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Federal Privacy Regulations for Institutions of Higher Education

The Family Educational Rights and Privacy Act & the Gramm-Leach-Bliley Act

Today we are increasingly faced with issues relating to privacy and the protection of personally identifiable information. Now, in addition to the Family Educational Rights & Privacy Act (FERPA) regulations we all know and love, we are faced with the new regulations and requirements in order to ensure our students' information is protected! In this session we'll cut through confusion and break FERPA down to its basic elements. In addition, this session will introduce the Gramm-Leach-Bliley Act and explore the additional requirements it imposes on you and your institution!

This session is for informational purposes only and should not be used as legal advice. Please ensure you consult with your own attorney in regards to writing or adopting any policies or procedures for the G-L-B Act or FERPA administration.

MASFAA—2007

presented by Shawn C. Monk, J.D.
Technology Solutions Consultant, American Student Assistance

Family Educational Rights & Privacy Act (FERPA)

History & Background

When was FERPA enacted?

- Effective date: November 19, 1974
- Amended nine times since then

Where can you find FERPA regulations?

- U.S. Code (20 USC § 1232g)
- Code of Federal Regulations (34 CFR § 99)

Who administers FERPA?

The Department of Education’s Office of Family Policy Compliance (FPCO)

Who is bound by FERPA?

Any educational agency or institution that receives federal funds under any program administered by the Secretary of Education (34 CFR § 99.1)

BONUS QUESTION:



What’s the difference between the United States Code (U.S. Code) and the Code of Federal Regulations (C.F.R.)?

Notes

Professional Services at ASA

Do you have training needs for your staff that aren’t being met? Are you struggling with staffing, organizational or technical issues in your office and want expert guidance in finding a solution that will work for you? If so, ASA’s Professional Services team can help!

We are a team of experienced consultants and professional trainers committed to our non-profit mission of ensuring student financial success! In addition to our wide range of commonly-requested topics, we can also customize training sessions or conduct personalized consultation sessions to address the needs of your institution!

Presenter

Shawn C. Monk, J.D. is a Technology Solutions Consultant for the Federal Family Education Loan Program (FFELP) guarantor American Student Assistance® (ASA). As a self-avowed techno-geek, Shawn works with financial aid offices to help streamline business processes, incorporate new technology to meet students’ rising expectations and address the challenges of regulatory compliance. When not consulting on campus, he may often be found authoring articles or presenting on technology or regulatory issues that impact the financial aid community.

Currently based in Dayton, Ohio, Shawn lives with the love of his life, Debra, twenty-five pounds of cats, two-hundred and fifty pounds dogs and more computers than all of the above combined.

Shawn begs for your questions and comments and may be reached (almost always) via e-mail at smonk@amsa.com or by phone (almost never) at (800) 999-9080 x4684.



Must-See Resources

If you're looking for more information about FERPA or the Gramm-Leach-Bliley Act, here are some online references that you really should check out!

Department of Education Family Policy & Compliance Office

<http://www.ed.gov/policy/gen/guid/fcpo>

Federal Trade Commission
Gramm-Leach-Bliley Act resources

<http://www.ftc.gov/privacy/privacyinitiatives/glbact.html>

NACUBO

<http://www.nacubo.org/x325.xml?s=x45>

Government Printing Office
U.S. Code, Code of Federal Regulations, Federal Register & much more!

<http://www.gpo.gov>

Notices of Proposed Rulemaking

<http://www.regulations.gov>



Question 4 Thought Answer

Page 4 **Release With or Without Consent Is Optional (from Federal Register, April 21, 2004)**

Any disclosure of education records to a third party, even in accordance with a student's consent, is permitted but not required under FERPA. Each agency or institution must have the flexibility to decide whether a request for disclosure meets the requirements of FERPA and whether the institution wishes to make the requested disclosure. **(Discussion under Third-Party Presentation of Electronic Signature)**

Family Educational Rights & Privacy Act (FERPA)

FERPA Basics

Who has rights under FERPA?

Parents OR Eligible Students

Student - Any individual who is OR has been in attendance at an educational agency or institution AND regarding whom the agency or institution maintains education records. (34 CFR § 99.3)

Eligible students - A student who has reached 18 years of age OR is attending an institution of postsecondary education. (34 CFR § 99.3)

What does FERPA protect?

Education records (34 CFR § 99.3) are defined as permanent records that are:

1. Directly related to the student and
2. Maintained by an educational agency

What rights does FERPA give?

1. Right to inspect
2. Right to seek amendment
3. Right to consent before disclosure



LAWYER SPEAK 101:

Conjunctions such as AND and OR should always make you pause for a moment and think!

- AND is all-inclusive
- OR will always limit options.

Notes

Family Educational Rights & Privacy Act (FERPA)

FERPA Basics

Consent Requirement of FERPA:

The eligible student shall provide a signed and dated consent before an educational agency or institution discloses personally identifiable information from the student’s personal records. (34 CFR § 99.30(a))

Consent must: (34 CFR § 99.30(b))

1. **Specify** the records that may be disclosed;
2. **State the purpose** of the disclosure; and
3. **Identify the party** or class of parties to whom the disclosure may be made.



Question 4 Thought:
Why must the student provide the purpose of the disclosure?
Need some help? See page 14

Notes

Our Threat Environment

Symantec’s Internet Security Threat Report

Volume XII (September 2007)

available online at <http://www.symantec.com/threatreport>

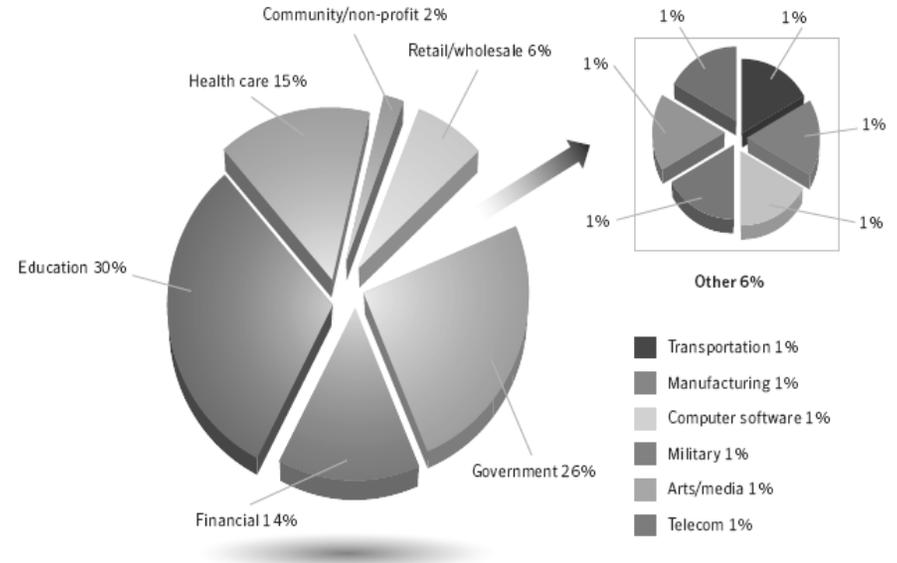


Figure 8. Data breaches that could lead to identity theft by sector
Source: Based on data provided by Attrition.org

Notes

Gramm-Leach-Bliley Act (G-L-B Act)

What Do You Need To Do?

- 1) **Identify & evaluate risks**
What? Where? How?
- 2) **Design security controls**
Physical? Technological?
- 3) **Dispose of records**
Shred? Digitally erase?
- 4) **Train employees**
Regular, consistent and appropriate
- 5) **Test security controls**
- 6) **Oversee service providers**
Expectations? Minimum requirements?
- 7) **Rinse and repeat**
(It's necessary!)



Notes

Family Educational Rights & Privacy Act (FERPA)

FERPA Basics

Permissible Disclosure (Exceptions)

34 CFR § 99.31(a)

An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by §99.30 if the disclosure meets one or more of the following conditions...



34 CFR § 99.31(b)

Paragraph (a) of this section does not forbid an educational agency or institution from disclosing, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11), (13), (14), and (15) of this section.

Notes

Family Educational Rights & Privacy Act (FERPA)

Selected Sections of 34 CFR § 99.31(a)

*Remember, these are exceptions that allow the disclosure of personally identifiable information from a student's educational record, but they do **not require** disclosure!*

- (1) Internal school officials with legitimate educational interest
- (2) Official at an institution of postsecondary education where the student seeks or intends to enroll
- (4) Disclosure is in connection with financial aid for which the student has applied or which the student has received, if information is necessary to:
 - a) Determine eligibility for aid;
 - b) Determine the amount of aid;
 - c) Determine the conditions for the aid; or
 - d) Enforce the terms and conditions of the aid.
- (8) Disclosure to parents of a dependent student
- (11) Directory Information
 - Institution-designated information
 - Annual notification to students is required
 - Option for students to opt-out of the release

Notes

Gramm-Leach-Bliley Act (G-L-B Act)

Safeguards Rule (continued)

16 CFR §314.3

"You shall **develop, implement, and maintain** a comprehensive **information security program** that is written in one or more readily accessible parts and contains **administrative, technical, and physical safeguards** that are appropriate to your size and complexity, the nature and scope of your activities, and the sensitivity of any customer information at issue. Such safeguards shall include the elements set forth in §314.4"

(emphasis added)

Each financial institution must:

- Designate one or more employees to coordinate its program;
- Assess risks to the security of customer information;
- Design and implement safeguards to address these risks, and test and monitor their effectiveness over time;
- Oversee service providers; and
- Adjust the program to address developments.

from FTC's G-L-B Act Safeguard Rule Training, June 2003

Notes

Gramm-Leach-Bliley Act (G-L-B Act)

Safeguards Rule

15 U.S.C. § 6801 Protection of Nonpublic Personal Information



(b) Financial Institution Safeguards

In furtherance of the policy in subsection (a), each agency or authority described in section 505(a) shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards -

- 1) to insure the security and confidentiality of customer records and information;
- 2) to protect against any anticipated threats or hazards to the security or integrity of such records; and
- 3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

Notes

Family Educational Rights & Privacy Act (FERPA)

FERPA Basics

Recordkeeping (34 CFR § 99.32)

The student's educational record must include:

- Each request for access; **and**
- Each disclosure of personally identifiable information

To be complete the student's educational record must include:

- Parties requesting or receiving; **and**
- Legitimate interests of the parties in requesting or obtaining

Record of access and attempted access (requests) must be kept as long as records are maintained

Recordkeeping Does Not Apply To Requests From:

- Student
- Party with consent
- Party seeking only directory information

Notes

Gramm-Leach-Bliley Act (G-L-B Act)

G-L-B Act Basics

Who must comply with the Act?

Financial institutions

Who does the Act protect?

Personally identifiable information of customers of financial institutions

Who administers the G-L-B Act?

Federal Trade Commission



Instituted two separate and distinct requirements for financial institutions:

- Privacy Rule
(compliance required as of July 1, 2001)
- Safeguards Rule
(compliance required as of May 23, 2003)

Notes

Gramm-Leach-Bliley Act (G-L-B Act)

Privacy Rule

15 U.S.C. § 6801 Protection Of Nonpublic Personal Information

(a) Privacy Obligation Policy

It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

16 CFR § 313.1 Purpose and scope.

Any institution of higher education that complies with the Federal Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, and its implementing regulations, 34 CFR part 99, and that is also a financial institution subject to the requirements of this part, shall be deemed to be in compliance with this part if it is in compliance with FERPA.

Notes
