

Interim Policy on Criteria for Local Workforce Development Boards

References:

Workforce Innovation and Opportunity Act, Section 107; WIOA Notice of Proposed Rulemaking, 20 CFR §§ 679.120, 679.300, 679.320, 679.340; Training and Employment Guidance Letter (TEGL) 19-14; TEGL 27-14; TEN 10-15.

Changes:

- Definitions section moved to the beginning of the policy.
- “Optimum policy-making authority,” “demonstrated experience and expertise,” and “workplace learning advisor” defined.
- Purpose and Vision as stated in the Notice of Proposed Rulemaking.
- Verification that multiple representation is permissible on local boards.

Background:

Sec. 107(a) of the Workforce Innovation and Opportunity Act (WIOA) states: “There shall be established in each local area of a State, and certified by the Governor of the State, a local workforce development board, to set policy for the portion of the statewide workforce investment system within the local area...”

Action:

After a 10 day review period, this Policy will be considered final. Questions and comments should be submitted in writing to the WIOA Policy Mailbox: ndol.wioa_policy@nebraska.gov.

Policy:

Definitions

Chief Elected Official (CEO)

This term means the chief elected executive officer of a unit of general local government in a local area, and in a case in which a local area includes more than one unit of general local government, the individuals designated under the local area plan or the agreement described in Sec. 107(c)(1)(B).¹

Unit of General Local Government

This term means any general purpose political subdivision of a State that has the power to levy taxes and spend funds, as well as general corporate and police powers.²

¹ WIOA Section 3(9)

² WIOA Section 3(48)

Optimum Policy-Making Authority

An individual with “optimum policy-making authority” means an individual who can reasonably be expected to speak affirmatively on behalf of the entity he/she represents and to commit that entity to a chosen course of action.³

Demonstrated experience and expertise

An individual with “demonstrated experience and expertise” means an individual who:

- Is a workplace learning advisor;
- Contributes to the field of workforce development, human resources, training and development, or a core program function; or
- The local board recognizes for valuable contributions in education or workforce development related fields.⁴

Workplace Learning Advisor

The term “workplace learning advisor” means an individual employed by an organization who has the knowledge and skills necessary to advise other employees of that organization about the education, skill development, job training, career counseling services, and credentials, including services provided through the workforce development system, required to progress toward career goals of such employees in order to meet employer requirements related to job openings and career advancements that support economic self-sufficiency.⁵

Purpose and Vision

The vision of the local board is to serve as a strategic leader and convener of local workforce development stakeholders. The local board partners with employers and the workforce development system to develop policies and investments that support workforce systems strategies that support regional economies, the development of effective approaches including local and regional sector partnerships and career pathways, and high quality, customer centered service delivery and service delivery approaches.⁶

The purpose of the local board is to:

- Provide strategic and operational oversight in collaboration with the required and additional partners and workforce stakeholders to help develop a comprehensive and high-quality workforce development system in the local area and larger planning region;
- Assist in the achievement of the state’s strategic and operational vision and goals as outlined in the Unified State Plan or Combined State Plan; and
- Maximize and continue to improve the quality of services, customer satisfaction, and effectiveness of the services provided.⁷

³ 20 CFR § 679.340(a)

⁴ 20 CFR § 679.120(b)

⁵ WIOA Section 3(70)

⁶ 20 CFR § 679.300(a)

⁷ 20 CFR § 679.300(b)

Membership of the Local Board

The Governor of the State, in partnership with the State board, shall establish criteria for use by CEOs of the local areas for appointment of members of the local boards in accordance with WIOA requirements for local board composition.⁸

As indicated below, WIOA provides minimum requirements as to what stakeholders are represented on local boards as well as minimum percentages of representation for two stakeholder categories: business and workforce.

Required Membership Categories and Formula

Business: Business owners and other business executives or employers with optimum policymaking or hiring authority who represent businesses with employment opportunities that reflect employment opportunities in the local area.

Workforce: Representatives of labor organizations or other representatives of employees, and requiring at least one person from a joint-labor management apprenticeship program or apprenticeship program in the area.

Education/Training: A representative of eligible providers administering adult education and literacy activities, and a representative of institutions of higher education providing workforce investment activities.

Government, Economic, and Community Development: A representative of economic and community development entities, a representative from the State employment office under the Wagner-Peyser serving the local area, and a representative of vocational programs carried out under Title I of the Rehabilitation Act of 1973.

An individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation for each entity.⁹ Assuming no representation of multiple categories occurs, the minimum size of a Local Workforce Development Board is 19 members as described in the formula below:

Business:	9+1 (to maintain a majority)	= 10
Workforce:	3 (2 labor + 1 apprentice) + 1 (to maintain 20%)	= 4
Education/Training:	2 (1 adult education/literacy + 1 higher education)	= 2
Economic/Community Dev:	1 (1 economic/community development)	= 1
Government:	2 (1 Wagner-Peyser + 1 Vocational Rehabilitation)	= 2
MINIMUM BOARD MEMBERSHIP:		19

[See Attachment A for Illustration of the Local Board]

Members appointed to the local board that represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities.¹⁰ A majority of the members of the local board shall be representatives of business in the

⁸ WIOA Section 107(b)(1)

⁹ 20 CFR 679.320(h)

¹⁰ WIOA Section 107(b)(5)

local area.¹¹ Business members must represent high quality, work relevant employment opportunities in in-demand industry sectors or occupations in the local area. The local board shall elect a chairperson for the local board from among the representatives of business on the local board.¹²

Composition of the Local Board

Composition Criteria

WIOA provides that the members of each local board shall include:

- Representatives of Business
 - A majority (at least 51 percent) of the membership shall be representatives of business in the local area who are owners of businesses, and other business executives or employers with optimum policymaking or hiring authority, who:
 - represent businesses, including small businesses, with employment opportunities that reflect the employment opportunities of the local area. At a minimum, the H3 (high-wage, high skill, high demand) criteria and occupations must be used to define a local area's high quality, in-demand industry sectors and occupations; **and**
 - are to be appointed from among individuals (plural) nominated by local business organizations and business trade associations;¹³
- Representatives of the Workforce
 - A minimum of 20 percent of the members shall include representatives of the workforce (workers) in the local area who:
 - shall include representatives (two or more) of labor organizations (for a local area in which employees are represented by labor organizations), nominated by local labor federations, or (for a local area in which no employees are represented by such organizations), other representatives of employees;¹⁴ **and**
 - shall include a representative (at least one) from a labor organization or a training director, from a joint-labor management apprenticeship program, or if no such program exists in the area, such a representative of an apprenticeship program in the area, if one exists;¹⁵ **and**
 - may include (optional) 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**
 - may include (optional) representatives of organizations that 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.¹⁶

¹¹ WIOA Section 107(b)(2)(A)

¹² WIOA Section 107(b)(3)

¹³ WIOA Section 107(b)(2)(A)

¹⁴ WIOA Section 107(b)(2)(B)(i)

¹⁵ WIOA Section 107(b)(2)(B)(ii)

¹⁶ WIOA Section 107(b)(2)(B)(iii) and (iv)

- Representatives (two or more) of Education and Training
 - Each local board shall include representatives of entities administering education and training activities in the local area who:
 - shall include a representative of eligible providers administering adult education and literacy activities; **and**
 - shall include a representative of institutions of higher education providing workforce investment activities (including community colleges); **and**
 - may include (optional) representatives of local education agencies, and of community-based organizations with demonstrated experience and expertise in addressing the education or training needs of individuals with barriers to employment;¹⁷
 - If there are multiple eligible providers serving the local area by administering adult education and literacy services, or multiple institutions of higher education serving the local area by providing workforce development activities, each representative from this category of local board composition shall be appointed from among individuals nominated by local providers representing such providers or institutions, respectively;¹⁸
- Representatives (three or more) of Government, Economic and Community Development
 - Each board shall include members of governmental and economic and community development entities serving the local area who:
 - shall include a representative of economic and community development entities; **and**
 - shall include a representative from the State employment office under the Wagner-Peyser Act serving the local area; **and**
 - shall include a representative of vocational programs carried out under Title I of the Rehabilitation Act of 1973 (other than section 112 or Part C) serving the local area; **and**
 - may include (optional) representatives of agencies or entities administering programs serving the local area relating to transportation, housing, and public assistance; **and**
 - may include (optional) representatives of philanthropic organizations serving the local area;¹⁹
- Other Optional Representatives
 - Each local board may include such other individuals or representatives of entities as the CEO in the local area may determine to be appropriate.²⁰

Appointment and Certification of the Local Board

Appointment of Board Members and Assignment of Responsibilities

The CEO in a local area is authorized to appoint the members of the local board for such area, in accordance with the State composition criteria established under Sec. 107(b). In a case in which a local area includes more than one unit of general local government, the CEOs of such units may execute an agreement that specifies the respective roles of the individual CEOs in the appointment of the members of the local board from the individuals nominated or recommended to be such members in accordance with the composition criteria established under Sec. 107(b)

¹⁷ WIOA Section 107(b)(2)(C)

¹⁸ WIOA Section 107(b)(6)

¹⁹ WIOA Section 107(b)(2)(D)

²⁰ WIOA Section 107(b)(2)(E)

and in carrying out any responsibilities assigned to such officials.²¹ If, after a reasonable effort, the CEOs are unable to reach agreement as provided above, the Governor may appoint the members of the local board from individuals so nominated or recommended.²²

Certification of the Local Board

The Governor shall, once every two years, certify one local board for each local area in the State.²³ Such certification shall be based on the composition criteria established under Sec. 107(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 local performance measures and achieve sustained fiscal integrity.²⁴ [Sustained fiscal integrity means that the Secretary has not made a formal determination, during either of the last two (2) consecutive years preceding the determination of such integrity, that either the grant recipient or the administrative entity of the area misexpended funds under WIOA or, if applicable, WIA, due to willful disregard of requirements, gross negligence, or failure to comply with accepted standards of administration.]²⁵

Failure of a local board to achieve certification shall result in appointment and certification of another local board for the local area pursuant to the process described in Sec. 107(c)(1) and Sec. 107(c)(2).²⁶

Decertification of the Local Board

Notwithstanding Sec. 107(c)(2), the Governor may decertify a local board at any time after providing notice, and an opportunity for comment for: fraud or abuse; or failure to carry out the functions specified for the local board in any of the paragraphs of Sec. 107(d).²⁷

Notwithstanding Sec. 107(c)(2), the Governor may decertify a local board if a local area fails to meet the local performance measures for such local area for two consecutive program years [in accordance with the local accountability measures provided under Sec. 116(c)].²⁸

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 CEO in the local area, and in accordance with the criteria established under Sec. 107(b).²⁹

Standing Committees

The local board may designate and direct the activities of standing committees to provide information to assist the local board in carrying out activities under Sec. 107 of WIOA. Such standing committees, if any, shall be chaired by a member of the local board, may include other

²¹ WIOA Section 107(c)(1)(B)(i)

²² WIOA Section 107(c)(1)(B)(ii)

²³ WIOA Section 107(c)(2)(A)

²⁴ WIOA Section 107(c)(2)(B)

²⁵ WIOA Section 106(e)(2)

²⁶ WIOA Section 107(c)(2)(C)

²⁷ WIOA Section 107(c)(3)(A)

²⁸ WIOA Section 107(c)(3)(B)

²⁹ WIOA Section 107(c)(3)(C)

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.³⁰

At a minimum, the local board may designate the following:

- A standing committee to provide information and assist with operational and other issues relating to the One-Stop delivery system, which may include as members representatives of the One-Stop partners.
- 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.
- 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 Sec. 188 of WIOA [Discrimination], if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 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.³¹

The local board may designate standing committees in addition to the standing committees specified above.³² Local boards may designate an entity in existence as of the date of the enactment of WIOA, such as an effective youth council, to serve as a standing committee as long as the entity meets the requirements of Sec. 107(b)(4) of WIOA.³³

Youth Standing Committees

WIOA eliminates the requirement for local boards to establish a youth council.³⁴ As mentioned above, WIOA permits an existing youth council to be designated as a standing committee if it is fulfilling the requirements of a standing committee, which means that they have members of the local board who have the appropriate experience and expertise in youth educational and workforce development.³⁵

USDOL has encouraged local boards to designate high performing youth councils as standing committees, if appropriate. Local boards are responsible for the oversight of youth programs. Under the Workforce Investment Act, youth councils were mandated to fulfill this function for the Board. Local boards now may choose to fulfill the oversight responsibility, or have the discretion to delegate this function to a standing youth committee. If local boards choose not to delegate this function to a standing youth committee, they are responsible for conducting oversight of youth workforce investment activities under Sec. 129(c) of WIOA.³⁶

³⁰ WIOA Section 107(b)(4)(A)

³¹ WIOA Section 107(b)(4)(A)(i)-(iii)

³² WIOA Section 107(b)(4)(B)

³³ WIOA Section 107(b)(4)(C), 20 CFR § 679.360(c)

³⁴ 20 CFR § 681.100

³⁵ WIOA Section 107(b)(4)(C), 20 CFR § 681.100, WIOA NPRM Section-by-Section Discussion of Proposal

³⁶ WIOA NPRM Section-by-Section Discussion of Proposal

Required Membership of Youth Standing Committees

If the local board decides to form a youth standing committee, the committee must include a member of the local board, who chairs the committee, members of community-based organizations with a demonstrated record of success in serving eligible youth and other individuals with appropriate expertise and experience who are not members of the local board.³⁷

The committee should reflect the needs of the local area. The committee members appointed for their experience and expertise may bring their expertise to help the committee address the employment, training education, human and supportive service needs of eligible youth including out-of-school youth. Members may represent agencies such as education, training, health, mental health, housing, public assistance, and justice, or be representatives of philanthropic or economic and community development organizations, and employers. The committee may also include parents, participants, and youth.³⁸

Duties of Youth Standing Committees

Under the direction of the local board, a youth standing committee may:

- Recommend policy direction to the local board for the design, development, and implementation for programs that benefit all youth;
- Recommend the design of a comprehensive community workforce development system to ensure a full range of services and opportunities for all youth, including disconnected youth;
- Recommend ways to leverage resources and coordinate services among schools, public programs, and community-based organizations serving youth;
- Recommend ways to coordinate youth services and recommend eligible youth service providers;
- Provide on-going leadership and support for continuous quality improvement for local youth programs;
- Assist with planning, operational, and other issues relating to the provision of services to youth; and

If so delegated by the local board after consultation with the Chief Elected Official, oversee eligible youth providers, as well as other youth program oversight responsibilities.³⁹

Alternative Entities

A local board may consist of an alternative local entity (including a local council, regional workforce development board, or similar entity) that meets the following criteria:

- is established to serve the local area (or the service delivery area that most closely corresponds to the local area);
- was in existence on the day before the date of August 7, 1998 (the day before the enactment of Workforce Investment Act of 1998)⁴⁰, pursuant to State law; and

³⁷ WIOA Section 107(b)(4)(A), 20 CFR § 681.110(a)

³⁸ WIOA Section 129(c)(3)(C), 20 CFR § 681.110(b)

³⁹ 20 CFR § 681.120

⁴⁰ TEN 10-15

- includes
 - representatives of business in the local area; and
 - representatives of labor organizations (for a local area in which employees are represented by labor organizations), nominated by local labor federations; or other representatives of employees in the local area (for a local area in which no employees are represented by such organizations).⁴¹

Local Board Responsibilities

The local board shall:

- Develop and submit a local plan to the Governor that meets the requirements in Sec. 108 of WIOA, in partnership with the CEO. If the local area is a part of a planning region that includes other local areas, the local board shall collaborate with the other local boards and CEOs in the preparation of a regional plan as described in Sec. 106(c)(2);⁴²
- In order to assist in the development and implementation of the local plan:
 - carry out analyses of economic conditions and workforce development activities (including education and training) in the region, and needed knowledge and skills for the region, and regularly update such information;
 - assist the Governor in developing the statewide workforce and labor market information system, specifically in collection, analysis, and utilization of such information for the region; and
 - conduct other such research, data collection, and analysis related to the workforce needs of the regional economy as the board determines to be necessary to carry out its functions;⁴³
- Convene local workforce development system stakeholders to assist in the development of the 4-year local plan and identifying non-Federal expertise and resources to leverage support for workforce development activities. The local board, including standing committees, may engage such stakeholders in carrying out these functions.⁴⁴
- Lead efforts to engage with a diverse range of employers and with entities in the region involved to:
 - promote business representation (particularly with representatives with optimal policymaking or hiring authority from employers whose employment opportunities reflect existing and emerging employment opportunities in the region) on the local board;
 - develop effective linkages (including the use of intermediaries) with employers in the region to support employer utilization of the local workforce development system and to support the local workforce investment activities;
 - ensure that workforce investment activities meet the needs of employers and support economic growth in the region, by enhancing communication, coordination, and collaboration among employers, economic development entities, and service providers; and
 - develop and implement proven or promising strategies for meeting the employment and skill needs of workers and employers (such as the establishment of industry and sector partnership), that provide the skilled workforce needed by employers in the region, and that expand employment and career advancement

⁴¹ WIOA Section 107(i); TEN 10-15

⁴² WIOA Section 107(d)(1)

⁴³ WIOA Section 107(d)(2)

⁴⁴ WIOA Section 107(d)(3)

opportunities for workforce development system participants in in-demand industry sectors or occupations.⁴⁵

- With representatives of secondary and postsecondary programs, lead efforts in the local area to develop and implement career pathways within the local area by aligning the employment, training, education, and supportive services that are needed by adults and youth, particularly individuals with barriers to employment;⁴⁶
- Lead efforts in the local area to identify and promote proven and promising strategies and initiatives for meeting the needs of employers, and workers and jobseekers (including individuals with barriers to employment) in the local workforce development system, including providing physical and programmatic accessibility in accordance with applicable WIOA non-discrimination requirements and applicable provisions of the Americans with Disabilities Act of 1990 (ADA); and identify and disseminate information on proven and promising practices carried out in other local areas for meeting such needs;⁴⁷
- Develop strategies for using technology to maximize the accessibility and effectiveness of the local workforce development system for employers, and workers and jobseekers by:
 - Facilitating connections among the intake and case management information systems of the one-stop partner programs to support a comprehensive workforce development system in the local area;
 - Facilitating access to services provided through the one-stop delivery system involved, including facilitating access in remote areas;
 - Identifying strategies for better meeting the needs of individuals with barriers to employment, including strategies that augment traditional service delivery, and increase access to services and programs of the one-stop delivery system, such as improving digital literacy skills; and
 - Leveraging resources and capacity within the local workforce development system, including resources and capacity for services for individuals with barriers to employment;⁴⁸
- In partnership with the CEO:
 - Conduct oversight with respect to local programs of youth activities, local employment and training activities, and the one-stop delivery system in the local area;
 - Ensure the appropriate use and management of funds provided under subtitle B for such activities and systems; and
 - For workforce development activities, ensure the appropriate use, management, and investment of funds to maximize performance outcomes under the performance accountability system provided in Sec. 116;⁴⁹
- Negotiate and reach an agreement with the CEO and the Governor on local performance measures;⁵⁰
 - In terms of the selection of operators and providers:
 - With the agreement of the CEO, designate or certify one-stop operators and terminate for cause the eligibility of such operators;
 - Identify eligible providers of youth workforce investment activities in the local area by awarding grants or contracts on a competitive basis (if there is a sufficient number of such providers in the local area), based on

⁴⁵ WIOA Section 107(d)(4)

⁴⁶ WIOA Section 107(d)(5)

⁴⁷ WIOA Section 107(d)(6)

⁴⁸ WIOA Section 107(d)(7)

⁴⁹ WIOA Section 107(d)(8)

⁵⁰ WIOA Section 107(d)(9)

- recommendations of the youth standing committee if established, and terminate for cause the eligibility of such providers;
 - Identify eligible providers of training services;
 - Identify eligible providers of career services, if the one-stop operator does not provide such services, by awarding contracts; and
 - Work with the State to ensure there are sufficient numbers and types of providers of career services and training services serving the local area and providing the services in a manner that maximizes consumer choice, as well as providing opportunities that lead to competitive integrated employment for individuals with disabilities;⁵¹
- Coordinate activities with education and training providers, including workforce investment activities, adult education and literacy activities, providers of career and technical education, and local agencies administering plans under title I of the Rehabilitation Act of 1973;⁵²
- Develop a budget for the activities of the local board in the local area, consistent with the local plan and duties of the local board, subject to the approval of the CEO;⁵³ and
- Annually assess the physical and programmatic accessibility, in accordance with applicable WIOA non-discrimination requirements and applicable provisions of the ADA, of all one-stop centers in the local area.⁵⁴

Disclaimer:

This interim policy is based on NDOL's reading of the statute along with the Notice of Proposed Rulemaking released by USDOL. This policy may be subject to change as additional federal regulations and TEGLs are released. This policy is not intended to be permanent and should be viewed as a placeholder until final federal regulations are released in early 2016.

⁵¹ WIOA Section 107(d)(10)

⁵² WIOA Section 107(d)(11)

⁵³ WIOA Section 107(d)(12)

⁵⁴ WIOA Section 107(d)(13)

ATTACHMENT A

MINIMUM NUMBER OF LOCAL BOARD MEMBERS

(Assuming no representation of multiple categories)
WIOA 107(b)(2)

