

Family Educational Rights and Privacy Act (FERPA) Supporting Statement

1. Necessity of Information Collected.

The Family Educational Rights and Privacy Act (FERPA) is authorized under 20 U.S.C. § 1232g. The purpose of the Act is to set out requirements for the protection of privacy of students' education records. FERPA affords certain rights to parents and to eligible students (a student who has reached 18 years of age or is attending a postsecondary institution at any age) with respect to students' education records. FERPA applies to educational agencies and institutions that receive funds from any program administered by the Department of Education. The regulations are found at 34 CFR Part 99.

20 U.S.C. § 1232g(e) requires each educational agency or institution to annually inform parents and students of their rights under FERPA (34 CFR § 99.7).

20 U.S.C. § 1232g(b)(4)(A) requires each educational agency or institution to keep a record of parties who have asked for and/or received access to the student's records (34 CFR § 99.32).

This collection is related to the notice of proposed rulemaking (NPRM) which was published on March 24, 2008. The information collection requirements include Sections 99.7 and 99.32.

2. Purpose of Use of Information Collected.

Educational agencies and institutions, such as school districts and postsecondary institutions are required to annually notify parents and students of their rights under FERPA. A school is not required to notify parents and students individually, but rather is required to provide the notice by any means that are reasonably likely to inform them of their rights under FERPA. These means could include publication in the school activities calendar, newsletter, school website, student handbook, or a combination of these methods.

In addition, educational agencies and institutions must keep a record of each request for access to and each disclosure of personally identifiable information from the education records of each student. FERPA includes several exceptions to the recordation requirement. The recordation requirement does not apply to requests from or disclosures to: (1) the parent or eligible student; (2) a school official with legitimate educational interest; (3) a party with written consent from the parent or eligible student; (4) a party seeking directory information; or (5) a party seeking or receiving the records as directed by a Federal grant jury or other law enforcement subpoena and the issuing court or agency has ordered that the existence or contents of the subpoena or the information furnished in response not be disclosed. The information collection requirements are necessary to carry out the purpose of the Act.

There are no new provisions in the 3/24/2008 NPRM affecting information collection requirements.

3. Consideration of Improved Information Technology.

The advancement of and more common use of computer systems have dramatically reduced the burden of graphically producing the notification of rights required under the FERPA since it was enacted in 1974. Electronic systems also enable schools to more easily create and maintain disclosure information for the mandatory recordation requirements.

The Family Policy Compliance Office (FPCO), which administers FERPA, makes available to school officials a model notification that can be adapted by schools. The models are posted on the Department's Web site -- <http://www.ed.gov/policy/gen/guid/fpc/ferpa/lea-officials.html> and <http://www.ed.gov/policy/gen/guid/fpc/ferpa/ps-officials.html>.

Thousands of school officials – elementary/secondary as well as postsecondary – routinely receive compliance training on FERPA in sessions around the country. The training includes information on where to locate and download the model notifications. School officials are also provided this information in response to requests for technical assistance via FERPA@ED.Gov. In addition, FPCO annually notifies school districts of their obligations under FERPA, as required by the No Child Left Behind Act of 2001. The annual notice includes a copy of the model FERPA notification and information on where to locate and download the model. This greatly reduces the burden on schools of having to write the required notification.

4. Efforts to Identify Duplication.

The provisions do not duplicate any other Federal requirements. No other agency has this information.

5. Burden Minimization as Applied to Small Businesses.

These regulations are consistent with the Administration's regulatory principles to minimize burden on small entities.

6. Consequences of Less Frequent Data Collection.

Should these collections of information under FERPA be conducted less frequently, the requirements of the Act would not be carried out.

7. Special Circumstances Governing Data Collection.

These information collection requirements are consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultation Outside the Agency.

The Department informed the public through a 60-day and a 30-day notice that the Notice of Proposed Rulemaking (NPRM) for the Family Educational Rights and Privacy Act was

published on March 24, 2008. The NPRM (Vol. 73, No. 57, page 15574) did not provide a comment period for the information collection activity. However, the 60-day notice provided and the 30-day notice provides the appropriate comment period for the information collection activity.

Prior to this time, the public had the opportunity to comment on the proposed changes in the collection of information under FERPA during the publication of a notice of proposed rulemaking in the March 14, 1996, Federal Register. See 61 Fed. Reg. 10664 (March 14, 1996). One of the proposed changes was to remove the previous requirement that educational agencies and institutions have a student records “policy” pursuant to § 99.6 of the regulations and to transfer some of the policy requirements to the notification requirement of § 99.7 of the regulations. As explained in the final regulations – 61 Fed. Reg. 59292 (November 21, 1996) – the purposes in removing the requirement that schools maintain a policy were: (1) the change will help to ensure that parents and eligible students receive more effective notification of their rights under the law; and (2) the change will afford schools greater flexibility by removing requirements that are not statutory and not necessary to implement the law.

Seven commenters submitted letters in support of the proposal to remove the regulatory requirement that schools adopt student records policies. One commenter said that the change will not only lessen the burden on schools, but would facilitate communication between the schools and parents or eligible students. The same commenter also said that the cost associated with the change would not be significant because his school district updates its notices regardless of statutory requirements. Another commenter representing a large public university stated that the “flexibility offered by not requiring having such a [student records] policy is a laudable goal.” Six commenters opposed the change. One commenter stated that the current requirements are not burdensome. Two noted that the policy is helpful in educating school officials about FERPA, and that the change in requirements would be burdensome on schools because they would incur costs to publish a longer notification. After consideration of the last comment, the Department removed some of the information proposed to be included in the notification as not necessary to meet the statutory requirement. (See discussion at 61 Fed. Reg. 59293, first column.) At the time of these final regulations, FPCO made a hard copy model notification available to schools. Both model notifications (one for elementary/secondary schools and one for postsecondary institutions) were published in the Federal Register. (See 61 Fed. Reg. 59297 – 59298.) Since that time, we have included the models on our Web site.

The other proposed change in 1996 involving the collection of information under FERPA was a change to the recordation requirements of § 99.32. The change resulted in the addition of the fifth exception to the requirement. Specifically, schools are not required to record disclosure of information resulting from certain types of subpoenas and court orders issued for law enforcement purposes. This change reduced the recordkeeping burden for these types of disclosures. No comments were received on this change.

Regulations since 1996 have not involved any changes in the collection of information under FERPA. In addition, because these information collection requirements in FERPA are

statutory, no specific consultation with school officials has occurred, other than the opportunity to comment on notices of proposed rulemaking. Educational agencies and institutions have not independently expressed concern over costs or burden because of these requirements. FPCO has sought ways to minimize burden of these requirements, such as making model notices easily available to school officials.

9. Payments or Gifts to Respondents.

The information collection’s respondents will not receive any payment or gift for submitting any information related to FERPA.

10. Assurance of Confidentiality.

FERPA requires that educational agencies and institutions protect the privacy of student’s education records, including the privacy of the record of request for the student’s education records. As the respondents of the information collection requirements, school officials do not need assurance of confidentiality because the requirements are intended to advance the privacy rights of parents and eligible students (a student who has reach 18 years of age or is attending a postsecondary institution at any age).

11. Questions of Sensitive Nature.

The Act does not address nor call for questions of a sensitive nature.

12. Annual Hour Burden for Respondents/Recordkeepers

FERPA’s Annual Notification of Rights Requirement (34 CFR § 99.7)

There are approximately 20,629 school districts and postsecondary institutions affected by these provisions. We estimate that an average of .25 hours (15 minutes) per response is required for the annual notification of rights requirement. From administrative experience, we have determined that, at the elementary/secondary level, school districts (as opposed to individual schools) are the entities that typically issue the annual notification of FERPA rights. At the postsecondary level, it is the individual institutions that issue the notice. Following is a breakdown of school districts and postsecondary institutions:

No. School Districts: 14,166
Burden Hours: x .25

Total Burden Hours = 3,542

No. Postsec. Inst.: 6,463
Burden Hours: x .25

Total Burden Hours = 1,616

School District Burden Hours: 3,542
Postsec. Inst. Burden Hours: + 1,616
 Grand Total Burden Hours: 5,158

Since most agencies and institutions met major requirements during the early years after FERPA's passage in 1974 and after publication of the revised regulations in 1988, the year-to-year cost is minimal.

FERPA's Recordkeeping Requirement (34 CFR § 99.32)

We informally contacted eight school officials – three officials at elementary/secondary school districts and one official at an elementary school and four officials at postsecondary institutions. Most of the schools we contacted use a paper-based system for recordkeeping, while some of the postsecondary institutions use both paper-based and electronic. From our informal review, it is clear that the recordkeeping is done at the individual school (as opposed to the school district at the elementary/secondary level) and the individual postsecondary institution. We estimate that an average of .0833 hours (5 minutes) per disclosure is required for the recordkeeping requirement. The average number of disclosures per year is based on responses from the eight school officials. (Based on the type and size of the school, the number of releases vary.) Following is a breakdown of individual schools (public elementary, secondary, or combined) and postsecondary institutions:

No. of Schools:	97,382
<u>Average No. of Disclosures: x</u>	<u>192</u>
# of Responses	18,697,344
 <u>Hours/Response: x</u>	 <u>.0833</u>
Burden Hours	1,557,489

No. of Postsec. Inst.:	6,463
<u>Average No. of Disclosures: x</u>	<u>192</u>
# of Responses	1,240,896
 <u>Hours/Response: x</u>	 <u>.0833</u>
Burden Hours	103,367

Elementary/Secondary School Burden Hours:	1,557,489
<u>Postsec. Inst. Burden Hours: +</u>	<u>103,367</u>
Grand Total Burden Hours:	1,660,856

Notification Grand Total Burden Hours		5,158
Recordation Grand Total Burden Hours	+	1,660,856
Total Burden Hours		1,666,014

The number of school districts and the number of postsecondary institutions subject to FERPA are based on the number of public school districts and the number of Title IV postsecondary institutions, as reported in the National Center for Education Statistics' (NCES') Digest of Education Statistics. See http://nces.ed.gov/programs/digest/d07/tables/dt07_005.asp. The number of affected schools reported to OMB in previous years was higher, but we believe this number that is based on NCES' count is more accurate.

13. Annual Cost Burden to Respondents

The total for the capital and start-up cost components of both information collection requirements is zero. The information collection requirements under FERPA do not require the purchase of any capital equipment nor create any start-up costs. Computers and word processing software used to complete this information collection are part of the respondents customary and usual business or private practices, and therefore are not included.

The total for operation and maintenance for this information collection is zero. The information collection does not create costs associated with generating, maintaining, and disclosing or providing the information that is not already identified in question 12 of this supporting statement.

14. Estimated Annual Cost to the Federal Government.

No measurable percentage of staff time is devoted to assisting educational agencies and institutions in either of these information collection requirements. With regard to the annual notification requirement, as explained in the response to question 3, the Department posts model notifications (one for elementary/secondary and one for postsecondary) on its website. The model can downloaded and easily be adapted by schools for use. With regard to the recordkeeping requirements, staff routinely provides technical assistance on other aspects of the law, but the recordkeeping requirements have become routine with schools and appear to not be an issue of concern.

15. Reasons for Changes to Burden Hours Estimated

All burden hours are counted as a program change since ED is requesting a new 1875 number for FERPA, due to the office moving to OPEPD. However, the burden hours are based on a more accurate number of educational agencies and institutions, as reported by the Department's National Center for Education Statistics. In addition, as explained in the response to question 12, we contacted eight (8) entities subject to the information collection requirements to request informal feedback on how they comply with the recordkeeping

requirements of FERPA. The additional burden hours for that requirement is based on an estimate of the time it takes entities to comply.

16. Collection of Information with Public Results.

The results of the collection of information will not be published.

17. Approval to Not Display Expiration Date.

ED is not seeking this approval.

18. Exception to the Certification Statement.

ED is not requesting any exceptions to the “Certification for Paperwork Reduction Act Submissions.”