

Summary of Comments Received from the Initial 60-day Comment Period and Proposed Dispositions for the “First Round” Amendment Proposals to the Wage Record Interchange System (WRIS) Data Sharing Agreement

Amendment Proposal Number 1:

- No comments were received on this amendment proposal during the 60-day comment period.
- The preliminary decision on the disposition of this amendment proposal is to incorporate the original language proposed on 3/19/07 into the Agreement.

Amendment Proposal Number 2:

- No comments were received on this amendment proposal during the 60-day comment period.
- The preliminary decision on the disposition of this amendment proposal is to incorporate the original language proposed on 3/19/07 (with the 4/9/07 clarification) into the Agreement.

Amendment Proposal Number 3:

- No comments were received on this amendment proposal during the 60-day comment period.
- The preliminary decision on the disposition of this amendment proposal is to incorporate the original language proposed on 3/19/07 into the Agreement.

Amendment Proposal Number 4:

- Comments/concerns were received on this amendment proposal during the 60-day comment period around how Freedom of Information Act (FOIA) requests for Wage Data received by ETA would be handled.
- The preliminary decision on the disposition of this amendment proposal is to incorporate it into the Agreement, using new proposed language intended to address the comments received during the 60-day comment period around the FOIA issue.

Amendment Proposal Number 5:

- No comments were received on this amendment proposal during the 60-day comment period.
- The preliminary decision on the disposition of this amendment proposal is to incorporate the original language proposed on 3/19/07 into the Agreement.

Amendment Proposal Number 6:

- A comment was received on this amendment proposal during the 60-day comment period.
- The preliminary decision on the disposition of this amendment proposal is to incorporate it into the Agreement, using new proposed language intended to address the comment received during the 60-day comment period.

It should be noted that general comments on the overall Agreement were also received during the 60-day comment period that were not germane to any of the current six amendment proposals. Many of these comments will be addressed during the upcoming “second round” of amendment proposals.

**Wage Record Interchange System (WRIS)
Data Sharing Agreement Amendment Proposal Form**

Proposal Number: 01

Proposal Title:

Confidentiality/Restrictions on the Use of Information

Reference: *Section VII. Confidentiality/Restrictions on Use of Information*

Date Submitted: 03/19/07

Sponsoring Entity Information:

Contact Person: Karen Staha

Agency/Organization: Employment and Training Administration

Phone: (202) 693-2917

E-mail: staha.karen@dol.gov

Statement of Issue:

Should the confidentiality requirements of the Agreement apply to Wage Data obtained under the prior Consolidated WRIS Data Sharing Agreement?

Discussion of Issue:

The proposed amendment clarifies the position suggested by the states that a party to the WRIS Data Sharing Agreement (the Agreement) that has retained Wage Data obtained under any prior NASWA Consolidated Data Sharing Agreement is bound by the confidentiality requirements of the current Agreement in managing such retained Wage Data.

The proposed amendment addresses the concern of some states that the current Agreement holds the potential for a discontinuity in the application of the confidentiality requirements governing the management of Wage Data obtained under predecessor data sharing agreements, but still retained, unless the current Agreement stipulates the applicability of its confidentiality requirements to retained Wage Data.

Statement of Proposed Change/Proposal:

Reference: Section VII. Confidentiality/Restrictions on Use of Information

Original Provision:

Not applicable

Proposed Replacement Provision:

The confidentiality requirements under this Agreement shall apply to any Wage Data a party to this Agreement obtained under the prior Consolidated WRIS Data Sharing Agreements to the extent such Wage Data are currently retained by the party.

Supporting Documentation:

Not applicable

Preliminary Decision on Disposition of Amendment Proposal: 5/25/07

Disposition Discussion:

No comments were received on this amendment proposal during the 60-day comment period.

Proposed Disposition:

The preliminary decision on the disposition of this amendment proposal is to incorporate the original language proposed on 3/19/07 into the Agreement.

**Wage Record Interchange System (WRIS)
Data Sharing Agreement Amendment Proposal Form**

Proposal Number: 02

Proposal Title:

Applicability of the Privacy Act of 1974 to data exchange activity conducted through the WRIS

Reference: Section VII. Confidentiality/ Restrictions on Use of Information, second paragraph

Date Submitted: 03/19/07

Sponsoring Entity Information:

Contact Person: Karen Staha

Agency/Organization: Employment and Training Administration

Phone: (202) 693-2917

E-mail: staha.karen@dol.gov

Statement of Issue:

Do the provisions of the Privacy Act of 1974 apply to the data exchange activity conducted by SUIAs and PACIAs through the WRIS?

Discussion of Issue:

Some states expressed concern that by becoming a party to the Agreement they may be accepting the requirements of the Privacy Act of 1974 (the Act) as applicable to the data exchange activity currently conducted by SUIAs and PACIAs under the WRIS. Thus, even though the Act, by its terms, applies only to federal agencies -- and not to state agencies -- being a party to the Agreement may be interpreted as contractually extending the Act's coverage to a state's WRIS data exchange activity. Some states also noted that their states' confidentiality laws are often more strict than federal laws.

ETA notes that the Agreement is not intended to contractually extend the provisions of

the Act to SUIA and PACIA WRIS data exchange activity. Only ETA and its agents are required to conduct WRIS activity according to the terms of the Act, not states. The proposed amendment clarifies the intent of the Agreement regarding the foregoing question.

Statement of Proposed Change/Proposal:

Reference: Section VII. Confidentiality/Restrictions on Use of Information, second paragraph

Original Provision:

All parties to this agreement recognize that confidentiality of Wage Data is of paramount importance and must be observed except where disclosure is allowed by this Agreement or by court order. All data exchange activity conducted through the WRIS will be conducted in a manner consistent with the Privacy Act of 1974, and with applicable state law. The parties agree to take all necessary steps to protect such confidentiality by complying with the following provisions that are applicable to their particular entity, which are consistent with 20 CFR Part 603, in governing their handling of confidential information.

Proposed Replacement Provision:

Amend the second sentence of the paragraph to read: *All data exchange activity by the SUIA and/or the PACIA conducted through the WRIS will be conducted in a manner consistent with applicable state law.*

4/9/07 Clarification:

Insert a new sentence after the second sentence of the paragraph to read: *All such activity conducted by ETA and/or its contractor/s will be performed in a manner consistent with the Privacy Act of 1974.*

(The original language from 3/19/07 referenced **amending** the third sentence of the paragraph, rather than **inserting** a new third sentence.)

Supporting Documentation:

Not applicable

Preliminary Decision on Disposition of Amendment Proposal: 5/25/07

Disposition Discussion:

No comments were received on this amendment proposal during the 60-day comment period.

Proposed Disposition:

The preliminary decision on the disposition of this amendment proposal is to incorporate the original language proposed on 3/19/07 (with the 4/9/07 clarification) into the Agreement.

**Wage Record Interchange System (WRIS)
Data Sharing Agreement Amendment Proposal Form**

Proposal Number: 03

Proposal Title:

Amendment of Agreement Procedures

Reference: Section IX. Amendment of Agreement, sub-section F., first sentence; and sub-section G.

Date Submitted: 03/19/07

Sponsoring Entity Information:

Contact Person: Karen Staha

Agency/Organization: Employment and Training Administration

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Statement of Issue:

Should the Agreement's amendment procedure specify that the adoption of amendment proposals that receive no objection during comment period following ETA's preliminary disposition decision must be executed by a written signature by all parties to the Agreement?

Discussion of Issue:

An initial 60-day comment period begins when an amendment proposal is first submitted. At the conclusion of this comment period and after resolution of comments received, ETA will publish on its Web site the proposed disposition of the amendment proposal based on comments received for an additional comment period (this one will be for 30 days). The disposition decision may propose acceptance of the amendment as submitted, or it may take the form of a revised amendment proposal. During the 2nd comment period that follows the proposed disposition, ETA will host a conference call to provide an additional opportunity for comment by the states.

The amendment proposal pertains to amendments that received no objections* from parties to the Agreement -- either in writing or via the conference call consultation -- during the 2nd comment period following ETA's preliminary decision on the disposition of the amendment proposal. Some states want the adoption of such proposals to be executed by written signature of the parties to the Agreement.

*Proposed amendments to which objections are raised during this period are subject to the provisions of Section IX., sub-section G., and are not eligible for adoption.

Statement of Proposed Change/Proposal:

Reference: Section IX. Amendment of Agreement, sub-section F., first sentence; and sub-section G.

Original Provision:

Section IX, sub-section F.: If no objections to the amendment are raised during the 30-day comment period or the conference call, the amendment will be adopted.

Section IX, sub-section G.: If objections are raised during the 30-day comment period or the conference call, the proposing entity may choose to amend its proposal and repeat steps D – E of this section IX again, or it may decide to withdraw its proposal

Proposed Replacement Provision:

Section IX, sub-section F: *If no objections to the amendment are raised during the 2nd comment period, which will be for 30 days, or the conference call, the amendment will be adopted and executed by written signature of the parties.*

Section IX, sub-section G.: *If objections are raised during the 2nd comment period, which will be for 30 days, or the conference call, the proposal will not be adopted. The proposing entity may choose to amend its proposal and repeat steps D – E of this section IX again, or it may decide to withdraw its proposal and take no further action at that time.*

Supporting Documentation:

Not applicable

Preliminary Decision on Disposition of Amendment Proposal: 5/25/07

Disposition Discussion:

No comments were received on this amendment proposal during the 60-day comment

period.

Proposed Disposition:

The preliminary decision on the disposition of this amendment proposal is to incorporate the original language proposed on 3/19/07 into the Agreement.

**Wage Record Interchange System (WRIS)
Data Sharing Agreement Amendment Proposal Form**

Proposal Number: 04

Proposal Title:

Disclosure of Wage Data by the Employment and Training Administration (ETA) under court order, or pursuant to the Freedom of Information Act (FOIA)

Reference: Section VII. Subsection C. #9

Date Submitted: 03/19/07

Sponsoring Entity Information:

Contact Person: Karen Staha

Agency/Organization: Employment and Training Administration

Phone: (202) 693-2917

E-mail: staha.karen@dol.gov

Statement of Issue:

Will ETA take steps to prevent undue disclosure of Wage Data when access to such information is requested via court order or the Freedom of Information Act (FOIA)?

Discussion of Issue:

Some states have expressed uncertainty regarding the circumstances under which ETA would (or would not) file an objection to a court order requiring disclosure of Wage Data available through the WRIS. This uncertainty includes the question of in which court -- federal or state -- the filing would occur. Additionally, the Freedom of Information Act (FOIA) was viewed as an avenue through which access to Wage Data could be readily obtained unless ETA was prepared to protect the Wage Data from the disclosure that may otherwise occur. States have requested that ETA notify them when ETA makes a required disclosure.

Because ETA as a rule does not have access to Wage Data, it is unlikely that ETA will be asked to provide these Data either under court order or through the FOIA. However, as with other parties to the WRIS Agreement, ETA has an obligation to comply with applicable law and orders of courts having jurisdiction to mandate disclosure of information either in its possession, or under its control, that pertains to matters pending before the court and in response to FOIA requests.

Because ETA is mindful of the need to take reasonable steps to protect access to Wage Data even where disclosure is legally mandated the proposed amendment stipulates that ETA shall endeavor to protect Wage Data from disclosure to the fullest extent allowable by law. The measures taken pursuant to this provision are necessarily dependent on the context in which the disclosure request arises. ETA has no objection to notifying states if and when it makes a required disclosure.

Statement of Proposed Change/Proposal:

Reference: Section VII. Confidentiality/Restrictions on Use of Information, Sub-section C. ETA, #9

Original Provision:

Wage Data obtained by ETA shall not be disclosed to third parties, except under court order or where required by federal law.

Proposed Replacement Provision:

Wage Data obtained by ETA shall not be disclosed to third parties, except where determined to be required by a court order or required by the Freedom of Information Act (FOIA). In either circumstance, ETA shall endeavor to protect from disclosure such data to the fullest extent allowable by law. ETA will provide notice to all parties to the Agreement of any such required disclosure of Wage Data to third parties, other than as provided in the Agreement.

Supporting Documentation:

Not applicable

Preliminary Decision on Disposition of Amendment Proposal: 5/25/07

Disposition Discussion:

During the initial 60-day comment period, ETA received some comments/concerns from states around entities that are not a party to the Agreement being able to obtain Wage Data through ETA by invoking the Freedom of Information Act (FOIA). The FOIA was viewed as an avenue through which access to Wage Data could be readily obtained unless ETA was prepared to protect the Wage Data from the disclosure that may otherwise

occur.

The Agreement does not allow ETA to have access to Wage Data through the routine operation of the WRIS. Therefore, in the unlikely event that ETA was asked to provide Wage Data through a FOIA request, such a request would be denied, as such Wage Data would not be in the custody or control of ETA. ETA's funding of the operation of the WRIS is not enough to establish ETA as having custody or control of this data, which would be a required condition for it to be subject to disclosure under the FOIA .

The only instance where ETA might have custody of Wage Data that could be disclosed under the FOIA would be when Wage Data was obtained by ETA for research and evaluation purposes, in which case, Exemption 6 of the FOIA, which protects records whose disclosure would cause an unwarranted invasion of personal privacy would be invoked. If Wage Data were requested of ETA under a court order that is unrelated to the FOIA, ETA shall redact all personally identifying information (PII).

ETA is mindful of the need to take all reasonable steps to protect access to Wage Data. Therefore, where disclosure is legally mandated, the new proposed amendment language stipulates that ETA shall endeavor to protect Wage Data from disclosure to the fullest extent allowable by law, including the redaction of PII. Of course, the measures taken pursuant to this provision are necessarily dependent on the context in which the disclosure request arises. However, ETA has no objection to notifying states if it is ever required to make such a disclosure, when such disclosure occurs.

Proposed Disposition:

The preliminary decision on the disposition of this amendment proposal is to incorporate it into the Agreement, using new proposed language intended to address the comments received during the 60-day comment period, as follows:

Delete the language currently contained in the Agreement at Section VII. Confidentiality/Restrictions on Use of Information, Sub-section C. ETA, #9 (Wage Data obtained by ETA shall not be disclosed to third parties, except under court order or where required by federal law) and replace it with the following:

ETA shall protect Wage Data from disclosure to third parties to the fullest extent allowable by law. ETA does not have access to Wage Data through the routine operation of the WRIS. Therefore, a Freedom of Information Act (FOIA) request for Wage Data would be denied because the data are not in the custody, or under the control, of ETA. ETA's funding of the operation of the WRIS does not establish ETA's control of the data.

As provided in Section VI, paragraph D, ETA may request Wage Data for research and evaluation purposes, subject to the limitations set forth in Section VI, paragraph C, sub-paragraph 5. Wage Data obtained by ETA under this provision could be subject to FOIA requests, as such data would be in the physical custody of ETA. In such instances, ETA shall not disclose this Wage Data to third parties, except where required by a court order or by the Freedom of Information Act (FOIA). If disclosure is

required through either of these mechanisms, ETA shall redact any personally identifying information (PII) contained in the Wage Data prior to disclosure.

ETA will provide notice to all parties to the Agreement of any required disclosure of Wage Data to third parties, other than as provided in the Agreement.

**Wage Record Interchange System (WRIS)
Data Sharing Agreement Amendment Proposal Form**

Proposal Number: 05

Proposal Title:

Limitations on Liability

Reference: Section X. Limitations on Liability, second paragraph

Date Submitted: 03/19/07

Sponsoring Entity Information:

Contact Person: Karen Staha

Agency/Organization: Employment and Training Administration

Phone: (202) 693-2917

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Statement of Issue:

Is the liability of parties to the Agreement for the acts and omissions of their employees regarding misuse of the Wage Data stated too broadly?

Discussion of Issue:

Some states expressed concern that the Agreement's provision regarding limitation of liability in the event of misuse of Wage Data does not distinguish between acts or omissions committed by a party's own employees and such acts or omissions committed by the employees of another state that is party to the Agreement with whom Wage Data is shared.

Additionally, provisions of some state laws that limit liability, or hold the state immune to liability, may conflict with the provision for limitation of liability in the current Agreement.

The proposed amendment also notes that the liability of the United States for the acts or

omissions of its employees under the Agreement is governed by the Federal Tort Claims Act.

Statement of Proposed Change/Proposal:

Reference: Section X. Limitations on Liability, second paragraph

Original Provision:

To the extent permitted by applicable federal or state law, the parties to this Agreement shall be responsible for the acts and omissions of their own employees. A party shall not be held responsible for the misuse of Wage Data disclosed under this Agreement by another party or employee of another party to this Agreement.

Proposed Replacement Provision:

To the extent permitted by applicable state law, the state agency parties to this Agreement shall be responsible for the acts and omissions of their own employees. Liability of the United States is governed by the Federal Tort Claims Act. No party shall be held responsible for the misuse of Wage Data disclosed under this Agreement by another party or employee of another party to this Agreement.

Supporting Documentation:

Not applicable

Preliminary Decision on Disposition of Amendment Proposal: 5/25/07

Disposition Discussion:

No comments were received on this amendment proposal during the 60-day comment period.

Proposed Disposition:

The preliminary decision on the disposition of this amendment proposal is to incorporate the original language proposed on 3/19/07 into the Agreement.

**Wage Record Interchange System (WRIS)
Data Sharing Agreement Amendment Proposal Form**

Proposal Number: 06

Proposal Title:

Applicability of Federal Laws

Reference: Section XVII. Applicable Law

Date Submitted: 03/19/07

Sponsoring Entity Information:

Contact Person: Karen Staha

Agency/Organization: Employment and Training Administration

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Statement of Issue:

The Agreement at Section XVII. Applicable Law provides as follows: “The terms of this Agreement shall be governed by all applicable federal laws and by the law of the forum in which the action is filed.” Should the concluding phrase of this provision which refers to the “law of the forum in which the action is filed” be deleted as ambiguous and potentially misleading?

Discussion of Issue:

The phrase proposed to be deleted is confusing because it implies that the terms of the Agreement could be governed by the law associated with any forum in which a legal action pertaining to the Agreement was filed.

The proposed amendment clarifies the fact that the intent of the provision is to note that the Agreement is governed by applicable federal laws.

Statement of Proposed Change/Proposal:

Reference: Section XVII. Applicable Law

Original Provision:

The terms of this Agreement shall be governed by all applicable federal laws and by the law of the forum in which the action is filed.

Proposed Replacement Provision:

The terms of this Agreement shall be governed by all applicable federal laws.

Supporting Documentation:

Not applicable

Preliminary Decision on Disposition of Amendment Proposal: 5/25/07

Disposition Discussion:

During the 60-day comment period, a state suggested that in order to conform with the other proposed amendments, it would be prudent to refer to state law, in addition to federal law, and suggested inserting the words “and state” before the word “laws” in the proposed replacement provision.

Proposed Disposition:

The preliminary decision on the disposition of this amendment proposal is to incorporate it into the Agreement, using new proposed language intended to address the comment received during the 60-day comment period as follows:

Delete the language currently contained in the Agreement at Section XVII. Applicable Law (The terms of this Agreement shall be governed by all applicable federal laws and by the law of the forum in which the action is filed), and replace it with the following:

The terms of this Agreement shall be governed by all applicable federal and state laws.