

2012-13 INTERNAL CONTROL SUMMARY & CONCLUSION FORM

Section 2800 (1)(a)(9) and Section 2800 (2)(a)(8) of Public Authorities Law require all public authorities to complete an annual assessment of the effectiveness of their internal control structures and procedures (source: Authority Budget Office - *Recommended Governance Practice Bulletin on Internal Controls*).

Additionally, State authorities with a majority of the members appointed by the Governor must establish and maintain a system of internal control and a program of internal control review as provided in Title 8 of Public Authorities Law.

This Internal Control Summary and Conclusion Form provides supporting documentation for Empire State Development Corporation's level of compliance with the requirements of the Internal Control Act. The form summarizes pertinent information about the annual assessment and reflects the President and CEO's review of the assessment.

Empire State Development Corporation	4/22/13	Thomas P. Brennan	212-803-3579
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Authority Name	Date	Completed by (Name)	Phone
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Note: Empire State Development (ESD) is comprised of an agency (Department of Economic Development – DED) and a public authority (Empire State Development Corporation – ESDC – and its subsidiaries).

This Summary and Conclusion Form pertains to ESDC and Job Development Authority (JDA). For simplicity, references to "ESDC" in this document refer to both ESDC and JDA.

DED has a separate internal control certification form prepared and submitted to DOB.

A. Establish and maintain guidelines for a system of internal controls for the authority. Internal control guidelines communicate an organization's management and programmatic objectives to its employees and provide the methods and procedures used to assess the effectiveness of its internal controls in supporting those objectives. Internal control guidelines should:

1. State the authority head's support of internal controls to provide staff with an understanding of the benefits of effective controls;
2. Identify the authority's primary responsibilities and objectives;
3. Explain how internal controls are organized and managed;
4. Define responsibilities of authority management, supervisors and staff;
5. Acknowledge that internal controls adhere to accepted standards; and,
6. Describe the organization's process for evaluating internal controls.

For this requirement, the authority is: Fully Compliant

Provide a thorough explanation of the specific actions your authority has taken, or which are needed, to comply with this requirement.

Internal Control Guidelines addressing above points have been distributed to ESDC personnel and are posted on the ESD Intranet.

Senior Management takes steps each year to effectively communicate information within the organization through company-wide broadcast messages, press releases and periodic meetings. Feedback from staff is encouraged and policy and procedural changes are communicated to employees as appropriate.

B. Establish and maintain a system of internal controls and a program of internal control review for the authority. The system of internal control should be developed using the COSO (Committee of Sponsoring Organizations of the Treadway Commission) conceptual framework adopted in the *Standards for Internal Controls in New York State Government*, and should incorporate COSO's five basic components of internal control: control environment, risk assessment, control activities, information and communication, and monitoring.

The program of internal control review shall be a structured, continuing and well documented system designed to identify internal control weaknesses, identify actions that are needed to correct these weaknesses, monitor the implementation of necessary corrective actions and periodically assess the adequacy of the authority's internal controls.

Organizations can adopt a system of internal control review tailored to their needs, size and degree of centralization. The procedures for evaluating the adequacy of that system also vary, but at a minimum should:

1. Identify and clearly document the primary operating responsibilities (functions) of the authority.
2. Define the objectives of these functions so they are easily understood by staff accountable for carrying out the functions.
3. Identify/document the policies and procedures used to execute functions.
4. Identify the major functions of each of the authority's assessable units.
5. Include a process and cycle used to assess risk and review controls for major functions. *(Describe the process used to review the authority's internal controls and list all high-risk activities and indicate which were reviewed during 2012-13.)*
6. Assess the risks and consequences associated with controls failing to promote the objectives of major functions. *(Identify the significant deficiencies revealed during the 2012-13 review process. Outline the actions taken, or planned, to eliminate those deficiencies, highlighting the most important improvements made during the year.)*
7. Test controls to ensure they are working as intended (see the Manager's Testing Guide which can be downloaded from BPRM Item B-350). *(Summarize specific actions the authority has taken to install a compliance testing program. Describe actions taken during 2012-13 to verify test results and expand the testing program.)*
8. Institute a centrally monitored process to document, monitor and report deficiencies and corrective actions. *(Describe the monitoring system installed to verify that corrective actions are taken. Discuss the extent to which IT systems are used to track actions.)*

For this requirement, the authority is: Partially Compliant (see page 4)

In addition to providing a thorough explanation of the specific actions your authority has taken, or which are needed, to comply with this requirement, please describe briefly your authority's process for reviewing and testing controls and monitoring corrective actions. Also list all high-risk activities which were reviewed during the past year, and the results of those reviews.

ESDC emphasizes operating in a well-controlled environment as a normal course of business. Annually, department and subsidiary heads are requested to identify key risks and related key controls, and to identify and address control gaps, if any. When control gaps are identified, either during the annual review or at other times, a plan of action is proposed and addressed appropriately. Essentially, ESDC's controls have been evaluated and deemed to be strong (see also the discussion regarding disaster recovery preparation efforts below).

The Internal Control Officer reviews and evaluates annual risk/control submissions and will compile a Control Enhancements summary, should any potential control enhancements be identified, for submission to executive management.

ESDC management understands that restrictions on funding for programs and projects in the continuing tight budgetary environment will have some impact on ESDC's execution of its mission to foster economic development in NYS. Management has acted, and will continue to act, strategically to maximize ESDC's impact with resources at its disposal.

Specific Higher Risk Activities

- a. Disbursement functions: Contracts Administration; Treasury Disbursements; Accounts Payable; Administrative Services (procurement and bidding)
- b. Subsidiary Operations (Development Corporations: NY Convention Center; Moynihan Station; USA Niagara; Harlem Community; Erie Canal Harbor; New Markets Corp.); Subsidiary Finance Dept.
- c. Treasury – Investments; Cash Management; Debt
- d. Controllers (GL Accounting and Account Reconciliations)
- e. Loans & Grants (Grant/Loan Screening, Approval, and Disbursement)
- f. Portfolio Management (Grantee Compliance Requirements Enforcement)
- g. MIS Functions

ESDC department personnel review and document key risks and key controls annually. ESDC's annual external audit also includes a review and test of controls. Audited ESDC financials (unqualified opinion at 3/31/12) are reviewed by ESDC's Audit Committee and presented to its Board annually. Also, Internal Audit evaluates and tests key controls for a significant portion of ESDC areas each fiscal year, and considers the extent of external auditor coverage when determining its annual plan of audit. Internal audit reports are issued to executive management, the Audit Committee's members, and other responsible managers following each audit.

Internal Audit follows up periodically on its audit report recommendations. Internal audits did not identify critical issues requiring current management attention in 2012/13, and this year's annual internal control documentation process identified no high risk issues in need of corrective action (see, however, comments re: disaster recovery preparedness below). IT systems to track corrective actions for audit issues are not deemed necessary.

ESDC's experienced internal auditors conducted significant levels of test work in its audits. The audits are designed to focus on key risks and controls. Managers are aware to monitor control adequacy and areas for possible improvement and, as noted, formally evaluate and document key risks and controls annually, subject to screening and evaluation by ESDC's Internal Control function.

Disaster recovery preparedness is a high priority for ESDC. Steps to be prepared for disaster recovery have been taken during 2012/13 and prior fiscal years. ESDC, for instance, was able to function adequately after Hurricane Sandy in 2012.

ESDC is in the process of moving forward with a plan to set up and operate its systems in a virtual environment in its NYC office, replicated to its Albany site. This enhancement will further strengthen system and data security and strengthen ESDC's ability to function in the event of a major disaster impacting the NYC office. In terms of timing, this transformation will be implemented to ensure that applications of highest criticality are set up in the virtual environment first; it should largely be rolled out and tested at both the NYC and Albany sites during 2013/14, providing ESDC with a fully functional and robust disaster recovery plan.

Not having yet fully tested the disaster recovery capability in processing live data at its current New Windsor back up facility (under the existing IT environment) currently makes ESDC "partially compliant" in terms of its disaster preparedness.

- C. Make available to each officer and employee of the authority a clear and concise statement of the generally applicable management policies and standards with which the officer or employee of such authority shall be expected to comply, along with detailed policies and procedures the employees are expected to adhere to in completing their work.** The statement should set an appropriate tone at the top, reflecting authority management's expectations. It should be issued periodically and emphasize the importance of effective internal controls to the authority and the responsibility of each officer and employee for effective internal controls.

Managerial policies and procedures for the performance of specific functions are articulated in administrative manuals, employee handbooks, job descriptions and applicable policy and procedure manuals. While it is not necessary for all employees to possess all manuals, employees should be provided with, or have access to, applicable policies and procedures for their position.

For this requirement, the authority is: Fully Compliant

Provide a thorough explanation of the specific actions your authority has taken, or which are needed, to comply with this requirement.

- a. *Executive management periodically circulates statements that reinforce the "tone at the top", emphasizing the importance to ESDC of effective internal controls and the responsibility of personnel for such internal controls*
- b. *Management policies and standards with which officers and employees of ESDC are to comply, and policies and procedures that employees adhere to, are appropriately available to ESDC personnel.*
- c. *Managerial policies and procedures for the performance of specific ESDC functions are spelled out in administrative manuals, employee handbooks, job descriptions and policy and procedure manuals which are made available to employees, as appropriate.*

- D. Designate an Internal Control Officer (ICO), who shall report to the head of the authority or to their designee within the executive office, to implement and review the internal control responsibilities established pursuant to this Item. The designation of the ICO should be communicated to all employees.** The ICO works with appropriate personnel within the authority to coordinate the internal control activities and to help ensure that the internal control program meets the requirements established by BPRM Item B-350. Although the ICO evaluates the adequacy of the internal control reviews, program and line managers are primarily responsible for conducting reviews to assure adherence to controls and for analyzing and improving control systems. The ICO should be an individual with sufficient authority to act on behalf of the authority head in implementing and reviewing the authority's internal control program. This individual should have a broad knowledge of the authority's operations, personnel and policy objectives.

For this requirement, the authority is: Fully Compliant

Provide a thorough explanation of the specific actions your authority has taken, or which are needed, to comply with this requirement.

The ICO continues to be the Internal Audit Director (IAD) of ESDC.

As noted in prior years, ESDC has established this coupling of responsibilities and views this as cost-effective and not incompatible, as the ICO/IAD makes recommendations as to control enhancements but does not mandate those changes.

The ICO/IAD instead expects executive management to evaluate the recommendations and implement changes as deemed appropriate. Internal Audit follows up as needed on the implementation of recommended and agreed-to actions.

As a check and balance, the IAD reports recommendations to ESD's Audit Committee and would alert them to any significant recommendations it deemed were not addressed properly. This has not proven to be necessary because ESDC continues to value a strong internal control environment and has proven to implement recommendations appropriately. IAD also will periodically follow up on the status of key recommendations, and report on same to the Audit Committee and management.

Please see prior responses in this document with regard to internal control evaluation and testing. The ICO and Internal Audit evaluate the adequacy of internal controls in conjunction with ESDC staff, program personnel and line managers.

The ICO has been designated with appropriate authority to act on behalf of ESDC in implementing and reviewing the authority's internal control program.

The IAD / ICO has 10 years with ESDC, and over 30 years of audit/internal controls experience, providing a strong and broad knowledge of ESDC operations, personnel and policy objectives.

- E. Implement education and training efforts to ensure that officers and employees have achieved adequate awareness and understanding of internal control standards and, as appropriate, evaluation techniques.** Authorities should identify staff requiring internal control training and the depth and content of that training. Such education and training should be on-going with specific courses directed at line staff, middle managers and executive management. For organizations that have established internal audit functions, training and education should be offered on the appropriate role of the internal auditor within the organization's internal control system.

For this requirement, the authority is: Fully Compliant

Provide a thorough explanation of the specific actions your authority has taken, or which are needed, to comply with this requirement.

In 2013, a representative of the Division of Budget was requested by the ICO to provide ESD employees with training on internal controls, their importance in the workplace, and the New York State Internal Control Act. Attendance was strong for this program with a large majority (approximately 260 ESDC staff) attending, and attended as well by many personnel of Department of Economic Development, ESDC's sister agency.

ESDC will follow up with those staff that have not attended to remind them to receive this valuable training, which staff has been informed is accessible by ESDC personnel via video and PowerPoint links on ESDC's intranet.

In addition to this presentation, it is clear, through ongoing interactions with many personnel in the organization, that there is a good awareness and understanding of internal controls and the reason for them. In addition, personnel are aware of ESDC's Internal Audit role in assessing and testing compliance with internal controls in its audits throughout the organization.

Going forward, ESDC will continue to assess internal control training needs and address those needs as appropriate.

- F. Periodically evaluate the need to establish, maintain or modify an internal audit (IA) function. If an IA function exists, it should operate in accordance with generally accepted professional standards for internal auditing.** Agencies on DOB's list of agencies required to establish IA functions – and those choosing to have an IA function – are required to comply with The Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing (see BPRM Item B-350 Section III "IA Responsibilities").

As outlined in BPRM Item B-350, agencies are required to periodically evaluate the need to establish, maintain or modify an IA function utilizing the *Internal Audit Evaluation Criteria* (**Attachment C**).

Authorities concluding that an IA function is warranted should submit their evaluation to DOB as outlined in BPRM Item B-350. Periodically thereafter, authorities with IA functions should review current operations to determine whether the function should be altered or maintained.

Authorities concluding an IA function is not warranted should periodically reevaluate the need for such a function using Attachment C, especially when organizational, operating, fiscal, program, legal or personnel changes occur which affect the authority's exposure to risk or which could otherwise change the results of the initial assessment.

Pursuant to BPRM Item B-350, agencies required to have – and those entities choosing to have – an internal audit unit should comply with The Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing. Therefore, the IA function should comply with the guidance outlined below regarding organizational placement, independence and reporting.

1. Directors of Internal Audit (DIA) should report functionally to the authority head or audit committee and may report administratively to the designated executive deputy (or equivalent position). If the executive deputy has line or staff duties, the DIA should report directly to the authority head.
2. A current organizational chart should be available that identifies the placement of the IA function, the individual that has responsibility for overseeing the internal audit activity and other organizations/activities under the purview of the DIA.
3. The IA function should be independent of the ICO, but should work closely with the ICO. Limitations should be established on IC activities where those duties overlap. Authorities should identify impairments to the independence of the DIA that may be created where the DIA is performing the ICO function. Furthermore, IA functions should not assume operating responsibilities, perform management functions, make management decisions or assume other monitoring roles (e.g., Information Security Officer).

4. IA staff should complete an annual independence statement identifying actual/potential impairments to independence and notifying the DIA whenever a new actual/potential impairment arises.
5. The IA function should develop an annual risk-based audit plan, track the extent to which audit plans are achieved and monitor implementation of audit recommendations.
6. At a minimum, DIAs should hold quarterly meetings with authority executive management and the audit committee, where applicable, to report on audit activities and results. Final reports should be distributed to the authority head, executive deputy, auditee, ICO and the audit committee.
7. The DIA should assure that authority audit staff have the skills, knowledge and ability to perform the audit work required, and should take steps to assure that the size of the audit staff is appropriate given the size and complexity of the organization.
8. The IA function should take appropriate steps to assure sufficient audit resources are available given the size and complexity of the organization. This can be accomplished by exploring in-sourcing, outsourcing and sharing audit services.

Authorities should specifically provide the following information when presenting their explanation:

1. A current organizational chart identifying the placement of the IA function, the name and title of the IA director, other organizations/activities under the IA function's purview and the name and title of the person to whom the IA director reports.

ESD's (and JDA's) Internal Audit Director (IAD) is Thomas Brennan, SVP and Audit Director, who also serves as ESDC's Internal Control Officer (ICO).

Thomas reports administratively to ESD's President and CEO and reports directly to ESD's independent Audit Committee.

2. A description of how the internal audit director's credentials, education and experience meet the minimum qualifications established in BPRM Item B-350.

ESD's Audit Director is a CPA with an MBA in Finance and an undergraduate BS in Accounting.

He has 37 years of audit experience, including 5 years of large CPA firm experience and over 21 years of internal audit managerial experience with large organizations, including having served as ESDC Audit Director for 10 years.

3. A description of how continuing professional education requirements are met by the director and each staff member.

The Director is a CPA and has extensive audit experience, and the 2 other Internal Audit staff members are also CPAs with numerous years of experience at ESD. Suitable, highly cost-effective training is undertaken on an ongoing basis, and is reported to ESDC's external auditors annually.

4. A description of how quality assurance review requirements are being met.

Annual audit plans are formulated by the IAD and presented to the Audit Committee and executive management.

Director oversight of the IA function is strong, as a) the scope of each audit is jointly determined by the IAD and the assigned auditor(s), and workpapers reviewed by the IAD; and b) drafted audit reports are reviewed and edited by the IAD, with management responses evaluated for adequacy by both the IAD and assigned staff.

The Audit Director assumed responsibility for the audit function of ESDC's sister agency DED in July 2011, without an increase above current staffing levels of 3.

Internal Audit has been working with the NYS Internal Control Association to have a Quality Assurance Review scheduled, conducted and completed. All preliminary materials have been forwarded by Internal Audit in that regard. Timing is subject to reviewers' schedules: the QAR will be conducted as soon as NYSICA personnel inform Internal Audit of their availability to conduct the review.

5. A description of how the IA function ensures that it does not compromise its independence if it is also responsible for other functions (i.e., internal control, information security or other duties).

ESD's IAD also serves as ICO, as has been the case (and reported as such) for the past several annual cycles. ESD sees this combination of ICO and IAD duties as more cost-effective than maintaining these roles under separate individuals, a significant consideration in this very tight cost environment. ESD does not view this as compromising Audit independence for reasons outlined in point D's response.

6. A copy of the 2013-14 internal audit plan.

The 2012-13 audit plan was discussed with and approved by the Audit Committee during 2012, and is attached. The 2013-14 audit plan is being formulated and will be discussed with, and approved by, the Audit Committee in the near future.

7. Documentation pertaining to the risk-assessment utilized in formulating the 2013-14 audit plan.

Internal Audit evaluates risk during each audit it performs and develops a Risk Assessment Matrix and process control and informational narratives for each, identifying key risks and controls, and ties those into audit work performed. Many ESDC functions have been audited several times in Audit Director's 10 year tenure.

Also, department and subsidiary heads' risk/control submissions are closely scrutinized to assess potential impact on the annual audit plan.

8. An indication of which audits in the audit plan for FY 2012-13 were not conducted, and an explanation as to why they were not conducted.

Most audits planned for 2012-13 were completed. As in prior years, a few were commenced late in 2012-13 and will be completed in early 2013/14.

9. An estimate of the cost savings to be achieved by virtue of implementing the recommendations contained in each conducted audit described in the FY 2012-13 audit plans and any audits that were conducted during that time period that were not in the audit plan. If it is not feasible to provide a cost estimate for savings, please identify process improvements, risk mitigation, fraud prevention or cost avoidance measures that resulted from implementation of such recommendations.

It is generally not feasible to provide a cost estimate for savings regarding process improvements, risk mitigation, fraud prevention or cost avoidance measures. In the 2012-13 audit of Moynihan Station activities, an amount totaling nearly \$4,000 was noted to have not been identified for reimbursement, and was subsequently addressed.

Also, Internal Audit has historically not been involved in processing transactions; in 2012, Audit assisted ESDC personnel in addressing the large volume of documentation-intensive business flood grants. While this unique request arose from a need for more personnel to process this atypical volume of transactions, it allowed Audit to have input into the approach to screening applications for signs of fraud. In a few instances, files were referred to ESDC Legal for evaluation in that regard. This performance of non-audit reviews of files was built into the audit plan, and discussed with the Audit Committee in terms of its limited impact on Audit's independence and Audit's ability to actually audit other aspects of the Flood Grant program in 2013/14.

10. Identify the recommendations contained in the audits described in the FY 2012-13 audit plans that were not implemented, if any, and provide a full explanation why they were not implemented.

Internal Audit stays abreast of activities in ESDC and performs follow ups on those areas where the prior audit may have identified relatively more significant audit issues. Audit has noted prior issue resolution, or progress towards issue resolution, when Audit performs follow up reviews, which evidences that auditees take the audits seriously and constructively.

11. Identify the recommendations contained in final audits issued by the Office of State Comptroller between April 1, 2012 and March 31, 2013 that were not implemented, if any, and provide a full explanation why they were not implemented.

None were issued in that timeframe (the last OSC report for ESDC was issued July 2010 and addressed in a previous Internal Control Summary and Conclusion document.)

For this requirement, the authority is: Partially Compliant

Provide a thorough explanation of the specific actions your authority has taken, or which are needed, to comply with this requirement.

See recap note on next page.

2012-13 INTERNAL CONTROL CONCLUSION

Empire State Development Corporation

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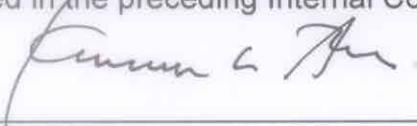
I hereby certify the authority is:

X Partially Compliant (i.e., Partial compliance with some or all provisions)

Recap Note: ESDC deems its internal control environment to be strong; the self-assessment conclusion of "*partial compliance*" is because the QAR of the internal audit function has not yet been completed (pending the review being scheduled by the QAR team), and because of the need to fully test its disaster recovery plan as ESDC moves to a virtual IT environment.

With the New York State Governmental Accountability, Audit and Internal Control Act.

This conclusion is supported with detailed justification of actions taken and/or outlines specific actions needed to address areas of partial compliance or noncompliance as described in the preceding Internal Control Summary.



Signature/Authority Head

5/21/13

Date

Note: As ESDC is a Public Authority, DOB indicated that it no longer requires ESDC to file this with DOB. ESDC's agency counterpart, DED, is still responsible to file an internal control certification with DOB. For consistency, ESDC continues to complete and conclude on (rather than certifying) this and filing it internally, and will share it with the Audit Committee, and with the Office of the State Comptroller when the annual Public Authority Reporting Information System (PARIS) information for ESDC is submitted this year.