



November 29, 2021

Workforce Innovation and Opportunity Act Policy Letter No. 15-17.1

To: Chief Elected Officials, Workforce Innovation and Opportunity Act (WIOA) Workforce Development Boards, WIOA Workforce Development Board Director, and WIOA Board Chairmen

From: Matt Damschroder, Director

Subject: Local Workforce Development Board Certification Process

I. Purpose

The purpose of this policy is to provide guidance for certifying, recertifying, and decertifying local workforce development boards (WDBs).

II. Effective Date

Immediately

III. Rescission

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-17, Local Workforce Development Board Certification Process, (July 15, 2015).

IV. Background

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

The purpose of the WDB is to do all of the following:

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

Section 107 of the Workforce Innovation and Opportunity Act (WIOA) requires each local workforce development area of the state to establish a WDB to administer the functions

outlined in Section 107(d) of WIOA for its local workforce development system. Furthermore, it requires that the Governor of the State certify each local board every two years.

Through the certification process, the State will assist in creating effective WDBs that have proper membership, and that maintain sound program and fiscal policies, provide a system of quality services, and enhance regional economic development.

V. Requirements

A. **Establishment of the Local Workforce Development Board**

The members of the local WDB must be selected by the chief elected official(s) (CEO(s)) in each local area pursuant to Section 107(b)(1) of WIOA and must meet the composition requirements of Section 107(b)(2) of WIOA.

1. Required Membership

The local WDB must include representatives from four categories:

- Business

A majority of the local WDB members must be business representatives who are owners, chief executive or operating officers, or other business executives or employers with optimum policymaking or hiring authority.

Pursuant to 20 CFR 679.320(b), members are to be representatives of businesses or organizations representing businesses, including a minimum of two members representing small businesses as defined by the U.S. Small Business Administration.

Members should represent businesses that provide employment opportunities in local area in-demand industry sectors or occupations. These representatives are uniquely suited to communicate the emerging workforce needs of employers in high-growth, in-demand sectors to the local WDB.

- Workforce

Not less than twenty percent of the members of the local WDB must be workforce representatives. Such representatives must include:

- Two or more representatives of labor organizations (or other employee representatives if there are no labor organizations in the local area); and
- One or more representatives of a joint labor-management Registered Apprenticeship program (or other Registered Apprenticeship program if there is no joint labor-management program in the local area). In areas with joint apprenticeship programs, the apprenticeship representative must be a member of a labor organization or a training director.

To fulfill the requirement that twenty percent of local WDB members be workforce representatives, the local WDB may include:

- One or more representatives from community-based organizations

(CBOs) with demonstrated experience and expertise in addressing the employment needs of individuals with barriers to employment, including veterans, or that provide or support competitive integrated employment for individuals with disabilities; and/or

- One or more representatives of organizations with 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.

- Education and Training

Members of the WDB must include representatives of entities administering education and training activities in the local area.

At least one of these members must be a representative from each of the following:

- Provider of the Adult Basic and Literacy Education (ABLE) program (operating in Ohio as the ASPIRE program); and
- Representative of higher education institutions that provide workforce training (including community colleges).

Additional members may include representatives of local education agencies and community-based organizations with demonstrated expertise and experience in addressing the education and training needs of individuals with barriers to employment.

- Government and Economic Development

WDB members must also include representatives from governmental and economic and community development entities in the local area. This includes at least one representative from each of the following:

- Economic and community development entities;
- State Employment Service Offices under Wagner-Peyser serving the local area; and
- Vocational Rehabilitation programs.

In addition to these four categories, the chief elected official(s) may appoint other individuals to the local WDB, such as representatives of local agencies or entities administering transportation, housing, public assistance, and philanthropic organizations.

The members who are representatives of organizations with "demonstrated experience and expertise" include the following:

- Individuals who are workplace learning advisors;
- Members who contribute to the field of workforce development, human resources, training and development, or a core program function; or
- Members the local WDB recognized for valuable contributions in education or workforce development related fields.

These provisions allow the chief elected official(s) the flexibility to assemble a local WDB that connects all key resources and stakeholders.

2. Nomination Process

WIOA requires that business representatives be appointed from among individuals nominated by local business organizations and business trade associations. The representatives from labor organizations must be appointed from among individuals who have been nominated from local labor federations.

When there is more than one local area provider of ASPIRE activities, or multiple institutions of higher education providing workforce investment activities, the chief elected official must solicit nominations from those providers and institutions, respectively, in appointing the required representatives. This requirement provides for a representative selection process for these membership categories.

3. Authority of Board Members

Members of the WDB that represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities. This means that the individual may reasonably be expected to speak affirmatively on behalf of the entity that he or she represents and to commit that entity to a chosen course of action.

4. Multiple Entity Representation

Members of the local WDB may be appointed as a representative of more than one entity if the individual meets all the criteria for representation for each entity represented.

5. Sunshine Law Provisions

Various state and federal "sunshine" laws require that public decision-making bodies conduct official business in an open, publicly accountable manner. In Ohio, the main source of this requirement is ORC 121.22, the Open Meetings Act.

Under Section 107(e) of WIOA, WDBs must also make information about their activities available to the public, on a regular basis through electronic means and open meetings. This information includes:

- Details of the local plan or its modifications, before they are submitted to the Office of Workforce Development;
- List and affiliation of local WDB members;
- Selection of the OhioMeansJobs center operator(s);
- Award of grants or contracts to providers of adult and dislocated worker career services and youth program services;
- Minutes of formal meetings of the local WDB; and
- Local WDB by-laws, consistent with Section 679.310(g) of the regulations.

Under ORC 121.22, public bodies cannot do official business without the attendance of a quorum, comprising members who gather in person at a designated location. The manual outlining these provisions, is found at

<https://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Legal/Sunshine-Laws-Publications/2021-Sunshine-Manual.aspx> .

However, revised ORC Section 6301.06 now allows WDB members to satisfy open meeting requirements by convening remotely in an interactive teleconference or video conference. The legislation sets the following pre-conditions for holding remote meetings, all of which must be embodied in printed policies of the WDB:

- The board authorizes its members to remotely attend a board meeting by interactive video conference or teleconference, or by a combination thereof, in lieu of attending the meeting in person.
- The board establishes a primary meeting location that is open and accessible to the public.
- The board establishes a minimum number of its members that must be physically present in person at the primary meeting location if the board conducts a meeting by interactive video conference or teleconference.
- Not more than one board member remotely attending a board meeting by teleconference, is permitted to be physically present at the same remote location.
- The board establishes geographic restrictions for participation in meetings by interactive video conference and by teleconference.
- The board establishes a policy for distributing and circulating meeting-related materials to board members, the public, and the media in advance of or during a meeting at which board members are permitted to attend by interactive video conference or teleconference.
- Meeting-related materials that are available before the meeting must be sent via electronic mail, facsimile, hand-delivery, or United States postal service to each board member.
- All board members must have the capability to receive meeting-related materials that are distributed during the board meeting.
- The board establishes a method for verifying the identity of a board member who remotely attends a meeting by teleconference.
- A roll call voice vote must be recorded for each vote taken.
- The minutes of the board meeting must identify which board members remotely attended the meeting by interactive video conference or teleconference.
- For remote meetings, the use of an interactive video conference is preferred, but nothing in this section prohibits the board from conducting its meetings by teleconference or by a combination of interactive video conference and teleconference at the same meeting.
- In the case of an interactive video conference, the board causes a clear video and audio connection to be established that enables all meeting participants at the primary meeting location to see and hear each board member.
- In the case of a teleconference, the board causes a clear audio connection to be established that enables all meeting participants at the primary meeting location to hear each board member.

Regardless of whether it expects to hold remote meetings, each WDB must make provision for that option, by including the above requirements in its printed policies. Questions about implementing these requirements can be addressed to WIOAQNA@jfs.ohio.gov. However, those seeking legal advice on the subject

should contact their local WDB counsel.

6. WDB By-Laws

In partnership with the chief elected official(s), the local WDB must establish by-laws and codes of conduct, which at a minimum, must address all of the following:

- The nomination process used by the chief elected official(s) to select the local WDB chair and members;
- The term limitations and how the term appointments will be staggered to ensure only a portion of membership expires in a given year;
- The process to notify the chief elected official(s) of a board member vacancy to ensure prompt nomination;
- The proxy and alternative designee process that will be used when a board member is unable to attend a meeting and assigns a designee as per the requirements at Section 679.110(d)(4) of CFR Title 20;
- The process to ensure board members actively participate, including the member's attendance, in WDB meetings; and
- A description of any other conditions governing appointment or membership on the State Board as deemed appropriate by the chief elected official(s).

7. Standing Committees

Standing committees may be established by the local WDB to provide information and assist the WDB in carrying out its responsibilities under WIOA, including identification of strategies for better meeting the needs of individuals with barriers to employment. Standing committees must be chaired by a member of the local WDB, may include other members of the local WDB, and must include other individuals appointed by the WDB who are not members of the board.

Standing committees may include each of the following:

- A standing committee to provide information and assist with operational and other issues relating to the OhioMeansJobs delivery system; such committee may include representatives of OhioMeansJobs center partners.
- A standing committee to provide information and to assist with planning, operational, and other issues relating to the provision of services to youth; such committee must include representatives of CBOs with a demonstrated record of success in serving eligible youth.
- A standing committee to provide information and to assist with operational and other issues relating to the provision of services to individuals with disabilities, including providing programmatic and physical access to the services, programs, and activities of the OhioMeansJobs delivery system.
- The local WDB may designate other standing committees (e.g., regarding service to priority populations such as low-income individuals), as determined needed and appropriate.

B. Workforce Development Board Certification

1. Biennial Workforce Development Board Certification

Section 107(c)(2)(A) and (B) of WIOA requires the local WDB to be certified every two years, to ensure the following:

- Membership composition conforms to the requirements of WIOA Section 107(b)(2), (3), and (5);
- The local board is ensuring that workforce investment activities are carried out in the local area;
- The local area meets its performance accountability measures; and
- The Local area achieves sustained fiscal integrity.

The State's biennial certification process shall include a review of the composition of the local WDB, including the appointment process, for compliance with the criteria established in Section 107 of WIOA. The composition of each WDB will be evaluated on the following criteria:

- Membership composition as required;
- Optimum policy-making authority of all members, including hiring authority for business members, as required in Section 107(b)(2)(A)(i) and (b)(5); and
- A chairperson for the WDB who is a representative of business as required in Section 107(b)(3).

The chief elected official(s) shall apply for local WDB certification for their local workforce investment area every two years, by completing and submitting the [JFS 08105, Local Workforce Development Board Subsequent Certification Application](#), and attaching all of the following:

- The WDB membership roster, including each member's job title and the business or organization he or she represents;
- Documentation of the appointment for each board member, including nomination process and/or completed resolutions;
- Conflict of interest forms signed by each board member; and
- Current copies of the Intergovernmental Agreement designating the Chief Elected Official(s) (CEO(s)) for WIOA purposes; the Local Governance Agreement delineating the roles of the CEO(s), WDB and local area fiscal agent; and the WDB by-laws. (For further guidance concerning these documents, see WIOAPL 15-18.1.).

The JFS 08105 and supporting documents shall be submitted to the Office of Workforce Development by e-mail at OWDPOLICY@jfs.ohio.gov. The subject line of the e-message should read, "WDB Certification."

The State will review the JFS 08105 and supporting documentation; assess the board's fulfillment of required functions under WIOA; and gauge its effectiveness in ensuring quality workforce activities in the local area. During its review, the State will gather information about whether or not the local workforce development area met its performance measures for the previous two program years, as well as information regarding the local area's fiscal integrity.

Within thirty calendar days after the certification packet is submitted; the State will notify the chief elected official(s) of the approval or denial of the board certification application.

Failure of the local WDB to achieve certification shall result in reappointment and certification of another WDB for the local area pursuant to WIOA Section

107(c)(2)(C). Prior to such action the State may, at its discretion, issue notice to a local workforce development area instructing it to correct any identified deficiencies and re-submit the JFS 08105 and supporting documentation within ninety days of receiving the denial. The local workforce development area may request technical assistance from the Office of Workforce Development to assist in the development of a compliant WDB.

2. Decertification of Local Workforce Development Board

Under Section 107(c)(3) of WIOA, any time that one or more of the following three conditions exist, the State may decertify a local WDB after notifying its members that it intends to do so, and providing them an opportunity to comment:

- Fraud or abuse;
- Failure to carry out the required functions of the local board as outlined in Section 107(d) of WIOA; and/or
- Failure to meet the same local performance measures for two consecutive program years.

If the State decertifies a local WDB, the State may require that a new local board be appointed and certified for the local area pursuant to a reorganization plan developed between the State and the local chief elected official(s).

Pursuant to Section 184(b)(2) of WIOA, if a local WDB is decertified, the chief elected official(s) may appeal to the United States Department of Labor (USDOL). The appeal must be filed no later than thirty days after receipt of written notification of the decertification. If appealed, the decertification of the local WDB will not become effective until the time for appeal has expired or USDOL has issued a decision.

The appeal must be submitted by certified mail, with return receipt requested, to the following address:

Secretary, U.S. Department of Labor
200 Constitution Ave. N.W.
Washington, D.C. 20210
Attention: ASET

A copy of the appeal must be simultaneously provided to the State by e-mail at OWDPOLICY@jfs.ohio.gov.

VI. Monitoring

The State will conduct annual onsite monitoring to review local WDB compliance with Section 107(b) of WIOA. Any compliance issues will be handled through the State's findings resolution procedure. The annual monitoring process will assist the local areas in identifying and resolving WDB compliance issues in preparation for biennial certification.

VII. Technical Assistance

The Office of Workforce Development's Technical Assistance Unit will provide technical

assistance to those local areas whose WDBs are decertified, are not approved for recertification, or are found during the annual program monitoring to be out of compliance.

Local areas also have access to ongoing support, guidance, training, and technical assistance regarding WDB composition requirements; the recruitment, development, and engagement of WDB members; and all aspects of WDB compliance.

Requests for technical assistance may be sent to ODJFS, Office of Workforce Development: WIOAQNA@jfs.ohio.gov.

VIII. References

Workforce Innovation and Opportunity Act, §§ 106 - 107, Public Law 113-128.

20 C.F.R. § 679.110.

20 C.F.R. § 679.310.

20 C.F.R. § 679.320.

20 C.F.R. § 679.330.

20 C.F.R. § 679.340.

20 C.F.R. § 679.350.

20 C.F.R. § 679.360.

20 C.F.R. § 683.650.

USDOL, Training and Employment Guidance Letter No. 19-14, Vision for the Workforce System and Initial Implementation of the Workforce Innovation and Opportunity Act, (February 19, 2015).

Section 6301.06 of the Ohio Revised Code.

Section 121.22 of the Ohio Revised Code

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-01.1, Local Workforce Development Area Initial Designation (September 19, 2016).

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-11.3, Use of Individual Training Accounts (September 27, 2021).

Ohio Attorney General Dave Yost, Ohio Sunshine Laws 2021: An Open Government Resource Manual (2021).

Attachment A: Local WDB Certification Glossary

Attachment A: Local Workforce Development Board Certification Glossary

Term	Definition
Chief elected official(s) (CEO(s))	The chief elected executive officer(s) of a unit of general local government in a local area and, in the case of a local area that includes more than one unit of general local government, the individual(s) designated under an inter-governmental agreement.
Community-based organization (CBO)	A private, nonprofit organization that is representative of a community or a significant segment of a community and that has demonstrated expertise and effectiveness in the field of workforce development.
Economic development agency	A local planning or zoning commission or board, a community development agency, or another local agency or institution responsible for regulating, promoting, or assisting in local economic development.
In-demand industry sector or occupation	<p>An industry sector that has a substantial current or potential impact on the state, regional, or local economy, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors; or an occupation that currently has or is projected to have a number of positions in an industry sector so as to have a significant impact on the state, regional, or local economy.</p> <p>Additionally, the Governor's Office of Workforce Transformation has designated certain occupations as "Critical Jobs" that meet growing health-related needs in Ohio. These along with other in-demand occupations are identified by the State as "Top Jobs".</p> <ul style="list-style-type: none"> • Ohio has established a state in-demand occupations list using various industry- and occupation-focused measures. These measures include projected openings, projected growth, select JobsOhio industry cluster occupations, and historic job postings data. The list will be validated or further enhanced using business data from the online Workforce Information Exchange job forecasts on a monthly basis. In-demand occupation data are found at https://topjobs.ohio.gov/wps/portal/gov/indemand/top-jobs-list. • Local WDBs may also identify additional local in-demand occupations using the criteria established in Workforce Innovation and Opportunity Act Policy Letter (WIOAPL) No. 15-11.3, <u>Use of Individual Training Accounts</u>.
Individual with a barrier to employment	<p>A member of one or more of the following populations:</p> <ul style="list-style-type: none"> • Displaced homemakers (defined in Section 3(16) of WIOA); • Low-income individuals (defined in Section 3(36) of WIOA); • Indians, Alaska Natives, and Native Hawaiians (as defined in Section 166(b) of WIOA);

Attachment A: Local Workforce Development Board Certification Glossary

	<ul style="list-style-type: none"> • Individuals with disabilities, including youth who are individuals with disabilities (defined in Section 3(25) of WIOA); • Older individuals (defined in Section 3(39) of WIOA); • Ex-offenders; • Homeless individuals (as defined in Section 41403(6) of the Violence Against Women Act of 1994, currently classified as 34 USC Section 12473(6)) or homeless children and youths (as defined in Section 725(2) of the McKinney-Vento Homeless Assistance Act, currently classified as 42 USC Section 11434a(2)); • Youth who are in or have aged out of the foster care system; • Individuals who are English language learners, individuals who have low levels of literacy, and individuals who are facing substantial cultural barriers; • Eligible migrant and seasonal farmworkers (defined in Section 167(i) of WIOA); • Individuals within two years of exhausting lifetime eligibility under part A of title IV of the Social Security Act; • Single parents (including single pregnant women); • Long-term unemployed individuals; and • Such other groups as the Governor involved determines to have barriers to employment.
Public assistance	Federal, State, or local government cash payments for which eligibility is determined by a needs or income test.
Sustained fiscal integrity	The United States Secretary of Labor has not made a formal determination, during either of the last two consecutive years preceding the determination regarding such integrity, that either the grant recipient or the fiscal agent of the area mis expended funds provided under WIOA due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration.
Workplace learning advisor	An individual employed by an organization who has the knowledge and skills necessary to advise other employees of that organization about the education, skill development, job training, career counseling services, and credentials, including services provided through the workforce development system, required to progress toward career goals of such employees in order to meet employer requirements related to job openings and career advancements that support economic self-sufficiency.