

Improved State Administrative Data Sharing: A Strategy to Promote Evidence-Based Policymaking for Economic and Workforce Development



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**STATE DATA
SHARING INITIATIVE**



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EXECUTIVE SUMMARY

In the 21st century data-driven economy, reliance on data analytics to improve outcomes is a driving force behind decisions being made in government, business, education, and research. States rely on sound workforce and economic development investments to fuel their economic engines. But are these investments working in the way that state leaders expect? Increasingly, leaders demand greater accountability for government resources. With ever tightening federal, state, and local budgets, demands for more rigorous analysis and evaluation of government-funded workforce and economic development programs means that access to reliable, accurate data is ever more critical.¹

States create one potential data source when they interact with business and individual taxpayers. These so-called “administrative records”—data regularly collected through the operation or administration of state or local programs—contain invaluable data elements describing the characteristics and behaviors of companies and workers.² These administrative data offer an independently validated source of information about the characteristics and behaviors of firms and workers, including those benefiting from state programs. States restrict access to this data and for very good reason—to protect the business’ or individual’s confidentiality. However, these restrictions limit the ability of researchers to use administrative data for policy analysis and program evaluation.

To encourage greater data sharing at the state level in the interest of more informed decision making, the Center for Regional Economic Competitiveness (CREC) launched a two-year State Data Sharing Initiative (SDS Initiative) in 2016. The focus of CREC’s efforts is on data sharing between state agencies that maintain administrative records (e.g., revenue or employment security), their sister program agencies (e.g., economic and workforce development), and outside researchers who may support policy analysis and program evaluation efforts. This report summarizes SDS Initiative research about the legal and regulatory environment, best practices, and the status of reform efforts to encourage safe and secure data sharing efforts that protect confidentiality while improving analysis and evaluation.

The research findings provide policymakers with insights about the parameters used to manage intra-state administrative data sharing, especially for corporate income tax and unemployment insurance wage records—the most valuable data resources available for economic and workforce development program evaluation and policy analysis. The SDS Initiative engaged the perspectives of 65 experts from state revenue, labor market research, economic development, and workforce development agencies. In the process, CREC collected information on data-sharing issues from over 40 states through three primary research activities:

- A comparison of state tax data to assess its importance as a strategic state asset
- An analysis of existing state confidentiality laws and regulations
- Interviews with an array of stakeholders affected by data sharing policies and processes

¹ The Pew Charitable Trust and MacArthur Foundation. 2014. “Evidence-Based Policymaking: A guide for effective government.” <http://www.pewtrusts.org/~media/assets/2014/11/evidencebasedpolicymakingaguideforeffectivegovernment.pdf>

² U.S. Office of Management and Budget. 2014. “Building Evidence with Administrative Data.” In Analytical Perspectives, Budget of the United States Government Fiscal Year 2016. https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/ap_7_evidence.pdf

These primary activities revealed that state agencies and their constituents benefit from using elements of corporate tax and unemployment insurance (UI) administrative records to analyze and evaluate economic and workforce development programs. The research also found that state intra-agency data sharing and data access help existing programs (1) improve the quality of their program evaluation efforts, (2) reduce the costs associated with conducting rigorous evaluations, (3) ensure that agencies can more readily identify potential program-related fraud and abuse, and (4) provide a third-party source for benchmarking data provided directly to the program agency by client firms or individuals.

Our analysis also identified numerous barriers that state agencies must overcome to increase support within data-managing agencies (e.g., revenue and employment security) for safe and secure intra-state sharing of administrative data. These barriers are related to:

- 1 data governance policy,
- 2 data sharing process management,
- 3 information technology requirements and limitations, and
- 4 user understanding and accessibility.

To overcome these barriers to securely sharing administrative data among state government agencies and with trusted external researchers, our team offers the following recommendations to improve the quality of analysis while lowering the costs of that work for both data producers and users alike:

- State leaders need to be educated on the value of administrative data and how it can support more evidence-based policymaking while reducing government costs to evaluate programs.
- Agency leaders and staff need help to understand that sharing data for appropriate purposes and maintaining the highest standards of data confidentiality are not mutually exclusive.
- States need to provide greater visibility to and more resources for agency efforts to streamline data sharing policies and processes.
- States need to establish more structured and transparent processes for reviewing data sharing requests.

Current restrictions on data access were put in place to protect the confidentiality associated with the administrative records. These remain critical priorities, but administrative data represents an invaluable asset that could be useful to improve the effectiveness and efficiency of taxpayer investments. Managed appropriately, sharing certain data elements with sister agency program managers or external academic evaluators could benefit state taxpayers by enabling the kinds of well-researched and valid policy analysis and program evaluation that would help decision makers make more informed choices.³ Overcoming some restrictions means that evaluators may be able to tap state unemployment records to assess whether taxpayer-funded workforce development programs help workers improve their wages. It could also mean allowing economic development agencies access to state corporate tax records so that they can determine whether business tax credit recipients that they are monitoring indeed used approved credits to achieve promised jobs and wages. These examples demonstrate that facilitating administrative data sharing for certain purposes has the power to improve agency performance. However, overcoming certain restrictions to access will require significant changes in state agency policies, culture, and in some cases reform legislation.

³ Balsekas, Julie D. et. al. 1998. "Administrative Data for policy-relevant research: Assessment of Current Utility and Recommendations for Development." http://public.econ.duke.edu/~vjh3/working_papers/adm_data.pdf

INTRODUCTION

lected and appointed officials are increasingly seeking evidence to guide their policymaking efforts. Consequently, they need data. Frequently, policymakers are asking state agencies to access and share administrative information that could be utilized to assess more rigorously how well public investments are doing in achieving public benefits. This demand for evidence to guide decision making is especially strong in the economic development and workforce development fields.

Administrative records, such as those created through the collection of unemployment insurance (UI) and corporate income tax filings, contain valuable data about the characteristics and behaviors of companies and workers. This information can be particularly helpful to policy analysts and researchers seeking to understand the impact of taxpayer investments made in economic and workforce development programs. Because these data provide information about the companies and workers that receive support as well as about those that do not, analysts can assess trends among program beneficiaries or evaluate results through unique quasi-experiments. With more rigorous analysis, leaders are better able to truly understand the impact of different types of public investments.

Unfortunately, administrative records are not always available for research or analysis. Sometimes, researchers cannot access data because state laws or regulations related to company or individual confidentiality and privacy prohibit sharing information. More often, however, the barriers to researcher access are not so much legal, but rather tied to longstanding state agency (or staff) policies put in place to manage, share, or protect confidential data that go beyond what state law requires. During the past two years, we have talked with many experts about this topic and concluded that the barriers often relate to how best to:

1. Organize, govern, and manage administrative data systems in ways that protect confidential data;
2. Manage, document, and continuously improve the data sharing process in ways that institutionalize responsible data sharing policies;
3. Develop technological solutions that can improve data integration and quality while protecting sensitive information; and
4. Reduce transaction costs for state data agency managers as well as researchers or analysts to efficiently share protected administrative data among eligible parties.

The focus of this report is on revealing new insights engendered about state data sharing policies involving the use of administrative records available primarily from state revenue or UI agencies. We define “data sharing” as a formal process in which these agencies grant access to appropriate segments of their data to program agencies or non-government researchers supporting activities authorized under federal or state data confidentiality laws and regulations.

As a result of this analysis, we seek to help inform state policy leaders (including elected officials, agency leaders, agency legal counsel, and program staff) about the barriers to data access and about how administrative data (especially corporate tax and unemployment insurance data) can be used to help understand economic development and workforce development program performance. With greater insights about these barriers and a comparison with other states’ laws, agency leaders and their staff can better determine appropriate purposes for sharing data and more readily identify eligible external data users in their own state.

In this report, we also seek to highlight the challenges that resource constraints associated with managing data impose on data quality and the data sharing process. The research examines how states that invest time and effort into documenting policies and procedures related to data sharing have a structured way to handle questions from users with greater transparency for all the parties involved. In addition, the report seeks to establish a case for states revisiting their current data sharing process in order to be more intentional about their policies.

With better methods for managing data systems and the data sharing process, authorized researchers and analysts will be more likely to gain access to these data in a timely manner. This is important because the policy analysis and program evaluation research conducted using these data could provide critical information to elected and appointed officials about what works and what does not.

These findings from this State Data Sharing Initiative research seeks to help state policy leaders and program managers develop clearly articulated strategies aimed at improving access to administrative data for appropriate research and policy analysis purposes in a manner that maintains the strict confidentiality of companies and individuals providing the information. Using administrative data can be higher quality and less expensive for the researcher than using ad hoc program-directed surveys and other methods. However, accessing the confidential administrative data for research purposes comes with very important legal responsibilities to both the agencies who manage the data and the researchers who seek access.

USING ADMINISTRATIVE DATA FOR EVIDENCE-BASED POLICYMAKING

Elected and appointed officials across state and local governments are working to increasingly ground policymaking efforts in “rigorous evidence”⁴ in order to ensure programs meet their intended purpose.⁵ Evidence used to substantiate public policies may prove integral to enhancing policy analysis and program evaluation while optimizing program performance/outcomes and improving the cost effectiveness of government services.⁶ In particular, administrative records have long been considered an invaluable resource well-suited for informing public policy,⁷ supporting rigorous policy analysis and program evaluation,⁸ and “estimating program impacts.”⁹ Specifically, administrative records—data regularly collected through the operation or administration of state or local programs—contain valuable information about the characteristics and behaviors of companies and workers.¹⁰

Examples of administrative records include corporate tax and UI records. Since it is mandatory¹¹ to file taxes, corporate tax and UI records offer relatively comprehensive¹² information about companies and workers, making them particularly useful. With regular collection and relatively stable data elements (e.g., company name, employment, revenues, deductions, and so forth) collected from year-to-year, tax filings provide data over long time periods.¹³ These data allow for time-series analyses to determine the long-term impacts of public programs on participants (e.g., beneficiaries of tax credit or a training program) or the state economy.¹⁴ While other types of administrative data are available about program recipients, it is particularly difficult to collect data on non-participating groups and compare the net impacts of the program in question.¹⁵ Yet, corporate tax and UI records allow researchers an opportunity to compare every company and/or individual that benefits from a program with those who did not receive assistance.

Corporate tax and UI records are particularly suited for assessments of economic and workforce development program expenditures. For economic development programs, greater scrutiny of business incentives offered at the state level seek to assess whether businesses, in fact, need those incentives to make the decisions they do and whether the firm indeed produces the benefits (e.g., new job creation, increased investment, and so forth) they promised when seeking the incentive. Historically, economic development agencies have limited capacity to collect and assess the accuracy of the data that the firm

⁴ The Pew Charitable Trust and MacArthur Foundation

⁵ Hollenbeck, K. M. (2005). On the Use of Administrative Data for Workforce Development Program Evaluation. ETA Occasional Paper 2005-09. <http://research.upjohn.org/cgi/viewcontent.cgi?article=1027&context=externalpapers>

⁶ The Pew Charitable Trust and MacArthur Foundation

⁷ Graham, Farrah S. et. al. 2016. “Navigating the Transparency– Privacy Paradox in Public Sector Data Sharing.” American Review of Public Administration.” 46(5): 569-591. <http://journals.sagepub.com/doi/pdf/10.1177/0275074014561116>

⁸ Balsekas, Julie D. et. al.

⁹ Mueser, P., Troske, K., and Gorislavsky, A. (2007). Using State Administrative Data to Measure Program Performance. Review of Economic and Statistics, 89(4), pp. 761-783. <http://faculty.smu.edu/millimet/classes/eco7377/papers/mueser%20et%20al.pdf>

¹⁰ U.S. Office of Management and Budget (2016).

https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/ap_7_evidence.pdf

¹¹ Ibid

¹² Figlio, D. N., et. Al. (2015). Education Research and Administrative Data. NBER Working Paper No. w21592. <http://www.ipr.northwestern.edu/publications/docs/workingpapers/2015/IPR-WP-15-13.pdf>

¹³ U.S. Office of Management and Budget

¹⁴ ibid

¹⁵ ibid

provides—economic development administrative data—in meeting its obligations under an incentive agreement with the state. So, the agencies are seeking alternative ways to ensure compliance and validate business reporting and validating the information that they aggregate and report to state legislators and taxpayers.

While our focus is largely on barriers to accessing administrative data from tax records, these barriers can also limit program agencies in sharing their own administrative data with one another. For instance, workforce development programs are shaped by the federal Workforce Investment Opportunity Act (WIOA) enacted in 2014. WIOA outlined an expectation that states demonstrate accountability to the constituents of their workforce programming via the establishment of performance measures for programs.¹⁶ Like their economic development counterparts, workforce institutions already collect data—workforce development administrative data—suited to perform program evaluations. However, these data are often limited in their distribution and suffer from quality issues because they are not adequately benchmarked. Furthermore, while WIOA purports to encourage workforce and economic development strategy alignment, workforce program data are not readily available to economic development institutions that may otherwise inform economic development analyses and evaluations.¹⁷

Experts note that the potential for administrative data to inform public policy might be augmented through efforts designed to facilitate intra-state sharing of all types of administrative data.¹⁸ However, legislative barriers and confidentiality concerns, specifically related to the purposes of evaluating economic and workforce development programs, have constrained the use of administrative data in this regard.¹⁹

Legislative directives alone are not the solution to imposing this data sharing. Frequently, state laws do not provide clear and definite guidance on whether and/or how these organizations can securely access the data required to perform rigorous analyses.²⁰ This, in turn, limits the capacity for economic development organizations to effectively examine the outcomes and impacts of their programs while impeding the potential for public policymakers to discern the effectiveness of programs. Consequently, these limitations might constrain the ability for said policymakers to develop and implement evidence-based policies that meet constituent needs.

Expanding access to administrative data through data sharing can provide a complement or alternative to “purpose-built,” voluntary surveys administered by agencies seeking ways to understand program performance in lieu of accessing available administrative data.²¹ Such surveys are designed to gather information about whether a firm receiving taxpayer-provided assistance provided the promised public benefit in exchange for the help. But, if the company is promising to increase employment, wages,

¹⁶ United States Department of Labor. “WIOA Overview.” <https://www.doleta.gov/wioa/overview.cfm>

¹⁷ Ibid.

¹⁸ The Pew Charitable Trust and MacArthur Foundation

¹⁹ Maxwell, Terrance A. and Tung-Mou Yang. 2011. “Information-sharing in public organizations: A literature review of interpersonal, intra-organizational and inter-organizational success factors.” *Government Information Quarterly*. 28: 164-175.

²⁰ Graham, Farrah S. et. al

²¹ Figlio, D. N., et. al

or sales, it is likely these data are already reported as part of their tax filings. In the instance that data collected on surveys duplicate data present in administrative records, sharing of administrative data can reduce the burden on taxpayers²² (i.e., companies) asked to complete these surveys by program agencies while allowing program agencies to use data that are potentially more accurate and auditable.

Finally, using administrative data as the basis for policy analysis and program evaluation can lower administrative costs to government associated with managing these types of surveys.²³ It requires staff time and resources—often at the expense of individual program implementation—to monitor compliance, to capture performance data, and to validate their accuracy. Providing program agencies with access to corporate tax or unemployment insurance data would reduce these costs and improve the quality of the information available to help agencies better assess program impacts on behalf of taxpayers.²⁴ This would allow the programs to operate more efficiently and effectively by reducing the amount of resources required for program monitoring and increasing the proportion of resources that can be applied to help achieve program goals.

STATE DATA SHARING INITIATIVE

This section describes the purpose and processes undertaken for the research that serves as the foundation of this report. What follows is a description of the project mission, logic, strategies (both implemented and in process) toward achieving the project objective.

To encourage data sharing among agencies and researchers within states, the Center for Regional Economic Competitiveness (CREC) launched a two-year State Data Sharing Initiative (SDS Initiative). The SDS Initiative seeks to improve data-driven program outcomes by enabling more rigorous analysis and evaluation through enhanced researcher access to state administrative records.

CREC will accomplish this mission through the SDS Initiative by:

- Increasing transparency about the legal and regulatory barriers that inhibit agencies from sharing protected administrative data,
- Enhancing relationships among data-gathering agencies and economic and workforce development program agencies seeking data access, and
- Guiding potential policy changes that would allow greater administrative data access for public purposes without compromising privacy and confidentiality.

Focused on economic and workforce development, we believe this effort could also inform broader state policymaking efforts, including education, health, criminal justice, and many other policy areas.

²² Ibid.

²³ U.S. Office of Management and Budget

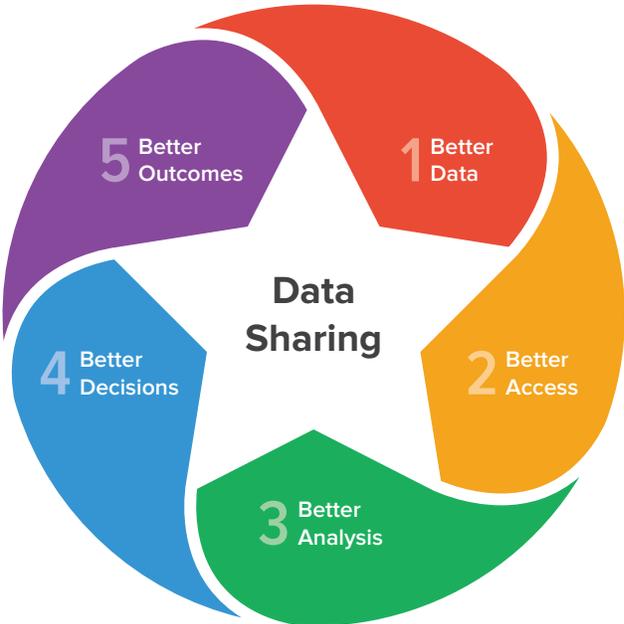
²⁴ Figlio, D. N., et. al.

DATA SHARING LOGIC

The SDS Initiative is based on the premise that increased sharing and use of administrative records for policy analysis and program evaluation can improve evidence available to policymakers. This evidence will be instrumental in guiding economic and workforce development program managers seeking to produce the greatest benefits for their states’ economy, workers, and communities. This logic model, summarized in Figure 1, suggests that a more robust data-sharing effort can improve administrative records, reduce the cost of the research and analysis required to assess program impacts, provide more useful information to policymakers, and lead to more effective decision making. Consequently, public investments are likely to have better results. Specifically, the logic model focuses on five ways to improve the process through:

1. **Better Data** – Administrative records contain valuable data on companies and workers that can provide useful insights about their characteristics.
2. **Better Access** – The federal and state data confidentiality laws that protect and govern access to administrative records are complex and not often well understood.
3. **Better Analysis** – Available administrative data potentially allow for analysis of correlation and causality that can help improve researchers’ understanding of the impact of public investments.
4. **Better Decisions** – Leaders armed with better research will make more informed decisions.
5. **Better Outcomes** – Evidence-based decisions are likely to result in more effective program outcomes.

Figure 1. State Data Sharing Logic Model



Data Sharing – At the foundation of our logic model, data sharing embraces laws, policies, and practices that allow data-gathering agencies to provide anonymized segments of their records to other agencies and non-government researchers for policy analysis and program evaluation purposes. This process is essential to reaching the goal of garnering greater returns from public investments in economic and workforce development programs.

SDS INITIATIVE STRATEGY

Within the context of the data sharing logic described above, CREC is implementing the SDS Initiative in two phases—a research phase (Phase I) and a technical assistance phase (Phase II):

- **Phase I** involves conducting extensive research and public education on the value of administrative data and the laws, regulations, policies, and practices that govern the sharing of that data for policy analysis and program evaluation purposes. Phase I research builds upon a previous CREC study on sharing UI employment and wage data for similar purposes.²⁵
- **Phase II** focuses on (a) providing technical assistance to multi-agency teams in five states that seek to improve their states’ data sharing environment and (b) helping establish best practices that can be used by other states nationwide.

Additionally, the SDS Initiative will populate a website, www.statedatasharing.org, with information and tools to help state leaders and non-government researchers better understand administrative data and data sharing; easily find and compare state data confidentiality laws and regulations; and access model language for confidentiality laws, data sharing agreements, and more.

This report presents the SDS Initiative’s Phase I research findings. It describes our research methodology and highlights results of desk and primary research to further investigate three core issues, including:

1. The types of data different state departments of revenue collect on companies and workers found in corporate income tax forms and their value for policy analysis and program evaluation.
2. The nuances of different states’ data confidentiality laws and regulations that may influence data-gathering agencies’ ability to share data with other groups.
3. The experiences in the data-sharing process of data-gathering agencies and data users.



www.statedatasharing.org

The report concludes with a series of recommendations that will inform the technical assistance phase (Phase II) of the SDS Initiative.

²⁵ Center for Regional Economic Competitiveness. 2015 “Balancing Confidentiality and Access: Sharing Employment and Wage Data for Policy Analysis and Research.” Arlington, VA: Center for Regional Economic Competitiveness and the Labor Market Information Institute. http://www.lmiontheweb.org/download/2015-05/Report--Data_Confidentiality_and_Sharing_-_CREC-LMI_Institute_-_May_2015.pdf

SCOPE AND METHODOLOGY

The following section delineates the scope and methodology for SDS Initiative research completed thus far. The section outlines the specific processes undertaken to implement the Initiative’s three research activities: state tax data comparison, confidentiality laws and regulation analysis, and data sharing stakeholder interviews.

To help policymakers and researchers understand the challenges associated with sharing administrative data and strategies for overcoming those challenges, the research focused on efforts to share data among agencies and groups located within the same state. Moving forward, we will refer to data-gathering agencies as “data producers,” or those agencies that collect and control the release of administrative data. “Data users” are defined as other state agencies or non-government research entities, such as economic and workforce development agencies or universities, which seek access to administrative data for policy analysis and program evaluation purposes. Data intermediary groups—those that collect records from various agencies and combine them for later reuse by researchers—are categorized as data users for the purposes of this report.

More than 65 experts contributed to this study. They represented state revenue, labor market research, economic development, and workforce development agencies as well as associations representing such agencies. They also represented university research centers and other research institutions. These experts provided examples of state corporate tax and UI data confidentiality laws and regulations and offered insights on data sharing through interviews. With their help, CREC collected information on data-sharing issues in over 40 states for the SDS Initiative.

The research for the SDS Initiative involved three primary activities:

1. **State Tax Data Comparison** – Gathering state corporate income tax forms and comparing the types of data elements different states collect on companies and workers that may support more rigorous policy analysis and program evaluation.
2. **Confidentiality Laws and Regulations Analysis** – Collecting, analyzing, and cataloging state corporate tax and UI data confidentiality laws and regulations, paying special attention to language that may impact data disclosures for the purposes of analyzing and evaluating economic and workforce development programs.
3. **Data Sharing Stakeholder Interviews** – Conducting in-depth phone interviews with representatives of various data producer and user groups to better understand how state policies, agency practices, and political and cultural norms can hinder or promote data sharing.

The work completed as part of each of these three steps is described below.

STATE TAX DATA COMPARISON

The SDS Initiative contends that analyzing individual data elements, or “microdata,” in corporate income tax and UI filings can significantly improve state leaders’ ability to validate the impact of existing economic and workforce development programs and inform modifications for better outcomes.

While the benefits of using UI employment and wage data to evaluate economic and workforce development program impacts are well documented, research on the value of corporate income tax data to support similar activities is more limited. To help close this gap, the SDS Initiative conducted a comprehensive assessment of states’ corporate income tax forms to identify data elements that could support more rigorous economic and workforce development policy analysis and program evaluation.

The research team first visited the revenue department websites for all 50 states and the District of Columbia to confirm which states collect corporate income tax and to download the 2015 tax forms (and attached schedules) for the 44 states that do so. Second, the team reviewed some of the most detailed forms (i.e., Missouri, Colorado, Iowa) to identify a set of 24 data elements the team considered “evaluation-relevant,” meaning that the data element could help answer one or more questions often raised by economic or workforce development policy analysts and program evaluators. These 24 data elements were grouped into four major information categories: (1) company background information, (2) general tax information, (3) tax credit information, and (4) reported economic impact information. See *Figure 2* for a full list of evaluation-relevant data elements identified. A data Elements Glossary containing detailed descriptions of all 24 data elements and sample analysis and evaluation questions that each element can help answer can be downloaded from the SDS Initiative website.

Next, the research team analyzed each of the tax forms and schedules collected, tallying the number of evaluation-relevant data elements requested on each form. These tabulations allowed researchers to compare the types and number of data elements different states collect and to determine which data elements are most frequently collected, in general.

The results of this analysis were used to build a **State Tax Data Comparison Tool**. The Excel-based tool consists of rows for each state and columns for each evaluation-relevant data element, grouped by the four major information categories. The presence of a specific data element on a state’s corporate income tax form is annotated by “1,” and the absence of an element is annotated by “0.” The sum of data elements that individual states collect, as well as a cross-state frequency count for all data elements considered, is also featured in the tool. Users can download the State Tax Data Comparison Tool from the SDS Initiative website.

FIGURE 2. EVALUATION-RELEVANT DATA ELEMENTS

Company Background Information

1. Federal employer identification number (FEIN)
2. Business organization type
3. North American Industry Classification System (NAICS) code
4. Business activity survey or questionnaire

General Tax Information

5. Gross income
6. State taxable income
7. Corporate income tax owed
8. Total property value, state vs. everywhere (in dollars)
9. Total property value, state vs. everywhere (as a percentage)
10. Total sales, state vs. everywhere (in dollars)
11. Total sales, state vs. everywhere (as a percentage)
12. Total wage, state vs. everywhere (in dollars)
13. Total wage, state vs. everywhere (as a percentage)

Tax Credit Information

14. Combined value of all tax credits claimed
15. Value of tax credits claimed, by program (on income tax form)
16. Value of tax credits claimed, by program (on attached schedule)
17. Value of tax credits sold
18. Discount rate applied to tax credits sold
19. Sales price for tax credits sold

Reported Economic Impact Information

20. Number of new jobs, attributable to program
21. Average hourly wage, attributable to program
22. Gross wages for new jobs, attributable to program
23. Job titles for new jobs, attributable to program
24. Counties where new jobs were created, attributable to program

DATA CONFIDENTIALITY LAWS & REGULATIONS ANALYSIS

Administrative records contain sensitive data about companies and workers, commonly referred to as personally identifiable information (PII). A complex set of federal and state data confidentiality laws and regulations provides important safeguards to ensure that this data is protected and only shared for authorized purposes, which, in some cases, may include analysis and evaluation of public programs.

To increase understanding of the different legal approaches that states employ to protect and permit access to corporate income tax and UI data, the SDS Initiative conducted an intensive analysis of state corporate tax and UI laws and regulations that define “confidential data” and set parameters for its disclosure.

The research team first developed a “**Confidentiality Assessment Framework,**” organized around **nine data confidentiality questions** that state departments of revenue and UI agencies must ask themselves in determining whether a disclosure to a user group is appropriate. These questions, shown in *Figure 3*, are derived from the basic tenets of two federal laws and related regulations governing corporate and UI data confidentiality:

- **Corporate Tax Data** – U.S. Code, Title 26 – Internal Revenue Code, Subtitle F – Procedure and Administration, Chapter 61 – Information and Returns, Subchapter B – Miscellaneous Provisions, Section 6103 – Confidentiality and Disclosure of Returns and Return Information (26 U.S.C. § 6103)
- **UI Data** – Code of Federal Regulations, Title 20 – Employee Benefits, Chapter V – Employment and Training Administration, Department of Labor, Part 603 – Federal-State Unemployment Compensation Program; Confidentiality and Disclosure of State Unemployment Compensation Information (20 CFR § 603)

Next, the research team contacted state departments of revenue and labor market information offices to request citations for any state laws and regulations that address corporate tax and UI data confidentiality. The team received and reviewed 35 corporate tax and 39 UI data confidentiality laws as well as regulations from 46 states.

The team analyzed all laws and regulations provided and extracted “relevant language” that answered any of the nine data confidentiality questions identified in *Figure 3*. “Relevant language” is defined as language in the law that: (1) answers the question, in part or in whole, and (2) may impact the disclosure of data for the purposes of analyzing or evaluating economic and/or workforce development programs.

To compare how different state laws and regulations address each of the nine data confidentiality assessment framework questions, the research team developed a **standard “specificity rating”** system to indicate how generally or specifically a given law or regulation addresses each confidentiality question. Upon thorough review, researchers tried to assess each state’s laws and regulations by assigning a specificity rating for each of the nine questions. The assessment involved categorizing each law or regulation with one of three possible specificity ratings, including:

- **Detailed Explanation** – The law includes explicitly clear language related to the issue, including identifying particular actors or situations in which a law applies.
- **Broad Mention** – The law includes only a general reference to the issue, which may provide only limited guidance to those interpreting or implementing the law.
- **Not Addressed** – The law provides no information about the issue to guide decision making.

Researcher ratings of laws using these three specificity categories are inevitably subjective. For example, a “Detailed Explanation” rating does not necessarily mean that laws or regulations contains more language overall; rather, it reflects the researcher’s assessment that the language used is prescriptive about what the executive branch may or may not do. For instance, Delaware’s corporate tax data confidentiality law (30 Del. Laws § 368) received a rating of “Detailed Explanation” for data confidentiality question three—For what purposes may data be disclosed? This is because the law highlights an explicit purpose for which data may be disclosed, namely, “[for the] **publication of statistics** classified so as to avoid identification of specific taxpayers.”

The inclusion of language that authorizes disclosure for “publication of statistics” as well as guidelines for protecting the data—“classified so as to avoid identification of specific taxpayers”—acts to provide greater clarity to legal counsel as they determine whether disclosure for policy analysis and program evaluation purposes is appropriate. While more explicit directions to the executive branch may be helpful, legal interpretations can vary widely by state. For instance, some states consider the use of data for program evaluation purposes to be related to the ‘publication of statistics’ while others may interpret this phrase otherwise. The research team did not try to assess these types of variations in legal interpretations for individual states.

Alternatively, state laws can also be quite imprecise. For instance, Ohio’s corporate tax data confidentiality law (R.C. 5703) includes only general language about the purposes for which data may be disclosed. The law provides that the department of taxation, “shall furnish any information to such office, board, or commission [of the state], and shall assist such officer, board, or commission in **performing the duties of its office.**” Because the law leaves significant room for interpretation of “duties of its office,” the law was assigned a “Broad Mention” rating for data confidentiality question three—**Purposes?** Additional examples of “Detailed Explanation” and “Broad Mention” ratings are provided in the Key Findings section of this paper.

FIGURE 3. CONFIDENTIALITY ASSESSMENT FRAMEWORK

1. **Definition** - How is confidential data defined?
2. **Authority** - Who is authorized to disclose data?
3. **Purposes** - For what purposes may data be disclosed?
4. **Parties** - To which parties may data be disclosed?
5. **Elements** - What specific data elements may be disclosed?
- 6a. **Agreement Type** - What type of data sharing agreement is required for data disclosure? (For Corporate Tax Data Only)
- 6b. **Content Requirement** - What are the content requirements for data sharing agreements? (For UI Data Only)
7. **Safeguards** - What safeguards are required for data disclosure?
8. **Payment Provisions** - What are the payment provisions for data disclosure?
9. **Penalties** - What are the penalties for violating disclosure rules?

The full results of this analysis were used to build an interactive **Confidentiality Laws and Regulations Database**, accessible from the SDS Initiative project website (www.statedatasharing.org). The database provides legal citations and highlights relevant language within corporate tax and unemployment insurance laws and regulations that may impact data sharing for policy analysis and program evaluation purposes. Users can also use the database to examine how state laws compare with regard to each of the nine questions comprising the SDS Initiative’s Confidentiality Assessment Framework.

DATA SHARING STAKEHOLDER INTERVIEWS

The research team conducted in-depth telephone interviews with 28 researchers and practitioners, representing 15 states and the District of Columbia. These interviews focused on gathering insights about individual experiences in sharing or accessing corporate tax data for policy analysis and program evaluation purposes. These interviews focused on efforts to share corporate tax data because the research team had already conducted interviews with more than 35 practitioners involved in sharing UI employment and wage data during a 2015 CREC study.²⁶

Interview participants represented seven sub-categories within two primary cohorts of data producers and users, as shown in **Figure 4**. Participants within these groups represented a diverse range of experience with administrative data and data sharing. Initially, the research team identified potential interview subjects through referrals from state revenue and economic development agency contacts and other administrative data management experts. During those interviews, the team received recommendations for additional experts who had insights to share.

The research team developed two sets of targeted questions to help draw out key data-sharing issues, challenges, and opportunities from both the data producer and user perspective. Both groups were asked questions in four common areas, or “categories”:

- **Authority to Disclose Data** – Identifying who regulates and administers data sharing.
- **Data Sharing Agreement Execution** – Outlining the data sharing request process.
- **Data Sharing Environment** – Illustrating the restrictions to data access and opportunities for overcoming various impediments to data sharing.
- **State and National Level Data Sharing Leaders** – Identifying local and national agencies, organizations, and individuals that are working to improve intrastate data sharing environments.

FIGURE 4. TYPES OF STAKEHOLDERS INTERVIEWED

Data Producers and their Advisors

1. State revenue department leadership and staff
2. State revenue department legal counsel
3. State labor market information division legal counsel
4. Hired non-government consultants

Data Users

5. Economic development agency leadership and staff
6. University research center directors
7. Independent research organization representatives

²⁶ Center for Regional Economic Competitiveness. 2015 “Balancing Confidentiality and Access: Sharing Employment and Wage Data for Policy Analysis and Research.” Arlington, VA: Center for Regional Economic Competitiveness and the Labor Market Information Institute. http://www.lmiontheweb.org/download/2015-05/Report--Data_Confidentiality_and_Sharing_-_CREC-LMI_Institute_-_May_2015.pdf

In addition to these questions, data producers and users were asked cohort-specific questions. For the data producer cohort, the research team posed questions about **Common Data Requestors and Intentions**. These questions asked data producers to describe which user groups commonly request corporate tax data and the typical reasons cited for those requests. Alternatively, data users were queried about their **Motivations for Requesting Data**. These questions focused on the intended uses of data and the data elements they typically sought to utilize. The interviews highlighted unique state-specific conditions in which data sharing may occur, uncovered common impediments to managing the data sharing agreement process, and provided examples of efforts to improve data access in ways that do not compromise confidentiality.

KEY FINDINGS

This section provides an overview of the highlights from each of the SDS Initiative's three primary research activities—the State Tax Data Comparison, the Confidentiality Laws and Regulations Analysis, and the Data Sharing Stakeholder Interviews.

In performing the research activities, the SDS Initiative offers insights into the prevalence of evaluation-relevant data elements collected by states on corporate income tax forms, state UI laws and regulations governing data confidentiality with respect to data sharing, and data sharing opportunities and challenges as communicated by experts across state agencies. In particular, the takeaways regarding data-sharing opportunities and challenges may prove helpful to states seeking to maximize the utility of administrative data for policy analysis and program evaluation purposes.

Our research also sheds light on some of the most significant barriers that states must overcome to increase support for data sharing. These barriers can be grouped into four major areas:

1. governance policy challenges,
2. data sharing process management challenges,
3. information technology challenges, and
4. user understanding and accessibility challenges.

Figure 5 highlights some of the most common issues encountered in these four areas.

FIGURE 5. DATA SHARING CHALLENGE AREAS

Governance Policy

- Interpreting legal restrictions
- Establishing effective data governance models
- Managing legislative activity to promote data sharing

Data Sharing Process Management

- Streamlining the data sharing process
- Building staff capacity to respond to increasing data sharing requests
- Granting access to business data within administrative records

Information Technology

- Finding common identifiers to match different data files
- Establishing appropriate safeguards to protect shared data

User Understanding and Access

- Educating public officials on the importance of data sharing
- Informing data users of what data is and is not available
- Establishing data warehouses or hubs to manage data access

STATE TAX DATA COMPARISON

The goal of the State Tax Data Comparison was to establish the relevance and potential value of corporate tax data for conducting economic and workforce development policy analysis and program evaluation. This work involves answering two basic questions:

1. What types of data do states collect on companies and workers in corporate income tax forms?
2. What types of policy analysis and program evaluation questions do these data help answer?

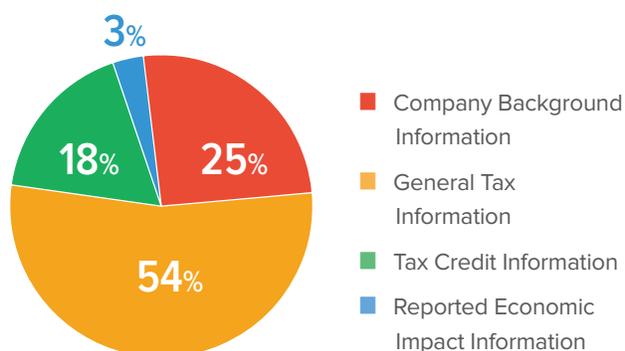
The research team found that, in 2015, 40 of the 50 states and the District of Columbia collected corporate income tax. States that did not levy corporate income tax nor collect any of the other data elements included Ohio, Nevada, South Dakota, Texas, Washington, and Wyoming. In addition, while South Carolina, Rhode Island, North Dakota, and Louisiana did not levy corporate income tax; these states did collect several of key data elements on tax forms that were considered “evaluation-relevant” (as identified earlier in **Figure 2**). To answer the questions above, the team scanned each of the states’ tax forms (and attached schedules) to identify and tally the number of evaluation-relevant data elements they contained. The data elements considered most useful were identified because researchers considered them helpful in potentially answering key policy questions such as:

- Which types of business organizations are taking advantage of different state tax credit programs? (Elements 2, 15 - 16, 20 - 24)
- What are the differences between the averages for state income received from various industries? (Elements 3, 6)
- What can the volume and trends in the use of tax credits tell us about the value of the program to business? (Elements 1, 15, 16)
- Did a business meet its obligation under a tax credit program for creating “good jobs” in the state? (Elements 1, 21, 22)

Of the 40 states and the District of Columbia that collect corporate income taxes, researchers analyzed the tax forms to determine which data elements could offer insights for policy analysis and program evaluation and which states collected the most useful data that could be used by state leaders to assess the impact of their states’ tax credit programs.

As shown in **Figure 6**, the General Tax Information category represented more than half of all data elements tallied in the tax forms reviewed. General tax information includes data elements such as “Total Property Value in the State versus Everywhere.” This element can help to answer important evaluation questions like “How important are certain property taxes in influencing business decisions about where to maintain product inventory?” This is particularly important for certain types of firms

FIGURE 6. PERCENTAGE OF ALL EVALUATION-RELEVANT DATA ELEMENTS BY INFORMATION CATEGORY



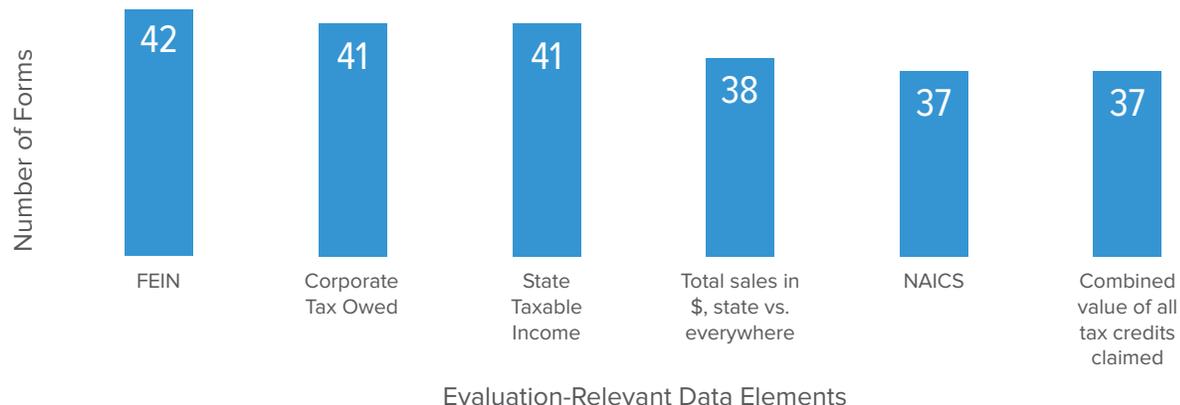
(such as national or regional wholesalers that may decide to hold inventory in one state or another).

Another one fourth of the data elements tallied were categorized as Company Background Information. Data elements collected under this category capture firm demographics, including a company’s “Organization Type” (e.g., a corporation, partnership, or limited liability company) and location. Researchers can use data about how firms are organized to understand trends in business formation that might be influenced by certain tax policies or credit programs. For instance, tax rates on partnerships may be higher or lower than corporations, influencing a firm’s management team to choose one organizing structure over another and whether the firm can readily hire employees. This information could help economic development officials formulate more targeted business outreach strategies.

The remaining 21 percent provided information directly related to Tax Credit programs (18 percent) and the Reported Economic Impact those programs have on the state’s economy and workers (3 percent). Data elements in the Tax Credit category such as the “Combined Value of All Tax Credits Claimed” can help leaders understand how trends in tax credit claims are impacting the state budget. This information can contribute to more informed government service planning efforts. For the few states that include data about Reported Impacts on their tax forms, data are available all in one place about both the amount of tax credits claimed and company performance. This is an unusual, and the states that have these data points on their tax forms have the advantage of providing data that researchers need without imposing additional reporting burdens on companies using tax credits or incentives beyond that required to file their annual taxes.

The six most frequently collected data elements were in the Company Background, General Tax, and Tax Credit Information categories. As shown in *Figure 7*, all but three of the forms reviewed require companies to report their FEIN number. This number is valuable because it provides a unique identifier for a company that can be used to link its tax record data to other data sets that contain the company’s FEIN number. The FEIN is useful because it is commonly found in datasets and can allow researchers to link data elements from multiple databases, expanding the range of policy or evaluation questions that could be answered. All but four forms included Corporate Tax Owed and State Taxable Income. These elements can help analysts better understand the sources of state revenues by sector or industry.

FIGURE 7. MOST FREQUENTLY COLLECTED DATA ELEMENTS ACROSS ALL CORPORATE INCOME TAX FORMS REVIEWED



When combined with tax credit information, Total Sales in Dollars, State vs. Everywhere, can help analysts evaluate whether tax credit programs are improving the sales outcomes of participating businesses versus those businesses that do not participate. NAICS codes can be used to monitor the health of different industries in terms of income and sales growth or decline, as well as industry-level participation in tax credit programs. Finally, the Combined Value of All Tax Credits Claimed can explain how tax credit claims are impacting a state’s budget and inform government service planning.

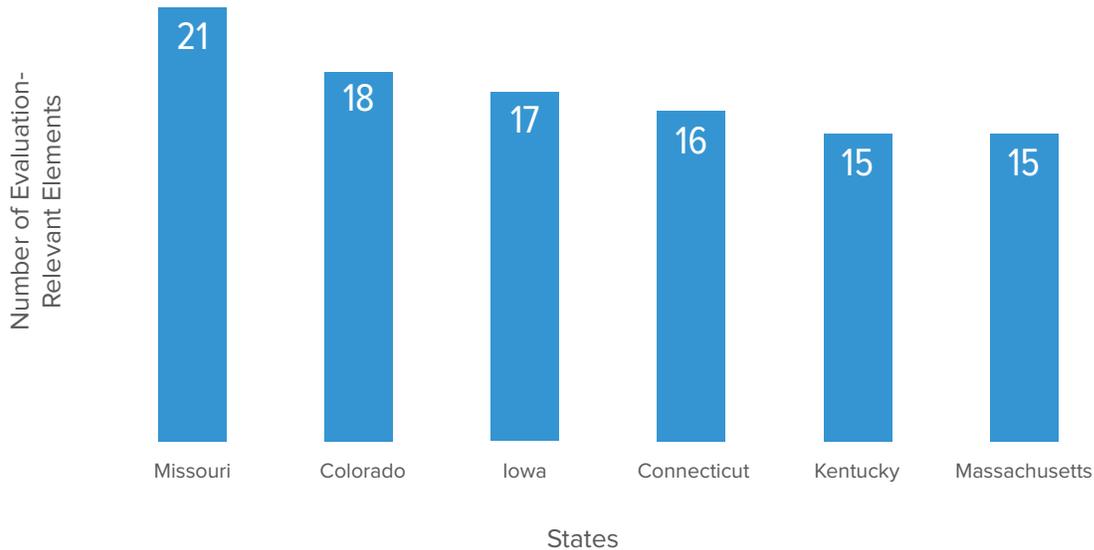
The least frequently collected data elements were in the Tax Credit and Reported Economic Impact categories. Seven data elements are included in Table 1 that are rarely collected by states, but they represented useful bits of information that could potentially inform very important state program evaluation. These data elements, especially those that help to attribute a company’s job creation activities to the company’s participation in a particular tax credit program, can help states assess programs more rigorously to determine which yield the greatest benefits to taxpayers.

TABLE 1: UNCOMMON, BUT USEFUL, DATA ELEMENTS CAPTURED ON STATE TAX AND UI RECORDS

Data Elements (and States that collect them)	Research Questions that They Inspire
Counties where new jobs were created, attributable to tax credit program (MO)	<ul style="list-style-type: none"> • Where did the program have the greatest impact in terms of workforce? • Are the appropriate assets in place to allow the state and region to provide an available and skilled workforce to support the company’s continued growth?
Discount rate applied to tax credits sold (IA, MO)	<ul style="list-style-type: none"> • What type of market is operating for the sale and use of specific state credits? • Does the prevailing discount rate have a positive or negative effect on the program operations?
Sales price for tax credits sold (GA, MO)	<ul style="list-style-type: none"> • Are any companies being taken advantage of in the tax credit exchange? • Should the state require a “must not exceed” percentage for discounting a credit?
Job titles for new jobs, attributable to tax credit program (IA, MO)	<ul style="list-style-type: none"> • Where did the program have the greatest impact in terms of workforce? • Are the appropriate assets in place to allow the state and region to provide an available and skilled workforce to support the company’s continued growth?
Average hourly wage of new jobs, attributable to program (MN, IA, MO)	<ul style="list-style-type: none"> • Did the business meet its obligations under the program for creating "good jobs" in the state? • What is the profile of a company that greatly exceeds expectations?
Value of tax credits sold (CT, GA, LA, MO)	<ul style="list-style-type: none"> • How much of the tax credits the state awards are left "on the table" by businesses that do not have enough liability to take the credit? • Should program be restructured to better meet the needs of such businesses?
Gross wages for new jobs, attributable to tax credit program (CO, DC, IA, IL, MO)	<ul style="list-style-type: none"> • How much is the program helping the state’s overall economic performance? • Do the jobs created help significantly impact the state’s overall economy?

The average number of evaluation-relevant data elements found in collection of each individual state’s tax forms was 14; the median was 12. **Figure 8** shows that Missouri’s form included 21 of the 24 data elements considered, making it the most robust tax form reviewed. Colorado’s form was the second most detailed, containing 18 of the 24 data elements considered.

FIGURE 8. STATE FORMS CONTAINING THE GREATEST NUMBER OF EVALUATION-RELEVANT DATA ELEMENTS



Many states gathered a similar number of data elements; however, the states varied widely in the mix of data elements they collected. Kentucky and Massachusetts were the exception, as the number and type of evaluation-relevant data elements (13 of 15) both states collected were the same.

In addition to learning what evaluation-relevant data exist in corporate income tax records, and the types of questions these data might help to answer, the research team identified several characteristics about tax forms that could impact the data’s usefulness for policy analysis and program evaluation purposes.

First, some states use different vocabulary to describe the same data element. For example, most state forms refer to North American Industrial Classification System codes simply as “NAICS.” However, some states use “Business Classification Code” or “Business Activity Code” to request NAICS information. These differences risk confusing data providers who may use some alternative coding classification system, thereby jeopardizing the ability to easily integrate the data with other databases that may use standard NAICS industry definitions.

Second, states often use different conventions to collect data pertaining to tax credit programs. While some states only require companies to report the combined value of tax credits claimed, others required companies to report the value of each tax credit claimed individually. As mentioned previously, states that require reporting by each individual program can learn even more about the impact tax credits have on the state’s budget, companies, and workers.

The complete results of the research team’s comparison of these similarities and differences are avail

able through the State Tax Data Comparison Tool, which can be downloaded from the project website at www.statedatasharing.org. The tool gives government leaders and outside researchers an easy way to determine which evaluation-relevant data elements each state collects.

CONFIDENTIALITY LAWS & REGULATIONS ANALYSIS

The SDS Initiative’s research efforts to deepen understanding of state data confidentiality laws and regulations included 35 corporate tax and 39 UI laws and regulations from a total of 46 states. Applying the Initiative’s Confidentiality Assessment Framework (described in **Figure 3**) as well as ratings designed to highlight the specificity or imprecision of each state’s corporate tax and UI laws, researchers found a wide variety among the states in how prepared their data-producing agencies are in sharing information that they generate with other agencies and non-government research entities. This section highlights trends that emerged from our analysis of state corporate tax and UI laws and regulations and how specific the states were in answering each of nine data confidentiality questions. Those answers helped CREC apply a “specificity rating” to each state, highlighted in **Figures 9** and **11**. These ratings summarized whether laws provide (1) a detailed explanation of an issue, (2) a reference to an issue in broader terms, or (3) simply do not address the issue at all.

This section provides examples of relevant language extracted from state corporate tax data confidentiality laws and regulations. Comparable examples of relevant language from UI laws and regulations are well documented in previous CREC research.²⁷

OBSERVATIONS ABOUT CORPORATE TAX DATA SHARING

In general, the research team found that most states’ corporate tax laws and regulations **define “confidential data”** in a similar manner, but some are more prescriptive with regard to what the legislature considered to be confidential. For example, Alabama defines “confidential data” broadly to include, *“...the return of any taxpayer or any part of the return, or any information secured in arriving at the amount of tax or value reported.”* (ALA Code § 40-2A-10) Alternatively, Virginia state law provides a much more detailed definition of “confidential data.” The law states:

“A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D and includes any document containing information on the transactions, property, income, or business of any person, firm, or corporation that is required to be filed with any state official by § 58.1-512.” (Code of Virginia § 58.1-3)

Both states’ laws make use of the word “any,” which suggests that all data gathered in connection with corporate tax transactions shall be kept confidential. The difference is that the Virginia law goes further to clarify some, but not necessarily all, of the data elements that must be protected.

All but one of the states’ corporate tax laws and regulations identified the official(s) or government entities that have **authority to disclose confidential data**. Georgia is the only state that does not identify

²⁷ Center for Regional Economic Competitiveness. 2015 “Balancing Confidentiality and Access: Sharing Employment and Wage Data for Policy Analysis and Research.” Arlington, VA: Center for Regional Economic Competitiveness and the Labor Market Information Institute. http://www.lmiontheweb.org/download/2015-05/Report--_Data_Confidentiality_and_Sharing_-_CREC-LMI_Institute_-_May_2015.pdf

such officials or entities. The law does, however, indicate who is responsible for disclosing any other data within corporate tax records:

*“When public disclosure is not required; disclosure of exempting legal authority...(b) This Code section shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable. It shall be the **duty of the agency having custody of a record** to provide all other portions of a record for public inspection or copying.” (O.C.G.A. § 50-18-72)*

In many cases, the state laws indicated that authority to disclose data rests with the department “Secretary” or “Director” (or an equivalent official); in other instances, authority was assigned more broadly to the “Department” or the “Board” (or an equivalent body). The Code of Maryland, somewhat uniquely, indicates both a specific official and a general body with authority to disclose data:

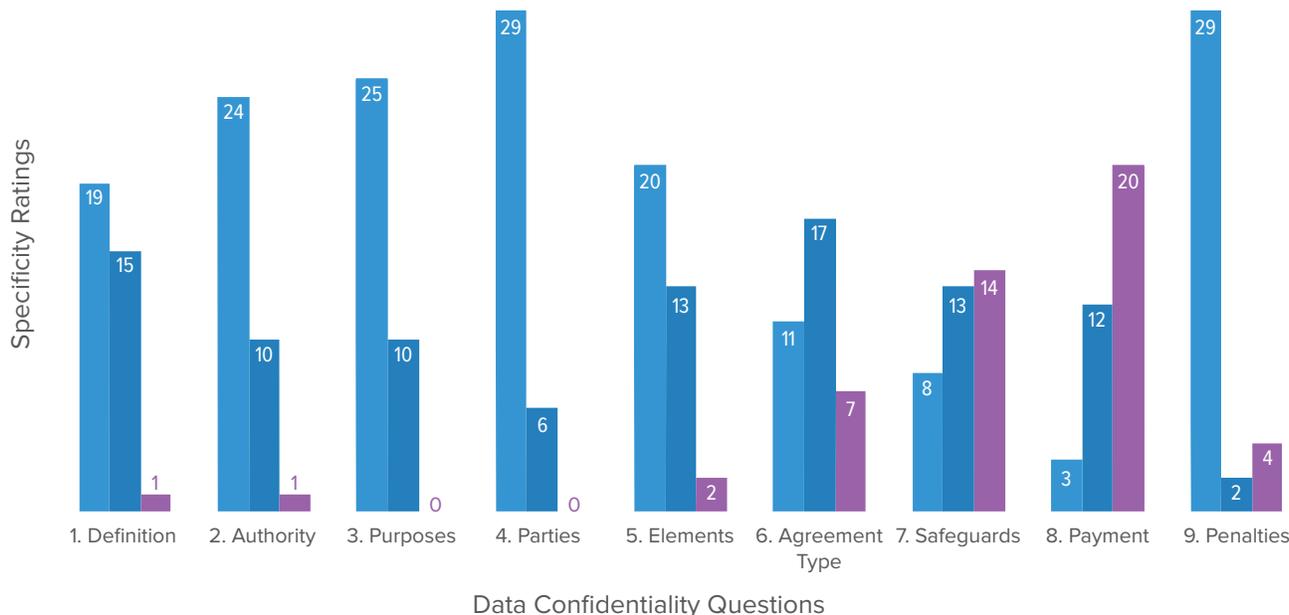
*“The **Comptroller or Department** may disclose to a taxing official tax information that is contained in any tax report or return...and relates to the imposition, assessment, and collection of taxes or to any other matter about taxation generally...” (Md. Code, §13-203)*

As shown in Figure 9, there were only two confidentiality questions that were answered, to some degree, by all 35 states’ corporate tax laws and regulations:

- Question 3. **Purposes** – For what purposes may data be disclosed?
- Question 4. **Parties** – To which parties may data be disclosed?

Over 70 percent of states received “Detailed Explanation” ratings on Question 3 – **Purposes**, and more than 80 percent received “Detailed Explanation” ratings for Question 4 – **Parties**.

FIGURE 9. SPECIFICITY RATINGS FOR ALL CORPORATE TAX LAWS AND REGULATIONS



The Missouri Revised Statutes provide examples of numerous corporate tax laws and regulations that co-mingle explanations of the purposes for which and parties to whom confidential data may be disclosed. The statute says:

*“...Nothing in this section shall be construed to prohibit: (1) The disclosure of information, returns, reports, or facts shown thereby, as described in subsection 1 of this section, by any officer, clerk or other employee of the department of revenue charged with the custody of such information:... (d) To any city officer designated by ordinance of a city within this state to collect a city earnings tax... (f) To the **director of the department of economic development or the director's duly authorized employees in discharging the director's official duties to certify taxpayers eligibility to claim state tax credits as prescribed by statutes;**... (9) The disclosure to the public of any information, or facts shown thereby regarding the claiming of a state tax credit by a member of the Missouri general assembly or any statewide elected public official...” (§32.057, RSMo).*

In this case, the law allows the Department of Revenue to disclose confidential data to the Department of Economic Development, but only for the purpose of certifying that taxpayers are eligible to participate in certain tax credit programs. Highlighting such a narrow purpose, if interpreted narrowly by the data-producing agency, may effectively limit the department’s ability to access the data for evaluation purposes, even to evaluate whether the tax credit programs referenced in the law are achieving the goals that the legislature intended.

As mentioned previously, other state laws define allowable disclosures and parties authorized to receive confidential data much more broadly, employing language such as “records may be disclosed to authorized public officials in the pursuit of their public duties.”

The greatest number of “Detailed Explanation” ratings were assigned for questions four and nine:

- Question 4. **Parties** – To which parties may data be disclosed? (29 states)
- Question 9. **Penalties** – What are the penalties for violating disclosure rules? (29 states)

“Detailed Explanation” ratings represented nearly 83 percent of answers to these two questions. States that were assigned “Detailed Explanation” ratings for Question 9 – Penalties often include very specific language about the nature and severity of penalties for violating disclosure rules. For example, the Connecticut General Statutes explicitly identifies the cost and imprisonment terms for violators, stating, “*Any person who violates any provision of this section shall be **fined not more than one thousand dollars or imprisoned not more than one year, or both.***” (C.G.S. § 12-15)

There was little consistency across all the states in terms of the legal references to which data elements may be disclosed (Question 5 – Elements) or the type of agreement the state requires be put in place before allowing disclosure of data (Question 6a – Agreement Type). States were almost as likely to have legislation with a “Detailed Explanation” of data elements and agreement types as they were to have a “Broad Mention” of these allowances and requirements. States with very particular language about which data elements are allowed received a “Detailed Explanation” rating from the research team while

states with more general laws were assigned as examples of those with “Broad Mention” in their state law. Arizona’s state law, for example, provides relatively detailed directions for handling data disclosure:

*“(I) The department may disclose **statistical information** gathered from confidential information if it does not disclose confidential information attributable to any one taxpayer...(J) The department may disclose the **aggregate amounts of any tax credit, tax deduction or tax exemption** enacted after January 1, 1994. Information subject to disclosure under this subsection **shall not be disclosed if a taxpayer demonstrates to the department that such information would give an unfair advantage to competitors.**” (A.R.S. § 42-2003)*

Language related to the type of agreement required for disclosing data generally received a “Detailed Explanation” rating when it described the form that an agreement should take. North Dakota law provides a good example of this scenario:

*“The tax commissioner may provide the department of commerce information obtained in the administration of the income tax under this chapter. **A request by the department of commerce for information must be in writing and must be limited to information necessary to evaluate the degree of success and compliance with statutory or contractual performance standards established for employers who received North Dakota state economic development assistance.**” (N.D. Cent. Code § 57-38-57)*

A number of state laws simply do not address some of the key issues that this confidentiality assessment framework seeks to understand. Three questions (about the agreement type, safeguards, and payment provision to reimburse for data preparation) represent the most common issues that are overlooked (and their state received a “Not Addressed” rating) in data sharing laws:

- Question 6a. **Agreement Type** – What type of data sharing agreement is required for data disclosure? (7 states)
- Question 7. **Safeguards** – What safeguards are required for data disclosure? (14 states)
- Question 8. **Payment Provisions** – What are the payment provisions for data disclosure? (20 states)

This means that 20 percent of state corporate tax laws lacked information related to the type of data sharing agreement required for data disclosure, and 40 percent lacked any instruction on measures that should be taken to protect personally identifiable information in the process of sharing data. Further, 57 percent of the laws reviewed provide no guidance on which party(s) should pay the cost of disclosing confidential data. In states where certain disclosures are permitted but not required, agency leaders may be more inclined to deny requests because they feel that the potential security risks and financial burden to their agency outweigh the potential benefits to the state. This suggests that more guidance may be needed to those parties charged with managing the confidential data disclosure process. Data producer agencies may want to document methods that are deemed appropriate to ensure that information sharing occurs in a secure way. There may also be a need for process that helps data agencies to assess the credibility of data requests, especially from agency staff or their external contractors seeking to use the data for research and analysis.

Sample language from corporate tax laws that do address these issues include Ohio’s Revised Code for safeguards and California’s Revenue and Taxation Code for payment provisions:

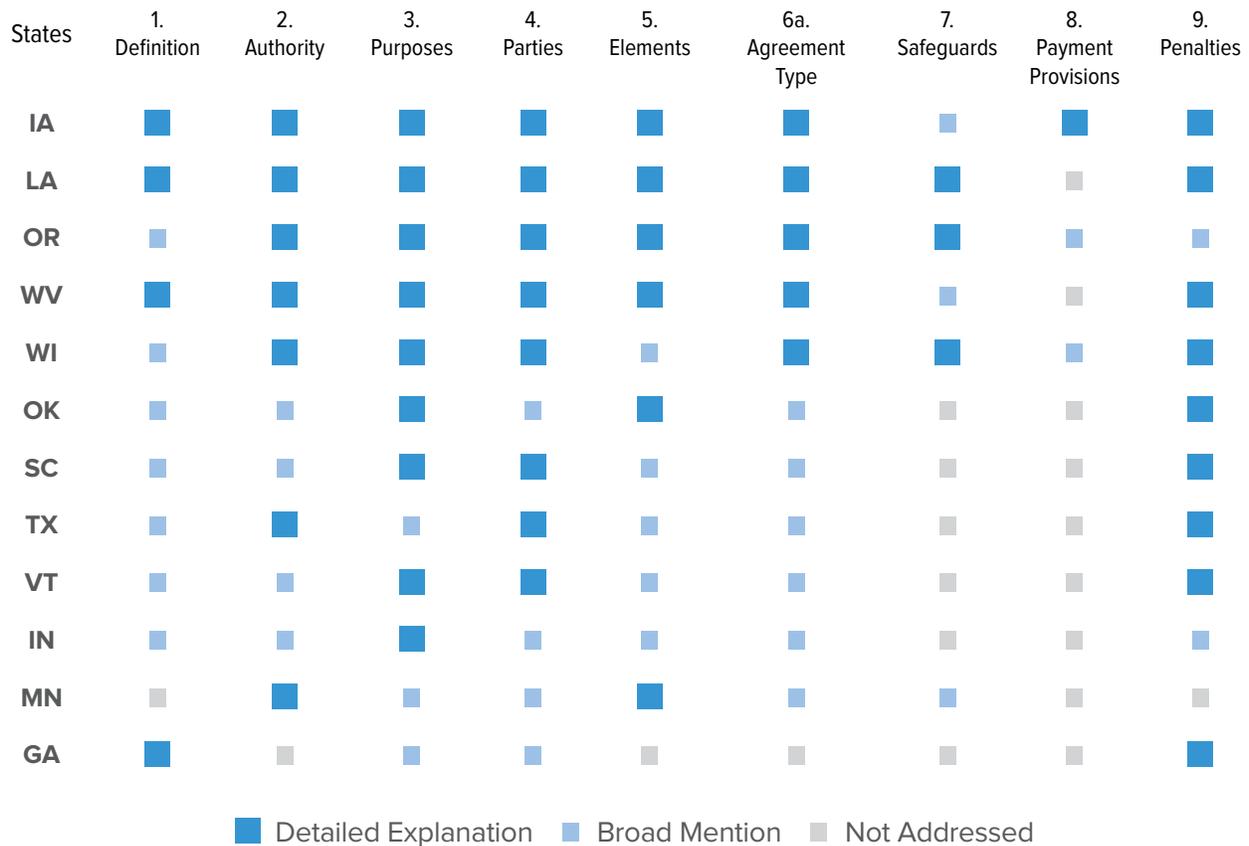
Safeguards: *“When transmitting or otherwise making use of a tax document that contains a person’s social security number, the commissioner shall take **all reasonable measures necessary** to ensure that the number is not capable of being viewed by the general public, including, when necessary, masking the number so that it is not readily discernible by the general public.”* (O.R.C. 5703)

Payment Provisions: *“...**The costs that are incurred** by the board in complying with a request made pursuant to this subdivision shall be deducted by the board from those revenues collected by the board on behalf of the county, city and county, city, or district making the request.”* (RTC § 7056)

Among the state laws and regulations with the most detail, Iowa, Louisiana, Oregon, West Virginia, and Wisconsin stood out. Those state laws provided specific guidance for at least six of the nine confidentiality questions that we monitored (See **Figure 10**). By comparison Georgia, Indiana, Minnesota, Oklahoma, South Carolina, Texas, and Vermont had the more general laws and regulations, when it came to determining how the legislature would interpret ways to handle the nine data confidentiality issues.

Figure 10 reinforces the identified differences among the states in how they handle the sharing of confidential data. Data sharing occurs in states with laws that are both detailed and vague in terms of the ability of agencies to share data. Yet, in states with detailed or prescriptive laws, the interpretation tends to be relatively straightforward regarding who can access data, what data they can access, and for what purpose. Even so, researchers generally found (except in Oklahoma and a few other case) they were more likely to encounter resistance to data sharing from agencies governed by vague laws and counsel that were restrictive in how they interpreted the law.

FIGURE 10. SPECIFICITY RATINGS FOR STATES WITH THE MOST AND LEAST DETAILED LEGAL REFERENCES TO DATA CONFIDENTIALITY QUESTIONS



At the most detailed end, Iowa’s and Louisiana’s corporate tax laws received “Detailed Explanation” ratings for eight of nine data confidentiality questions. West Virginia followed close behind with seven “Detailed Explanation” ratings. Meanwhile, Indiana only received one “Detailed Explanation” rating. Although Georgia received two “Detailed Explanation” ratings, its ratings overall were less specific than Indiana’s.

Finally, the research team identified two additional aspects of some corporate tax laws and regulations that may significantly impact data sharing opportunities. First, some state laws contain **specific guidance on disclosures for the publication of statistics**. Iowa and Nevada law provide examples of such approaches:

Iowa: “...the director may provide *sample individual income tax information to be for statistical purposes to the legislative services agency.*” (Iowa Code 422.72)

Nevada: “...The records and files of the Department concerning the administration and collection of any tax, fee, assessment or other amount required by law to be collected are not confidential and privileged in the following cases...(c) *Publication of statistics so classified as to prevent the identification of a particular business or document.*” (NRS 360.255)

In Iowa, then, the state’s Department of Management may access a sample of tax information to be used in answering questions from the legislature. So, if a legislator asked how many companies had retail sales over a specified amount, Iowa Code would permit the revenue agency to answer the question. In Nevada, state agencies have permission to use tax records to analyze and publish gross receipts tax data by industry or geography, so long as no individual business’ sales are revealed.

Second, some state laws expound upon **how the law should be interpreted**. In most cases, the guidance instructs those applying the law to interpret it narrowly. For example, Oklahoma’s law states:

“It is further provided that the provisions of this section shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Tax Commission relating to income tax or to any other taxes.” (68 O.S. § 205)

However, the research team did find rare instances—but only in UI laws and regulations—of language encouraging authorities to interpret the law a manner that most benefits the state and its people. For instance, Alaska’s UI law states:

“This chapter shall be liberally construed to accomplish its purposes to promote employment security by increasing opportunities for placement through the maintenance of a system of public employment offices and to provide through the accumulation of reserves for the payment of compensation to individuals with respect to their unemployment.” (AS 23.20.005)

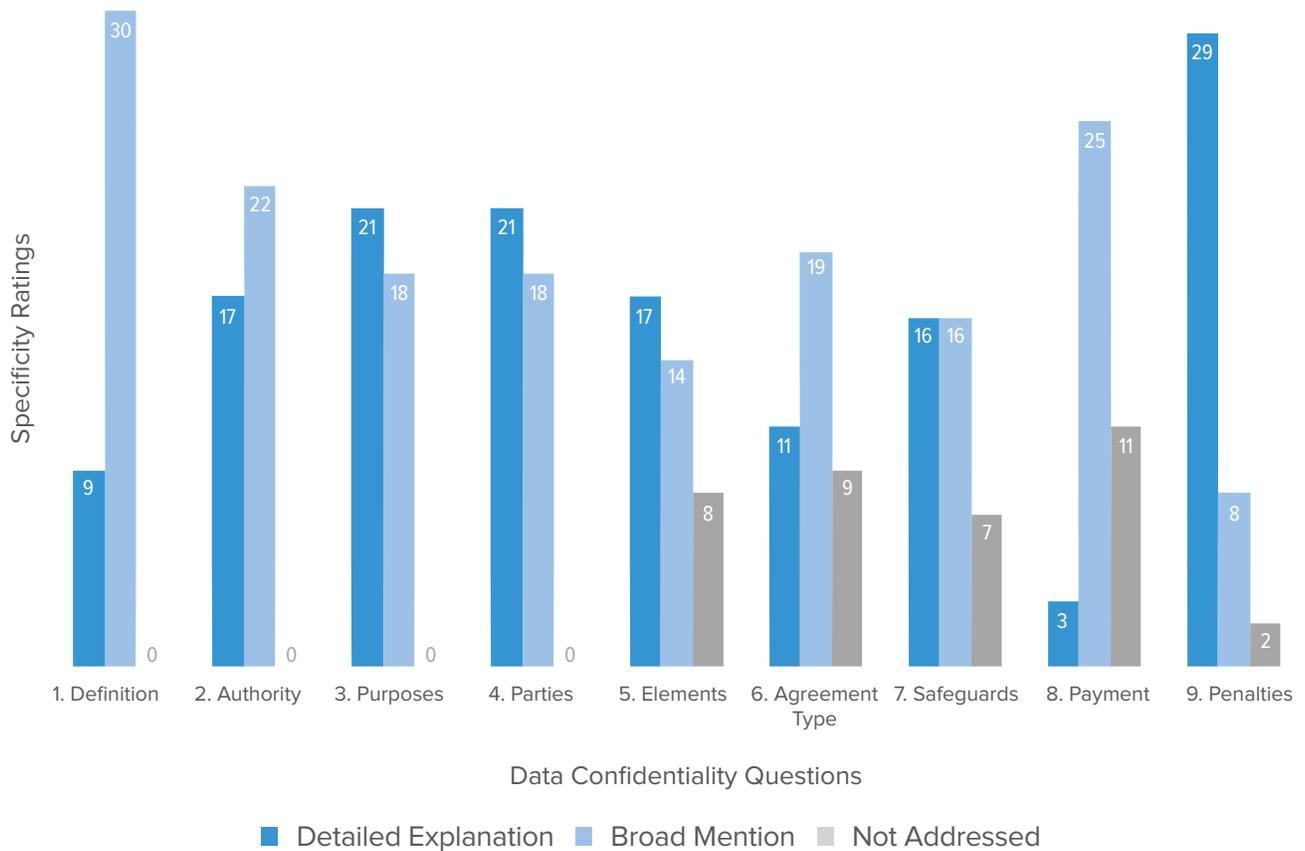
OBSERVATIONS ABOUT CORPORATE UI DATA SHARING

As shown in *Figure 11*, all 39 states’ UI data confidentiality laws and regulations addressed, to some degree, questions one through four:

- Question 1. **Definition** – How is confidential data defined?
- Question 2. **Authority** – Who is authorized to disclose data?
- Question 3. **Purposes** – For what purposes may data be disclosed?
- Question 4. **Parties** – To which parties may data be disclosed?

More than seventy-five percent of states received a “Broad Mention” rating for language **defining “confidential data.”** There was nearly an even split between “Detailed Explanation” and “Broad Mention” rating assignments for language answering questions about **authority** to disclose, the **purposes** for which, and the **parties** with whom data may be shared.

FIGURE 11. SPECIFICITY RATINGS FOR ALL UI TAX LAWS AND REGULATIONS



Among the UI laws and regulations reviewed, question nine provided the greatest number of “Detailed Explanation” ratings:

- Question 9. **Penalties** – What are the penalties for violating disclosure rules? (29 states)

“Detailed Explanation” ratings represented 74 percent of the ratings assigned to laws for this question category. Except for two states (Pennsylvania and Oklahoma), all other states received a “Broad Mention” rating for Question 9 – **Penalties**. As with corporate tax laws, the penalties for violating UI data confidentiality disclosure rules vary from state to state. However, most involve the imposition of fines, imprisonment, or both. In certain states, like Oregon, the penalties also include “disqualification from holding any appointment or employment” with the department. Given the severe, personal nature of these consequences (as opposed to penalties that could be imposed on the state agency or the data user that is provided access to the information), it is not surprising that data agency employees are reluctant to disclose data, even if laws permit them to do so.

The most frequent instances of a “Not Addressed” ratings relate to questions five, six b, seven, and eight:

- Question 5. **Elements** – What specific data elements may be disclosed? (8 states)
- Question 6b. **Content Requirements** – What are the content requirements of data sharing agreements? (9 states)
- Question 7. **Safeguards** – What safeguards are required for data disclosure? (7 states)
- Question 8. **Payment Provisions** – What are the payment provisions for data disclosure? (11 states)

IMPLICATIONS FOR CORPORATE TAX AND UI DATA SHARING

From our analysis of confidentiality laws and regulations, two critical factors affecting both corporate tax and UI data accessibility emerged that influence the willingness of states to share data for policy analysis and program evaluation. First is the explicit delineation of individual criminal or civil penalties in the law. While law may penalize individual staff, there are no rewards offered for individuals or institutions willing to share data, even if the results benefit the state. Second is the limited attention that policy leaders afford their agencies’ data sharing activities. This results in poorly articulated internal policies and poorly documented processes. Both conditions present significant challenges to improving access to data for other agencies and external researchers. Consequently, policymakers are not as likely to benefit from using administrative data to understand the impact of taxpayer investments for evidence-based decision making.

The laws’ **heavy emphasis on and severity of penalties** for violations of disclosure rules imply that data sharing is a high-risk, low-reward activity for public officials. To avoid this risk, agencies may choose to interpret other aspects of the law more strictly than they otherwise would—thus, limiting data sharing possibilities. This barrier is compounded by the fact that many state laws only allow for, but do not require, data sharing. Given the option, an agency may choose not to share its data if it perceives that the risks outweigh the benefits.

Second, **legal guidance related to data sharing process management** is lacking. As mentioned previously, the most frequent assignments of “Not Addressed” ratings in corporate tax and UI laws and regulations related to:

- Question 5. **Elements** – What specific data elements may be disclosed?
- Question 6b. **Content Requirements** – What are the content requirements of data sharing agreements? (For UI data only)
- Question 7. **Safeguards** – What safeguards are required for data disclosure?
- Question 8. **Payment Provisions** – What are the payment provisions for data disclosure?

Without guidance in these five areas, establishing a streamlined data sharing process in accordance with other aspects of the law may be complicated. Incorporating language into laws that establish a foundation for the information that can be shared, how data sharing agreements should be structured, what an acceptable baseline of security measures looks like, and how the process should be funded may lead to more balanced interpretations of confidentiality laws and regulations and greater opportunities for safe and secure data sharing to support policy analysis and program evaluation.

The complete results of the Confidentiality Laws and Regulations Analysis are available in the Confidentiality Laws and Regulations Database, which can be accessed from the project website. The database provides states and researchers with an easy way to compare how general or specific one state's laws are in relation to others. It also highlights relevant language in each law that may impact the disclosure of data for the purposes of analyzing or evaluating economic and/or workforce development programs.

In general, the language of state corporate tax and UI laws often varies where the intent of the legislature may be clearer in some states than in others. In general, where laws are vague about legislative intent, and agency legal counsel must interpret the laws. Often they do so conservatively because agency leaders do not have a clear sense of the value that using administrative data could have in policy making and program evaluation.

WHAT THE EXPERTS SAY

Interviews with data sharing stakeholder provided researchers with a great deal of context for our findings. These interviews pointed the research team to related research activities and uncovered administrative data sharing conditions, challenges and opportunities across the United States. The interviews elicited insights about four key themes as shown in *Figure 12*.

DATA ACCESS

Interview participants from both the data producer and user cohorts acknowledged that access to corporate tax data is limited. Participant concerns regarding data access include:

- Lack of access to administrative data
- Capacity for non-government entities to gain access

One state economic development agency official stated, “**On the income tax side, getting actual tax data for any purpose is very much prohibited,**” highlighting not only specific legal barriers but also widely held perception that data access is restricted. The perception persists even when state program agencies are entitled to access confidential data for approved legislative purposes. While limited access to corporate tax records is a common challenge, some states have found other ways to provide

Figure 12. Key themes from data sharing stakeholder interviews

1. Data access
2. Data sharing regulation
3. Data sharing risks
4. Data sharing need

relevant information to users from their confidential database. In Tennessee, for instance, data are made available to economic development agencies to help achieve appropriate evaluation goals. Per one member of the Department of Revenue's legal counsel, **"We try to work with [the Department of Economic and Community Development] to the extent that we can because it is in our best interest."** The official further explained that a state law now requires the economic development agency to evaluate business incentives programs. The problem was that once a claim was approved, DECD did not have information about whether individual companies with approved tax credit ever claimed their respective credits. This meant that the agency had no way to confirm whether the company met its performance requirements. Meanwhile, the Tennessee's revenue office had information about tax credit claims that companies made. To meet this legislated mandate, the state's Department of Economic and Community Development (DECD) sought access to information about which companies claimed tax credits the department has approved. The two agencies worked together to identify relevant company-specific data for firms with DECD-approved credits, and they established a formal process in which data were shared in a secure manner. To set up and manage this relationship, the state's economic development agency (DECD) formed a close working relationship with the Department of Revenue's research office. In some cases, aggregate-level data are helpful because they can provide an overall summary of the claims. However, the research office needed authority to share not only the aggregate-level data, but also individual company tax data so that the agency can monitor its clients' performance in a much more efficient way. This new data sharing arrangement saves DECD money because now the agency does not have to survey those companies every year and conduct so many on-site evaluations to ensure that the firms are meeting their obligations to the state of Tennessee in exchange for the credit. To receive access to the individual tax filings, economic development agency employees must sign a similar non-disclosure agreement to the one revenue agents sign.

Representatives from several other states reported that aggregate-level data is available for distribution to partner agencies, researchers, and sometimes the public. Despite this, several highly experienced data user groups expressed concerns that certain types of users are at a significant disadvantage in gaining access to data for policy research and analysis purposes. For instance, one academic explained, **"There are barriers to entry for smaller [universities] that are not recognized as research institutions. They do not have the legal or technical infrastructure to handle the agreement process or protect the data."** The challenge for those concerned about the state's data sharing protocols is that requirements put in place to protect the data need to remain in force. But, some researchers who could be significant contributors in the policy discussion about program impacts may not have the same access as others due to their employer's status (e.g., as a state research institution, private institution, and so forth). It is in the state's interest to provide pre-qualified researchers with access to administrative data for policy analysis or program evaluation. At the same time, it is incumbent upon the state to ensure that the institutions that receive confidential data have an adequate infrastructure to fulfill minimum state security and related information technology requirements. Two researchers representing independent organizations echoed this concern by stating that lack of access to confidential administrative records have forced them to rely either on costly proprietary data sources or aggregate data that may not fit their needs. Another independent researcher expressed his fear that nationally, **"The trend is toward less and less [data] sharing and more and more distrust."**

These issues suggest a solution that would require the state to invest in a shared database infrastructure that could be used for researcher access with an appropriate state-managed researcher clearance process. While not the only solution available, several states have turned to academic institutions (especially at state universities) as a hub for managing sensitive data because these institutions are more likely to have the resources and skills to manage sensitive datasets in a protected environment. These institutions also have the capability to manage external research proposals and related data requests focused on uses that are tied to state legal and regulatory parameters (e.g., requests to conduct independent policy analysis or program evaluations that could benefit state taxpayers). In essence, the mission of these academic institutions to foster research using sensitive data—a very different mission from state data producing agencies that have little direct incentive to support research per se. If managed appropriately, these types of arrangements with academic institutions can be particularly beneficial to the state and reduce the burdens on agencies that do not have the talent, time, or resources to manage data sharing requests.

DATA SHARING REGULATION

A key factor in determining access to corporate tax data is the regulatory environment around data sharing. Most participants reported that legislative statutes control how, with whom, and to what degree a state agency may share its data. The experts discussed:

- Importance of data sharing legislation
- Legal interpretations

Experts emphasized the importance of the data confidentiality laws and regulations that protect sensitive taxpayer information. In some cases, these laws limit departments of revenue in their ability to share data with other agencies; however, several representatives of state departments of revenue noted they could do so under certain circumstances. On legislative data sharing requirements, one department of revenue official stated, **“I would not consider [the laws as] impediments. We have the law, and it is there for a reason...but each department is able to do their job within the structure of the law.”** This point supported other statements from other revenue officials and legal counsel—that data confidentiality laws are necessary to reassure taxpayers and ensure proper administration of a state’s tax code, but that data sharing could play an important role in this process despite the fact that it is a secondary focus for most revenue agencies.

In discussing the data sharing limitations resulting directly from agency interpretations of state statutes, additional experts acknowledged that agencies’ legal counselors could construe statutes either more broadly or narrowly. In some cases, the law itself may dictate how these statutes should be interpreted. Two legal counselors noted that the prescribed level of interpretation directly influences the nature of and potential for data sharing between agencies. In short, legal counsel often sees its role in protecting the agency from potential risks. So many view their role as managing (or even limiting) access to data unless the law explicitly mandates it. Others take a more helpful approach to accommodating user request. In short, however, explicit directions provided in the law can often be very helpful to provide guidance to data agencies on allowed uses and permissible users.

DATA SHARING RISKS

Beyond the legislative framework, data producers and users recognized the importance of protecting and maintaining the security of corporate tax data. Issues pertaining to data sharing risk include:

- Legal risk
- Revenue agency responsibilities

An economic development official illustrated the risks incurred by tax agencies, stating, **“The Comptroller is open to the prospect of sharing the data, but two issues are of particular importance in providing access: (1) Do they have the technology to track the data; and (2) concerns about not violating confidentiality provisions.”** Revenue agencies need to be sure that the data will be protected and that they are not violating the state’s data sharing legislation. A data user from an independent research institution reinforced the importance of data security and affirmed, **“They have a responsibility to enforce taxes, and the confidentiality of the tax data is imperative in fulfilling that duty.”** Producers of corporate tax records also weighed in on the issue. One expert noted, **“We ask taxpayers to give very detailed and personal financial information [to us], so confidentiality is the gold standard of tax administration.”** Other tax administrators and departments of revenue legal counsel emphasized the legal risk that agency employees take on in sharing the data.

While recognizing the risks, many departments of revenue staff and legal counsel acknowledged the value in data sharing. One Texas revenue official described several state efforts to increase data transparency and encourage data sharing. In 2016, Texas established the Interagency Data Transparency Commission to study current public data structures, sharing practices, and state agency reporting standards. One of the major goals of the Commission is to “consider methods to structure, classify, improve coordination and share data among agencies [and to] increase accountability and ensure state agencies share and report the data collected by the state agencies.”²⁸ Additionally, the state has enacted legislation that provides further guidance to agencies on how to handle a security breach (Texas Gov’t Code § 2054.1125. Security Breach Notification by State Agency).

Risk management can be better institutionalized within data agencies. What that means is that agencies can create processes that share the responsibilities of managing risk more clearly. In many cases, the states have one or two people who manage all aspects of data sharing. That personalizes the risks associated with a potential data breach, focusing responsibilities in ways that make it relatively easy to decline access to data and make it difficult to access the resources needed to respond to user requests. This is a lot to ask of any one individual, especially when few states have documented data sharing processes in place. Institutionalizing risk management, then, would entail creating a formal process for (1) accepting data sharing requests, (2) determining eligibility and appropriateness of use, (3) reviewing data user credentials and creating a clearance process, (4) ensuring the data requestors’ institutions have adequate capacity to maintain data in a safe and secure environment (if shared off-premises), and (5) monitoring data use to ensure it remains in compliance with the data sharing agreement.

²⁸ <https://dircommunity.force.com/IDTC/s/>

DATA SHARING NEED

Interviewees for this study from both the data producer and user perspective identified a growing need for data sharing. At the heart of this need is the demand from legislators, executive branch officials, and others to have better research that can inform their decision making.

Data producers and users recognize the potential benefits for increased data sharing. As one Arizona revenue official noted, **“there are pockets of entities that produce information, which needs to be more integrated to help make decisions;”** This sentiment acknowledges the value that a more open data sharing environment would afford not only to program agencies but also to state taxing agencies. State programs tend to operate in siloes and the use of common data structures from the tax authorities can also help to cross-pollinate information that can guide multiple programs simultaneous to consider how they might work together.

In addition, many experts identified how better data access could contribute toward improved program evaluation. One economic development official noted the increased pressure facing agencies in accessing more data to better understand how programs are functioning. Many program agency leaders feel that enhanced data sharing and data access could help mitigate the challenges they face in improving evaluation efforts. In some states, revenue agencies partner with university research centers to meet increased data access requests resulting comes from greater demand for more rigorous policy analysis and program evaluation. In Missouri, for instance, the Department of Revenue maintains a data sharing agreement with the Economic and Policy Analysis Research Center (EPARC) and the University of Missouri. Under the agreement, authorized EPARC staff may access the department of revenue’s microdata for the purposes of preparing annual revenue forecasts for the state and conducting legislative research on proposed tax policy changes on behalf of the General Assembly. For the past 30 years, this agreement has enabled the Department of Revenue to leverage outside research capacity that it otherwise could not.

With greater demand for more rigorous research, states must seek out new solutions to respond to increased data sharing requests. Many states have limited capacity to support this activity and little prospects for additional resources so they have to find creative solutions. Building on the existing staff capabilities within revenue agencies, establishing data hubs within the state government or in university centers, and developing more streamlined processes are strategies that help to improve the efficiency of data sharing and respond to the demands of increasingly transparent and accountable governments.

CONCLUSION

This paper presents the findings of the SDS Initiative’s Phase I research. Our research provides a basic explanation of the value of administrative data and the increasing need for data sharing to support more rigorous policy analysis and evaluation of economic and workforce development programs.

To overcome barriers to sharing administrative data among government agencies within the same state, our research produced the following recommendations to enable greater data access that would improve the quality of analysis that can be performed and help lower the costs of that work for both data producers and users:

- State leaders need to be educated on the value of administrative data and how it can support more evidence-based policymaking while reducing government costs to evaluate programs.
- Agency leaders and staff need help to understand that (a) sharing data for appropriate purposes and (b) maintaining the highest standards of data confidentiality are not mutually exclusive.
- States need to provide greater visibility to and more resources for agency efforts to streamline the data sharing process.
- States need to establish more structured, transparent policies and procedures for reviewing data sharing requests.

The State Tax Data Comparison, Confidentiality Laws and Regulations Analysis, and Data Sharing Stakeholder Interviews can serve as a foundation for further research and technical assistance work to:

1. Identify existing and potential evaluation-relevant data in other types of administrative records,
2. Develop case studies of states where data sharing is employed routinely for policy analysis and program evaluation purposes, and
3. Support a discussion on the possible benefits of streamlining data confidentiality laws and regulations, as well as data sharing policies and practices across states.

The resources highlighted in this paper will help to inform state efforts nationally to facilitate interagency collaboration and data sharing. For the SDS Initiative’s second phase, CREC is helping five states (Iowa, Minnesota, South Carolina, Utah, and Wisconsin) to support greater collaboration among economic and workforce development program agencies with revenue and UI agencies to support data sharing for policy analysis and program evaluation. The lessons learned from these states have the potential to transform the way administrative data is shared in other states and other policy areas.