

Comments from

THE FUTURE OF PRIVACY FORUM



to

U.S. Department of Education, Regulatory Reform Task Force

Docket No. ED-2017-OS-0074

Request for Comment Regarding the “Evaluation of Existing Regulations”

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September 20, 2017

Dear Co-Chair Eitel, Co-Chair McFadden, and Regulatory Reform Task Force Members:

On behalf of the Future of Privacy Forum (FPF), thank you for the opportunity to provide comments in response to the U.S. Department of Education Regulatory Reform Task Force's ("Task Force") request for comments. FPF is a non-profit organization that serves as a catalyst for privacy leadership and scholarship, advancing principled data practices in support of emerging technologies.

In the Task Force's June [progress report](#), potential regulations associated with the Family Educational Rights and Privacy Act (FERPA) and Protection of Pupil Rights Amendment (PPRA) were listed as potential regulations to amend or update (pages 19-20 of the report). FPF asks that the Task Force recommend that these regulations be maintained as they currently are at the present time.

FPF has been working on student privacy for almost four years. In that time, among other accomplishments, we jointly created the [Student Privacy Pledge](#) with the Software and Information Industry Association (a voluntary and legally binding promise by more than 300 ed tech companies to date regarding the handling of student data); have read or provided comments on the more than 600 student privacy bills introduced in 49 states since 2014 and the eight federal bills introduced in 2015; released numerous resources on student privacy, including a [guide](#) for de-identifying student information under FERPA; and created [FERPA|Sherpa](#), a website compiling education privacy resources and tools with sections aimed at parents, schools, service providers, and policymakers.

As referenced above, the student privacy legal landscape has shifted dramatically. [123 new student privacy laws have been passed in 39 states](#) just since 2013, many of which are just starting to be implemented. At the same time, Congress has expressed a desire to pass a full re-write of FERPA. In a recent hearing, multiple representatives expressed a plan to update FERPA, with Congressman Thompson (R-Pa) [stating](#) "It's time—it's more than time" to update FERPA. Congressional staff has told FPF that a bill re-writing FERPA may be introduced as soon as this fall.

In this climate of change, FPF believes it is unwise to change FERPA's current regulations when states are already dealing with state law changes and may soon face new federal legislation that would nullify any updated FERPA or PPRA regulations passed by the Department at this time.

In particular, FPF would like to express that repealing or changing the 2011 FERPA regulations would have devastating consequences on evidence-based policymaking and local governance of education across the country. The 2011 regulations enabled, among other significant uses, state education agencies (SEAs) being authorized to conduct studies for or on behalf of the local education agencies (LEAs) in their state; allowing an SEA or LEA to evaluate the preparedness of its high school graduates for postsecondary education; and allowing state or federally-funded early childhood education programs to obtain information on how well their students did in kindergarten. These clarifications in the regulations were accompanied by significant privacy protections, such as explicit requirements for data sharing written agreements and stronger enforcement authority.

However, not amending or adding to FERPA regulations at this time does not mean the Department does not have an essential role in protecting student privacy. The Department's Privacy Technical Assistance Center (PTAC) has played a vital role in providing technical assistance and best practices to states, districts, companies, and privacy advocates. Prior to PTAC's creation in 2010, stakeholders were often afraid to ask the office that enforced FERPA – the Family Policy Compliance Office (FPCO) – for technical assistance or help in applying FERPA since they felt they might be penalized

for asking clarifying questions. In addition, stakeholders would frequently not hear back from FPCO in a timely manner. Having a separate office that deals with questions from SEAs, LEAs, and other stakeholders – and generally responds within a week of receiving any question – has remedied those problems. PTAC has been especially useful as states have changed their laws in helping stakeholders determine how their laws and practices work with FERPA and other federal privacy laws. Instead of new regulations, FPF recommends that additional resources be made available to PTAC so they can meet the expanding state and district demands for invaluable technical assistance and best practice guidance on student privacy.

FPF staff would welcome the opportunity to further discuss these issues and provide additional details or action steps on any of these recommendations.

Sincerely,

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