Financial Aid Data Sharing

I. Introduction[1]

Financial aid professionals collect, manage, and have access to a vast amount of confidential student and parent data. This data includes information from the Free Application for Federal Student Aid (FAFSA), the Institutional Student Information Record (ISIR), and the National Student Loan Data System (NSLDS), as well as information from other sources, such as tax returns, professional judgment documents, student progress data, and other private and sensitive information.

Institutional offices and departments, third-party vendors, regulators and research groups may request student-level financial aid data to better serve the institution's students and monitor student outcomes. Such well-intentioned requests can place pressure on the financial aid office, whether real or perceived, to release protected information to help the institution and other organizations in furthering their missions.

Due to increased regulatory focus on student-data privacy, financial aid administrators must be aware of the legal restrictions that govern the sharing of student financial aid information with other institutional offices and outside entities, and with NASFAA's Statement of Ethical Principles protecting the release of private student data.

There are three important laws that control the release of student data: (1) Sections 483(a)(3)(E) and 485B(d)(2) of the Higher Education Act (HEA), as amended; (2) the Family Educational Rights and Privacy Act (FERPA); and (3) the Privacy Act. The NASFAA Statement of Ethical Principles, which serves to guide member practices, also reflects the statutory and regulatory restrictions on the improper release of student data.

This paper was developed and updated to highlight the scope of these applicable laws and regulations, including analysis and guidance from the Department of Education's (ED) Privacy Technical Assistance Center (PTAC). It will also analyze case studies and provide recommendations to assist financial aid administrators in navigating the legal restrictions when responding to various types of internal and external data requests.

II. Applicable Laws

Federal Student Aid programs are authorized by the Higher Education Act of 1965 (HEA), as amended, which was last reauthorized by Congress in 2008. The implementing regulations are primarily found in Title 34 of the Code of Federal Regulations. Some of the statutory provisions found in the HEA, including the provision

[1] The National Association of Student Financial Aid Administrators, in collaboration with Cooley, LLP's Education Practice, originally published this white paper in July 2016. A subsequent revision, was published in June 2017 and contained updates based on the guidance provided by the U.S. Department of Education's Privacy Technical Assistance Center (PTAC) in a publication titled *Guidance on the Use of Financial Aid Information for Program Evaluation and Research*, published in January 2017. We acknowledge the following contributors to the 2017 updated paper from Cooley Higher Education: Vince Sampson, Rebecca Flake, Marjorie Arrington, and Paul Thompson.

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restricting the use of FAFSA and NSLDS data, do not have corresponding regulations because Congress has limited the U.S. Department of Education's 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 that data collected on the FAFSA form shall be used only for the application, award, and administration of aid awarded under Title IV student aid programs, state aid, or aid awarded by eligible institutions or such entities as ED may designate. In March 2018, the fiscal year (FY) 2018 omnibus appropriations bill that included appropriations for education programs included a provision adding that an institution may, with explicit written consent from the student, share FAFSA data with scholarship-granting organizations or tribal organizations. Subsequently, in September 2018, the FY 2019 Labor-HHS appropriations bill further expanded the HEA data sharing language to permit institutions of higher education to share FAFSA data—again, with explicit written consent from the student—with an organization assisting the applicant in applying for and receiving federal, state, local, or tribal assistance for any component of the student's cost of attendance. Section 485B(d)(2) of the HEA prohibits the use of NSLDS data for non-governmental research and marketing purposes.

The statutory authority for FERPA is found in 20 U.S.C. § 1232g, and its implementing regulations are in 34 C.F.R. Part 99. The intent of these regulations is to protect the privacy of students, in part by prohibiting postsecondary institutions from disclosing personally identifiable information (PII) contained in education records to any third party—including the student's parents—without the student's permission. FERPA applies to all postsecondary institutions that receive federal funds.

Finally, the Privacy Act (5 U.S.C. § 552) governs the collection, maintenance, and use of records maintained by federal agencies and generally prohibits agencies from disclosing data contained in those records. The Privacy Act can impose restrictions on institutions as well if a federal agency lawfully provides records or access to records to an institution.

III. HEA, FERPA, or the Privacy Act – When Do These Laws Apply?

Conceptually, it is important to understand the distinction between restrictions on uses of FAFSA data under the HEA, general restrictions on the release of all student data under FERPA, and the release of government data under the Privacy Act.

Scope of the HEA Restriction on Releasing Data from the FAFSA

Section 483(a)(3)(E) of the HEA limits the use of FAFSA application data. Without a student's written consent, institutions can only share FAFSA data for the purpose of applying for, awarding, and administering Title IV funds, state aid, and institutional aid programs. PTAC guidance states that ED's interpretation of the "administration of aid" release provision includes audits and program evaluations necessary for the efficient and effective administration of the student aid programs. This includes mandatory federal reporting, such as to the Integrated Postsecondary Education Data System (IPEDS).

With a student's written consent, however, institutions can share FAFSA data with scholarship granting organizations, tribal organizations, or other organizations assisting the applicant in applying for and receiving

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federal, state, local, or tribal financial assistance for any component of the applicant's cost of attendance. 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 awarding and administration of financial aid.

FAFSA data is easy to identify; it comprises answers to the 100+ questions students and parents are required to answer on the FAFSA. However, PTAC's guidance clarifies that the HEA restriction applies broadly to FAFSA data, ISIR data, key processing results, expected family contribution, awards, and the student's financial aid history, as reflected in NSLDS. The PTAC guidance goes on to say that use of the ISIR data to determine award eligibility, and the resulting awards and disbursement data, including information contained in the Common Origination and Disbursement (COD) System, are covered by the same restrictions that apply to the FAFSA data.

Similar or identical data collected by the institution through a source other than the FAFSA, such as the CSS Profile, is not subject to the same HEA restriction. However, data collected through a source other than the FAFSA would be part of the education record and therefore subject to the FERPA regulations.

Scope of the HEA Restriction on Releasing NSLDS Data

Section 485B(d)(2) of the HEA contains a provision that specifically prohibits the release of PII from NSLDS to non-governmental researchers and policy analysts and also prohibits use of NSLDS data for marketing purposes. These restrictions also apply to NSLDS data on the student's ISIR.

Scope of FERPA

FERPA prohibits institutions receiving federal funds from disclosing personally identifiable information contained in education records without the express written consent of the student unless doing so falls into one of several exceptions found in 34 C.F.R. 99.31. These exceptions are discussed in further detail in Section IV. Unless student data is requested by an auditor, regulatory agency, or in connection with a court order, it is important to note that postsecondary institutions are not required to release student data to third parties simply because it may do so under one of the FERPA exceptions.

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. PII 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. PII 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 qualify as education records. This includes most records generated and held by the institution's financial aid office, including but not limited to the following:

- Grades
- Student course schedules

- Disciplinary records
- 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

Scope of the Privacy Act

The Privacy Act applies to ED's student records to prevent the improper release of government-held student PII. ED is prohibited from releasing student records from their systems without prior written consent from the individual to whom the record pertains. However, the Privacy Act allows for the release of data to institutions for the "routine use" for which the data was collected.

The Student Aid Internet Gateway (SAIG) agreement between institutions and ED establishes requirements for the electronic exchange of student data for the administration of the Title IV programs. Under the SAIG agreement, access, disclosure, and use of student data is limited to "authorized personnel." ED interprets "authorized personnel" to include anyone who is permitted access to the information under all applicable statutes and regulations, which would capture, for example, FERPA's school official and studies exceptions.

IV. When Is Disclosure of PII and Education Records 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.

- Under FERPA, disclosure of FAFSA data is permitted without the student's written consent 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. See the Education Records heading below for other conditions where FERPA allows for disclosure of student data without written consent.
- Under the HEA, however, the FAFSA application data may only be used for the application, award, and administration of Title IV funds, state aid, and institutional aid programs or, with the student's written consent, for the purpose of assisting the applicant in applying for and receiving federal, state, local, or tribal financial assistance for any component of the applicant's cost of attendance.
- According to the PTAC guidance, de-identified, aggregate, descriptive statistics about program participants is a permitted use of the FAFSA data and related award information, because it relates to the

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administration of the financial aid programs. If a data set subject to FERPA is properly de-identified, it may be released without student consent under the FERPA rules.

- The institution may not release a student's FAFSA data and related award information that has not been de-identified for purposes other than those prescribed in the HEA (including the amendments to HEA that were included in the FY18 and FY19 federal appropriations bills), even if the student provides a signed release. The student must provide the data directly to the requesting party.
- Institutions are required to disclose student records, including the FAFSA data and the resulting award information, to an independent auditor, ED, accrediting agencies, and other state and local education agencies, without obtaining prior written consent, as required by 34 C.F.R.§ 668.24.

De-identified Data

ED's PTAC guidance provides details on how student data can be de-identified for release without student consent under FERPA and the HEA. Data de-identification is defined in 34 C.F.R. § 99.31(b) as the removal of all personally identifiable information provided to the institution and the determination that the student's identity is not personally identifiable.

The PTAC document states that the de-identification requirement goes beyond the removal of the student's name and Social Security Number. The removal of direct and indirect identifiers is required, along with the introduction of one or more statistical disclosure limitation (SDL) techniques like suppression, recoding, or the introduction of "noise" into the data. Determining the methods for de-identifying data and limiting disclosure risk must be made on a case-by-case basis after examining the underlying data sets and determining what information is publicly available. See the PTAC website for more information.

Any re-release of Privacy Act protected governmental data by an institution to a third-party is prohibited unless the data is de-identified and the institution and the researcher provide assurances to PTAC that the data will only be used for statistical research purposes, before the data is released. See the PTAC website for more information on this process.

Educational Records

As outlined above, FERPA generally prohibits disclosure of student education records without the student's prior written consent. There are several exceptions where prior written consent is not required, including, but not limited to, the following examples that may be relevant in the financial aid context:

- Disclosures to other offices or departments at the institution are generally prohibited unless the institution has determined that the school official requesting the data has a "legitimate educational interest" in the records. Institutions have discretion in defining both who is considered a school official and what constitutes a legitimate educational interest, but 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." An institution that discloses information under this exception must specify in its annual notification of FERPA rights the criteria it uses to determine who

constitutes a school official and what constitutes legitimate educational interest. 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 determining the need for academic counseling, registration activities, or a degree audit.

- Institutions may disclose PII from education records to a contractor, consultant, volunteer, or other third party outside the institution if the institution has outsourced institutional services or functions to that entity. 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. 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 educational interest in the data. The institution's legal counsel should review such written agreements.
- Institutions 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.
- Institutions may disclose, and in some cases may be required to disclose, student records to ED, 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.
- Institutions may disclose information regarding students that it classifies as "directory information." Only information that would not generally be considered harmful or an invasion of privacy if disclosed can be considered directory information, 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, email 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.
- Institutions may disclose student information 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 aid that the student has received or for which the student has applied.
- Institutions may disclose student information to officials of another school where the student 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.

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V. Case Studies

The practical application of these requirements can be tricky. It requires financial aid administrators to consider whether any or all of the three laws apply, and then—if more than one apply—adhere to the most stringent restriction. This section includes actual data-request scenarios provided by NASFAA members and solutions to provide context for the legal standards outlined in this document. The case studies are broken down by the origin of the data request and how the data will be used.

Internal Institutional Requests

1. The Institutional Research office is seeking de-identified income data for all incoming first-year students to determine trends in a student's persistence to graduation based on income level.

   Solution: Income data is FAFSA data subject to HEA data sharing rules. Under HEA, the institution would need to determine whether it considers the use of income data from the FAFSA for this purpose to be related to the administration of the Title IV, state, or institutional aid programs. If so, the institution could share this data without the student's written request. FERPA would not apply in this case because the data is de-identified.

   If the institution collects the income information on an institutional or private application, such as the CSS Profile form, this income information would not be subject to HEA data sharing rules because it would not be considered FAFSA data. In this example, because the data are de-identified, FERPA also would not apply.

2. The Institutional Research office is requesting disaggregated student data, including Pell grant recipient status, to assist them in completing the Integrated Postsecondary Education Data System (IPEDS) survey.

   Solution: A student's receipt of a Pell grant is considered FAFSA data and is subject to HEA data sharing restrictions. HEA permits sharing of FAFSA data for the administration of Title IV funds, and PTAC guidance considers audits and program evaluations necessary for the efficient and effective administration of those student aid programs to be classified as administration of aid. FERPA permits disclosure of such data to school officials with a legitimate educational interest in the disclosed information, so data sharing in this instance is permitted, provided the Institutional Research office meets the institution's definition of "school officials", the data use meets the institution's definition of "legitimate educational interest", and those definitions are included in the institution's annual FERPA notice.

3. The institution's housing office requests financial aid award data to determine if a student qualifies for a housing fee deferral for pending financial aid disbursement.

   Solution: According to ED's PTAC guidance, any type of award data is FAFSA data and thus is subject to the HEA use restriction. Because the purpose of the disclosure is related to the effective administration (disbursement) of financial aid, the financial aid office may disclose the requested information. However, in a case such as this, it is advisable to provide the minimal amount of data required for this determination. FERPA permits disclosure of such data to school officials with a legitimate educational interest in the disclosed information, so data sharing in this instance is permitted, provided the Institutional Research office meets the institution's definition of "school officials", the data use meets the

institution's definition of "legitimate educational interest", and those definitions are included in the institution's annual FERPA notice.

4. An institution's housing office wants to conduct outreach to students with housing insecurity to notify them of the option to stay on campus during scheduled breaks. They would like to know which students have self-identified as homeless or at risk of homelessness on the FAFSA.

   Solution: Since these questions appear on the FAFSA, they are FAFSA data and are subject to the HEA data sharing rules. The information will not be used for the application, award, or administration of Title IV, state, or institutional aid programs, and will not go to an organization assisting the student in applying for or receiving federal, state, local, or tribal assistance. In this case, data sharing is not allowed. The financial aid office could, however, offer to reach out on behalf of the housing office to at-risk students without disclosing to the housing office exactly what criteria were used to identify them, and students could then follow up on their own with the housing office. This same strategy could be applied in other student success efforts, such as referrals to mentoring programs.

5. The institution's financial aid office receives ISIRs for students who are not enrolled at the institution. May the institution contact those students about enrolling at the institution and the required financial aid process?

   Solution: According to ED's PTAC guidance, this is permitted under HEA since the prospective student has elected to send his/her information to the institution. The institution may contact the student about the admissions and financial aid processes. A prospective student's record is not yet subject to FERPA because the student is not enrolled at the institution. The HEA permits this disclosure because it directly relates to the prospective student's financial aid awarding process.

6. An institution's Single Stop or other similar wraparound student services center seeks to proactively identify students who may be eligible for public benefits such as free or subsidized health care, housing, or nutrition benefits, and wants a list of students with dependents whose incomes fall below a certain level.

   Solution: Student income and whether the student has dependents is FAFSA data, the authorized sharing of which falls under 483(a)(3)(E) of the HEA. Prior to the 2019 data sharing authority expansion, sharing would not have been permitted, even with student permission. The new statutory language passed in the FY 2019 appropriations package, however, would permit the sharing of this information (with the student's written permission) because the data sharing would be for the purpose of assisting the student in applying for and receiving federal, state, or local financial assistance for a component of the Cost of Attendance. FERPA also applies in this instance because the financial aid office is sharing the student's personally identifiable information. However, because the student's permission to share PII was granted with their signed consent, sharing is permitted under FERPA as well. Because the nature of this request is to be proactive vs. in response to the student having initiated a process, student permission would likely have had to have been obtained separately, possibly via an institutional admissions or financial aid application, or through the institution's student portal.

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7. An institution's emergency financial aid program is administered by their foundation, which is incorporated separately from the institution. Their criteria require that a student have unmet financial need in order to qualify for emergency aid, and request access to this information.

   Solution: If the foundation considered unmet need to be the difference between Cost of Attendance (COA) and estimated financial aid (EFA), as one would calculate private loan eligibility, data sharing is permitted under FERPA, provided the institution has obtained the student's written consent. HEA data sharing rules would not apply because ED does not consider either COA or total EFA to be FAFSA data. However, if the foundation considered unmet need as the difference between COA, EFA, and Expected Family Contribution (EFC), HEA data sharing rules would apply. The FY 2019 expanded data sharing authority permits disclosure of FAFSA data like EFC to organizations assisting the student in applying for and receiving federal, state, local, or tribal financial assistance for any part of the Cost of Attendance and, as such, would be permitted with the student's written consent. The written consent would also satisfy FERPA requirements for disclosure.

External Requests

8. A well-funded foundation manages its own scholarship program for high school students who attend public institutions. 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. In order to conduct a thorough analysis, they have hired researchers to engage in a comprehensive analysis of students receiving their scholarships. They have not requested data directly from the FAFSA, but have asked for individual student award information for both recipients of their scholarship and non-recipients (i.e., a control group).

   Solution: Award data has been requested, which is subject to the same HEA restriction as the FAFSA data, according to the ED's PTAC guidance. While the HEA allows disclosures of FAFSA data for the purpose of assisting students in applying for private aid programs, it does not allow disclosures of FAFSA data for purposes of the administration of those programs. A signed release from the student is not sufficient for the release of award information. The institution could suggest the foundation survey recipients directly to obtain the requested data.

9. If an institution is part of public system or district of postsecondary institutions, can the institution release HEA-restricted data to a central office or governing board for financial aid program evaluation?

   Solution: If the central office or governing board is considered a state educational authority under state law, then an institution may release ISIR data for purposes of financial aid program evaluation.

   An evaluation that measures and analyzes the impact of federal, state, and institution-system financial aid programs, necessary for decision-making purposes, would be considered part of the "administration of aid" and permissible under the HEA.

   In this case, since the evaluators are considered government researchers or analysts, the HEA restriction against the use of NSLDS data would not apply, as long as the NSLDS data is used for research purposes and not for marketing purposes.

Internal Institutional Request for an External Entity

10. 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 award data to the research entity to complete its analysis.

    Solution: Data from the FAFSA application has not been requested, but award information has and it is considered to be FAFSA data, according to the ED's PTAC guidance. Under HEA, the institution would need to determine whether it considers the use of award information for this purpose to be related to the administration of the Title IV, state, or institutional aid programs. If so, the institution could share this data without the student's written consent, provided the office of undergraduate studies is considered a school official with a legitimate educational interest in the data; the outside organization is conducting research for, or on behalf of, your institution to either develop, validate, or administer predictive tests, to administer student aid programs, or to Improve instruction; and the release of this data fits within the institution's FERPA policy. The institution must also disclose in its annual FERPA notice how it defines the terms "school official" and "legitimate educational interest."

11. An institution's Development office wants to know whether certain students received Pell grants, both in order to assist them in matching students to scholarships to match specific donor requests, as well as to disclose that information to donors and potential donors to demonstrate the positive impacts of donations.

    Solution: A student's receipt of a Pell grant is considered FAFSA data and is subject to HEA data sharing restrictions. Under HEA, the institution would need to determine whether it considers the use of income data from the FAFSA for this purpose to be related to the administration of the Title IV, state, or institutional aid programs. If so, disclosure would still be subject to FERPA, which permits disclosure without the student's written consent in several scenarios, the most relevant of which in this case would be when the data disclosure is in connection with financial aid for which the student has applied or has received, provided the disclosed information is necessary for such purposes as to determine eligibility for the aid, to determine the amount of the aid, to determine the conditions for the aid, or to enforce the terms and conditions of the aid. However, for the Development office to then disclose the student's Pell receipt status to a donor, they would have to again establish that the subsequent disclosure (from Development to the donor) met both the HEA requirements for disclosure detailed above and, if satisfied, also meets one of the FERPA disclosure conditions (see the Education Records heading in Section IV above for a complete list of allowable disclosures of FERPA data). While it is up to the institution to determine whether a donor would meet any of the FERPA disclosure conditions, is unlikely that a donor would fall into any of the FERPA categories under which disclosure is permitted without written student consent.

VI. Recommendations for Best Practices

A. Working with Data Requestors – Team Approach

Ultimately, data seekers and 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

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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 the 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. Financial aid administrators should remember two key considerations: 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. This would also include data storage site providers, particularly when storing FERPA- or HEA-protected student data. 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 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. Practical Considerations

Know Who Has Access to the Data:

The financial aid office must be aware of all institutional staff members who have access to the FAFSA data and processing results, award data, and disbursement information. This determination must be made to ascertain if the level of access is appropriate for their job duties, and to ensure that these individuals are fully informed of the laws that restrict the use and sharing of this data.

Get the Full Story:

When a data seeker comes to the financial aid office with a request, the staff should ask questions in order 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 without violating the HEA, FERPA, or the Privacy Act 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. Asking for the request in writing will assist in establishing an open dialog.

Release Minimal Data:

When releasing any student data, but particularly ISIR and award data for the awarding and administration of aid purposes, release the minimum amount of data needed for the purpose. For example, when releasing ISIR or award data for institutional aid determination purposes, release just what is needed to make the award determination, instead of the entire record.

Institutional Financial Aid Application:

Many institutions utilize an institutional financial aid application which collects some of the same data elements as the FAFSA, including income and asset information. This application data would be subject to FERPA, but not to the HEA or Privacy Act restrictions. The extraction of this data must be carefully documented, so as not to 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 institutional 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 data privacy policies, and provide feedback on procedures that are working and those that need to be adjusted. Each institution has the flexibility to define these areas within their FERPA policy, within reason. Of course, these modifications cannot be made on the spur of the moment when a FERPA request is made outside of the existing institutional policy. An amendment

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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.

Obtain Authorization or Information Directly from the Student:

Another solution institutions have identified includes recommending the data seeker contact students directly to obtain information or authorize the data release. Remember that a student may not provide an authorization for the institution to release HEA-protected information to a third party, unless the disclosure to a scholarship granting organization, tribal organization, or other organization assisting the applicant in applying for and receiving federal, state, local, or tribal financial assistance for any component of the applicant's cost of attendance. Outside of those circumstances, the data seeker should collect HEA-protected information directly from the student. Student surveys may work well for this purpose.

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 de-identified, aggregated data be used instead? Can IPEDS data be provided to fulfill a request that specifically seeks access to FAFSA data?

When the Answer is No:

If 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, 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 legal counsel and FERPA officer.

VII. 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, FERPA, and Privacy Act rules. However, financial aid 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. It is also important that aid administrators understand their role in the institution's larger process for managing access to student data. When a financial aid professional is unsure of his or her 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.