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## Family Educational Rights and Privacy Act

### Program Memorandum - OVAE/DVTE - 2001-2

Date: January 18, 2001

To: Chief State School Officers  
State Directors of Vocational-Technical Education  
State Directors of Adult Education  
State Directors of Community, Technical and Junior Colleges

From: Patricia W. McNeil

Subject: The Family Educational Rights and Privacy Act and the Use of State Unemployment Insurance Wage Records to Report on Performance under the Carl D. Perkins Vocational and Technical Education Act and the Adult Education and Family Literacy Act

The Carl D. Perkins Vocational and Technical Education Act (P.L.105-332) (20 U.S.C. 2301 et seq.) (Perkins III) and the Adult Education and Family Literacy Act (Title II of the Workforce Investment Act of 1998, P.L. 105-220) (20 U.S.C. 2901 et seq.) (AEFLA) hold States accountable for reporting on, and achieving, annual performance goals for the placement and retention of students in employment, as well as a number of other student outcomes. In addition, some States have established comparable accountability requirements for State community college systems. There is growing interest among States in using State unemployment insurance (UI) wage records to determine the employment status of former students in order to fulfill these requirements. Generally, State UI wage records can provide more accurate information than mail or telephone surveys of former students. Moreover, using State UI records is less expensive than mail or telephone surveys.

The Department supports your efforts to improve the accuracy of the information that your State collects concerning student outcomes and to reduce the burden of obtaining this information. However, preserving student privacy is also required by law. As you investigate using State UI wage records to determine the employment status of students, please note that this approach requires the use of personally identifiable information from student education records. Such personally identifiable information is protected by the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g). The purpose of this memorandum is to assist you in understanding FERPA's privacy protections and how to use State UI wage records to determine the employment status of former students in accordance with FERPA. This guidance applies solely to Perkins III and AEFLA. It was developed in consultation with the Undersecretary and the Family Policy Compliance Office, which administers FERPA.

### Accountability Requirements Established by Perkins III and AEFLA

Perkins III creates a State performance accountability system for vocational and technical education through which the Secretary and each eligible agency reach agreement on annual levels of performance for a number of "core indicators" specified in the law. Student "placement in, retention, and completion of, postsecondary education or advanced training, placement in military service, or placement or retention in employment" is one of these core indicators (section 113(b)(2)(iii)). Each eligible agency must use the State adjusted levels of performance to evaluate annually the activities of eligible recipients (section 123(b)). Section 113(c) of Perkins III also requires each eligible agency to submit annually a report to the Secretary regarding "the progress of the State in achieving the State adjusted levels of performance on the core indicators of performance."

AEFLA establishes a similar performance accountability system for adult education and literacy activities. The Secretary and each eligible agency reach agreement on annual levels of performance for a number of "core indicators" specified in the law, including "placement in, retention in, or completion of postsecondary education, training, unsubsidized employment or career advancement" (section 212(b)(2)(ii) of WIA). Each eligible agency must evaluate annually the effectiveness of local adult education and literacy activities using the core indicators

of performance (section 224(b)(3)). States must report annually to the Secretary on "the progress of the eligible agency in achieving eligible agency performance measures, including information on the levels of performance achieved by the eligible agency with respect to the core indicators of performance" (section 212(c)).

To fulfill these evaluation and reporting requirements, a number of States have expressed interest in using State UI wage records to determine the employment status of former students. Maintained by State labor or employment security agencies, these records consist of quarterly reports of employee earnings that are submitted by employers who are required to comply with the State's unemployment compensation law. In most cases, a wage record includes at least three data elements: (1) an employee's social security number (SSN); (2) the total amount of reportable earnings paid to the employee during the quarter; and (3) the employer's unique identifier. Although Federal and State law protects the confidentiality of this information, most States have established procedures to enable other public agencies to access the information for evaluation purposes.

The employment status of a former student can only be determined from UI wage records by using the student's SSN. A student's SSN, however, is personally identifiable information that is protected by FERPA.

### **Family Educational and Privacy Rights Act**

As you know, FERPA is a Federal law that protects an eligible student's privacy interest in his or her "education records." In particular, FERPA affords eligible students the right to inspect and review their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is broadly defined as:

"[T]hose records, files, documents, and other materials, which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. 1232g(a)(4). See also 34 CFR 99.3 "Education records.")

FERPA provides that education records, or personally identifiable information from such records, may be disclosed by educational agencies and institutions only after an eligible student provides prior written consent, except in statutorily specified circumstances. [(20 U.S.C. 1232g(b)(1) and (d). See also 34 CFR 99.30.)] "Personally identifiable information" is defined by 34 CFR 99.3 as information that "includes but is not limited to:

- (a) the student's name;
- (b) the name of the student's parent or other family member;
- (c) the address of the student or the student's family;
- (d) a personal identifier, such as the student's social security number or student number;
- (e) a list of personal characteristics that would make the student's identity easily traceable; or
- (f) other information that would make the student's identity easily traceable."

Because the vocational and adult education laws include identical provisions stipulating that "[n]othing in this Act shall be construed to supersede the privacy protections afforded students and parents under" FERPA (section 5 of Perkins III, section 504(a) of WIA), States must comply with FERPA in using State UI wage records.

Generally, there are three options available to State educational authorities for using State UI wage records consistent with the requirements of FERPA:

- "Importing" State UI wage records and using them internally to determine the employment status of former students;
- Obtaining the prior consent of eligible students to disclose their SSNs to the State UI agency (or other agency that has access to State UI wage records) in order to determine whether they secured or retained employment after they exited the program; and
- Authorizing the State UI agency (or other State agency that has access to UI records) to obtain student SSNs directly from local education agencies and educational institutions, determine the employment status of these students, and report the aggregate results, after which students' personally-identifiable information would be destroyed by the agency authorized to match the UI data.

## **"Importing" State UI Wage Records to Determine Employment Outcomes**

A State educational authority may obtain State UI wage record data from the State UI agency and then use this information internally to determine the employment status of students. This approach meets the requirements of FERPA because the State educational authority has not disclosed personally identifiable information from an education record to others. State law, however, may restrict the extent to which you may share personally identifiable information derived from wage records with local education agencies and educational institutions. Providing local education agencies and educational institutions with information about the earnings of individual students, for example, may be prohibited by Federal or State law.

## **Obtaining Student Consent for Disclosures to the State UI Agency**

FERPA permits the disclosure of protected student information if a student has consented in advance to this disclosure in writing. Thus, a State educational authority may disclose student SSNs to the State UI agency (or other agency that has access to State UI wage records) for the purpose of determining their employment status if it has secured the consent of these students for the disclosure. Requesting student consent for this disclosure, for example, may be made a regular part of the intake or admission process for vocational and adult education programs.

This written consent must be signed and dated by the eligible student and:

1. Specify the records that may be disclosed;
2. State the purpose of the disclosure; and
3. Identify the party or class of parties to whom the disclosure may be made." (34 CFR 99.30(b))

In addition, the State educational authority or local educational agency or institution must provide the student, upon his or her request, a copy of the records that are disclosed. (34 CFR 99.30(c)(1)). A sample consent form that you may adapt is included in Appendix A.

## **Authorizing a State UI Agency to Evaluate Employment Outcomes under Perkins III and AEFLA**

FERPA permits the disclosure of protected student information without the prior consent of students in certain, limited circumstances. (20 U.S.C. 1232g(b); 34 CFR 99.31). One exception permits the disclosure of information derived from education records without prior consent to "authorized representatives of" the Comptroller General of the United States, the Secretary, the Attorney General or "State or local educational authorities." The disclosure must be "in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs."

Thus, a State educational authority may authorize the State UI agency (or other agency that has access to State UI wage records) to be its representative for the purpose of evaluating whether local vocational and adult education programs have achieved the student employment goals established by the State under Perkins III or AEFLA. Typically, this authorization will be executed by a Memorandum of Agreement (MOA) between the two agencies. The MOA must contain, at a minimum, the following provisions required by FERPA:

1. Information disclosed by a school to an authorized representative must not be redisclosed to a third party in personally identifiable form. The information only may be redisclosed in aggregate, non-personally identifiable form.
2. The information should be destroyed when no longer needed for the purpose of the disclosure.
3. The authorized representative may have access to the records in connection only with --
  - an audit or evaluation of a Federally supported education program; or
  - for the enforcement of or compliance with Federal legal requirements that relate to those programs.

See 20 U.S.C. 1232g(b)(3); 34 CFR 99.35. Sample Memoranda of Agreement are included as Appendix B.

Pursuant to the MOA, the State UI or other agency may then obtain student SSNs directly from local educational

agencies or educational institutions and determine the employment status of these students. It may also report the aggregate results of its evaluation to the State educational authority, but no personally identifiable information may be redisclosed in this report. We would expect that the State UI or other agency would destroy student SSNs and any other personally identifiable information at the time it makes its evaluation report to the State educational authority. In addition, FERPA also requires that each eligible recipient that discloses a student's SSN or other personally identifiable information must maintain a record of this disclosure with the education records of the student. (34 CFR 99.32)

FERPA also allows a State UI agency to obtain a student's SSN directly from the State educational authority in order to determine the student's employment status. For the purposes of complying with the reporting requirements of Perkins III and AEFLA, a State educational authority may disclose a student SSN to the State UI agency if the UI agency has been made an "agent" of the State educational authority through a written MOA. This MOA should contain the same provisions discussed above.

We hope this memorandum is helpful to you in identifying how State UI wage records may be used to determine the employment status of students in a way manner that complies with FERPA. State laws concerning the privacy of student records and UI wage information also should be reviewed carefully as you consider the options available to you. If you have further questions regarding the requirements of Perkins III and AEFLA, you may contact Mr. Braden Goetz at (202) 205-3373 or Mr. Jon Weintraub at (202) 205-5602. Please direct any further questions you may have concerning FERPA to:

Family Policy Compliance Office

U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-4605  
(202) 260-3887 (Telephone)  
(202) 260-9001 (Fax)

**Appendix A: Sample FERPA Consent Form**

The following consent forms are examples that you should adapt to reflect the specific circumstances in your State.

*Carl D. Perkins Vocational and Technical Education Act*

I, a student at a postsecondary educational institution or a student age 18 years or older, \_\_\_\_\_, consent to the release of personally identifiable information from my education records or I, parent or guardian of a student at a secondary educational institution under the age of 18, \_\_\_\_\_ consent to the release of personally identifiable information from the education records of my son/daughter.

I understand that the records to be disclosed include my social security number and other personally identifiable information from my education records. I acknowledge that the purpose of the disclosure is to assist the \_\_\_\_\_ State Department of Education in obtaining and reporting information concerning the placement and retention of students in employment as required by section 113 of Carl D. Perkins Vocational and Technical Education Act. I understand that the personally identifiable information will be disclosed by the educational institution only to \_\_\_\_\_ Department of Labor / \_\_\_\_\_ Unemployment Insurance Agency. This information may not be redisclosed to others and will be destroyed as soon as all statistical analysis has been performed, or when the information is no longer needed, whichever date comes first.

\_\_\_\_\_  
Signature of Parent or Student      Date

*Adult Education and Family Literacy Act*

I, a student at a postsecondary educational institution or a student age 18 years or older, \_\_\_\_\_, consent to the release of personally identifiable information from my education records or I, parent or guardian of a student at a secondary educational institution under the age of 18, \_\_\_\_\_ consent to the release of personally identifiable information from the education records of my son/daughter.

I understand that the records to be disclosed include my social security number and other personally identifiable information from my education records. I acknowledge that the purpose of the disclosure is to assist the \_\_\_\_\_ State Department of Education in obtaining and reporting information concerning the placement and retention of students in employment as required by section 212 of the Adult Education and Family Literacy Act. I understand that the personally identifiable information will be disclosed by the educational institution only to \_\_\_\_\_ Department of Labor / \_\_\_\_\_ Unemployment Insurance Agency. This information may not be redisclosed to others and will be destroyed as soon as all statistical analysis has been performed, or when the information is no longer needed, whichever date comes first.

\_\_\_\_\_  
Signature of Parent or Student      Date

**Appendix B: Draft Memoranda of Agreement**

The following memoranda of agreement are examples that you should adapt to reflect the specific circumstances in your State.

*Carl D. Perkins Vocational and Technical Education Act*

MEMORANDUM OF AGREEMENT BETWEEN

\_\_\_\_\_ STATE DEPARTMENT OF EDUCATION AND

THE \_\_\_\_\_ DEPARTMENT OF LABOR/ THE \_\_\_\_\_ STATE

UNEMPLOYMENT INSURANCE AGENCY

This agreement, made the \_\_\_\_\_ day of \_\_\_\_\_ 2001, between the \_\_\_\_\_ State Department of Education and the \_\_\_\_\_ Department of Labor (Labor Department)/ State Unemployment Agency (UI Agency). The purpose of this agreement is to designate the Labor Department/UI Agency as an "authorized representative" of the \_\_\_\_\_ Department of Education (Education Department) for purposes of obtaining and reporting information concerning the placement and retention of students in employment as required by section 113 of Carl D. Perkins Vocational and Technical Education Act (Perkins III).

**RECITALS:**

1. Local secondary and postsecondary educational institutions maintain education records on enrollees that include information on student demographics, programs of study, achievement, attainment and social security numbers. Such records also include information on students participating in vocational education programs. The \_\_\_\_\_ Labor Department/ UI Agency maintains unemployment insurance wage

records on all qualified employees in \_\_\_\_\_ state.

2. Perkins III (P. L. 105-332) creates a State performance accountability system for vocational education programs. States must report annually to the U.S. Department of Education (ED) on the progress of the state in reaching agreed upon levels of performance on core indicators specified in the law. These core indicators include placement and retention in employment.

3. In order to determine employment outcomes for those vocational education students included \_\_\_\_\_'s Perkins III accountability system, local education agencies and educational institutions will supply the \_\_\_\_\_ Labor Department/UI Agency with a list of the social security numbers of these students. The \_\_\_\_\_ Labor Department/UI Agency will access unemployment insurance wage records using these social security numbers and determine employment outcomes for these students. The \_\_\_\_\_ Labor Department/UI Agency will report the results of this analysis to the \_\_\_\_\_ Education Department in aggregate form only, without personally identifiable information. Local education agencies and education institutions will not release personally identifiable information from the education records of students to state agencies or departments other than those listed in this agreement.

4. The Family Educational Rights and Privacy Act (FERPA) generally prohibits the disclosure of education records without the consent of the parent for children under the age of 18 or from students attending postsecondary educational institutions. Under FERPA, education records are defined as records directly related to a student and maintained by an educational agency or institution. The records accessed by \_\_\_\_\_ Department of Education to meet Perkins III performance reporting requirements are education records, and subject to FERPA.

5. FERPA contains several exceptions to the general rule that education records may not be disclosed without prior, written parental consent. One exception allows for disclosures to authorized representatives of the Secretary of Education, the Comptroller General, the Attorney General, and state and local educational authorities. Such a disclosure must be made in connection with an audit or evaluation of a Federal or State supported education program. The disclosure may also be made for the enforcement of or compliance with Federal legal requirements related to the Federal or State education program.

6. The disclosure of personally identifiable student information by local education agencies and educational institutions to the \_\_\_\_\_ Labor Department/UI Agency is for the purpose of complying with the performance reporting requirements of Perkins III, and is permissible under FERPA. ED has concluded that the \_\_\_\_\_ Labor Department/UI Agency can be designated an authorized representative for purposes of compiling and reporting information as required by Perkins III.

7. Without access to these records, the state of \_\_\_\_\_ will be unable to provide accurate performance information required by Perkins III in a timely and cost-effective manner.

**AGREEMENT:**

1. The \_\_\_\_\_ Education Department designates the \_\_\_\_\_ Labor Department/UI Agency as its "authorized representative" under FERPA for the limited purpose of collecting information directly from local education agencies and educational institutions in order to comply with the performance reporting requirements of Perkins III. This authorization is limited to the collection of data from the education records (as defined by FERPA) of secondary and postsecondary vocational education students in \_\_\_\_\_. It is understood and acknowledged by the parties that the \_\_\_\_\_ Labor Department/UI Agency will not redisclose any personally identifiable information from the education records.

2. The \_\_\_\_\_ Labor Department/UI Agency agrees to destroy all personally identifiable information such as social security numbers obtained from the above-referenced education records as soon as all statistical analysis has been performed, or when the information is no longer needed, whichever date comes first. All versions of such information and data, electronic, paper, or otherwise, must be destroyed.

3. The \_\_\_\_\_ Education Department agrees to work with ED, and in particular, the Family Policy Compliance Office (FPCO) to ensure that every educational agency and institution which discloses education records to the \_\_\_\_\_ Labor Department/UI Agency will update its annual notification to include the \_\_\_\_\_ Labor Department/UI agency as a recipient of education records for the purposes of complying with the performance reporting requirements of Perkins III.

This agreement shall be in effect for \_\_\_\_\_ years from the date of the last signature.

\_\_\_\_\_  
Superintendent  
\_\_\_\_\_  
Department of Education

\_\_\_\_\_  
Date

\_\_\_\_\_  
Secretary  
\_\_\_\_\_  
Labor Department/UI Agency

\_\_\_\_\_  
Date

*Adult Education and Family Literacy Act*

MEMORANDUM OF AGREEMENT BETWEEN

\_\_\_\_\_ STATE DEPARTMENT OF EDUCATION AND  
THE \_\_\_\_\_ DEPARTMENT OF LABOR/ THE \_\_\_\_\_ STATE  
UNEMPLOYMENT INSURANCE AGENCY

This agreement, made the \_\_\_\_\_ day of \_\_\_\_\_ 2001, between the \_\_\_\_\_ State Department of Education and the \_\_\_\_\_ Department of Labor (Labor Department)/ State Unemployment Agency (UI Agency). The purpose of this agreement is to designate the Labor Department/UI Agency as an "authorized representative" of the \_\_\_\_\_ Department of Education (Education Department) for purposes of obtaining and reporting information concerning the placement and retention of students in employment as required by section 212 of the Adult Education and Family Literacy Act (AEFLA).

*RECITALS:*

1. Eligible providers maintain education records on participants enrolled in adult education and literacy programs that include information on student demographics, programs of study, achievement, attainment and social security numbers. The \_\_\_\_\_ Labor Department/ UI Agency maintains unemployment insurance wage records on all qualified employees in \_\_\_\_\_ state.
2. AEFLA (P. L. 105-220) creates a performance accountability system for adult education and literacy programs. States must report annually to the U.S. Department of Education (ED) on the progress of the state in reaching agreed upon levels of performance on core indicators specified in the law. These core indicators include placement and retention in employment.
3. In order to determine employment outcomes for students enrolled in adult education and literacy programs, eligible providers will supply the \_\_\_\_\_ Labor Department/UI Agency with a list of the social security numbers of these students. The \_\_\_\_\_ Labor Department/UI Agency will access unemployment insurance wage records using these social security numbers and determine employment outcomes for these students. The \_\_\_\_\_ Labor Department/UI Agency will report the results of this analysis to the \_\_\_\_\_ Education Department in aggregate form only, without personally identifiable information. Eligible providers will not release personally identifiable information from the education records of students to state agencies or departments other than those listed in this agreement.
4. The Family Educational Rights and Privacy Act (FERPA) generally prohibits the disclosure of education records without the consent of the parent for children under the age of 18 or from students attending postsecondary educational institutions. Under FERPA, education records are defined as records directly related to a student and maintained by an educational agency or institution. The records accessed by

\_\_\_\_\_ Department of Education to meet AEFLA performance reporting requirements are education records, and subject to FERPA.

5. FERPA contains several exceptions to the general rule that education records may not be disclosed without prior, written parental consent. One exception allows for disclosures to authorized representatives of the Secretary of Education, the Comptroller General, the Attorney General, and state and local educational authorities. Such a disclosure must be made in connection with an audit or evaluation of a Federal or State supported education program. The disclosure may also be made for the enforcement of or compliance with Federal legal requirements related to the Federal or State education program.

6. The disclosure from the \_\_\_\_\_ Education Department to the \_\_\_\_\_ Labor Department/UI Agency is for the purpose of complying with the performance reporting requirements of AEFLA, and is permissible under FERPA. ED has concluded that the \_\_\_\_\_ Labor Department/UI Agency can be designated an authorized representative for purposes of compiling and reporting information as required by AEFLA.

7. Without access to these records, the state of \_\_\_\_\_ will be unable to provide accurate performance information required by AEFLA in a timely and cost-effective manner.

**AGREEMENT:**

1. The \_\_\_\_\_ Education Department designates the \_\_\_\_\_ Labor Department/UI Agency as its "authorized representative" under FERPA for the limited purpose of collecting information directly from eligible providers in order to comply with the performance reporting requirements of AEFLA. This authorization is limited to the collection of information and data from the education records (as defined by FERPA) of students enrolled in adult education and literacy programs in \_\_\_\_\_. It is understood and acknowledged by the parties that the \_\_\_\_\_ Labor Department/ UI Agency will not redisclose any personally identifiable information from the education records.

2. The \_\_\_\_\_ Labor Department/UI Agency agrees to destroy all personally identifiable information such as social security numbers obtained from the above-referenced education records as soon as all statistical analysis has been performed, or when the information is no longer needed, whichever date comes first. All versions of such information and data, electronic, paper, or otherwise, must be destroyed.

3. The \_\_\_\_\_ Education Department agrees to work with ED, and in particular, the Family Policy Compliance Office (FPCO) to ensure that every eligible provider which discloses education records to the \_\_\_\_\_ Labor Department/UI Agency will update its annual notification to include the \_\_\_\_\_ Labor Department/UI agency as a recipient of education records for the purposes of complying with the performance reporting requirements of AEFLA.

This agreement shall be in effect for \_\_\_\_\_ years from the date of the last signature.

\_\_\_\_\_  
Superintendent  
\_\_\_\_\_ Department of Education

\_\_\_\_\_  
Date

\_\_\_\_\_  
Secretary  
\_\_\_\_\_ Labor Department/UI Agency

\_\_\_\_\_  
Date

