



OKLAHOMA OFFICE OF WORKFORCE DEVELOPMENT

OKLAHOMA WORKFORCE DEVELOPMENT ISSUANCE #03-2015

TO: Chief Local Elected Officials
Local Workforce Development Board Chairs
Local Workforce Development Board Staff

FROM: Deidre D. Myers, Deputy Secretary for Workforce Development

DATE: July 1, 2015

SUBJECT: Local Workforce Development Board Two-Year Certification Process

REFERENCE: Workforce Innovation and Opportunity Act (WIOA) Section 107.

PURPOSE:

To provide guidance and process for the Local Workforce Development Board two-year certification process.

BACKGROUND:

The Workforce Innovation and Opportunity Act (WIOA) Section 107 states that the Governor of the State, in partnership with the State board, shall establish criteria for use by chief local elected officials in the local areas for the appointment of members of the local boards. The certification process is the key strategy to ensure Local Workforce Development Boards (LWDB) have the proper membership and structure to be highly effective in creating and continuously improving an aligned workforce development system, overseeing funds effectively and achieving established performance measures.

The desired outcome in each region is that the LWDB works to create collaborative partnerships with stakeholders in their area including Economic Development, Education, Organized Labor, Transportation, Housing, and other sectors, with everyone moving towards the same goals to create community workforce solutions. As a convener of partners and employers, the Local Workforce Development Board has a key role in creating that alignment.

LWDB CERTIFICATION PROCESS AND TIMELINE:

A local LWDB must meet the local LWDB certification criteria established by the U.S. Department of Labor's regulations and State criteria established by the Governor through the Governor's Council for Workforce and Economic Development. Upon completion of required documents, the LWDB will submit all information to the Governor's Council for Workforce and



Economic Development (GCWED). The Council will review the documentation and recommend certification to the Governor.

The following timeline for this process will be followed for the LWDB certification:

Process Steps	Completion Date
Certification policy is finalized	7-1-15
LWDBs submit certification documentation as per the guidelines	8-14-15
State reviews the submitted materials against the LWDB certification criteria and brings recommendations for certification to the Workforce System Oversight Committee for review and finalization	9-11-15
Council makes recommendation to the Governor	10-9-15
Certification letter to LWDBs	10-15-15

STATE CERTIFICATION CRITERIA:

The Workforce Innovation and Opportunity Act (WIOA) requires that the State certify Local Workforce Development Boards every two years. The term “certify” means the Local Workforce Development Board membership meets all the conditions for establishment according to the Act and the State’s membership criteria, including the appointments, the methods of nominations, and the final composition of the board.

Oklahoma Office of Workforce Development (OOWD) policy requires that local boards provide updated board membership information to the Oklahoma Office of Workforce Development whenever changes to membership are made. If membership changes exceed 25 percent before the next two-year certification cycle, the board would need to be re-certified. This helps to ensure that LWDBs remain properly constituted and viable. Member changes should be submitted to Jeane Burruss at ciburru@osuokc.edu within ten (10) days of the new appointment.

The following categories will be used to determine the documentation submitted for the LWDB to be certified (WIOA Section 107 a-c):

- Ensure appropriate LWDB membership
- Ensure the proper LWDB area organizational structure
- Ensure separation of LWDB, One-Stop Operator, and WIOA Title I provider staff
- Build greater collaboration with Economic Development Partners

ENSURING APPROPRIATE LWDB MEMBERSHIP:

The Governor’s Council has set the following criteria to assist the LWDBs to successfully and effectively lead their local workforce development systems.

A. Membership Requirements:

The Governor of the State, assisted by the Governor’s Council for Workforce and Economic Development, shall establish criteria for use by chief local elected officials in the local areas for appointment of members of the local boards in such local areas in accordance with the requirements as outlined below.

The Local Workforce Development Board’s full membership will represent:

- Key Regional Ecosystems;
- Community and economic development leaders/opinion leaders;
- Diversity of the workforce area;
- And the geography of the workforce area.

Business Member Representation: The Workforce Innovation and Opportunity Act requires that a majority of the members of the Local Board must be representatives of business in the local area.

The Workforce Innovation and Opportunity Act further requires that business representatives on the Local Workforce Development Board (LWDB) represent businesses whose employment opportunities reflect the employment opportunities within that specific local area. Therefore, business representatives may be appointed from employers that are representative of the local area. In those workforce development areas that contain multiple local labor markets, business representatives on the board shall be selected on a proportionate basis from nominations. In order that business members reflect the employment opportunities of the local labor market, the desired composition of each board’s business representatives is determined using the following criteria:

- Employment by industry type (Ecosystem)
- Employment by geography
- Employment by establishment size
- Total payroll of employers

Profiles of the employment opportunities in each local labor market are available from the OOWD or the Oklahoma Employment and Security Commission (OESC) Economic Research and Analysis Division. These profiles are to be used as a target by nominating and appointing authorities rather than as hard and fast requirements recognizing that (1) not all employers may choose to serve and (2) local knowledge of employment opportunities or personalities may indicate an appropriate alternative.

Definitions:

For the purpose of this certification process, the definition of employer is as follows: one who employs; esp., a person, business firm, etc. that hires one or more persons to work for wages or salary.

A single-person business, in the case of WIOA Board membership, does not constitute meeting the requirement regarding employer with employment opportunities. However, this does not preclude a local elected official appointing a single-employee business in the “other” category as they deem necessary. The single-employee business would be in addition to the 51 percent.

In support of the Governor’s intent that Oklahoma’s workforce development system be demand-driven, public entities should not be appointed to represent business if the public entity represents a specific membership category, such as education, community-based organizations or program service provider. Those categories are already included in the required membership.

- B. Member Representation:** Members of the Local Board must be individuals with *optimum policy making and hiring authority* within the organizations, agencies, or entities that they are representing. Business representatives must be owners of businesses, chief executives or operating officers, or other executives or employers with optimum policy making or hiring authority. WIOA Board members will consist, at a minimum, of the following:

Actual WIOA Language

Membership.--

(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) a majority 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;

(B) 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) 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) 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; and

(v) may include representatives of philanthropic organizations serving the local area; and

(E) 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.

- C. Board Size:** As seen above, local boards appointed under WIOA not only have minimum requirements as to what stakeholders are represented. It also establishes minimum percentages of representation in two stakeholder categories: business and workforce.

The minimum size of a Local Workforce Development Board would be 19 members under the following scenario:

Business: 9 + 1 (to maintain >50%) = 10

Workforce: 3 (2 labor org + 1 joint apprenticeships.) + 1 (to maintain 20% min) = 4

Education/Training: 2 (1 adult ed. /lit + 1 higher ed.) = 2

Government, Economic/Community Development: 3 (1 econ./comm. + 1 Wagner-Peyser + 1 Vocational Rehabilitation) = **3**

MINIMUM SIZE: 19

CLEO's may appoint additional members at their discretion but must assure the majority business representation and 20% minimum workforce representation is preserved.

- D. Nominations:** The WIOA specifies that certain representatives must be nominated for Local Workforce Development Board membership by particular organizations. The Workforce Innovation and Opportunity Act indicates that business representatives to the Local Workforce Development Board must be appointed from nominees of local business organizations or business trade associations. Lead city business or trade organizations should nominate business representatives from their local labor market areas.

Local educational entities, including representatives of local educational agencies, local school boards, entities providing adult education and literacy activities, and post-secondary educational institutions including representatives of community colleges where such entities exist, must be selected from individuals nominated by regional or local educational agencies, institutions, or organizations representing such local educational entities.

Representatives of labor organizations must be nominated by local labor federations, or for areas in which no employees are represented by such organizations, other representatives of employees.

WIOA Board staff and local elected official (LEO) must seek appropriate nominations and submit them to their chief local elected official (CLEO) for action. The CLEO may require more nominations than there are vacancies in order to exercise discretion in the selection and appointment of business representatives. In the absence of WIOA Board staff, the CLEO may also initiate the process of adding new members by seeking appropriate nominations, and making appointments in accordance with membership requirements, including the desire to include optional board members. However, entities that represent more than one funding stream should have no more than one representative on the Board.

- E. Appointment of Representatives:** The chief local elected official will make appointments to the Local Workforce Development Board. Local elected officials in the workforce development area will address, in their Consortium Agreement, the selection of a *Chief* Local Elected Official and the process for making Local Board appointments. A copy of each completed appointment shall be provided as an integral document in the certification process. To avoid confusion between Chief Executive Officers (CEOs) and Chief Elected Officials (CEOs), Oklahoma is using the term Chief Local Elected Official (CLEO) for the local elected official selected to function as the "chief."

The local WIOA Board is appointed by the CLEO, in the local area, in accordance with state criteria and the local elected official consortium agreement. The local elected officials, in their consortium agreement, can identify other local elected officials who may share this appointment authority.

Occasionally, new business representatives determine that someone else in their organization is more appropriate to serve on the WIOA Board. When this occurs, it is not necessary to seek this member's resignation and seek new nominations, etc. As long as any substitute is from the same business, and also has optimum policy making authority, it is acceptable for the Chief Local Elected Official to replace the originally appointed member with a designee.

WIOA BOARD

ENSURING THE LWDB AREA ORGANIZATIONAL STRUCTURE:

A. Requirements for Separation of LWDB, WIOA Title I Provider, and LWDB Staff:

In accordance with section 134 (c)(2) of WIOA the LWDB may not provide Career Services or be designated or certified as a One-Stop Operator, unless agreed to by the Chief Local Elected Official and the Governor." LWDBs also "are prohibited from providing training services, unless there is a Governor's agreement." The regulations state the above restrictions "also apply to the staff of the local board".

LWDBs must be able to study local issues, develop strategies and coalitions to address identified issues, evaluate progress, garner resources to support initiatives, align service delivery to meet the strategic objectives of the state and the local area, and to make hard decisions when there is not progress against the plans.

B. Requirement for Separation of LWDB and One-Stop Operator:

The LWDB, with the agreement of the chief local elected official, must designate and certify One-Stop operators in each local area through a competitive process as required by Section 121(d)(2)(A) of WIOA, at least once every 4 years. The state may require, or a local board may choose to implement, a competitive selection process more than once every 4 years. Under certain conditions, sole source procurement is an allowable method of procurement.

One-Stop operators may be a single entity (public, private, or non-profit) or a consortium of entities. If the consortium of entities is one of the One-Stop partners, it must include a minimum of three of the One-Stop partners described in 678.400. The agreement between the local LWDB and the One-Stop operator shall specify the operator's role. This role may range between simply coordinating service providers within the center to being the primary provider of services, to coordinating activities throughout the One-Stop system. The One-Stop operator may be a single entity or a consortium of entities and may operate one or more One-Stop centers.

To comply with organizational structure requirements, LWDB certification must include:

- A description of how the local board functions as an independent entity.
- Certified assurance that board staff is not on the payroll of the service provider organization.
- A description of the role of your One-Stop operator
 - Include who the operator is,
 - Board established role,
 - How the duties fit with the role of service provider, comprehensive workforce centers, other partners, local LWDB and fiscal agent.
- Clarifying agreements that are for local role clarification. LEO/Board, LEO/Fiscal Agent, LWDB/Fiscal Agent, LWDB/Service Provider.

To Avoid Potential Conflict of Interest in Relationships between Local Elected Officials and Service Provider Entities:

TEGL 35-10 states in part: “providing responsible stewardship for and oversight of public funding for federally-funded workforce programs must be accomplished in a way that demonstrates strong integrity, accountability, and transparency in order to preserve the public trust”.

The law allows the local elected officials through their consortium agreement, to choose the fiscal agent for WIOA funds. The local elected officials are also responsible for appointing workforce board members. The board is in turn responsible for developing a budget in conjunction with and approved by the LEO consortium. The board also has the (sole) responsibility for choosing a service provider. These decisions often have significant implications for service providers and participants they serve and thus must be made in a transparent and ethical manner. The fiscal agent is charged with disbursing money upon the direction of the board, unless the disbursement would result in disallowed cost(s). These roles are clear. However, when any of the parties also becomes the service provider, the entity and area become susceptible for questions of conflict of interest.

TEGL 35-10 references Conflict of Interest in 29 CFR Parts 97 and 95 from the Uniform Administrative Requirements. It specifically cites CFR 667.200(a)(4) regulations to say that members must neither cast a vote nor participate in decision-making, on the provision of services by that member or any organization which that member directly represents. While the section does not specifically name fiscal agent members as it does LWDB members, it does not because the law did not foresee fiscal agents procuring services, which they would be operating.

If the fiscal agent, chosen by the LEO consortium, is an entity that is under the governance structure of the LEOs, and that same entity is selected to become the WIOA program service provider, it could call into question whether they are demonstrating strong integrity, accountability, and transparency in order to preserve the public trust as required in the TEGL 35-10.

Local areas are advised that organizational structures where the LEO's fiscal agent and the service provider are both under the LEO governing structure may come under added scrutiny. Establishing an independent board as prescribed in this certification policy and ensuring the board is in charge of procuring the service provider will be a key action. Local elected officials, local boards and staff must ensure that they are taking all possible actions to avoid potential conflict of interest situations and demonstrating strong integrity, accountability, and transparency as required in TEG 35-10.

CERTIFICATION:

Initial Certification

A LWDB shall be initially certified for a period not to exceed two years if it is determined that its appointments and resulting membership composition are consistent with criteria established under WIOA Section 107 and State established criteria.

Subsequent Certification

WIOA Section 107(c)(2) provides that once every two years one local board for each local area in the state will be certified. The OOWD shall subsequently recertify each local board every two program years if it is determined that its appointments and composition have remained substantially consistent with WIOA and state policy, and it is determined that the local board has carried out its workforce activities in the local area to enable the local area to meet its local negotiated performance standards. Failure of a local board to achieve certification shall result in reappointment and certification of another local board for the local area pursuant to the process described in WIOA Section 107(c)(2), et al.

Recertification:

During the two-year certification period, if a LWDB's membership change is deemed to be over 25 percent (25%) of the current certified board, a recertification must occur. Changes in LWDB membership must be reported to the OOWD within 10 days of the change.

Decertification:

The Governor may decertify a local board after providing notice and an opportunity to comment for:

1. Fraud or abuse; or
2. Failure to carry out the functions specified for the local board (1-7 (d)); or
3. Nonperformance.

RESCISSIONS:

This issuance rescinds and replaces OWDI #07-2014, LWDB Two-Year Certification Process dated July 21, 2014.

ATTACHMENTS:

The request for certification must include the following information.

- Attachment 1 – Certification Form – Board Nominations
- Attachment 2 – Certification Form – Local Workforce Development Board Nomination Slate

INQUIRIES:

If you have any questions or concerns regarding this issuance, please contact Jeane Burruss, Oklahoma Office of Workforce Development, at cjburru@osuokc.edu. This policy is available at <http://oklahomaworks.gov/policy-center>.

WIOA
WORKFORCE DEVELOPMENT BOARD
Nomination Slate and Appointment Form

Local Workforce Development Area: _____

Name of Nominee: _____

Nominee Position/Title: _____

Nominees Organization: _____

Representing: Business or Mandated Workforce System Partner

Must be a representative with “optimum policy making authority” or “hiring authority”. An individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents to commit that entity to a chosen course of action. Yes or No

Ecosystem/Industry: _____ # of Employees: _____

Nominee Mailing Address: _____

Work Phone: _____ Other Phone: _____

FAX: _____ E-Mail: _____

Nominating Agency/Organization: _____

Address: _____

Telephone No: _____ Email: _____

Signature of President/Director or other Official of Nominating Organization Date

WDB Appointment Dates: _____

CLEO Signature Date