



May 23, 2011

Regina Miles
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Proposed Amendments to FERPA Regulations (Docket ID ED-2011-OM-0002)

Dear Ms. Miles,

This letter is submitted to comment on the U.S. Department of Education's (ED) above-captioned proposed regulations applicable to the Family Educational Rights and Privacy Act (FERPA), as published in the April 8, 2011, Federal Register. SHEEO is deeply committed to safeguarding individual student privacy as well as to the strategic and appropriate use of education data to inform policy, management and instructional decisions. We believe the proposed regulations strike the appropriate balance between these goals and we appreciate the efforts of the Department of Education to meet both goals by clarifying FERPA regulations.

Many individuals and organizations have responded to your request for comments emphasizing both the interest in the proposed regulations and the need for additional clarity. We have formally endorsed the suggestions from the Data Quality Campaign (DQC) and acknowledge the value of the specific comments and suggestions they have provided. We also have reviewed the comments from the Western Interstate Commission for Higher Education (WICHE) and find those comments useful in raising several important issues and requests for clarity.

Based on feedback from our members SHEEO offers the following additional comments:

- We are pleased to see the proposed definition of the term "authorized representative;" this clarification will facilitate and enhance the capacity for educational research and assessment. Sharing data among agencies is required in statewide longitudinal data systems and in much of the necessary research evaluating education programs.
- We support the definition of "education program" which will help to remove the confusion regarding which programs are covered for evaluation and auditing purposes under the FERPA guidelines. Current interpretations of FERPA have constrained the ability to understand and improve the many educational activities administered outside of the state education authority.
- We also support the emendation of the section about written agreements. The clarifications offered in this change will assist in interagency collaboration as well as collaborations among educational entities while maintaining student privacy.
- We support removal of the provision that a State or local educational authority must establish specific legal authority to conduct an audit or evaluation. We maintain that conducting such evaluations is already a foundational responsibility for state agencies that oversee educational activities, whether such authority is express or implied.

- Privacy safeguards should include, not only very strong procedures to avoid unauthorized access to data, but also the routine use of encryption procedures to prevent tracking individual records to individual students when data are used exclusively for policy research or accountability purposes.
- We encourage an explicit statement regarding the authority of education agencies to share data across state lines. Nothing in the proposed regulations appear to inhibit such sharing but we encourage the recognition of student mobility and an affirmation of the value of data being available wherever students are enrolled.
- Several items would benefit from more explicit definitions or examples including “reasonable methods” in reference to authorized representative’s compliance, “evaluation” and “audit,” along with “legitimate educational interest.”

Thank you again for the opportunity to respond and to participate in the open comment process. We look forward to seeing the proposed regulations with the modest changes suggested above.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul E. Lingenfelter". The signature is fluid and cursive, with a large initial "P" and "L".

Paul E. Lingenfelter
President