

to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: consentagreement@ftc.gov. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Educational Research Center of America, Inc., ("ERCA") and its officer Marian Sanjana ("Sanjana"), and Student Marketing Group, Inc., ("SMG") and its officer Jan Stumacher ("Stumacher"). ERCA is a student survey company that provides student data, through SMG, to colleges and universities and other entities for recruitment and marketing purposes. SMG is a commercial list broker that supplies names for youth marketing campaigns.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns representations about how detailed, personal information collected from middle, junior high, and high school students through a survey would be used. The proposed respondents distribute a survey to middle, junior high, and high school teachers and guidance counselors with the request that they have their students complete the survey. The survey collects from students personal information including name, address, age, race, religious affiliation, and academic, career, and athletic interests. ERCA compiles personal information collected from high school students into a survey report that it provides to colleges and universities. It also provides personal information

collected through the survey to SMG. SMG provides the survey information to colleges and universities, and also creates lists of students that it provides to commercial entities for use in marketing. Such entities include, but are not limited to, banks, insurance companies, consumer goods and services providers, and list brokers.

The Commission's complaint charges that the proposed respondents falsely represented that information collected from students through the survey is shared only with colleges, universities, and other entities providing education-related services when, in fact, such information is also shared with commercial entities for marketing purposes. The complaint also alleges that the proposed respondents falsely represented that information collected from middle and junior high school students through the survey is compiled into survey reports when, in fact, little if any such information is compiled into survey reports; instead it is primarily shared with commercial entities for marketing purposes.

Part I of the consent order prohibits the proposed respondents, in connection with the collection of personally identifiable information from an individual, from misrepresenting how such information is collected or will be used or disclosed. Part II of the order prohibits the proposed respondents, in connection with the collection of personally identifiable information from students for any "noneducational-related marketing purpose," from using or disclosing such information unless they disclose (1) the existence and nature of such noneducational-related marketing purpose, (2) the types or categories of any entities to which the information will be disclosed, and (3) that the information used or disclosed is personally identifiable.

The proposed order defines "noneducational-related marketing purpose" to mean for the purpose of marketing products or services, or selling personally identifiable information from or about an individual for use in marketing products or services to individuals. The definition specifically excludes the use of personal information in connection with certain activities determined to be "educational products or services" under the No Child Left Behind Act of 2001, namely (a) college or postsecondary education recruitment, or military recruitment; (b) book clubs, magazines, and programs providing access to low-cost literary products; (c) curriculum and instructional materials used by elementary schools and secondary

schools; (d) student recognition programs; or (e) any other activity expressly determined under the No Child Left Behind Act or its implementing regulations to be an "educational product or service." In addition, the proposed order provides that when determining whether any specific activity is an "educational product or service," any official, written, publicly-disseminated interpretation by the Department of Education regarding such activity shall be controlling.

Part III of the order prohibits the proposed respondents from using or disclosing for any noneducational-related marketing purpose any personally identifiable information that was collected through surveys distributed prior to July 30, 2002. In addition to the educational purposes excepted from the definition of "noneducational-related marketing purpose," Part III also permits the proposed respondents to use such information for the purpose of (a) job recruitment, (b) the provision of student loans, or (c) the provision of standardized test preparation services.

To address respondents' collection of information from younger children, Part IV of the order requires the proposed respondents to delete all personally identifiable information collected through surveys from any student who was under the age of thirteen at the time of collection.

The remainder of the proposed order contains standard requirements that the proposed respondents maintain copies of privacy statements and other documents relating to the collection, use or disclosure of personally identifiable information; distribute copies of the order to certain company officials and employees; notify the Commission of any change in the corporation that may affect compliance obligations under the order; and file one or more reports detailing their compliance with the order. Part X of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

This proposed order, if issued in final form, will resolve the claims alleged in the complaint against the named respondents. It is not the Commission's intent that acceptance of this consent agreement and issuance of a final decision and order will release any claims against any unnamed persons or