



## **Education Records and Student Privacy**

AACRAO encourages Congress to consider a number of provisions to update Family Educational Rights and Privacy Act (FERPA). Because AACRAO members serve as custodians of education records for current and former students, they are particularly knowledgeable about privacy issues in general, and specifically about information security and privacy requirements of Federal and State laws. Compliance with the FERPA has long been a primary area of professional jurisdiction for AACRAO members, who are often the leading FERPA experts on their campuses.

### **FERPA and Electronic Records**

- AACRAO believes that the current law is media-neutral and focuses solely on the information contained in educational records.
- However, recent court decisions have created confusion around the issue of whether electronic records, and emails that specifically identify the student, are considered educational records and are covered under FERPA.
- The association strongly supports the inclusion of language in the Higher Education Act that will identify electronic records in the definition of educational records to diminish confusion surrounding electronic documents, such as emails, and create a national standard.

### **Third Party Record Collection**

- We seek to resolve the legally ambiguous status of records collected and maintained by third parties, or cloud based storage, for use by educational agencies and institutions.
- The increased use of third party services that directly capture and maintain information that otherwise was previously maintained by higher education institutions, or “Third Party Record Collection Agencies,” needs to be included in the list of entities that capture and maintain student data and should be covered under FERPA.

### **Correcting the 2012 FERPA Regulations**

In 2012, the Obama Administration, through the Department of Education, implemented regulatory amendments that dramatically expanded FERPA. The amendments greatly broadened the definition of who is given access to personally identifiable information (PII) from student records on a nonconsensual basis. AACRAO strongly believes that some of the 2012 regulatory actions should be rescinded to ensure students’ private information will not be inappropriately disclosed to third parties.

#### **The Term "Authorized Representative"**

- The 2012 regulations inappropriately expanded the definition of "Authorized Representative" to anyone chosen by the designated official.
- AACRAO believes that the definition "Authorized Representative" should be restored to its previous definition of "individuals and entities under direct control of officials" as designated in the original statute.

#### **The Term "Implied Authority"**

- The 2012 regulations also overreached on the definition of "Implied Authority" to audit programs and have created much confusion, and lacks legal precedent.



- AACRAO believes that the Task Force should close this loophole for non-consensual disclosure of education records.

#### The Term "Education Program"

- The 2012 regulations vastly widened this definition to include programs not administered by educational authorities.
- AACRAO believes that the definition of "Education Programs" should revert back to the original definition of "programs administered by an educational agency or institution."

#### The Term "Non-Consensual Disclosure for Studies"

- The 2012 regulations expanded the meaning of non-consensual disclosure of personal information from education records to organization conducting "for, or on behalf of" educational agencies or institutions.
- AACRAO strongly urges the restoration of the limitation on the purposes for which the research exception may be invoked, and to statutorily prohibit re-disclosure of personally identifiable information by organizations accessing education records under this exception.

### **About AACRAO**

Founded in 1910, the American Association of Collegiate Registrars and Admissions Officers (AACRAO) is one of the oldest nonprofit higher education associations in the nation and represents approximately 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States.

Our mission is to provide guidelines and standards for the higher education community regarding record management, admissions, enrollment management, information technology, and student services.

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