

October 4, 2010

Director, NSLDS Systems, Application, Operations and Delivery Services
Federal Student Aid
U.S. Department of Education
830 First Street, NE - Room 44E3
Union Center Plaza (UCP)
Washington, DC 20202-5454

**COMMENTS: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4) and (11))
Notice of an Altered Systems of Records (NSLDS)**

Dear Director:

Champion College Services, Inc. began its journey as "*Hands On*" *Default Management, Inc.* in 1989 as the first default prevention company in the United States. The foundation of the default prevention program was recognized by the Department of Education in 1989 for its remarkable results at the Al Collins Graphic Design School in Tempe, Arizona. At the time, the school's default rate had been reduced from 35% to less than 10% in two years. This program was incorporated into drafting "Appendix D", the mandated regulatory criteria for default prevention from 1989 to 1996.

My name is Mary Lyn Hammer, Founder, President and CEO of "*Hands On*" and *Champion College Services*. I designed and implemented the default prevention program at the school in Tempe; was given permission to copyright the program under my own name; and started "*Hands On*" to share my experiences and techniques to help students avoid student loan defaults.

I am writing to offer comments to the recently published notice of an altered systems of records for the National Student Loan Database System (NSLDS). My body of past experiences that can be helpful to comments for "Gainful Employment" regulations includes participation in drafting "Appendix D" that was the mandated regulatory criteria for default management from 1989 to 1996; participation as a 1999 alternate negotiator in the Negotiated Rulemaking process; participation as a 2000 negotiator in drafting the rewrite of "Appendix D" into "Subpart M" and negotiating additional appeal criteria for institutions; participation as a 2009 negotiator in drafting "Subpart N" that is the regulatory criteria for the 3-year cohort default rates; participation as a contributor to the original and revised versions of the "Cohort Default Rate Guide" published by the U.S. Department of Education. I have testified at numerous Congressional and Departmental hearings in every reauthorization since 1988. Our company provides data and analysis on a consistent basis to Congressional committee members and staff as well as to top ranking officials within the Department of Education.

Over the years, Champion has consistently delivered remarkable results. For high default rate schools, Champion's work has averaged a 50% reduction in default rates in the first full year of servicing. Conversely, schools that have moved away from our services have experienced an average increase of 45% in their default rates.



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The average Gainful Employment "repayment rate" as published by the U.S. Department of Education for Champion's tenured clients is 45%. This is a direct result of quality services provided to the students that teach and support positive behaviors and accountability for their student loans. These statistics reflect an average of two years of mentoring for these students. We strongly adhere to a culture of accountability for ourselves, our school clients, and our student customers by "doing it right in the first place."

Champion's belief that "*Education is the Vehicle for Making Dreams Come True*" has been the driving force to advocate for career-based education and high-risk students. This belief is practiced throughout Champion College Services where we strive to improve people's lives, one student at a time.

Our portfolio of over 200 institutions includes all school types, ranging from cosmetology schools to law schools and everything in between. The phenomenal statistics that we have consistently delivered to our clients for over 20 years is largely based upon access to the information needed to ensure accurate data for all relevant parties and to swiftly help students in early delinquent stages where the success rate of cures is higher. Achievement in early intervention drives outcomes for financial stability for the students, the institutions, the government, and the taxpayers.

The Champion advocacy stems from our passion to serve the students. It is with and through this dedication that I write my comments for your review and consideration of the notice of an altered systems of records for the NSLDS.

Thank you for your time and consideration.

Sincerely,

Mary Lyn Hammer
President and CEO
Champion College Services, Inc.

Champion College Services' comments to the Department of Education Federal Register, Privacy Act of 1974: System of Records published on September 7, 2010, will consist of two parts: general comments and specific recommendations.

General Comments

Champion College Services strongly urges reconsideration of the Department's proposed rules for the National Student Loan Database System (NSLDS) System of Records to include language that specifically permits access by third party agents that specialize in default prevention.

We strongly believe that the authority exists in many laws and regulations and has not been properly enforced. We ask that additional language be added to insure enforcement of this valid and valuable communication that allows student access to help in avoiding the devastating consequences of student loan defaults; insures program integrity through enforcement of student loan rights, responsibilities, and obligations; and serves the fiscal interest of the public.

The federal government has already demonstrated “compelling interest” in the Higher Education Amendments and other federal statutes that support collection of federal student loans.

Student loan information access is needed to properly educate and assist borrowers who take out federally-guaranteed student loans and to comply with many existing statutes and regulations. Access to this critical information is clearly preventing these loans from going into default and costing taxpayers billions of dollars in default costs each year. Default prevention services, whether offered through the schools or by third parties contracted by the schools, help students avoid defaults and build good credit. The trickle-down effect of this valuable service supports our country's economic growth and stability from citizens through government levels and everyone in between.

This compelling interest is demonstrated in the following areas:

- Mandated collection of Social Security Numbers and Driver's License Numbers on loan applications for federally-guaranteed loans to use in data matching and skip tracing
- Collection of additional family members and references on federal forms for higher education funding to assist in locating borrowers
- Required credit checks on federal PLUS loans
- Required reporting to national credit reporting agencies for delinquent student loans by lenders and/or schools acting as lenders
- Mandated reporting of delinquent student loans by guarantee agencies and/or the Department of Education to schools when the loans are in “pre-claims” status
- Appeal options for removing borrowers from a cohort default rate when there is proof that the student was not reported to the requesting school in the pre-claims status
- Required cooperation of schools in locating “skip” borrowers for federally-guaranteed loans
- Shortcuts for legal routes to collect outstanding debt for federally-guaranteed loans including, but not limited to, seizure of tax refunds, wage garnishment, and liens on personal property
- Exclusion of federally-guaranteed loans from discharge in bankruptcy
- Authorization of multiple data matches between federal data systems to assist in the collection of debts owed on defaulted student loans

- Barring individuals who have defaulted on student loans from federal employment and certain public assistance

“Compelling Interest Test” standards apply when a citizen’s fundamental rights have been violated. There is no general constitutional right to privacy, to the extent we do have a constitutionally protected right to privacy it has been defined in very limited ways that are for the most part confined to protected areas such as the home or a person’s body. In particular there is no explicit constitutional protection for this type of information and there is no Supreme Court jurisprudence stating that individuals have a fundamental right to have their personal information protected.

Current laws permit the disclosure of protected information in certain situations. Limiting access to a specific party whose scope of services and purpose for business is consistent with other parties whom currently have access to the same non-public personal information would reduce the regulatory power of the committee and would be harmful to the industry by undoing certain Gramm Leach Bliley Act provisions that are commercially useful to financial institutions.

The costs of default are severe and they are felt not just by the individual borrower but by society as a whole; therefore, the government has a compelling interest to mitigate or avoid these penalties through its policies.

Borrowers authorize the sharing of student loan information when they sign the Master Promissory Notes.

FFELP Master Promissory Note: Borrower Certifications and Authorizations 14(F)(ii) states:

"F. I authorize the release of information pertinent to my loans: (i) by the school, the lender, and the guarantor, or their agents, to the references on the applicable loans and to members of my immediate family unless I submit written directions otherwise; and, (ii) by and among my schools, lenders, guarantors, the Department of Education, and their agents."

Direct Loan Master Promissory Note, Section C: Borrower Request, Certifications, Authorizations, and Understanding:

G. I authorize my schools, lenders and guarantors, ED, and their agents to release information about my loan to each other.

H. I authorize my schools, ED, and their respective agents and contractors to contact me regarding my loan request or my loan, including repayment of my loan, at the current or any future number that I provide for my cellular telephone or other wireless device using automated dialing equipment or artificial or prerecorded voice or text messages.

Schools and their agents already have authority through the Gramm-Leach-Bliley Act to access to protected private information.

Section 6802. Obligations with respect to disclosures of personal information

(e) General exceptions

Subsections (a) and (b) of this section shall not prohibit the disclosure of nonpublic personal information-

(1) *as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer*, or in connection with-

(A) servicing or processing a financial product or service requested or authorized by the consumer;

Section 6809. Definitions

(5) Nonaffiliated third party

The term “nonaffiliated third party” means any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution, but does not include a joint employee of such institution.

Schools and their agents already have authority through the Family Educational Rights and Privacy Act (FERPA).

Title 34 C.F.R. § Part 99, Subpart A, 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

Act means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 444 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

Dates of attendance. (a) The term means the period of time during which a student attends or attended an educational agency or institution. Examples of dates of attendance include an academic year, a spring semester, or a first quarter.

(b) The term does not include specific daily records of a student's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral,

written, or electronic means, to any party except the party identified as the party that provided or created the record.

(Authority: 20 U.S.C. 1232g(b)(1) and (b)(2))

Education records. (a) The term means those records that are:

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

Party means an individual, agency, institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

Personally Identifiable Information

The term includes, but is not limited to—

(a) The student's name;

(b) The name of the student's parent or other family members;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number, student number, or biometric record;

(e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;

(f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or

(g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

(Authority: 20 U.S.C. 1232g)

Record means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

(Authority: 20 U.S.C. 1232g)

Student, except as otherwise specifically provided in this part, means 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.

(Authority: 20 U.S.C. 1232g(a)(6))

Title 34 C.F.R. § Part 99, Subpart D, 99.31 Under what conditions is prior consent not required to disclose information?

(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:

(1)(i)(A) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(B) A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party—

(1) Performs an institutional service or function for which the agency or institution would otherwise use employees;

(2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and

(3) Is subject to the requirements of §99.33(a) governing the use and redisclosure of personally identifiable information from education records.

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, *financial aid* means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

Title 34 C.F.R. § Part 99, Subpart D, 99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

Other laws and regulations exist for sharing of student loan information.

This type of information sharing is already mandated in the case of FFELP guarantee agencies and institutions of higher education (see 34 C.F.R. § 682.401(b)(24) and 34 C.F.R. § 682.404(a)(4)). Champion seeks to require the cooperation of the entire student lending community with needed default prevention efforts.

Higher Education Amendments, Section 428 [U.S.C. 1078] (c)(2)(G) and (H)

(G) shall prohibit the Secretary from making any reimbursement under this subsection to a guaranty agency when a default claim is based on an inability to locate the borrower, unless the guaranty agency, at the time of filing for reimbursement, certifies to the Secretary that diligent attempts, including contact with the institution, have been made to locate the borrower through the use of reasonable skip-tracing techniques in accordance with regulations prescribed by the Secretary; and

(H) set forth assurances that—

(i) upon the request of an eligible institution, the guaranty agency shall, subject to clauses (ii) and (iii), furnish to the institution information with respect to students (including the names and addresses of such students) who received loans made, insured, or guaranteed under this part for attendance at the eligible institution and for whom preclaims assistance activities have been requested under subsection (I);

(ii) the guaranty agency shall not require the payment from the institution of any fee for such information; and

(iii) the guaranty agency will require the institution to use such information only to assist the institution in reminding students of their obligation to repay student loans and shall prohibit the institution from disseminating the information for any other purpose.

Higher Education Amendments, Section 432. [20 U.S.C. 1082] (I)(1)

(1) In general.—The Secretary shall, by regulation developed in consultation with guaranty agencies, lenders, institutions of higher education, secondary markets, students, **third party servicers** and other organizations involved in providing loans under this part, prescribe standardized forms and procedures regarding—

- (A) Origination of loans;
- (B) Electronic funds transfer;
- (C) Guaranty of loans;
- (D) Deferments;

- (E) Forbearance;
- (F) Servicing;
- (G) Claims filing;
- (H) Borrower status change; and
- (I) Cures.

34 CFR § 682.404(a)(4)

(4) If a lender has requested default aversion assistance as described in paragraph (a)(2)(ii) of this section, the agency must, upon request of the school at which the borrower received the loan, notify the school of the lender's request. The guaranty agency may not charge the school or the school's agent for providing this notification and must accept a blanket request from the school to be notified whenever any of the school's current or former students are the subject of a default aversion assistance request. The agency must notify schools annually of the option to make this blanket request.

34 C.F.R. § 682.401(b)(24)

(24) *Information on defaults.* The guaranty agency shall, upon the request of a school, furnish information with respect to students, including the names and addresses of such students, who were enrolled at that school and who are in default on the repayment of any loan guaranteed by that agency.

Specific Recommendations

RECOMMENDATIONS: Purpose(s)

The information maintained in this system is also maintained for the following purposes relating to institutions participating in and administering the Title IV programs:

(2) to provide student aggregate loan calculations to educational institutions **and their agents**:

(7) to assist guaranty agencies, educational institutions **and their agents**, lenders, and servicers in collecting debts arising from receipt of Title IV funds;

(10) to provide reporting capabilities for educational institutions **and their agents**, guaranty agencies, lenders, and servicers for use in Title IV administrative functions and for the Department for use in oversight and compliance;

(13) to assist Department staff, **educational institutions and their agents**, contractors, guaranty agencies and the Department of Justice in the collection of debts owed to the Department under Title IV of the HEA.

RECOMMENDATIONS: Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

(1)(b) To support default rate calculations and/or provide information on borrowers' current loan status, the Department may disclose records to guaranty agencies, educational institutions **and their agents**, financial institutions, servicers, and State agencies;

(c) To provide financial aid history information to aid in their administration of Title IV programs, the Department may disclose records to financial aid professionals, **educational institutions and their agents**, guaranty agencies, loan holders, or servicers;

(d) To support auditors and program reviewers in planning and carrying out their assessments of Title IV program compliance, the Department may disclose records to guaranty agencies, educational institutions **and their agents**, financial institutions and servicers and to Federal, State and local agencies;

(g) To assist in locating holders of loan(s), the Department may disclose records to students/borrowers, guaranty agencies, educational institutions **and their agents**, financial institutions and servicers, and Federal agencies;

(h) To assist analysts in assessing Title IV program administration by guaranty agencies, educational institutions **and their agents**, and financial institutions and servicers, the Department may disclose records to Federal and State agencies;

(i) To assist loan holders in locating borrowers, the Department may disclose records to guaranty agencies, educational institutions **and their agents**, financial institutions that hold an interest in the loan and their servicers, and to Federal agencies;

(k) To assist program administrators with tracking refunds and cancellations of Title IV loans, the Department may disclose records to guaranty agencies, educational institutions **and their agents**, financial institutions and servicers, and to Federal and State agencies;

(l) To enforce the terms of a loan, assist in the collection of a loan or assist in the collection of an aid overpayment, the Department may disclose records to guaranty agencies, loan servicers, educational institutions **and their agents**, and financial institutions that hold an interest in the debt, and to Federal, State, or local agencies; and

Summary

Currently, existing authorizations, laws and regulations are complicated and misunderstood. Additional regulatory language is appropriate to insure the sharing of student loan information necessary for effective default prevention for students, schools, and taxpayers.

Sharing of student loan information is currently AUTHORIZED by cross-reference of several legal documents as follows:

- ❖ Borrower authorization to share information with schools and their agents is in the Master Promissory Notes and regulations. GLB and HEA laws in conjunction with authorization requirements captured in the Master Promissory Note meets both the intent and the letter of GLB.
- ❖ The Gramm-Leach-Bliley Act (GLB) under Title V – Privacy statute recognizes that there are circumstances in which the nonpublic information needs to and should be shared with non-affiliated third parties and spells out the requirements for doing so.
- ❖ The Family Educational Rights and Privacy Act (FERPA) specifically authorizes the sharing of information and spells out the requirements of doing so..
- ❖ The HEA Amendment and conforming regulations require guaranty agencies to share information for default aversion.

Long-term benefits for sharing information with third party default prevention companies:

- Insure student access to financial aid
- Insure choice of education to students
- Help student borrowers avoid the consequences of default
- Insure program integrity
- Serve the federal fiscal interest

Specifically defining the sharing of information among all stakeholders to collecting student loan debt ultimately serves in the best interest of the students by facilitating actions that will benefit the student's financial stability and future as a responsible citizen. The benefits will follow these students into other financial areas including payment of credit card debt, personal debt, and home mortgage debt. The return to our country will be stabilization of our economic future, one student at a time.

Again, thank you for your time and consideration.