JOINT GUIDANCE ON DATA MATCHING TO FACILITATE WIOA PERFORMANCE REPORTING AND EVALUATION

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EXECUTIVE SUMMARY

This joint guidance by the U.S. Departments of Labor and Education (DOL and ED, or, collectively, Departments) is a resource to provide information to assist State agencies (including Vocational Rehabilitation (VR) agencies and workforce development agencies), educational agencies and institutions, and service providers in performance reporting and evaluation requirements under the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113-128). Under WIOA, States are required to use education information and quarterly wage records to measure performance of the six core programs and other title I programs authorized by WIOA, which raises complex issues related to data sharing and privacy. This guidance provides States with information about applicable requirements for, and procedures and options for, matching confidential Unemployment Compensation (UC) information from wage records with personal information from VR records, and personally identifiable information (PII) from education records, and for protecting the confidentiality of information contained in such records.

Family Educational Rights and Privacy Act (FERPA) is a Federal law that protects the privacy of student education records and affords parents and eligible students certain rights with respect to these education records. The general rule is that a parent or eligible student must provide a signed and dated written consent before an educational agency or institution discloses PII from the student's education records, unless an exception, such as FERPA's audit or evaluation exception, applies. Under FERPA's audit or evaluation exception, an authorized representative of State or local educational authorities may obtain access to PII from education records to audit or evaluate a Federal- or State-supported education program. However, State law may provide greater privacy protections than those required by FERPA.

FERPA's audit or evaluation exception permits disclosure of PII from education records for WIOA performance accountability purposes.

Vocational Rehabilitation (VR) regulations govern the protection, use, and release of personal information held by VR agencies. VR agencies, which are not considered educational agencies or institutions under FERPA, must develop policies and procedures to safeguard the confidentiality of all personal information, and to inform applicants and recipients of services and, as appropriate, their representatives, of the VR agency's need to collect personal information and its policies. There is no Federal requirement that a VR agency obtain informed written consent from the individual prior to releasing personal information for purposes directly related to the administration of the VR program, or for audit, evaluation, or research purposes when the audit, evaluation, or research are conducted only for purposes directly connected with the administration of the VR program or for purposes that would significantly improve the quality of life for applicants and recipients of services and only if done in accordance with a written agreement. However, if the final audit, evaluation, or research product will contain personal information, written consent is required.

Unemployment Compensation Confidentiality provisions differ from State to State, making it necessary for educational agencies and institutions, VR agencies, State workforce agencies, and other entities to consult with individual State UC agencies to determine the laws, regulations, and procedures unique to each State. If the State law permits, educational agencies and institutions,

VR agencies, and other entities may obtain individual's UC wage data by informed consent. If informed consent is not given, other provisions providing access to public officials for specified purposes may apply.

Federal UC confidentiality regulations permit disclosure of confidential UC information for WIOA performance accountability purposes.

Options for Matching Student Data with UC Wage Records to Report Performance Outcomes

This guidance explains several options, with graphics, by which State UC agencies, State workforce agencies, State educational authorities, educational agencies or institutions, and VR agencies, may disclose PII from the student's education records, confidential UC information, and personal information contained in VR records for performance accountability reporting purposes under WIOA, as well as for audits and evaluations. The options are examples only. Because State UC agencies, State workforce agencies, VR agencies, and State educational authorities differ in their structure, policies, and procedures, this is not intended as an exhaustive list of ways in which States may accomplish the goal of matching education, VR, and wage records for performance accountability purposes.

Option 1: A State Educational Authority Discloses PII from Education Records to the State UC Agency as its Authorized Representative

Option 2: A State's Higher Education Governing Board, as a State Educational Authority, Discloses PII from Education Records to the State UC Agency as its Authorized Representative

Option 3: A State Educational Authority Discloses PII from Education Records to a State Workforce Agency in addition to the State UC Agency as its Authorized Representatives

Option 4: Educational Agencies or Institutions Disclose PII from Education Records directly to a State UC Agency, that has been designated as an Authorized Representative of the State Educational Authority

Option 5: A State Educational Authority, Operating a Statewide Longitudinal Data System (SLDS), Discloses PII from Education Records to the State UC Agency as an Authorized Representative of the State Educational Authority

Option 6: A State VR Agency Discloses Personal Information to the State UC Agency for the Purpose of Conducting an Audit or Evaluation of the VR Program, or for Determining Performance Accountability

Option 7: A State Educational Authority Discloses PII from Education Records to State UC Agencies in One or More States, that have been designated as Authorized Representatives of the State Educational Authority

Option 8: Accessing Interstate Wage Record Data via the Wage Record Interchange System 2 (WRIS 2)

Under WRIS2 aggregate wage information is available for WIOA performance accountability purposes to both public officials and certain third-party entities.

Option 9: A State VR Agency Discloses Personal Information, and State and Local Educational Authorities Disclose PII from Education Records, to State UC Agency for Purposes of Evaluations under section 116(e) of WIOA.

INTRODUCTION

The U. S. Departments of Labor and Education (DOL and ED, or Departments) are issuing this joint guidance to assist State agencies (including Vocational Rehabilitation (VR) agencies), educational agencies and institutions, State workforce agencies, and service providers in meeting performance reporting and evaluation requirements, as applicable, under sections 116 and 122 of the Workforce Innovation and Opportunity Act (WIOA), Pub. L. No. 113-128. Given the complexity of the privacy and confidentiality issues raised by the need to match various records for purposes of meeting performance accountability, reporting, and evaluation requirements, and the need for States to develop processes that support the required data matching, this guidance explains:

- An overview of the confidentiality requirements, particularly with regard to when informed consent, or prior written consent, is required for the disclosure of:
    - PII from education records maintained by educational agencies and institutions, some of which may be eligible training providers (ETPs) under title I of WIOA, which are protected by the requirements in the Family Educational Rights and Privacy Act (FERPA) set forth at 20 U.S.C. 1232g and 34 CFR part 99;
    - Personal information from records held by VR agencies, which are protected by the requirements set forth at 34 CFR 361.38; and
    - Confidential UC information from wage records held by the State Unemployment Compensation (UC) agencies, which are protected by the requirements set forth at 20 CFR part 603;

- Options that provide examples of how to meet the various privacy and confidentiality requirements noted above when matching records for purposes of the performance accountability, reporting, and evaluation requirements of sections 116 and 122 of WIOA; and

- Guidelines for the publication of performance reports as set forth in section 116(d)(6)(C) of WIOA and 34 CFR 99.31(b) of FERPA regulations regarding the de-identification of records and information.

The Departments recognize there may be other State or Federal laws that require matching education records with UC wage records for the purpose of evaluating and reporting information for Federal or State supported education programs. This guidance does not address these other laws or regulations; however, the privacy and confidentiality provisions and the options discussed in this guidance may be relevant or helpful to other programs that operate under such laws and regulations. For example, the Carl D. Perkins Career and Technical Education Act of 2006 (P.L. 109-270) requires States to report on core measures of performance that include indicators that may necessitate matching PII from education records with UC wage records.

States may choose to provide greater privacy and confidentiality protections to education, UC wage records, or VR records through State law, regulation, or policy than Federal laws require. These laws, regulations, or policies may include greater restrictions on how and when educational agencies and institutions, VR agencies, UC agencies, State workforce agencies, State educational authorities, or other entities may, without consent, disclose records to other entities. Because laws, regulations, and procedures vary from State to State, educational agencies and

institutions, VR agencies, UC agencies, State workforce agencies, State educational authorities, or other entities should consult with counsel to determine the appropriate course of action for matching records, which may include further steps and restrictions than those established by the Federal requirements and described in this guidance.

We note that this guidance applies only to requests for wage records when the requestor has a Social Security Number (SSN) for each of the individuals whose wage records are sought. This is because the State UC data bases, and the WRIS/WRIS2 platform for exchanging data, are set up to be searchable only by SSNs.

This guidance does not impose new Federal requirements. Rather, this guidance provides States with procedures for matching education, VR, and wage records to measure a State's progress in performance under the performance accountability requirements in WIOA, and to assist the Federal government and States in conducting evaluations consistent with requirements in sections 116, 122, and 169 of WIOA. The Departments are committed to providing technical assistance to State agencies, educational agencies and institutions, service providers, and the WIOA core programs, as well as other title I WIOA programs, to facilitate matching these records for purposes of satisfying performance accountability reporting and evaluation requirements, and will work with entities to facilitate the matches through these methods or other approaches that are consistent with the applicable Federal and State laws.

The Departments of Labor's *Workforce Innovation and Opportunity Act* Final Rule, the Departments of Education's and Labor's *Workforce Innovation and Opportunity Act: Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions*, and the Department of Education's Final Rules on *State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage* and on *Programs and Activities Authorized by the Adult Education and Family Literacy Act (Title II of the Workforce Innovation and Opportunity Act)*, were published by the Office of the Federal Register (OFR) on August 19, 2016. The published versions in the Federal Register are the official Final rules. The Department of Education's final regulations will take effect 30 days after publication in the Federal Register (September 19, 2016), and the joint final regulation and the Department of Labor's final regulation will take effect 60 days after publication in the Federal Register (October 18, 2016).

DEFINITIONS

Administration of law is a term used in DOL's UC confidentiality and disclosure regulations and is defined under 20 CFR 603.5(e) as including research related to the law administered by the public official.

Agent is a person or an entity who or which acts instead of and on behalf of a public official as provided in UC Confidentiality provisions at 20 CFR 603.5(f). State UC agencies may disclose confidential UC information to the agent or contractor of a public official so long as the public official has an agreement with the State UC agency to obtain the data, the confidential UC information will be used for a permissible purpose as set out in the agreement, and the public official agrees to be responsible for any failure by the agent or contractor to abide by the terms of the agreement. Also see "contractor."

Aggregate Data is a term used in the Wage Record Interchange System (WRIS) and WRIS2 and is "wage data" that has been stripped of any information that would identify the individual(s) and employers to whom the data pertains, including but not limited to, name and SSN or Federal Employer Identification Number, and that have been aggregated into a group(s) containing no fewer than three records, provided however, that nothing herein shall prevent a Performance Accountability and Customer Information Agency (PACIA) from observing a more stringent aggregation policy with regard to its own use and reporting of data.

Authorized representative is a term used in FERPA's audit or evaluation exception to consent. It is defined as any entity or individual designated by a State or local educational authority or an agency headed by an official listed in section 99.31(a)(3) of the FERPA regulations to conduct — with respect to Federal or State supported education programs — any audit or evaluation, or any compliance or enforcement activity in connection with Federal legal requirements that relate to these programs. See 34 CFR 99.3.

Confidential UC information is defined at 20 CFR 603.4(b) as: "any UC information which reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particular." Information that must be kept confidential under 20 CFR 603.4(b) includes SSNs, wages paid to an individual, the names and addresses of individuals and employers, and the State and Federal employer identification number of the employer who paid wages to an individual. See 20 CFR 603.2(b), (j), and (k).

Contractor is a term used in both 34 CFR part 99 and 20 CFR part 603. Contractor, in both instances, has the ordinary meaning of one with whom an educational entity or public official contracts. Additional information on contractors may be found in the sections of this guidance designated as Permissive Disclosures of PII from Education Records Protected by FERPA and Permissive Disclosures of Confidential UC Information in UC Wage Records.

Core programs are the following six programs authorized by WIOA: the Adult, Dislocated Worker, and Youth programs, authorized under title I of WIOA and administered by DOL; the Adult Education and Family Literacy Act (AEFLA) program, authorized under title II of WIOA and administered by ED; the Employment Service program, authorized under the Wagner-Peyser

Act as amended by title III of WIOA and administered by DOL; and the VR program, authorized under title I of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by title IV of WIOA and administered by ED.

De-identified records and information is a term used in the FERPA regulations to describe records or information that may be permissibly disclosed, without prior written consent, after the removal of all PII provided that the party making the release has made a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple releases and taking into account other reasonably available information. See 34 CFR 99.31(b)(1).

Educational agency or institution is a term used in FERPA to refer to those educational entities to which FERPA directly applies. To meet the definition of "educational agency or institution," these entities must receive Federal funds under a program administered by the Secretary of Education. See 34 CFR 99.1(a) and 99.3. The term "educational agencies and institutions" generally refers to local educational agencies (LEAs), public elementary and secondary schools, and institutions of postsecondary education.

Education program is a term used in FERPA's audit or evaluation exception to prior written consent to mean any program principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution. See 34 CFR 99.3.

Education records are, with certain exceptions, records directly related to a student and maintained by an educational agency or institution, or by a party acting for the agency or institution. See 34 CFR 99.3.

Eligible individual is a term used in title II of WIOA and means an individual who has attained 16 years of age; who is not enrolled or required to be enrolled in secondary school under State law; and who (i) is basic skills deficient; (ii) does not have a secondary school diploma or its recognized equivalent, and has not achieved an equivalent level of education; or (iii) is an English language learner. See section 203(4) of WIOA.

Eligible provider means an organization of demonstrated effectiveness that may include LEAs and postsecondary institutions, community-based and faith-based organizations, volunteer literacy organizations, public or private nonprofit agencies, libraries, public housing authorities, and other nonprofit entities that have the ability to provide AEFLA program activities under title II of WIOA. Consortia and partnerships of these entities, and a partnership between an employer and any of these entities, are also eligible providers.

Eligible student means a student who has reached 18 years of age or is attending an institution of postsecondary education. See 34 CFR 99.3.

Eligible Training Provider (ETP) is a provider of training services eligible to receive funds for the provision of such services under the title I Adult and Dislocated Worker programs and, in certain circumstances, the title I Youth program. Such providers must meet the requirements of

section 122 of WIOA and submit an annual performance report in accordance with section 116(d)(4) of WIOA.

PACIA means the Performance Accountability and Customer Information Agency designated by the governor of a State to be responsible for coordinating a State's program for assessing State and local program performance, and evaluating training provider performance. Assessing program performance and evaluating training provider performance was required under the Workforce Investment Act of 1998 (WIA), and is now required by WIOA. The PACIA is responsible for coordinating requests and aggregating matched data to facilitate the interstate matching of records under WRIS and WRIS2 (and any subsequent agreement). States may have more than one PACIA.

Additional information about PACIAs may be found in the section titled Wage Record Interchange System (WRIS) and WRIS2, and in Option 8, as well as through the link in the Additional Resources section (Attachment IV to this guidance).

Participant, for purposes of this data matching guidance, means an individual who satisfies the definition of that term at 20 CFR 677.150(a), 34 CFR 361.150(a), and 34 CFR 463.150(a).

Performance of official duties is defined at 20 CFR 603.5(e) to mean "administration or enforcement of law or the execution of the official responsibilities of a Federal, State, or local elected official." This would include enabling State UC agencies to disclose confidential UC information to State and local agencies and other public officials authorized to carry out their responsibilities under WIOA for performance accountability, including audits and evaluations of the programs and other required reporting of outcomes.

Personal information is a term used by VR programs that includes all current and stored identifiable personal information maintained by the VR agency, including photographs and lists of names. See 34 CFR 361.38(a).

Personally identifiable information (PII) is a term used in FERPA that refers to information in education records, such as a student's name or identification number, that can be used to distinguish or trace an individual's identity either directly or indirectly through linkages with other information. See 34 CFR 99.3. The term includes not only direct identifiers like name and SSN but also indirect identifiers such as the student's date and place of birth. PII also includes "other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty." Id. In some cases, a student's identity may be personally identifiable, even after removal or redaction of nominally identifying information from student-level data.

Public official is defined in 20 CFR 603.2(d), as follows:

> (1) An official, agency, or public entity within the executive branch of Federal, State, or local government, who (or which) has responsibility for administering or enforcing a law, or an elected official in the Federal, State, or local government.

(2) Public postsecondary educational institutions established and governed under the laws of the State. These include the following:

(i) Institutions that are part of the State's executive branch. This means the head of the institution must derive his or her authority from the Governor, either directly or through a State Board, commission, or similar entity established in the executive branch under the laws of the State.

(ii) Institutions which are independent of the executive branch. This means the head of the institution derives his or her authority from the State's chief executive officer for the State education authority or agency when such officer is elected or appointed independently of the Governor.

(iii) Publicly governed, publicly funded community and technical colleges.

(3) Performance accountability and customer information agencies designated by the Governor of a State to be responsible for coordinating the assessment of State and local education or workforce training program performance and/or evaluating education or workforce training provider performance.

(4) The chief elected official of a local Workforce Development Area as defined in WIOA section 3(9).

(5) A State educational authority, agency, or institution as those terms are used in the Family Educational Rights and Privacy Act, to the extent they are public entities.

Service provider is a broad term that is not program-specific but that refers to any entity carrying out training for or providing services to participants of WIOA's core programs. A subset of the service providers carrying out title I programs are ETPs, organizations determined by a State or local board to be eligible to provide programs of training services to WIOA title I core program participants. Service providers also include AEFLA-eligible providers offering adult education and literacy services and providers of services to VR participants.

State and local educational authority is a term used in FERPA's audit or evaluation exception to prior written consent, which covers a State educational agency, LEA, a State postsecondary commission, Bureau of Indian Education, or any other entity that is responsible for and authorized under local, State, or Federal law to supervise, plan, coordinate, advise, audit, or evaluate elementary, secondary, or postsecondary Federal or State supported education programs and services in the State. See 34 CFR 99.31(a)(3) and 99.35.

State UC Agency means the State agency charged with the administration of the State UC law. See 20 CFR 603.2(g).

State VR agencies are the designated State agency or designated State unit responsible for administering the VR program under title I of the Rehabilitation Act, as amended by title IV of WIOA.

State workforce agency is the State agency responsible for oversight and management of the workforce development system defined in section 3(67) of WIOA.

Student means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records. See 34 CFR 99.3.

Third Party Entities (TPEs) are any public body, agency, or private career school required by law to meet State and/or Federal performance measures. A PACIA, or its agent or consultant, cannot be designated as a TPE.

Wage Records (also called Wage Data) refers to individually identifiable information reported quarterly by employers as required by section 1137(a)(3) of the Social Security Act (SSA) including, but not limited to, employer names, employee names, SSNs, and associated wages. Wage data also include, to the extent the information is available, industry sectors in which employees work, as identified by the North American Industrial Classification System ("NAICS") codes.

Summary of the Workforce Innovation and Opportunity Act (WIOA)

WIOA, signed into law on July 22, 2014, is the first legislative reform of the publicly-funded workforce development system in more than 15 years. WIOA reaffirms the role of the customer-focused one-stop delivery system, a cornerstone of the publicly-funded workforce development system, and mandates enhanced and increased coordination among several key employment, education, and training programs. WIOA is designed to help job seekers access employment, education, training, and support services to succeed in the labor market, and to match employers with the skilled workers they need to compete in the global economy.

Performance accountability for the core programs is one of the focal points of WIOA. Sections 116(b)(2)(A)(i) and (ii) of WIOA require each of the core programs to be accountable for primary indicators of performance. See *Core programs* in the Definitions section for a listing of those programs. Additionally, other programs authorized by WIOA, such as Indian and Native American programs, YouthBuild, the National Farmworker Jobs Program, and Job Corps, must comply with certain performance accountability requirements in section 116 of WIOA.

WIOA section 116(i)(2) requires each of the core programs to use quarterly wage records to measure the progress of the State on the State and local performance accountability indicators, specifically those measuring employment outcomes (i.e., employment rates and median earnings). The Departments interpret "quarterly wage records" in 20 CFR 677.175(b), 34 CFR 361.175, and 34 CFR 463.175 to include, among other things, the interstate and intrastate wages paid to an individual. As noted in the final Joint Performance information collection requests (ICR), States must report the performance results for the core programs in the "WIOA Annual State Performance Report" and, as applicable, the "WIOA Annual Local Area Performance Report," as provided in paragraphs (2) and (3) of section 116(d) of WIOA.

ETPs provide training services through Individual Training Accounts to WIOA title I program participants. Under section 116(d)(4)(A) of WIOA, ETPs receiving WIOA funds must report employment outcomes (employment rates and median earnings) for all individuals participating in an eligible program of study (meaning both WIOA participants and the other students in the program of study). Section 122(b)(2) of WIOA also requires ETPs to submit information to the State that includes employment outcomes for WIOA title I program participants in the programs of study. These are the same employment performance indicators generally applicable to the Adult and Dislocated Worker programs.

WIOA's requirements for States, local areas, and ETPs to report on indicators of performance pertaining to employment outcomes and the need to rely on quarterly wage records to prepare those reports, raise complex privacy and confidentiality issues for the core and other workforce development programs. In addition, the required ongoing evaluations of these programs by States will likely require the use of wage records. Therefore, States will need to establish processes to support reporting of required data by these programs and ETPs, including supporting matching of wage records with records maintained by the programs.

WIOA also contains a requirement in section 116(d)(6)(C) that the disaggregation of data for the performance reports "shall not be required when the number of participants in a category is insufficient to yield statistically reliable information or when the results would reveal personally identifiable information about an individual participant." In addition, section 116(i)(3) specifically requires States to comply with FERPA when carrying out WIOA requirements. Therefore, the processes established by the States will also need to take these limitations into account.

WIOA requires States to conduct ongoing evaluations of the WIOA core programs. Section 116(e)(1) of WIOA, also requires States to conduct those ongoing evaluations in coordination with local boards and State agencies responsible for administration of core programs, to conduct evaluations in order to promote, establish, implement, and utilize methods for continuously improving core program activities in order to achieve high-level performance within, and high-level outcomes from, the workforce development system. These evaluations must be coordinated with evaluations and research conducted by the Secretaries of Education and Labor. See WIOA section 116(e)(1).

Overview of FERPA Rules Governing Education Records

FERPA is a Federal law that protects the privacy of student education records and affords parents and eligible students certain rights with respect to their education records. These rights include the right of parents to have access to their children's education records, the right to seek to have the records amended, and the right to provide consent for the disclosure of PII from education records, unless an exception to consent applies. These rights transfer to the student when he or she becomes an eligible student. See 34 CFR 99.3 and 34 CFR 99.5.

FERPA directly applies to all educational agencies and institutions that receive Federal funds under any program administered by the Secretary of Education (including Pell Grants or student loans funded under title IV of the Higher Education Act of 1965, as amended). The general rule under FERPA is that a parent or eligible student must provide a signed and dated written consent before an educational agency or institution discloses PII from the student's education records, unless an exception to the general consent rule applies.

It is important that service providers, educational agencies and institutions, and State agencies comply with FERPA's requirements when disclosing PII from education records for the purpose of matching various records to meet performance accountability, reporting, and evaluation requirements under WIOA. This section provides clarification as to which entities are covered under FERPA and when records are education records subject to FERPA.

Entities covered under FERPA. As stated above, FERPA directly applies to all educational agencies and institutions that receive Federal funds under any program administered by the Secretary of Education. The requirements of FERPA and its protections are most applicable to PII from education records maintained by WIOA service providers (including AEFLA-eligible providers and certain ETPs), as many WIOA service providers are educational agencies or institutions. FERPA is also applicable when third parties that are not educational agencies or institutions (such as VR agencies, State workforce agencies, or other entities) access, without the

parent's or eligible student's prior written consent, PII from education records that was originally maintained by an educational agency or institution. This subsection provides clarification as to whom and when FERPA would apply.

AEFLA-eligible providers.

Under AEFLA, services are provided to participants by "eligible providers," which may include LEAs and postsecondary institutions, community-based and faith-based organizations, volunteer literacy organizations, public or private nonprofit agencies, libraries, public housing authorities, and other nonprofit entities that have the ability to provide adult education and literacy activities. Consortia and partnerships of these entities, and a partnership between an employer and any of these entities, are also eligible providers. LEAs and postsecondary institutions providing AEFLA adult education and literacy services are generally considered to be educational agencies or institutions subject to FERPA as most are recipients of Federal funds under a program administered by the Secretary of Education. However, non-educational eligible providers delivering AEFLA adult education and literacy services, such as community- or faith-based organizations, volunteer organizations, public or private nonprofit agencies, libraries, public housing authorities, and other nonprofit entities, typically would not be considered to be entities covered by FERPA. Although these non-educational entities receive Federal funds under a program administered by the Secretary of Education to provide AEFLA services, they do not typically meet the definition of an educational agency or institution and, therefore, FERPA does not directly apply to such eligible providers. While FERPA does not directly apply to these eligible providers, FERPA's "redisclosure" provisions at 34 CFR 99.33 would apply when the non-educational eligible providers have been provided PII from education records that was originally maintained by an educational agency or institution without the parent's or eligible student's prior written consent. See "*FERPA redisclosure provisions.*"

ETPs.

Under WIOA, ETPs may include institutions of higher education that provide a program that leads to a recognized postsecondary credential, entities that carry out programs registered under the National Apprenticeship Act, 29 U.S.C. 50 et seq., or other public or private provider of a program of training services, which may include community-based organizations, joint labor-management organizations, and eligible providers of adult education and literacy activities under title II of WIOA if such activities are provided in combination with certain training services. FERPA would generally apply to postsecondary institutions that are ETPs as most postsecondary institutions are also recipients of Federal funds under a program administered by the Secretary of Education. However, some private providers of training services may not be recipients of funds administered by ED (including Pell Grants or student loans funded under title IV of the Higher Education Act of 1965, as amended) and, if they are not, those providers would not be considered educational agencies or institutions under FERPA.

VR agencies.
VR agencies are not considered educational agencies or institutions under FERPA, but must abide by the confidentiality provisions set forth in 34 CFR 361.38, which are discussed in detail in the VR-specific section below. While FERPA does not directly apply to VR agencies, FERPA's "redisclosure" provisions at 34 CFR 99.33 apply when a VR agency has been provided PII from education records that was originally maintained by an educational agency or institution without the parent's or eligible student's prior written consent. See "*FERPA redisclosure provisions.*"

State educational agencies.
FERPA does not directly apply to State educational agencies as they do not meet the definition of educational agencies or institutions under FERPA, although FERPA was amended so that parents and eligible students have the right to inspect and review their education records that are maintained by State educational agencies and their components. See 20 U.S.C. 1232g(a)(1)(B) and 34 CFR 99.10. Additionally, FERPA's "redisclosure" provisions at 34 CFR 99.33 also apply to State educational agencies that have been provided PII from education records that was originally maintained by an educational agency or institution without the parent's or eligible student's prior written consent. This implicates the vast majority of PII from education records maintained by State educational agencies.

Education records. As defined earlier in this guidance, education records are those records that, with certain exceptions, are: (1) directly related to a student; and (2) maintained by an educational agency or institution, or by a party acting for the agency or institution. See 20 U.S.C. 1232g(a)(4)(A) and 34 CFR 99.3. Individual records of participants under WIOA are only education records protected by FERPA if they meet the above definition. Examples of some records created and or maintained by different service providers and State agencies and the applicability of FERPA to such records follow.

AEFLA-eligible providers.
AEFLA-eligible providers' records may or may not be considered an "education record" and subject to the requirements of FERPA since, as discussed above, not all eligible providers are considered educational agencies or institutions under FERPA. If an eligible provider is an educational agency or institution and eligible individuals are students in attendance at the educational agency or institution, the records of the participants would be education records subject to FERPA. For eligible providers that are not educational agencies or institutions (or acting for educational agencies or institutions in maintaining education records, such as non-profit organizations), or for eligible providers that are educational agencies or institutions and eligible individuals are not students enrolled in educational agencies or institutions, participant records would not be education records subject to FERPA. However, if an AEFLA-eligible provider receives PII from education records that was originally maintained by an educational agency or institution during the course of providing services to a student, without the parent's or eligible student's prior written consent, the redisclosure requirement in FERPA would apply to that information. See "*FERPA redisclosure provisions.*"

ETPs.
ETPs' records on participants may or may not be considered "education records," as not all ETPs are educational agencies or institutions subject to FERPA. For those students in attendance at postsecondary institutions that are recipients of Federal funds under a program administered by

the Secretary of Education and are also ETPs, their records would be education records and the requirements in FERPA would apply to those records. But participant records generated and maintained by service providers that are not educational agencies or institutions subject to FERPA would not be considered education records subject to FERPA requirements.

VR agencies.

VR records are not subject to the requirements of FERPA, since VR agencies are not considered educational agencies or institutions under FERPA. However, if a VR agency receives PII from education records that was originally maintained by an educational agency or institution during the course of providing VR services to a student, without the parent's or eligible student's prior written consent, the "redisclosure" requirement in FERPA would apply to that information. See "*Overview of Confidentiality Protections Governing VR Records*."

Permissive Disclosures of PII from Education Records Protected by FERPA

FERPA generally requires parents or eligible students to provide written consent before an educational agency or institution discloses PII from a student's education records. Such written consent must specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or classes of parties to whom the disclosure may be made. See 20 U.S.C. 1232g(b)(2)(A) and 34 CFR 99.30. However, there are exceptions to the prior written consent requirement set forth in the statute and regulations. Under these exceptions, FERPA permits, but does not require, educational agencies and institutions to disclose PII from education records without obtaining the prior written consent of the parent or eligible student. In cases in which there is not written consent from the parent or eligible student, the exception to consent in FERPA that may be used to permit matching of PII from education records and wage records is FERPA's audit or evaluation exception. See 20 U.S.C. 1232g(b)(1)(C), 1232g(b)(3), and 1232g(b)(5); 34 CFR 99.31(a)(3) and 99.35.

The audit or evaluation exception permits, without consent, the disclosure of PII from education records to authorized representatives of State or local educational authorities. Under this exception, PII from education records must be used to audit or evaluate a Federal or State supported education program, or to enforce or comply with Federal legal requirements that relate to those education programs. The State or local educational authority disclosing the PII from education records is specifically required to use reasonable methods to ensure to the greatest extent practicable that its designated authorized representative complies with FERPA and its regulations.

A description of the different entities permitted to access education records through the audit or evaluation exception, the requirements for doing so, and when FERPA's redisclosure provisions apply follow.

State or local educational authority. Each State designates one or more agencies or entities that are responsible for and authorized under local, State, or Federal law to supervise, plan,

coordinate, advise, audit, or evaluate elementary, secondary, or postsecondary Federal or State supported education programs and services in the State. FERPA refers to such an agency or entity as a "State or local educational authority." ED generally has interpreted the term to include a State educational agency, an LEA, and a State postsecondary commission. See 76 Fed. Reg. 75,604, 75,607 (Dec. 2, 2011). However, State agencies other than a State educational agency or State postsecondary commission might, depending on State law, also be a "State educational authority" under FERPA. This is true for AEFLA programs where the State agency responsible for the administration and supervision of AEFLA programs may be the State educational agency, State postsecondary commission, workforce commission or agency, the State's department of labor, or any other State entity as determined by the State. Further, ED generally considers an LEA to be both an educational agency and a local educational authority under FERPA. Id.

Authorized representative. FERPA's audit or evaluation exception permits a State or local educational authority to designate an individual or entity, including a contractor or other government agency, to be its authorized representative. The State or local educational authority may then disclose PII from education records to its authorized representative or permit its authorized representative to obtain access to PII from education records, without the prior written consent of the parent or eligible student, when necessary for an audit or evaluation of a Federal or State supported education program, or in connection with the enforcement of any Federal legal requirements that relate to these programs. For example, the State educational authority may designate agencies such as a State UC agency to serve as its authorized representative for the purpose of conducting an audit or evaluation of a Federal or State supported education program.

Conditions governing disclosures to authorized representatives. The FERPA regulations at 34 CFR 99.35 govern the disclosure of PII from education records, by a State or local educational authority to its authorized representative:

- The PII from education records must only be used by the authorized representative to audit or evaluate a Federal or State supported education program, or to enforce Federal legal requirements that relate to those education programs.
- The State or local educational authority disclosing the PII from education records is specifically required to use reasonable methods to ensure to the greatest extent practicable that its authorized representative is FERPA-compliant.
- If the State or local educational authority's authorized representative is not an employee of the State or local educational authority, then there must be a written agreement between the State or local educational authority disclosing the PII from education records and its authorized representative that includes the mandatory elements in 34 CFR 99.35(a)(3). Attachment II sets out the requirements for a written agreement. If the authorized representative will in turn make further disclosures of the PII from education records to any other entity (other than disclosure back to the State or local educational authority), then the State or local educational authority must provide authorization for any such further disclosure to be made and is responsible for ensuring that all other FERPA requirements have been satisfied, such as the recordation requirements in 34 CFR 99.32(b)(2). If the disclosure will be made to another authorized representative of the State or local educational authority, then the State or local educational authority must ensure that all of the FERPA requirements, such as the use of reasonable methods and

written agreements, applicable to making a disclosure to another authorized representative have been met.

The State or local educational authority disclosing PII from education records to its authorized representative is responsible for using reasonable methods to ensure to the greatest extent practicable that its authorized representative:

- Uses PII only for the authorized purpose, namely, to carry out an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements related to these programs;
- Protects the PII from further disclosures or other uses, except as authorized in 34 CFR 99.35(b)(1); and
- Destroys the PII when no longer needed for the authorized purpose.

Before a State or local educational authority discloses PII from education records to an authorized representative who is not an employee, the State or local educational authority should create a record of the disclosure containing the name of the authorized representative and the legitimate interests of the authorized representative in the PII. See 34 CFR 99.32(b)(1).

FERPA's redisclosure provisions.

FERPA regulations at 34 CFR 99.33 govern the redisclosure of PII from education records by an educational agency or institution. In general, FERPA permits an educational agency or institution to disclose PII from education records only on the condition that the party to whom the PII is disclosed will not disclose the information to any other party without prior written consent. However, FERPA does permit an educational agency or institution to disclose PII from education records with the understanding that the party receiving the PII may make further disclosures of the PII on behalf of the educational agency or institution if the disclosure meets the requirements of one of the exceptions to consent under 34 CFR 99.31 and the educational agency or institution (or the State or local educational authority) has complied with the recordation requirements in 34 CFR 99.32(b).

If the State or local educational authority's authorized representative will, in turn, be making further disclosures of the PII from education records on behalf of the State or local educational authority (other than disclosures back to the State or local educational authority), such redisclosure must be conducted in accordance with the requirements of the FERPA exceptions to consent, and the State or local educational authority must either obtain and maintain the record of further disclosures made by its authorized representative or ensure that the educational agency or institution that originally disclosed the education records to the State or local educational authority obtains and maintains the record of further disclosures. See 34 CFR 99.32(b)(2).
Education program. "Education program" is an important term under the audit or evaluation exception because PII from education records may only be shared without prior written consent using this exception to audit or evaluate Federal or State supported "education programs" or to enforce Federal legal requirements related to these programs. The term means any program that is principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, adult education, and any program that is administered by an educational agency or institution.

However, an education program need not be administered by an educational agency or institution for it to be considered an education program for purposes of conducting an audit or evaluation under FERPA's audit or evaluation exception. See 76 Fed. Reg. 75,604, 75,614 (Dec. 2, 2011). For example, in many States, agencies other than the State educational agency may administer job training or adult education programs. As the core programs are principally engaged in the provision of education (i.e, job training and adult education) ED interprets these programs to be education programs under FERPA for the purpose of conducting required core program audits or evaluations, even when agencies other than educational agencies administer such programs.

Thus, under FERPA's definitions of "authorized representative" and "education program," FERPA would permit a State educational authority to designate another agency, such as the State department of labor, as its authorized representative to conduct an audit or an evaluation of any Federal or State supported education program, such as job training or adult education program. The reporting requirements under section 116(d) and 122(b) of WIOA, and the evaluation requirements under section 116(e)(1) of WIOA, also would constitute an audit or evaluation of a federally supported education program for purposes of this exception.

Overview of Confidentiality Protections Governing VR Records

Like education records protected by FERPA and the wage records protected by UC Confidentiality provisions, VR records also have protection provisions. The protection, use, and release of personal information under the VR program, which is one of the core programs under WIOA, are governed by 34 CFR 361.38. In addition to the VR program-specific confidentiality requirements of 34 CFR 361.38, VR agencies must also consider FERPA and UC confidentiality requirements when accessing confidential UC information in wage records and PII from education records.

As stated previously in the section providing an overview of FERPA, VR agencies and their records are not subject to the requirements of FERPA, since VR agencies are not considered educational agencies or institutions. However, if a VR agency receives PII from education records that were originally maintained by an educational agency or institution during the course of providing VR services to a student, without the parent's or eligible student's prior written consent, the "redisclosure" requirement in FERPA would apply to that information (see detailed description of FERPA's requirements above).

VR Program Requirements for Policies that Protect the Use and Release of Personal Information. VR regulations at 34 CFR 361.38(a)(1) require VR agencies to develop and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must ensure that:

- Specific safeguards are established to protect current and stored personal information, including a requirement that data only be released when governed by a written agreement between the VR agency and receiving entity under paragraphs (d) and (e)(1) of 34 CFR 361.38;

- All applicants and recipients of services and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;
- All applicants and recipients of services, or their representatives, are informed about the VR agency's need to collect personal information and the policies governing its use, including:
    - Identification of the authority under which information is collected;
    - Explanation of the principal purposes for which the VR agency intends to use or release the information;
    - Explanation of whether providing requested information to the VR agency is mandatory or voluntary and the effects of not providing requested information;
    - Identification of those situations in which the VR agency requires or does not require informed written consent of the individual before information may be released; and
    - Identification of other agencies to which information is routinely released;
- An explanation of State policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and
- These policies and procedures provide no fewer protections for individuals than State laws and regulations.

In developing policies and procedures governing personal information in accordance with 34 CFR 361.38(a), and providing that information to applicants, recipients of services, and, as appropriate, their representatives, a VR agency should make it clear that: (1) some VR records are needed to comply with the performance accountability requirements of section 116 of WIOA; and (2) that those records will be matched with State quarterly wage records. In so doing, the VR agency should explain what information will be released and whether informed written consent is required. For example, PII from education records received by the VR agency during the course of providing VR services to a student with a disability, from an educational agency or institution that are protected by FERPA's "redisclosure" provisions, might require prior written consent before the education records could be redisclosed. However, other VR records that do not include education records may not require informed written consent prior to disclosure during matching of VR records with wage records for purposes of the VR agency complying with the performance accountability requirements in WIOA (see further discussion below). While 34 CFR 361.38 sets general parameters for the protection, use, and release of personal information, these requirements are superseded by State privacy law if those State laws provide more protection. See 34 CFR 361.38(a)(1)(v).

When VR agencies Will Release Personal Information. In explaining when and for what purposes personal information will be released, the VR agencies should make clear, in pertinent part:

- All personal information in the VR agency's possession must be used and disclosed only for the purposes directly connected with the administration of the VR program (34 CFR 361.38(b)).

- The VR agency must release personal information when required to do so by Federal law or regulation (34 CFR 361.38(e)(3)), which would include the requirements under section 116 of WIOA to collect data (e.g., matching records for the employment-related performance indicators). The matching of these records, as well as the subsequent reporting of that data, for purposes of complying with the performance accountability requirements of WIOA, is not only required by Federal law but also is clearly an administrative function of the VR agency.

- The VR agency may, but is not required to, release personal information for audit, evaluation, and research purposes when the release is done in accordance with a written agreement (see discussion below of "permissive" release of information). See 34 CFR 361.38(d).

Limitation on the Release of Personal Information under the VR Program. The VR agency may not disclose personal information to advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the VR program, the VR agency may obtain personal information from service providers and cooperating agencies under assurances that the information will not be further divulged, except as provided under 34 CFR 361.38(c) through (e).

Permissive Disclosures of Personal Information from VR Record

In addition to the express authorities for the VR agency to release personal information, namely in the administration of the VR program or when required by Federal law or regulation, 34 CFR 361.38(d) also permits the VR agency to release personal information for audit, evaluation, and research when the release of information is done in accordance with a written agreement. In so doing, the VR agency may release, in accordance with a written agreement, personal information to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the VR program or for purposes that would significantly improve the quality of life for applicants and recipients of services.

Release of Personal Information under the VR Program for Audit, Evaluation, and Research. If the VR agency chooses to release personal information for this purpose in accordance with a written agreement, 34 CFR 361.38(d) requires the VR agency to ensure that the organization, agency, or individual conducting the audit, evaluation, or research complies with the following:

- The information will be used only for the purposes for which it is provided;

- The information will be released only to persons officially connected with the audit, evaluation, or research;

- The information will not be released to the involved individual;

- The information will be managed in a manner to safeguard confidentiality; and

- The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

There is no Federal requirement under 34 CFR 361.38(d) that the VR agency obtain informed written consent from the individual prior to releasing personal information, in accordance with a written agreement, for audit, evaluation, or research purposes under the VR program, except if the final product will contain personal information. In that circumstance, the VR agency must obtain informed written consent from the individual. See 34 CFR 361.38(d)(5). Having said this, the FERPA provisions, such as those governing disclosures for audit or evaluation purposes, would still apply for any education records (or PII contained therein) held by a VR agency that the VR agency obtained or accessed, without prior written consent of the parent or eligible student during the course of providing VR services to the student with a disability (see more detailed discussion of this type of disclosure in the section describing permissive disclosure of education records under FERPA above).

Example of a VR Agency's Release of Personal Information for Audit, Evaluation, and Research. Under 34 CFR 361.38(d), a VR agency may choose to contract with an entity to conduct an evaluation of the VR program to determine areas for performance improvement. In such a scenario, the VR agency could conduct the evaluation study, in accordance with a written agreement, without obtaining informed written consent from individuals because: (1) the study is being conducted as part of the administration of the VR program (34 CFR 361.38(b)); and (2) the study is directly connected with the administration of the VR program (34 CFR 361.38(d)). The entity receiving the personal information, in accordance with a written agreement, from the VR agency to conduct the evaluation study must comply with all of the requirements described under *Release of Personal Information under the VR Program for Audit, Evaluation, and Research* above.

The other requirements governing the protection, use, and release of personal information under the VR program are not relevant to the matching of wage records and, therefore, will not be discussed in this guidance.

Overview of Confidentiality Protections Governing UC Wage Records

Like PII in education records protected by FERPA, and confidential information in VR records protected by 34 CFR 361.38, State UC agencies have their own requirements for protecting the confidentiality of quarterly wage records. DOL's confidentiality and disclosure regulations at 20 CFR part 603 govern the disclosure of wage records by States and State UC agencies that administer State UC laws. Section 603.4 requires that State law provide for "maintaining the confidentiality of any UC information which reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars…" See 20 CFR 603.4(b).

Disclosure of confidential UC information falls into two categories: required and permissive. Required disclosures are set out in sections 303 and 1137, SSA, and section 3304 of the Federal Unemployment Tax Act, and listed in section 603.6 of the UC confidentiality regulations. Permissive disclosures of confidential UC information are listed in section 603.5 of the UC confidentiality regulations. Given that WIOA performance accountability is not among the required disclosures in 20 CFR 603.6, the provisions for permissive disclosures apply.

The UC confidentiality regulations permit States to disclose confidential UC information with the informed consent of the individual and, under certain circumstances described below, without the individual's consent, if State law allows and if the disclosure does not interfere with the efficient administration of State UC law. States may disclose confidential UC information to those persons and entities listed in section 603.5, including to "public officials" in the performance of their public duties, in accordance with State law. Some States may narrowly define "public official," as used in section 603.5, so that only particular officials or State agencies may obtain confidential UC information. Because laws, regulations, and procedures vary from State to State, educational agencies and institutions, as well as VR agencies, must consult with individual State UC agencies to determine the appropriate course of action for gaining access to confidential UC records, which may include steps and restrictions in addition to what is required by the Federal requirements outlined below.

It is important to note that, in accordance with section 603.4(b) of the UC confidentiality regulations, the disclosure of aggregate data is not subject to the requirements contained in the confidentiality regulations because aggregate data does not contain confidential UC information. For data to be outside the scope of the UC confidentiality requirements, it must not identify individuals by such characteristics as age, ZIP code, occupations, or a combination of characteristics in the aggregate reports; that is, the data provided cannot "foreseeably be combined with other publicly available information to reveal" particulars about an individual. See 20 CFR 603.4(b).

Permissive Disclosures of Confidential UC Information in UC Wage Records

Confidential UC information means any UC information required to be kept confidential under section 603.4(b) of the confidentiality regulation. However, States may disclose confidential UC information when requested to do so by the individual to whom the information applies, or to public officials and their agents or contractors in the performance of their public duties. See 20 CFR 603.5(d), (e), and (f).

Informed Consent. Educational agencies and institutions, VR agencies, other partner programs under WIOA described above, and WIOA service providers, as well as other entities, may obtain individuals' UC wage data by informed consent if permitted by State law. See 20 CFR 603.5(d). The requirements of section 603.5(d)(2)(i) (specifying the elements that must be included in a written, signed release) and section 603.10 (regarding the disclosure agreement between the entity requesting the information and the State UC agency) must be met for informed consent disclosures.

While the informed consent form may not be open-ended, the specific information to be disclosed to an educational agency or institution, or a VR agency, may include wages over a set time period because the WIOA performance reporting requirements require data on outcomes over several quarters after training or educational program completion. That is, the State UC agency may provide quarterly wage data for a set number of quarters or months, so long as the purpose set out in the informed consent form provides for multiple disclosures. See 20 CFR 603.5(d)(2)(i)(C). Additionally, the agreement between the entity requesting the information and the State UC agency must include the purpose for the disclosure, which purpose may provide for multiple disclosures. See 20 CFR 603.10(b)(1)(i).

Public Officials. In cases where there is not informed consent, disclosure of confidential UC information to a public official, and to his or her agents and contractors, for use in the performance of his or her official duties is permissible where authorized by State law. See 20 CFR 603.5(e) and (f). "Public official" is defined in section 603.2(d)(1) as "an official, agency, or public entity within the executive branch of Federal, State, or local government who (or which) has responsibility for administering or enforcing a law, or an elected official in the Federal, State, or local government."

DOL recently amended the confidentiality and disclosure regulations to clarify the definition of "public official" to specify those State government officials with whom the State may share certain confidential UC information to carry out reporting requirements under WIOA. See 20 CFR 603.2(d)(2). The regulations also enumerate certain additional public officials who may access confidential State wage records needed for performance reporting. Ensuring access to these State wage records allows State agencies to better manage the information for the purpose of making federally required reports on certain program outcomes, cooperate more effectively, and be more informative with respect to Federal program evaluations.

Consistent with 20 CFR 603.2(d)(1), a Federal, State, or local education entity is considered to be in the executive branch of government if—

- It is established and funded under Federal, State or local laws;
- It is operated in accordance with procedures established under such laws; and
- The entity is ultimately under the control of Federal, State or local executive branch officials.

In addition, section 603.2(d)(1) includes in the definition of public official "an elected official in the Federal, State, or local government."

The definition of "public official" specifically includes public institutions of higher education as follows:

> (2) Public postsecondary educational institutions established and governed under the laws of the State. These include the following:
>
> (i) Institutions that are part of the State's executive branch. This means the head of the institution must derive his or her authority from the Governor, either directly or through a State Board, commission, or similar entity established in the executive branch under the laws of the State.

(ii) Institutions which are independent of the executive branch. This means the head of the institution derives his or her authority from the State's chief executive officer for the State education authority or agency when such officer is elected or appointed independently of the Governor.

(iii) Publicly governed, publicly funded community and technical colleges.

(3) Performance accountability and customer information agencies designated by the Governor of a State to be responsible for coordinating the assessment of State and local education or workforce training program performance and/or evaluating education or workforce training provider performance.

(4) The chief elected official of a local Workforce Development Area as defined in WIOA section 3(9).

(5) A State educational authority, agency, or institution as those terms are used in the Family Educational Rights and Privacy Act, to the extent they are public entities.

For example, officials of State agencies responsible for institutions of higher education, such as the State council on higher education or the State superintendent of schools, would be in the executive branch. While these entities would generally have been considered public officials under the provisions of 20 CFR 603.2(d) prior to the 2016 amendment, the regulation clarifies that public institutions of higher education are in the executive branch if they meet the above factors.

The first part of the definition of public official requires that an executive branch entity must have responsibility for "administering or enforcing a law." Such entities would be considered to be administering a law if the purpose of matching education records with wage records is to report information that is required under Federal, State or local laws. To clarify that requirement, the Department of Labor has revised section 603.5(e) to include the following:

(2) For purposes of section 603.2(d)(2) through (5), "performance of official duties" includes, in addition to the activities set out in paragraph (e)(1) of this section, use of the confidential UC information for the following limited purposes:

(i) State and local performance accountability under WIOA section 116, including eligible training provider performance accountability under WIOA sections 116(d) and 122;

(ii) The requirements of discretionary Federal grants awarded under WIOA; or

(iii) As otherwise required for education or workforce training program performance accountability and reporting under Federal or State law.

The above discussion applies only to those entities that are public officials as defined in 20 CFR 603.2(d). Community-based organizations, and for- or nonprofit educational entities or service providers, may not obtain confidential UC information.

In addition, an educational agency or institution, or a VR agency, meeting the definition of public official must enter into an agreement for disclosure of confidential UC information that

meets the requirements of section 603.10. That section requires the State UC agency to execute a written, enforceable agreement with the agency or entity requesting the records before it may disclose confidential UC records to public officials, their agents or contractors. The agreement must include the following components:

- A description of the specific information to be disclosed and the purposes for which the information is sought;
- A statement that those who request or receive information under the agreement will be limited to those with a need to access it for purposes listed in the agreement;
- The methods and timing of requests for information and responses to those requests, including the format to be used;
- Provision for paying the State UC agency for any costs of furnishing the information if more than an incidental amount of staff time and more than nominal processing costs are involved in making the disclosure, as provided by section 603.8(b) of the regulations;
- Provision for safeguarding the information disclosed, as required by section 603.9; and
- Provision for on-site inspections of the education agency, entity, or contractor to assure that the requirements of the State's law and the agreement are being met.

Many of these elements overlap the elements required under the FERPA for disclosures to authorized representatives. We note that the VR regulation on confidentiality does not require that the agency enter into an agreement to disclose VR information for purposes directly related to the administration of the VR program. However, a written agreement is required for sharing personal information with another entity for either audit and evaluation purposes, or for another program's purpose. There are no specific VR content requirements for data exchange agreements; such agreements must be consistent with statutory and regulatory requirements at 34 CFR 361.38. ED expects to issue guidance in the near future regarding the development of written agreements for the purpose of ensuring the confidentiality of personal information held by the VR agencies. See Attachment II for a comparison of the FERPA and UC requirements for an agreement to disclose information.

Agents and contractors of public officials. Regulations in 20 CFR part 603 permit the disclosure of confidential UC information to agents and contractors of public officials. Specifically under 20 CFR 603.5(f), State UC agencies may disclose confidential UC information to the agent or contractor of a public official so long as the public official has a written, enforceable agreement with the State UC agency to obtain the data, the public official agrees in the written agreement to be responsible for any failure by the agent or contractor to comply with the safeguards and security requirements of 20 CFR 603.9 and 603.10(a), the confidential UC information will be used for a permissible purpose, and the requirements for all agreements in 20 CFR 603.10(b) are met.

In this context an "agent" is a person or an entity who or which acts instead of and on behalf of a principal. A contractor is a person or entity with whom a public official enters into an agreement to provide services, usually, in this context, for data analysis.

Wage Record Interchange System (WRIS) and WRIS2

WRIS is an automated system for facilitating the exchange of wage records among participating States for the purpose of providing interstate access to wage record data to support performance reporting and evaluations of DOL-funded employment and training programs under WIA (the predecessor to WIOA). WRIS2 extends the WRIS record-sharing model for purposes of fulfilling Federal or State performance reporting and evaluation requirements to programs administered by partners in the one-stop system, identified in WIOA, that are not administered by DOL, including the following programs administered by ED: AEFLA, authorized under title II of WIOA; the Vocational Rehabilitation Services program authorized under title I of the Rehabilitation Act of 1973 as amended by Title IV of WIOA; and the postsecondary career and technical educational programs under the Carl D. Perkins Career and Technical Education Act. The automated system that supports the WRIS and WRIS2 is funded by DOL through a cooperative agreement with Maryland to provide the technology infrastructure that facilitates the information exchange among the States. WRIS and WRIS 2 function only as gateways for exchanging the information, and the data are not retained in a database.

The Departments and States are collaborating to assess the current WRIS and WRIS2 agreements and to develop a new agreement, or agreements, that would address all programs' needs for interstate wage record data under WIOA and the FERPA written agreement and reasonable methods requirements. The agreement or agreements also would address other FERPA compliance requirements that govern the disclosure of PII from education records for the purpose of assessing and reporting under sections 116 and 122 of WIOA.

Until the new agreement or agreements are negotiated by the Departments and the States, and have been signed by the States, Options 7 and 8 set out below provide State educational authorities, agencies, and institutions, as well as State workforce and VR agencies and service providers, information on how to match PII from education records and personal information from VR records with interstate wage records as required by 20 CFR 677.175 for performance accountability reporting.

The Departments will provide further guidance regarding the WRIS and WRIS2 agreements and the new model agreements when they are finalized.

For purposes of conducting interstate data sharing under WRIS and WRIS2, the governor in each State designates one or more PACIAs. The PACIA is responsible for coordinating the State's program for assessing State and local program performance, evaluating training provider performance as was required under the WIA, and is responsible for coordinating data matching requests and aggregating the matched data.

WIOA contains the same authorities as WIA to establish a system such as WRIS or WRIS 2 for the purposes of reporting under section 116 and 122 of WIOA. Unlike WIA, section 116 of WIOA applies to all of the WIOA core programs, which include the Adult, Dislocated Worker and Youth programs under Title I; the AEFLA programs under title II; the Wagner-Peyser

Employment Services as amended under title III; and the Vocational Rehabilitation programs as amended under title IV.

We note that the existing WRIS2 agreement requires that any data exchange under the WRIS2 data sharing agreement be conducted in a manner consistent with FERPA and applicable State law. Thus, before a State educational authority discloses PII from education records to the PACIA, the authority must enter into a written agreement with the PACIA, compliant with FERPA's written agreement requirements, authorizing the PACIA to serve as its authorized representative and also authorizing the PACIA to redisclose the PII from education records for which matching wage records are requested to other States' UC agencies. The State educational authority must also enter into written agreements with any and all other third parties with whom the PACIA subsequently rediscloses the PII from education records to conduct the matching needed for performance reporting, unless the original written agreement with the PACIA designates the third parties in that agreement as additional authorized representatives of the State educational authority and the FERPA requirements for written agreements and reasonable methods are met by the PACIA in making the further disclosures of the PII from education records to these additional authorized representatives. See 34 CFR 99.35.

Options for Matching Student Data with UC Wage Records to Report Performance Outcomes

The State should determine which agency or agencies within the State are responsible for WIOA required performance reporting and program evaluation. In making this decision the State should take into account factors such as:

- Whether existing State data infrastructures can be used. (E.g., can an existing SLDS be used for this purpose?)
- Whether the agency has the requisite resources to conduct quality data matching and ensure data security and confidentiality.
- Whether unique State laws and regulations govern data use.
- Whether the State needs to conduct interstate matching, as well as intrastate matching, to meet its obligations to report on participants who work in another State.

This section provides examples of various options that will help States determine the best approach to use in performing data matching. These options take into account the particular needs of the entities responsible for providing performance information, the varying requirements of particular State laws relating to the use of wage, education, and other program records, differing State organizational structures, and other factors. The examples provided below do not cover all possible situations, but address only those the Departments consider to be the most common options selected by States. Attachment I provides a chart describing some of the ways in which educational authorities and training providers may obtain wage records for audit and evaluation and performance reporting purposes. In addition, each option is accompanied by graphics describing the flow of requests and results between and among agencies.

These options and all other information in this guidance do not take into consideration State-specific laws providing further requirements or restrictions on the disclosure and use of education and wage records. As stated earlier in this guidance, the Departments are available to provide technical assistance to States regarding the development of methods that best fit States' needs.

While these options focus on using an exception to prior written consent under FERPA and on exceptions to the confidentiality requirements in 20 CFR part 603, educational agencies and institutions, VR agencies, ETPs, and other service providers are encouraged to obtain prior written consent from program participants when feasible. One program that is successfully relying on a consent model is the AEFLA program, where providers currently obtain written consent from program participants prior to disclosing PII from education records for the purpose of conducting cross-data matching with UC wage data. The Departments recommend that participants of programs under WIOA, including the VR and AEFLA programs, be made aware that their information is being disclosed, how their information is being used, and how it is being protected from further disclosure.

The Departments recognize that obtaining prior written consent may not be a feasible option in all circumstances under WIOA. This may be the case for ETP reporting requirements under section 116 of WIOA, which requires ETPs to report on the levels of performance achieved in aggregate by all individuals engaged in a program of study, whether they are WIOA participants or not. Thus, sometimes FERPA's permissible audit or evaluation exception to written consent may be the only viable method to permit the disclosure of PII from education records to State UC agencies as a designated authorized representative of the State or local educational authority.

As discussed in detail earlier in this guidance, FERPA's audit or evaluation exception allows the disclosure, without the parent's or eligible student's consent, of PII from education records to authorized representatives of State or local educational authorities responsible for auditing or evaluating the Federal or State supported education programs administered by the entities of which it has oversight, including States' job training or adult education programs under WIOA. With respect to ETPs, States may want to consider assigning responsibility for ETP reporting under title I of WIOA to the State educational authority in order to facilitate the necessary data sharing. In some States, the State educational authority may not otherwise have responsibility for overseeing ETPs that are not public institutions, but those ETPs may receive Federal funds under a program administered by the Secretary of Education and therefore be subject to FERPA.

By assigning responsibility for ETP reporting to the State educational authority, the authority could, through FERPA's audit or evaluation exception, authorize representatives, including the State UC agency, to receive PII from education records or other identifying information from the ETPs and carry out the matching needed to produce the required ETP performance reports. In addition, those ETPs may not meet the public official definition in 20 CFR 603.2 for purposes of the UC confidentiality regulations, whereas the State educational authority would meet that definition and could facilitate the match with the State UC agency.

The audit or evaluation exception would, therefore, permit the disclosure of PII from education records to authorized representatives of State or local educational authorities as needed to link PII from education records with wage records for the evaluation of Federal or State supported education programs. The reports on employment outcomes required under WIOA would

constitute an audit or evaluation of a Federal or State supported education program because they measure and report on the overall effectiveness of WIOA programs at improving the career readiness of program participants. The following options describe how the audit or evaluation exception would apply when matching education data with wage data for program evaluation and performance accountability purposes. The options include methods for conducting intrastate and interstate record matching that are compliant with Federal confidentiality requirements.

Each of the options below is accompanied by a graphic description of work flow. The first chart describes the icons used in the flow charts. For all options where service providers/ETPs or State educational authorities are included in the data exchange, either the service provider/ETP or the State educational authority should meet FERPA's recordkeeping requirements for the disclosure to the State UC agency. In addition, for all options where the State educational authority designates the State Workforce Agency (SWA) or the State UC agency as an authorized representative, the written agreements between or among agencies must be both FERPA-compliant and consistent with 20 CFR 603.10. Similarly, for those options that involve data matching between VR records and UC wage records, the written agreement must satisfy the requirements of 34 CFR 361.38 and 20 CFR 603.10.

In addition, retention or return/disposal of confidential UC information is specific to the purpose set out in each agreement under 20 CFR 603.10, and must be included in each agreement. Thus, this issue is not discussed in each option below, but is discussed in Attachment II – Required Components of a Written Agreement.

NOTE: Options 1-6 cover only how entities may match SSNs against wage data from the State UC agency in which the entity is located. For options discussing how entities may match SSNs against wage data from one or more other State UC agencies, please see options 7 and 8.

Also, note that these options are intended to provide a high-level overview of the flow of data among agencies and of required written agreements. For example, an option may illustrate that a State educational authority designates a State UC agency as its authorized representative through a written agreement, but will not provide detail on the specific elements to be included in the agreement or other criteria to comply with FERPA's audit or evaluation exception, such as the requirement for the entity disclosing education records to use reasonable methods to ensure to the greatest extent practicable that its designated authorized representative is FERPA-compliant. These details can be found in the *FERPA Provisions* section of this guidance.

Each option highlighted below will include a brief summary and diagram using the following icons:

Service Provider: Service provider is a broad term referring to any entity carrying out training for or providing services to core WIOA program participants. A subset of the service providers carrying out title I programs are ETPs, organizations determined by a State or local board to be eligible to provide job training programs to core WIOA program participants. Service providers also include AEFLA-eligible providers offering adult and literacy services and providers of services to VR participants. Service providers that meet the public official exception in the UC regulations, such as public postsecondary education agencies and institutions in the State education system, may be considered public officials for data agreements with a State UC agency.

State Educational Authority (Ed. Authority): The State educational authority could refer to the State educational agency (SEA) but may also be a State postsecondary commission, workforce commission or agency, the State's department of labor, or any other entity that is responsible for and authorized under State law to supervise, plan, coordinate, advise, audit, or evaluate elementary, secondary, or postsecondary Federal or State supported education programs and services in the State. Please see the *Definitions* section for additional information.

Authorized Representative (Auth. Rep): The State Educational authority for WIOA programs may designate agencies such as a State UC agency to serve as its authorized representative through a written agreement that meets FERPA's requirements to conduct an audit or evaluation of Federal or State supported education programs. Please see the *Definitions* section for additional information.

Public Official: This icon represents entities that meet the UC definition of a "public official". The State UC agency may share confidential UC information with public officials to carry out reporting requirements under the law. Please see the *Definitions* section for additional information.

Individual-level Data: This icon represents identifiable, individual-level data being shared. The data include personal identifiers needed to match individuals across entities, as well as program participation or wage and employment data, depending on which entity is disclosing the data. Individual-level data may be PII from education records, confidential UC information, or personal information from VR program records (please see the *Definitions* section for additional information.)

Linking Data: This icon represents the linking of multiple sets of data.

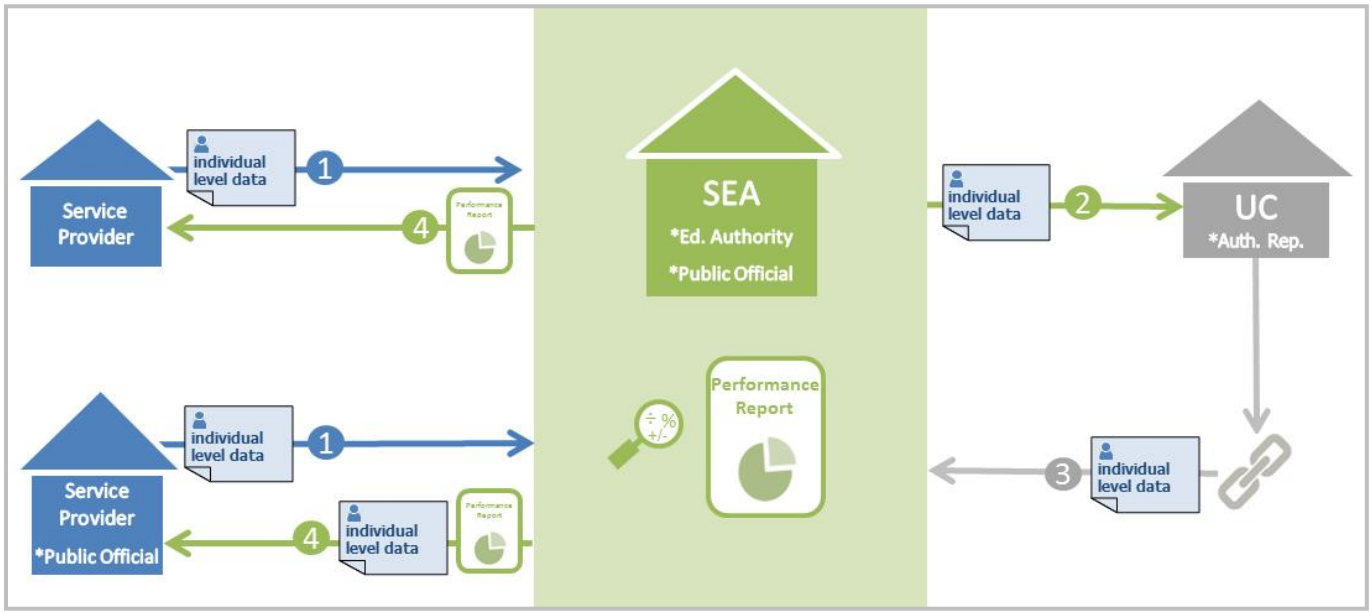
Analyzing Data: This icon represents the role of analyzing individual level data to evaluate programs and create the WIOA required performance reports for educational entities, ETPs, and the core programs.

Performance Reports: This icon represents a report containing the required performance metrics for educational entities and ETPs. The report only includes aggregate, de-identified information; no identifiable participant outcomes are shared. Since no identifiable participant information is included, these reports may be shared with other agencies and/or made publicly available.

NOTE: In each of the graphics below that accompany the various options, the activities reflected in each shaded area are conducted by the entity whose or which icon is in the shaded area.

Option 1: A State Educational Authority Discloses PII from Education Records to the State UC Agency as its Authorized Representative

In this option, the SEA is the State educational authority (Ed. Authority) over core WIOA programs and designates the State UC agency as its authorized representative. The SEA takes a lead role in collecting program participation data from service providers, such as ETPs and sends program participant PII from education records to the State UC Agency. The State UC agency uses the PII from education records to link individuals to wage information and sends the matched, individual level records to the SEA that meets the public official exception under UC regulations. The SEA is responsible for analyzing program participation data and wage records to create performance reports for each core program, and reports by ETP. The SEA may share the de-identified, aggregate performance reports with each ETP, and may share individual level wage records with ETPs that meet the public official exception in the UC confidentiality regulations. Because the type of information that can be shared with service providers depends on whether the service provider meets the exception for public officials in the UC confidentiality regulations, the chart below contains two paths, one for service providers that are not public officials (top) and one for service providers that are public officials (bottom).



1. Service providers such as ETPs and AEFLA-eligible providers share PII from education records or program participation data with the SEA, the Ed. Authority, to audit or evaluate WIOA core programs and meet the recordkeeping requirements for disclosure to the SEA.

2. The Ed. Authority sends the PII from education records collected from the service providers to the State UC agency; the FERPA regulations at 34 CFR 99.35 require the Ed. Authority to designate the State UC agency as its authorized representative.

3. The State UC agency links data and appends wage records to PII from education records, then sends individual level data back to the Ed. Authority, which is a "public official" as defined in Federal UC confidentiality regulations.

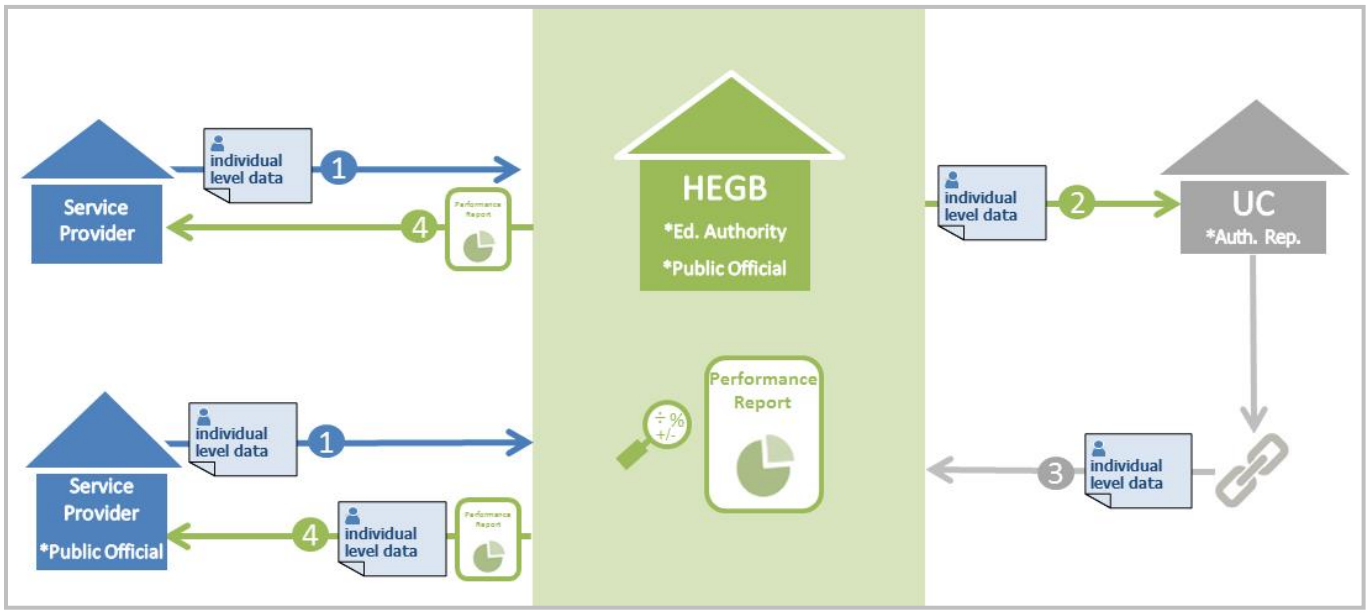
4. The Ed. Authority analyzes the data and creates WIOA evaluation and performance reports. De-identified, aggregate reports may be shared with all service providers such as ETPs. PII from education records with wage records may only be shared with service providers such as ETPs who meet the "public official" exception.

Required written agreement(s):

- SEA, as the Ed. Authority, and State UC agency: includes FERPA requirements for the SEA to designate the State UC agency as its authorized representative and otherwise complies with the written agreement and reasonable methods requirements in 34 CFR 99.35; includes the UC confidentiality regulations consistent with 20 CFR 603.10(b).

Option 2: A State's Higher Education Governing Board, as a State Educational Authority, Discloses PII from Education Records to the State UC Agency as its Authorized Representative

Higher education is structured very differently across the fifty States. In States that have a Higher Education Governing Board (HEGB) with authority under State law to evaluate Federal or State supported postsecondary education programs within the State, the State may rely on the HEGB to perform these linkages. Under this scenario the HEGB obtains PII from education records for all individuals engaged in a program of study for purposes of the performance reports under section 116(d)(4) of WIOA, or for WIOA participants for purposes of reporting under section 122 of WIOA, from ETPs in the States and may provide it to the State UC Agency under FERPA's audit or evaluation exception by designating the State UC Agency as its authorized representative. The State UC agency then conducts the match between the PII from education records and its State UC wage records, appends the wage information to the HEGB file, and returns it to the HEGB, which uses it to evaluate the Federal or State supported education programs. This is permissible because the HEGB is a "public official" under 20 CFR 603.2(d) responsible for performance accountability reports. However, the HEGB may not provide individual level data back to private for-profit or nonprofit educational institutions. It may provide only aggregate information to those institutions. If the HEGB does not otherwise have authority over certain training providers that are ETPs, the State would have to assign responsibility to the HEGB to audit or evaluate such providers for purposes of carrying out title I of WIOA.



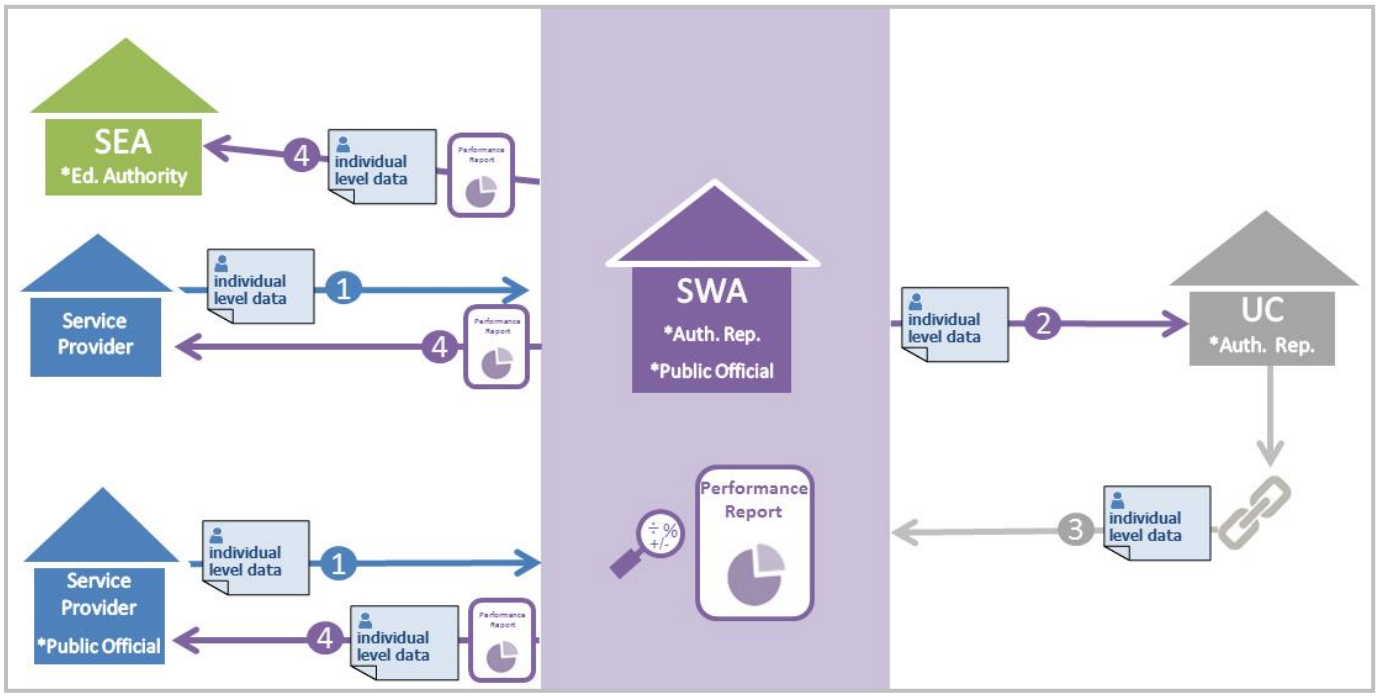
1. Postsecondary educational institutions and ETPs disclose PII and program participation data to the HEGB, the Ed. Authority to audit or evaluate core WIOA programs.
2. HEGB shares PII from education records with the State UC Agency; the HEGB must designate the State UC agency as its authorized representative pursuant to 34 CFR 99.35.
3. The State UC agency links data and appends wage records to PII from education records, then returns individual level data to the HEGB if the HEGB meets the definition of a "public official" in the UC confidentiality regulations.
4. HEGB analyzes the data and creates WIOA evaluation and performance reports. De-identified, aggregate reports may be shared with all public postsecondary educational institutions and ETPs. PII from education records with wage records may only be shared with postsecondary educational institutions and ETPs that meet the "public official" exception.

Required written agreement(s):

- HEGB and State UC Agency: includes FERPA requirements for HEGB to designate the State UC Agency as its authorized representative and otherwise complies with the written agreement and reasonable methods requirements in 34 CFR 99.35, and is consistent with UC confidentiality regulations at 20 CFR 603.10(b).

Option 3: A State Educational Authority Discloses PII from Education Records to a State Workforce Agency in addition to the State UC Agency as its Authorized Representatives

To fulfill the necessary reporting requirements under WIOA, the State educational authority may choose to designate other authorized representatives, in addition to the State UC agency, to support performance accountability and auditing and evaluation of those federally-supported education programs. The SEA, as the State educational authority, may designate a SWA to receive PII from education records to assist in preparing the performance reports. The State educational authority would submit PII from education records to the State workforce agency, which would submit the PII to the State UC agency, also designated an authorized representative by the SEA, to conduct the match and return identified wage information to the SWA, a public official. The information returned by the SWA to the educational institutions may include individual level data where such institutions meet the public official exception in the UC confidentiality regulations, and only aggregate information where the educational institution does not meet that exception.



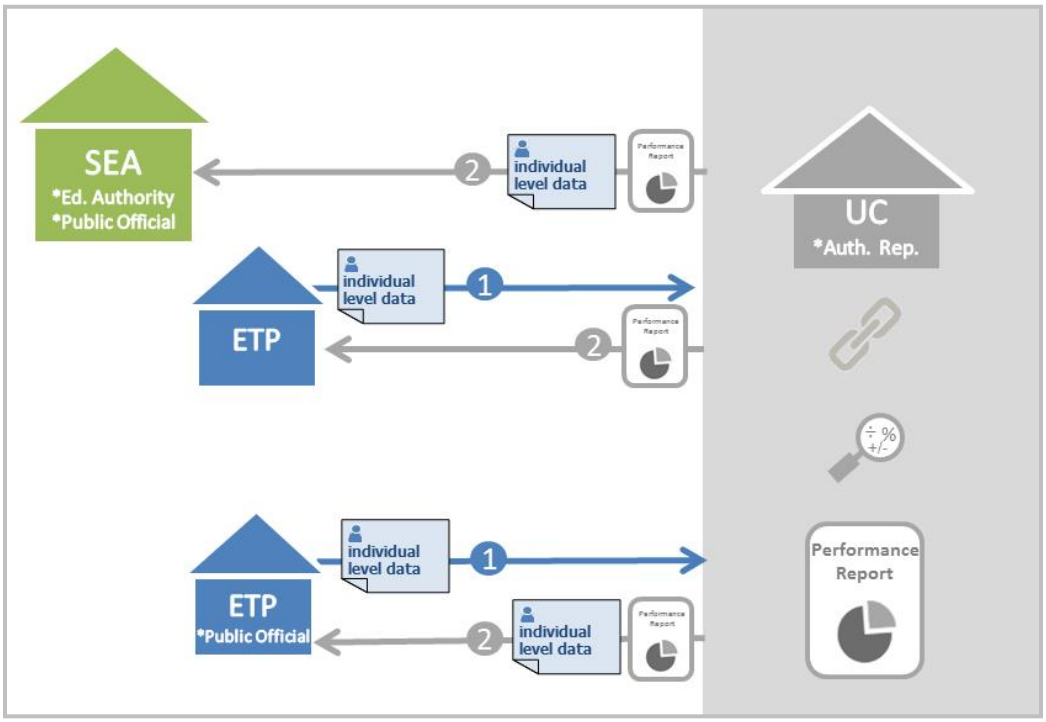
1. Service providers such as ETPs and AEFLA eligible providers submit PII from education records and program participation data to the SWA, an authorized representative, to audit or evaluate core WIOA programs.
2. SWA sends PII from education records to the State UC agency, another authorized representative.
3. The State UC agency links wage records to PII from education records, then returns individual level data to the SWA, which is a "public official" as defined in Federal UC confidentiality regulations.
4. SWA analyzes the data and creates WIOA evaluation and performance reports. De-identified, aggregate reports may be shared with the SEA and all service providers and ETPs. PII from education records with wage records may only be shared with service providers and ETPs who meet the public official exception in the UC confidentiality regulations

Required written agreement(s):

- SEA and State UC Agency: includes FERPA requirements for SEA to designate the UC Agency as its authorized representative and otherwise complies with the written agreement and reasonable methods requirements in 34 CFR 99.35, and is consistent with 20 CFR 603.10(b).
- SEA and SWA: includes FERPA requirements for SEA to designate the SWA as its authorized representative and otherwise complies with the written agreement and reasonable methods requirements in 34 CFR 99.35 and is consistent with 20 CFR 603.10.

Option 4: Educational Agencies or Institutions Disclose PII from Education Records to a State UC Agency, as an Authorized Representative of the State Educational Authority

In this example, the SEA, as the State educational authority, may permit educational institutions to disclose (without consent) PII from education records directly to the State UC agency (serving as the SEA's authorized representative) to conduct the match with wage records and return the wage information requested by the educational institution to enable preparation of the performance reports. As noted above, the record-keeping required by FERPA regarding the disclosure could be met by either the SEA or the disclosing educational institutions. In the case of educational institutions that meet the definition of a "public official" under the UC confidentiality regulations, the educational institution could receive back the individual level data, including the individual wage data. Educational institutions that do not meet the exception for public officials in the UC confidentiality regulations may only receive back aggregate data.



1 Educational institutions submit PII from education records, and program participation data, to the State UC agency. This is permissible if the SEA designates the State UC agency as its authorized representative for audit and evaluation purposes.

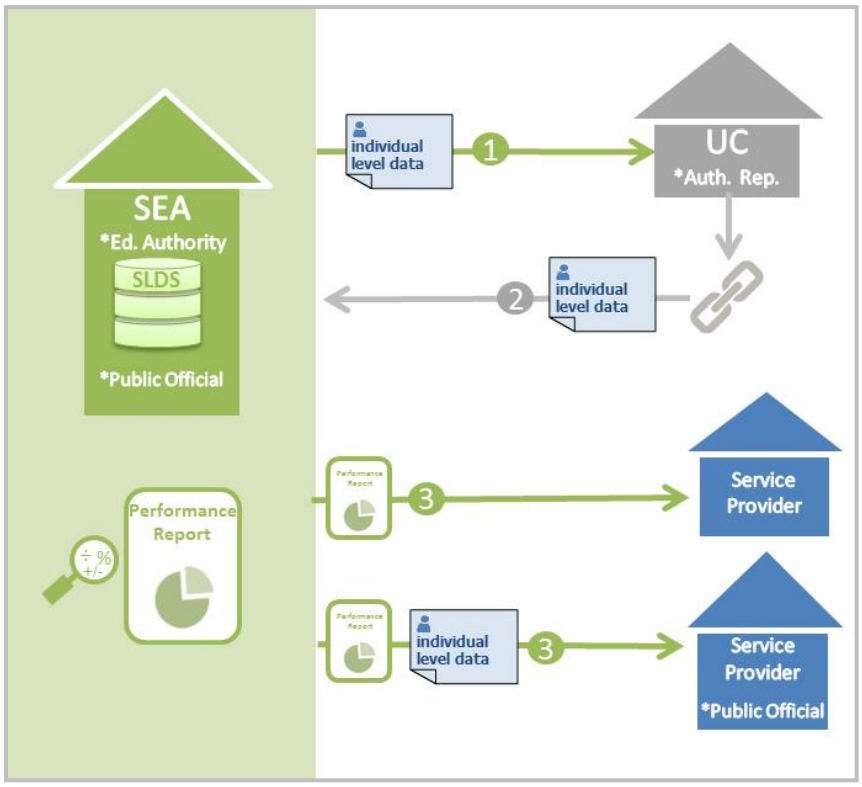
2 The State UC agency matches data and appends wage records to PII from education records and returns de-identified aggregate reports to ETPs and may only share PII from education records and individual-level wage records with the SEA and educational institutions who meet the "public official" exception (for example, public community colleges) in the UC confidentiality regulations.

Required written agreement(s):

- SEA and State UC Agency: includes FERPA requirements for SEA to designate the UC Agency as its authorized representative and otherwise complies with the written agreement and reasonable methods requirements in 34 CFR 99.35, and is consistent with UC confidentiality requirements in 20 CFR 603.10(b).

Option 5: A State Educational Authority, Operating a Statewide Longitudinal Data System (SLDS), Discloses PII from Education Records to the State UC Agency as an Authorized Representative of the State Educational Authority

An SEA, as the State educational authority operating a Statewide Longitudinal Data System (SLDS) that contains core WIOA program participant data, may redisclose PII from education records to the State UC agency by designating the State UC agency as the SEA's authorized representative to evaluate core WIOA programs. The State UC agency then matches the PII from education records to its UC wage records, adds the wage information to the SLDS file, and sends PII and matched wage records back to the SEA. This is permissible because the SEA meets the definition of a "public official" under the UC confidentiality regulations. The linked education and workforce data, now integrated in the SLDS, may only be used for permitted purposes, including the production of mandatory WIOA reporting. Individual level data may be returned to service providers such as ETPs that meet the "public official" exception in the UC confidentiality regulations, but only aggregate data may be returned to service providers that do not meet that exception.



1. SEA extracts WIOA participant PII from the SLDS and sends it to the State UC Agency, an authorized representative to audit or evaluate WIOA programs.
2. The State UC agency links data and appends wage records to PII from education records then returns individual level data back to the SEA as a "public official."
3. SEA analyzes the data and creates WIOA evaluation and performance reports. De-identified, aggregate reports may be shared with all service providers and ETPs. PII from education records with wage records may only be shared with service providers and ETPs that meet the "public official" exception.

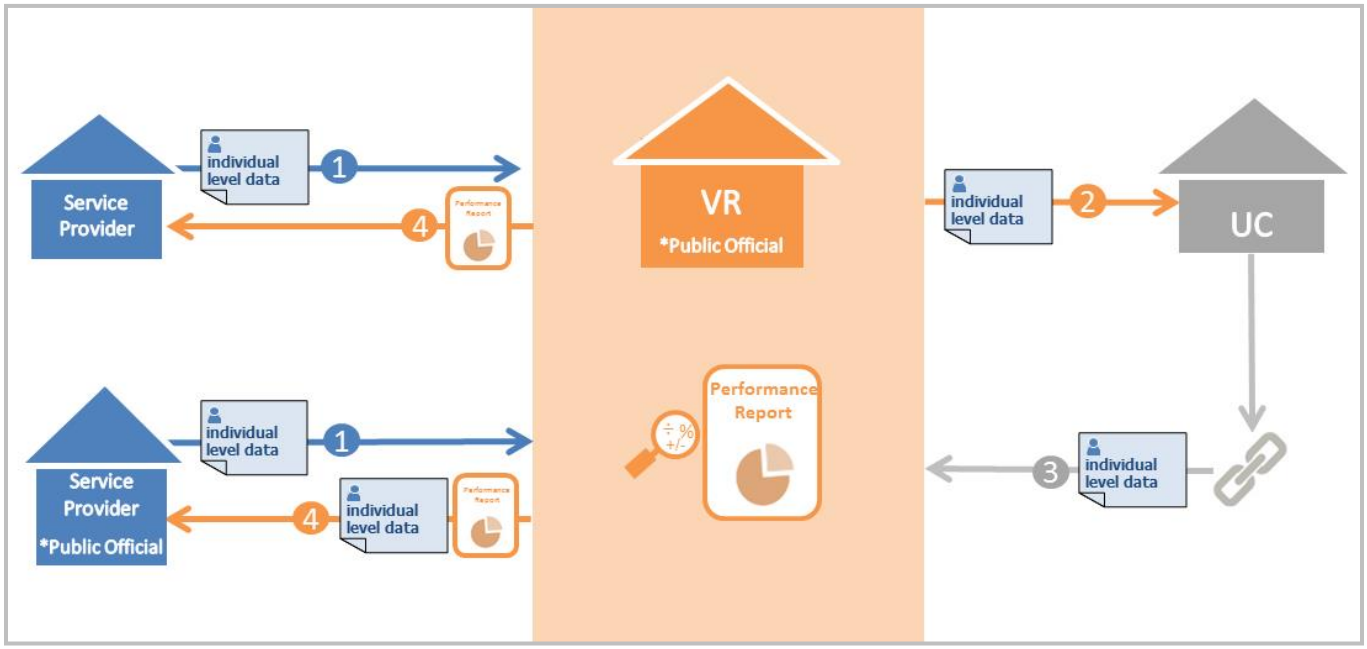
Required written agreement(s):

- SEA and State UC Agency: includes FERPA requirements for SEA to designate the State UC Agency as its authorized representative and otherwise complies with the written agreement and reasonable methods requirements in 34 CFR 99.35 and is consistent with UC confidentiality regulations at 20 CFR 603.10(b), since SEA is a public official.

Option 6: A State VR Agency Discloses Personal Information to the State UC Agency for Conducting an Audit or Evaluation of the VR Program

As stated earlier in this guidance, a VR agency is not required by 34 CFR 361.38(d) to obtain informed written consent from the individual prior to conducting the matching of VR records with the State's quarterly wage records for the purpose of conduct an audit or evaluation of the VR program. However, 34 CFR 361.38(d) requires the VR agency to enter into a written agreement with the entity receiving the personal information from the VR records. Thus, a VR agency (whether located within a State Department of Education, State Department of Labor, or other State agency) may submit personal information to the State UC agency to match the VR data with the wage data for audit, evaluation, and research purposes so long as the release of the data is done in accordance with a written agreement. The VR agency must ensure that the UC agency only uses the data for the purposes of conducting the audit or evaluation and manages the information in a manner that safeguards the confidentiality of the information consistent with the requirements of 34 CFR 361.38.

Unlike the FERPA regulation and DOL's confidentiality and disclosure regulations, there is no VR requirement that there be a written agreement between the VR agency and the State UC agency prior to disclosing VR data to the State UC agency when that disclosure is for purposes directly related to the VR agency's administration of the VR program (34 CFR 361.38(b)), such as would be required to match VR records with UC wage records for purposes of complying with the performance accountability requirements, specifically determining performance under the primary indicators of performance at section 116(b)(2)(A)(i) of WIOA. No written agreement is needed for purposes directly related to the administration of the VR program under 34 CFR 361.38(b), but such written agreement is required when the release is for an audit, evaluation, or research purpose even if that audit, evaluation , or research is connected to the VR program (34 CFR 361.38(d)). UC regulations require that the State UC agency enter into a written agreement, consistent with section 603.10, before wage records may be disclosed to the VR agency. Upon completing the match, the State UC agency returns the results of the match back to the VR agency at the individual level. The final released product must not reveal any personal information without the informed written consent of the involved individual or the individual's representative (see 34 CFR 361.38(d)(5)).



1 Service providers share personal information and program participation data with the State VR agency.

2 The VR agency consolidates personal information from multiple service providers and shares with the State UC agency.

3 The State UC agency links data and appends confidential UC information from wage records, then sends individual level data back to the VR agency, which is a "public official" under the UC confidentiality regulations.

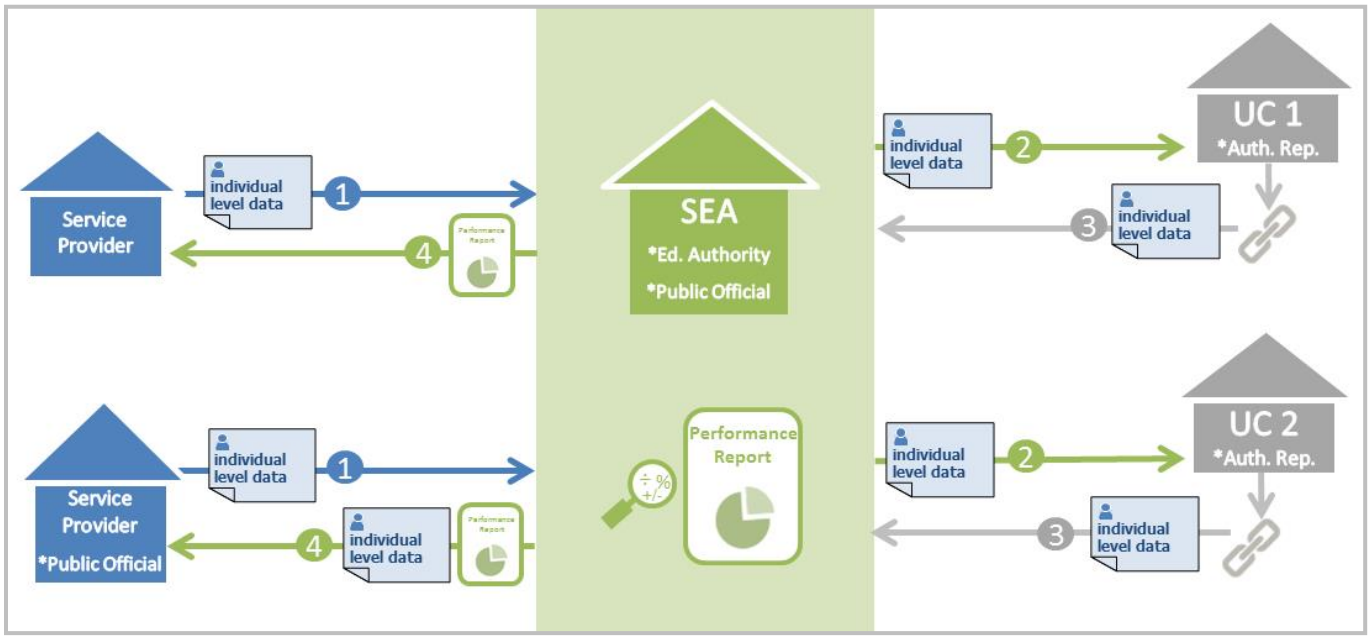
4 The VR agency analyzes the data and creates WIOA evaluation and performance reports. De-identified, aggregate reports may be shared with all service providers. Personal information with wage records may only be shared with service providers who meet the "public official" exception

Required written agreement(s):

- State UC Agency with VR: a written agreement containing all requirements in 20 CFR 603.10 and 34 CFR 361.38. FERPA does not apply in this scenario.

Option 7: A State Educational Authority Discloses PII from Education Records to State UC Agencies in One or More States, as Authorized Representatives of the State Educational Authority

In many States the relevant labor markets for the employment of WIOA participants and individuals engaged in ETP programs of study may include multiple States. To produce accurate information on employment outcomes the SEA, as the State educational authority, may want to share PII from education records under FERPA's audit or evaluation exception by designating State UC agencies in one or more States as its authorized representative for purposes of preparing performance reports. The State UC agencies then conduct the matches between the PII from education records and its State wage records, append the wage information to the files of the State educational authority, and return the files to the State educational authority, which uses the information to evaluate the Federal or State supported education programs (e.g., ETPs under title I of WIOA, AEFLA under title II of WIOA, postsecondary vocational education under the Carl D. Perkins Career and Technical Education Act). The individual level data may be returned to service providers, such as ETPs, that meet the exception for "public officials" in the UC confidentiality regulations, but only aggregate data may be returned to service providers that do not meet that exception.



1. Service providers, such as ETPs, share PII from education records and program participation data with the SEA, the State educational authority over core WIOA programs.
2. SEA shares PII from education records with multiple State UC agencies; the SEA must designate each State's UC agency as its authorized representative pursuant to 34 CFR 99.35.
3. Each State UC agency matches data and appends wage records to PII from education records; the State UC agency then returns individual level data back to the SEA, a "public official."
4. SEA analyzes the data and creates WIOA evaluation and performance reports. De-identified, aggregate reports may be shared with all service providers and ETPs. PII from education records with wage records may only be shared with service providers such as ETPs that meet the "public official" exception.

Required written agreement(s):

- SEA will need separate written agreements with each State UC agency: includes FERPA requirements for the SEA to designate the State UC agency as its authorized representative and otherwise meets the written agreement and reasonable methods requirements in 34 CFR 99.35; is consistent with UC confidentiality regulations at 20 CFR 603.10.

Option 8: Accessing Interstate Wage Record Data via the Wage Record Interchange System 2 (WRIS 2)

To meet their performance reporting and evaluation requirements under WIOA, States must match program participant records with both inter- and intrastate wage records, as appropriate, to account for the employment outcomes of those participants in WIOA core programs and certain other WIOA-authorized programs. A possible option for States is to build upon the current Wage Record Interchange Systems (WRIS and WRIS 2) through the State's PACIA.

WRIS is an automated system that provides interstate access to wage record data to support performance reporting and evaluations of DOL-funded employment and training programs under the Workforce Investment Act of 1998 (WIA) (the predecessor to WIOA). WRIS2 enables participating States to meet Federal or State performance reporting and evaluation requirements for programs administered by partners in the one-stop system.

Under the current WRIS2 agreement, each program or entity, including a TPE, desiring to match program participant data against wage records for performance accountability reporting must enter into a separate agreement with the PACIA; the agreement must incorporate the confidentiality guidelines of their State. Thus, a TPE disclosing SSNs to the PACIA must have an agreement with the PACIA before data are shared. The current WRIS2 agreement permits the PACIA to return only aggregate reports to TPEs.

If the requestor is subject to FERPA, or the individual level data to be sent to the PACIA are subject to FERPA, then the agreement with the PACIA must include all the requirements in 34 CFR 99.35(a)(3), and there must be agreements with all other parties, including DOL's contractor and other States, to which the PACIA will send the PII from education records that are subject to FERPA. Attachment II sets out the requirements for a written agreement.

Governor designates the educational authority as a PACIA and the educational authority signs the WRIS agreement: The educational institutions can disclose PII to the educational authority/PACIA and the educational authority/PACIA can query the WRIS2 for the purpose of ETP performance reporting. In this formulation, because the educational institutions are private entities, and therefore not public officials, the State educational authority/PACIA may only return aggregate data to the educational institution.

Governor does not designate the educational authority as a PACIA: The state educational authority could enter into a third party agreement under WRIS2 allowing the PACIA to query the WRIS2 for the ETP performance reporting. For the reasons described above, the PACIA would only be able to return aggregate data to the state educational authority which the state educational authority would then return to the educational institution.

If an educational institution that needs interstate wage data for performance accountability reporting is a private entity over which the State would not otherwise have oversight authority, a possible approach is for the State to designate a State entity as having responsibility for overseeing the WIOA ETP reporting provisions in the State, making that entity a State educational authority pursuant to FERPA. Once a State educational authority is designated, that authority must comply with all of the FERPA requirements, including those in 34 CFR 99.35(a)(3), to disclose PII from education records to other recipients (other than entities and officials listed in 34 CFR 99.31(a)(3)) in order to meet the performance reporting and evaluation requirements under WIOA.

The VR agency is permitted to release personal information to the PACIA and to all third parties (including DOL's contractor and other States) to which the PACIA will send personal information from VR records for performance reporting and evaluation purposes. If the individual level data to be sent to the PACIA are subject to VR confidentiality regulations at 34 CFR 361.38, then the agreement with the PACIA must include all the relevant requirements in 34 CFR 361.38. See 34 CFR 361.38(d). There are no specific VR content requirements for data exchange agreements. However, in order to ensure that the content of VR data exchange agreements meet the statutory and regulatory requirements, ED intends to issue guidance in the near future specifically regarding written agreements required by 34 CFR 361.38, particularly those required for audit, evaluation, and research purposes at 34 CFR 361.38(d).

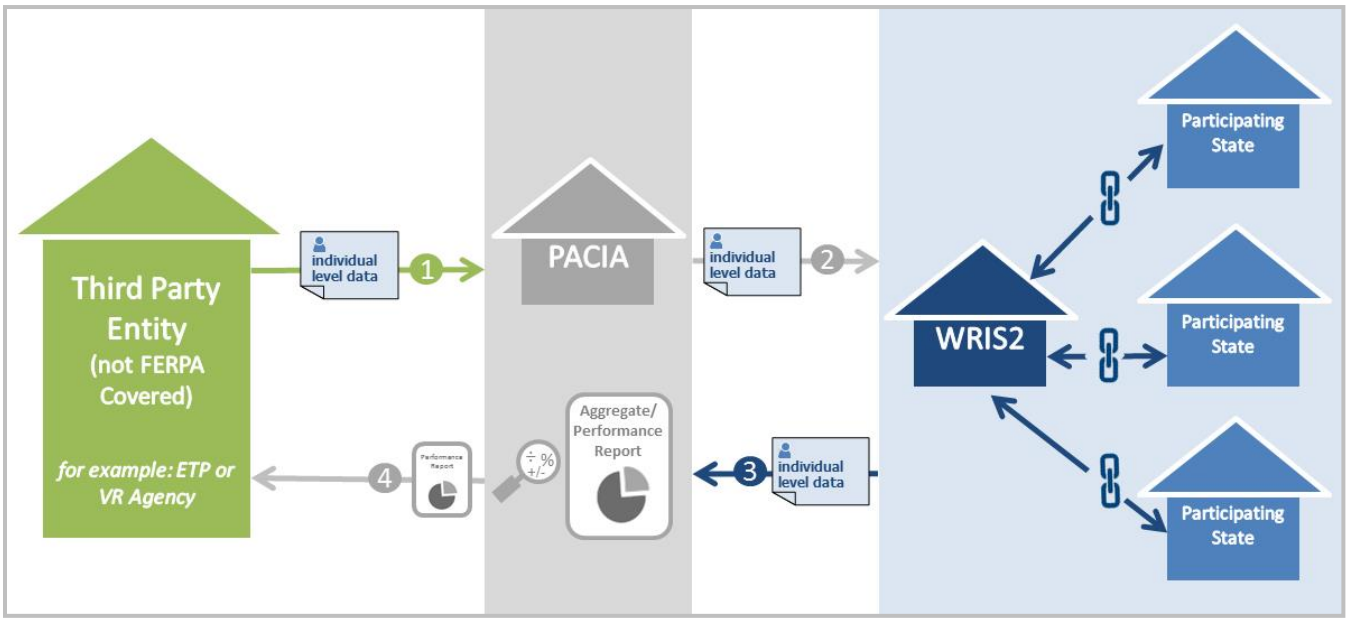
NOTE: As noted above, WRIS and WRIS2 were intended to meet the requirements under WIA and will not meet all requirements under WIOA without amendments. For that reason, and because WIOA added new core programs and requirements for performance accountability, DOL and ED are currently working with States to negotiate a single agreement that takes into account not only the confidentiality protections in 20 CFR part 603, but also includes privacy

protections for PII in education records required by FERPA, and protections for personal information obtained by VR as required by 34 CFR 361.38.

Until the new agreement or agreements are negotiated and have been signed by the States, Options 7 and 8 provide information to State educational authorities, agencies, and institutions, as well as State workforce and VR agencies and service providers, on how to match PII from education records and personal information from VR records with interstate wage records as required by 20 CFR 677.175 for performance accountability reporting.

The Departments intend to provide further guidance regarding the WRIS and WRIS2 agreements and the new model agreements when they are finalized.

If the requestor is not subject to FERPA:

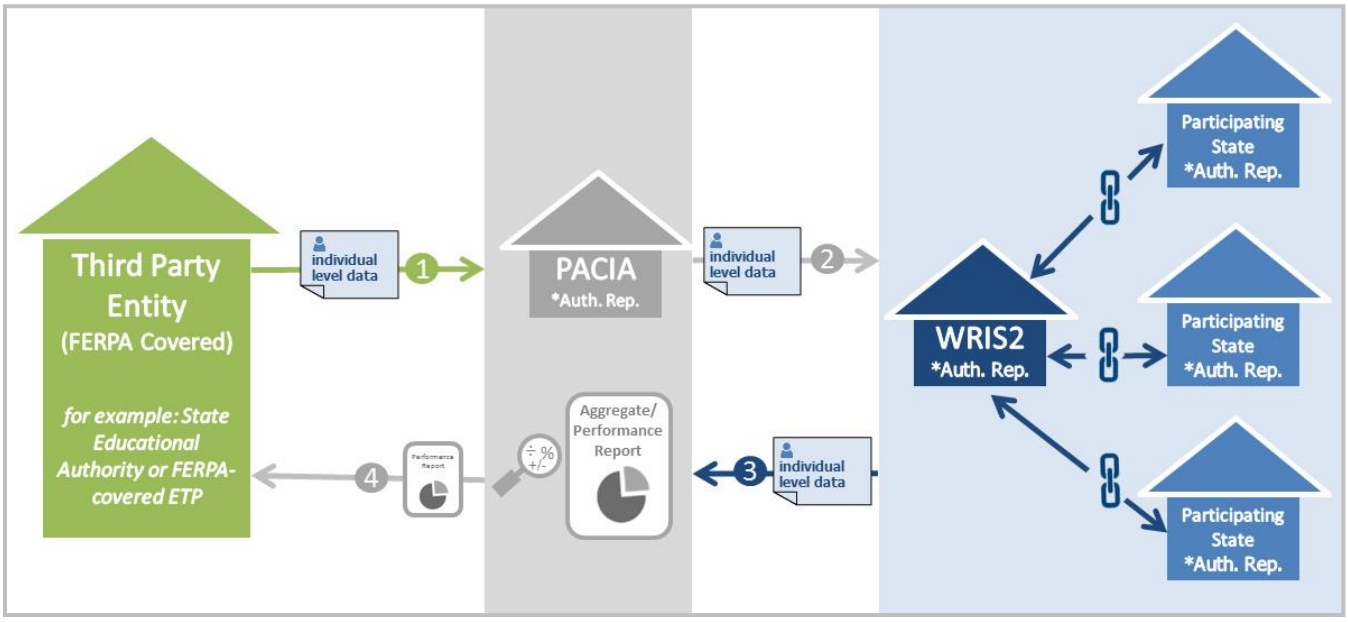


1. The TPE shares WIOA program participant data with the PACIA.
2. The PACIA shares WIOA participant data with WRIS2 to facilitate matches.
3. WRIS2 matches data and returns the individual level results to the PACIA.
4. The PACIA returns aggregate data to the TPE for purposes of the required performance reports.

Required written agreement(s):

- If the TPE is a VR agency, then an agreement between the VR agency, the PACIA, the contractor administering WRIS2, and the participating States that covers the VR written agreement requirements at 34 CFR 361.38 and the UC confidentiality regulations in 20 CFR 603.10(b).
- If the TPE is not a VR agency and will not be exchanging PII from educational records or personal information covered by the VR regulations, then an agreement between the TPE and the PACIA that covers the UC confidentiality regulations consistent with 20 CFR 603.10(b) .

If the entity is subject to FERPA and the Governor does not designate the Educational Authority as a PACIA.



1 The TPE shares PII from education records with the PACIA, which must be designated as an authorized representative for audit and evaluation purposes pursuant to 34 CFR 99.35.

2 The PACIA shares PII from education records with WRIS2 to facilitate matches; to permit this, the FERPA-covered TPE must designate all parties to WRIS2, including the contractor administering WRIS2 and other States, as its authorized representatives pursuant to 34 CFR 99.35.

3 WRIS2 matches data and returns the individual level results to the PACIA.

4 The PACIA returns aggregate data to the TPE for purposes of the required performance reports.

Required written agreement(s):

- **If the Governor designates the PACIA as an Educational Authority for the purposes of WIOA performance reporting:**
  - PACIA, as the Ed. Authority, and all entities receiving PII from educational records, including the contractor administering WRIS2 and the Participating States: covers FERPA compliance for the PACIA/Ed. Authority to designate the contractor administering WRIS2 and the participating States as its authorized representatives and covers UC confidentiality regulations consistent with 20 CFR 603.10(b).
- **If the Governor does not designate the PACIA as an Educational Authority:**
  - The TPE, the PACIA, all entities receiving PII from educational records, including the contractor administering WRIS2, the Participating States, and the Ed. Authority: covers FERPA compliance for the Ed. Authority to designate the PACIA and other entities receiving PII as its authorized representatives and covers UC confidentiality regulations consistent with 20 CCR 603.10(b).

Option 9: A State VR Agency Discloses Personal Information, and State and Local Educational Authorities Disclose PII from Education Records to a State UC Agency for Evaluations under Section 116(e) of WIOA

Section 116(e)(1) of WIOA requires States, in coordination with local boards and State agencies responsible for administration of core programs, to conduct evaluations to promote, establish, implement, and utilize methods for continuously improving core program activities to achieve high-level performance within, and high-level outcomes from, the workforce development system.

To obtain wage records for program evaluations, States would follow the same processes set out in Options 1 through 8, above; which option or options a State would use for any given evaluation would depend on the purpose of the evaluation. That is, if the purpose of the evaluation were to measure the success of only those program participants who remained within the State, a "public official" as defined in 20 CFR 603.2(d), could use Options 1 through 6, or a combination of those options. If the State wished to include in the evaluation students who had moved to a specific State, or out of State, the State would use the methods discussed in Options 7 or 8.

The FERPA, VR, and UC requirements for written agreements would have to be met whether the evaluation measured outcomes for only in-State, for only out-of-State, or for all program participants.

Administrative and Organizational Processes and Infrastructure for Data Sharing

Written Agreement Requirements

Attachment II sets forth the required contents of a data exchange agreement and includes both FERPA requirements and 20 CFR 603.10 requirements. There are no specific VR content requirements for data exchange agreements; however, such agreements must be consistent with statutory and regulatory requirements of 34 CFR 361.38. ED expects to issue guidance in the near future regarding the development of written agreements required by 34 CFR 361.38 for purposes of ensuring the protection of the confidentiality of personal information held by VR agencies.

Publication of WIOA Performance Reports

When generating WIOA performance reports, it is important to remember that section 116(d)(6)(C) of WIOA and 34 CFR 99.30 of the FERPA regulations prohibit the publication of any data in those reports that would reveal PII from education records. While the aggregation of individual-level data into program-level reports removes much of the risk of disclosure of PII from education records, some risk of disclosure does remain in circumstances where data are reported for small groups, when individuals possess a unique or uncommon characteristic (or a combination of characteristics) that would allow them to be identified in the resulting aggregate report, or when all (or almost all) members of a group share a common characteristic or outcome (e.g., if all program participants are unemployed). To protect privacy in these situations, it is necessary to establish minimum group size thresholds for reporting data, as well as routines for truncating extreme values for outcome variables (e.g., when mean or median income is below $15,000 or above $200,000). While the parameters selected for these privacy protections may vary from State to State depending on local reporting rules (e.g., States minimum n-size requirements vary from 3-30, with the majority of States using n=10), the principles behind disclosure avoidance in public reporting are discussed in a Privacy Technical Assistance Center FAQ on Disclosure Avoidance (available at: http://ptac.ed.gov/sites/default/files/FAQs_disclosure_avoidance.pdf

Because State laws on privacy protection vary, as noted above, the UC agency, the State educational agency, and other educational agencies and institutions, should consult with the State's privacy officer or counsel to ensure the UC agency's actions conform to State law. State laws on data security may be found at: http://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx

In addition, NIST 800-122 (*Guide to Protecting the Confidentiality of PII*) provides guidance for Federal agencies and those who conduct business on behalf of the agencies. Recommendations in section 4, Pg. 4-1 of NIST 800-122 can be leveraged. That guidance recommends, among other things, that the organizations:

- Evaluate the sensitivity of each individual PII data field. For example, an individual's SSN is generally more sensitive than an individual's phone number or ZIP code. States should also evaluate the sensitivity of the PII data fields when combined.
- De-identify records by removing enough PII such that the remaining information does not identify an individual and there is no reasonable basis to believe that the information can be used to identify an individual. De-identified records can be used when full records are not necessary, such as for examinations of correlations and trends

Additional information on suppression of data will be forthcoming if needed.

Costs for Providing Access to Wage Records

Federal law prohibits State UC agencies from charging the costs of providing wage data to public officials, or for- and nonprofit entities, against the grant funds received for administration of the UC program, unless there is only an incidental amount of staff time and no more than nominal processing costs are involved in making the disclosure or in those instances where the UC agency has a reciprocal cost agreement or arrangement with the recipient entity. See 20 CFR 603.8(b) and (d). UC confidentiality regulations define "reciprocal" to mean that the relative benefits received by each are approximately equal. See 20 CFR 603.8(d). Consequently, State UC agencies must recover, from the recipient of the wage data or from some other source such as general revenues, the actual costs of providing the wage data. This must be done consistent with the uniform requirements in 2 CFR part 200. Provisions for paying the costs of providing wage data must be included in the written agreement between the State UC agency and the "public official" receiving the data. See 20 CFR 603.10(b)(iv).

Each State determines the costs of disclosing wage records for that State. The amount recovered in payment or reimbursement for providing the wage data must include any initial start-up or programming costs associated with making the disclosure; costs include programmer time to establish or create a program to extract data based on the requester's needs; staff time to pull or review the data; and any other expenses specific to the data request. See 20 CFR 603.8(c). States vary in their methodology for calculating these costs. State UC agencies should recover only the actual costs of data access and cross-matching, and are strongly encouraged to assess costs so as not to place undue burden on State programs and other entities that are required to use the data under WIOA.

State Infrastructure to Support WIOA Performance Accountability

To meet the performance accountability provisions under WIOA for core programs and ETP reporting, States will need to collaborate across programs to plan and implement the necessary foundational written agreements to support information sharing, and information technology solutions and business processes, to support matching of data and to provide, as appropriate under both Federal and State laws, either individual data or aggregate data that results from the matching with the entities that need it. In addition to ensuring that WIOA performance reporting on participants by the core programs is enabled, States are strongly encouraged to consider how to support the reporting requirements for ETPs. DOL and ED plan to work with States to identify models for developing WIOA performance accountability infrastructure and enabling sharing of States' best practices.

Additional Resources

Attachment IV provides links to Federal regulations, including FERPA, and the WRIS and WRIS 2 Data Sharing Agreements, as well as several guidance documents outlining privacy and security considerations for protecting confidential information from education records.

Also included in Attachment IV are best practice resources on records governance and the use of the administrative records. These guides review issues that should be considered when preparing to collect workforce data (e.g., does the State use a federated or centralized data system; how long have the data been collected; are there any issues with data quality; what was the original intent of the administrative data collection; how has the State approached data sharing in the past; etc.). For example, data ownership, technical requirements, and privacy vary greatly depending on whether a State uses a federated or centralized data system. In a federated system, individual source systems maintain possession of their data; in a centralized system, data are housed in a centrally located data repository. To help agencies better navigate these important issues, references include information on the State longitudinal database system (SLDS) design, culture of administrative records in the State, and application of UC confidentiality regulations to requests for records.

Contact Information

DOL and ED have worked collaboratively in the development of this guidance and expect to continue to work collaboratively to respond to questions from stakeholders and to provide technical assistance related to the guidance. Questions are likely to surface through a variety of

ways and may flow up through individual program channels. However, DOL and ED plan to jointly develop responses to questions associated with this guidance and will work to ensure that all stakeholders receive the same information.

U.S. Department of Education

Please refer to the Privacy Technical Assistance Center (PTAC) website (http://ptac.ed.gov/) and direct questions related to FERPA and SLDS to PrivacyTA@ed.gov or 855-249-3072. PTAC will work with the Department's Family Policy Compliance Office (FPCO), which administers FERPA, to provide you with answers.

U.S. Department of Labor

For inquiries regarding the protection and use of UC data please contact Information.StateUILegal@dol.gov.

Questions related to WRIS or WRIS 2 should be sent to WRIS@dol.gov

For questions or concerns on performance-related issues please contact the Department of Labor at etaperforms@dol.gov

Attachment I

Options for Matching UC Wage Records & Education Data

This chart describes some of the ways in which educational authorities and training providers may obtain wage records for audit or evaluation, and performance reporting, purposes, and provides a short-cut to the Options set out above.

Type of Entity that May Receive Student Data	**Type of Entity that May Receive Wage Records**	**Intra or Interstate Match**	**Individual Wage Records or Aggregate Data**	**Entity that May Execute the Match**[1]
State Educational Authority	Public Official	Intrastate	Individual wage records & aggregate data permitted	State agency that has wage records (generally the UC agency), educational authority, or public educational institutions
Authorized Representative of a State Educational Authority	Public Official	Intrastate	Individual wage records & aggregate data permitted	State agency that has wage records (generally the UC agency), educational authority, or public educational institutions
State Educational Authority	Public Official	Interstate	Individual wage records or aggregate data permitted (see below)	PACIA, State agency that has wage records (generally the UC agency), educational authority, or public educational institutions
Authorized Representative of a State Educational	Public Official	Interstate	Individual wage records or aggregate data permitted (see	PACIA, State agency that has wage records (generally the UC

Type of Entity that May Receive Student Data	Type of Entity that May Receive Wage Records	Intra or Interstate Match	Individual Wage Records or Aggregate Data	Entity that May Execute the Match[1]
Authority			below)	agency), educational authority, or public educational institutions
State Educational Authority	Non-profit or for-profit service providers	Intrastate	Aggregate data only	State agency that has wage records (generally the UC agency) or educational authority
Authorized Representative of a State Educational Authority	Non-profit or for-profit service providers	Intrastate	Aggregate data only	State agency that has wage records (generally the UC agency) or educational authority
State Educational Authority	Non-profit or for-profit service providers	Interstate	Aggregate data only	PACIA, State agency that has wage records (generally the UC agency), or educational authority
Authorized Representative of a State Educational Authority	Non-profit or for-profit	Interstate	Aggregate data only	PACIA, State agency that has wage records (generally the UC agency), or educational authority

NOTE: The permissible options detailed above apply to all methods by which the matches occur, such as WRIS2, SLDS, WDQI, or directly from a State UC agency. However, each such method may have additional limitations/requirements.

Authorized Representative: Any entity or individual designated by a State or local educational authority or an agency headed by an official listed in §99.31(a)(3) to conduct—with respect to Federal or State supported education programs—any audit or evaluation, or any compliance or enforcement activity in connection with Federal legal requirements that relate to these programs (34 CFR 99.3), A State UC agency or other State agency that has wage records may be an authorized representative.

PACIA: The Performance Accountability and Customer Information Agency designated by the governor to be responsible for coordinating the State's program for assessing State and local program performance, and evaluating training provider performance as required under the WIA. Note that the current definition may change under the new agreements. Note, too, that under the WRIS and WRIS2 agreements a PACIA may return only aggregate data; this may also change under the new agreement being negotiated among the States.

[1] If a match is executed by an entity other than the agency that has the wage records (generally the UC agency), such entity may NOT have unfettered access to confidential UC information. Many State UC agencies provide public agencies (such as child support enforcement, SNAP, and TANF) access to screens with specific information from the UC data base necessary for the recipient's program, but which screens do not provide access to all information in the UC agency data base.

Attachment II

Required Components of a Written Agreement

FERPA regulations at 34 CFR 99.35(a)(3)(i) require the State or local educational authority or agency to use a written agreement to designate any authorized representative to whom PII from education records will be disclosed for the purpose of auditing or evaluating Federal or State supported education programs.

UC confidentiality regulations at 20 CFR 603.10 require a State or State UC agency to enter into a written, enforceable agreement with the agency or entity requesting confidential UC information. The agreement must be terminable if the State or State UC agency determines that the safeguards in the agreement are not being adhered to.

There are no specific VR content requirements for data exchange agreements; however, such agreements must be consistent with statutory and regulatory requirements at 34 CFR 361.38. ED expects to issue guidance in the near future regarding the development of written agreements for the purpose of ensuring the confidentiality of personal information held by the VR agencies.

The following table lists the required components for written agreements under FERPA and the UC confidentiality regulation. An "X" in a column denotes that there is no comparable requirement.

Components of Agreement	FERPA Regulations	UC Confidentiality Regulations
Designation of agent	Designate the individual or entity as an authorized representative	X
Defining scope of disclosure	Specify the PII from education records to be disclosed	Include a *description of the specific information to be disclosed* and the purposes for which the information is sought *(See also "Purpose of disclosure")*
Purpose of disclosure	Specify that the PII will be disclosed to the authorized representative for the purpose of carrying out an audit or evaluation of a Federal or State supported education program, or to enforce or to comply with	Include a description of the specific information to be disclosed and the *purposes for which the information is sought (See also "Defining scope of disclosure")*

Components of Agreement	FERPA Regulations	UC Confidentiality Regulations
	Federal legal requirements that relate to the program)	
How disclosed information will be used	Include a description of the activity with sufficient specificity to make clear that the work falls within the exception of §99.31(a)(3), including how the PII from education records will be used	Require the recipient to use disclosed information only for purposes authorized by law and consistent with the written agreement it entered into meeting the requirements of §603.10
Procedural requirements for requests	X	Include a description of the methods and timing of requests for information and responses to those requests, including the format to be used
Reimbursement of administrative disclosure costs	X	Provision for paying the State UC agency for any costs of furnishing the information. Grant funds may be used to pay costs associated with any disclosure of UC information if not more than an incidental amount of staff time and no more than nominal processing costs are involved in making the disclosure.
Who may access disclosed records	Limit the use of PII to only authorized representatives with legitimate interests (i.e., those who need to access data for the purposes authorized under the audit or evaluation exception) *(See also "Security of*	Include a statement that those who may receive information under the agreement will be limited to those with a need to access it for purposes listed in the agreement and that they will only access the

Components of Agreement	FERPA Regulations	UC Confidentiality Regulations
	disclosed Information")	information for those purposes.
Security of disclosed information	Establish policies and procedures to protect the disclosed PII from further disclosure (except back to the disclosing entity) and unauthorized use. This includes limiting the use of PII to only authorized representatives with legitimate interests (i.e., those who need to access data for the purposes authorized under the audit or evaluation exception). The specific policies and procedures outlined in the agreement should be consistent with FERPA and other Federal and State confidentiality and privacy provisions. Please consult with your legal team to ensure compliance with all applicable Federal, State, and local laws.	Provision for safeguarding the information disclosed, as required by section 603.9

Components of Agreement	FERPA Regulations	UC Confidentiality Regulations
Retention period of disclosed information	Specify the time period in which the information must be destroyed	Information disclosed must not be retained with PII for longer than such period of time as the State or State UC agency deems appropriate on a case-by-case basis. The length of the retention period will be determined by the purpose for the disclosure, required under 20 CFR 603.10(b)(1), and any retention laws to which the recipient is subject.
Destruction of disclosed information	Require the authorized representative to destroy PII when no longer needed for the specified purpose	After the purpose for the disclosure has been served, the recipient must dispose of the confidential information. Disposal means return of the information to the disclosing State or State UC agency or destruction of the information as directed by the State or State UC agency. Disposal includes deletion of PII by the State or State UC agency in lieu of destruction. 20 CFR 603.9(b)(1)(vi)
Compliance	X	Require recipients to maintain a system sufficient to allow an audit of compliance with safeguards and security requirements. 20 CFR 603.9(b)(1)(vii) Provision for on-site inspections of the education

Components of Agreement	FERPA Regulations	UC Confidentiality Regulations
		agency, entity, or contractor to assure that the requirements of the State's law and the agreement are being met.

Attachment III

Agencies that Maintain UC Wage Data and Manage Wage Record Matching Agreements.

State	Agency that oversees wage record data collection and maintenance	Unit or office that specifically manages wage record cross matching agreements
AK	Alaska Department of Labor and Workforce Development	Division of Employment and Training Services, Unemployment Insurance Support Unit
AL	Alabama Department of Labor	Disclosure Unit
AR	Arkansas Department of Workforce Services	Arkansas Department of Workforce Services Information Security Office
AZ	Arizona Department of Economic Security, Unemployment Insurance Tax	Arizona Department of Economic Security, EA/UI Data Security Unit
CA	Employment Development Department (Tax Branch)	Unemployment Insurance Integrity and Accounting Division (UI Branch)
CO	Colorado Department of Labor and Employment, Division of Unemployment Insurance	Unemployment Insurance Policy and Communications
CT	Connecticut Department of Labor	CTDOL Office of Program Policy
DC	District of Columbia Department of Employment Services	Office of Unemployment Compensation
DE	Department of Labor, Division of Unemployment	Benefit Payment Control Unit
FL	Florida Department of Revenue	General Tax Administration, Resource Management – Anna Barnes
GA	Georgia Department of Labor	GDOL Legal Services Unit
HI	Department of Labor and Industrial Relations Unemployment Insurance Division Program Development Coordination and Evaluation Services Office	Department of Labor and Industrial Relations Unemployment Insurance Division Program Development Coordination and Evaluation Services Office
IA	Iowa Workforce Development	Unemployment Tax
ID	Idaho Department of Labor	Unemployment Insurance Division

State	Agency that oversees wage record data collection and maintenance	Unit or office that specifically manages wage record cross matching agreements
IL	Illinois Department of Employment Security	Illinois Department of Employment Security http://www.ides.illinois.gov/Pages/Shared-Data-Agreements.aspx We have a website where organizations can go to request a shared data agreement for wage matching. Otherwise, agencies can contact Economic Information & Analysis (general number 312-793-2316) for information.
IN	Indiana Department of Workforce Development	Office of General Counsel
KS	Kansas Department of Labor	Kansas Department of Labor – Office of Legal Services
KY	Office of Employment and Training, Division of Unemployment Insurance, Tax Enforcement Branch	Office of Employment and Training, Grants Management & Support Division, Operations Branch
LA	Louisiana Workforce Commission	Louisiana Workforce Commission's Legal Unit/Office of General Counsel
MA	Department of Unemployment Assistance	Office of the Chief Counsel
MD	Department of Labor, Licensing and Regulation, Division of Unemployment Insurance	Department of Labor, Licensing and Regulation, Division of Unemployment Insurance
ME	Maine Department of Labor	Administration Unit, Bureau of Unemployment Compensation, Maine Department of Labor
MI	Unemployment Insurance Agency (UIA), Benefit Enforcement Unit	UIA, Benefit Enforcement Unit
MN	Unemployment Insurance Division of the Minnesota Department of Employment and Economic Development	Performance Management Unit of the Minnesota Department of Employment and Economic Development
MO	Missouri Department of Labor and	Missouri Department of Labor and

State	Agency that oversees wage record data collection and maintenance	Unit or office that specifically manages wage record cross matching agreements
	Industrial Relations, Division of Employment Security	Industrial Relations, Office of General Counsel
MS	Mississippi Department of Employment Security	Mississippi Department of Employment Security
MT	Montana Department of Labor and Industry (Unemployment Insurance Division)	Unemployment Insurance Division (Program Support Bureau)
NC	N.C. Department of Commerce, Division of Employment Security	Legal Department
ND	Job Service North Dakota	Unemployment Insurance Area
NE	Nebraska Department of Labor Unemployment Insurance	Office of Administrative Services
NH	New Hampshire Employment Security, Unemployment Compensation Bureau, Contributions Section	Legal Unit manages the actual agreements; Office of the Assistant to the Commissioner should also be involved.
NJ	New Jersey Department of Labor and Workforce Development Division of Employer Accounts	New Jersey Department of Labor and Workforce Development Income Security Agency
NM	New Mexico Department of Workforce Solutions	Information Technology Department
NV	Department of Employment, Training and Rehabilitation (DETR)	Unemployment Insurance Support Services (UISS)
NY		
OH	Ohio Department of Job and Family Services, Office of Unemployment Insurance Operations (OUIO)	OUIO Data Integrity and Access Unit
OK	Oklahoma Employment Security Commission	RES – Support and Compliance Division
OR	Oregon Employment Department	Unemployment Insurance Division, Benefit Payment Control Unit
PA	Pennsylvania Department of Labor and	UC Tax Services, UC Benefits Policy,

State	Agency that oversees wage record data collection and maintenance	Unit or office that specifically manages wage record cross matching agreements
	Industry	Center for Workforce Information and Analysis, and Bureau of Workforce Development Partnership
PR	Puerto Rico Department of Labor and Human Resources	Tax Division at the PRDOL
RI	RI Department of Revenue, Division of Taxation, Employer Tax office	RI Department of Labor and Training, our Unemployment Insurance division and Legal Office
SC	South Carolina Department of Employment and Workforce (SCDEW)	SCDEW Office of General Counsel
SD	South Dakota Department of Labor and Regulation, Unemployment Insurance Division	South Dakota Department of Labor and Regulation, Secretariat
TN	Tennessee Department of Labor & Workforce Development	Unemployment Insurance Division
TX	Tax Department of the Texas Workforce Commission	Risk and Security Department
UT	Department of Workforce Services - Unemployment Insurance Division	Department of Workforce Services - Unemployment Insurance Division
VA	Virginia Employment Commission	Customer Relations and Information Control
VI	Virgin Islands Department of Labor	Tax Unit
VT	Vermont Department of Labor's Unemployment Insurance Division, Employer Services Unit	Legal Section
WA	Washington State Employment Security Department	Labor Market and Performance Analysis (LMPA) Division, Office of Special Investigations
WI	Wisconsin Department of Workforce Development- Unemployment Insurance	Data Sharing Coordinator in the Bureau of Management and Information Services

State	Agency that oversees wage record data collection and maintenance	Unit or office that specifically manages wage record cross matching agreements
WV	WorkForce West Virginia – Unemployment Compensation	WorkForce West Virginia – Unemployment Compensation
WY	Department of Workforce Services	Unemployment Insurance Division

Attachment IV

Additional Resources

- *Case Study #5: Minimizing Access to PII: Best Practices for Access Controls and Disclosure Avoidance Techniques*, U.S. Department of Education (2012): http://ptac.ed.gov/sites/default/files/case-study5-minimizing-PII-access.pdf
- *Centralized vs. Federated: State Approaches to P-20W Data System*, NCES (2012): http://nces.ed.gov/programs/slds/pdf/federated_centralized_print.pdf
- *Checklist: Data Governance*, PTAC (2011): http://ptac.ed.gov/sites/default/files/data-governance-checklist.pdf
- *Checklist: Data Sharing Agreement*, PTAC (2012): http://ptac.ed.gov/sites/default/files/data-sharing-agreement-checklist.pdf
- *Data Governance and Stewardship*, PTAC (2011): http://ptac.ed.gov/sites/default/files/issue-brief-data-governance-and-stewardship.pdf
- *Data Security: Top Threats to Data Protection*, PTAC (2015): *http://ptac.ed.gov/sites/default/files/Issue%20Brief%20Data%20Security%20Top%20Threats%20to%20Data%20Protection.pdf*
- *Data Stewardship: Managing Personally Identifiable Information in Student Education Records* (NCES 2011-602): http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2011602
- *Federal regulations resources compilation*, U.S. Department of Education: www.ed.gov/policy/gen/reg/edpicks.jhtml?src=ln
- *FERPA regulations amendment*, U.S. Department of Education (2011): www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf
- *Guidance for Reasonable Methods and Written Agreements*, Family Policy Compliance Office (2011): www.ed.gov/policy/gen/guid/fpco/pdf/reasonablemtd_agreement.pdf
- Privacy Technical Assistance Center website: http://ptac.ed.gov/
- *Techniques for Analyzing Longitudinal Administrative Data*, NCES (2012): http://nces.ed.gov/programs/slds/pdf/Data-Use-Issue-Brief-4_Analysis-Techniques.pdf
- *Turning Administrative Data into Research-Ready Longitudinal Datasets*, NCES (2012): http://nces.ed.gov/programs/slds/pdf/Data-Use-Issue-Brief-3_Research-Ready-Datasets.pdf

- *20 CFR Part 603 Federal-State Unemployment Compensation Program (UC); Confidentiality and Disclosure of State UC Information Final Rule: http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title20/20cfr603_main_02.tpl*
- *WIOA Final Regulations may be found at* https://www.doleta.gov/wioa/eta_default.cfm
- *DOL-issued guidance related to WIOA may be found at* http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm
- *WRIS Data Sharing Agreement:* http://doleta.gov/performance/pfdocs/WRIS_Data_Share_Agree_Amended_Febr_17_2011.pdf
- *WRIS Website:* http://doleta.gov/performance/WRIS.cfm
- *WRIS 2 Data Sharing Agreement:* http://doleta.gov/performance/pfdocs/WRIS2_DataSharingAgreement%20_Voluntary_Opt-in.pdf
- *WRIS 2 Website:* http://doleta.gov/performance/wris_2.cfm