



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

September 21, 2016

Provost Marisa Kelly  
Suffolk University  
73 Tremont Street  
Boston, MA 02108

Dear Provost Kelly:

Thank you for your letter to the U.S. Department of Education's (the Department's) General Counsel James Cole regarding the request of Professor Kathleen Engel and Ms. Deanne Loonin to use data from the Department's National Student Loan Data System (NSLDS) to study student loan servicing and borrower default and delinquency of Suffolk University's (Suffolk's) students and graduates (the Suffolk request). Your letter has been referred to me for response.

Below is our analysis of the various issues raised by the Suffolk request:

### The Higher Education Act of 1965

Section 485B(d)(2) of the Higher Education Act of 1965, as amended (the HEA), prohibits non-governmental researchers and policy analysts from accessing personally identifiable information (PII) from NSLDS. We understand, however, that the Suffolk request is to use de-identified data from NSLDS. If our understanding is correct, there is no statutory barrier under the HEA to Suffolk providing de-identified NSLDS data to Prof. Engel and Ms. Loonin to conduct the proposed study.

### The Privacy Act of 1974

The Privacy Act of 1974, as amended (the Privacy Act) protects the privacy of records that are maintained in NSLDS. The Privacy Act permits the non-consensual disclosure of records to a recipient (Prof. Engel and Ms. Loonin in this case) who has provided the Department with written assurance that the records will be used solely for statistical research purposes and that the records will be transferred in a form that is not individually identifiable. 5 U.S.C. § 552a(b)(5). Thus, there is no statutory barrier under the Privacy Act to Suffolk providing de-identified NSLDS data to Prof. Engel and Ms. Loonin to conduct the proposed study.

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## The Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA) governs the disclosure of Personally Identifiable Information (PII) from students' education records, as detailed in FERPA's implementing regulations at 34 CFR Part 99, Subpart D. The disclosure of PII from students' education records (including PII about a student obtained from NSLDS) without the students' written consent may put a student's privacy at risk and is generally prohibited by FERPA. Therefore, Suffolk may only disclose PII from education records that Suffolk obtained from NSLDS without the prior, written consent of the student if the disclosure meets the requirements of one of FERPA's consent exceptions in 34 CFR § 99.31 and also any applicable recordation requirements in 34 CFR § 99.32. Additionally, FERPA generally would prohibit Prof. Engel and Ms. Loonin from making any further disclosure of PII from a student's education records, as provided in 34 CFR § 99.33(a).

### *Definition of PII:*

The FERPA regulations (34 CFR § 99.3 "Personally Identifiable Information") define PII as including, but 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.

### *Inferring Identity:*

We note that Item (f) above includes virtually any piece of information that could be used by "a reasonable person in the school community" to infer a student's identity "with reasonable certainty." When considering the release of information such as a student's ZIP code, Suffolk must be mindful that certain circumstances, such as the student residing in a unique area where no other student resides, could allow for the identification of that student by a "reasonable person in the school community" based on this seemingly benign piece of data.

Additionally, Item (f) defines PII as "information that, *alone or in combination*, is linked or linkable to a specific student." This means that although one piece of data alone may not be enough to identify a



student, oftentimes it can be used in combination with other released data to identify a student, such as the release of both date of birth and ZIP code. FERPA's prohibition on the release of such pieces of complementary data constituting PII is not avoided by releasing the information at different times.

*De-identification:*

Proper de-identification of individual-level student data typically requires the removal of all direct and indirect identifiers, followed by the application of one or more statistical disclosure limitation (SDL) techniques. These techniques include suppression (e.g., redacting all or some of the records for students from small subgroups or with uncommon characteristics), blurring (e.g., replacing continuous variables like income with categorical variables like income quartile), and perturbation (e.g., introducing noise or error into the data or swapping variable values for individuals at risk of re-identification). More information about the application of these types of SDL techniques on education data is available through the Department's Privacy Technical Assistance Center (PTAC) at <http://ptac.ed.gov>.

Summary

In accordance with the legal restrictions discussed above, and pursuant to Office of Management and Budget (OMB) guidance on the Privacy Act (OMB Guidelines, 40 Fed. Reg. 28,948, 28,954 - July 9, 1975), prior to receiving any NSLDS information from Suffolk, Prof. Engel and Ms. Loonin must submit to the Department a certification confirming that the NSLDS information will only be used for statistical research or reporting. In addition, a senior official of Suffolk University must submit to us a certification that the data being provided to Prof. Engel and Ms. Loonin have been properly de-identified by Suffolk. Both of these signed and dated certifications should be submitted as PDF attachments to an email addressed to the Department's Privacy Technical Assistance Center at [PrivacyTA@ed.gov](mailto:PrivacyTA@ed.gov).

Suffolk University, Prof. Engel, and Ms. Loonin must keep in mind the limitations and requirements discussed in this letter when designing and implementing any study or analysis that proposes to use de-identified NSLDS information. Violations of the provisions of the HEA, the Privacy Act, or FERPA, can harm Suffolk's current and former students and could lead to administrative, civil, or criminal actions, as appropriate.

If you have questions on the specifics of de-identification, please contact us at [PrivacyTA@ed.gov](mailto:PrivacyTA@ed.gov).

I hope this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathleen M. Styles', with a long horizontal flourish extending to the right.

Kathleen M. Styles  
Chief Privacy Officer