**U S. Department of Education and U.S. Department Labor**

**State Wage Interchange System (SWIS) Data Sharing Agreement**

**Guidance on Using the Supplemental FERPA Agreement (Attachment 1)**

June 2021

*Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.*

Performance Accountability and Customer Information Agencies (PACIAs) that are “state educational authorities” under the Family Educational Rights and Privacy Act (FERPA) entering into the State Wage Interchange System (SWIS) Data Sharing Agreement will, pursuant to the SWIS Data Sharing Agreement/FERPA Written Agreement (Annex 1), designate as their “authorized representatives” specified entities that will, or may need to, have access to personally identifiable information (PII) from “education records” under the terms of the SWIS Data Sharing Agreement in order to comply with FERPA’s Audit and Evaluation exception to the requirement of written consent. However, a subset of Access PACIAs entering into the SWIS Data Sharing Agreement will have to complete the Supplemental FERPA Agreement (Attachment 1) if they are neither state educational authorities under FERPA nor designated in Annex 1 as authorized representatives of Non-Access PACIAs that are state educational authorities under FERPA. This subset of Access PACIAs must be designated as the state educational authority’s authorized representative in order to permit disclosure of PII from education records, without prior written consent, by such state educational authority to the Access PACIA, and to permit the Access PACIA to further designate specified other entities that will, or may need to, have access to PII from education records under the terms of the SWIS Data Sharing Agreement in order to comply with FERPA’s Audit and Evaluation exception to the requirement of written consent. For a complete description of Annex 1 and using Attachment 1, please see <https://www.dol.gov/sites/dolgov/files/ETA/Performance/pdfs/SWIS_Agreement_6-20-19_Accessible_PDF_Fillable_Form.pdf>.

EXAMPLES:

(Note: The following examples assume that the Adult Education (AE) entity is a state educational authority under FERPA responsible for administering WIOA title II. However, in some states another entity, such as a community college board, state department of education, or the state labor agency, may be responsible for administering WIOA title II and, if so, would be a state educational authority under FERPA).

* *Is Attachment 1 required where an AE entity that is a state educational authority under FERPA for WIOA title II but is neither an Access PACIA nor a Non-Access PACIA will be disclosing, without prior written consent, PII from education records for the purpose of evaluating and/or auditing Federally-supported education programs authorized under WIOA title II to a State Workforce Agency that is an Access PACIA but is not a state educational authority under FERPA?*

Yes. In this scenario, the AE entity, as a state educational authority, must execute Attachment 1 for purposes of designating the State Workforce Agency, as an Access PACIA that is not a state educational authority, as its authorized representative in order to disclose, without consent, PII from education records to the State Workforce Agency, and to permit the State Workforce Agency to further designate specified other entities that will, or may need to, have access to PII from education records under the terms of the SWIS Data Sharing Agreement as additional authorized representatives of the AE entity for purposes of further PII re-disclosure, without prior written consent, through the SWIS Clearinghouse.

* *Is Attachment 1 required where an AE entity that is a Non-Access PACIA and a state educational authority under FERPA will be disclosing, without prior written consent, PII from education records for the purpose of evaluating and/or auditing Federally-supported education programs authorized under WIOA title II to a State Workforce Agency that is an Access PACIA but is not a state educational authority under FERPA?*

No. In this situation, Attachment 1 is not necessary. By entering into the SWIS Data Sharing Agreement, the AE entity, as a state educational authority and Non-Access PACIA, will designate, pursuant to Section IV of Annex 1, the State Workforce Agency as the AE entity’s authorized representative under FERPA. Pursuant to this designation, along with other applicable designations, the AE entity may disclose PII from education records, without prior written consent, to the State Workforce Agency, and the State Workforce Agency may further redisclose such PII from education records, without prior written consent, to specified other entities also designated as the AE entity’s authorized representatives in Section IV of Annex 1.