

Financial Aid Data Sharing

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I. Introduction

Financial aid professionals collect and administer a vast amount of confidential student and parent data. This data includes information from the Free Application for Federal Student Aid (FAFSA), as well as information from other sources, such as tax returns, social security numbers, names of household members, citizenship information, professional judgment documents, student progress data, and other private sensitive information.

This storehouse of data is appealing to many university offices and departments across campus and third-party regulators and research groups, who seek to better serve the institution's students and monitor student outcomes. These offices and departments occasionally request student level financial aid data to do so. Such well-intentioned requests can, at times, place pressure on the financial aid office, whether real or perceived, to release protected information to help the institution and other organizations in furtherance of their missions.

As a result of increased regulatory focus on student data privacy, financial aid professionals must be aware of the legal restrictions that govern the sharing of student financial aid information with other institutional offices and outside entities. There are two important laws that control the release of student data: the Higher Education Act (HEA), which limits the use of student data provided on the FAFSA to the administration of financial aid, and the Family Educational Rights and Privacy Act of 1974 (FERPA), which broadly restricts the release of personal information contained in student educational records.

This paper was developed to highlight the scope of these applicable laws and regulations, analyze case studies and provide recommendations to assist financial aid professionals in navigating the legal restrictions when responding to various types of internal and external data requests.

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II. Applicable Laws

Federal Student Aid programs are authorized by the Higher Education Act of 1965 (HEA), which was last reauthorized by Congress in 2008. The implementing regulations are mainly found in Title 34 of the Code of Federal Regulations, which are developed and published by the U.S. Department of Education. Some of the statutory provisions found in the HEA, including the provision restricting the use of FAFSA data, do not have corresponding regulations because Congress has limited the U.S. Department of Education's (the Department) authority to further regulate the application and need analysis process.

Section 483(a)(3)(E) of the HEA, specifically restricts the use of the FAFSA data, and states in summary that data collected on the FAFSA form shall be used only for the application, award, and administration of aid

awarded under federal student aid programs, state aid, or aid awarded by eligible institutions or such entities as the Department may designate.

The statutory authority for FERPA is found in 20 U.S. Code § 1232g and the implementing regulations, promulgated by the Department, are published in 34 C.F.R. Part 99, Subparts A through D. The intent of these rules is to protect the privacy of student records by prohibiting the improper disclosure of personally identifiable information to any third party, including the student's parents. FERPA applies to all postsecondary institutions that receive federal funds.

III. NASFAA Principles

In addition to the HEA and FERPA, the NASFAA Ethical Principles further reflect the statutory and regulatory restrictions on the improper release of student data, as discussed above. Protecting private information is a recurring theme in NASFAA's Statement of Ethical Principles, which serve to guide member practices.

The sharing of FAFSA data has its own sub-section in the Principles:

“Protect the privacy of financial aid applicants

- Ensure that student and parent private information provided to the financial aid office by financial aid applicants is protected in accordance with all state and federal statutes and regulations, including FERPA and the Higher Education Act, Section 483(a)(3)(E) (20 U.S.C. 1090).
- Protect the information on the FAFSA from inappropriate use by ensuring that this information is only used for the application, award, and administration of aid awarded under Title IV of the Higher Education Act, state aid, or aid awarded by eligible institutions.”

The statement also mentions that the goal of financial aid administrators should be to “manifest the highest level of professional integrity,” and “protect the privacy of individual student financial records.”

The Statement of Ethical Principles also compels NASFAA members to be lawful at all times. Members are expected to “comply with federal and state laws,” and “adhere to all applicable laws and regulations governing federal, state, and institutional financial aid programs.”

IV. HEA and FERPA – Which Law Applies?

Conceptually, it is important that financial aid officers and institutions understand the distinction between restrictions on uses of FAFSA data, and general restrictions on the release of all student data under FERPA.

Scope of the HEA Restriction on Releasing Data from the FAFSA

Section 483(a)(3)(E) of the HEA limits the use of the FAFSA application data to the awarding and administration of Title IV funds and other aid programs. The FAFSA data is easy to identify; it comprises 100+ questions the student and parents are required to answer for the calculation of the expected family contribution (EFC). This data includes a range of demographic information and sensitive income and asset information. Because the restriction on use of FAFSA data applies to all information obtained by a school from

the FAFSA form, it is important for financial aid offices to keep this data separate from other data collected from the student to ensure that it is only used for the administration of financial aid.

The HEA does not specifically address whether aggregated FAFSA data is also covered under the HEA restriction. However, given that the applicable provision of the HEA limits use of data based on its source, it is reasonable to conclude that even aggregated, de-identified FAFSA data can only be used for the purpose of administering student aid. Perhaps a more difficult question is whether calculations based on FAFSA data (such as a student's EFC) are also subject to the HEA restrictions. While schools should carefully consider whether sharing the results of the EFC calculation would be permissible, generally speaking, there is a lesser possibility that this would be considered a violation of the HEA restriction to share an entirely distinct new piece of data calculated using FAFSA data as opposed to releasing aggregated data collected directly from the FAFSA.

Similar or identical data collected by the institution through a source other than the FAFSA, however, is clearly not subject to the same HEA restriction. If the institution collects information from the student and parent from other sources that overlaps with the FAFSA data, this data would be part of the education record and subject to the FERPA regulations.

Scope of FERPA

FERPA both gives students rights and prohibits schools from disclosing student data. It requires that institutions make educational records available for review by students and provide them with an opportunity to request corrections to their record. FERPA further prohibits schools from releasing student information without the express written consent of the student unless doing so falls into one of several narrow exceptions found in 34 C.F.R. 99.31 that permits release of the information. These exceptions are discussed in further detail in Section V. It is important to note, that except when student data is requested by a regulatory agency or in connection with a court order, postsecondary institutions are not required to release student data to third parties without the prior consent of the student simply because it *may* do so under one of the FERPA exceptions.

As noted above, FERPA applies to all institutions receiving federal funds and generally prohibits such schools from disclosing, without the student's prior written consent, information contained in the student's education records. That leads to the question, what are education records under FERPA?

The term "education records" is defined as those records that contain personally identifiable information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Personally identifiable information includes items like the student's name, address, social security number, or student identification number, but it also includes indirect identifiers such as the student's date of birth, place of birth, and mother's maiden name. It also includes information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

Records received or created and maintained by the financial aid office (regardless of the format of the documents) that directly pertain to a student are considered to be education records and generally may not

be disclosed without the student's prior written consent. This includes most records generated and held by the institution's financial aid office, including but not limited to the following:

- Grades
- Class lists
- Student course schedules
- Disciplinary records
- Payroll records for employees who are employed as a direct result of their status as students (e.g. work study, assistantships, resident assistants)
- Financial aid applications (FAFSA application also subject to the HEA restriction)
- Financial aid history information (including transfer students)
- Cost of attendance information, including documentation relating to any adjustments
- Records relating to eligibility and disbursement of Federal student aid funds
- Satisfactory Academic Progress (SAP) documentation
- Documents used for verification of FAFSA data
- Loan entrance and exit counseling records
- Student financial records, including student account and loan repayment records

The information that is exclusive to the FAFSA would be covered under Section 483(a)(3)(E) of the HEA and FERPA, however, the HEA provisions are more restrictive and limit the use of this data to the awarding and administration of the aid programs. All other student information in the institution's databases and records is considered part of the student's educational record and the release of this data would be subject to the FERPA regulations.

V. What Types of Education Records Disclosures Are Permissible?

FAFSA Data

As discussed above, FAFSA data is part of the student's educational record and is protected by the FERPA regulations. Information that is exclusive to the FAFSA is also subject to the more restrictive HEA provisions.

- Disclosure of FAFSA data is permitted if necessary to determine financial aid eligibility or the amount of aid, the conditions for the aid, or to enforce the terms and conditions of the aid.
- Schools must disclose student records, including the FAFSA data, to the U.S. Department of Education, auditors, accrediting agencies, and other state and local education agencies without obtaining prior written consent, as required by 34 C.F.R. § 668.24.

Educational Records

As outlined above in the FERPA rules, disclosure of student education records is generally prohibited without the student's prior written consent. Although this prohibition is broad, there are several exceptions where prior written consent is not required, including, but not limited to, the following examples which may be relevant in the financial aid context:

- Disclosures to other offices or departments of the school are generally prohibited unless the institution has determined that the individual employee requesting the data has a legitimate educational interest in the records. Institutions may define what constitutes a legitimate educational interest slightly different, but in all cases, an institution must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate *educational* use for the information as part of their official duties. According to the U.S. Department of Education's Family Policy Compliance Office 2011 publication, *The Family Education Rights and Privacy Act, Guidance for Eligible Students*, an educational interest is legitimate if "the official needs to review an education record in order to fulfill his or her professional responsibility."
 - ◆ For example, a legitimate educational use of a student's educational record would include such things as the review of a student's grades by an advisor for the determination of the need for academic counseling, registration activities, or a degree audit.
 - ◆ In contrast, the financial aid office may not disclose information in the student's financial aid records to a development office or to a professor who is curious to know the identity of their students who receive Pell grants, as these individuals likely do not need the information for a legitimate educational purpose. Even though this information may assist the development office or professor in his or her professional responsibilities, the educational purpose for obtaining this information is difficult to justify.
- Disclosure may also be made to a contractor, consultant, volunteer, or other third party outside the institution if the institution has outsourced institutional services or functions to that group. In such cases, the third party must perform an institutional service or function for which the institution would otherwise use its own employees and the third party must be under the direct control of the agency or institution with respect to the use and maintenance of education records. In such cases, institutions should enter a written agreement with the third party outlining the purpose, scope, and the information to be disclosed, limiting the use of personally identifiable information to one or more specific purposes, and prohibiting disclosure of records to anyone other than representatives of the entity with third party legitimate education interest in the data. Such written agreements should be reviewed by the institution's counsel.
- Similar to the exception for outsourcing institutional services to a contractor or third party, an institution may disclose personally identifiable student information to an organization conducting studies for, or on behalf of, educational agencies or institutions for the following purposes: to (a) develop, validate, or administer predictive tests, (b) administer student aid programs, or (c) improve instruction. In order to release identifiable student data in connection with such studies, there must be an agreement in place between the institution and the researching organization, even if that research organization is run by a state or local educational authority.
- Schools may disclose, and in some cases may be required to disclose, student records to the U.S. Department of Education, auditors, accrediting agencies, and other state and local education agencies without obtaining prior written consent in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with legal requirements that relate to those programs. Note, if the request for information is in connection with a government-

sponsored research study or some other non-regulatory purpose, additional requirements outlined under the research exception above would apply.

- Schools may disclose information regarding students that it classifies as “directory information.” Directory information must be contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed, *and* the institution must provide public notice to students each year informing them of the information it considers to be directory information. Directory information may include information such as the student’s name, electronic mail address, photograph, major field of study, grade level, and enrollment status. As part of the annual notice, students must be given the opportunity to opt out of having their directory information disclosed. It is important for a financial aid office to review the institution’s FERPA policy and its annual notice to understand what is considered directory information and to ensure opt out students are excluded from a directory information data release.
- Disclosure of information is permitted if necessary to determine financial aid eligibility or the amount of aid, determine the conditions for the aid, or to enforce the terms and conditions of the aid. (Allowable under the HEA restriction as well.)
- Disclosure is permissible if it is made to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student’s enrollment or transfer.
- Schools may disclose statistical, non-personally identifiable information. Educational agencies and institutions are permitted to release, without consent, education records, or information from education records that have been de-identified through the removal of all personally identifiable information. Determining whether a particular set of methods for de-identifying data and limiting disclosure risk is adequate must be made on a case-by-case basis after examining the underlying data sets, other data that have been released, publicly available directories, and other data that are linked or linkable to the information in question. The key consideration in determining whether the information is personally identifiable is whether a reasonable person in the school or its community, without personal knowledge of the relevant circumstances, would be able to identify a student with reasonable certainty. The releasing party is responsible for conducting its own analysis and identifying the best methods to protect the confidentiality of information from education records it chooses to release.

VI. Case Studies

The practical application of these requirements can be tricky. In this section there are actual data request scenarios provided by NASFAA members and solutions to provide context for the guidance given in this document. Note that the scenarios have been slightly modified to make the information more generic and useful to the NASFAA membership. The case studies are broken down by the origin of the data request and how the data will be used.

Internal Institutional Requests

1. Institutional Research is seeking income data for all incoming freshman to determine trends in a student’s persistence to graduation based on income level.

Solution: The income data from the FAFSA will not be used to award student aid or for the administration of the Title IV programs, and so this is not a permitted use of the FAFSA data. If the FAFSA data is the only

source available, the Financial Aid Office must refuse the request. On the other hand, if the institution collects the income information on an institutional application, such as the CSS Profile form, this income information would be subject to the FERPA restrictions and may be provided if it is determined that there is a legitimate educational purpose for sharing the data to offer additional academic assistance to students and the release of this data fits within the institution's FERPA policy and is disclosed in the annual FERPA notice.

2. The Athletic Department offers reduced price tickets to students receiving a Pell Grant. The Athletic Department wants a list of all Pell students to be able to provide these free tickets directly to the students.

Solution: This request is not for FAFSA specific data, but rather for award data that would be covered under FERPA restriction. It can be reasonably determined that free athletic event tickets would not constitute a legitimate educational purpose for the release of student data under FERPA. The financial aid office must refuse this request, but it may recommend that the Athletic Department require the student to fill out a ticket application and indicate they receive a Pell grant and authorizes the ticket office to verify that with the financial aid office.

3. A guest lecturer of the School of Social Work requested student income data for research he is conducting on the random assignment of roommates in the dorms and student incomes.

Solution: If the information can only be provided from FAFSA data, the request would be prohibited by the HEA statutory restrictions and the financial aid office must refuse the request. However, if the institution collected this information on an institutional application, the income information would be subject to FERPA restriction, and may only be shared if the student provides permission to the guest lecturer. The financial aid office could also suggest that the guest lecturer request this information directly from the student.

External Requests

A well-funded foundation manages its own scholarship program for high school students wanting to attend a public institution in a state. The Foundation provides scholarship awards to thousands of students it selects through its own application process.

Leaders within the Foundation are interested in researching the impact of this scholarship program and in order to conduct a thorough analysis, they have hired researchers to engage in a comprehensive analysis of students receiving their scholarships. They have requested from institutions significant data, not directly from the FAFSA, but individual student award information from both recipients of their scholarship and non-recipients (i.e., a control group).

Solution: Since FAFSA information was not requested, the FERPA rules would apply. However, aggregated data may be provided to the Foundation's researchers that would be general enough that specific students could not be identified given the number of recipients but also provides the data needed to determine the impact of the scholarships.

Internal Institutional Request to be provided to an External Entity

The Office of Undergraduate Studies has contracted with an outside entity to review student data and make recommendations or provide guidance on activities that might help increase retention and completion rates. The outside entity requests financial aid recipients award information, but not necessarily income or other FAFSA data. The Office of Undergraduate Studies would like to provide the FERPA protected award data to the research entity to complete its analysis.

Solution: Data from the FAFSA application has not been requested, only award information. This request would be subject to the FERPA regulations and not the HEA restrictions on the FAFSA data. However, the institution must determine if the outside entity qualifies as a school official and if the use of the data will be for a legitimate educational purpose as defined in the institution's FERPA policy. If the data is released to the research entity, the entity is held to the same FERPA restrictions as the university, it cannot use the FERPA protected information for a different purpose than those for which the information was shared. The entity may also fall under the FERPA release waiver found in 34 C.F.R. § 99.31(6) as an organization conducting a study for or on behalf of an educational agency or institution, but further discussion on the use of the data would be required to make this determination and an agreement would need to be put in place outlining the scope of permissible information sharing.

VII. Recommendations for Best Practices

A. Working with Data Requestors – Team Approach

Ultimately, data seekers and the financial aid administrators should cooperate to serve students and ensure their offices comply with all of the laws that protect student data. The financial aid office should not be a closed resource for data seekers, but a partner with limited authority to release data. Data seekers should see the financial aid office as a partner but also respect the statutory limitations and administrative burdens of the release of student data. Both the requestor and financial aid office must remember that the release of data protected under FERPA is permissible but not required to any entity other than the student and parent of an underage student. The release of data by the financial office is not always a black and white issue; many factors come into play other than the authority to release the requested data.

When the requested data cannot be provided for either legal or administrative reasons, the financial aid office should consult with appropriate administrators to look for other possible solutions or suggestions for the requestor. The institution's counsel and FERPA officer should be involved in situations where the boundaries are not entirely clear on what data can be released or if a request is unreasonable.

B. Contracting with Outside Vendors

Arrangements with outside vendors to perform certain functions can be helpful, but can also pose unique challenges to financial aid offices. Two key things financial aid officers should remember: understand the scope of the service agreement with the vendor and limit a vendor's access to only the data necessary for the vendor to do their job.

The institution should have an agreement in place that clearly outlines the scope of work and the specific type of student data that the vendor will be permitted to access, and for what purposes. We recommend that legal

counsel (either internal or external) review any contracts to be sure that they include all necessary provisions and clearly establish institutional control over the vendor's use of student data. Ideally, a representative of the financial aid office should be consulted when vendors are engaged, particularly when those vendors will require access to significant amounts of student data under the control of the financial aid office. We encourage financial aid offices to advocate within their institutions to be consulted when such agreements are put in place.

While ensuring that an agreement is in place typically *is not* the responsibility of the financial aid office, financial aid directors should review such agreements to be sure that they understand the scope of the arrangement and to be sure their office is only supplying data covered under the agreement. For example, an outside vendor performing counseling services may need access to student addresses to mail out informational literature but likely would have no legitimate interest in accessing the student's social security number and other personal information that may be held in the same database. Prohibiting the vendor from accessing the social security numbers and other information in such a case is clearly required under FERPA, but the vendor may request access to other data that can be disclosed under other exceptions, such as the directory information. Even though the office *may* release such directory information, it is not required to do so, and the office should weigh the risk and benefit of doing so. As a general rule, limiting the range of student information the vendor can access, even when disclosure of certain data is permissible, can lower the risk of additional FERPA violations as a result of vendor error or data breach.

For large offices, with multiple persons fielding requests from vendors on an ongoing basis, it may be advisable to circulate a brief summary of what data you may and may not provide to each vendor.

C. Suggestions

Get the Full Story:

When a data seeker comes to the financial aid office with a request, the staff should endeavor to fully understand the request and how the data will be used. Understanding the requestor's needs and purposes of the data will allow the financial aid administrator to determine what information can be provided and not violate the HEA or FERPA restrictions.

Get the Request in Writing:

Requiring the data request be submitted in writing with specific details will ensure that all parties understand what data is being requested and how the data will be used. The written request will assist in establishing an open dialog on the request.

Institutional Financial Aid Application:

Many institutions utilize an institutional financial aid application which collects many of the FAFSA data items, including income and asset information. Although this institutionally collected data mirrors the FAFSA data, it may be provided in a way that it does not come from the FAFSA, but rather the institution's own application. This application data would be subject to FERPA, but not to the HEA restrictions. The extraction of this data must be carefully documented as to not originate from or appear to have originated from the FAFSA data.

Review Your Institution's FERPA Policy:

All institutions should periodically examine their FERPA policy to determine if there are areas where the policy can be modified to better define the institution officials with a legitimate educational interest in the FERPA protected data. As a key repository for student data at your institution, financial aid administrators should advocate to be included in discussions regarding institutional policies and provide feedback on procedures that are working and that need to be adjusted. Each institution has the flexibility to define these areas within their FERPA policy, remembering that they must be reasonable. Of course, these modifications cannot be made in the spur of the moment when a FERPA request is made outside of the existing institutional policy. An amendment to the institutional FERPA data release policy must be in place prior to implementing any changes in the manner in which FERPA data is released and this change must also be included in the annual FERPA notification to students.

Get Direct Authorization:

Another solution institutions have identified includes recommending the data seeker contact students directly to obtain information or authorize the data release. This works better for more specific student data requests.

Offer Alternatives:

There will be many times when the requested data cannot be provided due to statutory and regulatory restrictions. The financial aid office should seek alternatives to offer the requestor. The financial aid office could ask questions like: Is student level documentation really needed? Can aggregated data be used? Can IPEDS data be provided to fulfill a request that specifically seeks access to FAFSA data?

When the Answer is No:

If these alternatives are not accepted or no data can be provided, the financial aid office should provide a written response to the data seeker, clearly explaining the reason why the data is not available based on statutory, regulatory, or other reasons. Often times, this is a business decision for institutional administrators to make. Financial aid administrators should discuss the appropriate channels for elevating requests to the correct institutional administrators. And in all cases, a copy of the written response should be provided to the institution's counsel and FERPA officer.

VIII. Summary

As gatekeepers of confidential student and parental information, financial aid professionals have an important responsibility to protect the data for which they are entrusted. Other offices and individuals may have an interest in the data that is managed by the financial aid office for purposes that fall inside and outside of the statutory limitations set by the HEA and FERPA rules. However, the financial aid office administrators have an obligation to know what requirements apply to various types of data requests and to act accordingly while remembering that the sharing of some data is permitted and may ultimately benefit students. When working with data seekers, the financial aid office receives various types of requests from a multitude of sources and it is critical that they study the nuances of each type and become knowledgeable regarding what information can be released and to whom, and understand their role in the institution's larger process for managing access to student data. When a financial aid professional is unsure of their ability to release the requested data, they should reach out to internal and external resources, including consulting with the institution's counsel and FERPA officer to reach a compliant resolution.

**The National Association of Student
Financial Aid Administrators (NASFAA)
provides professional development
for financial aid administrators;
advocates for public policies
that increase student access and
success; serves as a forum on
student financial aid issues;
and is committed to diversity
throughout all activities.**



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