



January 30, 2017

**Workforce Innovation and Opportunity Act Policy Letter No. 15-18.1**

To: Chief Elected Officials, Workforce Innovation and Opportunity Act  
Local Workforce Development Board Chairmen, Fiscal Agent, and  
Workforce Innovation and Opportunity Act Local Workforce  
Development Board Director

From: Cynthia C. Dungey, Director

Subject: Local Workforce Development Area Governance

**I. Purpose**

The purpose of this policy is to outline the roles of the entities responsible for establishing the workforce development system within a local workforce development area. This policy will also identify and describe the required agreements to ensure that the local area serves as a jurisdiction for the administration of workforce development activities and expenditure of adult, dislocated worker, and youth funds allocated by the State.

**II. Effective Date**

Immediately

**III. Background**

The Workforce Innovation and Opportunity Act (WIOA) envisions a workforce development system that is customer-focused on both the job seeker and business, and is able to anticipate and respond to the needs of regional economies. It requires local workforce development boards (WDBs) and chief elected officials (CEOs) to design and govern the system regionally, aligning workforce policies and services with regional economies and supporting service delivery strategies tailored to those needs.

Local workforce development areas (local areas) serve as a jurisdiction for the administration of workforce development activities and require the CEO to play an active role in both the strategic planning and ongoing operation of the local system. Agreements between the CEO and the entities responsible for the workforce development system will address the logistics of how the local

area will function and how administrative tasks will be carried out within the local area.

#### **IV. Requirements**

##### **A. Roles and Responsibilities**

###### Chief Elected Official

Per section 3(9) of WIOA, the CEO is 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 individual designated under the agreement that specifies the respective roles of the individual CEOs.

Responsibilities of the CEO include, but are not limited to:

- Requesting local area designation;
- Appointing members of the local WDB;
- Requesting local WDB certification;
- Providing input to establish the by-laws of the local WDB;
- Designating a fiscal agent (if not serving as grant recipient);
- Remaining liable for any misuse of WIOA grant funds by the local workforce development area;
- Negotiating and reaching agreement on local performance measures with the local WDB and the State;
- Negotiating with the local WDB and required partners to maintain the workforce delivery system through the Memorandum of Understanding; and
- Partnering with the local WDB and planning region, if appropriate, to develop and submit the local plan and regional plan.

###### Fiscal Agent

The fiscal agent is the entity designated by the CEO to serve as the grant recipient for WIOA funds and perform accounting and funds management on behalf of the CEO. The fiscal agent is responsible for the following functions:

- Receiving funds;
- Ensuring sustained fiscal integrity and accountability for expenditures of funds in accordance with Office of Management and Budget (OMB) circulars, WIOA and corresponding federal regulations and State policies;
- Responding to financial audit findings;
- Maintaining proper accounting records and adequate documentation;
- Preparing financial reports; and
- Providing technical assistance to sub-recipients regarding fiscal issues.

Although the appropriate role of the fiscal agent is limited to accounting and funds management functions rather than policy or service delivery, there may be situations in which the fiscal agent may be the procured OhioMeansJobs center operator or the career service provider and/or youth service provider.

When the fiscal agent is not the OhioMeansJobs center operator and/or provider of career and/or youth services, then at the direction of the local WDB, the fiscal agent may have the following additional functions:

- Procuring contracts or obtaining written agreements;
- Conducting financial monitoring of service providers; and
- Ensuring an independent audit is conducted of all employment and training programs.

#### Local Workforce Development Board

The local WDB provides strategic and operational oversight, assists in achievement of the State's strategic and operational vision and goals, and maximizes and continues to improve quality of services, customer satisfaction, and effectiveness of services provided.

Some of the roles of the local WDB are to:

- Develop and submit local and regional plans;
- Conduct workforce research and regional labor market analysis;
- Convene local workforce development system stakeholders to assist in the development of the local plan and identify non-Federal expertise and resources to leverage support for workforce development activities;
- Lead efforts to engage a diverse range of employers and other entities in the region;
- Lead efforts to develop and implement career pathways;
- Lead efforts in the local area to identify and promote proven and promising strategies and initiatives for meeting the needs of employers, workers, and job seekers;
- Conduct oversight of the adult, dislocated worker, and youth programs and the entire workforce delivery system, ensure the appropriate use and management of WIOA funds, and ensure the appropriate use, management, and investment of funds to maximize performance outcomes;
- Negotiate and reach agreement on local performance measures with the CEO and the State;
- Negotiate with the CEO and required partners to maintain the workforce delivery system through the Memorandum of Understanding;
- Select providers of youth program services through competitive grants or contracts or designation of the fiscal agent/grant recipient to perform youth activities; select providers of career services through award of contracts if the OhioMeansJobs center operator

- does not provide such services; and select the OhioMeansJobs center operator through competitive contracts;
- Ensure there are sufficient numbers and types of providers of career services and training services serving the local area;
  - Coordinate activities with education and training providers in the local area, and review applications to provide adult and basic literacy activities under title II (which in Ohio, is adult basic and literacy education (ABLE)) to determine whether such applications are consistent with the local plan;
  - Develop a budget for the activities of the WDB;
  - Assess, on an annual basis, the physical and programmatic accessibility of all OhioMeansJobs centers in the local area, in accordance with section 188 of WIOA (pertaining to nondiscrimination), if applicable, and applicable provisions of the Americans with Disabilities Act of 1990;
  - Certify the OhioMeansJobs centers in the local area;
  - In partnership with the CEO, establish by-laws and codes of conduct, which, at minimum, must address all of the following:
    - The nomination process used by the CEO to elect the local WDB chair and members;
    - The term limitations and how the term appointments will be staggered to ensure only a portion of membership expire in a given year;
    - The process to notify the CEO of a WDB member vacancy to ensure a prompt nominee;
    - The proxy and alternative designee process that will be used when a WDB member is unable to attend a meeting and assigns a designee as per the requirements of 20 C.F.R. 679.110(d)(4);
    - The use of technology, as allowable under Ohio's Sunshine Laws and Ohio's Open Meetings Act, that will be used to promote WDB member participation;
    - The process to ensure WDB 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;
    - The process to ensure that board members' participation on the board is done in a manner that does not pose a conflict of interest; and
    - A description of other conditions under which a local WDB member may continue to serve on the local WDB if such member has also been appointed to serve on the State Board, as deemed appropriate by the CEO;
  - Establish additional monitoring and reporting requirements if one entity is fulfilling multiple functions to ensure the entity is compliant

with WIOA, final rules and regulations, OMB circulars, and the State's conflict of interest policy.

#### Local Workforce Development Board Director and Staff

The local WDB may hire a qualified director, and as appropriate and feasible, staff to assist in ensuring the functions of the local board are achieved. If the local WDB does not elect to hire a director, the local WDB or the CEO may designate an individual or entity to fulfill the role of workforce development director. The individual or entity who is designated to fulfill the role of director must not be the OhioMeansJobs center operator or the provider of career and/or youth services. If the local WDB does not hire or designate a director, all the functions of the local WDB outlined in section 107(d) of WIOA and 20 C.F.R. 679.370 shall be carried out by the local WDB itself.

The local WDB must establish and apply a set of objective qualifications for the position of director that ensure the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and to assist in effectively carrying out the functions of the local WDB which includes, but is not limited to:

- Coordinating with the CEOs regarding the identification and nomination of members to the local WDB and ensuring membership is compliant with WIOA;
- Organizing local WDB meetings and ensuring that the meetings are held according to the WDB's by-laws and the sunshine laws;
- Developing and submitting the local and regional plan;
- Conducting oversight of the adult, dislocated worker, and youth programs, including development of policies and monitoring the administration of the programs;
- Negotiating and reaching agreement on local performance measures;
- Negotiating with CEO and required partners for the Memorandum of Understanding;
- Competitively procuring or awarding contracts for providers of youth program services, providers of adult and dislocated worker career services, and the OhioMeansJobs center operator as required in paragraph (l) of 20 C.F.R. 679.370;
- Developing budget for activities of the local WDB; and
- Certifying the OhioMeansJobs centers.

The director and other staff hired by the local WDB may be employed directly by the local WDB or by another entity or organization not directly involved in the delivery of career services and/or youth program services, and/or who is not the OhioMeansJobs center operator. If an individual or entity is designated to fulfill the role of director, this individual or entity also must not be directly involved in the delivery of services or the operation of the OhioMeansJobs center. Per 20 C.F.R. 679.410(d), the general

prohibitions that apply to local boards directly providing career services also apply to local WDB staff.

#### OhioMeansJobs Center Operator

The OhioMeansJobs center operator must be competitively procured by the local WDB. Minimally, the OhioMeansJobs center operator is the coordinator of the OhioMeansJobs partners. Therefore, the OhioMeansJobs center operator must perform the following:

- Coordinate service delivery among partners as defined in the memorandum of understanding;
- Coordinate service delivery among physical OhioMeansJobs centers and electronic sites;
- Coordinate services across the local area workforce development system;
- Implement local WDB policies; and
- Report to the local WDB on operations, performance accountability, and continuous improvements.

The entity selected to be the operator may also be procured to provide career services to adult and dislocated workers and/or youth program services.

The OhioMeansJobs center operator cannot assume functions that are inherently the responsibility of the local WDB and its staff.

### **B. One Entity Performing Multiple Functions**

WIOA establishes clear roles and responsibilities for each entity or organization involved in the workforce delivery system. There may be situations in which one entity can perform multiple functions. Local entities or organizations often function simultaneously in a variety of roles, including fiscal agent, local WDB staff, OhioMeansJobs center operator, provider of career services, and provider of youth services as follows:

- The local WDB, director, and/or staff may also be designated as the fiscal agent.
- The fiscal agent may also be the local WDB, WDB director or WDB staff. The fiscal agent may also be the OhioMeansJobs center operator, the provider of career services, or the provider of youth program services. Please note that the fiscal agent cannot simultaneously perform all the roles and responsibilities of the local WDB, WDB director, WDB staff, OhioMeansJobs center operator, provider of career services, and provider of youth program services.
- The OhioMeansJobs center operator may also be the fiscal agent, the provider of career services, or the provider of youth program services.

The local WDB and its staff shall not have the role and perform the responsibilities of the OhioMeansJobs center operator, the provider of career services, and/or the provider of the youth program. The local WDB is designed to oversee the workforce delivery system and its services, not provide them. The entities performing these functions are procured through the local WDB, which also has the responsibility of monitoring and overseeing the contracts, as well as the services performed through the contract.

However, in certain critical circumstances (e.g., sudden termination of contract or failed procurement), the local WDB may become an OhioMeansJobs center operator or a provider of career and/or youth services on a time-limited (six months or less) basis if the provision is approved by the chief elected official and the State.

#### Local Workforce Development Area Multi-Function Agreement

For situations in which an entity or organization has been selected or otherwise designated to perform more than one function, the required contract or written agreement shall include a clause to clarify how the entity will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, relevant OMB circulars, and the State's conflict of interest policy. The written clause in the contract or agreement shall include, at a minimum, the following requirements:

- Definition of roles and duties per function (e.g., fiscal agent, OhioMeansJobs center operator, and/or procured provider of services);
- Description of the separation of staff duties under each role, including deliverables for each separate function;
- Description of how budget authority is separated, including separate line item budgets for each function; and
- Description of how staff duties will be completed while demonstrating compliance with WIOA and regulations, OMB circulars, and the State's conflict of interest policy, including how conflict of interest will be minimized;
- Description of the roles and responsibilities within the organization, including an organizational chart, and sustainability if a function is removed; and
- Description of how fiscal monitoring will occur if the fiscal agent is performing multiple functions.

The written clauses in the agreement are intended to limit conflicts of interest or the appearance of conflicts of interest, minimize fiscal risk, and develop appropriate firewalls within a single entity performing multiple functions.

### **C. Governance Agreements**

Implementation of a local workforce development system pursuant to WIOA requires that the local elected officials play an active role in both strategic planning and ongoing operation of the local system.

### Intergovernmental Agreement

The purpose of having an intergovernmental agreement is to identify how the decisions that are delegated to the local elected officials and/or designated CEO will reflect the agreement of all the local elected officials in all jurisdictions of a local area. This agreement is between the local elected officials of each jurisdiction within the local area and should contain signatures of all county commissioners and/or mayor(s).

This agreement should clearly state the accord to be reached amongst the governmental entities involved and identify the roles and responsibilities of all local elected officials within the local area. At a minimum, the agreement should contain the following sections:

- **Identification of local workforce development area**  
The agreement needs to clearly identify the units of local government which are covered by this agreement and which make up the local area.
- **Designation of chief elected official(s)**  
The parties to the Intergovernmental Agreement should identify the county commissioner(s) and/or mayor(s) to serve as the CEO(s) of the local area for the purposes of approving local and regional plans, establishing policy, authorizing WIOA expenditures, establishing contracts, paying for services outside of the local area or paying costs associated with monitoring or audit findings or sanctions.
- **Designation of the fiscal agent**  
The fiscal agent is the entity designated to perform accounting and funds management on behalf of the chief elected official(s). The agreement should identify the entity performing these duties.
- **Process for local elected officials to provide input**  
The agreement should include a process for local elected officials to provide input to the CEO(s) for the purposes of reaching a consensus on critical decisions that may impact the local workforce development system.
- **Liability**  
Under WIOA, CEOs are liable for misspent funds, disallowed costs, funds spent fraudulently, and potential sanctions for non-performance. Therefore, local elected officials within a local area must agree on how liability for these funds will be shared among the counties should this situation arise. Some issues that should be addressed include:

- If a local area receives a monetary sanction for non-performance, who will be responsible for paying the sanction?
  - If there are disallowed costs or misspent funds that cannot be covered by grant funds, how will funds be identified to pay the money back to the State?
  - If a local area receives monetary incentives for good performance, how will decisions on how to spend the money be made?
- **Performance accountability**

Generally, performance accountability issues are addressed in the local area's local plan. However, local elected officials should agree on an approach to performance accountability. Issues to be addressed in this section of the inter-governmental agreement include, but are not limited to:

  - Who will be responsible for negotiating local performance measures with the State (this should include the local elected officials and the local WDB)?
  - Will the local area have any additional performance criteria in addition to federal and state criteria?
  - How will performance be administratively tracked locally?
  - How will incentives and sanctions related to performance be shared among the jurisdictions within the local area?
- **OhioMeansJobs service delivery**

The development of the workforce delivery system within a local area, is a critical requirement under WIOA. There are several issues associated with workforce delivery system design and implementation that local elected officials should address in their inter-governmental agreement, such as the following:

  - How will the key partners and stakeholders be brought to the table to design and implement the workforce delivery system for the local area?
  - What specific roles will local elected officials play in the design and implementation and how will they be shared area wide?
  - How will the location of the physical OhioMeansJobs centers be identified?
- **Dispute resolution process**

Because of the different interests of the local elected officials within a local area, it is possible that disputes will occur. The agreement must include provisions for resolving disputes, should they arise. Below are possible issues to address in the agreement relative to dispute resolution:

  - What types of disputes do local elected officials agree arise to the level of needing a dispute resolution process?
  - What type of dispute resolution process should be used (mediation, arbitration, consultation with State, etc.)?

- **Miscellaneous provisions**
  - Duration of the agreement;
  - Process for modification or termination of agreement.

#### Local Governance Agreement

The purpose of the local governance agreement is to delineate the roles and responsibilities between the CEO(s), local WDB (or its director and/or staff), and the fiscal agent. This agreement is between the CEO(s), the local WDB, and the fiscal agent and should be signed by all three entities. At a minimum, the agreement should contain the following sections:

- **Establishment, appointment, and operation of the local WDB**  
The agreement should include an agreed process for establishing and appointing the local WDB. Issues to consider include, but are not limited to:
  - The size and membership of the local WDB;
  - Bylaws and procedures for local WDB actions as described in Section IV. A. of this policy under "Local Workforce Development Board;
  - How board members will be geographically representative of all jurisdictions within the local workforce development area; and
  - How appointed board members can/will be removed or replaced.
- **Hiring or designating the local WDB director and/or staff**  
The local WDB may hire a qualified director and as appropriate and feasible, staff to assist in ensuring the functions of the local WDB are achieved. If a director is not hired, the local WDB or the CEO(s) may designate an individual or entity to fulfill the role of WDB director. At a minimum, the agreement should contain the following information:
  - The established set of objective qualifications for the position of director;
  - The duties of the director and, as appropriate and feasible, the staff;
  - The process of evaluating the director and, as appropriate and feasible, the staff; and
  - The process of terminating the director and, as appropriate and feasible, the staff.
- **Role of the fiscal agent**  
Because fiscal decisions frequently impact the overall success of a program or initiative and because there is clear liability associated with the management of public funds, the parties to the agreement must have a clear understanding of the fiscal issues, which must be addressed in the agreement, including how WIOA funds will be divided to ensure each jurisdiction receives its fair share.

Other fiscal issues that should be identified, mentioned, and/or addressed within the local governance agreement include, but are not limited to:

- How the local workforce development area will comply with state and federal fiscal reporting requirements;
  - Establishment of fiscal policies relative to procurement, auditing, fiscal monitoring, and overall fiscal administration;
  - What flexibility there will be to utilize WIOA program funds for fiscal agent operational costs and for benefit of the overall local workforce development area as opposed to each individual jurisdiction within the local area;
  - The federal and state requirements applicable to all fiscal agreements, including, but not limited to, limitations on use of program funds, cost allocation requirements, procurement requirements, reporting requirements, and audit requirements; and
  - Other policy issues associated with the administration of WIOA program funds and other program funds, as identified in the local or regional plans.
- **Multi-function agreement**  
For situations in which the fiscal agent and the local WDB director are the same individual or from the same entity or organization, the local governance agreement shall include a clause to clarify how the entity will carry out each of its responsibilities, both as a fiscal agent and a local board director, while demonstrating compliance with WIOA and corresponding regulations, relevant OMB circulars, and the State's conflict of interest policy. Requirements of this clause are outlined in section IV. B. of this policy.
  - **Dispute resolution process**  
Because of the different interests of the local elected officials within a local area, it is possible that disputes will occur. The agreement must include provisions for resolving disputes, should they arise.
  - **Miscellaneous provisions**
    - Duration of the agreement;
    - Process for modification or termination of agreement.

## V. **Monitoring**

At the local level, the local WDB and its director or staff must conduct oversight of the procurement process and resulting contracts and agreements to ensure all aspects of written agreements and contracts are compliant with federal and state laws and regulations. Additionally, the local WDB and its director or staff must also ensure that governing agreements are upheld.

Through the state's monitoring system, program and fiscal monitors will review the local area's agreements and contracts during the annual onsite

monitoring review for compliance with federal and state laws and regulations. Any issues will be handled through the state's monitoring resolution process.

## **VI. Technical Assistance**

Ongoing support, guidance, training and technical assistance on development of intergovernmental agreement and local governance agreement as well as procurement processes are available to all local areas.

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

## **VII. References**

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

20 C.F.R. §§ 678.620, 679.310, 679.370, 679.400, 679.420, 679.430.

USDOL, Training and Employment Guidance Letter No. 27-14, WIOA Operating Guidance, Workforce Innovation and Opportunity Act Transition Authority for Immediate Implementation of Governance Provisions, (April 15, 2015).

Rule 5101:9-4-07 of the Administrative Code.

Rule 5101:9-4-07.1 of the Administrative Code.

The Ohio Ethics Commission, Ohio Ethics Law and Related Statutes (October 2014).

Ohio Attorney General Mike DeWine, Ohio Sunshine Laws 2015: An Open Government Resource Manual (2016).

### **Rescissions**

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-18 Local Workforce Development Area Governance, (September 8, 2015).