

WIOA AND 2 CFR 200 ADMINISTRATIVE REQUIREMENTS

Macey Prince Consulting
maceyprince@yahoo.com
510-772-4344

Purpose of This Session

- Discuss some of the 2 CFR 200 and DOL Exceptions at 2 CFR 2900 that apply to all awards, pass-through entities and subrecipients
 - Except as otherwise found in the award agreement
 - Discuss the ETA 2021 Terms and Conditions (see DOL website)
 - Discuss ETA Guidance (TEGLS, FAQs...)
- Discuss the WIOA administrative requirements, weaving the changes in 2 CFRs 200 and 2900 and the 2021 terms and conditions into your policies and procedures. Each year, DOLETA has published its terms and conditions on its website.
- I mention the following because we will not discuss them later
 - See 29 CFRs 93, 94 and 98 regarding lobbying, drug free workplace and debarment and suspension, respectively – also see 2 CFR 200 regarding these requirements – see the DOL Terms and Conditions – all awards
 - See 20 CFR 688.600 regarding Youthbuild programs and grantees are subject to the Davis-Bacon Act
 - See 20 CFR 680.790 regarding long-term worker who are looking to gain new skills (incumbent Worker) and 680.810 regarding factors a LOCAL WIB must consider for employer eligibility to receive incumbent worker funds;
 - 20 CFR 680.810 regarding incumbent training only/not classified as participants
 - 20 CFR 688.530 (excess of required match) and 688,540 (other Federal resources) regarding leveraged resources and match – both must be reported to DOL on the 9130...same documentation standards as other expenditures
 - 20 CFR 688.420 Secretary to prescribe quarterly performance, quarterly narrative, quarterly financial reports – ETA 9130
 - See 20 CFR 683.150; 2 CFRs 200.343 and 200.344 regarding awarding agency and pass-through entity will closeout and when
 - See 20 CFR 688.800 regarding physical accessibility of the One-Stop Center for individuals with disabilities
 - See terms and conditions of the DOL award for each year, including 2021
- **Share information regarding DOL's and OMB's Frequently asked questions (FAQs)**
See DOL FAQ: <https://www.dol.gov/agencies/eta/coronavirous>
- See Workforce GPS for additional guidance. The new community page is at:
<https://grantsapplicationandmanagement.workforcegps.org/resources/2016/12/14/10/45/Grant-Management-Training>
 - We will be unable to cover all of the requirements or guidance...lets get started

WIOA

683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds

- (a) Uniform Administrative Requirements
- All recipients and subrecipients of a Federal award under WIOA title I and under Wagner-Peyser must follow 2 CFR 200, including the Department of Labor exceptions identified in 2 CFR 2900
 - Note: (I used eCFR when I searched for the latest revisions in 2 CFRs 200 and 2900)
 - **(1) Commercial organizations for-profit entities and foreign entities** that are award recipients and sub recipients must adhere to 2 CFR 200, including any DOL exceptions at 2 CFR 2900 and all other awarding agency guidance and terms and conditions of the award
 - **(2) Commercial for-profit entities and foreign contractors and subcontractors** must adhere to Federal Acquisition (FAR) regulations, including cost principles at 48 CFR part 31
 - Note: All One-Stop Operators are subrecipients (DOL TEGL 16-16 dated January 18, 2017, Subject: One Stop Guidance for the American Job Center Network) and see other relevant active TEGs on the doleta.gov website
- DOL 2021 Terms and Conditions (48 pages); past years (DOL ETA site)

683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds (2)

- (b) Allowable costs and cost principles.
 - (1) Recipients and subrecipients of a Federal award under title I of WIOA and the Wagner-Peyser Act must follow the cost principles at subpart E and appendices III through IX of 2 CFR part 200, including any exceptions identified by the Department at 2 CFR part 2900.
 - (2) Unless specified in the grant agreement, for those items requiring prior approval in the Uniform Guidance (e.g., selected items of cost, budget realignment), the authority to grant or deny approval is delegated to the Governor for programs funded under sec. 127 or 132 of WIOA or under the Wagner-Peyser Act.
 - See 2021 DOLETA terms and conditions, Grant Office can re-impose the requirement to request prior approval.
 - (3) Costs of workforce councils, advisory councils, Native American Employment and Training Councils, and Local WDB committees established under title I of WIOA are allowable.

683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds (3)

- (c) Uniform administrative requirements.
 - (1) Except as provided in paragraphs (c)(3) through (6) of this section, all recipients and subrecipients of a Federal award under title I of WIOA and under the Wagner-Peyser Act must follow 2 CFR part 200, including any exceptions identified by the Department at 2 CFR part 2900.
 - (2) Unless otherwise specified in the grant agreement, expenditures must be reported on accrual basis.
 - (3) In accordance with the requirements at 2 CFR 200.400(g)
 - subrecipients may not earn or keep any profit resulting from Federal financial assistance, unless expressly authorized by the terms and conditions of the Federal award. (For profit entities must separately negotiate profit and separately identify profit in budgets)
 - (4) In addition to the requirements at 2 CFR 200.317 through 200.326 (as appropriate), all procurement contracts between Local WDBs and units of State or local governments must be conducted only on a cost reimbursement basis. (a procurement handout follows the end of my presentation)

683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds (4)

- (c)(5) *Uniform administrative requirements.*
- In addition to the requirements at 2 CFR 200.318, 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 or that member's immediate family.
 - (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 at 2 CFR 200.112, 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

683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds (5)

- (6) The addition method, described at 2 CFR 200.307, must be used for all program income earned under title I of WIOA and Wagner-Peyser Act grants.
 - When the cost of generating program income has been charged to the program, the gross amount earned must be added to the program in which it was earned. However, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the program.
- (7) Any excess of revenue over costs incurred for services provided by a governmental or non-profit entity must be included in program income.
- (8) Interest income earned on funds received under title I of WIOA and the Wagner-Peyser Act must be included in program income. Note – not the case for other programs unless regulated or in the terms and conditions of the award

683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds (6)

- (9) On a fee-for-service basis, employers may use local area services, facilities, or equipment funded under title I of WIOA to provide employment and training activities to incumbent workers:
 - (i) When the services, facilities, or equipment are not being used by eligible participants;
 - (ii) If their use does not affect the ability of eligible participants to use the services, facilities, or equipment; and
 - (iii) If the income generated from such fees is used to carry out programs authorized under this title.
- (d) *Government-wide debarment and suspension, and government-wide drug-free workplace requirements.*
 - All WIOA title I and Wagner-Peyser Act grant recipients and subrecipients must comply with the government-wide requirements for debarment and suspension, and the government-wide requirements for a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988, 41 U.S.C. 8103 *et seq.*, and 2 CFR part 182.

683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds (7)

- (e) Restrictions on lobbying. All WIOA title I and Wagner-Peyser grant recipients and subrecipients must comply with the restrictions on lobbying specified in WIOA sec. 195 and codified in the Department regulations at 29 CFR part 93.
- (f) Buy-American. As stated in sec. 502 of WIOA, all funds authorized in title I of WIOA and the Wagner-Peyser Act must be expended in compliance with secs. 8301 through 8303 of the Buy American Act (41 U.S.C. 8301-8305).
 - Grant terms and conditions may contain additional requirements
- (g) Nepotism. (1) No individual may be placed in a WIOA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual.

683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds (8)

- (2) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such State or local requirement must be followed.
- (h) *Mandatory disclosures.* All WIOA title I and Wagner-Peyser Act recipients of Federal awards must disclose as required at 2 CFR 200.113, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.
 - Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338 (Remedies for noncompliance), including suspension or debarment.
- Note: Administrative cost definition is covered in the Cost Limitation session

683.220 What are the internal control requirements for recipients and subrecipients WIOA title I and Wagner-Peyser Act funds?

- (a) Recipients and subrecipients of WIOA title I and Wagner-Peyser Act funds must have 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.

683.220 What are the internal control requirements for recipients and subrecipients of WIOA Act title I and Wagner-Peyser Act funds?

- (a) continued
- Internal controls also must include reasonable assurance that the entity is:
 - (1) Managing the award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award;
 - (2) Complying with Federal statutes, regulations, and the terms and conditions of the Federal awards;
 - (3) Evaluating and monitoring the recipient's and subrecipient's compliance with WIOA, regulations and the terms and conditions of Federal awards; and
 - (4) Taking prompt action when instances of noncompliance are identified.

683.220 What are the internal control requirements for recipients and subrecipients of WIOA Act title I and Wagner-Peyser Act funds?

- (b) Comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
- (e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.
- Lets take a look at reporting

Accrued Financial Cost Reporting

- DOL uses the ETA - 9130 formats and reporting instructions for direct grants and discretions grants awarded <https://www.dol.gov/sites/dolgov/files/ETA/grants/pdfs/ETA-9130-M.pdf>
- This is an on-line reporting system with passwords and pins
- There are different formats with specific instruction for the for the various ETA programs
 - Discretionary grantees use the 9130 Basic format and instructions and additional instructions may be in the specific grant awards
- Pass-through entities must issue reporting formats and instructions to their subreceptients
 - These are feeder reports and they must have due dates that allow the reporting data to be rolled up and reported timely. This is very critical because the reports must be accurate and timely
- A new training line has been included on the financial reports.
- Regarding cost, since inception, these reports have been accrual reporting cost reports and they were never intended to capture anything but accrued cost; therefore only accrued cost goes on the expenditure reports. If it is not cost, do not include it on the financial cost reports. Also, the cash section must be completed. Federal cash only.
- All reports require dollars or zero in each field.

683.295 WIOA Profit Earned

- **(a) (1)** Under secs. 121(d), 122(a) and 134(b) of WIOA, **for-profit entities are eligible to be one-stop operators, service providers, and eligible training providers.**
- **(2)** Where **for-profit entities** are one-stop operators, service providers, and eligible training providers, they are recipients or subrecipients and the for-profit entity must **follow 2 CFR 200 requirements regarding contract cost and price.**
Reasonable profit based upon effort and other factors in that section.
- **(c)** Income earned by a public or private nonprofit entity may be retained by such entity **only if such income is used to continue to carry out the program**

683.410 Oversight Roles and Responsibilities of Recipients and Subrecipients

(a) Each recipient and sub recipient of funds under title I of WIOA and under the Wagner-Peyser Act must conduct regular oversight and monitoring of its WIOA and Wagner-Peyser Act program(s) and those of its sub recipients and contractors as required under title I of WIOA and the Wagner-Peyser Act, as well as under 2 CFR part 200 and Department exceptions at 2 CFR part 2900 in order to ensure compliance with:

- Cost categories and cost limitations
- Compliance with WIOA, WIOA regulations and other applicable laws and regulations
- Assure compliance with 2 CFR part 200; and
- 29 CFR Part 38 Determine compliance with the nondiscrimination, disability, and equal opportunity requirements of sec. 188 of WIOA, including the Assistive Technology Act of 1998 (29 U.S.C. 3003)

SOME OF THE REVISIONS

2 CFR 200, 2 CFR 2900 and the 2021 DOL Terms and Conditions

Revisions to the Uniform Guidance in the DOL 2021 Terms and Conditions

- The Office of Management and Budget issued revisions to 2 CFR 200 (the Uniform Guidance) on August 13, 2020 and February 22, 2021 (technical correction).
 - These revisions became effective November 12, 2020, except for the amendments to §§ 200.216 and 200.340, which were immediately effective on August 13, 2020.
- The grant award recipient must operate in compliance with these revised regulations.
- Please note that the section numbering in the Uniform Guidance has changed in some instances, and
- Please read the complete DOL 2021 Terms & Conditions document has been updated. 48 pages
- Also see the terms and conditions of your award

2 CFR 200 Revisions

- The DOLETA 2021 Terms and Conditions incorporate the 2 CFR 200 and the 2 CFR 2900 changes
- All of these requirements must flow to subrecipients
- Non-Federal entities should ensure that staff understand and are trained and should review and update policies and procedures accordingly. This includes:
 - Manuals
 - Monitoring tools, subrecipient agreements, inter-local agreements, etc.
 - Reporting requirements
 - Your organization is responsible for making these changing and following the guidance.

2 CFR 2900.4

- Adoption of [2 CFR part 200](#). Under the authority listed above, the Department of Labor adopts the Office of Management and Budget (OMB) Guidance in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of [2 CFR part 200](#)), as supplemented by this part, as Department of Labor policies and procedures for financial assistance administration.
- This part gives regulatory effect to the OMB guidance as supplemented by this part. The DOL also has programmatic and administrative regulations located in titles 20 and 29 of the CFR.

200.302 Financial management.

- (a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds.
 - In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also [§ 200.450](#) (extensive lobbying requirements).

200.302 Financial management. (2)

- (b) The financial management system of “**each non-Federal entity must** provide for the following (see also [§§ 200.334](#), [200.335](#), [200.336](#), and [200.337](#)):
- (1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the Assistance Listings title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.
- Note:

200.302 Financial management. (3)

- (2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in [§§ 200.328](#) and [200.329](#).
- DOL requires accrual based reporting
 - a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system.
 - This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand.
 - Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.

200.302 Financial management. (4)

- (3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, financial obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.
- (4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See [§ 200.303](#).
- (5) Comparison of expenditures with **budget amounts for each Federal award**.
- (6) Written procedures to implement the requirements of [§ 200.305](#).
- (7) Written procedures for determining the allowability of costs in accordance with [subpart E of this part](#) and the terms and conditions of the Federal award
- Lets move to internal controls

2 CFR 200.303 Internal controls.

- The non-Federal entity must:
- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

2 CFR 200.303 Internal controls.

- The non-Federal entity must
 - (b) Comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal awards.
 - (c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.
 - (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
 - (e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality
 - Lets take a look at the WIOA internal control requirements

Accrued Financial Cost Reporting Is Mandatory

- The ETA-9130 format and instructions are required for Financial reporting
- The reports are sectioned to capture Federal cost, recipient and program income on the accrual basis of reporting, they also capture cash (Federal dollars only), required match and recipient required and other match; and leveraged resources (other Federal funds),
- There are specifically required breakouts of cost for each of the various types of awards by DOL.
- Recipients must use the proper version of the ETA-9130 reporting formats and instructions.
- Discretionary and competitive grant recipient use the basic ETA-9130
- Reports are due quarterly 45 days after the end of the reporting period and the final or 45 days after all funds are spent.
- If the reporting due date falls on the weekend or a holiday, the reports should be submitted before the weekend or holiday. Late reporting is non-compliance and sanctions could be imposed.

Accrued Financial Cost Reporting

- You must indicate if the report is a final quarterly report.
 - This indication triggers the closeout report which IS due 90 days after the final quarterly report. So far, the closeout date has not changed BY ETA though 2 CFR 200 has a definition for closeout that extends this 90 day period to 120 days.
- Fiscal and program staff must work together to ensure that proper cost and accruals are reported timely and accurately.
- If the accounting system cannot accommodate accruals
 - Not required to change the accounting system; linking spreadsheets must be kept with details of the best estimates of accrual information.
 - These linking spreadsheets are part of the official records and they must be kept for the entire record retention period...3 years after submission of the final expenditure reports or longer until all matters are resolved.
- Indirect cost must be reported annually by all direct award recipients. this requirement is not on the local WIOA 9130 reports but it is a requirement for all direct grant recipients. SWACAP vs LO-CAP. Report the LO-CAP.
- See the 9130 reporting instructions regarding indirect cost rates used by the direct recipient various rates used...report all rates used
- Each 9130 has a remarks section for explanations. Reports are locked by the N.O. See the TEGl guidance. Grantees can request the N.O. to unlocks the report. The N.O. will decide
- All financial reports require a certification. Lets take a look

200.415 Required Certification

- The annual final fiscal reports or vouchers requesting payment under the agreements must include a certification. This certification passes to subrecipients.

Specific Wording Required:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete and accurate and the expenditures, disbursements and cash receipts are for the purposes and objects set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Accrual Reporting is Mandatory for All ETA Awards – See Handout

- Cash expenditures + unpaid cost for the respective award through the end of the reporting quarter = accruals
 - Only expenditures liquidate accruals
 - Accruals must be reversed when the expenditure occurs but records of the accruals must be kept for the respective quarter – linking spreadsheets or the accounting system.
- When the closeout report is submitted, all accruals should be liquidated with expenditures.
 - No “new expenditures” can occur during the 90-day period after the end of the award or the final quarterly report. Errors and omissions can be corrected and reported and properly explained in the remarks section of the report
 - Other examples: Lower cost identified after closeout must be adjusted downward, e.g., due to lower audited cost and final indirect cost, recovery of improper payments. If the funds have not expired, you may move them forward to a concurrent grant if they are allowable under that grant. If the funds have expired, they must be returned. See 2 CFR 200 regarding returning Federal funds.
- At the end of the award, all program income earned during the life cycle of the award must be spent prior to expending grant dollars.
 - When requesting cash, offset any income against the new request for cash
- The reporting formats are accompanied by instructions. The reporting requirements must be issued by pass-through entities to the subrecipients
- Feeder reports:
 - Same or different formats and instructions may be issued but they must capture the ETA required data.
 - Tighter due dates are required to ensure the pass-through entity data is reported up through the system to the entity that received the award from DOL.
 - The lowest level of subrecipient activity must have the tightest due date in order to roll up the data to DOL.

Please See The DOLETA Reporting FAQ and Reporting TEGL 20-19

See the Reporting Frequently Asked Questions (FAQ) on the DOL website
See the latest reporting Training and Employment Guidance Letter (TEGL) 20-19, April 29, 2020 for addition guidance. The reporting instructions are the main source of information to complete the reports.

Note about accruals:

annualized salaries are not accruals – only time worked...employees may not work – until they work – no accrual is permitted.

Estimates may be used for payroll but the estimates must be checked periodically and they must be trued up (quarterly is preferred).

If no report received by the pass-through – you must use estimates and you must document how the estimate was derived, e.g., phone call, who called and to whom did they speak to get the information....

Funded leave vs unfunded leave:

funded leave (escrow accounts); unfunded leave – no accrual is are permitted

200.306 Cost sharing or matching.

- (b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third-party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:
 - (1) Are verifiable from the non-Federal entity's records; 2 CFR 2900 must be in the accounting system as the funds are expended ditto for leveraged funds
 - (2) Are not included as contributions for any other Federal award;
 - (3) Are necessary and reasonable for accomplishment of project or program objectives;
 - (4) Are allowable under [subpart E of this part](#);
 - (5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
 - (6) Are provided for in the approved budget when required by the Federal awarding agency; and
 - (7) Conform to other provisions of this part, as applicable.
- 2 CFR 2900 require these cost to be tracked in the accounting system and reported as they are expended

2 CFR 2900 Subpart E - Cost Principles

- § 2900.16 Prior written approval (prior approval). In addition to the guidance set forth in [2 CFR 200.407](#), for Federal awards from the Department of Labor,
 - the non-Federal entity must request prior written approval which should include the timeframe or scope of the agreement and be submitted not less than 30 days before the requested action is to occur.
- Unless otherwise noted in the grant agreement or cooperative agreement, the Grant Officer is the only official with the authority to provide prior written approval (prior approval).
 - Items included in the statement of work or budget as awarded does not constitute prior approval.
 - Please read 2 CFR 2900 and the DOL 2021 terms and conditions of awards for more information on prior approval.
 - Lets take a look at 2 CFR 200 prior approval requirements

200.407 Prior written approval

- a) [§ 200.201](#) Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);
 - (b) [§ 200.306](#) Cost sharing or matching; also see 2900 cost must be expended in the accounting system
 - (c) [§ 200.307](#) Program income;
 - (d) [§ 200.308](#) Revision of budget and program plans; (covered earlier)
 - (e) [§ 200.311](#) Real property; See WIOA SESA real property and prohibitions and Secretary of Labor approval in the WIOA regulations
 - (f) [§ 200.313](#) Equipment; WIOA and Wagner Peyser delegated to the Governor
 - (g) [§ 200.333](#) Fixed amount subawards;
 - (h) [§ 200.413](#) (c) Direct costs
 - (i) [§ 200.430](#) Compensation - personal services, paragraph (h);
 - (j) [§ 200.431](#) Compensation - fringe benefits;
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- Note: The DOL 2021 Terms and Conditions for all grantees limit daily consultant fee to \$750.00 per day based upon an 8 hour day unless specific written approval is received from the DOL Grant Officer
 - WIOA delegates cost principle prior approval to the Governor for only those cost principle items that require prior approval. A system is needed to ensure that request for approval from the Governor is sufficient to handle the prior approval. DOL can re-impose the requirement to request prior approval...see 2021 DOLETA terms and conditions.
 - Discretionary grants received from the Department of Labor, all prior approval must come from the Grant Officer and only the DOL Grant Officer.

200.407 Prior written approval for the following cost – see appropriate citations

- (k) [§ 200.438](#) Entertainment costs;
- (l) [§ 200.439](#) Equipment and other capital expenditures;
- (m) [§ 200.440](#) Exchange rates;
- (n) [§ 200.441](#) Fines, penalties, damages and other settlements;
- (o) [§ 200.442](#) Fund raising and investment management costs;
- (p) [§ 200.445](#) Goods or services for personal use;
- (q) [§ 200.447](#) Insurance and indemnification;
- (r) [§ 200.454](#) Memberships, subscriptions, and professional activity costs, paragraph (c);
- (s) [§ 200.455](#) Organization costs;
- (t) [§ 200.456](#) Participant support costs; (required – prior approval is waived.
- (u) [§ 200.458](#) Pre-award costs;
- (v) [§ 200.462](#) Rearrangement and reconversion costs;
- (w) [§ 200.467](#) Selling and marketing costs;
- (x) [§ 200.470](#) Taxes (including Value Added Tax); and
- (y) [§ 200.475](#) Travel costs. (see DOL 2021 award terms and conditions)

200.407 Prior Written Approval

- Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine.
- In order to avoid subsequent disallowance or dispute based on unreasonableness or non-allocability,
 - the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency for direct cost in advance of the incurrence of special or unusual costs.

200.407 Prior Written approval

- Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability.
- See 2 CFR 2900 regarding prior approval
- Lets take a look at Federal payments

200.305 Federal payment.

- (a) For states, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at [31 CFR part 205](#) and Treasury Financial Manual (TFM) 4A-2000, “Overall Disbursing Rules for All Federal Agencies”.
- (b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also [§ 200.302\(b\)\(6\)](#).
- (1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part.
 - Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.

200.305 Federal payment.

- (b)(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.
- (i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in [31 CFR part 208](#).
- (ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act ([15 U.S.C. 1693-1693r](#)).
- (3) Reimbursement is the preferred method when the requirements in this [paragraph \(b\)](#) cannot be met, when the Federal awarding agency sets a specific condition per [§ 200.208](#), or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.

200.305 Federal payment.

- (b)(4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital,
 - the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.
- (5) To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.
- (6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of § 200.208, [subpart D of this part](#), including [§ 200.339](#), or one or more of the following applies: (see the list in 200.305 (b)(6))
- Lets take a look at procurement

200.324 Contract cost and price.

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. (One-Stop Operators must be in the local area)
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under [subpart E of this part](#). The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used
- See the procurement handout at the end of this presentation for more on procurement
- Lets take a look at indirect cost

200.414 (f) Indirect Cost De minimis Rate

- (f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that does not have a current negotiated (including provisional) rate, except for those non-Federal entities described in appendix VII to this part, paragraph D.1.b,
 - may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. No documentation is required to justify the 10% de minimis indirect cost rate. As described in §200.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both.
 - If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.
 - Lets take a look at audit

200.1 Definitions: Modified Total Direct

- *Modified Total Direct Cost (MTDC)* means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award).
 - MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000.
 - Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.
 - Lets look at audit

200.414 (e) Indirect F&A Cost Development and Submission

- (e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III-VII and Appendix IX as follows:
- (1) Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);
- (2) Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;
- (3) Appendix V to Part 200—State/Local Government-wide Central Service Cost Allocation Plans;
- (4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans;
- (5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals; and
- (6) Appendix IX to Part 200—Hospital Cost Principles.

Single Audit Submission Deadline Extension

- Related to COVID-19 In OMB Memorandum M-20-17, OMB offered an extension of Single Audit submission deadlines for fiscal years ending June 30, 2020 to allow recipients and subrecipients a responsible transition to normal operations.
 - This flexibility was extended through December 31, 2020 by OMB Memorandum 20-26. In OMB Memorandum M-21-20, Appendix 3, Item IX, OMB has offered an additional extension of Single Audit submission deadlines for fiscal years ending June 30, 2021.
 - Award recipients and subrecipients that have not yet filed their single audits with the Federal Audit Clearinghouse as of March 19, 2021 that have fiscal year-ends through June 30, 2021 may delay the completion and submission of the Single Audit reporting package, as required under 2 CFR 200.501 (Audit Requirements), to six (6) months beyond the normal due date.
 - This extension does not require individual recipients and subrecipients to seek approval for the extension by the cognizant or oversight agency for audit; however, recipients and subrecipients should maintain documentation of the reason for the delayed filing.

Audits Organization-wide or program-specific audits

- Audits must be performed in accordance with Subpart F, the Audit Requirements of the Uniform Guidance.
- Non-Federal entities that expend \$750,000 or more in a year from any Federal awards must have an audit conducted for that year in accordance with the requirements contained in 2 CFR 200.501.
- OMB's approved DOL exceptions to 2 CFR 200 at 2 CFR 2900
 - expands the definition of 'non-Federal entity' to include for-profit entities and foreign entities.
- As such, for-profit and foreign entities that are recipients/subrecipients of a DOL award must adhere to the Uniform Guidance at 2 CFR 200, including Subpart F.
- Audits of direct award recipients that are for-profit and foreign entities must be submitted directly to: USDOL ETA-OGM, Attn: Audit Resolution, 200 Constitution Ave NW, Room N4716, Washington, DC 20210. All other audit reports are submitted through the Federal Audit Clearinghouse.

683.210 WIOA title I and Wagner-Peyser Audit Requirements

- All non-Federal entities that are recipients and subrecipients must follow subpart F audit requirements.
- **(a) Commercial or for-profit.** commercial or for-profit grant recipients and subrecipients must adhere to the requirements contained in 2 CFR 200, subpart F.
- **(b) Subrecipients and contractors.** An auditee may simultaneously be a recipient, a subrecipient, and a contractor depending on the substance of its agreements with Federal awarding agencies and pass-through entities.
- **(c) Contractors.** The payments received for goods or services provided as a contractor are not Federal awards.

2900.3 Questioned cost.

- In the DOL, in addition to the guidance contained in [2 CFR 200.1](#), a questioned cost means a cost that is questioned by an auditor, Federal Project Officer, Grant Officer, or other authorized Awarding agency representative because of an audit or monitoring finding:
- (a) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;
- (b) Where the costs, at the time of the audit, are not supported by adequate documentation; or
- (c) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.
- (d) Questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123 Appendix C (see also the definition of improper payment in [2 CFR 200.1](#)).

2900.21 Management decision.

- In the DOL, ordinarily, a management decision is issued within six months of receipt of an audit from the audit liaison of the Office of the Inspector General and is extended an additional six months when the audit contains a finding involving a subrecipient of the pass-through entity being audited.
 - The pass-through entity responsible for issuing a management decision must do so within twelve months of acceptance of the audit report by the FAC.
 - The auditee must initiate and proceed with corrective action as rapidly as possible and should begin corrective action no later than upon receipt of the audit report. (See [2 CFR 200.521\(d\)](#)).
- Let's take a look at indirect cost

200.337 Access to records.

- (a) **Records of non-Federal entities.** The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.
- (b) **Extraordinary and rare circumstances.** Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.
- (c) **Expiration of right of access.** The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

200.340 Termination

- (a) The Federal award may be terminated in whole or in part as follows:
 - (1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
 - (2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
 - (3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
 - (4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or
 - (5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.

Note: Please read this entire section

200.340 Termination

- (d) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in [§§ 200.344](#) and [200.345](#).
- **200.341 Notification of termination requirement.**
- (a) The Federal agency or pass-through entity must provide to the non-Federal entity a notice of termination.

200.331 Subrecipient and contractor determinations.

- **§200.331** The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities.
- Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

200.331(a) Subrecipients

A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship **with the subrecipient.**

All One-Stop Operators are subrecipients

Definitions in WIOA and in 2900 includes for-profit entities and foreign entities

Also, see the definition for Subaward in §200.1 and in WIOA Final Rule

Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- (1) Determines who is eligible to receive what Federal assistance;
- (2) Has its performance measured in relation to whether objectives of a Federal program were met;
- (3) Has responsibility for programmatic decision-making;
- (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

200.331 Contractors.

- (b) A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See the definition of *contract* in §200.1 of this part. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:
 - (1) Provides the goods and services within normal business operations;
 - (2) Provides similar goods or services to many different purchasers;
 - (3) Normally operates in a competitive environment;
 - (4) Provides goods or services that are ancillary to the operation of the Federal program; and
 - (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

200.331 (c) Use of judgment in making determination.

- In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement.
- All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract
- Lets take a look at pass-through entity requirements

200.332 Requirements for pass-through entities.

- This section address specific responsibilities that pass-through entities must follow.
 - Please read and follow the guidance accordingly

200.417 Interagency service.

- The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro-rated share of indirect costs.
- A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service.
- These services do not include centralized services included in central service cost allocation plans as described in Appendix V to Part 200.
- [[85 FR 49564](#), Aug. 13, 2020]
- See WIOA requirements regarding inter-agency agreements

2 CFR 200 Appendices

- Appendix I – Federal Funding Opportunity layout
- Appendix II – Contract Provisions
- Appendix III- Indirect F&A Cost
- Appendix IV – Indirect F&A Cost
- Appendix V – State/Local Governments Central Service Cost Allocation Plans
- Appendix VI – Public Assistance Cost Allocation Plans
- Appendix VII – State, Local Governments, Indian Tribal Cost Allocation Plans
- Appendix VIII – Non-profits exempted from Subpart E Cost Principles
- Appendix IX – Hospital Cost Principles – not yet updated, follow 45 CFR, Appendix E – remain in effect until changed
- Appendix X – Data Collection Form
- Appendix XI – Compliance Supplement – 2017 currently available at OMB whitehouse.gov site
- Appendix XII – Award term and condition for recipient integrity and performance – **grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award**, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of [Public Law 110-417](#), as amended ([41 U.S.C. 2313](#)). As required by section 3010 of [Public Law 111-212](#), all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.
 - Other Federal requirements are noted in the appendix

Any Questions



PROCUREMENT

Handout

200.317 Procurements by states.

- **When** procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds.
- The State will comply with [§§ 200.321](#), [200.322](#), and [200.323](#) and ensure that every purchase order or other contract includes any clauses required by [§ 200.327](#).
- All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in [§§ 200.318](#) through [200.327](#).

200.318 General procurement standards.

- (a) The **non-Federal entity** must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward.
- The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in [§§ 200.317](#) through [200.327](#).

200.318 General procurement standards. (2)

- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c) (1) 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.
 - Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
 - The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

200.318 General procurement standards. (3)

- (c)(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

200.318 General procurement standards. (4)

- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also [§ 200.214](#).
- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

200.319 Competition.

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](#).
- (b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
 - (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - (2) Requiring unnecessary experience and excessive bonding;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive contracts to consultants that are on retainer contracts;
 - (5) Organizational conflicts of interest;
 - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - (7) Any arbitrary action in the procurement process.

200.319 Competition. (2)

- (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.
- Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- WIOA requires One-Stops to operate in the local area

200.319 Competition. (3)

- (d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
 - (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
 - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.
- (f) Noncompetitive procurements can only be awarded in accordance with [§ 200.320\(c\)](#).

200.319 Competition. (4)

- (j) (1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:
 - (i) The actual cost of materials; and
 - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency.
 - Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

200.319 Competition (5)

- (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction

200.320 Methods of procurement to be followed.

- The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and [§§ 200.317](#), [200.318](#), and [200.319](#) for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.
- WIOA requires a competitive process for Title 1 Youth

200.320 Methods of procurement to be followed.

- The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and [§§ 200.317](#), [200.318](#), and [200.319](#) for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.
 - Micro Purchase threshold is increased (\$50,000)
 - Simplified acquisition threshold is increased (\$250,000)
 - The pass-through entity and the local policies may have lower threshold. If so, your organization must follow those requirements
 - WIOA requires a competitive process for Title 1 Youth (Please see 200.320 for other methods and requirements)

200.320 Methods of procurement to be followed.

- The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and [§§ 200.317](#), [200.318](#), and [200.319](#) for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.
- (a) ***Informal procurement methods.***
- When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in [§ 200.1](#), or a lower threshold established by a non-Federal entity, formal procurement methods are not required.
 - The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost.
 - The informal methods used for procurement of property or services at or below the Simplified Acquisition Threshold include:

200.320 Methods of procurement to be followed. (a) *Informal procurement methods.*

- (1) **Micro-purchases** -
 - (i) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in [§ 200.1](#)). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
 - (ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
 - (iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with [paragraphs \(a\)\(1\)\(iv\)](#) and [\(v\)](#) of this section.
 - (iv) **Non-Federal entity increase to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with [§ 200.334](#). The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:
 - (A) A qualification as a low-risk auditee, in accordance with the criteria in [§ 200.520](#) for the most recent audit;
 - (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
 - (C) For public institutions, a higher threshold consistent with State law.
 - (v) **Non-Federal entity increase to the micro-purchase threshold over \$50,000.** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in [paragraph \(a\)\(1\)\(iv\)](#) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

200.320 Methods of procurement to be followed.

- (2)(i) ***Small purchase procedures.*** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.
- (ii) ***Simplified acquisition thresholds.*** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(c) Noncompetitive procurement.

- There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
 - (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see [paragraph \(a\)\(1\)](#) of this section);
 - (2) The item is available only from a single source;
 - (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
 - (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
 - (5) After solicitation of a number of sources, competition is determined inadequate.

(b) Formal procurement methods.

- When the value of the procurement for property or services under a Federal financial assistance award exceeds the Simplified Acquisition Threshold, or a lower threshold established by a non-Federal entity, formal procurement methods are required.
 - Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with [§ 200.319](#) or [paragraph \(c\)](#) of this section.
- The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(b) Formal Procurement

(1) Sealed bids.

- A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.
 - (i) In order for sealed bidding to be feasible, the following conditions should be present:
 - (A) A complete, adequate, and realistic specification or purchase description is available;
 - (B) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
 - (ii) If sealed bids are used, the following requirements apply:
 - (A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
 - (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - (D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - (E) Any or all bids may be rejected if there is a sound documented reason.

(b) Formal Procurement (2) Proposals.

- A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:
 - (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
 - (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
 - (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.
- Lets take a look at indirect cost