

Criteria for Local Workforce Investment Boards

References:

Workforce Investment Act of 1998, Section 117; Federal Register/Vol. 65, No. 156/Friday, August 11, 2000; 20 CFR Part 652 et al.; and Nebraska Workforce Investment Act.

Background:

Sec. 117(a) of the Workforce Investment Act (WIA) states: "There shall be established in each local area of a State, and certified by the Governor of the State, a local workforce investment board, to set policy for the portion of the statewide workforce investment system within the local area..."

Action:

After the 10 day public review period, this policy is considered final. Questions and comments should be submitted in writing to Stan Odenthal, Policy Coordinator, stan.odenthal@nebraska.gov.

Policy:

The local board:

- shall develop and submit a local plan to the Governor, in partnership with the Chief Elected Official (CEO);
- shall, with the agreement of the CEO, designate or certify one-stop operators and may terminate for cause the eligibility of such operators;
- shall develop a budget for the purpose of carrying out the duties of the local board, subject to the approval of the CEO;
- shall, in partnership with the CEO, conduct oversight with respect to local programs of youth activities, local employment and training activities, and the one-stop delivery system in the local area;
- shall negotiate and reach an agreement with the CEO and the Governor on local performance measures;
- shall assist the Governor in developing the statewide employment statistics system;
- shall coordinate the workforce investment activities carried out in the local area with economic development strategies and develop other employer linkages with such activities; and
- shall promote the participation of private sector employers in the statewide workforce investment system and ensure the effective provision, through the system, of connecting, brokering, and coaching activities, through intermediaries such as the one-stop operator in the local area or through other organizations, to assist such employers in meeting hiring needs.

Membership of the Local Board

State Criteria - The Governor of the State, in partnership with the State board, shall establish criteria for use by CEOs in the local areas for appointment of members of the local boards in accordance with the requirements for composition in Sec. 117(b)(2).

Composition of the Local Board

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

- Representatives of business in the local area who are owners of businesses, and other business executives or employers with optimum policymaking or hiring authority. The business members shall constitute a majority of the members of the Local Board. These persons are to represent businesses with employment opportunities that reflect the employment opportunities of the local area. They are to be appointed from among individuals nominated by local business organizations and business trade associations;
- Representatives (two or more) of local educational entities, including representatives of local educational agencies, local school boards, entities providing adult education and literacy activities, and post-secondary educational institutions (including representatives of community colleges, where such entities exist), selected from among individuals nominated by regional or local educational agencies, institutions, or organizations representing such local educational entities;
- Representatives (two or more) of labor organizations (for a local area in which employees are represented by labor organizations), nominated by local labor federations, or (for a local area in which no employees are represented by such organizations), other representatives of employees;
- Representatives (two or more) of community-based organizations (including organizations representing individuals with disabilities and veterans, for a local area in which such organizations are present);
- Representatives (two or more) of economic development agencies, including private sector economic developmental entities;
- Representatives (at least one of each) of the one-stop partners; and
- May include such other individuals or representatives of entities as the CEO in the local area may determine to be appropriate.

Requirements of the Law:

- Members of the board that represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities. Sec. 117(b)(3)
- A majority of the members of the local board shall be representatives of business in the local area. Sec. 117(b)(4)
- The local board shall elect a chairperson for the local board from among the representatives of business on the local board. Sec. 117(b)(5)

Requirements of the Final Regulations:

- Special consideration must be given to the entities identified in WIA Section 117(b)(2)(A)(ii), (iv) and (v) in the selection of members representing those categories. 20 CFR 661.315(a)
- The membership of local boards may include individuals or representatives of other appropriate entities, including entities representing individuals with

multiple barriers to employment and other special populations, as determined by the CEO. 20 CFR 661.315(b)

- Members representing business must be individuals who are owners, chief executive officers, chief operating officers, or other individuals with optimum policymaking or hiring authority. Business representatives serving on local boards may also serve on the State board. 20 CFR 661.315(d)
- CEOs must appoint the business representatives from among individuals who are nominated by local business organizations and business trade associations. 20 CFR 661.315(e)
- An individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation. 20 CFR 661.315(f)
- When there is more than one grant recipient, administrative entity or organization responsible for administration of funds of a particular one-stop partner program in the local area, the CEO may appoint one or more members to represent all of those particular partner program entities. In making such appointments, the local elected official may solicit nominations from the partner program entities. 20 CFR 661.317

Appointment and Certification of the Local Board

1. Appointment of board members and assignment of responsibilities.
 - The CEO in a local area is authorized to appoint the members of the local board for such area, in accordance with the State criteria established under Sec. 117(b).
 - In a case in which a local area includes more than one unit of general local government, the CEOs of such units may execute an agreement that specifies the respective roles of the individual CEOs in the appointment of the members of the local board from the individuals nominated or recommended to be such members in accordance with the criteria established under Sec. 117(b) and in carrying out any responsibilities assigned to such officials.
 - If, after a reasonable effort, the CEOs are unable to reach agreement as provided above, the Governor may appoint the members of the local board from individuals so nominated or recommended.
2. Certification of the Local Board.
 - The Governor shall, once every two years, certify one local board for each local area in the State.
 - Such certification shall be based on criteria established under Sec. 117(b) and, for a second or subsequent certification, the extent to which the local board has ensured that workforce investment activities carried out in the local area have enabled the local area to meet the local performance measures.
 - Failure of a local board to achieve certification shall result in reappointment and certification of another local board for the local area pursuant to the process described in Sec. 117(c)(1) and Sec. 117(c)(2).
3. Decertification of the Local Board.
 - Notwithstanding Sec. 117(c)(2), the Governor may decertify a local board at any time after providing notice, and an opportunity for comment for: fraud or abuse; or failure to carry out the functions specified for the local board in any of paragraphs (1) through (7) of Sec. 117(d).

- Notwithstanding Sec. 117(c)(2), the Governor may decertify a local board if a local area fails to meet the local performance measures for such local area for two consecutive program years [in accordance with Sec. 136(h)].
- If the Governor decertifies a local board for a local area, the Governor may require that a new local board be appointed and certified for the local area pursuant to a reorganization plan developed by the Governor, in consultation with the CEO in the local area, and in accordance with the criteria established under Sec. 117(b).

Definitions:

Chief Elected Official (CEO) means the chief elected executive officer of a unit of general local government in a local area, and in a case in which a local area includes more than one unit of general local government, the individuals designated under the local area plan or the agreement described in Sec. 117(c)(1)(B), hereafter called a Chief Elected Official agreement.

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, as well as general corporate and police powers.

A representative with “optimum policy making authority” is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.

Nebraska’s Policy for Certification of the Local Board

1. The Governor shall certify the local board if the Governor, upon advice by the State board, determines that its composition and appointments are consistent with the WIA and State policy. Such certification will be for a period not to exceed two years.
2. The Governor shall recertify the local board every two years if the Governor, upon advice from the State board, determines that its composition and appointments are consistent with WIA and State policy, and if the Governor determines, upon advice from the State board, that the local board has ensured that workforce investment activities carried out in the local area have enabled the local area to meet the local performance measures.
3. Each local board shall submit a written request for certification to the Nebraska Commissioner of Labor at least sixty days before the beginning date for which certification is being requested. Such request must include the following information:
 - A. Membership information
 - Name of each board member, title, business address, and phone number.
 - A brief description of the board members’ “optimum policy making authority” for the business or entity they represent.
 - Representation affiliation (business, education, labor, etc.)
 - The board members’ term of appointment (beginning and ending).
 - Indicate board officers.
 - B. Local Board Nomination Process
 - The CEOs shall develop a process for soliciting local board nominations consistent with WIA and State policy. The CEO (or local board) shall keep on file a record of the process followed for soliciting

nominations and the names of all candidates nominated, including their qualifications.

- Each local board shall submit, with their request for certification, the adopted documented process for solicitation of nominations and records of nominations received in the last 12 months.

C. Chief Elected Official Agreement

- A fully executed copy of the CEO Agreement pursuant to WIA Sec. 117(c)(1)(B) and State policy must be included with the request for certification. Per 20 CFR § 667.705 this agreement should describe how the CEOs of units of local government in an area shall carryout their respective roles, and must specify the liability of the individual jurisdictions constituting the local workforce area.
- Except when the Governor has agreed to be the grant recipient, the CEO Agreement must include an acknowledgement that the CEOs are the grant recipient for all local WIA funds or designate a particular CEO to be grant recipient for the local area.
- To assist in the administration of grant funds, the CEO Agreement may designate an entity to serve as the local grant subrecipient for such funds or as a local fiscal agent as described in WIA 117(d)(3)(b)(ii). When a fiscal agent is designated the CEO Agreement must describe the process for designation, and this process must comply with state and local procurement laws and policies.
- When a new chief elected official (CEO) is elected in the jurisdiction liable for the misuse of WIA funds pursuant to 20 CFR § 667.705(b), or there is a change in the person occupying such position, within 120 days the new official must submit to the local board a written statement acknowledging that the official:
 - (i) has read, understands, and will comply with the current chief elected official agreement; and
 - (ii) reserves the option to request negotiations to amend the chief elected official agreement at any time during the official's tenure as a chief elected official.
- In the event of a change in the local grant subrecipient or fiscal agent designated in accordance with WIA 117(d)(3)(B)(i), a new CEO Agreement shall be required within 120 days of such change.

D. Local Board Bylaws

- Each local board must adopt bylaws for its governance. A statement must be submitted indicating that such bylaws have been adopted and/or will be adopted and that the State board has a copy of such bylaws on file.
- The bylaws must include a conflict of interest clause that is in compliance with the WIA and State policy.