



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

Office of the Chief Privacy Officer

October 31, 2016

Dr. Daniel Cohen-Vogel
Associate Vice President for Institutional Research
University of North Carolina General Administration
P.O. Box 2688
Chapel Hill, NC 27515-2688

Dear Dr. Cohen-Vogel:

This letter is in response to your inquiry on whether there are any restrictions that would prevent any of the 16 individual constituent institutions that are part of the University of North Carolina (UNC) from providing to the University of North Carolina General Administration (UNC-GA) information from students' Free Application for Federal Student Aid (FAFSA) that is provided to each institution by the Department in the form of an Institutional Student Information Record (ISIR).

Relevant Provisions:

As explained below, a State educational authority (i.e., UNC-GA) may use ISIR and other student information provided to it by the educational institutions under its purview for the purpose of evaluating financial aid programs. This includes the analysis, measurement, and assessment of the impact of state and university-system proposals for the setting of tuition and fee amounts and for determining levels of state and university-system student aid support.

As you know, each of the UNC institutions individually executes a Student Aid Information Gateway (SAIG) Agreement with the Department. The SAIG is the mechanism that permits the Department to provide, among other things, FAFSA/ISIR data to institutions.

The applicable Federal statutes related to the matter discussed in this letter are the Higher Education Act of 1965, as amended (HEA) and the Family Educational Rights and Privacy Act (FERPA).

Higher Education Act of 1965, as amended

Section 483(a)(3)(E) of the HEA provides that the information collected by the FAFSA (and provided to institutions on the ISIR) can be “. . . used only for the application, award, and administration of aid awarded under this title [Title IV of the HEA], State aid, or aid awarded by eligible institutions”

Family Educational Rights and Privacy Act

FERPA, 20 U.S.C. § 1232g, and its implementing regulations at 34 CFR Part 99.99, generally require the prior written consent of a student in attendance at an institution of postsecondary education to disclose the student's education records. Note that FERPA does not apply to students who are not or have not been in attendance at an educational institution. There are a number of exceptions to the requirement of prior written consent under FERPA. In the UNC instance, our understanding is that while the UNC-GA is not responsible for administering student financial aid programs, it is responsible for evaluation of the financial aid programs administered by its constituent institutions. Therefore, we believe that the "audit or evaluation" exception to consent in FERPA, discussed in more detail below, can be used to permit the non-consensual disclosure of Personally Identifiable Information (PII) from education records to the UNC-GA (including FAFSA/ISIR data).

Under FERPA's exception to consent for audits or evaluations, PII from student education records may be disclosed to the UNC-GA, as a State educational authority, in order for the UNC-GA to audit or evaluate a Federal- or State-supported education program. 20 U.S.C. §§ 1232g(b)(1)(C)(i)(III), (b)(3), and (b)(5); 34 CFR 99.31(a)(3)(iv) and 99.35. The FERPA regulations define an "education program" as "any program that is principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution." 34 CFR 99.3 (education program). FERPA similarly requires the individual educational institutions to record the disclosures of PII from education records made to the UNC-GA under the "audit or evaluation" exception. 34 CFR 99.32.

The UNC-GA must protect PII from education records in a manner that does not permit access to personal identification of individuals by anyone other than employees of the UNC-GA or its designated, authorized representatives, except that the UNC-GA may, under FERPA, make further disclosures of the PII from education records, on behalf of the individual educational institutions, in accordance with the requirements of 34 CFR 99.33(b). 34 CFR 99.35(b)(2). The UNC-GA also must destroy the PII from education records when it is no longer needed for the audit or evaluation purposes. 34 CFR 99.35(b)(2).

Student Aid Information Gateway Agreement

The SAIG agreement establishes a number of data security and data governance requirements for institutions accessing FAFSA/ISIR data from the Department. Included among these requirements is a provision that limits disclosure of FAFSA/ISIR data by those accessing the system to "authorized personnel." In most cases, "authorized personnel" would include those employees and contractors of the institution involved in the administration of student aid programs. However, the Department interprets "authorized personnel" to include anyone who is permitted access to the

information under all applicable statutes and regulations. This may include, in appropriate circumstances, employees of the State educational authority.

Analysis:

As the access and use restrictions of the HEA, FERPA, and the SAIG agreement are jointly implicated in any proposed disclosure and use of FAFSA/ISIR data by an educational institution, the most restrictive provisions of each law (and agreement) will jointly apply. Under that concept, educational institutions (the individual UNC campuses) may disclose FAFSA/ISIR data and PII from students' education records to employees or authorized representatives of a State Educational Authority (UNC-GA) for the purpose of evaluating UNC's financial aid programs, specifically, the analysis, measurement, and assessment of the impact of State and university-system proposals for the setting of tuition and fees and for determining levels of State and university-system student aid support. As the evaluation of Federal- or State-supported financial aid programs administered by the individual UNC campuses constitutes an evaluation of a Federal- or State-supported education program, this type of disclosure and use would be permissible under FERPA's "audit or evaluation" exception. And, as the measurement and analysis of the impact of Federal, State, and university-system student aid programs and policies is necessary for data-driven decision-making, the evaluation can be considered part of the broader process of "administration of aid [under Title IV,] State aid, or aid awarded by eligible institutions," and thus would be permissible under the HEA.

We remind both the institutions and the UNC-GA that they must be in compliance with all of the applicable legal provisions, including the detailed requirements in the FERPA regulations, as well as any more stringent privacy provisions under State law. We also remind both that there must be appropriate privacy and security protocols in place for both the transmission of the data from the institutions to the UNC-GA and for the maintenance of those data by the UNC-GA. Finally, we remind the UNC-GA that the authority provided in this letter does not extend to any further non-consensual disclosure by the UNC-GA to any other entity except in a summary, de-identified manner, with appropriate safeguards to protect the privacy of individuals.

I hope the information and decision described in this letter are helpful as the University of North Carolina General Administration continues to develop proposals to support educational and financial opportunities for students.

Please let me know if you have any questions.

Sincerely,



Kathleen Styles
Chief Privacy Officer
U.S. Department of Education