UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

July 22, 2015

GEN-15-15

Subject: Implementation of the VAWA Final Regulations

Summary: This letter summarizes the final regulations implementing statutory changes to the Clery Act.

Dear Colleague:

On March 7, 2013, President Obama signed the Violence Against Women Reauthorization Act of 2013 (VAWA) (Pub. Law 113-4), which, among other provisions, amended section 485(f) of the Higher Education Act of 1965, as amended, 20 U.S.C. §1092(f), otherwise known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). In May 2013, the U.S. Department of Education (Department) initiated a negotiated rulemaking process to develop regulations to implement the amendments to the Clery Act made by VAWA. The negotiated rulemaking committee held three negotiating sessions in January, February, and March of 2014. Ultimately, the committee reached consensus on a set of draft regulations. The Department published a Notice of Proposed Rulemaking for public comment on June 20, 2014, and after completing its review of the comments received, it published final regulations on October 20, 2014. Those final regulations, which will appear in 34 CFR 668.46, went into effect July 1, 2015.

The preamble to the NPRM noted that the changes made to the Clery Act by VAWA did not affect in any way Title IX of the Education Amendments of 1972 (Title IX), its implementing regulations, or associated guidance issued by the Department's Office for Civil Rights (OCR). Nothing in the Clery Act, as amended by VAWA, alters or changes an institution's obligations or duties under Title IX as interpreted by OCR.

Below is a list of the major changes that have been made to the Clery Act regulations and information regarding the 2015 Campus Safety and Security Survey, the instrument that institutions of higher education use to report campus crime statistics to the Department. Note that this letter provides only an overview of the changes made to the regulations and to the Campus Safety and Security Survey. Detailed information is provided in the final regulations, and screenshots of the 2015 Campus Safety and Security Survey that will be available through the survey website in early August. Institutions should review both of these documents to ensure compliance with the new requirements.

Summary of the Major Changes to the Clery Act Regulations

The final regulations--

- Require institutions to collect and report information regarding incidents of dating violence, domestic violence, sexual assault, and stalking that occur on an institution's Clery Geography and are reported to a Campus Security Authority or to local law enforcement agencies;
- Require institutions to disclose statistics of such incidents in their Annual Security Reports (ASRs) and the Campus Safety and Security Survey and to maintain credible documentation that substantiates the institution's crime statistics;
- Require institutions to have policies and procedures for victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the institution's crime statistics;
- Clarify the very limited circumstances in which an institution may remove reports of crimes that have been "unfounded" by law enforcement officials and require institutions to report to the Department and disclose in the ASR the number of crimes that were "unfounded" and subsequently withheld from their crime statistics;
- Revise the definition of "rape" to reflect the Federal Bureau of Investigation's (FBI) updated definition in the Uniform Crime Reporting (UCR) Summary Reporting System, which encompasses the categories of rape, sodomy, and sexual assault with an object that are used in the UCR National Incident-Based Reporting System;
- Revise the categories of bias for the purposes of Clery Act hate crime reporting to add gender identity and to separate ethnicity and national origin into different categories;
- Require institutions to provide information on culturally relevant, inclusive prevention awareness programs to incoming students and new employees, as well as describe these programs in their ASRs. These programs must include: a statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking; the definitions of these terms in the applicable jurisdiction; the definition of "consent," in reference to sexual activity, in the applicable jurisdiction; a description of safe and positive options for bystander intervention; information on risk reduction; and information on the institution's policies and procedures after a sex offense occurs;
- Require institutions to provide, and describe in their ASRs, ongoing prevention and awareness campaigns for students and employees. These campaigns must

include the same information as the institution's primary prevention and awareness program;

- Define the terms "awareness programs," "bystander intervention," "ongoing prevention and awareness campaigns," "primary prevention programs," and "risk reduction";
- Require institutions to describe each type of disciplinary proceeding used by the institution in cases of alleged dating violence, domestic violence, sexual assault, or stalking; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; how to file a disciplinary complaint; how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking; and the standard of evidence that will be used during the disciplinary proceeding;[1]
- Require institutions to list all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceedings for an allegation of dating violence, domestic violence, sexual assault, or stalking;
- Require institutions to describe the range of protective measures that the institution may offer following an allegation of dating violence, domestic violence, sexual assault, or stalking;
- Require institutions to provide students or employees who report being victims of dating violence, domestic violence, sexual assault or stalking with a written explanation of their rights and options, regardless of whether the offense occurred on campus, including written notification of counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims both within the institution and in the community, and the availability of changes to academic, living, transportation, and working situations, or protective measures regardless of whether the victim reports to law enforcement;
- Require institutions to provide for a prompt, fair, and impartial disciplinary proceeding in cases of alleged dating violence, domestic violence, sexual assault, or stalking in which: (1) officials are appropriately trained and do not have a conflict of interest or bias for or against the accuser or the accused; (2) the accuser and the accused have equal opportunities to have others present, including an advisor of their choice; (3) the accuser and the accused receive simultaneous notification, in

[1] An institution of higher education can comply with both Title IX and the Clery Act by using a preponderance of evidence standard in disciplinary proceedings regarding title IX complaints and by disclosing this standard in the ASR required by the Clery Act.

writing, of the result of the proceeding and any available appeal procedures; (4) the proceeding is completed in a reasonably prompt time frame; (5) the accuser and accused are given timely notice of meetings at which one or the other or both may be present; and (6) the accuser, the accused, and appropriate officials are given timely and equal access to information that will be used during informal and formal disciplinary meetings and hearings;

- Define the terms "proceeding" and "result"; and
- Specify that compliance with these provisions does not constitute a violation of section 444 of the General Education Provisions Act (*20 U.S.C. 1232g*), commonly known as the Family Educational Rights and Privacy Act of 1974 (FERPA).

2014 ASRs and Statistics for the 2013 Calendar Year

For their 2014 ASRs, institutions were required to make a good-faith effort to include incidents of dating violence, domestic violence, sexual assault, and stalking in the crime statistics for calendar year 2013. Institutions also were required to make a good-faith effort to ensure that the statistics for the new crime categories were accurate and complete in their ASRs with the understanding that institutions may not have complete statistics for 2013.

The 2015 Campus Safety and Security Survey

The Clery Act requires institutions to disclose and report crime statistics for the three most recent calendar years. As we have done in the past, we will phase in the new statistical requirements by collecting data until three years are represented, beginning with an institution's statistics for the 2014 calendar year. To ease the burden on institutions and to help ensure accuracy, the Department will not collect data on incidents of dating violence, domestic violence, sexual assault, and stalking for the 2013 calendar year, although, as stated above, institutions were expected to include 2013 statistics for these incidents in their 2014 ASRs. In addition, the final regulations require institutions to report the number of crimes determined to be "unfounded" in both the 2015 ASRs and the 2015 Campus Safety and Security Survey. Institutions must still report three years of statistics for all other crime categories. Further, institutions will be required to report the contact information of their lead Title IX coordinator in the 2015 Campus Safety and Security Survey. For more detail on what is included in the ASRs and data collections, please refer to the chart below.

Reporting of New Statistical Requirements in the ASR and Online Data Collection

	Calendar Year 2013	Calendar Year 2014	Calendar Year 2015	Calendar Year 2016
ASR issued by October 1, 2014	X			
ASR issued by October 1, 2015	X	X		
ASR issued by October 1, 2016	X	X	X	
ASR issued by October 1, 2017		X	X	X
Data Collection October 2014				
Data Collection October 2015		X		
Data Collection October 2016		X	X	
Data Collection October 2017		X	X	X

We thank you for your cooperation in the implementation of the new Clery Act regulations necessitated by VAWA. If you have any questions about the information provided in this letter, please direct them to: Ashley.Higgins@ed.gov.

Sincerely,

Lynn B. Mahaffie
Deputy Assistant Secretary for
Policy, Planning, and Innovation
Office of Postsecondary Education