
WIOA Guidance Notice No. 02 -15
Local Workforce Development Board (LWDB) Member Nomination Guidelines,
WorkForce WV Confirmation Process and Board Certification by the WV Development Board
(WVWDB)

TO: WorkForce Development Boards

FROM: Russell Fry, Acting Executive Director
WorkForce West Virginia

CATEGORY: WorkForce Innovation and Opportunity Act

SUBJECT: Policy on Local Workforce Development Board Member Nominations and Appointments process, WorkForce West Virginia confirmation process, and Board Certification by WVSWDB, referred to as “State Workforce Development Board” in WIOA.

DISTRIBUTION: Local Workforce Development Boards (LWDBs), Local Workforce Development Areas (LWDAs) staff, State Workforce Development Board and Chief Elected Officials (CEOs)

EFFECTIVE DATE: July 1, 2015

- I. REFERENCE(S):**
Title I of the WorkForce Innovation and Opportunity Act (WIOA) of 2014, WIOA Section 107
- II. PURPOSE:**
This policy provides guidance and clarification to LWDBs regarding local board membership, board confirmation process and state certification
- III. BACKGROUND:**
Replaces Workforce Investment Act (WIA) guidance, policies and processes relating to Local Workforce Development Boards (LWDBs) - referred to as “Local Workforce Development Boards” in WIOA.
- IV. POLICY:**

112 California Avenue
Charleston, West Virginia 25305

An agency of the Department of Commerce
An equal opportunity employer/program and auxiliary aids are available upon request to individuals with disabilities.

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LOCAL WORKFORCE DEVELOPMENT BOARDS (Sec. 107.)

ESTABLISHMENT:

(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.

MEMBERSHIP:

(WIOA Sec. 107 (b) (1) (2) (3) (4) (5) (6))

1. **STATE CRITERIA:**

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 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.

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- Representatives from proprietary schools cannot be considered a business sector member.
- **MINIMUM** number of business representatives: Ten (10)

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 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 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;

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 a representative of eligible providers administering adult education and literacy activities under title II;
- (ii) shall include 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;

D. **GOVERNMENT AND ECONOMIC DEVELOPMENT REPRESENTATIVES**

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Each local board shall include representatives of governmental and economic and community development entities serving the local area, who

- (i) shall include a representative of economic and community development entities;
- (ii) shall include 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 an appropriate 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;
- (v) may include representatives of philanthropic organizations serving the local area.

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. 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 as members 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

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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).

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.

APPOINTMENT AND CERTIFICATION OF BOARD – (WIOA Sec. 107 (c))

1. APPOINTMENT OF BOARD MEMBERS AND ASSIGNMENT OF RESPONSIBILITIES.

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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 2 years, certify 1 local board for each local area in the State.

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- 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).
- 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) 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))

Consistent with section 108 [LOCAL PLAN], the functions of the local board shall include

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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

SUNSHINE PROVISION (WIOA Sec. 107 (e))

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))

(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

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194(15).

LIMITATIONS (WIOA Sec. 107 (g))

1. TRAINING SERVICES

A. **IN GENERAL** - No local board may provide training services.

2. CAREER SERVICES; DESIGNATION OR CERTIFICATION AS ONE-STOP OPERATORS.

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.

3. LIMITATION ON AUTHORITY – Nothing on 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))

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.

ALTERNATIVE ENTITY (WIOA Sec. 107 (i))

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