

Policy Draft on Data Privacy and Sharing
Bureau of Adult Education
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Background

The National Reporting System for Adult Education (NRS) is the accountability system for the Federally funded adult education program, authorized by Section 212 of the Workforce Innovation and Opportunity Act (WIOA). The NRS includes the WIOA primary indicators of performance, measures that describe adult education students and their program participation, methodologies for collecting performance data, and program reporting procedures.

The NH Data and Assessment policy outlines the data collection and reporting requirements for assessment, participation and outcomes. State performance is determined in two ways: Measurable Skill Gain as defined in the Data and Assessment Policy and reported on the NRS Tables; and the Primary Indicators as defined in the Data and Assessment Policy and reported on the Joint Statewide Performance Report.

- Measurable Skill Gain includes measurements such as educational functioning level gain and secondary school credential attainment.
- The six (6) Primary Indicators/Outcomes are as follows:
 1. The number of individuals employed during the second quarter after exit
 2. The median earnings of individuals employed during the second quarter after exit
 3. The number of individual employed during the fourth quarter after exit
 4. The number of individuals earning a secondary school credential and entering employment within twelve months of program exit.
 5. The number of individual earning a secondary school credential and entering postsecondary education or training within twelve months of program exit.
 6. The number of individuals earning a postsecondary credential within twelve months of program exit.

Prior to 2016, outcomes were required only for individuals in specific cohorts as defined under the National Reporting System. However, under WIOA, outcome data collection is required on ALL participants after program exit. Program exit is defined as having no instructional hours for a 90 day period.

The Primary Indicators are reported annually on October 1st to the US Department of Education, Office of Career Technical and Adult Education on the NRS Table 5.

New Hampshire has historically used a survey method to collect outcome information. In the past, this may have required several hundred contacts with individual who have left the program, usually conducted by phone, email or mail.

Additional WIOA requirements include the reporting of outcome data on the Statewide Joint Performance Report in combination with all of the other core WIOA partners. Recently, the US Departments of Labor and Education have required each state to submit a written Data Validation plan for all data collected and reported on the Statewide Joint Performance Report.

NH Adult Education is the only core partner who does not collect Social Security numbers for the purpose of data matching with the NH Unemployment Insurance system. Due to privacy issues, the NH Department of Employment Security provides data matching to employment records using only a Social Security number as a unique identifier. No other personally identifiable information is provided for the purposes of data matching.

The Problem

The NH Bureau of Adult Education has identified a number of issues resulting from the inability to conduct data matching using Social Security numbers.

1. Currently, because outcome data is required for ALL participants, the number of required surveys has dramatically increased and now numbers in the thousands.
 - a. Most programs do not have dedicated staff to conduct follow up surveys.
 - b. Conducting follow up surveys is extremely time consuming.
 - c. Even though the Adult Diploma Program does not receive federal funding, the follow up data must be collected because all Title II students are reported and state funds used on those participants are required for the federal Maintenance of Effort.
2. Collecting follow up data has always been challenging due to the transient nature of the participants served manifested by changing phone numbers and addresses. While other methods have been used including texting, email, social media and 3rd party reporting, the return results are still very low.

<i>As reported on NRS Table 5</i>	2016-2017	2017-2018
# of Exited Participants	4822	1307
# of Survey Responses	1740	525
Percent	36%	40%

3. The US Departments of Labor and Education issued joint guidance regarding Supplemental Wage Data which refers to surveys as an alternative to the use of data matching with SSN.
 - a. Both agencies feel that survey should be a last resort for data collection, not the primary method.
 - b. At repeated meetings with OCTAE and the NRS team, NH has been pressured to conduct data matching as a more reliable method of data collection.
 - c. Regional NRS trainings focus on data matching requirements rather than survey.
 - d. Program Memorandum OCTAE 17-6 issued June 1, 2017
 - i. "Matching a participant's SSN against quarterly wage record information is the most effective means for determining employment status and earning for a program participant. "
4. Each year, the NH Bureau of Adult Education has to complete a Data Quality Checklist as a part of the NRS reporting.
 - a. Each year, NH has received less than Exemplary status for Data Quality because data matching is not used.
5. Until 2018-2019, the data reported to NRS has been used to establish a Statistical Adjustment Model by creating a baseline for all state adult education programs across the country.
 - a. In 2019-2020, it is anticipated that the Statistical Model will be completed and will be used to determine the negotiated performance measures for each state.
 - b. In 2020-2021, it is anticipated that OCTAE will have to impose sanctions on states who do not meet their negotiated performance measures.
 - i. Currently the other WIOA programs faced the possibility of sanctions for not meeting performance requirements.
 - ii. OCTAE has never done this in the past, but it is required under WIOA.
6. NH has a long history of protecting the individual's privacy and ensuring that adult education is accessible for all.

- a. It is the intention of the Bureau to continue to provide open access to services as well as protecting the privacy of adult education students.
7. The LACES Data System currently does not allow for a SSN to be entered into NH's system. They do provide this field for all of the other states under their contracts.

Authorization for SSN Collection

Personally Identifiable Information

Title II funded programs must comply with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g), a federal privacy law administered by the U.S. Department of Education. FERPA and its implementing regulations (34 CFR part 99) seek to protect the privacy of students' education records and afford parents and eligible students certain rights to inspect and review education records, to seek to amend these records, and to consent to the disclosure of personal identifiable information (PII) from education records. The general rule under FERPA is that PII from education records cannot be disclosed or shared without written consent. For the full text of 20 U.S.C. 1232g, see [Family Educational Rights and Privacy Act Regulations](#).

"Personally Identifiable Information," according to FERPA, includes, but is not limited to:

- a) *The student's name;*
- b) *The name of the student's parent or other family members;*
- c) *The address of the student or student's family;*
- d) *A personal identifier, such as the student's social security number, student number, or biometric record;*
- e) *Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;*
- f) *Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or*
- g) *Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.*

State-Level Data Matching

Under the Audit or Evaluation Exception in FERPA, States are allowed to share data for the purpose of data matching to carry out an audit or evaluation of federally supported education programs, or to inform or comply with Federal legal requirements that relate to those programs¹.

Additionally, the WIOA Final Rules authorize the use of social security numbers to measure the progress of participants².

¹ §99.35 https://studentprivacy.ed.gov/node/548/#0.1_se34.1.99_135

² §463.175 https://www.ecfr.gov/cgi-bin/text-idx?SID=f284d9f4d8e105d9b4ccbc1dfc7c5fc6&mc=true&node=pt34.3.463&rgn=div5#se34.3.463_1175

To meet federal reporting requirements, the NH DOE will share (i.e. data matches) personally identifiable information from adult education students with outside organizations such as the NH Department of Employment Security, the State Wage Interstate System, and the National Student Clearinghouse.

This data matching allows the State of New Hampshire to report on adult education outcomes measures such as employment, wages and entry into postsecondary education for its Title II students, a requirement of WIOA. PII sent to outside organizations is either returned to the NH DOE or destroyed upon completion of data matching.

Please note that Title II participants will be included in the NRS denominator for performance measures regardless of whether they have provided their SSN for data match or not.

Prior Written Consent

FERPA requires prior written consent for the release of PII. Prior written consent is established when an eligible student signs and dates a statement that—

- Specifies the records that may be disclosed;
- States the purpose of the disclosure; and
- Identifies the party to whom the disclosure may be made.

Social Security Numbers

Neither WIOA nor the Joint WIOA Final Rule allows or requires States to request or require SSNs as a condition of program participation or for receipt of any form of financial assistance. As such, program eligibility under WIOA is not contingent on the provision of a SSN.

Additionally, depriving such an individual of service would be in violation of the Privacy Act of 1974, which establishes a code of fair information practices that govern the collection, use, dissemination, and maintenance of information about individuals contained in systems of Federal records. Specifically, sec. 7(a)(1) of the Privacy Act³ (5 U.S.C. 552a Note, Disclosure of Social Security Number) provides that unless the disclosure is required by Federal statute, “It shall be unlawful for any Federal, State, or Local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual’s refusal to disclose his social security account number.”

Student consent is voluntary and is not required for participation in any programs or services.

Data Sharing & Privacy Policies

1. Programs must attempt to gather SSNs from all Title II students.
2. Programs **MAY NOT** collect SSN from students who are dual enrolled in a regular high school program regardless of the student’s age.

³ Privacy Act of 1974 https://www.ssa.gov/OP_Home/comp2/F093-579.html

- a. Students who are 16 or 17 are required under the compulsory attendance law to be enrolled in school. SSNs may NOT be collected.
 - b. Students who are over 18 may be enrolled in school. The Program is responsible for asking the student if he/she has officially withdrawn from high school.
 - c. Pursuant to RSA 193:1, I(f)(2), the parent of homeschooled students who are 16 or 17 are required to certify that the child has completed the home school program at the high school level. Students over 18 are considered to be Title II.
3. Programs must provide an opportunity for students to consent or decline release of their information by informing students, in writing, that their personal and confidential information will only be shared with their written consent⁴. See [Appendix 1](#) for an example of an Authorization for Release of Information form.
 4. Programs must not deny services to students who do not authorize release of information.
 5. If a student consents, but states that he/she does not have a SSN, he/she should be directed to an appropriate community service for assistance in obtaining one. See <https://www.ssa.gov/ssnumber/> for more information.
 6. Programs must inform students, in writing, of students' ability to revoke consent to release information. See [Appendix 2](#) for an example of a Revocation for Release of Information form.
 7. Programs are prohibited from sharing personal confidential information or records if the student declines to give or revokes prior written consent.
 8. Programs must keep the signed and dated consent forms and revocation forms on file in accordance with record retention policies(a minimum of three years).
 9. Programs must enter the SSN into LACES **OR** check the box indicating that the request has been made and the student has declined to provide.

Data Storage for Security

1. Programs must maintain a secure data system to protect confidentiality and privacy of student. Data (paper and electronic) must be housed in a secure location.
 - a. Paper records must be stored in a locking file cabinet with limited access authorized personnel only.
 - b. No electronic records with SSNs will be maintained except in the LACES data system.
 - c. Access to electronic data in the LACES must be restricted with an individualized user password and through the appropriate use of user permissions.
 - d. The LACES system has multiple privacy safeguards including password protection, an audit history, field masking and other requirements as outlined in the contract with LiteracyPro Systems, Inc.
 - e. Programs must allow access to all student files by the NH Bureau of Adult Education and/or the US Department of Education staff for audit purposes.
2. Programs must designate specific staff to be responsible for maintaining the records in the LACES data system.
 - a. Administrative staff may be authorized as Center Directors in LACES.

⁴ In accordance with the Privacy Act of 1974, the requestor must state whether giving an SSN is voluntary or mandatory and describe how the SSN will be used.

- b. Teachers may be authorized to view their class enrollment/attendance data only.
3. SSNs are not required to be stored on hardcopies of student records. See [Recommended Guidelines](#).

Recommended Guidelines

For Paper Intake Forms

1. Place the SSN consent form at the back of the application to avoid the possibility of a SSN being visible in the unlikely event that the form is left on a desk during data entry.
2. Establish local policies for staff requiring timely data entry of personal data and the immediate destruction of the recorded SSN.
3. If possible, conduct Intake Interviews on an individual basis or separate the SSN Consent Form and request it on an individual basis.
4. Place a shredder in close proximity to the computer used for data entry.
5. Consider the purchase of a USB pin pad so that students can enter their own SSN directly into LACES without having to record it on paper.
6. The following practices are recommended:
 - a. Student enters SSN directly into LACES using a handheld Pinpad.
 - b. Student records SSN on a page that is removed from the student record after entered into LACES. See sample in [Appendix 1](#).



For Electronic Intake Forms

1. The design of an electronic Intake form must ensure that the form with the SSN is NOT transmitted over the Internet for security reasons. Please consult your agency's IT department.

Conducting Intake Interviews

1. Let the students know why you are asking for this information.
 - a. For WIOA Adult Education – suggested script
 - i. “The classes that you take here are free because we receive money from the federal government to provide adult education and to continue to receive money, we need to show that the services that we provide are helping our students to build their academic skills, to move into postsecondary education and training to improve their lives, and to get and keep employment that supports their families.

So after you leave this program, we need to find out how you are doing, so we will use just your SSN to match to the records of people who are working or use your name and DOB to match to records of people who are in college.

We can also get this information by calling you or sending you an email or text after you leave, so it is important that we have your contact information.”

- b. For Adult Diploma Program – suggested script
 - i. “The classes that you take here are paid for in part by your school district and in part with money by the NH Department of Education. It is important for us to show that the services we provide are helping our students to get a high school diploma or equivalent; to move into postsecondary education or training and to get a good job to support you and your family.

So after you leave this program, we need to find out how you are doing, so we will use just your SSN to match to the records of people who are working or use your name and DOB to match records of people who are in college or training.

We can also get this information by calling you or sending you an email or text after you, so it is important that we have your contact information.”

2. Let students know that you will protect their personal information whether or not they provide a SSN.
 - a. All staff should be required to sign a confidentiality agreement that prohibits them from sharing information about students with those outside of the agency,
 - b. Tell them that the records are kept in a locked storage area.
 - c. Provide direct instruction on how to avoid identity theft and protect the SSN.
3. Acknowledge that there are risks associated with sharing their SSN, but that safeguards have been implemented to protect the personal data that they provide to the agency.
 - a. Tell them about your security measures.
 - i. In LACES, the primary identifier is NOT the SSN. It is a uniquely assigned ID number in the system. The SSN is only a secondary identifier.
 - ii. The data contained in LACES is encrypted at numerous levels. This means that the data can only be seen by a person authorized to have access to it. Upon entry, the first 5 digits of the SSN are masked. No one can see the whole number once it is entered.
 - iii. LACES has strong firewalls and protections for its system. They had to meet very stringent protection requirements as a part of their contract with the State.
 - iv. Develop a local policy and share it with students.
 1. This might include a disclosure statement required for employees who handle documents containing confidential information. Talk to your legal counsel or HR Department about this.
 2. Under FERPA, the handler of such documents may be subject to criminal prosecution and civil penalties, as well as disciplinary action by their employer, if they improperly disclose confidential information.
 3. Consider creating a Chief Privacy Officer position for oversight of all issues involving record security, including protection of SSNs maintained.
 4. Ensure that LACES is used on a protected computer with up-to-date anti-virus protection and possibility limited access through the use of unique user names/passwords.
 - v. Provide training on handling confidential data. The Department of Education may be able to provide technical assistance for this. Also check with your legal counsel and/or your Human Resources Office.
 - b. Give students options on how/if they provide the information.

Appendix 1 – Authorization of Release of Information Sample

VOLUNTARY AUTHORIZATION TO SHARE SOCIAL SECURITY NUMBER

Name of Agency:

This form allows the agency listed above to collect your Social Security Number and share it with the NH Department of Education. The NH Department of Education will only use this information for data matching for federal WIOA reporting and for educational research.

Completing and signing the form below allows the NH Department of Education to collect and release student information as described below, for the purpose described below.

Specific Information to be released:

- Personal Identifiable Information (PII)
 - Name
 - Address
 - Birth date
 - Social Security Number
- Education Information
 - Educational records
 - Test results
 - Attendance

If you sign this form indicating authorization to release your information, your information will be shared with WIOA partners including, but not limited to,

- NH Unemployment Insurance System (SSN only, not your name)
- State Wage Information System (SSN only, not your name)
- National Student Clearinghouse (Name and DOB only)

PLEASE READ THE FOLLOWING CAREFULLY

I understand that I do NOT need to provide a Social Security Number to take classes at this agency.

Student Name (Print): _____

YES. I voluntarily provide my Social Security Number.

NO. I choose not to provide a Social Security Number.

Student Signature

Date

✂-----

NOTE TO STAFF

Cut and shred SSN after it has been entered into the LACES Data System.

My Social Security Number is: _____ - _____ - _____

I do not consent to release my personal or educational information.

Student name printed

Student Signature

Date

Appendix 2 - Revocation of Release of Information

REVOCATION FOR RELEASE OF INFORMATION

Name of Agency:

The Family Education Rights and Privacy Act of 1974 (FERPA) states that a student must authorize in writing the release of his/her educational records. Students may revoke the consent to release education records to previously authorized requestors in writing. Please complete this form to revoke consent to release education records.

Student Name (Print): _____

Student Signature

Date

This form serves as your signed revocation of consent for _____ to release indicated educational records to the individual or entity identified below. One form is required per authorized individual. If you wish to reinstate this individual's authorization, you will need to fill out another Authorization for Release of Information form.

I _____, the undersigned, hereby revoke the authorization for _____ to release my personal or educational information to the designated individual or entity listed below:

NH Department of Employment Security, Bureau of Unemployment Insurance

State Wage Information System

National Student Clearinghouse

Other: _____

Appendix 3 – Supplemental Wage Data

FROM TEGL 26 – 16: *Guidance on the use of Supplemental Wage Information to implement the Performance Accountability Requirement under the Workforce Innovation and Opportunity Act*

Limitations of Data Matching with SSN

While most forms of employment in a State's workforce will be reported via employer tax filings in the Unemployment Insurance wage records system, certain types of employers and employees are excluded from coverage under Federal and State UI laws. For program participants engaged in these types of employment, and for participants for whom the State does not have an SSN on record, States may use supplemental wage information and wage data from other reliable sources to collect employment-related data necessary for calculating levels of performance.

Individuals for whom a quarterly wage record match would not be available through the State UI data system include but are not limited to:

- Federal employees
- Military employees
- Individuals who are self-employed
- Individuals who are working and paying taxes under a Taxpayer ID # rather than a SSN (several large companies report offering this option for employees)

Currently AEFLA is not authorized to use the Wage Record Interchange System for interstate wage records, however, the US Department of Education has signed on with the US Department of Labor as a signatory for the State Wage Information System soon to be released.

Other sources of supplemental wage information (may or may not be available in NH):

- Federal employment records, such as military employment records, or records from the US Department of Defense, US Postal Services and the US Office of Personnel Management;
- State New Hires Registry
- State Department of Revenue or Taxation
- Railroad Retirement System; and
- Other forms of supplemental wage information

The following information methods and procedures are acceptable forms of supplemental wage information, but are not limited to, the following:

- Tax documents, payroll records and employer records including pay stubs or a signed letter from an employer
- Follow up survey (self-reported) from program participants;
- Income earned from commission in sales or other similar positions;
- Detailed case notes verified by employer and signed by the counselor, if appropriate to the program;
- Automated database systems or data matching with other partners with whom data sharing agreements exist;
- One-Stop operating systems' administrative records, such as current records of eligibility for program with income-based eligibility (e.g. Temporary Assistance for Needy Families or Supplemental Nutrition Assistance Program); or
- Self-employment worksheets signed and attested to by program participants

Appendix 5 - Additional Resources

- **TEGL 26 – 16:** *Guidance on the use of Supplemental Wage Information to implement the Performance Accountability Requirement under the Workforce Innovation and Opportunity Act*
 - https://wdr.doleta.gov/directives/attach/TEGL/TEGL_26-16.pdf

- **TEGL 14 – 18:** *Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training programs Administered by the US Department of Labor*
 - https://wdr.doleta.gov/directives/attach/TEGL/TEGL_14-18.pdf

- *Joint Guidance on Data Matching to Facilitate WIOA Performance Reporting and Evaluation*
 - <https://www2.ed.gov/policy/gen/guid/fpco/pdf/final-ferpa-tegl-report.pdf>

- *US Department of Education: Protecting Student Privacy*
 - <https://studentprivacy.ed.gov/>

- *Social Security Administration*
 - Identity Theft and Your Social Security Number
 - <https://www.ssa.gov/pubs/EN-05-10064.pdf>
 - Avoid Identify Theft: Protect Social Security Numbers
 - <https://www.ssa.gov/phila/ProtectingSSNs.htm>

- *Federal Trade Commission – Consumer Information*
 - Identity Theft
 - <https://www.consumer.ftc.gov/features/feature-0014-identity-theft>