

- Establish a reasonable way to identify the individual and authenticate the identity of the particular eligible student or parent as the source of the electronic message or record requesting access or consenting to the disclosure of education records (authentication);
- Attribute the electronic signature to the unaltered message or document to prevent repudiation by the sender (attribution);
- Verify the integrity of the signed message or document in transmission and upon receipt (integrity or security of transmission); and
- Document the requester's approval of the text contained in the electronic message.

While agencies and institutions are not limited to any particular technology or method, the Department considers electronic signature standards established under the Federal student loan programs to satisfy the written consent requirement in FERPA. You may view those standards on the Internet at the following Web site: <http://www.ifap.ed.gov/dpcletters/gen0106.html>

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of these regulatory actions.

The potential costs associated with these proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulatory actions, we have determined that the benefits would justify the costs.

Summary of Potential Costs and Benefits

FERPA requires an educational agency or institution to obtain “written and signed” consent from a parent or eligible student before the educational agency or institution discloses education records. These proposed regulations would provide additional flexibility for educational institutions and agencies in meeting the existing consent requirement. These proposed regulations would not require that an educational institution or agency participate in the electronic format option.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential Memorandum on “Plain Language in Government Writing”

require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in these proposed regulations clearly stated?
- Do these proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of these proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would these proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A “section” is preceded by the symbol “§” and a numbered heading; for example, § 99.30 Under what conditions is prior consent required to disclose information?)
- Could the description of these proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making these proposed regulations easier to understand? If so, how?
- What else could we do to make these proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small local educational agencies (LEAs) receiving Federal funds from the Department and certain 4- and 2-year colleges and for-profit postsecondary trade and technical schools with small enrollments that receive Federal funds, such as student aid programs under Title IV of the Higher Education Act of 1965. However, these regulations would not have a significant economic impact on the small LEAs affected because these regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. These regulations would provide an electronic format option for records and signatures and impose minimal requirements to ensure that LEAs comply with the educational privacy protection requirements in FERPA.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

These proposed regulations are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education, Information, Parents, Privacy, Records, Reporting and recordkeeping requirements, Students.

Dated: June 9, 2003.

Rod Paige,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 99 of title 34 of the Code of Federal Regulations as follows:

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

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

PART 99—[AMENDED]

2. Section 99.30 is amended by adding a new paragraph (d) to read as follows:

§ 99.30 Under what conditions is prior consent required to disclose information?

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