**WorkforceGPS**

**Transcript of Webinar**

**Joint Guidance on Data Matching to Facilitate WIOA Performance
Reporting and Evaluation**

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LAURA CASERTANO: Now I'm going to go ahead and get myself right out of the way and move right into today's presentation. Again, I want to welcome everyone to today's "Joint Guidance on Data Matching to Facilitate WIOA Performance Reporting and Evaluation" webinar. I'm going to turn things over to today's moderator, Pam Mertens. She's the supervisory UI specialist for the Employment & Training Administration U.S. Department of Labor. Pam?

PAM MERTENS: Hi. And with me today are Dale King, the chief of privacy at the Department of Education and Agnes Wells who works in the office of unemployment insurance with me. What we want to do is to talk today about the joint guidance that was issued back in August. We worked with Dale and others at the Department of Education to get us to the point where we could talk about the requirements of WIOA and how that affects performance reporting for the core programs.

In July 2014 Congress enacted the Workforce Innovation and Opportunity Act, which, as I've already indicated, is known by its acronym WIOA and this is the first legislative reform of the publicly funded workforce development system – which was previously WIA – in more than 15 years. One of the things that WIOA did was to add two new core programs, one, the Adult Education and Family Literacy Act programs from the Department of Education and the vocational rehabilitation program from the Department of Education.

Today's objectives will be to provide you an overview of WIOA and the joint guidance and to provide an overview of the federal laws and regulations governing the use and disclosure of records. One of the issues that we had in developing the joint guidance is that we had different sets of privacy and confidentiality requirements that we had to work together to get to a point where we could cover – where we could meet the requirements and help you all meet the requirements of each of those laws.

One of them is the Family Educational Rights and Privacy Act, otherwise known as FERPA, the vocational rehabilitation regulations, which are not subject – vocational and rehabilitation is not subject to FERPA and they have their own regulation at 34 CFR 361.38 and the DOL regulations are in confidentiality of unemployment compensation information at 20 CFR part 603. So in the overview, we have listed several regulations.

There were two DOL only – I'm sorry, one DOL-only regulation and two Education-only regulations and then one joint regulation with Education and the Department of Labor. All of those regulations were final as of yesterday and they can be found on the WIOA website at the Department of Labor and at the end of the slides, we'll give you a link to that so that you can find that information and get the regulations.

So the key goals are to help job seekers to access employment, education, training and support services, to match employers with skilled workers and WIOA mandates enhanced and increased coordination among key employment, education and training programs.

So what WIOA does is to reaffirm the role of the customer-focused one-stop delivery system, which is the cornerstone of the publicly funded workforce development system and it's designed, as I said, to help job seekers to access employment and the training they need to move into the jobs that will help them compete in the global economy.

So the big issue that we wanted to talk about today is the performance accountability requirement and the WIOA core programs. The core programs, as I indicated, AEFLA program administered by education, vocational rehabilitation administered by education and the adult, dislocated worker and youth programs, those are three separate programs in the Department of Labor as well as the employment service program otherwise known as Wagner-Peyser. So you may hear the term "Wagner-Peyser" and that refers to the employment services program that's administered by the Department of Labor.

So there are other programs besides those that are subject to WIOA and some of those are the Indian and Native American programs, YouthBuild and the National Farmworker Jobs program and Job Corps.

So at this point – oops. Sorry about that. So at this time, I'm going to turn this over to Dale. Can I go back a slide? No. I'm not turning it over to Dale yet, because I wanted to talk about the performance reporting and data privacy and confidentiality.

So in WIOA, states are required to use the programs that are subject to WIOA or required to use wage records to evaluate the performance accountability of their programs and their training providers.

Now, that requires that they match records, they match the Social Security numbers from the educational records or from vocational rehabilitation records or from any of the other programs and send those Social Security numbers to the UI agency. The UI agency can then match against the wage records and send the information back. As we go through today, we'll talk about the different ways that that can be accomplished and the different restrictions on all of that as we go through.

DALE KING: Thank you, Pam. And good afternoon, folks. As Pam was saying, the different core programs are required to do the matching. So given the different – given the variety of these different core programs matching records to meet the WIOA performance accountability reporting and evaluation requirements does raise a lot of complex issues regarding privacy and confidentiality.

Now, the core programs must consider the privacy and confidentiality requirements of multiple federal laws, which does make it much more complex when conducting these – the data matching for the WIOA performance reporting purposes.

Now, in addition to the federal laws, there could be state laws that provide greater privacy and confidentiality protections and you should be aware of those if you do have state laws that do provide such greater protections. And of course, we're not going to be discussing those in our presentation today nor do we cover any of these state laws in our guidance. Now, as Pam mentioned, there are three federal laws that governed the use of disclosure of records, the FERPA, which governs the use and disclosure of Personally Identifiable Information or what I'll be using throughout this presentation is PII from education records.

And then there is VR regulations, which governs the use and release of what's called personal information from VR records and of course, VR regulations, which governs the use and release of confidential UC information. Now, I will be discussing FERPA and the VR regs. And please note that while my office, the family policy compliance office, administers FERPA, it's really the Department of Education's rehabilitation services administration or RSA, which is in the Office of Special Education and Rehabilitative Services that oversees the VR programs and administers the VR regulations.

So what is FERPA then? So FERPA is the federal privacy law that protects the privacy of PII from education records and FERPA really gives parents certain rights regarding their child's records, it gives them a right to have access to their child's education records, the right to seek to have the records amended and the right to consent to disclosure of the PII from those education records, except there are exceptions to that requirement which will come into play as we go through the presentation today.

And it's important to note that these rights that the parents have are transferred to the student when he or she becomes 18 or enters post-secondary school at any age. Now, when talking about matching records for WIOA performance reporting and evaluation, it's important to understand which entities are subject to FERPA and what records are FERPA protected. FERPA really directly applies to all educational agencies and institutions that receive any federal funds under any program administered by the secretary of education and this also includes Pell grants or student loans, which are funded under the Higher Education Act.

So basically, most post-secondary institutions are covered, however, there may be some private K-12 schools that would not be covered. Now, when we talk about educational agencies and institutions, we really are talking about schools, school districts and post-secondary institutions. For example, LEAs, post-secondary institutions that are providing AEFLA, adult education literacy services generally would be considered to be educational agencies or institutions subject to FERPA as most of those institutions would be the recipient of federal funds under a program administered by the secretary.

Now, as you're probably aware, many of the WIOA programs are actually administered by entities that are not considered to be an educational agency or institution. One, as I think Pam mentioned early, the VR agencies, which have their own regulations – confidentiality provisions are not considered to be educational agencies or institutions under FERPA and of course, then they would not be subject to FERPA, but they would be subject to their own confidentiality provisions.

Also, FERPA does not apply directly to a state education – to state educational agencies as they do not meet the definition of an educational agency or institution under FERPA, although FERPA was amended so that parents and eligible students would have a right to inspect and review their education records that are maintained by the state agency. Now, many eligible providers delivering WIOA services also are not schools, LEAs or post-secondary institutions. These providers, such as community-based organizations and the other entities that are listed on the slide typically would not be considered to be entities covered by FERPA.

Now, although these non-educational entities may receive federal funds under a program administered by the secretary of the education, such as they may be receiving AEFLA funds, they do not typically meet the definition of educational agencies or institutions and therefore, FERPA does not directly apply to such eligible providers. Equally, it's important to understand which entities are FERPA-covered entities. It is also important to understand which records must be protected under FERPA.

Now, FERPA has a very broad definition of education records and it's those records that, with certain exceptions, are directly related to the student and are maintained by an educational agency or institution or by a party acting for the agency or institution. Therefore, individual records of participants that are WIOA are only going to be considered education records protected by FERPA if they meet this definition. Also, FERPA only applies to education records of students who are or have been in attendance at an educational agency and institution.

FERPA is also applicable to those educational records accessed without consent of the parents or an eligible student by third parties that are not educational agencies or institutions. For example, such as VR agencies if that PII from the education records was originally maintained by an educational agency or institution. So while the education records, in this situation, are FERPA-protected, though, that does not mean that the third party itself would become a FERPA-protected entity.

Now, there also are records then that would not be covered under FERPA when we were talking about WIOA programs. For eligible providers that are non-educational agencies or institutions or if somebody – a third party that would be acting – if they're not a third party that's acting for the institution, or for eligible providers that are educational agencies or institutions and the eligible individuals are not actually students enrolled in the schools, participants' records would not be education records subject to FERPA.

This, for example, since VR has its own confidentiality provisions, those VR records also are not subject to the requirements of FERPA, however, if the VR agency would be the recipient of PII from education records, then those records are FERPA-protected and they must be protected as required by FERPA. Now, similar to other privacy laws, there are certain restrictions that are on the disclosure of records and the general rule under FERPA is that the parent or the eligible student must provide a signed and dated written consent before an educational agency or institution discloses PII.

Now, such written consent has requirements, it must specify the records that are going to be disclosed, state the purpose of the disclosure and identify the party or class of parties to whom the disclosure might be made. However, there are several exceptions to this consent requirement and under the – under these exceptions, FERPA permits, but does not require educational agencies or institutions to disclose the PII without obtaining the prior written consent of the parent of student.

Now, the exception to consent in FERPA that is the most applicable to matching PII from education records and wage records is FERPA's audit and evaluation exception and this is really the only exception we discuss in our guidance and also the only one we're going to discuss today. So under WIOA evaluation exception, the state or local education authority may disclose PII without consent to its appropriately designated authorized representative for the purpose of auditing and evaluating a federal/state-supported education program, which by the way, does include WIOA core programs.

Now, it's important to understand who is a state or local authority and whom may be an authorized representative. Now, each state designates one or more agencies or entities that's responsible for or authorized under local, state or federal law to supervise, plan, coordinate, advise, audit, evaluate all the elementary, secondary and post-secondary programs and services in the state. FERPA refers to such agencies or entities as a state or local education authority. Now, it generally has interpreted the term to include a state educational agency or what's usually referred to as a SEA and a local educational agency, which is referred to as an LEA and a state post-secondary commission.

However, state agencies other than these might, depending on state law, also be a state education authority under FERPA and this can become an important factoid when we start talking about WIOA programs and how you would – options for doing matching. Now, for example, this is also true for AEFLA programs. It's a good example where the state agency responsible for administration and supervision of AEFLA programs may be the state educational agency, could be a post-secondary commission, it could be a workforce commission, the state's Department of Labor or any other entity in the state that's determined to have that function within the state.

Now, as I stated, FERPA permits the education authority to designate an individual or entity, including a contractor or other government agency to be its authorized representative. Now, the education authority may then disclose the PII from educational records to its authorized representative or permit its authorized representative to obtain access to PII without prior written consent when necessary for an audit or evaluation of federal/state-supported education programs or for enforcement purposes.

Now, for example, the state education authority may designate agencies, such as a state UC agency to serve as its authorized representative for the purpose of conducting an audit and evaluation. As long as certain conditions are met, the state education authority could then disclose PII from education records to the UC agency to conduct the data matching. So what are those conditions that would govern disclosures to an authorized rep? Well, there are several and one – there are several that they may use before – they have to follow before they would be able to disclose PII to the authorized rep.

The PII must only be used by the authorized representative to audit or evaluate federal/state-supported education program or again, it could be used for enforcement of federal legal requirements regarding those programs. The education authority disclosing the PII is required to use reasonable methods to insure, to the greatest extent, that the authorized representative is FERPA compliant. And if the education authority authorized representative is not an employee of the authority, then there must be a written agreement between the education authority and its authorized representatives.

That includes all of the mandatory elements that are required for such written agreements under FERPA and actually, you will find these requirements in Appendix II to our guidance. Also, the education authority should create a record of the disclosure containing the names of the authorized rep and the legitimate interest of the authorized representative in that PII. And the education authority must authorize any further disclosures that would be made and if the further disclosures are to be made on behalf of the authority, such re-disclosure must be conducted in accordance with the requirements under FERPA.

Now, education program is an important term under the audit and evaluation exception. As you will see from the slide, education program includes, among other programs, job training, career and technical education, adult education, which are really more relevant, I think, to the WIOA discussion and any other program that may be 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 to be an education program for the purposes it conducted an audit and evaluation, which is – under WIOA, many of the programs would not be administered by an educational agency or institution.

Another good example would be in many states, agencies other than the state education agency may administer job training and adult education programs. And again, as the – all the core programs are principally engaged in the provision of education, all of the ones we're talking about under WIOA, it interprets all these programs to be education programs under FERPA for the purposes of conducting core program audits and evaluation.

Now, that's – that is a summary of FERPA – (inaudible) – and the provisions under FERPA that will – when we get to the options, I think, will sort of come together. But now I want to switch and I want to talk a little bit about the voc rehabilitation provisions in 34 CFR 361.38. Now, these provisions govern the protection, use and release of personal information that are held by VR agencies. As stated earlier, these regulations are administered by the department of ed's RSA.

As I had mentioned during the discussion of FERPA, VR agencies are not considered educational agencies or institutions under FERPA and must develop their own policies and procedures to safeguard the confidentiality of all personal information.

Now, there are no federal requirements that a VR agency obtain 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 and research are conducted only for purposes directly connected to 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 in accordance with a written agreement.

Also, there are no specific VR content requirements for date exchange agreements, however, such agreements must be consistent with the statutory and regulatory requirements in 34 CFR 361.38. Now, the VR regulations require VR agencies to develop and implement written policies and procedures to safeguard the confidentiality of all personal information and these policies and procedures must insure certain things. It includes the 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.

All applicants and recipients of services and as appropriate, those individual representatives, service providers, cooperating agencies and interested persons are informed throughout – or through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information.

All the applicants and recipients of services or the representatives must be – are informed about the VR agency's need to collect personal information and the policies governing them must include an explanation of state policies and procedures affecting personal information that will be provided to each individual in that individual's native language or through an appropriate mode of communication and the – these policies and procedures must provide no fewer protections for individuals than state laws and regulations.

VR agencies also should make clear that some VR records are needed to comply with performance accountability requirements under WIOA and that those records will be matched with state quarterly wage records. Under – when we were talking about the VR program and the release of personal information from audit, evaluation and research, if the VR agency chooses to release PI for these purposes, then there are certain requirements that must be followed. The information will only be used for the purposes for which it was provided.

The information will be released only to persons officially connected with the audit, evaluation and research. The information will not be released to the involved individuals. The information will be managed in a manner to safeguard confidentiality and there are – the final product would not reveal any personal identifying information without the informed written consent of the involved individuals or individual representatives.

However, as stated in the discussion of FERPA, FERPA provisions will still apply for any education records that were held by the VR agency that the VR agency obtained or accessed without prior written consent of the parent of eligible student during the course of the VR services to the student with a disability. At that point, I'm going to turn it over to Agnes who I think is going to talk about the Department of Labor confidentiality regulations.

AGNES WELLS: We'll move to the next slide. All right. Thank you, Dale. 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. In a nutshell, confidential UC information, including wage records, claim information and employer information may not be disclosed, except as permitted by the confidentiality regulations. Certain disclosures of confidential UC information are mandatory under federal law.

These include information necessary for the proper and efficient administration of the program as well as disclosures to other federal programs, including Temporary Assistance for Needy Families or TANF, child support enforcement, housing and urban development programs, the Supplemental Nutrition Assistance Program or SNAP and the Railroad Retirement Board. Permissible disclosures are listed in 20 CFR 603.5. States are permitted to disclose confidential UC information under certain circumstances, but only if authorized by state law and only if the disclosure does not interfere with the proper and efficient administration of the UC program.

So the purposes of WIOA performance reporting, the following types of disclosures are permissible, disclosures, on the basis of informed consent, disclosures to a public official for use in the performance of official duties and disclosures to an agent or contractor of a public official. We'll talk about informed consent first. Disclosure of confidential UC information is permissible on the basis of informed consent. For this type of disclosure, the entity requesting the confidential UC information must obtain a written signed release from the individual whose information is being sought.

The release must include a statement identifying the specific information to be disclosed, that state government files will be accessed to obtain the information. The statement must also identify the specific purpose or purposes for which the information is sought and the statement that the information obtained under the release will be used only for that specific purpose or purposes. And finally, the release must include a listing of all parties who may receive the information disclosed.

The purpose specified in the release must be limited to providing a service or benefit to the individual signing the release or carrying out administration or evaluation of a public program. 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 individuals' consent if state law allows and if the disclosure does not interfere with the efficient administration of state UC law.

Educational agencies and institutions, VR agencies, other partner programs under WIOA, WIOA service providers as well as other entities may obtain individual's UC wage data by informed consented if permitted by state law. The requirements of Section 603.5(d)(2)(i), which specify the elements that must be included in the 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.

To sum up, just because you have an informed consent signed by the individuals whose information is being sought, that does not obviate the need for an agreement between the state UC agency and the entity requesting the information. 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.

Public official is, defined in the confidentiality regulation, as an official agency or public entity within the executive branch of federal, state or local government who or which has a responsibility for administering or enforcing a law or an elected official in the federal, state or local government. The regulations also enumerate certain additional public officials who may access confidential state wage records needed for performance reporting. We will be discussing these on the next slide.

In the recently published final rule, the Department of Labor clarified that the definition of public official specifically includes certain public institutions of higher education. These include 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. Also included in the definition of public official are 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. And finally, public official also includes publicly governed and publicly funded community and technical colleges.

Furthermore, the term public official includes performance accountability and customer information agencies or PACIAs designed by the governor of the 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.

Public official also includes the chief elected official of a local workforce development area as defined in WIOA Section 39. And finally, public official includes a state educational authority, agency or institution as those terms are used in FERPA to the extent that they are public entities. So what are official duties anyway? As we said, in order to be considered a public official under 20 CFR 603, an official agency or public entity within the executive branch must have responsibility for administering or enforcing a law.

Entities that meet these requirements may obtain confidential UC information for use in the performance of their official duties. Under the revised regulation, performance of official duties includes the use of confidential UC information for state and local performance accountability under WIOA, the requirements of discretionary federal grants awarded under WIOA or as otherwise required, for education and workforce training program performance accountability and reporting under federal or state law.

Non-public service providers. From time to time, we are asked whether non-public education or training service providers may receive confidential UC information for performance reporting purposes. These include private, for-profit educational institutions, like DeVry University, Kaplan University and the University of Phoenix and also private career schools. These types of entities do not fit the 603.2 definition of public official and thus they may not receive confidential UC information unless they obtain a written signed informed consent from each individual whose information is being sought.

These non-public service providers may obtain aggregate information. States are permitted to disclose confidential UC information to an agent or contractor as a public official. With this type of disclosure, the confidentiality regulation requires the public official to be held responsible for insuring that their agent or contractor complies with all safeguards and security requirements. In addition, the agent or contractor may not re-disclose the information, except as permitted by 20 CFR 603.9(c).

Educational agency or institution or a VR agency meeting the definition of public official must enter into a written enforceable agreement with the state or state UC agency for disclosure of confidential UC information. The requirements for agreements are listed in 20 CFR 603.10 and will be discussed on the next slide. Many of these elements overlap the elements required under FERPA for disclosures to authorized representatives and are consistent with VR provisions at 34 CFR 361.38.

However, we note that the VR regulation on confidentiality does not require that the agency enter into an agreement disclose VR information for purposes directly related to the administration of the VR program. However, written agreement is required for sharing personal agreement with another entity for either audit and evaluation purposes or for another program purpose. Agreements must include a number of different elements, which are outlined in 603.10. Most disclosures of confidential UC information require the state UI agency to enter into a written enforceable agreement with the entity requesting the information.

The confidentiality regulation outlines the various elements that the agreements must contain a description of the specific information to be disclosed and the purposes for which the information is sought. Also, the agreement must include a statement that only individuals with a need to access the information for the purposes listed in the agreement may receive the information. The agreement must also address the methods and the timing of requests for information and the responses to those requests.

The agreement must contain provision for payment of cost, provision for safeguarding the information disclosed and provisions for onsite inspections of the recipient of confidential UC information. The agreement must be terminable in the event of a breech and the state UI agency must undertake any necessary action to enforce the agreement. And now I will pass it back to Dale who will discuss some of the options for matching data.

MR. KING: Thank you, Agnes. So I think what we've done so far is sort of given you the individual pieces and when we were doing this joint guidance, we wanted to try to put together some options with visuals to sort of outline and demonstrate how the – how matching could occur that would be in compliance and consistent with the different federal laws and regulations. Now, so what we did in this guidance is to discuss not only with the options as not only for intrastate, it was also for interstate, because we recognized that this was also an issue, both –

We had to actually obtain information from other states. So this guidance discusses both, provides options that deals with those inter and intrastate matching. Also, the options that we provided were not intended to be an exhaustive list of options. The options that we chose we felt provided what we consider to be the most common options that would be selected by states. And even during this webinar we're not going to cover all of those options, we're only going to cover a few of the more relevant options just so to sort of demonstrate how – to give you a better feel of the visuals of how it comes together.

Also, one thing to remember is that these options do not take into consideration any state-specific laws that providing – that may provide further requirements or restrictions on disclosure and the use of education and wage records. So let's – looking at Option 1, in this option, we have a State Educational Agency, an SEA that is the state education authority, which in the graphic is ed authority and there – who is the education authority over core WIOA programs and in this option designates the state UC agency as its authorized representative.

If you'll see from the – you'll see from the diagram that the SEA collects program participation data from each of the service providers, which would be number one and it sends the program participation – participant PII to the state UC agency who is the SEA's authorized representative. The state UC agency uses the PII to link individuals to wage information and then will send back the matched individual level record to the SEA as the – as that SEA meets the public official exception under the UC regs, because they are an authority.

Just for UC, I don't know if we clarified, is unemployment compensation just to make sure that that is understood. When we're talking about UC, it's unemployment compensation of agencies and records. And then the SEA then, in this option, is responsible for analyzing program participation data and wage records to create the performance reports for the core programs. And then the SEA may share the identified aggregate performance reports with each service provider and that's looking at number four on the graphic.

And many share individual – and may also share individual level wage records with service providers that meet the public official exception. You'll see from this is the cause of the types of information that can be shared with service provider depends on whether the service provider meets the exception for the public official then. So the chart contains two paths, one for service providers that are not public officials, which is the top one and one for service providers that are public officials, which is the bottom one.

So in this option, there must be a written agreement then between the SEA, because the SEA is the educational authority, and the state UC agency that – the written agreement that must include all the required components for written agreements, including designating the state UC agency as its authorized representative. And if you'll – in our – in the guidance itself, we provide several other types of similar options like this where instead of the SEA, the educational authority could be the hiring governing board, for example.

So in some ways, you could almost substitute who is the educational authority in this graphic and it would still be actually the same option. Now, Option 6 is – in this option is where a state VR agency is disclosing personal information to a state UC agency for conducting an audit or evaluation of the VR program. So in this option, service providers will share personal information from VR records with the state VR agency and then the VR agency consolidates the personal information from the multiple service providers and shares that with the state UC agency.

And then the state UC agency then will link the data and append the confidential UC information from wage records and then will send the individual level data back to the VR agency, which is a public official under the UC confidentiality regulation. Then the VR agency analyzes the data, creates the WIOA evaluation performance report and then the identified aggregate reports may be shared with all service providers. And similar to Option 1, personal information with wage records, may only be shared with service providers who meet the public official exception.

In this option, there must be a written agreement between the VR agency and the state UC agency. VR agencies are not – and again, remember, the VR agencies are not educational agencies – (inaudible). So FERPA would not apply. It would not be the – the written agreement – FERPA doesn't apply here. Now, as you are very aware, information on the employment outcomes of WIOA, program participants may necessitate the matching of PII with UC wage record information from multiple states.

And in the guidance, we provide two options and Option 7, which is here is where you have multiple state UC agencies are designated authorized representatives. Now, this option is very similar to Option 1, except we're talking about multiple states here. So in looking at this option, the SEA, who would be the State Education Authority, they share PII by designating the state UC agencies in all the multiple states as authorized representatives and the state UC agencies then would conduct the matching between the PI and its state wage records with a – (inaudible) – wage records – wage information to the files and then return the files to the SEA.

And then the SEA would analyze the data and create a WIOA evaluation performance report. As in Option 1, the individual level data may be returned from service providers that meet the exception for public officials, but only aggregate data may be returned to service providers that did not meet that exception. Now, the SEA will need to have separate written agreements under this option with each state UC agency, which includes the proper requirements for the SEA to designate the state UC agency as its authorized representative and otherwise meet all the written agreement method requirements in FERPA and would also – it would be consistent with the UC – must be consistent with UC confidentiality regulations at 20 CFR 603.10.

Now, another option for multiple state data matching is the WRIS2 and I'm going to turn it over to Pam who's going to talk a little bit more broadly about the WRIS2.

MS. MERTENS: As Dale pointed out, in Option 7, the SEA will go state by state to get information from other states. And as we pointed out at the very beginning, under WIOA, the WIOA programs are required to use both inter and intrastate data to – for their performance reporting. So Option 7 is one way to get interstate data. The only other options in the guidance tell you how to get data from your state as opposed to interstate. So if you know that most of your completers in your programs are going to one or two states, then you might want to use Option 7.

On the other hand, if you don't know where your completers have gone and you're not getting enough hits from your own state to have a significantly – statistical – a statistically significant record, then you might want to use what is known as WRIS and WRIS2. Now, WRIS is an automated system for facilitating the exchange of wage records among participating states for the purpose of providing intrastate access to wage record data to support performance reporting and evaluations of DOL-funded employment and training programs.

It was developed under WIA, which as we noted before, is the predecessor to WIOA. WRIS2 was then developed to extend the WRIS – well, let me back up just a minute. WRIS covered only the core programs and as a result, WRIS2 was developed to extend that record sharing model for purposes of fulfilling federal or state performance reporting and evaluation requirements to programs that are administered by the programs – I'm sorry, by the partners in the one-stop system that are identified in WIOA that are not administered by DOL and they include the following programs that are administered by education, which his AEFLA, which we've talked about and vocational rehabilitation.

And also, the Carl D. Perkins Career and Technical Education Act program can get data through the WRIS2. What this is is an automated system that runs on a platform that you may have heard about called ICON and it works as a pass-through so that when you look at – let me go to the next slide and see if we can talk about it here.

So what you have here in Option 8 is the third party entity, which is one of these other programs, the AEFLA program or one of the other programs that is not covered by FERPA and – I mean, that's one situation where they are not covered by FERPA and others where they are.

But what happens then is that the program works so that the education entity, whether it's the state education authority of whether it's the state education agency or whether it's one of these other programs, career and technical colleges that we've noted under the amended 603.2(d), our public officials can get the data directly by going to a PACIA, which is the Performance Accountability and Customer Information Agent in a state.

And the PACIA will then query the network and it will send the query out to all the other – well, you could limit the number of states that you want it sent to or the names of the states that you want it sent to or you can send it out to all the states if you have no idea where your completers have gone. And then each of those states will send the information back to the PACIA, the PACIA will consolidate the information, create the report and send the aggregate data back to the requester. Now, under WRIS and WRIS2, the PACIA may only send aggregate data back to the requester.

Now, at this point, the states are negotiating a new agreement that will include education, because right now education is not a – signatory to the WRIS or WRIS2 agreement, although, they're working on – I think they're working, Dale, on an amendment to the WRIS2 to see if they can get education involved in that.

But ultimately, there's a new agreement that the states are negotiating that will include education so that even a state education authority can be a PACIA and it can then query the system as the PACIA so that once that is accomplished, the new agreement, then it will be easier – and in the new agreement, one of the things that they're talking about in the negotiations is to be able to send individual level data back to the public officials just like in the earlier options that Dale was showing you and – but then send only aggregate data back to those entities that are not public officials.

So that's how the WRIS works. And there's one other thing too, it's – you have to be signed on as a participant in order to either use the system to get data – I mean, your state when I say you.

Your state has to be signed on as a signatory either to use the system to get data or to be queried to send data, because if you're not a participant, nobody's going to ask you for your wages. Now, all the states are signatory to the WRIS agreement, but not all the states are signatory to the WRIS2 agreement. So once the new agreement is out – and it's called SWIS, the State Wage Information System and once that agreement is out to the states to be reviewed and for –

And once it's reviewed and comes back with comments and goes back out again for signature, then where the states have signed on, they can start using the system. So Dale, do you want to talk about the options themselves?

MR. KING: Yes.

MS. MERTENS: Option 8. Oh, I'm sorry, you need this.

MR. KING: Yeah. I do. I think Pam's already covered this one. So I'm going to go to – this is the one where the requester is not subject to FERPA, but – well, hang on. Next slide. But I always talk a little bit about where the requester is subject to FERPA. The one thing that you have to remember about the current WRIS2 is in the WRIS2 agreement, as it is – as it exists today, it has a statement that says that any data exchange must be conducted in a manner that's consistent with FERPA and applicable state law.

However, that's all it says in the current WRIS2 agreement. So it's important to understand that just signing the current WRIS2 agreement is not a substitution for written agreements that are required under FERPA's audit or evaluation exception. So if the educational authority will be disclosing PII from education records with PACIA under the audit/evaluation exception, then the agreement between the educational authority and the PACIA must include all of the written agreement requirements in FERPA.

And there are also – and if you're looking at using this example where you have all the different participating states, under the current WRIS2, then there would – also must be written agreements between the educational authority and all other parties, including the Department of Labor's contractor, other states to which the PACIA will send the PII.

Now, the one thing that – which is a good thing that will sort of make this an easier process with the new negotiated agreement will be that under the new agreement – all of the FERPA written agreement requirements will be incorporated into that agreement negating the need then for the separate agreements with each of the third parties, which is now required – would be required under the current WRIS.

Now, one option that states want to consider, let me go back one slide, is – or two slides, actually – is currently you – a state could consider the – that the governor designate the education authority as a PACIA and then the education authority would sign the current WRIS2 agreement. This would then permit the educational institutions to disclose PII to the education authority who happened to also be the PACIA.

And then the education authority and the PACIA can query the WRIS2 for the purpose of performance reporting, but again, even under this scenario, even if the governor were to designate education authority as the PACIA, there still would have to be written agreements between then the education authority/PACIA at all the subsequent states that would be disclosing information to.

So I think at this point, that covers the options and the presentation. One, we have – there are resources available, you can go to the WIOA resource page. You can also contact my office, the family policy compliance office or our privacy – or Education's privacy technical assistance center or also contact the office of unemployment insurance. As we get inquiries that are coming in regarding the guidance, Department of Labor and Ed are working very closely in coordinating our responses that back to any of the inquiries that we do receive. Now, I think at this point, we're going to –

MS. MERTENS: Before we get to the questions, I wanted to point out too that there's a website that's listed on the resources page for doleta.gov performance WRIS2 and at that website, you can find a list of PACIAs for your state and you can also find – because it's broken down on a state-by-state basis. You can also find a list of the state unemployment insurance agencies, which are otherwise known as SUIAs, but that list of state unemployment agencies is also attached to the guidance as Attachment 3 I think.

But there's a whole list in there of the state UI agencies or UC agencies and then also who, in that state, or what agency in that state you would contact to negotiate an agreement with that state's unemployment agency. So I just wanted to point those out to you before we got into the questions. So –

MR. KING: We have to scroll up.

MS. MERTENS: Yeah. We have to scroll up here. Let's see, use that little – "When will the VR agencies be able to access WRIS2 data?" Dale, do you want to take that one?

MR. KING: Well, I apologize, I don't feel comfortable with some of the VR – I mean, I see there are a few questions regarding VR program and I don't administer that. What I will do is on any questions that pertain to VR, as soon as I get back to the office, I will definitely forward those to our SA and then they will probably get back to folks on these. Some of them I might be able to answer, if I can, I will, but I don't know if I can answer this question. So that one I don't have an answer to.

MS. MERTENS: I don't think that we have an answer on that one even if you're not talking about VR data, but any educational data. We don't have a definite date at this point for when the attachment to the current WRIS and WRIS2 would be signed by education and the states to allow any of the education entities or the VR entities to use the current WRIS and WRIS2. All right. Dale, you – the measurable skills gain.

MR. KING: The question – well, I may have to get back on this one. "What about using education records to report all measurable skill gains?" I don't think this would be under WIOA – (inaudible).

MS. MERTENS: No. I don't think it is. Well, it's – no. It's part of the measures, but it's a different measure from what we've been discussing.

MR. KING: Right. Is that required or recommended by the departments for WIOA? I don't know if I know the answer to the question there either.

MS. MERTENS: Yeah. We don't have – we have not – in the joint guidance, which is what this webinar is designed to address, we did not address the issue of measurable skill gains, because what the guidance is is a how-to for state unemployment agencies and education agencies to be able to exchange data to get the wage records and to be able to do the reporting. So we did not address the measurable skill gains issue in that.

MR. KING: OK. One question is if – just I guess for some people who may have come in late, and we were probably using FERPA throughout, FERPA is the Family Educational Rights and Privacy Act. It's the privacy law that governs education records. The next question is if a library is part of an educational institution, are those records subject to FERPA?

Well, again, that sort of depends. If the library – if the records – if their records – if there are records that are specific to an individual student and are being maintained by the school or a representative of the school, then they would be considered to be an education record.

So if the library – I don't know what context we're talking about. I guess if the library is administering a –

MS. MERTENS: Program.

MR. KING: – program – so if the library is administering a program, then if those records – if those students – if those records are of students that are currently enrolled in that educational institution and they're being maintained by that educational agency or institution, then those would be – more than likely would be covered under – they would be education records covered under FERPA.

But if the library is running a WIOA program, then those students would not be considered to be enrolled in that school where that – in that educational institution, then they probably would not be covered under FERPA. "Performance management, what is that?"

MS. MERTENS: I'm not sure of what the question is. We're not sure what the question is on performance management and whether that's an evaluation under FERPA. As Dale pointed out earlier, the exception in FERPA that permits disclosure of PII from educational records is for the audit and evaluation exception and the WIOA performance accountability measures that are considered to be audit or evaluation. And there are also evaluation provisions in WIOA that wage records must be used for.

So to that extent, it seems to me they, I would say, would be subject to FERPA, but other performance management I'm not sure what the question is. One of the things that you can do is to contact one of us at the information that's on the resources page and then we can take a look at that and get back an answer to you.

MR. KING: Question seven, "Is veteran voc rehab included in this provision?"

MS. MERTENS: If this is a program that is run by the VA, then as far as we know, it is not included in this, but again, Dale, that's something you might want to take back to RSA; right?

MR. KING: Yeah, because it would depend, I guess, on whether it would be – if it would be covered under VR regulations. The next question, is there a plan to get beyond the requirement that state workforce agencies have to be explicitly designated as an authorized representative under FERPA?

Well, no. I don't think so. I mean, you have to understand, again, that the way the laws are – our laws are written – the federal FERPA law is written and regulations that in order for an educational authority to disclose to any third party, whether it's a state workforce agency, whatever, then they would – it would have to be done under one of the exceptions under FERPA and if we're talking about the audit and evaluation exception, which is what we're talking about today, then if the state workforce agency would have to be – would have to be designated as an authorized representative and there would have to be a written agreement.

Now, with that said, it is possible that the state workforce agency, in some states, could be designated as the educational authority itself, which in some – under AEFLA programs, that is true, it is designated for the purposes of WIOA programs.

MS. MERTENS: But otherwise it would take a – an amendment to your regulations; right?

MR. KING: Well, amendment to the statute.

MS. MERTENS: With the statute and the regulations. Right. And that's a time-consuming process. There's a specific question about Illinois, I'm not sure what that is regarding sheltered workshops, but it sounds, Dale, like that's something you might need to take back to –

MR. KING: I don't know the context of that – I mean –

MS. MERTENS: Yeah. If the person asking that will send an email, again, we can – with some more context, then we can take a look at that. The core programs themselves – well, the individual service providers do not do the reporting.

Reporting is done by the agency that governs the program and the reports to the Department of Labor include PII or confidential UC information, but the individual level data, let's call it that – but information going back to the programs, again, if it's going back from the PACIA, it can only go back in aggregate form, because that's what the WRIS and WRIS2 agreements provide for.

And if it's from the agency directly to the state UI agency, the state UI agency can send individual level data back to a public official, but may provide only aggregate data back to any entity that is not a public official. Travel organizations are not included in the definition of public officials. There was a question about that when the notice of proposed rulemaking was sent out and we got the comments back.

It was a question about that, but there are a lot of issues that are outside the scope of the Department of Labor or the Department of Education that include the department of the interior with respect to sovereignty and things like that. So the travel organizations and the travel education entities are not included as public officials. So they would not be able to get confidential information back from the state UI agencies.

MS. WELLS: You already answered number 12.

MS. MERTENS: Right. And I think 12 we've already answered.

MR. KING: Thirteen, if I'm – I think this may be for us. I don't know whether 13 has to do with – as a STEP coordinator. If I'm maybe – I'm not sure if I've – (inaudible) – about this, but I think this STEP program, it may – I'm not sure about – I'd have to look this – well, I'll have to see – I don't know what your role, if any, would be regarding WIOA. I don't the STEP – STEP is not a – I don't think that's your program at all – (inaudible).

MS. MERTENS: Oh, it's not – (inaudible).

MR. KING: Yeah. I don't think – I'll have to check on this, but I don't think that there –

MS. WELLS: Is that a post-secondary program?

MR. KING: No. I don't think the – it's not. The STEP program, from my understanding, is a K-12 program, but I don't think that the – they have a role in WIOA.

MS. MERTENS: Now, WIOA applies to post-secondary programs and although it may occasionally, because of the youth program, apply to an individual who is not in post-secondary, but is working or out in the workforce or needs training or whatever.

MR. KING: Now, on this one, I think the question is these are the students in those STEP programs, which would be special ed – would be – I think a lot of it would be students with disabilities. It's about how you would evaluate the students' job performances. So that's really – I think on this one, let me get back to this.

I don't know who submitted the question, but if you want to submit that question directly to us, we could look at it. I think your question is you would not have a role regarding WIOA, but the – your question is how you might be able to match data regarding your students with wage information in order to determine the evaluation of the students' job performances. I'm thinking it's going to have to take – require consent, but that's really out of the scope of the WIOA.

MS. MERTENS: OK. And the question about the 911, that's a report that I understood from a subsequent question down there, and I don't remember what number it was, but it's a VR question and it depends on what I – from what I can gather from the question is if you put identifiable client data in the report, but the report is going to the government entity that oversees that program, they all – I don't – that would not violate the UC regulations, but I don't know about FERPA.

MR. KING: Well, I don't know. I don't think – so the 911 report – it's a report; right?

MS. MERTENS: It's a report.

MR. KING: It's a result of –

MS. MERTENS: That's what I gathered from a later question.

MR. KING: It's a report under the –

MS. MERTENS: Let me – hold on, let me scroll. No. Let me scroll down a little bit more and see if I can find that other question. – (inaudible) – level data for our 911.

MR. KING: OK. It's a 911. These are VR questions; all right? I do not know the answer. I will – this is really not a FERPA. It would not be a FERPA issue if the – if we're talking about VR agencies and VR data, FERPA would not be an issue here unless they're disclosing if the VR agency happened to have PII from education records that they received from the school itself, then at that point, those records – the records – those records would be subject to FERPA, but whether the VR agency – since the 911 is a VR report, I don't think – it would not be a FERPA issue. I think it's more of a question for VR.

MS. MERTENS: OK. So then the next one it says the WIOA performance evaluation report that only has aggregate data meets the federal agency's reporting requirements. The non-public official service provider is only receiving back aggregate data, but that service provider is not creating the report. The report is being created by the agency – well, either by the PACIA if it includes interstate data or by the entity that has oversight over the service provider or the program that the service provider is providing services for.

So if they're providing services for say, if it's an ETP and it's providing services under adult and dislocated workers, then the adult and dislocated worker program would actually create the report and it would have – because it's a state agency, it would have access to individual level data, but the non-public official service provider would only get back the aggregate data, but it would not have to use that to do the report, because the report would already be done.

Are we going to provide assistance? Absolutely. Agnes and I spend a lot of time working with states and agencies within those states to help them craft agreements that meet both our requirements and the states' requirements and then we also – any questions that come into us now on this we send them over to Dale and he helps to craft any answer that requires an education approach to it.

MR. KING: Well, also on that – on the deal asking about agreements under Option 7, because Option 7 is the interstate, if you're needing assistance on the FERPA compliant written agreements that would be between the PACIA – the – (inaudible) – education authority and the individual states, you can also send a – an email to our privacy technical assistance center, which is on that resource page and that is something that we can assist also from our end in terms of those written agreements that would be FERPA compliant.

MS. MERTENS: OK. On 17, we don't have an option or scenario where the unemployment agency is responsible for producing the performance reports, however, you can – and a requester can, in the agreement with the UC agency, request that the UC agency create the report and send it out or that they send back this aggregate data, if that's the question. So – but you can ask – you could request that of the state UC agency, but there is no specific scenario, because that's not the usual way in which the reports are done. Actually, 18 we have already done.

MR. KING: Eighteen is the VR question.

MS. WELLS: Yeah. That's the one we already covered.

MS. MERTENS: OK. So 19, does the WRIS2 education – PII would be distributed to all – oh, I'm sorry, back – I'm sorry –

MS. WELLS: The federal employee – (inaudible).

MS. MERTENS: Right. The federal. If this – this thing was moving faster than I was reading. The federal employee wage data is not contained in the information that's available through WRIS2, because that goes directly to the state and the federal data is not downloaded to the states unless there's a claim filed and then there's a request made to the federal government for those wages. So the states don't have access to the federal wage data. There is a system out there that does, it's called FEDES, but only certain entities have access to that.

And I don't think that – there's no plan right now to incorporate that data into the data that's accessible through WRIS2.

MR. KING: OK. Question 20, the WRIS2 education PI would be distributed to all participating states, would the FERPA covered entity – (inaudible) – FERPA-compliant agreement – (inaudible)? Yeah. This is – yes. It would. What we're talking about – under the current configuration of the WRIS2, the education authority would have to enter into a written agreement designating each of the separate states as their authorized representative in order to obtain – in order to disclose information with the other states in order to do the matching.

So the answer to your question is yes, there would have to be a FERPA-compliant agreement with each of those states.

MS. MERTENS: Right. But that's part of what we're trying to resolve in the SWIS agreement is to take care of that so that you don't have to have individual agreements. So it may be that for FERPA purposes, it may be easier to just have an agreement with each individual state that you think you need to get the most data from. For example, in Northern Virginia, you would want to get data from D.C. and Maryland, but if you're in Central Virginia, you wouldn't necessarily want that information.

And in Southern Virginia, you might want differentiation from North Carolina. So you would just have to have an agreement with each state. So Option 7 may be the best way to go right now until the new agreement gets out there.

MR. KING: Twenty-one, again, is the same question around the 911 reports in need of individual level data. So we will have somebody from RSA respond to those. I think we have several of those questions, same one.

MS. MERTENS: Right. And I know there are some questions about when we anticipate that the new agreement is likely to be complete. The plan right now is to get – we're working now with education on getting an agreement that we can send out to the states for comment. We would have to have – once we get that out, which we hope to get out sometime in the next month or so and then the states would have to have a comment period.

We'd have to get those comments back, get them incorporated into the agreement and then from that point, once we have everything incorporated into the agreement, then we can send it back out to the states. Now, the problem with that is that we don't have any control over – I mean, with respect to comments, we can say OK, we want your comments back by X date, but that's not the problem. The problem is, though, that once we get to the next stage where we're sending it out, states are going to take a long time, and by long time, I mean several months, to review it, because different departments have to review it, their attorney general has to review it.

They may have to have some legislation, but once – I don't know what the minimum number of states is before it's operative, but once it's operative, any other state that signs on is just automatically included in the pass-through. But we can get – we don't have a timeline right this minute, but all I can say is that we're hoping to get it out before the reporting requirements kick in on July 1, 2017, but there's no guarantee to that.

MR. KING: I think we have reached the end of our time and we do have several other questions. I think at this point, what we will be doing is looking at all of the different questions. We are going to figure out a way to respond back to folks on these, we just don't – I don't think we've figured out exactly how we're going to do that, but we are going to work together and as we look at the questions and try to figure out a way most efficiently and effectively get back – (inaudible).

MS. MERTENS: Right, because as we understand it, the questions will have information – when we get them, have information on who sent them in, but we're also looking at the probability that we will send out additional information in the form of Q&As so that we can address these questions that come in and other questions that have come directly to us so we can get to that, And as we've pointed out before, you have the resources where you can contact us, you can contact Dale's office, you can contact PTAC, contact the WRIS email or look at the WRIS website or contact Agnes and that way we can get your questions taken care of.

And as Dale pointed out earlier, we work together on this so that you get – because none of these questions are simply education questions or UI questions, they all seem to be interrelated. So we're working on that.

So thank you for participating and we will get back to you on your questions as soon as we can.

(END)