

Office of the President

May 23, 2011

Ms. Regina Miles
U.S. Department of Education
400 Maryland Avenue S.W.
Washington, DC 20202

Re: Docket ID ED-2011-OM-002

Dear Ms. Miles:

I write on behalf of the higher education associations listed below to provide comments on the April 8, 2011, notice of proposed rulemaking (NPRM) published in the *Federal Register* regarding the Family Educational Rights and Privacy Act (FERPA).

From its inception, the application and administration of FERPA has been a balancing act that strives to achieve equilibrium between the need to collect and maintain information about individuals for educational purposes on the one hand, and the requirement to protect the individual from the misuse of that data through improper disclosure or dissemination of personally identifiable information on the other. This has never been an easy task, but it is one that has grown increasingly complicated in direct relation to rapid technological advances that bring with them countless opportunities to create vast data warehouses that can be linked and mined with ease. To appreciate the temptation that such databases offer to invade the privacy of the individuals whose personally identifiable data they contain, one needs look no further than the example of the nine employees of an Iowa-based federal contractor who were indicted in 2010 for improperly accessing the student loan records of President Barack Obama.

The issue of balance is at the center of the April 8 NPRM. The proposed regulations would substantially expand not only the amount of information that might be shared, but also the number of individuals who could gain access to it. The privacy side of the equation is acknowledged through related actions taken by the department to create and appoint a new chief privacy officer, to develop a new Privacy Technical Assistance Center, and to issue a series of policy briefs on privacy concerns. However, in the NPRM itself, the needed balance is lacking—a situation we fear will work to the detriment of student privacy and data security.

May 23, 2011

We believe the proposed regulations unravel student privacy protections in significant ways that are inconsistent with congressional intent. The legislative history of the act clearly establishes that its purpose “is two-fold—to assure parents of students, and students themselves... access to their education records, and to *protect such individuals’ rights to privacy by limiting the transferability of their records without their consent.*” [Joint Statement of Explanation of Buckley/Pell Amendment, 120 Cong. Rec. 39863 (December 13, 1974)—emphasis added.] The statute places the exclusive right to access non-consensual release of personally identifiable information at the disposal of four designated entities: the secretary of education, the comptroller general, the attorney general of the United States, and state and local education officials. By expanding the “authorized representatives” designation to public and private entities acting on behalf of the four statutory designees, the NPRM encourages greater transferability of private records without student consent. The practical effect of this proposal would be to remove control over who gets access to their private educational records and for what reason from students and their families and transfer it to the officials cited in 99.31(a)(3).

Moreover, we believe the requirements set out in the NPRM for maintenance, storage, disposal and re-disclosure are accompanied by weak enforcement measures that will not serve as effective disincentives for noncompliance. For example, we do not believe that a five-year ban on access to personally identifiable information for an entity that has violated the re-disclosure provision would be as effective a deterrent as a substantial monetary penalty. In addition, FERPA requirements are extremely technical and can be misunderstood even by those most familiar with them. Because the proposed regulations will increase access to education records by individuals who are unfamiliar with FERPA and its application and may regard FERPA as an inconvenient barrier to navigate, we fear that student privacy will be compromised.

We are very concerned that the NPRM greatly increases the number of agents acting on behalf of the statutorily-designated entities, while it simultaneously removes the requirement that the authority to collect such data for audit, evaluation or compliance or enforcement purposes must be established by federal, state or local law. We believe this will create significant administrative challenges for institutions of higher education which may begin to receive requests for data from multiple entities without a clear understanding of what authority resides in the entity making the request and what protections—if any—are conveyed or guaranteed in regard to the data.

We share the department’s commitment to educational excellence, and we are actively involved in a variety of ways to promote this goal. However, we believe the proposed regulations jeopardize important FERPA protections by expanding the number

May 23, 2011

of individuals who may access personally identifiable information without consent, the basis on which they may obtain that access and the ability to re-disclose it to other parties.

Sincerely,

A handwritten signature in black ink, reading "Molly C. Broad". The signature is written in a cursive, flowing style.

Molly Corbett Broad
President

MCB/ldw

On behalf of:

ACPA – College Student Educators International
American Association of Colleges of Nursing
American Association of Collegiate Registrars and Admissions Officers
American Association of State Colleges and Universities
American Association of University Professors
American Council on Education
American Dental Education Association
APPA, “Leadership in Educational Facilities”
Appalachian College Association
Association for Biblical Higher Education
Association of American Law Schools
Association of American Universities
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Independent Colleges of Art & Design
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Association of Research Libraries
Conference for Mercy Higher Education
Council for Christian Colleges & Universities
Council of Independent Colleges
Council of Opportunity in Education
Hispanic Association of Colleges and Universities
Lutheran Educational Conference of North America
National Association of College and University Business Officers

FERPA Comment Letter

Page 4

May 23, 2011

National Association of Independent Colleges and Universities

National Association of Student Financial Aid Administrators

Thurgood Marshall College Fund

UNCF

Women's College Coalition