



September 24, 2018

Ms. Diane Jones
Principal Deputy Under Secretary
U.S. Department of Education
Washington, D.C. 20202

Dear Ms. Jones,

On behalf of the Association of Public and Land-grant Universities and Association for Institutional Research, we appreciate the opportunity to summarize some of the problems created through the Department of Education's Privacy Technical Assistance Center's (PTAC) January 2017 guidance on the institutional use of student financial aid information for program evaluation and research. We offer possible solutions to address troublesome, unintended consequences stemming from the guidance and respectfully request the Department put a stay on the PTAC guidance while it works to provide new guidance that will protect the privacy of students while ensuring institutions may appropriately use FAFSA data to advance student success initiatives; meet Department of Education grant reporting requirements; and safeguard the accuracy of data reported to the Integrated Postsecondary Education Data System (IPEDS). New guidance to resolve the problems described below could reference the Family Educational Rights and Privacy Act (FERPA) and/or the Privacy Act as governing the non-consented disclosure of FAFSA data such as the use by institutional research offices.

Background

In January 2017, PTAC published guidance on the use of student financial aid information in response to inquiries from colleges and universities regarding allowable uses of federal student financial aid data. As a result of the PTAC guidance and a very strict interpretation by the National Association of Student Financial Aid Administrators (NASFAA), some college and university officials have issued restrictions that prevent the use of the data for analysis and evaluation outside of the financial aid office. The guidance has led to significant problems for some campuses that require access to the data to evaluate programs and to effectively implement student success initiatives. The Association of Public and Land-grant Universities and the Association for Institutional Research have collected a number of examples demonstrating the problems stemming from the guidance. The lack of clarity within the PTAC guidance resulted in overly strict interpretations that are in direct conflict with policies, practices, and priorities of the Department. For example, institutions are expected to evaluate the success of low-income students, measure and report the efficacy of grant-funded interventions to the Department as conditions of federal grants and gather and submit student outcomes data to the Department as part of IPEDS.

The PTAC guidance builds upon, and adds to, existing requirements of the Privacy Act and the Family Educational Rights and Privacy Act ("FERPA") with regard to personally-identifiable

student data. The guidance details responsibilities of institutions related to Institutional Student Information Record (ISIR) financial aid data. Disclosure “to other individuals with the institution” is permissible under the “School Official Exception” if 1) the data are used for institutional service, 2) the individual’s role is under direct control of the institution, 3) the data is only used for the purpose(s) for which disclosure was made, 4) the use meets FERPA criteria, and 5) it serves as a legitimate educational interest. PTAC further allows the disclosure of financial aid data for studies conducted by third parties for improving instruction.

The Privacy Act governs the collection, maintenance, use, and disclosure of personally-identifiable information by the federal government to ensure security and confidentiality. The “routine uses” of Privacy Act-protected data, that is, disclosures that do not require the consent of the individual to whom the data are associated, are statutorily required to be described by the Department. This is accomplished via publication of a system of records notice (“SORN”) in the Federal Register. When a new or amended SORN is published, the public is afforded the opportunity to comment. The Department published the current SORN for the Federal Student Aid Application file (System Number: 18-11-01) on August 3, 2011. This system of records contains information provided by applicants for federal financial aid on the FAFSA.

The Department’s FERPA regulations enumerate the conditions under which a college or university may disclose information from an individual student’s educational record without first obtaining that student’s consent. The Department has modified its FERPA regulations a number of times since the law was enacted in 1974 using the notice-and-comment protocol mandated by the Administrative Procedure Act. The Department’s most recent modification of its FERPA regulations was published on December 2, 2011. It is notable that prior to publishing this final rule, the Department received, analyzed, and responded to 274 comments from interested members of the public.

Unlike its Privacy Act and FERPA guidance, the Department developed and implemented its PTAC guidance absent any formal opportunity for public participation and solely on its interpretation of section 483(a)(3)(E) of the Higher Education Act (“HEA”). However, the Department considered and then incorporated elements of the existing FERPA regulation in the PTAC Guidance. For example, the FERPA “audit or evaluation” exception permits institutions to evaluate financial aid programs using students’ personally-identifiable data without first obtaining their consent. The Department has determined that such evaluations are part of the broader HEA “administration of aid” exception, and thus are consistent with the FERPA “audit or evaluation” exception for accessing FAFSA data without the individual’s consent.

Also, the Department has determined that the FERPA “school official” exception permits the non-consented release of FAFSA data for the purpose of evaluation and analysis within the institution. Given the Department’s reading of the HEA “administration of aid” and the FERPA “school official” exceptions, the Department could apply similar reasoning to consider FERPA or the Privacy Act as governing the non-consented disclosure of FAFSA data – including the use of financial aid data by institutional research offices.

The PTAC guidance sends a mixed message as in one area it stipulates that it is the responsibility of each institution to establish criteria defining who is considered a “school official” and what constitutes a “legitimate educational interest.” However, in another area of the guidance, it contradicts this deference to institutions by restricting access to financial aid data “unless the function is necessary to the efficient and effective administration of student aid.” It is the

disparate interpretations of “efficient and effective administration of financial aid” that have led to untenable situations regarding restricted access to FAFSA data by institutional research offices. Interpretations of this section of the guidance range from continued sharing of data with IR personnel in their role as “school officials” with “legitimate educational interest” to a full withdrawal of access to financial aid data for IR personnel as some have deemed their activities as not “necessary to the efficient and effective administration of student aid.”

Administration Policy Conflicts

The Department’s priorities include reducing the size and scope of the federal role in education and empowering states and communities to improve the performance of postsecondary institutions. However, the PTAC guidance inhibits state and institutional efforts, particularly in the areas of increased completion rates and closing equity gaps. The following are some examples provided by institutions.

California State University System

Through its Graduation Initiative 2025, the California State University (CSU) has set ambitious completion goals, including doubling four-year graduation rates and eliminating equity gaps in degree completion for low-income students. To support this effort, system and campus leaders have identified six key areas for innovation and institutional improvement efforts, including identifying and addressing affordability and financial constraints for students in completing their degrees. Several elements of the financial aid record are important to understanding these patterns, especially given that half of CSU students receive a Pell grant and CSU campuses and student populations are situated in some of the highest cost of living areas in the country. Several state laws also require CSU to track, report on, and most importantly, take action to improve graduation rates for low-income students, including students receiving Pell Grants. Without the FAFSA data, the CSU is limited in how it can analyze and address these concerns.

A West Coast Baccalaureate College

In this era of concern around postsecondary education access and persistence, colleges and universities take a collaborative approach to understand and eliminate barriers to access and persistence, including the financial and household situations of students and their families. FAFSA-generated data such as the expected family contribution (“EFC”) and financial aid award history are used to predict both student persistence and success. In order for institutions to provide students with the proper support for success, they need to share data in order to identify students who need interventions. The interaction of financial aid factors related to academic preparation is crucial to improving student success for students with financial need.

A Midwest Community College

The college has identified achievement gaps within subgroups of students, including between white males and African American males. The college is working to implement specific initiatives to focus more directly on closing these gaps. Historically, the larger gaps related to Pell-eligible students, students who have dependents, and first-generation students. FAFSA contains the necessary data to evaluate initiatives aimed at increasing the educational experiences for these students. Absent these data, the college cannot know if these students are experiencing increased levels of student success.

Institutions in Georgia

Some institutional research offices in Georgia are interpreting the NASFAA letter to mean that any information even tangentially related to a student's financial aid status cannot be shared with the state association which collects the data for the state longitudinal data system (SLDS). Institutions within the state are pulling out of SLDS programs because of this strict interpretation – particularly private institutions.

IPEDS Reporting

The guidance issued by PTAC is unclear and possibly contradictory with regard to the responsibilities that typically fall within offices of institutional research. Institutional research offices are generally responsible for submitting the data required for IPEDS to the Department, providing analytic support for grants related to the success of low-income students, and evaluating the efficacy of various institution-specific programs designed to close equity gaps and improve student success. Many complex reporting and analytical functions require the sharing of data among offices within institutions for actionable results and to meet institutional, state, and federal reporting requirements.

Of particular concern within the federal reporting responsibilities of most institutional research offices is the IPEDS Outcome Measures (OM) Survey. This survey generates a high number of calls to the IPEDS Helpdesk and is one of the most difficult for institutions to complete. It requires blending data from a variety of sources to track and calculate the outcomes for eight different cohorts of students per year, including Pell recipients, over an eight-year period. The Department has invested significant time and resources to develop this measure and to get accurate, consistent, and comparable data across institutions. If institutions shift the responsibility for completing this survey to an office with less experience and expertise than institutional research based on the PTAC Guidance, it is likely that the data accuracy and consistency will be compromised. In the 2016 Association for Institutional Research (AIR) National Survey of Institutional Research Offices (NSIRO), 23 percent of respondents indicated they had no access to financial aid data. This survey will be conducted again in fall 2018 and, given anecdotal reports from offices across the country, it is likely the number of IR offices without access to financial aid data will rise. The deadline for completing the next year's OM survey is early 2019, lending urgency to the need for clarification.

Grant-making and On-campus Program Administration Contradictions

The Department typically requires its grantees to evaluate the effectiveness of program activities supported by their grants. These evaluations often utilize financial aid data.

Maryland Mathematics Reform Initiative (“MMRI”)

The MMRI is a collaborative effort among twelve two- and four-year colleges in Maryland and is supported by a Department of Education First in the World Grant. The MMRI explores the efficacy of multiple math pathways through the developmental sequence. The evaluation plan uses two FAFSA data points: if a student completed a FAFSA and whether or not they were eligible for financial aid, to determine the effects of the grant initiative. The evaluation plan is a requirement of the grant funding. The project team was notified by one of the participating

colleges that it was prohibited from using FAFSA data. The ability of the University System of Maryland to meet the grant requirements were in question until the Department of Education clarified that the data from partners could be shared to conduct the evaluation.

Washington State University

The majority of the University's grants that target improving the recruitment, and retention and graduation rates of underserved students (e.g. first generation and/or under-represented minorities) require data on first-generation status and low-income status, which are provided in the FAFSA. Further, Pell Grant eligibility is often used as a proxy for low income. The University's Aspiring Teacher Leadership and Success (ATLAS) program is funded by a Department of Education TRIO program grant. Without access to FAFSA data the University may not be able to meet the requirements of the grant.

The California State University System

The California State University (CSU) is the largest four-year public university in the country, and the system office handles NCES IPEDS reporting for its 23 campuses. To facilitate data collection efficiency and quality, NCES allows a single "coordinator" to submit data on behalf of multiple institutions. CSU's approach is thus consistent with NCES protocols. In order to report the required data for the IPEDS Graduation Rates and Outcomes Measures surveys, FAFSA data must be combined with enrollment and completions data for over 100,000 students across these surveys each reporting cycle. Currently, system office staff have access to the minimal data needed to comply with IPEDS reporting requirements. Access to similar data has been restricted at some campuses following the recent PTAC guidance. When this occurs, campus staff may be unable to replicate and validate the graduation rates for Pell and/or Stafford loan recipients required in these IPEDS surveys, which undermines established data quality and review processes.

Possible Solutions to Clarify Guidance:

The PTAC guidance demonstrates the Department's willingness to interpret the HEA and FERPA in a way that recognizes legitimate uses of personally-identifiable financial aid data. Clarification is urgently needed for institutions to provide the best quality data for federal and state reporting and to evaluate grant-funded and institution-funded student success initiatives, particularly those related to low-income students. There are several actions the Department could take to clarify the disclosure and use of financial aid data.

First, the Department should as soon as possible put a stay on the PTAC guidance pending further guidance. This could provide immediate relief and address real problems on campuses that are creating confusion and inefficient business processes as well as impeding work that benefits students.

Following the stay, the Department has a number of options to address the situation on a more permanent basis.

One option is for the Department to issue a guidance letter or Questions for the Record (QFR) that reaffirms the use of financial aid data for state and federal reporting of financial aid

information, analyses to support student success and data-driven decision-making by institutions, and evaluation of student programs to more effectively disseminate financial aid. This may be consistent with a Department of Education [letter](#) issued on October 31, 2016 to Daniel Cohen-Vogel, Assistance Vice President for Institutional Research, University of North Carolina General Administration. This letter permits the disclosure of personally-identifiable financial aid data to authorized representatives of the state under FERPA’s “audit and evaluation” exception.

The Department could also publish in the Federal Register a “Notice of Proposed Policy Guidance with a Request for Comment,” which it has done in the past.

The Department can refine its HEA interpretation by referencing previous guidance issued related to the Privacy Act. In particular, the purposes of the Federal Student Aid Application file as stated in the current SORN include:

- Ensuring compliance with and enforcing of Title IV programmatic requirements and acting as a repository and source for information necessary to fulfill the requirements of Title IV, both of which address required IPEDS reporting by Title IV participating institutions.
- Evaluating Title IV program effectiveness, which the Department typically requires as a condition of grant funding.

Sincerely,



Peter McPherson
President
Association of Public and Land-grant Universities



Christine Keller
Executive Director
Association for Institutional Research