



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

2 TUESDAY, MAY 26, 2015

3 (2:07 p.m.)

4 CHAIRMAN ALCANTAR: Good afternoon,

5 everyone.

6 We will now begin our work session on the

7 Notice of Proposed Rulemaking under WIOA.

8 Laurie Biscoe, what do you have for us

9 this afternoon?

10 Good afternoon.

11 MS. BISCOE: I have the last work session

12 on WIOA, Notices of Proposed Rulemaking, we think.

13 So we are going to be discussing kind of

14 an assortment of WIOA provisions this afternoon;

15 essentially anything that was left.

16 For the most part we're going to be

17 reviewing proposed regulatory provisions that relate to

18 a number of federally-administered programs under Titles

19 I, III and IV and items that during prior work sessions

20 we noted we were postponing until this, the final work

21 session.

22 These postponed items include the

23 provisions relating to infrastructure costs, Veterans'

24 preference, statewide activities and all of the

25 provisions relating to the eligible training provider

1 system.

2 I'm going to review everything other than  
3 the ETP provisions, and Adam is going to present those  
4 eligible training provider provisions for you.

5 So we'll begin.

6 CHAIRMAN ALCANTAR: Please do.

7 MS. BISCOE: In the packet that you have,  
8 the document that has the -- it looks like it comes from  
9 a database is the one that we're going to begin with.

10 So beginning in that document, Part 371 of  
11 the vocational rehabilitation regulations relates to the  
12 American Indian Vocational Rehabilitation Services  
13 Program that provides vocational rehabilitation services  
14 for American Indians with disabilities to reside on or  
15 near federal/state reservations. We're recommending  
16 agreement with the regulations as proposed.

17 Part 373 relates to the special  
18 demonstration programs which are competitive grants made  
19 available to expand and improve the delivery of  
20 vocational rehabilitation services and other services.

21 Part 381 provides regulatory requirements  
22 for the Protection and Advocacy of Individual Rights  
23 Program.

24 Part 385 provides the regulatory  
25 requirements for the rehabilitation training program.

1 Under this program the secretary for vocational  
2 rehabilitation awards grants on a competitive basis for  
3 training to assist in increasing the number of qualified  
4 personnel to provide vocational rehabilitation services  
5 to persons with disabilities.

6                   The rehabilitation training program grants  
7 are made in relation to four programs, the  
8 Rehabilitation Long-Term Training Program, the  
9 Innovative Rehabilitation Training Program, the  
10 Rehabilitation Short-Term Training Program and the  
11 Training for Interpreters Programs.

12                   So unless there are questions about those  
13 specific programs, I'm going to skip to Section 652.1 on  
14 Page 2 of your document.

15                   With that move we are taking out parts of  
16 the Wagner-Peyser Employment Services Program that we  
17 did not cover previously.

18                   Section 652.1 through .8 lay out the  
19 Employment Services Program purpose, allotments,  
20 requirements for a labor exchange system and  
21 administrative provisions. We're recommending agreement  
22 with these provisions.

23                   Included in Section 652.100 to 252.205 are  
24 the requirements relating to providing Veterans with  
25 priority of services with which staff is recommending

1 agreement.

2                   There is one change that we are  
3 recommending for inclusion in our comments in this  
4 section.

5                   For the sake of clarity, in Section  
6 652.100 we are recommending that DOL adds specifics  
7 about the definition of "Veteran" to be used for both  
8 WIOA and Wagner-Peyser.

9                   WIOA itself does provide a definition, but  
10 the definition refers to another federal statute. It  
11 just cites a location.

12                   We are recommending that our comment  
13 requests that the statutory language be included in the  
14 regulations as follows: "As provided in the statutory  
15 reference the term 'Veteran' means a person who served  
16 in the active military, naval or air service and who was  
17 discharged or released therefrom under conditions other  
18 than dishonorable."

19                   This definition does not include a time  
20 requirement for active service. By so doing the  
21 regulations will be clear that the definition of  
22 "Veteran" be used for WIOA and Wagner-Peyser programs is  
23 consistent.

24                   Section 652.215 and .216 retain the  
25 requirements that were Wagner-Peyser services must be

1 provided by state merit staff.

2                   As we've noted previously, the regulations  
3 stipulate that state merit staff and the One-Stop  
4 settings may receive and take guidance from the One-Stop  
5 office management.

6                   Section 652.301, .301 and .303 relate to  
7 the development of labor market information under  
8 Wagner-Peyser and the coordination with -- and the  
9 coordination of that development with the Bureau of  
10 Labor Statistics and ETA.

11                   Sections 653.100 to .103, the proposed  
12 regulations relate to the provision of services to  
13 migrant and seasonal farm workers.

14                   For Sections .100 through .103 we have no  
15 comments and suggest reflecting agreement with the  
16 regulations as proposed.

17                   In Section 653.107 there is a reference to  
18 the requirement that states employ an adequate number of  
19 outreach workers to conduct MSFW -- Migrant Seasonal  
20 Farm Worker -- outreach in their service areas.

21                   We're recommending a comment to request  
22 that DOL clarify that the requirement for workers to  
23 outreach MSFWs only applies to offices which serve a  
24 significant number of MSFWs and not to all service  
25 areas.

1 CHAIRMAN ALCANTAR: Commissioners.

2 COMM. ANDRADE: I'm okay.

3 MS. BISCOE: Section 653.108 presents the  
4 requirements and responsibilities for a state monitor  
5 advocate to monitor compliance with ES regulations in  
6 serving MSFWs.

7 Staff is recommending that we note in our  
8 comments the absence of Subsections (h)(2) and (h)(3) in  
9 the regulations even though the preamble references the  
10 existence of those subsections.

11 We are also recommending that the annual  
12 summary report relating to the provision of MSFW  
13 services be coordinated and combined with the submission  
14 of the WIOA annual report.

15 Section 653.109 lays out the performance  
16 accountability measures associated with MSFW service  
17 delivery; however, the measures are different than the  
18 primary indicators identified for all other Workforce  
19 programs.

20 We're recommending that we comment that  
21 the MSFW measures should be aligned with the primary  
22 indicators under WIOA. Section 653.110 and .111 provide  
23 regulatory requirements for the disclosure of MSFW data  
24 and staffing requirements associated with facilitating  
25 the delivery of ES services to MSFWs.

1                   These are consistent with current  
2 regulations and we're recommending we agree with the  
3 regulations as proposed.

4                   Part 653.500 lays out the requirements for  
5 the agricultural recruitment system for farm workers.  
6 The proposed regulations are consistent with current  
7 processing and we're recommending noting agreement with  
8 the regulations as proposed.

9                   Part 658 Subpart (e) lays out the  
10 requirements for employment service and  
11 employment-related law complaint handling.

12                   Specifically in Section 658.411 we're  
13 recommending that we make two comments. First, in  
14 Section 658.411(b) (ii) relating to the complaints filed  
15 by MSFWs regarding employment related law violations,  
16 the proposed regulations reference the need to  
17 coordinate some complaints with the appropriate  
18 enforcement agency.

19                   Staff is recommending that the regulatory  
20 provision retain the specific regulatory reference and  
21 requirement for coordination of these complaints between  
22 the Employment Standards Administration, OSHA and the  
23 Employment and Training Association.

24                   Specifying which federal enforcement  
25 agencies are to be involved with coordination efforts is

1 consistent with expectations for coordination across  
2 these agencies and would assist local and state  
3 officials in understanding the possible enforcement  
4 agencies involved in these complaints.

5                   Secondly, we're recommending that Section  
6 658.411(c) be modified to clarify that allegations of  
7 violations of rights or discrimination by employers  
8 received both at the local and state levels should be  
9 forwarded to the EEOC.

10                   Section 678.315 is consistent with WIOA in  
11 stating that separate Wagner-Peyser offices are not  
12 permitted under WIOA. We've been operating consistent  
13 with these provisions for years.

14                   Section 678.435 and 440 present the  
15 business services to be provided in the One-Stop  
16 delivery system, including those that are required to be  
17 provided at no fee and those that may be provided on a  
18 fee-for-service basis.

19                   Section 678.500 through .510 relate to the  
20 Memoranda of Understanding that must be established  
21 between local boards and One-Stop partners relating to  
22 the operation of the One-Stop delivery system.

23                   These sections provide the elements that  
24 must be included in each MOU, including the referral  
25 processes between partners and funding of infrastructure

1 costs for One-Stop offices and the process for  
2 negotiation of these MOUs. We're recommending agreement  
3 with the regulations as proposed.

4                   Section 678.600 through .625 relate to the  
5 One-Stop operators, including who can serve as One-Stop  
6 operators, the requirement, the One-Stop operators be  
7 competitively procured and the roles to be performed by  
8 One-Stop operators. And, again, we're recommending  
9 agreeing with the regulations as proposed.

10                   Section 678.700 through .760 relate to the  
11 calculation and sharing of infrastructure costs among  
12 One-Stop partners for the operation of the One-Stop  
13 centers. Staff is recommending that we comment  
14 agreement with the provisions as they've been proposed.

15                   Section 679.200 and .210 relate to the  
16 requirement for states to designate regions prior to and  
17 for submission with the state plan.

18                   Considerations for defining regions  
19 include factors such as shared labor market, shared  
20 economic development areas, population centers,  
21 commuting patterns, labor force conditions, et cetera.

22                   CHAIRMAN ALCANTAR: This doesn't impact us  
23 in any way -- right -- in terms of the way we're  
24 structured?

25                   MS. BISCOE: We'll have continued

1 discussion as we look at developing the state plan about  
2 how we will approach the designation of regions in the  
3 state relative to our local workforce areas.

4 CHAIRMAN ALCANTAR: Okay. All right.

5 MS. BISCOE: Section 682.100 through .220  
6 relate to statewide activities. We've received -- we've  
7 reviewed these provisions in our recommending statements  
8 of agreement with the proposed regulations.

9 Just so that you are aware, the required  
10 statewide activities include a number of things, some of  
11 which are required activities under -- have been  
12 required under WIOA and there are some new ones.

13 Included in required activities are rapid  
14 response, disseminating various types of information  
15 such as information about eligible training providers  
16 and partnerships with business and conducting  
17 evaluations.

18 New under WIOA are items such as providing  
19 technical assistance to local areas and aligning data  
20 systems, conducting regional planning and development  
21 convening and implementation in industry and sector  
22 partnerships.

23 CHAIRMAN ALCANTAR: Not new to us.

24 (Laughter)

25 CHAIRMAN ALCANTAR: Okay. Go ahead.

1 MS. BISCOE: All right. Part 684 relates  
2 to the Native American programs provided under WIOA.

3 We're recommending statements of agreement  
4 with the regulations as proposed, and these final  
5 several items are all relating to national programs.

6 So Part 685 relates to the National Farm  
7 Worker Jobs Program. Part 686 relates to the Federal  
8 Job Corps Program, and, finally, Part 688 relates to the  
9 Federal YouthBuild Program.

10 For all of these federally-administered  
11 programs we've reviewed the proposed regulations and are  
12 recommending agreement as proposed.

13 CHAIRMAN ALCANTAR: Thank you, Laurie.  
14 Commissioners, any comments or questions on any of those  
15 items?

16 COMM. ANDRADE: No.

17 CHAIRMAN ALCANTAR: I guess, Adam, you're  
18 next.

19 MR. LEONARD: Good afternoon. The  
20 material I'm covering today, the ETP section, actually  
21 is included in two different NPRMs.

22 One section has to do with ETP reporting,  
23 and that is in the NPRM 1 which focuses on various  
24 things that are consistent across all of the programs,  
25 and then the actual eligible training provider list and

1 eligibility and things like that are part of Group 3,  
2 and that's why this is in a separate document to ensure  
3 that it was easier to look at them both together even  
4 though they were -- they come to us in separate places.

5                   So when we were looking at this, there  
6 were a couple of key points that we wanted to make. One  
7 is that we feel very strongly about the need for -- or  
8 the role that an informed consumer can play in making  
9 determinations about their own career pathways and that  
10 they need good information in order to make those kinds  
11 of decisions.

12                   So we talk a little bit about how we've  
13 been doing that through Texas CREWS already and how we  
14 could envision the requirements to report or provide  
15 this information for ETP more broadly, that it would be  
16 useful within the One-Stops, but also for people in  
17 Texas in general might be interested in going to these  
18 institutions for these types of programs. So we wanted  
19 to talk a little bit about that.

20                   We also wanted to talk about trying to  
21 create enough simplicity in the process in terms of what  
22 they're submitting to us and reducing duplication so  
23 that, hopefully, eligible training providers might not  
24 decline to participate in the system.

25                   There is some concern there nationally as

1 well as in Texas, because most of these providers have  
2 not been required to submit information, or many of them  
3 have not been required to submit information every year  
4 or go through a redetermination of an eligibility  
5 process.

6                   So we're trying to counsel that they  
7 should be very judicious in terms of what they would  
8 select to include there. Then it talks about the  
9 information has to be made available online in the form  
10 of these lists and the performance information so that  
11 people can make decisions.

12                   So we're recommending that they not be  
13 overly prescriptive in that format. It's fine to tell  
14 us the types of things or even specify the things to  
15 include and make available, but we're concerned with  
16 more and more people accessing this information via  
17 their phone, that what looks good on a full size  
18 computer monitor -- columns and headings and everything  
19 a certain way -- may work fine there but doesn't  
20 translate well to a phone.

21                   So we need some flexibility in terms of  
22 the way that we present the information and make it  
23 available to people.

24                   Another area that we thought there was an  
25 opportunity for improvement in was in the coordination

1 between the eligible training provider system and the  
2 services in up One-Stop.

3                   So right now lots of people go and receive  
4 training through an eligible training provider. Under  
5 the ETP program -- under the changes in the law, their  
6 performance, whether we paid for it or not, is going to  
7 be reported to us and be made part of the performance  
8 reporting system so that people can see this information  
9 and make decisions about whether or not they want to  
10 pursue a path.

11                   So one of our recommendations was to go  
12 ahead and use something like we use in the other  
13 programs, like a common exit-type idea, so that if these  
14 students who don't start from the One-Stop and go to the  
15 ETP but, instead, just find the ETP on their own and  
16 then come to the One-Stop for job search assistance  
17 afterwards, that rather than measuring the provider's  
18 outcomes from the point that the person leaves the  
19 course, we might extend that period that we're looking  
20 at for the performance to incorporate a seamless handoff  
21 between the ETP and the One-Stop system, which means in  
22 all likelihood that we would perhaps improve performance  
23 for the eligible training provider, we can improve  
24 service to the job seeker, we can improve service to the  
25 employers because they know that we've got more ready to



1 that we need that. Then on Page 4 when we get into Line  
2 20 -- I believe it's Line 20 on Page 4 --

3 MR. LEONARD: Uh-huh.

4 CHAIRMAN ALCANTAR: -- where we're talking  
5 about "states may waive" --

6 MR. LEONARD: Uh-huh.

7 CHAIRMAN ALCANTAR: -- I would rather have  
8 the flexibility for states to waive than not, and if we  
9 decide to approach it differently -- I'm not in favor of  
10 advocating for a certain accountability because you  
11 don't know where they're going to go with it.

12 I'd rather that the states set up their  
13 own unique, appropriate accountability systems  
14 consistent with what their goals and objectives are. So  
15 I would rather not propose that they don't provide that  
16 flexibility to states in any form or fashion whether --

17 MR. LEONARD: I think I miscommunicated  
18 that. You're right. I had no intent of trying to do  
19 that. I was trying to simply point out that, wouldn't  
20 it be nice if we didn't need to waive things simply  
21 because you made it simple enough upfront, but that  
22 message gets lost.

23 I agree.

24 CHAIRMAN ALCANTAR: Yeah. I would rather  
25 not create the impression that we want standards when

1 we're given our overall message.

2 MR. LEONARD: Uh-huh.

3 CHAIRMAN ALCANTAR: On Page 5, Line 43 --

4 MR. LEONARD: Yes.

5 CHAIRMAN ALCANTAR: -- I would say if the  
6 rule is silent, let it be silent and let's not ask for  
7 anymore additional guidance.

8 So that would be my only -- I ask you to  
9 take another look at that.

10 MR. LEONARD: Okay.

11 CHAIRMAN ALCANTAR: It gives us discretion  
12 and flexibility. I just want you to take another look  
13 at that and make sure that's what you're trying to get  
14 at there.

15 And then finally on Page 6, Line 29, or I  
16 guess Line 30, I guess it's -- you know, why add  
17 additional requirements for apprenticeship programs in  
18 terms of --

19 COMM. CONGLETON: I was going to bring  
20 that up. I'm glad you did.

21 CHAIRMAN ALCANTAR: Okay. I'll let you  
22 go --

23 COMM. CONGLETON: Thank you very much.

24 CHAIRMAN ALCANTAR: -- I'll let you go,  
25 Commissioner.

1                   COMM. CONGLETON: You know, we already  
2 exempt apprenticeship from that reporting. We already  
3 have all their information. So does the federal  
4 government.

5                   So why would we want them to report again?

6                   MR. LEONARD: Actually, that was -- what  
7 it had to do with is that the law and the rule provides  
8 that they don't have to be on the list unless they  
9 request to be on the list, and all I was trying to say  
10 on here is that if they request to be on the list they  
11 should provide the information that everybody else  
12 provides --

13                   COMM. CONGLETON: We exempt them --

14                   MR. LEONARD: -- to make it consistent.

15                   COMM. CONGLETON: -- and you already have  
16 the information anyway.

17                   MR. LEONARD: Okay.

18                   COMM. CONGLETON: Yeah. Thank you.

19                   CHAIRMAN ALCANTAR: I'd just rather not  
20 add any additional requirements. If we want to make it  
21 a part of our own unique program, I don't know that --  
22 we don't need to recommend to our federal partners to  
23 add any more additional reporting requirements.

24                   I understand that you want consistency,  
25 but we can strive for consistency where we need to add

1 it --

2 COMM. CONGLETON: Thank you.

3 CHAIRMAN ALCANTAR: -- independent of  
4 those --

5 COMM. ANDRADE: (Mic off) I agree.

6 CHAIRMAN ALCANTAR: All right. Unless  
7 we're missing something then you can brief us on that  
8 when you come back around.

9 MR. LEONARD: Not at all. It was really  
10 just a question of comparability between -- you know, to  
11 the consumer.

12 CHAIRMAN ALCANTAR: Right. They're just  
13 very different. In structure it's --

14 COMM. CONGLETON: Well, you know, I  
15 appreciate what you're trying to do and I know what you  
16 were trying to do for the consumer and I can appreciate  
17 that, but when you already have their information,  
18 they've been exempted, because of that reason everybody  
19 has their information, they really don't need to go  
20 through that again.

21 CHAIRMAN ALCANTAR: And for those programs  
22 that we fund we can always work to make sure that  
23 individuals have good information on their performance  
24 of those different apprenticeship programs, and that's  
25 something that we'll make sure that we do in

1 consideration of that factor. I appreciate the focus on  
2 that, Adam.

3                   Commissioners, any other questions or  
4 comments for staff?

5                   COMM. CONGLETON: None.

6                   COMM. ANDRADE: (Mic off) Good job.

7                   CHAIRMAN ALCANTAR: Yeah. You guys did a  
8 really wonderful job.

9                   COMM. CONGLETON: Thank you.

10                  CHAIRMAN ALCANTAR: I want to thank you  
11 for all that you've done.

12                  Larry, do you have any final thoughts --  
13 Laurie, first. I'm sorry. Laurie, any additional  
14 thoughts or comments?

15                  MS. BISCOE: I would just say thank you to  
16 all of you for spending as much time as you've spent  
17 allowing us to present this information.

18                  It's been a significant undertaking and I  
19 would note that it goes well beyond those that are  
20 sitting here in this room.

21                  We've had probably close to 100 folks  
22 throughout the organization who've been reviewing these  
23 regulations and providing input. So I would say they  
24 need to be recognized as well.

25                  It's been a real team effort across the

1 agency.

2 CHAIRMAN ALCANTAR: I thank them all for  
3 their hard work and their contributions to this process.  
4 Adam, you had your finger up for one more comment.

5 MR. LEONARD: I'm sorry. When we jumped  
6 there was one thing I wanted to mention.

7 In your comments on Page 2 and 3 where we  
8 were talking about the content of the information to be  
9 in the reports, what I found out since then is that  
10 there is a national standard called the "Integrated  
11 Post-secondary Education Data System" where community  
12 colleges and others report student level nationally.

13 So I was recommending that we change the  
14 comment there to reference that system to say that  
15 they're already reporting this. So let's see if we can  
16 get what we need out of the same format, again, to  
17 simplify things for colleges.

18 I just wanted to make sure you-all knew  
19 that we had investigated that a little further and found  
20 something better to tie to.

21 CHAIRMAN ALCANTAR: Okay. Great. I  
22 appreciate that.

23 Larry.

24 MR. TEMPLE: When we get these all cleaned  
25 up and everything and those that we disagree or

1 conditionally agree, we're going to share that with  
2 other states and see if we can't get some support, and  
3 then we're probably going to ask if they would share  
4 with us where they disagree on things.

5                   So there may be something we didn't think  
6 about. So we've got a couple of weeks there before we  
7 have to submit them.

8                   CHAIRMAN ALCANTAR: Okay. That would be  
9 good.

10                   Commissioners, any final thoughts or  
11 comments?

12                   COMM. CONGLETON: None.

13                   COMM. ANDRADE: (Mic off) No.

14                   COMM. CONGLETON: That concludes this work  
15 session.

16                   Thank you and have a good afternoon.

17                   (Proceedings concluded at 2:32 p.m.)

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## 1 C E R T I F I C A T E

2 STATE OF TEXAS )

3 COUNTY OF TRAVIS )

4 I, William C. Beardmore, Certified Shorthand  
5 Reporter in and for the State of Texas, do hereby  
6 certify that the above-mentioned matter occurred as  
7 hereinbefore set out.

8 I FURTHER CERTIFY THAT the proceedings of such  
9 were reported by me or under my supervision, later  
10 reduced to typewritten form under my supervision and  
11 control and that the foregoing pages are a full, true,  
12 and correct transcription of the original notes.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 and seal this 29th day of May 2015.

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WILLIAM C. BEARDMORE  
Certified Shorthand Reporter  
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