

April 19, 1993

Mr. Daniel R. Boehmer
Vice President, Servicing
Student Loan Marketing Association
1050 Thomas Jefferson Street, N.W.
Washington, D.C. 20007-3871

Dear Mr. Boehmer:

This is in follow-up to our meeting on January 12, 1993, and your subsequent letter of January 13, 1993. You have inquired whether release of personally identifiable information from student education records to a proposed student loan "Clearinghouse" would violate the Family Educational Rights and Privacy Act (FERPA). It is our understanding that the Clearinghouse would be established as an independent, not-for-profit corporation by a broad group of lenders, guaranty agencies and secondary markets participating in the Federal Family Education Loan Program (FFELP) to provide a central depository for information on the enrollment status of student borrowers. The Clearinghouse will enter into agreements with postsecondary educational institutions pursuant to which the institution will designate the Clearinghouse as its agent for the purpose of satisfying the institution's obligations under the FFELP to report information on the enrollment status of student borrowers to lenders and guaranty agencies. It is expected that the Clearinghouse will eventually provide this information directly to the National Student Loan Data System.

Under the proposed structure, the Clearinghouse will maintain an enrollment list containing the student's 1) name; 2) Social Security number; 3) enrollment status; 4) date of status change; and other data required to be disclosed under the FFELP regulations. In order for the Clearinghouse to provide current and accurate information on students' enrollment status to lenders, guaranty agencies, and the Department, it is necessary that participating educational institutions provide this information to the Clearinghouse on all of their students, not just those known by the institution to have applied for or received Federal financial assistance. The reason is that a guaranty agency or lender sends a student status confirmation report only to the educational institution identified in the student's application for aid. When a student transfers from the school that first awarded the student financial aid, or enrolls in a new school after having already entered loan repayment status, the second school often has no knowledge of the student's prior financial aid history. As a result, the guaranty agency or lender does not ask for, and the second school does not report, the current enrollment status of that student. Many of these students fail to obtain deferments on their loans and enter into default status without being located.

The information provided to the Clearinghouse will be obtained from the student's education records. See 20 U.S.C. §1232g(a)(4)(A); 34 CFR §99.3 ("Education records"). FERPA generally prevents a postsecondary educational institution from disclosing information from an education record without the student's prior written consent. 20 U.S.C. §1232g(b)(1); 34 CFR §99.30. One of the specified exceptions to this general rule provides for non-consensual disclosure of information from education records "in connection with a student's application for, or receipt of, financial aid." 20 U.S.C. §1232g(g)(1)(D); 34 CFR §99.31(a)(4). While this specific exception would clearly permit non-consensual disclosure of information to the Clearinghouse of records on students who had applied for or received financial aid, it would not permit disclosure of education records, or information from education records, about students who have not applied for or received financial aid.

However, nothing in FERPA prevents an educational institution from contracting with a person or entity outside the institution to perform services that the institution would otherwise provide for itself. As described above, it appears that the Clearinghouse will be established and operated to perform for educational institutions the reporting of student enrollment status that these

institutions are otherwise required to perform under the FFELP. A guaranty agency or lender may ask any educational institution that participates in the FFELP for confirmation of student status, and the institution must search all of its education records in order to respond completely and accurately to that request. We believe that nothing in FERPA prevents an educational institution from entering into an agreement with the Clearinghouse to perform this service for it. Therefore, an educational institution subject to FERPA may disclose to the Clearinghouse information about all of its students, both those that applied for financial aid and those that did not, without prior written consent to the extent necessary to enable the Clearinghouse to perform the student status confirmation services it has been retained to provide on behalf of the institution.

The Clearinghouse should note that the definition of "education records" under FERPA includes records, files, documents, and other materials that are maintained by a person acting for the educational institution. This means that records on students maintained by the Clearinghouse would be subject to FERPA, although it is the educational institution that provided them, and not the Clearinghouse, that is subject to FERPA and liable for any FERPA violations by the Clearinghouse. Before an educational institution enters into this type of agreement, the institution should first be reminded of its recordkeeping obligations under 34 CFR §99.32. Further, the agreement should provide that the Clearinghouse may use information obtained from an institution's education records only for the specific purposes for which it is provided, that is, to report to guaranty agencies, lenders, and the Department on the enrollment status of students who have applied for or received financial aid. The agreement should specify that the Clearinghouse has no authority to disclose any information about students who have not applied for or received financial aid. The agreement should also specify that without the prior written consent of each student, the Clearinghouse has no authority to make any other disclosures of any information from education records, whether or not the student applied for or received financial aid.

I trust that the above information is helpful to you. Should you have additional questions or concerns regarding this matter or FERPA in general, feel free to contact me again.

Sincerely,

LeRoy S. Rooker
Director
Family Policy Compliance Office

cc: Mr. Wayne E. Becraft
Executive Director
National Association of
Collegiate Registrars and
Admissions Officers

Mr. William M. Mackie, Jr.
Chairman
National Council of Higher
Education Loan Programs, Inc.