

**NATIVE AMERICAN EMPLOYMENT AND TRAINING COUNCIL MEETING  
U.S. Department of Labor**

**Sheraton Gateway Hotel,  
Los Angeles, CA**

**DAY One: Tuesday, May 23, 2017**

**Call Meeting to Order & Opening Remarks:** Gary Rickard, Council Chairman, called the meeting to order of the Native American and Training Council (Council/NAETC) at 9:07 a.m. (PST). Athena Brown, Designated Federal Officer (DFO) gave the blessing. Roselyn Shirley, Council Vice-Chair, called the roll and determined a quorum was present.

**PRESENT-ROLL CALL**

Gary Rickard, Representing Region 6, Chairman  
Roselyn Shirley, Representing Region 6, Vice Chair  
Hon. Dave Archambault, Representing Other Discipline, Member  
Jacob Bernal, Representing Region 6, Member  
Christine Campbell, Representing Region 5, Member  
Kim Carroll, Representing Region 4, Member  
Daryl Legg, Representing, Region 4, Member  
Cynthia Lindquist, Representing Other Discipline, Member  
Curtis Osceola, Representing Region 3, Member  
Erwin L. Pahmahmie, Jr., Representing Region 4, Member  
Chief Anne Richardson, Representing Region 2, Member  
Michael Tucker, Representing Region 6, Member  
Darrell Waldron, Representing Region 1, Member \* via teleconference  
Winona Whitman, Representing Hawaii, Member

**ALSO PRESENT**

Athena Brown, Designated Federal Officer

**Follow-up of Motions and Resolutions and Overview of Council Procedures and Responsibilities**

Chairman Rickard informed the Council that he will ask for a vote to resubmit the resolutions which had been decided upon at the October meeting to the new administration. He will also request that the Department extend the reporting requirements on performance measures for an additional year. Councilman Osceola asked for an update on the BearTracks reporting system. Athena Brown, DFO, responded that, although the DOL has been working on the system, it is anticipated that the system will not be ready for demonstration until Fall, 2017. Prior to implementation, the Department anticipated that there will be some field and pilot testing before the system is distributed amongst its grantees. The Department is also aware of the need to provide resources for training grantees to use the new system.

Ms. Brown gave an overview of the structure and mission of the Council for the new members present. Councilwoman Campbell asked when members are allowed to share the minutes with their region. Ms. Brown responded that members are free to share them as soon as they receive them. Councilwoman Campbell then asked about the expiration date of the contract with Lumbee Enterprise Development, Inc., (LED). Ms. Brown explained that the contract is a four year contract with options to renew each November. When Council moved over from a technical assistance grant to a contract, the Department subcontracted administration of the training and technical assistance funds through a Small Business Administration 8(a) contract and LED was selected. As DINAP understands, the only way to change the contract is to change the Statement of Work.

Councilwoman Campbell expressed frustration about what she felt to be negligence on the part of LED in taking care of member's requests, saying that she works more with the Division of Indian and Native American Programs (DINAP) staff than employees of LED. Ms. Brown asked that members inform her of any issues with LED so she can in turn inform the Contracting Officer's Representative (COR), Michael Delaney and especially if travel reimbursement invoices are not being processed in a timely manner. Councilwoman Carroll asked what else LED does for the Council besides travel reimbursement. Ms. Brown said that LED also takes care of logistics for the Council meetings as well as the summary of minutes. They also set up some of the peer to peer networks, working directly with the Federal Project Officer's (FPO) recommendations and handle travel reimbursements for the national conferences.

Councilman Osceola asked about the scope of work as stated in the contract. He voiced concerns about the work that LED is doing for the Council, explaining that sometimes it takes months to get reimbursed. He also expressed some confusion about the award of this contract and its expiration date, worrying that it had been administered in a fashion that limited competition. Ms. Brown explained that there was a competitive bid process for this contract. During the last competition, she understood that three bids were submitted. One contractor retracted their bid and another did not qualify as an 8A contractor, leaving LED's bid as the sole applicant. Adding to Councilman Osceola's issues, Councilwoman Campbell asked Ms. Brown about DINAP's IT contractor. At the end of 2016, she experienced some technical issues that went unaddressed by the IT contractor. Instead, Duane Hall, DINAP, stepped in and worked through the issues with her IT staff. She stated that Duane has generally served as their IT support and primary contact, instead of the contractor. Chairman Rickard asked how exactly the LED contract funding continued year to year. Ms. Brown explained that each fiscal year the Council decides what monies to allocate from their appropriations to the contractor, explaining that no money was added in 2016 because the Council determined that the previous appropriation had been large enough to carry them through. She suggested that perhaps the Council can request that someone from the Department's Contracting Office explain the contract and relationship to the Council in further detail and can address any concerns at the next meeting. Councilwoman Richardson supported this request, stating that she believed the contractor had not been performing adequately, especially compared with the previous administration of the TAT funds.

## **Approval of the Agenda and Minutes**

Councilman Archambault moved to approve the agenda; Councilman Osceola seconded the motion. Members voted unanimously to approve the agenda. Councilwoman Lindquist asked that when Ms. Brown sends out the agenda for future meetings, she flag the email as important and request a read receipt.

Councilman Legg moved to approve the minutes from the meeting on October 25-16, 2016; Councilman Bernal seconded the motion. Members voted unanimously in favor of it.

## **Follow-up Discussion of Transition Report and Recommendations of the Effective Management Workgroup**

Chairman Rickard provided the overview and led the discussion. The Effective Management Workgroup met at the Western Regional Conference in Spokane, Washington, in February 2017. The workgroup decided to make the transition paper their main priority. Councilwoman Carroll composed the first draft of the transitions paper. Chairman Rickard indicated that the President's budget proposals that have been disseminated threaten to eliminate crucial DOL employment assistance programs, a threat that has been heightened by the Heritage Foundation's Blueprint for America budget proposal. Furthermore, Lorenda Sanchez, California Indian Manpower Consortium (CIMC), has noted that in the DOL's new peer-to-peer data collection system has over a hundred thousand data collection fields, very few of which relate to Indian and Native American Programs. These facts necessitate a strong response from the Council to ensure the protection of Indian and Native American Programs. Chairman Rickard has solicited regional data from members to support the argument that these programs are an effective use of their appropriations.

Councilwoman Whitman highlighted the meeting notes that Lorenda Sanchez and Carol Jennings had supplied from the February 28th workgroup meeting in Spokane, Washington. These notes outlined the following recommendations the workgroup had decided upon. The paper should identify the number of grantees that under Section 166 and Public Law 477 programs, with the added suggestion that the Council provide more granular data as to whether grantees are tribal community-based organizations, consortia, or 477 entities. The paper should include what the federal award has been and include arguments as to the socioeconomic disparities tribal communities experience with employment. A substantial portion of the paper should discuss how the workgroup will incorporate the recommendations from the NCAI report on Empowering Workforce Development. Additional data should be included in the appendices showing, in part, how many tribes there are and how many employment programs there.

Councilman Legg had suggested including return on investment information as well as anecdotal success stories. Councilman Bernal argued that the Council should invite the Secretary to meet with them in order to share the Native American/Indian experience in a more direct manner. Councilman Osceola suggested an executive summary be provided to the Secretary outlining what is important in WIOA to the American Indian community. Chairman Rickard indicated that an account of the misalignment between new mandated performance measures and the realities of Native American/Indian communities, supplemented by the NCAI's proposals on

performance measures also be presented. Councilwoman Carroll suggested a list of recommended items for funding, including technical assistance for BearTracks.

Councilwoman Carroll reported that she had combined the notes from the Spokane meeting and distributed them to Council members, but that she had not received any feedback beyond the updated success stories and the return on investment information. Councilman Pahmahmie explained his calculations for the return on investment data, elaborating on how they demonstrate that there's an unmet need in Indian/Native American communities. Councilwoman Whitman commented on the need to report on data from both the 477 and 166 programs so that the full breadth of their outreach is properly reflected. She volunteered to draft a copy of the transition paper. Members made suggestions regarding format and concerns that the information be concise and not have excessive pages. They noted that great care will be given to the issue of 477 funding to avoid skewing effectiveness data.

Ms. Brown suggested listing types of grantees in a chart. Councilman asked whether Council members will have an opportunity to make a presentation to the Secretary in concert with the transition paper or whether it was something you simply mail in. Ms. Brown explained that the Council typically meets in Washington, D.C., for its fall meeting, and they can invite senior leadership for a discussion or a presentation. Ms. Brown identified the different charts that she and DINAP staff would produce for the Council. Councilman Bernal said that since the budget proposals have been released, the Council needs to focus on the critical issues and the issues related to their charge as opposed to technical information. Councilman Osceola added that the paper needed to remind the government of its responsibilities to tribes and Indian/Native American communities. It needs to state that direct funding is still the preferred method of allocating money. Council discussed the possibility that the new Secretary of Labor could be invited to the Council meeting in Washington, DC where the transition paper will be presented.

Chairman Rickard called for a small team of volunteers to work on this project together. Chairman Rickard suggested that Councilwomen Carroll, Lindquist, and Whitman break off at some point to work on the executive summary of the paper and then report back to the full Council. Councilman Archambault argued for a historical element to the Council's plea to the Secretary. He encouraged members to reflect on whether current training programs are functioning optimally. He also pointed out that there's an opportunity here to maintain that investment in Indian/Native American communities is an investment in the American economy.

At this time, Ms. Brown received notice of the proposed FY 2018 budget, which allocated \$49,595,000 for DINAP. This allocation signifies a slight decrease in funding although it is given some of the decreases faced by other programs in the Office of Workforce Investment, it is fortunate. Councilman Osceola asked Ms. Brown about the proposed program accountability language. The Office of Management and Budget has increased its focus on oversight and monitoring of government programs. OMB has given authority to the Employment and Training Administration to take money from program appropriations for to fulfill those functions.

Chairman Rickard steered the discussion back to the transition paper. Councilman Archambault asked if the paper is supposed to affect the budget or whether its purpose is to advocate for Indian/Native American employment programs. Chairman Rickard responded that the first goal

is to inform the new Secretary of Labor about the programs so that he understands that the funding is being used wisely. The second goal is to show what needs remain unaddressed, making an argument for increases in funding. Councilwoman Lindquist stressed that the 2016 Presidential election added renewed urgency to this agenda. She reiterated that it was imperative that the Council take action on the paper at this meeting, deciding upon a concise list of recommendations that could then be coupled with an offer of assistance. Ms. Brown concurred, informing the Council that discussions have already begun on the FY 2019 budget.

Councilman Pahmahmie moved to amend the agenda in order to accommodate discussion on the transition paper; Councilwoman Campbell seconded the motion. The Council voted unanimously in favor of the motion.

### **Review of DINAP's Anticipated Schedule and Competitive Process with Designation And Q&A with Council**

Ms. Brown presented an overview and new developments with the DINAP's next competitive funding year, July 1, 2018, through June 30, 2019. DINAP is mandated to align the competitive planning process with the strategic planning process, and DINAP grantees are required to submit a four year strategic plan. This means that the next training and employment guidance will have to address performance metrics as well as the waiver process for these reporting requirements. Tribes historically do not have competition in their regions. Ms. Brown noted that the Grant Officer is adamant that DINAP staff are not allowed to contact grantees in regards to late or missing application materials during a competitive process. DINAP has been disseminating information on the application process via their website and webinars to ensure that all grantees are aware of the requirements and are familiar with the performance metrics and waiver requirements. DINAP staff will be working with the Solicitor's Office to develop a straightforward process that will not place a heavy burden on applicants in applying for waivers for the youth measures.

Councilwoman Campbell asked if Ms. Brown would suggest that 166 grantees begin preparing their waiver applications. Ms. Brown explained that it takes about 6 months from the time a Training and Employment Guidance Letter (TEGL) is drafted for it to be cleared for publication. Ms. Brown and Duane Hall, Federal Project Officer with DINAP, are aware that the first draft must be prepared in August.

Vice Chair Shirley commented that the waiver application process isn't simply a waiver request. She informed the Council that waiver applications require a waiver plan to be submitted as well. Member Whitman read aloud what the Indian/Native American regulations from the WIOA say about waivers. DINAP has met with senior leadership to inform them of issues early on in the process during the regulation process. Chairman Rickard asked if the summer youth programs could be waived *en masse* as a grantee type. Ms. Brown replied that each individual program would have to submit a request as a part of their strategic plan. Councilwoman Carroll suggested drafting a waiver template to be used by the SYS grantees. Ms. Brown added that language for grantees to use in their strategic plan would also have to be developed. Councilwoman Carroll asked members to consider taking on the task individually.

Vice Chair Shirley asked Ms. Brown if there was anyone outside the Department who could offer language to be included in the TEGs. Ms. Brown replied that that the TEGs are internal guidance documents and, as such, DOL does not seek third party comments. Chairman Rickard requested that the Council have an opportunity to participate in the TEG review process. Ms. Brown said that limited comments were a possibility, but that she had reservations about agreeing to circulate internal policy memos outside of the Department without clearance from management. Vice Chair Shirley requested speedier dissemination of the TEGs given that some tribes have their own approval processes.

Councilman Pahmahmie asked if the only way to remove competitiveness from the grant program would be to rewrite the act, which Ms. Brown affirmed. Councilman Pahmahmie asked whether there was a task force or some other organization that brought Congress' attention to this issue. Ms. Brown recounted that the competitive language was included when the program rolled over from the JTPA to the WIOA. The process is complicated by the many different levels of funding among the grantees as well as the individual contexts of each tribe. Some programs are funded at \$1,000 while others receive \$3 million. Councilman Pahmahmie explained that, despite Ms. Brown's assertion that there's no competition to service a tribe within that tribe's territory, there can be overlap on the borders, especially when close to a large metropolitan area. Councilwoman Campbell said the American Indian Council experiences a similar conflict with United Tribes in White Cloud, Kansas. Adjacent service areas like this require a complex effort of communication and negotiation to ensure that all the individuals within the domain of each are provided for without duplicating efforts.

Ms. Brown stated that these issues are created by tribal organizations and are not mandated by the Department. Grantees are free to serve whoever they want, as long as they are Native American. Individuals looking for services have the ability to appeal directly to the Secretary. Grantees also have an opportunity to leverage funds from state formula-funded programs to account for the extra burden on their programs, whatever the cause. Chairman Rickard shared his experience as a former case manager under the JTPA. Members expounded upon the various reasons these programs need more funding.

### **Charter Expiration and Renewal Discussion**

The Council's charter will expire September 11, 2017. With the Charter's potential renewal comes the opportunity for the Council to recommend any changes or additions; however, the Secretary of Labor, in conjunction with his executive staff, ultimately decides what goes into the charter for a Federal Advisory Committee. Chairman Rickard asked about the necessity of a full time employee for the Council as stated in the Charter. Ms. Brown explained all the tasks that that employee has beyond meeting preparation and clarified that their salary does not come out of the \$150,000 allocated for Council activities.

Councilwoman Campbell asked a clarifying question about section (a)(1) under "Description of Duties," specifically whether the inclusion of the word "addition" in that section was a typo. Ms. Brown answered that it was not a typo, though she understood Councilwoman Campbell's concern that it seemed like smaller grantees were being placed under an additional burden. To change this aspect of the charter would require an act of Congress, because it was mandated by

the WIOA. Councilwoman Richardson recalled previous conversations about this topic where members had voiced frustration that Congress was making the ETA program more burdensome than the other employment and training programs. One solution suggested was simply not enforcing that requirement. Ms. Brown added that the “additional measures” might be achieved through developing other viable performance measures beyond the six suggested.

Chairman Rickard asked the Council if they wanted to resubmit their resolutions to the new administration or whether that was going to be addressed in the transition paper. He advocated for resubmission. He also asked for a resolution to postpone the data required by the WIOA for an additional year, though it’s not clear that an adequate data collection system will be in place by then. Councilwoman Campbell asked what had become of the Performance Measures Workgroup that had been proposed previously. She encouraged the Council to tweak existing measures rather than undertake the development of new measures. She also requested another representative for Region 5 on the Council, given its large geographic area.

Returning to the Charter, Vice Chair Shirley pointed out that it requires regular reports be submitted to the DFO. She asked if the Council was behind on its reporting and also wondered whether it would be possible to speed up the delivery of meeting summaries to the Council. Ms. Brown said DINAP could make an effort to return meeting summaries to members more quickly.

With regards to the IT and Performance Measures Workgroups, Councilwoman Richardson recalled that those groups had not been able to meet because they had not been approved by the Secretary. Ms. Brown said that the IT Workgroup, specifically, had been impeded because BearTracks has not yet been operationalized. As for the Performance Measures Workgroup, members were assigned, but a meeting was simply never convened. Ms. Brown offered to have Jennifer Whitmore return to give her presentation on performance measures again for the benefit of new members. Chairman Rickard asked whether resubmitting the resolutions would be a duplication of the content of the transition paper. Councilman Osceola suggested submitting the resolutions alongside of the transition paper as a single package. Councilwoman Richardson expressed support for postponing the data gathering requirements for another year, given how slowly IT operations have been progressing. DOL has not demonstrated urgency in approving workgroups and therefore the Council has been able to efficiently prepare for the required implementation deadlines. Chairman Rickard agreed, but suggested that they postpone this discussion until the following day.

### **Public Comment**

John Murray, with the American Indian Council, Kansas City, commented on the BearTracks development process. He requested additional training funds from DOL to ensure that grantees fully understand how to use the program as well as the requirements being imposed upon them. He argued that the efficiency of transitioning to a web-based system is hindered if users are not properly educated. He also requested increased access or faster response times from the contractor with regards to addressing technical issues. The contractor has taken up to two weeks to respond to previous technical issues.

Angela Cully, also with the American Indian Council in Kansas City, requested that DINAP release the strategic planning TEGP early in 2018 to give grantees time to complete their four year plan as well as time to complete waivers, if necessary. She also advocated for DINAP to provide grantees training on how to complete a strategic plan and how to submit a waiver.

Greg Madil, Director, Workforce Development, Pascua Yaqui tribe in Tucson, Arizona stated that he'd like DINAP to collect data from grantees on how the proposed measures might be affecting them. State programs have already imposed the measures on their grantees and, in Arizona, they're finding that tribes require a lot of technical assistance. He also requested information with regards to the status of the IT Workgroup, given that grantees are being asked to transition to this new, web-based system. He sees the IT Workgroup as an integral part of the Council's charge to report back to DOL.

Christine Harjo, Program Coordinator, Inter-Tribal Council of Nevada, Native Workforce, reported that her program's having trouble getting funds for their youth programs on time. Because they rely on DOL to fund these programs, the timing of the funding dictates when they can begin the summer program. DOL discourages programs from carrying over funds from year to year, but Ms. Harjo informed the Council that her program doesn't have a choice if they want to operate normally from year to year. She also confirmed that the Inter-Tribal Council of Nevada does not have enough funds to meet the performance reporting requirements and that they foresee it as being a problem going forward.

Lorenda Sanchez, Executive Director, California Indian Manpower Consortium, addressed the issue of the performance reporting measures. She insisted that the Council develop recommendations with regards to the six performance reporting measures tailored to the perspective and needs of the Indian/Native American community. Work from previous workgroups surrounding the performance reporting measures may provide the Council with a head start on this work. Members should consider another waiver, on behalf of the Section 166 grantees, for the performance measures for program year 2017.

Ms. Sanchez also presented concerns about changes to BearTracks. While she supports the transition to a web-based system, the Indian/Native American community should have more input to its development via an IT Workgroup. She echoed previous commenters that there needs to be some degree of community education on this topic, emphasizing the benefits of face-to-face training. She also reported to the Council that she's working with state workforce boards in California, Iowa, and Illinois to complete memoranda of understanding to ensure that services are provided for all the individuals residing in those services areas. While this work has been intensive yet successful on the smaller scale, Ms. Sanchez argued that these partnerships should be replicated across the nation. She complained that the DOL, in its recent MOU toolkit, has not listed Indian/Native American examples in a clear fashion. Thirdly, she praised Duane Hall's presentation at the Program Year 2018 Strategy Session, calling it informative and challenging. The group at that session, however, asked for templates to be developed to guide them in the planning process. Finally, she commented on the budget appropriations announced that day. One line of the budget she looked at drastically reduced funding for this year in light of a large amount in unspent funds. She asked the Council to work on recommendations for safety nets to reduce the large amount of year-to-year carryover from these programs.

Kay Seven, Director of Adult Education, Tribal Education Department, Nez Perce Tribe, shared that she was elected to serve a second term as the NINAETC Conference's vice chair. She recalled former Secretary of Labor Tom Perez's account of WIOA as "silo-busting" and as something that would create synergies between federal agencies. She explained that tribes have been undertaking this work for decades now, since the passage of Public Law 102-477 in 1992, and that they might serve as a model for the federal government on addressing workforce development issues. She also asked the Council to create a task force oriented towards investigating ways workforce development can be improved with the reauthorization of Public Law 102-477. Additionally, she informed the Board that her state, Idaho, had been basing the composition of its state workforce development board on language from the JTPA. Her tribe is very supportive of the WIOA Section 166 policy recommendations and requirements.

Myrna Gardner, Central Council of the Tlingit and Haida Indian Tribes of Central Alaska, commented on the lower living standard income level (LLSIL) tables. While the LLSIL guideline applicable to that region is set at \$47,000 for a family of four, 30% of the entire workforce in Juneau, Alaska, makes less than \$20,000. The cost of living is very high in Juneau due to the climate and the limited housing supply. She asked that LLSIL standards to be set in conjunction with the tribes so that they reflect the realities of living conditions and have effective eligibility requirements.

Rachel Tyner, American Indian Council, spoke from her experience with inputting data into the BearTracks system. She stressed that it's very important that DINAP consult with the grantees as they develop this new web-based system. They have firsthand experience with the technical issues that have been affecting the rollout of the new system. Specifically, she shared that her office had had saving data in the system. Moreover, grantees have ideas about how to simplify data reporting and making matches between job seekers and employers that should be tapped into. As a final comment, she pressed for the lower living standard to be raised, since it hasn't been since 1985 even though the cost of living has increased.

### **Finalizing Advisory Council Transition Paper/Recommendation**

The Council resumed their discussion of the transition paper, pending further comments from the public. Councilwomen Lindquist, Whitman, and Carroll made a presentation of their work in their breakout session. Councilwoman Lindquist read aloud her introduction for the paper, which included her four suggested recommendations:

1. The Secretary should meet with the Council as soon as possible to assure mutual understanding and to establish a four year plan of action
2. DOL should increase funding to address inequities faced by the Indian/Native American community
3. DINAP should be staffed adequately to support the programs
4. DOL should review and support the NCAI transition recommendations, as endorsed by NAETC

Councilwoman Lindquist further explained the rationale behind each of these recommendations

and made suggestions on organizing supporting material in support of them. Councilwoman Carroll gave an overview of the next portion and the recommendations from the March 5th recommendation letter that she thought should be included in an addendum document to the transition letter. The first recommendation is that the Native American community's voice be strengthened in DOL decision making. The second is that 1% of the budget goes to technical assistance, whereas it's currently being used for a variety of projects which include the funding of the NAETC. Councilwoman Carroll also sought to include the recommendations about amendments to the law. She discussed beginning a tribal YouthBuild program as well as bulking up the tribal set aside to be used for various programs. Councilwoman Campbell appreciated the inclusion of the YouthBuild program, but suggested phrasing that would explicitly include urban programs as well as tribal nations. Councilwoman Carroll counter-suggested that the category read simply Section 166 grantees, which would cover both groups.

Councilwoman Whitman shared her section, which incorporated the earlier feedback members gave. This section focused on funding sources, explaining what the current streams are and how they are utilized. She included the point that current levels of funding are not enough to meet the needs of the Indian/Native American community. She acknowledged the previously discussed difficulty that youth programs have meeting the new performance reporting measure requirements. This would be a part of larger sections overviewing the misalignment between the requirements of the law and the realities of these communities. This section would include data about the various socioeconomic and health disparities faced by the Indian/Native American community as well as the success stories.

The members discussed the next steps for the transition paper. It was generally concluded that the Council should voice any reservations about the existing proposal, seeing as the writing team is working from materials that have already been approved by the Council. Councilman Archambault enumerated the items that the Council needs to vote upon, pointing out that part of it is simply approving context. He also affirmed Chairman Rickard's earlier suggestion to resubmit the resolutions to the new administration. The final topic he addressed was creating a bill to submit to Congress to make amendments to the Act regarding performance measures. He also asked if the Council was able to respond to public comments. Ms. Brown clarified that the Council is allowed to respond to public comment indirectly and can make recommendations that reflect the concerns brought to them by the commenters. Chairman Rickard supported Councilman Archambault's comments, suggesting that they represent a way through which the Council can address its issues with the performance reporting requirements mandated in WIOA. Councilwoman Carroll also voiced her support, noting however that the process is long and that the Council might find it faster to propose amendments. Councilman Archambault suggested that a bill or an amendment to a bill was the best way of ensuring that the issue is addressed and can be put to rest.

Vice-Chair Shirley voiced concern about the scope of actions available to the Council for remediating issues that tribes have with laws or that the public commenters have with programs. She cited specifically the public comments about the issues with BearTracks and the LLSIL limits, noting that the latter are governed by HHS. She expressed a desire for some kind of more direct response to public commenters, in part to encourage more participation. Ms. Brown explained that, as a part of the Council's official duties, they report directly to the Secretary and,

therefore, don't lobby Congress. That does not preclude, however, the possibility that members can craft a bill and submit it on their own time. Furthermore, she suggested that the Chair can provide a general report at the regional sessions that address the concerns of public commenters. Councilman Archambault noted that agencies can produce recommendations for legislation that might form the basis of a bill. Ms. Brown shared her hesitations with this plan of action, explaining that she didn't want to draw extra scrutiny to the Council's actions. Defending her suggestion for regional reporting, she noted that it was part of a member's obligation to report out on Council activities.

Vice Chair Shirley moved to recess the meeting; Councilman Bernal seconded the motion. Chairman Rickard adjourned the meeting at 5:38 p.m.

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

1. Members of the Council raised questions and concerns about the contract and performance of work of Lumbee Enterprise Development (LED) and the IT Contractor for DINAP. They noted issues with delays in payment of requests for travel reimbursement and lack of timely IT support. They asked for information on the nature and status of the DOL contract with LED and asked that the DOL contracting officer provide more information at future meetings.
2. The Council approved the agenda for the meeting and approved the minutes of the meeting of October 25-26, 2016.
3. The Council heard extensive reports from members of the Effective Management Workgroup that met in February 2107. Leaders of the Workgroup provided reports on various matters that were considered in preparing a draft transition paper and stated that it was most important that the Council take action on the transition paper at this Council meeting. The Council amended the agenda to provide more time for work and discussion on this matter.
4. Athena Brown presented update information on the proposed DOL budget, which proposed \$49,595,000 for DINAP in PY 2018. This allocation provides just a slight decrease in funding from past fiscal years.
5. Ms. Brown gave a presentation and led discussion on matters related to the schedule and process of DINAP's next competitive funding year, July 1, 2018 to June 30, 2019. The group discussed possible training and guidance documents that DINAP will issue on the process, the time frame for notification of grantees, and the process of requesting waivers related to performance measures.
6. Ms. Brown gave a presentation and led discussion on matters related to the expiration, renewal, and major issues of concern on the Charter for NAETC.
7. Council members discussed problem areas for DINAP grantees including: performance measures, gathering data, and resolutions to DOL officials requesting changes to the process.

There was discussion of efforts to provide information between the DFO and the Council more quickly.

8. The Council heard presentations from eight people in the Public Comments session. The presenters included: American Indian Council, Kansas City; Pascua Yaqui Tribe, Tucson; Inter-Tribal Council of Nevada; California Indian Manpower Consortium, Nez Perce Tribe; and Central Council of Tlingit and Haida Indian Tribes.
9. The leaders of the Effective Management Workgroup gave an update report on their work during the day on the Transition Paper to be presented to DOL officials. The proposed document includes four major recommendations for improving DOL support for Native Americans. The transition paper will include information on major disparities that impact Native Americans more severely than other population groups. The Workgroup leaders noted that DOL should consider these disparities in applying rules and regulations on DOL programs serving Native Americans. The Council discussed possible steps to take after the transition paper is submitted to the new administration, including sending information to the US Congress.
10. The Council discussed actions that can be taken by the Council to better address issues brought to the Council by tribes or by public commenters at the NAETC meetings. The possible actions discussed included reports to the US Congress and reports by NAETC members at DOL training sessions in different regions.

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

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

**NATIVE AMERICAN EMPLOYMENT AND TRAINING COUNCIL MEETING  
U.S. Department of Labor**

**Sheraton Gateway Hotel, Los Angeles, CA**

**DAY Two: Wednesday, May 24, 2017**

**Call Meeting to Order & Roll Call:** Gary Rickard, Council Chairman, reconvened the meeting of the Native American and Training Council (Council/NAETC) at 9:00 a.m. (PST) Athena Brown, Designated Federal Officer gave the blessing. Roselyn Shirley, Council Vice-Chair, called the roll and determined a quorum was present.

**PRESENT-ROLL CALL**

Gary Rickard, Representing Region 6, Chairman  
Roselyn Shirley, Representing Region 6, Vice Chair  
Hon. Dave Archambault, Representing Other Discipline, Member  
Jacob Bernal, Representing Region 6, Member  
Christine Campbell, Representing Region 5, Member  
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Winona Whitman, Representing Hawaii, Member

**ALSO PRESENT**

Athena Brown, Designated Federal Officer  
Duane Hall, Federal Project Officer, DINAP  
Jennifer Whitmore, Workforce Development Specialist, DINAP

**Workgroups, Upcoming Schedule of Meetings, Potential Dates for next NAETC Meeting and Regional Conferences Strategic Objectives for PY 2017-2018**

Ms. Brown suggested that the Council begin by reviewing the membership of the workgroups, noting that Traci Morris, the former chair of the Effective Management Workgroup, has resigned from the Council. Chairman Rickard accepted the nomination to chair the Effective Management Workgroup. Councilwoman Whitman also asked about the possibility of holding an IT workgroup meeting. Duane Hall, DINAP, suggested that the fall would be the best time for a meeting because the system is a work-in-progress. However, the Performance Measures Workgroup should choose a meeting date. Councilwoman Whitman asked if the Chair and/or Ms. Brown would announce the Council's determination with regards to the IT Workgroup at the general assembly meeting on May 25th. Ms. Brown said that Mr. Hall could do a short

presentation. With regards to the Performance Measures Workgroup updates to the general assembly, Ms. Brown shared that DINAP submitted questions to Karen Staha, who oversees performance measures within DOL, and never received a response.

Chairman Rickard excused himself due to illness at 9:30 a.m. and Vice Chair Shirley facilitated the remainder of the meeting.

### **Performance Measures Working Session, Duane Hall and Jennifer Whitmore, DINAP**

Jennifer Whitmore gave a presentation on the WIOA Performance Indicators. In Program Year 2016, CSP received approximately \$46 million and SYS received \$16 million. Together, these programs provide competitive grants to 176 individual grantees. Ms. Whitmore provided the background on the performance indicators as they transitioned from JTPA to WIOA. The law established six standard performance measures as well as allowing for an INA-specific measure that the Advisory Council will define as instructed by Section 166(h). ETA is in the process of identifying additional guidance for the creation of this measure.

The new WIOA performance measures for adults are as follows:

1. Employment in the 2nd quarter after exit
2. Employment in the 4th quarter after exit
3. Median earnings in the 2nd quarter after exit
4. Credential attainment
5. Measurable skills gain
6. Services to employers
7. INA specific measure(s)

One of the major changes represented in these measures is benchmarking employment a certain period of time after completing a training program and then again a year after termination. For the credential attainment, high school diplomas/GED equivalents, recognized post-secondary degree or credential all count, while work readiness certificates will not. The measurable skills gain is designed to measure the interim progress of a candidate and includes a variety of valid achievements, including moving up a skill level or making satisfactory progress in school. Services to employers has three sub-metrics that are being considered, with employer retention rates being considered for INA programs. Employer retention rate will be a function of comparing employment numbers from the first and second performance measures.

Outcomes are currently measured through BearTracks, which contains Social Security Numbers (SSNs) for the participants. DOL then takes these SSNs and compares them with Unemployment Insurance files to verify the data. Because UI data is calculated on a quarterly basis, there can be a lag running these comparisons, meaning that data is often at least a year old when by the time it comes available. Supplemental data is being allowed through the Supplemental Program Information Report (SPIR).

To set standards for the program, DOL uses a statistical adjustment model. Currently, for example, DINAP uses a statistical adjustment model established under the JTPA to determine

recommended levels in each of these performance indicator areas. These recommendations are then posted online for programs to use to judge themselves. This regression model takes into account geographic and economic contexts for service areas as well as characteristics of previous participants.

As for some of the challenges presented by this new approach, it can be difficult to time exits to optimize performance data because it's being calculated in the 2nd and 4th quarters after program termination. Measurable skills gain and services to employers are additional measures to what had been in place previously, representing an increased reporting burden. Currently, BearTracks isn't able to collect measurable skills gain data, which would make reporting on them a considerable burden for grantees. The challenges are especially tough for the SYS programs. Even though they receive just 1% of what state programs receive, they have largely the same reporting requirements as more robust programs.

Fifteen years ago, before the establishment of common measures, there was a menu of measures that was designed in consultation of the Advisory Council at the time, grantees were allowed to choose three measures that best reflected the composition of their communities. The three most commonly chosen were employability enhancements, entered employment and positive termination. Ms. Whitmore shared the numbers for those measures in Program Year 2005. The most complete dataset for recent program years is from 2015. These data indicated that grantees largely met their goals, falling short in average earnings. For that shortfall in average income, Ms. Whitmore explained that it could be attributable to the restriction of the use of supplemental data. The new measures aren't slated to be implemented until program year 2017 and a number of tasks remain to be done. The current system still must be modified to meet these new requirements. The Advisory Council has to develop specific measures for INA communities.

Councilwoman Richardson commented that grantees appeared to perform better on the WIA performance measures as compared with the current measures. Ms. Whitmore affirmed this, though she pointed out that a different time period was being assessed here. Mr. Hall said the use of UI wage record comparison drastically increased the success rate of these programs because it gave positive proof of employment where there previously had been none. Councilman Bernal asked about the use of supplemental information beyond UI wage records. Ms. Whitmore clarified that supplemental information was now allowed for all of the performance measures whereas it was previously restricted to the first two. Councilman Bernal then asked when UI was calculated. Mr. Hall explained that they have to show up in UI the quarter after exit, which means that every employee that works reported hours will be counted as a positive.

Councilwoman Lindquist asked about the term "grantee success." Mr. Hall explained that grantees met standards as determined by a regression model that accounted for a number of contextual factors. These contextual factors, however, should not be construed as accounting for granular differences between individual grantees for retention and average earnings. Councilwoman Lindquist asked what is meant by "positive termination." Vice Chair Shirley observed that the Council may also need a briefing from DINAP on how program reporting actually works. Councilwoman Campbell gave the example that, under the old act, positive

termination in community was counted as the achievement of goals that were set at the outset of the training program.

Councilman Archambault asked Ms. Whitmore if DINAP had data from the grantees on the six WIOA measures. Vice Chair Shirley replied that they are not slated to begin reporting and collecting information on those new measures until PY '18. Currently, the Council should occupy itself with developing a measure specific to INA programs and working out glitches in the new reporting system. Councilman Archambault pointed out that adding another measure specific to INA programs does not solve the fact that the other six required measures are not suited to the realities of the Indian/Native American community. He advocated for the seventh measure to allow grantees to pick from a menu of measures. Councilwoman Carroll agreed, arguing that JTPA allowed for more flexibility whereas WIA and WIOA have been more restrictive. Councilman Pahmahmie agreed and wondered whether it would be possible to incorporate the UI information into the previous menu of 13 measures to provide better tracking. Councilwoman Campbell discussed using some of the data from Ms. Whitmore's presentation for the transition paper.

For the seventh measure, Ms. Brown urged members to develop one that was challenging but attainable by the grantees. Councilman Archambault asked if it was required that they develop such a measure. The language in the law is that the Council "shall" create an additional measure. Ms. Brown recapped the history, recalling that DINAP felt that there should be a separate reporting option for INA programs rather than an additional one. DOL will not create an additional measure, however, if the Council does not make any recommendations for the creation of one. Councilman Tucker pointed out that the law provides no timeline under which the Council has to complete this task. Ms. Brown said that the Council should be sure, when they resubmit their resolutions, to inform the Secretary that they still dispute the language requiring them to develop another measure. Vice Chair Shirley added that the Council should take that opportunity to ask questions of Ms. Staha and Secretary Acosta as well.

Councilman Archambault explained his position on the performance reporting measures, using examples from Standing Rock, North Dakota, and said that if the Council must develop an additional measure it should be one that accurately captures the situations in their service areas. Councilwoman Campbell informed Councilman Archambault that the discussions about measures applicable to Indian Council has been ongoing with DOL for years, where members have stated that the performance reporting measures are not all relevant for INA programs. Member Archambault reiterated his earlier point then, saying that they have to change the law in that case. Vice Chair Shirley recalled that there was a Regulations Workgroup that attempted to preempt these issues prior to WIOA. Ms. Brown said that the history of this on discussion archived at DINAP for those who were interested. She stated that a regulations workgroup doesn't make sense because the law has already been published. Councilwoman Richardson agreed, sharing that the recommendations the Council had offered with regards to this issue were not taken into account by the authors of the legislation. She expressed that the requirement for an additional measure that was placed upon INA programs in the Act is discriminatory because it was not placed on the states. The result is that the onus is on the Council now to figure out how to make that measure work in favor of INA programs.

Vice Chair Shirley asked what the next steps were for deciding upon a meeting date for the Performance Measures Workgroup. Ms. Brown pointed out that they usually coincide with regional conferences. Members discussed the possible logistics for the date. There were calls for the meeting to take place somewhere central, such as Oklahoma. Vice Chair Shirley suggested the Workgroup hold its meeting in August in Dallas. Members concluded that the Performance Measures Workgroup meeting will be tentatively held as a one and a half day meeting on August 8th and 9th in Dallas. Councilwoman Richardson suggested that they make it a joint meeting with the Effective Management Workgroup to ensure that everyone was able to attend.

### **Transition Paper Follow-Up Discussion**

Councilman Archambault moved to have the writing team draft the letter and to finalize the drafts for the transition paper; Councilman Osceola seconded the motion. All those present voted in favor. Councilman Archambault proposed an informal review process by the Council, perhaps by teleconference.

Councilman Archambault moved to resubmit the previous resolutions to the new administration; Councilman Osceola seconded the motion. All those present voted in favor.

Councilman Archambault offered his assistance in drafting an amendment to WIOA, pointing out that this Congress is looking for viable legislation. He also advocated for the creation of credential programs, and suggested a number of avenues through which that could be accomplished.

### **DOL Reporting Update Jennifer Whitmore, DINAP**

Ms. Whitmore presented information on the on-going efforts of the Department in designing a web-based, WIOA data reporting system and stated that these efforts are in collaboration with the YouthBuild Program. DOL has been working with a contractor on the proof of concept that covers the basic reporting requirements. Integral to this revamped system is the Participant Information Record Layout or PIRL, which are the individual records of the individuals serviced within the program. If DOL approves this proof of concept, DINAP will pursue a more aggressive development schedule and implement more rigorous testing. Deployment should occur by the end of this year or early next year. Ms. Whitmore explained that if this new system is not operationalized, a combination of BearTracks and SPIR reporting could cover the WIOA reporting requirements. Councilman Pahmahmie asked what should be done with the previous data and whether it would be converted into the new system. Ms. Whitmore said that she'd take that back to the contractor. Councilman Osceola asked if any consideration was being given to individualized reporting portals for each grantee. Ms. Whitmore responded that there will not be individualized portals.

### **Recap, Adjournment, and Closing**

Councilwoman Carroll suggested that the D.C. meeting occur before November. Councilwoman Campbell asked whether it would be possible for Ms. Brown to send a letter to the Secretary. Ms. Brown responded that that request should come from the Council itself so that it goes directly to the Secretary's scheduler; however, a scheduling request will also be prepared by DINAP.

Councilman Legg moved to adjourn; Councilman Archambault seconded the motion. The motion was approved unanimously. Vice Chair Shirley adjourned the meeting at 11:51 am.

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

1. The Council appointed Chairman Rickard to the position of Chairman of the Effective Management workgroup. The Council made plans for holding a meeting of the IT Workgroup and Performance Measures Workgroup and reporting to DOL grantees on matters discussed by the IT workgroup. The Council also made plans for a Council meeting in Washington, DC.
2. A presentation was made to the Council on the WIOA Performance Indicators and how these indicators have changed over time as the DINAP program transitioned from JTPA to WIOA. Of the seven new Performance Indicators, six are required of all DOL grantees, and the seventh measure is specific to INA grantees. The Council is charged with defining the INA specific measure. Information was presented on the BearTracks online reporting system and some shortcomings in this system in tracking information related to the new Performance Indicators. DINAP grantees are not required to begin collecting information and reporting on the new Performance Indicators until PY 2018.
3. The Council discussed the measure that is specific to INA grantees. The Council is struggling to figure out how to make the seventh measure work in favor of INA programs.
4. The Council approved a motion to have the Council members working on the Transition Paper to complete the work and submit it to the Council for final review. The Council approved a motion to resubmit resolutions approved by Council in recent meetings to the new administration.
6. A presentation was made to the Council that provided update information the DOL work efforts to design and implement a web-based, WIOA data reporting system that would replace the current BearTracks system. Testing and deployment of the new system may occur by the end of 2017 or early 2018.

Summary of Minutes Prepared by **Neal R. Gross, Court Recorder**  
Document Reviewed for Corrections, and Modified by **Lumbee Enterprise Development**