Transparency in the Workforce System

Establishing Firewalls & Internal Controls

Presented by the U.S. Department of Labor, Employment and Training Administration
Today’s Objectives

- Define internal controls
- Identify components of an internal control structure
- Discuss conflict of interest
- Identify types of conflict of interest
- Explain firewalls
- Building firewalls to mitigate risk
- Strengthen transparency using internal controls & firewalls
Applicable to **Internal Controls** in the local delivery system and management of Federal grants

- WIOA DOL Final Rule and WIOA Joint Final Rule
  - 20 CFR 679.430
  - 20 CFR 683.220

**Uniform Guidance**

- 2 CFR 200.61 and 200.62
- 2 CFR 200.302, 200.303, and 200.400
- 2 CFR 200.507 and 200.514

**Guidance and TA**

- TEGL 15-16, TEGL 21-16, and WIOA FAQs
Internal Controls

**WIOA at 20 CFR 683.220**

Grant recipients and subrecipients of Title I and Wagner Peyser funds must install **internal controls** that are consistent with the Uniform Guidance at **2 CFR 200.303** and includes:

An internal control structure and written policies in place that provide safeguards to protect personally identifiable information, records, contracts, grant funds, equipment, sensitive information, tangible items, and other information that is readily or easily exchanged in the open market, or that the Department or the recipient or subrecipient considers to be sensitive, consistent with applicable Federal, State and local privacy and confidentiality laws.
Internal Controls cont’d

**WIOA at 20 CFR 683.220**

**Must include reasonable assurance that the entity is:**

- Complying and managing the award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award;

- Evaluating and monitoring the recipient’s and subrecipients compliance with WIOA, regulations and the terms and conditions of Federal awards; and

- Taking prompt action when instances of non-compliance are identified.
Internal controls should be in compliance with the guidance in “The Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
Defined by COSO

Provide "reasonable assurance" regarding the achievement of objectives in the following categories:

- Effectiveness and efficiency of operations
- Reliability of financial reporting
- Compliance with applicable laws and regulations
- Safeguarding of assets
Internal Controls

Uniform Guidance at 2 CFR 200.61

Internal controls means a process, implemented by a non-Federal entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- Effectiveness and efficiency of operations;
- Reliability of reporting for internal and external use; and
- Compliance with applicable laws and regulations.
WIOA requires **Internal Controls** in functions of entities involved in the local delivery system including:

- Local WDB
- Committees
- Staff to the Local WDB
- Fiscal Agent
- Administrative Entity
- One-Stop Operator
- Service Providers
Uniform Guidance and WIOA requires **internal controls** in financial systems involved in the local delivery system including:

- Budgeting
- Cost Allocation
- Accounting & Payables
- Financial Reporting
- Information Systems
- Travel
- Cash Management
- Procurement & Purchasing
- Property Management
- Personnel & Payroll
- Participant Related Payments
- Contracting & Leasing
An effective internal control structure/system is comprised of five (5) components:

1) Control Environment
2) Risk Assessment
3) Control Activities
4) Information & Communication
5) Monitoring

These components work to establish the foundation for sound internal control & culture that emphasizes accountability for control.
1. Control Environment

1. Control Environment is comprised of the following areas:

- Foundation for all other standards of internal control.
- Pervasive influence on all the decisions and activities of an organization.
- Effective organizations set a positive “tone at the top”.
- Factors include the integrity, ethical values and competence of employees, and, management’s philosophy & operating style.
2. Risk Assessment

Risks are internal and external events that threaten the accomplishment of objectives. Risk assessment is the process of identifying, evaluating, and deciding how to mitigate them.

- What is the likelihood of the event occurring?
- What would be the impact if it were to occur?
- What is the vulnerability or likelihood of loss?
- What can we do to prevent or reduce the risk?
3. Control Activities

Control activities are the policies and procedures that help ensure management directives are carried out.

- Help prevent or reduce the risks that can impede the accomplishment of objectives.
- Occur throughout the organization, at all levels, and in all functions.
- Includes functions such as approvals, authorizations, recording, processing payments, conducting reconciliations, custody of assets, review of performance that must have adequate separation of duties.
Communication and information must be shared with staff and board members to ensure consistency and proper application.

- Pertinent information must be captured, identified and communicated on a timely basis.
- Effective information and communication systems enable the organization’s people to exchange the information needed to conduct, manage, and control its operations.
- Records and information systems must be sufficient to provide reliable reporting and demonstrate compliance with the federal award.
Internal control systems must be monitored to assess their effectiveness...

- Are they operating as intended?
- Ongoing monitoring is necessary to react to changing conditions...Have controls become outdated, redundant, or obsolete?
- Monitoring occurs in the course of everyday operations; it includes regular management & supervisory activities and other actions personnel take in performing their duties.
- It also includes the process of monitoring subrecipients for compliance with requirements and taking appropriate actions to correct deficiencies.
Applicable to conflict of interest in the local delivery system and management of Federal grants

- WIOA DOL Final Rule and WIOA Joint Final Rule
  - 20 CFR 679.320 – Local WDBs
  - 20 CFR 683.200(c)(5)

Uniform Guidance
- 2 CFR 200.112
- 2 CFR 200.318(c)

Guidance and TA
- TEGL 15-16, TEGL 21-16, and FAQs
In addition to the requirements at 2 CFR 200.318 (UG), which address codes of conduct and conflict of interest, the following applies:

(i) A State WDB member, Local WDB member, or WDB standing committee member must neither cast a vote on, nor participate in any decision-making capacity, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member of that member’s immediate family.”
Conflict of Interest

WIOA 20 CFR 683.200 (c)(5)

ii) Neither membership on the State WDB, the Local WDB, or a WDB standing committee, nor the receipt of WIOA funds to provide training and related services, by itself, violates these conflict of interest provisions.

(iii) In accordance with the requirements of 2CFR 200.112 (UG), recipients of Federal awards must disclose in writing any potential conflict of interest to the Department. Subrecipients must disclose in writing any potential conflict of interest to the recipient of grant funds.
Conflict of Interest

Uniform Guidance 2 CFR 200.112
The Non-Federal Entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

“Potential conflicts” – defined as REAL, APPARENT or ORGANIZATIONAL conflicts of interest.
Uniform Guidance 2 CFR 200.318

The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

“Potential conflicts” – defined as REAL, APPARENT or ORGANIZATIONAL conflicts of interest.
Conflict of Interest – Relationships

The persons whose interests are attributed to the employee include the following:

a. Employee’s spouse
b. Employee’s children
c. Employee’s general partner or outside business endeavors
d. Any organization that the employee serves on or is an employee of;

Any action, transaction both financial & non-financial that could result in benefit to the employees financial & non-financial well being.
A real, or actual conflict of interest arises when an employee or person is assigned official responsibilities in a particular matter that will directly and predictably affect the employee’s personal financial interests or the interests of other specific persons.

**Real:** You are employed by the Local WDB and your spouse is a part owner of the facility your agency leases.

**Risk:** You do not recuse yourself from voting when Local WDB board members submit a proposal to become a service provider.

Disclosing the conflict doesn’t mitigate the risk.
Conflicts of Interest

- Real

Real: As staff to the Local WDB, market research is conducted, draft solicitation specifications and evaluation criteria is prepared and the Local WDB submits a proposal for consideration as the One-Stop Operator.

Risk: As staff to the Local WDB, your evaluation of proposals may be favor the outcome of the proposal submitted by the Local WDB.
The appearance of a conflict of interest arises where an employee is assigned to participate in an official duty matter where an organization with which the employee has a covered relationship is or represents a party to that matter, or where the matter is likely to affect the interests of a household member, and there are circumstances that would cause a reasonable person with knowledge of the relevant facts to question the employee's impartiality in the official matter.
Conflicts of Interest - Apparent

Members of their households and relatives with whom they are deemed to have close personal relationships:

- Persons or organizations with whom they have or seek a business, contractual or other financial relationship other than a routine consumer transaction;

- Persons or organizations for whom their spouses, parents or dependent children are, to their knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
Conflicts of Interest
- Apparent

- Persons or organizations for whom they have, within the last year, served as an officer, director, trustee, general partner, agency, attorney, consultant, contractor or employee; or

- An organization in which they are an active participant (e.g., serves as a committee chair, spokesperson, promotes the organization, coordinates fund-raising events).

These are areas where an employee is promoting an organization or their services in which they have or had an affiliation.
Conflicts of Interest - Apparent

**Apparent:** You are contracted to be a fiscal agent and also prepare and submit participant training invoices from your employer (Community College) to the Local WDB.

**Risk:** Employment at a training provider and contracted as a fiscal agent interferes with proper segregation of duties and functions in key area of authorization, execution and payment.
Conflicts of Interest - Organizational

**Organizational:** You are an employee of the administrative entity and assist in monitoring the Local WDB who is also the One-Stop Operator and service provider.

**Risk:** There is no organizational separation of duties between the two functions of acting as an administrative entity and monitor. Organizational conflicts must be mitigated with complete separation of duties, supervision, restrictions on informational access.
Law, Regulations & Guidance

Applicable to firewalls in the local delivery system and management of Federal grants

- WIOA DOL Final Rule and WIOA Joint Final Rule
  - Preamble
    - 20 CFR 679.410 and 679.430
    - 20 CFR 678.600-678.635
    - 20 CFR 683.220

Guidance and TA

- TEGL 15-16, TEGL 21-16, and WIOA FAQs
FIREWALL ORIGINS:

- History – the term **Firewall** came about following the stock market crash of 1929 when the government passed the “Glass-Steagall” Act.
  - Separated investment banking from brokerage firms
  - Created a **Firewall** between investment banking & brokerages
Firewalls

Definition
A conflict of interest can arise when actions are taken or may appear to be taken by any entity involved in more than one role, such that the performance of that entity in one role affects its interest in its other role, thereby making it difficult for the entity to perform the procurement process objectively and impartially.

Therefore, proper firewalls must be in place to ensure the transparency and integrity of the procurement process and demonstrate to the public and to the Department that the selection process was impartial and that no preferential treatment was given to the awardee.
Building Firewalls

Key areas that require firewalls:

- Procurement and financial system functions and responsibilities
- Governance roles and functions
  - Local WDB and Committees
  - Staff to the Local WDB
  - Administrative Entities
  - Fiscal Agents
  - One-Stop Operators
No entity or individual that has any role in the issuance of a solicitation may compete or submit a proposal under that procurement action.

Including development of requirements, drafting the RFP or IFB, evaluation of proposals/bids, and identification of best entity.

**FIREWALL:** There must be a complete separation in duties and identify an alternate entity such as the State WDB or State to assist if the Local WDB plans on submitting a proposal.
Recusal of Members of the Local WDB

- Recusal of individuals with conflicts of interest is a way to avoid conflicts of interest when a small number of decision-makers have conflicts of interest.

- However, if the number of members who must be recused deprives the Local WDB of quorum, the Local WDB must follow an alternative process and outsource the selection to an outside entity or to a State agency or the State WDB.

- Best practice also requires Local WDB procurement policies and procedures to define the requirements for quorum for decisions of the Local WDB.
If the Local WDB is applying to be the One-Stop Operator, Fiscal Agent, or WIOA Training provider, then:

- Separation of Duties among staff functions, duties, etc.;
- Responsibilities on multiple roles need to be communicated;
- Recusal from voting on any related matters applicable to these other duties;
- Physical and electronic access to information is restricted;
- Compete independence over supervision or control of staff;
- Complete confidentiality over information regarding documentation involved in these duties;
If the Local WDB is applying to be the One-Stop Operator, Fiscal Agent, or WIOA Training provider, then:

- Separation of Duties among staff functions, duties, etc.;
- Responsibilities on multiple roles need to be communicated;
- Recusal from voting on any related matters applicable to these other duties;
- Physical and electronic access to information is restricted;
- Compete independence over supervision or control of staff;
- Complete confidentiality over information regarding documentation involved in these duties;
Disclose any potential conflicts of interest arising from the relationships of the one-stop operators with particular training service providers or other service providers, including but not limited to career services providers.

In coordinating services and serving as a one-stop operator, refrain from establishing practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term services, such as intensive employment, training, and education services; and

Comply with Federal regulations, and procurement policies, relating to the calculation and use of profits.
Prohibited Functions of the One-Stop Operator

Only the Local WDB can do the following:

- Convene system stakeholders to develop the local plan
- Prepare and submit the local plan
- Conduct oversight over itself or its functions
- Manage or participate in the competitive selection process of the one-stop operators
- Select or terminate one-stop operators, career service providers, and youth providers
- Negotiate local performance accountability measures
- Develop and submit budgets for activities of the Local WDB
Entities performing in multiple roles/functions

FIREWALLS

- Roles and functions are clearly articulated by Local WDB and the entity in the contract, agreement or MOU.
- Include outside or alternative entity to assist in procurements or processes to mitigate risk and conflict of interest. These entities may include:
  - State WDB
  - State agencies
  - Other independent agencies
  - State Auditors or State Inspector General
Ensure that conflict of Interest and/or financial disclosures forms up to date for all members and persons involved in more than one role, function or procurement action.

Update when new procurement actions arise.

Provide reasonable assurance that separation of duties is enforced from all sides of the local delivery system.
Transparency

By connecting internal controls with firewalls, you will strengthen transparency in the local workforce delivery system.
Any Questions?
For questions regarding the information in presentation, send an email to*:

DOL.WIOA@ dol.gov

*Please use Firewalls & Internal Controls as the subject line.
Thank you!