



Office of the President

October 10, 2000

BY HAND

Donald S. Clark, Esq.
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

**Re: Gramm-Leach-Bliley Act Privacy Safeguards Rule,
16 C.F.R. Part 313 -- Comment**

Dear Mr. Clark:

On behalf of the American Council on Education ("ACE") and the other higher education associations listed below, I submit these comments on the Federal Trade Commission's (FTC) advance notice of proposed rulemaking and request for comment on administrative, technical, and physical safeguards for customer records of financial institutions, referred to as the Safeguards Rule, under Title V of the Gramm-Leach-Bliley Act (GLB Act), Pub. L. No. 106-102 (codified at 15 U.S.C. § 6801 *et seq.*). See 65 Fed. Reg. 54186 (Sept. 7, 2000). We respectfully ask that the Safeguards Rule provide that higher education institutions that comply with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and its implementing regulations, 34 C.F.R. pt. 99, shall be deemed in compliance with the Safeguards Rule. As you know, the FTC already concluded in its earlier rule under Title V, referred to as the Privacy Rule, that compliance with FERPA satisfies the GLB Act's privacy provisions. We appreciate the FTC's acceptance of the views of the higher education community in the Privacy Rule. Similarly, it is unnecessary to require higher education institutions to comply with the Safeguards Rule if they comply with FERPA, because FERPA imposes strict privacy-safeguards requirements on higher education institutions.

ACE represents all sectors of American higher education. Founded in 1918, it is a non-profit national education association whose members include more than 1,800 public and private colleges, universities, and educational organizations throughout the United States. As a leading participant in higher education affairs, ACE's purpose is to promote the interests of all members of the academic community, including students and their parents. ACE members participate in various federal, state, and institutional student financial aid programs, including student loan and grant programs. See, e.g., 20 U.S.C. § 1070 *et seq.* (federal student financial aid programs).

1. *The FTC has already concluded that compliance with FERPA satisfies the GLB Act's privacy provisions.*

ACE submitted comments on the FTC's proposed Privacy Rule. See letter from S. Ikenberry to D. Clark (Mar. 31, 2000) (attached). In our comments, we explained that federal law already imposes strict privacy requirements on higher education institutions. FERPA, which is enforced by the U.S. Department of Education (Department), forbids higher education institutions to disclose education records, and personally identifiable information contained in such records, unless the student or parent consents in writing. See 20 U.S.C. § 1232g(b). We therefore urged the FTC not to impose unnecessary and duplicative regulations on higher education institutions.

In the final Privacy Rule, the FTC concluded that compliance with FERPA satisfies the GLB Act's privacy requirements. The FTC found that higher education institutions are subject to "stringent" privacy provisions under FERPA and its implementing regulations, "which govern the privacy of education records, including student financial aid records." See 65 Fed. Reg. 33646, 33648 (May 24, 2000). The Privacy Rule thus provides that "[a]ny institution of higher education that complies with FERPA, 20 U.S.C. § 1232g, and its implementing regulations, 34 C.F.R. 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." *Id.* at 33678.

The Privacy Rule's FERPA provision apparently will apply to the Safeguards Rule. Both the Privacy Rule and the Safeguards Rule will be codified at 16 C.F.R. part 313. The Privacy Rule states that compliance with FERPA will constitute compliance with "this part." *Id.* Reiteration of the FERPA provision in the Safeguards Rule, however, will confirm that compliance with FERPA satisfies the Safeguards Rule.

2. *Higher education institutions already must comply with strict privacy safeguards under FERPA.*

Compliance with FERPA will satisfy the Safeguards Rule, because FERPA already requires higher education institutions to comply with strict privacy safeguards that serve the GLB Act's objectives of preventing anticipated threats or hazards to security or integrity, preventing unwarranted access and use, and insuring security and confidentiality.

Preventing anticipated threats or hazards to security or integrity. FERPA contains numerous safeguards relating to the integrity of student records. Under FERPA, a parent or student has a right to inspect and review the student's education records. 34 C.F.R. § 99.10. If a

parent or student believes that the student's education records contain information that is inaccurate, misleading, or in violation of the student's privacy rights, he or she may ask the institution to amend the record. *Id.* § 99.20. If the institution decides not to amend the record, it must give the parent or student an opportunity for a hearing, conducted in accordance with FERPA-specified requirements, to challenge the content of the student's record. *Id.* §§ 99.21 (hearing rights), 99.22 (hearing conduct requirements). If the institution decides based on the hearing not to amend the student's record, the parent or student has a right to put a statement in the record commenting on the contested information and the institution's decision. *Id.* § 99.21(b).

Preventing unwarranted access and use. As we discussed in our letter regarding the proposed Privacy Rule, FERPA strictly prohibits unwarranted access and use of student records. For example, FERPA requires that institutions annually notify parents and students of their rights under FERPA. *Id.* § 99.7. Institutions must obtain detailed written consents before releasing personally identifiable information. *Id.* § 99.30. Institutions must comply with stringent recordkeeping requirements. *Id.* § 99.32. Institutions that release information to third parties as permitted under FERPA must ensure that the recipient complies with FERPA, and the recipient may use the information only for the purposes for which the disclosure was made. *Id.* § 99.33. Even with respect to disclosures to other school officials, including teachers, within the institution, an institution must comply with certain privacy safeguards: Before disclosure, the institution must determine whether the school official has a legitimate educational interest in the information and it must have a written policy that specifies the criteria for determining who constitutes a school official and what constitutes a legitimate educational interest. *Id.* §§ 99.31(a)(1), 99.7(a)(3)(iii).

Insuring security and confidentiality. FERPA promotes security and confidentiality through its disclosure-limitation requirements, described above, and its enforcement provisions. For example, in order to insure that consents to disclose are valid and do not permit unintended or undesired disclosure, consents must be written, signed, and dated and must specify the records to be disclosed, the purpose of the disclosure, and the party to whom the disclosure may be made. *Id.* § 99.30. Students or parents who believe that an institution is not complying with FERPA have a right to file a complaint with the Department. *Id.* § 99.63. Institutions take their obligations under FERPA seriously, and those that violate FERPA risk losing federal funds. *Id.* § 99.67.

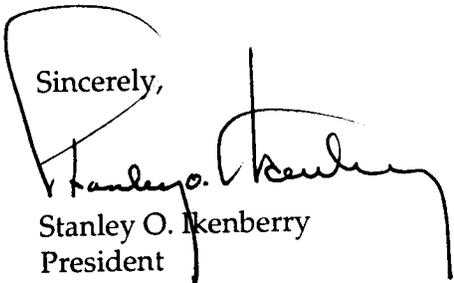
In light of FERPA's comprehensive and rigorous privacy safeguards, it is unnecessary to require higher education institutions to comply with the Safeguards Rule if they comply with FERPA.

3. *The FTC should confirm that compliance with FERPA satisfies the Safeguards Rule's requirements.*

For the foregoing reasons, we respectfully request that, consistent with the FTC's Privacy Rule, the FTC confirm in its proposed and final Safeguards Rule that compliance with FERPA will satisfy the Safeguards Rule's requirements. We suggest that the FTC include in the Safeguards Rule the same statement that is included in the Privacy Rule regarding compliance with FERPA.

We appreciate your consideration of these comments. Please call me if you have any questions or need additional information.

Sincerely,



Stanley O. Kenberry
President

On behalf of:

American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Jesuit Colleges and Universities
Council of Independent Colleges
National Association for Equal Opportunity in Higher Education
National Association of Independent Colleges and Universities
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators