



WINTAC

Workforce Innovation Technical Assistance Center



WINTAC TOOLKIT – DATA SHARING AGREEMENTS

WIOA requires Vocational Rehabilitation (VR) agencies to enter into written agreements with other organizations and entities receiving personal VR program information during the conduct of audits, evaluations, research and other program purposes (CFR 34 361.38(a), (d), and (e)).

This Toolkit is a resource for developing those agreements.

WIOA DATA SHARING TOOLKIT

for STATE VR AGENCIES

Purpose of Sharing Data

Section 116 of the Workforce Innovation and Opportunity Act (WIOA) requires States to collect data necessary to determine levels of performance for each of the six core programs, one of which is the Vocational Rehabilitation (VR) program, with respect to six primary performance indicators. Section 116(i)(2) of WIOA requires States to utilize quarterly wage records, consistent with State law, to measure the State's progress with respect to the primary performance indicators, particularly the three employment-related indicators.

Pursuant to section 116(b)(2)(A)(i) of WIOA, the six primary performance indicators are as follows:

- A. Employment Rate – Second Quarter After Exit:** The percentage of participants who are in unsubsidized employment during the second quarter after exit from the program;
- B. Employment Rate – Fourth Quarter After Exit:** The percentage of participants who are in unsubsidized employment during the fourth quarter after exit from the program;
- C. Median Earnings – Second Quarter After Exit:** The median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;
- D. Credential Attainment:** The percentage of those participants enrolled in an education or training program (excluding those in on-the-job training (OJT) and customized training) who attain a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within one year after exit from the program. A participant who has attained a secondary school diploma or its recognized equivalent is included in the percentage of participants who have attained a secondary school diploma or its recognized equivalent only if the participant also is employed or is enrolled in an education or training program leading to a recognized postsecondary credential within one year after exit from the program;
- E. Measurable Skill Gains:** The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational, or other forms of progress, towards such a credential or employment.

F. Effectiveness in Serving Employers: WIOA sec. 116(b)(2)(A)(i)(VI) requires the Departments to establish a primary indicator of performance for effectiveness in serving employers. The Departments are piloting three approaches designed to gauge three critical workforce needs of the business community.

- Approach 1: Retention with the same employer – addresses the programs’ efforts to provide employers with skilled workers;
- Approach 2: Repeat Business Customers – addresses the programs’ efforts to provide quality engagement and services to employers and sectors and establish productive relationships with employers and sectors over extended periods of time; and
- Approach 3: Employer Penetration Rate – addresses the programs’ efforts to provide quality engagement and services to all employers and sectors within a State and local economy.

Section 116(i)(2) of WIOA also requires the Secretary of the U.S. Department of Labor (Labor) to make arrangements, consistent with State law, to ensure that the wage records of any State are available to any other State to the extent that such wage records are required by the State in carrying out the State plan of the State or completing the annual performance report described in section 116(d). To that end, the Secretary of Labor and the Secretary of the U.S. Department of Education (Education) (collectively, Departments) are in the process of developing a State Wage Interchange System (SWIS) for purposes of matching program data about participants with wage records held by State Unemployment Compensation (UC) agencies. The SWIS will facilitate and streamline the data exchange between States. Participation in the SWIS is voluntary; however, if a State elects to participate, it must enter into a SWIS Data Sharing Agreement (SWIS Agreement). The Departments issued a draft SWIS Agreement on January 17, 2017, seeking comments from affected State agencies, including the VR agencies.

It is important to note that the SWIS is only for the exchange of data on an **interstate** basis. This means that States that sign the SWIS Agreement, and, therefore, are eligible to participate in the SWIS, may exchange data with other participating States without having to develop a data sharing agreement with those other States. Thus, the SWIS significantly streamlines the process for the exchange of data on an interstate basis for participating States.

States that elect not to participate in the SWIS will need to develop their own data sharing agreements with other States from which quarterly wage records are needed in order to comply with the performance accountability system requirements of section 116 of WIOA. For example, the Pennsylvania VR agency may have participants who exited the VR program who achieved employment outcomes in New Jersey, New York, Maryland, Delaware, West Virginia, and Ohio. If the State of Pennsylvania does not participate in the SWIS, the VR agency would need to develop interstate data exchange agreements with the State UC agency in **each of these States** in order to obtain the requisite data necessary for compliance with the performance accountability system requirements. Had Pennsylvania participated in the SWIS along with each of these States, there would be no need for the VR agency to develop separate agreements with these States.

As noted above, the SWIS is applicable only for the exchange of data on an **interstate** basis, not the exchange of **intrastate** data. Regardless of whether a State participates in the SWIS, the VR program still will need to develop a data sharing agreement with the UC agency in its own State

in order to obtain quarterly wage records for participants who achieve employment outcomes **within** the State.

This Toolkit provides guidance to State VR agencies that will need to develop data sharing agreements within their own States, as well as with other States in the event a VR agency is in a State that does not participate in the SWIS.

Confidentiality Requirements Under the VR Program

VR Regulations at 34 CFR 361.38(a)(1) require VR agencies to develop and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must ensure that:

- Specific safeguards are established to protect current and stored personal information, including a requirement that data only be released when governed by a written agreement between the VR agency and receiving entity under 34 CFR 361.38(d) and (e)(1);
- All applicants and recipients of services and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;
- All applicants and recipients of services, or their representatives, are informed about the VR agency's need to collect personal information and the policies governing its use, including:
 - Identification of the authority under which information is collected;
 - Explanation of the principal purposes for which the VR agency intends to use or release the information;
 - Explanation of whether providing requested information to the VR agency is mandatory or voluntary and the effects of not providing requested information;
 - Identification of those situations in which the VR agency requires or does not require informed written consent of the individual before information may be released; and
 - Identification of other agencies to which information is routinely released;
- An explanation of State policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and
- These policies and procedures provide no fewer protections for individuals than State laws and regulations.

In developing policies and procedures governing personal information in accordance with 34 CFR 361.38(a), and providing that information to applicants, recipients of services, and, as appropriate, their representatives, a VR agency should make it clear that:

- Some VR records are needed to comply with the performance accountability requirements of section 116 of WIOA; and
- Those records will be matched with State UC quarterly wage records.

In so doing, the VR agency should explain what information will be released and whether informed written consent is required.

Disclosing Personal Information Contained in VR Records

All personal information in the VR agency's possession must be used and disclosed only for the purposes directly connected with the administration of the VR program (34 CFR 361.38(b)). Disclosures made for purposes associated with the administration of the VR program do not require the informed written consent of the participant.

In addition, the VR agency must release personal information when required to do so by Federal law or regulation (34 CFR 361.38(e)(3)), which would include the requirements under section 116 of WIOA to collect data (e.g., matching records for the employment-related performance indicators). The matching of these records, as well as the subsequent reporting of that data, for purposes of complying with the performance accountability requirements of WIOA, is not only required by Federal law but also is clearly an administrative function of the VR agency. Again, such disclosures do not require the informed written consent of the participant.

The VR agency may, but is not required to, release personal information for audit, evaluation, and research purposes when the release is done in accordance with a written agreement (34 CFR 361.38(d)). Such disclosures do not require the informed written consent of the participant so long as the resulting report contains only aggregate information.

Elements of Data Sharing Agreements

For purposes of the VR program, to be effective, data sharing agreements should outline the applicable requirements and procedures and options for matching confidential UC wage record information with personal information from VR records, and for protecting the confidentiality of information contained in such records.

Specifically, the data sharing agreements must make clear that the VR agency is matching its VR records in a manner that is consistent with the confidentiality requirements of 34 CFR 361.38. In so doing, the data sharing agreements should specify:

- Parties to the data sharing agreement;
- purpose of the data sharing agreement;
- personal information to be disclosed through the data sharing agreement;
- how the confidentiality of the personal information to be disclosed will be protected;
- when personal information obtained from another agency (e.g., confidential UC information) must be destroyed in order to comply with requirements governing that data;
- duration of the data sharing agreement;
- procedural requirements for the request for and provision of data;
- cost for the data matching and how the payment will be made; and
- how the parties will ensure compliance, including permitting Federal administering agencies to monitor for compliance, as appropriate.

These elements are similar to those contained in the SWIS Agreement.

Other Relevant Requirements

FERPA permits, but does not require, educational agencies and institutions to disclose PII from education records without obtaining the prior written consent of the parent or eligible student if the disclosure meets one or more of the exceptions to prior written consent under [34 CFR 99.31](#). In cases in which there is not written consent from the parent or eligible student, the exception to consent in FERPA that may be used to permit matching of PII from education records and wage records is FERPA's audit or evaluation exception. See 20 U.S.C. 1232g(b)(1)(C), 1232g(b)(3), and 1232g(b)(5); 34 CFR 99.31(a)(3) and 99.35.

The audit or evaluation exception permits, without consent, the disclosure of PII from education records to authorized representatives of State or local educational authorities.¹

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It is important to note that some VR records may contain personally identifiable information (PII) obtained from educational records. Such PII is protected by the Family Educational Rights and Privacy Act (FERPA) (20 USC §1232g) and its implementing regulations at 34 CFR part 99.

The State UC agencies must comply with confidentiality requirements set forth in 20 CFR part 603.

Because the data sharing agreement entered into by the VR agency will involve, at a minimum, confidential information held by the State UC agency and may involve PII protected by FERPA, it is essential that the State VR agency seek legal counsel from its attorney to ensure it complies with all Federal, State, and local privacy laws and regulations when exchanging personal information through any data sharing agreement.

¹ Joint Guidance on Data Sharing: <https://www2.ed.gov/policy/gen/guid/fpco/pdf/final-ferpa-tegl-report.pdf>

Appendix A - Overview of FERPA

Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR part 99)

FERPA governs the use and disclosure of student education records and the personally identifiable information (PII) contained therein. FERPA is a Federal law that protects the privacy of PII from education records and affords parents and “eligible students” (i.e., students who are 18 years of age or older, or who attend an institution of postsecondary education) the right to have access to their education records, the right to seek to have these education records amended, and the right to have some control over the disclosure of these education records and the PII contained therein.

FERPA directly applies to all educational agencies and institutions that receive Federal funds under any program administered by the Secretary of Education (including Pell Grants and student loans funded under title IV of the Higher Education Act of 1965, as amended). The term “educational agencies and institutions” generally refers to public elementary and secondary schools, local education agencies (LEAs) (i.e., school districts), and postsecondary institutions.

LEAs and postsecondary institutions providing adult education and literacy services under the Adult Education and Family Literacy Act are generally considered to be educational agencies or institutions subject to FERPA, as most are recipients of Federal funds under a program administered by the Secretary of Education.

VR agencies are not considered educational agencies or institutions under FERPA, but must abide by the confidentiality provisions set forth in 34 CFR 361.38 and, to the extent that they access, without parents’ or eligible students’ prior, written consent, PII from student education records originally maintained by educational agencies or institutions, FERPA’s “re-disclosure” provisions at 34 CFR 99.33.

FERPA does not apply directly to State educational agencies as they do not meet the definition of educational agencies or institutions under FERPA, although FERPA was amended so that parents and eligible students have the right to inspect and review their education records that are maintained by State educational agencies and their components.

Non-educational eligible providers delivering adult education and literacy services, such as community- or faith-based organizations, volunteer organizations, public or private nonprofit agencies, libraries, public housing authorities, and other nonprofit entities, typically would not be considered to be entities covered by FERPA. Although these non-educational entities receive Federal funds under a program administered by the Secretary of Education to provide adult education and literacy services, they do not typically meet the definition of an educational agency or institution and, therefore, FERPA does not directly apply to such eligible providers.

Appendix B - Overview of Unemployment Compensation

Confidentiality and Disclosure of State Unemployment Compensation (UC) Information 20 CFR part 603

Labor's confidentiality and disclosure regulations at 20 CFR part 603 govern the disclosure of wage records by States and State UC agencies that administer State UC laws.

Section 603.4 requires that State law provide for “maintaining the confidentiality of any UC information which reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars, ...”

The UC regulations at 20 CFR 603.5 provide information on permissive disclosures, which permits disclosure under certain circumstances as long as the disclosure does not interfere with the proper and efficient administration of the UC program. This includes disclosures to public officials for use in the performance of official duties. “Public official” is defined as “an official, agency, or public entity within the executive branch of Federal, State, or local government who (or which) has responsibility for administering or enforcing a law, or an elected official in the Federal, State, or local government.”