

November 2, 2000

Ms. Barbara Hoblitzell
Principal Policy Analyst
Office of the President
University of California
1111 Franklin, 9th Floor
Oakland, California 94607-5200

Dear Ms. Hoblitzell:

You have requested a written opinion from the Office of General Counsel regarding the applicability of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g; 34 CFR Part 99) to the U.S. Department of Education's Office of the Ombudsman. Specifically, your inquiry is whether borrower information protected under FERPA can be disclosed by an educational institution to the Ombudsman and/or her designated representative(s) without the borrower's written consent, or whether the borrower must provide prior written consent for the disclosure to be made. The Office of General Counsel has forwarded your inquiry to the Family Policy Compliance Office (FPCO), which is charged with providing technical assistance on FERPA, for a reply.

FERPA applies to all postsecondary institutions that receive funds under a program administered by the Secretary of Education. FERPA requires that postsecondary institutions annually notify parents and eligible students of their rights under FERPA. FERPA generally requires postsecondary institutions to afford eligible students access to their education records, as well as to afford them the right to consent to most disclosures of information from education records. There are 15 categories of disclosures in FERPA, however, that are permitted without the student's prior consent.

One such exception to the requirement that student consent be obtained is found at 20 U.S.C. § 1232g(b)(1)(D), which allows for the nonconsensual disclosure of education records

"in connection with a student's application for, or receipt of financial aid."

The implementing regulations also permit disclosure of personally identifiable information from an education record without the student's prior consent when:

(i) [t]he 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.

34 C.F.R. § 99.31(a)(4) (emphasis added).

The Office of the Ombudsman was established by the Higher Education Amendments of 1998, Public Law 105-244. The Ombudsman is charged with providing timely assistance to borrowers of loans made, insured, or guaranteed under Title IV of the Higher Education Act (HEA) by receiving, reviewing, and attempting to resolve informally (in accordance with regulations

prescribed by the Secretary) complaints from borrowers of loans made under Title IV of the HEA. The Ombudsman may, as appropriate, work with other offices within the Department of Education, institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in the Title IV loan programs in the performance of its functions.

Student borrower complaints to the office of the Ombudsman typically involve the following issues: whether the loans have been accurately reported (number of loan, type of loan, balance of loans); whether the default status of the loan is appropriate; whether the customer service provided by the holder of the loan is appropriate; whether the borrower has been properly granted or denied a deferment or forbearance; whether the balance owed on the loan is correct, and reflects all payments made; whether the borrower is eligible for an administrative discharge of the loan; why a borrower's income tax refund has been offset to reduce the loan balance; and whether the borrower is eligible for a loan consolidation.

Although FERPA does not **specifically** permit educational institutions to disclose student education records to the Ombudsman without the borrower's prior consent, such disclosure is permissible. As previously indicated, the Ombudsman is charged with assisting borrowers of Title IV funds in resolving complaints they have about their Title IV loans. The Ombudsman is also charged to work with, as appropriate, other offices within the U.S. Department of Education, institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in the Title IV loan programs in the performance of its functions. Because the Ombudsman is charged with resolving student complaints about Title IV loans, we recognize that the Ombudsman will need to see education records in order to resolve complaints that arise in connection with a student's application for or receipt of financial aid. Thus, we find that educational institutions may make disclosures without student consent to the Ombudsman if the disclosure is in connection with the student's receipt of Title IV loans.

As explained above, the FERPA regulations state that the disclosed information should be necessary for such purposes as to determine eligibility for the aid, determine the amount of the aid, determine the conditions for the aid, or enforce the terms and conditions of the aid. Therefore, we believe that if the information is necessary for the Ombudsman to perform her statutory duty of providing assistance to a student borrower in resolving a complaint about the student's Title IV loan, it meets the requirement of being disclosed in connection with financial aid which the student has applied or received. Further, we believe that in carrying out her statutory duty of assisting student borrowers, the Ombudsman will be enforcing the terms and conditions of the aid. Finally, we note that the disclosure of information to the Ombudsman frequently will be necessary for the Ombudsman to assist students in determining the amount of or the conditions for the aid received or the student's eligibility for aid.

In sum, we find that Title IV institutions do not have to obtain prior consent of the borrower before releasing information to the Ombudsman and/or her representatives so that the Ombudsman may resolve student borrower complaints concerning Title IV loans.

As a reminder, FERPA establishes certain record-keeping requirements regarding requests for access to and disclosures of education records. 20 U.S.C. § 1232g(b)(4)(A); 34 CFR § 99.32. The FERPA regulations state that an educational agency or institution (1) shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student and (2) shall maintain the record with the education records of the student as long as the records are maintained. The record of disclosure must also include: (1) the parties who have requested or received personally identifiable information from the education records, and (2) the legitimate interests the parties had in requesting or obtaining the information. 34 CFR § 99.32(a). If an educational agency or institution discloses personally identifiable information from education records with the understanding that further disclosures will be made, the educational agency or institution's record of disclosure must include the names and legitimate interests of the additional parties. 34 CFR § 99.32(b).

I trust that this is responsive to your inquiry.

Sincerely,

LeRoy S. Rooker
Director
Family Policy Compliance Office

cc:Debra Wiley

Ombudsman