U.S. DEPARTMENT OF LABOR
U.S. DEPARTMENT OF EDUCATION

MEMORANDUM FOR: STATE WORKFORCE DIRECTORS
STATE DIRECTORS OF HIGHER EDUCATION AGENCIES
STATE DIRECTORS OF COMMUNITY, JUNIOR AND TECHNICAL COLLEGES
STATE DIRECTORS OF EMPLOYMENT SECURITY AGENCIES

FROM: RAYMOND BRAMUCCI, Assistant Secretary of the Department of Labor for Employment and Training

JUDITH A. WINSTON, UnderSecretary of the Department of Education

SUBJECT: APPLICATION OF FERPA TO REPORTING FOR ELIGIBLE TRAINING PROVIDERS UNDER TITLE I OF WIA

DATE: January 19, 2001

The purpose of this memorandum is to address concerns that have been raised by some States regarding the effect of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) on the administration of the eligible training provider provisions under section 122 of the Workforce Investment Act of 1998 (WIA) (29 U.S.C. 1801, et seq.). As this memorandum describes below, we believe the performance information required under section 122 may be obtained by entities administering WIA in a manner that is consistent with the requirements of FERPA.

Eligible Training Provider Requirements of Title I of WIA

Section 122 of the WIA requires that, for a program of study to be eligible to receive training funds under section 134(d)(4) of WIA (relating to adult and dislocated worker programs), the provider of the program (often an educational institution) must, among other things, provide certain performance outcome information relating to all students who participated in the program. WIA requires performance outcomes on all students, whether or not such students received financial assistance under section 134 of the law. This information includes program completion rates, percentage of students obtaining unsubsidized employment, and wages at placement in employment. Section 122 of WIA also requires additional information relating to the performance outcomes of students in the program who received assistance under section 134, including retention in employment and earnings six months after placement in employment.

The primary purpose of all of this information is to develop "consumer reports" on eligible programs that will be made available at local One-Stop centers to assist section 134 participants, as well members of the general public, in selecting the most effective training providers. In addition, the information is used to determine whether the programs meet the minimum performance levels established by each State under section 122(c) for the programs to retain eligibility to receive assistance under section 134 of WIA.

The data on each program is to be reported to the public in the aggregate. Section 122(c)(5)(B) of WIA generally requires that wage record matches be used in developing the aggregate reports relating to placement in unsubsidized employment and earnings. Wage record matches, which are also the most efficient and reliable method for obtaining this performance information, are accomplished by conducting a computer match of the Social Security Number (SSN) of the student (maintained by the educational institution) with the wage records that are maintained by State agencies administering the unemployment insurance program. The SSN maintained by the educational institution is an education record under FERPA. Under the exceptions discussed below, an educational institution may disclose an SSN to an entity involved in the administration of section 122, that has been authorized by the state educational authority to receive such information. The entity receiving the SSN may not redisclose the education record in personally identifiable form. Further, this record must be destroyed when no longer needed for the purposes of complying with section 122 of WIA.

Application of FERPA Requirements

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. Section 136(f)(3) of the WIA specifically makes FERPA applicable to WIA programs. 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."

FERPA generally prohibits an educational institution from disclosing personally identifiable information from individual student records (such as an SSN) without the prior written consent of the eligible student or parent unless such disclosure falls within one of several exceptions specified under the Act. One of the exceptions, subject to the conditions and limitations discussed in more detail below, is a disclosure in connection with a student's application for or receipt of financial aid (20 U.S.C. 1232g(b)(1)(D)). We believe this exception applies only to the disclosure of student records relating to those students who receive training assistance under section 134 of WIA. Thus, in the case of a WIA participant, the financial aid exception allows for the disclosure a student's SSN to another state agency for the purposes of measuring performance outcome as required by section 122 of WIA.

Subject to the conditions and limitations discussed below, we believe that another exception under FERPA allows providers to disclose the SSNs of all students in a program of study to the entity responsible for preparing the performance information required under section 122 of WIA. This exception allows educational institutions (providers) to disclose personally identifiable information from education records to authorized representatives of State educational authorities in connection with the audit and evaluation of Federally-supported education programs, or in the enforcement of Federal legal requirements relating to such programs (20 U.S.C. 1232g(b)(1)(C)). In short, a State educational authority may authorize a representative to obtain the personally identifiable information such as SSNs from an educational institution for the limited purpose of conducting the required wage record matches and preparing the aggregate information necessary for the consumer reports. Such disclosures may be made to an authorized representative, which could include an entity such as the State UI agency, an entity involved in carrying out interstate wage record matches under the Wage Record Interchange System (WRIS), the State WIA agency, or another entity carrying out the performance reporting requirements of section 122 of WIA. The disclosure, however, is subject to the conditions and limitations of FERPA that are discussed in more detail below.

Conditions and Limitations on Disclosures without Prior Consent

As a condition of disclosure under the authorized representative exception, personally identifiable information such as an SSN from a student's records may not be redisclosed by an authorized representative to a third party without the prior written consent of the student. In applying the authorized representative exception, FERPA provides that personally identifiable information such as SSNs may be used only by the entity designated to prepare the performance information under section 122. Further, such information must be destroyed by such entity when

it is no longer needed for the purposes of section 122. Finally, FERPA requires that all disclosures by an educational institution be recorded in the student's file.

Conclusion

This memorandum summarizes the requirements regarding the reporting of performance information for programs of study conducted by educational institutions required by section 122 of WIA. The memo further describes how such information may be obtained consistent with the requirements of FERPA. We do not believe such requirements will impose undue burdens on educational institutions or on entities involved in administering Title I of WIA, and we believe that these requirements can be carried out in a manner that ensures the accountability of training providers while appropriately protecting the privacy of individual students. If you have any questions regarding this memorandum, please contact Maria Kniesler, Division of One-Stop Operations, at (202) 693-3045.