

SCASFAA ~ *2018 Annual Conference*



SCASFAA Conference
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Data Sharing and Financial Aid

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Historical Context

- In fall of 2017, ED upended the long standing guidance by reinterpreting the existing law to prohibit schools from sharing student specific information with other entities
- Whereas previously, student authorization was permitted, ED now stated that such authorization was not sufficient
- This created uncertainty among financial aid professionals and has created another unnecessary hoop



Historical Context

- This new guidance prohibited institutions from sharing data with other entities (outside scholarship entities, sibling verification forms, Section 8 (Housing Act of 1937) housing information, fee waivers, etc.).
- Efficiency is now grounded in regards to decades of practice concerning data sharing.
- How do we respond to this reinterpretation?



Historical Context

- We recognize security is a viable concern (one year ago we learned of the data breach regarding the DRT).
- The implementation of protecting PII and masking/encrypting data is understood but it must be balanced against measures that become counter effective to service and processing.



Existing laws/regulations that control the release of student data

- 1) HEA - Sections 483(a)(3)(E), 485B(d)(2), and 85B(d)(5)(B) of the Higher Education Act (HEA)

- 2) FERPA - Family Educational Rights and Privacy Act
 - 20 U.S. Code § 1232g
 - 34 CFR 99

- 3) The Privacy Act



We Need to Understand

- The importance, and timeline, on uses of FAFSA data under the HEA
- The general restrictions on the release of all student data under FERPA
- The release of government data under the Privacy Act



HEA Provisions

- This is the federal law that governs the administration of most FSA programs
- Lesser known than FERPA
- Data collected on FAFSA to be used exclusively for:
 - Application, award, and administration of aid programs
 - Also includes state and institutional aid programs



HEA Section 483(a)(3)(E)

“Data collected by such electronic version of the forms shall be used only for the application, award, and administration of aid awarded under this title, State aid, or aid awarded by eligible institutions or such entities as the Secretary may designate”



HEA Provisions

PTAC's guidance "clarifies" that these HEA restrictions apply "broadly" to:

- 1) FAFSA/ISIR data
 - 2) Key Processing results
 - 3) EFC
 - 4) FA History (NSLDS history within the SAR/ISIR)
- Includes information found within the COD system (restrictions apply)
 - ED's interpretation of "administration of aid" includes audits and program reviews



HEA Provisions

- Similar or even identical data collected through an entity other than the FAFSA (i.e., CSS Profile) is not subject to the same HEA restriction
- However, data collected through a source other than the FAFSA would be part of the educational record
- As a result, it is subject to FERPA regulations



HEA Provisions

What does this mean?

- Institutions must identify the student and parent data collected on the FAFSA
- Use FAFSA data only for specified awarding and administration of aid (Title IV, state, and institutional)
- Restrict the release of FAFSA and FAFSA derived data



HEA Provisions

- Release of FAFSA-related data:
 - Aggregated FAFSA Data – ED considers the production of de-identified, aggregate, descriptive statistics about program participants to be a permitted use of FAFSA/ISIR data related to the administration of a financial aid program
 - EFC/Award Data – outcome of FAFSA data and not actual FAFSA data, ED interprets as subject to HEA restrictions



FERPA Provisions

- FAFSA Data covered under both HEA and FERPA provisions – HEA limitations more strict
- Protects an eligible student’s privacy interest in his or her “education records”
- Affords the student the right to have some control over the disclosure of information from the records
- Affords the student certain rights in regards to access to the education records.



FERPA Provisions: Education 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 Provisions: Protection of Student's Privacy

Directory Information – Consent to disclose not required, however, the college must provide:

- “Public notice of the categories of information which it has designated as such information”
- A student may refuse to let the institution designate any or all types of information about the student as directory information



FERPA Provisions: Protection of Student's Privacy

- **Personally Identifiable Information** – Consent is required to disclose, with exceptions
 - College must have student's prior written, signed and dated consent to release information
 - Consent must specify the records to be disclosed, stated purpose, and identify the party to whom disclosure is to be made



FERPA Provisions: Protection of Student's Privacy

On our University webpage:

- No personally identifiable information should be released without written authorization from the student each time that the information is needed. Written authorization should consist of the date, the person receiving the information, what records are to be released, and the student's signature.
- For students who have declared privacy, no information, including directory information, may be released to anyone outside of the University or without an educational need for the information.



FERPA Provisions: Protection of Student's Privacy

Directory Information: Unless the student has requested with the Office of the Registrar that his or her information be listed as confidential, information designated as "Directory Information" **MAY** be disclosed without the consent or knowledge of the student. Directory information at Cedarville University includes the following student information:

- Student's name
- Address
- Telephone Number
- Major/Fields of Study
- Participation in officially recognized activities and sports
- Height and weight (for athletic team members)
- Dates of attendance
- Degrees and awards received
- Most recent education institution attended



FERPA Provisions: Disclosure Exceptions

- Other departments of the school that have a **legitimate educational interest**.
- A contractor, consultant, volunteer, or other third party outside the institution if institution has outsourced institutional services or functions to that group.
- U.S. Department of Education, auditors, accrediting agencies, and other state and local education agencies.
- Officials of another school where the student seeks or intends to enroll. Purpose must be related to enrollment or transfer.
- Statistical, non-personally identifiable information. Educational agencies and institutions are permitted to release.



FERPA Provisions: “Legitimate Educational Interest”

- Defined by institution in FERPA policy, which must be disclosed annually
- Use of information in official duties
- Tie the release of data to an educational purpose and not just curiosity or other interests



FERPA Provisions: Release of De-Identified Data

- De-identified data may be disclosed without consent
- Proper de-identification
 - More than removing name and SSN
 - Includes using a statistical disclosure limitation technique
 - More info at ptac.ed.gov



Privacy Act

- Governs the collection, maintenance, use, and disclosure by federal agencies of records contained in the agencies' systems of records.
- Requires federal agencies that maintain a system of records to establish appropriate safeguards to ensure the security and confidentiality of these records



Privacy Act

- Applies in situations where the school has obtained information directly from an ED system of records (e.g., NSLDS)
- Prohibits federal agencies from disclosing records from their systems of records without prior written consent with some exceptions



Privacy Act: Allowable Disclosures without Consent

- ED may disclose a record from a system of records without written consent for “a routine use”
- ED can disclose to school without consent and school can re-disclose if record will be used solely as a statistical research or reporting record and record is transferred in a de-identified form
 - If school wants to disclose info it obtains directly from ED system, it must provide written statement about de-identification
 - Researcher must also provide written statement about statistical purposes
 - Statement is sent to PrivacyTA@ed.gov before disclosure is made



Privacy Act: Allowable Disclosures without Consent

SAIG (Student Aid Internet Gateway):

- Established to allow authorized entities (including schools), to exchange data electronically with ED
- This agreements establishes the conditions on which data is exchanged
- ED has a contractual agreement with every school that receives financial information through the SAIG
- Data is limited to “authorized personnel”



Privacy Act: Allowable Disclosures without Consent

- “authorized personnel” is defined to include anyone who is permitted access to the information under appropriate statute and regulations



Omnibus Bill

- SEC. 313.
- (a) Notwithstanding the limitations on sharing data described in paragraph (3)(E) of section (a) of the HEA, an institution of higher education may, with explicit written consent of an applicant who has completed a FAFSA under such section 483(a), provide such information collected from the applicant's FAFSA as is necessary to a scholarship granting organization, including a tribal organization (defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)), designated by the applicant to assist the applicant in applying for and receiving financial assistance for the applicant's cost of attendance (defined in section of the HEA) at that institution.
- (b) An organization that receives information pursuant to subsection (a) shall not sell or otherwise share such information.
- (c) This section shall be in effect until title IV of the HEA is reauthorized.



What does this mean?

- 1) Does the proposed language in the bill allow for institutions to provide information to student life or admissions to waive certain fee's?
- 2) May an institution complete and return a verification of sibling enrollment and return to another institution?



What does this mean?

3) Section 8 housing generally is requested through the student, who in turn gives to the entity. Is this permitted?

4) How does an institution handle fee waivers (Praxis, GRE, etc.)?



FAQ's (per PTAC, January 2017)

- **Can an institution provide student financial aid data obtained directly from NSLDS and that are de-identified to a researcher not affiliated with the institution?**
- **Can an institution that is legally part of a public system of postsecondary institutions provide ISIR data including PII, to their administrative central system--wide office or governing board staff for an evaluation of tuition and student financial aid programs?**
- **Can an institution generate and publish de-identified, aggregate statistics using FAFSA/ISIR data about students receiving financial aid at the institution?**



FAQ's (per PTAC, January 2017)

- **Can an institution use a student's financial aid information provided by a student on the FAFSA to recruit a student who has not yet enrolled or tried to enroll at the institution?**
- **Can an institution's housing office obtain FAFSA/ISIR data to determine if a student qualifies for a housing fee deferral pending financial aid disbursement?**
- **Can a financial aid office share FAFSA/ISIR data, including PII about students who receive student aid, with institutional staff responsible for analyses, audits, or evaluations at the institution (e.g., an Institutional Research Office)?**



FAQ's (per PTAC, January 2017)

- **Can a financial aid office share FAFSA/ISIR data with an outside non--state scholarship organization?**



NASFAA Advocacy Efforts

- **White Paper published by NASFAA in consultation with Cooley Higher Education (July 2016 and updated version in June 2017)**
- **Data Sharing Decision Tree released by NASFAA (October 2017)**
- **NASFAA letter on November 17th, addressing ED's interpretation, lack of written guidance, and the overall burdens placed on students and other stakeholders, from NASFAA to:**
 - 1) **James Manning (Acting Under Secretary)**
 - 2) **Kathleen Smith (Acting Assistant Secretary for OPE)**
 - 3) **Michael Hawes (Director of Student Privacy Policy)**



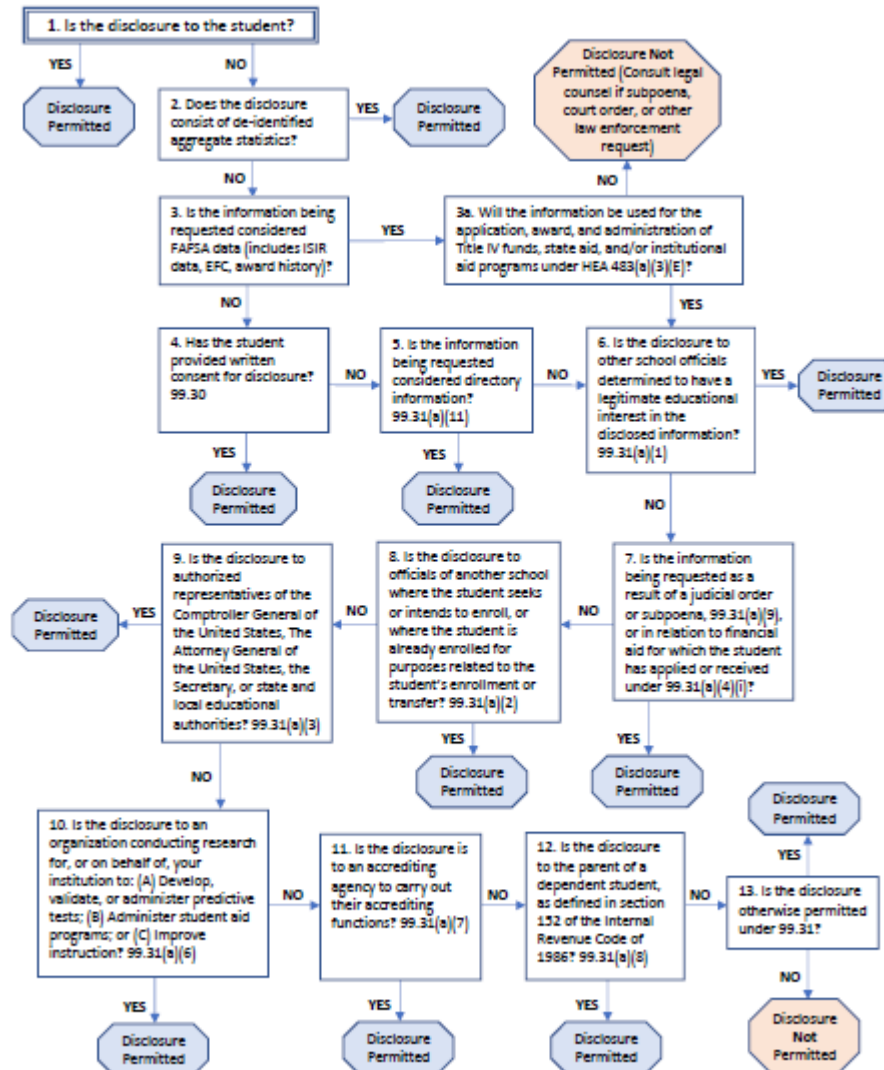
So what is the right answer?

- 1) Private loans
- 2) Student Success Center
- 3) Advancement Office

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Data Sharing Decision Tree





Recommended Best Practices

- Know the rules and your school's related policies and procedures!
- Consult your institutional legal counsel
- Consult your resources:
 - NASFAA (News, decision tree, white paper, etc.)
 - PTAC.ed.gov
- Wait on guidance from ED
 - After all, the law is only 120 hours old
 - ED has been noting guidance to come late March

