



OKLAHOMA WORKFORCE DEVELOPMENT ISSUANCE # 07-2014

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

FROM: Deidre D. Myers
Deputy Secretary of Commerce for Workforce Development

DATE: July 21, 2014

SUBJECT: WIB Two-Year Certification Process

RESCISSION: This issuance rescinds and replaces OWDI #02-2012, WIB Two-Year Certification Process dated February 13, 2012.

CATEGORY: Policy, Category B

BACKGROUND:

The WIA section 117(b) states that the Governor of the State, in partnership with the State board, shall establish criteria for use by chief elected officials in the local areas for the appointment of members of the local boards. The certification process is the key strategy to ensure WIBs have the proper membership and structure to be highly effective in achieving established performance measures.

The desired outcome in each region is that the local WIB 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 the convener of partners and employers, the local WIB, has a key role in creating that alignment.

WIB CERTIFICATION PROCESS AND TIMELINE:

A local WIB must meet the local WIB 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 WIB will submit all information to the Governor's Council for Workforce and Economic Development. The Council will review the documentation and recommend certification to the Governor.

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

Process Steps	Completion Date
Certification policy goes through 30-day comment and is finalized	07-11-14
WIBs submit certification documentation as per the guidelines	09-01-14
State reviews the submitted materials against the WIB certification criteria and brings recommendations for certification to the Workforce System Oversight Committee for review and finalization	09-17-14
Council makes recommendation to the Governor	10-03-14
WIBs are notified of certification by official letter	12-15-14

STATE CERTIFICATION CRITERIA:

The Workforce Investment Act (Act) requires that the State certify Workforce Investment Boards every two years. The term “certify” means the Local Workforce Investment 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 policy requires that local boards provide updated board membership information to the Workforce Solutions Division whenever changes to membership are made. If membership changes exceed 25% before the next two-year certification cycle, the board would need to be re-certified. This helps to ensure that WIBs remain properly constituted and viable. Member changes should be submitted to Jeane Burruss at [Jeane Burruss@OKcommerce.gov](mailto:Jeane.Burruss@OKcommerce.gov) within ten (10) days of the new appointment.

The following categories will be used to determine the documentation submitted for the WIB to be certified (WIA Section 117 a-c):

- Ensure appropriate WIB membership;
- Ensure the proper WIB area organizational structure;
- And ensure that the workforce investment activities carried out in the local area have enabled the local area to meet the local performance measures.

ENSURING APPROPRIATE WIB MEMBERSHIP:

The Governor’s Council has set the following criteria to assist the WIBs 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 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 Workforce Investment Board's full membership will represent:

- Key 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 Investment Act requires that a majority of the members of the Local Board must be representatives of business in the local area.

The Workforce Investment Act further requires that business representatives on the local Workforce Investment Board 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 investment 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 Oklahoma Department of Commerce (ODOC) 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.

Single person business in the case of WIA 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%.

In support of the Governor’s intent that Oklahoma’s workforce investment 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: WIA Board members will consist, at a minimum, of the following:

- 51% must be business from the local area who:
 - are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policy making or hiring authority;
 - represent businesses with employment opportunities that reflect the employment opportunities of the local area; and
 - are appointed from among individuals nominated by local business organizations and business trade associations.
- At least two representatives of local **educational entities** from the following categories:
 - Local educational agencies;
 - Local school boards;
 - Entities providing adult education and literacy activities; and
 - Post-secondary education institutions (including community colleges, where they exist).
- At least two **labor representatives**
- At least two representatives from **Community-Based Organizations**, including organizations representing the following:
 - Individuals with disabilities (example: Goodwill);
 - Veterans (example: American Legion).
- At least two representatives from **Economic Development Agencies**, including private sector economic development entities and Chambers of Commerce
- At least one representative from each of the **following programs or agencies:**

- Oklahoma Department of Human Services;
 - Oklahoma Employment Security Commission;
 - WIA Title I (Adult and Dislocated Worker and Youth);
 - Adult Basic Education and Family Literacy Program;
 - Post-secondary Carl D. Perkins Vocational and Applied Technology Education Program;
 - Oklahoma Department of Rehabilitation Services;
 - Community Service Block Grant (if CSBG is expending grant funds for employment and training activities);
 - Title V Senior Community Services Employment Program (if national sponsor); and,
 - Housing and Urban Development Programs (if HUD programs are expending grant funds for employment and training activities)
- At least one **WIA Title I National Program Operator** for each of the following categories (if they are present in the local labor market):
 - Native American Programs;
 - Migrant & Seasonal Farm Worker Programs;
 - Job Corps;
 - Youth Opportunity Grants; and,
 - Veterans Workforce Investment programs
 - May include such **other** individuals or representatives of entities as the Chief Local Elected Official may determine to be appropriate.

Members of the Local Board must be individuals with *optimum policy making 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.

- C. Nominations:** The Act specifies that certain representatives must be nominated for Local Workforce Investment Board membership by particular organizations. The Workforce Investment Act indicates that business representatives to the Local Workforce Investment 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.

WIA Board staff 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 WIA 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.

D. Appointment of Representatives: The chief elected officials will make appointments to the Local Workforce Investment Board. Local elected officials in the workforce investment 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 (CLEOs), Oklahoma is using the term Chief Local Elected Official (CLEO) for the local elected official selected to function as the “chief.”

The local WIA Board is appointed by the CLEO(s), 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 WIA 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.

E. Youth Council Membership: Local Youth Councils are also a requirement of the Act in section 117(h). Youth Councils present a powerful and viable opportunity to focus local communities on the development of a comprehensive youth-serving system. It is important for every area to create an effective Youth Council with diverse and engaged membership that is supported, connected, respected and heard.

The local youth council acts as a subgroup within the local WIB with specific roles and responsibilities related to youth training and employment. Thus, as part of local WIB certification it is important to ensure that the local WIB has a Youth Council that is properly formed in accordance with the Act.

To comply with youth membership requirements, local WIB certification must include:

- Youth Council membership check list – in accordance with membership requirements found in section 117(h).
- Name, company, company address, position, industry represented, and industry sectors.
- Copy of by-laws established for membership on the Local WIB Board.
- Copy of the Local Elected Officials Consortium Agreement to include a definition of cause for dismissal of board members.

ENSURING THE WIB AREA ORGANIZATIONAL STRUCTURE:

A. Requirements for Separation of WIB, WIA Title I Provider, and WIB Staff:

Unless otherwise waived by the Governor or designee in accordance with 117 (f) (B) (i-iii), the WIA law and regulations indicate that WIBs “may not directly provide core or intensive services, or be designated or certified as a One-Stop Operator, unless agreed to by the Chief Elected Official and the Governor.” WIBs 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”.

WIBs 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 WIB and One-Stop Operator:

The local WIB, with the agreement of the chief elected official, must designate and certify One-Stop operators in each local area. The One-Stop operator is designated or certified 1) through a competitive process or 2) under an agreement between the local WIB and a consortium of entities that includes at least three or more of the required One-Stop partners.

The agreement between the local WIB 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, WIB 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 WIB and fiscal agent.
- Copies of the clarifying agreements that are required for local role clarification as outlined in the Roles and Responsibilities guidance. **LEO/Board, LEO/Fiscal Agent, WIB/Fiscal Agent, WIB/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 WIA 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. **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 WIB and Youth Council 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 WIA program service provider, it could call into question whether we 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 TEGl 35-10.

PERFORMANCE MEASURES (117 c 2):

“The extent to which the local board has ensured that the workforce investment activities carried out in the local area has enabled the local area to meet the local performance measures.”

To be approved for certification, the WIB will describe measures put in place and/or activities to be conducted that will enable the WIB to meet local performance measures.

CERTIFICATION:

Recertification:

During the two-year certification period, if a WIB’s membership change is deemed to be over 25 percent (25%) of the current certified board, a recertification must occur. Membership will be evaluated during the annual monitoring visit.

In the absence of a duly certified board, the Governor’s Council **may** grant a provisional certification in the interim.

Decertification:

The Governor may decertify a local board after providing notice and an opportunity to comment for 117 (2) (C) and 117 (3) of the Act.

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

ATTACHMENTS:

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

CONTACT PERSON(S): Jeane Burruss, Project Director, Workforce Solutions Division, Oklahoma Department of Commerce, jeane_burruss@okcommerce.gov or Tina Lindsay, Deputy Division Director at tina_lindsay@okcommerce.gov.

WORKFORCE INVESTMENT BOARD
Nomination Slate and Appointment Form

Workforce Investment Area: _____

Name of Nominee: _____

Nominee Position/Title: _____

Nominees Organization: _____

Representing: **Business** or **Mandated Workforce System Partner**

Ecosystem/Industry: _____ *# of Employees:* _____

Nominee Mailing Address: _____

Work Phone: _____ Other Phone: _____

FAX: _____ E-Mail: _____

Nominating Agency/Organization: _____

Address: _____

Telephone No: _____ FAX: _____

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

WIB Appointment Dates: _____

CLEO Signature

Date

VI. Economic Development Entities

Note: At least two economic development agencies, even if they are private, must be included in the membership. Economic development agencies include local Chambers of Commerce.

Member's Name & Title	Industry Cluster	Member's Organization	Member's Organization Address	Number of Employees			Nominating Organization