

INITIAL STATEMENT OF REASONS

CALIFORNIA STUDENT AID COMMISSION
P. O. Box 419026
Rancho Cordova, CA 95741

FAFSA and CADAA Completion Requirement Model Acceptable Use Policy and Opt-out Form

Title 5. Education
Division 4. California Student Aid Commission
Chapter 1. California Student Aid Commission
Article 3.1

Adopt new Article 3.1, Section 30035, California Code of Regulations.

I. INTRODUCTION AND BACKGROUND

This document presents the California Student Aid Commission's (Commission) proposed regulations to establish a model "opt-out form" for grade 12 pupils electing not to submit, or determined to be exempt from submitting, a Free Application for Federal Student Aid (FAFSA), or a California Dream Act Application (CADAA)--as applicable. The regulations also seek to establish a model "acceptable use policy" for the safe and secure handling of confidential, parent and pupil personal data by local educational agencies (LEAs) gathered in relation to the FAFSA and CADAA completion requirement pursuant to Education Code Section 51225.7.

Education Code Section 51225.7 was most recently amended by Assembly Bill 469 (AB 469), Chapter 560, Statutes of 2021. One of the stated purposes of AB 469 is: "*to maximize the number of California students who apply for and receive federal and state financial aid without creating an undue burden that prevents some students from graduating, without impacting student or parent immigration status, and with full protection for parent and student data.*"

With respect to this goal, Education Code Section 51225.7(h) provides that:

The Student Aid Commission shall, on or before July 1, 2022, adopt regulations that include, but are not limited to, model opt-out forms and acceptable use policies for the purpose of providing guidance on the requirements relating to state law in paragraph (2) of subdivision (e). The Student Aid Commission shall post and make available any model opt out forms and policies established pursuant to this subdivision on its internet website.

The stated purpose of paragraph (2) of subdivision (e) is to ensure:

Information shared by parents, legal guardians, and pupils under this section is handled in compliance with the federal Family Educational Rights and Privacy Act of 2001 (20 U.S.C. Sec. 1232g) and applicable state laws, including Chapters 493 and 495 of the Statutes of 2017, regardless of any person's immigration status or other personal information, in order to protect all pupil and parent data to the fullest extent possible so that schools and all personal data remain safe.

The proposed regulations contained in this document were developed to satisfy these amended

provisions of the Education Code for the Commission to establish a model opt-out form for the FAFSA or CADAA completion requirement, and to establish a model acceptable use policy for data collected by LEAs in connection with compliance with Education Code Section 51225.7. The proposed regulations developed by staff to achieve these objectives are shown in **Appendix A: Proposed Regulations.**

II. THE PROBLEM THE PROPOSAL INTENDS TO ADDRESS

Education Code Section 51225.7 mandates that the Commission promulgate regulations to further the objectives identified in the statute. However, it limits the Commission's authority with respect to those regulations to provide model forms and policies as guidance. The Commission has no enforcement or oversight authority with respect to the provisions of Section 51225.7 or the model forms and policies it proposes pursuant to these regulations. As a result, unlike most regulatory actions which provide requirements or mandates for a regulated community to adhere to, these proposed regulations serve as guidance and provide model forms and policies. LEAs may choose to use these model forms or to develop their own.

The Commission's proposed regulations would establish a model opt-out form to be completed by grade 12 pupils who elect not to submit a FAFSA or CADAA, or are determined to be exempt from submitting a financial aid application. The model opt-out form is designed to assist LEAs maintaining a documented record of such pupils. The completion and collection of the opt-out form will allow LEAs to identify and maintain a record of which pupils opt-out of, or are exempt from submitting, a FAFSA or CADAA, and will ensure that pupils who elect not to file a FAFSA or CADAA are informed of the purpose of the application they are opting out of.

The proposed regulations would also establish a model acceptable use policy to assist LEAs with the secure handling of confidential pupil, parent, and guardian data collected in related to pupils' completion of the FAFSA or CADAA applications, or from pupil opt-out forms. The Commission established model policy would help ensure LEAs comply with their obligations under state law pursuant to Education Code Section 51227.5(e)(2), including practices to protect confidential personal information in accordance with State laws governing these data handling practices.

III. THE SPECIFIC PURPOSE AND RATIONALE OF EACH ADOPTION, AMENDMENT, OR REPEAL

This chapter provides a summary of the specific purpose of each section of the proposed regulations, along with Commission staff's determination of why each proposed section is reasonably necessary and appropriate to achieve the purpose of each proposed regulatory section.

Subdivision (a): Model Opt-Out Form.

Summary and Purpose of Section 30035 (a)

The model opt-out form is designed to create a documentary record of grade 12 pupils who elect not to file, or are determined to be exempt from submitting, a FAFSA or CADAA in accordance with Education Code Section 51225.7(c) or (d), as applicable. As noted earlier, the

collection of the opt-out form will allow LEAs to identify and maintain a record of which pupils opt-out of, or are exempt from, submitting a FAFSA or CADAA and will ensure that pupils who elect not to file a FAFSA or CADAA are informed of the purpose of the application they are opting out of.

The model opt-out form collects minimal information concerning the pupil and is limited to the pupil's full name, date of birth, and Statewide Student Identifier. The form also requests the pupil's signature, or the signature of the pupil's parent or legal guardian if the pupil is under age 18. The form further contains an option for a school counselor to complete and sign the opt-out form on a pupil's behalf in accordance with Education Code Section 51225.7(d) for pupils who are determined to be exempt from submitting a FAFSA or CADAA. The form collects information only necessary to identify each pupil for which a form is completed for compliance with the requirement that each pupil submit an application or opt-out form and record retention purposes.

The opt-out form also contains information about the FAFSA and CADAA, presented as "frequently asked questions," to provide additional information about financial aid applications to pupils or their guardians who complete the form to ensure that pupils who elect not to file a FAFSA or CADAA are making an informed decision to opt out, and not because the pupil does not know the purpose of, or is unaware of the availability and benefits of, filing a FAFSA or CADAA.

Rationale for Section 30035 (a)

The establishment of a model opt-out form by the Commission through these proposed regulations is necessary to satisfy the statutory requirements of Education Code Section 51225.7(c) and (d). Education Code Section 51225.7(h) directs the Commission to adopt regulations establishing a model opt-out form on or before July 1, 2022. As noted above, the information collected in the opt-out form will allow the LEA to identify which pupils have opted out or are determined to be exempt from the requirement and will provide the pupil, or parent and guardian, information to ensure they are fully aware of the purpose of the application they are opting out of.

Subdivision (b): Model Acceptable Use Policy.

Summary and Purpose of Section 30035 (b)

The model acceptable use policy contained within the proposed regulations is designed to ensure that LEAs, including their staff and contractors, comply with State laws related to the confidentiality and privacy of information shared by parents, legal guardians, and pupils under Section 51225.7, relative to FAFSA and CADAA filings or pupil opt-out forms. This includes protecting the unauthorized disclosure of confidential information that may be shared with LEAs by other government agencies.

The model policy provides that the disclosure of confidential information shall be limited solely to those personnel having the need for and authorization to access the information. The model policy also provides that LEA employees, contractors, consultants, and temporary employees with access to information assets and systems or other confidential information of the LEA, shall acknowledge adherence to the adopted LEA policy and sign an information security and confidentiality agreement to that affect.

The model policy recommends a specific individual(s) be designated by the LEA as responsible for implementing the policy and ensuring compliance with its provisions. It further recommends this designated individual(s) maintain in writing the LEA's policies and procedures, and maintain a list of those staff, contractors, and other individuals who have access to confidential information, and ensure all such individuals are included in annual information security and privacy awareness training.

The model policy contains provisions to ensure the LEA handles any confidential information it collects for purposes of complying with Education Code Section 51225.7 in a manner consistent with the following applicable State laws (including any policies and procedures adopted by the LEA in furtherance of these laws):

- The California Information Practices Act (California Civil Code Sections 1798, et seq.);
- California's Pupil Protections Relating to Immigration and Citizenship Status provision (Education Code Section 234.7);
- California's Values Act (Government Code Sections 7284, et seq.);
- California's Student Online Personal Information Practice Act (Business and Professions Code Sections 22584, et seq.);
- Third Party Contracts for the digital storage, maintenance, and retrieval of student records (Education Code Section 49073.1);
- Pupil Records (Education Code Sections 49060, et seq. and any related regulations); and
- California's Public Records Act (Government Code Section 6250, et seq.)

Each of these provisions was identified and specified in the acceptable use policy because of their requirements related to public records, confidential information and its handling by governmental entities in California, and in some instances, related specifically to pupil records. In addition, California's Pupil Protections Relating to Immigration and Citizenship Status and California's Values Act were specified in the legislation as state laws the acceptable use policy was intended to address.

The model policy is drafted based on the understanding that LEAs already have policies and procedures and have taken other actions to ensure compliance with these statutory provisions and recommends that LEAs incorporate this program and its requirements into those existing policies and procedures. The model policy also includes recommended conditions to be applied to the management of confidential information collected and maintained by LEAs to ensure that a minimum level of confidentiality and protection are established. These generally include:

- Ensuring confidential information is maintained on secure data infrastructure with appropriate levels of security upgrades and not copied to other computers or physically leave the LEA's data infrastructure;

- Ensuring that information transfers to a third party are only made to further obligations under the Education Code, and that such transfers are only made to parties covered by the LEA's acceptable use policy and are made in a secure manner;
- Avoiding the disclosure of any confidential information not authorized by the Family Educational Rights and Privacy Act (FERPA) or other applicable State laws; and
- Refraining from disclosing information to third parties not covered by the acceptable use policy without written consent of the pupil, or a parent or guardian. This condition also outlines acceptable and recommended conditions for written consent requests.

Finally, the model acceptable use policy contained in these proposed regulations is drafted to not only capture the necessary data handling provisions established and recommended by the Commission, but also to provide a policy format, which can be readily adopted or modified by an LEA choosing to make use of the model policy.

Rationale for Section 30035 (b)

The establishment of a model acceptable use policy by the Commission through these proposed regulations is necessary to satisfy the statutory requirements of Education Code Section 51225.7(h) and (e)(2). Failure of an LEA to adequately ensure the confidentiality and privacy of information it receives and maintains (pursuant to the requirements of Education Code Section 51225.7(e)(2)) could result in a violation of one or more State laws and violate parents' and pupils' rights to privacy for their financial and educational records.

The model acceptable use policy is divided into four sections. Generally speaking, these sections are modeled after other acceptable use policies staff reviewed. The necessity for each section is discussed in more detail below.

Introduction and Overview

This section describes the statutory requirements related to the adoption of these forms, the ramifications of those requirements which include the acquisition and maintenance of confidential information related to a pupil and his or her parents or guardians' financial status. It is also possible that some information related to a pupil's immigrant status is created. This section also describes the consequences should an LEA fail to comply with state laws related to the confidentiality of pupil information, immigration status information, and other confidential information LEAs may acquire or maintain to further the objectives of the statutory requirements.

Policy

This section provides a brief statement regarding the policy objective of the model acceptable use policy. Specifically, to ensure that only those people who need access to the information will have access, that all such individuals will be bound by the policy, and that they will acknowledge their knowledge of the policy's requirements.

These two sections – Introduction and Overview, and Policy – are necessary to provide the context in which the acceptable use policy is being proposed and adopted by LEAs that utilize it. Inclusion of these sections would ensure that employees and contractors who are covered by it understand the reasons for the policy and the consequences for failure to comply with the policy.

State Law

This section provides a list of state laws that govern the use, maintenance, and disclosure of confidential information collected or received in relation to compliance with Education Code Section 51225.7. Some provisions are general in nature (for example, the Information Practices Act and the Public Records Act), while others are specific to pupil records (for example, the Pupil Protection Related to Immigration and Citizenship Status and Pupil Records).

This section is drafted based on Commission staff's understanding that most, if not all, LEAs, already have policies and procedures developed to ensure compliance with these provisions. Rather than create a model policy that is redundant to existing policies that comply with each of these laws, Commission staff determined that it is only necessary to include language that LEAs would ensure that their existing policies and procedures related to the list of state laws would also include their compliance efforts with respect to Education Code Section 51225.7.

In addition, to ensure that basic elements of data security were included, Commission staff determined it was necessary to include several provisions related to how confidential information should be handled in secure environments and the circumstances in which confidential information may be disclosed to third parties. As stated, these elements are necessary to ensure minimum levels of data security and confidentiality are maintained by LEAs who choose to adopt this model policy.

Definitions

Each of these definitions is necessary to improve the readability of the proposed regulations and forms and ensure clarity and understanding of those terms. Most specifically, the definition of the term "confidential information" is necessary as it is slightly different than this term may be used in other contexts. In this instance, "confidential information" includes not just information pupils, parents or guardians may provide to an LEA, but also information the California Department of Education and/or the Commission may provide to LEAs to assist them in complying with the statutory requirements. Such a definition is necessary to ensure that LEAs, their employees, and their contractors, recognize that both types of information are covered by this model policy.

The Commission's adoption of this model acceptable use policy would ensure that each LEA and individuals who have access to confidential information for purposes of complying with Education Code Section 51225.7 is aware of these important requirements and advised of appropriate procedures for the secure handling of such information.

The Commission reviewed and identified all State laws applicable to the handling of confidential information, which are relevant to the type of information contained in FAFSA and CADAA filings, to develop the model acceptable use policy. The recommended conditions for LEA management of confidential information contained in the proposed policy were drawn from these applicable State laws.

IV. BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

As previously noted, the model opt-out form contained within the proposed regulations would help LEAs maintain a record of the pupils who opt out of, or are determined from being exempt from, the submission of a FAFSA or CADAA filing, and ensure that pupils not filing a FAFSA or

CADAA are knowingly doing so; and not because they are uninformed or unaware of the availability, benefits, or requirements for filing a FAFSA or CADAA. This will allow LEA's to accurately track compliance with the requirement to verify each pupil's completion of a financial aid application or opt-out form. This may also result in greater or more widespread use of available educational, financial aid programs within California, and facilitate the efforts of LEAs and high school counselors to identify and reach out to pupils electing not to take advantage of these programs.

The proposed model acceptable use policy would help ensure LEAs comply with their obligations pursuant to Education Code Section 51227.5(e)(2), including protecting pupil and parent personal information in accordance with State laws governing such data handling practices. In addition, the model policy has been drafted in a manner that can be readily adopted or modified by LEAs, interested in adopting or implementing local data handling policies that are consistent with the Commission's recommendations.

V. JUSTIFICATION FOR ADOPTION OF REGULATIONS DIFFERENT FROM FEDERAL REGULATIONS CONTAINED IN THE CODE OF FEDERAL REGULATIONS

The regulation would only apply in California and specifically to information reported to and collected by LEAs relative to FAFSA and CADAA filings and opt-out forms, and would neither affect nor conflict with any federal regulations or federal education programs. In accordance with California Education Code Section 51225.7(e)(2), the model acceptable use policy contained within the proposed regulations are consistent with the federal Family Education Rights and Privacy Act of 2021 (20 U.S.C. Sec. 1232g).

VI. PUBLIC PROCESS FOR DEVELOPMENT OF PROPOSED REGULATORY ACTION (Pre-regulatory Information)

These regulations are prepared in response to direction provided by the California Student Aid Commission at its January 21, 2022, meeting.

VII. ECONOMIC IMPACT ASSESSMENT

The proposed regulations are limited to (1) establishing a model opt-out form to assist LEA efforts to track and maintain records of grade 12 pupils electing not to file a FAFSA or CADAA; and (2) establishing an acceptable use policy to assist LEAs with the secure handling of confidential personal data collected or received by LEA's pursuant to obligations in Education Code Section 51225.7. The use or implementation of the Commission's proposed opt-out form and acceptable use policy by LEA's is voluntary, and the form and policy are designed to provide guidance to these agencies. As such, the proposed regulations place no new or substantial requirements on businesses, individuals, or government agencies within California.

The regulations are not expected to create or eliminate any jobs within the State. The regulations are not expected to create new businesses or eliminate existing businesses within the State or cause an expansion to businesses currently doing business within the State. Therefore, the proposed regulations have no potential for adverse economic or fiscal impact.

Furthermore, there is no significant Statewide adverse economic impact directly affecting businesses, including California businesses' ability to compete with businesses in other states or on representative private persons.

The benefits of the regulations, as discussed above, would be to assist LEAs maintain records of grade 12 pupils who elect not to apply for available federal and State financial aid programs; and to provide guidance on the secure handling of personal data in furtherance of the statutory obligations placed on LEAs. Thus, the regulations should help improve the overall administrative efficiency of LEAs and the Commission in administering these financial assistance programs. The regulation is not expected to impact California residents' health and welfare, worker safety, and the state's environment.

VIII. EVALUATION OF REGULATORY ALTERNATIVES

Government Code Section 11346.2(b)(4) requires the Commission to consider and evaluate reasonable alternatives to the proposed regulatory action and provide reasons for rejecting those alternatives. This section discusses alternatives evaluated and provides reasons why these alternatives were not included in the proposed regulation. As explained below, no proposed alternative was found to be less burdensome and equally effective in achieving the regulation's purposes. The Commission has not identified any reasonable alternatives that would lessen any adverse impact on small businesses.

The Executive Officer evaluated two separate alternatives to the proposed regulations. The first alternative *"Incorporation of Attorney General Guidelines"* considered incorporating by reference the data handling guidelines recently adopted by the Attorney General's (AG) Office, in lieu of the model acceptable use policy contained in the proposed regulations. The second option *"LEA Adoption of Regulations"* considered an additional regulatory step to the proposed regulations whereby LEAs would be required to adopt or implement the proposed model opt-out form and model acceptable use policy.

"Incorporation of Attorney General Guidelines"

This alternative included structuring the regulations to "incorporate by reference" all or some of the data handling guidelines applicable to LEAs that were recently adopted by the Attorney General's (AG) office pursuant to AB 694 and SB 54 of 2017. While these adopted AG guidelines address many aspects of personal data handling relative to information collected by LEAs, the AG guidelines focus on the proper sharing of information with law enforcement agencies, rather than specific practices for the safeguarding of personal data. This alternative was rejected, because the direct incorporation of these AG office guidelines would not provide the most suitable guidance for LEAs in handling data collected specifically from FAFSA and CADAA filings, or pupil opt-out forms.

"LEA Adoption of Regulations"

As noted above, this alternative considered the inclusion of an additional regulatory step to the proposed regulations. Requiring LEAs to adopt and implement the proposed opt-out form and model acceptable use policy, as established by the Commission, would help ensure that LEAs follow through and consistently use the proposed opt-out form and implement the model acceptable use policy. This appears to be a logical regulatory action for the proposed regulations and should improve LEA performance. However, this additional regulatory step was rejected because there does not appear to be clear statutory authority within the provisions of Education Code Section 51225.7(h), as amended by AB 469, to further require LEAs to adopt

the provisions of the proposed regulations. As a result, the model opt-out form and model acceptable use policy contained in the proposed regulations are generally designed to provide a form of guidance and technical assistance to assist LEA efforts to comply with these current Education Code provisions.

IX. APPENDICIES

A. Proposed Regulations