

**Attention: Information No Longer Current  
(Alert archived November 2011)**

## Alert #5 – Update 1

**Subject: The Family Educational Rights and Privacy Act and Emerging Federal Regulations**

**Prepared: March 2001**

### Summary

The Family Educational Rights and Privacy Act (FERPA) of 1974 (as amended) requires the protection of student records by educational institutions that receive funds from the U.S. Department of Education (ED). Except for certain circumstances specified in the statute and regulations, FERPA prohibits the disclosure of personally identifiable information from education records to third parties unless the institution has the student's consent.

Several federal initiatives make awareness of FERPA a priority for institutional researchers. The regulations implementing the Student Right-to-Know Act (SRK) of 1990 require institutions participating in federal financial aid programs under Title IV of the Higher Education Act (HEA), and whose missions include providing substantial preparation for students to enroll in another eligible institution without having graduated from the reporting institution, to disclose transfer-out rates for cohorts of full-time, first-time, degree or certificate-seeking undergraduate students. The Taxpayer Relief Act (TRA) of 1997 requires institutions to submit an annual report to the Internal Revenue Service (IRS) that includes students' social security numbers. The teacher education program reports required under Title II of the HEA require the sharing of information about students in order to determine institutional pass rates on state licensure or certification tests.

For professional legal advice, consult your institutional legal counsel. For an overview of SRK and the Graduation Rate Survey (GRS), TRA, or the Title II reports, please refer to the AIR Alerts #2 Update #1, #4, and #11. This Alert addresses potential conflicts between FERPA and SRK, TRA, or Title II.

### Current Status

Student Right-to-Know. Institutions whose missions include providing substantial preparation for students to enroll in another eligible institution without having graduated from the reporting institution are **not** required under SRK to establish any **new** processes for obtaining information on transfers-out. They are only required to disclose the information they have through current processes. Under SRK, students are counted as transfers-out if they did not complete or graduate

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from the reporting institution and transferred-out within 150% of the normal time for completion or graduation from their programs. An institution can determine that students have transferred through communications with prior students about their re-enrollment.

Another method is by communicating with the receiving institution through another organization such as the Enrollment Search service of the National Student Clearinghouse. The Family Policy Compliance Office (FPCO) of ED has determined that the Clearinghouse may not use social security numbers to match student enrollment information for the enrollment search service. Students may be identified by the institution using only information that the institution has designated as directory information (e.g., name, date of birth). Directory information may not include social security numbers or other student identification numbers. Institutions are required to notify students of the types of information that the institution has designated as directory information and of their right to block release of that information. Directory information may not be used for the enrollment service for any student who has blocked the release of this information under FERPA.

The FPCO also has determined that the FERPA provision for disclosure without student consent of personally identifiable information to organizations conducting studies of tests, the administration of financial aid programs, or the improvement of instruction does **not** authorize the disclosure of information for SRK tracking purposes.

Taxpayer Relief Act. FERPA has also played a role in TRA implementation, particularly the requirement that institutions will need to send personally-identifiable information to the IRS, including students' social security numbers. By letter dated November 25, 1997, the FPCO determined that because the TRA was a later enacted and more specific statute, Congress intended that the information required in the law be reported to the IRS, notwithstanding FERPA's privacy provisions. (A copy of this letter may be obtained from the FPCO Web site <http://www.ed.gov/offices/OM/fpc/>.) At the same time, however, the FPCO has reaffirmed the FERPA requirement that any personally-identifiable information not be redisclosed by a third party. The IRS would not be permitted to redisclose personally-identifiable information without student consent.

Title II Teacher Education Program Reports. The Department of Education has determined that the procedures for verification of test scores for teacher education program completers described in the Reference and Reporting Guide are consistent with federal law, including FERPA, although the laws and policies of some states may preclude institutions from obtaining test scores of individual completers without their consent.

## **Implications for Institutions**

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Institutions should be aware of the FERPA requirements regarding notices to students, directory information, restrictions on the disclosure of information about students to third parties without consent of the students, and recordkeeping.

Institutions do not need to be concerned about possible FERPA violations in regard to the required reporting to the IRS under TRA, or the test score verification procedures under Title II of the HEA.

Institutions seeking information through the Clearinghouse enrollment search service should be careful to send only information the institution has designated as directory information, and should not send information about students who have blocked the release of directory information. Files should not contain social security numbers or student identification numbers.

The responsibility for compliance with the FERPA regulations for institutions considering the Clearinghouse enrollment search service rests entirely with the institution. The Clearinghouse has no responsibilities regarding whether institutions submit only the allowable information.

## **Timeline**

**November 25, 1997** - FPCO letter regarding the reporting requirements of the Hope Scholarship Credit and the Lifetime Learning Credit issued.

**August 2, 1999** - FPCO letter of technical assistance sent to National Student Clearinghouse.

**November 1, 1999** - Final Student Right-to-Know regulations published.

**May 2000** - The Reference and Reporting Guide for Preparing State and Institutional Reports on the Quality of Teacher Preparation published.

## **Additional Resources**

The FERPA regulations and the letters from LeRoy S. Rooker, Director of the Family Policy Compliance Office regarding technical assistance to the NSC, and the applicability of FERPA to the reporting requirements of the Hope Scholarship Credit and the Lifetime Learning Credit are available from the Family Policy Compliance Office Web site:

<http://www.ed.gov/offices/OM/fpc>

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The Family Policy Compliance Office of the U.S. Department of Education can be reached at: 400 Maryland Avenue, SW, Washington, DC 20202-4605; (202) 260-3887; or E-mail: [FERPA@ED.Gov](mailto:FERPA@ED.Gov)

The National Center for Education Statistics has published *Protecting the Privacy of Student Records: A Guide for Education Agencies* (1995). NCES 97-527. <http://nces.ed.gov/pubs97/97527.html>

The American Association of Collegiate Registrars and Admissions Officers has published *Guidelines for Postsecondary Institutions for Implementation of the Family Educational Rights and Privacy Act of 1974 as Amended* (1998). AACRAO's distribution center can be reached at PO Box 231, Annapolis Junction, MD 20701; phone: (301) 490-7651; fax: (301) 206-9789; E-mail: [pubs@aacrao.org](mailto:pubs@aacrao.org)

CAUSE (in cooperation with AACRAO) published *Privacy and the Handling of Student Information in the Electronic Networked Environments of Colleges and Universities* (April 1997). For information contact EDUCAUSE at [info@educause.edu](mailto:info@educause.edu) or (303) 449-4430.

The Reference and Reporting Guide for Preparing State and Institutional Reports on the Quality of Teacher Preparation (NCES 2000-089), and additional information about the Title II, HEA requirements for teacher education program reports can be obtained at <http://title2.org>

Information about the Student Right-to-Know regulations and the IPEDS Graduation Rate Survey was published in the AIR Alert #2-Update 1 (November 2000). [Alert #2-Update 1](#)

Information about the state and institutional reports on the quality of teacher preparation was published in the AIR Alert #11 (March 2000). [Alert #11](#)

Information about the Taxpayer Relief Act of 1997 was published in the AIR Alert #4 (February 1998). [Alert #4](#) More recent information on the reporting requirements is available on the National Association of College and University Business Officers Web site <http://www.nacubo.org>

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