



## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

<p>Nebraska Department of Labor (NDOL)          Office of Employment and Training          550 South 16<sup>th</sup> Street          Lincoln, NE 68508          402.471.2022  <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a></p>	<p><b>Policy category</b>          Governance</p> <p><b>Effective date</b>          January 12, 2018</p> <p><b>Supersedes</b>          Interim Policy on Criteria for Local Workforce Development Boards (Rev. 09/28/2015)          Preliminary Policy on the Request for Local Board Certification (Rev. 5/4/2015)          Interim Policy on Conflict of Interest (Rev. 12/9/2015)          Preliminary Policy on Salary and Bonus Limitations (Rev. 4/6/2015)          Preliminary Policy on Monitoring (Rev. 5/11/2015)          Local Workforce Development Boards – High-performing Criteria (effective January 24, 2017)          Preliminary Policy on the Role and Responsibilities of Chief Elected Officials (Rev. 03/16/2015)</p>
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## Workforce Development Boards and Chief Elected Officials

### REFERENCE

Federal and state laws, regulations, rules, and other guidance and documentation relied upon for the development of this policy are cited in footnotes.

### BACKGROUND

WIOA<sup>1</sup> establishes roles, functions, and requirements for Nebraska’s state workforce development board (state board), local workforce development boards (local boards), and chief elected officials (CEOs) of local workforce development areas (local areas).

<sup>1</sup> WIOA refers to the Workforce Innovation and Opportunity Act of 2014.

## ACTION

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This policy supersedes and cancels the State's:<sup>2</sup>

- Interim Policy on Criteria for Local Workforce Development Boards (Rev. 09/28/2015);
- Preliminary Policy on the Request for Local Board Certification (Rev. 5/4/2015);
- Interim Policy on Conflict of Interest (Rev. 12/9/2015);
- Preliminary Policy on Salary and Bonus Limitations (Rev. 4/6/2015);
- Preliminary Policy on Monitoring (Rev. 5/11/2015);
- Local Workforce Development Boards – High-performing Criteria (effective January 24, 2017); and
- Preliminary Policy on the Role and Responsibilities of Chief Elected Officials (Rev. 03/16/2015).

The State provides a thirty (30) day review period for this policy, during which questions and comments may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

## POLICY

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This policy identifies the requirements for the state board, local boards, and CEOs and is organized into three (3) sections and one (1) appendix.

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### Section I. State Board

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#### (a) Membership

The members of the state board are appointed by the Governor and must:<sup>3</sup>

- represent diverse geographic areas of Nebraska, including urban, suburban, and rural areas; and

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<sup>2</sup> The term “State” refers to the Nebraska Workforce Development Board and the Nebraska Department of Labor (acting on the Governor’s behalf pursuant to the Governor’s Executive Order No. 15-03).

<sup>3</sup> 20 CFR § 679.110

- meet the requirements described in 20 CFR § 679.110 and the bylaws of the state board,<sup>4</sup> including requirements regarding the nomination process used by the Governor for appointment of members and selection of the chair of the state board.

## (b) Functions

The state board is required to assist the Governor with the activities described in WIOA Sec. 101(d) and 20 CFR § 679.130.

### (1) Sunshine provision requirements<sup>5</sup>

In addition to functions described in WIOA Sec. 101(d) and 20 CFR § 679.130, the state board must conduct its business in an open manner by making available to the public information about its activities. This information must be made available on a regular basis through electronic means and open meetings. These requirements are referred to as sunshine provision requirements, which are described in WIOA Sec. 101(g) and 20 CFR § 679.140 and restated below to stress their importance.

To meet sunshine provision requirements, the state board must make the following information available to the public:<sup>6</sup>

- the state plan and modifications of the plan, before submission of the plan or any modification for approval;
- information regarding state board membership;
- minutes of formal meetings of the state board; and
- state board bylaws.

In addition, meetings of the state board must comply with the requirements of the Nebraska Open Meetings Act.<sup>7</sup>

### (2) State board staff<sup>8</sup>

The state board may hire a director and other staff to assist in carrying out its required functions, using funds reserved by the state for administrative activities in accordance with WIOA Secs. 129(b)(3) or 134(a)(3)(B)(i). If the state board elects to hire staff, two (2) requirements must be met.

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<sup>4</sup> The bylaws of the Nebraska Workforce Development Board are accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/NWDB>.

<sup>5</sup> 20 CFR § 679.140

<sup>6</sup> Nebraska's current state plan is accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/ManualsPlansReports>. Information regarding state board membership, minutes of formal meetings of the state board, and state board bylaws are accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/NWDB>.

<sup>7</sup> Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2016)

<sup>8</sup> 20 CFR § 679.160

1. The state board must establish and apply a set of qualifications for the position of director that ensures the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and assist in carrying out the functions of the state board.
2. The state board's director and other staff must be subject to limitations on payment of salary and bonuses as described in WIOA Sec. 194(15) and TEGL 29-14 Change 2.

(c) Conflict of interest

The bylaws of the state board define specific requirements regarding conflicts of interest in relation to state board members, and the members must adhere to those requirements.

## Section II. Local Boards

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(a) Membership

Members of a local board are appointed by the CEO for the local area. At a minimum, each local board must consist of representatives from the four (4) categories described in Table 1. All members of the local board must:

- be individuals with optimum policymaking authority within the entities they represent;<sup>9</sup> and
- meet the criteria for the entity they represent as described in Table 1.

*Table 1. Required structure of a local board<sup>10</sup>*

Category of representation	Required membership entity and criteria for membership
Business	At least 51% percent of local board members <u>must</u> be business representatives in the local area and each individual representing this category <u>must</u> : <ul style="list-style-type: none"> <li>▪ be an owner, chief executive officer, chief operating officer, or other individual with optimum policy-making authority or hiring authority; <u>and</u></li> <li>▪ provide employment opportunities in in-demand industry sectors or occupations.</li> </ul> At least 2 individuals representing this category <u>must</u> represent small business.
Workforce	At least 20% percent of local board members <u>must</u> be workforce representatives and <u>must</u> include: <ul style="list-style-type: none"> <li>▪ 2 or more representatives of labor organizations, if labor organizations exist in the local area; <i>or</i>, where labor organizations do not exist, the workforce representatives <u>must</u> be selected from other representatives of workers in the local area; <u>and</u></li> <li>▪ 1 or more representatives of a joint labor-management or union-affiliated Registered Apprenticeship program in the local area; <i>or</i>, if no union-affiliated Registered Apprenticeship program exists in the local area, a representative of a Registered Apprenticeship program having no union affiliation <u>must</u> be appointed, if one exists.</li> </ul> Workforce representatives <u>may</u> include: <ul style="list-style-type: none"> <li>▪ 1 or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training</li> </ul>

<sup>9</sup> 20 CFR § 679.320(f)

<sup>10</sup> 20 CFR § 679.320(b) – (d)(1) – (3)

Category of representation	Required membership entity and criteria for membership
	<p>or education needs of individuals with barriers to employment, including organizations that serve Veterans or provide or support competitive integrated employment for individuals with disabilities; and</p> <ul style="list-style-type: none"> <li>▪ 1 or more 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.</li> </ul>
Education and training	<p>Local board membership <u>must</u> include at least 1 representative from each of the following education and training entities:</p> <ul style="list-style-type: none"> <li>▪ an provider that administers adult education and literacy activities under WIOA Title II; <u>and</u></li> <li>▪ an institution of higher education providing workforce investment activities, including community colleges.</li> </ul>
Government; economic and community development	<p>Local board membership <u>must</u> include at least 1 representative from each of the following governmental and economic and community development entities:</p> <ul style="list-style-type: none"> <li>▪ economic and community development entities serving the local area;</li> <li>▪ Wagner-Peyser Employment Service program serving the local area; and</li> <li>▪ vocational rehabilitation programs authorized under Title I of the Rehabilitation Act of 1973, as amended by WIOA Title IV.</li> </ul>

(1) Additional members<sup>11</sup>

In addition to the required members described in Table 1, the membership of the local board may include individuals or representatives of other appropriate entities in the local area, including:

- individuals from entities administering education and training activities who represent local educational agencies or community-based organizations that have demonstrated expertise in addressing the education or training needs for individuals with barriers to employment;
- representatives from governmental and economic and community development entities representing transportation, housing, and public assistance programs;
- individuals from philanthropic organizations serving the local area; and
- representatives of entities determined by the CEO as appropriate.

All additional members of the local board must:

- be individuals with optimum policymaking authority within the entities they represent; and
- meet the criteria for the category and entity they represent as described in this subsection.

**IMPORTANT.** If additional members are included in the local board’s membership, requirements regarding minimum percentages for representation of the business and workforce categories still apply and must be met as described in Table 1.

<sup>11</sup> 20 CFR § 679.320(e) – (f)

## (2) Nomination

Members of the local board are nominated for appointment according to the formal process established by the CEO in the bylaws of the local board and the following requirements:<sup>12</sup>

- business representatives must be nominated by local business organizations or business trade associations;
- labor representatives must be nominated by:
  - local labor federations; or
  - other organizations or representatives of employees if employees are not represented by local labor federations in the local area;
- if there is more than one (1) local area provider of adult education and literacy activities under WIOA Title II *or* multiple institutions of higher education providing workforce investment activities in the local area, education and training representatives must be nominated by those entities.

## (3) Appointment

Members of the local board are appointed by the CEO:

- from the individuals nominated as described above in subsection (2); and
- according to the formal process established by the CEO in the bylaws of the local board according to the requirements established in [Section II\(a\)](#).<sup>13</sup>

An individual may be appointed as a representative of more than one (1) required membership entity if the individual meets all of the criteria for representation for each entity the individual is meant to represent.<sup>14</sup>

Where governance of a local area is provided by a chief elected officials board (CEOB) and the members of the CEOB are unable to reach agreement regarding appointment of local board members after reasonable effort, the Governor may appoint the members of the local board from among individuals nominated according the process described in subsection (2) above.<sup>15</sup>

## (b) Functions

The local board must perform the functions described in WIOA Sec. 107(d) and 20 CFR § 679.370. In addition, the local board must:

- elect a chairperson from among the business representatives appointed to the local board;<sup>16</sup> and

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<sup>12</sup> 20 CFR §§ 679.310(g)(1) and 679.320(g)(1) – (3)

<sup>13</sup> 20 CFR § 679.350

<sup>14</sup> 20 CFR § 679.320(h)

<sup>15</sup> 20 CFR §§ 679.310(e) and 679.320(g)(3)

<sup>16</sup> 20 CFR § 679.330

- when there is a change in the position of CEO for the local area, inform the new CEO, in a timely manner, of the CEO's responsibilities and liabilities and the need to review and update any written agreements among CEOs in the local area.<sup>17</sup>

#### (1) Sunshine provision requirements

In addition to the required functions described above and in WIOA Sec. 107(d) and 20 CFR § 679.370, each local board must conduct its business in an open manner by making available to the public information about the activities of the local board. This information must be made available on a regular basis through electronic means and open meetings. These requirements are referred to as sunshine provision requirements, which are described in WIOA Sec. 107(e) and 20 CFR § 679.390 and described below to emphasize their importance.

To meet sunshine provision requirements for local boards, each local board must make the following information available to the public:

- information about the local plan or modification of the local plan before submission of the local plan or any modification for approval;
- a listing of local board members and their category of affiliation (business, workforce, *etc.*);
- information about the selection of a one-stop operator;
- awarding of grants or contracts to providers of workforce investment activities, including providers of youth workforce investment activities;
- minutes of meetings of the local board; and
- local board bylaws.

In addition, meetings of the local board must comply with the requirements of the Nebraska Open Meetings Act.<sup>18</sup>

#### (2) Local board staff<sup>19</sup>

Each local board has the authority to hire a director and other staff to assist in carrying out the functions of the local board. If the local board elects to hire staff, the following requirements must be met.

- The local board must establish and apply a set of qualifications for the position of director that ensures the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and to assist in carrying out the functions of the local board.
- The local board's director and staff must be subject to limitations on payment of salary and bonuses described in WIOA Sec. 194(15) and TEGL 29-14 Change 2.
- In general, local board staff may assist the local board only in fulfillment of its required functions as described in WIOA Sec. 107(d). If the local board selects an entity that

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<sup>17</sup> 20 CFR § 683.710(b)(3)

<sup>18</sup> Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2016)

<sup>19</sup> 20 CFR § 679.400

provides additional workforce functions beyond the functions described in WIOA Sec. 107(d), that entity must enter into a written agreement with the local board and CEO to clarify its roles and responsibilities.

### (3) Standing committees<sup>20</sup>

A local board may designate standing committees to assist the local board in carrying out its responsibilities. If the local board elects to designate standing committees, each standing committee:

- must be chaired by a member of the local board;
- must include other individuals appointed by the local board who are not members of the local board and have demonstrated experience and expertise as determined by the local board; and
- may include other members of the local board.

Standing committees designated by the local board may include each of 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 representatives of one-stop partners;
- a standing committee to provide information and assist with planning, operational, and other issues relating to the provision of services to youth, which must include community-based organizations with a demonstrated record of success in serving eligible youth and may include parents, participants, and youth;<sup>21</sup>
- a standing committee to provide information and assist with operational and other issues relating to the provision of services to individuals with disabilities, including issues relating to:
  - compliance with WIOA Sec. 188 (nondiscrimination) and 29 CFR Part 38, if applicable, and the applicable provisions of the Americans with Disabilities Act of 1990 (42 USC § 12101 *et seq.*) regarding programmatic and physical access to the services, programs, and activities of the one-stop delivery system; and
  - appropriate training for staff on providing supports for, accommodations to, and finding employment opportunities for individuals with disabilities;
- an entity in existence as of the date of the enactment of WIOA (July 22, 2014), such as an effective youth council, to serve as a standing committee as long as the entity meets the requirements described in this subsection (3); and
- other standing committees.

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<sup>20</sup> 20 CFR § 679.360

<sup>21</sup> 20 CFR § 681.110(a) and (b)

#### (4) Consumer choice requirements

Each local board must satisfy the consumer choice requirements described in 20 CFR § 679.380 and in Table 2 to emphasize their importance.

*Table 2. Consumer choice requirements*

Services	Consumer choice requirements
Career services	The local board satisfies consumer choice requirements for career services by: <sup>22</sup> <ul style="list-style-type: none"> <li>▪ determining which career services: <ul style="list-style-type: none"> <li>○ are best performed by the one-stop operator; and</li> <li>○ require contracting with a career services provider;</li> </ul> </li> <li>▪ identifying a wide array of potential career services providers and awarding contracts when appropriate, including awarding contracts to providers to ensure access to: <ul style="list-style-type: none"> <li>○ services for individuals with disabilities, including opportunities that lead to integrated, competitive employment for individuals with disabilities; and</li> <li>○ adult education and literacy activities.</li> </ul> </li> </ul>
Training services	The local board satisfies the consumer choice requirement for training services by: <sup>23</sup> <ul style="list-style-type: none"> <li>▪ providing adequate access to training services for individuals with disabilities;</li> <li>▪ working with NDOL to ensure there are sufficient numbers and types of providers of training services serving the local area, including training providers with expertise in assisting: <ul style="list-style-type: none"> <li>○ individuals with disabilities; and</li> <li>○ adults in need of adult education and literacy activities;</li> </ul> </li> <li>▪ assisting NDOL, as requested, regarding Nebraska's Eligible Training Provider Program;<sup>24</sup> and</li> <li>▪ ensuring the dissemination and appropriate use of Nebraska's Eligible Training Provider List through the one-stop delivery system, including dissemination of program performance and cost information.<sup>25</sup></li> </ul>

#### (5) Oversight and monitoring

Each local board, in partnership with the CEO for the local area, must provide oversight and monitoring as described in Table 3.

*Table 3. Required oversight and monitoring activities for local boards and CEOs*

Required activity
1. Conducting oversight and monitoring of Youth, Adult, and Dislocated Worker program activities <u>and</u> the entire one-stop delivery system in the local area <sup>26</sup>
2. Ensuring appropriate use and management of funds provided under WIOA Title IB for youth, adult, and dislocated worker activities and the one-stop delivery system in the local area; <sup>27</sup>
3. For workforce development activities, ensuring appropriate use, management, and investment of funds to maximize performance outcomes under WIOA Sec. 116 <sup>28</sup>
4. Providing oversight and monitoring of local area operations and activities supported by WIOA Title IB funding <sup>29</sup>

<sup>22</sup> 20 CFR § 679.380(b)

<sup>23</sup> 20 CFR § 679.380(a)

<sup>24</sup> Refer to the State's current policy on Nebraska's Eligible Training Provider Program for information on the local board's role regarding Eligible Training Providers.

<sup>25</sup> Ibid.

<sup>26</sup> 20 CFR § 679.370(i)(1)

<sup>27</sup> 20 CFR § 679.370(i)(2)

<sup>28</sup> 20 CFR § 679.370(i)(3)

<sup>29</sup> 2 CFR § 200.328

Required activity
5. Monitoring local board activities to: <sup>30</sup> a. assure compliance with applicable Federal requirements; and b. assure performance expectations are being achieved
6. Conducting monitoring of subawards to one-stop operators, service providers, and other subrecipients to ensure (1) subawards are used for authorized purposes in compliance with Federal statutes, regulations, and the terms and conditions of the subaward and (2) subaward performance goals are achieved, which <u>must</u> include: <sup>31</sup> a. reviewing financial and performance reports required of the subrecipient by the local board; b. ensuring that subrecipients take timely and appropriate action on all deficiencies detected through audits, on-site reviews, and other means; and c. issuing a management decision for audit findings as required by 2 CFR § 200.521
7. Ensuring contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders <sup>32</sup>
8. Evaluating and monitoring the local board's compliance with statutes, regulations and the terms and conditions of its WIOA grant agreement <sup>33</sup>
9. Taking prompt action when instances of noncompliance are identified, including noncompliance identified in audit and monitoring findings <sup>34</sup>

### (6) Internal controls

Each local board must:<sup>35</sup>

- establish and maintain effective internal controls<sup>36</sup> that provide reasonable assurance that the local board is managing WIOA funds in compliance with Federal statutes, regulations, and the terms and conditions of its WIOA grant agreement; and
- take reasonable measures to safeguard protected personally identifiable information and other information the US Department of Labor or NDOL designates as sensitive or the local board considers sensitive, consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

In addition, if the local board or CEO has selected or designated an organization to function simultaneously in two (2) or more roles, including local fiscal agent, local board staff, one-stop operator, and direct provider of services, the local board and CEO must develop a written agreement with the organization. The agreement must clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, relevant Office of Management and Budget circulars, and the State's conflict of interest provisions.<sup>37</sup>

<sup>30</sup> 2 CFR § 200.328

<sup>31</sup> 2 CFR § 200.331(d)

<sup>32</sup> 2 CFR § 200.318(b)

<sup>33</sup> 2 CFR § 200.303(c)

<sup>34</sup> 2 CFR § 200.303(d)

<sup>35</sup> 2 CFR § 200.303(a) and (e)

<sup>36</sup> Internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government,” issued by the Comptroller General of the United States, *or* the “Internal Control Integrated Framework,” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) [20 CFR § 683.220(b)].

<sup>37</sup> 20 CFR § 679.430

### (c) Conflict of interest

A local board member and a member of a standing committee of the local board must not vote on or participate in any decision-making capacity regarding:<sup>38</sup>

- the provision of services by the member or any entity or class of officials which that member directly represents; or
- any matter that would provide any direct financial benefit to the member or that member's immediate family.

In addition, the local board, as a non-Federal entity, must maintain written standards of conduct covering conflicts of interest and governing the actions of its members and local area staff engaged in the selection, award and administration of contracts as described in 2 CFR § 200.318(c)(1), the requirements of which are restated below to stress their importance.

- No employee, officer, or agent of a non-Federal entity may participate in the selection, award, or administration of a contract supported by a Federal award if the individual has a real or apparent conflict of interest.
  - A conflict of interest arises when the employee, officer, or agent, any member of the individual's immediate family, the individual's partner, or an organization which employs or is about to employ any of the parties described in this subsection (c), has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
- If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest.
  - Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- Officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
- The non-Federal entity's standards of conduct must provide for disciplinary actions to be applied for violations of the standards by officers, employees, or agents of the non-Federal entity.

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<sup>38</sup> 20 CFR § 683.200(c)(5)(i)

#### (d) Certification procedures and criteria

The local board must be certified every two (2) years.<sup>39</sup> Certification procedures are provided every other year to local boards and CEOs through an Employment and Training Notice issued by NDOL. Certification of local boards is based on the following criteria.<sup>40</sup>

1. The composition of the local board must comply with the membership requirements described in [Section II\(a\)](#).
2. The chair of the local board must be a representative of business as described in [Section II\(b\)](#).
3. If the local board has established standing committees, the committees must comply with the requirements described in [Section II\(b\)\(3\)](#).
4. The local board must have ensured that workforce investment activities carried out in the local area enabled the local area to meet the corresponding performance accountability measures during the preceding two (2) program years.
5. The local board must have sustained fiscal integrity during the preceding two (2) program years.

If a local board fails to achieve certification, a new local board must be nominated and appointed according to the process described in [Section II\(a\)\(2\) – \(3\)](#).

#### (e) Decertification criteria and procedure<sup>41</sup>

The Governor has the authority to decertify a local board at any time for any of the following reasons:

- fraud or abuse;
- failure to carry out the functions specified for the local board in 20 CFR § 679.370 and [Section II\(b\)](#); or
- failure to meet the local area's negotiated levels of performance for two (2) consecutive program years.

Prior to decertification, the Governor must provide the local board written notice of decertification and provide an opportunity for comment by the local board.

If the Governor decertifies a local board, the Governor may require that a new local board be nominated, appointed, and certified for the local area pursuant to a reorganization plan developed by the Governor in consultation with the CEO of the local area and in accordance with the criteria established in [Section II\(a\)](#).

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<sup>39</sup> 20 CFR § 679.350

<sup>40</sup> WIOA Secs. 107(b)(1) – (4) and (c)(2).

<sup>41</sup> WIOA Sec. 107(c)(3)

## (f) High-performing local boards

Criteria for high-performing local boards are under development and will be provided through a change to this policy.

## Section III. CEOs

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### (a) Functions

The CEO must perform the functions described in Table 4.

*Table 4. Required functions of the CEO*

Description
1. Serve as subrecipient for WIOA Title IB (Youth, Adult, and Dislocated Worker) funds or designate an alternative entity as subrecipient or fiscal agent <sup>42</sup>
2. Designate the entity responsible for the disbursement of WIOA Title IB (Youth, Adult, and Dislocated Worker programs) funds to the local area <sup>43</sup>
3. Bear financial liability for misuse of grant funds, even if an alternate grant subrecipient or fiscal agent has been designated, unless an agreement has been reached with the Governor to bear the liability <sup>44</sup>
4. If the local area is composed of more than 1 unit of general local government, the liability of the individual jurisdictions with regard to misused funds <u>must</u> be specified in a written agreement among the CEOs in the local area <sup>45</sup>
5. Establish the bylaws for the local board <sup>46</sup>
6. Select and appoint members of the local board <sup>47</sup>
7. Request designation for the local area in collaboration with the local board <sup>48</sup>
8. Approve the following actions of the local board: a. local board's competitive selection of a one-stop operator; <sup>49</sup> b. local board's intent to serve as the one-stop-operator and/or provide career services, <u>prior</u> to requesting approval from NDOL, <sup>50</sup> according to the requirements of 20 CFR § 679.410
9. Consult with the state board and NDOL, as appropriate, regarding significant structural, planning, operational, and performance matters pertaining to the delivery of workforce services, including consultation related to: a. designation of local areas; <sup>51</sup> b. identification of planning regions; <sup>52</sup> c. allocation of WIOA Title IB funds; <sup>53</sup> and d. policies regarding certification of American Job Centers (AJCs) and funding of AJC infrastructure costs <sup>54</sup>

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<sup>42</sup> 20 CFR § 679.420(a)

<sup>43</sup> 20 CFR § 679.560(b)(14)

<sup>44</sup> 20 CFR §§ 679.420(a) and 679.710(b)(1) and (4)

<sup>45</sup> 20 CFR § 683.710(b)(2)

<sup>46</sup> 20 CFR § 679.310(g)

<sup>47</sup> 20 CFR §§ 679.310(a), 679.320(a), and 679.350

<sup>48</sup> 20 CFR § 679.250

<sup>49</sup> WIOA Sec. 107(d)(10)

<sup>50</sup> 20 CFR § 679.410(a) – (b)

<sup>51</sup> 20 CFR §§ 679.230(b) and 679.250

<sup>52</sup> 20 CFR §§ 679.130(c)(5) and 679.210(b)(1)

<sup>53</sup> 20 CFR § 683.120(a)(2)(ii)

<sup>54</sup> 20 CFR §§ 678.705(a), 678.730(b), and 678.800(a)

Description
10. Consult with NDOL, as requested, regarding a reorganization plan developed in relation to decertification of the local board <sup>55</sup>
11. Work in partnership with the local board to: <ul style="list-style-type: none"> <li>a. establish a written agreement among CEOs and local boards in the planning region on how the planning region will collectively negotiate and reach agreement with NDOL on levels of performance;<sup>56</sup></li> <li>b. establish a written agreement between the CEO and local board when a single entity has been selected to operate in more than 1 of the following roles in or for the local area:<sup>57</sup> <ul style="list-style-type: none"> <li>i. fiscal agent;</li> <li>ii. local board staff;</li> <li>iii. one-stop operator; or</li> <li>iv. direct provider of career services or training services;</li> </ul> </li> <li>c. develop and submit a comprehensive 4-year local plan for the local area to the Governor;<sup>58</sup></li> <li>d. develop a budget for the activities of the local board;<sup>59</sup></li> <li>e. set policy for the local area, consistent with applicable Federal and state laws, rules, regulations and the State's policies;<sup>60</sup></li> <li>f. conduct oversight of youth workforce investment activities authorized under WIOA Sec. 129(c), adult and dislocated worker employment and training activities under WIOA Secs. 134(c) and (d), and the entire one-stop delivery system in the local area as described in <a href="#">Section II(b)(5)</a>;<sup>61</sup></li> <li>g. ensure appropriate use and management of funds provided for WIOA Title IB (Youth, Adult, and Dislocated Worker) program activities and the one-stop delivery system in the local area;<sup>62</sup></li> <li>h. ensure the appropriate use, management, and investment of funds to maximize performance outcomes under WIOA Sec. 116;<sup>63</sup></li> <li>i. negotiate and reach agreement on local levels of performance with NDOL;<sup>64</sup></li> <li>j. negotiate with required one-stop partners on methods for funding infrastructure costs for one-stop centers in the local area and notify NDOL if consensus is not reach;<sup>65</sup></li> <li>k. participate in a regional planning process that results in a regional plan;<sup>66</sup></li> <li>l. at the end of the first two (2) year period of the regional and local plan, review the plan and prepare and submit modifications to the plan as described in 20 CFR §§ 679.530 and 679.580 and the State's current policy on regional and local plans</li> </ul>
12. Carry out Rapid Response activities in conjunction with NDOL, the local board, and other stakeholders <sup>67</sup>

In addition to the required functions described in Table 3, CEOs may:

- enter into an agreement with the local board that describes the respective roles and responsibilities of the parties;<sup>68</sup>

<sup>55</sup> WIOA Sec. 107(c)(3)(C)

<sup>56</sup> 20 CFR § 679.510(a)(1)(viii)

<sup>57</sup> 20 CFR §§ 679.400(e), 679.420(a), and 679.430

<sup>58</sup> 20 CFR §§ 679.310(d), 679.370(a), and 679.550(a)

<sup>59</sup> 20 CFR § 679.370(o)

<sup>60</sup> 20 CFR § 679.310(b)

<sup>61</sup> 20 CFR § 679.370(i)(1)

<sup>62</sup> 20 CFR § 679.370(i)(2)

<sup>63</sup> 20 CFR § 679.370(i)(3)

<sup>64</sup> 20 CFR § 679.370(j)

<sup>65</sup> 20 CFR § 679.370(k)

<sup>66</sup> 20 CFR § 679.510(a)(1)

<sup>67</sup> 20 CFR § 682.310(a) and 682.330(e)

<sup>68</sup> 20 CFR § 679.310(c)

- serve on the state board at the discretion of the Governor;<sup>69</sup> and
- convey voting privileges to non-required members of the local board.<sup>70</sup>

#### (1) Delegation of authority and financial liability<sup>71</sup>

The CEO within each local must serve as the subrecipient for WIOA Title IB (Youth, Adult, and Dislocated Worker programs) funds unless the CEO designates an alternative entity to serve as subrecipient or fiscal agent. CEOs in local areas having multiple units of general local government may designate a single CEO as the subrecipient or designate another entity to serve as subrecipient or fiscal agent pursuant to an agreement among the CEOs in the local area.

When an alternate entity is designated as fiscal agent by the CEO, the CEO must ensure the fiscal agent has clearly defined roles and responsibilities regarding:

- receipt of funds from the entity functioning as subrecipient;
- ensuring sustained fiscal integrity and accountability for expenditures of funds in accordance with Office of Management and Budget (OMB) circulars, WIOA, and corresponding Federal and state laws, rules, and regulations and the State's policies;
- responding to audit financial findings;
- maintaining proper accounting records and adequate documentation;
- preparing financial reports;
- providing technical assistance to subrecipients regarding fiscal issues;
- procuring contracts or obtaining written agreements;
- conducting financial monitoring of service providers; and
- ensuring independent audit of all WIOA Title IB (Youth, Adult, and Dislocated Worker programs) employment and training programs.

**IMPORTANT.** Designation of a fiscal agent does not relieve the CEO of liability for misuse of grant funds.

#### (2) Local board bylaws

The CEO must establish bylaws for the local board that address, at a minimum:<sup>72</sup>

- the nomination and appointment process used by the CEO to select the local board members;

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<sup>69</sup> 20 CFR § 679.110(b)(iii)(A)(2)

<sup>70</sup> 20 CFR § 679.320(i)

<sup>71</sup> 20 CFR § 679.310(e) and 679.420

<sup>72</sup> 20 CFR §§ 679.110(d)(4), 679.310(g), 679.330

- the process for election of the local board chair;
- the term limitations and how the term appointments will be staggered to ensure only a portion of membership expire in a given year;
- the process for notifying the CEO of a member vacancy to ensure prompt replacement;
- the proxy and alternative designee process that will be used when a local board member is unable to attend a meeting and assigns a designee according to the following requirements:
  - if the alternative designee is a business representative, the designee must have optimum policymaking or hiring authority; and
  - if the alternative designee is not a business representative, the designee must have demonstrated experience and expertise and optimum policymaking authority;
- the use of technology, such as phone and web-based meetings, to be used to promote local board member participation;
- the process for ensuring local board members actively participate in convening the one-stop delivery system stakeholders, brokering relationships with a diverse range of employers, and leveraging support for workforce development activities; and
- a description of any other conditions governing appointment or membership on the local board, as deemed appropriate by the CEO.

### (3) CEO agreement

Local areas having more than one (1) unit of general local government must establish a written agreement among the CEOs in the local area to define the liability of individual jurisdictions with regard to misuse of WIOA Title IB grant funds.<sup>73</sup> The CEO agreement may also describe the roles and responsibilities of CEOs in the local area.<sup>74</sup>

### (b) Conflict of interest

Each CEO must disclose to NDOL in writing any potential conflict of interest regarding the CEO's role as a subrecipient of Federally awarded grant funds.

## DISCLAIMER

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This policy is based on NDOL's reading of the applicable statutes, regulations, rules, and guidance released by the U.S. Government and the State of Nebraska. This policy is subject to change as revised or additional statutes, regulations, rules and guidance are issued.

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<sup>73</sup> 20 CFR § 683.710(b)(2)

<sup>74</sup> 20 CFR § 679.310(e)

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

### 1. chief elected official (CEO)

The term *chief elected official* means:<sup>75</sup>

- the chief elected executive officer of a unit of general local government in a local area; and
- in the case of a local area that includes multiple units of general local government, the individuals designated under the agreement executed among the chief elected officials of the local area in accordance with WIOA Sec. 107(c)(1)(B).

For purposes of this policy, the term chief elected official also refers to a chief elected officials board (CEOB) established in accordance with WIOA Sec. 107(c)(1)(B).

### 2. demonstrated experience and expertise

For purposes of selecting representatives as members of the state board, a representative with *demonstrated experience and expertise* means an individual who has documented leadership in developing or implementing workforce development, human resources, training and development, or a core program function.<sup>76</sup> Individuals with *demonstrated experience and expertise* may include an individual with experience and expertise in:

- education or training of job seekers with barriers to employment, such as Veterans;
- providing or supporting competitive, integrated employment for individuals with disabilities; or
- addressing employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth.

For purposes of selecting representatives as members of local boards, a representative with *demonstrated experience and expertise* means an individual who:<sup>77</sup>

- 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.

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<sup>75</sup> WOA Sec. 3(9)

<sup>76</sup> 20 CFR §§ 679.110(b)(3)(ii)(C) – (D) and 679.120(b)

<sup>77</sup> 20 CFR § 679.340(b)

### 3. in-demand industry sector or occupation

The term *in-demand industry sector or occupation* means an:<sup>78</sup>

- industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the state, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors; or
- occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the state, regional, or local economy, as appropriate.

### 4. optimum policy-making authority<sup>79</sup>

For purposes of selecting representatives as members of the state board and local boards, a representative with *optimum policymaking authority* is an individual who can reasonably be expected to:

- speak affirmatively on behalf of the entity the individual represents; and
- commit that entity to a chosen course of action.

### 5. performance standards<sup>80</sup>

The standard of *exceeded*, in relation to local area performance, means the local area exceeded negotiated performance levels when actual performance on an individual performance measure is in excess of one hundred (100) percent of the negotiated level of performance.

The standard of *met*, in relation to local area performance, means the local area met negotiated performance levels when actual performance on an individual performance measure falls within the eighty (80) percent to one hundred (100) percent range of the negotiated level of performance.

The standard of *failed*, in relation to local area performance, means the local area failed to meet negotiated performance measures when actual performance on an individual performance measure is less than eighty (80) percent of the negotiated level of performance.

### 6. personally identifiable information

*Personally identifiable information* is information that can be used to distinguish or trace and individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.<sup>81</sup>

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<sup>78</sup> WIOA Sec. 3(23)

<sup>79</sup> 20 CFR §§ 679.120(a) and 679.340(a)

<sup>80</sup> TEGL 25-13

<sup>81</sup> TEGL 39-11

## 7. subrecipient

*Subrecipient* means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.<sup>82</sup>

## 8. sustained fiscal integrity<sup>83</sup>

The term *sustained fiscal integrity* means that the Secretary of USDOL has not made a formal determination that during the two (2) preceding program years that neither the local area grant recipient or administrative entity misexpended funds provided under WIOA Title IB (Youth, Adult, and Dislocated Worker programs) due to:

- willful disregard of the requirements of the WIOA provision involved;
- gross negligence; or
- failure to comply with accepted standards of administration.

## 9. unit of general local government

The term *unit of general local government* means any general-purpose political subdivision of a state that has the power to levy taxes and spend funds and has general corporate and police powers.<sup>84</sup>

## 10. workplace learning advisor<sup>85</sup>

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 education, skill development, job training, career counseling services, and credentials that are required to progress toward the career goals of the employees in order to meet employer requirements related to job openings and career advancements that support economic self-sufficiency. The *workplace learning advisor* must also have the knowledge and skills necessary to advise other employees on the services provided through the workforce development system.

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<sup>82</sup> 2 CFR § 200.93

<sup>83</sup> 20 CFR § 679.260(c)

<sup>84</sup> WIOA Sec. 3(62)

<sup>85</sup> WIOA Sec. 3(70)