

COMMONWEALTH OF KENTUCKY  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
AND  
KENTUCKY WORKFORCE INNOVATION BOARD

**POLICY NAME:** WIOA Local Workforce Development Board Composition, Membership, Certification, and Functions

**POLICY NUMBER:** 15-001

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**APPLIES/OF INTEREST TO:** Local Workforce Development Boards (LWDBs), LWDB Staff, Local Workforce Development Areas (LWDAs) staff, Kentucky Workforce Innovation Board, and Chief Local Elected Officials (CLEOs)

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**PURPOSE:** This policy provides guidance and clarification regarding LWDB composition, membership, and functions as well as the board certification process.

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## **POLICY:**

### **I. Local Workforce Development Boards**

**Local Board Composition.** Section 107 of the Workforce Innovation and Opportunity Act (WIOA) states that “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 [required] functions ... The Governor, in partnership with the State board, shall establish criteria for use by chief elected officials in the local areas for appointment of members of the local boards in such local areas ....” WIOA Section 107(b)(2) provides the composition of the local boards, which is as follows:

- 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.

- NOTE: Representatives from private not-for-profit entities that operate as businesses and are employers may be considered business sector members on the local boards. The not-for-profit entities should align with the key industry sectors for the state and the local area. Representatives from proprietary schools cannot be considered a business sector member. The minimum number of business representatives on a local board is ten (10), and at least two (2) of those business representatives must represent small business. *See* 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) 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.

- NOTE: The minimum number of workforce representatives is four (4). Where possible, the local boards are strongly encouraged to align board membership with designated state or local job 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) representative of eligible providers administering adult education and literacy activities under title II; (ii) shall include at least one (1) representative of institutions of higher education providing workforce investment activities (including community colleges); and (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.

- NOTE: The minimum number of education and training representatives is two (2). The representative for adult education and literacy activities under Title II and the representative of institutions for higher education providing workforce investment activities (including community colleges) cannot be the same local board member.
- 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) representative of economic and community development entities; (ii) shall include at least one (1) 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) representative of the programs carried out under 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.
- NOTE: The minimum number of government and economic development representatives is 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.
- f. **DUAL REPRESENTATION:** A local board member cannot represent an entity in more than one (1) of the following three (3) categories: business representatives, workforce representatives, or government representatives. Except where a single government agency is responsible for multiple required programs, a member shall not represent more than one (1) entity within a category.
- g. **CHAIRPERSON:** The local board must elect a chairperson from among the business representatives on the board.

**Member Qualifications.** WIOA Section 107(b)(5) states that “[m]embers 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.”

**Standing Committees.** 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

WIOA. 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. WIOA Section 107(b)(4) describes various types of allowable standing committees, and Section 107(b)(4)(B) allows additional committees. DWD encourages local boards to create committees that include non-board members and are led by the private sector.

**Quorum.** DWD defines “quorum” as a simple majority (51%) of local board members, excluding vacancies, AND of those members in attendance, 51% or more shall be a combination of business and workforce representatives.

**Member Appointments / Vacancies / Removal / Proxy.** LWDB member appointments must be signed by the appointing CLEO and submitted to the DWD. 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 (e.g., no longer work in the private sector or no longer with an educational institution). LWDB members replacing out-going members mid-term will serve the remainder of the out-going member term. 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 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 bylaws or later than the 90 days per this policy shall be void unless the LWDB has an approved waiver from the DWD prior to the LWDB meeting. Waivers are to be requested in writing to the DWD 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.

LWDB members must be removed by the CLEO(s) if any of the following occurs: documented violation of conflict of interest, failure to meet LWDB member representation requirements, or documented proof of fraud and/or abuse. LWDB members may be removed for other reasons outlined in the LWDB bylaws such as attendance. The DWD 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 as well as any appeal process

If a member of a local board is unable to attend a meeting and wishes to send a proxy, the proxy must be from the same category of representation/membership as the member.

**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 enactment date of WIOA), and that remains a local area under WIOA, 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's criteria and to carry out any other responsibility relating to workforce investment activities assigned to such official under WIOA.

## **II. Appointment and Certification of Board**

**Appointment of Board Members and Assignment of Responsibilities.** The chief elected official in a local area is authorized to appoint the members of the local board for such area in accordance with WIOA Section 107(c).

**Board Certification Process.** In accordance with WIOA Section 107(c)(2), the Governor shall, once every two years, certify one local board for each local area in the State. 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 WIOA.

Certification shall be attained through a written and completed Local Workforce Development Board Certification Checklist provided by the LWDBs to the Kentucky Workforce Innovation Board (KWIB) that contains the required elements and documentation for certification. *See* Attachment A (Checklist). The Local Workforce Development Board Certification Checklist shall be provided to the KWIB no later than June 30th of odd-numbered years (i.e., 2023, 2025, 2027, 2029, 2031, etc.). The KWIB's staff will review the certification documentation provided by a local board and make a recommendation to the KWIB for review and action at the next KWIB meeting following receipt of documentation.

The Local Workforce Development Board Certification Checklist shall include the following:

1. A complete list of the local board members, the category of their respective representation (e.g., business, workforce, education, government), and any entities they represent;
2. Documentation showing a majority of the board members are business representatives;
3. Documentation showing that at a minimum, twenty (20) percent of members are representative of workforce within the local area; and
4. Documentation showing that the board members are representative of diverse geographical locations within the local area.

The KWIB and the LWDBs shall post the local boards' membership rosters on their respective websites within ten (10) business days when there is a change in membership.

**Decertification.** 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 WIOA. The Governor may also decertify a local board if a local area fails to meet the local performance accountability measures for such local area in accordance with WIOA Section 116(c) and 20 CFR 679.370 for 2 consecutive program years. If the Governor decertifies a local board for a local area, 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 in accordance with the criteria established under WIOA.

### **III. Functions of the Local Board**

Consistent with WIOA Section 108 and 20 CFR 679.370, the functions of the local boards shall include the following:

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

Details for each function listed above are located in WIOA Sec. 107(d).

**Bylaws.** LWDBs must establish bylaws reflecting a regional focus per WIOA guidelines. The bylaws must include LWDB and CLEO agreements with the fiscal agent or grant subrecipient regarding payment processes and procedures.

**Sunshine Provision.** The LWDBs shall make available to the public, on a regular basis through electronic means and open meetings, information regarding the activities of the local boards, 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.** The local board may hire a director and other staff to assist in carrying out the functions described in WIOA Sec. 107(d). 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. The board director and staff shall be subject to the limitations on the payment of salaries and bonuses described in WIOA Section 194(15).

**Limitations.** No local board may provide training services. 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. For the Governor to approve, the local board must:

1. 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;
2. develop a written agreement, to be submitted to the State, with the LWDB 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;
3. use a process and Request for Proposal (RFP) that has been reviewed and approved by the DWD;
4. be identified as the highest scorer at the completion of the process; and
5. in cases where the local board has previously provided services, have met performance accountability measures and achieved sustained fiscal integrity.

**Conflict of Interest.** 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 regarding the provision of services by such member (or by an entity that such member represents) or 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 Kentucky WIOA State Plan. A conflict of interest is also present when a member of an entity that 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.

**Alternative Entity.** The State will not recognize or use any alternative local entity.

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**REFERENCES:** WIOA Sec. 107 (b), (c), (d), (e), (f), (g), (h), (i); WIOA Sec. 108; WIOA Section 194(15); 20 CFR 679.320; Commonwealth of Kentucky, Executive Order 2020-857; 20 CFR 679.330; 20 CFR 679.350; 20 CFR 679.370; 20 CFR 679.390; 20 CFR 679.400; 20 CFR 679.410; 20 CFR 679.430

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## Local Workforce Development Board Certification Checklist

### **Required Documentation:**

- A complete list of the local board members, the category of their respective representation (e.g., business, workforce, education, government), and any entities they represent.
- Documentation showing a majority of the board members are business representatives.
- Documentation showing that at a minimum, twenty (20) percent of members are representative of workforce within the local area.
- Documentation showing that the board members are representative of diverse geographical locations within the local area.

### **Additional Considerations:**

- The Local Workforce Development Area's Interlocal Agreement is on file with the Department of Workforce Development.
- The Local Workforce Development Board has developed by-laws that are available for review if needed.
- Partnership Agreements are on file with the Department of Workforce Development.