



November 17, 2017

Mr. James Manning
U.S. Department of Education
Acting Under Secretary
400 Maryland Ave, SW
Washington, D.C. 20202

Ms. Kathleen Smith
U.S. Department of Education
Acting Assistant Secretary for the Office of Postsecondary Education
400 Maryland Ave, SW
Washington, D.C. 20202

Mr. Michael Hawes
Director of Student Privacy Policy
400 Maryland Ave, SW
Washington, D.C. 20202

Dear Mr. Manning, Ms. Smith, and Mr. Hawes:

On behalf of the National Association of Student Financial Aid Administrators (NASFAA), and the undersigned organizations, I am writing about the verbal guidance given by the Department of Education's (ED) Privacy and Technical Assistance Center (PTAC) on the sharing of Free Application for Federal Student Aid (FAFSA) and Institutional Student Information Record (ISIR) data. This new guidance would prohibit a student from providing written consent for institutions to release FAFSA data for a purpose not deemed permissible in Section 483(a)(3)(E) of the Higher Education Act, as amended. ED's legal interpretation of what constitutes FAFSA data and why written consent is not allowable, the failure to provide the guidance in writing, and the lack of consideration for the implications of this new guidance is negatively impacting students by inserting another obstacle between them and non-federal scholarship and grant dollars, all while sowing confusion and frustration throughout the aid community. We urge ED to find an alternative solution that would allow data-sharing with the student's written consent, and to formalize their guidance in writing so that institutions have a policy to reference.

Under the new guidance, institutions may not, even with written consent, disclose financial aid award information to outside entities that have legitimate need for the financial aid award information. For example, postsecondary students rely on outside scholarships from private organizations, foundations, and donors to fill the gap between the cost of college and the federal, state, and institutional financial aid they receive. These awards are often need-based and, to determine need, scholarship providers obtain student consent to request certain data directly from the student's financial aid office.

Institutions have a long-standing practice of requiring a student's written consent before releasing financial aid award information to outside entities, in accordance with FERPA. PTAC's January guidance on this topic (https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FSA_final_0.pdf) specifically addresses disclosure of FAFSA data to outside scholarship providers in its Frequently Asked Questions section, but does not prohibit students from authorizing such disclosures by providing written consent. Under the new verbal guidance, institutions may no longer release the information directly to the scholarship provider, even with the student's written consent. Instead, the student must provide the requested information to the scholarship provider. Prohibiting the sharing of application and award data, even with the student's permission, forces students to provide the information they already gave on the FAFSA separately to each scholarship provider, creating an unnecessary burden.

Privacy laws are in place to protect student data from misuse; interpreting those laws as prohibiting students from authorizing use of their own data for their own potential benefit is not only misguided, it contradicts much of the progress we have jointly made over many years to simplify the financial aid process for students.

There are opportunities for ED to help students apply for outside scholarships without creating additional burden. To start, ED should reconsider its interpretation of what is considered FAFSA data. The inclusion of award eligibility information as FAFSA data is overly broad. Disclosure of award data should fall within the limits of FERPA only, and not be subject to the additional restrictions imposed by the HEA.

ED should also explore ways to extend the status of ED-designated entities authorized to use FAFSA data to award aid—a status currently granted to the United Negro College Fund (UNCF) and the Hispanic Scholarship Foundation (HSF)—more broadly to encompass all organizations that provide private scholarship funding for postsecondary study.

We urge ED to identify efficient, practical solutions to these data-sharing concerns in a timely manner and to issue clear written guidance as soon as possible. Recent guidance has raised questions where none existed before, and the affected parties often find themselves in adversarial situations despite their common goal: helping students pay for college. Ultimately, it is the students— who the privacy laws were designed to protect— who lose out when the interpretation and application of these laws does not correctly balance privacy and practicality.

Sincerely,



Justin Draeger, President & CEO

Hispanic Scholarship Fund
National College Access Network
National Scholarship Providers Association
United Negro College Fund