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MEMO

SUBJECT: IMPROVING MICHIGAN'S WAGE AND EMPLOYMENT DATA SHARING
TO: LEGISLATIVE AND EXECUTIVE GOVERNMENT LEADERS
FROM: WORKFORCE INTELLIGENCE NETWORK
DATE: JANUARY 21, 2016

Executive Summary:
The Workforce Intelligence Network (WIN) for Southeast Michigan—on behalf of its member community colleges and Michigan Works! Agencies (MWAs) —proposes a legislative and regulatory agenda for improving Michigan's wage and employment data sharing policies. The information is important to access in order to better understand whether public investments in education and training are being optimized, with workers and employers being well-served. Access to UI wage data has been limited in Michigan, making it difficult for institutions like MWAs and community colleges to use the data, particularly for program improvement and optimization.

A combination of regulatory and legislative reforms are proposed to update and improve the state's UI-data sharing policies. The recommendations include:

1.   Ensure that public academic and workforce institutions, including community colleges, universities, workforce development agencies deemed eligible, are legally identified as accessors to the data.
2.   Remove liability from individual public officials and extend it to the requesting organization.
3.   Grant access for research AND continuous improvement/evaluative, performance enhancement purposes. Allow the use of the data for creating longitudinal tracking systems (such as that being developed in Michigan), so that it is clear legally that the data may be shared and accessed in such ways.
4.   Require a clear and public process for how to make a request, explanation of what information is available, and explanation for why a request may have been denied.
5.   Where an MOU or relationship is required to access data, allow such agreements to exist long-term.
6.   Eliminate criminal penalties (or soften them), especially if the onus of liability remains on individuals rather than institutions.

Purpose:
The Workforce Intelligence Network (WIN) for Southeast Michigan—on behalf of its member community colleges and Michigan Works! Agencies (MWAs) —proposes a legislative and regulatory agenda for improving Michigan's wage and employment data sharing policies. This agenda draws upon best practices from other states which lead the nation with policies that promote data-driven decision making in government, by providing fair, progressive and responsible means for data access.

UI wage records explained:
Unemployment insurance (UI) wage record data allows access to a wealth of information that otherwise can only be collected through surveys. This makes the data far more reliable (people have difficulty remembering the details of their employment history) and less expensive to collect. The data itself has numerous applications and can support awareness relating to a number of factors, for example: where employees work vs. live, in what occupations they are employed, and how much they earn over a spectrum of time. As such, the data supports longitudinal tracking and research, program evaluation, process improvement, and related analyses. The information is important to access in order to better understand whether public investments in education and training are being optimized, with workers and employers being well-served. Further, researchers can use the data to determine the size class and industry of the establishments that have hired certain workers, how many workers there are in particular industries, which industries are more likely to employ certain types of workers (e.g., the long-term unemployed), if companies that have hired certain workers are growing or shrinking over time, etc.

While access to UI wage record data unlocks the potential for greater data-driven decision-making, this objective must be pursued while maintaining necessary confidentiality and privacy of data. Federal and state laws and regulations prohibit certain uses of data and set boundaries on what kind of information can be published. These safeguards protect participating businesses and workers from having their identities and individual wage data inappropriately disclosed.

Challenge:
Every state provides some access to UI wage record data, but in Michigan, access tends to be more limited. First, those with explicit access to wage and employment data include public officials, public employees, or those acting as agents to the state. Historically, this has made it difficult for institutions like MWAs and community colleges to use the data, particularly for program improvement and optimization. In recent years, MWA leaders have been allowed greater access to unemployment insurance (UI) wage record data, identified presumably through their interpretation as agents of the state; however, their access remains limited compared to their peers in other states. Meanwhile, community colleges have had even less access to UI data, making it difficult to measure the outcomes of their curriculum and program offerings. The colleges have had the option to access UI wage record data via an MOU with the state; however, the MOUs have required one of their trustees, as a public official, to be the lead signatory. These individuals then, by law, assume personal liability (including criminal) if access or use of the data breeches the guidelines set. (The same is true for MWA directors.) As such, many of the institutions have been reluctant to enter into these MOUs (or, rather, their trustees refuse to accept the liability).

Further, Michigan law restricts access to the data for research purposes. This leaves open for interpretation the methods in which the data may be used as a research tool. Also, it is unclear what information is collected in the UI wage records, leaving institutions uncertain of the data points that may be requested and, if a request is denied, for what reasons.

Proposed agenda for improvement:
In fall 2014, WIN staff attended a Pew Center convening of local, state, and federal data experts that were examining data quality and access, including UI wage record data. The information presented made it clear that Michigan's policies and statutes governing data availability and access are archaic so as to stifle contemporary data-driven research methods. In spring/summer 2015, WIN formed a working group to review options for improving Michigan's UI-wage record laws. The committee worked with national data experts that helped facilitate the Pew Center conversations and decided to undertake a detailed analysis of three "exemplary-practice" states' UI wage record laws and administrative practices. Based on this analysis, the work group proposed a combination of regulatory and legislative reforms to update and improve the state's UI-data sharing policies. The following six recommendations were made:

1. **Ensure that public academic and workforce institutions, including community colleges, universities, workforce development agencies deemed eligible, are legally identified as accessors to the data.**

As mentioned earlier, Michigan law currently places narrow restrictions on who can access wage and employment data collected by the state. Only public employees and public officials—or contractors or agents of a public official, including colleges, universities or agencies of the state— are permitted to make data requests (MCL 421.11 (b)(1). This language should be broadened and clarified to ensure access for institutions like community colleges and workforce development agencies, which may or may not work in collaboration with an individual public official. New York State provides a model in this regard with a statute that specifies that access can be granted to:

"Any state or United States territorial workforce agency, local workforce investment board and its agents, and one-stop operating partner receiving funds under the workforce investment act of 1998." (NY 537.3(g)(ii)(2))

Michigan should adopt similar language to ensure that publicly-funded higher education institutions (community colleges and universities) and Michigan Works! agencies, particularly those receiving public funding for education and training purposes, can access UI wage data. Furthermore, distribution should be limited to public bodies that have an infrastructure that requires them to answer to the state for their conduct.

2. **Remove liability from individual public officials and extend it to the requesting organization.**

Unlike Michigan, both New York and Washington State, which also have sought to encourage data-driven policy, emphasize the responsibility of the requesting organization/institution in the case of data misuse, versus an individual public official. Michigan should consider similar liability standards.

3. **Grant access for research AND continuous improvement/evaluative, performance enhancement purposes. Allow the use of the data for creating longitudinal tracking systems (such as that being developed in Michigan), so that it is clear legally that the data may be shared and accessed in such ways.**

Currently, Michigan law only permits data requests for "research projects of a public service nature," potentially excluding a host of other potential purposes, including program evaluation and program improvement efforts (MCL 421.11 (b)(1)(*viii*)). By providing access to two data points, employment and earnings, much of the research and continuous improvement/evaluation could be accomplished. Again, New York offers an attractive alternative that accounts for a variety of purposes beyond just research, such as:

"Evaluation of program performance, including, but not limited to, longitudinal outcomes analysis of programs (including programs funded by public or private moneys or a combination thereof)." (NY 537(3)(g))

Similarly, Washington State designates access to "certain records and information" for the purpose of improving operation of programs, conducting statistical analysis, research and evaluation. Michigan could adopt the language in Washington's statute that explicitly permits uses most relevant to community colleges and workforce development agencies:

"To promote the reemployment of job seekers, the commissioner may enter into data-sharing contracts with partners of the one-stop career development system." (RCW 50.13.060)

4. Require a clear and public process for how to make a request, explanation of what information is available, and explanation for why a request may have been denied.

While many of the previous recommendations involve statutory changes, administrative and regulatory improvements could go a long way in improving Michigan's data request process. Michigan does not provide clear instructions and support for submitting data requests, and the process for reviewing and determining validity of requests lacks transparency. On the other hand, New York has instituted several procedural steps to facilitate an easier and more predictable experience for data users. Beginning in 2013—to accompany the legislative reforms enacted by the state—New York set up a straightforward process for the application process, including:

- A website that provides support in developing data requests and specifically indicates what data is available;
- A standard application for data requests and a description of the cost burdens;
- An established process for reviewing data requests that guarantees receipt of an approval or denial letter within 30 calendar days;
- A process for the state to request additional information if needed that provides 20 business days for agencies to respond to inquiries;
- Confidentiality training for new data users.

Michigan can institute many of these reforms without even amending its statutes, proving that it recognizes the value of promoting more data-driven decision-making in and outside of government.

5. Where an MOU or relationship is required to access data, allow such agreements to exist long-term.

Michigan's law does not mention or account for requirements for long-term data sharing arrangements, but New York permits MOUs for up to ten years by statute and five years through data sharing agreements (NY 537(3)(g)(ii)(10)). New York's data sharing website provides further explanation: "The length of the MOU/Agreement will be driven by the initial discussion on the intended use of the data. Entities may opt for a shorter duration, while others might prefer a longer duration" (see http://labor.ny.gov/data-sharing/data-sharing-faqs.shtm).

6. Eliminate criminal penalties (or soften them), especially if the onus of liability remains on individuals rather than institutions.

Michigan's laws assign stringent penalties for violation of non-disclosure rules. Specifically, the law holds that a public official who violates the state's employment data privacy law "is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $1,000.00, or both" (M R 421.10(f)). However, because harsh penalties tend to stifle, not encourage, interest in data sharing, other states have adopted penalties, which are more commensurate to the risk in these situations. Oregon, for example, has put into law that "any person or any officer or employee of an entity" to which information is improperly disclosed, may be:

 "disqualified from performing any service under contract or disqualified from holding any appointment or employment with the state agency that engaged or employed that person, officer or employee." (ORS 657.665).

Michigan would benefit from reforming the penalties related to data sharing misuse, which are currently deterring prospective applicants.