

Financial Aid Data Sharing

Published by NASFAA in consultation with
Cooley Higher Education

June 2017



Financial Aid Data Sharing

I. Introduction¹

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 the analysis and guidance provided by PTAC, 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 restricting the use of FAFSA/ISIR and NSLDS data, do not have corresponding regulations because Congress has limited the U.S. Department of Education's (the Department) authority to further regulate the application and need-analysis process.

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. This version, published in June 2017, contains 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 this updated paper from Cooley Higher Education: Vince Sampson, Rebecca Flake, Marjorie Arrington, and Paul Thompson.

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 federal student aid programs, state aid, or aid awarded by eligible institutions or such entities as the Department may designate. Section 485B(d)(2) of the HEA also 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 at 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 the FAFSA application data to the application, award, and administration of Title IV funds, state aid, and institutional aid programs. FAFSA data is easy to identify; it comprises answers to 100+ questions the student and parents are required to answer for the calculation of the expected family contribution. 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.

PTAC’s guidance clarifies that the HEA restriction applies broadly to FAFSA data, ISIR data, key processing results, expected family contribution, 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.

In addition, the PTAC guidance states that the Department’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.

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 the Department's student records to prevent the improper release of government-held student PII. The Department 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 the Department 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." The Department 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 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.
- 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.
- According to the PTAC guidance, de-identified, aggregate, descriptive statistics about program participants is a permitted use of the FAFSA/ISIR data and related award information, because it relates to the 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/ISIR data and related award information that has not been de-identified for purposes other than those prescribed in the HEA, 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, the Department, 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

The Department'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 document](#) and 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 individual employee requesting the data has a "legitimate educational interest" in the records. Institutions have discretion in defining 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.
 - ◆ In contrast, the financial aid office may not disclose information in the student's financial aid records to a development office or to a professor who is curious to know the identity of their students who receive Pell grants, as these individuals likely do not need the information for a legitimate educational purpose. Even though this information may assist the development office or professor in his or her professional responsibilities, the educational purpose for obtaining this information is difficult to justify.
- 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 education interest in the data. The institution's 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 the Department, 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 the aid.
- 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.

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 have also been updated to include some of the clarifying information from the question-and-answer section of the Department's PTAC guidance. The case studies are broken down by the origin of the data request and how the data will be used.

Internal Institutional Requests

1. Institutional Research is seeking income data for all incoming freshman to determine trends in a student's persistence to graduation based on income level.

Solution: The income data from the FAFSA will not be used to award student aid or for the administration of the Title IV programs, and so this is not a permitted use of the FAFSA data under the HEA restriction. If the FAFSA data is the only source available, the financial aid office must refuse the request. However, the financial aid office would be permitted to disclose income data if it is aggregated, de-identified and presented as a descriptive statistic.

If the institution collects the income information on an institutional application, such as the CSS Profile form, this income information would be subject to the FERPA restrictions and may be provided if it is determined that there is a legitimate educational purpose for sharing the data to offer additional academic assistance to students, and the release of this data fits within the institution's FERPA policy and is disclosed in the annual FERPA notice.

2. 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 the Department's PTAC guidance, any type of award data is FAFSA/ISIR data and thus is subject to the HEA 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.

3. 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 the Department's PTAC guidance, this is permitted 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.

External Requests

4. 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 Department’s PTAC guidance. The HEA does not allow disclosures of FAFSA data for purposes of the administration of private aid programs. A signed release from the student is not sufficient for the release of FAFSA/ISIR data and related award information. The institution could suggest the foundation survey recipients directly to obtain the requested data.

5. 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

6. 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 subject to the same restrictions as the FAFSA data, according to the Department’s PTAC guidance. This information may not be released to the outside entity, since it will not be used for the administration of an aid program.

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 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 institution 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 in the spur of the moment when a FERPA request is made outside of the existing institutional policy. An amendment 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. 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.

**The National Association
of Student Financial Aid
Administrators (NASFAA)
provides professional
development for financial
aid administrators; advocates
for public policies that increase
student access and success;
serves as a forum on student
financial aid issues; and is
committed to diversity
throughout all activities.**

© 2017 National Association of Student Financial Aid Administrators



NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS

**1801 PENNSYLVANIA AVENUE NW, SUITE 850
WASHINGTON, DC 20006**

202.785.0453 FAX. 202.785.1487 WWW.NASFAA.ORG