

August 2, 1999

Mr. Daniel R. Boehmer  
President  
National Student Loan Clearinghouse  
2191 Fox Mill Road, Suite  
Herndon, VA 20171-3019

Dear Mr. Boehmer:

This responds to your letter of June 2, 1999, in which you asked this office whether operation of a new EnrollmentSearch program by the National Student Loan Clearinghouse (Clearinghouse) would comply with the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. The Family Policy Compliance Office (FPCO) is responsible for investigating complaints and providing technical assistance to ensure compliance with FERPA and its implementing regulations found at 34 CFR Part 99. We find that the proposed operation of the new EnrollmentSearch program, as described in your June 2 letter, would not violate the requirements of FERPA.

In particular, under the proposed EnrollmentSearch Addendum to the Clearinghouse's participation agreement, member institutions that wish to obtain information on the current enrollment or graduation status of students who have left the institution (Requester Institutions) will submit the following directory information to the Clearinghouse: the student's name, date of birth, and date of last attendance at the Requester Institution. Institutions may not submit this information for students who have blocked the release of directory information under FERPA.

The Clearinghouse will use the student's name, date of birth, and date of last attendance to search its existing database. The existing database is composed of both directory and non-directory information submitted by institutions in order to meet certain reporting requirements of the Federal student loan process. If there is a match, and if the student has not blocked the release of directory information by the institution that submitted the information to the Clearinghouse, the Clearinghouse will provide the following directory information to each Requester Institution: the student's name; whether a transfer record was found (Y/N); the student's new name, if any; the name of the school of first transfer; the Office of Postsecondary Education Identification (OPEID) code of the transfer school; and the starting date for transfer term. The release of information under the

EnrollmentSearch program is separate and distinct from the release of information for purposes of meeting student status confirmation and other enrollment status requests under the Federal Family Educational Loan (FFEL) and other student financial assistance programs.

FERPA provides that an educational agency or institution that receives Federal education funds may not have a policy or practice of releasing education records, or personally identifiable, non-directory information from education records, unless the parent or eligible student has provided prior written consent for the disclosure, except in several statutorily specified circumstances. 20 U.S.C. § 1232g(b)(1); 34 CFR §§ 99.30; 99.31. An institution may designate certain information as "directory information" and then disclose or release the information without first obtaining written consent. See 34 CFR § 99.31(a)(11). "Directory information" includes the following:

the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

20 U.S.C. § 1232g(a)(5)(A). FERPA regulations explain further that directory information means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed.

34 CFR § 99.3 ("Directory information").

In accordance with these provisions, FPCO has advised that certain types of information not listed in the statute, such as a student's social security account number (SSN) or other student identification number, may not be designated and disclosed on a nonconsensual basis as directory information because of the relative ease with which it can be used to access other information about the student that would be considered harmful or an invasion of privacy if disclosed. Accordingly, EnrollmentSearch is structured so that the information released or disclosed by participating institutions and the Clearinghouse does not identify students by SSN or other identification numbers. Rather, it is our understanding that the program uses only information that falls clearly within the scope of "directory information" as specified in both statute and regulation.

The student's name, date of birth, and dates of attendance at an institution are listed as examples of directory information in the statute. As explained in your letter, these are the primary data fields used by Requester Institutions and the Clearinghouse to identify students in the Enrollment Search program. An indication whether a transfer record has

been found merely identifies the student's enrollment status in an institution. Similarly, the starting date of a transfer term merely indicates dates of attendance, which may be designated and disclosed as directory information. The institution's OPEID code contains only information about the transfer institution itself and does not contain information from a student's education record. As described above, all information from education records released by the Requester Institution and the Clearinghouse under the EnrollmentSearch program is directory information under FERPA.

FERPA regulations also provide that an educational agency or institution may disclose directory information only if it has given public notice to parents or eligible students in attendance at the institution of:

1. The types of personally identifiable information that the agency or institution has designated as directory information;
2. A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and
3. The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

34 CFR § 99.37(a).

You explained that in order to comply with this FERPA provision on blocking the release of directory information, the EnrollmentSearch program requires modification of institutional databases to include a "data block indicator" for those students who have exercised their FERPA right to opt out of disclosure of directory information. Under the basic participation agreement, institutions must now include this data block indicator for the information that is submitted every four to six weeks as part of confirmation of enrollment status process for current students. This will ensure that the Clearinghouse does not release directory information for student's who have blocked the release of directory information, even if there is a match with information submitted by a Requester Institution. You also indicated that the Clearinghouse will ask participating

institutions to complete a data block indicator for former students, and that if the institution is unable or unwilling to provide that information for former students, the Clearinghouse will not release enrollment status information for those students.

In summary, FERPA prevents an institution from requesting EnrollmentSearch information for students who have blocked the release of directory information under FERPA, and the Clearinghouse will not release EnrollmentSearch information for those students who have blocked the release of directory information. Based on these conditions, we find that the EnrollmentSearch program complies with the requirements of FERPA regarding the release or disclosure of personally identifiable information from education records on a nonconsensual basis. Please note that other terms and conditions for the release of information about students under the Federal Family Educational Loan (FFEL) and any other student loan programs remain as set forth in our April 19, 1993, letter to the Clearinghouse.

Sincerely,

LeRoy S. Rooker  
Director  
Family Policy Compliance Office