Preliminary Policy on the Role and Responsibilities of Chief Elected Officials

Reference:

The Workforce Innovation and Opportunity Act, Section 3, 107, 108, and 121.

Background:

The chief elected official is the chief elected executive officer of a unit of general local government in a local area.[1] In a case in which a local area includes more than one (1) unit of general local government, the chief elected officials of such units may execute an agreement that specifies the respective roles of individual elected officials in the appointment of members of the local board from the individuals nominated or recommended to be such members in accordance with standards set forth in 107(b); and in carrying out any other responsibilities assigned to such officials under Title I.[2]

Action:

This policy is effective July 1, 2015; however, note that the request for certification of the local board is due to the State on **May 29, 2015**.

Policy:

Appointment of the Members of the Local Workforce Development Board

The chief elected official (CEO) in a local area is authorized to appoint the members of the local workforce development board in accordance with State criteria established by the Governor in partnership with the State board.[3]

The Workforce Innovation and Opportunity Act (WIOA) provides that a majority of the members of each local board shall include representatives of business in the local area who are owners of businesses, chief executive or operating officers of businesses, and other business executives or employees with optimum hiring or policymaking authority. These persons are to represent businesses, including small businesses, or organizations representing businesses, that provide employment opportunities that reflect the 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. They are to be appointed from among individuals nominated by local business organizations and business trade associations.[4]

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

- Representatives of the workforce within the local area. The workforce members shall constitute not less than 20 percent of the members of the local board. This portion of the local board:

[1] WIOA Section 3(9)
[2] WIOA Section 107(c)(1)(B)(i)
[3] WIOA Section 107(c)(1)(A)
[4] WIOA Section 107(b)(2)(A)

- Must include representatives 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. [5]
- Must 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 program exists in the area, such a representative of an apprenticeship program in the area, if one exists.[6]
- 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.[7]
- 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.[8]

- Representatives of entities administering education and training activities in the local area.
  - These persons must include a representative of eligible providers administering adult education and literacy activities, and a representative of institutions of higher education providing workforce investment activities (including community colleges).These persons may include 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;[9]
  - 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 investment 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;[10]
- Representatives of governmental and economic and community development entities serving the local area. These persons must include a representative of economic and community development entities, a representative from the State employment office under the Wagner-Peyser Act serving the local area, and a representative of vocational rehabilitation programs serving the local area. These persons may also include representatives of agencies or entities administering programs serving the local area relating to transportation, housing, and public assistance, as well as representatives of philanthropic organizations serving the local area;[11] and
- May include such other individuals or representatives of entities as the CEO in the local area may determine to be appropriate.[12]

[5] WIOA Section 107(b)(2)(B)(i)
[6] WIOA Section 107(b)(2)(B)(ii)
[7] WIOA Section 107(b)(2)(B)(iii)
[8] WIOA Section 107(b)(2)(B)(iv)
[9] WIOA Section 107(b)(2)(C)
[10] WIOA Section 107(b)(6)
[11] WIOA Section 107(b)(2)(D)
[12] WIOA Section 107(b)(2)(E)

As with the representatives of business, each of the representatives of other sectors are to be individuals with optimum policymaking authority within the entities they represent.[13] A majority of the members of the local board are to be representatives of business in the local area.[14]

For further details on local board composition, see the Preliminary Policy on Criteria for Local Workforce Development Boards Policy.

The request for certification of the local board is due to the State **May 29, 2015**. The Governor will certify the local board by June 30, 2015.

Local Grant Recipient for Funds Allocated to the Local Area

The CEO in a local area shall serve as the local grant recipient for, and shall be liable for any misuse of, the grant funds allocated to the local area, unless the CEO reaches an agreement with the Governor for the Governor to act as the local recipient and bear such liability.[15]

In order to assist in the administration of the grant funds, the CEO or the Governor, where the Governor serves as the grant recipient for the local area, may designate an entity to serve as a local grant subrecipient for such funds or as a local fiscal agent. Such designation shall not relieve the CEO or the Governor of the liability for misuse of the funds.[16]

<u>The CEO Agreement</u>

Options available to the CEO may include, but are not limited to:

- Name one CEO (and their unit of general local government) to serve as grant recipient;
- Negotiate with the Governor for the Governor to serve as grant recipient or to appoint a grant subrecipient or fiscal agent;
- Appoint an entity to serve as the grant subrecipient or fiscal agent and document such appointment in the CEO agreement; or
- Other locally developed procedures consistent with the Act and described in the CEO agreement

Further, the CEO agreement should respond to the following:

- If a single CEO is appointed as grant recipient, will the unit of general local government of that CEO bear full liability for misuse of grant funds?
- Will the liability for misuse of grant funds be vested proportionately among the units of general local government based on population, number of participants, or other factors determined locally?
- If the CEOs appoint a grant subrecipient or fiscal agent, will there be a written agreement with that entity and is it understood that such designation shall not relieve the CEO or the Governor (where the Governor serves as the local grant recipient for a local area) of the liability for any misuse of grant funds?

[13] WIOA Section 107 (b)(5)
[14] WIOA Section 107(b)(2)(A)
[15] WIOA Section 107(d)(12)(B)(i)(I)
[16] WIOA Section 107(d)(12)(B)(i)(I)

Submission of the Local Plan

For the first year of WIOA implementation, local areas will be asked to modify existing local plans and submit the modified plans to serve as "transitional" plans.

Each local board shall develop and submit to the Governor a 4-year local plan (beginning July 1, 2016), in partnership with the CEO. The local plan shall support the strategy described in the State plan in accordance with section 102(b)(1)(E), and otherwise be consistent with the State plan. If the local area is part of a planning region, the local board shall comply with section 106(c) in the preparation and submission of a regional plan. At the end of the first 2-year period of the 4-year local plan, each local board shall review the local plan and the local board, in partnership with the CEO, shall prepare and submit modifications to the local plan to reflect changes in labor market and economic conditions or in other factors affecting the implementation of the local plan.[17]

The CEO Agreement

Options available to the CEO may include, but are not limited to:

- Review and approve, as a body, the plan as developed by the Local Workforce Development Board;
- Appointment of a committee of CEOs to develop the plan in conjunction with a similar committee of the local Workforce Development Board;
- Designate one or more CEOs to serve on the Local Workforce Development Board's planning committee;
- Designate one or more CEOs to monitor the Local Workforce Development Board's planning committee and report to the CEOs; or
- Other locally developed procedures consistent with the Act and described in the CEO agreement.

Approval of the Designation and Certification of One-Stop Operators

Consistent with an approved State plan, the local board, with the agreement of the CEO, is authorized to designate or certify one-stop operators and to terminate for cause the eligibility of such operators.[18]

Required one-stop partners are entities that carry out the following:

- Programs carried out under Title I [Workforce Development Activities] of WIOA;
- Programs authorized under Wagner-Peyser;
- Adult education and literacy activities authorized under Title II of WIOA;
- Programs authorized under Title I of the Rehabilitation Act of 1973 (other than Sec. 112 [Client Assistance Program under Basic Vocational Rehabilitation Services] or part C [American Indian Vocational Rehabilitation Services] of Title I of such Act);
- Activities authorized under Title V [Community Service for Older Americans] of the Older American Act of 1965;
- Career and technical education programs at the postsecondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006;

[17] WIOA Section 108(a)
[18] WIOA Section 121(d)(1)

- Activities authorized under chapter 2 [Adjustment Assistance for Workers] of Title II of the Trade Act of 1974;
- Activities authorized under chapter 41 of title 38, United States Code [Job Counseling, Training, and Placement Service for Veterans];
- Employment and training activities carried out under the Community Services Block Grant;
- Employment and training activities carried out by the Department of Housing and Urban Development;
- Programs authorized under State unemployment compensation laws;
- Programs authorized under section 212 [Responsible reintegration of offenders] of the Second Chance Act of 2007; and
- Programs authorized under part A [Block Grants to States for Temporary Assistance to Needy Families] of Title IV of the Social Security Act, unless the option to remove the entity carrying out such programs as a required partner is exercised by the Governor in accordance with WIOA Sec. 121(b)(1)(C).[19]

With the approval of the local board and CEO, other entities that carry out workforce development programs may be one-stop partners for the local area and carry out responsibilities described in Sec. 121(b)(1)(A).[20]

The CEO Agreement

Options available to the CEO may include, but are not limited to:

- Review and approve, as a body, actions taken by the Local Workforce Development Board relating to the designation of one-stop operators and their termination for cause;
- Appointment of a committee of CEOs to review actions of the Local Workforce Development Board relating to designation of one-stop operators and their termination for cause; or
- Other locally developed procedures consistent with the Act and described in the CEO agreement.

Memorandum of Understanding with One-Stop Partners

The local board, with the agreement of the CEO, shall develop and enter into a memorandum of understanding (between the local board and one-stop partners) concerning the operation of the one-stop delivery system in the local area.[21]

The CEO Agreement

Options available to the CEO may include, but are not limited to:

- Review and approve, as a body, the memorandum of understanding developed by the Local Workforce Development Board;
- Appoint a committee of CEOs to assist the Local Workforce Development Board (or relevant committees thereof) in the development of the memorandum of understanding;

[19] WIOA Section 121(b)(1)(A) and (B)
[20] WIOA Section 121(b)(2)(A)
[21] WIOA Section 121(c)(1)

- Appoint a committee of CEOs to review and approve the memorandum of understanding; or
- Other locally developed procedures consistent with the Act and described in the CEO agreement.

Oversight of the One-Stop Delivery System

Consistent with an approved State plan, the local board for a local area, with the agreement of the CEO, shall conduct oversight with respect to the one-stop delivery system in the local area.[22]

The CEO Agreement

Options available to the CEO may include, but are not limited to:

- Review and approve, as a body, monitoring activities of the Local Workforce Development Board;
- Appoint CEOs from the local area to serve on a monitoring committee of the body of CEOs, which will review and approve monitoring activities of the Local Workforce Development Board;
- Appoint one or more CEOs from the local area to serve on the monitoring committee of the Local Workforce Development Board; or
- Other locally developed procedures consistent with the Act and described in the CEO agreement.

Local Workforce Development Board Budget

The local board shall develop a budget for the activities of the local board, consistent with the local plan and the duties of the local board, subject to the approval of the CEO.[23]

The CEO Agreement

Options available to the CEO may include, but are not limited to:

- Review and approve, as a body, the budget of the Local Workforce Development Board;
- Appoint CEOs to serve on a budget committee of the body of CEOs, which will review and approve monitoring activities of the Local Workforce Development Board, with or without further approval by the CEOs as a body;
- Appoint one or more CEOs to serve on the budget committee of the Local Workforce Development Board; or
- Other locally developed procedures consistent with the Act and described in the CEO agreement.

[22] WIOA Section 121(a)(3)
[23] WIOA Section 107(d)(12)(A)

Disclaimer:

This policy is based on NDOL's initial reading of the statute without any interpretive guidance from USDOL. This policy may be subject to change as additional federal regulations and TEGLs are released that are contrary to or otherwise different from NDOL's interpretation of WIOA. This policy is not intended to be permanent and should be viewed as a placeholder until final federal regulations and guidelines are established.