

Cybersecurity and Data Sharing



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Cooley Higher Education Practice

Practice group within a global law firm. Trusted counsel to 400+ education industry clients, including postsecondary institutions, schools, education organizations, accreditors, investors, lenders, and education technology providers.

- Areas of Practice:
 - Federal Student Aid Funds Compliance
 - Privacy and Data Protection Counseling and Data Breach Response
 - Accreditation and State Licensure
 - Program Review and Audit Preparation and responses
 - Changes of Ownership
 - Initial and Ongoing Institutional Eligibility
 - Education Technology

What We'll Cover Today

- Why is This Important?

Cybersecurity

- Gramm Leach Bliley Act (GLBA)
- Data Breach
- State Laws

Data Sharing

- Applicable Laws
- Uses of FAFSA and FTI Data
- Sharing FAFSA and FTI Data



Why is this important?

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Program Participation Agreement SAIG Agreement



- **Gramm Leach Bliley Act (GLBA) Compliance is Required as part of the **Program Participation Agreement****
- Data use and breach reporting are requirements of the Student Aid Internet Gateway (SAIG) Agreement schools have with the Department of Education

Cost and Reputation

- Average cost for a breach in the higher education sector in 2023 was \$3.7 million and \$5 million for a ransomware attack
- Potential for a U.S. Department of Education fine
- State Attorney General investigations and fines
- Reputational damage through negative publicity and press
- Student and parent identity theft mitigation
- Downtime for students and employees



Subject to Audit



- Now a testing requirement in all compliance audits
- Administrative capability and institutional eligibility issue
- If a finding is noted, a corrective action plan is required
- Like Clery, this is an area where ED has fine authority – FTC also has fine authority
- As of FY2022 –
 - not a top ten compliance audit or program review finding
 - As of FY 2022 – no ED fine action related to GLBA
- More likely an FTC or State AG Fine Action

The Threat is Real



Phishing attempts – both students and employees

Targeting of key personnel

Ransomware attacks

Direct deposit re-routing

Unsecured cloud databases

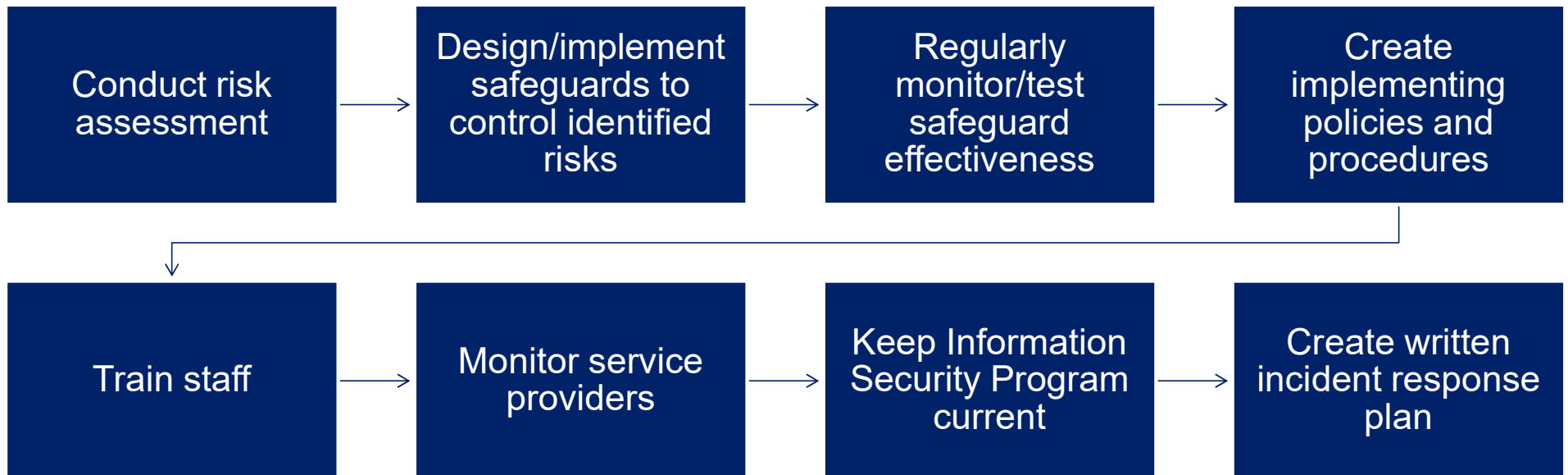
Valuable research or intellectual property

Gramm Leach Bliley Act (GLBA)

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GLBA Requirements

Designate individual to oversee, implement, and oversee the information security program



Examples of GLBA Compliance Findings



Missing Information
Technology Point of
Contact



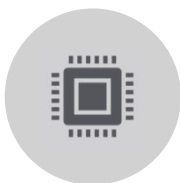
Risk Assessment
has not been
performed



Use of accounts that
are not password
protected



Account passwords
shared with staff
members and
student interns



Scanning and
storage of PII to a
network that can be
easily accessed
through any of the
common
administrator
accounts



Discovered
malicious programs,
such as ones
capable of capturing
keystrokes typed on
the keyboard
(keylogger)

Data Breach

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What is a Breach?

- OMB M-17-12: “The loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses personally identifiable information or (2) an authorized user accesses or potentially accesses personally identifiable information for another than authorized purpose.”
- A “data breach” is “the unauthorized access to or use of customer information that could result in substantial harm or inconvenience to a customer.”
- For Post-Secondary Institutions, the data set is information obtained under or through the Title IV participation agreements (i.e. student information system data)



Are There Data Breach Exceptions?

- No minimum size or # of records
- Employee access is not exempt, if wrong
- Not strictly digital or technology-based – paper counts!
- Covers data in storage, in transit or being processed
- Does not have to be intentional or criminal – accidental handling



Common Causes of a Data Breach

- Mishandling of data
- Phishing attacks
- Password recycling
- IT system configuration
- Malware
- Database hacking
- Unencrypted data with PII sent through an insecure email
- Laptop/computer loss or theft
- Unauthorized/accidental exposure
- Malicious insiders
- Improper disposal



How to Report a Breach to FSA

- Complete ED's data breach intake form at: <https://fsapartners.ed.gov/title-iv-program-eligibility/cybersecurity/cybersecurity-breach-intake>; reportable data includes:
- Date of the breach (suspected or known)
- Impact of the breach (# of records, etc.)
- Method of the breach (hack, accidental disclosure, etc.)
- Information Security Program Point of Contact (email and phone)
- Remediation Status (complete, in- process – with detail)

An official website of the United States government.

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Home > Cybersecurity

Cybersecurity Breach Intake

Please complete the Cybersecurity Breach Intake Form.

Cybersecurity Breach Intake Form

All fields marked with an asterisk (*) are required.

* **Date of Breach**
Suspected or Known

Florida Breach Laws



Florida Information Protection Act

Florida Law Section 501.171 - Security of confidential personal information

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0500-0599/0501/Sections/0501.171.html

Includes information on:

- Definition of covered information and entities
- Definition of a data breach
- Specifies the timing, method, and target of the breach notification
- For breaches with more than 500 impacted state residents, must report the breach to the FL Department of Legal Affairs within 30 days

Student Data Sharing

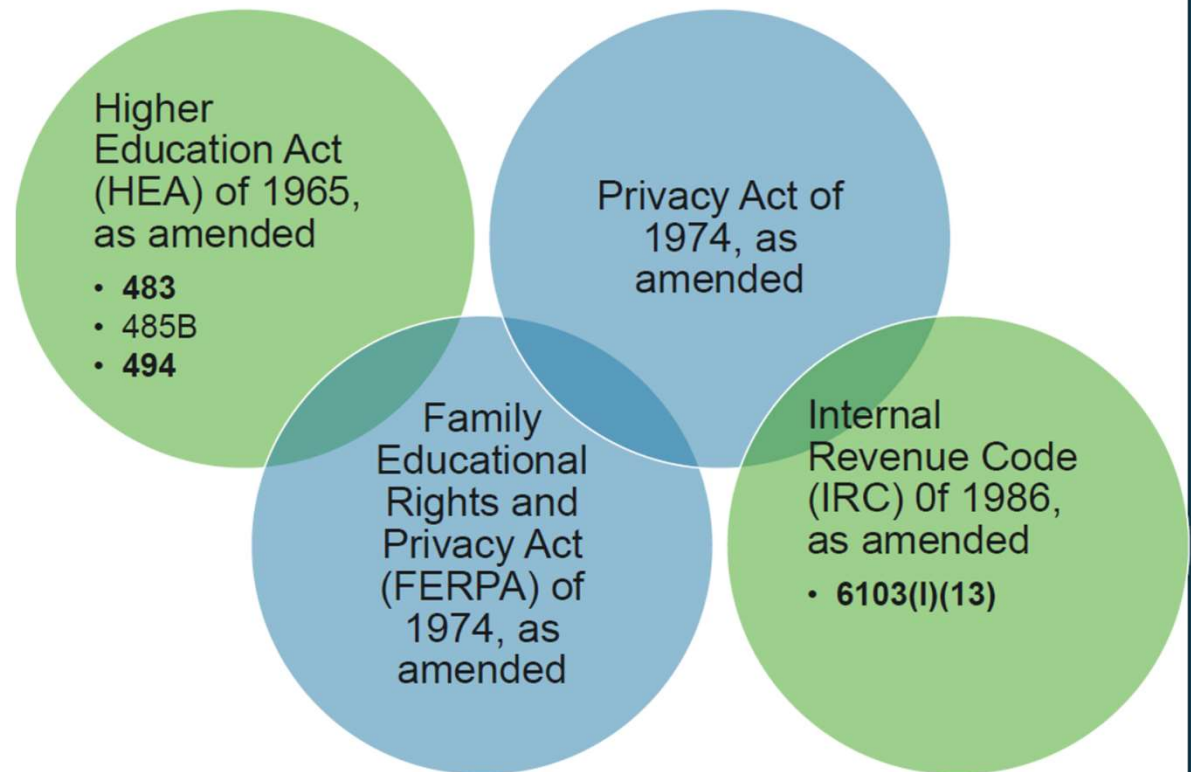
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What is Student Data?

- There are three categories of student data:
 - *Free Application for Federal Student Aid (FAFSA®)* data,
 - **Federal Tax data; and (new for 2024-2025)**
 - Personally Identifiable Information (PII)
- There are four laws governing the use and sharing of student data
 - Privacy Act
 - Higher Education Act (HEA)
 - **Internal Revenue Code (IRC) Section 6103 (I)(13) (new for 2024-2025)**
 - Family Educational Rights and Privacy Act (FERPA)

What Law Applies?

- More than one law may apply to sharing student data.
- If more than one rule applies, you must always apply the strictest requirement in your data release decisions.



Quick Law Summary

HEA Section 483(a)(3)(E) – Allows the use of FAFSA data for the application, award, and administration of Title IV, state, and institutional aid programs and designated scholarship programs

HEA Sections 485B(d)(2) & 485B(d)(5)(B) – governs how NSLDS data can be used

HEA Section 494 – New provision added by the FUTURE Act allowing ED to request and use Federal Tax Information for specific purposes within the Title IV programs

Internal Revenue Code Section 6103(l)(13) – Permits the disclosure of Federal Tax Information to ED for determining the eligibility for and amount of, repayment obligations of, and loan discharges of the Title IV programs

FERPA – Governs the privacy, access, and disclosure of student's education records.

Privacy Act - Governs the collection, maintenance, use, and disclosure by Federal agencies of records contained in the agencies' systems of records.

What is FAFSA data?

- FAFSA data is all of the data collected on the FAFSA that does not come from the IRS, including manually entered income information
- FAFSA data also includes the following derived data:
 - If the FAFSA was filed
 - Student Aid Index
 - If the student is Pell-eligible
 - ISIR and Student Aid Summary data
 - NSLDS FA History
 - Award and disbursement information
 - COD award and disbursement data



What is Federal Tax Information data?

- Tax year;
- Tax filing status;
- Adjusted gross income (AGI);
- Number of exemptions and number of dependents;
- Income earned from work;
- Taxes paid;
- Educational tax credits;
- Untaxed Individual Retirement Arrangement (IRA or Individual Retirement Account) distributions;
- IRA deductible and payments;
- Tax exempt interest;
- Untaxed pension amounts;
- Schedule C net profits/losses;
- Indicators for Schedules A, B, D, E, F, and/or H; and
- IRS response code which indicates the status of the tax filer/FTI with the IRS



Handling Federal Tax Information

- Institution systems must tag FTI data in their system of record as Controlled Unclassified Information/Specified Tax or CUI//SP-TAX at the beginning and end of the FTI data elements
- Penalties for misuse of FTI

IRC §7213

Willful unauthorized **disclosure** of tax return or return information

Felony; fine up to \$5,000, or imprisonment up to 5 years, or both, plus the costs of prosecution

IRC §7213A

Willful unauthorized **inspection** of tax return or return information

Fine up to \$1,000, imprisonment up to 1 year, or both, plus the costs of prosecution

IRC §7431

Knowing or negligent inspection or disclosure of tax return or return information by officer or employee in violation of any provision of IRC §6103

Taxpayer may bring a civil action for damages against officer or employee

How can FAFSA data be used?

- Data collected in the FAFSA form can be used only for the application, award, and administration of Title IV, state aid, institutional aid programs, and the programs of the following scholarship organizations:
 - United Negro College Fund (UNCF); and
 - Hispanic Scholarship Fund (HSF)



How can FAFSA data be used?

- May use disaggregated FAFSA data, **excluding FTI**, for research to promote college attendance, persistence, and completion
- Any other FAFSA data sharing, excluding the FTI, the school must have the explicit written consent of the applicant
- This includes institutional uses that were previously permitted under a FERPA exclusion. The HEA now has a stricter requirement.

How can the FTI data be used?

- Permits disclosure of FTI to institutions of higher education, state higher-education agencies, and designated scholarship organizations, solely for the use in the application, award, and administration of financial aid awarded by these entities
- Permits further redisclosure of FTI to **contractors of institutions**, state higher-education agencies, and designated scholarship organizations that assist the entity in the application, award, and administration of financial aid programs.

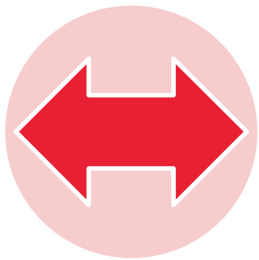
How can the FTI data be used?

- IRC permits disclosure of FTI, with individual consent, for purposes of:
 - Applications and recertifications for income-contingent or income-based repayment;
 - Discharge of loan based on total and permanent disability;
 - Federal student financial aid only for the purpose of (and to the extent necessary in) determining eligibility for, and amount of, Federal student financial aid programs

Who else can have the FTI data?

- With the written consent by the applicant to an institution of higher education, may be provided by such institution of higher education as is necessary to a scholarship granting organization, including a tribal organization, or to an organization assisting the applicant in applying for and receiving Federal, State, local, or tribal assistance, that is designated by the applicant to assist the applicant in applying for and receiving financial assistance for any component of the applicant's cost of attendance at that institution.
- The school can release the FTI data to the student upon request

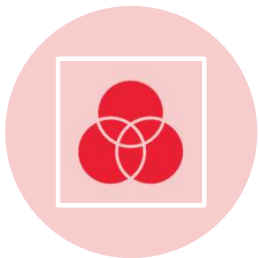
Student Aid Internet Gateway (SAIG) Agreement



SAIG Agreement – vehicle that allows the exchange of data electronically with the Department of ED – updated to receive 2024-2025 ISIR information – separate agreement and box because it contains FTI



Conditions placed for receipt of data



All data uses must be consistent with this Agreement.



Access, disclosure, and use of data restricted to “authorized personnel”

Thank You!

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