

FERPA

Challenges And Amendment

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1. Latest amendments to the federal **Family Educational Rights and Privacy Act (FERPA)**
 - Proposed in 2011
 - Became effective at the beginning of 2012
2. "These amendments are needed to ensure that the US Department of Education (Department or we) continues to implement FERPA in a way that protects the privacy of education records while **allowing for the effective use of data.**" [Federal Register, 12/02/2011]

Code of Fair Information Practices

Task Force of the US Department of Health, Education & Welfare (HEW), 1973

- Recordkeeping of personally identifiable information (PII) may not be kept secret
- Individuals have a right to know what information is being collected about them and how it is being used
- Individuals must be able to prevent disclosure of their information without their consent
- Individuals must be able to correct or amend information stored about them
- Recordkeepers must ensure that information collected is for internal use only and must take precautions to prevent misuse

3. Improved access to education records for states
 - To evaluate education programs
 - To ensure limited resources are invested effectively
 - To build upon what works and discard what does not
 - To increase accountability and transparency
 - To contribute to a culture of innovation and continuous improvement in education

4. State longitudinal data systems (SLDS)
 - Designated by the individual state or by a group of states
 - Collection of PII about students from all education levels
 - Intended to evaluate the effectiveness of education programs

California Department of Education – Longitudinal Data Systems
www.cde.ca.gov

- California Basic Educational Data Systems (CBEDS)
- California Pupil Achievement Data Systems (CalPADS)
- California Schools Information Systems (CSIS)

5. Objection to three definitions added are about implications for expansive interpretation
 - Sharing of education records without direct control
 - Lack of privacy and security to prevent further disclosure
 - Previous regulatory language regarding studies and audits was sufficient
6. Defined **authorized representative** (99.3) as any entity or individual
 - Designated by a State or local educational authority (SEA/LEA)
 - Or an agency headed by an official listed in 99.31(a)(3)
 - Comptroller General of the United States
 - Attorney General of the United States
 - The Secretary
 - State or local education authorities
 - With respect to Federal or State-supported education programs
 - To conduct any audit or evaluation
 - Or any compliance or enforcement activity in connection with Federal requirements that relate to these programs
7. Defined **early childhood program** (99.3)
 - Includes Head Start, licensed child care, LEA programs
 - Serves children from birth through age six addressing cognitive, social, emotional, and physical development
8. Defined **education program** (99.3)
 - Principally engaged in the provision of education
 - K-12 and special education
 - Job training, career and technical education, adult education
 - Any program administered by an educational agency or institution

9. Authority to conduct audits or evaluations (99.35)
 - Need not be under the direct control of the institution or authorities in 99.31(a)(3)
 - Includes state health and human services, state labor agencies, other public or private entities
 - Officials in 99.31(a)(3) no longer need to “establish legal authority” for audit, evaluation, or other activity—clause in 99.35 added in 2009 now removed
 - Written agreement required
 - Written agreements had been added in 2009, but now reaffirmed because entities may not be under direct control

10. “The changes also establish that FERPA does not prohibit a postsecondary data system from non-consensually redisclosing PII to an SEA in connection with the SEA’s evaluation of whether the State’s LEAs effectively prepared their graduates to enroll, persist, and succeed in postsecondary education.” [Federal Register, 12/02/2011]

11. Research studies (99.33(b))
 - Added “improve instruction” as one of purposes
 - Permits State to designate authorities for studies “on behalf of the educational agencies or institutions” —even if the institution objects
 - “The Department recognizes that this authority may be implied and need not be explicitly granted.”
 - Previously, there was no implied consent in FERPA

12. Redisclosure (99.33(b))
 - Study officials now authorized “to further disclose PII on behalf of the providing institution as long as the recordation requirements” are met
 - Previously, the institution had to be contacted and authorize the disclosure
 - Recordation requirements: document what was disclosed, to whom, and for what purpose
 - Recordation requirements had been expounded in 2009

13. Expansion of enforcement provisions (99.60(a)(2))
 - Beyond the traditional educational agencies and institutions
 - Any other entity that receives Department funds
 - Includes nonprofit organizations, student loan guaranty agencies, student loan lenders

14. Limit directory information (99.37)
 - Institution may limit disclosures of directory information
 - Must include in Annual Notification
 - What kind of directory information is disclosed
 - Identify specific recipients of disclosures of directory information

15. Creation of Privacy Technical Assistance Center (PTAC)

- Available to SEAs and LEAs
- One-stop shop for technical assistance on the applicability of FERPA to SLDS
- How to use education data to assess program effectiveness and remain FERPA-compliant
- Best practices for data security and governance

Family Policy Compliance Office

www.ed.gov/fpc

(800) USA-LEARN or (800) 872-5327

Higher Ed Officials only: ferpa@ed.gov

Privacy Technical Assistance Center

www.ed.gov/ptac

Toll Free: (855) 249-3072

PrivacyTA@ed.gov

16. EPIC v US Department of Education

- Electronic Privacy Information Center (EPIC)
- Action filed February 12, 2012
- Charges 2012 regulations are "in excess of statutory authority" of the Department to implement

FERPA Forecasts

Department of Defense Memo of Understanding (DoD MOU)

- Applies to active duty service personnel receiving tuition assistance
- Establishes institutional reporting requirements through military Service portal (unique to each service branch)
- MOU cites FERPA-compliance
- Includes agreements for mandatory credit, credit for prior military training, and maximums on residency requirements

Washington prognosticators: something is expected next to impact Veterans Administration (VA) educational benefits

Resource

Ramirez, Clifford A., *FERPA Clear and Simple*. San Francisco: Jossey-Bass, 2009.

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