

Correcting Certain Provisions Created by 2012 Regulations

In 2012, the Obama Administration, through the Department of Education, implemented regulatory amendments that dramatically expanded FERPA. The amendments greatly broadened the definition of who is given access to personally identifiable information (PII) from student records on a nonconsensual basis. AACRAO strongly believes that some of the 2012 regulatory actions should be rescinded to ensure students' private information will not be inappropriately disclosed to third parties.

The Term "Authorized Representative"

- The 2012 regulations inappropriately expanded the definition of "Authorized Representative" to anyone chosen by the designated official.
- AACRAO believes that the definition "Authorized Representative" should be restored to its previous definition of "individuals and entities under direct control of officials" as designated in the original statute.

The Term "Implied Authority"

- The 2012 regulations also overreached on the definition of "Implied Authority" to audit programs and have created much confusion, and lacks legal precedent.
- AACRAO believes that the Task Force should close this loophole for non-consensual disclosure of education records.

The Term "Education Program"

- The 2012 regulations vastly widened this definition to include programs not administered by educational authorities.
- AACRAO believes that the definition of "Education Programs" should revert back to the original definition of "programs administered by an educational agency or institution."

The Term "Non-Consensual Disclosure for Studies"

- The 2012 regulations expanded the meaning of non-consensual disclosure of personal information from education records to organization conducting "for, or on behalf of" educational agencies or institutions.
- AACRAO strongly urges the restoration of the limitation on the purposes for which the research exception may be invoked, and to statutorily prohibit re-disclosure of personally identifiable information by organizations accessing education records under this exception.