

Proposed Round Two Amendment to the SWIS Agreement: Record Retention

Proposal (in general):

The U.S. Departments of Labor and Education (Departments) propose to amend the State Wage Interchange System (SWIS) Data Sharing Agreement (SWIS Agreement) to permit (but not require) the retention of Wage Data obtained through the SWIS for up to 15 years after a participant exits a program. Currently, the SWIS Agreement requires Performance Accountability and Customer Information Agencies (PACIAs) to destroy Wage Data received through the SWIS five (5) years after receiving the Result file. The proposed amendment text is presented below.

Background Giving Rise to the Proposed Amendment:

Two areas of concern gave rise to this proposed amendment. First, States expressed concern regarding the length of time they are permitted to retain Wage Data received from the SWIS Clearinghouse. Currently, section XI.B.5. of the SWIS Agreement requires PACIAs to destroy Wage Data obtained through the SWIS within five (5) years of receiving that data. Several States have said the five-year retention period does not provide sufficient time to meet certain Federal reporting requirements, particularly when a participant continues to receive services from a program for many years and that program must begin collecting Wage Data at the time the individual applies for services.

Second, the Departments use data submitted by the States pursuant to section 116(d)(2) of the Workforce Innovation and Opportunity Act (WIOA) to create and implement the WIOA statistical adjustment model (SAM). Similarly, states use the data they obtain from the SWIS Clearinghouse in their implementation of the SAM in local performance assessment. The current requirement of the SWIS Agreement that all Wage Data must be destroyed five years after receipt reduces the accuracy and reliability of the SAM, which relies, among other data, on wage records.

Analysis to Support Proposed Amendment:

Section 116(b)(2)(A) of WIOA describes the primary indicators of performance, several of which pertain to employment. For two of those indicators, States must report the percentage of participants employed in unsubsidized employment in the second and fourth quarters after exiting the program. The third employment-related performance indicator requires States to report the median earnings of participants in the second quarter after exiting the program. States must report data specifying levels of performance for the primary indicators of performance, including the three employment-related performance indicators, pursuant to section 116(d)(2)(A) of WIOA.

Section 116(i)(2) of WIOA requires States to use quarterly wage records to measure their progress on State and local performance accountability measures. The provision also requires the Secretary of Labor to make arrangements, consistent with State law, to ensure that the wage records of any State are available to any other State to the extent that such wage records are required by the State in carrying out the Unified or Combined State Plan or completing the annual report required by section 116(d) of WIOA. To that end, the Secretaries of Labor and

Education collaborated in the development and implementation of the SWIS and the SWIS Agreement to facilitate the interstate exchange of Wage Data between participating States for the purpose of assessing and reporting on State and local performance for the six core programs, other one-stop partners under WIOA, and for other purposes allowed under the SWIS Agreement. More specifically, the SWIS, in pertinent part: (1) assists States in assessing the performance of individual training providers and state education, employment, and training programs; and (2) supports States in preparing and submitting reports to the Departments 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.

1. Participants Receiving Program Services for Longer Periods

In addition to the joint reporting requirements of section 116(d) for all core one-stop partner programs, some programs provide services to participants for an extended period of time, sometimes multiple years. Due to the SWIS Agreement's five-year Wage Data retention period, programs that serve participants for multiple years may no longer have the initial Wage Data needed for their required reporting. For example, under the Vocational Rehabilitation (VR) program, participants with disabilities often need services for many years in order to achieve an employment outcome. In addition to the post-exit employment data that must be reported pursuant to section 116(d)(2)(A) of WIOA, section 101(a)(10)(E)(i)(III) of the Rehabilitation Act of 1973 (Rehabilitation Act) requires State VR agencies to report wage information about a participant at the time of application to and termination from the program. If participants remain in the VR program for more than five years, the State would not have access to the initial Wage Data obtained at the time of application when those participants exit the VR program. The State also would not have that Wage Data from the time of application when reporting the employment data required by section 116(d)(2)(A) of WIOA for those participants, namely median earnings at second quarter after exit from the program and supporting wage records to document the participant was employed in the second and fourth quarters after exit. To illustrate, some participants enter the VR program while still in high school, remain in the VR program to attend a four-year college program, and continue to remain in the VR program after graduation receiving a variety of VR services until they achieve an employment outcome. For these participants, the time spent in the VR program can far exceed five years. Therefore, for participants such as these, State VR agencies would submit incomplete data at the time of the participants' exit because the Wage Data at the time of application would no longer be available when they exit the program, despite the fact that section 101(a)(10)(E)(i)(III) of the Rehabilitation Act requires State VR agencies to report the wage information at time of the participant's application to the program.

Similarly, the Trade Adjustment Assistance (TAA) program – one of the other partner programs in the one-stop system for which states are permitted to use Wage Data from the SWIS for required performance reporting – may have participants who are in the program for long periods of time. Consider for example, a WIOA dislocated worker program participant who receives services and is determined eligible for TAA services on January 1, 2018. The participant may receive six months or more of employment and case management services starting on that date, followed by a TAA training program that lasts 130 weeks (2 ½ years) or more, followed by additional TAA benefits after the training program ends, including up to 104 weeks (2 years) of

Reemployment Trade Adjustment Assistance (RTAA). On January 1, 2018, PACIAs would start including that participant on the quarterly SWIS wage response and return file, pursuant to 20 C.F.R. §618.684(h)(15), because that is when the participant entered the TAA program and started receiving TAA services. If Wage Data were returned from the SWIS Clearinghouse, the PACIA would start adding this information to the wage table for that participant immediately. Under the current records destruction requirement in section XI.B.5. of the SWIS Agreement, the PACIA must destroy (and delete from its electronic files) the Wage Data (if any) that it obtained from the SWIS on January 1, 2018, no later than January 2023, i.e., five years after receipt of the data from the SWIS. If the participant exits the TAA program in 2023 after receiving the maximum training and Trade Readjustment Assistance (TRA) benefits, the State would have already deleted the Wage Data that existed prior to and at the time of program entry, and the State, therefore, would not be able to satisfy the requirement at 20 C.F.R. §618.684(h)(15) to report on the participant's wages prior to their program participation. Since TAA participation may extend more than 5 years, particularly when combined with services from co-enrolled programs such as the WIOA Dislocated Worker program, and TAA participant reporting in PIRL requires reporting for an additional 2.5 years after exit, a record retention of more than five years is needed to meet TAA performance reporting requirements. In addition, under 20 CFR 618.852(a)(2)(ii), the TAA program requires the state to retain the data for a period of 3 years following submission of any [quarterly or annual] report for which it is used, which extends the period of retention even further.

2. WIOA Statistical Adjustment Model (SAM)

In addition to the above-described performance reporting needs of certain programs which support the need to extend the record retention period for SWIS wage records past the five-year mark, the data requirements for implementation of the SAM highlight the need for a record retention period of up to 15 years post a participant's exit from a program. Specifically, the five-year period makes it difficult for the Departments to implement the SAM, required by section 116(b)(3)(A)(viii) of WIOA, as intended, including allowing the adjustment of levels of performance for actual economic conditions and characteristics of participants.

The SAM is an objective regression model used in the performance assessment process of the performance accountability system established under WIOA, in accordance with the requirements of section 116(b)(3)(A)(iv), (v), and (vii) of WIOA. When using the SAM to assess for performance levels, the Departments must take certain factors into consideration, such as the characteristics of participants when they enter each of the programs, including, in pertinent part, indicators of lack of work history and poor work history. In addition to its use at the State level, section 116(c)(3) of WIOA requires the local boards, chief elected officials, and the Governor to make adjustments for the expected economic conditions and the expected characteristics of participants to be served in the local area, using the SAM developed pursuant to section 116(b)(3)(A)(viii) of WIOA, in negotiating the local levels of performance. The provision also requires that a SAM be used to revise negotiated local levels of performance after a program year to reflect the actual economic conditions experienced and the characteristics of the populations served in the local area. In short, the Departments are required to develop the SAM that is used to negotiate with States and establish negotiated levels of performance and conduct assessments of each State. In turn, States must use a SAM to negotiate levels of performance with local areas. However, to take into account conditions and performance at the local level to accurately predict

performance at that level, states must produce a state-specific SAM from the federally-developed SAM. The Federal SAM cannot be used by a State without adjustments to establish the local negotiated levels and, to make these adjustments, the States must have the relevant historical data.

Statistical principles necessitate that the SAM, at both the Federal and local area levels, include several continuous years of Wage Data in order to ensure accurate and reliable results. While to a statistician the phrase “objective statistical model” is somewhat redundant in that SAMs are by definition intended to be objective, the Departments interpret the use of the word “objective” to emphasize that the SAM must be based on historical data. The more years of observations in the SAM, the more accurate the data will be and the more reliable its predictive value. In other words, the more years of ups and downs in the data the SAM has to make predictions, the better the model can be for future predictive value. Therefore, as the Departments have worked with the SAM since PYs 2018-2019, we have seen the positive value of data being added to the SAM in terms of improving the accuracies of the adjusted levels of performance and actual levels of performance. The Departments are confident this accuracy will increase with the addition of more data years, thereby yielding a better historical perspective of the actual economic conditions and participant characteristics in each State and local area over a long period of time and ever increasing reliable predictive value for negotiating with the States and local areas. Such historical predictive values would prove even more critical should there ever be another situation such as the global pandemic that we just experienced.

Under the current five-year record retention period of section XI.B.5. of the SWIS Agreement, States are required to destroy all Wage Data obtained from the SWIS five years after obtaining those records. Since these data are among the data used to develop the SAM, the destruction of these files would have a negative impact on the implementation of the SAM in future years. For example, the Departments are currently implementing a SAM for PYs 2022-2023. In PY 2022, the cohort of those who were employed in the fourth quarter after exiting from a program (Employment Rate Q4) is participants who exited in calendar year (CY) 2021 – going back as far as individuals who exited on January 1, 2021. Under the current SWIS, the Departments could not use these data after January 1, 2026, which is five years after the States received the Wage Data.

The Departments will soon develop and implement a SAM for PYs 2024 and 2025. The second year of this model, PY 2025, ends on June 30, 2026; however, States do not submit their PY 2025 annual report until October 2026. Therefore, with a five-year retention period the Departments would not be able to include the cohort of PY 2022 Employment Q2 participants in the PY 2024-2025 SAM when assessing for actual levels of performance for PY 2025. In other words, with the current five-year retention period of section XI.B.5. of the SWIS Agreement, Wage Data can only be used for purposes of one SAM iteration, not multiples, thereby minimizing the historical significance that the SAM was intended to provide.

Summary

Amending the SWIS Agreement to permit Wage Data to be retained for up to 15 years post a participant’s exit from a program, would solve both identified concerns. First, we would ensure that Wage Data would be maintained from the time the participant applies for a program through

the fourth quarter after program exit, thereby capturing all Federally-required data (*i.e.*, application, exit, median earnings in the second quarter after exit, and employment in the second and fourth quarters after exit). The time period proposed would be sufficient to accommodate time lags historically noted in the data reporting process.

Second, we would ensure the SAM would be developed and implemented as intended for its historical significance by ensuring that multiple data set years are used in the development and implementation of each SAM. In proposing to extend the record retention period to 15 years post a participant's exit, using the PY 2022 Employment Q2 cohort described above, the Departments could use the PY 2022-2023 cohort data for multiple SAMs, not just one.

Specifically, the employment outcomes could be used in the 2022-2023, 2024-2025, 2026-2027, 2028-2029, and 2030-2031 SAMs. With the PY 2030-2031 biennial, the Departments would assess for performance subsequent to the States submitting their annual reports in October 2032. While there still may be time for the PY 2022 data cohort to be used in one more SAM iteration, with the lag in SAM implementation at times, the PY 2030-2031 biennial may realistically be the final use for that data. Still, with the proposed extension of the record retention period, the Departments would be able to use the PY 2022 Wage Data for at least five different SAMs, if not six, rather than the current one, thereby dramatically increasing the historical significance of the SAM.

<p><u>Proposed Round Two Amendment. Record Retention</u></p>
<p>Reference: Section XI. Confidentiality and Restrictions on Use of DDBI Information, Wage Data, PII from Education Records, and Personal Information from VR Records B. PACIA 5.</p>
<p>Current Provision (Section XI.B.5)</p> <p>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.</p>
<p>Proposed Amendment Text</p> <p>5. The PACIA shall retain the Wage Data received from the SWIS only for the period required to utilize it for assessment and reporting purposes, or to satisfy applicable Federal or state records retention requirements, not to extend beyond fifteen (15) years after the participant exits a program identified in Section IX, paragraph B, after which period of time the Wage Data shall be destroyed, including the degaussing of magnetic tape files and permanent deletion of electronic data.</p>
<p>Reference: Annex 1, Section V. Requirements 2</p>
<p>Current Provision (Annex 1 Section V.2.)</p> <p>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 Result, as defined in Section V.U. of the SWIS Data Sharing Agreement, is received.</p>
<p>Proposed Amendment Text</p> <p>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 a period longer than what is defined in Section XI.B.5.</p>
<p>Reference: Attachment 1, Supplemental FERPA Agreement, Section V. Requirements 2</p>
<p>Current Provision</p>

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

Proposed Amendment Text

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 a period longer than what is defined in Section XI.B.5.**