

Additional Proposed Round Two Amendments to the State Wage Interchange System (SWIS) Data Sharing Agreement – Comment Period One Comments and Responses

Proposed Amendment 7. Perkins Grantees as PACIAs

Comment #1:

I am writing in support of the proposed additional “round two” Amendments that would:

- permit the state agency that administers the Career and Technical Education (CTE) programs authorized under the Strengthening Career and Technical Education for the 21st Century Act (Perkins V) to be a Performance Accountability and Customer Information Agency (PACIA) so that it can access individual wage records through the SWIS Clearinghouse;
- permit the U.S. territories that receive Workforce Innovation and Opportunity Act (WIOA) Title I funds the ability to obtain aggregate information to assist with WIOA performance reporting;
- enable using Wage Data obtained from the SWIS Clearinghouse for the purposes of carrying out Reemployment Services and Eligibility Assessment (RESEA) and Worker Profiling and Reemployment Services (WPRS) program evaluations required under section 306 of the Social Security Act (SSA) or other related Federal law or regulation.

I am particularly supportive of *Amendment 7: Perkins Grantees as PACIAs*, as it will improve our state’s ability to leverage SWIS data for Perkins performance reporting. My understanding is that Amendment 7, Section IX.G, would permit Perkins grantees as our PACIAs] to share the employment flag with local college staff, provided the Annex 3 and Annex 3A or 3B are in place. Access to the employment flag will improve our ability to accurately report on CTE graduate employment rates.

Because our Perkins performance metrics capture both the percent of graduates employed and the percent of graduates employed in-field, we request consideration of future amendments to allow sharing of North American Industry Classification System (NAICS) code data at an individual level to use for determining whether a graduates’ employment was in a field related to their major. Sharing of these data could function similar to the employment flag, where SWIS wage and employer information would remain confidential, but the disclosed NAICS code and description would be available on a “read only” basis via the secure case management application.

Again, I support the proposed amendments and appreciate the opportunity to comment and provide suggestions.

Response #1:

The Departments appreciate the commenter’s support for proposed amendments 7, 8, and 9 to the SWIS Agreement. The commenter recommended allowing Perkins V local service providers to have access to individual-level North American Industry Classification System (NAICS) codes. The Departments considered the possibility of modifying the current amendments to provide this flexibility but decline to make this amendment at this time. Disclosing the NAICS code as part of the employment flag amendment is beyond the original intent to disclose employment status. Moreover, while the Departments believe the data would provide valuable information to States, the data are not required for Perkins performance reporting purposes.

However, the Departments note that while the SWIS Agreement and the proposed amendment limits the sharing of individual wage record information with local service providers to the “yes/no” employment flag, it is permissible to share aggregate data containing NAICS codes. While this would not allow for a direct link to determine if an individual’s employment is directly related to a field related to their major, it can still provide valuable information regarding industries in which graduates are employed. Individual-level NAICS code access is not necessary for the purposes of Perkins performance reporting. Section 113(b)(3)(C)(ii)(III)(dd) of Perkins V requires that eligible recipients disaggregate data for post-program placement and postsecondary placement, to the extent such data is available, by individuals in employment (including those individuals who are employed in a high-skill, high-wage, or in-demand section or occupation). In meeting this requirement, eligible recipients do not have to report if CTE concentrator employment is in the respective field of training.

The Departments note that PACIAs can provide “Aggregate Statistical Reports” to local service providers for the CTE programs. Section V of the SWIS Agreement defines Aggregate Data and Aggregate Statistical Reports as follows:

“Aggregate Data” are Wage Data have been stripped of any information that would identify the individual(s) to whom the data pertains, including but not limited to, name and Social Security Number (SSN) and that have been aggregated into a group(s) containing no fewer than three records, provided however, that nothing herein shall prevent a PACIA from observing a more stringent aggregation policy with regard to its own use and reporting of data.

“Aggregate Statistical Reports” are reports containing aggregate data.

Section VIII.B.6. of the SWIS Agreement allows PACIAs to prepare 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.

Therefore, if this is information that could be beneficial to the local service provider, the PACIA could provide aggregate employment data by industry in relation to the percent of graduates employed in-field.

Additional Proposed Round Two Amendments to the State Wage Interchange System (SWIS) Data Sharing Agreement

Amendment 7: Perkins Grantees as PACIAs

Proposal/Background (in general):

Section IX.B.2. of the SWIS Agreement permits PACIAs to obtain individual level Wage Data for the 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.]. Since signing the SWIS Agreement, some states have reorganized the agencies which administer the WIOA core programs within a state which has meant that the CTE program is no longer administered by the same state agency that administers at least one of the WIOA core programs. This is not a scenario the Departments contemplated when drafting the SWIS Agreement and, thus, no alternatives were incorporated to ensure CTE programs in reorganized states could continue to access individual wage records through the SWIS. As a result, the CTE program in these states (i.e., where it is not housed with at least one WIOA core program) have found it difficult to satisfy Federal Perkins V performance reporting requirements due to the lack of access to data through the SWIS.

Under the SWIS Agreement, only PACIAs and their contractors can receive individual level Wage Data. The SWIS Agreement currently defines a PACIA as including a state educational authority or other state agency the Governor designates as responsible for coordinating or facilitating the performance reporting of one or more of the state's WIOA core programs. Because the Perkins program is not a WIOA core program, it is not a PACIA. However, because of section IX.B.2. of the SWIS Agreement, a PACIA could re-disclose individual level wage records to the CTE program when that program is housed within the same or another PACIA. However, the SWIS Agreement does not permit the disclosure of individual-level wage records to the CTE program when it is not housed with at least one WIOA core program (i.e., a PACIA).

To ensure these programs have the individual wage records they need for performance reporting under Perkins V, the Departments propose to amend section V.N. of the SWIS Agreement to clarify that "eligible agencies" for the CTE program can be a "PACIA", and therefore, can receive individual level Wage Data through the SWIS for the purpose of fulfilling their Federally-required performance reporting requirements. If this proposed amendment is adopted, it will no longer be relevant whether the CTE program is housed in the same state agency as at least one WIOA core program. As a PACIA, the CTE program also could be a party to the SWIS Agreement, as proposed at section IV.B of the SWIS Agreement.

Additionally, the Departments also propose amendments to ensure that local service providers for the CTE program can access the Employment Flag for the purposes of completing required performance reporting. Similar to the core programs authorized by WIOA, Perkins V requires states and subrecipients (i.e., local service providers) to report on the employment status of secondary and postsecondary "CTE concentrators" during the second quarter after their exit from secondary education or completion of a postsecondary program (Perkins V, sections 113(b)(2)(A)(iii) and 113(b)(2)(B)(i), respectively). These data must be disaggregated by race, ethnicity, gender and for nine "special populations" identified in the law (e.g., students with

disabilities) (Perkins V section 113(b)(3)(C)(ii)). The law gives states and subrecipients particular responsibilities with respect to addressing performance disparities or gaps identified in the disaggregated results. For example, each subrecipient must include in its required biennial comprehensive local needs assessment “an evaluation of performance for special populations” and the other subgroups for which it must disaggregate student outcome data (Perkins V section 134(c)(2)(A)), as well as describe how it is “providing programs that are designed to enable special populations to meet the local levels of performance” (Perkins V section 134(c)(2)(E)). To meaningfully fulfill these and other responsibilities with respect to the student subgroups for which they are required to disaggregate employment outcomes, subrecipients need access to the employment status of “CTE concentrators.” For that reason, we are proposing amendments to ensure that Perkins subrecipients (i.e., local service providers) can access the Employment Flag.

Finally, the Departments propose other corresponding changes throughout the SWIS Agreement to clarify that under these proposed amendments the CTE programs would be a PACIA and, thus, able to receive individual wage records through the SWIS. These corresponding edits are technical or editorial in nature, not substantive.

Proposed Amendment 7. Perkins State Grantees as PACIAs

Reference: The SWIS Agreement, as amended. An unofficial version that incorporates the Amended terms from the First Agreement to Amend SWIS may be accessed here: [Restated SWIS Agreement November 15, 2023](#).

Current Provision (I. Background)

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.

Proposed Amendment Text (I. Background, insert the following text as the last sentence of the penultimate paragraph of the Background section)

In addition to the six core programs just identified, states may submit a Combined State Plan that includes certain other partner programs, including the Career and Technical Education (CTE) programs authorized under the Strengthening Career and Technical

Education for the 21st Century Act (Perkins V), which reauthorized the Carl D. Perkins Career and Technical Education Act of 2006 [20 U.S.C. 2301 et seq.] (section 103(a)(2)(A) of WIOA). In so doing, WIOA created a nexus between its requirements and those of Perkins V. Just as section 116 of WIOA requires the six core programs to collect and report individual-level wage information for participants, section 113(b)(2)(A)(iii) and (B)(i) of Perkins V [20 U.S.C. 2323(b)(2)(A)(iii) and (B)(i)] require the CTE programs to report individual level data employment data regarding its participants.

Current Provision (Section III. Legal Authority)

Proposed Amendment Text (New item under III.A.)

15. The Strengthening Career and Technical Education for the 21st Century Act (Perkins V), which reauthorized the Carl D. Perkins Career and Technical Education Act of 2006 [20 U.S.C. 2301 et seq.], authorizes the establishment of State and local performance accountability systems to assess the effectiveness of the state and the eligible recipients of the state in achieving statewide progress in career and technical education, including reporting disaggregated employment data to the Secretary of Education, and to optimize the return of investment of Federal funds in CTE activities.
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Current Provision (Section IV.B)

- 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.

Proposed Amendment Text (Section IV.B)

- B. The “PACIA,” or Performance Accountability and Customer Information Agency, for each participating state, is the entity (or entities, if there is more than one such entity) that is:
 1. The state agency(ies) 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]; or
 2. The eligible agency as defined in 3(18) of Perkins V [20 USC 2302(18)] that administers the CTE programs as required by section 113(b)(2) of Perkins V [20 U.S.C. 2323(b)(2)].

Current Provision (Section IV.D)

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 education and career and technical education activities. This includes administering AEFLA, as authorized under set forth in title II of WIOA, and the Perkins V, respectively, and jointly administered activities under title I of WIOA.

Proposed Amendment Text (Section IV.D)

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 education and CTE activities. This includes administering AEFLA, as authorized under title II of WIOA, and the CTE program, respectively, and jointly administered activities under title I of WIOA.

Current Provision (Section V.N)

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:

Proposed Amendment Text (Section V.N)

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 or is the eligible agency designated to administer the CTE program under Perkins V. 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 (including the “eligible agency” for the CTE programs as defined in section 3(18) of Perkins V), 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:

Current Provision (Section V.X)

- 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.

Proposed Amendment Text (Section V.X)

- 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, which include eligible agencies for the CTE programs as defined in section 3(18) of Perkins V, are permitted to access, without consent, PII from Education Records.
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Current Provision (Section IX.C.1)

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

Proposed Amendment Text (Section IX.C.1)

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 or Education; (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;

Current Provision (Section IX.G)

1. Notwithstanding any other provision of this Agreement, a PACIA that has obtained Wage Data for a participant in a program listed in Section IX.B.1 or IX.B.2 may provide a Local Service Provider and its employees with a notification or electronic system access for purposes of completing WIOA-required performance reporting, provided that, (a) such access is limited to identifying on a “read only” basis whether an Employment Flag is disclosed for a program participant, (b) the PACIA and Local Service Provider have entered into an agreement in the form set forth at Annex 3, and (c) the employee(s) of such Local Service Provider who will access the Employment Flag have completed an Acknowledgement of Confidentiality as set forth at either Annex 3-A or 3-B.

Proposed Amendment Text (Section IX.G)

1. Notwithstanding any other provision of this Agreement, a PACIA that has obtained Wage Data for a participant in a program listed in Section IX.B.1 or IX.B.2 may provide a Local Service Provider and its employees with a notification or electronic system access for purposes of completing Federal-law required performance reporting, provided that, (a) such access is limited to identifying on a “read only” basis whether an Employment Flag is disclosed for a program participant, (b) the PACIA and Local Service Provider have entered into an agreement in the form set forth at Annex 3, and (c) the employee(s) of such Local Service Provider who will access the Employment Flag have completed an Acknowledgement of Confidentiality as set forth at either Annex 3-A or 3-B.
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Current Provision (Section IX.G.3.b)

- b. “Local Service Provider” as used in this Agreement means the entity with which the state or the Workforce Development Board (either State or Local) has a documented relationship to provide the services described in the approved Unified or Combined State Plan under sections 102 or 103 of WIOA in a local area (as defined in subsection 3(32) of WIOA).

Proposed Provision (Section IX.G.3.b)

b. “Local Service Provider” as used in this Agreement means: 1) the entity with which the state or the Workforce Development Board (either State or Local) has a documented relationship to provide the services described in the approved Unified or Combined State Plan under sections 102 or 103 of WIOA in a local area (as defined in subsection 3(32) of WIOA); or 2) the eligible agency as defined in section 3(18) of Perkins V that administers CTE programs as required by section 113(b)(2) of Perkins V.

Continuation of Amendment 7 terms:

Current Annex 3

Employment Flag Agreement by and between PACIA & Local Service Provider

[INSERT LSP NAME]

This Employment Flag Data Sharing Agreement (Agreement) sets out the terms and conditions agreed to by and between PACIA and Local Service Provider.

- I. Background.** The PACIA is the state public agency responsible for the state’s case management system and for WIOA-required performance reporting, including performance reporting related to the programs operated by the Local Service Provider. The data accessed through the state’s case management system includes Employment Flag data that is useful for WIOA-required performance reporting. This agreement sets out the terms by which the Local Service Provider, an entity engaged by the state or Workforce Development Board to provide certain services, will access the PACIA’s case management system in order to complete certain WIOA performance reporting for the PACIA. This Agreement relates to unemployment compensation (UC) information governed by 20 CFR Part 603 (the Federal regulation on confidentiality and disclosure of state UC program information), and by the terms of the State Wage Interchange System (SWIS) Agreement, to which PACIA is a party. This Agreement references terms defined in the SWIS Agreement.
- II. The PACIA agrees to the following:**
 - A. The PACIA hereby engages the Local Service Provider to access Employment Flag data for its program participants for purposes of required performance reporting.
 - B. The PACIA is responsible for the Local Service Provider’s use of the Employment Flag, which constitutes confidential UC information, including ensuring compliance by the Local Service Provider and its employees with the applicable safeguards required for such information as set out in this Agreement and the SWIS Agreement.
 - C. The Employment Flag will be provided as “read only” information meaning that individuals will not be able to electronically copy, save, or print the information.
 - D. The PACIA will confirm the sufficiency and ongoing completion of the Acknowledgements of Confidentiality described in Section XI.B.8. of the SWIS Agreement (either in the form set out in Annex 3-A or as described at Annex 3-B of the SWIS Agreement) for all employees of the Local Service Provider who will access the Employment Flag.
 - E. After confirming the sufficiency and completion of Acknowledgements, PACIA will coordinate Read-only access to the Employment Flag through PACIA’s case management system for each employee designated by Local Service Provider.
 - F. Unless the Annex 3-B electronic acknowledgement requirement is fully implemented in the PACIA’s case management system, the PACIA will confirm that a completed Annex 3-A Acknowledgement of Confidentiality is in place for each Local Service Provider employee, at least annually.

G. If the Local Service Provider is no longer engaged by the state or Workforce Development Board to provide services in a local area, a PACIA will cease sharing the Employment Flag with the Local Service Provider and its employees no later than the end date of the documented relationship with the state or Workforce Development Board, and this Agreement will terminate according to Section V below.

III. The Local Service Provider _____ [INSERT LSP NAME] agrees to the following:

- A. The Local Service Provider agrees to obtain only the Employment Flag data that relates to the Local Service Provider’s program participants from the state case management system and to use such Employment Flag data solely for purposes of completing required performance reporting for the PACIA.
- B. The Local Service provider acknowledges the confidential nature of the Employment Flag data that its employees will access from the state case management system.
- C. The Local Service Provider agrees that the Employment Flag Data will only be used pursuant to the terms and conditions of this Agreement and the SWIS Agreement, including ensuring all required safeguards for such data.
- D. The Local Service Provider agrees that access to the Employment Flag will only be requested for its employees whose official job responsibilities relate to performance reporting.
- E. The Local Service Provider will instruct its employees who will be provided access to the Employment Flag of the confidential nature of the information, the safeguards required to protect the information, the civil and criminal sanctions for noncompliance with such safeguards, and the requirements of this Agreement and the SWIS Agreement.
- F. The Local Service Provider will ensure that employee(s) who will be provided access to the Employment Flag acknowledge the confidentiality requirements of this data and the restrictions of this Agreement by either:
 - 1. Signing the Employment Flag Confidentiality Acknowledgement in **Annex 3-A** of the SWIS Agreement; or
 - 2. Agreeing to the requirements of the SWIS Agreement by clicking an acknowledgement committing to comply with the SWIS requirements each time the Employment Flag is accessed through the state’s electronic case management system as described in **Annex 3-B** of the SWIS Agreement.
- G. The Local Service Provider will provide signed acknowledgements as set out in **Annex 3-A** to the PACIA, or will maintain records of the acknowledgements set out in **Annex 3-B**, as applicable.
- H. The Local Service Provider agrees to allow on-site inspections by the PACIA and its agents and contractors for purposes of assuring that the requirements set out herein are being met.
- I. The Local Service Provider will: (1) provide records of all employee acknowledgements to the PACIA, and (2) periodically, including upon request by the

PACIA, remind its employees of the confidential nature of the Employment Flag and required safeguards.

- J. If the Local Service Provider is no longer the entity engaged by the state or Workforce Development Board to provide services in a local area, the Local Service Provider will immediately notify the PACIA, and promptly cooperate with PACIA as needed to ensure termination of Employment Flag access for its employees. This Agreement will terminate according to Section V below.

IV. Effect of Agreement. The relative benefits received by each party in carrying out the duties and commitments described in this agreement are approximately equal. Therefore, each party agrees to bear their own costs related to this Agreement. This Agreement sets out the roles and responsibilities of the parties in relation to each other and is not intended to confer any right to any third party. Nothing herein shall limit, supersede, or otherwise affect the PACIA’s normal operations or decisions in carrying out its duties and does not limit the PACIA from entering into similar arrangements with other entities. This Agreement must be signed by individuals who have authority to bind their respective organizations to the commitments in this Agreement.

V. Termination. The PACIA may terminate this Agreement immediately at any time if the PACIA determines that the required data safeguards are not being adhered to by the Local Service Provider or any of its employees. The duties regarding confidentiality of the Employment Flag described herein continue beyond termination of this Agreement until all access by the Local Service Provider and its employees to such data, in any form, has ended. This Agreement will terminate automatically as of the end date of the Local Service Provider’s documented relationship with the state or Workforce Development Board. Either party may terminate this Agreement without cause with thirty (30) days written notice.

Performance Accountability and Customer Information Agency (PACIA)

I hereby certify that I have authority to legally bind this PACIA.

By: _____ Date: _____

Name (Printed): _____ Title: _____

Email: _____ Phone: _____

Agency: _____

System Name: _____

Agency reporting on behalf of WIOA: Title I Title II Title III Title IV

Local Service Provider

I hereby certify that I have authority to legally bind this Local Service Provider.

By: _____ Date: _____

Name (Printed): _____ Title: _____

Email: _____ Phone: _____

Agency providing services on behalf of WIOA: Title I Title II Title III Title IV

Continuation of Amendment 7 terms:

Proposed Annex 3

Employment Flag Agreement by and between PACIA & Local Service Provider

[INSERT LSP NAME]

This Employment Flag Data Sharing Agreement (Agreement) sets out the terms and conditions agreed to by and between PACIA and Local Service Provider.

- I. Background.** The PACIA is the state public agency responsible for the state’s case management system and for required performance reporting, including performance reporting related to the programs operated by the Local Service Provider. The data accessed through the state’s case management system includes Employment Flag data that is useful for Federal- law required performance reporting. This agreement sets out the terms by which the Local Service Provider, an entity engaged by the state or Workforce Development Board to provide certain services, will access the PACIA’s case management system in order to complete Federal-law required performance reporting for the PACIA. This Agreement relates to unemployment compensation (UC) information governed by 20 CFR Part 603 (the Federal regulation on confidentiality and disclosure of state UC program information), and by the terms of the State Wage Interchange System (SWIS) Agreement, to which PACIA is a party. This Agreement references terms defined in the SWIS Agreement.
- II. The PACIA agrees to the following:**
- A. The PACIA hereby engages the Local Service Provider to access Employment Flag data for its program participants for purposes of Federal-law required performance reporting.
 - B. The PACIA is responsible for the Local Service Provider’s use of the Employment Flag, which constitutes confidential UC information, including ensuring compliance by the Local Service Provider and its employees with the applicable safeguards required for such information as set out in this Agreement and the SWIS Agreement.
 - C. The Employment Flag will be provided as “read only” information meaning that individuals will not be able to electronically copy, save, or print the information.
 - D. The PACIA will confirm the sufficiency and ongoing completion of the Acknowledgements of Confidentiality described in Section XI.B.8. of the SWIS Agreement (either in the form set out in Annex 3-A or as described at Annex 3-B of the SWIS Agreement) for all employees of the Local Service Provider who will access the Employment Flag.
 - E. After confirming the sufficiency and completion of Acknowledgements, PACIA will coordinate Read-only access to the Employment Flag through PACIA’s case management system for each employee designated by Local Service Provider.
 - F. Unless the Annex 3-B electronic acknowledgement requirement is fully implemented in the PACIA’s case management system, the PACIA will confirm that a completed Annex 3-A Acknowledgement of Confidentiality is in place for each Local Service Provider employee, at least annually.

- G. If the Local Service Provider is no longer engaged by the state or Workforce Development Board to provide services in a local area, a PACIA will cease sharing the Employment Flag with the Local Service Provider and its employees no later than the end date of the documented relationship with the state or Workforce Development Board, and this Agreement will terminate according to Section V below.

III. The Local Service Provider _____ [INSERT LSP NAME] agrees to the following:

- A. The Local Service Provider agrees to obtain only the Employment Flag data that relates to the Local Service Provider's program participants from the state case management system and to use such Employment Flag data solely for purposes of completing Federal-law required performance reporting for the PACIA.
- B. The Local Service provider acknowledges the confidential nature of the Employment Flag data that its employees will access from the state case management system.
- C. The Local Service Provider agrees that the Employment Flag Data will only be used pursuant to the terms and conditions of this Agreement and the SWIS Agreement, including ensuring all required safeguards for such data.
- D. The Local Service Provider agrees that access to the Employment Flag will only be requested for its employees whose official job responsibilities relate to performance reporting.
- E. The Local Service Provider will instruct its employees who will be provided access to the Employment Flag of the confidential nature of the information, the safeguards required to protect the information, the civil and criminal sanctions for noncompliance with such safeguards, and the requirements of this Agreement and the SWIS Agreement.
- F. The Local Service Provider will ensure that employee(s) who will be provided access to the Employment Flag acknowledge the confidentiality requirements of this data and the restrictions of this Agreement by either:
 - 1. Signing the Employment Flag Confidentiality Acknowledgement in Annex 3-A of the SWIS Agreement; or
 - 2. Agreeing to the requirements of the SWIS Agreement by clicking an acknowledgement committing to comply with the SWIS requirements each time the Employment Flag is accessed through the state's electronic case management system as described in Annex 3-B of the SWIS Agreement.
- G. The Local Service Provider will provide signed acknowledgements as set out in Annex 3-A to the PACIA, or will maintain records of the acknowledgements set out in Annex 3-B, as applicable.
- H. The Local Service Provider agrees to allow on-site inspections by the PACIA and its agents and contractors for purposes of assuring that the requirements set out herein are being met.

- I. The Local Service Provider will: (1) provide records of all employee acknowledgements to the PACIA, and (2) periodically, including upon request by the PACIA, remind its employees of the confidential nature of the Employment Flag and required safeguards.
- J. If the Local Service Provider is no longer the entity engaged by the state or Workforce Development Board to provide services in a local area, the Local Service Provider will immediately notify the PACIA, and promptly cooperate with PACIA as needed to ensure termination of Employment Flag access for its employees. This Agreement will terminate according to Section V below.

IV. Effect of Agreement. The relative benefits received by each party in carrying out the duties and commitments described in this agreement are approximately equal. Therefore, each party agrees to bear their own costs related to this Agreement. This Agreement sets out the roles and responsibilities of the parties in relation to each other and is not intended to confer any right to any third party. Nothing herein shall limit, supersede, or otherwise affect the PACIA’s normal operations or decisions in carrying out its duties and does not limit the PACIA from entering into similar arrangements with other entities. This Agreement must be signed by individuals who have authority to bind their respective organizations to the commitments in this Agreement.

V. Termination. The PACIA may terminate this Agreement immediately at any time if the PACIA determines that the required data safeguards are not being adhered to by the Local Service Provider or any of its employees. The duties regarding confidentiality of the Employment Flag described herein continue beyond termination of this Agreement until all access by the Local Service Provider and its employees to such data, in any form, has ended. This Agreement will terminate automatically as of the end date of the Local Service Provider’s documented relationship with the state or Workforce Development Board. Either party may terminate this Agreement without cause with thirty (30) days written notice.

Performance Accountability and Customer Information Agency (PACIA)

I hereby certify that I have authority to legally bind this PACIA.

By: _____ Date: _____

Name (Printed): _____ Title: _____

Email: _____ Phone: _____

Agency: _____ System Name: _____

Agency reporting on behalf of the SWIS entity responsible for: Title I Title II Title III

Title IV Perkins

Local Service Provider

I hereby certify that I have authority to legally bind this Local Service Provider.

By: _____ Date: _____

Name (Printed): _____ Title: _____

Email: _____ Phone: _____

Agency providing services on behalf of the SWIS entity responsible for: Title I Title II

Title III Title IV Perkins

Amendment 8: Territories Access to Aggregate Data

Proposal/Background (in general):

Section IX.B.3. of the SWIS Agreement authorizes a PACIA to query the SWIS for the enumerated programs to provide aggregate information to the grantee or contractor that administers the program. Currently, the Employment and Training Administration (ETA) and the Kansas Department of Commerce (KDOC) have a memorandum of understanding putting in place the Common Reporting Information System (CRIS), which enables ETA's national programs to utilize aggregate information for required performance reporting. Under the CRIS, the national and discretionary grantees send participant information to ETA, which sends that information to KDOC. KDOC accesses wage records through the SWIS and then provides aggregate employment outcome information to ETA.

The programs enumerated in section IX.B.3. do not include the WIOA title I core programs. Therefore, the SWIS Agreement does not authorize ETA to query the CRIS on behalf of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, or the Republic of Palau (hereinafter territories) for their WIOA title I required performance reporting. Having access to this aggregate information would greatly assist the territories in meeting their negotiated performance goals.

The Departments propose to amend SWIS Agreement to permit the territories that receive WIOA title I funds to obtain aggregate information to assist with WIOA required performance reporting for the WIOA Title I core programs. The proposed amendment text is presented below.

Proposed Amendment 8. Territories Access to Aggregate Data
Reference: Section IX Disclosures under the SWIS 3. Aggregate Data Disclosures to DOL programs not administered by a public official
Proposed Amendment Text (New Section IX.B.3.k) k. Programs listed in Section IX.B.1 of this Agreement administered by American Samoa, Guam, Commonwealth of the Northern Mariana Islands, or the Republic of Palau.

Amendment 9: Required Evaluations for Unemployment Insurance Reemployment Programs

Proposal/Background (in general):

The 2018 Bipartisan Budget Act (Public Law 115-123) amended the Social Security Act (SSA) to permanently authorize the Reemployment Services and Eligibility Assessment (RESEA) program and requires states to adopt evidence-based strategies in their RESEA programs. The RESEA program is a one-on-one assessment of a claimant’s continuing eligibility for unemployment compensation and provides individuals with support in seeking re-employment. The Worker Profiling and Reemployment Services (WPRS) system is a required UI service in which states apply statistical models to identify claimants that are likely to exhaust their UI benefits and refer them to reemployment services. WPRS is required by Section 303(j) of the SSA and has been integrated into RESEA to support the identification of claimants that would most benefit from reemployment services.

Section 306(c) of the SSA requires states to use RESEA grant funds for evidence-based interventions or service delivery strategies that reduce the average number of weeks participants receive benefits by improving employment outcomes, including earnings. Section 306(d)(2) of the SSA permits states to use 10 percent of their RESEA grants to fund evaluations to help generate such evidence. A key component of RESEA service delivery is appropriate claimant selection and RESEA evaluation requirements have been expanded to include WPRS where states are operating integrated RESEA/WPRS programs. Currently, all states operating a RESEA program have integrated WPRS into their RESEA program.

This proposed amendment to the SWIS Agreement permits states to use Wage Data obtained from the SWIS Clearinghouse to carry out these evaluations.

<u>Proposed Amendment 9. Required Evaluations for Unemployment Insurance Reemployment Programs</u>

Proposed Amendment Text (New Section IX.D.5)

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| <ul style="list-style-type: none">5. Re-Disclosures for Required Evaluations for Unemployment Insurance Reemployment Programs<ul style="list-style-type: none">a. Wage Data obtained from the SWIS Clearinghouse may be used for the purposes of carrying out Reemployment Services and Eligibility Assessment (RESEA) and Worker Profiling and Reemployment Services (WPRS) program evaluations required under section 306 of the SSA or other related Federal law or regulation. Use of Wage Data for these purposes is not subject to the section IX.E. limitations.b. The following requirements apply to the use of Wage Data obtained for RESEA or WPRS program research and evaluations:<ul style="list-style-type: none">(i) The state entity responsible for carrying out the required RESEA or WPRS evaluation(s) must ensure that all other entities, including other |
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state agencies, agents or contractors, with access to Wage Data for purposes of this section IX.D.5 agree to comply with the requirements of the SWIS Agreement. This includes, but is not limited to, the requirement that all individuals with access to Wage Data for these purposes must sign an Annex 2 Acknowledgement of Confidentiality Requirements and Restrictions.

- (ii) A SUIA, PACIA, or SUIA or PACIA's agent or contractor carrying out the evaluation may have access to the Wage Data necessary to conduct the evaluation.

Reference Provision: XI. B.1.

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).

Proposed Amendment Text (New Section XI.B.1.f)

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); or
- f. To other entities as permitted in this Agreement.