

# Recordkeeping and Disclosure

*Schools must maintain detailed records to show that FSA funds are disbursed according to statutory and regulatory requirements. These records must be made available to program reviewers from the Department and other authorized individuals or organizations in the course of audits, program reviews, or investigations. Schools are also responsible for safeguarding the privacy of personal information in these records.*

The General Provisions regulations require schools to maintain records related to their participation in the FSA programs. These records must be made available by schools to representatives of the Department and other specified individuals or organizations in the course of audits, program reviews, investigations, or other authorized reviews.

In addition to the general institutional recordkeeping requirements discussed here, a school must also comply with all program-specific recordkeeping requirements contained in the individual FSA program regulations.

This chapter also describes the rules governing disclosure, including a discussion of the Family Educational Rights and Privacy Act (FERPA). FERPA restricts the disclosure of student records to other parties and requires the school to give a student the opportunity to review his or her records.

## REQUIRED RECORDS

A school must keep comprehensive, accurate program and fiscal records related to its use of FSA program funds. The importance of maintaining complete, accurate records cannot be overemphasized. Program and fiscal records must demonstrate the school is capable of meeting the administrative and fiscal requirements for participating in the FSA programs. In addition, records must demonstrate proper administration of FSA program funds and must show a clear audit trail for FSA program expenditures. For example, records for each FSA recipient must clearly show that the student was eligible for the funds received, and that the funds were disbursed in accordance with program regulations.

### CHAPTER 9 HIGHLIGHTS

- Required records
  - program records
  - fiscal records
  - loan program records
- Record maintenance
  - record retention periods
  - acceptable formats
  - special requirements for SARs and ISIRs
- Access to records & personnel
  - location & timely access
  - reasonable access to personnel
  - FSA recipient information
- Privacy of student & parent information (FERPA rules)
- Related information
  - Ability to Benefit, Volume 1 Chapter ?

### FSA Assessment module

To assess your compliance with the provisions of this chapter see Activity 2 under "Fiscal Management" at [ifap.ed.gov/qahome/qaassessments/fiscalmanagement.html](http://ifap.ed.gov/qahome/qaassessments/fiscalmanagement.html)

### Recordkeeping cite

34 CFR 668.24

### ***Program records***

A school must establish and maintain on a current basis any application the school submitted for FSA program funds. A school must also maintain on a current basis program records that document:

- the school’s eligibility to participate in the FSA programs,
- the FSA eligibility of the school’s programs of education,
- the school’s administration of the FSA programs,
- the school’s financial responsibility,
- information included in any application for FSA program funds, and
- the school’s disbursement of FSA program funds.

## **Program records a school must maintain**

*The program records that a school must maintain include, but are not limited to:*

- ✓ Program Participation Agreement
- ✓ Application portion of the FISAP
- ✓ Accrediting and licensing agency reviews, approvals, and reports
- ✓ State agency reports
- ✓ Audit and program review reports
- ✓ Self-evaluation reports
- ✓ Other records, as specified in regulation, that pertain to factors of financial responsibility and standards of administrative capability

### ***Fiscal records***

A school must keep fiscal records to demonstrate its proper use of FSA funds. A school’s fiscal records must provide a clear audit trail that shows that funds were received, managed, disbursed, and returned in accordance with federal requirements. Schools are required to account for the receipt and expenditure of all FSA program funds in accordance with generally accepted accounting principles.

A school must establish and maintain on a current basis:

- financial records that reflect each FSA program transaction, and
- general ledger control accounts and related subsidiary accounts that identify each FSA program transaction and separate those transactions from all other school financial activity.

## Fiscal records a school must maintain

*The fiscal records that a school must maintain include, but are not limited to:*

- ✓ Records of all FSA program transactions
- ✓ Bank statements for all accounts containing FSA funds
- ✓ Records of student accounts, including each student's institutional charges, cash payments, FSA payments, cash disbursements, refunds, returns, and overpayments required for each enrollment period
- ✓ General ledger (control accounts) and related subsidiary ledgers that identify each FSA program transaction (FSA transactions must be separate from school's other financial transactions)
- ✓ Federal Work-Study payroll records
- ✓ FISOP portion of the FISAP
- ✓ Records that support data appearing on required reports, such as:
  - Pell Grant Statements of Accounts
  - GAPS cash requests and quarterly or monthly reports
  - FSA program reconciliation reports
  - Audit reports and school responses
  - State grant and scholarship award rosters and reports
  - Accrediting and licensing agency reports
  - Records used to prepare the Income Grid on the FISAP

### ***Loan program records***

There are special record keeping requirements in the Direct and FFEL loan programs. A school must maintain

- A copy of paper or electronic loan certification or origination record, including the amount of the loan and the period of enrollment.
- The cost of attendance, estimated financial assistance, and estimated family contribution used to calculate the loan amount (and any other information that may be required to determine the borrower's eligibility, such as the student's Federal Pell Grant eligibility or ineligibility).
- The date(s) the school disbursed the loan funds to the student (or to the parent borrower), and the amount(s) disbursed. (For loans delivered to the school by check, the date the school endorsed each loan check, if required.)

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### **Loan program record cite**

34 CFR 668.24, 34 CFR 682.610, and  
34 CFR 685.309(c)

- Documentation of the confirmation process for each academic year in which the school uses the multi-year feature of the Master Promissory Note. This may be part of the borrower's file, but acceptable documentation can also include a statement of the confirmation process that was printed in a student handbook or other financial aid publication for that school year. The documentation may be kept in paper or electronic form. There is no retention limit for this documentation; you must keep it indefinitely because it may affect the enforceability of loans.

A school must keep records relating to a student or parent borrower's eligibility and participation in the Direct Loan or FFEL program for three years after the end of the award year in which the student last attended the school. A school must keep all other records relating to the school's participation in the Direct Loan or FFEL program for at least three years after the end of the award year in which the records are submitted.

***Records of the school's administration of the FSA programs***

A school must maintain the records that pertain to its administration of FSA program funds (listed on the chart on the following page).

In addition, participants in the:

- Perkins Loan Program must follow procedures in Section 674.19 for documenting the repayment history for each borrower for that program (see Volume 6 – Campus-Based Programs); and
- FWS Program must follow procedures established in Section 675.19 for documentation of work, earnings, and payroll transactions for the program (see Volume 6 – Campus-Based Programs).

## Records of the school's administration of the FSA programs

*A school must maintain records for each FSA recipient that include, but are not limited to:*

- ✓ The Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine a student's eligibility for FSA program funds
- ✓ Application data submitted to the Department, lender, or guaranty agency by the school on behalf of the student or parent
- ✓ Documentation of each student's or parent borrower's eligibility for FSA program funds (e.g., records that demonstrate that the student has a high school diploma, GED, or the ability to benefit)
- ✓ Documentation of all professional judgment decisions
- ✓ Financial aid history information for transfer students
- ✓ Cost of attendance information
- ✓ Documentation of a student's satisfactory academic progress (SAP)
- ✓ Documentation of student's program of study and the courses in which the student was enrolled
- ✓ Data used to establish student's admission, enrollment status, and period of enrollment
- ✓ Required student certification statements and supporting documentation
- ✓ Documents used to verify applicant data, and resolve conflicting information
- ✓ Documentation relating to each student's or parent borrower's receipt of FSA program funds, including but not limited to:
  - The amount of the grant, loan, or FWS award; its payment period; its loan period, if appropriate; and the calculations used to determine the amount of grant, loan, or FWS award;
  - The date and amount of each disbursement of grant or loan funds, and the date and amount of each payment of FWS wages;
  - The amount, date, and basis of the school's calculation of any refunds/returns or overpayments due to or on behalf of the student; and
  - The payment of any refund/return or overpayment to the FSA program fund, a lender, or the Department, as appropriate.
- ✓ Documentation of and information collected at any initial or exit loan counseling required by applicable program regulations

*In addition, a school must maintain records that include, but are not limited to:*

- ✓ Reports and forms used by the school in its participation in an FSA program, and any records needed to verify data that appear in those reports and forms
- ✓ Documentation supporting the school's calculation of its completion or graduation rates, and transfer-out rates (see chapter 6).

**Records cite**

34 CFR 668.24

34 CFR 668.27

**Retaining FISAP records**

**Schools must keep the Fiscal Operations Report (FISAP) and any records necessary to support their data (e.g., the source data for the income grid) for three years from the end of the award year in which the FISAP is submitted.**

The most current FISAP, which will contain 2004-2005 data, must be submitted during the 2005-2006 award year, will request 2006-2007 funds, and has a submission date of October 2005. Because this FISAP will be submitted during the 2005-2006 award year, records must be kept until at least June 30, 2009, three years from the last day of the 2005-2006 award year.

**Retaining records for a branch that closes**

If an additional location or branch of a school closes and borrowers who attended the school obtain loan discharges by reason of the closure of the location or branch (or improper ATB or loan certifications), the Department will pursue recovery against the larger institution.

If a school has an additional location or branch that closes, the school might want to maintain its loan records beyond the end of the three-year record retention requirement in order to respond to the Department or to refute borrower claims of eligibility for discharge.

**RECORD RETENTION PERIODS**

Schools must retain all required records for a minimum of three years from the end of the award year. However, the starting point for the three-year period is not the same for all records. For example, some Campus-Based program records must be kept for three years from the end of the award year in which the funds were awarded and disbursed.

Different retention periods are necessary to ensure enforcement and repayment of FSA loans. Perkins Loan repayment records, including cancellation and deferment records, must be kept for three years from the date that the loan was assigned to the Department, cancelled, or repaid. Perkins original promissory notes and original repayment schedules must be kept until the loan is satisfied or needed to enforce the obligation (for more information, see Volume 6 – Campus-Based Programs). Records relating to a borrower’s eligibility and participation in the FFEL and Direct Loan programs must be kept for three years from the last day of the award year in which the student last attended the school.

There are also additional record retention requirements that apply to schools granted waivers of the audit submission requirements.

The chart on the next page illustrates the required minimum retention periods for records under the various FSA programs.

A school may retain records longer than the minimum period required. Moreover, a school may be required to retain records involved in any loan, claim, or expenditure questioned in any FSA program review, audit, investigation, or other review, for more than three years (see chapter 12 for information on program reviews and audits). If the three-year retention period expires before the issue in question is resolved, the school must continue to retain all records until resolution is reached.

**RECORD MAINTENANCE***Acceptable formats*

A school must maintain all required records in a systematically organized manner. Unless a specific format is required, a school may keep required records in:

- hard copy
- microform
- computer file
- optical disk
- CD-ROM
- other media formats

Record retention requirements for the Institutional Student Information Record (ISIR) are discussed later in this chapter. All other record information, regardless of the format used, must be retrievable in a coherent hard copy format (for example, an easily understandable printout of a computer file) or in a media format acceptable to the Department. The requirement providing for other media formats

## Minimum Record Retention Periods

### FSA Program

|   | End of the award year in which the report was submitted | End of the award year for which the aid was awarded | End of the award year in which the student last attended | The loan is satisfied or the documents are needed to enforce the obligation | The date on which a loan is assigned to the Department, cancelled, or repaid |
|---|---|---|--|---|--|
| <b>Campus-based, Pell, ACG/SMART</b>  |   | 3 YEARS   |  |   |  |
| <i>Except:</i>  |   |   |  |   |  |
| • Fiscal Operations Report (FISAP) and supporting records   | 3 YEARS   |   |  |   |  |
| • Perkins repayment records (after 12/87, includes original repayment schedule, though manner of retention remains same as promissory note) |   |   |  |   | 3 YEARS  |
| • Perkins original promissory notes (before 12/87, included original repayment schedule)  |   |   |  | UNTIL   |  |
| <b>FFEL and Direct Loans</b>  |   |   |  |   |  |
| • Records related to borrower's eligibility and participation   |   |   | 3 YEARS  |   |  |
| • All other records, including any other reports or forms   | 3 YEARS   |   |  |   |  |

acceptable to the Department allows for the use of new technology as it is developed. The Department will notify schools of acceptable media formats; schools should not apply for approval of a media format.

Any document that contains a signature, seal, certification, or any other image or mark required to validate the authenticity of its information must be maintained in its original hard copy or in an imaged media format. This includes tax returns, verification statements, and Student Aid Reports (SARs) used to determine eligibility, and any other document when a signature seal, etc., contained on it is necessary for the document to be used for the purposes for which it is being retained.

A school may maintain a record in an imaged media format only if the format is capable of reproducing an accurate, legible, and complete copy of the original document. When printed, the copy must be approximately the same size as the original document.

Please note that promissory notes that are signed electronically, must be stored electronically and the promissory note must be retrievable in a coherent format.

### Closed-school records

If a school closes, stops providing educational programs, is terminated or suspended from the FSA programs, or undergoes a change in ownership that results in a change of control, it must provide for the retention of required records. It must also provide for access to those records for inspection and copying by the Department. For a school that participates in the FFEL Program, the school must also provide access for the appropriate guaranty agency.

### **Safeguarding electronic records**

As schools begin developing plans for using electronic recordkeeping in administering other FSA programs, they should keep in mind the safeguards required for electronic certification in the FWS program. Those safeguards include:

- password protection,
- password changes at set intervals,
- access revocation for unsuccessful log-ins,
- user identification and entry point tracking,
- random audit surveys with supervisors, and
- security tests of the code access.

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### **Requirements for electronic promissory notes**

34 CFR 668.24(d)(3)(i) through (iv).

### ***Special requirements for SARs and ISIRs***

Special maintenance and availability requirements apply for SARs and ISIRs used to determine eligibility. It is essential that these basic eligibility records be available in a consistent, comprehensive, and verifiable format for program review and audit purposes.

Because the SAR is a hard copy document, it must be maintained and available in its original hard copy format or in an imaged media format. The ISIR, an electronic record, must be maintained and available in its original format (*e.g.*, as it was archived using EDExpress software supplied to the school). A school that uses EDExpress has the ability to preserve the ISIR data that it has maintained during the applicable award year by archiving the data to a disk or other computer format.

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## **EXAMINATION OF RECORDS**

### ***Location***

A school must make its records available to the Department at a location of the institution designated by the Department. These records must be readily available for review, including any records of transactions between a school and the financial institution where the school deposits any FSA funds.

A school is not required to maintain records in any specific location. For example, it may be more appropriate for a school to maintain some records in the financial aid office while maintaining others in the business office, the admissions office, or the office of the registrar. The responsible administrator in the office maintaining the records should be aware of all applicable record retention requirements.

### ***Cooperation with agency representatives***

A school that participates in any FSA program, and the school's third-party servicers, if any, must cooperate with the agencies and individuals involved in conducting any audit, program review, investigation, or other review authorized by law. This cooperation must be extended to the following individuals and their authorized representatives: an independent auditor, the Secretary of the Department of Education, the Department's Inspector General, and the Comptroller General of the United States. A school must also provide this cooperation to any guaranty agency in whose program the school participates, and to the school's accrediting agency.

### ***Timely access***

A school must cooperate by providing timely access to requested records, pertinent books, documents, papers, or computer programs for examination and copying by any of the agents listed above. The records to which timely access must be provided include, but are not limited to, computerized records and records reflecting transactions with any financial institution with which the school or servicer deposits or has deposited any FSA program funds.



***FSA recipient information***

If requested by the Department, a school or servicer must provide promptly any information the school or servicer has regarding the last known address, full name, telephone number, enrollment information, employer, and employer address of a recipient of FSA program funds who attends or attended the school. A school must also provide this information, upon request, to a lender or guaranty agency in the case of a borrower under the FFEL Program.

***Reasonable access to personnel***

A school must also provide reasonable access to all personnel associated with the school's or servicer's administration of the FSA programs so that any of the agents listed above may obtain relevant information.

A school or servicer has not provided reasonable access to personnel if the school or servicer

- refuses to allow those personnel to supply all relevant information,
- permits interviews with those personnel only if the school's or servicer's management is present, or
- permits interviews with those personnel only if the interviews are tape-recorded by the school or servicer.

## Resources for developing a FERPA policy

Anyone involved in developing a school's policy or anyone who would like a copy of the Department's model notification for postsecondary schools, may review and download the notification from the Family Policy Compliance Office Web site at [www.ed.gov/policy/gen/guid/fpc/index/html](http://www.ed.gov/policy/gen/guid/fpc/index/html)

### "Sole Possession" Records

The term education record does not include records that are kept in the sole possession of the maker of the record (often called sole possession records). Sole possession records are

- used as a memory or reference tool,
- not accessible or revealed to any other person except a temporary substitute for the maker of the record, and
- typically maintained by the school official unbeknownst to other individuals.

Records that contain information taken directly from a student or that are used to make decisions about the student are not sole possession records.

## PRIVACY OF STUDENT INFORMATION (FERPA RULES)

The Family Educational Rights and Privacy Act (FERPA) sets limits on the disclosure of personally identifiable information from school records, and defines the rights of the student to review the records and request a change to the records.

With exceptions such as those noted in this section, FERPA generally gives postsecondary students the right—

- to review their education records
- to seek to amend inaccurate information in their records
- to provide consent for the disclosure of their records

These rules apply to all education records the school keeps, including admissions records (only if the student was admitted) and academic records as well as any financial aid records pertaining to the student. Therefore, the financial aid office is not usually the office that develops the school's FERPA policy or the notification to students and parents, although it may have some input.

### *Student's & parents' rights to review educational records*

A school must provide a student with an opportunity to review his or her education records within 45 days of the receipt of a request. A school is required to provide the student with copies of education records, or make other arrangements to provide the student access to the records, if a failure to do so would effectively prevent the student from obtaining access to the records. While the school may not charge a fee for retrieving the records, it may charge a reasonable fee for providing copies of the records, provided that the fee would not prevent access to the records.

## FERPA responsibilities & student rights

A school is required to —

- ✓ annually notify students of their rights under FERPA;
- ✓ include in that notification the procedure for exercising their rights to inspect and review education records; and
- ✓ maintain a record in a student's file listing to whom personally identifiable information was disclosed and the legitimate interests the parties had in obtaining the information (does not apply to school officials with a legitimate educational interest or to directory information).

A student has the right to —

- ✓ inspect and review any education records pertaining to the student;
- ✓ request an amendment to his/her records; and
- ✓ request a hearing (if the request for an amendment is denied) to challenge the contents of the education records, on the grounds that the records are inaccurate, misleading, or violate the rights of the student.

While the rights under FERPA have transferred from a student's parents to the student when the student attends a postsecondary institution, FERPA does permit a school to disclose a student's education records to his or her parents if the student is a dependent student under IRS laws.

Note that the IRS definition of a dependent is quite different from that of a dependent student for FSA purposes. For IRS purposes, students are dependent if they are listed as dependents on their parent's income tax returns. (If the student is a dependent as defined by the IRS, disclosure may be made to either parent, regardless of which parent claims the student as a dependent.)

#### *Prior written consent to disclose the student's records*

Except under one of the special conditions described in this section, a student must provide written consent before an education agency or school may disclose personally identifiable information from the student's education records.

The written consent must—

- state the purpose of the disclosure,
- specify the records that may be disclosed,
- identify the party or class of parties to whom the disclosure may be made, and
- be signed and dated.

If the consent is given electronically, the consent form must—

- identify and authenticate a particular person as the source of the electronic consent, and
- indicate that person's approval of the information contained in the electronic consent.

The FERPA regulations include a list of exceptions where the school may disclose personally identifiable information from the student's file without prior written consent. Several of these allowable disclosures are of particular interest to the financial aid office, since they are likely to involve the release of financial aid records.

#### ***Disclosures to school officials***

Some of these disclosures may be made to officials at your school or another school who have a legitimate interest in the student's records. Typically, these might be admissions records, grades, or financial aid records. Disclosure may be made to:

- other school officials, including teachers, within the school whom the school has determined to have legitimate educational interests.
- to officials of another postsecondary school or school system, where the student receives services or seeks to enroll.

#### **Subpoena cites**

20 U.S.C. 1232g(b)(1)(J)(i) and (ii), (b)(2)(B);  
20 U.S.C. 1232g(b)(4)  
34 CFR. 99.31(a)(9)  
34 CFR 99.32

#### **Ex-parte orders & terrorism**

"Terrorism" and "drimes of terrorism" are defined in  
18 U.S. Code 2331 and 2332b(g)(5)(B)

#### **Patriot Act Changes**

A Dear Colleague Letter on changes made to FERPA by the 2001 Patriot Act is posted in PDF format at  
[www.ed.gov/policy/gen/guid/fpco/pdf/htterrorism.pdf](http://www.ed.gov/policy/gen/guid/fpco/pdf/htterrorism.pdf)

Issued April 12, 2002 by ED's Family Policy Compliance Office

Web site: [www.ed.gov/offices/OM/fpco](http://www.ed.gov/offices/OM/fpco)  
E-mail: FERPA@ED.Gov

#### **Third-party housing records**

Whether the rent is paid to the third party by the school on behalf of the student or directly by the student, a student housing facility owned by a third party that has a contract with a school to provide housing for the school's students is considered "under the control" of the school. Therefore, records (maintained by either the third-party or the school) related to the students living in that housing are subject to FERPA.

### **FERPA sources**

The relevant law is the Family Educational Rights and Privacy Act of 1974. Do not confuse FERPA with the Privacy Act of 1974 that governs the records kept by government agencies, including the application records in the federal processing system.

The Department's Family Policy Compliance Office maintains an on-line library of FERPA guidance at:  
[www.ed.gov/policy/gen/guid/fpco/ferpa/library/index.html](http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/index.html)

FERPA also affects the disclosure of records that are created and maintained by campus law enforcement units (for law enforcement purposes). This topic is discussed in the Handbook for Campus Crime Reporting, available as a downloadable PDF file from EDPUBS <[www.edpubs.org](http://www.edpubs.org)>.

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### **FERPA citations**

34 CFR 99.10-12 Right of parent/student to review records  
34 CFR 99.20-22 Right of parent/student to request amendment to records or hearing  
34 CFR 99.30 When prior consent required to disclose information  
34 CFR 99.31 When prior consent not required to disclose information  
34 CFR 99.32 Recordkeeping requirement  
34 CFR 99.33 Limitations on redisclosure  
34 CFR 99.34 Disclosure to other agencies/institutions  
34 CFR 99.35 Disclosure for federal/state program purposes

If your school routinely discloses information to other schools where the student seeks to enroll, it should include this information in its annual privacy notification to students. If this information is not in the annual notice, the school must make a reasonable attempt to notify the student at the student's last known address

### ***Disclosures to government agencies***

Disclosures may be made to authorized representatives of the U.S. Department of Education for audit, evaluation, and enforcement purposes. "Authorized representatives" includes employees of the Department—such as employees of the Office of Federal Student Aid, the Office of Postsecondary Education, the Office for Civil Rights, and the National Center for Education Statistics—as well as firms that are under contract to the Department to perform certain administrative functions or studies. In addition—

- Disclosure may be made if it is in connection with financial aid that the student has received or applied for. Such a disclosure may only be made if the student information is needed to determine the amount of the aid, the conditions for the aid, the student's eligibility for the aid, or to enforce the terms or conditions of the aid.
- A school may release personally identifiable information on an F, J, or M nonimmigrant student to U.S. Immigration and Customs Enforcement (formerly the Immigration and Naturalization Service) in compliance with the Student Exchange Visitor Information System (SEVIS) program without violating FERPA.

### ***Disclosures in response to subpoenas or court orders***

FERPA permits schools to disclose education records, without the student's consent, in order to comply with a lawfully issued subpoena or court order.

In most cases, the school must make a reasonable effort to notify the student who is the subject of the subpoena or court order before complying, so that the student may seek protective action. However, the school does not have to notify the student if the court or issuing agency has prohibited such disclosure.

A school may also disclose information from education records, without the consent or knowledge of the student, to representatives of the U.S. Department of Justice in response to an ex parte order issued in connection with the investigation of crimes of terrorism.

### **Documenting the disclosure of information**

Except as noted below, school must keep a record of each request for access and each disclosure of personally identifiable student information. The record must identify the parties who requested the information and their legitimate interest in the information. This record must be maintained in the student's file as long as the educational records themselves are kept.

For instance, if student records are requested by Department reviewers in the course of a program review, the school must document in each student's file that the student's records were disclosed to representatives of the Department. The easiest way for the school to do this is to photocopy a statement to this effect and include it in each student's file. A statement such as the following would be appropriate for a review of the FSA programs conducted by a Department regional office.

These financial aid records were disclosed to representatives of the U.S. Department of Education, Region \_\_, on (Month/Day/Year) to determine compliance with financial aid requirements, under 34 CFR Part 99.31(a)(4).

When redisclosure is anticipated, the additional parties to whom the information will be disclosed must be included in the record of the original disclosure. For instance, to continue the example for an FSA program review, the following statement might be added:

The School Eligibility Channel may make further disclosures of this information to the Department's Office of Inspector General, and to the U.S. Department of Justice, under 34 CFR 99.33(b). Schools should check with the program review staff to find out if any redisclosure is anticipated.

There are some exceptions to this requirement. A school does not have to record instances where the request is made by:

- The parent or eligible student.
- A school official who has a legitimate educational interest.
- A party with written consent from the parent or eligible student.
- A party seeking directory information.
- Certain court orders or subpoenas.

### **Privacy of health records (HIPAA) and FERPA**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) sets standards for the confidentiality of health records applies to health care providers, private benefit health plans, and health care clearinghouses. It does not apply to other types of organizations whose receipt or maintenance of health records is incidental to their normal course of business.

Your schools' Disability Services office normally obtains and maintains health records for each student who applies for services or waivers. So, the receipt and maintenance of health records by students services' units is well established.

Note: In most cases, a student receiving a waiver from a school's academic progress policy would also have applied for services from your school's Disability Services office. Since most financial aid offices are not used to handling medical records, you may find it more practical to have the Disability Services office maintain the record, and reference that record in your file in the financial aid office. (Of course, you will have to ensure that the record maintenance requirements are complied with.)

For more information on HIPAA, see the U.S. Department of Health & Human Services: [www.hhs.gov/ocr/hipaa/](http://www.hhs.gov/ocr/hipaa/) HIPAA regulations are published as: 45 CFR Parts 160, 162, and 164

### **FERPA & crime records**

There are two different FERPA provisions concerning the release of records relating to a crime of violence. One concerns the release to the victim of any outcome involving an alleged crime of violence (34 CFR 99.31(a)(13)). A separate provision permits a school to disclose to anyone the final results of any disciplinary hearing against an alleged perpetrator of a crime of violence where that student was found in violation of the school's rules or policies with respect to such crime or offense (34 CFR 99.31(a)(14)).

## Information security requirements

- Federal Trade Commission regulations: 16 CFR 313.3(n) and 16 CFR 314.1-5
- Financial Services Modernization Act of 1999 (also known as the Gramm-Leach-Bliley Act or GLB Act)  
Pub. L. No. 106-102  
Sections 501 and 505(b)(2)
- US Code: 15 U.S.C. 6801(b), 6805(b)(2).

## Effective dates

Your school was required to implement an information security program that meets these requirements no later than May 23, 2003.

The FTC regulations include a “grandfathering” provision for contracts made with nonaffiliated third parties to perform services for your school or functions on your school’s behalf; this provision expired on May 24, 2004.

## Reporting security breaches to students and ED

Schools are strongly encouraged to inform their students and the Department of any breaches of security of student records and information. The Department considers any breach to the security of student records and information as a demonstration of a potential lack of administrative capability.  
(See Chapter 10, Administrative Capability)

## Safeguarding electronic records

As schools begin developing plans for using electronic recordkeeping in administering other FSA programs, they should keep in mind the safeguards required for electronic certification in the FWS program.

Those safeguards include:

- password protection,
- password changes at set intervals,
- access revocation for unsuccessful log-ins,
- user identification and entry point tracking,
- random audit surveys with supervisors, and
- security tests of the code access.

## ESTABLISHING & MAINTAINING AN INFORMATION SECURITY PROGRAM

The Federal Trade Commission has ruled that most colleges are subject to the provisions of the Financial Services Act’s Security Provisions (also known as the Financial Services Modernization Act). In the regulation, the commission created a definition of financial institutions that includes most colleges on the basis of the financial relationships they have with students, donors, and others. Consequently, colleges must draft detailed policies for handling financial data covered by the law, such as parents’ annual income, and must take steps to protect the data from falling into the wrong hands.

Financial institutions, including postsecondary institutions, are required to have adopted an information security program by May 23, 2003, under the FTC rule. For specific requirements, see the box on “FTC Standards for Safeguarding Customer Information” on the following pages.

Thus, while schools have maximum flexibility in choosing a system that provides for electronic requests for release of personally identifiable information, they must ensure that their systems provide adequate safeguards.

## FTC Standards for Safeguarding Customer Information

Postsecondary educational institutions participating in the FSA programs are subject to the information security requirements established by the Federal Trade Commission (FTC) for financial institutions.

### ***Customer information that must be safeguarded***

These requirements apply to all customer information in your school's possession, regardless of whether such information pertains to students, parents, or other individuals with whom your school has a customer relationship, or pertains to the customers of other financial institutions that have provided such information to you.

Customer information means any record containing *nonpublic personal information* (see definition .) about a customer of a financial institution, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of you or your affiliates.

\* Definition of "nonpublic personal information":  
Personally identifiable financial information;  
and any list, description, or other grouping of  
consumers (and publicly available information  
pertaining to them) that is derived using any  
personally identifiable financial information that is  
not publicly available.

### ***Establishing & maintaining an information security program***

As a financial institution covered under these information security requirements, your school must develop, implement, and maintain a comprehensive *information security program*.

\* Definition of "information security program": the  
administrative, technical, or physical safeguards you  
use to access, collect, distribute, process, protect,  
store, use, transmit, dispose of, or otherwise handle  
customer information

The information security program must be written in one or more readily accessible parts and contain administrative, technical, and physical safeguards that are appropriate to the size and complexity of the school, the nature and scope of its activities, and the sensitivity of any customer information at issue.

The safeguards shall be reasonably designed to achieve the following objectives:

- Insure the security and confidentiality of customer information,
- Protect against any anticipated threats or hazards to the security or integrity of such information, and
- Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.

### ***Required elements of an information security program***

*Designated coordinators.* Your school must designate an employee or employees to coordinate its information security program.

*Risk Assessment.* Your school must identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.

At a minimum, the school's risk assessment should include consideration of risks in each relevant area of your operations, including:

- Employee training and management,
- Information systems, including network and software design, as well as information processing, storage, transmission, and disposal, and
- Detecting, preventing, and responding to attacks, intrusions, or other systems failures.

*Safeguards & Testing/Monitoring.* Your school must design and implement information safeguards to control the risks you identify through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.

*Evaluation & Adjustment.* Your school must evaluate and adjust its information security program in light of the results of the required testing and monitoring, as well as for any material changes to your operations or business arrangements or any other circumstances that it has reason to know may have a material impact on your school's information security program.

*Overseeing service providers.* A service provider is any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to your school. Your school must take reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue and require your service providers by contract to implement and maintain such safeguards.

### ***Effective dates***

Your school was required to implement an information security program that meets these requirements no later than May 23, 2003.

The FTC regulations include a "grandfathering" provision for contracts made with nonaffiliated third parties to perform services for your school or functions on your school's behalf; this provision expired on May 24, 2004.

### ***Sources:***

*FTC regulations: 16 CFR 313.3(n) and 16 CFR 314.1-5*

*Gramm-Leach-Bliley Act: Sections 501 and 505(b)(2)*

*US Code: 15 U.S.C. 6801(b), 6805(b)(2).*