104TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPORT 104–94

FAMILY PRIVACY PROTECTION ACT OF 1995

MARCH 29, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CLINGER, from the Committee on Government Reform and Oversight, submitted the following

REPORT

[To accompany H.R. 1271]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform and Oversight, to whom was referred the bill (H.R. 1271) to provide protection for family privacy, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Family Privacy Protection Act of 1995".

SEC. 2. FAMILY PRIVACY PROTECTION.

(a) RESTRICTION ON SEEKING INFORMATION FROM MINORS.—Notwithstanding any other provision of law and subject to section 6, in conducting a program or activity funded in whole or in part by the Federal Government a person may not, without

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the consent of at least one parent or guardian of a minor or, in the case of an emancipated minor, the prior consent of the minor, require or otherwise seek the response of the minor to a survey or questionnaire intended to elicit information concerning any of the following:

(1) Parental political affiliations or beliefs.

(2) Mental or psychological problems.

(3) Sexual behavior or attitudes.

(4) Illegal, antisocial, or self-incriminating behavior.

(5) Appraisals of other individuals with whom the minor has a familial relationship.

(6) Relationships that are legally recognized as privileged, including those with lawyers, physicians, and members of the clergy.

(7) Religious affiliations or beliefs.

(b) GENERAL EXCEPTIONS.—Subsection (a) shall not apply to any of the following:

(1) The seeking of information for the purpose of a criminal investigation or adjudication.

(2) Any inquiry made pursuant to a good faith concern for the health, safety, or welfare of an individual minor.

(3) Administration of the immigration, internal revenue, or customs laws of the United States.

(4) The seeking of any information required by law to determine eligibility for participation in a program or for receiving financial assistance.

(c) EXCLUSION OF ACADEMIC PERFORMANCE TESTS FROM RESTRICTIONS.—Any restriction under any provision of Federal law on the seeking of information from minors through surveys, questionnaires, analyses, or evaluations shall not apply to any test intended to measure academic performance.

SEC. 3. NOTIFICATION PROCEDURES.

The head of any Federal department or agency which provides funds for any program or activity involving the seeking of any response from a minor to any survey or questionnaire shall establish procedures by which the department, agency, or its grantees shall notify minors and their parents of protections provided under this Act. The procedures shall also provide for advance public availability of each questionnaire or survey to which a response from a minor is sought.

SEC. 4. COMPLIANCE.

The head of each Federal department or agency shall establish such procedures as are necessary to ensure compliance with this Act and the privacy of information obtained pursuant to this Act by the department or agency and its grantees. Nothing in this Act shall be construed to foreclose any individual from obtaining judicial relief if requested monetary damages are not in excess of $500.

SEC. 5. MINOR DEFINED.

In this Act, the terms "minor" and "emancipated minor" will be defined under the laws of the State in which the individual resides.

SEC. 6. APPLICATION.

This Act does not apply to any program or activity which is subject to the General Education Provisions Act (20 U.S.C. 1221 et seq.).

SEC. 7. EFFECTIVE DATE.

This Act shall take effect 90 days after the date of the enactment of this Act.

SHORT SUMMARY OF LEGISLATION

H.R. 1271, The Family Privacy Protection Act, establishes a consent requirement for those conducting a survey or questionnaire funded in whole or part by the Federal Government. Those seeking responses of minors on surveys or questionnaires must obtain parental/guardian consent before asking seven types of sensitive questions. The bill also provides five types of common sense exceptions from this requirement.

Areas of concern for which parental consent is required for minors are questions related to: parental political affiliation or beliefs; mental or psychological problems; sexual behavior or attitudes; illegal, antisocial, or self-incriminating behavior; appraisals of other individuals with whom the minor has a familial relationship; rela-

tionships that are legally recognized as privileged, including those with lawyers, physicians, and members of the clergy; and religious affiliations and beliefs.

The areas of exception are: the seeking of information for the purpose of a criminal investigation or adjudication; any inquiry made pursuant to a good faith concern for the health, safety, or welfare of an individual minor; administration of the immigration, internal revenue or customs laws of the United States; the seeking of any information required by law to determine eligibility for participation in a program or for receiving financial assistance; and seeking information to conduct tests intended to measure academic performance.

The legislation requires that Federal agencies provide implementation procedures and ensure full compliance with the legislation. The procedures shall provide for advance availability of each survey or questionnaire for which a response from a minor is sought. The Family Privacy Protection Act does not apply to the Department of Education, because a similar provision is already contained in the General Education Provisions Act pertaining to that department. The Act would become effective 90 days after enactment.

I. BACKGROUND AND NEED FOR THE LEGISLATION

The Contract With America includes a commitment to protect and strengthen the rights of families. As part of this commitment, H.R. 1271, "The Family Privacy Protection Act of 1995," provides for parents/guardians' rights to supervise and choose their children's participation in any Federally funded survey or questionnaire that involves intrusive questioning on sensitive issues. H.R. 1271 is an outgrowth of the original legislation provided for the Title IV of H.R. 11, The Family Reinforcement Act, which is included as part of the Contract With America.

The American family is critical to the very core of our civilization. It is through the family that values such as responsibility, commitment, and faith are learned. Today it appears that the values of families are under siege and being undermined. The Family Privacy Protection Act is intended to help correct this. The Act strikes a delicate balance between the legitimate interest of those engaging in Federally funded research to obtain information, and the interests of parents in protecting family privacy and children.

The legislation responds to the concerns of many parents/guardians that certain Federally funded surveys or questionnaires have inappropriately delved into matters which should be left to families themselves. Also, children should not be subjected to improper questions. In some cases, survey questions have been phrased in a manner that suggests neutrality, or even tacit approval for behavior or attitudes which may be contrary to the values held by parents/guardians. This legislation addresses this unintended result.

A. Constitutional rights of parents

In recognizing the right of parents/guardians to supervise the upbringing of their children, this legislation logically dovetails with Supreme Court precedents. A landmark Supreme Court case in the protection of this right is *Meyer* v. *Nebraska*, 262 U.S. 390 (1923). The State of Nebraska had enacted a statute which prohibited all

school teachers from teaching children in foreign languages. The purpose of the statute was to encourage immigrants to adapt to American life by forcing them to learn, speak, and think in English. Meyer, a parochial school teacher, was convicted for teaching in German to a ten year-old child, and he appealed his conviction to the Supreme Court. The Court struck down the Nebraska statute as violating the Fourteenth Amendment, in that it prohibited parents from employing teachers to teach their children in a manner that the parents thought best.

A few years after *Meyer*, the Supreme Court extended the primacy of parents in the upbringing of the children in *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925). In *Pierce*, the State of Oregon enacted legislation which largely foreclosed private schooling by requiring public school attendance through eighth grade. Citing its ruling in *Meyer*, the Court struck down the Oregon statute as violative of parents' Fourteenth Amendment liberty interest in directing the upbringing of their children.

Only a few years after *Pierce*, the Court, in *Farrington* v. *Tokushige*, 273 U.S. 284 (1927), struck down a statute of the then Territory of Hawaii which severely curtailed the activities of private foreign language schools, most of which had Japanese curricula. In striking down the statute, the Supreme Court stated "[t]he Japanese parent has the right to direct the education of his own child without unreasonable restrictions; the Constitution protects him as well as those who speak another tongue." *Farrington* at 298.

The right of parents to supervise the upbringing of their children was reaffirmed in *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972). In *Yoder* Amish parents had been convicted under Wisconsin's compulsory attendance law which required all children under age 16 to attend some form of public or private school. In the view of Wisconsin authorities, the Amish had not satisfactorily complied with this law because the Amish had alternative preparation for their children. The Amish parents in *Yoder* refused to allow their children to participate in public education after the eighth grade, relying instead on training that prepared them for the distinctive Amish way of life.

The Supreme Court struck down Wisconsin's compulsory attendance law, as it applied to the Amish, holding that Wisconsin's interest in compelling an additional two years of public schooling was outweighed by the parents' First and Fourteenth Amendment interest in maintaining their own system of preparing their children for Amish life. The Court's words in striking down the Wisconsin law as it applied to the Amish are of great significance. The Court noted:

> The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role for parents in the upbringing of their children is now established beyond debate as an enduring American tradition. *Yoder* at 232.

The Family Privacy Protection Act (H.R. 1271) recognizes the right of parents/guardians to a primary role in the upbringing of

their children. The Act allows parents/guardians to shield their children from certain intrusions by public institutions into matters of family privacy. The legislation is firmly grounded in established precedents of the Supreme Court.

B. Legislative history

Legislation protecting the privacy of minors from Federally sponsored questioning traces its origins to the General Education Provisions Act (GEPA) (Public Law 90–247, January 2, 1968, as amended).

The GEPA, originally enacted as Title IV of the Elementary and Secondary Education Amendments of 1967 (P.L. 90–247), brought together in one document statutory provisions enacted during the previous 100 years that applied to Federal education programs. Since 1970, most major acts extending Federal education programs' authorization for appropriations, have amended GEPA in some significant way. Three of those changes have greatly affected the section of GEPA on "Protection of Pupils": (1) the "Kemp amendment" of 1974; (2) the "Hatch amendment" of 1978; and (3) the "Grassley amendment" of 1994.

1. The Kemp amendment (P.L. 93–380, August 21, 1974) required that parents of pupils participating in Federally assisted educational "research or experimentation program[s] or project[s]" be provided access to the instructional materials used therein. A "research or experimentation program or project" was defined as an instructional activity using "new or unproven teaching methods or techniques."

2. The Hatch amendment (P.L. 95–561, November 1, 1978) enhanced pupil protection by inserting several provisions of the Privacy Act of 1974 to apply specifically in cases covered by the Kemp amendment. The provision prohibited requiring pupils to participate in certain forms of testing as part of a Federally assisted education program, without the prior consent of the pupil (if an adult or emancipated minor) or the pupil's parent/guardian. The requirement was specific in referring to "psychiatric" or "psychological" tests or treatments that gather information on: political affiliations; "potentially embarrassing" mental or psychological problems; sexual behavior or attitudes; illegal, antisocial, or "demeaning" behavior; "critical appraisals" of family members; privileged relationships, such as those with lawyers, physicians, or ministers; or income (except where necessary to determine eligibility for financial aid).

3. The Grassley amendment (P.L. 103–227, General Education Provisions Act, March 31, 1994) sought to restore parents/guardians' rights and powers in obtaining the redress of family privacy violations resulting from intrusive questions or improper procedures. The provision was no longer limited to only research or experimentation programs or projects and psychiatric or psychological tests. It expanded consent requirements to "any survey, analysis, or evaluation" that was Federally assisted. The Grassley amendment also contained a lower threshold for triggering the consent requirement. Questions that happen to reveal private information trigger the prior-consent requirement, not just questions with a primary purpose of revealing private information. According to a Con-

gressional Research Service memorandum, the Department of Education had yet to modify its regulations in order to reflect any of the Grassley amendment provisions as of March 1995.

C. Need for the legislation

Because the Grassley amendment impacts only the Department of Education, not all intrusions on family privacy by Federally sponsored questionnaires or surveys are being addressed. New legislation is necessary to expand the scope of parental consent requirements to cover surveys or questionnaires funded by agencies other than the Department of Education.

Some of the Federal Nationwide surveys, not now covered by the Grassley amendment, that might be affected by the Family Privacy Protection Act include: Head Start and other child development programs, as well as potentially health or welfare related surveys of the Department of Health and Human Services; child nutrition programs of the Department of Agriculture; education and related programs of the National Science Foundation and National Endowments for the Arts and the Humanities; and national surveys done by the Department of Commerce's Bureau of the Census, either as part of its own decennial population updates or as contract work for other Federal departments and agencies.

The Department of Health and Human Services and the Bureau of the Census regularly conduct and update a number of large-scale nationwide surveys that include minors among the respondents. None of these surveys, as currently conducted (except where noted otherwise), require all parents/guardians of participating minors to provide verbal or written consent. To the extent that any of H.R. 1271's seven categories of private information might be revealed in the course of surveying, the proposed legislation would significantly affect the conduct of these surveys.

National Crime Victimization Survey: Conducted by the Bureau of the Census for the Bureau of Justice Statistics in the Department of Justice, the survey contacts 10,000 households per month. About two-thirds of the respondents are contacted by telephone and the balance are surveyed in person. Minors as young as 12 years old are asked questions addressing a range of crimes. A number of questions specifically focused on date rape and sexual assault. Respondents aged 12 and 13 are not surveyed, unless prior verbal parental consent is obtained.

National Health Interview Survey: Conducted by the Bureau of the Census on behalf of the Department of Health and Human Services, and HHH's constituents agencies, Public Health Service, Centers for Disease Control, and the National Center for Health Statistics. About 1400 households per week are contacted in person. Questions are asked of respondents 17 years and older and address health categories including diet, tobacco use, alcohol and/or drug use, and sexual behavior. No parental consent is obtained when surveying minors.

Youth Risk Behavior Survey: Conducted by the National Center for Health Statistics of the Department of Health and Human Services. The Center's biannual survey is administered to high school students. Consent is required only if the state and local school district administering the survey requests it.

II. LEGISLATIVE HEARINGS AND COMMITTEE ACTIONS

H.R. 11, Title IV was referred to the Committee on Government Reform and Oversight. The Subcommittee on Government Management, Information, and Technology held a hearing on March 16, 1995. The bill was marked-up in the Government Management, Information, and Technology Subcommittee on March 22, 1995, where Subcommittee Chairman Horn presented an amendment in the form of a substitute to H.R. 11, Title IV. This amendment was introduced as H.R. 1271 on March 21, 1995.

Two amendments were considered and adopted without objection. The first, offered by Rep. Maloney, Subcommittee Ranking Minority Member, required that agency rules and regulations promulgated pursuant to the legislation provide for protection of the confidentiality of survey data. The other amendment, offered by Rep. Tate, provided for advance public availability of proposed surveys and questionnaires. The legislation passed the Subcommittee unanimously by voice vote.

The Government Reform and Oversight Committee met on March 23, 1995, to consider H.R. 1271. Chairman Clinger presented an amendment in the nature of a substitute to H.R. 1271 reflecting the two Subcommittee amendments. The bill, as amended, was favorably reported to the House unanimously by voice vote and without further amendment by the full Committee.

III. COMMITTEE HEARINGS AND WRITTEN TESTIMONY

On Thursday, March 16, 1995, the Subcommittee on Government Management, Information, and Technology, of the Committee on Government Reform and Oversight, met pursuant to notice. The purpose of the hearing was to solicit comments from interested parties on Title IV of H.R. 11, the Family Reinforcement Act.

Subcommittee Chairman Horn stated at the opening of the hearing that the Subcommittee would strike a delicate balance and produce a bill that would not endanger minors' health and safety nor handicap law enforcement operations. At the same time, the bill would provide necessary and needed safeguards to ensure the primacy of parents/guardians' authority. He noted that the legislation attempted to tip the balance back to the rights of families. Ranking Member Maloney questioned whether requiring written permission to ask questions of minors would have a deleterious impact on agencies questioning children. She also expressed concern about the confidentiality of the information obtained. Rep. Maloney advocated excluding from parental consent requirements interviews of young children who had experienced, or who were suspected of having been subjected to, some sort of parental abuse. Similarly, she indicated that exceptions should apply to police, teachers, and counselors.

Senator Grassley, in testimony before the Subcommittee, welcomed expansion of the privacy protection afforded families in his 1994 amendment to the General Education Provisions Act of 1968. The Senator stated that the terms "survey, analysis or evaluation" in his amendment and in the proposed legislation, had been deliberately chosen to be broad in scope. He approved of applying the parental consent requirement to all Federally funded programs be-

cause many of the surveys regarded as offensive had not been covered by his 1994 amendment.

Dr. Lloyd Johnston, Program Director, Survey Research Center, University of Michigan, testified that the legislation, as proposed, might hamper social science research because conducting surveys involving minors would be made more difficult. According to Dr. Johnston, introducing a prior written consent requirement would unduly hamper social science research as presently conducted among minors in a school setting. The normal response rate to a request for written consent was estimated at 55 percent. With follow-up, it could be increased to between 96 percent and 99 percent. Without follow-up, a 55 percent response rate could diminish the value of research.

Dr. Matthew Hilton, a member of the Utah Bar and an authority on family privacy issues, cited the difficulties parents/guardians faced in getting redress when children were required to answer surveys against their parents/guardians' wishes. He welcomed efforts to protect family autonomy and privacy and advocated a private enforcement mechanism. Dr. Hilton alleged that courts sometimes ignored the plain language of statutes for privacy protection. Protections afforded to individuals might be of limited value unless the individuals had the opportunity to challenge such actions in court.

Ms. Sally Katzen, Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, and Dr. William T. Butz, Associate Director, Demographic Programs, Bureau of the Census, testified on behalf of the Administration. The Department of Health and Human Services was invited to send a representative but declined to provide one.

Ms. Katzen testified that in most social science research, it is current standard practice to require some form of parental consent before interviewing minors. In addition, the Privacy Act bars Federal agencies from inquiring about political affiliations or religious beliefs without consent. However, written consent is not generally required; verbal or implied consent is sufficient. She noted consent is often regarded as implicit when a parent neglects to return a mailed consent slip.

Ms. Katzen claimed that a policy shift from passive implied consent to active written consent would burden individual parents, school staff, and those engaged in the research. Response rates would suffer because parents who felt bothered might withhold consent and schools might decide not to participate because of the extra work required to secure written parental consent. She testified that a written consent requirement would reduce response rates, lessen the reliability of results, and significantly raise the cost of proceeding with surveys.

Dr. Butz described three surveys conducted by his agency: the National Crime Victimization Survey; the Youth Behavior Survey; and the Teenage Attitudes and Practices Survey. Parental consent is required for all three of these, but it need not be in writing. His testimony cited the additional cost of getting written consent.

The Department of Justice and the Office of Health Legislation of the Department of Health and Human Services also sent written comments. Both Departments suggested the proposed language

could compromise child protection intervention. They noted that survey participation was always voluntary on the part of the minor.

IV. EXPLANATION OF THE BILL

A. Overview

The existing administrative framework for the collection of information with Federal funds is provided by the Paperwork Reduction Act.[1] Pursuant to that Act, the Office of Management and Budget reviews the collection of data by all government agencies and has established implementing rules and regulations.

The Paperwork Reduction Act contains no special provision for minors or the consent of their parent/guardian for privacy-related questions. The Paperwork Reduction Act covers "information collection," which as defined, covers a broader range of activities. These include the obtaining or soliciting of facts or opinions by an agency through the use of applications, computerized or written forms, questionnaires, reporting or recordkeeping requirements, schedules, or other similar methods calling for answers to identical questions.

The comparable terms used in the Family Privacy Protection Act, "survey or questionnaire," are more restricted. The Paperwork Reduction Act specifically exempts certain agencies, whereas the Family Privacy Protection Act (H.R. 1271) covers all agencies not subject to the General Education Provisions Act of 1968, as amended.

For the sake of economy and efficiency, the Office of Management and Budget (OMB) should draft general rules and regulations that each agency could adopt. Similarly, OMB could change its existing procedures for the collection of information to include the Family Privacy Protection Act requirements. The requirements of the Family Privacy Protection Act (H.R. 1271) take effect 90 days after enactment and would apply to current grantees of department and agencies, not just future recipients of funds. Therefore, time will be of the essence in providing those conducting surveys and questionnaires with necessary guidance through implementing rules and regulations. By incorporating the requirements of the Family Privacy Protection Act (H.R. 1271) into these existing administrative processes, OMB can assure expeditious implementation.

B. Section by section analysis

Section 1. Short title

Section 1 provides the bill's short title, the "Family Privacy Protection Act of 1995."

Sec. 2(a). Family privacy protection

Section 2(a) establishes the requirement that the administrators of Federally funded surveys and questionnaires obtain parental

[1] The Act consists of the Paperwork Act of 1980 (P.L. 96–511, 94 Stat. 2812) as amended by the Paperwork Reduction Act of 1986 (section 101 (m) [Title VIII, Part A]) of P.L. 99–500 and P.L. 99–591, 100 Stat. 1783–335, 3341–335. The Act is codified at Chapter 35 of Title 44 of the United States Code.

consent before asking seven kinds of sensitive or inappropriate questions.

The provision covers Federally funded programs or activities. The intent is to include "surveys or questionnaires" which the Federal government either performs, or else contracts for, or provides funding through its programs or activities. Also covered would be programs, grants, or contracts in which it would be anticipated that a survey or questionnaire would be essential to fulfill the requirements. The Federal funds standard is similar to the one used under the Paperwork Reduction Act.

The provision requires active consent from a parent/guardian. The consent can be handled in various ways, including in writing. However, mere notice of a survey is not enough to satisfy the consent requirement. Essentially there is a two tier test necessary for consent:

First, the parent/guardian needs to have disclosure about the survey or questionnaire. This means that the method used to communicate with the parent/guardian must have a very high degree of likelihood of reaching the parent/guardian along with a description of the survey and the purpose for which it is being used. Also, the notice given should include enough information about the "privacy" content of the survey or questionnaire that the parent/guardian can make an informed decision whether or not to provide consent. This requirement would necessitate obtaining a separate consent for each survey or questionnaire.

Second, the parent/guardian must have an opportunity to decline. It should be clear to the parent/guardian that, if they so choose, they can decline to have their minor children participate in the survey. Furthermore, the notification must provide for a readily accessible method for the parent/guardian to exercise the option to decline. Neither the parent/guardians nor their children should be exposed to any additional pressure to participate or be subject to public identification as having exercised their option not to participate.

A parent/guardian's failure to respond to notification by itself does not constitute implied consent. Consent must involve both disclosure and the opportunity to decline.

The language "require, or otherwise seek the response" reflects the fact that the prohibition applies to the program or agency conducting a survey, and does not change the ability of minors to exercise their free speech rights. We note that surveys and questionnaires do not provide for self-selection or self-initiation by participants. Those conducting research initiate contact with potential survey participants. Consequently when the parent/guardian's consent for a minor is lacking, the minor involved shall not participate.

The seven categories of privacy questions covered by the Family Privacy Protection Act are:

1. Parental political affiliations or beliefs;
2. Mental or psychological problems;
3. Sexual behavior or attitudes;
4. Illegal, antisocial, or self-incriminating behavior;
5. Appraisals of other individuals with whom the minor has a familial relationship;

6. Relationships that are legally recognized as privileged, including those with lawyers, physicians, and members of the clergy; and with whom the minor has a familial relationship;

7. Religious affiliations and beliefs.

With regard to the "privilege" privacy category, the law of the State in which the minor resides should be used to determine whether a relationship should be considered privileged.

Sec. 2(b). General exceptions

This section establishes four out of five exceptions under which privacy impact questions may be asked of a minor without the consent of a parent or guardian. These common sense exceptions reflect circumstances in which other societal interests or the interests of the minor are overriding.

The four general exceptions are:

1. The seeking of information for the purpose of a criminal investigation or adjudication;

2. Any inquiry made pursuant to a good faith concern for the health, safety, or welfare of an individual minor;

3. Administration of the immigration, internal revenue, or customs laws of the United States; and

4. The seeking of any information required by law to determine eligibility for participation in a program or for receiving financial assistance.

Each of these four exceptions involves specific, individual circumstances in order to be triggered. The criminal investigation or adjudication requires a specific investigation or adjudication.

An inquiry can be made pursuant to a reasonable concern for the health, safety, or welfare of an individual. The essential requirement is a reasonable belief that an individual minor is at risk and evidence to show that such an inquiry is appropriate. Using the "health, safety, or welfare" exception to circumvent parental consent on prohibited topics is not acceptable, e.g., a survey on sexual behavior or attitudes would not be covered by this exception.

The Committee's intent with regard to Sec. 2(b)(2) is narrow. It guards against possible misinterpretation of the Act in cases in which an inquiry, without prior parental approval, is clearly appropriate. For example, it might, under some circumstances, be suitable for a teacher to ask questions of a student who shows signs of physical abuse. It might be proper for a health care provider to ask an apparently malnourished child about his or her meals at home. This is a common-sense approach to problem situations. It cannot be used as an excuse or rationale for administering a survey or questionnaire without the consent of a parent/guardian.

The "administrative" exception of Sec. 2(b)(3) applies to surveys or questionnaires used during the course of routine administrative interactions with individual citizens. Examples of this include customs or immigration forms given to a minor who may be traveling without a parent/guardian. This provision does not establish a blanket exception permitting the affected agencies to conduct surveys or questionnaires that do not comply with the parental consent requirements.

Sec. 2(c). Exclusion of academic tests

Tests intended to measure academic performance are excluded from the parental consent requirements. The exclusion applies only to tests whose sole purpose is to measure academic performance. A survey or questionnaire which reaches beyond that goal would not fall under the exclusion.

Sec. 3. Notification procedures

This provision requires Federal departments and agencies to establish notification procedures under the Act. The procedures shall provide for advance public availability of each survey or questionnaire to which a response from a minor is sought.

The procedures of the Paperwork Reduction Act already provide for public involvement in the OMB's review of agency requests for the collection of information. Once an agency files a proposed collection of information with OMB for approval, all materials are a matter of public record. Agencies requesting OMB approval must concurrently notify the public through the Federal Register. The procedures further provide that any person may participate in the OMB review by furnishing comments.

Agencies should consider accelerating public notification by involving interested individuals and groups prior to submission to OMB. The hope is that those planning a prospective survey or questionnaire have the opportunity to incorporate the concerns of interested parties into the development of their data requests, surveys, and questionnaires. Both agencies and OMB should consider the use of creative technological means to encourage public access to the process, for example, through the use of the Internet or Fax-on-demand.

Sec. 4. Compliance

This section requires that the head of each Federal department or agency shall establish such procedures as are necessary to ensure compliance with the Act. As discussed above, the existing review process for "information collection" under the Paperwork Reduction Act could provide a framework for this, and thereby assure an expeditious implementation of this Act.

The section also provides that the Act should not be construed to foreclose any individual from obtaining judicial relief if requested monetary damages are not in excess of $500.

Sec. 5. Minor and emancipated minor defined

The terms "minor" and "emancipated minor" will be defined under the laws of the State in which the individual to be surveyed resides. No single Federal law covers these provisions, and State laws vary; therefore, these definitions will be provided by State law.

Sec. 6. Application

This section excludes the Act from applying to any program or activity subject to the General Education Provisions Act of 1968, as amended (20 U.S.C. 1221 et seq.). This essentially removes the Department of Education from the Family Privacy Protection Act. As discussed above, the General Education Provisions Act, as amend-

ed, contained the Grassley amendment which provided similar family privacy protection provisions. Those requirements, therefore, are not affected by this Act.

Sec. 7. Effective date

The Act shall take effect 90 days after its enactment. Upon effect it will apply to current grantees of department and agencies, not just future recipients.

V. COMPLIANCE WITH RULE XI

Pursuant to rule XI, 2(l)(3)(A), of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1) and clause 3(f), the results and findings from those oversight activities are incorporated in the recommendations found in the bill and amended in this report.

VI. BUDGET ANALYSIS AND PROJECTIONS

This Act provides for no new authorization or budget authority or tax expenditures. Consequently, the provisions of section 308(a)(1) of the Congressional Budget Act are not applicable.

VII. COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 28, 1995.

Hon. WILLIAM F. CLINGER, Jr.,
Chairman, Committee on Government Reform and Oversight, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1271, the Family Privacy Protection Act of 1995, as ordered reported by the House Committee on Government Reform and Oversight on March 23, 1995. The bill would require that parental consent be obtained before minors would be surveyed on certain topics, such as parental political affiliations or beliefs, sexual behavior, and illegal activities.

CBO estimates that enactment of H.R. 1271 would not significantly affect the Federal budget. Staff at the Census Bureau and Public Health Service—two of the agencies for whom H.R. 1271 would potentially have the most impact—indicate that the bill would have little or no effect on the activities of these agencies, because current consent practices would cover the requirements of H.R. 1271. Pay-as-you-go procedures would not apply because the bill would not affect direct spending or receipts.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are John Webb for the effects of the Census Bureau and Connie Takata for the impact on the Public Health Service.

Sincerely,

JUNE E. O'NEILL, *Director.*

VIII. INFLATIONARY IMPACT STATEMENT

In accordance with rule XI, clause 2(l)(4) of the Rules of the House of Representatives, this legislation is assessed to have no in-

flationary effect on prices and costs in the operation of the national economy.

IX. CHANGES IN EXISTING LAW

Clause 3 of the rule XIII of the Rules of the House of Representatives requires that any change in existing law made by the bill, as reported, be shown with the existing law proposed to be omitted enclosed in black brackets, new matter printed in italic, and existing law in which no change is proposed shown in roman. This provision is inapplicable for the reported bill, which makes no change in existing law. Instead, it provides new authority for the parents or guardians to decide whether to consent to the participation of their minor children in Federally funded surveys or questionnaires.

X. COMMITTEE RECOMMENDATION

On March 23, 1995, a quorum being present, the Committee ordered the bill favorably reported.

Committee on Government Reform and Oversight—104th Congress Rollcall

Date: March 23, 1995.
Amendment No. 1.
Description: Amendment in the Nature of a Substitute (Showing the Amendments Adopted by the Subcommittee on Government Management, Information and Technology on March 22, 1995)
Offered By: Mr. Clinger.
Voice Vote: Ayes.
Date: March 23, 1995.
Final Passage of H.R. 1271.
Offered By: Mr. Horn.
Voice Vote: Ayes.

XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104–1; SECTION 102(B)(3)

This provision is inapplicable to the legislative branch because it does not relate to any terms or conditions of employment or access to public services or accommodations.

XII. APPENDIX

COMMITTEE ON ECONOMIC AND
EDUCATIONAL OPPORTUNITIES,
Washington, DC, March 21, 1995.

Hon. WILLIAM F. CLINGER, Jr.,
Chairman, Committee on Government Reform and Oversight, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN CLINGER: Thank you for working with me in developing changes to provisions contained in H.R. 11, the Family Reinforcement Act, specifically those changes effecting Title IV, Family Privacy Protection. I understand that you intend to adopt and report these provisions through a bill you introduced last evening, H.R. 1271, the Family Privacy Protection Act of 1995. As you know, similar provisions are contained in the General Provisions Act (GEPA) governing the Department of Education; the provisions of GEPA are within the sole jurisdiction of the Economic and Educational Opportunities Committee.

Based on our agreed changes and our joint desire to expedite the legislative process and since H.R. 1271 are essential components of the "Contract with America", the Economic and Educational Opportunities Committee has no desire to delay the House's consideration of this important measure. Therefore, I do not intend to seek sequential referral of your reported bill. However, the Committee does hold an interest in preserving its future jurisdiction with respect to issues raised in Title IV of H.R. 11 and H.R. 1271 and its jurisdictional prerogatives should the provisions of this bill or any Senate amendments thereto be considered in a conference with the Senate.

Again, I thank you for working with me in developing the amendments to H.R. 11 and look forward to working with you on these issues in the future.

Sincerely,

BILL GOODLING, *Chairman.*

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