

# BALANCING

# CONFIDENTIALITY

# AND ACCESS

## SHARING EMPLOYMENT AND WAGE DATA FOR POLICY ANALYSIS AND RESEARCH

MAY 2015

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## INTRODUCTION

Businesses report their individual workers' employment and wages to states when the companies pay their unemployment compensation (UC) taxes. The government departments collecting these data must adhere to federal and state UC data confidentiality laws and regulations, which protect businesses and workers by placing restrictions on the disclosure and potential uses of the data. These legal protections help safeguard sensitive information and are essential to states' ability to sustain taxpayer cooperation. **However, they also limit access to data that might be used for statistical analysis in evaluating the impact of public investments, including those in the areas of workforce and economic development.**

While most states allow certain categories of data users to access confidential employment and wage data for a limited number of purposes, the process for obtaining the data is often complex and arduous. When appropriate, departments have the authority to enter into data sharing agreements with data users, but the process of establishing and implementing agreements is often difficult as a result of various administrative barriers and organizational capacity limitations. Data sharing is further limited due to departments' concerns over data users' understanding of the appropriate use of confidential data and users' ability to properly secure confidential datasets.

With support from the Ewing Marion Kauffman Foundation, the Center for Regional Economic Competitiveness (CREC), in collaboration with the Labor Market Information (LMI) Institute, carried out a study in 2014 and early 2015 to better understand the legal and regulatory environment, government policies, and practices that influence data sharing activities between state government departments and other appropriate data users within their respective states.

With an increased movement toward making government administrative records more open, advocates for broader access to government-collected data are asking which data can be opened and under what circumstances. Given the potential that employment and wage records offer to help answer thorny questions about the effectiveness of education, training, economic development, and various social service programs,

it seems reasonable to ask why access to employment and wage records seems so difficult for policymakers and researchers.

This research sought to catalogue the current state of practice in intra-state data sharing (data sharing among stakeholders within a state). It was also designed to recognize and catalyze efforts that try to balance the data confidentiality needs of individuals and employer taxpayers with the important role employment and wage data could play in strengthening policymakers' statistical and program evaluation activities. The ultimate goal of the investigation was to support changes in data sharing policies and practices that can make taxpayer investments in workforce and economic development programs more effective.

While this research focuses on workforce and economic development, it is also applicable to other fields such as education and social services that may also seek to access employment and wage records. Many of the lessons also apply to other types of data and associated data sharing problems in fields as varied as health and criminal justice.

This report summarizes the current state of practice, highlighting common issues and challenges as well as efforts in different states to address them. It offers recommendations for improving data sharing to support workforce and economic development policy analysis, research, and program evaluation.

# METHODOLOGY

## PROJECT SCOPE

This research seeks to increase understanding of intra-state data sharing between data producers (state government departments or divisions within them that generate and control employment and wage data) and data users (other government departments or divisions and non-government entities that request employment and wage data).

This research examined the issues through three lenses:

- » The nature of federal and state UC data confidentiality laws and regulations.
- » The content of data sharing agreements that data producers have entered into with data users.
- » The experiences of data producers and users engaged in data sharing agreements.

This study was informed by an array of stakeholders. Researchers generated input from representatives of 10 data producer and user categories associated with the workforce and economic development fields (see *Exhibit 1*). More than 75 workforce and economic development researchers, legal experts, educators, and others from 37 states contributed to the project. They provided examples of state laws and regulations and data sharing agreement templates. They gave their insights through one-on-one telephone interviews. More than two dozen participated in an in-person workshop held in November 2014.

## TECHNICAL APPROACH

The research for this study involved four key activities:

- » Collect and review federal and state UC data confidentiality laws and regulations to understand key requirements and restrictions by state.
- » Gather and analyze data sharing agreements to identify the range and frequency of features.
- » Interview data sharing agreement participants on how they develop and implement agreements.
- » Hold a workshop to explore challenges and best practices in data sharing.

### EXHIBIT 1. Categories of Data Producers & Users included in the research

#### Data Producers and their Advisors

1. State labor market information (LMI) divisions
2. LMI division legal counsel
3. Attorneys general offices

#### Typical Data Users

4. Workforce investment boards
5. Economic development agencies
6. Community colleges
7. University research centers
8. Independent research organizations
9. National associations
10. Federal Statistical Agencies

### Collect and review federal and state UC data confidentiality laws and regulations.

This research initiated with a review of federal and state UC data confidentiality laws and regulations. The goal of this exercise was to better understand how different states approach data confidentiality and data sharing within the context of Federal law.

As a starting point, the research team reviewed Title 20, Section 603, of the U.S. Code of Federal Regulations—The Federal-State Unemployment Compensation Program; Confidentiality and Disclosure of State Unemployment Compensation Information (20 CFR § 603). This set of regulations establishes the Federal baseline in defining confidentiality requirements, identifying exceptions, suggesting options for cost recovery, and describing safeguards and security requirements (see *Exhibit 2*). The Federal regulations also catalog key elements of data sharing agreements.



Next, the research team asked the state labor market information (LMI) divisions in the 50 states, three U.S. territories, and the District of Columbia to provide citations for any state UC data confidentiality laws and regulations dictating their latitude to disclose employment and wage data. Representatives from 33 states submitted citations that they use in their work. The research team reviewed these state laws and regulations to identify elements that may affect the availability of data for workforce and economic development policy, research, and program evaluation. Using the five basic elements of the federal regulation on UC data confidentiality as a benchmark (see [Exhibit 2](#)), the research team assessed state laws and regulations through a two-step review process.

First, the team identified sections within each state’s laws or regulations that may affect the availability of data for workforce and economic development policy, research, and program evaluation. These sections were extracted for more detailed review. Language relating to the release of confidential records for purposes such as determining eligibility for supplemental nutrition assistance, enforcing child support obligations, or conducting criminal investigations was excluded from this analysis. Researchers also documented whether a law included specific penalties for violations of non-disclosure rules.

Second, researchers reviewed the extracted language to assess how specifically it addressed key issues related to (1) confidentiality requirements, (2) exceptions to these requirements, (3) cost

**EXHIBIT 2. Basic Elements of Title 20, Section 603, of the U.S. Code of Federal Regulations (20 CFR § 603)—*The Federal-State Unemployment Compensation Program; Confidentiality and Disclosure of State Unemployment Compensation Information***

§ 603.4 What is the confidentiality requirement of Federal UC law?

§ 603.5 What are the exceptions to the confidentiality requirement?

§ 603.8 What are the requirements for payment of costs and program income?

§ 603.9 What safeguards and security requirements apply to disclosed information?

§ 603.10 What are the requirements for [data sharing] agreements?  
(Whether state laws and regulations include details on penalties for violating non-disclosure restrictions was also considered in the analysis.)

recovery, (4) data security, and (5) data sharing agreement elements. For each of these three issues, the research team categorized the language into one of three possible levels of detail:

- » The law includes a **broad mention** of the issue.
- » The law includes a **detailed explanation** of the issue.
- » The issue is **not addressed** in the law.

The table in the next page illustrates statutory language categorized as either a “broad mention” or a “detailed explanation” for two of the five factors being evaluated: confidentiality requirements and data sharing agreement elements.

## TABLE 1: EXAMPLES OF STATE STATUTORY LANGUAGE RELATED TO DATA CONFIDENTIALITY AND DISCLOSURE

### QUESTION § 603.5 WHAT ARE THE EXCEPTIONS TO THE CONFIDENTIALITY REQUIREMENT?

Broad Mention

"A state or federal official or agency may receive disclosures to the extent required by federal law. In the division's discretion, **any other party** may receive disclosures to the extent authorized by state and federal law."— Missouri Revised Statutes § 288.250.1 (*emphasis added*)

Detailed Explanation

"1. Use of data. (a) Except as provided by this section, data gathered from any person under the administration of the Minnesota Unemployment Insurance Law are private data on individuals or nonpublic data not on individuals...and may not be disclosed except...These data may be disseminated to and used by the following agencies without the consent of the subject of the data:...(16) the **Office of Higher Education for purposes of supporting program improvement, system evaluation, and research initiatives including the Statewide Longitudinal Education Data System**..."—2014 Minnesota Statutes § 268.19 (*emphasis added*)

### QUESTION § 603.10 WHAT ARE THE REQUIREMENTS FOR [DATA SHARING] AGREEMENTS?

Broad Mention

"(a) Information and records may be made available to public employees in the performance of their duties, but the agency receiving the information and records shall assure the confidentiality, as required in this section, of all information and records so released by entering into a **written, enforceable, and terminable agreement with the cabinet and by satisfying the safeguards set forth in the federal confidentiality and disclosure requirements as prescribed by 42 U.S.C. sec. 503, 26 U.S.C. sec. 3304, and 20 C.F.R. sec. 603.9**—Kentucky Revised Statutes § 341.190 (*emphasis added*)

Detailed Explanation

"(b) The agreement between the department and the requesting agency shall include, but not be limited to:

**(1) The purposes for which requests will be made and the specific information needed;**

**(2) Identification of all agency officials, by position, with authority to request information;**

**(3) Methods and timing of the requests for information, including the format to be used, and the period of time needed to furnish the requested information;**

**(4) Basis for establishing the reporting periods for which information will be provided;**

**(5) Provisions for determining appropriate reimbursement from the requesting agency for the costs incurred in providing data;**

**(6) Safeguards to ensure that information obtained from the department will be protected against unauthorized access or disclosure.**

At a minimum, such procedures will comply with the requirements of subsection (c)."—HIC § 12-5-220 (*emphasis added*)

In total, the research team reviewed state laws and regulations for 31 states and U.S. Territories. Representatives from South Dakota and the Virgin Islands reported that they rely on the federal regulation to guide their data confidentiality and sharing policies. The results of the research team's comparison of state UC Data confidentiality laws & regulations to 20 CFR § 603 are presented in the table below. For a summary of the research team's categorizations, see **Appendix A: State UC Data Confidentiality Laws and Regulations Categorization**.

#### **Gather and analyze data sharing agreements.**

The research team asked all LMI divisions to provide examples of data sharing agreements for purposes of analysis and comparison. The majority of states provided data sharing agreement templates; some states also provided examples of existing agreements. The research team received a total of 37 agreements or agreement templates from 24 states. Researchers evaluated each agreement as to whether it met the minimum requirements of data sharing agreements set forth in 20 CFR § 603.10 (see **Exhibit 3**), and, if so, in what level of detail. This exercise helped identify the range and frequency of different features of agreements used by the states.

#### **Interview data sharing agreement participants on how they develop and implement agreements.**

The research team conducted in-depth telephone interviews with more than 35 data sharing agreement participants. The interviews provided insights about different approaches to developing agreements, challenges encountered in developing and managing those agreements, and also innovative solutions. Interviews included individuals representing all 10 data producer and user categories considered in the study (see **Exhibit 1**).

Initially, the research team identified potential participants through referrals from state workforce and economic development department staff as well as other experts in wage record data management. Interviewees in the first cohort suggested additional interview candidates. To structure the telephone interviews, the research team developed a protocol designed to address a

#### **EXHIBIT 3. What are the requirements for agreements? (20 CFR § 603.10)**

- » A description of the **specific information to be furnished and the purposes for which the information is sought**.
- » A statement that **those who request or receive information under the agreement will be limited to those with a need to access it for purposes listed in the agreement**.
- » The **methods and timing of requests for information and responses to those requests, including the format to be used**.
- » **Provision for paying the State or State UC agency for any costs of furnishing information, as required by § 603.8 (on costs)**.
- » **Provision for safeguarding the information disclosed, as required by § 603.9 (on safeguards)**.
- » **Provision for on-site inspections of the agency, entity, or contractor, to assure that the requirements of the State's law and the agreement or contract required by this section are being met**.

variety of questions about the need for confidential data and key factors in making decisions about data requests. Participants were asked about barriers to successful implementation and strategies to overcome them. Insights from these discussions helped to identify common challenges and promising strategies for addressing problem areas.

#### **Hold a workshop to explore challenges and best practices in data sharing.**

Having collected and organized this information, the research team conducted an in-person workshop, convening more than 25 data producers and users with extensive experience in developing, negotiating, and implementing data sharing agreements. Hosted by the Pew Charitable Trusts, the workshop was held on November 14, 2014, in Washington, DC. During the workshop, the research team presented preliminary findings and facilitated a series of group exercises. Participants reviewed the research completed to date. They helped the research team analyze the most significant barriers to data sharing, identify and prioritize potential solutions, and develop consensus on the most important actions to take to improve data sharing conditions at the state and national levels. For a description of how the workshop developed its findings step by step, see **Appendix B: Workshop Proceedings**.



## MAJOR CHALLENGES

The experts contributing to this research helped isolate a set of challenges that data producers and users often encounter when attempting to disclose or acquire employment and wage data. For the purposes of this discussion, these challenges are grouped into four major categories:

- » Data producer concerns
- » Data user capabilities
- » Legal and regulatory restrictions
- » Value and trust impediments

The paragraphs that follow discuss the primary issues of concern in each category.

### DATA PRODUCER CONCERNS

When attempting to share employment and wage data with users, data producers find themselves confronted by a variety of administrative and institutional challenges. These challenges can result in laborious processes that delay agreement development and implementation, undermine the willingness of data producers to undertake the process, and may even prohibit data sharing altogether. Some of the most frequently cited issues include:

- » Bureaucratic approval processes and poorly documented administrative policies.
- » Limited staff capacity to meet increasing demand for data.
- » Divided control of employment and wage data.

**Bureaucratic approval processes and poorly documented administrative policies.** Complex processes can inhibit data sharing, especially when the processes are not clearly defined. These processes may be particularly burdensome to state staff who manage duties related to data sharing on top of other routine work assignments.

**[Divisions with data] need to understand that there is a greater public good to their data being used elsewhere.**

*National association senior policy advisor*

In some states, data sharing approval processes are prescribed by law. In others, they are a policy matter, developed by administrative staff who may feel they gain little direct benefit from the results of research or evaluations conducted with the data, or who may have limited understanding of the value of these activities to policy makers. Either way, nearly

all data producers interviewed said they were required to seek multiple approvals from higher-level policy makers before disclosing employment and wage data. In some cases, the approval of the Department Secretary may be required. Data producers often commented that, once the agreement leaves their desk, they have little control over how long

the approval process will take.

Furthermore, the process for establishing agreements may not be well documented, having to be re-invented for each agreement sought. Some interview subjects were aware of data producers that have no written protocols in place to streamline data sharing. The absence of process documentation may lead to confusion about the roles and responsibilities of different departments and divisions in the data sharing process. Many agreed that some departments overly rely on a few individual staff to maintain institutional knowledge about how the process has been implemented successfully in the past. Staff turnover may make more likely an ad hoc approach that creates major impediments to accepting data sharing requests, reviewing them, obtaining approvals, and establishing agreements.





**Limited staff capacity to meet increasing demand for data.** Data producers reported that few staff resources are allocated to data sharing activities. At the same time, states are encountering increased interest in accessing UC data for research, policy analysis, and program evaluation. In particular, data producers noted a dramatic increase in the number of requests for employment and wage data over the past few years. They attributed the rise, in part, to factors such as:

- » Increased pressure to demonstrate government program impact through measurable evidence.
- » Increased computing power that enables researchers to assemble and analyze more and more comprehensive data sets, continually expanding the depth, breadth, and quality of their investigations.

Many data producers commented that their ability to meet demand for data sharing is strained by a lack of resources. Small (and often shrinking) budgets, staffing shortages, and pressures from staff's primary duties make it difficult to allocate time and effort to data sharing-related activities. This situation is especially likely when departments are not compelled to share data by law, in which case they tend to view these requests as a low priority.

Some data producers reported that limited time and resources to properly train their staff in data sharing issues and procedures poses a serious challenge to their ability to respond to a growing demand for data access. Without adequately trained staff, supervisors cannot delegate significant administrative level tasks related to data sharing. Supervisors' inability to delegate, while balancing competing management responsibilities, may cause delays in establishing new agreements and in sharing data under existing agreements.

**Changing internal operations is difficult when you have few resources and high [staff] turnover, and when systems are different [across agencies].**  
*Economic development agency director*

**EXHIBIT 5. Non-disclosure exemptions for higher education institutions in Iowa state law (Iowa Code § 96.11).**

"Subject to conditions as the department by rule prescribes, information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the department under section 96.6, subsection 2, as to benefit rights of an individual may be made available for purposes consistent with the purposes of this chapter to any of the following:...

(6) Colleges, universities, and public agencies of this state for use in connection with research of a public nature, provided the department does not reveal the identity of an employing unit or individual."

**Divided control of employment and wage data.** In some states there is a lack of clarity about which government departments or divisions control different data sets. When wage data are intermingled with tax data or employment data, lines of authority can be murky. The legal standing of any particular department or division in a data sharing agreement can be difficult to comprehend.

Multiple data producers and users pointed out that employment and wage data are not always collected and controlled by a single department, or by the same division within a department. Within California's Employment Development Department (EDD), for example, EDD's Labor Market Information Division controls employment records from the Bureau of Labor Statistics Quarterly Census of Employment and Wages Program—while EDD's Tax Branch controls UC

wage records. Within North Carolina's Department of Commerce, the Labor and Economic Analysis Division controls employment records, while the Division of Employment Security controls wage records.

Different departments may have different policies about what data they are willing or able to share. An imprecise request from a prospective data user can create confusion about which data elements are actually required and which departments need to be party to the agreement. Thus, fragmented control of data can further exacerbate the problems data producers and users encounter in establishing and implementing data sharing agreements. Since the data control patterns differ from state to state, no one-size-fits-all solution will work for every state.

**Other state agencies that are used to releasing different types of data not only need a better understanding of [UC data confidentiality] laws, but also the data programs themselves.**  
*LMI division director*

## DATA USER CAPABILITIES

Data users seeking confidential UC data must overcome multiple hurdles. Many of these hurdles derive from the legal, administrative, and institutional challenges described above. Other difficulties derive from the characteristics of data users themselves.

The most significant challenges identified during this research include:

- » Inability of data users to meet states' non-disclosure exemption criteria.
- » Difficulty data users have in preparing well-crafted data sharing requests and agreements.
- » Limited or poorly demonstrated capacity of data users to protect and manage confidential data.

**Inability of data users to meet states' non-disclosure exemption criteria.** States frequently place limits on data user access to confidential UC records based on the data user's employer. Many state laws and regulations only allow data sharing between public entities. In a few cases, the laws also allow data sharing with private contractors acting on behalf of public entities. Several states, including Iowa, Minnesota, and California, identify organizations that are exempt from data sharing restrictions by data user category or name. **Exhibit 5** provides an example of a UC data confidentiality regulation in Iowa that specifically grants higher education institutions access to confidential data by right.

In some instances, the language used to describe exempt data user categories is much broader. Missouri's law (RSMo § 288.50), for example, states: *In the Division's discretion, any other party may receive disclosures to the extent authorized by state and federal law.*

Researchers who are not employed by an exempt data user category are typically denied access without regard to the purpose of their research. For instance, analysts from university research centers frequently do not fit neatly into the exempt data user categories definition of many states. Even though the purpose of their research may be in the public interest, and even if their organization meets all other

**We had four federal grants that required us to report wage data on graduates [from our programs], but the [department with control of the data] will not grant access. More than anyone, students need this data. Community college administrator**



legal and regulatory requirements, it can be very difficult, and often impossible, for these analysts to obtain access to confidential employment and wage data.

**Difficulty data users have in preparing well-crafted data sharing requests and agreements.** Challenges often arise when prospective data users do not fully understand the data they are requesting, and when data producers do not have the time and resources to help data users determine what precisely they need. Moreover, guidance for data users may be either not readily accessible or non-existent.

Both data producers and users acknowledge that data sharing agreement templates can be hard to understand. In interviews, data users and producers agreed that data users who

lack familiarity with data sharing requests and agreements can significantly increase the amount of time data producers must spend responding to routine questions that are ill-informed or poorly formulated. As a result, unnecessary delays occur in getting responses to queries or in developing and implementing agreements.

**The number one issue [for data users] is knowing which pot of information to pull from, and where the pots are [located].**  
*Economic development agency director*

It is incumbent on beneficiaries to demonstrate the value of the data to the functioning of U.S. labor markets.

*National association senior policy advisor*

necessary. Sometimes, however, data producers may fail to proactively provide guidance on what constitutes a compelling data request.

Many data producers reported that requests are more successful when the research question is very specific and the intended use of the confidential data is narrow. This circumstance, however, creates a dilemma for data users seeking data for multiple research purposes. Data producers and users reported that, in most cases, users must submit individual requests for each purpose, even though the data sought may be the same.

#### Limited or poorly demonstrated capacity of data users to protect and manage confidential data.

Data producers feel, or may actually be, ultimately responsible for any breaches of confidentiality that might result from data sharing. To participate in a data sharing agreement, users must institute and maintain a variety of safeguards to protect and manage confidential data. Commonly required safeguards include establishing protocols for how and where data will be stored and submitting to on-site inspections to ensure that requirements of laws and agreements are being met.

Data users and producers acknowledged that many

Data transfer is a big concern. We do not have the resources to purchase advanced software needed to deal with complex data protection formats that the data are provided in.

*Community college vice president*

Many data producers reported that their decision to consider a data sharing request is heavily influenced by how well the requestor articulates the purpose of his research—even when the requestor meets the state’s exempt data user categories definition. Data users must present their research questions in a manner that convinces data producers that access to confidential data is both appropriate and

necessary. Sometimes, however, data producers may fail to proactively provide guidance on what constitutes a compelling data request.

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who request employment and wage data do not have sufficient experience or capacity to assure data security on the scale required. Common problems reported by data users included limited information technology and data security staff capacity, as well as insufficient resources to purchase adequate software, hardware, and facilities to manage large data sets.

## LEGAL AND REGULATORY RESTRICTIONS

The array of UC data confidentiality laws and regulations create multiple challenges for data producers and users as well as for legal counsel responsible for interpreting the laws and regulations and facilitating the design of data sharing agreements. Study participants frequently associated legal and regulatory challenges with two key factors:

- » Complex, multi-layered systems of laws and regulations.
- » Inconsistent interpretations of laws and regulations.

### Complex, multi-layered systems of laws and regulations.

The confidentiality of employment and wage data is protected by a complex system of federal and state UC data confidentiality laws and regulations. These complexities mean that data producers and users alike frequently struggle to fully understand the laws and how best to interpret them.

One commonality across the participating states is that most state laws and regulations offer similar definitions of confidential data. Pennsylvania law (34 Pa.C.S. § 61.25 (1)) provides a good example of regularly observed language. The statute defines confidential data as:

*...information which reveals the name or any other identifying particular about an employer, employee, or claimant.*

#### EXHIBIT 4. Non-disclosure exemptions in California state law (CUC § 4-6-1095).

“The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes... (r) To enable city and county planning agencies to develop economic forecasts for planning purposes...(z) To enable the Chancellor of the California Community Colleges...to obtain quarterly wage data, commencing January 1, 1993, on students who have attended one or more community colleges, to assess the impact of education on the employment and earnings of students, to conduct the annual evaluation of district-level and individual college performance in achieving priority educational outcomes, and to submit the required reports to the Legislature and the Governor. The information shall be provided to the extent permitted by federal statutes and regulations...”

States, however, have written their confidentiality laws and regulations in widely different ways. For example, criteria for non-disclosure exemptions vary from state to state. Some states, such as Iowa, California, Minnesota, and Washington, include very explicit language regarding to whom and for what purposes confidential data may be disclosed. **Exhibit 4** shows an example of a California law that identifies exempt parties, for certain purposes, by name. Other state laws use more ambiguous language, leaving greater room for interpretation of allowable disclosures.

Further, states vary in the degree to which they follow federal regulations. This research uncovered multiple instances where basic requirements of the federal regulation—such as inclusion of mandatory safeguards and security provisions in data sharing agreements—are only broadly mentioned or omitted entirely in state laws and regulations.

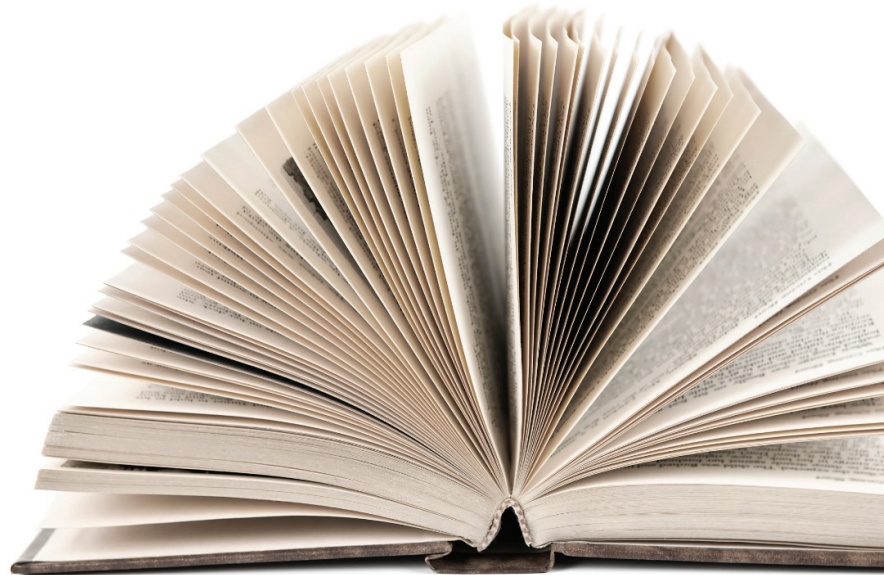
Alternatively, many states add to their laws and regulations language that is not expressly required by the federal regulation. Most notably states may include specific penalties for violating non-disclosure rules. Even so, states differ on the nature and severity of penalties.

**Inconsistent interpretations of laws and regulations.** Inconsistencies reflect differences in state cultures and legal environments. The research found that decisions to disclose or withhold employment and wage data are largely based on how state legal counsel choose to interpret UC data confidentiality laws and regulations. Data producers, users, and legal counsel participating in interviews and workshop discussions identified two major factors influencing the interpretation and application of laws and regulations:

- » The level of detail written into the law or regulation.
- » Legal counsels' understanding of different programs and their stakeholders.

*The level of detail written into the law or regulation.* State UC data laws and regulations vary in how general or explicit they are regarding who can access data and for what purposes. The level of detail, or lack thereof, found in a state's the law or regulation may influence how broadly or narrowly legal counsel elect to interpret to whom and for what purposes departments may disclose employment and wage data. Less detailed laws can provide broad discretion, but, in a conservative legal environment, this can also lead to counsel making narrow interpretations that exclude some potentially valuable uses of data.

**There is no consistency in departments' decisions to make data accessible. This is a big [deterrent] to asking for state data.**  
*University researcher*



*Legal counsels' understanding of different programs and their stakeholders.* In some cases, data producers have in-house legal counsel who in their work develop intimate knowledge of state UC, workforce, or economic development programs. They may also gain familiarity with the data user community. Other data producers, however, depend on counsel—such as staff from the Attorney General's office—who are further removed from these programs and often have competing priorities. These legal counsel are less likely to appreciate how making confidential data available to outside groups could benefit those programs.

Another confounding factor is that many states' UC data confidentiality laws and regulations have become outdated. Data users expressed con-

cerns that their state laws and regulations may be misaligned with the data rich environment government programs and researchers operate within today. Some users advised a thorough review of older state UC data confidentiality laws and regulations to bring them up to date with more recent laws related to confidential information protection and data sharing.

**The great thing about being a part of the state [education] system is that we have [in-house] legal staff who 'get' the data.**  
*Community college vice president*



## VALUE AND TRUST IMPEDIMENTS

The relationship between data producers and users is a critical factor in addressing many of the challenges just described. When the data producer does not know the data user nor fully understand the user's research goals, the producer may be unwilling to take a risk on the ability of the data user to comply with all the requirements of data sharing. At the core is how confident data producers are with data users' intent and ability to use the data appropriately and protect it from any breach of confidentiality as the law provides. Trust is an intangible characteristic often developed over time and with much work on both sides. Even if other challenges are technically addressed, a data producer that does not fully trust a user will likely limit access to data. A lack of trust often manifests from one or more issues, such as:

- » **Insufficient awareness among elected officials about the potential benefits of data sharing.**
- » **Data producer concerns about the potential risks and consequences of data sharing.**
- » **Data producer reservations about the capabilities of data users.**
- » **Data user doubts about confidential data quality.**

### **Insufficient awareness among elected officials about the potential benefits of data sharing.**

Lack of awareness about the value of data sharing discourages elected officials from calling for the broadest possible range of appropriate use of confidential employment and wage data. Furthermore, some elected officials have expressed concerns about privacy that often trump any perceived value that may result from expanded data sharing policies. This situation reflects the low priority the issue often has received in the past. It also reflects concerns raised by recent security breaches of private sector data that have dominated media coverage. Only in recent years have policy leaders developed such a strong consensus around the value of evidence-based decision making. This realization has encouraged policymakers to demand more data-driven research and evaluation. Even in this environment,

concerns about individual privacy and data security prevail. Still, the trend toward greater openness of data and greater accountability for public investments has generated an increased need for researchers to access confidential data in order to answer a growing number of policy questions.

Data producers and users interviewed contend that comparatively few elected officials have a comprehensive understanding of issues around data sharing or how the process works. For many officials, data access is an arcane bureaucratic issue. Few elected officials have been exposed (or paid attention) to the legislative impediments that prevent researchers from accessing confidential data. The legislators who have expressed opinions tend to adhere to one of two opposing viewpoints. Some emphasize the importance of the restrictions as a protection for taxpayer data confidentiality. Others point to the negative impact that these restrictions have in limiting the production of statistical research that could improve policy making and public investments. Past efforts to attract the interest of elected officials in the issue have had only limited success. Today, however, data users and producers are seeking out elected officials willing to champion the data access issue in the legislative arena.



**Data producer concerns about the potential risks and consequences of data sharing.**

Data producers, like most bureaucratic organizations, tend to be risk averse. This tendency comes into play when a data producer believes that the potential risks of sharing confidential data outweigh the proposed research benefits.

Agreeing to share confidential data with a third party exposes data producers to a variety of potential risks.

Most states have legislation that clearly describes the fines or even criminal charges that can be brought against a data sharing participant in the event that data confidentiality is breached.

The nature and severity of penalties for violating data non-disclosure rules vary from state to state, and some are quite severe. An assessment of state laws revealed that financial penalties may be imposed for a first-time offense. Idaho, for example, levies a \$500 fine on first-time offenders. Several states impose a fine and potentially a criminal penalty as well. In Ohio, first-time offenders can be fined up to \$1,000, imprisoned for one year, or both. Other states impose penalties that may directly affect the careers of individuals found in breach. Oregon's penalty, for example, disqualifies the offender from any appointment or employment with the state. These penalties, although seldom imposed, have a chilling effect on many department administrators who feel these potential personal consequences outweigh any potential public benefit that may result from a proposed study.

**[I found LMI division staff] were helpful, but higher ups were more protective... [They] did not want to venture outside the boundaries of what [their department] could do well.**

***Economic development agency director***

Data producers know that a confidentiality problem might damage their reputation. A breach of confidentiality could potentially impact the data producer's standing with the Governor's office or the legislature. If employers begin to question whether the state taxing authority actually tries hard enough to keep their employment and wage records confidential, it could make future efforts to collect accurate tax information more difficult. The stakes are especially high in political environments that are very sensitive to confidentiality

and privacy issues and in media environments in which security breaches routinely make headlines.

Department administrators are ultimately responsible for ensuring that data producers under their direction uphold the laws of the state. Most have worked hard to develop a reputation as excellent stewards of sensitive individual and employer data. To engage in data sharing agreements, however, department administrators may have to put considerable trust in partners with whom they may have little day-to-day contact, or over whom they have no direct control.



Several data producers pointed out that administrators also must consider the potential political consequences to their own departments of disclosing confidential employment and wage data. For example, there may be concern that the findings of externally produced research, even studies that are carefully performed, could reflect adversely on the department's priorities or performance. Such concerns may particularly arise if the department has little control over the research scope or how the data being shared is ultimately to be used. Department administrators, therefore, must assess the risk not only of confidentiality breaches but also from a possible political backlash that a negative research outcome might have on the department.

#### **Data producer reservations about the capabilities of data users.**

Data producers reported that data users often ask poorly articulated research questions, or even may ask for data that are not available in the UC records. Many data producers said they sometimes question whether particular users have the research experience and expertise required to conduct sound analysis or to otherwise perform as good data sharing partners. If they are not convinced that a proposed research or evaluation project will result in a quality analysis, data producers will be less willing to spend the time required to negotiate a data sharing agreement.

Many data producers reported that their inclination to partner with a data user depends on the user's track record of effectively protecting confidential employment and wage data and using it appropriately. During interviews, many successful data users reported that they believe their success in acquiring confidential data was largely based on their trustworthy reputation, developed through many years of experience partnering with data producers and successfully carrying out multiple agreements. Data producers and users acknowledged that the lack of a reputation for established expertise in

conducting research using confidential data can be one of the most challenging impediments for new data users to overcome.

As noted earlier, some data producers said they were skeptical of the analytical capacity of certain data users. They emphasized that for many data requests, the research questions were not actually appropriate for the data set requested. In these cases, data producers were less likely to respond positively to the request.

#### **Data user doubts about confidential data quality.**

In conversations with researchers who have experience working with confidential data, some raised questions about the quality of employment and wage data obtained through data sharing agreements. Such concerns may make potential data users reluctant to contemplate using UC data.

With any data collection process or database, inconsistencies and incomplete records can result. Data users said they have no way of knowing how complete individual employment and wage records are, since they do not actually receive the data in raw form. Consequently, they are uncertain as to whether a database issue is one associated with the data file that they receive from the data producer or with the data itself. Furthermore, data producers rarely share their practices and protocols for maintaining the data (their so-called "data hygiene practices"). Without this information, however, data users must make assumptions about the data and make adjustments for any quality issues that they identify, adjustments that may or may not be accurate. Finally, data users noted that the file formats in which data are sometimes provided through an agreement, such as a portable document format (PDF), are difficult to manipulate without introducing a greater likelihood of human error.



## SUCCESSFUL STRATEGIES FOR IMPROVING DATA SHARING CONDITIONS

Thus far, this report has focused on the impediments to data sharing. The following section provides examples of strategies that data producers and users have employed to address issues and overcome challenges. The examples are organized around four basic strategies to address data producer concerns, data user capabilities, legal and regulatory restrictions, and value and trust relationship impediments:

- » Reducing the burden on data producers to evaluate and implement data sharing agreements.
- » Enhancing data users' knowledge about the data sharing request process and requirements.
- » Educating legal counsel and elected officials about legislative and regulatory impediments.
- » Establishing mechanisms to enhance trust between data producers and users.

### STRATEGY 1: REDUCING THE BURDEN ON DATA PRODUCERS TO EVALUATE AND IMPLEMENT DATA SHARING REQUESTS

Data producers have developed a variety of resources aimed at helping to mitigate the burdens of developing and managing data sharing agreements. Three focus on reducing the costs associated with pre-qualifying eligible data users and negotiating data sharing agreements.

**Preliminary assessment tools.** Many data producers reported that they require data users to complete a brief questionnaire before submitting a full data request application. These questionnaires may consist of very basic questions designed to help the division make an initial determination about (1) whether or not the applicant data user is eligible to receive confidential data and (2) whether or not the request is for an appropriate use. Such preliminaries demonstrate the requestor's

ability to clearly describe the purpose for accessing the data, and to plausibly detail their research methods. By using a preliminary questionnaire, data producers can limit the time that might be required to review ineligible or incomplete applications. This approach enables producers to identify eligible researchers and focus their limited time on helping them to refine appropriate requests. Pennsylvania created a brief assessment to serve this purpose, seeking to determine whether requesting researchers are eligible and can clearly articulate their research plan in a way that aligns with the state's confidentiality law requirements.

**Standard data sharing agreement templates.** Several states have created a framework for their data sharing agreement with key provisions that must be included. These are often shared in advance with potential data users. In Washington State, the state workforce agency has developed two data sharing agreement templates—one for inter-agency agreements, and one for agreements with any other authorized entity. This approach reduces inconsistencies across individual agreements.

**Agreement duration extensions.** Multiple data producers and users expressed frustration with how frequently data sharing agreements must be renewed. Study participants gave examples of agreements that required renewal as soon as six months after the agreement was signed. Some data producers have taken steps to reduce this administrative burden by extending the duration of agreements. The Maryland Department of Labor, Licensing, and Regulation, for example, extended the length of its data sharing agreements from one to three years while reserving the right to terminate the agreement at any time during the agreement period.





### **STRATEGY 2: ENHANCING DATA USERS' KNOWLEDGE ABOUT THE DATA SHARING REQUEST PROCESS AND REQUIREMENTS**

Data users are seldom familiar with the intricacies of the process of receiving approval to access data and then negotiating an agreement unless they have already gone through the process several times. Even then, a user may have to answer different questions or provide information that is not similar to prior requests.

A few states are exploring ways to demystify the process for users by providing examples and technical guidance on data sharing policies and practices. Both New York State and Washington State maintain websites that provide data users with a range of data sharing resources. These items include basic explanations of non-disclosure rules and regulations, standard data request forms, and sample data sharing agreements. Washington State posts resources and information at [HTTP://WWW.ESD.WA.GOV/NEWSANDINFORMATION/MEDIA/DATA-SHARING.PHP](http://www.esd.wa.gov/newsandinformation/media/data-sharing.php). New York published resources to their website at [HTTP://LABOR.NY.GOV/DATA-SHARING](http://labor.ny.gov/data-sharing).

### **STRATEGY 3: EDUCATING LEGAL COUNSEL AND ELECTED OFFICIALS ABOUT LEGISLATIVE AND REGULATORY IMPEDIMENTS**

The complexity, even obscurity, of UC data confidentiality laws and regulations means that elected officials, data producers, data users, and legal counsel may have difficulty arriving at a common understanding of the concept, processes, and value of data sharing. Moreover, similar laws and regulations are often variously interpreted in different places. This situation reflects not only the differences in the legal climate among the states, but also a lack of a common understanding across states about how best to implement similar provisions.

Many study participants noted that there is a great need for educating legal counsel and elected officials about the benefits of data sharing as well as about strategies that mitigate risks of confidentiality breaches. This education can lead to policy changes both at the legislative and executive levels. Some study participants reported that their efforts to educate and establish relationships with elected officials have resulted in changes to state laws and regulations. As a result, statutes and administrative laws have been revised to make them more supportive of data sharing activities.

There is a [financial] cross benefit to sharing administrative records [with other departments]. When departments have to turn to [outside data vendors], it becomes very expensive to answer questions that could be answered internally.

*LMI division legal counsel*



By working through the state's legislative process, the Oregon Employment Department (OED) was able to broaden the range of purposes for which it may disclose confidential data to other government agencies. Formerly, state law only permitted OED to disclose data for the purposes of planning. Today, OED may also disclose confidential data for the purposes of performance measurement, program analysis, socioeconomic economic analysis, and policy analysis. Additional statutory changes enabled OED to disclose confidential data to workforce boards and other workforce system partners.

Creating an environment that is supportive of data sharing may require identifying champions for broader data use in the executive and legislative branches—officials who may be in a position to propose legislative and regulatory changes. Such a process, however, tends to require leadership at the highest levels of the executive branch on an issue which many elected or appointed leaders may not find compelling.

Data users themselves can play an important role in educating legal counsel and elected officials on the benefits of data sharing. Researchers at the City University of New York (CUNY), for example, are dedicated to increasing researcher access to confidential employment and wage data. At the individual agreement level, CUNY researchers have provided training for legal counsel representing both data producers and users on data terminology, data security procedures, and analytical methods of ensuring confidentiality. At the policy level, CUNY researchers helped build a coalition of data users in support of expanded data sharing in New York State. The coalition's efforts gained the attention of Governor's office,

which endorsed a legislative amendment adopted in December 2013 [UI Data Sharing Bill (S5773A), which amended NYS Labor Law Labor Law §537]. The amendment allows expanded access to UC program data for a variety of government departments. It gives CUNY, the State University of New York, and their agents or contractors access to Wage Record System Data, the Quarterly Census of Employment and Wages, and Unemployment Insurance Data. The legislation authorizes use of the data for several purposes articulated in the legislation, including:

- » Evaluating program effectiveness.
- » Financial or other analysis required by federal, state, or local law or regulation.
- » Preparing reports required by federal, state, or local law or regulation.
- » Improving program services or operational efficiencies.
- » Establishing common case management systems across federal, state, and local agencies in support of workforce services.



#### **STRATEGY 4. ESTABLISHING MECHANISMS TO ENHANCE TRUST BETWEEN DATA PRODUCERS AND USERS**

No matter how formal the process is in developing an agreement to share data, ultimately, data producers must be convinced that the data they provide to users is safeguarded and used appropriately. This is a fundamental impediment in negotiating and implementing data sharing agreements. Nearly all study participants identified issues that reflected, in essence, a lack of trust between data producers and users.

To cope with this challenge, data producers and users may rely on formal administrative rules as well as turning to more informal behavioral norms to find areas of agreement. Articulating clearly and in writing basic principles of confidentiality and intended use can ease data producers' concerns. It also may help to ensure that data users take every step necessary to maintain the security of confidential employment and wage data.

In the body of a data sharing agreement, states often require data users to identify, by name, all personnel who will have access to confidential data. This requirement makes the agreement between the organizations personal. Individual reputations and future access are at stake, encouraging the people involved to take the agreement seriously. In many cases, individuals with data access must also sign acknowledgements of non-disclosure rules and penalties. In addition, some states require data sharing participants to complete an ethics or data security training as part of the agreement process.

Maryland, among other states, uses agreements that give data producers the right to review any research involving confidential data prior to publication. These agreements give data producers an additional opportunity to ensure that data is being used appropriately as well as time to prepare public officials to respond to research outcomes.

Many recipients of confidential data reported that they proactively share research findings with their state agreement partners, even when the law does not require giving the department a right to review. Researchers from the University of Hawaii, University of Baltimore, University of Texas, and Stanford University all said that maintaining open lines of communication with data producers is a key strategy for building and maintaining a positive reputation for handling confidential data. Other types of data users echoed this sentiment.

At the heart of these strategies is the idea that while the agreement may be written in formal legal language the negotiation is a human process. Through these negotiations two parties the data producers and the data users must build trust that both sides will live up to their part in the agreement.

Since there is little downside if they refuse a particular request, data producers largely negotiate from a position of strength. However, most data producers gain when their data is used appropriately, highlighting the value and importance of their department's data. So, it is essential for prospective data users to articulate clearly the benefits of their proposed research.

## CONCLUSION AND RECOMMENDATIONS

This study illuminates some of the major challenges data producers and users encounter when they attempt to operate through data sharing agreements governing the use of confidential employment and wage data for research or evaluation purposes. It also highlights strategies being used to diffuse certain difficult issues.

The successful efforts of data producers and users in overcoming administrative, capacity, legal, and value and trust obstacles are encouraging. However, most of these strategies have been state-specific and may not be easy to translate from state to state. Regardless, they offer a strong foundation for launching further initiatives to promote broader access to confidential data and responsible data sharing.

During the course of this study, all participants were asked to offer insights about what might improve the ability of states to share confidential employment and wage data with researchers while maintaining data integrity and security. The research team shared those recommendations with the experts in attendance at the data sharing workshop convened at the Pew Charitable Trusts in Washington, DC in November 2014. Through a process of discussions and voting, the group identified four specific recommendations that they felt would have the greatest impact on moving the process forward and supporting data sharing in the future (see [Appendix A](#)). The workshop group chose the following recommendations as priorities for action:

- » Educate key decision makers about current issues associated with data sharing.
- » Develop training and other resources for data producers, users, and legal counsel.
- » Advocate for greater alignment of laws and regulations, policies, and procedures.
- » Collect and disseminate best practices in data sharing for data producers, users, and policymakers.



### RECOMMENDATION 1. EDUCATE KEY DECISION MAKERS ABOUT ISSUES ASSOCIATED WITH DATA SHARING

More structured and intentional efforts are needed to educate policymakers, data producers, and data users about data sharing issues and options. Currently, policy makers—including elected officials, workforce agency leaders, unemployment compensation program managers, and legal counselors—learn about data sharing issues on an ad hoc basis. Seldom are they informed about procedures and restrictions in a way that covers the nuances of the important task of balancing two sets of values: (1) upholding confidentiality and (2) granting opportunities for the data to be used to provide evidence-based insights about program effectiveness and public investment strategies.



The way things tend to work at present, data producers and users often struggle to learn and articulate the data sharing process, including its risks and benefits. Department staff often have limited experience in negotiating and implementing agreements so the process is not well documented. Data producers must re-learn or sometimes even re-create the process each time.

One valuable contribution to improving data sharing would be to deliver presentations and trainings at national or regional meetings that convene elected officials, appointed agency leaders, data producer managers, and researchers. The goal of these presentations would be to raise the visibility of the issues surrounding the process of sharing confidential data, demonstrate the value of data sharing activities, and encourage decision makers to proactively support expanded access to confidential data. Additional written resources such as exemplary data sharing agreements and agreement development protocols could supplement the presentations.

It would also be valuable for those who advocate for broader data sharing to collaborate with existing national networks to put the issue on the agendas of different national policy organizations. The periodicals of target organizations such as the National Conference of State Legislators, the National Governors Association, the Council of State Governments, the National Association of State Workforce Agencies, and the National Association of Attorneys General could highlight data sharing issues.

Such activities might be carried out in collaboration with foundations interested in evidence-based policymaking.

## **RECOMMENDATION 2: DEVELOP TRAINING AND OTHER RESOURCES FOR DATA PRODUCERS, USERS, AND LEGAL REPRESENTATIVES**

States currently implement data sharing activities as an appendage to their core administrative activities. These ad hoc efforts have resulted in a system that is idiosyncratic to each state, but there is often a rationale to the process. Individuals involved in implementing data sharing agreements—producers, users, and their respective legal counsel—should receive technical assistance and training designed to help all parties understand alternative interpretations of federal and state laws and regulations, how the process operates within the state, as well as basic principles that could be applied to improving the process in each state. A foundation interested in evidence-based policy making could support the LMI Institute and state partners organizations (e.g., NCSL, NGA, CSG, NASWA, or NAAG) to develop and implement the training. Increased access to training and other resources on data sharing could significantly benefit data users in particular since they may not understand many of the legal and process limitations that influence data producers' ability to disclose data and establish agreements. The training should include practical advice on how to present data requests in a way that clearly articulates an appropriate research purpose and reflects the values and concerns of all stewards of confidential data.

In addition to addressing legal, policy, and process issues, the training should also cover more general topics related to how the confidential data are collected and managed as well as the specific variables available for research and their strengths and limitations. This training should be supplemented with collateral materials including examples of research and researchers that have used data sharing agreements to support their research.

### **RECOMMENDATION 3: ADVOCATE FOR GREATER ALIGNMENT OF LAWS AND REGULATIONS, POLICIES, AND PROCEDURES**

The cause of broader data sharing requires greater attention among elected leaders—state legislators and governors—as well as officials in departments that collect and control confidential employment and wage data. In some cases, state laws are adequate to provide sufficient direction and flexibility for government officials to take action. In other cases the research suggests that issues exist in several states that can deter even appropriate data sharing activity.

State laws that establish severe fines and criminal penalties on data producers for what may be inadvertent confidentiality breaches by data users create a discouraging environment for data sharing. Laws that identify relatively narrow categories of data users eligible to access the data may exclude potentially important users desiring to undertake relevant policy research. On the other hand, inadequately detailed regulations may fail to provide sufficient guidance to key decision makers on how to interpret provisions of the law, thus limiting the department's ability to respond to requests for data.

The research team found that the states that have been most successful in promoting data sharing for policymaking and research are those with legislation that provides greater detail about both to whom and for what purposes confidential data may be disclosed. Administrators tend to prefer more specifically worded laws to provide the preferred parameters regarding the intent of confidentiality laws and reconciling them with an increasing demand for data sharing. The challenge, of course, is the barrier created by trying to get this type of statute approved by skeptical legislators.

To advance data sharing on a national scale will require education and advocacy among executive and legislative leaders. This report may encourage national associations supporting workforce development, economic development, and data quality to educate federal and state policy makers on the importance of data sharing, both within and across states.

The report may also encourage these groups to develop and provide guidance on the appropriate balance between ensuring the confidentiality of individual and employer data and disclosing the data that researchers need to conduct high quality statistical analysis and program evaluation. It is especially important that leaders understand how legal confidentiality restrictions may affect the latitude states have in sharing data with analysts and researchers, as well as the extent to which these data may be used to improve the effectiveness of current and future public investments.

### **RECOMMENDATION 4: COLLECT AND DISSEMINATE BEST PRACTICES IN DATA SHARING FOR DATA PRODUCERS, USERS, AND POLICYMAKERS**

The research conducted for this study represents a first attempt at analyzing UC data confidentiality laws and regulations, data sharing agreements, and related activities. The research team hopes this will prove to be a continually evolving endeavor.

This study is intended as the beginning of a process for collecting information and sharing insights among a network of policymakers, data producers, and data users. As states learn from one another, it is likely that many will try out innovations and learn additional lessons in the process.

It would be valuable to develop an ongoing process for collecting best practices in how states are establishing more structured processes for assessing eligible research activities and creating templates for use in negotiating data sharing agreements. This effort should include a mechanism for disseminating best practices about these efforts through the development of a technical guidance document. The guide might include a process flow chart for departments developing their own data sharing request forms and agreement templates. It would be supplemented with online resources that identify eligible users and allowable uses, helping data producers better communicate with potential data requestors.

## CONCLUSION

In conclusion, this effort represents the first step in providing more information and help to policymakers seeking to improve access to data that could help to drive evidence-based decision making in the education, training, and economic development fields. A key aspect of this work is to support research and technical assistance in how data sharing can and does contribute to more effective policymaking.

Many potentially fruitful avenues for further research in the area of data sharing suggest themselves. It would be valuable to conduct further research on how employment and wage record data sharing can help to better understand the impact of public investments on education, workforce, and economic development investments. In particular, exploring the misalignment in data sharing laws and regulations among states could help elucidate the reasons that barriers have been put in place in the individual states. This misalignment is particularly troublesome because UC data are needed to track employment trends within and across states that are economically linked. This research might include examining recent research completed under data sharing agreements, summarizing their findings, and interviewing policymakers to determine if those results had any influence on the debate tied to the issue of study.

Another avenue might be exploring how expanded access to employment and wage data may be used to assess how well K-12 and higher education students do in achieving successful careers. For instance, Statewide Longitudinal Data Systems (SLDS) are databases that capture K-12 students' records. They are designed to help districts, schools, and teachers make informed, data-driven decisions to improve student learning. Increasingly states are trying to link their SLDS data to employment and wage records. Additional research would explore which states have successfully made this linkage and how these new data are being used to assess student outcomes and improve workforce performance.



Yet another avenue for research might be establishing specifics on how states that have more workable data sharing arrangements benefit from them. For example, have states that share more data received more grant funding, or do they have better performing talent systems as a result? State legislators are likely to ask how broader data sharing benefits the state.

In the end, making a more compelling case for broader data sharing requires better insights about why this is such an important need. Leaders open to support legislative or regulatory fixes to the challenges identified in this study will require specific evidence that data sharing actually improves leaders' ability to make better policy decisions. The case that is most likely to influence legislators to make changes, for instance, must be tied to specific research that shows states with data sharing agreements used the research resulting from those efforts to improve policy making in ways that help to make the education and workforce system more impactful with fewer resources. Data sharing for research purposes is not in and of itself a sufficiently persuasive reason for elected officials to make data more widely available.

# APPENDIX A. STATE UC DATA CONFIDENTIALITY LAWS AND REGULATIONS CATEGORIZATION

	§ 603.4 What is the confidentiality requirement of Federal UC law?	§ 603.5 What are the exceptions to the confidentiality requirement? (To whom?)	§ 603.5 What are the exceptions to the confidentiality requirement? (For what purposes?)	§ 603.8 What are the requirements for payment of costs and program income?	§ 603.9 What safeguards and security requirements apply to disclosed information?	§ 603.10 What are the requirements for [data sharing] agreements?	What is the penalty for a violation of non-disclosure rules?*
<b>AK</b>	Broad Mention	Detailed Explanation	Broad Mention	Broad Mention	Broad Mention	Detailed Explanation	Detailed Explanation
<b>AZ</b>	Broad Mention	Broad Mention	Broad Mention	Not Addressed	Not Addressed	Broad Mention	Not Addressed
<b>CA</b>	Broad Mention	Detailed Explanation	Detailed Explanation	Broad Mention	Not Addressed	Not Addressed	Not Addressed
<b>CO</b>	Broad Mention	Broad Mention	Broad Mention	Broad Mention	Not Addressed	Not Addressed	Detailed Explanation
<b>CT</b>	Broad Mention	Detailed Explanation	Broad Mention	Broad Mention	Broad Mention	Detailed Explanation	Detailed Explanation
<b>DE</b>	Broad Mention	Detailed Explanation	Detailed Explanation	Not Addressed	Not Addressed	Broad Mention	Detailed Explanation
<b>FL</b>	Broad Mention	Detailed Explanation	Broad Mention	Broad Mention	Broad Mention	Broad Mention	Detailed Explanation
<b>HI</b>	Broad Mention	Detailed Explanation	Detailed Explanation	Broad Mention	Detailed Explanation	Detailed Explanation	Detailed Explanation
<b>IA</b>	Broad Mention	Detailed Explanation	Broad Mention	Broad Mention	Broad Mention	Not Addressed	Detailed Explanation
<b>ID</b>	Broad Mention	Broad Mention	Broad Mention	Detailed Explanation	Not Addressed	Not Addressed	Detailed Explanation
<b>IL</b>	Broad Mention	Detailed Explanation	Detailed Explanation	Not Addressed	Detailed Explanation	Detailed Explanation	Not Addressed
<b>KY</b>	Broad Mention	Broad Mention	Broad Mention	Broad Mention	Broad Mention	Broad Mention	Detailed Explanation
<b>MD</b>	Broad Mention	Broad Mention	Broad Mention	Not Addressed	Broad Mention	Not Addressed	Not Addressed
<b>MI</b>	Broad Mention	Detailed Explanation	Detailed Explanation	Broad Mention	Not Addressed	Broad Mention	Not Addressed
<b>MN</b>	Broad Mention	Detailed Explanation	Detailed Explanation	Broad Mention	Broad Mention	Not Addressed	Not Addressed
<b>MO</b>	Broad Mention	Broad Mention	Broad Mention	Not Addressed	Not Addressed	Not Addressed	Detailed Explanation
<b>MT</b>	Broad Mention	Broad Mention	Broad Mention	Not Addressed	Broad Mention	Not Addressed	Detailed Explanation
<b>NC</b>	Broad Mention	Broad Mention	Broad Mention	Not Addressed	Not Addressed	Not Addressed	Not Addressed
<b>ND</b>	Broad Mention	Detailed Explanation	Broad Mention	Not Addressed	Not Addressed	Broad Mention	Not Addressed
<b>NE</b>	Broad Mention	Detailed Explanation	Detailed Explanation	Broad Mention	Not Addressed	Detailed Explanation	Detailed Explanation
<b>NM</b>	Broad Mention	Broad Mention	Broad Mention	Detailed Explanation	Not Addressed	Not Addressed	Not Addressed
<b>NY</b>	Broad Mention	Broad Mention	Broad Mention	Not Addressed	Not Addressed	Detailed Explanation	Detailed Explanation
<b>OH</b>	Broad Mention	Broad Mention	Detailed Explanation	Not Addressed	Not Addressed	Not Addressed	Detailed Explanation
<b>OK</b>	Broad Mention	Detailed Explanation	Detailed Explanation	Not Addressed	Not Addressed	Broad Mention	Not Addressed
<b>OR</b>	Detailed Explanation	Detailed Explanation	Detailed Explanation	Broad Mention	Not Addressed	Broad Mention	Detailed Explanation
<b>PA</b>	Broad Mention	Broad Mention	Broad Mention	Not Addressed	Not Addressed	Broad Mention	Not Addressed
<b>SC</b>	Broad Mention	Detailed Explanation	Broad Mention	Broad Mention	Not Addressed	Not Addressed	Detailed Explanation
<b>TX</b>	Broad Mention	Broad Mention	Broad Mention	Not Addressed	Broad Mention	Broad Mention	Broad Mention
<b>VA</b>	Broad Mention	Detailed Explanation	Broad Mention	Detailed Explanation	Detailed Explanation	Not Addressed	Broad Mention
<b>WA</b>	Broad Mention	Detailed Explanation	Detailed Explanation	Not Addressed	Not Addressed	Detailed Explanation	Detailed Explanation
<b>WI</b>	Broad Mention	Broad Mention	Broad Mention	Not Addressed	Not Addressed	Not Addressed	Not Addressed
<b>Broad Mention</b>	30	14	20	13	9	10	2
<b>Detailed Explanation</b>	1	17	11	3	3	7	17
<b>Not Addressed</b>	0	0	0	15	19	14	12

\* Not a basic element of 20 CFR § 603

Note: South Dakota and Virgin Islands refer to 20 CFR § 603



## APPENDIX B.

# WORKSHOP PROCEEDINGS

### SUMMARY REPORT

#### **Sharing State Employment Records for Policy Analysis, Research, and Evaluation: A Workshop on Principles and Practices**

*Held November 14, 2014, in Washington, DC*

### INTRODUCTION

The Labor Market Information Institute (LMI Institute), in collaboration with the Center for Regional Economic Competitiveness (CREC), is researching state unemployment compensation data confidentiality laws and regulations, as well as data sharing agreements, with support from the Ewing Marion Kauffman Foundation. The research will increase understanding of current data sharing practices within different states and aims to find ways to balance the need for confidentiality and the value of research access to protected data.

As part of this effort, the LMI Institute and CREC organized a one-day workshop bringing together more than 20 data producers and data users with extensive experience developing, negotiating, and implementing data sharing agreements. The LMI Institute and CREC presented the preliminary findings of their research. Participants, including data producers and users, discussed barriers to sharing or acquiring confidential data, identified potential solutions, and set priorities for advancing data sharing for purposes of policy analysis, research, and program evaluation. Representatives from state labor market information (LMI)

offices, state legal counsel, workforce investment boards, economic development agencies, community colleges, and universities across 13 states attended. Representatives of relevant federal agencies and national associations and foundations were also present.

The workshop, held on November 14, 2014, was supported and hosted by The Pew Charitable Trusts in Washington, DC. The results of the workshop are detailed below. The table below summarizes the primary challenges, solutions, and implementation recommendations which arose from small group discussions.

# RECOMMENDATIONS AND IMPLEMENTATION SUMMARY TABLE

CHALLENGE AREA	SOLUTION	IMPLEMENTATION RECOMMENDATION
<p><b>1</b> Different data producers within state government do not understand the relevant legal, process, and other issues that influence their counterparts' ability or willingness to share confidential data with data requestors.</p>	<p>Define common questions and challenges that many data producers face.</p>	<p><b>1</b> Facilitate a conversation among different data producers within state government (including data producing agencies and their legal counsel) to help them better recognize: 1) the value of data sharing to policy makers, and 2) the range of legal, political, and cultural contexts affecting data producers' willingness to share confidential data.</p> <p><b>2</b> Identify and develop a contact list of individuals across data producing agencies that are responsible for managing the agency's data sharing process.</p>
<p><b>2</b> Data producers need to more clearly describe the limitations (e.g., variable availability, quality constraints, and related parameters) associated with confidential data in general to data users and others.</p>	<p>Create an educational one-pager about appropriate uses and limitations of key confidential data sources.</p>	<p>Develop one-pagers targeted towards different audiences, which highlight:</p> <ul style="list-style-type: none"> <li>A. Meta-data descriptions of datasets,</li> <li>B. Typical data source uses,</li> <li>C. Data limitations,</li> <li>D. Minimum security and other requirements to obtain confidential data.</li> </ul>
<p><b>3</b> Data users do not understand data confidentiality and data sharing issues.</p>	<p>Develop tools to help data users communicate their needs (including better articulating research questions and methods) to data producers.</p>	<p><b>1</b> Develop a general education program targeted to data users on data sharing issues, especially related to the process for requesting confidential data.</p> <p><b>2</b> Develop templates and guidance to help data users better frame requests so they clearly demonstrate how access to confidential data would enhance the quality of research outcomes.</p>
<p><b>4</b> Confusion over what constitutes legally appropriate uses of confidentiality data and processes for sharing that data results from the inconsistent interpretation of confidentiality laws and regulations among different data producers and data users.</p>	<p>B. Develop step-by-step best practice document on how to create ideal data sharing agreements.</p>	<p><b>1</b> Develop a policy document (or technical guide) that includes a common data definitions dictionary, describes a step-by-step process for developing effective data sharing agreements, shares best practices, and provides sample agreement templates.</p> <p><b>2</b> Disseminate elements of the policy document (or technical guide) via webinars.</p> <p><b>3</b> Develop an advocacy plan for the use of the policy document (or technical guide) as a recognized standard methodology.</p>

## WORKSHOP RESULTS

### CHALLENGE AREAS

Workshop participants discussed a range of challenges from the data producers and data user perspective that negatively impact data sharing opportunities. The group identified nine major “challenge areas.” The group was then polled to help prioritize four challenge areas on which to focus during the remainder of the workshop. Challenge areas C, E, G, and I—highlighted in blue—received the most votes.

- A** Data producers fear that data users will violate confidentiality laws and regulations and/or data sharing agreement requirements.
- B** Data producers do not treat data users as partners.
- C** *Different data producers within state government do not understand the relevant legal, process, and other issues that influence their counterparts’ ability or willingness to share confidential data with data users.*
- D** Data producers have limited capacity to respond to the rapidly increasing demand for confidential data (including time and staff resources).
- E** *Data producers need to more clearly describe the limitations (e.g., variable availability, quality constraints, and related parameters) associated with confidential data in general to data users and others.*
- F** Elected officials lack an understanding of and the value of sharing confidential data.
- G** *Data users do not understand data confidentiality and data sharing issues.*
- H** Data sharing advocates do not understand the internal challenges data owners face (legal, political, and cultural) when it comes to their ability to share data.
- I** *Confusion over what constitutes legally appropriate uses of confidential data and processes for sharing that data results from the inconsistent interpretation of confidentiality laws and regulations among data producers and data users.*

### SOLUTIONS AND RECOMMENDATIONS FOR IMPLEMENTATION

Four small groups of four-to-five participants were assigned one of the selected challenge areas. Each small group helped to more clearly articulate the challenge area and developed a series of potential solutions. Small groups then summarized their deliberations for the larger group. Following, participants were again polled to select one potential solution to each challenge for further exploration and development of recommendations for implementation. Finally, each small group presented their recommendations to the larger group.

All of the potential solutions to the four prioritized challenge areas are listed below. The blue-highlighted solutions are those that participants elected to further investigate. Recommendations for implementation for each solution are then described.

**Challenge C:** Different data producers within state government do not understand the relevant legal, process, and other issues that influence their counterparts’ ability or willingness to share confidential data with data requestors.

#### POTENTIAL SOLUTIONS:

- A** *Define common questions and challenges that many data producers face.*
- B** Create a “home” for conversations about confidentiality and data sharing concerns and solutions.
- C** Establish administrator-level buy-in on data sharing.
- D** Develop shared education and training opportunities for data producers and data users.
- E** Create templates for data sharing agreements.
- F** Recognize the limitations on what data producers can and cannot do depending upon the unique environment in which they work.



#### RECOMMENDATIONS FOR IMPLEMENTATION:

- 1 Facilitate a conversation among different data producers within state government (including data producing agencies and their legal counsel) to help those data producers better recognize: 1) the value of data sharing to policy makers, and 2) the range of legal, political, and cultural contexts affecting data producers' willingness to share confidential data.
- 2 Identify and develop a contact list of individuals across data producer agencies that are responsible for managing the agency's data sharing process.

**Challenge E:** Data producers need to more clearly describe the limitations (e.g., variable availability, quality constraints, and related parameters) associated with confidential data in general to data requestors and others.

#### POTENTIAL SOLUTIONS:

- A Raise the priority of data sharing among policy makers.
- B *Create an educational one-pager about appropriate uses and limitations of key confidential data sources.*
- C Develop webinars and trainings.
- D Consider branding of "Wage Records" to more clearly illustrate what they comprise.

#### RECOMMENDATIONS FOR IMPLEMENTATION:

Develop one-page descriptions targeted towards different audiences, which highlight:

- » Meta-data descriptions of datasets
- » Typical data source uses
- » Data limitations
- » Minimum security and other requirements to obtain confidential data

**Challenge G:** Data users do not understand data confidentiality and data sharing issues.

#### POTENTIAL SOLUTIONS:

- A Create a general education program on data sharing with a checklist and webinars.
- B Develop tools to educate people on appropriate use of data.
- C *Develop tools to help data users communicate their needs (including better articulating research questions and methods) to data producers.*
- D Develop solutions to help data producers handle the high volume of requests.
- E Identify and share best practices for developing and implementing data sharing agreements.
- F Document and share the process to effectively obtain a data sharing agreement.

#### RECOMMENDATIONS FOR IMPLEMENTATION:

- A Develop a general education program targeted to data users on data sharing issues, especially related to the process for requesting confidential data.
- B Develop templates and guidance to help data users better frame requests so they clearly demonstrate how access to confidential data would enhance the quality of research outcomes.



**Challenge I:** Confusion over what constitutes legally appropriate uses of confidential data and processes for sharing that data results from the inconsistent interpretation of confidentiality laws and regulations among different data producers and data users.

#### **POTENTIAL SOLUTIONS:**

- A** Map relevant statutes and identify overlap.
- B** *Develop step-by-step best practice document on how to create ideal data sharing agreements.*
- C** Develop long-term legislative strategy to align and update statutes.

#### **RECOMMENDATIONS FOR IMPLEMENTATION:**

- 1** Develop a policy document (or technical guide) that includes a common data definitions dictionary, describes a step-by-step process for developing effective data sharing agreements, shares best practices, and provides sample agreement templates.
- 2** Disseminate elements of the policy document (or technical guide) via webinars.
- 3** Develop an advocacy plan for the use of the policy document (or technical guide) as a recognized standard methodology.

#### **PRIORITIES FOR IMPLEMENTATION**

Workshop participants concluded the day's proceedings with a discussion of priority issues that need to be addressed to advance confidential data sharing for policy research, analysis, and program evaluation. Key issues included:

- » Breaking down internal barriers (legal, political, and cultural) that hinder data producers' ability or inclination to share data by building a coalition of willing states that can bring along other states in which key decision makers are yet to embrace data sharing.
- » Addressing resource gaps and the capacity of data producers to handle increasing requests for confidential data.
- » Identifying means to improve data hygiene to ensure that administrative data, confidential or otherwise, is of the highest quality.