

MEMORANDUM

To: Meteor Advisory Team

From: Shelly Repp
General Counsel, NCHELP

Re: Impact of Various Privacy Laws on Meteor

The Meteor Network allows student/borrowers, financial aid professionals and guarantor, lender, and loan servicer customer service representatives to view aggregated financial aid information on-line. This memorandum explains how the Meteor Network complies with the financial privacy provisions of the Gramm-Leach-Bliley Act (15 U.S.C. 6802; the “GLB Act”) and the Family Educational Rights and Privacy Act (20 U.S.C. 1232g; the “FERPA”).

The GLB Act

The Meteor Network includes access providers and data providers. Data providers include financial institutions subject to the GLB Act, including the implementing regulations.¹ The GLB Act governs the disclosure of non-public personal financial information by financial institutions. The Network is designed to restrict disclosures to student/borrowers, financial aid professionals and guarantor, lender and loan servicer customer service representatives. The GLB Act analysis for each category of end user is set forth below. Also included is an analysis of the implications of a California Privacy Act passed in 2001 (SB 168), which added Section 1798.85 to the California Civil Code.

First, there are no impediments in the GLB Act to providing an individual with access to his or her own financial information (any such disclosure would not be a disclosure to a third party). The principal concern is authentication (validating that the individual is who he or she claims to be). Individuals will authenticate themselves with a user ID and password or other unique ID (other than a social security number). Also, the data provider will have the ability to override the security procedure used by the access provider by requiring a different authentication protocol (i.e. the data provider will be able to mandate that the student/borrower authenticate himself or herself with the data provider’s password).

¹ Regulatory cites refer to the Federal Trade Commission’s rules, but these rules closely track the regulations issued by the other GLB Act regulators.

Financial aid professionals can only access non-public personal information through the Meteor Network if they are using the information in connection with the administration of financial aid programs. Each financial aid professional who logs onto the Meteor Network certifies, as part of the login process, that they are a financial aid professional, that they have institutional authority to view the information involved, that the information relates to an applicant, a current student, or a former student of the educational institution on whose behalf they are working and that their use of the information is in connection with the administration of financial aid to the individual involved. As a general matter, a financial institution may disclose nonpublic personal financial information to schools in order to enable the school to administer its student assistance programs. The authority to make such a disclosure is based on 16 CFR 313.14(a) (processing a transaction that the individual requests or authorizes), 313.14(b)(1) (required or appropriate to enforce rights), 313.14(b)(2) (required or appropriate to carry out the transaction or the product or service of which the transaction is a part), 313.15(a)(1) (with consent), 313.15(a)(2)(ii) (to protect against fraud or unauthorized transactions). The disclosure path may travel through an access provider, but in all cases the end use will be as described above. Each access provider will sign a certification under which it agrees not to capture, store, use or reuse any information that passes through its website. Access providers are in effect communication intermediaries.

The GLB Act analysis for guarantor and lender customer service representatives is the same as for school officials. Access is limited to authorized representatives of guarantors and lenders for the purpose of servicing loan accounts that are, respectively, guaranteed by the guarantor or owned by the lender. The same GLB exceptions authorizing disclosure to school officials also authorize disclosures to guarantor and lender representatives.

Finally, loan servicer customer service agents will have access to Meteor screens in order to answer questions from borrowers, school officials, lenders and guarantors who are viewing borrower information. The only information the servicer will be able to view will be data that the loan servicer provides as a Meteor data provider. Since the data will already be in possession of the loan servicer, no GLB disclosure issues are involved.

A question has also arisen as to whether SB 168 impacts the Meteor Network. That California legislation provides, inter alia, that in cases where individuals are required to use their social security number to access a website, such access must be accompanied by a password or unique identifier or other authentication. Section 1798.85(a)(4) of the California Civil Code. The only aspect of the Meteor Network that is affected by this law is student/borrower inquiry, as the law does not impose restrictions on institutional users.² With respect to student/borrowers, the Meteor Network complies with the California statute since a password or other unique ID other than or in addition to a social security number is used to access any Meteor related website.

² In any case, access providers generally require any user to authenticate themselves with a user ID and password.

The FERPA

The FERPA is a federal law that protects the privacy of student education records. The FERPA applies to educational institutions that receive funds under an applicable U.S. Department of Education program. Meteor data providers can include schools that provide data on Perkins loans or other financial aid programs. Any such disclosure of information by schools is subject to the FERPA, including the implementing regulations (34 CFR Part 99). Students/borrowers (who have reached the age of 18) may access their own records maintained by a school. Thus, the disclosure of loan information by a school to its student or former students is permitted by the FERPA. Schools may also disclose information to appropriate parties in connection with financial aid for which the student has applied or has received if the information is necessary to determine eligibility for such aid or enforce the terms and conditions of the aid. See 34 CFR 99.31(a)(4)(i). Financial aid professionals and guarantor, lender, and loan servicer customer service representatives that access Meteor data are covered by this FERPA exception because their use of the information is in connection with the administration of financial aid to the individual involved. They provide a certification of this commitment each time they access data.