

# Data Brokers and the Sale of Students' Data

Privacy and Policy Implications — and How Students Feel About It

By Alistair Simmons  
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**Overview:** This report investigates the protection and vulnerability of student data within the data brokerage ecosystem. It specifically examines the privacy and policy impacts of the sale of student data and whether students are equipped to protect their own data. First, it examines the existing research on the topic, analyzes additional information about data brokers selling and monetizing data about students, and looks at gaps in U.S. laws and regulations. It finds that data brokers are gathering and selling a wide variety of data points about students in the U.S., including data about students under the age of 18. Then, it presents the results of a survey of college students about the sale of their own data and how they feel about this practice. It concludes with discussing how this practice harms students and how U.S. policymakers can fill in the gaps.

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## Introduction

This report was written to investigate the protection and vulnerability of student data. The research question that this report addresses is, "What are the privacy and policy impacts associated with the sale of student data and are students equipped to protect their data?" I began by researching institutions that transmit, report, and sell student data and the laws that regulate the sale and circulation of student data. My research discovered a variety of institutions engaged in transmitting student data, which involved schools directly reporting student data to data brokers. Since higher education institutions commonly report student data, I surveyed college and university students to measure their understanding and comfortability with the current student data reporting practices. I applied my research on the reporting of student data to create a survey which I shared among students through fliers, text messages, and emails. I analyze the survey responses below. As a university student, I thought the survey was valuable to reveal how other students regarded commodification of their student data.

## Background

The data broker industry specializes in collecting, aggregating, and selling data. Data brokers transact and exchange personal and device data with their clients. The global data broker industry was valued, by one estimate, at over \$232.634 billion in 2019, and the market continues to grow.<sup>2</sup> A large market has emerged from the commodification of consumers' personal information, as data brokers organize details about every facet of consumers' lives to develop targeted lists that are sold to marketers and other clients. The data broker industry operates in the U.S. without sufficient regulatory oversight, as the current patchwork of privacy laws cannot effectively regulate the sale of brokered data. The data brokerage research team at Duke University's Sanford School of Public Policy researches the impacts of data brokers and advises on the implementation of legislation and policy.

Data brokers sell a broad range of datasets, each typically tailored to track specific categories of people or personal information, such as employee data, student data, information on veterans, and data about people with Alzheimer's disease.<sup>3</sup> To compile these datasets, data brokers collect data from a range of sources, aggregate it, and then identify and profile people according to their demographics and data about their beliefs, behaviors, and situations. Data brokers can also draw upon these inferences to offer their customers insights on how to influence the actions and manipulate the mindsets of American consumers.

Many people do not fully understand the harms of having their data brokered, partially because many data brokers do not engage directly with the individuals to whom the data relates, and some data brokers are intentionally covert. Data brokers often gather and sell personal data without the knowledge or consent of the person whose data is sold, making it hard for the public to grasp the impact that data brokers have on their lives.

This report focuses on datasets of student data. It demonstrates that data brokers have many different methods to obtain student data. Some of this data may be used for purposes that provide value for the individual, schools, and employers. However, there are also situations where the data can be used for harmful purposes. My survey indicates that students are largely unaware of these practices and do not know how to verify their student data. Finally, this report proposes policies to allow for beneficial uses of student data while reducing the harms from student data brokerage.

## Findings

This study finds:

- There are numerous sources reporting student data.
  - Most post-secondary institutions directly report student data to National Student Clearinghouse.
  - Directory information is published by schools and collected by data brokers.
  - Student data can be accessed for credit reports and background checks.
  - In the Vermont data broker registry, National Student Clearinghouse, Equifax, Experian, and TransUnion state that they collect data on minors.
- There are numerous benefits to reporting student data.
  - National Student Clearinghouse reports enrollment data to the Department of Education.
  - National Clearinghouse adds 5 million missing students every year to the Department of Education's student loan database.
  - National Student Clearinghouse helped resolve 6.5 million errors in students' data.
- There are numerous harms associated with the collection and sale of student data.
  - Expenses from incorrect student data can compound and put students in debt or result in denial of student loans.
  - Scholarships.com collected lists of students who are or are affiliated with someone who is suffering from domestic abuse.
  - "Student data" can include sensitive data points such as teen pregnancy.
  - Student data can be used to make discriminatory decisions about college acceptance.
- Students have filed lawsuits with data brokers to gain control over their student data and attain redress for harms associated with student data.
  - In *Robinson v. National Student Clearinghouse* (2021), students sued for having to pay to access their transcripts.
  - In *Katherine Sass and Cody Hounanian v. Great Lakes Educational Loan Services* (2020), *Equifax Information Services* (2020), *TransUnion* (2020), *Experian Information Solutions* (2020), and *VantageScore Solutions* (2020), students sued data brokers for inaccurately reporting millions of students' financial data, causing financial damages.
- Students need more information and desire the right to consent to the sale of student data.
  - In the student survey, there was a unanimous belief that students should consent to having their data shared.
  - Most students did not know how to verify their student data on National Student Clearinghouse.
- The current patchwork of privacy laws does not adequately protect student data.
  - Despite sharing data with credit reporting agencies, National Student Clearinghouse states they are not a Consumer Reporting Agency regulated by the Fair Credit Reporting Act (FCRA).

- The Family Educational Rights and Privacy Act (FERPA) § 99.31 allows schools to disclose student data to certified contractors without prior consent.
- Schools should notify students that they can opt out of disclosing directory information under FERPA § 99.37.
- The Children's Online Privacy Protection Act (COPPA) only restricts online companies from collecting data on children under the age of 13.

## Existing Research on the Sale of Students' Data

Student data is collected and sold by data brokers on a widespread basis. Data brokers gather data about students from many sources, including student directories, credit reports, and transcripts. Student information is sensitive because the data subjects include children, teenagers, and young adults. Student information also can be personally identifiable, and contain full names and addresses, the status of financial aid, medical reasons for withdrawal from class, disciplinary records, and private details about students' personal lives. Additionally, this information enables data brokers to draw inferences about students, including about their academic performance and employment opportunities. The dissemination of this information and use of it to make inferences can adversely impact a student's financial stability or future opportunities. Faulty student data can cause the denial of student loans, worsen credit score, and result in denial of employment.

The Fordham Center on Law and Information Policy published a 2018 study on the brokerage of student data with findings regarding the sale of students' personal information.<sup>4</sup> These findings were groundbreaking because they revealed many data brokers in the student data market, demonstrated the sensitivity of student data, and tracked how information is collected by data brokers through scholarship websites or surveys. The research identified 14 data brokers which were advertising the sale of student data, including information on students' health conditions, citizenship status, socioeconomic status, and any disabilities.<sup>5</sup> Scholarship.com, it found, also collected data on whether a student was, or was associated with, a victim of domestic abuse.<sup>6</sup>

Two of the data brokers who sold student information—Student List and National Research Center for College and University Admissions—were both investigated by the Federal Trade Commission (FTC) for deceptive trade practices. They settled their FTC cases in 2003. The FTC describes that these data brokers engaged in “deceptive and unfair business practices” by providing surveys that were completed by students in high school classes under the promise that the surveys would exclusively be used to match students with colleges.<sup>7</sup> The FTC press release describes how “respondents not only provided the information to colleges and universities, but also sold the information to commercial marketers.”<sup>8</sup> The Fordham research identifies ASL Marketing as “the nation's premier provider of student marketing data” for over 40 years, possessing a database of mailing addresses for over 5 million high school students.<sup>9</sup> LAKE B2B was also identified as selling lists of students “as young as two years old.”<sup>10</sup>

When the Fordham researchers attempted to purchase data from these data brokers, the report describes how data broker Exact Data was willing to sell lists of “fourteen and fifteen year old girls for family planning services.”<sup>11</sup> When Fordham researchers subscribed to Scholarships.com, they received solicitations from Vector, the parent company of CUTCO, to sell knives. Featured below is a list of sensitive data points collected by Scholarships.com, which includes “Autism/Asperger Syndrome,” “HIV positive,” and “Domestic abuse victim.”<sup>12</sup> While personal information is collected through solicitations promising scholarships and

employment opportunities, this data can also be used for purposes outside of the students' interests.<sup>13</sup>

**Table 1 – Examples of Sensitive Data Points Collected by Scholarships.com**

<p><b>Citizenship</b>  <b>Race</b>  <b>Ethnicity</b>  <b>Religion</b>  <b>Disabilities/impairments including:</b></p> <ul style="list-style-type: none"> <li>○ ADD/ADHD</li> <li>○ Allergies</li> <li>○ ALS (Lou Gehrig's Disease)</li> <li>○ Autism/Asperger Syndrome</li> <li>○ Autoimmune Disorder</li> <li>○ Bipolar Disorder</li> <li>○ Cancer related</li> <li>○ Clinically depressed</li> <li>○ Clinically overweight</li> <li>○ Cystic fibrosis</li> <li>○ Developmental impairment</li> <li>○ Digestive impairment</li> <li>○ Disabled parent</li> <li>○ Down Syndrome</li> <li>○ Dyslexia</li> <li>○ Epilepsy</li> <li>○ Heart Disease</li> <li>○ Hepatitis</li> <li>○ HIV positive</li> <li>○ Learning disability</li> <li>○ Medical disability</li> <li>○ Mental impairment</li> <li>○ Multiple Sclerosis</li> <li>○ Narcolepsy</li> <li>○ Parkinson's Disease</li> <li>○ Post-traumatic Stress Disorder</li> </ul>	<p><b>Whether the student is interested in or affiliated with any of the following:</b></p> <ul style="list-style-type: none"> <li>○ Adopted/foster child/orphan</li> <li>○ Affected by Sept. 11 attacks</li> <li>○ Against the death penalty</li> <li>○ Anti-bullying advocate/victim of bullying</li> <li>○ Birth mother placed a child for adoption</li> <li>○ Cancer patient/survivor (or child of)</li> <li>○ Child of a single parent</li> <li>○ Domestic abuse victim</li> <li>○ Homeless/formerly homeless</li> <li>○ LGBTQ or Parent LGBTQ</li> <li>○ Migrant worker/child of migrant worker</li> <li>○ Refugee/immigrant</li> <li>○ Undocumented/TPS/DACA</li> </ul>
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*Fordham CLIP's report.*<sup>14</sup>

While investigating how data brokers acquired students' personal information, the Fordham researchers submitted public records requests to the New York and Los Angeles Public School Districts. They found that these public schools shared student directory information with the data broker National Student Clearinghouse, as well as with military recruiters and community colleges.<sup>15</sup> Although the Fordham report does not elaborate on any additional sources for student data, it recognizes that National Student Clearinghouse acquires student information directly from public school districts.<sup>16</sup> The report also describes other possible avenues that data brokers could use to collect student data, such as a "third-party app or service or detailed information about students' eating habits."<sup>17</sup> Although the research does not identify many sources of student data, it demonstrates the widespread availability for collecting such information.

In 2020, the nonprofit World Privacy Forum (WPF) published a report on the brokerage of student data.<sup>18</sup> This report identifies how data brokers obtain student data through exemptions in the Family Educational Rights and Privacy Act. The report explains that FERPA § 99.31 can allow school directories to be published "without prior consent" of students or parents.<sup>19</sup> WPF's research examines 5,000 schools and reveals how student directories make students' personal information publicly available.<sup>20</sup> The WPF report identifies how student data is compiled in many targeted mailing lists. A search conducted on Nextmark revealed "748 list results for the search term 'high school.'"<sup>21</sup> School directory

information can include personally identifiable information (PII), such as “legal name, exact date and place of birth, home address, photographs, gender, social media handles, parent or guardian home address, and primary language spoken.”<sup>22</sup> The report describes that “49 percent of studied schools include student photographs in directory information that can be released without prior consent.”<sup>23</sup> These images of students’ faces can be scraped to train facial recognition programs by Clearview AI.<sup>24</sup>

Roster of Student Information Shared Without Prior Consent if not Opt Out is in Place	
<ul style="list-style-type: none"> <li>Names of students</li> <li>Dates of attendance at the university</li> <li>Program/major field(s) of study</li> <li>Degrees and certificates received including dates</li> <li>Participation in officially recognized university activities</li> <li>Academic and co-curricular awards, honors, and scholarships received and dates received</li> <li>Weight and height of students on athletic teams</li> <li>Students' email addresses</li> <li>Hometown, city and state</li> </ul>	<ul style="list-style-type: none"> <li>Names of students</li> <li>Dates of attendance at the university</li> <li>Program/major field(s) of study</li> <li>Degrees and certificates received including dates</li> <li>Participation in officially recognized university activities</li> <li>Academic and co-curricular awards, honors, and scholarships received and dates received</li> <li>Weight and height of students on athletic teams</li> <li>Students' electronic mail addresses</li> <li>Hometown, city and state</li> </ul>
<ul style="list-style-type: none"> <li>Student's name</li> <li>Participation in officially recognized activities and sports</li> <li>Weight and height of members of athletic teams</li> <li>Degrees, honors, and awards received</li> <li>Major field of study</li> <li>Dates of attendance</li> <li>The most recent school attended</li> </ul>	<p>Directory information includes</p> <ul style="list-style-type: none"> <li>student's name,</li> <li>address,</li> <li>telephone number,</li> <li>date and place of birth,</li> <li>honors and awards, and</li> <li>dates of attendance.</li> </ul>

*WPF's report on student data.*



## Collection of Data on Minors

There are too many student data brokers to cover each one in detail, so this report will focus on major data brokers handling student data. This report defines major data brokers as data brokers that receive student data directly from schools or assist in credit reporting. School-reported data<sup>25</sup> and credit-reported data<sup>26</sup> about students are common for many students enrolled in higher education. This report focuses on data brokers that engage in school-related and credit-related data reporting because it addresses broad use cases for student data (especially student loans). I analyzed the Vermont data broker registry by searching for data brokers by name to analyze data brokers' current policies. The Vermont data broker registry was created by Vermont's Act 171 of 2018 Data Broker Regulation, which required data brokers to "register with the Vermont Secretary of State annually and provide certain information."<sup>27</sup> I searched for data brokers that were featured in the WPF report,<sup>28</sup> and I documented the updated responses to identify changes in their policies.

I started by researching National Student Clearinghouse because they receive the largest amount of student data directly from educational institutions. Regarding student opt-out conditions, National Student Clearinghouse stated:

National Student Clearinghouse collects student data from participating postsecondary institutions and discloses such data to 3rd parties as contractually authorized by such institutions, in compliance with the Family Educational Rights & Privacy Act. FERPA allows disclosure of directory information (DI) without consent unless the student has opted-out of having their DI disclosed, and National Student Clearinghouse respects such opt outs as FERPA requires. Individuals may opt-out of the disclosure of their DI by notifying their institution.<sup>29</sup>

National Student Clearinghouse has the same policy for requesting an opt-out: students must go through their schools to refuse having their data collected rather than contact the data broker. This policy is based on FERPA § 99.37, which allows for parents and eligible students to refuse that schools report their directory information.

Regarding the collection of data on minors, National Student Clearinghouse stated:

There are cases in which the Clearinghouse has actual knowledge that it possesses such information on minors who are or who have been enrolled in educational institutions. We collect, maintain, and protect this data with the same robust policies we apply to all student data, and respect the same FERPA directory information opt-out rights as we do for non-minors enrolled in postsecondary education. See our privacy policy at: <https://www.studentclearinghouse.org/privacy-policy/>.<sup>30</sup>

National Student Clearinghouse removed "rare" from its previous statement when it described that there are cases in which it knowingly collects data on minors.<sup>31</sup> Minors' data is treated the same as all students' data because it is reported from educational institutions.

Students under the age of 18, and students aged 13 and above, cannot opt out of having their data reported, making it harder for minors to stop National Student Clearinghouse from collecting their data. The Children's Online Privacy Protection Act restricts companies' collection of data about children under the age of 13, but it does not apply to teenagers aged 13-17 and may not comprehensively prevent data brokers from selling information about children under 13, depending on how the broker gathered the data.<sup>32</sup> COPPA will be described further later in the report.

Equifax Workforce Solutions LLC included in its Vermont filing that it receives data on minors:

EWS may receive information from its data furnishers on minors. EWS does allow parents or guardians to place a security freeze on a minor's consumer report if a valid power of attorney or other documentation specifying guardianship is provided as required under the protected consumer state security freeze laws.<sup>33</sup>

Equifax states that it receives information on minors from its "data furnishers." A "data furnisher" is any entity that reports information about consumers to a consumer reporting agency.<sup>34</sup> Since National Student Clearinghouse reports data to Equifax Workforce Solutions, it is possible that Equifax acquires minors' data through National Student Clearinghouse.

Another Vermont registrant, Experian Marketing, collects information on minors:

Experian does not collect nor sell children's personal information for ages 15 or under. Experian collects and maintains the below elements as they relate to minors 16 and older within our ConsumerView database: Parents Name; Minor's name; Minor's Date of Birth (includes the full date of birth, month/year, exact age, and combined age); Minor's Person ID Minor's gender; Minor's ethnicity; 1st child indicator; Address.

Experian creates probability scores that indicate the presence of children in a household. Experian licenses this Presence of Children indicator to 3rd parties to market to households or parents.

Experian licenses the Death Master file from the SSA and to the extent a deceased minor exists in the file, we may receive that information. It's used for fraud prevention and LBN in compliance with applicable laws.<sup>35</sup>

Experian collects data on minors for credit reporting interests. Although Experian added the caveat that it "does not collect nor sell children's personal information for ages 15 or under," Experian appears to collect data on parents to make inferences about the likelihood of them having a child.<sup>36</sup> Experian sells "probability scores" which make inferences about the likelihood a family has a child to third-party clients.<sup>37</sup> Experian also licenses lists from its Death Master file which can include information on a "deceased minor."<sup>38</sup> Durham Police in

the UK paid Experian for 850 million data points to assist in custody decisions, predicting the likelihood that a juvenile will be a repeat offender.<sup>39</sup>

According to the Vermont registry, TransUnion collects information on minors:

TransUnion does not knowingly solicit or collect information from children. We collect personal information of children to enable a search of our database for any potential activity (i.e. request for a product Credit Report, reporting of data using the minor child's personal information, dispute submission, etc.). We allow a parent or guardian to freeze the credit report of a minor aged 15 or younger. We do not sell personal information of minors under the age of 18.<sup>40</sup>

Although TransUnion does not solicit data on minors, this data can be used for Credit Reports and other reporting which involves personal information. Data on minors is monitored to track "potential activity," which can be used to profile the behavior of a maturing adult.<sup>41</sup> The incorporation of minors' data into TransUnion's credit reporting database demonstrates the early age that financial data is collected on individuals.

## Brokerage of Student Data

Equifax is a data broker which specializes in credit reporting and employment verification. It is also one of the U.S.' three major credit reporting agencies (alongside Experian and TransUnion). As demonstrated by the Vermont registry, all three major credit reporting agencies process data on minors. Equifax collects and resells personal information on individuals to help clients assess the suitability of approving someone for a loan, hiring someone for a job, accepting a mortgage, and qualifying for unemployment benefits.<sup>42</sup>

The data which Equifax collects and distributes has a significant impact on an individual's life opportunities and financial situation. Equifax receives student data from National Student Clearinghouse, expanding the age range that information is collected on individuals for pre-employment assessment.<sup>43</sup> Equifax uses this student data to conduct degree verification and background checks.<sup>44</sup> Information on students is shared from high schools and colleges to National Student Clearinghouse, and then it is shared with Equifax. Student data obtained by Equifax potentially influences the decisions made by employers when conducting background checks or banks when verifying credit scores.<sup>45</sup> After integrating with National Student Clearinghouse, Equifax released a report stating:

Equifax (NYSE: EFX) announced an exclusive integration with National Student Clearinghouse® (Clearinghouse) as part of its strategic expansion of pre-employment verification offerings. The education dataset further enhances the verifications data hub being created by Equifax Workforce Solutions to help serve the fast-growing employee onboarding space. Talent Report™ Education will be available to background screeners and employer clients later this year. The report will offer for each candidate, via a single inquiry, all available postsecondary degree information from participating Clearinghouse institutions.<sup>46</sup>

The announcement made by Equifax indicates that student data collected by National Student Clearinghouse has been integrated into their credit reporting and employment verification services. The "education dataset" belonging to National Student Clearinghouse will be available to "Equifax Workforce Solutions," providing more insight into an individual's life experience.<sup>47</sup> Equifax Workforce Solutions is a subsidiary owned by Equifax which maintains a database named "The Work Number," containing payroll and employment information on 54 million Americans.<sup>48</sup> "The Work Number" is used by companies to verify the employment information of job applicants. After establishing an exclusive partnership with National Student Clearinghouse, Equifax offered a new service called "Talent Report™ Education" which is offered to "background screeners" and "employer clients" to verify the education credentials of a candidate before hiring.<sup>49</sup> Equifax's marketing of its "exclusive integration" with the National Student Clearinghouse implies that the data broker has gained access to student data from the "leading provider of educational reporting, data exchange, verification, and research services."<sup>50</sup>

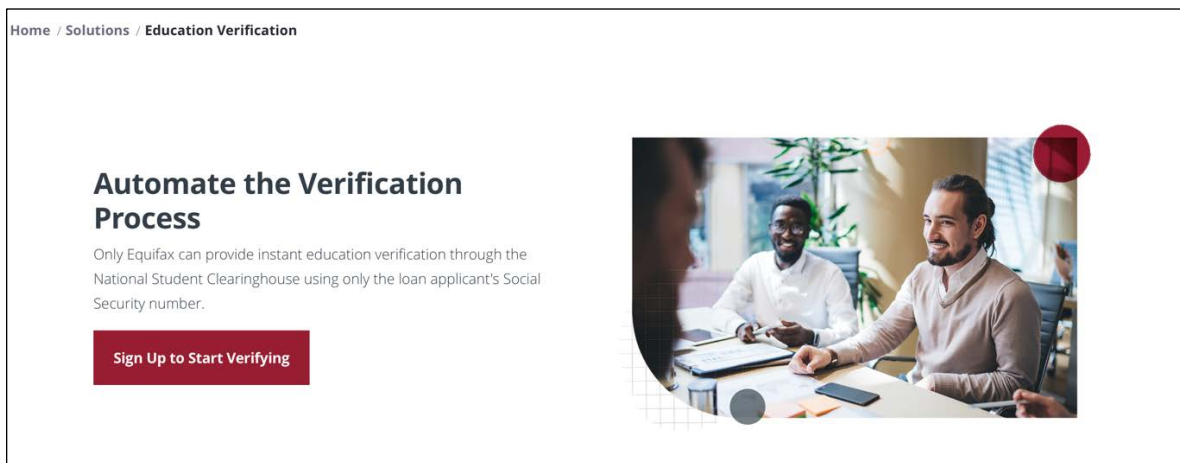
Equifax also markets student data to its clients. Joe Muchnick, Senior Vice President at Equifax Workforce Solutions, said in 2021:

We've seen increased demand for a more holistic view of the candidate and additional candidate data. This collaborative effort with the Clearinghouse to help streamline access to education data for our Talent Report products will give background screeners and employers greater visibility into a candidate's history than ever before.<sup>51</sup>

This statement appears to imply that student data will be included with other personal information to offer a "more holistic" report on individuals.<sup>52</sup> Student data from National Student Clearinghouse can be accessed by Equifax's Talent Report, which is a service that conducts pre-employment verification and researches the personal history of a job applicant.<sup>53</sup> For pre-employment verification, Equifax Talent Report Express offers information that "includes all available Clearinghouse postsecondary degree information, employment history and identity validation from Equifax Workforce Solutions."<sup>54</sup> The use of student data in the pre-employment verification process implies that Equifax also includes student data in background checks. Student data can also contain PII such as Social Security Number (SSN), birthdate, and address, which Equifax could obtain from National Student Clearinghouse to conduct background checks. Equifax can sell student data to enhance the amount of information it reports to its clients, as student data can supplement background checks and identity verification.

## Student Data Pipeline and Credit Reporting

The transfer of student data from academic institutions to background checkers and creditors happens through a pipeline that includes many sectors. First, many post-secondary schools report data to the National Student Clearinghouse's Student Tracker (which covers 97% of all students) to document student and degree data.<sup>55</sup> Second, National Student Clearinghouse shares "postsecondary enrollment status and institution name for the previous six months" with Equifax for pre-employment verification services.<sup>56</sup> The Work Number markets that "Only Equifax can provide instant education verification through the National Student Clearinghouse using only the loan applicant's Social Security number."<sup>57</sup> Potential employers or banks verifying loans can access these reports through Equifax. Student data can influence the financial position of a student or recent graduate seeking a loan or employment.

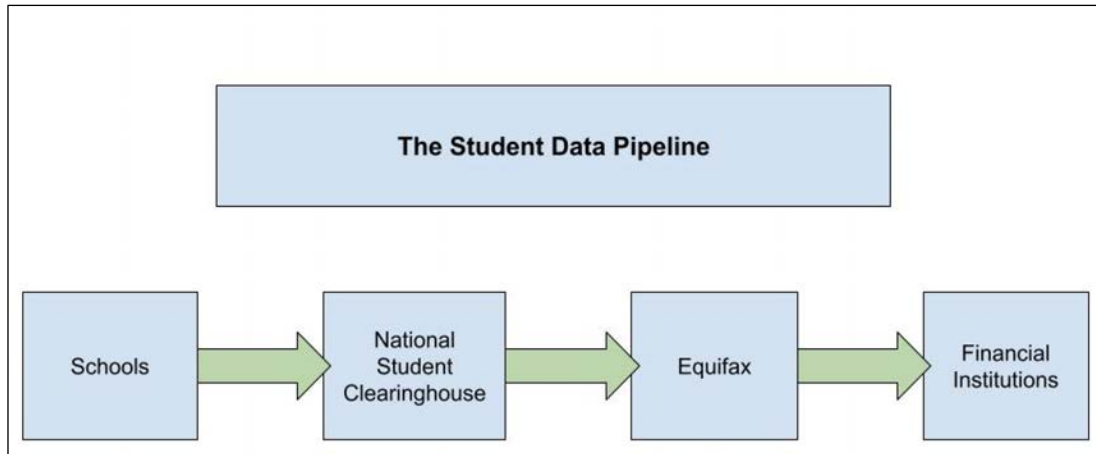


*The Work Number's webpage on Education Verification.<sup>58</sup>*

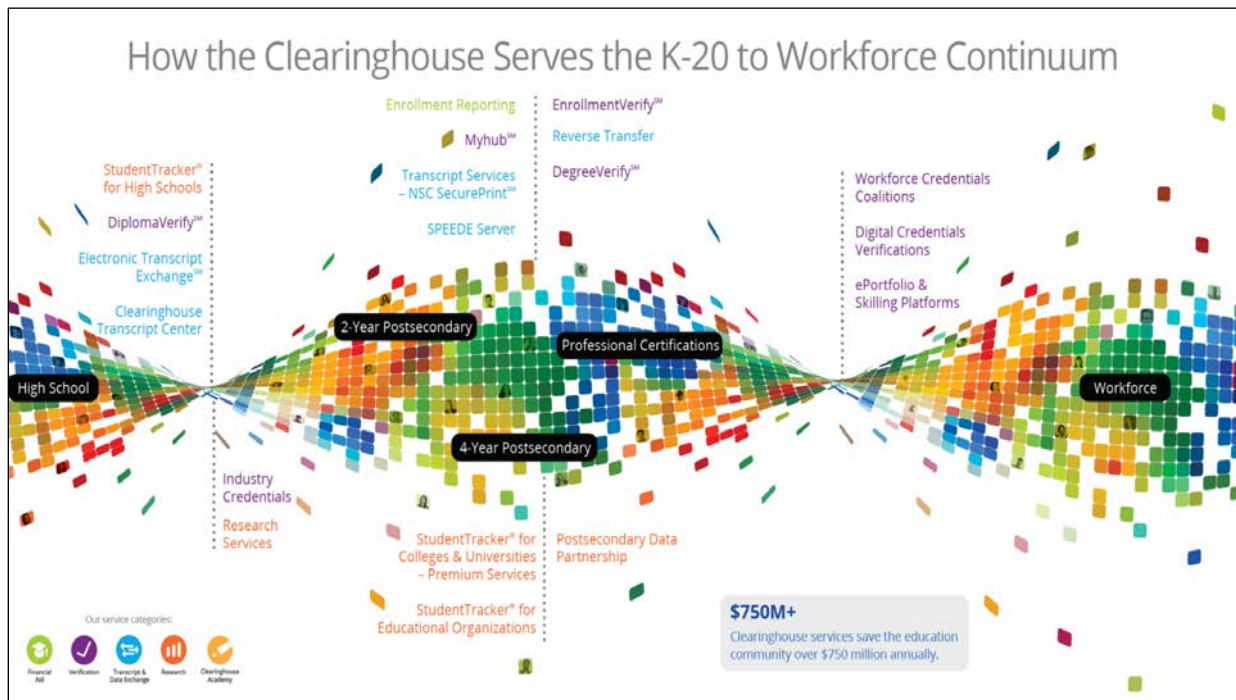
Equifax's use of student data demonstrates that academic performance can impact the opportunities afforded to an individual. Student data is not simply collected to enhance the school experience, but it is also used to make pre-employment and loan-approval judgements of students.<sup>59</sup> Student data can have lingering effects on the ability of students to find employment, attain good credit, or get a mortgage because reports on student performance influence the decisions made by economic institutions. It is unclear how much of an impact student data has on the considerations made from background checks, but it is a factor.<sup>60</sup> Otherwise, Equifax would not be incentivized to include student data in its background checks and verification services. Instances of financial damage caused by student data are described in the section on harms below.

As seen in *In Robinson v. National Student Clearinghouse* (2021), National Student Clearinghouse states that it is not consumer reporting agency.<sup>61</sup> However, advocacy groups such as the Student Borrower Protection Center argue that student data brokers should be regulated as credit reporting agencies.<sup>62</sup> The CFPB defines a Consumer Reporting Agency under the Fair Credit Reporting Act as an entity that engages in a "practice of assembling or

evaluating consumer credit.”<sup>63</sup> Since student data influences a consumer’s financial condition, it could be considered a form of “consumer credit.”<sup>64</sup> Although National Student Clearinghouse does not appear to directly function as a consumer reporting agency, they share student data with Equifax which does. Further legal research should be done to address whether student data brokers should qualify as consumer reporting agencies.



Created by Alistair Simmons.

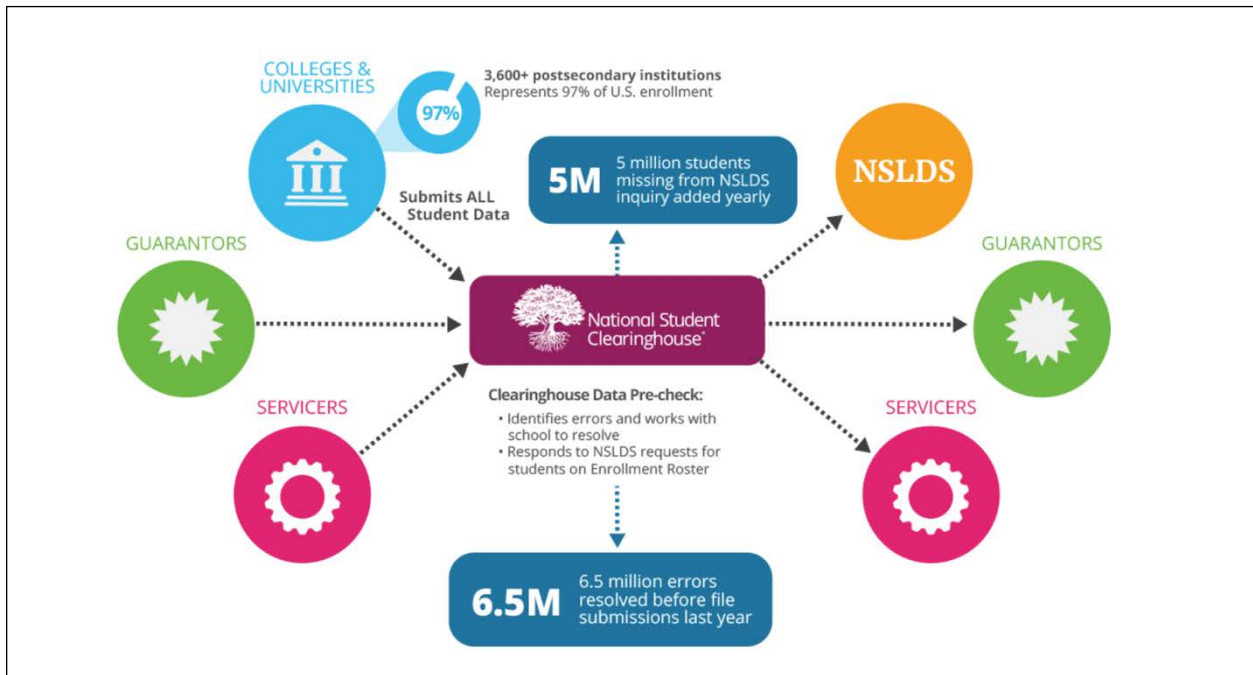


From a National Student Clearinghouse brochure titled “Helping education go further: Solutions Serving the K-20 to Workforce Continuum” released in 2022.<sup>65</sup>

## Benefits to Students

Reporting student data is important for enrollment verification. National Student Clearinghouse transmits student data from education institutions to the Department of Education's National Student Loan Data System (NSLDS), which is housed at the Office of Federal Student Aid at the Department.<sup>66</sup> This enrollment information is used by the NSLDS to determine when students enter student loan repayment.<sup>67</sup> Every year, National Student Clearinghouse adds data on 5 million missing students to NSLDS.<sup>68</sup> National Student Clearinghouse also helped resolve 6.5 million errors in students' data.<sup>69</sup>

For students with loans not from the Department of Education, National Student Clearinghouse reports enrollment data to private loan holders.<sup>70</sup> National Student Clearinghouse also reports institution-level enrollment data to the Department of Education's Integrated Postsecondary Education Data System (IPEDS).<sup>71</sup> IPEDS collects institution-level data to assess and manage all "Title IV-eligible universities, colleges, and technical and vocational education providers in the United States and other jurisdictions."<sup>72</sup> National Student Clearinghouse benefits education institutions and students by reporting student data to the Department of Education.



National Student Clearinghouse's Compliance Central webpage.<sup>73</sup>



## Harms to Students

Students may not be able to consent to the sale of their data, which could make them unequipped and unaware of how to protect against the potential harm that the exposure of their personal information presents. The reporting of student data is an institutionalized process that many students accept as an inevitable condition for enrollment within a school. Students under the age of 18 and are 13 or above have no way to consent to the publication of their personal information because they are below the age of an “eligible student” which can opt out under FERPA.<sup>74</sup>

COPPA imposes restrictions on collecting data about children under the age of 13, but it only regulates companies and does not apply to schools.<sup>75</sup> In an education context, the school can also consent for a student to sign up for an online service.<sup>76</sup> A parent could also consent to share the student’s data.<sup>77</sup> When the operator is exclusively using data for “the educational context,” schools can grant consent on behalf of parents.<sup>78</sup> It is important that parents and students remain aware and informed about what information the school is disclosing on students. Even if students can opt out of having their directory information reported, many schools make this process challenging. The WPF report identifies that only “39 percent of studied primary and secondary schools make FERPA opt out forms online and available to the public.”<sup>79</sup> National Student Clearinghouse receives student data from 97% of total enrollments at Title IV, degree-granting institutions in the U.S.<sup>80</sup> Since students would have trouble accessing student loans or enrolling in academic institutions without allowing their data to be shared, students’ have limited ability to consent.

Inaccurate reporting of student data can financially impact students and recent graduates. Each year, the Consumer Financial Protection Bureau (CFPB) receives thousands of reports from students having financial issues due to inaccurate student data.<sup>81</sup> Inaccurate attendance history reports can cause “hundreds in additional interest charges, and lead to unexpected loan bills and lost eligibility for other student loan benefits.”<sup>82</sup> When data brokers incorrectly report enrollment information, students can experience financial repercussions. Students who are enrolled full-time in school have received unexpected loan bills or delinquency charges due to data brokers misreporting their information.<sup>83</sup> These expenses can compound and put students in debt or result in denial of student loans. The CFPB also received many complaints about the difficulties of correcting inaccurate information.<sup>84</sup>

In 2020, students filed a class action lawsuit against credit reporting data brokers: Great Lakes Educational Loan Services, Equifax Information Services, TransUnion, Experian Information Solutions, and VantageScore Solutions.<sup>85</sup> The student plaintiffs sued because these data brokers inaccurately reported data about student loan repayments which were suspended under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act became a law on March 27, 2020, and it provided economic relief to workers, students, families, and businesses.<sup>86</sup> The CARES Act provided relief for student loan borrowers by suspending all requirements for paying student loans owned by the U.S.

Department of Education from March 13, 2020 to as long as 60 days after June 30, 2023.<sup>87</sup> When many students stopped paying their loans at the beginning of COVID, data brokers reported that their payments were late.<sup>88</sup> This inaccuracy placed many students in increased financial distress during COVID. The misreported information caused the students to “suffer long lasting credit stigma, including inaccurate and lower credit scores resulting in no, limited or more costly access to credit.”<sup>89</sup> The credit reporting data brokers worsened the situation by mishandling “desperately-needed federal relief granted to students under the Coronavirus Aid, Relief, and Economic Security Act.”<sup>90</sup> The plaintiffs claimed that there was widespread misreporting of student loan data, as the “Defendants inaccurately reported the status and financial import of millions of borrowers’ student loans.”<sup>91</sup> According to the plaintiffs, data brokers inaccurately reported student data, causing immediate financial repercussions and long-term financial challenges for millions of students.<sup>92</sup>

There was a domino effect of harm as incorrect data spread from one data broker to another, causing students’ financial distress to compound. In order to run Vantage Score algorithms, Experian, TransUnion, and Equifax often share consumer credit information with each other.<sup>93</sup> This data sharing system means that incorrect information from one data broker can be distributed to other consumer reporting agencies and used to worsen someone’s credit score. In *Katherine Sass and Cody Hounanian v. Great Lakes Educational Loan Services et al.* (2020), plaintiff Hounanian’s student loan data was allegedly inaccurately reported by Great Lakes and Equifax, causing him to experience a diminution in his Vantage 3.0 credit scores.<sup>94</sup> His score “dropped by nearly 33 points when calculated based on Equifax’s data, and by 27 points when calculated using Trans Union’s data.”<sup>95</sup> The worsened credit score made Hounanian unable to purchase a house despite already signing a lease.<sup>96</sup> More generally, credit reporting data brokers treated the relief offered by the federal government to student loan borrowers as a negative, causing a sudden and widespread drop in the Vantage scores of student loan borrowers.<sup>97</sup> Incorrect student data was passed along between credit reporting agencies, placing a financial burden on millions of students.<sup>98</sup>

Credit reporting data brokers sometimes fail to verify or validate data before transmitting it, which can cause compounding errors in the data. Equifax received incorrect information about millions of students defaulting on loans from Great Lakes, which should have been noticed by the data broker’s internal controls. Instead of checking to verify the student data, according to the class action complaint, “Equifax not only misreported the status of borrowers’ loans, it participated in incorporating that misreporting into the Vantage Score.”<sup>99</sup> Equifax added incorrect information about defaulted student loans into a centralized credit reporting database, causing immediate and widespread financial damage to many students.<sup>100</sup> Students could not prevent this financial damage until after it had already been done, because students were not notified before their credit score was lowered.<sup>101</sup> Once incorrect information is introduced into the student data pipeline, it can be hard to fix it.

Incorrect reporting of student data can exacerbate discrimination in algorithms that process student data. If student data is incorrectly input into algorithms, it can lead to compounding bias which entrenches inequality into algorithmic decision-making.<sup>102</sup> Since students are

already profiled during the college application process and when seeking employment, incorrect information can create biases that heighten inequality in the education process.<sup>103</sup> For example, algorithms predicting course grades performed worse for underrepresented students than white and Asian students, assuming that certain minority students would have lower grade point averages (GPAs).<sup>104</sup> Incorrect reporting of student data can increase inequalities within algorithms by training the models on unrepresentative data.

Brokering student data has enabled discriminatory practices in the college admissions process, placing roadblocks on underprivileged students from acceptance into higher education.<sup>105</sup> At least 44 public and private colleges and universities hire consulting firms, such as Capture Higher Ed and Ruffalo Noel Levitz, to track and analyze data on potential applicants, creating predictive scores on each student's likelihood of enrolling.<sup>106</sup> College consulting firms buy data from third-party data brokers to calculate scores for applicants.<sup>107</sup> These scores use household income and zip code to predict if the student has enough family income to meet revenue goals, discriminating against students from underprivileged socioeconomic backgrounds.<sup>108</sup> Assigned scores influence the probability of admission and what financial aid packages are offered to students, having an impact on the opportunities provided to disadvantaged students.<sup>109</sup>

## Existing Regulation

The Family Educational Rights and Privacy Act of 1974 regulates what records can be disclosed by educational institutions. FERPA offers several exemptions which allow data brokers to collect student data without direct consent. For example, FERPA § 99.31 permits the disclosure of education records to authorized third parties.<sup>110</sup>

FERPA § 99.31 states:

(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:”

...

[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—”<sup>111</sup>

National Student Clearinghouse is contracted by educational institutions to handle student data, making them licensed to collect data on students.<sup>112</sup>

National Student Clearinghouse’s compliance policy states:

The Clearinghouse agrees to only use the personally identifiable student information supplied by the school for the specified purposes and to return or delete the personally identifiable information when the school is no longer under contract with the Clearinghouse; in this way, the school retains control over its data as required under FERPA.<sup>113</sup>

The National Student Clearinghouse is allowed to collect student data under FERPA because they are contracted by schools to handle this information. Educational institutions are authorized to share information with contracted student data brokers, such as National Student Clearinghouse. Schools can change their contracts with student data brokers to better protect the information of their students.

Data brokers can also acquire information on students through exemptions in FERPA which allow for the collection of public information in student directories. FERPA § 99.3 allows for the disclosure of “directory information,” which “includes, but is not limited to, the student’s name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status.”<sup>114</sup> The WPF report also highlights that “schools are not required to disclose if they routinely give directory information to third party companies.”<sup>115</sup> Also, if parents or students do not explicitly opt out of having their personal information shared, there are essentially no restrictions on schools sharing information with third parties.<sup>116</sup> Data brokers can directly receive information from many schools because FERPA standards have made it legal for academic institutions to supply

third party entities with students' personal information.<sup>117</sup> The WPF report found that only "51 percent of primary/secondary schools posted some form of annual FERPA notice online in a way that was available and accessible to the public."<sup>118</sup> Further research should be done to investigate how FERPA disclosure notifications are made by schools (specifically, colleges and universities).

According to FERPA, schools can disclose information on students once they have informed the students and parents. FERPA § 99.37 states:

- (a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of:
  - (1) The types of personally identifiable information that the agency or institution has designated as directory information;
  - (2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information;<sup>119</sup>

FERPA § 99.37 allows educational institutions to share directory information on students if they disclose what information they share and when the information is shared. Students and parents should have the ability to refuse to allow an educational institution to share their data, but there are many caveats. An "eligible student" must be at least 18 years old to personally opt out of having their directory information shared, making it inaccessible for most of the middle school and high school students.<sup>120</sup> Placing the burden on students and parents to opt out removes the obligation from educational institutions and data brokers to proactively seek consent before sharing student data. Students and parents should exercise their authority to demand transparency under FERPA § 99.37 and require educational institutions to notify them when student data is shared. Schools should notify students and parents that they can opt out of disclosing directory information.

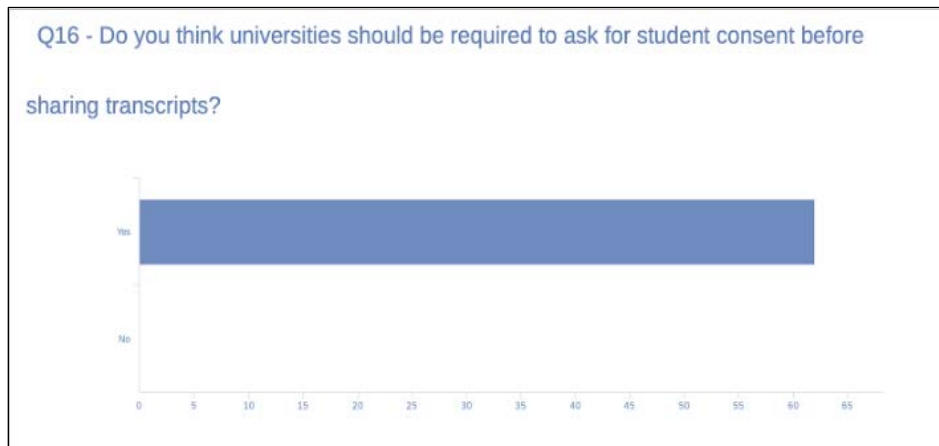
COPPA applies only to students under the age of 13 and does not protect information that is obtained from students' parents.<sup>121</sup> There is also a data broker market for data about 13- to 17- year-olds which is not regulated under COPPA. The Fair Credit Reporting Act only applies to data brokers who act as designated consumer reporting agencies and only affects "a small part of the commercial marketplace for student data."<sup>122</sup> Many student data brokers claim that they are not consumer reporting agencies and are therefore not regulated by FCRA.<sup>123</sup>

California's Student Online Personal Information Protection Act (SOPIPA) limits the sale and disclosure of student data for students who do not consent to have their information shared, but it does not apply to data that has already been collected.<sup>124</sup> Any student data that the data broker already possesses can be sold without informing the student. There are no laws which uniformly protect student data for students across a broad age range and across different states.

## Survey of Students on Student Data

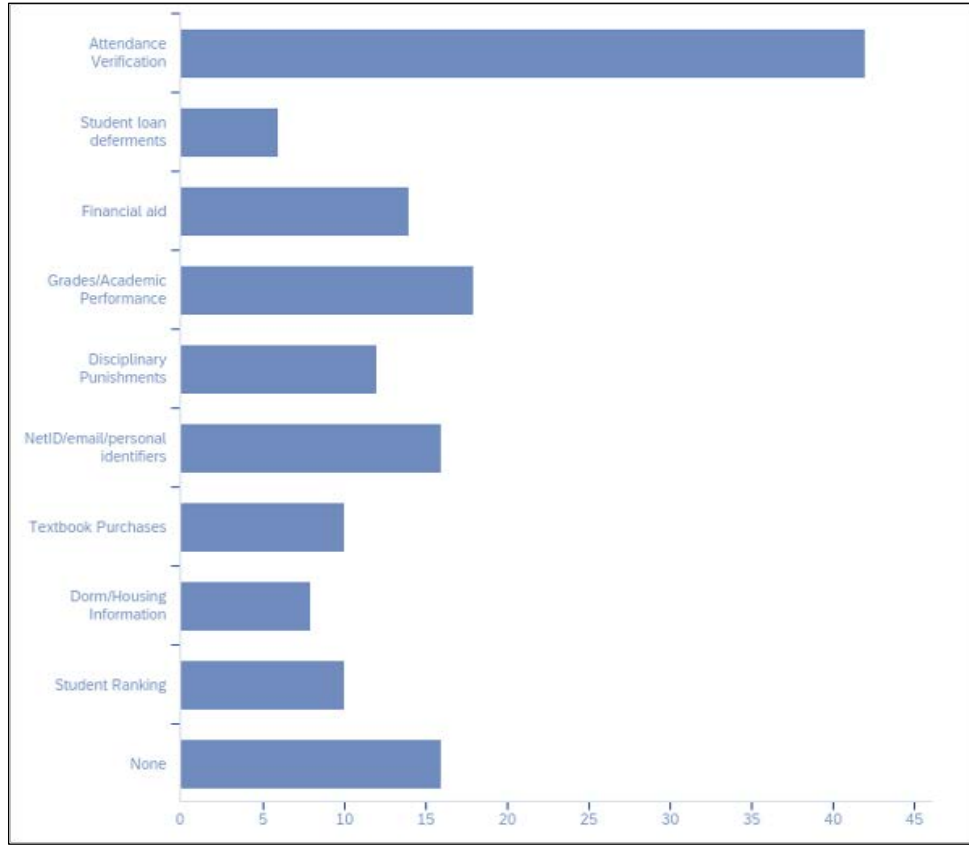
To better understand students' degree of awareness and comfortability about the sale of their student data, I conducted an Institutional Review Board (IRB)-exempted survey among college students. I disseminated flyers containing a link for the survey around the Duke University campus and shared the survey among friends. I received 92 responses in total, and 66.3% of the respondents fully completed the survey. While the number of students surveyed is not enough to make statistically significant observations, it demonstrates students' concerns about student data reporting practices and indicates that a larger survey should be done. The results from the survey are described below:

Students unanimously believed that they should consent before colleges share their data:



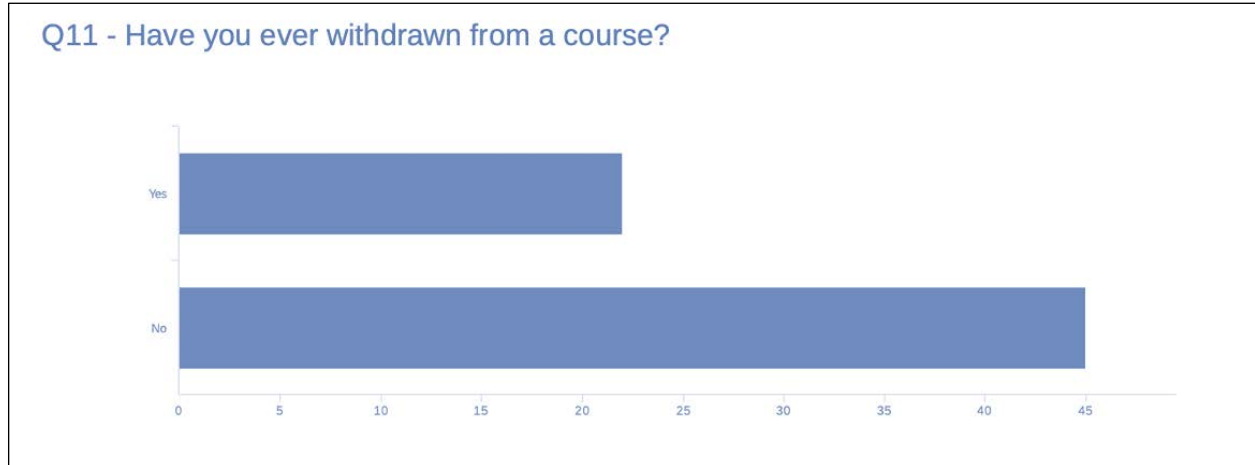
This consensus indicates that students believe they should have to consent before their student data is shared. Informing students about the application and distribution of their student data is a prerequisite for consent to occur. Consent is important for students to be prepared to handle the impacts that transmission of the student data could have.

When students were asked about what information they would be comfortable with a college or university sharing without direct consent, the responses are as follows:



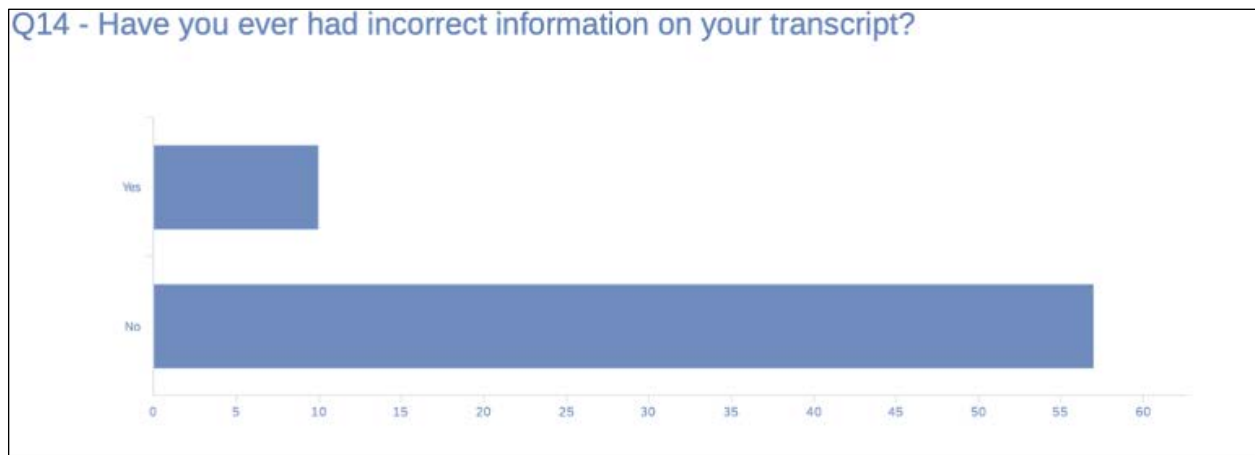
Out of all the information, students were most comfortable with attendance verification (27.63%), followed by academic performance (11.84%), personal identifiers (10.53%), and financial aid (9.21%). A significant portion of respondents (10.53%) were not comfortable with any student data being shared. These results indicate that students are most comfortable with universities sharing data that they already know was being collected and reported, such as attendance verification and grades, while they are less comfortable with information that is not directly related to academic performance, such as dorm information.

When describing if students had withdrawn from a course, the responses are as follows:



These responses indicate that a proportion of students (32.84%) have withdrawn from a course previously. Out of the students who had withdrawn from a course, the mean rating of comfortability for having information shared that indicated a student withdrew from a course was 4.00 out of 5.00 (on a scale of 1, being very comfortable, through 5, being very uncomfortable). These results indicate that students who have withdrawn from courses are typically uncomfortable with that information being shared with data brokers.

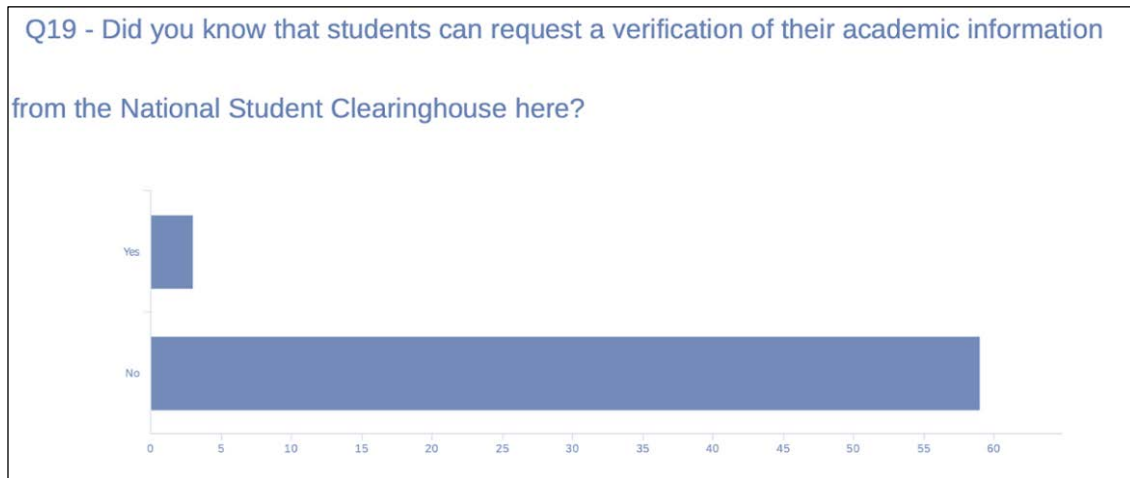
When asked if students ever noticed incorrect information reported on their transcript, the results were as follows:



14.93% of students noticed incorrect information reported on their transcripts. Out of the students who had incorrect information on their transcript, there was a mean rating of 3.44—out of a scale from 1, being seamless, to 5, being extremely painstaking—to rank how hard it was to correct the information. What remains unclear, however, is whether data brokers who collect student data also correct the incorrect information on students' transcripts after the change has been made by the student.



The survey responses demonstrate that students were largely unaware of how they could access copies of student data from National Student Clearinghouse:



Most respondents (95.18%) did not know that they could attain copies of their transcripts circulated by the National Student Clearinghouse. Since students are not shown how to access their academic information from data brokers, it is harder for students to verify the accuracy of this information. More students would likely respond that they have inaccurate information reported on their transcript if more students knew how to verify their academic information from National Student Clearinghouse.

Finally, when students were asked to rank their support of a policy that required the National Student Clearinghouse to inform students when their student data is shared (with 1 being not in support and 5 being in full-fledged support), the mean response was 4.66. Based on the high amount of support, this survey demonstrates that students desire more insight and control over the circulation of their student data.

The overall results from this survey indicate that every student believes they should have to consent before their student data is shared. Most students did not know how to verify their transcript information on the National Student Clearinghouse. Students reported having to correct information on their transcript, but students would not be able to correct for information that has already been circulated if they do not know which data brokers have access to their data. The lack of transparency is a dominant feature of the data broker ecosystem which can limit students' ability to protect information about themselves.

## Legislative and Regulatory Proposals on Student Data

There are many proposals to better protect student data. On February 8, 2023, a collection of non-profit advocacy groups and Senator Ron Wyden wrote letters to Director Chopra of the Consumer Financial Protection Bureau, urging for more regulation of data brokers under the FCRA.<sup>125</sup> The letter urges the CFPB to exercise its enforcement authority under FCRA § 1681s(e) and hold data brokers accountable for creating opaque markets that disproportionately deny consumers equal opportunities.<sup>126</sup> FCRA § 1681s(e) prohibits the reporting of inaccurate information, stating, “a person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.”<sup>127</sup> If student data brokers were regulated under Section FCRA § 1681s(e), they could receive penalties for reporting inaccurate information. Under the statute, the CFPB’s role is to ensure that “markets for consumer financial products and services are fair and transparent.”<sup>128</sup> Incorrectly reporting information can inhibit fair treatment by restricting access to student loans, mortgages, and good credit. The letter appeals for greater enforcement since data brokers “consistently fail to comply with the accuracy standard set forth in FCRA.”<sup>129</sup>

In order to expand the regulatory authority of the FCRA, the letter urges the CFPB to issue an advisory opinion stating that “credit header” data—such as name, aliases, birth date, Social Security number, current and prior addresses, and telephone number—is not exempt from regulations under the FCRA.<sup>130</sup> Since personally identifiable information is gathered and sold within the broader ecosystem of selling student data, an expanded definition of “credit header” data could apply to student data. This letter argues that the CFPB has the authority to regulate the data broker industry; it just needs to apply FCRA more expansively.

There is a support for FCRA to regulate data brokers that manage student data. In a 2021 court case, *Robinson v. National Student Clearinghouse*, James Robinson, a student, sued on behalf of himself and other students who were charged \$14.95 to access a copy of their reports.<sup>131</sup> Robinson alleged that National Student Clearinghouse violated FCRA 15 U.S.C. § 1681j(f), which requires “all consumer reporting agencies” to “make all disclosures pursuant to section 1681g of this title once during any 12-month period upon request of the consumer and without charge to the consumer.”<sup>132</sup> The parties negotiated a class action settlement “providing for a \$1.9 million settlement fund, injunctive relief, and a free self-verification report for each class member.”<sup>133</sup>

Written in the settlement, the National Student Clearinghouse said that it “vigorously denies...that it is a consumer reporting agency and that the FCRA...appl[ies] to it or its business practices.”<sup>134</sup> A settlement was made before a final ruling was reached, but in the agreement, National Student Clearinghouse denied acting as a consumer reporting agency. The Student Borrower Protection Center argues that National Student Clearinghouse denied being a consumer reporting agency because they wanted to avoid further regulation under FCRA and from the CFPB.<sup>135</sup> Reinterpreting the FCRA to further regulate data brokers will

likely be met with opposition from the industry because it would entail restrictions on data use and increase compliance costs.

FERPA should be broadly enforced to ensure that students and parents can verify education records. Verifying education records is important for ensuring that reporting is accurate, and students have transparency over their student data. FERPA §99.10 states that “a parent or eligible student must be allowed to inspect and review the student's education records.”<sup>136</sup> This stipulation within FERPA should be emphasized to require educational institutions and student data brokers to provide student access to reports on their data. Unfortunately, FERPA § 99.12 excludes reporting student data about “admission to an educational institution” or “application for employment.”<sup>137</sup> FERPA § 99.37 requires that schools give a “public notice” to parents and eligible students before sharing data with third parties. Requirements for educational institutions to inform students and parents about reporting student data should be encouraged. Students should have insight into reports made about them for college admissions and employment applications, because this information is significant in shaping someone's future life opportunities. There should be more transparency about the process of reporting student data, and students should be given greater agency in verifying that the data is accurate.

The U.S. would benefit from comprehensive privacy legislation which designates student data as a protected demographic. This provision is important to regulate the brokerage of student data. The patchwork of COPPA, FERPA, and FCRA leaves many methods for collecting student data unaddressed, and there is no uniform regulation that protects student data throughout the education landscape. Effective privacy regulation would restrict data collection from educational technologies, require student consent before sharing transcripts, and restrict the sale of student data when it is collected for scholarships or student loans. Privacy regulation should also strive to prevent student data from being used to profile students based on their academic performance. Policy should protect the privacy of America's maturing generation by restricting the collection of student data and requiring consent before student data is shared.

In the 117th session of Congress, the College Transparency Act (CTA) passed the House and was introduced into the Senate.<sup>138</sup> The CTA proposes to create a federal database that collects student and employment data to assist in processing student loans and measure the success of schools in preparing students for their occupations. Aggregate analysis of the student data from the database would be published online, but there have been scientific studies that have linked aggregate data to personal information.<sup>139</sup> The version of the bill proposed by Senator Cassidy contains a clause (5.C) that prohibits the sale of student data.

Another clause (5.H), however, allows for the sale of publicly available data, stating, “Nothing in this paragraph shall be construed to prohibit third-party entities from using publicly available information in this data system for commercial use.”<sup>140</sup> This mirrors many other “publicly available information” carve-outs in other privacy laws and bills (such as every state-level consumer privacy law). Since the aggregates (a compiled, de-identified format) of student data will be published online, the creation of a federal student database would

expand the access that data brokers have to student data. Data brokers could match the existing information they have on individuals with the published aggregate data to identify information on specific students. Passing the CTA, therefore, could have negative consequences on the privacy of student data, and Congress should remove the publicly available data carve-out.

The Higher Education Opportunity Act (HEOA) of 2008 advanced protections for student data. HEOA regulated student loans by mandating that borrowers are informed about loan forgiveness options.<sup>141</sup> Section 113 of HEOA prohibits the “development, implementation, or maintenance of a Federal database of personally identifiable information” for student data.<sup>142</sup> HEOA also explicitly outlawed the creation of a centralized student database, protecting students from programs that track student data over time. This provision within HEOA created important standards for protecting the privacy of student data, which should also be applied to the data brokerage industry. Extending protections to prohibit data brokers from creating student databases is necessary to restrict the numerous sources which collect and share student data. Future education legislation should strive to include clauses that protect student data from collection and sale by data brokers and other third-party companies.

Working with existing laws and advocating for new privacy legislation can increase the protection of student data. Amending or reinterpreting FCRA and FERPA will provide the best potential to regulate student data brokers. Data brokers could be held accountable under FCRA for inaccurately reporting student data. Students could gain more transparency over their student data by leveraging the requirements in FERPA for educational institutions to inform students when their information is shared. Schools should notify students that they can opt out of disclosing directory information under FERPA § 99.37. Future privacy laws should complement existing regulations by allowing students to verify their student data in enrollment and credit reports. Policies should recognize the sensitivity of student data and protect it from being used to profile students or limit access to future opportunities.

## Endnotes

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<sup>1</sup> The Duke University Cyber Policy Program receives unrestricted funding from a number of organizations which the faculty leaders of the program have determined to have had a long-term commitment to privacy and cybersecurity. Certree, Inc. has been one of the funders of the program, and their business involves providing privacy protections for student data. None of the program funders have editorial control over the content of this or any other work product of the program. For more information on program funding, see <https://techpolicy.sanford.duke.edu/fundingtransparency/>.

<sup>2</sup> "Global Data Broker Market Size & Share: Industry Report, 2021-2026." Knowledge Sourcing Intelligence LLP. Accessed April 21, 2023. [https://www.knowledge-sourcing.com/report/global-data-broker-market#:~:text=Offered%20with%20this%20report&text=The%20global%20data%20broker%20market,U\\$%24345.153%20billion%20in%202026.](https://www.knowledge-sourcing.com/report/global-data-broker-market#:~:text=Offered%20with%20this%20report&text=The%20global%20data%20broker%20market,U$%24345.153%20billion%20in%202026.)

<sup>3</sup> See, e.g., Alistair Simmons and Justin Sherman, "Data Brokers, Elder Fraud, and Justice Department Investigations," *Lawfare*, July 25, 2022, <https://www.lawfaremedia.org/article/data-brokers-elder-fraud-and-justice-department-investigations>.

<sup>4</sup> Russell, N. Cameron, Joel R. Reidenberg, Elizabeth Martin, and Thomas Norton. "Transparency and the Marketplace for Student Data." SSRN, June 21, 2018. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3191436](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3191436).

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ritchie, John Newman & Amy, and The FTC Office of Technology. "National Research Center for College and University Admissions, the, Inc.; American Student List, LLC; and Don M. Munce." Federal Trade Commission, January 29, 2003. <https://www.ftc.gov/legal-library/browse/cases-proceedings/022-3005-national-research-center-college-university-admissions-inc-american-student-list-llc-don-m-munce>.

<sup>8</sup> Ritchie, John Newman & Amy, and The FTC Office of Technology. High School Student Survey Companies Settle FTC Charges, October 2, 2002. <https://www.ftc.gov/news-events/news/press-releases/2002/10/high-school-student-survey-companies-settle-ftc-charges>.

<sup>9</sup> Russell, N. Cameron, Joel R. Reidenberg, Elizabeth Martin, and Thomas Norton. "Transparency and the Marketplace for Student Data." SSRN, June 21, 2018. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3191436](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3191436).

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid., 138.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid., 118.

<sup>18</sup> Gellman, Robert. "Without Consent 2020 - World Privacy Forum." World Privacy Forum, 2020. <https://www.worldprivacyforum.org/wp-content/uploads/2020/04/ferpa/without-consent-2020-summary.pdf>.

<sup>19</sup> Ibid., 1.

<sup>20</sup> Ibid., 1.

<sup>21</sup> Ibid., 72.

<sup>22</sup> Ibid., 1.

<sup>23</sup> Ibid., 87.

<sup>24</sup> Ibid., 78.

<sup>25</sup> Whistle, Wesley. "How Higher Education Data Reporting Is Both Burdensome and Inadequate – Third Way." – Third Way. Accessed June 30, 2023. <https://www.thirdway.org/report/how-higher-education-data-reporting-is-both-burdensome-and-inadequate>.

<sup>26</sup> "How Can Student Loans Affect Credit?: Equifax®." How Can Student Loans Affect Credit? | Equifax®. Accessed June 29, 2023. <https://www.equifax.com/personal/education/loans/how-can-student-loans-affect-credit/>.

- <sup>27</sup> Guidance on Vermont's Act 171 of 2018 Data Broker Regulation. Accessed July 3, 2023. <https://ago.vermont.gov/sites/ago/files/wp-content/uploads/2018/12/2018-12-11-VT-Data-Broker-Regulation-Guidance.pdf>.
- <sup>28</sup> Gellman, "Without Consent 2020."
- <sup>29</sup> Bizfilings.vermont.gov. Accessed June 8, 2023. <https://bizfilings.vermont.gov/online/DatabrokerInquire/DataBrokerInformation?businessID=353284>.
- <sup>30</sup> Ibid.
- <sup>31</sup> Gellman, "Without Consent 2020."
- <sup>32</sup> "Children's Online Privacy Protection Act." Federal Register : Request Access. Accessed June 29, 2023. <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-C/part-312>.
- <sup>33</sup> Bizfilings.vermont.gov. Accessed June 8, 2023. <https://bizfilings.vermont.gov/online/DatabrokerInquire/DataBrokerInformation?businessID=422452>.
- <sup>34</sup> "Overview-for Furnishers of Data." CDIA, March 6, 2018. <https://www.cdiaonline.org/resources/furnishers-of-data-overview/#:~:text=A%20data%20furnisher%20is%20an,%2C%20medical%20information%20services%20C%20etc>.
- <sup>35</sup> Bizfilings.vermont.gov. Accessed June 8, 2023. <https://bizfilings.vermont.gov/online/DatabrokerInquire/DataBrokerInformation?businessID=367915>.
- <sup>36</sup> Gellman, "Without Consent 2020."
- <sup>37</sup> Ibid., 77.
- <sup>38</sup> Bizfilings.vermont.gov. Accessed June 8, 2023. <https://bizfilings.vermont.gov/online/DatabrokerInquire/DataBrokerInformation?businessID=367915>.
- <sup>39</sup> Big Brother Watch Team / April 6. "Police Use Experian Marketing Data for AI Custody Decisions." Police use Experian Marketing Data for AI Custody Decisions - Big Brother Watch. Accessed June 29, 2023. <https://bigbrotherwatch.org.uk/2018/04/police-use-experian-marketing-data-for-ai-custody-decisions/>.
- <sup>40</sup> Bizfilings.vermont.gov. Accessed June 8, 2023. <https://bizfilings.vermont.gov/online/DatabrokerInquire/DataBrokerInformation?businessID=423416>.
- <sup>41</sup> Ibid.
- <sup>42</sup> See, e.g., Justin Sherman, "Examining Equifax's relationships with millions of employers," Duke University Sanford School of Public Policy, August 24, 2022, <https://techpolicy.sanford.duke.edu/blogroll/examining-data-broker-equifaxs-relationships-with-millions-of-employers/>; Joel Winston, "Facebook and America's largest companies quietly give worker data to Equifax," November 8, 2017, <https://www.fastcompany.com/40485634/equifax-salary-data-and-the-work-number-database>.
- <sup>43</sup> HRM Outlook. "Enhancing the World's Attention towards an Overlooked Segment of Human Resources." HRM Outlook, June 22, 2023. <https://hrmoutlook.com/enhancing-the-worlds-attention-towards-an-overlooked-segment-of-human-resources/>.
- <sup>44</sup> "Verify Education History: Business." Equifax. Accessed June 29, 2023. <https://www.equifax.com/business/verification/verify-education-history/>.
- <sup>45</sup> "High Schools." National Student Clearinghouse, June 16, 2022. <https://www.studentclearinghouse.org/high-schools/>.
- <sup>46</sup> "Equifax Workforce Solutions Set to Enhance Its Pre-Employment Verification Service with New Talent Report Education." Equifax Inc., August 18, 2021. <https://investor.equifax.com/news-events/press-releases/detail/1183/equifax-workforce-solutions-set-to-enhance-its>.
- <sup>47</sup> Ibid.
- <sup>48</sup> "HR Compliance Management Solutions: Equifax Workforce Solutions." HR Compliance Management Solutions | Equifax Workforce Solutions. Accessed April 8, 2023. <https://workforce.equifax.com/>.
- <sup>49</sup> "Equifax Workforce Solutions Set to Enhance Its Pre-Employment Verification Service with New Talent Report Education." Equifax Inc., August 18, 2021. <https://investor.equifax.com/news-events/press-releases/detail/1183/equifax-workforce-solutions-set-to-enhance-its>.
- <sup>50</sup> "About the Clearinghouse." National Student Clearinghouse, June 27, 2023. <https://www.studentclearinghouse.org/about/>.
- <sup>51</sup> "Equifax Workforce Solutions Set to Enhance Its Pre-Employment Verification Service with New Talent Report Education." Equifax Inc., August 18, 2021. <https://investor.equifax.com/news-events/press-releases/detail/1183/equifax-workforce-solutions-set-to-enhance-its>.

---

52 Ibid.

53 "Resource." Talent Report™ Employment Staffing. Accessed April 8, 2023.

<https://workforce.equifax.com/resource/-/resource/product-sheet-talent-report%E2%84%A2-employment-staffing>.

54 "Equifax Workforce Solutions Set to Enhance Its Pre-Employment Verification Service with New Talent Report Education." Equifax Inc., August 18, 2021. <https://investor.equifax.com/news-events/press-releases/detail/1183/equifax-workforce-solutions-set-to-enhance-its>.

55 "StudentTracker." National Student Clearinghouse, April 17, 2023.

<https://www.studentclearinghouse.org/colleges/studenttracker/>.

56 "Equifax Announces Industry's First Pre-Employment Verification Service Tailored to the Hourly Workforce." Business Insider. Accessed June 29, 2023.

<https://markets.businessinsider.com/news/stocks/equifax-announces-industry-s-first-pre-employment-verification-service-tailored-to-the-hourly-workforce-1032398609>.

57 "Education Verification - Verify Education Status: The Work Number." Verify Education Status | The Work Number. Accessed June 29, 2023. <https://theworknumber.com/solutions/products/education-verification>.

58 Ibid.

59 "The Only Source for Nationwide Student Outcomes Information." National Student Clearinghouse Research Center. Accessed April 12, 2023. <https://nscresearchcenter.org/>.

60 Klazema, Michael. "Here's What Employers Look for When They Run a Background Check." Online Background Checks Company for small business and consumers, March 24, 2021.

<https://www.backgroundchecks.com/blog/heres-what-employers-look-for-when-they-run-a-background-check>.

61 Lynch, Circuit Judge. "Robinson v. Nat'l Student Clearinghouse." Legal research tools from Casetext, September 17, 2021. <https://casetext.com/case/robinson-v-natl-student-clearinghouse>.

62 Pierce, Mike. "How a Data Company at the Center of the Student Loan System Is Costing Borrowers Millions." Student Borrower Protection Center, January 29, 2020. <https://protectborrowers.org/how-a-data-company-at-the-center-of-the-student-loan-system-is-costing-borrowers-millions/>.

63 CFPB consumer laws and Regulations FCRA. Accessed May 30, 2023.

[https://files.consumerfinance.gov/f/documents/102012\\_cfpb\\_fair-credit-reporting-act-fcra\\_procedures.pdf](https://files.consumerfinance.gov/f/documents/102012_cfpb_fair-credit-reporting-act-fcra_procedures.pdf).

64 Ibid.

65 "How We Serve the K-20 to Workforce Continuum." National Student Clearinghouse, September 19, 2022.

<https://www.studentclearinghouse.org/about/how-we-serve-the-k-20-to-workforce-continuum/>.

66 Whistle, Wesley. "How Higher Education Data Reporting Is Both Burdensome and Inadequate – Third Way." – Third Way. Accessed June 30, 2023. <https://www.thirdway.org/report/how-higher-education-data-reporting-is-both-burdensome-and-inadequate>.

67 Ibid.

68 "Resources to Help You Report Student Data to the Clearinghouse." Compliance Central. Accessed July 3, 2023. <https://www.studentclearinghouse.org/compliancecentral/reporting-data/>.

69 Ibid.

70 Ibid.

71 Whistle, Wesley. "How Higher Education Data Reporting Is Both Burdensome and Inadequate – Third Way." – Third Way. Accessed June 30, 2023. <https://www.thirdway.org/report/how-higher-education-data-reporting-is-both-burdensome-and-inadequate>.

72 NCES Handbook of Survey Methods - Integrated Postsecondary Education Data System (IPEDS). Accessed July 3, 2023. <https://nces.ed.gov/statprog/handbook/ipeds.asp>.

73 "Resources to Help You Report Student Data to the Clearinghouse." Compliance Central. Accessed July 3, 2023. <https://www.studentclearinghouse.org/compliancecentral/reporting-data/>.

74 "Definition: Eligible Student from 34 CFR § 99.3 | LII / Legal Information Institute." Legal Information Institute. Accessed June 8, 2023.

[https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def\\_id=c5d6bfea60ed33eb6dc5028e27e718ab&term\\_occur=999&term\\_src=Title%3A34%3ASubtitle%3AA%3APart%3A99%3ASubpart%3AD%3A99.37](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=c5d6bfea60ed33eb6dc5028e27e718ab&term_occur=999&term_src=Title%3A34%3ASubtitle%3AA%3APart%3A99%3ASubpart%3AD%3A99.37).

- 
- 75 "Student Privacy Laws: What District & School Administrators Need To Know." Education Framework Inc - Student Data Privacy Protection for K-12 School Districts. Accessed June 29, 2023. <https://educationframework.com/resources/student-privacy-laws/federal-laws>.
- 76 "COPPA Form Requesting That Schools/Districts Exercise Their Rights on Behalf of Parents ." Parent coalition for student privacy. Accessed July 3, 2023. <https://studentprivacymatters.org/coppa-form-for-schools/#:~:text=The%20FTC%27s%20guidance%20further%20states,school%2C%20and%20for%20no%20other>.
- 77 Ibid.
- 78 Ritchie, John Newman & Amy, and The FTC Office of Technology. "Complying with COPPA: Frequently Asked Questions." Federal Trade Commission, February 3, 2023. <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions#Schools>.
- 79 Gellman, "Without Consent 2020."
- 80 "Current Term Enrollment Estimates." National Student Clearinghouse Research Center. Accessed June 7, 2023. <https://nscresearchcenter.org/current-term-enrollment-estimates/>.
- 81 "Consumer Advisory: Bad Information about Your College Enrollment Status Can Cost You." Consumer Financial Protection Bureau, February 27, 2017. <https://www.consumerfinance.gov/about-us/newsroom/consumer-advisory-bad-information-about-your-college-enrollment-status-can-cost-you/>.
- 82 Ibid.
- 83 Ibid.
- 84 Student Data & Student Debt - files.consumerfinance.gov. Accessed May 31, 2023. [https://files.consumerfinance.gov/f/documents/201702\\_cfpb\\_Enrollment-Status-Student-Loan-Report.pdf](https://files.consumerfinance.gov/f/documents/201702_cfpb_Enrollment-Status-Student-Loan-Report.pdf).
- 85 *Katherine Sass and Cody Hounanian v. Great Lakes Educational Loan Services, Equifax Information Services, TransUnion, Experian Information Solutions, and VantageScore Solutions* (United States District Court Northern District of California May 20, 2020).
- 86 H.R.748 - 116th Congress (2019-2020): Cares Act. Accessed June 29, 2023. <https://www.congress.gov/bill/116th-congress/house-bill/748>.
- 87 Waggoner, John. "FAQs on the CARES Act and Student Loan Debt." AARP. Accessed June 29, 2023. <https://www.aarp.org/money/credit-loans-debt/info-2020/student-loans-coronavirus-faq.html>.
- 88 *Sass and Hounanian v. Great Lakes Educational Loan Services et al.* (2020).
- 89 Ibid.
- 90 Ibid.
- 91 Ibid.
- 92 Ibid.
- 93 Ibid.
- 94 Ibid.
- 95 Ibid.
- 96 Ibid.
- 97 Ibid.
- 98 "Great Lakes, Equifax, Transunion, and Experian Sued for Damaging Millions of Student Loan Borrowers' Credit, Mishandling Pandemic Relief." Student Borrower Protection Center, January 6, 2021. <https://protectborrowers.org/great-lakes-equifax-transunion-and-experian-sued-for-damaging-millions-of-student-loan-borrowers-credit-mishandling-pandemic-relief/>.
- 99 *Sass and Hounanian v. Great Lakes Educational Loan Services et al.* (2020).
- 100 Ibid.
- 101 Ibid.
- 102 Brown, S., Davidovic, J., & Hasan, A. (2021). The algorithm audit: Scoring the algorithms that score us. *Big Data & Society*, 8(1). <https://doi.org/10.1177/2053951720983865>.
- 103 Baker, R.S., Hawn, A. Algorithmic Bias in Education. *Int J Artif Intell Educ* 32, 1052–1092 (2022). <https://doi.org/10.1007/s40593-021-00285-9>.
- 104 Yu, R., Li, Q., Fischer, C., Doroudi, S., & Xu, D. (2020). Towards Accurate and Fair Prediction of College Success: Evaluating Different Sources of Student Data. *Proceedings of The 13th International Conference on Educational Data Mining (EDM 2020)*, 292–301.
- 105 MacMillan, Douglas, and Nick Anderson. "Student Tracking, Secret Scores: How College Admissions Offices Rank Prospects before They Apply." *The Washington Post*, April 26, 2021.



<https://www.washingtonpost.com/business/2019/10/14/colleges-quietly-rank-prospective-students-based-their-personal-data/>.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Richardson, Rashida, and Marci Lerner Miller. "The Higher Education Industry Is Embracing Predatory and Discriminatory Student Data Practices." *Slate Magazine*, January 13, 2021.

<https://slate.com/technology/2021/01/higher-education-algorithms-student-data-discrimination.html>.

<sup>110</sup> United States Department of Education. Accessed June 5, 2023.

[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/A%20parent%20guide%20to%20ferpa\\_508.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/A%20parent%20guide%20to%20ferpa_508.pdf).

<sup>111</sup> "The Federal Register." *Federal Register :: Request Access*. Accessed June 7, 2023.

<https://www.ecfr.gov/current/title-34/subtitle-A/part-99/subpart-D/section-99.31>.

<sup>112</sup> "Enrollment Reporting Faqs." *National Student Clearinghouse*, June 16, 2022.

<https://www.studentclearinghouse.org/colleges/enrollment-reporting/faqs/>.

<sup>113</sup> "Ferpa Compliance." *National Student Clearinghouse*, April 17, 2023.

<https://www.studentclearinghouse.org/high-schools/studenttracker/ferpa-compliance/>.

<sup>114</sup> "The Federal Register." *Federal Register :: Request Access*. Accessed June 5, 2023.

<https://www.ecfr.gov/current/title-34/subtitle-A/part-99/subpart-A/section-99.3>.

<sup>115</sup> Gellman, "Without Consent 2020."

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid., 7.

<sup>119</sup> "34 CFR § 99.37 - What Conditions Apply to Disclosing Directory Information?" *Legal Information Institute*. Accessed June 8, 2023. <https://www.law.cornell.edu/cfr/text/34/99.37>.

<sup>120</sup> "Definition: Eligible Student from 34 CFR § 99.3 | LII / Legal Information Institute." *Legal Information Institute*. Accessed June 8, 2023.

[https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def\\_id=c5d6bfea60ed33eb6dc5028e27e718ab&term\\_occur=999&term\\_src=Title%3A34%3ASubtitle%3AA%3APart%3A99%3ASubpart%3AD%3A99.37](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=c5d6bfea60ed33eb6dc5028e27e718ab&term_occur=999&term_src=Title%3A34%3ASubtitle%3AA%3APart%3A99%3ASubpart%3AD%3A99.37).

<sup>121</sup> Russell, N. Cameron, Joel R. Reidenberg, Elizabeth Martin, and Thomas Norton. "Transparency and the Marketplace for Student Data." *SSRN*, June 21, 2018.

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3191436](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3191436), 118.

<sup>122</sup> Ibid., 119.

<sup>123</sup> Pierce, "How a Data Company at the Center of the Student Loan System."

<sup>124</sup> Russell, N. Cameron, Joel R. Reidenberg, Elizabeth Martin, and Thomas Norton. "Transparency and the Marketplace for Student Data." *SSRN*, June 21, 2018.

<sup>125</sup> Harriman, Lauren. "February 8, 2023 the Honorable Rohit Chopra Director, Consumer ..." *Epic.org*, 2023.

<https://epic.org/wp-content/uploads/2023/02/2023-02-08-Coalition-Letter-to-CFPB.pdf>.

<sup>126</sup> Ibid., 1.

<sup>127</sup> "15 U.S. Code § 1681s-2 - Responsibilities of Furnishers of Information to Consumer Reporting Agencies." *Legal Information Institute*. Accessed June 7, 2023. <https://www.law.cornell.edu/uscode/text/15/1681s-2>.

<sup>128</sup> Ibid., 1.

<sup>129</sup> Ibid., 3.

<sup>130</sup> Ibid., 5.

<sup>131</sup> Lynch, Circuit Judge. "Robinson v. Nat'l Student Clearinghouse." *Legal research tools from Casetext*, September 17, 2021. <https://casetext.com/case/robinson-v-natl-student-clearinghouse>.

<sup>132</sup> "Statutes, Codes, and Regulations." 15 U.S.C. § 1681j. Accessed June 29, 2023.

<https://casetext.com/statute/united-states-code/title-15-commerce-and-trade/chapter-41-consumer-credit-protection/subchapter-iii-credit-reporting-agencies/section-1681j-charges-for-certain-disclosures>.

<sup>133</sup> Ibid., 2.

<sup>134</sup> Lynch, Circuit Judge. "Settlement Agreement, Fully Executed." *Courtlistener*, March 1, 2020.

[https://storage.courtlistener.com/recap/gov.uscourts.mad.208991/gov.uscourts.mad.208991.24.1\\_2.pdf](https://storage.courtlistener.com/recap/gov.uscourts.mad.208991/gov.uscourts.mad.208991.24.1_2.pdf).

<sup>135</sup> Pierce, "How a Data Company at the Center of the Student Loan System."

<sup>136</sup> "FERPA." FERPA | Protecting Student Privacy. Accessed June 5, 2023.

[https://studentprivacy.ed.gov/ferpa#0.1\\_se34.1.99\\_110](https://studentprivacy.ed.gov/ferpa#0.1_se34.1.99_110).

<sup>137</sup> "FERPA." FERPA | Protecting Student Privacy. Accessed June 5, 2023.

[https://studentprivacy.ed.gov/ferpa#0.1\\_se34.1.99\\_112](https://studentprivacy.ed.gov/ferpa#0.1_se34.1.99_112).

<sup>138</sup> "H.R.2030 - College Transparency Act 117th Congress (2021-2022)." Accessed April 16, 2023.

<https://www.congress.gov/bill/117th-congress/house-bill/2030>.

<sup>139</sup> Riley, Richard, Mark Simmonds, and Maxime Look. "Evidence Synthesis Combining Individual Patient Data and Aggregate Data: A Systematic Review Identified Current Practice and Possible Methods." *Journal of Clinical Epidemiology*. Pergamon, February 5, 2007.

<https://www.sciencedirect.com/science/article/pii/S0895435606004033>.

<sup>140</sup> Ibid.

<sup>141</sup> The Higher Education Opportunity Act of 2008 - student loan borrowers ... Accessed June 7, 2023.

[https://www.studentloanborrowerassistance.org/wp-content/uploads/File/policy\\_briefs/heoasummary.pdf](https://www.studentloanborrowerassistance.org/wp-content/uploads/File/policy_briefs/heoasummary.pdf).

<sup>142</sup> "Text - H.R.4137 - 110th Congress (2007-2008): Higher Education ..." Accessed April 16, 2023.

<https://www.congress.gov/bill/110th-congress/house-bill/4137/text>.