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## **Certification of Local Workforce Development Boards Policy and Procedures**

**PURPOSE:** The purpose of this policy is to provide guidance concerning the membership and certification of Local Workforce Development Boards.

**REFERENCES:**

WIOA § 107  
20 CFR 679  
Arkansas Act 907 of 2015  
A.C.A. § 15-4

**BACKGROUND:**

Arkansas Act 907 of 2015 requires that in every local workforce development area (LWDA) there is a local workforce development board (LWDB) certified by the Governor, and the purpose of this board is to carry out the functions described in A.C.A. § 15-4-3711 [2 CFR 679.350; A.C.A. § 15-4-3709(a)]. The Governor, in partnership with the Arkansas Workforce Development Board (AWDB), must establish the criteria for use by the chief elected officials (CEOs) in the LWDA's to use in the appointment of members of the LWDBs [WIOA § 107(b)(1); A.C.A. § 15-4-3709(b)].

If, after a reasonable effort, the CEO(S) are unable to reach an agreement concerning the membership of the LWDB, the Governor may appoint the members of the LWDB from among the individuals nominated or recommended for those memberships [A.C.A. § 15-4-3709(g)(3)].

**POLICY and PROCEDURES:**

**A. Certification:** The Arkansas Division of Workforce Services, as the WIOA administrative agent of the Governor, will certify each LWDB once every two years [A.C.A. § 15-4-3710(a)].

**B. Membership on the LWDB:**

The purpose of the LWDB is to:

- Provide strategic and operational oversight in collaboration with the required and additional partners and workforce stakeholders to help develop a comprehensive and high-quality workforce development system in the local area,
- Assist in the achievement of the State’s strategic and operational vision and goals as outlined in the Combined State Plan, and
- Maximize and continue to improve the quality of services, customer satisfaction, and effectiveness of the services provided [20 CFR 679.300(b)].

To accomplish this purpose, the members of each LWDB must be carefully chosen from individuals who can best contribute to providing the benefits of the Workforce Innovation and Opportunity Act to all eligible individuals in the local workforce development area (LWDA). To ensure that the most effective representatives of required entities are included on the LWDB, all LWDB member must have optimum policy-making authority within the LWDA for the entities they represent [20 CFR 679.320(f)]. “Optimum policy-making authority” is defined as 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 [20 CFR 679.340(a)].

The Chief Elected Official(s) of the LWDA appoint the members of the LWDBs, based on the criteria developed by the Governor, partnership with the AWDB, and based on the nomination criteria below [WIOA § 107(b)(1)]; 20 CFR 679.320; & A.C.A. § 15-4-3709(b)&(g)(1)]. If there are more than one CEO in the LWDB, the CEO agreement must include how appointments to the LWDB will be accomplished [WIOA §107(c)(B), A.C.A. § 15-4-3703(1)(A), & A.C.A. § 15-4-3709(g)(2)]. The selection of members for each LWDB will be made from nominees as required in this policy. If there is no required nomination or appointment requirement for a particular situation, such as how the nominations will be divided among the counties of the local area or the entities from which nominations will be accepted when such entities are not specified in State or Federal law, regulations or guidance, the CEO(s) may designate a nomination and/or appointment process as part of the CEO agreement.

When a representative of an Arkansas state agency is required, the Director or Deputy Director of the agency may designate the required representative(s) for the LWDB. If possible, this representative must work within the local area. This designation must be accepted by the CEO(s). The designation of the agency representative must be done in writing by July 1 of each year, either by letter or email signed by the Director or Deputy Director of the agency.

The CEO(s) must establish by-laws, consistent with this State policy for LWDB membership that at a minimum address [20 CFR 679.310(g)]:

- 1) The nomination process used by the CEO(s) to select the Local WDB chair and members;
- 2) The term limitations and how the term appointments will be staggered to ensure only a portion of the membership expire in a given year;
- 3) The process for notifying the CEO(s) of a LWDB member vacancy to ensure a prompt nominee;
- 4) The proxy and alternative designee process that will be used when a LWDB member is unable to attend a meeting and assigns a designee as per the requirements at 20 CFR 679.110(d)(4);
- 5) The use of technology, such as phone and web-based meetings, that will be used to promote LWDB member participation;
- 6) The process to ensure LWDB members actively participate in convening the workforce development system’s stakeholders, brokering relationships with a diverse range of employers, and leveraging support for workforce development activities; and

- 7) A description of any other condition governing appointment or membership on the LWDB as deemed appropriate by the CEO(s).

At a minimum, the criteria for the membership of each LWDB must follow the following guidelines [A.C.A. § 15-4-3709(c)]. Documentation attesting to the criteria must be maintained and made available to the certification team.

1. **Business Representatives.** At least fifty-one percent (51%) of the LWDB must be representatives of businesses in the LWDA [WIOA § 107(b)(A)(i); A.C.A. § 15-4-3709(c)(1)] or representatives of organizations that represent businesses in the LWDA [WIOA § 107(b)(A)(i); A.C.A. § 15-4-3709(c)(1)(B)]. At least two (2) of the members must represent small businesses as defined by the U.S. Small Business Administration [20 CFR 679.320(b)]. Each business representative must meet all of the lettered criteria below:
  - a. The business(es) must provide employment opportunities that, at a minimum, include high-quality, work-related training and development in in-demand industry sectors or occupations in the LWDA [A.C.A. § 15-4-3709(c)(1)(B)].
  - b. Each of the business representatives must hold at least one of the following roles in the business described in 1.a above or the organization representing businesses, as described in 1.a above. [WIOA § 107(2)(A); 20 CFR 679.320; A.C.A. § 15-4-3709 (c)(1)(A-B)]:
    - Be the business owner
    - Be the chief executive officer (CEO)
    - Be the chief operating officer (COO)
    - Be another business executives
    - Be another employee with optimum policymaking authority (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 [20 CFR 679.340(a)].)
    - Be another employee with optimum hiring authority
  - c. Each of the business representatives must be appointed by the Chief Elected Official(s) from among individuals nominated by local business organizations and business trade associations [WIOA A.C.A. §15-4-3709(c)(1)(C)].
2. **Labor representatives.** Not less than twenty percent (20%) of the members of each LWDB are representatives of the workforce within the LWDA who meet at least one of the following lettered criteria [WIOA § 107(2)(B); 20 CFR 679.320(c); A.C.A. § 15-4-3709(c)(2)]. At least one representative from each of the lettered criteria must be included on the LWDB unless the criterion does not apply or the criterion contains the phrase “may include.”:
  - a. If employees of businesses in the LWDA are represented by one or more labor unions or organizations, the CEO(s) must select at least two labor representatives from individuals nominated by local labor federations [WIOA §107 (2)(B)(i); 20 CFR 679.320(c)(1)]; 20 CFR A.C.A. § 15-4-3709(c)(2)(A)]:

If no employees of businesses in the LWDA are represented by labor unions or organization, or if there are an insufficient number of nominations by the local labor federations after contacting all known labor federations in the LWDA, the CEO(s) must select representatives from individuals nominated by other organizations that represents employees [20 CFR 679.320(c)(1); A.C.A. § 15-4-3709(c)(2)(A)].

- b. If there is a labor organization or a training director from a joint labor-management apprenticeship program in the LWDA, a representative must be selected from this program [WIOA § 107(2)(B)(II); 2 CFR 679.320(c)(2); A.C.A. § 15-4-3709(c)(2)(B)]. If more than one program exists in the LWDA, only one program is required to be represented, although nothing prevents the CEO(s) from selecting more than one representative of labor-management apprenticeship programs.

If the LWDA does not have such a joint program, a representative of an apprenticeship program in the LWDA must be selected [WIOA § 107(2)(B)(ii); 2 CFR 679.320(c)(2); A.C.A. § 15-4-3709(c)(2)(B)].

- c. Labor representatives may include representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment needs of individuals with barriers to employment, including but not limited to, organizations that serve veterans or that provide or support competitive integrated employment for individuals with disabilities [WIOA § 107(2)(B)(ii); 2 CFR 679.320(c)(3); A.C.A. § 15-4-3709(c)(2)(C)].
- d. Labor representatives may include representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including, but not limited to, representatives of organizations that serve out-of-school youth [WIOA § 107(2)(B)(iv); 2 CFR 679.320(c)(4); 20 CFR 679.320(d)(1); A.C.A. § 15-4-3709(c)(2)(D)].

Note: For B.2. and B.3 of this policy and any other requirement for “demonstrated experience and expertise,” the term means that the individual has one of the following characteristics [20 CFR 679.340(b):

- Is a workplace learning supervisor as defined in WIOA § 3(70) - 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;
- Contributes to the field of workforce development, human resources, training and development, or a core program function; or
- Is recognized by the LWDB for valuable contributions in education or workforce development related fields.

**3. Education and Training Representatives.** Each LWDB must include representatives of entities administering education and training activities in the LWDA [A.C.A. § 15-4-3709(c)(3)]. At least one representative from each of the following lettered criteria must be included on the LWDB unless the criterion does not apply or the criterion contains the phrase “may include.”:

- a. Include a representative of eligible providers administering adult education and literacy activities [WIOA § 107(b)(2)(C)(i); 20 CFR 679.320(d)(1); A.C.A. § 15-4-3709(c)(3)(A)];
- b. Include a representative of institutions of higher education providing workforce investment activities, including, but not limited to, community colleges [20 CFR 679.320(d)(2); [WIOA § 107(b)(2)(C)(ii); A.C.A. § 15-4-3709(c)(3)(B)];

- c. May include representatives of local educational agencies and of community-based organizations with demonstrated experience and expertise in addressing the education or training needs of individuals with barriers to employment [20 CFR 679.320(d)(1); A.C.A. § 15-4-3709(c)(3)(C)].

4. **Government and Community Development Representatives.** Each LWDB must include representatives of government and of economic and community development entities serving the LWDA [WIOA § 107(b)(2)(D)(ii); A.C.A. § 15-4-3709(c)(4)].

At least one representative from each of the following lettered criteria must be included on the LWDB unless the criterion does not apply:

- a. Include a representative of economic and community development entities [WIOA § 107(D)(i); A.C.A. § 15-4-3709(c)(4)(A)];
- b. Include an appropriate representative from an Arkansas Division of Workforce Services office providing services to the LWDA under the Wagner-Peyser Act. 29 U.S.C. § 49 et seq., [WIOA § 107(a)(2)(D)(ii); A.C.A. § 15-4-3709(c)(4)(B)];
- c. Include an appropriate representative of the Arkansas Division of Workforce Services carrying out programs under Subchapter 1 of the Rehabilitation Act of 1973, 28 U.S.C. §701 et seq., other than 29 U.S.C. §112 [repealed], §732, or 741, serving the LWDA [WIOA § 107(D)(iii); A.C.A. § 15-4-3709(c)(4)(C)].

5. **Other LWDB Members:**

- a. The LWDB may include representatives of agencies or entities administering programs serving the LWDA relating to transportation, housing, and public assistance [WIOA § 107(D)(iv); A.C.A. § 15-4-3709(c)(4)(D)]; and
- b. The LWDB may include representatives of philanthropic organizations serving the LWDA [WIOA § 107(D)(v); A.C.A. § 15-4-3709(c)(4)(E)].
- c. Each LWDB may include other individuals or representatives of entities that the CEO(s) in the LWDA may determine to be appropriate [WIOA § 107(E); A.C.A. § 15-4-3709(c)(5)].

C. **LWDA Governance and Administration:**

1. Annually, the members of the LWDB must elect a LWDB chairperson and a vice-chairperson from among the business representatives described in B.1 of this policy [A.C.A. § 15-4-3709(d)].
2. Each local workforce development board must meet at least quarterly and may meet more often at the call of the chairperson or upon the written request of a majority of the members of the LWDB [A.C.A. § 15-4-3709(e)].
3. The LWDB must designate and direct the activities of standing committees to provide information and to assist the LWDB in carrying out activities under A.C.A. §15-4-3711 [A.C.A. § 15-4-3712(a)(1)]. A standing

committee must be chaired by a member of the LWDB. It may include other members of the LWDB, and it must include other individuals appointed by the LWDB who are not members of the LWDB and who the LWDB determines have appropriate experience and expertise to advise the LWDB, as defined in 20 CFR 679.340(b) [WIOA § 107(b)(4)(A), 20 CFR 679.360(a), A.C.A. § 15-4-3712(a)(2)].

At a minimum, the LWDB must designate the following standing committees [A.C.A. § 15-4-3712(b)(1)]:

- a. One-Stop Committee: This standing committee must provide information and assist with operational and other issues relating to the one-stop delivery system. The One-Stop Committee may include members representative of the one-stop partners [A.C.A. § 15-4-3712(b)(1)(A,B)].
- b. Youth Committee: This standing committee must provide information and assistance with planning, operations, and issues involving the provision of services to youth. This committee must include representatives of community-based organizations with demonstrated records of success in serving eligible youth [A.C.A. § 15-4-3712(b)(2)(A,B)].
- c. Committee for Services to Individuals with Disabilities: This standing committee provides information and assistance to the LWDB with regard to services for individuals with disabilities, including, but not limited to, issues relating to compliance with Section 188 of the Workforce Innovation and Opportunity Act (Pub. L. No. 113-128), and with applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), regarding providing programmatic and physical access to the services, programs, and activities of the one-stop delivery system, as well as appropriate training for staff on finding employment opportunities for individuals with disabilities, including providing the appropriate supports and accommodations to employment [A.C.A. § 15-4-3712(b)(3)].

A local WDB may designate standing committees in addition to these listed standing committees [A.C.A. § 15-4-3712(c)].

4. The LWDB must comply with A.C.A § 25-19 concerning the Arkansas Freedom of Information Act, including A.C.A. § 25-19-106 concerning Open Public Meetings. Part of this requirement is that two or more LWDB members may not discuss Board matters outside of open, recorded meeting [A.C.A. § 25-19-106]. Minutes and recordings of meetings must be kept and may be examined for compliance with the Arkansas Freedom of Information Act, including A.C.A. § 21-8-1001:
  - a. No member of a state board or commission or board member of any entity receiving state funds shall participate in, vote on, influence, or attempt to influence an official decision if the member has a pecuniary interest in the matter under consideration by the board, commission, or entity.
  - b. A member of a state board or commission or any entity receiving state funds may vote on, influence, or attempt to influence an official decision if the only pecuniary interest that may accrue to the member is incidental to his or her position or accrues to him or her as a member of a profession, occupation, or large class to no greater extent than the pecuniary interest could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.
  - a. No member of a state board or commission or board member of an entity receiving state funds shall participate in any discussion or vote on a rule or regulation that exclusively benefits the member.
5. No member of any entity receiving state funds shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others [A.C.A. §21-8-1002].

6. Nepotism laws: Because LWDBs are subrecipients of federal funds administered by state agencies, Nepotism laws for a state Board or commission, A.C.A. § 21-8-101 Nepotism laws apply to the LWDBs:
  - a. A person who is related within the second degree, by consanguinity or affinity, to a member or employee of a state board or commission shall not be eligible for appointment as a member of the board.
  - b. A person who is related within the second degree, by consanguinity or affinity, to a member of a state board or commission shall not be eligible for employment of the board or commission.
  - c. The CEO(s) may develop a more stringent nepotism policy for the local area than A.C.A. § 21-8-101.
7. Conflict of interest forms listing entities for which there might be a conflict of interest for the LWDB member must be completed by each LWDB member prior to their first LWDB meeting. Such forms must be available during the LWDB certification, as well as any other monitoring visit, along with minutes and recording of Board meetings.
8. The CEO(s) must fill a vacancy in the required category in the same manner as the original appointment within 60 calendar days from the effective date of the resignation, termination, or other event causing a vacancy. During the 60-day period, the LWDB will be able to act as a body and conduct business. Any action taken by the Board with a vacancy in the required category beyond such 60-day period will be void. The CEO(s) must develop bylaws that include information about filling vacancies, as described in 20 CFR 679.310(g).

**D. LWDB Certification:**

1. Once every two (2) years, the Governor must certify one (1) local workforce development board for each local workforce development area in the state *A.C.A. § 15-4-3710(a)*.
  - a. The first certification of a LWDB will be based on membership criteria given in A.C.A. § 15-4-3709 and in Section B of this policy *[A.C.A. § 15-4-3710(b)]*.
  - b. The second and subsequent certifications will be based on membership criteria and the extent to which the LWDB has ensured that the workforce development activities carried out in the LWDA have enabled the LWDA to meet the corresponding performance accountability measures and achieve sustained fiscal integrity *[A.C.A. § 15-4-3710(b)]*.
2. Failure of a LWDB to achieve certification must result in the appointment and certification of a new LWDB *[A.C.A. § 15-4-3710(c)]*. This new LWDB may be appointed and certified for the LWDA pursuant to a reorganization plan developed by the Governor in consultation with the CEO(s) in the LWDA *[A.C.A. § 15-5-3710(e)]*.
3. After providing notice and an opportunity for comment, the Governor may decertify a local workforce development board at any time for:
  - a. Fraud or abuse;
  - b. Failure to carry out the functions specified for the local workforce development board, as listed in A.C.A. § 15-4-3711; or

- c. Failure to meet the local performance accountability measures for two (2) consecutive program years [A.C.A. § 15-4-3710(d)].
4. Documents that must be available to the Certification Team for review are:
- a. CEO Agreement, if there are more than one (1) CEO in the LWDA, that specifies the respective roles of the individual CEOs
    - i. In the appointment of the members of the LWDB from the individuals nominated to be members [WIOA §107(c)(B), A.C.A. §15-4-3703(1)(B) & A.C.A. §15-4-3709(g)(2)(A)] and
    - ii. In carrying out the other responsibilities assigned to the CEO(s) under WIOA A.C.A. §15-4-3709(g)(2)(A)].
  - b. The CEO(s) by-laws discussed in 20 CFR 679.310(g)
  - c. All nomination forms, signed by the CEO(s) appointing the LWDB member
  - d. Board minutes for the last two (2) years, showing attendance and the voting/abstaining of members
  - e. The most recent Local Plan (and the Regional Plan, if appropriate)
  - f. The Youth Service Provider Chart (Listing of 14 elements and the available service provider(s) for each
  - g. LWDB Title I-B Grievance and Complaint Procedures, as required by ADWS Policy No. WIOA I-B - 4.3
  - h. Local Priority of Service of Veterans Policy and Procedures, as required by ADWS Policy No. WIOA I-B - 2.2
  - i. Local Priority of Service for Individuals with Barriers to Employment Policy and Procedures, as required by ADWS Policy No. WIOA I-B – 2.8
  - j. Local Follow-up Services Policy for Adults and Dislocated Workers, as described in ADWS Policy No. WIOA I-B – 3.1
  - k. Local Work Experience Policy, as required by ADWS Policy No. WIOA I-B – 3.8
  - l. Local Supportive Services Policy and Procedures, as required by ADWS Policy No. WIOA I-B – 3.9
  - m. Local Confidentiality Policy and Procedures, as required by ADWS Policy No. WIOA I-B – 4.1
  - n. Local Self-Sufficiency Definition, as required in 20 CFR 680.710
  - o. Local ITA Policy and Procedures
  - p. Contracts and/or agreements for the provision of Title I-B Services
  - q. All RFPs and RFQs issued in the last two (2) years for services that must be procured through a competitive bidding process
- E. **Appeals:** If the Governor determines that a reorganization of the LWDA is required because of substantial violation of WIOA title I or because the LWDA has failed to meet local performance indicators for consecutive program years, the LWDB may appeal this to the U.S. Department of Labor as explained in ADWS Policy No. 6.1 (current version), *WIOA §§ 116(g)(2)(A) & 184(b); 20 CFR 361.225, 463.225, 677.225, 683.410, or 683.650*, depending on the reason for the reorganization determination.