



4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Part 99

Family Educational Rights and Privacy Act

AGENCY: Office of the Chief Privacy Officer, Office of Management, Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary amends the Family Educational Rights and Privacy Act (FERPA) regulations to change the name of the office designated enforcement functions by the Secretary from the Family Policy Compliance Office to the Office of the Chief Privacy Officer. The purpose of this amendment is to reflect additional resources committed to protecting student privacy and to increase internal efficiency.

DATES: These regulations are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kathleen Styles, U.S. Department of Education, 400 Maryland Avenue, SW., room 2E315, Washington, DC 20202. Telephone: (855) 249-3072 or via email: privacyTA@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: FERPA, 20 U.S.C. 1232g(g), requires the Secretary to establish or designate an office within the Department of Education (Department) for the purpose of investigating, processing, reviewing, and adjudicating violations and complaints. As part of an expansion of student privacy operations at the Department, the designated office will change from the Family Policy Compliance Office to the Office of the Chief Privacy Officer. This change will not directly impact the public. This change is being made:

1. To allow the Department to more effectively make use of new resources dedicated to student privacy;
2. To permit efficiencies relating to specialization of work; and
3. To clarify responsibilities within the Department.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as

possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

Upon review of the cost, we have determined there is no financial or resource burden associated with these changes.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments merely reflect changes in internal organization and procedure. The changes do not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b) (B), the Secretary has determined that proposed regulations are unnecessary and contrary to the public interest.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations contain technical changes to current regulations. The changes will not have a significant economic impact on any of the entities affected because the regulations do not impose excessive burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Privacy, Reporting and recordkeeping requirements, Students.

Dated:

Denise L. Carter,
Acting Assistant Secretary
for Management.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations as follows:

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

1. The authority citation for part 99 continues to read as follows:

AUTHORITY: 20 U.S.C. 1232g, unless otherwise noted.

2. Amend § 99.60 paragraph (a) by removing “Family Policy Compliance Office” and adding, in its place, “Office of the Chief Privacy Officer”.

[FR Doc. 2017-00958 Filed: 1/18/2017 8:45 am; Publication Date: 1/19/2017]