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## State Wage Interchange System (SWIS) Data Sharing Agreement

This data sharing agreement for the State Wage Interchange System (“Agreement” or “SWIS Data Sharing Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ by and among the individual State Unemployment Insurance Agencies (SUIAs) of each state participating in the State Wage Interchange System (SWIS), the Performance Accountability and Customer Information Agencies (PACIAs) of each state participating in the SWIS, the United States Department of Labor (DOL), Employment and Training Administration (ETA), the United States Department of Education (ED), Office of Career, Technical, and Adult Education (OCTAE), and Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration (OSERS/RSA), and the Interstate Connection Network (ICON) grantee. The following agencies are parties to the Agreement on behalf of the state [or Commonwealth] of

\_\_\_\_\_:

(SUIA) \_\_\_\_\_, and the

(SUIA Agency Name)

(SUIA) \_\_\_\_\_, and the

Access  Non-Access] (Additional SUIA Agency Name – if applicable as described in Section IV.A. of this Agreement)

(PACIA) \_\_\_\_\_, and the

Access  Non-Access] (PACIA Agency Name)

(PACIA) \_\_\_\_\_, and the

Access  Non-Access] (Additional PACIA Agency Name – if applicable as described in Section IV.B. of this Agreement)

(PACIA) \_\_\_\_\_, and the

Access  Non-Access] (Additional PACIA Agency Name – if applicable)

(PACIA) \_\_\_\_\_, and the

Access  Non-Access] (Additional PACIA Agency Name – if applicable)

(PACIA) \_\_\_\_\_, and the

Access  Non-Access] (Additional PACIA Agency Name – if applicable)

(PACIA) \_\_\_\_\_

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[ Access  Non-Access] (Additional PACIA Agency Name – if applicable)  
of the State of \_\_\_\_\_.

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## **I. Background**

Under the Workforce Investment Act of 1998 (WIA), the Wage Record Interchange System (WRIS) was developed to facilitate the interstate exchange of Wage Data between participating states for the purpose of assessing and reporting on state and local performance for programs authorized under WIA, for programs authorized under other Federal laws but identified as one-stop partners under WIA, and for other purposes allowed by law. More specifically, the WRIS: (1) assisted states in assessing the performance of individual training providers and state employment and training programs; (2) supported states in preparing and submitting reports to DOL regarding the performance of workforce investment programs; and (3) supported research and evaluation efforts authorized under the terms of the WRIS Agreement. In addition to the WRIS Agreement, the state-initiated WRIS 2 Agreement expanded some of the provisions of the WRIS Agreement to partner programs subject to performance reporting requirements. Under WIA, the WRIS and WRIS 2 were operated on the unemployment insurance Interstate Connection Network (ICON) platform utilizing the Distributed Database Index (DDBI) to query out-of-state SUIA(s) for wage information to fulfill the reporting requirements of the programs under Subtitle B of Title I of WIA.

The SUIAs participating in the SWIS, as under the WRIS, use the DDBI for purposes of determining Federal-State Unemployment Compensation (UC) program eligibility, which is governed by sec. 303(a)(1) of the Social Security Act (SSA) [42 USC 503(a)(1)] requiring, as a condition of a state's administrative grants, that states follow methods of administration "reasonably calculated to insure full payment of unemployment compensation when due," and sec. 3304(a)(9)(B) of the Federal Unemployment Tax Act (FUTA) [26 USC 3304], which requires each state, as a condition of participation in the UC program, to participate in any arrangement specified by the Secretary of Labor for payment of UC "on the basis of combining an individual's wages and employment" in two or more states.

The Workforce Innovation and Opportunity Act (WIOA), signed into law on July 22, 2014, supersedes WIA. The authority provided to the Secretary of Labor under WIA with respect to Wage Data was continued under WIOA Section 116(i)(2), which requires states to use quarterly Wage Data, consistent with state law and with sec. 444 of the General Education Provisions Act [20 USC 1232g] as outlined in Section 116(i)(3) of WIOA to meet the Federal reporting requirements set forth in WIOA Section 116. WIOA also extends these requirements to the six core programs identified in WIOA Section 3(12) and 3(13): the Adult, Dislocated Worker, and Youth programs authorized under title I of WIOA and administered by DOL; the Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA and administered by ED; the Employment Service program authorized under the Wagner-Peyser Act, as amended by title III of WIOA and administered by DOL; and the Vocational Rehabilitation (VR) program authorized under title I of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by title IV of WIOA and administered by ED.

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Given the requirements of WIOA, the new State Wage Interchange System (SWIS) has been developed to facilitate the interstate exchange of Wage Data between participating state agencies for the purpose of assessing and reporting on state and local performance for the programs authorized under WIOA, under other statutory provisions authorizing programs identified as one-stop partners under WIOA, and for other purposes allowed under this Agreement. More specifically, the SWIS: (1) assists states in assessing the performance of individual training providers and state education, employment, and training programs; (2) supports states in preparing and submitting reports to DOL and ED regarding the performance of workforce programs and activities authorized under WIOA and for other statutorily-authorized programs that are referenced in WIOA and identified as one-stop partners; and (3) supports research and evaluation efforts authorized consistent with the terms of the SWIS.

## **II. Purpose**

The purpose of this Agreement is to establish and implement the operating conditions and procedures related to access of Wage Data for performance accountability and other administrative functions, as authorized by this Agreement, which will govern the participation of the state agencies holding Wage Data (i.e., the SUIAs), the PACIAs, DOL-ETA, and ED-OCTAE, ED-OSERS/RSA, and the ICON grantee in the SWIS. This Agreement establishes certain conditions and procedures, as required by 20 CFR part 603, 20 USC 1232g, and 34 CFR part 99, and 34 CFR 361.38 in order to protect the confidentiality of personally identifiable information (PII) from students' Education Records, confidential UC information, personal information in the possession of VR agencies, and other confidential information that is disclosed between or among the participating parties through the SWIS Clearinghouse or as a part of the data exchanges described in this Agreement. The Agreement requires that no Wage Data, PII from students' Education Records, or Personal Information from VR Records obtained pursuant to the SWIS be re-disclosed except as specifically permitted by this Agreement.

## **III. Legal Authority**

### **A. Applicable Legal Authorities**

The legal authority to establish this Agreement is derived from Section 116(i)(2) of WIOA or its successor statute, which requires states to use quarterly Wage Data, consistent with state law, for performance measurement purposes. Section 116(i)(2) of WIOA also requires the Secretary of Labor to arrange, consistent with state law, to ensure that a state's Wage Data are available to any other state to the extent that such Wage Data are required by the state in carrying out its state plan or completing the annual performance reports required under WIOA.

Further legal authority to establish and enter into this Agreement is provided by:

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1. Sections 116(d) of WIOA [29 USC 3141(d)] and 185 [29 USC 3245], which authorizes DOL to collect workforce development system data.
2. Section 415 of the Department of Education Organization Act [20 USC 3475], which authorizes ED to enter into interagency agreements.
3. Sections 116(d) of WIOA [29 USC 3141(d)] and 212 [29 USC 3292] and sections 101(a)(10) [29 USC 721(a)(10)] and 106 [29 USC 726] of the Rehabilitation Act, which authorize ED to collect workforce development system data.
4. Section 101(d)(3)(A) of WIOA [29 USC 3111(d)(3)(A)], under which each state Workforce Development Board is required to assist the Governor in its state in the development and continuous improvement of the statewide workforce development system by the identification of barriers and means of removing barriers to better coordinate, align, and avoid duplication among the programs and activities carried out through the system.
5. Section 101(d)(4) of WIOA [29 USC 3111(d)(4)], which requires the State Workforce Development Board to assist the Governor in developing and updating comprehensive state performance accountability measures to assess the effectiveness of the core programs in the state.
6. Section 101(d)(8) of WIOA [29 USC 3111(d)(8)], which requires the State Workforce Development Board to assist the Governor in developing strategies for aligning technology and data systems across one-stop partner programs to improve efficiencies in reporting on performance accountability measures.
7. Sections 121(b)(1)(B) and 121(b)(2)(B) of WIOA [29 USC 3151], which list the required one-stop partner programs and additional one-stop partner programs, all of whose activities Section 101(d) requires states to coordinate within the one-stop system.
8. Section 102(b)(1)(D) of WIOA [29 USC 3112(b)(1)(D)], under which each state is required to include in its Unified or Combined State Plan a description of the state's strategic vision and goals for preparing an educated and skilled workforce, including goals relating to performance accountability measures based on the primary indicators of performance.
9. Section 102(b)(2)(B)(ii) of WIOA [29 USC 3112(b)(2)(B)(ii)], under which each state is required to include in its Unified or Combined State Plan information about the strategy the state will take to ensure coordination and non-duplication among those programs.

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10. Section 169 of WIOA [29 USC 3224], which requires DOL's continuing evaluation of programs and activities carried out under WIOA title I, authorizes DOL's evaluation of other Federally-funded employment-related programs and activities under other provisions of law (see Section 169(a)(3) of WIOA), and requires DOL to coordinate evaluations it carries out under Section 169 with evaluations carried out by states under WIOA Section 116(e) [29 USC 3141(e)], from which the authority to establish the existing WRIS Agreement is derived. In turn, Section 116 requires each state, in coordination with local boards in the state, to conduct ongoing evaluations of activities under statewide and local workforce development systems, and to coordinate those evaluations with evaluations conducted by DOL under Section 169.
11. Section 122 of WIOA [29 USC 3152], which requires that to be eligible to receive and continue to receive Federal funds for the provision of training services, certain training providers must meet required annual levels of performance, as demonstrated using quarterly Wage Data described in Section 116(i)(2) [29 USC 3141].
12. 42 USC 301 et seq., which provides for the reimbursement of costs incurred by state VR agencies in assisting participants who are also Supplemental Security Income and/or Social Security Disability Insurance recipients achieve an employment outcome (see also Sec. 108 of the Rehabilitation Act [29 USC 728]).

**B. Applicable Privacy Laws**

As required by WIOA Section 116(i)(3), all data exchange activities conducted through the SWIS will be conducted in a manner consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g and its implementing regulations at 34 CFR part 99. In addition, all data exchange activities conducted through the SWIS must be consistent with the confidentiality requirements of 20 CFR part 603 and applicable state laws. Finally, any exchange of personal information contained in VR Records of service through the SWIS must comply with the requirements of 34 CFR 361.38, which governs the protection, use, and release of personal information under the VR program.

**C. National Database Prohibited**

The SWIS will be administered in accordance with Section 501(b) of WIOA [29 USC 3341(b)], which prohibits the development of a national database of PII on individuals receiving workforce development services while allowing activities for the proper administration and management of such programs.

## **IV. Parties to the Agreement**

The following are the parties to this Agreement:

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- A. The “**SUIA**,” or State Unemployment Insurance Agency, for each participating state, is the state agency (or agencies, if two separate agencies carry out the responsibilities within the state) charged with at least one of the following: (1) the administration of the state’s UC law, or (2) performing the functions described under either Section VIII.A.2., Section VIII.A.4, or both, of this Agreement whether or not such agency also administers the state’s unemployment UC law. In participating states where the agency administering the state’s UC law is not the agency performing the responsibilities in Section VIII.A.2., Section VIII.A.4., or both, that state will have two SUIAs, an Access SUIA and a Non-Access SUIA, as defined in Section V.Z below, participating under this Agreement.
- B. The “**PACIA**,” or Performance Accountability and Customer Information Agency, for each participating state, is the state agency (or agencies, if there is more than one such agency) designated by the state’s Governor as being responsible for coordinating or facilitating the performance reporting of one or more of the state’s WIOA core programs as required under WIOA Section 116 [29 USC 3141]. PACIA, as well as Access PACIA and Non-Access PACIA, are defined in Section V.N below.
- C. “**ETA**” is the DOL, Employment and Training Administration. ETA is responsible for carrying out the standards, policies, programs, and activities of DOL, including grant-making and contract procurement activities in accordance with existing governmental and DOL regulations, relating to workforce development activities under a variety of Federal laws, including title III, title IX, title XI, and title XII of the Social Security Act of 1935, as amended [42 USC 501-505, 42 USC 1101-1110, 42 USC 1320b-7, and 42 USC 1321-1324], the Wagner-Peyser Act, as amended [29 USC 49 et seq.], and WIOA.
- D. “**OCTAE**” is the ED, Office of Career, Technical, and Adult Education. OCTAE is responsible for carrying out the standards, policies, programs, and activities of ED relating to adult and career and technical education activities. This includes administering AEFLA, as set forth in title II of WIOA, and the Carl D. Perkins Career and Technical Education Act of 2006, as amended by the Strengthening Career and Technical Education for the 21st Century Act (Perkins V), and jointly administered activities under title I of WIOA.
- E. “**OSERS/RSA**” is the ED, Office of Special Education and Rehabilitative Services/ Rehabilitation Services Administration. OSERS/RSA is responsible for carrying out the standards, policies, programs, and activities of ED relating to VR program activities under a variety of Federal laws, including the Rehabilitation Act and jointly administered activities under title I of WIOA.
- F. “**Interstate Connection Network (ICON) grantee**,” is the entity through which DOL funds and operates the ICON system. The DOL, with possible participation of ED, maintains a cooperative agreement with the ICON grantee and the ICON grantee serves as an agent for the 53 state Workforce Agencies in contracting for the services of the ICON system. In the



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event that the ICON grantee outsources operation of the ICON system to a third party contractor, referred to in this Agreement as the Operations Contractor, as a result of which said contractor receives access to PII from student Education Records, the ICON grantee and the Operations Contractor must enter into a written agreement. Any such written agreement must document, among other items, the terms under which the Operations Contractor is authorized to receive and use such PII in accordance with FERPA and satisfy the requirements set forth in 34 CFR 99.35; 20 CFR part 603; and 34 CFR 361.38.

## V. Definitions

The following terms used in this Agreement shall have the meanings set forth below:

- A. **“Acknowledgement of Confidentiality”** is the form of Acknowledgement of Confidentiality Requirements and Restrictions set forth in Annex 2 of this Agreement by which an individual employee, agent, or contractor is to acknowledge: (1) their understanding of the confidential nature of Wage Data, PII from Education Records, and Personal Information from VR Records, (2) the standards and guidelines for the handling of such data as described in Section XI and the SWIS Data Sharing Agreement/FERPA Written Agreement (Annex 1), and in any supplemental agreements, and (3) the individual’s obligation to comply with such standards and guidelines in carrying out their duties consistent with this Agreement. When completed, the Acknowledgement of Confidentiality form in Annex 2 is hereby incorporated by reference.
- B. **“Aggregate Data”** are **“Wage Data”** that have been stripped of any information that would identify the individual(s) or the employer(s) to whom the data pertain, including but not limited to, name and Social Security Number (SSN) or Federal Employer Identification Number (FEIN), and any state tax ID number, and that have been aggregated into a group(s) containing no fewer than three (3) records, provided that nothing herein shall prevent a PACIA from observing a more stringent aggregation policy with regard to its own use and reporting of data.
- C. **“Aggregate Statistical Reports”** are reports containing Aggregate Data.
- D. **“Agreement”** when capitalized, refers to this SWIS Data Sharing Agreement, including any amendments, annexes, appendices, attachments, supplements, and addendums.
- E. **“Authorized Representative”** is used in the context of FERPA’s Audit and Evaluation exception to the general requirement of consent in 34 CFR 99.31(a)(3) and 99.35 and includes any entity or individual designated by a state educational authority to conduct

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any audit or evaluation of any Federally or state-supported education program. Authorized Representative is defined in 34 CFR 99.3.

- F. **“Confidentiality Compliance Review”** or **“CCR”** is used in this Agreement to denote reviews that may be conducted by a Federal entity, or its agents or contractors, to ensure those recipients of Wage Data, PII from Education Records, or Personal Information from VR Records are complying with the terms of this Agreement, including the confidentiality requirements, and to provide feedback and findings to the parties, as appropriate, on how their processes can be improved to better safeguard the Wage Data, PII from Education Records, and Personal Information from VR Records. CCRs and the related party responsibilities are addressed in further detail in Section XIII.A. Under 20 CFR 603.9(b)(1)(vii), an entity receiving Wage Data from a SUIA must maintain a system sufficient to allow an audit of compliance with 20 CFR part 603.
- G. **“Distributed Database Index”** or **“DDBI”** is an index of all SSNs for which wages have been reported to SUIAs participating in the SWIS over a period of up to eight quarters. The DDBI contains the following three information items for each entry: SSN, the quarter for which wages were reported, and the name of the state that holds the wage record. Participating states continuously update the DDBI, in accordance with a schedule maintained by the ICON grantee or its Operations Contractor.
- H. **“Disclose”** or **“Disclosure”**
- a. In the context of UC, refers to the release of Wage Data in accordance with the terms of this Agreement and relevant Federal or State confidentiality requirements.
  - b. In the context of FERPA, means to permit access to or the release, transfer, or other communication of PII contained in Education Records, by any means, including oral, written, or electronic, to any party except the party identified as the party that provided or created the record. In the context of FERPA, Disclosure is defined in 34 CFR 99.3.
  - c. In the context of the VR program, refers to the release of personal information held by the state VR agencies in accordance with the terms of this Agreement and the requirements of 34 CFR 361.38.
- I. **“Education Program”** in FERPA means any program that is principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution. The term is used in the context of

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FERPA's Audit and Evaluation exception to the general requirement of consent in 34 CFR 99.31(a)(3) and 99.35. Education Program is defined in 34 CFR 99.3.

- J. **“Education Records”** in FERPA are those records that are directly related to a student and maintained by an educational agency or institution, except as otherwise provided. Education Records is defined in 34 CFR 99.3.
- K. **“Family Educational Rights and Privacy Act”** or **“FERPA”** [sec. 444 of the General Education Provisions Act, 20 USC 1232g] is a Federal statute that, among other things, protects an individual student's right to the privacy of his/her Education Records and the PII contained therein. FERPA prohibits disclosure of PII from Education Records without prior written consent, unless an exception to the requirement of consent is applicable. The regulations implementing FERPA are set forth at 34 CFR part 99.
- L. **“ICON”** or the **“Interstate Connection Network”** is a nationwide telecommunications system used by SUIAs to transmit information for unemployment insurance and related program purposes. ICON is the infrastructure used by the SWIS to exchange Wage Data between SUIAs and PACIAs in participating states.
- M. **“Operations Contractor”** is an entity with which the ICON grantee may enter into an agreement to carry out responsibilities for the technical operation and maintenance of the SWIS Clearinghouse hardware and software, for providing technical support to states participating in the SWIS, and for assisting ETA, OCTAE and OSERS/RSA with their SWIS management and administrative functions. If outsourced by the ICON grantee, the Operations Contractor refers to the contractor of the ICON grantee.
- N. **“PACIA”** is a party to this Agreement that satisfies the requirements described in Section IV above and is so designated by the state Governor. A Governor may designate up to six (6) PACIAs in a state, at least one (1) of which must be an Access PACIA, as defined below. PACIAs are comprised of Access PACIAs and Non-Access PACIAs and may include, for example, a state educational authority, a state workforce agency, or a state vocational rehabilitation agency. Under FERPA, a PACIA that is a “state educational authority” must designate an entity as its Authorized Representative in order to comply with FERPA's Audit and Evaluation exception to the requirement of written consent, prior to: (1) the PACIA disclosing PII from student Education Records to such entity, and (2) any re-disclosure of such PII from student Education Records by said entity in connection with the SWIS Data Sharing Agreement. The Access PACIAs and Non-Access PACIAs are:

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(1) “**Access PACIA**” is a PACIA for a state designated by the Governor to request data from the SWIS Clearinghouse and has signed the SWIS Agreement. Where a state’s SWIS structure is comprised of both Access PACIAs and Non-Access PACIAs, an Access PACIA will Request Wage Data from the SWIS Clearinghouse on its own behalf and on behalf of the Non-Access PACIAs. An Access PACIA may only disclose Results to a requesting Non-Access PACIA and is bound by the disclosure requirements and limitations under Section IX and the storage and restriction provisions in Section XI when handling this data. A state must designate at least one (1) Access PACIA, but may designate up to six (6) Access PACIAs.

(2) “**Non-Access PACIA**” is a PACIA that has signed this Agreement, but does not request data from the SWIS Clearinghouse directly. Where a state’s SWIS structure is comprised of both Access PACIAs and Non-Access PACIAs, the Non-Access PACIA will disclose individual-level data to the Access PACIA, which will in turn transmit Requests, on behalf of the Non-Access PACIA, for individual-level Wage Data from the SWIS Clearinghouse. After the requested individual-level Wage Data are received from the SWIS Clearinghouse, the Access PACIA will return that individual-level Wage Data to the Non-Access PACIA. Non-Access PACIA(s) are bound by all applicable provisions of this Agreement including the disclosure requirements and limitations under Section IX and the storage and restriction provisions in Section XI. A state may designate up to five (5) Non-Access PACIAs.

- O. “**Participant Individual Record Layout**” or “**PIRL**” is the standardized record layout on individual participants that states must submit to the Secretary of Labor or the Secretary of Education, respectively, for participants receiving services from the six core programs under WIOA, per Section 116(d)(1) [29 USC 3141(d)(1)] and certain other DOL-administered programs.
- P. “**Personal Information from VR Records**” is a term used under the VR program that includes all current and stored identifiable personal information maintained by the VR agency, including photographs and lists of names.
- Q. “**Personally Identifiable Information**” or “**PII**” in FERPA includes, but is not limited to, the following: the student’s name; the name of the student’s parent or other family members; the address of the student or student’s family; a personal identifier, such as the student’s SSN, student number, or biometric record; other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal

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knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the Education Record relates. Personally Identifiable Information is defined in 34 CFR 99.3.

- R. **“Query”** is a request for interstate Wage Data sent from the SWIS Clearinghouse to the SUIA in a participating state.
- S. **“Reply”** is a response to a Query from a SUIA that contains interstate Wage Data.
- T. **“Request”** is a request for interstate Wage Data submitted by an Access PACIA to the SWIS Clearinghouse.
- U. **“Result”** is the Wage Data transmitted from the SWIS Clearinghouse to the requesting Access PACIA in response to a Request.
- V. **“State”** includes all 50 states of the United States of America, as well as the District of Columbia, Puerto Rico, and the United States Virgin Islands. For purposes of this Agreement, “state” does not include American Samoa, Guam, Commonwealth of the Northern Mariana Islands, or the Republic of Palau because the operation of this Agreement requires the presence of an Unemployment Insurance program, which is only present in “states” as defined in FUTA sec. 3306(j).
- W. **“State Audits”** denotes reviews of PACIAs, and their agents or contractors, that may be conducted by any signatory SUIA, in accordance with 20 CFR 603.9, to ensure that recipients of Wage Data, PII from Education Records, or Personal Information from VR Records are complying with the terms of this Agreement, including the confidentiality requirements.
- X. **“State Educational Authority”** in FERPA means a state educational agency, state postsecondary commission, or any other entity that is responsible for and authorized under state or Federal law to supervise, plan, coordinate, advise, audit, or evaluate elementary, secondary, or postsecondary Federal- or state-supported education programs and services in the state. The term is used in the context of FERPA’s Audit and Evaluation exception to the general requirement of consent in 34 CFR 99.31(a)(3) and 99.35. Under FERPA, state educational authorities are permitted to access, without consent, PII from Education Records.
- Y. **“State Workforce Development Boards”** are boards established by the Governor of a state in accordance with Section 101 of WIOA.

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Z. “**SUIA**” is a party to this Agreement as described in Section IV above. There may be up to two (2) SUIAs in a state; however, only one may be an Access SUIA. In a state that has two SUIAs, one SUIA will be responsible for the administration of the state’s UC law. The other SUIA will be responsible for holding and maintaining the state’s confidential UC information under the authority or direction of the SUIA that is responsible for maintaining the state’s UC law. Where a state’s SWIS participation structure is comprised of two SUIAs, the Access SUIA and Non-Access SUIA are:

(1) “**Access SUIA**” is the SUIA that provides data to the SWIS Clearinghouse, submits Replies to the SWIS Clearinghouse, and has signed the SWIS Agreement. The Access SUIA will be responsible for compliance with the disclosure requirements and limitations under Section IX and the confidentiality and other data and information sharing restrictions under Section XI of this Agreement.

(2) “**Non-Access SUIA**” is the SUIA that has signed the Agreement, but it does not provide data to the SWIS Clearinghouse directly. The Non-Access SUIA may disclose individual-level data (confidential UC information) to the Access SUIA, which will in turn transmit Replies to the SWIS Clearinghouse. A Non-Access SUIA is responsible for compliance with all applicable provisions of this Agreement including the confidentiality and other data and information sharing restrictions under Section XI of this Agreement.

AA. “**SWIS**” is the State Wage Interchange System, an automated system for facilitating the exchange of interstate Wage Data between participating states.

BB. “**SWIS Clearinghouse**” is the central processing operation through which SWIS Requests, Queries, Replies, and Results are processed. The SWIS Clearinghouse may be operated by the ICON grantee or its Operations Contractor.

CC. “**Third-Party Entity**” or “**TPE**” is any public body, public agency, or private provider of training services required by law to meet state and/or Federal performance measures for the programs identified in Section IX, paragraph B, subparagraph 4 of this Agreement. Neither a PACIA nor its agent or contractor may be designated as a TPE.

DD. “**VR Record of Service**” is the record of service that a VR agency must maintain for each applicant and recipient of services under the VR program that satisfies the requirements of 34 CFR 361.47.

EE. “**Wage Data**” are individually-identifiable information reported quarterly by employers as required by sec. 1137(a)(3) of the SSA [42 USC 1320b-7], including, but not limited to: employer names and employee names, SSNs, FEINs, state tax ID numbers, and associated wages. Wage Data also include information identifying the industry sectors in which an employee works, as identified by the North American

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Industry Classification System (or “NAICS”) codes when such codes are combined with other identifying information. Wage Data are confidential UC information under 20 CFR part 603.

## **VI. Authorized Representative Designation under FERPA**

FERPA is a Federal statute that, among other items, protects an individual student’s right to the privacy of his/her Education Records and the PII contained therein. FERPA protects Education Records and PII from these Education Records from being disclosed without the prior signed and dated written consent of a parent or “eligible student” (as defined in FERPA), unless an exception to FERPA’s written consent requirement applies. [34 CFR 99.30(a) and 34 CFR 99.31]. Pursuant to one such exception, the Audit and Evaluation exception, a state educational authority may, if certain conditions are satisfied, non-consensually disclose PII from Education Records to its Authorized Representative in connection with an audit or evaluation of Federal- or state-supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs. [34 CFR 99.31(a)(3) and 99.35].

*SWIS Data Sharing Agreement/FERPA Written Agreement* (Annex 1). By entering into the Annex 1, PACIAs that constitute “state educational authorities” under FERPA will designate certain entities that will have access to PII from Education Records under the terms of the Agreement as their Authorized Representatives in order to comply with FERPA’s Audit and Evaluation exception to the requirement of written consent. Additionally, Annex 1 incorporates the FERPA requirements for a written agreement to ensure compliance with FERPA of the ICON grantee and those Authorized Representatives who are parties to this Agreement. Annex 1 is incorporated by reference herein.

*Supplemental FERPA Agreement* (Attachment 1). Attachment 1 must be completed by the subset of Access PACIAs that do not constitute “state educational authorities” under FERPA and are not designated in Annex 1 as Authorized Representatives of Non-Access PACIAs that are “state educational authorities” under FERPA. This subset of Access PACIAs must be designated as the state educational authority’s “Authorized Representative” to permit disclosure of FERPA-protected PII by such state educational authority to the Access PACIA and to permit the Access PACIA to further designate certain other entities that are parties to this Agreement and the ICON grantee as additional Authorized Representatives of the “state educational authority” for purposes of further PII re-disclosure through the SWIS Clearinghouse. Additionally, Attachment 1 incorporates the FERPA requirements for a written agreement between these state educational authorities and Access PACIAs. If completed, Attachment 1 is incorporated by reference herein.

## **VII. SWIS Governance**

A SWIS Advisory Group shall be established to provide a venue for communication (including notice of any termination or suspensions implemented in accordance with Section XIV of this

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Agreement), discussion of SWIS operations, recommendations for improvement, and other SWIS-related policy and operational issues.

**A. Membership:** The Advisory Group shall consist of:

1. **Signatory States:** Each state with agencies that are party to this Agreement must designate at least one representative for each signed PACIA and SUIA to represent its state on the Advisory Group. Each such representative on behalf of a state PACIA or the state's SUIA must be an employee of that state.
2. **ETA:** ETA shall designate one (1) officer or employee representative to the Advisory Group. Additionally, ETA shall provide up to five (5) support staff (including Federal unemployment insurance and legal staff) to support the Advisory Group as part of ETA's roles and responsibilities defined in Subparagraph C below and elsewhere in the Agreement.
3. **OCTAE:** OCTAE shall designate one (1) officer or employee representative to the Advisory Group. Additionally OCTAE shall provide up to one (1) support staff to support the Advisory Group as part of OCTAE's roles and responsibilities defined in Subparagraph C below and elsewhere in the Agreement.
4. **OSERS/RSA:** OSERS/RSA shall designate one (1) officer or employee representative to the Advisory Group. Additionally, OSERS/RSA shall provide up to one (1) support staff to support the Advisory Group as part of OSERS/RSA's roles and responsibilities defined in Subparagraph C below and elsewhere in the Agreement.
5. **ED's Chief Privacy Office,** or office charged with administering FERPA, shall designate one (1) officer or employee representative with knowledge of FERPA to the Advisory Group.
6. **ICON grantee (or the Operations Contractor)** will participate in the Advisory Group meetings in a support role.

**B. Meetings and Communication of the SWIS Advisory Group:**

1. The Advisory Group will convene at least semi-annually either in person or via a conference call. In-person meetings will be held in conjunction with other meetings to conserve state travel resources to the extent possible.
2. Additional in-person meetings or conference calls may be convened upon the majority concurrence of the Advisory Group or if ETA, OCTAE, or OSERS/RSA determines that the Advisory Group should meet due to time-sensitive issues, such as



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the termination or suspension of a party to this Agreement in accordance with Section XIV of this Agreement.

3. In the event that a party notifies in writing the SWIS Advisory Group of its intention to terminate this Agreement in accordance with Section XIV of this Agreement, the Advisory Group must notify the affected state(s) of the termination. The SWIS Advisory Group must provide written notice to the affected state(s) at least thirty (30) calendar days prior to the effective date of the termination, or as soon as practicable given the circumstances necessitating the termination, so that all parties in the state(s) can plan accordingly.
4. All parties to the Agreement shall maintain current contact information in accordance with Section XXIII of this Agreement.

**C. Roles and Responsibilities of the SWIS Advisory Group:**

1. Signatory PACIA(s) and SUIA(s) in a state: Shall be active participants in the Advisory Group, and shall provide timely feedback as requested.
2. ETA:
  - a. Will provide timely logistical support to the Advisory Group, e.g., notice of meetings, draft agendas, and meeting minutes.
  - b. After each meeting or call, ETA shall provide a draft report of the meeting or conference call to group members within thirty (30) calendar days. Advisory Group members will have fifteen (15) business days to comment on the draft report.
3. OCTAE: Shall be active participants in the Advisory Group, and shall provide timely feedback as requested. OCTAE support staff assigned to the Advisory Group will assist ETA in providing logistical support to the Advisory Group and in the development of draft reports of the meetings or conference calls.
4. OSERS/RSA: Shall be active participants in the Advisory Group, and shall provide timely feedback as requested. The OSERS/RSA support staff assigned to the Advisory Group will assist ETA in providing logistical support to the Advisory Group and in the development of draft reports of the meetings or conference calls.
5. ED's Chief Privacy Office: Shall be active participants in the Advisory Group, and shall provide timely feedback as requested.

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## **VIII. Responsibilities of the Parties**

The parties to this Agreement shall have the following responsibilities in connection with the operation, management, and administration of the SWIS:

A. **SUIAs** shall be responsible for:

1. Providing ETA with a properly executed Acknowledgement of Confidentiality, as set forth at Annex 2 of this Agreement, for each SUIA employee, agent, or contractor authorized to respond to SWIS Queries.
2. Transmitting to the ICON grantee or its Operations Contractor, on a quarterly basis, the SSNs of all individuals for whom employers have reported wages for inclusion in the DDBI. The SSNs shall be submitted no later than the quarterly upload date set by the ICON grantee or its Operations Contractor and shall cover a period established by the ICON grantee or its Operations Contractor.
3. Ensuring that the costs associated with any disclosure of Wage Data for SWIS purposes, if more than an incidental amount of staff time or nominal processing costs, will be covered from a source other than the state's UC grant.
4. Providing appropriate data to all other states participating in the SWIS by providing to the SWIS Clearinghouse a complete, timely, and accurate Reply to Queries for appropriate Wage Data.
5. Ensuring that there are internal security measures in place that prevent the unauthorized disclosure of SSNs obtained from PACIAs participating in the SWIS; and, that such security measures comply with the confidentiality provisions set forth in this Agreement and 20 CFR part 603, 20 USC 1232g and 34 CFR part 99, and 34 CFR 361.38.
6. Ensuring that their employees, agents, or contractors working with the SWIS comply with the standards and guidelines for the handling of confidential UC data, Personal Information from VR Records, and PII from Education Records as discussed in Section XI of this Agreement, as well as any additional rules established by the SUIA, that are consistent with 20 CFR part 603, 20 USC 1232g and 34 CFR part 99, and 34 CFR 361.38 to protect the confidentiality of data exchanged through SWIS.
7. Ensuring that prior to any transfer of data from an Access SUIA to a Non-Access SUIA, encryption is applied with a strong password that, at minimum, meets the standards established by the National Institute of Standards and Technology (NIST).
8. Cooperating with CCRs as described in Section XIII.

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9. Cooperating with on-site inspections by representatives of other states participating in the SWIS, as required by 20 CFR 603.10(b)(1)(vi).

**B. PACIAs** shall be responsible for:

1. Providing ETA with a properly executed Acknowledgement of Confidentiality, as set forth at Annex 2 of this Agreement, for each PACIA employee, agent, or contractor who is authorized to carry out PACIA functions under this Agreement, including Requests for data from the SWIS Clearinghouse or transmitting other data or information as part of a SWIS data Request.
2. Presenting to the SWIS Clearinghouse only those Requests for Wage Data allowable under the terms of this Agreement.
3. Compensating their SUIA for costs incurred from participation in SWIS, as required in 20 CFR 603.8. PACIAs within a state are responsible for reimbursement of costs to the SUIA in their state only. PACIAs must also ensure that their own costs of participation in the SWIS, including the responsibilities under this Agreement to query, de-identify information, and transmit results to other entities, are supported in a manner that complies with any legal restrictions on the use of Federal funding.
4. Ensuring that their employees, contractors, and agents working with the SWIS comply with the standards and guidelines for the handling of Wage Data, VR Personal Information, and FERPA's requirements for disclosure of PII from Education Records, consistent with 20 CFR part 603, 20 USC 1232g and 34 CFR part 99, and 34 CFR 361.38 to protect the confidentiality of data exchanged through the SWIS.
5. Ensuring that prior to any transfer of Wage Data from an Access PACIA to a Non-Access PACIA or to any other entity permitted to receive such data under this Agreement, encryption is applied with a strong password that, at minimum, meets the standards established by the NIST.
6. Preparing Aggregate Data from Wage Data received through the SWIS Clearinghouse, for (a) use in preparing program performance reports and individual records (the PIRL data) for DOL and ED for their respective programs, according to dates established in reporting guidelines issued by ETA, OCTAE, and/or OSERS/RSA; (b) transmission to the programs and TPEs described in Sections IX.B.3 and IX.B.4 of the SWIS Agreement; and (c) approved research and evaluation under Section IX.E.
7. Cooperating with CCRs as described in Section XIII.

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8. Cooperating with on-site inspections by representatives of other states participating in the SWIS as required by 20 CFR 603.10(b)(1)(vi).
- C. **ETA** shall be responsible for the overall administration and management of the SWIS, which shall include the following:
1. Communicating with states, other Federal agencies, the Congress, and other interested public and private parties regarding the operation of the SWIS.
  2. Facilitating the exchange of Wage Data, PII from Education Records, and Personal Information from VR Records through the SWIS by: (a) obtaining executed SWIS Data Sharing Agreements/FERPA Written Agreements (Annex 1), and any Supplemental FERPA Agreements (Attachment 1) to the SWIS Data Sharing Agreement needed by those PACIAs that do not constitute “state educational authorities” under FERPA in a participating state, (b) enforcing requirements regarding passwords, encryption, and usernames, (c) revising the SWIS Data Sharing Agreement, as appropriate, and notifying the participating states of agreed-upon changes to the SWIS Data Sharing Agreement, (d) training SWIS staff in confidentiality requirements, (e) responding to questions and complaints about the confidentiality of the Wage Data exchanged through the SWIS, and (f) referring questions or complaints about the confidentiality of the PII from Education Records exchanged through the SWIS to the Office of the Chief Privacy Officer, or office charged with administering FERPA, at ED and about the confidentiality of Personal Information from VR Records to ED’s OSERS/RSA.
  3. Perform or contract for an agent or contractor to conduct joint CCRs, as described in Section XIII of this Agreement, in order to ensure the confidentiality of the Wage Data, PII from Education Records, and Personal Information from VR Records exchanged through the SWIS, in coordination with OCTAE and OSERS/RSA.
  4. Continuously improving the SWIS in collaboration with the Operations Contractor and the states participating in the SWIS under this Agreement. In some instances, this may include amending this Agreement in accordance with the procedure outlined in Section XV of this Agreement.
  5. Providing information to the participating states on SWIS operation and its value in meeting performance measures and reporting requirements.
  6. Coordinating the process for the distribution of research proposals seeking to use Wage Data obtained through SWIS. This includes distributing proposals to the appropriate agencies of the affected SWIS states for consideration and governing the

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disposition of the research proposals generated by a SUIA, PACIA, ETA, OCTAE, or OSERS/RSA.

7. Providing appropriate monetary resources at the Federal level to support the operational infrastructure of SWIS to allow the exchange of Wage Data between participating states.
  8. ETA will notify parties of any change in the ICON Grantee's Operations Contractor during the quarterly Advisory Group meetings in addition to an email notification.
- D. **OCTAE** shall be responsible for supporting ETA in its overall administration and management of the SWIS through coordination and consultation and by:
1. Communicating with states, other Federal agencies, the Congress, and other interested public and private parties regarding the operation of the SWIS.
  2. Facilitating the confidentiality of Wage Data, PII from Education Records, and Personal Information from VR Records exchanged through the SWIS by: (a) assisting, as appropriate, in any revisions of Annex 1 and Attachment 1 to the SWIS Data Sharing Agreement that may be needed by PACIAs that do not constitute "state educational authorities" under FERPA, (b) notifying the participating states of agreed-upon changes to the SWIS Data Sharing Agreement, (c) training SWIS staff in confidentiality requirements relevant to the AEFLA program, (d) responding to questions and complaints about the confidentiality of the Wage Data exchanged through the SWIS, (e) referring questions related to the access of Wage Data to the Department of Labor, and (f) referring questions or complaints about the confidentiality of the PII from Education Records exchanged through the SWIS to the Office of the Chief Privacy Officer, or office charged with administering FERPA, at ED and about the confidentiality of Personal Information from VR Records to ED's OSERS/RSA.
  3. Perform or contract for an agent or contractor to conduct joint CCRs, as described in Section XIII of this Agreement, in order to ensure the confidentiality of the Wage Data, PII from Education Records, and Personal Information from VR Records exchanged through the SWIS, in coordination with ETA and OSERS/RSA.
  4. Continuously improving the SWIS in collaboration with the ICON grantee or its Operations Contractor, and the participating SWIS states. In some instances, this may include amending the Agreement in accordance with the procedure outlined in Section XV of this Agreement.

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5. Providing information to the participating states on the SWIS operation and its value in meeting performance measures and reporting requirements.
  6. Assisting with the process for the distribution of research proposals to the appropriate agencies of the affected SWIS states for consideration, and governing the disposition of the proposals generated by a SUIA, PACIA, ETA, OCTAE, or OSERS/RSA.
  7. Providing appropriate monetary resources at the Federal level to support the operational infrastructure of SWIS to allow the exchange of Wage Data between participating states. In the event that ED lacks fiscal resources to support OCTAE's continued participation in the SWIS, OCTAE's participation in the SWIS will be terminated or suspended as discussed in Section XIV.
- E. **OSERS/RSA** shall be responsible for supporting ETA in its overall administration and management of the SWIS through coordination and consultation and by:
1. Communicating with states, other Federal agencies, the Congress, and other interested public and private parties regarding the operation and of the SWIS.
  2. Facilitating the confidentiality of Wage Data, PII from Education Records, and Personal Information from VR Records exchanged through the SWIS by: (a) assisting, as appropriate, in any revisions of Annex 1 and Attachment 1 to the SWIS Data Sharing Agreement that may be needed by PACIAs that do not constitute "state educational authorities" under FERPA, (b) notifying the participating states of agreed-upon changes to the SWIS Data Sharing Agreement, (c) training SWIS staff in confidentiality requirements relevant to the VR program, (d) responding to questions and complaints about the confidentiality of the Wage Data exchanged through the SWIS, (e) referring questions related to the access of Wage Data to the Department of Labor, and (f) referring questions or complaints about the confidentiality of the PII from Education Records exchanged through the SWIS to the Office of the Chief Privacy Officer, or office charged with administering FERPA, at ED.
  3. Perform or contract for an agent or contractor to conduct joint CCRs, as described in Section XIII of this Agreement, in order to ensure the confidentiality of the Wage Data, PII from Education Records, and Personal Information from VR Records exchanged through the SWIS, in coordination with ETA and OCTAE.
  4. Continuously improving the SWIS in collaboration with the ICON grantee or its Operations Contractor, and the participating SWIS states. In some instances, this may include amending the Agreement in accordance with the procedure outlined in Section XV of this Agreement.
  5. Providing information to the participating states on the SWIS operation and its value in meeting performance measures and reporting requirements.

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6. Assisting with the process for the distribution of research proposals to the appropriate agencies of the affected SWIS states for consideration, and governing the disposition of the proposals generated by a SUIA, PACIA, ETA, OCTAE, or OSERS/RSA.
7. Providing appropriate monetary resources at the Federal level to support the operational infrastructure of the SWIS to allow the exchange of Wage Data between participating states. In the event that ED lacks fiscal resources to support OSERS/RSA's continued participation in the SWIS, OSERS/RSA's participation in the SWIS will be terminated or suspended as discussed in Section XIV.

**F. ICON grantee shall be responsible for:**

1. Signing and complying with the security requirements as set forth in the ICON grant agreement and terms of this Agreement.
2. Operating the ICON system. The ICON system may be operated by the ICON grantee directly or the ICON grantee may enter into a third party contract with another entity to operate the ICON system.
3. Entering into a written agreement with the contractor documenting, among other things, the terms under which the contractor is authorized to receive and use such PII in accordance with FERPA, in the event that the ICON grantee outsources operation of the ICON system to a third party contractor, as a result of which said contractor receives access to PII from student Education Records and Wage Data. Any such written Agreement must satisfy the requirements set forth in 34 CFR 99.35; 20 CFR 603; and 34 CFR 361.38 and require that the contractor comply with the protections established in this Agreement, and any annex and supplement to this Agreement, as applicable. The third party contractor operating the ICON system may change during the term of the Agreement.

## **IX. Disclosures under the SWIS**

**A.** Requirements for Disclosure of PII from Education Records. Disclosures of PII from Education Records made under this Agreement for the purposes outlined in this Section must be made in accordance with the Audit or Evaluation exception under FERPA [20 USC 1232g(b)(1)(C), (b)(3) and (b)(5); 34 CFR 99.31(a)(3) and 99.35] or an entity disclosing such PII must have the appropriate, written consent from the individual student whose PII is to be disclosed.

**B.** Programs for which Access PACIA may obtain Wage Data. Subject to paragraph A above, an Access PACIA under this Agreement is authorized to obtain Wage Data through the SWIS Clearinghouse, for itself or another PACIA, for the purposes of authorized

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performance reporting required by Federal or state law or regulation for the programs listed in subparagraphs 1 through 4 below.

While Wage Data may be obtained on behalf of all of the programs listed in this paragraph, the entities operating the programs listed in subparagraphs 3 and 4 below may only receive Aggregate Data. Programs listed in subparagraphs 1 and 2 may obtain individual level Wage Data.

1. Wage Data disclosure to state and local programs administered by DOL:
  - a. WIOA Title I Adult program [title I of WIOA, subtitle B, chapter 3]
  - b. WIOA Title I Dislocated Worker program [title I of WIOA, subtitle B, chapter 3]
  - c. WIOA Title I Youth program [title I of WIOA, subtitle B, chapter 2]
  - d. WIOA Title I National Dislocated Worker Grants program [title I of WIOA, subtitle D, Sec. 170] in which the grantee is a state
  - e. The Wagner-Peyser Act, as amended by title III of WIOA [29 USC 49 et seq.], Employment Service program
  - f. The Jobs For Veterans State Grants program, [chapter 41 of title 38 of the United States Code]
  - g. The Trade Adjustment Assistance (TAA) program [chapter 2 of title II of the Trade Act of 1974, as amended, (19 USC 2271 et seq.)]
2. Wage Data disclosure to state and local programs administered by ED:
  - a. The AEFLA program [title II of WIOA]
  - b. Career and technical education programs authorized under the Carl D. Perkins Career and Technical Education Act of 2006, as amended by the Strengthening Career and Technical Education for the 21st Century Act [20 USC 2301 et seq.]
  - c. The VR program authorized under title I of the Rehabilitation Act of 1973 [29 USC 720 et seq.], as amended by title IV of WIOA

3. Aggregate Data Disclosures to DOL programs not administered by a public official:

The following programs administered by DOL through grants and contracts may only receive Aggregate Data (These entities may also qualify as Third-Party Entities as described in subparagraph B.4 below.):

- a. The Senior Community Service Employment Program [title V of the Older Americans Act of 1965, as amended [42 USC 3056 et seq.]]
- b. The Job Corps program [title I of WIOA, subtitle C]



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- c. The National Farmworker Jobs Program (Migrant Seasonal Farmworkers Program) [title I of WIOA, subtitle D, Sec. 167]
  - d. The Indian and Native American program(s) (Adult and Youth) [title I of WIOA, subtitle D, Sec. 166]
  - e. The YouthBuild program [title I of WIOA, subtitle D, Sec. 171]
  - f. The Reentry Employment Opportunities program [Sec. 212 of the Second Chance Act of 2007 [34 USC 60532, repealed by Sec. 504(a) of the First Step Act of 2018, Pub. Law 115-391 (Dec. 21, 2018)]
  - g. Programs authorized under H-1B job training grants [American Competitiveness and Workforce Improvement Act, 29 USC 3224a]
  - h. The Registered Apprenticeship program [division H, title I of the National Apprenticeship Act, 29 USC 50]
  - i. Programs authorized under Sec. 169 of WIOA [29 USC 3224]
  - j. WIOA Title I National Dislocated Worker Grants program under title I of WIOA, subtitle D, Sec. 170, in which the grantee is not a state.
4. Aggregate Data Disclosures to TPEs:

The programs described in subparagraphs (a) through (k) below (and those listed in subparagraphs (3)(a) through (3)(j) above) and administered by authorized TPEs may only receive Aggregate Data for the purpose of satisfying Federal or state performance reporting requirements, provided that the PACIA has voluntarily entered into an agreement with the TPE or ETA that sets forth terms and conditions for such data sharing consistent with the terms of this Agreement and with 20 CFR part 603, 20 USC 1232g and 34 CFR part 99, and 34 CFR 361.38 as applicable.

The authority of a PACIA to access the SWIS Clearinghouse to submit a Request for a program administered by a TPE is limited by Federal appropriations law. A PACIA may only query the SWIS Clearinghouse on behalf of TPEs if such queries do not result in more than a *de minimis* cost to the ICON system. ETA will notify all parties to the Agreement if the costs associated with TPE queries exceed this standard and suspend the PACIAs' ability to submit this category of Requests to the SWIS Clearinghouse.

- a. Any program listed in Section IX.B of this Agreement that is not administered by an entity designated as a PACIA under this Agreement
- b. Employment and training activities carried out under the Community Services Block Grant Act [42 USC 9901 et seq.]
- c. Employment and training programs operated by the U.S. Department of Housing and Urban Development
- d. The Temporary Assistance for Needy Families program [42 USC 603(a)(5)]

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- e. Employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency Program established under Sec. 1148 of the Social Security Act [42 USC 1320b-19]
- f. Employment and training programs carried out by the U.S. Small Business Administration
- g. Programs authorized under Sec. 6(d)(4) of the Food and Nutrition Act of 2008 [7 USC 2015(d)(4)]
- h. Programs authorized under the National and Community Service Act of 1990 [42 USC 12501 et seq.]
- i. Work programs as defined in Sec. 6(o)(1) of the Food and Nutrition Act of 2008 [7 USC 2015(o)(1)]
- j. The Supplemental Nutrition Assistance Program
- k. Employment, education, and training programs provided by public libraries.

**C. Other Permissible Data Disclosures.** Subject to Section IX, paragraph A above, an Access PACIA is authorized to obtain Wage Data through the SWIS Clearinghouse for the following purposes:

1. To allow the PACIAs to comply with requirements affecting the SWIS that are set forth in any of the following: (i) Federal law; (ii) regulations promulgated by the Secretary of Labor, (iii) separate policy decisions issued by the Secretary of Labor or Education, (iv) jointly issued regulations promulgated by the Secretary of Labor and Secretary of Education; and (v) jointly issued policy decisions issued by the Secretary of Labor and Secretary of Education;
2. To assess the performance of individual training providers under WIOA Section 122 and eligible training providers under WIOA Section 116, and to provide Aggregate Data to such providers;
3. As necessary, assist the ICON grantee or the Operations Contractor with operating and troubleshooting the SWIS;
4. As necessary for internal administrative use by VR agencies for purposes directly connected with seeking reimbursements from the Social Security Administration for the cost of providing VR services to Supplemental Security Income and/or Social Security Disability Insurance recipients when those services have assisted the recipients to achieve employment outcomes under the VR program. VR agencies shall only use such information for this reimbursement purpose when the information has been previously obtained for performance reporting purposes pursuant to this Agreement.

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#### **D. Re-Disclosure under the SWIS**

1. **Non-Access PACIA.** Re-Disclosure of Wage Data, from an Access PACIA to a Non-Access PACIA is allowed under this Agreement with the following limitations:
  - a. The re-disclosure is made for the purposes of carrying out activities on behalf of the programs listed in Section IX, paragraphs B and C above.
  - b. All PACIAs must adhere to the requirements of this Agreement.
  
2. **Agents and Contractors**
  - a. A PACIA may redisclose Wage Data obtained under this Agreement to an agent or contractor with the responsibility for compiling and maintaining performance reports in accordance with relevant law, including 20 CFR 603, and to the extent authorized by this Agreement and subject to the limitations set forth in this Section.
  - b. A SUIA may redisclose data obtained through this Agreement to an agent or contractor in accordance with relevant law, including 20 CFR 603, to the extent authorized by this Agreement and subject to the limitations set forth in this Section.
  - c. In no circumstance may an agent or contractor of a PACIA or a SUIA directly access the SWIS Clearinghouse.
  - d. An Access PACIA may not disclose Wage Data obtained on behalf of a Non-Access PACIA to the Access PACIA's agent or contractor. Wage Data obtained on behalf of a Non-Access PACIA may only be disclosed to: (i) the Non-Access PACIA that originated the Request as provided in subparagraph D.1. above, or (ii) the agent or contractor of the Non-Access PACIA that originated the Request, provided that there is an agreement in place between the Non-Access PACIA and its agent or contractor as described in subparagraph D.2.e. below.
  - e. PACIA and SUIA agents or contractors that have access to Wage Data obtained from the SWIS Clearinghouse or through any activities pursuant to this Agreement must have entered into an agreement with that PACIA or SUIA that satisfies the requirements of 20 CFR part 603.10, 20 USC 1232g and 34 CFR part 99, and that incorporates by reference the terms and conditions of this Agreement.

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- f. PACIAs and SUIAs must ensure that each staff member of any agent or contractor that interacts with or has access to data obtained through the SWIS Clearinghouse has reviewed, understands, and has signed the Acknowledgement of Confidentiality form set forth at Annex 2 of this Agreement.
3. **Routine Use Disclosure of RSA-911 Data.** Under Sec. 131 of the Rehabilitation Act [29 USC 751], the Secretary of Education and the Secretary of the Department of Health and Human Services (HHS) must enter into a memorandum of understanding (MOU) for the purpose of exchanging data of mutual importance that concern participants of the VR program and that are data maintained by OSERS/RSA and SSA. To effectuate the data exchange necessary under Sec. 131 of the Rehabilitation Act, ED has entered into and maintains an MOU with HHS and SSA for the exchange of RSA-911 data with data held by SSA. The RSA-911 data include individual-level Wage Data obtained pursuant to this Agreement. ED's OSERS/RSA may re-disclose individual-level Wage Data obtained pursuant to this Agreement and submitted by states within the RSA-911 to HHS and SSA pursuant to MOUs that satisfy the requirements of 20 CFR 603.10, and consistent with the "routine use" disclosures published in the RSA-911 System of Records Notice.
4. **Only Expressly Permitted Re-Disclosures.** Any re-disclosure not described in this Section IX.D., is prohibited.

#### **E. Research and Evaluation under the SWIS**

Under this Agreement, PACIAs may query the SWIS Clearinghouse for the purposes of research and evaluation. However, approval must be obtained from ETA, OCTAE, and/or OSERS/RSA prior to the submission of a query for Wage Data for the purpose of research and evaluation. All research and evaluation proposals submitted to ETA, OCTAE, and/or OSERS/RSA must include the elements required below and must demonstrate a direct benefit to one or more of the programs or activities described in subparagraphs 1 through 4 of paragraph B and subparagraph 1 of paragraph C in Section IX of this Agreement.

1. Utilizing Wage Data for research and evaluation under this Agreement is subject to the limitations set forth below:
  - a. The research and evaluation must relate to one or more programs or an activity set forth in Section IX, paragraph B and subparagraphs C.1. and C.2.;
  - b. The express written voluntary consent of each participating state whose data are to be used for the research and evaluation must be obtained in advance;
  - c. A state that has elected to participate in research proposals may only share its own Wage Data, and not any other state's Wage Data that is obtained through the SWIS, for such purpose;

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- d. Entities approved for research and evaluation must provide ETA with a signed Acknowledgement of Confidentiality Requirements and Restrictions form found in Annex 2 of this Agreement;
  - e. All Wage Data for approved research purposes must be stored in an area that is physically safe and electronically safe (including appropriate encryption) from access by unauthorized persons at all times;
  - f. Wage Data for approved research purposes must have a clear retention and destruction period;
  - g. All Wage Data for approved research purposes shall be transmitted only to the PACIA;
  - h. Only a PACIA and its agent or contractor may have access to individual level Wage Data obtained for such purposes; and
  - i. Only a PACIA may have direct access to the SWIS for approved research and evaluation purposes; no agent or contractor may have direct access to the SWIS.
2. To obtain consent for conducting research and evaluation under this Agreement the requesting PACIA must:
- a. Present notice to the SWIS Advisory Group of its intent to conduct a research or evaluation project using the SWIS. Such notices must include:
    - (i) purpose of the study and the authorized program under this Agreement for which it will be used, including, if applicable, the statutory or regulatory authority for conducting the research or evaluation
    - (ii) identification of the states whose data are being requested for the study and copies of each state's express, written voluntary consent
    - (iii) the time period of the study and approximate number of queries needed
    - (iv) identification of who will receive the data; identification of how the data will be used
    - (v) an explanation of the controls and security measures to be in place for the data
    - (vi) identification of the time period for which the data will be held; not to exceed three (3) years following the close of the period of performance for the study
    - (vii) an explanation of retention and destruction procedures.
  - b. ETA will facilitate the dissemination of the notice to the affected states and the SWIS Advisory Group, including OCTAE and OSERS/RSA.

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- c. A meeting will be convened by ETA to allow affected states and relevant Advisory Group members an opportunity to request clarification and further explanation.
- d. If an affected state consents to the research and evaluation proposal, the state will use the notification document described in subparagraph (a) above to indicate its consent.
- e. Affected states have thirty (30) calendar days to review and make proposed changes to the consent notice.
- f. ETA, and where appropriate, ETA's contractor will facilitate the exchange of comment and responses.
- g. At the close of the 30-calendar day review period, consenting states will submit to the requesting PACIA via ETA, electronic versions of signed consent notices. If costs are incurred due to research provisions, even nominal costs, SUIA's must seek remuneration for these costs in accordance with state policies and procedures for such remuneration. SUIAs may seek remuneration either through their state PACIA arrangements or through the requesting state(s).
- h. At any time during the conducting of such studies a state participating in the research study may request a meeting with the requesting PACIA.
- i. At any time during a research study, an affected state may withdraw consent with written notice to the requesting PACIA and ETA, and OCTAE or OSERS/RSA, as appropriate.

F. **ETA, OCTAE, or OSERS/RSA** use of Wage Data. ETA, OCTAE, or OSERS/RSA may also use Wage Data reported by states, as applicable, in accordance with requirements of Section 116 of WIOA for research and evaluation, subject to the same limitations set forth for PACIAs above in paragraph E of this Section IX.

## **X. Operation of the SWIS**

The following describes how the SWIS operates, including how Requests for Wage Data are submitted and processed:

- A. In general, the ICON process is as follows:
  1. The SUIA shall submit, in a timely manner, to the SWIS Clearinghouse the SSNs of all individuals for whom employers have reported wages for a period identified by the ICON grantee or its Operations Contractor. Such transmissions shall be made no later than the quarterly upload date established by the ICON grantee or its Operations Contractor.
  2. The data obtained from the SUIAs will be grouped by reporting state and included in the DDBI by the ICON grantee or its Operations Contractor.

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B. SWIS processes on the ICON platform are as follows:

1. An Access PACIA transmits a Request for Wage Data containing SSNs to the SWIS Clearinghouse for the purposes permitted in Section IX above.
2. The SWIS Clearinghouse assigns a unique identifier to each Request.
3. The SWIS Clearinghouse makes an inquiry to the DDBI to determine the states that have Wage Data associated with the SSNs contained in the Request.
4. The SWIS Clearinghouse periodically consolidates Requests into Queries to be sent to SUIA(s) identified as holding pertinent Wage Data. Consolidation consists of creating Queries containing SSNs from different PACIAs that are for Wage Data held by the same SUIA.
5. The SWIS Clearinghouse transmits Queries to the appropriate SUIAs for processing. The SWIS Clearinghouse maintains a copy of each Query sent to a SUIA until the SWIS Clearinghouse receives a Reply.
6. The SUIA(s) then processes Queries and creates and sends Replies containing Wage Data to the SWIS Clearinghouse.
7. The SWIS Clearinghouse verifies the source of the Reply, extracts the Wage Data from the Reply, and temporarily stores the Wage Data.
8. The SWIS Clearinghouse compares pending Requests with Wage Data received from the SUIAs' Replies and if matches are found, the SWIS Clearinghouse sends Wage Data to the Requesting Access PACIA in the form of a Result.
9. The Access PACIA receives the Result and, when applicable, transmits it to the Non-Access PACIA(s) that sought the information.
10. The PACIA uses the information in Results in preparing reports as described in Section IX of this Agreement.
11. The SWIS Clearinghouse only keeps a copy of each Result it provides to a requesting PACIA until the Result has been downloaded by the PACIA. The Access PACIA originally requesting the Wage Data will receive an electronic message reminding it that the data are now available. If the data have not been

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downloaded within ten (10) business days of being made available, the response file will permanently be removed from the SWIS Clearinghouse.

12. The SWIS Clearinghouse provides ETA with periodic reports detailing the volume of SWIS activity during the reporting period for ETA's use in preparing reports.

## **XI. Confidentiality and Restrictions on Use of DDBI Information, Wage Data, PII from Education Records, and Personal Information from VR Records**

In addition to the use of the DDBI for the processing of Requests, the SSNs contained in the DDBI shall be available for the use by an agency charged with administration of a state's unemployment insurance program to identify other states having data needed for: unemployment insurance claims administration, fraud detection, and benefit overpayment collection through the ICON system.

All parties to this Agreement recognize that confidentiality of Wage Data, PII from Education Records, and Personal Information from VR Records, is of paramount importance and that disclosure of any such information is only allowed consistent with the terms of this Agreement, or as required by law.

All data exchange activity by the SUIA and the PACIA conducted through the SWIS will be conducted in a manner consistent with applicable Federal and state laws. All such activity conducted by ETA, OCTAE, and OSERS/RSA and their agents and contractors will be performed in a manner consistent with the Privacy Act of 1974, as amended [5 USC 552a], FERPA [20 USC 1232g and 34 CFR part 99], and the confidentiality requirements set forth in 34 CFR 361.38 and 20 CFR part 603, as applicable. Any further re-disclosure not described in Section IX.D of this Agreement is prohibited. The parties agree to take all necessary steps to protect such confidentiality by complying with or providing the necessary technical assistance to states to comply with the laws applicable to their handling of confidential information including 20 CFR part 603, 20 USC 1232g and 34 CFR part 99, and 34 CFR 361.38. These responsibilities include:

### **A. SUIA**

1.
  - a. No employee of the SUIA (or its agent or contractor) receiving a Query may duplicate or disseminate the Wage Data, PII from Education Records, or Personal Information from VR Records contained in the Query except to other employees of the SUIA (or its agent or contractor) specifically authorized to receive such data.



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- b. No employee of the SUIA (or its agent or contractor) receiving a Query may duplicate or disseminate the Wage Data, PII from Education Records, or Personal Information from VR Records contained in such Query to anyone outside the SUIA (or its agent or contractor), except where authorized explicitly by this Agreement.
2. The SUIA that receives a Query shall only use information from the Query for the purpose of responding to the Query by transmitting Wage Data in the form of a Reply, and for no other purpose.
3. The SUIA shall retain the Query only for the period of time required to respond with a Reply or respond to any issues regarding the Reply, not to extend beyond ten (10) business days after which period of time the Query shall be deleted, including degaussing magnetic tape files and permanently deleting electronic data as applicable.
4. The SUIA shall store Replies that the SUIA sends to the SWIS Clearinghouse in an area that is physically and/or electronically safe from access by unauthorized persons at all times and may only retain Replies for a period not to exceed ten (10) business days.
5. The SUIA shall not duplicate, disseminate, or create a separate file or system containing the SSNs of individuals about whom the SUIA received a Query for Wage Data as outlined in Section XI.A.4 above.
6. The SUIA shall process the Queries obtained through the SWIS in a manner that will protect the confidentiality of the records and is designed to prevent unauthorized persons from retrieving such records. Queries may be downloaded to, or maintained on, mobile or portable devices only if the queries are encrypted with a strong password that, at minimum, meets the standards established by the NIST. Queries may be accessed only from a secure location.
7. SUIA employees (or its agent or contractor) who will have access to PII from Education Records, and Personal Information from VR Records shall be advised of the confidential nature of the information, the safeguards required to protect the information, and the civil and criminal sanctions for noncompliance with such safeguards that are contained in Federal and state laws. Prior to being able to have access to PII from Education Records, or Personal Information from VR Records, such SUIA employees (or its agent or contractor) shall execute an Acknowledgement of Confidentiality, consistent with the form at Annex 2 of the Agreement.

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8. The SUIA shall permit periodic Federal CCRs by ETA, OCTAE, and OSERS/RSA (or any of these agencies' agents or contractors) consistent with Section XIII of this Agreement.
9. The SUIA shall respond to the ICON grantee or its Operations Contractor for the purpose of correcting system errors or breakdowns, troubleshooting, or testing the system, or for other operational purposes.
10. The SUIA shall report to ETA, in writing, regarding any circumstances adversely affecting its ability to meet the responsibilities or obligations set forth in this Agreement.
11. The SUIA shall ensure that the costs of disclosing Wage Data are paid for from a source other than the state's UC grant.
12. The SUIA shall report to ETA at the earliest available time, but no later than twenty-four (24) hours, consistent with Section XII.A, any identified breach of security of the data governed by this Agreement.

**B. PACIA**

1. No employee of the PACIA may duplicate or disseminate Wage Data received from a SUIA, subject to the following exceptions:
  - a. To other employees of the PACIA (or its agents or contractors) specifically authorized to receive such data; or
  - b. To a Non-Access PACIA, as provided for in Section IX.D.1 of this Agreement; or
  - c. To the ICON grantee or its Operations Contractor for the purpose of performing duties pursuant to the terms of this Agreement; or
  - d. To auditors who are public officials as defined in 20 CFR 603.2(d) (or agents or contractors of those auditors as provided for in 20 CFR 603.5(f)) seeking access to the information in the performance of their official auditing duties; or
  - e. To the Secretary of Labor or Secretary of Education in the form of reports containing individual records (such as the PIRL).
2. Unless covered by one of the exceptions in B.1. above, under no circumstance shall Wage Data obtained through the SWIS be shared with any party outside the PACIA except in the form of Aggregate Statistical Reports.

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3. The PACIA shall not create a separate file or system concerning the individual(s) for whom a SUIA provides Wage Data.
4. The PACIA shall not extract or use information from Wage Data provided by a SUIA for any purpose not stated in this Agreement.
5. The PACIA shall retain the Wage Data received from the SUIA only for the period required to utilize it for assessment and reporting purposes, or to satisfy applicable Federal or state records retention requirements. Thereafter, the Wage Data shall be destroyed, including the degaussing of magnetic tape files and permanent deletion of electronic data. The PACIA shall not retain the records for more than five (5) years from the date the Result is received.
6. The PACIA shall ensure that any information used to create Requests has been obtained and is being transmitted in conformity with applicable confidentiality provisions, including FERPA [20 USC 1232g and 34 CFR part 99], 20 CFR part 603, and 34 CFR 361.38, as well as state laws governing the confidentiality of information in the possession of any entity signed to this Agreement.
7. Access to Wage Data, to any records created from Wage Data exchanged through the SWIS, and to PII from Education Records and Personal Information from VR Records shall be restricted to only those employees of the PACIA (or its agents or contractors) who need it in their official capacity to perform duties connected with implementation of this Agreement.
8. PACIA employees (and any of its agents or contractors) who will have access to Wage Data, PII from Education Records, and Personal Information from VR Records shall be advised of the confidential nature of the information, the safeguards required to protect the information, and the civil and criminal sanctions for noncompliance with such safeguards that are contained in Federal and state laws. Prior to being authorized to have access to Wage Data, PII from Education Records, or Personal Information from VR Records, such PACIA employees (and any agent or contractor) shall execute an Acknowledgement of Confidentiality in the form set forth at Annex 2 of this Agreement.
9. To comply with FERPA's recordkeeping requirements at 34 CFR 99.32, an Access PACIA must keep a record of any other entity to which PII from Education Records is disclosed under the terms of this Agreement or as required by law and said entity's legitimate interests in obtaining this PII from Education Records. This requirement applies, but is not limited to:

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- a. the recordation of, the disclosure of PII from Education Records to the ICON grantee or its Operations Contractor for the purpose of performing duties imposed upon the ICON grantee or its Operations Contractor pursuant to the terms of this Agreement
  - b. any SUIA that receives a Query for Wage Data pursuant to the terms of this Agreement
  - c. any representative of the Secretary of Labor or the Secretary of Education to carry out their duties under the terms of this Agreement. Access PACIAs designated as Authorized Representatives pursuant to Attachment 1, must provide, no less than quarterly, the state educational authority which designated the Access PACIA with the record of disclosures (or with a copy thereof) in order to enable the state educational authority to maintain the record of disclosures in accordance with FERPA.
10. The PACIA shall store Wage Data, PII from Education Records, and Personal Information from VR Records obtained through the SWIS in an area that is physically safe from access by unauthorized persons at all times.
11. The PACIA shall process Wage Data, PII from Education Records, and Personal Information from VR Records obtained through the SWIS Clearinghouse in a manner that will protect the confidentiality of the records and is designed to prevent unauthorized persons from retrieving such records. Any PII from Education Records, Wage Data, or Personal Information from VR Records may be downloaded to, or maintained on, mobile or portable devices only if such data has been encrypted with a strong password that, at minimum, meets the standards established by the NIST. Transfer of Wage Data, PII from Education Records, and Personal Information from VR Records from an Access PACIA to a Non-Access PACIA requires encryption with a strong password that, at minimum, meets the standards established by the NIST. In addition, PACIAs may only access Wage Data, PII from Education Records, and Personal Information from VR Records from secure locations.
12. Wage Data, PII from Education Records, and Personal Information from VR Records obtained by the PACIA through a Request shall not be disclosed to third parties except as permitted under the terms of this Agreement.
13. The PACIA shall permit ETA, OCTAE, and OSERS/RSA (or their agents or contractors) and/or the representatives of any participating state to make onsite inspections during regular business hours for the purpose of conducting program audits and/or to conduct other investigations to ensure that the PACIA is

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complying with the confidentiality requirements described above. In accordance with this responsibility, the PACIA shall make records applicable to this Agreement available to authorized persons for the purpose of inspection, review, and/or audit in accordance with Section XIII of this Agreement.

14. The PACIA shall respond to the ICON grantee or its Operations Contractor for the purpose of correcting system errors or breakdowns, troubleshooting, or testing the system, or for other operational purposes.
15. The PACIA shall report to ETA, OCTAE, or OSERS/RSA in writing, regarding any circumstances adversely affecting the PACIA's ability to meet its responsibilities or obligations under the terms of this Agreement.
16. The PACIA shall report to ETA, OCTAE, and OSERS/RSA at the earliest available time, but no later than twenty-four (24) hours, consistent with Section XII.B, of any identified breach of security of the data governed by this Agreement.

**C. ETA, OCTAE, and OSERS/RSA**

1. Access by ETA, OCTAE, and OSERS/RSA to Wage Data shall be limited to the access necessary for ETA, OCTAE, and OSERS/RSA to carry out their responsibilities for overall administration and management of the SWIS, unless specifically allowed by the terms of this Agreement, including under the research and evaluation procedures set forth in this Agreement.
2. Any reports produced as a result of CCRs conducted by an agent or contractor under a contract with ETA, OCTAE, and OSERS/RSA in accordance with Section XIII.C through E, shall not contain PII, Wage Data or other personal or confidential information obtained from the SWIS.
3. ETA, OCTAE, and OSERS/RSA may not extract or use information from Wage Data for any purpose not stated in this Agreement.
4. ETA, OCTAE, and OSERS/RSA will not create a separate file or system concerning the individuals for whom it may have access to Wage Data except where permitted in this Agreement.
5. Access to Wage Data exchanged through the SWIS shall be restricted to only those employees, agents, and contractors of ETA, OCTAE, and OSERS/RSA who need it to perform their official duties in connection with this Agreement.

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6. ETA, OCTAE, and OSERS/RSA employees, and agents, and contractors of ETA, OCTAE, and OSERS/RSA, who will have access to Wage Data will be advised of the confidential nature of the information, the safeguards required to protect the information, and the civil and criminal sanctions for noncompliance with such safeguards that are contained in Federal and state laws. Such employees, agents, and contractors of ETA, OCTAE, and OSERS/RSA shall execute written confidentiality Agreements acknowledging their understanding of these requirements and their duty to comply with them.
7. Wage Data obtained through the SWIS shall be stored by ETA, OCTAE, and OSERS/RSA in an area that is physically safe from access by unauthorized persons at all times.
8. The Wage Data obtained by ETA, OCTAE, and OSERS/RSA through the SWIS shall be processed in a manner that will protect the confidentiality of the records and is designed to prevent unauthorized persons from retrieving such records. Wage Data may be downloaded to, or maintained on, mobile or portable devices only if the Wage Data are encrypted with a strong password that, at minimum, meets the standards established by the NIST. In addition, Wage Data may only be accessed from secure locations.
9. ETA, OCTAE, and OSERS/RSA shall protect Wage Data from disclosure to third parties consistent with law. ETA, OCTAE, and OSERS/RSA do not have access to Wage Data through the routine operation of the SWIS. ETA's, OCTAE's, and OSERS/RSA's funding of the operation of the SWIS does not establish ETA's, OCTAE's, and OSERS/RSA's control of Wage Data exchanged through the SWIS.
10. As provided in Section IX.E, ETA, OCTAE, and OSERS/RSA may request Wage Data for research and evaluation purposes, subject to the limitations set forth in Section IX. B. Wage Data obtained by ETA, OCTAE, and OSERS/RSA under this provision could be subject to FOIA requests; as such data would be in the physical custody of ETA, OCTAE, and OSERS/RSA. In such instances, ETA, OCTAE, and OSERS/RSA shall not disclose this Wage Data, except where required by Federal law. If disclosure is required, ETA, OCTAE, and OSERS/RSA shall redact any PII or other personal or confidential information contained in the Wage Data prior to disclosure.

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11. ETA, OCTAE, and OSERS/RSA will provide notice to all parties to the Agreement of any disclosure of Wage Data they are required to make to third parties, other than as provided in this Agreement.

## **XII. Breach Procedures and Party Responsibilities**

All parties to the SWIS Agreement must have in place a policy and process in the event of unauthorized access or other breach of confidentiality or of the Agreement that involves all or part of any files or other information, whether in electronic or other format, obtained through the SWIS. This Section outlines the minimum requirements for each party in the event of a breach of data obtained through the SWIS.

- A. SUIA responsibilities for data breach procedures under the SWIS:
  1. A SUIA must maintain a policy for data breach incidents in accordance with applicable state and/or Federal statute and regulations.
  2. A SUIA is responsible for complying, and ensuring its agents' and contractors' compliance, with all of the provisions of this Section.
  3. In the event that a data breach occurs within the SUIA system, the SUIA must comply with state policies and protocols for data breach incidents.
  4. A SUIA must notify ETA of a data breach, or suspected breach, as soon as possible, but no later than twenty-four (24) hours from the time that the breach, or suspected breach, is identified.
    - a. Notification to ETA must include:
      - i. Nature and extent of the breach and description of the data exposed to risk due to the breach.
      - ii. Listing of all other entities whose data have been affected by the breach.
      - iii. Timeline and description of the data breach incident, and proposed timeline of the data breach response and resolution plan.
    - b. ETA may suspend activity with an affected SUIA until ETA determines that the data breach has been resolved and all data are adequately protected.
- B. PACIA responsibilities for data breach procedures under the SWIS:
  1. A PACIA must maintain a policy for data breach incidents in accordance with applicable state and/or Federal statute and regulations.

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2. A PACIA is responsible for complying, and ensuring its agents and contractors compliance, with all of the provisions of this Section.
  3. In the event that a data breach occurs within the PACIA system, the PACIA must comply with state policies and protocols for data breach incidents.
  4. A PACIA must notify the appropriate Federal agency charged with Federal oversight of a program and ETA of a data breach, or suspected breach, as soon as possible, but no later than twenty-four (24) hours from the time that the breach or suspected breach is identified.
    - a. Notifications to Federal agencies and ETA must include:
      - i. Nature and extent of the breach and description of the data exposed to risk due to the breach.
      - ii. Listing of all other entities whose data have been affected by the breach.
      - iii. Timeline and description of the data breach incident, and proposed timeline of the data breach response and resolution plan.
    - b. ETA, OCTAE and OSERS/RSA may suspend activity with an affected PACIA until such time as ETA, OCTAE, and OSERS/RSA, as appropriate, determine(s) that the breach has been resolved and all data are adequately protected.
- C. ICON grantee and its Operations Contractor responsibilities for data breach procedures under the SWIS:
1. The ICON grantee and its contractor must maintain a policy for data breach incidents in accordance with Federal statute and regulations.
  2. In the event that a data breach, or suspected breach occurs within the ICON system that places data exchanged under the SWIS at risk, the ICON grantee and its contractor must comply with ETA, OCTAE, and OSERS/RSA's established policies and protocols for data breach incidents.
  3. The ICON grantee and its contractor must notify ETA, OCTAE and OSERS/RSA as soon as possible, but no later than twenty-four (24) hours from the time that the breach or suspected breach is identified.
    - a. Notifications to Federal parties must include:
      - i. Nature and extent of the breach and description of the data exposed to risk due to the breach.
      - ii. Listing of all other entities whose data has been affected by the breach.



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- iii. Timeline and description of the data breach incident, and proposed timeline for the data breach response and resolution plan.
  - b. ETA, OCTAE and OSERS/RSA may suspend activity on the ICON platform until such time as ETA, OCTAE, and OSERS/RSA, as appropriate, determine that the breach has been resolved and all data are adequately protected.
- D. ETA responsibilities for breach procedures under the SWIS.
  1. ETA will maintain a policy for data breach incidents in accordance with Department of Labor policies and procedures and Federal statute and requirements.
  2. In the event that ETA receives notification of a data breach from any entity under the SWIS, ETA will notify OCTAE and OSERS/RSA as soon as possible, but no later than twenty-four (24) hours from the time ETA receives notification.
  3. ETA, in conjunction with OCTAE and OSERS/RSA, will notify the identified state points of contact for each PACIA and SUIA signatory to the SWIS of the breach or suspected breach within forty-eight (48) hours of ETA's receipt of notice.
    - a. Notifications to states must include:
      - i. Nature and extent of the breach and description of the data exposed to risk due to the breach.
      - ii. Listing of known entities whose data has been affected by the breach.
      - iii. Available information regarding the timeline and description of the data breach incident, and proposed timeline of the data breach response and resolution plan.
      - iv. Notice of any suspension of activity due to the breach.
    - b. ETA, in conjunction with OCTAE and OSERS/RSA, will identify and suspend activity, as they deem appropriate, in order to protect states' data exchanged through the SWIS from further risk or breach. Such suspensions may be:
      - i. Specific state agencies;
      - ii. States; or
      - iii. A universal suspension of activity on ICON.
  4. As necessary, ETA, in conjunction with OCTAE and OSERS/RSA, will work with the party which has identified a data breach or suspected breach and provide a point of coordination for notices to the SWIS signatories.

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5. ETA, in conjunction with OCTAE and OSERS/RSA, will notify state points of contact for each PACIA and SUIA signed to the SWIS of the resolution of such data breach(es).

Notifications to states must include:

- i. Notice of resolution.
- ii. Notice that activities have resumed (if a suspension has occurred) under the SWIS.

E. OCTAE responsibilities for breach procedures under the SWIS:

1. ED will maintain a policy for data breach incidents in accordance with Federal statute and requirements.
2. In the event that OCTAE receives notification of a data breach from any entity under the SWIS, OCTAE will notify ETA and OSERS/RSA as soon as possible but no later than twenty-four (24) hours from the time OCTAE receives notification.
3. OCTAE, in conjunction with ETA and OSERS/RSA, will notify the identified state points of contact for each PACIA and SUIA signed to the SWIS of the data breach or suspected breach within forty-eight (48) hours of OCTAE's receipt of notice.
  - a. Notifications to states must include:
    - i. Nature and extent of the breach and description of the data exposed to the risk due to the breach.
    - ii. Listing of all other entities whose data has been affected by the breach.
    - iii. Established timeline and description of the data breach incident, and proposed timeline of the data breach response and resolution plan.
    - iv. Notice of any suspension of activity due to the breach.
  - b. OCTAE, in conjunction with ETA and OSERS/RSA, will identify and suspend activity, as they deem appropriate, in order to protect states' data exchanged through the SWIS from further risk or breach. Such suspensions may be:
    - i. Specific state agencies;
    - ii. States; or
    - iii. A universal suspension of activity on ICON.
4. As necessary, OCTAE, in conjunction with ETA and OSERS/RSA, will work with the party which has identified a data breach or suspected breach and provide a point of coordination for notices to the SWIS signatories.

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5. OCTAE, in conjunction with ETA and OSERS/RSA, will notify state points of contact for all PACIA and SUIA signatory to the SWIS of the resolution of such data breach(es).

Notifications to states must include:

- i. Notice of resolution.
- ii. Notice that activities have resumed (if a suspension has occurred) under the SWIS.

- F. OSERS/RSA responsibilities and considerations for breach procedures under the SWIS:
  1. ED will maintain a policy for data breach incidents in accordance with Federal statute and requirements.
  2. In the event that OSERS/RSA receives notification of a data breach from any entity under the SWIS, OSERS/RSA will notify ETA and OCTAE as soon as possible but no later than twenty-four (24) hours from the time OSERS/RSA receives notification of the breach.
  3. OSERS/RSA, in conjunction with ETA and OCTAE, will notify the identified state points of contact for each PACIA and SUIA signatory to the SWIS of the data breach or suspected breach within forty-eight (48) hours of OSERS/RSA's receipt of notice.
    - a. Notifications to states must include:
      - i. Nature and extent of the breach and description and proposed timeline of the data exposed to risk due to the breach.
      - ii. Listing of known entities whose data has been affected by the breach.
      - iii. Available information regarding the timeline and description of the data breach incident, and proposed timeline of the data breach response and resolution plan.
      - iv. Notice of any suspension of activity due to the breach.
    - b. OSERS/RSA, in conjunction with ETA and OCTAE, will identify and suspend activity, as they deem appropriate, in order to protect states' data exchanged through the SWIS from further risk or breach. Such suspensions may be:
      - i. Specific state agencies;
      - ii. States; or
      - iii. A universal suspension of activity on ICON.
  4. OSERS/RSA, in conjunction with ETA and OCTAE, will work with the party who has identified a data breach or suspected breach as necessary and provide a point of coordination for notices to the SWIS signatories.

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5. OSERS/RSA, in conjunction with ETA and OCTAE, will notify state points of contact for each PACIA and SUIA signatory to the SWIS of the resolution of such data breach(es).

Notifications to states must include:

- i. Notice of resolution.
- ii. Notice that activities have resumed (if a suspension has occurred) under the SWIS

### **XIII. Confidentiality Compliance Reviews and State Audits**

ETA, OCTAE and OSERS/RSA, or their agents or contractors, may periodically conduct joint CCRs to ensure that all parties to the Agreement are complying with the terms and conditions of the Agreement. Each Access and Non-Access PACIA is subject to up to one jointly conducted Federal CCR per 12-month period. This Section does not preclude any other audit, inspection, or review by Federal or state agencies allowed under Federal law, including under 20 CFR 603.10, or where there is good cause to believe a violation of the Agreement has occurred.

#### **A. SUIA responsibilities and considerations for CCRs:**

1. The SUIA and its agents or contractors are responsible for cooperating with periodic, and as required, CCRs related to the SWIS. This includes permitting site and record inspections related to the SWIS during regular business hours by ETA, OCTAE, or OSERS/RSA (or their agents or contractors.)
2. The SUIA and its agents or contractors shall permit joint Federal CCRs by ETA, OCTAE, and OSERS/RSA (or their agents or contractors) periodically and as required, to make on-site inspections during regular business hours or other investigations to ensure that the confidentiality safeguards described in this Agreement are being maintained by the SUIA and its employees. In accordance with this responsibility, the SUIA and its agents or contractors shall make records demonstrating its compliance with this Agreement available for inspection, review, and audit by authorized persons.

#### **B. PACIA responsibilities and considerations for CCRs:**

1. The PACIA and its agents or contractors are responsible for cooperating with periodic, and as required, program reviews and CCRs related to the SWIS. Program reviews are reviews conducted for other reasons than those covered in this Agreement; they are neither Audits nor CCRs. This includes permitting site and record inspections related to the SWIS during regular business hours by ETA, OCTAE, or OSERS/RSA (or their agents or contractors.)

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2. The PACIA and its agents or contractors shall permit joint Federal CCRs by ETA, OCTAE, and OSERS/RSA (or their agents or contractors) periodically and as required, to make on-site inspections during regular business hours or other investigations to ensure that the confidentiality safeguards described in this Agreement are being maintained by the PACIA, its agents or contractors and their employees. In accordance with this responsibility, the PACIA and its agents or contractors shall make records demonstrating its compliance with this Agreement available for inspection, review, and audit by authorized persons.

C. ETA responsibilities and considerations for CCRs:

1. ETA may engage an agent or contractor to conduct CCRs in partnership with OCTAE and OSERS/RSA to monitor the parties' compliance with the confidentiality requirements of the Agreement and to provide feedback and findings to the parties, as appropriate, on how their processes can be improved to better safeguard the Wage Data, PII from students' Education Records, and Personal Information from VR Records, as required.
2. The agent or contractor, referenced in subparagraph XIII.C.1. above, conducting CCRs will monitor to ensure that the PACIA's and SUIA's processes, use, disclosure and handling of the Wage Data, PII from Education Records, and Personal Information from VR Records comply with the requirements of this Agreement. Without obtaining additional authorization from the state or states whose data will be accessed, as required by and in accordance with applicable Federal law, the agent or contractor will not receive nor have access to individual-level data or other data that is not de-identified.

D. OCTAE responsibilities and considerations for CCRs:

1. OCTAE in partnership with ETA and OSERS/RSA may conduct, or contract for an agent or contractor to conduct, CCRs to monitor the parties' compliance with the confidentiality requirements of the Agreement and to provide feedback and findings to the parties on how their processes can be improved to better safeguard the Wage Data, PII from Education Records, and Personal Information from VR Records.
2. The agent or contractor, referenced in subparagraph XIII.D.1. above, conducting CCRs will monitor to ensure that the PACIA's and SUIA's processes, use, disclosure and handling of the Wage Data, PII from Education Records, and Personal Information from VR Records comply with the requirements of this Agreement. Without obtaining additional authorization from the state or states whose data will be accessed, as required by and in accordance with applicable

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Federal law, the agent or contractor will not receive nor have access to individual-level data or other data that is not de-identified.

E. OSERS/RSA responsibilities and considerations for CCRs:

1. OSERS/RSA in partnership with OCTAE and ETA may conduct, or contract for an agent or contractor to conduct, CCRs to monitor the parties' compliance with the confidentiality requirements of the Agreement and to provide feedback and findings to the parties, on how their processes can be improved to better safeguard the Wage Data, PII from Education Records, and Personal Information from VR Records.
2. The agent or contractor, referenced in subparagraph XIII.E.1. above, conducting CCRs will monitor to ensure that the PACIA's and SUIA's processes, use, disclosure and handling of the Wage Data, PII from Education Records, and Personal Information in VR Records comply with the requirements of this Agreement. Without obtaining additional authorization from the state or states whose data will be accessed, as required by and in accordance with applicable Federal law, the agent or contractor will not receive nor have access to individual-level data or other data that is not de-identified.

F. ETA, OCTAE and OSERS/RSA must ensure that no report(s) produced as a result of CCRs conducted by an agent or contractor under a contract with ETA, OCTAE, and OSERS/RSA contain any PII from Education Records, Personal Information from VR Records, or Wage Data obtained from the SWIS.

G. State Audits

PACIA responsibilities and considerations for State Audits:

1. The PACIA is responsible for maintaining a system sufficient to allow an audit of its compliance with the requirements of the SWIS and 20 CFR part 603, and is required to cooperate with audits, and to resolve issues detected in state audits under the SWIS.
2. The recipient of the Wage Data is responsible for any costs it incurs during state audits or in the maintenance of systems sufficient to allow a state audit.

## **XIV. Termination and Suspension of the Agreement**

This Agreement may be terminated in the following ways:

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1. Unilaterally by a participating state to this Agreement, so long as the terminating state provides a written notice, executed by the appropriate representatives from the PACIA(s) and the SUIA(s) of the state's intention to terminate the Agreement by a specified date to the Advisory Group at least sixty (60) calendar days prior to the specified date of the termination. Termination of this Agreement by a participating state shall not affect the continuing enforceability of any Agreement that ETA, OCTAE, and OSERS/RSA have with any other state.
2. Unilaterally by ETA, so long as it provides a written notice, executed by the appropriate representative of its intention to terminate the Agreement to the Advisory Group at least sixty (60) calendar days prior to the specified date of termination. The termination of ETA's participation will preclude the continued use of the SWIS by all parties, including all state signatories.
3. Unilaterally by OCTAE, so long as it provides a written notice, executed by the appropriate representative of its intention to terminate the Agreement for itself and on behalf of all participating state AEFLA and Perkins V programs to the Advisory Group at least sixty (60) calendar days prior to the specified date of termination (except as provided in paragraph 6 of this Section). In the event that OCTAE terminates its participation in the SWIS, the exchange of Wage Data for purposes of ETA and OSERS/RSA reporting requirements may continue.
4. Unilaterally by OSERS/RSA, so long as it provides a written notice, executed by the appropriate representative of its intention to terminate the Agreement for itself and on behalf of all participating state VR agencies to the Advisory Group at least sixty (60) calendar days prior to the specified date of termination (except as provided in paragraph 6 of this Section). In the event that OSERS/RSA terminates its participation in the SWIS, the exchange of Wage Data for purposes of ETA and OCTAE reporting requirements may continue.
5. In the event that OCTAE and/or OSERS/RSA is (or are) unable to contribute to the Federal infrastructure costs of the SWIS, and consistent with Section VIII, paragraphs D.7. and E.7., OCTAE, OSERS/RSA, or both, as applicable, must suspend participation in the SWIS in writing by notifying ETA of its (or their) inability to contribute funds, as soon as possible, but no later than five (5) business days from the date either or both learn such information. In the event that OCTAE, OSERS/RSA, or both, suspend its (or their) participation in the SWIS, such suspension will preclude state AEFLA and Perkins V and/or VR agencies, as applicable, from participating in the SWIS for the duration of the suspension. In the event that OCTAE and/or OSERS/RSA has (or have) sufficient funding subsequent to a suspension to contribute to the infrastructure costs of the SWIS, OCTAE, OSERS/RSA, or both, will inform ETA in writing within ten (10) business days

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from the date that either or both learn such information of its/their intent to end the suspension due to the availability of funds. OCTAE, OSERS/RSA, or both, will resume participation in the SWIS no later than five (5) business days from the date of its (or their) written notice of intent to end the suspension. All AEFLA and VR agencies, as applicable, will be permitted to resume participation in the SWIS as of the date that the suspension ends.

6. In the event that OCTAE and/or OSERS/RSA do not suspend their participation in the SWIS in a timely manner due to a lack of financial resources for the SWIS infrastructure funding, ETA may suspend OCTAE's and/or OSERS/RSA's participation in the SWIS in writing to OCTAE and/or OSERS/RSA immediately upon receiving OCTAE's and/or OSERS/RSA's notice of an inability to pay consistent with Section VIII, paragraphs D.7 and E.7. Such suspension would preclude AEFLA and/or VR agencies, as applicable, from participating in the SWIS for the duration of the suspension.
7. ETA, in conjunction with the suspended party (or parties) to this Agreement (i.e., OCTAE and/or OSERS/RSA), will provide written notice to the states no later than thirty (30) calendar days prior, or if 30 days of notice is not possible, as soon as practicable prior to implementation of the suspension so that state parties will have as much notice as possible under the circumstances necessitating the suspension that the SWIS will no longer be available for use.
8. Notwithstanding the above, if a state SUIA fails to properly perform or substantially fulfill its obligations under this Agreement in a timely or proper manner, or substantially violates any term of this Agreement, ETA, OCTAE, and OSERS/RSA reserve the right to collectively immediately suspend or terminate the participation of the state in this Agreement, upon written notice.
9. Notwithstanding the above, if a state PACIA fails to properly perform or fulfill substantially its obligations under this Agreement in a timely or proper manner, or substantially violates any term of this Agreement, ETA, OCTAE, and OSERS/RSA reserve the right to collectively immediately suspend or terminate the participation of that PACIA in this Agreement, upon written notice.
10. Further, notwithstanding the above, this Agreement may also be terminated immediately, upon written notice, should governing state or Federal laws or regulations render performance under the Agreement illegal, impracticable, or impossible.
11. In the event of a termination or suspension under this Section, the Federal parties of this Agreement reserve the right to require deletion of all data obtained by the terminated or suspended state party.



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## **XV. Amendment of the Agreement**

The parties agree that a change in the ICON grantee or its Operations Contractor will not require renegotiation or re-execution of the Agreement.

This Agreement may be amended in accordance with the following procedure:

- A. An amendment may be proposed in writing by a participating state PACIA, SUIA, ETA, OCTAE, OSERS/RSA or the ICON grantee or Operations Contractor, accompanied by a statement of support and any other relevant material by the party proposing the amendment, and must be submitted to ETA.
- B. ETA will e-mail the proposed amendment and any supporting material submitted by the proposing party to the parties' contacts identified in Section XXIII of this Agreement, in addition to posting it on ETA's, OCTAE's, and OSERS/RSA's websites for fifteen (15) business days. During this fifteen (15) business day period, all parties will have the opportunity to review the proposal and submit comments in writing on the proposed change to ETA, OCTAE, and OSERS/RSA for their consideration and review.
- C. The proposed amendment will be considered by ETA, OCTAE, and OSERS/RSA, taking into account comments received from the states. ETA will contact those that submitted comments for clarification as necessary, especially in the case where it appears that the amendment under consideration may conflict with a state's law.
- D. ETA, OCTAE, and OSERS/RSA will make a joint preliminary decision on the acceptability of the amendment, which may include issuing a revised proposal in collaboration with the originating party to address comments received. The amendment, including any proposed revisions, will be e-mailed to the parties' contacts identified in Section XXIII of this Agreement, in addition to being published on ETA's, OCTAE's, and OSERS/RSA's websites for another fifteen (15) business days.
- E. Prior to the conclusion of the fifteen (15) business day comment period identified in paragraph D, ETA, OCTAE, and OSERS/RSA jointly will host a conference call in which any party to the Agreement can participate to further express its concerns. The proposing entity must participate in this conference call, so it can hear feedback regarding its amendment. The intention of this is to allow the entity that proposed the amendment to potentially amend its proposal to address any issues identified by submission of a revised proposal.
- F. If no objections to the amendment are raised during the second comment period, which will be for fifteen (15) business days (see paragraph D above), or the conference call, signature pages will be distributed to all parties of this Agreement. The amendment will

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be adopted when all parties to this Agreement have signed and delivered this signature page. ETA will provide prompt, written notice of the amendment to the Agreement to the contacts identified in Section XXIII of this Agreement. The amendment will not be effective until all parties sign and return the amendment to ETA and it is fully executed. ETA will keep a record of proposed amendments, their disposition, and executed Agreements and make that information available to the public via ETA's, OCTAE's, and OSERS/RSA's websites.

G. If substantive objections are raised during the second comment period, which will be for fifteen (15) business days, or the conference call, the proposal will not be adopted. The proposing entity may choose to amend its proposal and repeat the steps in paragraphs D – E of this Section again, or it may decide to withdraw its proposal and take no further action at that time.

H. The proposing party may withdraw its proposal at any time during the consideration process.

## **XVI. Limitations on Liability**

Although the SUIA will make a reasonable effort to ensure the accuracy of the Wage Data provided to the SWIS Clearinghouse, the SUIA does not warrant that the Wage Data provided in response to Queries is current, accurate, or complete.

To the extent permitted by applicable state law, the state agency parties to this Agreement shall be responsible for the acts and omissions of their own employees. The Federal Tort Claims Act governs liability of the United States.

## **XVII. Non-Discrimination**

The PACIA and SUIA agree, warrant, and ensure that they will fully comply with the nondiscrimination and equal opportunity provisions set forth in Section 188 of WIOA and its implementing regulation at 29 CFR part 38 in the performance of this Agreement.

## **XVIII. Waiver/Strict Performance**

Failure by any party to insist in one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision of the Agreement.

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### **XIX. Entire Agreement**

This Agreement, including Annex 1, Attachment 1, and Annex 2, as well as any amendment executed by all parties and incorporated into this Agreement, is complete and contains the entire understanding among the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' Agreement. This Agreement supersedes any and all prior understandings, representations, negotiations, and Agreements between the parties relating hereto, whether written or oral.

### **XX. Severability**

If any terms and conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.

### **XXI. Changes in Legal Authority**

This Agreement will remain in effect, unless a change or changes to legal authority through amendment or supersession substantially alter this Agreement or limits or revokes the underlying authority. Additionally, the supersession and replacement of a legal authority with a parallel legal authority (such as WIOA's supersession of the Workforce Investment Act of 1998) will not, by itself, require signatories to amend and re-execute this Agreement.

### **XXII. Reciprocal Participation/Waiver of Separate Execution/Effect of Agreement**

- A. Each PACIA and SUIA executing this Agreement on behalf of their acknowledges that the participation of their state in the SWIS binds their state to the exchange of data with all other states participating in the SWIS, provided such exchange does not violate any Federal or state laws.
- B. Each PACIA and SUIA further acknowledges that ETA, OCTAE, and OSERS/RSA will notify all SUIAs and PACIAs participating in the SWIS regarding additions or deletions to the roster of participating states. A state's date of entry into the SWIS shall be the date on which ETA, OCTAE, and OSERS/RSA provide other participating states with notice of the execution of the SWIS Data Sharing Agreement by such state. This notice shall be provided in accordance with Section XXIII of this Agreement.
- C. Execution of this Agreement by the SUIA and PACIA of a participating state shall bind that state to comply with its terms as to all other states that have executed this Agreement and that are participating in the SWIS Clearinghouse (regardless of the date of entry of

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such state into the system) and shall serve as a waiver of the right to separately execute a Data Sharing Agreement with each of the other participating states for the purposes set forth in this Agreement. Nothing herein shall be construed as preventing participating states from entering into a data sharing Agreement(s) with other participating state(s) for any other purpose.

- D. This Agreement may be signed by the parties in any number of counterparts. Each counterpart is, hereby, deemed an original agreement. Regardless of the number of individually signed counterparts, together, all counterparts form one single agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

### **XXIII. Communications and Contacts**

All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be made by electronic transmission, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, to the respective party and at the facsimile number or address as set forth below or to another party, facsimile number or address as may be hereafter specified by written notice:

For ETA: United States Department of Labor  
Employment and Training Administration  
Office of Policy Development and Research  
Attn: SWIS Administration  
200 Constitution Avenue, NW, Room N-5641  
Washington, DC 20210  
E-mail: [Swis@dol.gov](mailto:Swis@dol.gov)

For OCTAE: United States Department of Education  
Office of Career, Technical, and Adult Education  
Attn: Accountability Team  
400 Maryland Avenue SW

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Washington, DC 20202

E-mail: [NRS@ed.gov](mailto:NRS@ed.gov)

For OSERS/RSA: United States Department of Education

Office of Special Education and Rehabilitative Services, Rehabilitation Services  
Administration

Attn: Data Collection and Analysis Unit

400 Maryland Avenue SW

Washington, DC 20202

E-mail: [RSADData@ed.gov](mailto:RSADData@ed.gov)

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**SUIA: (ALL items must be completed)**

Access  Non-Access]<sup>1</sup>

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**PACIA: (ALL items must be completed)**

Access  Non-Access]<sup>2</sup>

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**PACIA: (ALL items must be completed)**

Access  Non-Access]

\_\_\_\_\_

<sup>1</sup> Refer to Section IV.A. and Section V.Z. of this Agreement

<sup>2</sup> Refer to Section IV.B. and Section V.N. of this Agreement

**SUIA: (ALL items must be completed)**

Access  Non-Access]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**PACIA: (ALL items must be completed)**

Access  Non-Access]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**PACIA: (ALL items must be completed)**

Access  Non-Access]

May 6, 2019

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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Address: \_\_\_\_\_

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Phone: \_\_\_\_\_

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Email: \_\_\_\_\_

Email: \_\_\_\_\_

**PACIA: (ALL items must be completed)**

Access  Non-Access]

**PACIA: (ALL items must be completed)**

Access  Non-Access]

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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Phone: \_\_\_\_\_

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Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

The PACIA(s) and SUIA(s) will inform ETA, OCTAE, and OSERS/RSA of any changes in their contact information in a timely manner by sending corrected information to ETA at the address set forth above. The parties need not execute an amended SWIS Data Sharing Agreement to update or change the contact information contained herein. ETA will continue to send all SWIS information and notices to the individuals and the addresses listed above unless it receives a notice of a change. All instructions, notices, consents, demands, or other communications will be considered effectively given as of the day of actual delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the electronic or facsimile transmission is received at the receiving location. Any

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communication by facsimile transmission shall be sent by United States mail on the same date of the facsimile transmission.

#### **XXIV. Applicable Law**

All applicable Federal and state laws shall govern the terms of this Agreement.

#### **XXV. Effective Date and Expiration of the Agreement**

For the programs and purposes listed in Sections IX.B.1., IX.B.3., IX.B.4, IX.C.1 through IX.C.3., and IX.D. through IX.E., the Agreement will take effect upon the date on which it is fully executed by ETA, the ICON grantee, and the state's SUIA(s) and PACIA(s), and may be amended from time to time in accordance with the Amendment Procedure set forth in Section XV.

For the programs and purposes listed in Section IX.B.2. and IX.C.4, the Agreement will take effect upon the date on which it is fully executed by ETA, the ICON grantee, OCTAE, OSERS/RSA, the SUIA(s), and the PACIA(s), and may be amended from time to time in accordance with the Amendment Procedure set forth in Section XV.

The Agreement will expire five (5) years after the date of execution of the Agreement between ETA, OCTAE, OSERS/RSA, and the first state's SUIA(s) and PACIA(s) to sign the Agreement. Upon the expiration of the five-year term of Agreement, ETA, OCTAE, and OSERS/RSA may jointly agree in writing, at their sole discretion, to renew the Agreement. Renewing the Agreement does not require any additional action by the other parties to the Agreement.

This Agreement may be terminated as described in Section XIV above.



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## State Wage Interchange System (SWIS) Data Sharing Agreement

### APPROVALS

Now, therefore, in consideration of the mutual promises and undertakings contained herein, the parties hereto consent to the provisions of this Agreement, including Annex 1 and Annex 2 to the Agreement.

### SIGNATURES

Office of Career, Technical, and Adult Education: U.S. Department of Education

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: Assistant Secretary for Career, Technical, and Adult Education

Office of Special Education and Rehabilitative Services: U.S. Department of Education

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: Assistant Secretary for Special Education and Rehabilitative Services

Employment and Training Administration

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: Assistant Secretary for Employment and Training

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**SIGNATURES**

State Unemployment Insurance Agency

Access  Non-Access]

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

State Unemployment Insurance Agency

Access  Non-Access]

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Performance Accountability and Customer Information Agency (1)

Access  Non-Access]

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Performance Accountability and Customer Information Agency (2)

Access  Non-Access]

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Performance Accountability and Customer Information Agency (3)

Access  Non-Access]

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

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**SIGNATURES**

Performance Accountability and Customer Information Agency (4)

Access  Non-Access]

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Performance Accountability and Customer Information Agency (5)

Access  Non-Access]

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Performance Accountability and Customer Information Agency (6)

Access  Non-Access]

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Interstate Connection Network (ICON) Grantee

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**NOTE:**

States that have more than one PACIA designated by their Governor must have a representative of each PACIA sign this document. States with one PACIA should leave the additional PACIA signature blocks blank. Likewise, states that have more than one SUIA under this Agreement must have a representative of each SUIA sign this Agreement, while a state with one SUIA should leave the additional SUIA signature block blank.

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A state agency that is both the designated PACIA and the SUIA may have the same individual execute the document on behalf of both the PACIA and SUIA in the signature block identified for each so long as the individual signing the document has the authority to bind the state agency to the terms of the Agreement in both capacities.

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## **Annex 1**

### **State Wage Interchange System (SWIS) Data Sharing Agreement FERPA Written Agreement**

#### **I. BACKGROUND**

Performance Accountability Customer Information Agencies (PACIAs) that are signatories to the SWIS Data Sharing Agreement need to receive and redisclose personally identifiable information (PII) from student Education Records protected by the Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g, and its implementing regulations, 34 CFR part 99, in order to meet the reporting requirements outlined in the Workforce Innovation and Opportunity Act (WIOA).

PACIAs are comprised of Access PACIAs and Non-Access PACIAs, as defined in Section V.N. of the SWIS Data Sharing Agreement. Some, but not all, Access PACIAs (state educational authority Access PACIAs) and Non-Access PACIAs (state educational authority Non-Access PACIAs) also constitute “state educational authorities” under FERPA, as defined in Section V.X. of the SWIS Data Sharing Agreement, that exercise authority over the Federally and state-supported “Education Programs,” as defined in Section V.J. of the SWIS Data Sharing Agreement. This Annex 1, SWIS Data Sharing Agreement/FERPA Written Agreement (this Agreement), pertains to the designation of authorized representatives by these state educational authority Access PACIAs and/or state educational authority Non-Access PACIAs, as described further below.

#### **II. PURPOSES**

PII from Education Records disclosed without prior written consent to state educational authority Access PACIAs and/or state educational authority Non-Access PACIAs and their authorized representatives may only be used to evaluate and/or audit programs referenced in Section IX of the SWIS Data Sharing Agreement if those programs constitute “Federally- or state-supported education programs” under FERPA. This Agreement is entered into to document the terms under which state educational authority Access PACIAs and/or state educational authority Non-Access PACIAs are permitted under FERPA to receive, use, and further disclose, without prior written consent, PII from students’ Education Records for the purpose of evaluating and/or auditing Federally-supported education programs authorized under WIOA.

State educational authority Access PACIAs and/or state educational authority Non-Access PACIAs signed to the SWIS Data Sharing Agreement may receive and then may make further disclosures of PII from Education Records, without prior consent, to additional parties to the

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SWIS Data Sharing Agreement both by designating these additional parties as the state educational authority Access PACIAs' and/or state educational authority Non-Access PACIAs', respectively, "authorized representatives" for the purpose of evaluating and/or auditing Federally-supported education programs authorized under WIOA (or other Federally- or state-supported education programs) and by complying with the other written agreement provisions in the FERPA regulations at 34 CFR 99.35(a)(3). This Agreement serves to secure compliance with the written agreement provisions in the FERPA regulations by state educational authority Access PACIAs and state educational authority Non-Access PACIAs and any entities that are both parties to the SWIS Data Sharing Agreement and listed as authorized representatives in Section IV of this Agreement. For entities that are not parties to the SWIS Data Sharing Agreement but that are listed as entities that may be designated as additional authorized representatives in Section IV of this Agreement, additional written agreements (not appended or attached hereto) must be entered into with these entities to bind them to the terms and conditions of the SWIS Data Sharing Agreement and to meet the requirements of 34 CFR 99.35(a)(3).

Further, this Agreement will not suffice to secure compliance with the written agreement provisions in the FERPA regulations for Access PACIAs that do not constitute "state educational authorities" (under FERPA, entities that exercise authority over the Federally- and state-supported education programs referenced in Section IX of the SWIS Data Sharing Agreement) and are not herein designated by a state educational authority Non-Access PACIA as an authorized representative of the applicable state educational authority Non-Access PACIA. These Access PACIAs would need to execute another Agreement, the Supplemental FERPA Agreement to the SWIS Data Sharing Agreement, in order to be designated as the authorized representative of the applicable state educational authority, to permit the Access PACIA to re-disclose, without prior written consent, PII from Education Records further to additional authorized representatives of that state educational authority that are also parties to the SWIS Data Sharing Agreement, and to otherwise comply with the requirements set forth in FERPA.

### **III. AUTHORITY**

The Authority for this Agreement is set forth in Section III of the SWIS Data Sharing Agreement, as well as in 20 USC 1232g(b)(3) and (b)(5), 34 CFR 99.31(a)(3)(iv), 99.33, and 99.35(a)(3).

### **IV. DESIGNATION OF AUTHORIZED REPRESENTATIVES**

Those state educational authority Access PACIAs that are authorized to collect and use PII from student Education Records consistent with applicable state and Federal laws, including FERPA, hereby designate the state Unemployment Insurance Agencies (SUIAs), the Employment and Training Administration (ETA), and the ICON grantee that are parties to the SWIS Data Sharing Agreement as their authorized representatives, consistent with 20 USC 1232g and 34 CFR 99.35

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and the terms and conditions of the SWIS Data Sharing Agreement. If the state educational authority Access PACIAs enter into a separate written agreement with their agent(s) or contractor(s) binding them to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then the state educational authority Access PACIAs also may designate their agent(s) or contractor(s) as additional authorized representatives. If the SUIAs enter into a separate written agreement with their agent(s) or contractor(s) binding them to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then the SUIAs also may designate their agent(s) or contractor(s) as additional authorized representatives. If the ICON grantee enters into a separate written agreement with the SWIS Operations Contractor binding the SWIS Operations Contractor to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then the ICON grantee also may designate the SWIS Operations Contractor as an additional authorized representative.

For state educational authority Non-Access PACIAs that are authorized to collect and use PII from student Education Records consistent with applicable state and Federal laws, including FERPA, these state educational authority Non-Access PACIAs hereby designate the Access PACIA(s) that are not state educational authority Access PACIA(s), the SUIAs, the Employment and Training Administration (ETA), and the ICON grantee that are parties to the SWIS Data Sharing Agreement as their authorized representatives, consistent with 20 USC 1232g and 34 CFR 99.35 and the terms and conditions of the SWIS Data Sharing Agreement. If the state educational authority Non-Access PACIAs enter into a separate written agreement with their agent(s) or contractor(s) binding them to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then the state educational authority Non-Access PACIAs also may designate their agent(s) or contractor(s) as additional authorized representatives. If the Access PACIAs that are not state educational authorities but that are designated herein as authorized representatives of the applicable state educational authority Non-Access PACIAs enter into a separate written agreement with their agent(s) or contractor(s) binding them to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then those Access PACIAs also may designate their agent(s) or contractor(s) as additional authorized representatives. If the SUIAs enter into a separate written agreement with their agent(s) or contractor(s) binding them to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then the SUIAs also may designate their agent(s) or contractor(s) as additional authorized representatives. If the ICON grantee enters into a separate written agreement with the SWIS Operations Contractor binding the SWIS Operations Contractor to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then the ICON grantee also may designate the SWIS Operations Contractor as an additional authorized representative.

For Access PACIAs that are not “state educational authorities” under FERPA, that have not been designated by state educational authority Non-Access PACIAs as their authorized

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representatives, and that have, therefore, executed the Supplemental FERPA Agreement to the SWIS Data Sharing Agreement, those Access PACIAs hereby designate the SUIAs, the ETA, and the ICON grantee that are parties to the SWIS Data Sharing Agreement as additional authorized representatives, consistent with 20 USC 1232g and 34 CFR 99.35 and the terms and conditions of the SWIS Data Sharing Agreement, of the state educational authority. If the Access PACIAs that have executed the Supplemental FERPA Agreement to the SWIS Data Sharing Agreement enter into a separate written agreement with their agent(s) or contractor(s) binding them to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then those Access PACIAs also may designate their agent(s) or contractor(s) as additional authorized representatives. If the SUIAs enter into a separate written agreement with their agent(s) or contractor(s) binding them to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then the SUIAs also may designate their agent(s) or contractor(s) as additional authorized representatives. If the ICON grantee enters into a separate written agreement with the SWIS Operations Contractor binding the SWIS Operations Contractor to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then the ICON grantee also may designate the SWIS Operations Contractor as an additional authorized representative.

## **V. REQUIREMENTS**

To effectuate the transfer of data and information that is subject to state and Federal confidentiality laws, and to ensure that the required confidentiality of PII from Education Records is maintained, the entities designated as authorized representatives pursuant to either Section IV of this Agreement or the Supplemental FERPA Agreement (*i.e.*, any Access PACIAs that are not state educational authorities that have executed the Supplemental FERPA Agreement to the SWIS Data Sharing Agreement, the SUIAs, the ETA, and the ICON grantee that are parties to the SWIS Data Sharing Agreement) agree:

1. That PII from students' Education Records to be disclosed will consist of student Social Security numbers, and in some cases may also include the credentials that students attained and their program completion status from an eligible training provider. This PII will be used to obtain the students' Wage Data only for the purposes set forth in Section II of this Agreement.
2. To destroy all PII from Education Records referenced above in Section V.1 of this Agreement when no longer needed for the purposes outlined in the Section II of this Agreement. Destruction of the PII from Education Records shall consist of, but shall not be limited to, the degaussing of magnetic tape files and permanent deletion of electronic data. Nothing in this Agreement authorizes any authorized representative to maintain the PII for more than five (5) years from the date the



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Result, as defined in Section V.U. of the SWIS Data Sharing Agreement, is received.

3. In all respects, to comply with the applicable provisions of FERPA. For the purposes of this Agreement and the specific projects conducted pursuant to this Agreement, FERPA includes any amendments or other relevant provisions of Federal law, as well as all requirements set forth in 20 USC 1232g and 34 CFR part 99. Nothing in this Agreement shall be construed to allow any authorized representative to maintain, use, disclose, redisclose, or share PII from Education Records in a manner not allowed under Federal law or regulation, as set forth above in Section II of this Agreement and in Section IX, Paragraph A, of the SWIS Data Sharing Agreement.
4. To use PII from Education Records disclosed under this Agreement only for the purposes outlined in Section II of this Agreement. Nothing in this Agreement shall be construed to authorize the authorized representatives to have access to additional PII from Education Records that is not included in the scope of this Agreement and the SWIS Data Sharing Agreement. The authorized representatives further agree not to disclose PII from Education Records received under this Agreement to any other entity without prior written approval of the State educational authority from which the PII originated and as otherwise consistent with state and Federal law, including FERPA.
5. To comply with the confidentiality provisions in Section XI (Confidentiality/Restrictions on Use of Information) of the SWIS Data Sharing Agreement.

## **VI. EFFECT OF AGREEMENT**

This Agreement does not, in itself, authorize the expenditure or reimbursement of any Federal or state funds. Nothing in this Agreement shall obligate the parties to expend appropriations or other monies.

This Agreement is not intended to confer any right upon any private person.

Further, this Agreement shall not be interpreted to limit, supersede, or otherwise affect a party's normal operations or decisions in carrying out its mission, statutory or regulatory.

Amendments to this Agreement must be made in accordance with Section XV of the SWIS Data Sharing Agreement and must be executed in writing and signed by individuals with authority to bind the parties involved. No oral or unilateral amendments will be effective. Only terminations in accordance with Section XIV of the SWIS Data Sharing Agreement will be effective.

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**ATTACHMENT 1**  
Supplemental FERPA Agreement

**I. PARTIES**

The \_\_\_\_\_ is a state educational authority (state educational authority) under the Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g; and 34 CFR part 99, as defined in Section V.X. of the SWIS Data Sharing Agreement, that exercises authority over the Federally- and state-supported “Education Programs,” as defined in Section V.J. of the SWIS Data Sharing Agreement. The state educational authority is authorized to collect and maintain Personally Identifiable Information (PII) from student Education Records consistent with applicable state and Federal laws.

The \_\_\_\_\_ Access Performance Accountability and Customer Information Agency (Access PACIA) needs to receive and then share PII from student Education Records for the purposes set forth below. An Access PACIA, as defined in Section V.N. of the SWIS Data Sharing Agreement, is a PACIA that requests data from the State Wage Interchange System on behalf of the state educational authority.

**II. PURPOSES**

This Supplemental FERPA Agreement (this Agreement) documents the terms under which the state educational authority is authorized to release, without prior written consent, certain PII from student Education Records to the Access PACIA, as the state educational authority’s authorized representative, and the Access PACIA is authorized to further release, without prior written consent, said PII to other, specifically listed authorized representatives of the state educational authority, as set forth in Section IV of this Agreement, for the purpose of evaluating and/or auditing Federally-supported education programs authorized under Workforce Innovation and Opportunity Act (WIOA). This Agreement also documents the requirements under FERPA on the use, further disclosure, protection, and destruction of this PII by these authorized representatives.

PII from Education Records disclosed to the Access PACIA and other specifically listed authorized representatives in this Agreement only may be used to evaluate and/or audit the programs referenced in Section IX of the SWIS Data Sharing Agreement if those programs constitute Federally- or state-supported education programs under FERPA.

**III. AUTHORITY**

The Authority for this Agreement is set forth in Section III of the SWIS Data Sharing Agreement, which is incorporated by reference herein, as well as in 20 USC 1232g(b)(3) and (b)(5), 34 CFR 99.31(a)(3)(iv) and 99.35(a)(3).

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#### **IV. DESIGNATION OF AUTHORIZED REPRESENTATIVES**

The state educational authority hereby designates the Access PACIA as its authorized representative for the purposes of evaluation and/or audit of the programs referenced in Section IX of the SWIS Data Sharing Agreement that constitute Federally- or state-supported education programs under FERPA.

The state educational authority further understands and expressly authorizes the Access PACIA to enter into the SWIS Data Sharing Agreement and the Annexes thereto in which state Unemployment Insurance Agencies (SUIAs), the Employment and Training Administration (ETA), and the ICON grantee that are parties to the SWIS Data Sharing Agreement are designated as additional authorized representatives of the state educational authority and in which the Access PACIA's agent(s) or contractor(s), the SUA's agent(s) or contractor(s), and the SWIS Operations Contractor may be further designated as additional authorized representatives of the state educational authority, provided that they have entered into separate written agreements binding them to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3).

#### **V. AGREEMENT**

To effectuate the transfer of data and information that is subject to state and Federal confidentiality laws and to ensure that the required confidentiality of PII from Education Records shall be maintained, the Access PACIA agrees:

1. That the PII from students' Education Records will consist of Social Security numbers and in some cases may also include the credentials that students attained and their program completion status from an eligible training provider. This PII will be used by the Access PACIA to obtain the students' Wage Data for the purposes set forth in Section II of this Agreement.
2. To destroy all PII from Education Records referenced above in Section V.1 of this Agreement when no longer needed for the purposes outlined in Section II of this Agreement. Destruction of the PII from Education Records shall consist of, but shall not be limited to, the degaussing of magnetic tape files and permanent deletion of electronic data. Nothing in this Agreement authorizes the Access PACIA to maintain the PII from Education Records for more than five (5) years from the date the Result, as defined by Section V.U. of the SWIS Data Sharing Agreement, is received.

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3. In all respects, to comply with the applicable provisions of FERPA. For the purposes of this Agreement and the specific projects conducted pursuant to this Agreement, FERPA includes any amendments or other relevant provisions of Federal law, as well as all requirements of 20 USC 1232g and 34 CFR part 99. Nothing in this Agreement shall be construed to allow any party to maintain, use, disclose, redisclose, or share PII from student Education Records in a manner not allowed under Federal law or regulation, as set forth above in Section II of this Agreement and in Section IX, Paragraph A, of the SWIS Data Sharing Agreement.
4. To use PII from Education Records disclosed under this Agreement only for the purposes outlined in Section II of this Agreement. Nothing in this Agreement shall be construed to authorize the Access PACIA to have access to additional PII from Education Records that is not included in the scope of this Agreement and the SWIS Data Sharing Agreement. The Access PACIA is authorized to further disclose PII from Education Records received under this Agreement to other entities that have been designated as authorized representatives pursuant to Section IV of this Agreement and pursuant to the terms and conditions set forth in the SWIS Data Sharing Agreement and the Annexes thereto. However, this Agreement does not authorize the Access PACIA to disclose PII from Education Records to any other entity or under any other terms and conditions without prior written approval from the state educational authority from which the PII originated and as otherwise consistent with state and Federal law, including FERPA.
5. To comply with the confidentiality provisions in Section XI (Confidentiality/Restrictions on Use of Information) of the SWIS Data Sharing Agreement.
6. To comply with FERPA's recordkeeping requirements at 34 CFR 99.32 by keeping a record of any other entity to which PII from Education Records is further disclosed under the terms of the SWIS Data Sharing Agreement and the Annexes thereto, along with such entity's legitimate interest(s) in obtaining this PII from Education Records. This requirement applies, but is not limited to: (1) the recordation of any disclosure of PII from Education Records to the ICON grantee or SWIS Operations Contractor (as defined in the SWIS Data Sharing Agreement) for the purpose of performing duties imposed upon them pursuant to the terms of the SWIS Data Sharing Agreement; (2) any SUIA that receives a Query for Wage Data (as defined in the SWIS Data Sharing Agreement) pursuant to the terms of the SWIS Data Sharing Agreement; and, (3) any representative of

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the Secretary of Labor or the Secretary of Education to carry out their duties pursuant to the terms of the SWIS Data Sharing Agreement.

7. To submit a signed copy of this Agreement to the ETA, as set forth in Section XXIII of the SWIS Data Sharing Agreement, to accompany the state's signed copy of the SWIS Data Sharing Agreement before PII from Education Records is exchanged under the SWIS Data Sharing Agreement.

The state educational authority agrees to transmit PII from Education Records to the Access PACIA in conformity with applicable confidentiality provisions, including FERPA and state laws governing the confidentiality of the information.

## **VI. EFFECT OF AGREEMENT**

This Agreement does not in itself authorize the expenditure or reimbursement of any Federal or state funds. Nothing in this Agreement shall obligate the parties to expend appropriations or other monies, or to enter into any contract or other obligation.

This Agreement is not intended to confer any right upon any private person.

Further, this Agreement shall not be interpreted to limit, supersede, or otherwise affect either party's normal operations or decisions in carrying out its mission, whether statutory or regulatory.

Amendments must be bilaterally executed in writing, signed by authorized representatives of the parties involved. No oral or unilateral amendments will be effective. Only terminations done in accordance with the terms of this Agreement may be done unilaterally.

The terms of this Agreement shall be governed by and construed in accordance with the applicable state or Federal laws, including FERPA.

## **VII. EFFECTIVE DATE, DURATION, TERMINATION, AND AMENDMENT**

This Agreement shall become effective upon the date of the last signature of the undersigned parties and will expire five (5) years from the effective date unless terminated by any party to this Agreement. At the expiration of five (5) years, the parties may jointly agree in writing, at their sole discretion, to renew the Agreement for an additional five (5) years. The parties shall submit a fully executed copy of this Agreement, as well as any subsequent written renewal or termination of this Agreement, to the SWIS Advisory Group, as defined in the SWIS Data Sharing Agreement. This Agreement may be terminated in writing, upon thirty (30) calendar days' written notice delivered by either party to the other party. Any such termination shall become effective thirty (30) calendar days after the date upon which the non-terminating party receives written notice from the terminating party. In no case will any oral termination be

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effective. This Agreement shall automatically terminate in the event that the SWIS Data Sharing Agreement terminates in accordance with Section XIV of said SWIS Data Sharing Agreement. Upon the effective date of the termination of this Agreement, the Access PACIA will no longer have the authority to use or further disclose PII from Education Records and thus must promptly destroy all PII from Education Records in accordance with the terms set forth in Section V.2. of this Agreement. Termination of this Agreement shall not relieve the Access PACIA of its obligation to destroy all PII from Education Records.

This Agreement may be amended by a written Agreement that is signed by authorized representatives of both parties, if the amendment is approved by the Advisory Group, as defined in the SWIS Data Sharing Agreement, and is appended to the SWIS Data Sharing Agreement.

**VIII. SIGNATORIES**

Each Party to this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal Agreement binding on such party and enforceable in accordance with its terms.

For the [State Educational Authority]

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature and Date

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## **Annex 2**

### **State Wage Interchange System (SWIS)**

#### **Performance Accountability and Customer Information Agency (PACIA) and State Unemployment Insurance Agency (SUIA)**

#### **Acknowledgement of Confidentiality Requirements and Restrictions**

In accordance with Section VIII of the SWIS Data Sharing Agreement, which sets out the Responsibilities of the Parties, the names and signatures of everyone who will have access to Wage Data, personally identifiable information (PII) from Education Records, or Personal Information from Vocational Rehabilitation (VR) Records, including PACIA or SUIA employees, contractors, or agents properly authorized by the PACIA or SUIA to use the SWIS Clearinghouse in accordance with the provisions of Sections VI, VIII, and XI of the SWIS Data Sharing Agreement appear below. All authorized PACIA or SUIA employees, contractors, or agents below acknowledge their understanding of:

- the confidential nature of SWIS data, including Wage Data, PII from students' Education Records, and personal information in the possession of VR agencies received through the SWIS Data Sharing Agreement;
- the standards for the handling of such data as discussed in Sections VI, VIII, and XI of the SWIS Data Sharing Agreement, the SWIS Data Sharing Agreement/FERPA Written Agreement incorporated by reference therein, and any Supplemental FERPA Agreement(s) incorporated by reference therein; and
- their obligation to comply with such standards in carrying out their responsibilities under the SWIS Data Sharing Agreement.

All authorized PACIA or SUIA employees, contractors, or agents listed below attest that they:

- have been provided a copy of the SWIS Data Sharing Agreement, the SWIS Data Sharing Agreement/FERPA Written Agreement, and any Supplemental FERPA Agreement(s) incorporated by reference into the SWIS Data Sharing Agreement;
- have reviewed the SWIS Data Sharing Agreement and the other agreements incorporated therein; and
- agree to comply with the applicable standards contained in the SWIS Data Sharing Agreement, and the other agreements incorporated therein, in carrying out their SWIS-related duties.



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**Mailing address.** Please mail the signed Acknowledgement of Confidentiality document to the current ETA SWIS support contractor.

In addition to the mailed original, a copy of the signed document may be e-mailed to [SWIS@dol.gov](mailto:SWIS@dol.gov).

State: \_\_\_\_\_

SUIA or PACIA Agency: \_\_\_\_\_

SUIA or PACIA Contact Name: \_\_\_\_\_

Title: \_\_\_\_\_

Agency/Organization: \_\_\_\_\_

Signature of Contact: \_\_\_\_\_

Date: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail Address: \_\_\_\_\_