

# “What keeps you up at night?”

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Higher Education  
Practice Group:

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Vice Chair

## U.S. Department of Education proposes amendments to FERPA regulations

By Allison B. Newhart

### SUMMARY

**The Department of Education has issued proposed amendments to the FERPA regulations, which, if approved, will affect institutions' use of directory information. Comments are due May 23, 2011.**

On April 8, 2011, the U.S. Department of Education published a Notice of Proposed Rulemaking [76 Fed. Reg. 19726 (Apr. 8, 2011)] regarding amendments to the regulations implementing the Family Educational Rights and Privacy Act (“FERPA”). The proposed amendments address several FERPA issues, including those highlighted below.

### DIRECTORY INFORMATION (34 C.F.R. §§ 99.3, 99.37, 99.37(D))

The proposed amendments clarify that students cannot avoid an institution's requirement that they wear or carry an ID card or badge by opting out of disclosing directory information. Specifically, the proposed language would modify the definition of “directory information” to clarify that student ID numbers can be disclosed on the face of an ID card or badge without consent, provided that the numbers cannot be used to access education records except in conjunction with another authentication tool, such as a PIN or password.

The proposed amendments would also allow a college or university to adopt a policy limiting the disclosure of directory information to specific parties, for specific purposes. An institution implementing such a policy would have to provide public notice to eligible students setting forth the parties to whom the information will be disclosed and for what purposes, and limit its disclosures accordingly.

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### AUDIT AND EVALUATION (34 C.F.R. §§ 99.3, 99.35)

Currently, FERPA does not contain an exception expressly permitting a state or local education authority to conduct an audit or evaluation of a federal or state supported education program. The proposed regulations would clarify that FERPA permits such limited disclosure.

### ENFORCEMENT PROVISIONS (34 C.F.R. § 99.60)

The Department's FERPA enforcement power extends only to educational institutions. Non-school entities, such as state and local educational authorities, are not covered despite receiving federal funds from the Department. The amended regulations would broaden the scope of the Department's FERPA powers to include all recipients of federal funds under any program administered by the Secretary of Education.

Institutions wishing to submit comments on the Department's proposed amendments must do so by May 23, 2011. The Department is particularly interested in comments regarding the impact the directory information amendments would have on campus ID cards and badges. You can submit comments

electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> (instructions are available on the site under “How to Use This Site”) or by sending them to Regina Miles, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

We will continue to monitor the progress of the regulations and provide further updates as appropriate.

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This Alert was written by Allison B. Newhart, a member of the firm's Higher Education Practice Group. Allison can be reached at 215.972.7191 or [anewhart@saul.com](mailto:anewhart@saul.com). This publication has been prepared by the Higher Education Practice Group for information purposes only.

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