



National Association of Student Financial Aid Administrators

Sharing Financial Aid Application Information and FERPA

Karen McCarthy, NASFAA


How did we get here?



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NASFAA Task Force on Code of Conduct and Statement of Ethical Principles


- 2013-14 NASFAA Board appointed the task force to re-examine in light of new challenges and dynamics
- Board approved revised Code and Statement in March of 2014
- Data requests consistently came up during the work of the Task Force



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Code verses the Statement

Code of Conduct	Statement of Ethical Principles
Prescriptive	Aspirational
Members must comply	Members should strive
Enforcement procedures	No enforcement process



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So what about data requests?


- One of six ethical principles:
 - Protect the privacy of financial aid applicants



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So what about data requests?

- “Ensure that student and parent private information provided to the financial aid office by applicants is protected in accordance with all state and federal statutes and regulations, including FERPA and the Higher Education Act.”
- “Protect the information on the FAFSA from inappropriate use by ensuring that this information is only used for the application, award and administration aid awarded under Title IV of the Higher Education Act, state aid, or aid awarded by eligible institutions.”



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Why is this not in the Code of Conduct?

Because it is hard.



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NASFAA Data Sharing White Paper

- No guidance at the time that synthesized all applicable rules
- Includes applicable laws/regulations, case studies, and recommendations
- Released in *Today's News* on July 8, 2016
- Can search "data sharing" on NASFAA home page



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ED White Paper

- ED's Privacy Technical Assistance Center released their own paper on January 12, 2017
- "Guidance on the Use of Financial Aid Information for Program Evaluation and Research"
- www.ptac.ed.gov



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Laws and Regulations

- Higher Education Act (HEA)
 - Section 483(a)(3)(E) restricts use of FAFSA data
 - Sections 485B(d)(2) and 85B(d)(5)(B) prohibit nongovernmental researchers or policy analysts from accessing PII from NSLDS and prohibit the use of NSLDS data for marketing purposes
 - No corresponding regulations
- Family Education Rights and Privacy Act (FERPA)
 - 20 U.S. Code § 1232g
 - Regulations found in 34 C.F.R. Part 99
 - Restricts the release of student education records



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Laws and Regulations

- 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



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HEA Provisions

- Less known than FERPA
- Data collected on FAFSA to be used exclusively for:
 - > Application, award, and administration of aid programs
 - > Includes institutional, state, and other aid programs

"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 Section 483(a)(3)(E))



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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 administrative purposes
 - Restrict the release of FAFSA data



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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



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FERPA Provisions

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"Before I write my name on the board, I'll need to know how you're planning to use that data."



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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.



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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.")



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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



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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, state purpose, and identify the party to whom disclosure is to be made



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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.



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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



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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



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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



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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



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Case Studies and Discussion


- Internal Institutional Requests
 - Institutional research
 - Athletics
 - Academics conducting research
- External Requests
 - Foundations



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Recommended Best Practices

- Working with Data Requestors
- Contracting with Vendors

 Most important: Know the rules and your school's related policies and procedures!



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