIONAL COMMITTEES.—The local board may designate standing committees in addition to the standing committees specified in subparagraph (A).

Additional – OET Guidance/Clarification

- Committees are encouraged to include non-board members.
- Committees should be private-sector led.

(C) DESIGNATION OF ENTITY.—Nothing in this paragraph shall be construed to prohibit the designation of an existing (as of the date of

enactment of this Act) entity, such as an effective youth council, to fulfill the requirements of this paragraph as long as the entity meets the requirements of this paragraph.

(5) AUTHORITY OF BOARD MEMBERS.—Members of the board that represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities. The members of the board shall represent diverse geographic areas within the local area.

(6) SPECIAL RULE.—If there are multiple eligible providers serving the local area by administering adult education and literacy activities under title II, or multiple institutions of higher education serving the local area by providing workforce investment activities, each representative on the local board described in clause (i) or (ii) of paragraph (2)(C), respectively, shall be appointed from among individuals nominated by local providers representing such providers or institutions, respectively.

Additional – OET Guidance/Clarification

1) Quorum - A quorum shall be defined as :

A simple majority (51%) of members, excluding vacancies AND of [Of] those members in attendance, [no fewer than] 51% or more shall be [are] a combination of business and workforce representatives.

2) Appointments – LWDB member appointments must be signed by the appointing CLEO and submitted to the Administrative Entity. (Attachment A)

3) Change in Status – Acknowledgement that LWDB members who no longer hold the position or status that made them eligible Local Board members must resign or be removed by the CLEOs immediately as a representative of that entity; i.e. no longer work in the private sector, or no longer with an educational institution, etc. [;]

4) Mid-Term Appointment – LWDB members replacing out-going members mid-term ~~[will]~~ serve the remainder of the out-going member term.

5) Vacancies - LWDB vacancies must be filled within a reasonable amount of time of the vacancy as determined by the LWDA, but no later than 90 days from occurrence. The CLEO in a LWDA is authorized to make all reappointments of members. Reappointments must be made within a reasonable amount of time of the term expiration, but no later than 90 days. Any action taken by a LWDB, with a vacancy or term expiration beyond the time period described in the LWDB by laws or later than the 90 days per this policy shall be void unless the LWDB has an approved waiver from the Office of Employment and Training prior to the LWDB meeting. Waivers are to be requested in writing to the Division Director of Workforce and Employment Services, Office of Employment and Training with an explanation of why a vacancy was not filled in the defined timeframe and a description of the process

underway to fill the vacancy.

6) Removal - LWDB members must be removed by the CLEO(s) [~~CLEO~~] if any of the following occurs: documented violation of conflict of interest, failure to meet LWDB member representation requirements defined in the WIOA and this policy, or documented proof of fraud and/or abuse. LWDB members may be removed for other factors outlined in the LWDB bylaws such as attendance. OET strongly encourages LWDBs to establish and enforce attendance guidelines for its members. The bylaws must define the specific criteria that will be used to establish just cause for such removal and the process that will be required to document proof, and the steps regarding filing an appeal and arbitration.

7) Proxy - If a member of a local board is unable to attend a meeting and wishes to send a proxy, the [~~that~~] proxy must be from the same category of representation/membership as the member.

APPOINTMENT AND CERTIFICATION OF BOARD – (WIOA Sec. 107 (c) and 20 CFR 679.350)

(1) APPOINTMENT OF BOARD MEMBERS AND ASSIGNMENT OF RESPONSIBILITIES.—

(A) IN GENERAL.—The chief elected official in a local area is authorized to appoint the members of the local board for such area, in accordance with the State criteria established under subsection (b) [MEMBERSHIP].

(B) MULTIPLE UNITS OF LOCAL GOVERNMENT IN AREA.—(i) IN GENERAL.—In a case in which a local area includes more than 1 unit of general local government, the chief elected officials of such units may execute an agreement that specifies the respective roles of the individual chief elected officials— (I) in the appointment of the members of the local board from the individuals nominated or recommended to be such members in accordance with the criteria established under subsection (b); and (II) in carrying out any other responsibilities assigned to such officials under this title. (ii) LACK OF AGREEMENT.—If, after a reasonable effort, the chief elected officials are unable to reach agreement as provided under clause (i), the Governor may appoint the members of the local board from individuals so nominated or recommended.

(C) CONCENTRATED EMPLOYMENT PROGRAMS.—In the case of an area that was designated as a local area in accordance with section 116(a)(2)(B) of the Workforce Investment Act of 1998 (as in effect on the day before the date of enactment of this Act), and that remains a local area on that date, the governing body of the concentrated employment program involved shall act in consultation with the chief elected official in the local area to appoint members of the local board, in accordance with the State criteria established under subsection (b), and to carry out any other responsibility relating to workforce investment activities assigned to such official under this Act.

(2) CERTIFICATION

(A) IN GENERAL.—The Governor shall, once every two years, certify one local board for each local area in the State.

(B) CRITERIA.—Such certification shall be based on criteria established under subsection (b), and for a second or subsequent certification, the extent to which the local board has ensured that workforce investment activities carried out in the local area have enabled the local area to meet the corresponding performance accountability measures and achieve sustained fiscal integrity, as defined in section 106(e)(2) and have met the requirements of 20 CFR 679.310.

(C) FAILURE TO ACHIEVE CERTIFICATION.—Failure of a local board to achieve certification shall result in appointment and certification of a new local board for the local area pursuant to the process described in paragraph (1) and this paragraph.

(3) DECERTIFICATION

(A) FRAUD, ABUSE, FAILURE TO CARRY OUT FUNCTIONS.— Notwithstanding paragraph (2), the Governor shall have the authority to decertify a local board at any time after providing notice and an opportunity for comment, for— (i) fraud or abuse; or (ii) failure to carry out the functions specified for the local board in subsection (d).

(B) NONPERFORMANCE.—Notwithstanding paragraph (2), the Governor may decertify a local board if a local area fails to meet the local performance accountability measures for such local area in accordance with section 116(c) and 20 CFR 679.370 for 2 consecutive program years.

(C) REORGANIZATION PLAN.—If the Governor decertifies a local board for a local area under subparagraph (A) or (B), the Governor may require that a new local board be appointed and certified for the local area pursuant to a reorganization plan developed by the Governor, in consultation with the chief elected official in the local area and in accordance with the criteria established under subsection (b).

FUNCTIONS OF LOCAL BOARD (WIOA Sec. 107 (d) and 20 CFR 679.370)

Consistent with Section [section] 108 [LOCAL PLAN] and 20 CFR 679.370, the functions of the local board shall include the following: (Details for each function listed below are in Sec. 107 (d))

1. Local Plan
2. Workforce Research and Regional Labor Market Analysis
3. Convening, Brokering, Leveraging
4. Employer Engagement
5. Career Pathways Development
6. Proven and Promising Practices
7. Technology
8. Program Oversight

- 9. Negotiation of Local Performance Accountability Measures
- 10. Selection of Operators and Providers
- 11. Coordination with Education Providers
- 12. Budget and Administration
- 13. Accessibility for Individuals with Disabilities

Additional – OET Guidance/Clarification

- ~~The by-laws of LWDBs must include [By-laws to include:]~~ LWDB and CLEO agreements with the fiscal agent or grant subrecipient regarding [on] payment processes and procedures.
- LWDBs must establish by-laws reflecting a regional focus per WIOA guidelines.

SUNSHINE PROVISION (WIOA Sec. 107 (e) and 20 CFR 679.390)

The local board shall make available to the public, on a regular basis through electronic means and open meetings, information regarding the activities of the local board, including information regarding the local plan prior to submission of the plan, and regarding membership, the designation and certification of one-stop operators, and the award of grants or contracts to eligible providers of youth workforce investment activities, and on request, minutes of formal meetings of the local board.

STAFF (WIOA Sec. 107 (f) and 20 CFR 679.400)

(1) IN GENERAL.—The local board may hire a director and other staff to assist in carrying out the functions described in subsection (d) using funds available under sections 128(b) and 133(b) as described in section 128(b)(4).

(2) QUALIFICATIONS.—The local board shall establish and apply a set of objective qualifications for the position of director that ensures that the individual selected has the requisite knowledge, skills, and abilities, to meet identified benchmarks and to assist in effectively carrying out the functions of the local board.

(3) LIMITATION ON RATE.—The director and staff described in paragraph (1) shall be subject to the limitations on the payment of salaries and bonuses described in section 194(15).

LIMITATIONS (WIOA Sec. 107 (g) and 20 CFR 679.410(c))

(1) TRAINING SERVICES.

(A) IN GENERAL.—No local board may provide training services.

(2) CAREER SERVICES; DESIGNATION OR CERTIFICATION AS ONE-STOP OPERATORS. 20 CFR 679.410(a) and (b)

—A local board may provide career services through a one-stop delivery system or be designated or certified as a one-stop operator

only with the agreement of the chief elected official in the local area and the Governor.

Additional – OET Guidance/Clarification , TEGL 15-16 and 20 CFR 679.430

To secure the Governor’s agreement, the local board must:

- have been selected as the One-Stop Operator and/or Career Services Provider through a competitive procurement process facilitated by a state agency or private sector organization. The Governor must approve the entity that facilitates the competitive procurement process;
- develop a written agreement, to be submitted to the State, with the Local Workforce Development Board and the CLEO(s) to clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, the Uniform Guidance, and conflict of interest policies of both the State and the organization or entity performing multiple functions;
- [~~conduct a competitive procurement process facilitated by the Department of Workforce Investment for the provision of career services or designation/certification as the one-stop operator;~~]
- use a process and Request for Proposal (RFP) [RFP] that has been reviewed and approved by the Department of Workforce Investment;
- be identified as the highest scorer at the completion of the process; and
- in cases where the local board has previously provided services, have met performance accountability measures and achieved sustained fiscal integrity.

(3) LIMITATION ON AUTHORITY.—Nothing in this Act shall be construed to provide a local board with the authority to mandate curricula for schools.

CONFLICT OF INTEREST (WIOA Sec. 107 (h) , TEGL 15-16 and 20 CFR 679.430)

A member of a local board, or a member of a standing committee, may not (1) vote on a matter under consideration by the local board—(A) regarding the provision of services by such member (or by an entity that such member represents); or (B) that would provide direct financial benefit to such member or the immediate family of such member; or (2) engage in any other activity determined by the Governor to constitute a conflict of interest as specified in the State Plan.

A conflict of interest also is present when a member of an entity that

	<p><u>issues an RFP or that member’s relative as defined in KRS 11A.010(4) is or has been affiliated with a bidder that seeks designation as a fiscal agent, grant sub-recipient, One-Stop Operator and/or Career Services Provider. In that situation, the member of the RFP-issuing entity shall recuse themselves from the procurement and/or designation process. If, as a result of the recusal, there is less than a quorum for the RFP-issuing entity, the Governor shall select and designate the successful bidder.</u></p> <p>ALTERNATIVE ENTITY (WIOA Sec. 107 (i)) The State will not recognize or use any alternative local entity.</p> <p>OET PROCESSES AND PROCEDURES</p> <p>OET developed form, Attachment A, must be completed for all LWDB member nominations/appointments and be signed by the appointing CLEO and submitted to the Administrative Entity.</p> <p><u>OET Review and Confirmation Process</u> OET will review and confirm that the composition of each LWDB, including the nomination and appointment process, complies with the criteria outlined in Section 107 of the WIOA, <u>20 CFR 679.320</u>, and with OET policy. The composition of each LWDB will be evaluated annually during the local planning cycle/annual monitoring, reflected in the Appointment and Certification of Board (WIOA Sec. 107 (b) and (c)) and of this policy. This includes the review of:</p> <ul style="list-style-type: none"> • The OET created Nomination/Appointment form that must be completed for all LWDB member nominations/appointments, be signed by the appointing CLEO and submitted to the Administrative Entity. (Attachment A) • LWDB Roster Forms to be kept current and electronically updated as vacancies are filled, by a designated LWDA staff on the OET/”Team of Experts” website. (Attachment B)
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<p><u>Procedural References</u></p>	<p><u>Workforce Innovation and Opportunity Act (Pub. L. 113-128), Workforce Innovation and Opportunity Act Final Rule (81 FR 56072), Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions (81 FR 55791, CFR Part 200, Training and Employment Guidance Letter WIOA 15-16, and KRS 11A.010(4) [Available for OET monitoring]</u></p>
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