

SOP 19-04
Local Workforce Development Boards and Chief Elected Officials
Policy Change 1
Standard Operating Procedures
Grow Southwest Indiana Region 11

Purpose

To provide guidance to local workforce development areas (LWDAs) regarding the roles and responsibilities of local workforce development boards (WDBs) and chief elected officials (CEOs) and local WDB certification.

Change Summary

Attachment B Local WDB Membership Template has been updated.

Rescission

DWD Policy WIOA TI-(107)-P1, Local Workforce Development Board Certification
DWD Policy WIOA T1-(107)-P2, Definition of a Unit of General Local Government,
Designation of Regional Chief Elected Official, and Content of CEO Agreement
DWD Policy WIOA T1-(107)-P3, Policy Guidance for Local Workforce Development Board
Functions

References

Workforce Innovation and Opportunity Act (WIOA), Secs. 3, 107
20 CFR §§ 679.300-679.430, 200.303(a) and (e), 683.200(c)(5)(i)
2 CFR § 200.318(c)(1)

Action

DWD Policy 2019-02 will be implemented in Region 11 SOP Policy 19-04.

Content

Chief Elected Official(s)

Section 3(9) of WIOA defines a chief elected official as the chief elected executive officer of a unit of general local government in a local area. Section 3(62) defines a unit of local government to be 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. The Department of Workforce Development (DWD) further defines a unit of general local government as:

- All counties in the LWDA, regardless of size, and
- All incorporated cities and towns with a population of 50,000 or more in the LWDA according to the U.S. Census Bureau, Census 2010

Chief Elected Official Agreements and Designation of the Regional Chief Elected Official

WIOA Section 107 (c)(1)(B) allows areas that have more than one unit of local government to execute an agreement among the CEOs of those units that specifies the roles of the individual CEOs in carrying out their responsibilities identified in the law, including the appointment of local WDB members. WIOA requires that the CEOs in LWDA with more than one unit of local government execute a CEO agreement to, at a minimum, identify the method to be used to determine the financial liability among the individual jurisdictions pursuant to 20 CFR 683.710. DWD further required the CEOs to identify one CEO to serve as the Regional Chief Elected Official (RCEO). The purpose of the RCEO is to serve as the point of contact for all CEO business, the signatory for items not requiring approval from all CEOs, and any other responsibilities outlined in the CEO agreement. This agreement must establish the authority of the RCEO and delineate the individual responsibilities of the CEOs and RCEO. Attachment A explains the required CEO agreement content and examples of CEO role and responsibility designation.

If the CEOs in a LWDA are unable to reach consensus on the CEO agreement after reasonable effort, the Governor may appoint the members of the local WDB from individuals nominated or recommended as specified in WIOA sec. 107(b). The CEO agreement must be submitted to DWD at policy@dwd.in.gov when fully executed.

Chief Elected Official Roles and Responsibilities

CEOs are charged with the following responsibilities under WIOA:

- Appoint members to the local WDB;
- Establish by laws for local WDB membership consistent with the requirements set forth in 20 CFR 679.310(g);
- Approve/deny requests from the local WDB to serve as a provider of career services;

- Approve, along with the Governor, for local WDB to be selected as the One-Stop Operator through sole-source procurement or successful competition;
- Serve as, or designate, a fiscal agent for grant funds allocated to the local area under WIOA secs. 128 and 133;
- Comply with applicable uniform cost principles included in the appropriate circulars or rules of the Office of Management and Budget;
- Assume liability for any misuse of grant funds allocated to the local area under WIOA secs. 128 and 133 as set forth in 20 CFR 683.710; and
- Provide consultation to the Governor, DWD, or the Governor’s Workforce Cabinet (GWC) as the State WDB, where required under WIOA.

Other responsibilities, in partnership with the local WDB, include:

- Develop and submit local and regional plans and subsequent modifications;
- Conduct oversight for all local youth workforce investment activities 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 LWDA;
- Negotiate and reach agreement on local performance indicators;
- Negotiate with required partners on the methods of funding infrastructure costs of the one-stop centers in the LWDA and notify DWD if there is a failure to reach agreement at the local level;
- Approve budgets for the activities of the local WDB; and
- Provide agreement for the local WDB to develop and enter into a memorandum of understanding (MOU) with one-stop partners.

Local Workforce Development Boards: Purpose and Appointment

The Local WDB serves as the strategic leader and convener of local workforce development system stakeholders. Local WDBs are appointed by the CEOs (or RCEO if delegated such authority) in a LWDA and certified by the Governor’s Workforce Cabinet (GWC), as the Governor’s designee, every two (2) years.

Membership

At a minimum, each local WDB must consist of representatives from the four (4) categories described in the Local WDB Structure Table (the Table) below. All members of the local WDB must:

- Be individuals with optimum policymaking authority within the entities they represent;
- Meet the criteria for the entity they represent as described in Table 1; and
- Represent diverse geographic areas within the LWDA.

Local WDB Structure Table

Representation Category	Required membership entity and criteria for membership
Business	<p>Over 50 percent of local WDB members must be business representatives in the LWDA and each individual representing this category must:</p> <ul style="list-style-type: none"> • Be an owner, chief executive officer, chief operating officer, or other individual with optimum policy-making authority or hiring authority; and • Provide employment opportunities in in-demand industry sectors or occupations as defined in WIOA Sec. 3(23); <p>Additionally, Indiana has added the following requirements for business representatives. They must:</p> <ul style="list-style-type: none"> • Employ at least five (5) full-time employees, with one exception: because approximately five (5) percent of the employment opportunities throughout the State are located at a business with fewer than five full-time employees, one (1) business representative on each local WDB may come from a business that employs at least one full-time employee other than the owner of the business. This individual may count as one of the two business representatives discussed below. • Provide employment opportunities for residents of the area. • Be one of the region’s targeted industries or have employment positions that are on the region’s targeted occupations list. <p>At least two (2) individuals representing this category must represent small business as defined by the U.S. Small Business Administration (SBA).</p> <p><u>Nomination</u> Business representatives are nominated by local business organizations and business trade associations. If no nominations are received that meet the membership requirement and needs of the local WDB, representative may be solicited directly from employers within the LWDA’s labor market (including out-of-state, when the labor market crosses state lines).</p>
Workforce	<p>At least 20% of local WDB member must be workforce representatives and must include:</p> <ul style="list-style-type: none"> • Two or more representatives of labor organizations, where such organizations exist in the LWDA.

	<ul style="list-style-type: none"> • One of more representative(s) of a joint labor-management, or union affiliated, registered apprenticeship program within the area who must be a training director or a member of a labor organization. If no union affiliated registered apprenticeship programs exist in the area, a representative of an apprenticeship program may be appointed, if one exists. <p><u>Optional additional workforce representatives</u> The 20% workforce representation minimum may be met solely through representatives of labor and apprenticeship, as described above. However, the WDB <u>may</u> also include the following in this category:</p> <ul style="list-style-type: none"> • One or more representative(s) of community-based organizations that have demonstrated experience and expertise in addressing the employment, training 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 • One 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. <p>Nomination (for mandatory workforce representatives) The labor representatives are nominated by local labor federations (or, for a LWDA in which no employees are represented by such organizations, other representatives of employees). If no nominations are received within 60 days, representatives may be solicited directly from labor member within the LWDA’s labor market area (including out-of-state, when the labor market crosses state lines).</p> <p>Additionally, if no joint labor-management or union-affiliated registered apprenticeship programs exists in the LWDA or if no nomination is received within 60 days, then the WDB may solicit a representative directly from an apprenticeships program in the LWDA,</p>
Education and Training	Local WDB membership must include at least one (1) representative from each of the following education and training entities: An eligible training provider that administers adult education and literacy activities under WIOA TitleII: and

	<p>An institution of higher education providing workforce investment activities, including community colleges.</p> <p><u>Nomination</u> When there is more than one provider of adult education and literacy activities under Title II, or multiple institutions of higher education providing workforce investment activities in a LWDA, nominations are solicited from those particular entities. If no nominations are received within 60 days, representatives may be solicited directly from adult education providers and postsecondary education providers within the LWDA.</p>
<p>Government; economic and community development</p>	<p>Local WDB membership <u>must</u> include at least one (1) representative from each of the following governmental and economic and community development entities: Economic and community development entities serving the local area should nominate representatives for this category. If no nomination is received within 60 days, representatives may be solicited directly from these entities.</p> <p>DWD requires nominations for the representative of the Wagner-Peyser Employment Service to be solicited from the Commissioner, or his/her designee, at DWD.</p> <p>Nominations for the representative of vocational rehabilitation must be solicited from the Director of the Bureau of Rehabilitation Services at the Indiana Family and Social Services Administration.</p>

Additional Members

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

- Individuals from entities administering education and training activities who represent local educational agencies or community-based organizations that have demonstrated experience and 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/or
- Representatives of entities determined by the CEO as appropriate.

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

Voting Privileges

All required WDB members must have voting privileges. The CEO may also convey voting privileges to additional (non-required) members.

Dual Representation

An individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation.

Chairmanship

The member of the local WDB shall elect a chairperson from among the business representatives.

Local Workforce Development Board Functions

The local WDB must perform the function described in WIOA Sections 107(d), 108 and 20 CFR 679.370 summarized as follows:

- Develop and submit the four-year local plan in partnership with the CEO(s)
- If a LWDA is part of a planning region, develop and submit a regional plan in collaboration with the other local areas within the region
- Conduct workforce research and regional labor market analysis
- Convene, broker, and leverage workforce development system stakeholders
- Lead employer engagement efforts
- Collaborate with education representatives to develop and implement career pathways
- Identify and promote proven and promising practices
- Develop and implement strategies for using technology to maximize the accessibility and effectiveness of the local workforce development system for employers, workers, and job seekers
- Conduct program oversight, in partnership with the CEO
- Ensure appropriate use and management of adult, dislocated worker, and youth funds, in partnership with the CEO
- Ensure the appropriate use, management, and investment of funds to maximize performance outcomes, in partnership with the CEO
- Negotiate local performance accountability measures
- Negotiate methods for funding the infrastructure costs of one-stop centers in the LWDA
- Select and terminate (as appropriate) one-stop operators and service providers
- Ensure adequate availability of career and training services, maximizing consumer choice

- Coordinate workforce activities with education and training providers
- Develop a local WDB budget
- Assess the accessibility for individuals with disabilities, and
- Certify one-stop centers in accordance with 20 CFR 678.800 and DWD Policy 2016-10.

Sunshine Provision Requirements

In addition to the required functions described above, each local WDB must conduct its business in an open manner by making available to the public information about the activities of the local WDB. 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. Meetings of the local WDB must also comply with the requirements of the Indiana Open Door Law, as applicable.

To meet sunshine provision requirements for local WDBs, each local WDB 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 WDB 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 WDB, and
- Local WDB by-laws.

Local Workforce Development Board Staff

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

- The local WDB 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 the identified benchmarks and to assist in carrying out the functions of the local WDB.
- The local WDB's director and staff must be subject to limitations on payment of salary and bonuses described in WIOA sec. 194(15).
- In general, local WDB staff may assist the local WDB only in fulfillment of its required functions as described in WIOA Sec. 107(d). If the local WDB staff provide additional workforce functions beyond the functions described in WIOA Sec. 107(d), local WDB staff must enter into a written agreement with the local WDB and CEO to clarify the staff's roles and responsibilities.
- All local WDB restrictions identified in WIOA also apply to staff to the local WDB.

Standing Committees

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

- Must be chaired by a member of the local WDB.
- Must include other individuals appointed by the local WDB who are not members of the local WDB and have demonstrated experience and expertise as determined by the local WDB, and
- May include other members of the local WDB.

Standing committees designated by the local WDB 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 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.
- Recognizing that Local EO Officers exist in every region, a standing committee with the Local EO Officer to provide information and assist with the 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 38, if applicable, and the applicable provisions of the American 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 support for, accommodations to, and funding employment opportunities for, individuals with disabilities
- Other standing committees.

Internal Controls

Each local WDB must:

- Establish and maintain effective internal controls that provide reasonable assurance that the local WDB is managing WIOA funds in compliance with Federal statutes, regulations, and the terms and conditions of its WIOA grant agreement, and
- Take reasonable measure to safeguard protected personally identifiable information and other information the US Department of Labor or DWD designates as sensitive or the

local WDB consider sensitive, consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

In addition, if the local WDB or RCEO has selected or designated an organization to function simultaneously in two (2) or more roles, including local fiscal agent, local WDB staff, one-stop operator, and/or direct provider of services, the local WDB 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.

Conflict of Interest

A local WDB member and a member of a standing committee of the local WDB must not vote on or participate in any decision-making capacity regarding:

- The provision of services by the member of 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 WDB, as a non-Federal entity, must maintain written standards of conduct covering conflicts of interest and governing the actions of its member and local area staff engaged in the selection, award, and administration of contract 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, 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 mean that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable to appear to be unable to be impartial in conducting a procurement action involving a related organization.
- Officer, 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.

Certification Criteria and Procedures

The local WDB must be certified every two (2) years. Although certification occurs every two years, local WDBs will be monitored annually to review sustained compliance with this policy.

Criteria

Certification of local WDBs is based on the following criteria:

1. The composition of the local WDB must comply with the membership requirements described in *Membership*.
2. The chair of the local WDB must be a representative of business as described in *Chairmanship*.
3. If the local WDB has established standing committees, the committees must comply with the requirements described in *Standing Committees*.
4. The local WDB 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) years.
5. The local WDB must have sustained fiscal integrity during the preceding two (2) program years.

Procedure

Below is the process to be followed for local WDB certification:

1. Each local WDB shall submit a letter requesting certification to policy@dwd.in.gov no later June 1st of the second program year for which the current board certification extends.

Note: For PY 2019-2020 only, this letter must be submitted no later than September 1, 2019.

The letter must be signed by the CEOs (or RCEO if delegated such authority) and must include:

- a. Assurance that the local WDB is currently chaired by a representative of business
- b. Assurance that the local WDB has complied with its roles and responsibilities as outlined in WIOA secs. 107(d), 108 and 20 CFT 679.370
- c. Assurance that the local WDB has carried out workforce investment activities in the local area which have enabled the local area to meet the corresponding performance accountability measures for the preceding two (2) program years
- d. Assurance the local WDB has sustained fiscal integrity during the preceding two (2) program years
- e. Assurance that the local WDB will notify DWD via policy@dwd.in.gov of any membership changes within ninety (90) days by updating the membership template provided in Attachment B, and

- f. A completed membership template of current local WDB members (Attachment B).
2. DWD, along with the GWC, will review the certification request letter and the membership template to ensure the local WDB has met all requirements. DWD, on behalf of the GWC, will issue the local WDB and CEO a formal letter no later than July 1 of the new program year informing the local area of its certification status.

Note: For PY 2019-2020 only, DWD will issue this letter no later than October 1, 2019.

If a local WDB fails to achieve certification, a new local WDB must be nominated and appointed according to the process described in *Membership*.

Decertification Criteria and Procedure

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

- Fraud or abuse
- Failure to carry out the functions specified for the local WDB in 20 CFR 679.370 and Local Workforce Development Board Functions, or
- Failure to meet the local area's negotiated levels of performance for two (2) consecutive program years.

Prior to decertification of a local WDB for fraud, abuse, or failure to carry out functions, the Governor must provide the local WDB written notice of decertification and provide an opportunity for comment by the local WDB.

If the Governor decertifies a local WDB, the Governor may require that a new local WDB be nominated, appointed, and certified for the LWDA pursuant to a reorganization plan developed by the Governor in consultation with the CEO of the LWDA and in accordance with the criteria established in *Membership*.

Effective Date

- All current CEO agreements must be updated to comply with this guidance upon expiration, or July 1, 2020, whichever is sooner.
- All local WDBs must submit a request for WDB certification by September 1, 2019. Subsequent certification requests will be due by June 1, 2021 and every two (2) years thereafter.
- All other provisions in this policy are effective immediately.

Ending Date

Upon rescission.

Attachment A

CEO Agreement Requirements

All CEOs in LWDA with more than one unit of local government shall enter into a CEO agreement. At a minimum, the CEO agreement must include the following:

- Identify all counties in the LWDA and provide a name, title, and contact information for the CEO of each.
- Identify all cities and towns with a population of 50,000 or more in the LWDA and provide a name, title, and contact information of each.
- Identify cities and towns of less than 50,000 who have opted into the agreement and provide name, title, and contact information of each.
- Identify a single CEO to serve as the RCEO in the LWDA. The RCEO serves as the point of contact for all CEO business, the signatory on all items not requiring approval from all CEOs, and any other responsibilities delegated to him/her pursuant to the CEO agreement. All responsibilities of the CEOs and the RCEO must be identified within the agreement.
- Describe the process for repaying misused or disallowed funds.
- Include the start and end dates for the agreement period. At a minimum, CEO agreements must be updated every five (5) years.
- Outline the process for amending this agreement.
- Include the printed name, signature, and date for all required CEOs and any CEOs from smaller units of government who opt into this agreement.

The CEO agreement may also address the responsibilities assumed by each CEO if the LWDA elects to delegate such responsibilities. Examples of delegation could be as follows:

Responsibility	CEO(s)	Process
Appointment of Board Members	Names(s)	RCEO appoints all WDB members; or, each CEO to appoint one business representative from his/her county or city. CEO of the largest incorporated city in the LWDA to appoint all other board members
Serve as, or designate fiscal agent for WIOA Title I funds	Name(s)	Majority of CEOs agree in writing to designation of fiscal agent.

Establish by-laws for local WDB membership	Name(s)	CEO 1 and CEO 2 will draft by-laws and obtain approval by a majority vote of all CEOs.
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- Other delegable responsibilities may include:
 - Approve/deny request form the local WDB to serve a provider of career services
 - Approve, along with the Governor, the local WDB to be selected as the One-Stop operator through sole-source procurement or successful competition
 - Serve as, or designate, a fiscal agent for grant funds allocated to the local area under WIOA sec. 128 and 133
 - Provide consultation to the Governor, DWD, and GWC as the State WDB, where required under WIOA
 - In partnership with the local WDB:
 - Develop and submit local and regional plans and subsequent modifications
 - Conduct oversight for all local youth workforce investment activities 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 LWDA
 - Negotiate and reach agreement on local performance indicators
 - Negotiate with required partners on the methods of funding infrastructure costs of the one-stop centers in the LWDA and notify the governor if there is a failure to reach agreement at the local level
 - Approve budgets for the activities of the local WDB
 - Provide agreement for the local WDB to develop and enter into a memorandum of understanding (MOU) with one-stop partners

All CEO agreements should be maintained in the office of the RCEO. Additionally, each local WDB should maintain a copy of the agreement. An electronic copy of the agreement must be sent to DWD (policy@dwd.in.gov). All modifications to the agreement must be sent to the same within ninety (90) day of the modification.

