

September 25, 2023

Michelle L. Paczynski
Administrator
Office of Policy Development and Research
US Department of Labor, Employment and Training Administration
200 Constitution Avenue NW
Room N-5641
Washington, DC 20210

RE: Department of Labor, Employment and Training Administration Request for Information Regarding Confidential Unemployment Compensation Information, Docket No. ETA-2023-0002 and Regulatory Identification Number (RIN) 1205-AC11

Dear Administrator Paczynski:

The undersigned organizations are committed to using data and evidence to improve transparency as well as education and employment outcomes for individuals and communities across the country. Through a variety of approaches, we all seek to promote data policies and practices that result in better impact, support, and services for individuals and communities, particularly policies and practices that impact the use of statewide longitudinal data systems (SLDSs)—systems that incorporate early childhood, K-12, postsecondary, and workforce data.

We appreciate the Department of Labor asking critical questions about the role that federal unemployment compensation (UC) information should play in helping to further improve opportunities for learners and workers. From our perspective, SLDSs are both a critical foundation for federal data collections and essential to ensuring equitable data access, use, and collaboration across and among public sector entities at all levels. As such, our comments below focus on questions that address the interconnectedness between state and federal data ecosystems.

Students, workers, and employers are experiencing a major shift in the labor market toward specific skills and competencies and using this information to make more informed and timely decisions. This new emphasis on skills is intended to expand access to the pathways that lead to high-quality careers and reduce friction in the wider labor market. Such a shift could bring any number of benefits: less student debt and lost time pursuing expensive but relatively low-quality training programs for job seekers, a larger pool of individuals with the specific skills employers need, higher wages, and lifelong skill accumulation. But this shift can only happen successfully if sustained by a strong data ecosystem at all levels—local, state, and federal—that gathers and publicizes data on labor market need, program availability and quality, and most importantly, *earnings*.

A strong data ecosystem would enable students, workers, employers, community organizations, policymakers and others to answer pressing (and sometimes basic) questions that they cannot currently answer, such as:

- Where are quality jobs located in a state/region/community and which opportunities offer the best career pathways as well as the potential for earnings and professional growth?
- How do employment and wage outcomes vary by different training, credential, and degree programs and which training, credential, and degree programs provide the greatest return on investment for students?
- Where are quality career preparation programs located across a state and what does access to those programs look like for individuals from different races, ethnicities, genders, and socioeconomic statuses, including alignment to in-demand careers?
- What are the trends for the entire workforce and for young job seekers who are seeking employment for the first time but have not had education beyond K–12 (e.g., opportunity youth)? What are the trends by region, industry, and demographic groups, including historically underserved populations? How do leaders address these trends?

Additionally, access to high-quality, up-to-date, standardized data would allow employers and researchers to conduct ongoing performance management, evaluate program activities, and identify trends that can be used to strengthen support for job seekers and participants in training programs.

Unfortunately, stakeholders lack consistent access to earnings and employment outcomes data and the data that is available has major gaps, creating quality concerns. For example, it is challenging to capture earnings associated with particular jobs and sectors, locating training participants who work out of state, or identifying more precise wage details (e.g., hours worked, occupation information, and other pertinent information).

Even if these quality issues are remedied, the lack of consistent *access* will continue to stymie efforts of individuals, communities, and policymakers to make informed choices about education and workforce pathways. For example, current UC regulations and guidance are not structured in ways that ensure SLDSs can reliably integrate UC wage information, despite the significant need for these records. The permissibility of sharing UC information with an SLDS for federal and state accountability purposes, research, evaluation, and policy development, and the development of data analytics tools remains vague and overly ambiguous. There is no consistent set of rules and guidelines for sharing UC information with an SLDS given wide-ranging state interpretations of current regulations and related guidance. Thus, far too often, whether states are sharing this information remains at the whim and discretion of legal counsel within individual state UC agencies.

Although the lack of clear guidance on this topic is a particular concern for the state entities that govern SLDSs, it is not solely their issue. Other agencies and institutions that require access to UC information to satisfy federal reporting requirements (e.g., Carl D. Perkins Career and Technical Education Act (Perkins V) reporting, pending gainful employment regulations, and low-value postsecondary program reporting) experience similarly inconsistent answers about whether they may access UC information that would enable policymakers to determine whether and in which ways public investments are benefiting students, learners, and workers.

These persistent challenges have frustrated state efforts to make thoughtful investments in education and training programs as well as provide employers, students, workers, and training providers with clear insights about the quality and return on investment of different programs and pathways. This lack of information in turn complicates individuals' efforts to make decisions about the education and workforce journeys that will put them on pathways to sustained economic mobility. For example, high school students trying to make post-graduation plans cannot make informed decisions about whether to

pursue college, a career, or both without transparent earnings information connected to postsecondary education programs, training opportunities, apprenticeships, and jobs.

We encourage the Department to think creatively about the ways it can support sharing UC information in a secure and privacy protected manner that ensures data works for states, students, workers, employers, and communities. The undersigned organizations look forward to working with the Department to ensure that data policies and practices can equitably meet worker, employer, training provider, and policymaker needs.

Please do not hesitate to reach out directly to any of the organizations below should you wish to discuss these ideas further or Kate Tromble at the Data Quality Campaign (kate@dataqualitycampaign.org) can assist in connecting you with any of these organizations.

Sincerely,

Advance CTE

Allegheny County (PA) Department of Human Services

American Association of Community Colleges

America Forward, the policy initiative of New Profit

Association for Career and Technical Education

CAEL

Council of Chief State School Officers

Credential Engine, Inc.

Data Foundation

Data Quality Campaign

Georgetown University Center on Education and the Workforce

Institute for Higher Education Policy (IHEP)

Iowa Board of Regents

National Association of Workforce Boards

National Skills Coalition

New America Higher Education Program

Results for America

Propel America

StriveTogether

Third Way

The Education Trust

Year Up

Kathy Stack, Senior Fellow, Yale Tobin Center for Economic Policy and Former Deputy Associate Director for Education, Income Maintenance, and Labor, OMB

RESPONSES TO REQUEST FOR INFORMATION

A. Part 603 Definitions

1. Are there any terms that should be added to § 603.2? If so, what is the recommended definition for any such new § 603.2 term? If you are recommending defining a new term, please provide the reason the term needs to be defined. If you are proposing a revised or new definition, please explain why you recommend this definition or changes.

Yes, there are a few instances within the existing regulatory framework that can be amended to enhance UC information generally and, in certain circumstances, improve how this information can be shared and with whom. To this end, we suggest the following changes, highlighted in red below, to the definitions section contained in this section of the regulations:

§ 603.2(k) Wage information means information in the records of a State UC agency (and, for purposes of § 603.23 (IEVS)), information reported under provisions of State law which fulfill the requirements of Section 1137, SSA) about the—

(1) Wages paid to an individual,

(2) Social Security account number (or numbers, if more than one) of such individual,
~~and~~

(3) Name, address, State, and the Federal employer identification number of the employer who paid such wages to such individual,

(4) *Employment status such as full-time, part-time, or seasonal, and*

(5) *Standard Occupational Classification (SOC) code, which may include supplementary information related to an individual's job title.*

As detailed further in our comments, the inclusion of more specific information related to an individual's occupation would greatly improve the ability to answer critical questions related to education and employment. Further, using the SOC Code system—an existing six-digit classification and statistical standard used extensively by the public and private sectors—would reduce the need to familiarize UC stakeholders with this new data element within the context of UC systems. Given their widespread use and familiarity, including SOC codes in UC records in this way would also allow for greater integration into state data systems and related source collections which already make use of this approach. This change would improve the utility of subsequently matched data and help policymakers and other critical stakeholders understand the impact that public investments have on labor market outcomes.

Another important question that UC records should be able to answer is related to a worker's full-time, part-time, or seasonal employment status. We further suggest adding a new data element to distinguish this. This suggestion is based on the US Chamber of Commerce's Jobs and Employment Data Exchange

project,¹ which recommends adding an element² or metric to wage records focused on the nature of the employer-worker relationship to capture full-time vs. part-time or seasonal status.

Finally, we suggest formally including statewide longitudinal data systems (SLDSs) as part of the existing definition for “Public Official.” As currently crafted, 603.2 of the governing regulations enumerates several different types of public officials—executive branch entities with responsibility for administering or enforcing a law, public postsecondary institutions, performance accountability entities, chief elected officials as defined by WIOA, and state education agencies. SLDSs—despite their role in harnessing cross-agency data to support statewide analytic, research, evaluation, policy development, and continuous improvement efforts—do not fit neatly in any of these categories.

Some SLDSs may sit within an executive branch but many such as Maryland’s Longitudinal Data System Center, are independent entities. Others, like Connecticut’s P–20 WIN System or California’s Cradle-to-Career Data System, do sit within the executive branch, but they are not charged with enforcing or administering a specific statute. Rather, they serve important functions such as providing the data and information to state entities with those responsibilities. Further, the primary function of most SLDSs is to support research, analysis, and evaluation efforts, not to measure accountability or release data to the public. While we believe more SLDSs should in fact function as customer information agencies, the reality is that currently, they generally do not and often have fairly strict privacy and redisclosure laws governing their operations.

Some of this ambiguity may be because the UC information regulations have not been revisited since 2006, at which time, SLDSs were much less prevalent in states. States and the federal government did not start investing heavily in the development of these systems until the passage of the American Rescue and Recovery Act (ARRA) in 2009. Since then, the federal government alone has invested more than \$800 million in states’ SLDSs.³ As a result, 93 percent (50 of 54) of states and territories collect data across multiple P–20W agencies (early education, K–12, postsecondary education, and workforce) in their SLDSs. However, only 35 percent (19) of those states and territories can connect workforce data in their SLDSs⁴—an issue that can, at least in part, be attributed to difficulty collecting this data because SLDSs are not considered public officials under the current regulations.

To this end, we suggest the following changes, highlighted in red:

603.2(d) *Public official* means:

- (1) An official, agency, or public entity within the executive branch of Federal, State, or local government who (or which) has responsibility for administering or enforcing a law, or an elected official in the Federal, State, or local government.

- (2) Public postsecondary educational institutions established and governed under the laws of the State. These include the following:

¹ https://www.uschamberfoundation.org/sites/default/files/USCCF_2023_JEDx_REP-Report_FINAL_May2023.pdf

² <https://www.uschamberfoundation.org/JEDx/DataStandards>

³ <https://nces.ed.gov/pubs2022/2022051.pdf#page=1>

⁴ <https://nces.ed.gov/pubs2022/2022051.pdf#page=6>

(i) Institutions that are part of the State's executive branch. This means the head of the institution must derive his or her authority from the Governor, either directly or through a State WDB, commission, or similar entity established in the executive branch under the laws of the State.

(ii) Institutions which are independent of the executive branch. This means the head of the institution derives his or her authority from the State's chief executive officer for the State education authority or agency when such officer is elected or appointed independently of the Governor.

(iii) Publicly governed, publicly funded community and technical colleges.

(3) Performance accountability and customer information agencies designated by the Governor of a State to be responsible for coordinating the assessment of State and local education or workforce training program performance and/or evaluating education or workforce training provider performance.

(4) The chief elected official of a local area as defined in WIOA sec. 3(9).

(5) A State educational authority, agency, or institution as those terms are used in the Family Educational Rights and Privacy Act, to the extent they are public entities.

(6) A data system operated at the State level by a State agency, as determined by the Governor, that connects individual-level data from early childhood education, elementary and secondary education, postsecondary education, the workforce, and other data sources, or the chief official of this agency with related oversight responsibility.

Local Workforce Development Boards

9. Are local workforce development boards prevented from receiving confidential UC information for their official duties? If yes, please explain why (for example, the structure of a local workforce development board prevents it from being considered a public official).

Local workforce development boards are not supposed to be prevented from receiving confidential UC information for their official duties as part of implementing WIOA and other federal laws. However, local workforce development boards often encounter a number of challenges in seeking to do so.

Unemployment insurance (UI) claimants must register with the public workforce system as a condition of getting their UI benefits; once those individuals register with the workforce system, that data is available to workforce boards and/or one-stop operators.

However, the degree to which UI systems interface with labor exchange/workforce systems vary state to state. Some local workforce development boards have no difficulties and others are unable to access the information. Local workforce development boards often report that when they are able to access UC information, these data may be incomplete, significantly delayed, or have other limitations placed on them that significantly decrease its utility. In addition, the governance structures of local workforce development boards vary considerably, which can often play a role in these challenges. For instance, when local workforce development boards contract out services, or if a workforce board functions as its own non-profit apart from government, they also may struggle to get access to relevant UC data.

10. For what purposes do local workforce development boards request confidential UC information?

Unemployment data, which includes wage data (where quarterly earnings records are generated), is necessary for reporting on Workforce Innovation and Opportunity Act (WIOA) common measures and performance outcomes, among other federal reporting requirements. More granular level data from UC systems could be helpful for individuals involved in workforce development and labor market issues. Generally, data exists but is often not available in a user-friendly format and local workforce boards may lack the capacity to extract and use all of the data that exists in UC systems.

11. For what purposes would one-stop operators or their agents or contractors request confidential UC information?

Most state-level wage and occupational data is derived from UC systems; employers are required by law to report the quarterly wages of their W-2 employees to ensure that they are paying the proper amount into the UI trust fund. This is generally the only wage/occupational data that states can access. The Bureau of Labor Statistics (BLS) collects the data, and also has access to tax filing data from the Internal Revenue Service (IRS), which is the most comprehensive data available on occupations and wages.

Generally, practitioners attempting to improve workforce outcomes would benefit from improved data to validate the results of their efforts. While state UC systems provide the best data available, there are significant limitations. For example, the data is quarterly, reports only gross earnings by employer, and does not show earnings data broken down by occupation, hours worked, or the number of jobs held by a given worker.

12. For what purposes would other Workforce Innovation and Opportunity Act (WIOA) local service providers request confidential UC information?

Local service providers would request confidential UC data for research purposes, to understand local workforce trends, and/or to design or evaluate their services. Ultimately, workforce systems are limited in their ability to track important outcomes—for example earnings by SOC code, earnings tied to a specific Social Security number, or earnings broken down to an hourly rate. More granular data would allow service providers to disaggregate information, which would better illuminate program performance and allow them to glean insights into interventions that improve outcomes, empowering data-driven programmatic change.

Private Postsecondary Educational Institutions

16. Should private postsecondary educational institutions be given access to confidential UC information? Why or why not?

Yes, there are instances where private postsecondary institutions, including workforce training providers, should be afforded access to data derived from UC wage records and related information sources. In many cases, federal and/or state laws and regulations mandate that institutions and other education and training providers reliably report on the subsequent workforce outcomes of participants.

Without access to dependable sources of wage information, which can be matched with provider and institutional records, post-program surveys are most often used to fulfill this important obligation.

However, surveys of this nature often lead to incomplete or inaccurate information as they rely on voluntary disclosure of sensitive topics such as wages from program participants long after they have completed or graduated. Data that is successfully collected through post-program surveys can therefore be unreliable given that it is self-reported and there is no dependable method to verify or validate that the reported information is accurate. In addition, such survey efforts create a significant burden on program stakeholders as this work is resource intensive, requiring substantial staff-time to complete. Improving access to UC information would help to reduce existing state and local burden while enhancing stakeholders' ability to more rigorously evaluate programs and related investments. For example:

- The **California** Bureau for Private Postsecondary Education has historically struggled to obtain reliable and verified employment data to evaluate institutional and programmatic outcomes. To address this problem, the California legislature passed [legislation](#) in 2019 requiring the Bureau to collect student-level data to match with the state's Employment Development Department. Because current federal regulations and guidance make it difficult to easily pull the UC information into the state's Cradle-to-Career Data System, the Bureau is having to create an entirely separate and expensive data system just to understand student employment outcomes.
- Although the majority of states house their SLDSs within their education or higher education agencies, to avoid UC and labor market data-sharing challenges, the state of **Kentucky** established their SLDS within the Education and Labor Cabinet, which is the agency responsible for managing the state's UC program.

Finally, access for private postsecondary institutions should be limited in scope, particularly for the purposes of mandated reporting, program assessment, and improvement. Access to this data can and should be allowable in ways that facilitate the development of student support tools and resources.

17. For what purpose would a private postsecondary educational institution request confidential UC information?

Private postsecondary institutions may request UC wage records in order to understand the employment outcomes of their graduates, either for transparency, accountability, and program improvement purposes or to fulfill state or federal reporting requirements. For example, a wide range of over 7,000 eligible public and private training providers currently participate in the publicly funded workforce system, authorized by WIOA. A recent analysis conducted by Harvard University's Project on the Workforce examined public-facing WIOA performance data, derived from roughly 75,000 eligible programs delivered by these providers. Troublingly, three-quarters of this dataset lacked information on completion rates, employment rates, median earnings, or credential attainment despite these being federally mandated indicators of WIOA performance.⁵

The Harvard report identified barriers to accessing data as one of the contributing factors that has led to inconsistency in federally mandated workforce reporting saying, in part, "[s]ome performance completion data is self-reported by the training programs and is therefore subject to bias and miscoding." The authors of the report recommended the development of interagency data-sharing

⁵ <https://www.pw.hks.harvard.edu/post/publicjobtraining>

initiatives and encouraged greater investments in data infrastructure to improve the ability of training providers, partners, and stakeholders to report on WIOA outcomes more reliably. Given that other federal and state efforts to develop the workforce depend on WIOA's training provider ecosystem to some degree, more explicit education and training provider access to UC wage record data would significantly benefit and improve reporting and accountability within the workforce and education ecosystem.

18. What types of private postsecondary educational institutions make disclosure requests?

As noted elsewhere in this comment, a wide range of private postsecondary education and training providers could make disclosure requests to fulfill reporting and accountability obligations—for example as part of WIOA. The following entities are described in detail within the statutory text of WIOA (Sec. 122) and within related regulations (20 CFR 680.410):

- Institutions of higher education;
- Registered Apprenticeship Programs; and
- Public or private providers of training services.

In order to be eligible for WIOA funding, each of these entities must provide a “program of training services” (20 CFR 680.420) and be included on a state’s eligible training provider list (ETPL). Given the wider performance accountability requirements of WIOA, these entities would each have important reasons to make UC wage record disclosure requests. In addition, if state or federal investments in education or workforce development make use of these related processes for program approval and validation purposes, UC information disclosure would be necessary to evaluate the impact of these initiatives.

For example, job training programs like Year Up seek to provide equitable access to economic opportunity, education, and justice for all young adults through their partnerships with employers, talent providers, and policymakers. A key element of their model is rigorous evaluations of program outcomes. However, the data needed to evaluate these programs is often difficult and extremely expensive to acquire, as each state seems to interpret federal law regarding the sharing of confidential UC information differently. As a result, Year Up has only been successful in obtaining participant data that it can use for evaluation and program improvement purposes from three states: California, Maryland, and Texas.

Finally, there may be instances when private institutions of higher education make UC wage record disclosure requests to track and understand the employment outcomes of their program completers and graduates for purposes of transparency, accountability, and program improvement. For instance, the US Department of Education’s (ED) forthcoming gainful employment regulations are likely to require substantial access to data and information that can be derived from UC records to report on subsequent student earnings and compare them to a state or locally adjusted median earnings threshold of high school graduates in a given area. However, under the current rules, institutions and programs serving students struggle to gain access to necessary wage data. For example, a private nonprofit institution of higher education with a large online presence reports that, because they lack access to UC information, they must cobble together and make a number of assumptions about survey data, publicly available state data, and other labor data to inform program creation, program improvement, and student advising.

As policymakers continue to emphasize the importance of increasing the public’s understanding of the return on investment for postsecondary education, access to UC information will continue to become an increasing necessity for related evaluation of student labor market outcomes.

Federal Statistical and Other Agencies

20. Should confidential UC information be subject to the requirements of [20 CFR part 603](#) when disclosed for evidence-based research and evaluations, including but not limited to activities authorized under the Foundations for Evidence-Based Policymaking Act of 2018 (“Evidence Act”)? Why or why not?

Data systems have long gathered data for compliance purposes, but participants in the workforce system—including policymakers, education and training providers, workers, and researchers—would benefit from the myriad data that exists in these systems in order to make informed decisions about how to transform their programs, policies, and career pathways. To achieve this, the Department and its agency partners should dedicate collaborative time, energy, and resources to building a more cohesive intergovernmental workforce data ecosystem in partnership with a range of stakeholders to support a more robust, effective, aligned, and evidence-based workforce education and training system across all levels of government.

We agree with our colleagues, the Data Foundation, that the confidentiality requirement outlined in 20 CFR Part 603, which governs the safeguarding of UC information, should be thoughtfully expanded to include an exemption for evidence-based research and evaluations. This expansion is imperative because privacy-protected UC data can serve as a valuable resource for a wide range of research endeavors while adhering to the stringent privacy safeguards established under Title III of the Evidence Act—the Confidential Information Protection and Statistical Efficiency Act (CIPSEA).

22. What safeguards and limits should be in place for disclosures to Federal Government entities, including Federal statistical and other agencies, for evidence-based research, evaluations, and other purposes?

The regulations should be consistent with the definitions outlined in Title III of the Evidence Act (§44 USC 3561), which permit disclosures to federal statistical or other agencies for "statistical purposes." Specifically, these disclosures should be allowed when the purpose is the "description, estimation, or analysis of the characteristics of groups" without revealing the identity of individual respondents or organizations (as defined by the term "statistical purpose" in the legislation). This safeguard would ensure that data can be shared for legitimate statistical activities that benefit society without compromising the privacy or confidentiality of the respondents.

Other

23. Are there other entities to which it would be beneficial to disclose confidential UC information under certain circumstances (including disclosures to publicly funded grantees)? If so, what are those entities and what would be the benefits and costs of disclosing confidential UC information to such entities?

In certain circumstances, state agencies with responsibility for administering or overseeing federal or state initiatives may engage with researchers to assist in rigorously evaluating the impact of related investments. This work would necessarily require access to UC information to fully understand outcomes for learners and individuals participating in these initiatives. Similarly, SLDSs or other statewide or cross-agency entities that oversee or govern data within a state should have access to UC information. We believe that access to this data can be systematized and integrated into wider state-level data processes that can help to ensure privacy and security.

The underlying quality of data within SLDSs can be further improved by matching relevant records for learners and workers securely. Such efforts can help support policymakers and practitioners in making more informed decisions regarding program implementation, improvement, and state investments. These efforts can also help policymakers calibrate related policies in ways that support better outcomes for learners and workers. The ability to match records through an SLDS could surface additional insights for policymakers, especially regarding initiatives outside of the education and workforce development space, providing greater clarity on how investments in other areas, such as public health, housing, or nutrition can impact labor market outcomes.

25. Would it be beneficial for the Department to define in § 603.2 which individuals or entities constitute agents or contractors of public officials (for example, an employee of a public official carrying out their official duties as an agent, or a research agency hired by a public official to carry out their official duties as a contractor)? If so, please provide any recommended definition(s) and an explanation for why this is the recommended definition.

Yes, it would be beneficial for the Department to establish clearer definitions for individuals and entities that could qualify as agents, contractors, or public officials as currently defined in § 603.2. Greater clarity regarding how these roles are defined would provide much-needed consistency in the implementation of these regulations and improve the field's wider understanding of the specific roles and responsibilities of these entities. Specifically, the Department could adopt an approach like ED used for the Family Educational Rights and Privacy Act (FERPA) as outlined in this Privacy Technical Assistance Center (PTAC) [guidance](#).

Toward this end, SLDSs should be included as part of the definition of a public official to facilitate more systemic statewide access to UC information, as outlined earlier in this comment. Alternatively, the governing entity of an SLDS could be included within the current regulatory definitions for "agent" or "contractor" given the significant role these systems have in supporting statewide decisionmaking and policy formulation. Both approaches would provide greater clarity—but defining SLDSs as public officials would more effectively underscore SLDSs' important public function of enhancing transparency and promoting accountability in the conduct of official duties (as currently defined).

Furthermore, researchers should be formally defined as "contractors" when they are engaged in work under a contractual agreement with the state or another agency operating on its behalf. By categorizing researchers as contractors under these specific circumstances—such as when they undertake tasks on behalf of public officials or at their direction (e.g., helping answer questions identified in the state's research or learning agenda)—the definition can encompass a wide range of professional engagements while ensuring consistent public oversight.

26. Are any public officials prevented from receiving confidential UC information for their official duties? If yes, please explain why.

At present, the lack of clarity in current regulations regarding authorized officials' use of UC information creates a barrier within some states. For example, public officials carrying out official duties for certain federal grants are sometimes unable to access UC information due to varying state interpretations of existing regulations and guidance. This state-level discretion can result in an overly complex data landscape that can unnecessarily limit data access and sharing. Disclosing UC information to public officials for the purpose of meeting other federal performance, accountability, or reporting requirements aligns with the spirit and intent of the existing regulations.

However, without a more exhaustive listing of the specific officials afforded access to this information for these purposes, the lingering ambiguity can (and does) create uneven access to UC information during state implementation. A more comprehensive approach to defining which officials are permitted access for distinct purposes, like federal reporting and state policy enhancement, would address this issue. Such an approach would minimize inconsistencies, foster additional interagency cooperation within states, and ensure the effective use of UC information in alignment with federal requirements and broader state objectives.

For example, Perkins V requires that states and local grant recipients report on learner outcomes at the secondary and postsecondary education levels.⁶ Nearly two-thirds of states implement Perkins V via state education agencies, which can limit these agencies' ability to report on federally mandated performance measures (such as employment outcomes) contained in the law.⁷ UC information is essential for compliance with this federal requirement. Yet, state Departments of Labor (DOLs) and UC agencies retain discretionary power to decide whether to share data or enable other officials to access it. The criteria surrounding when or whether state DOLs and UC agencies will share this data are opaque and frequently driven by the interpretation of permissibility of a particular attorney general's office. This current decisionmaking structure can lead to instances where UC data is not shared, which can prevent state agencies—that would be otherwise eligible to access this information—from reliably reporting on these indicators of student performance.

Another example is the use of high school earnings as a threshold or metric for assessing quality and eligibility for federal grant dollars. ED's recently proposed low-financial-value program transparency list⁸ would use a high school earning metric to determine whether enhanced student disclosures are necessary. Additionally, pending congressional proposals to allow students enrolled in short-term postsecondary programs to access Pell Grants to pay for those programs have variously proposed earnings and employment measures that would necessitate more systemic access to UC information and related data. As efforts like the Postsecondary Value Commission⁹—which emphasizes the importance of earnings and employment as part of a postsecondary education—continue to influence the trajectory of these and similar policies, access to UC records will continue to grow in importance. In short, achieving this vision for postsecondary education is something that can only be done comprehensively through the use of confidential UC information.

⁶ <https://cte.ed.gov/accountability/core-indicators>

⁷ https://cte.careertech.org/sites/default/files/files/resources/State_CTE_PerkinsV_2020.pdf. Pp 9.

⁸ <https://www.govinfo.gov/content/pkg/FR-2023-05-19/pdf/2023-09647.pdf>

⁹ <https://postsecondaryvalue.org/>

While current regulations indicate specific purposes for data use—such as in support of WIOA-related activities—other existing federal statutes (e.g., Perkins) and future legislation may necessitate access to the same UC data for different but similar purposes. We appreciate that the existing UC regulations speak to this to a degree. However, the lack of additional clarity regarding specific instances where access to this data can be granted has led to an overly conservative approach to UC information access in states. Put another way, effective and data-driven state policy development requires access to UC information beyond what is explicitly outlined in existing regulations and limited existing guidance. This discrepancy between explicit authorization and broader potential usage leaves a gap in the regulatory framework that the Department can fix by providing greater specificity in future regulation.

B. Permissible Disclosures

27. Would State UC agencies find it helpful for § 603.5 to further clarify what it means for a disclosure to “not interfere with the efficient administration of the State UC law” (see introductory sentence of § 603.5)? If so, what clarifications would be helpful?

Yes, clarification on the following two aspects need to be articulated.¹⁰

First, refining the definition of “public official” is a great approach, as discussed above. This change may require states to also define, within their regulatory structures, what constitutes a “public official.”

Second, technology has significantly changed but current legal and regulatory structures have not kept pace with the technological shifts—especially in regard to differences between cloud-based systems and traditional physical servers. As a result, many states currently consider the initial data linkage/sharing between a UC agency and its cloud-based system the same kind of “initial disclosure” or “act by an authorized public official” as the UC agency’s data-sharing relationship with an outside vendor. This strict interpretation of disclosure should be modified to include a more general legal clause that can add safeguards that allow states to define “within their public agency technology structures” which agencies are “authorized for and/on behalf of the state workforce/labor agency” to “process and store data.” The term “disclosure” should only apply to data that is released to non-authorized public officials that do not fit the aforementioned “public official” definition. This adjustment would potentially address retention and storage concerns, allowing for longitudinal analysis as well as the ability to track inter-state economic mobility through facilities such as the Administrative Data Research Facility (ADRF).

To ensure the security and privacy of confidential UC information, we encourage the enforcement of safeguards using data-sharing agreements. These agreements should ensure, or at least encourage, the use of Social Security numbers for linkage only, subsequently assigning a new unique identifier to replace the Social Security number. This process should not constitute a disclosure; rather, it should be considered a use case that is authorized within the UC regulatory structures and enforced through contractual safeguards, similar to the controls utilized with Europe’s General Data Protection Regulation (GDPR).

¹⁰ This response was developed in partnership with the Data Integration Support Center (DISC) at WestEd.

We recommend that states be allowed to determine, within some generally defined parameters, what is considered “efficient administration.” For example, many state workforce and labor agencies may want to move their technological footprint from a centralized, cloud environment to a more centralized, secure architecture. This shift would allow the modernization of both the workforce and labor data systems as well as the ability for those agencies to obtain a more comprehensive picture of their workforce needs. Specifically, from a technological perspective, it is much more efficient to have the ability to scale up security, data collection, linkages, and tools through a Tier 3 or better data center. But there are many state agencies using less secure, physically vulnerable on premise data centers because the current legal interpretations view anything different as a “disclosure.” Allowing states to define how they secure, collect, link, and access their data as “efficient administration” would give many agencies the clarity they need to improve the quality of their current data center. Further, clarifying the “disclosure” difference between sharing information with a state data system or hosting data in a cloud-based system and sharing data with an outside vendor or third-party would enable state workforce agencies to leverage these economies of scale at a greatly reduced cost, while increasing the capacity, security, and usefulness of their data.

Agents or Contractors of Public Officials (§ 603.5(f))

31. For purposes of permissible disclosures of confidential UC data to public officials for the performance of their official duties, what are the typical industries of the agents or contractors (including, but not limited to, IT) that public officials hire to assist them in the performance of such duties? Are the agents or contractors using subcontractors to perform work for public officials?

Public officials commonly hire agents or contractors from the research and evaluation and data science and analytics industries to assist them in performing their duties. Particularly in the education and workforce space, state and federal laws often require evaluations of federally funded work. Two such examples are the new Postsecondary Student Success Grant Program¹¹ and the Education Innovation and Research Grant Program,¹² both of which mandate an evaluation of the work funded through these grants. State agencies, school districts, universities, and university systems that receive these grants must conduct an independent, third-party evaluation of their funded work. The evaluators are sometimes private research and evaluation entities, but they are also often public institutions of higher education within the state.

Moreover, some states use their university system to provide additional analytic, research, and evaluation capacity to state governments. The state of Michigan, for instance, often uses its flagship institution, the University of Michigan, to play this role. Other states rely on private institutions such as the Wilson Sheehan Lab on Economic Opportunities at Notre Dame or J-PAL North America at the Massachusetts Institute for Technology to provide the same evaluation capacity. On a local level, the University of Chicago’s Consortium on School Research plays a similar role for the Chicago City Public Schools. These entities may hire subcontractors to perform work, but more often perform it themselves directly. Through this work, important questions related to UC information access can arise, especially

¹¹ <https://www.federalregister.gov/documents/2023/07/26/2023-15780/applications-for-new-awards-postsecondary-student-success-grant-program-pssg>

¹² <https://oese.ed.gov/files/2016/12/ESEA-ESSA-eir.pdf>

when these evaluations are attempting to examine subsequent labor market outcomes of learners or workers after participating in publicly funded education or workforce initiatives.

Finally, 93 percent of states and territories reported in 2020 that they collect data across multiple P–20W agencies.¹³ Of those states, only about 35 percent have an operational link that allows them to match their workforce data with early childhood, K–12, or postsecondary data.¹⁴ This ecosystem exists to assist public officials in the operation of their duties and bolster transparency, accountability, public reporting, performance, and program improvement within the workforce system. Clarifying the instances of permissible disclosures of UC information within these contexts is therefore critical to ensuring that policymakers can understand and improve efforts along the full P–20W continuum.

Safeguards Required of Recipients (603.9(B))¹⁵

74. Do State UC agencies currently require that recipients of confidential UC information store data in a specific way? If yes:

Yes.

a. Are these requirements enumerated in State statute, regulations, or State policy? If so, please explain.

The implementation of requirements varies state by state. For example, some state regulatory structures require the deidentification of data after it has been linked to other state data. This creates two major issues in relation to policymaker and citizen workforce outcome data. First, this limits the ability to measure changes over time (longitudinal analysis). This approach creates a fractured picture of policy change impact, workforce pipeline skill needs, and other public supports that form a complete picture of an education to workforce pipeline. Second, this unnecessarily complicates measurement of regional and/or geographic movement of skilled workers from one state to another. Cross-state mobility is very common, such as with a large increase or decrease of sectoral employment or matriculation from college into the workforce. To provide scale, state leaders estimate that the inability to track this mobility contributes to a gap of over 30 percent of citizens trained, educated, or certified in a state.¹⁶ And, mobility has only amplified post-pandemic with so many companies and organizations moving from onsite to hybrid or remote work.

b. For what types of disclosures do State UC agencies impose requirements relating to storage of data by recipients of confidential UC information?

Generally, the storage requirements are centered on the use of Social Security numbers as this poses a financial risk to individuals in the event of a breach. Many labor agencies require this data to be stored in their systems and only provide requestors with summary-level data at one point in time. For those states that do allow Social Security number data to be stored in a centralized public agency system,

¹³ <https://nces.ed.gov/pubs2022/2022051.pdf>

¹⁴ <https://nces.ed.gov/pubs2022/2022051.pdf>

¹⁵ These responses were developed in partnership with the Data Integration Support Center (DISC) at WestEd.

¹⁶ Nebraska NSWRS presentation, DC Stats Conference, August 2023.

there is often a requirement to add additional security, such as “hashing” to the identifiable data after the initial linkage is complete. While the security procedure does provide additional protection, this data must be “un-hashed” by the labor agency in the event of any discrepancies in the data linkages or additional data or time periods that may be necessary for the analysis. This is a very labor intensive process.

c. What requirements do you recommend the Department impose relating to data storage? For example, do you recommend requirements related to on-site data storage, cloud storage, centralized data storage with segregated confidential data, or some combination of these approaches?

We recommend that the Department collaborate with state UC agency partners to explore ways to encourage new, non-Social Security number solutions for linking data. Social Security numbers in any system create a risk footprint and often a poor match rate to other education and workforce data. As such, many states have either passed laws restricting their use or have developed unique identifiers or other mechanisms (e.g., using driver’s license information) to circumvent the use of Social Security numbers in their data matching efforts. The Department could help states by lifting up best practices that protect confidential data in the matching process.

Regarding storage requirements, data minimization—especially as it relates to Social Security numbers—should be considered if an alternative identifier methodology is not employed. The data that contains Social Security numbers should include encryption, strict and limited access controls, the assignment of a new unique identifier within, and potentially hashing of the Social Security number fields after completion of the linkages.

76. Should the Department restrict or limit whether or how a recipient of confidential UC information may use that information for a purpose other than those specifically outlined in the § 603.10 disclosure agreement? Why or why not?

No. States should define, in their regulatory structures, a retention period for the destruction of confidential UC information. This retention period should be shared with and approved by the Department, but a retention period allows states to have latitude to conduct longitudinal analyses instead of just point-in-time or snapshot reports. The Department could mirror the requirements in FERPA, which allows public officials to delineate the time period for which data may be retained as part of a data-sharing agreement. This agreement must also specify security and privacy controls, but provides the flexibility to determine a longitudinal time frame.

Redisclosure (603.9(C))

81. Should a recipient of confidential UC information be permitted to redisclose the information to an entity not specifically named in the § 603.10 disclosure agreement? If so, under what conditions?

Whether a recipient of confidential UC information is permitted to redisclose the information is an area that warrants further clarification by the Department. As the Department embarks on drafting more specific guidance on that subject, we suggest the Department address whether the use of UC information to develop tools and resources constitutes redisclosure. A number of states and multistate collaboratives are working on ways to make their state data more accessible and useful to individuals,

the public, and policymakers. For the most part, those efforts are focused on tools and resources (e.g., dashboards, queryable websites, open data portals) that draw insights from individual-level data but do not disclose personally identifiable data. Nonetheless, UC information likely will be used to develop those tools, particularly the tools and resources aimed at providing more transparent data to individuals and communities about career pathways, postsecondary education and training programs, and postsecondary return-on-investment models.

Some tools, such as Learning and Employment Records (LERs), may actually require the use of personally identifiable data in limited circumstances. LERs—which states as diverse as Alabama, Colorado, Pennsylvania, and North Dakota are developing—are essentially digital education, experience, credential, and skills resumes that can facilitate connections between employees looking for work and employers with job openings. To build these kinds of individualized, useful tools, states may have to redisclose UC data. The key, however, is control over this data and related information. We strongly believe that an individual’s data should be disclosed only by the person whose data it is or others they choose to share it with. This concept of control over one’s own data is a cornerstone of the European Union’s GDPR and California’s Consumer Privacy Act (CCPA), both of which provide a useful example of how these protections can be enshrined in future UC information regulatory frameworks.¹⁷

Neither of these scenarios—where public officials use individual-level data to develop aggregate insights that are displayed through dashboards or where individuals use a publicly created tool to share their personal data with others—are adequately addressed in the current regulations and guidance. It would, therefore, be helpful for the Department to clarify that it is permissible to use UC information to build individual and public data access tools as well as the criteria and guardrails that must exist when building such tools.

G. Agreements

98. Do State UC agencies always require an agreement to be in place before disclosing confidential UC information? For what disclosures (if any) do State UC agencies not require an agreement?

It is a best practice to establish an agreement before disclosing confidential UC information. Thus, UC agencies should require an agreement to access UC information and records. However, these agreements can take various forms—including a broad data-sharing agreement with the UC agency’s SLDS or other statewide integrated data system; a specific, one-time agreement with a researcher allowing access to a narrow and defined scope of data; or a multi-year agreement with an eligible training provider that covers disclosure of confidential UC information only for participants of that provider’s training programs. Regardless of the scope, there should be an agreement in place before any confidential UC information is released.

The Department can further support stakeholders and the wider education and workforce development communities by disseminating additional guidance and best practices regarding the development and

¹⁷ https://commission.europa.eu/law/law-topic/data-protection/eu-data-protection-rules_en and <https://www.oag.ca.gov/privacy/ccpa>

execution of these sorts of agreements. Templates or example agreements that can be easily used by relevant stakeholders would greatly help the field and further facilitate best practices in the future.