



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202

December 2009

To Institutions of Postsecondary Education:

We are providing postsecondary institutions with guidance on the applicability of the Family Educational Rights and Privacy Act (FERPA) to the disclosure of certain personally identifiable information from student education records to representatives of the U. S. Census Bureau (Bureau) who are conducting Group Quarters (GQ) or group housing data collection for the American Community Survey (ACS). This guidance is consistent with the guidance provided earlier for the 2010 Census. Unlike the decennial census, the ACS is an on-going monthly survey of a sample of housing units and GQs.

The Bureau has indicated Field Representatives (FRs) will visit a sample of GQs on college and university campuses each month to participate in the ACS. Group housing facilities sampled on college and university campuses include college residence halls, dormitories and fraternity/sorority housing recognized by the college or university. Prior to each visit, a letter will be mailed to sampled colleges and universities to let them know that a residence hall or dormitory has been selected to participate in the ACS and that a FR will contact them soon to discuss the survey and schedule an appointment to visit the facility. During the personal visit, FRs will ask a contact person (such as the Registrar or Resident Assistant) a series of GQ level questions such as the verification of the GQ type (i.e. college residence hall), location, and the number of residents currently residing in the facility. The number of residents currently residing in the residence hall or dormitory will help the FR draw a sample of residents to interview using the resident level questionnaire. Based on the number of residents currently residing in the facility, between 10 and 15 residents may be selected to answer the resident level questionnaire.

Bureau FRs will ask for "directory information" on the sampled residents living in the group housing. Specifically, the Bureau will request the following "directory information" items on these students: *names* and *campus addresses*. After receiving "directory information," FRs will also conduct interviews with sampled residents to complete the survey questions. FRs are instructed to conduct a face-to-face interview with sampled residents, but have other options available, such as self-response (FR leaves the form with the sampled resident or the contact person), or a telephone interview (sampled resident requests to be contacted later for a telephone interview). The resident level interviews take about 25 minutes to complete. If the FR is unable to conduct a personal interview with sampled residents, FRs will provide the college/university contact person with envelopes addressed to each sampled resident containing an ACS GQ questionnaire to be completed by the sampled resident. FRs will return later to retrieve the completed census forms from the contact person.

For those students who do not complete and return the form to the contact person, FRs may ask the contact person to provide the information on the student that is being sought by the ACS. As explained more fully below, FERPA permits a school to disclose properly designated “directory information” on students, without consent, provided that the student has not opted out of directory information disclosures.

FERPA is a Federal law that protects a student’s privacy interest in his or her “education records.” FERPA provides that educational institutions, such as postsecondary institutions, may disclose education records, or personally identifiable information from such records, only if an eligible student has provided prior written consent, except in several specified circumstances. 20 U.S.C. § 1232g(b)(1) and (d). *See also* 34 CFR § 99.30. An “eligible student” is one who is at least 18 years of age or attends a postsecondary institution. *See* 34 CFR § 99.3. The term “education records” is broadly defined as those records that are:

- (a) Directly related to a student; and
- (b) Maintained by an educational agency or institution or by a party acting for the agency or institution.

34 CFR § 99.3 “Education records.” Section 99.3 of the FERPA regulations also defines “personally identifiable information” as information that includes, but is not limited to:

- (a) The student's name;
- (b) The name of the student's parent or other family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

As noted above, FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from education records, except in certain circumstances. 20 U.S.C. § 1232g(b); 34 CFR § 99.31. Accordingly, if one or more of the exceptions are met, an educational agency or institution may disclose education records, or personally identifiable information from education records, without prior written consent. One exception to the general prior consent rule is the nonconsensual disclosure of information derived from education records that has been appropriately designated as “directory information” by the educational agency or institution. 20 U.S.C. § 1232g(b)(1); 34 CFR § 99.31(a)(11).

FERPA defines “directory information” as information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. 34 CFR § 99.3 “Directory information.” Directory information includes, but is not limited to, a student’s name, address, telephone number, date and place of birth, participation in officially recognized activities and sports, and dates of attendance. FERPA provides that a school may disclose directory information if it has given public notice of the types of information which it has designated as “directory information,” the student’s right to restrict the disclosure of such information, and the period of time within which a student has to notify the school in writing that he or she does not want any or all of those types of information designated as “directory information.” 20 U.S.C. § 1232g(a)(5)(B); 34 CFR § 99.37(a).

Accordingly, postsecondary institutions may disclose, without prior written consent, properly designated “directory information” on those students who have not opted out of “directory information” disclosures to representatives of the Bureau. That is, an RA or other school official may provide ACS FRs with the names and campus addresses of students (who have not opted out), assuming that the institution has a “directory information” policy and has designated names and addresses as “directory information” items. If the student does not complete the ACS questionnaire and the FR requests that a school official, including an RA, fill out the ACS questionnaire in the student’s absence, the school official may only disclose, without prior written consent, properly designated “directory information” to the FR.

The ACS GQ questionnaire also asks for information about the student’s sex, ethnicity and race. However, school officials may not disclose this information, without prior written consent, to ACS FRs because these items of information may not be designated as “directory information.” This Office, through letters, guidance, and compliance training, since at least 1991, has consistently advised that the disclosure of a student’s sex, ethnicity or race as directory information would not comply with the regulatory definition, which provides that directory information is information that would not generally be considered harmful or an invasion of privacy if disclosed.

In addition, school officials have advised this Office that some local representatives of the Bureau have specifically requested the students’ Social Security numbers (SSNs). Institutions should be aware that, as previously explained, they may only disclose properly designated “directory information” to the Bureau. As this Office has advised previously and as stated in a recent amendment to the FERPA regulations, SSNs may not be designated as “directory information” and disclosed without consent. *See* 34 CFR § 99.3 “Directory information” (b)(1). The recent amendment to the FERPA regulations also prohibits a school from using a student’s SSN to disclose or confirm “directory information,” unless the eligible student has provided written consent. The new provision in 34 CFR § 99.37(d) states the following:

An educational agency or institution may not disclose or confirm directory information without meeting the written consent requirements in § 99.30 if a student’s social security number or other non-directory information is used alone or combined with other data elements to identify or help identify the student or the student’s records.

Accordingly, postsecondary institutions may – to the extent allowed by FERPA – provide information to and cooperate with ACS FRs. That is, a postsecondary institution subject to FERPA may disclose properly designated directory information to ACS FRs on those students who have not opted out of “directory information.” However, if an institution does not have a “directory information” policy under FERPA, it may not disclose any of the requested contact information without prior written consent. If an institution has a “directory information” policy but does not include all of the items being requested by ACS FRs as “directory information,” then it may only disclose, without prior written consent, those items it has so designated to ACS FRs. Moreover, the institution may not utilize SSNs provided by the requester to locate the “directory information” on the students.

I trust that the above will be helpful to you as you work with the Bureau in participating in the American Community Survey. If school officials need further guidance on FERPA, please do not hesitate to contact the Family Policy Compliance Office at (202) 260-3887 or email us at FERPA@ED.Gov. Should you have questions about the American Community Survey in general or concerns about an FR asking for information outside the scope of what the Bureau has indicated it needs, you may contact the following Bureau official: Judy G. Belton, Chief, Group Quarters Branch, American Community Survey Office. Phone number: 301-763-6024. Email address: judy.g.belton@census.gov.

Sincerely,

/s/

Paul Gammill
Director
Family Policy Compliance Office