

1 P R O C E E D I N G S

2 TUESDAY, MAY 12, 2015

3 (9:46 a.m.)

4 CHAIRMAN ALCANTAR: Good morning,
5 everyone.

6 Laurie, I think you're up. Good morning.
7 How are you?

8 MS. BISCOE: Good morning, Mr. Chairman.

9 CHAIRMAN ALCANTAR: I would like to begin
10 this work session on WIOA NPRM.

11 MS. BISCOE: All right. Good morning
12 again, Commissioners.

13 For this work session we're going to be
14 discussing the WIOA provisions relating to rapid
15 response, the funding allotments and allocations,
16 monitoring and audit requirements, resolution of
17 investigation and monitoring findings, and then the
18 National Dislocated Worker Grants, which we formerly
19 knew as the "National Emergency Grants" or NEG's.

20 All of these provisions are found in the
21 notices of proposed rulemaking relating to Title I and
22 Title III.

23 Overall, the provisions we're covering
24 today are generally consistent with the integrated
25 service delivery system Texas has operated for many

1 through the document unless anyone has any questions.

2 CHAIRMAN ALCANTAR: No, please proceed.

3 MS. BISCOE: All right. So starting with
4 Section 682.300 to 682.370, these are all provisions
5 that relate to the provision of rapid response services
6 to address mass layoffs.

7 The provisions are consistent with
8 existing provisions relating to the delivery of rapid
9 response services, and we're recommending/commenting
10 that we agree.

11 CHAIRMAN ALCANTAR: We agree.

12 MS. BISCOE: In Section 683.100, 105, 110
13 and 115, these sections relate to the receipt and
14 allowable terms of WIOA and Wagner-Peyser funds.

15 Again, there are no significant changes
16 other than the reference to pay-for-performance
17 contracts for some WIOA adult and dislocated worker and
18 youth activities, and I'll talk a little bit about those
19 provisions later in the document.

20 Other than that, we have no comments on
21 these provisions.

22 CHAIRMAN ALCANTAR: We agree.

23 MS. BISCOE: 683.120 relates to the
24 allocation of funds to Boards which is consistent with
25 current practices.

1 The one thing that I would note is that
2 there is -- included in the regulations is that rapid
3 response funds that are not obligated in the first year
4 become available for statewide activities in future
5 years.

6 So that will be a change.

7 CHAIRMAN ALCANTAR: Does that provide
8 additional flexibility or does it come with some
9 restrictions in terms of how you can use the
10 additional --

11 MS. BISCOE: It would be allowable
12 statewide activities.

13 CHAIRMAN ALCANTAR: And it just -- with no
14 further limitations other than --

15 MS. BISCOE: Fall in the category of what
16 is allowable statewide.

17 CHAIRMAN ALCANTAR: Okay. Good. All
18 right. We would agree.

19 MS. BISCOE: Section 683.125, 135, 140,
20 145 and 150 relate to the additional fiscal provisions
21 relating to the allocation and reallocation of funds.

22 Although we've not included it here, I
23 would like to remind you that in 683.130 there is a new
24 provision regarding the -- allowing for the transfer of
25 up to 100 percent of funds between the adult and

1 dislocated worker funding streams, and we've discussed
2 that provision previously.

3 All of these provisions we'd be
4 recommending/commenting that we agree.

5 CHAIRMAN ALCANTAR: Commissioners.

6 COMM. CONGLETON: Agree.

7 CHAIRMAN ALCANTAR: Okay.

8 MS. BISCOE: Moving to the next section,
9 683.200, I'm going to skip because I would like to cover
10 all of 683.200 through 260 if agreeable to the
11 Commission.

12 CHAIRMAN ALCANTAR: That would be fine.
13 Go ahead.

14 MS. BISCOE: All of these provisions
15 relate to the allowable use of funds and the requirement
16 for audit of funds and the protection of
17 personally-identifiable information.

18 The provisions in this section are all
19 consistent with our current operations and practices,
20 and we recommend agreeing with the regulations as
21 proposed.

22 CHAIRMAN ALCANTAR: Commissioners.

23 COMM. ANDRADE: Agree.

24 CHAIRMAN ALCANTAR: We agree.

25 MS. BISCOE: We're moving right along. So

1 given that we've covered all through 683.620, we'll move
2 to the section relating to 683.270, which is on Page 4
3 of 16.

4 CHAIRMAN ALCANTAR: Proceed.

5 MS. BISCOE: In Section 683.270, 275, 280,
6 285, 290 and 295, all of these provisions relate to
7 wages and health and safety restrictions that must be in
8 place for the allowable use of WIOA funds, consistent
9 with current practices.

10 I would highlight in Section 683.295,
11 there is expressed authorization for one-stop operator
12 service providers and eligible training providers to be
13 for-profit entities. This provision is consistent with
14 our current operations.

15 I only highlight it because there's been
16 some discussion about the requirements of the Super
17 Circular that we are in the process of implementing
18 concurrently with WIOA stating that profit is not
19 allowable unless expressly authorized in the federal
20 statute and/or regulations.

21 So here we certainly have expressed
22 authorization for WIOA funds to be used and provided to
23 for-profit entities. As an aside, I would just let you
24 know that we've been working with finance about the
25 other funding streams, and we are finalizing that, but

1 it does look like all of our other funding streams would
2 also include authorization to work with for-profit
3 entities.

4 CHAIRMAN ALCANTAR: We would agree.

5 MS. BISCOE: Moving to Section 683.400 --
6 and I would take -- would like to also take up 410 at
7 the same time -- these sections relate to the
8 regulations regarding the requirements for DOL and
9 states to perform monitoring and oversight of their
10 grantees.

11 The proposed regulations are consistent
12 with current operations. We would like to note,
13 however, that the statute and rules have retained the
14 requirement that annual on-site monitoring is required
15 for local areas.

16 We were hoping that there may have been
17 some flexibility with regard to the on-site requirement
18 for our monitoring activities, but the statute retains
19 that requirement. So we'll continue to operate as we
20 have.

21 CHAIRMAN ALCANTAR: Okay. Commissioners.
22 Please continue.

23 MS. BISCOE: All right. We'll move to
24 683.420, 430 and 440. Again, I would like to take these
25 up together.

1 CHAIRMAN ALCANTAR: Please do.

2 MS. BISCOE: They relate to the handling
3 of the resolution of findings arising from audits, eggs
4 investigations, monitoring and oversight reviews both at
5 the state and federal levels.

6 We don't see any issues or concerns with
7 the provisions as included in the proposed regulations,
8 and we would recommend indicating agreement with
9 regulations as proposed.

10 CHAIRMAN ALCANTAR: I would concur.

11 COMM. ANDRADE: Agree.

12 MS. BISCOE: Then I'm going to move to
13 683.500 on Page 12 of 16. And, again, I would like to
14 take up all of -- we've only indicated Section 683.500
15 here, but I would like to cover that entire section,
16 which is 500 through 540.

17 CHAIRMAN ALCANTAR: Please do.

18 MS. BISCOE: This section is regarding the
19 pay-for-performance provisions that I mentioned earlier.

20 Under WIOA pay-for-performance contracts
21 are allowed to be used for up to 10 percent of adult
22 dislocated and youth contracts relating to adult
23 training services and youth training services and other
24 activities.

25 Here we're recommending that we comment on

1 the use of "must" in Section 583.510 regarding the
2 services pay-for-performance contracts may be used for.
3 In WIOA pay-for-performance contracts are allowable but
4 not required.

5 So we would like to -- we would recommend
6 commenting that the regulatory provision should reflect
7 the option to use these types of contracts rather than
8 making it appear that they are required.

9 CHAIRMAN ALCANTAR: I think anything that
10 provides us with additional local flexibility is a good
11 thing. Absolutely. Let's convey that.

12 MS. BISCOE: All right. Moving to
13 683.600, 610, 620, 630 -- I would also include 640 and
14 650 -- these provisions relate to the handling of
15 grievances and complaints and appeal processes.

16 The proposed regulations are consistent
17 with current law and practices, and we would recommend
18 commenting agreement regarding these provisions.

19 CHAIRMAN ALCANTAR: Commissioners.

20 COMM. ANDRADE: Agree.

21 COMM. CONGLETON: Agree.

22 MS. BISCOE: Moving to 683.710, this
23 section establishes that the chief elected officials are
24 responsible for funds granted under Title 1 of WIOA and
25 Wagner-Peyser, and we would be recommending agreement.

1 Before I move to the next section in your
2 document, we had a little -- we struggled a little bit
3 with keeping track of all these comments at the same
4 time.

5 There's one additional section that we
6 would recommend commenting on, and it is not in your
7 packet but I will describe to you what it is. It is
8 683.720.

9 In that section, the proposed regulations
10 establish the corrective actions to be taken by the
11 state or by the Department of Labor for a local area's
12 noncompliance with provisions of the uniform
13 administrative requirements, cost principles and audit
14 requirements, as well as actions to be taken if there
15 are federal criminal law violations.

16 Staff is recommending that TWC
17 conditionally agree with this proposed regulation and
18 request the addition of clarifying language to ensure
19 consistent seed with WIOA and other provisions under the
20 NPRM.

21 Specifically we're recommending that the
22 regulatory language align with the wording of WIOA
23 regarding corrective action taken in response to
24 substantial violations. The way that the proposed
25 regulations are drafted they just refer to "any and all

1 violations," and so we -- which is not consistent with
2 what is in the law and in other areas of the notice of
3 proposed rulemaking.

4 So we are making that recommendation as
5 well as recommending that the resolution process for
6 corrective actions imposed by DOL or by the state align
7 with the processes that have been laid out in other
8 areas regarding corrective actions taken by a grant
9 officer, essentially allowing for an opportunity for the
10 local area or person subject to corrective action to
11 respond to the issue and potentially take corrective
12 action.

13 CHAIRMAN ALCANTAR: Commissioners.

14 COMM. ANDRADE: Agree.

15 CHAIRMAN ALCANTAR: Okay.

16 MS. BISCOE: Moving to the 683.730, in
17 this section we're recommending a comment which relates
18 to the waiving of sanctions.

19 In this section and as noted in our
20 proposed comment, (b) (1) of this section talks about the
21 waiver of debt as a sanction; however, it is unclear.

22 We've read this section. We've all read
23 it and we're not exactly certain what is being
24 communicated; so we're just asking for clarification.
25 Something has been missed in that section.

1 CHAIRMAN ALCANTAR: Agree.

2 MS. BISCOE: 683.740 -- and I would like
3 to take up 750 at the same time to finish out the
4 subpart regarding the waiver of liability, providing
5 guidance on handling advanced approvals and offsets
6 relating to corrective action and we have no issues with
7 the regulations as proposed in this section.

8 Then I'll have to 683.800, and I would
9 like to take up all of the Sections 800 through 850
10 together.

11 CHAIRMAN ALCANTAR: Hold on, Laurie. On
12 750 --

13 MS. BISCOE: Uh-huh.

14 CHAIRMAN ALCANTAR: -- would you look at
15 it from the perspective of whether or not we need
16 additional referencing on how to appeal a determination
17 of misexpenditure? Just take another look at that and
18 see if we need to examine or ask for clarification
19 there.

20 MS. BISCOE: Certainly.

21 CHAIRMAN ALCANTAR: All right. Thank you.

22 MS. BISCOE: So back to 683.800 through
23 850, these sections address the appeal procedures for
24 DOL determinations to the Office of Administrative Law
25 Judges and for judicial review, and we're recommending

1 that we agree with the proposed regulations as presented
2 for all of these sections.

3 CHAIRMAN ALCANTAR: Commissioners.

4 COMM. CONGLETON: Agree.

5 MS. BISCOE: All right. Then we're moving
6 to 687.140. For this section we're recommending that
7 TWC comment on the requirement for potential grantees to
8 collect identifying information and interest of affected
9 workers -- wait a minute.

10 Let me back up. Let me set the tone for
11 this section. We're entering the last section of the
12 items that we are presenting for comment today, and this
13 whole section relates to the National Dislocated Worker
14 Grants, and we begin with 687.100.

15 All of the comments, 100 -- or all of the
16 proposed regulations, 100 through 130, provide guidance
17 on the types of National Dislocated Worker Grants, the
18 eligible entities and the timing for applications.

19 Staff has no questions or comments with
20 regard to those provisions as drafted.

21 CHAIRMAN ALCANTAR: So we generally agree
22 with them.

23 MS. BISCOE: We generally agree with
24 them --

25 CHAIRMAN ALCANTAR: Okay.

1 MS. BISCOE: -- until we move to 687.140.
2 In 687.140 we are recommending that TWC comment on the
3 requirement for potential grantees to collect data
4 identifying needs and interests of affected workers
5 prior to submission of the grant requests.

6 We're recommending that we note to DOL
7 that such data collection efforts should not delay the
8 ability to apply for and then receive funds.

9 These are national dislocation or
10 emergency or disaster grants, and we are not in
11 disagreement but we just want to be on the record
12 indicating those efforts should not delay being able to
13 make those requests.

14 CHAIRMAN ALCANTAR: I think that we
15 express to them the importance of having a framework
16 that does not delay the application of grants.

17 Okay.

18 MS. BISCOE: All right. 687.150 provides
19 that a project implementation plan for a grant must be
20 submitted after receiving a National Dislocated Worker
21 Grant award.

22 Staff is recommending that we strongly
23 agree with this provision given that we have some
24 experience with these types of grants, and having the
25 additional time to develop the details of the services

1 needed and the project details is a positive move as we
2 see it.

3 CHAIRMAN ALCANTAR: Okay.

4 MS. BISCOE: 687.160 indicates that grant
5 applications will be approved or disapproved within 45
6 days of receipt.

7 Staff is recommending indicating that TWC
8 agrees.

9 MR. TEMPLE: You got it. Okay.

10 MS. BISCOE: I'm going there, I think. We
11 would like to -- I understand. Well, again, it was
12 there but it didn't come out on the page, but we
13 definitely would like to add to this comment to indicate
14 that TWC agrees with the 45 days as it applies to the
15 regular Dislocated Worker Grants, but we would request
16 that the department -- that the Department of Labor make
17 a determination in a much more timely fashion if it's a
18 situation of disaster, since in those situations timing
19 is of the essence to get services provided.

20 So we would like to add to the comment as
21 it's reflected in the document you have.

22 CHAIRMAN ALCANTAR: I think that would be
23 appropriate.

24 MS. BISCOE: All right. 687.170 is --
25 provides expanded eligibility relative to what is in

1 WIOA.

2 We are recommending that TWC comments
3 reflect the need for clarification regarding individuals
4 eligible due to relocation as a result of a disaster.

5 Clarification is needed about whether
6 services may be provided in the area in which the
7 individual relocated to in the area of the disaster --
8 either or both. We just want it to be clear where those
9 services can be provided.

10 CHAIRMAN ALCANTAR: Commissioners.

11 COMM. ANDRADE: Agree.

12 MS. BISCOE: 687.180 provides that
13 disaster relief employment under a Dislocated Worker
14 Grant may be up -- may be for up to 12 months versus the
15 six months that is currently in place, and that
16 individuals may receive concurrently career and training
17 services as well as the disaster relief employment, and
18 we recommend agreeing with that proposed regulation.

19 CHAIRMAN ALCANTAR: Commissioners.

20 COMM. CONGLETON: Agreed.

21 MS. BISCOE: We're almost there. 687.190
22 relates to the use of waivers. We don't see any issue,
23 and that is consistent with what we've seen under WIOA.

24 687.200 is our last section. In this
25 section it provides that grantees may be -- may retain

1 any available funds from a previous grant within the
2 same program year if there is an additional disaster or
3 situation that would require another type of grant.

4 Sadly we've had those kind of experiences
5 with hurricanes, and so we would strongly agree with the
6 proposed regulation as drafted.

7 CHAIRMAN ALCANTAR: I would agree, too.
8 Commissioners, do we have any questions on any of the
9 sections that have been covered by staff?

10 COMM. CONGLETON: No questions.

11 COMM. ANDRADE: No.

12 CHAIRMAN ALCANTAR: No additional
13 comments? Laurie, good work in going through these.
14 Appreciate all the hard work of the team and being so
15 concise but also thorough in terms of the review.

16 I look forward to another good week of
17 work, and I thank you and the rest of the team for all
18 your hard work.

19 Larry, Reagan, do you have any comments?

20 MR. TEMPLE: One other thing. Next week
21 we'll be primarily -- we'll be closing up this process
22 primarily on the vocation and rehab comments.

23 We've been working with the DARS. They
24 certainly are looking at making their own comments
25 relative to VR. We're looking at the comments as they

1 relate to the employment piece. Obviously, these are
2 due June 16th, and depending on what the Legislature
3 does may very well change the approach that we have in
4 our comments. So we'll --

5 CHAIRMAN ALCANTAR: It's my intent to make
6 sure that in the interest of what is possible under this
7 legislation and consistent with the integrated model
8 that we offer advice to DOL in this space and NED and
9 make sure that we communicate the essential points.

10 So I would agree. All right.

11 MR. TEMPLE: All right. That's all we
12 have.

13 CHAIRMAN ALCANTAR: Well, good. This
14 concludes this work session. Thank you and have a good
15 day.

16 (Proceedings concluded at 10:08 a.m.)

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