

**PUBLIC MEETING  
NATIVE AMERICAN EMPLOYMENT AND TRAINING COUNCIL MEETING  
U.S. DEPARTMENT OF LABOR**

**DAY TWO – Friday, August 26, 2016**

**Call to Order & Opening Remarks:** Gary Rickard, Council Chairman, called the meeting to order of the Native American Employment and Training Council (Council) at 9:00 a.m. Athena Brown, Designated Federal Officer (DFO), said a blessing. Roselyn Shirley, Council Vice-Chair conducted roll call.

**PRESENT- ROLL CALL**

Gary Rickard, Representing Region 6, Chairman  
Roselyn Shirley, Representing Region 6, Vice Chair  
Carla Bowlan, Representing Oklahoma, Member  
Kim Carroll, Representing Region 4, Member  
David Gipp, Representing Other Discipline, Member  
Michael Hunter, Representing Other Discipline, Member  
Cynthia Lindquist, Representing Other Discipline, Member  
Christine Molle, Representing Region 5, Member  
Traci Morris, Representing Other Discipline, Member  
Curtis Osceola, Representing Region 3, Member  
Elkton Richardson, Representing Region 3, Member  
Michael Tucker, Representing Region 6, Member  
Darrell Waldron, Representing Region 1, Member  
Winona Whitman, Representing Hawaii, Member

**ALSO PRESENT**

Athena Brown, Designated Federal Officer (DFO)  
Craig Lewis, Alternate Designated Federal Officer

Chairman Gary Rickard determined that there was a quorum.

**Council support of NINAETC/477 Conference Resolutions**

Several members discussed a motion discussed at the Thursday Council meeting and resolutions made by the NINAETC/477 conference. Councilman Elk Richardson read a draft of the NAETC motion to endorse the NINAETC/477 resolution regarding NAETC's support of the Standing Rock Sioux Tribe's legal opposition and peaceful protest to the Dakota Access Pipeline (DAPL). Council members discussed sending this resolution to the involved tribes and communities and the National Congress of American Indians (NCAI). Ms. Brown, DFO, explained that any correspondence and supporting documentation from NAETC must be addressed to the Secretary of Labor so that it can be processed by the Department. She explained the formal process that the Council should follow using the letterhead of the Advisory Council. However, NAETC

members can support the opposition and protest of the DAPL as individuals outside of NAETC without having to go through the Secretary.

Councilwoman Whitman made a motion that NAETC replicate, endorse, and forward to the Secretary for action resolutions 2016-01 (strengthen Indian country's voice in DOL decision making), 2016-02 (determining performance indicators for grantees), and 2016-03 (tribal workforce development summit), as presented by the 37<sup>th</sup> National Indian and Native American Employment/Public Law 102-477 Training Conference (NINAETC/477) at the August 25<sup>th</sup>, 2016 NAETC public comment period. Councilman Waldron seconded the motion and it passed unanimously.

### **Council Discussion of DOL 166 Program Funding**

Councilwoman Whitman moved that the DOL table the competitive process regarding assistance to unique populations in Hawaii and Alaska until such time when the main priority of Indian and Native American (INA) funds have been returned to the previous appropriation level of at least \$55 million. Secondly, until such time when additional funds are appropriated, she moved that the DOL design and implement a WIOA INA database reporting system, the justifications being that: 1) the aforementioned section on financial assistance to unique populations in Hawaii and Alaska is a divisive financial incentive with Hawaii and Alaska against Indian country, 2) precedence has been set that this financial assistance was tabled during the WIA years when it was also in the law, and 3) precedence was set when migrant and seasonal farmworkers were allocated a higher appropriation than was authorized under WIOA.

Athena Brown, DINAP Chief clarified that the DOL has already started the funding opportunity announcement process for this fiscal year and has set aside the money needed for these competitive grants. She added that a recommendation that clearly identifies that the future appropriations should support the types of work required of the Section 166 programs would be helpful. WIOA law states that a specific amount of funds needs to be allocated for these grants each fiscal year. However, budget cuts have decreased the amount of appropriations that DINAP receives, and so without the necessary appropriations, additional requirements and initiatives in the law act as unfunded mandates. Lisa Rieger, general counsel of the Cook Inlet Tribal Council, spoke on behalf of Councilman Tucker. She stated that the law does not specifically state that the funds for this special initiative have to come out of the total Section 166 funds. Rather, this is a position that the DOL has taken. Upon a suggestion by Chairman Rickard, Councilwoman Whitman added to her motion a recommendation that the Secretary increase DINAP's budget to support the special initiatives and funding mandates set out in Section 166. Councilman Waldron seconded the motion and it passed unanimously.

### **Presentation-Overview of DINAP's Performance, PY 2010-2015 FY 2017 Proposed Budget, Performance Indicators and Discussion of Additional Measures**

Ms. Brown, DFO, presented information to stimulate a discussion with NAETC members about how to proceed with making recommendations on the six performance measures, and to create a timeline for presenting these recommendations to the DOL. Any additional measures proposed by NAETC would have to go through the Federal Register process and be cleared by the DOL and the Office of Management and Budget (OMB). Members asked why NAETC would want to recommend additional performance measures if Section 166 programs already have the six

mandatory performance measures. Ms. Brown responded that if grantees request a waiver of any of the six performance measures, they should have an option to propose alternative measures that better fit their community. Chairman Rickard asked if the additional measures would give grantees the ability to choose their own performance measures, or if they would act as blanket measures. Ms. Brown responded that each grantee would be required to submit its own waiver and there will be no blanket waivers. Although the waiver guidance has not been determined yet, it will be by the time DINAP is required to report performance data in program year (PY) 2018. The process to determine this guidance will begin in 2017, and so NAETC needs to take action on this and create recommendations soon. She recommended that NAETC members build off of past credentialing measures so that they don't have to start from scratch.

Councilwoman Carroll asked if these additional measures would be optional because the law currently states that grantees have to report on the six performance measures and additional measures. Ms. Brown responded that this is a gray area that is left up to interpretation, and that NAETC can recommend what they think is most beneficial. The important work of the Council is to identify one or two performance measures that may be a better option for Section 166 grantees. The members discussed the potential for grantees to obtain waivers for the performance measures. Chairman Rickard asked how long it would take for each grantee to request its own waiver. Ms. Brown responded that the DOL cannot issue blanket waivers and will additionally consider waivers for small adult programs but that the use of waivers will depend on the guidance and options that NAETC provides through formulation of additional measures. However, the DOL would not waive all six performance measures. Some members discussed their past experience in meetings with DOL officials to discuss the development of the new WIOA rules. They noted that development of the six performance measures was not what they had hoped for. Councilwoman Molle suggested revisiting the idea of using a menu of performance measures as was done under other acts regarding employment and training. Members also stated that the term "additional measures" is a mistake, and that terms like "alternative measures" or "menu of measures" would be more accurate.

### **Upcoming Schedule of Meetings, Potential Dates for next NAETC Meeting and Regional Conferences**

Councilman Waldron suggested that NAETC meet before the presidential election and administration change and that the workgroup be prepared to present recommendations for additional performance measures at this meeting. Councilman Hunter discussed the meeting that tribal chairmen will have with President Obama on September 26<sup>th</sup>, 2016 and suggested that the tribal chairmen on NAETC could present the Performance Measures Workgroup's decisions and ideas to other tribal chairmen and government officials at this time. The members decided to meet as a full council Washington, DC preferably in the Frances Perkins Building so that they could meet with the Secretary or Assistant Secretary and discuss any optional performance measure recommendations. Ms. Brown recommended that NAETC send an invitation to the Secretary as soon as possible so that he can schedule the meeting. Councilman Gipp moved to have the Performance Measures and Effective Management Workgroups meet on September 26<sup>th</sup>-27<sup>th</sup>, with a travel date on September 25<sup>th</sup>, and for NAETC to meet on October 25<sup>th</sup>-26<sup>th</sup>, with a travel date on October 24<sup>th</sup>. He amended the motion to have the Workgroups meet on September 25<sup>th</sup>-26<sup>th</sup> so that they can be involved in pre-meeting discussions. Councilman Waldron

seconded the amended motion and it passed unanimously. Although members discussed sending a committee to the NCAI meeting in October, they ultimately decided that this wasn't necessary.

Chairman Rickard and Ms. Brown will formulate an agenda for the NAETC meeting in October. Councilman Waldron asked that the agenda only have a few items so that NAETC has time to have a detailed discussion and take action on these items during the meeting. Suggested agenda items included discussion on mandatory and additional performance measures, the data reporting system and how it will be funded, and the waiver process. Councilwoman Molle suggested that the Effective Management Workgroup could create recommendations for the waiver process.

### **Review of DINAP's Anticipated Schedule for PY 2017-2018 Competitive Grants Process**

Ms. Brown, DFO, presented information on how DINAP is aligning the competitive process with strategic planning for grantees with the intent that an applicant's strategic plan and required federal documents for budgeting will be required up front. As a result, DINAP will be preparing planning guidance at the same time as preparing for a funding opportunity announcement. This is the first year that all grantees have been required to electronically file their grant forms through grants.gov, and many grantees had difficulty with the process. DINAP recognizes this as an area for additional technical assistance and training. DINAP is also working to educate new staff and the new grants officer about Section 166 programs so that both DINAP staff and Section 166 grantees are prepared when moving into this new alignment process. Many grantees did not submit their grant paperwork in time this year and needed an extension. DINAP had provided only ten days' notice to grantees for this paperwork but had also sent out reminders earlier in the year to help grantees get prepared for the changes. Councilwoman Molle expressed concern that ten days is not enough time for this notice and made a motion that Section 166 grantees be given a minimum of 45 days advance notice to submit their four year plan for PY 18, 19, 20, and 21 through the grants.gov process. Councilman Waldron seconded the motion but asked that it read as no less than 45 days. The motion passed unanimously.

### *Problems with some Grantees with excess Carry-over funds*

Ms. Brown, DFO, presented information on how DINAP is working to help grantees resolve problems with excess carry-over. DINAP does not want the Section 166 programs to be penalized for unspent funds. Grantees have the option of reallocating their funds if they're 80% unspent at the end of the year. In these cases, the grantee can recommend where they would like funds to go. DINAP will take this recommendation into consideration and can take action if they have advance notice. Completing a reallocation will not affect a grantee's allocation for the following year. DINAP encourages grantees to carry over no more than 20% of their funds to the following year. In the past year, 20% of grantees in the Supplemental Youth Services Program exceeded the carry-over limit; and the carryover funds unspent ranged up to 80%. About 30% of grantees in the adult program exceeded the carry-over limit, and the funds unspent ranged up to 75%.

Councilwoman Molle was concerned that the fact that some grantees consistently have excess carry-over is causing all grantees to receive less funding and wanted to address this issue through a motion. Members discussed the best way to word this motion so as to recognize the differences in program size and structure between grantees. Councilman Waldron stated that a TEGL addressing this issue had been sent out in the past, and Ms. Brown suggested that members

recommend prioritizing this TEG. Councilwoman Molle withdrew her motion. DINAP has not yet reallocated funds, but Ms. Brown has reviewed the budget and contacted grantees who have not spent 85% or more of their budget. These grantees agreed to give the funds back to DINAP, and Ms. Brown recommends that the unspent funds be put towards training and technical assistance. Councilwoman Carroll wanted to ensure that Public Law 102-477 grantees would not be left out of this technical assistance funding because that has happened in the past. Councilman Waldron moved to recommend that DINAP prioritize the TEG regarding excess carry-over. Councilwoman Molle seconded the motion. Ms. Brown assured members that she would provide NAETC with the draft language of the TEG. The motion passed unanimously.

Councilman Hunter moved that DINAP look at minutes from this meeting, future meetings, and NAETC's meetings in Durant and California to identify motions and actions taken. DINAP would then send this information to NAETC. Councilwoman Bowlan seconded the motion and it passed unanimously.

Councilwoman Morris read the major recommendations coming forth in NCAI's policy brief titled Empowering Tribal Workforce Development. She read from a draft that was under review, with a comment period that closed August 31<sup>st</sup>, 2016. She emailed NAETC members a copy of this draft and encouraged them to comment on it. Members debated whether there was any conflict between the paper's recommendation regarding performance measures and NAETC's previous recommendations regarding additional performance measures, but ultimately decided that there was no conflict. Councilman Waldron made a motion to support NCAI's position paper and Councilwoman Morris seconded the motion. The motion passed unanimously. Councilwoman Morris suggested that members also make individual comments to strengthen this paper. NAETC will send a letter to NCAI stating their support of this paper. Councilwoman Morris volunteered to present this letter to the appropriate committee at NCAI's annual meeting.

#### *Discussion with NAETC on future training topics*

Councilman Osceola asked if there is a budget for this year going forward to support some of the training cost and technical assistance for this new online grants process. Ms. Brown responded that DINAP can provide guidance to prepare grantees for the process but is not allowed to provide training and technical assistance when grantees are responding to FOAs because it is a competitive process. Ms. Brown suggested that NAETC identify areas where training is needed and so that she can formulate a plan for how much money is needed. She recommended that the Council suggest training topics that can be included in the regional and national DOL conferences. Councilman Tucker asked when grantees who didn't spend all of their funding received their funding. He added that when funding is late, it becomes difficult to spend it all. Ms. Brown responded that the DOL is usually not more than a month late in awarding funding.

#### **Council Workgroup Updates and Activities for PY 2016-2017**

Councilman Gipp raised the concern that many workgroups have not been allowed to meet because the DOL has been unable to provide the funds for these meetings. He wondered if the workgroups need to be further defined and further chart out the goals and objectives of these committees. Ms. Brown stated that the DOL wants members to come out of these meetings with something substantive, and so members should go into the meetings with a clear mission and objectives. On-site meetings can also get costly, and so the DOL often prefers telephonic

meetings. Councilman Waldron also stated that some meetings had to be cancelled because not all regions and disciplines were represented. Councilman Gipp opined that NAETC needs to refine the workgroup process so that everyone in NAETC and DOL understands what is being accomplished. Agendas are required for workgroup meetings.

NAETC members are able to volunteer for which workgroup they would like to join. Non-NAETC members who are subject matter experts are also permitted on these workgroups. Each workgroup has a chair who works with a DOL representative to determine logistical details for workgroup meetings. Councilman Elk Richardson asked if Chairman Rickard could be allowed to exercise executive authority in consult with Ms. Brown to reconstitute the workgroups based on current membership and expertise. This would be taking volunteers into consideration. Chairman Rickard stated that it was vital to determine the chair of each workgroup before moving forward. Ms. Brown and Councilman Waldron have a list of workgroup members that they will send out to NAETC. Chairman Rickard thinks it should be the responsibility of workgroup chairs to seek out members with the relevant expertise. Councilman Gipp stated that the broad definition with goals and potential tasks of each workgroup should be created and made available to NAETC members.

Prior to the next NAETC meeting, Chairman Rickard stated that he would like each workgroup chair to bring in their concerns and issues they would like to see their workgroup address so that NAETC can have input. Reviewing the definitions, goals, and membership of each workgroup would be an appropriate agenda item for NAETC's next meeting. Ms. Brown clarified that because NAETC makes the recommendations, it is responsible for determining which workgroups are needed and then tasking the workgroups. Workgroups are then able to work out their mission and objectives from this tasking. Councilman Waldron reminded members of the upcoming election and that several NAETC members' terms will be ending in November. He suggested focusing on what can be accomplished because NAETC might not be able to meet for a while after November.

#### *IT/Reporting Workgroup*

Ms. Brown, DFO, reported that the Workgroup met during the NINAETC/477's Western Regional meeting in Phoenix. However, there was not much to work on because the DOL is still working on the state reporting systems. DOL is still trying to determine the resources to support the development of a Section 166 reporting system. The Workgroup did provide an update to NAETC through Tiffany Smith.

#### *Census Workgroup*

Members and tribal leaders have expressed concerns about the American Community Survey (ACS). Councilwoman Molle asked if the Census Workgroup should meet as soon as possible before the upcoming presidential election to address these concerns. The WIOA regulations state that the most current Census data must be used for grantees, but this does not necessarily mean ACS data. Ms. Brown recommended that NAETC seriously examine Norm DeWeaver's presentation from the February 2016 meeting, especially his recommendation that a hold harmless formula be created so that no grantee is unfairly impacted by whichever Census data NAETC chooses to use. Members suggested that Norm DeWeaver be invited to NAETC's next meeting. Member Carroll stated that NAETC passed a motion at the February 2016 meeting to

support Ms. Brown's efforts in obtaining funds through other means in the DOL and Section 166 programs for a special tabulation of Census numbers. Ms. Brown had put in a budget request for this special tabulation but it was not approved.

### *Performance Measures Workgroup*

The February 2016 meeting minutes state that the chair of this Workgroup is Roselyn Shirley and that the other members are Jennifer Whitmore, Winona Whitman, Anne Richardson, David Gipp, Christine Molle. NAETC made a motion earlier that this Workgroup would meet in September. Member Gipp asked if NAETC needed to write up a definition of the Performance Measures Workgroup as justification for the DOL to pay for this expense. Ms. Brown responded that the workgroups should always be aware of their objective and report back to NAETC for their recommendations. However, obtaining funds for the workgroup meetings is more dependent on the training and technical assistance funds available. DOL is working to identify funds other than the training and technical assistance ones that can be used.

### **Recap, Adjourn, and Closing**

Councilman Waldron moved to adjourn the meeting, and was seconded by Councilwoman Bowlan. The motion passed unanimously. There being no other comments, the meeting adjourned at 2:32 pm.

### **Key Highlights from the Meeting**

1. The Council approved a motion to support three resolutions approved by the NINAETC/477 Conference. The resolutions are: 2016-01 (strengthen Indian country's voice in DOL decision making), 2016-02 (determining performance indicators for grantees), and 2016-03 (tribal workforce development summit).
2. The Council discussed needs for funding to Hawaiians and Alaska Natives and for funds for a WIOA INA database reporting system. The Council approved a motion to recommend that the Secretary of Labor increase DINAP's budget to support the special initiatives and funding mandates set out in Section 166.
3. The Council discussed recommendations regarding the six WIOA performance measures, possible alternative measures, and potential for obtaining waivers for Section 166 grantees on the performance measures. The group discussed how they may review past credentialing measures and past performance measures to develop possible WIOA alternative measures.
4. The Council approved a motion to hold meetings for the Performance Measures Workgroup and the Effective Management Workgroup on September 25<sup>th</sup>-26.
5. The Council approved a motion to hold meetings of the Council on October 25<sup>th</sup>-26<sup>th</sup> in Washington, D.C. at the Department of Labor building.
6. The Council approved a motion to request that DOL give Section 166 grantees no less than 45 days advance notice to submit their four year plan for PY 18, 19, 20, and 21 through the grants.gov process.

7. The Council discussed the problems that are created for Section 166 funding and administration when a large number of grantees have excessive carry-over funds. The Council approved a motion to request that DOL give priority to the development of a TEGL regarding excess carry-over.
8. The Council approved a motion to support an NCAI policy brief titled Empowering Tribal Workforce Development that was read to the Council. The Council approved sending a letter to NCAI stating the Council support on this matter.
9. Ms. Athena Brown, DFO, discussed the need for grantee training on a number of matters related to changes in the Section 166 grant making process and other areas of need. She recommended that the Council NAETC identify areas where training is needed so that DOL can seek funding to meet these needs. She recommended that the Council suggest training topics that can be included in the regional and national DOL training events.
10. The Council discussed issues related to lack of performance by Council workgroups and need for information and guidance on this matter. Chairman Rickard, Athena Brown, and Councilman Waldron agreed to provide to Council members information including lists of members of workgroups and to get the chairs of the workgroups to seek out additional members to get work done. The Council will define goals and potential tasks for each workgroup and this will be an agenda item for the next Council meeting.
11. The Council discussed issues related to Census, the American Community Survey, and the need for the Census Workgroup to meet in the near future. Members suggested that Norm DeWeaver be invited to the next Council meeting and that the Council support efforts of Ms. Brown to obtain funding to address Census data needs.

Summary of Minutes Prepared by **Neal R. Gross, Court Recorder**

Document Reviewed for Corrections, and Modified by **Lumbee Enterprise Development**