



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INNOVATION AND IMPROVEMENT

September 25, 2003

Dear Colleague:

It has come to our attention that some postsecondary institutions refuse to provide information about student borrowers to representatives of the office of Federal Student Aid (FSA), U.S. Department of Education, on the grounds that disclosure without the student's written consent violates the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. The Family Policy Compliance Office (FPCO) administers FERPA and is responsible for providing technical assistance to ensure compliance with the statute and regulations codified at 34 CFR Part 99. The purpose of this letter is to explain conditions under which educational agencies and institutions may disclose personally identifiable information from education records to FSA without the student's written consent.

FSA is responsible for enforcing the terms and conditions of Federal student financial aid programs under Title IV of the Higher Education Act of 1965, as amended (HEA), 20 USC § 1070 *et seq.* This includes determining whether student borrowers are eligible for grants or loans and whether they have met conditions for discharge of a loan in bankruptcy or otherwise. Participating institutions are required to provide FSA with the necessary enrollment, disbursement and other information about each borrower or grantee in accordance with the terms of their Program Participation Agreement, as well as program regulations including those found at 34 CFR §§ 668.24(d)(2), 668.24(f), and 685.309.

FERPA provides that an educational agency or institution may not have a policy or practice of disclosing personally identifiable information from a student's education records without the prior written consent of the parent or "eligible student," that is, a student who is 18 years of age or who attends a postsecondary institution. 34 CFR §§ 99.3 ("Eligible student"), 99.5, and 99.31. There are several statutory exceptions to this requirement codified at 34 CFR § 99.31. Section 99.31(a)(4) provides that an educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required in section 99.30 if:

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

- (A) Determine eligibility for the aid;
- (B) Determine the amount of the aid;
- (C) Determine the conditions for the aid; or
- (D) Enforce the terms and conditions of the aid.

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This FERPA exception permits postsecondary institutions to disclose, without prior written consent, personally identifiable information from the education records requested by FSA for students who have applied for or received Federal financial aid. In making these disclosures, institutions must comply with the FERPA recordkeeping requirements in 34 CFR § 99.32 and the prohibitions on redisclosure of information in 34 CFR § 99.33.

Under FERPA, disclosure of information to outside parties is permissive. However, participating institutions are *required* to provide FSA with certain information on student borrowers and grantees under the HEA provisions cited above. They may do so either directly or through a third-party servicer, but an institution remains responsible and liable for any failure by its third-party servicer or other agent to comply with HEA requirements.

Should you have any questions about this matter in particular or FERPA in general, you may contact FPCO at the following address:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-5901

Additionally, school officials may contact us at the following e-mail address: FERPA@ED.Gov.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office