

**DEPARTMENT OF EDUCATION****34 CFR Part 99**

RIN 1855-AA00

**Family Educational Rights and Privacy Act****AGENCY:** Department of Education.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend 34 CFR part 99 to implement the Department's interpretation of the Family Educational Rights and Privacy Act (FERPA) identified through administrative experience as necessary for proper program operation. These regulations would provide general guidelines for accepting "signed and dated written consent" under FERPA in electronic format.

**DATES:** We must receive your comments on or before September 26, 2003.

**ADDRESSES:** Address all comments about these proposed regulations to LeRoy Rooker, U.S. Department of Education, 400 Maryland Avenue, SW., room 2W119, Washington, DC 20202-4605. If you prefer to send your comments through the Internet, use the following address: [FERPA.Comments@ED.Gov](mailto:FERPA.Comments@ED.Gov).

**FOR FURTHER INFORMATION CONTACT:** Kathleen Wolan, U.S. Department of Education, 400 Maryland Avenue, SW., room 2W115, Washington, DC 20202-4605. Telephone: (202) 260-3887.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:****Invitation To Comment**

We invite you to submit comments regarding these proposed regulations. We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 2W115, 400 Maryland Avenue,

SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Background**

The Department has developed these proposed regulations in accordance with its "Principles for Regulating," which are intended to ensure that the Department regulates in the most flexible, equitable, and least burdensome way possible. The Secretary proposes these regulations and believes they are necessary to implement the law and give the greatest flexibility to local governments and schools. In addition, these regulations minimize burden while protecting the rights of parents and students.

**Significant Proposed Regulations**

The following is a summary of the regulatory provisions the Secretary proposes. These provisions interpret statutory text. The Secretary is not authorized to change statutory requirements. Commenters are asked to direct their comments to the regulatory provisions that would implement or interpret the statute.

**Statute:** FERPA provides that an agency or institution may not have a policy or practice of disclosing personally identifiable information from education records without the "written consent" of the parent or eligible student, subject to specified exceptions. 20 U.S.C. 1232g(b)(1).

**Current Regulations:** Regulations codified at 34 CFR 99.30 provide that written consent must be "signed and dated" and must specify the records to be disclosed, the purpose of the disclosure, and the party or class of parties to whom the disclosure may be made.

**Proposed Regulations:** Proposed § 99.30(d) provides general guidelines for educational agencies and institutions that choose to meet the requirements of § 99.30 with records and signatures in electronic format.

**Reasons:** The Department has received numerous inquiries whether some form of electronic consent and signature, including e-mail, satisfies FERPS's written consent requirement.

The requirements of a valid signature, including various forms of electronic signature, are generally established under State rather than Federal law. However, Congress has enacted at least two Federal statutes to encourage the use of electronic signatures and records. The Government Paperwork Elimination Act (GPEA), Pub. L. 105-277 (effective October 21, 1998) applies to filing forms electronically with Federal agencies. The Electronic Signatures in Global and National Commerce Act (E-Sign), Pub. L. 106-229 (effective October 1, 2000) validates and establishes general standards for use of electronic signatures and records in interstate commerce that remain in place pending a State's adoption of some form of the Uniform Electronic Transactions Act (UETA).

E-Sign, UETA (where enacted in State law), and the GPEA validate the use of electronic records and signatures in contracts and other legal transactions. The Department concludes that educational agencies and institutions may use electronic records and signatures for written consents governed by FERPA to the extent that the procedures used for creating and storing the electronic records and signatures comply with these proposed regulations.

This discussion, as well as the proposed amendment to § 99.30, constitutes general guidance for the use of electronic communications in meeting certain FERPA requirements. The proposed amendment does not specify desired methods but instead contains general guidelines, adapted from concepts contained in E-Sign, GPEA, and UETA, to help ensure that FERPA's privacy protections are not compromised when records are disclosed pursuant to electronic communications. The Family Policy Compliance Office may issue further guidance concerning electronic records and signatures.

FERPA is technology-neutral with respect to how to meet disclosure and signature requirements. In cases where FERPA requires a signed and dated written consent under § 99.30 for a disclosure, such as issuance of a transcript to an employer, there proposed regulations specify that an agency or institution may accept electronic consents and signatures when reasonable security is provided for the process. In particular, the process must: