ED=Department of Education (February 2015)

Issue	Description of Problem(s)	Potential Solution(s)
Campus Crime and Campus Security		
22. ***Clery reporting is not consistent with Federal Bureau of Investigation (FBI) Uniform Crime Reporting (UCR) and the National Incident-Based Reporting System (NIBRS)**	The Clery Act has been expanded to require institutions to report on a number of incidents that, while objectionable, are not crimes under the UCR or NIBRS crime reporting framework. For example, "dating violence" is not classified as a crime under either UCR or NIBRS (although, of course, "rape" and "assault" are). In addition, for some Clery crimes, such as "burglary," ED requires institutions to report crimes based on its own definition of the crime, a definition at odds with the UCR's definition. Without a UCR or NIBRS definition to provide a single and consistent form for reporting, campus officials spend excessive time determining whether and how a particular incident should be reported and their decisions are easily second-guessed by ED auditors. This results in inconsistencies in the data and liability for institutions. Finally, requiring reporting of incidents outside the UCR and NIBRS framework means that campus crime statistics cannot be compared with crime statistics gathered from local jurisdictions across the country.	If Congress believes campuses should report on other "crimes" that are not currently a part of the UCR or NIBRS, it should instruct DOJ to modify the UCR to include these definitions. This would ensure that new crime definitions would be developed by experts in law enforcement and crime reporting protocols, and would provide a common definition for both local police and campus security officials.
23. **Duplicative reporting of crimes**	Clery regulations and guidance require institutions to count the same incident in multiple crime categories, resulting in a significant over-counting of crimes. One recent analysis demonstrates that a single incident could be reported as 31 separate crimes under Clery. These requirements make campus crimes statistics less useful to the public, and mean that this reporting is inconsistent and incomparable with all other crime statistics.	Revise the regulations to require reporting to be consistent with well-accepted DOJ hierarchy rules. Require crimes to be reported only once, and in the category that would reveal the most useful information to those reading the annual security report.
24. ***Timely Warning Procedures**	The Clery Act requires institutions to have procedures for issuing Timely Warnings for Clery crimes occurring anywhere in the Clery geography as soon as information is available that suggests a serious or continuing threat to students and employees. It is unclear whether Timely Warnings must be issued for all Clery crimes, what constitutes "timely," and what represents a "continuing threat." Timely Warnings must also include a "safety tip," which is usually unnecessary and can be totally inappropriate in certain cases. The handbook provides a sample that cautions students "not to leave drinks unattended" and "to use the buddy system when socializing." Including this type of information could be seen as blaming the victim of a crime. Issuing Timely Warnings for certain crimes may compromise an ongoing police or campus investigation by alerting a suspect. In addition, Timely Warnings are likely to be ignored by students because of the sheer number they receive.	Give institutions the clear authority to rely upon their own professional judgment in determining both what constitutes a "continuing threat" and when they have the information needed to release a warning, provided it is consistent with the spirit of the law. ED should not second-guess institutions that follow their own reasonable policies in making these determinations. Eliminate the requirement to include a safety tip in a Timely Warning. Institutions should include a safety tip only if, in their judgment, it is helpful and appropriate to do so.

Issue	Description of Problem(s)	Potential Solution(s)
Campus Crime and Campus Security cont.		
25. ***Overly broad and confusing definition of "noncampus property" for the purposes of collecting crime statistics**	Under the Clery statute, regulations, and guidance, institutions are required to report crimes that occur on "noncampus property." The definition of noncampus property is extremely broad, requiring institutions to report statistics for locations that are either controlled by a recognized student organization or owned or controlled by the higher ed institution and used in support of the institution's educational purpose or by students. This requires, for example, reporting on hotel rooms and common areas where students regularly stay overnight for institution-sponsored trips, meeting space provided for a university club arranged through an email, an institutionally-recognized fraternity house, the stairwell of a building where the institution holds classes on Wednesday night, or on a ship where the institution conducts research. Counterintuitively, it doesn't require reporting on fraternity houses if the organization is not officially recognized by the institution—a data point consumers may actually find to be important. Since the numbers are reported in aggregate, without differentiating between an overseas trip and a bowling alley down the street from campus, the data provides little useful information to consumers. Finally, out-of-town and foreign police agencies seldom respond to these requests for information.	Narrow the definition of "noncampus property." Consider excluding properties such as medical clinics where the educational use is only incidental. Eliminate foreign and overnight-trip reporting entirely. (Reporting requirements from branch campuses are appropriate.)
26. ***Campus Security Authorities**	The regulations and handbook contain definitions of Campus Security Authorities (CSAs) that are very broad, and result in institutions being required to designate hundreds, if not thousands, of individuals as CSAs. This can dramatically undermine confidentiality for students and reduce their confidence in the institution's procedures for handling sensitive cases.	CSAs should be more narrowly defined. Institutions should continue to encourage prompt and accurate reporting of crimes by CSAs.
27. **Fire reports**	The fire-related reporting requirements under the statute and regulations are excessively prescriptive and detailed. For example, the statute requires institutions to disclose the number of supervised fire drills as well as their policies on open flames, such as candles in dorm rooms. Even minor incidents where no flames are observed, such as a singed extension cord, are defined as a "fire" and must be reported. There is no evidence of significant demand for this information or that it is used by consumers in making college choices.	Streamline the requirements to require the most important fire safety information to be disclosed annually, such as the number of student injuries and the number of student deaths resulting from a fire. Institutions that want to disclose more information are free to do so.
28. **Policies on Missing Students**	The missing students provision in HEA is needlessly complex and prescriptive. It requires institutions to keep separate records of missing student emergency contacts as opposed to regular emergency contact information. FERPA already allows institutions to contact a student's parent, regardless of age, in the case of an emergency. This requirement is largely unnecessary since each local law enforcement agency has policies on missing persons, and they are better equipped to deal with a missing person.	Streamline the provisions. Require institutions to have a policy stating that, if a student goes missing, the institution will contact law enforcement and either the emergency contact provided by the student or, if the student is under 18, the student's parent. Allow institutions to use general emergency contact information, instead of requiring them to collect specific missing student emergency contact information.

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Issue	Description of Problem(s)	Potential Solution(s)
Campus Crime and Campus Security cont.		
29. **Anti-drug/alcohol abuse policy**	The HEA requires an institution to certify to the Secretary that it has adopted a drug- and alcohol-abuse and prevention program meeting a number of detailed requirements. The institution must conduct a biennial review to determine the program's effectiveness, make any necessary changes, and maintain these records for possible review by the Secretary or audit. This is unduly prescriptive, burdensome, and not necessarily effective in decreasing alcohol or drug abuse on campus.	Replace this provision with a clear and straightforward requirement that an institution must adopt and implement a program designed to discourage the use of illicit drugs and abuse of alcohol by students and employees. Remove any requirements for certification or biennial review and remove the threat of a loss of all federal funding.
Americans with Disabilities Act (ADA)		
30. **ADA "Direct Threat" Rule**	In 2011, DOJ revised the "direct threat" regulations governing the Americans with Disabilities Act (ADA). As a result, under the current regulations, colleges and universities are permitted to require treatment or discipline a student only in cases where the student poses a direct threat to others, but not in cases where the student poses a threat to him or herself. This change means that, if an institution tries to help a self-harming student by requiring medical treatment or counseling, it risks an ADA lawsuit or Office of Civil Rights (OCR) action. This hamstrings institutions in their efforts to help self-harming students and to prevent trauma to other members of the campus community.	DOJ should reinstate "threat to self" provisions in Title II of the ADA regulations. Alternatively, OCR should issue clear guidance which allows reasonable flexibility for institutions to address concerns related to self-harming students.
31. **ADA regulations' chilling effect on the development and use of new technologies**	Through subregulatory guidance (Dear College/University President Letter in 2010), ED has exceeded the parameters of ADA and inhibits institutions from exploring new technologies that may not be fully "accessible" at present but may ultimately yield important benefits to students with and without disabilities.	Revise the 2010 letter to align with actual ADA standards. Encourage institutions to experiment and conduct research with new technologies as long as community and public information highways are fully accessible.
Integrated Postsecondary Education Data System (IPEDS)		
32. *** IPEDS burden generally**	Institutions are required to respond to nine IPEDS surveys. While some institutions (such as larger public institutions with significant state data reporting requirements and/or state longitudinal data systems) find IPEDS manageable, other institutions report a significant burden with the required reporting and the level of detail required, and question the benefits derived. For example, IPEDS requires institutions to report employees on nine-month, 10-month, 11-month, and 12-month contracts, and requires institutions to assign Department of Labor's (DOL's) Standard Occupational Classification (SOC) codes to academic jobs even when the positions do not fit neatly into SOC categories. While IPEDS reporting continues to grow and become ever more detailed, there is no formal mechanism to force the removal of elements that have outlived their usefulness.	Congress should create an advisory committee to study the burden associated with IPEDS reporting, and make recommendations to reduce the number of items reported, the level of detail, and total time spent by institutions. The House-passed bill H.R. 1949 provides a useful model.

Even though the rule was blocked, it nonetheless has had an effect. Many states now regard federal Title IV state authorization requirements as a revenue generator, and the cost to institutions can be quite high. A public institution with a well-established online program estimated the costs at nearly $800,000. One private institution has estimated that it will cost $290,000 and take up to 2,000 hours annually to deal with the changes. The regulation has led some schools to restrict both online offerings in certain states and critical experiences, such as internship opportunities, clinical rotations, and student teaching—all of which hurt students.

This fundamental shift in policy was done without any guidance from Congress. In 2012, a federal appellate court upheld the original decision to vacate the regulation due to the Department's failure to properly give notice of this issue in its pending notice of proposed rulemaking and provide stakeholders with a meaningful opportunity to comment on the policy.[33] Despite the court's ruling, the Department continues to pursue this policy.[34]

For example, state authorization for distance education was included as a topic for its 2013-14 program integrity negotiated rulemaking. At the session, negotiators were shocked to see that the Department's distance education rules had ballooned from the two sentences originally proposed in 2010 to more than 14 paragraphs. It is unclear when a proposed rule will be published for comment.

Recommendation: Consistent with long-standing interpretation, Congress should clarify that federal requirements on institutions to meet state authorization requirements apply only to the state in which an institution is physically located. States may elect to place additional requirements on institutions that serve students in their state through distance education, and indeed several states have already done so. The Department should be prohibited from publishing regulations on this topic.

Uniform Definitions of Clery Crimes

Summary: The Clery Act requires institutions to report incidents using definitions that can conflict with the Uniform Crime Reporting (UCR) definitions and the updated National Incident-Based Reporting System (NIBRS), creating confusion for campus law enforcement. To improve uniformity and effectiveness in reporting crime statistics under the Clery Act, the Department should rely on the expertise of the Department of Justice (DOJ) to establish common definitions for crimes, and Clery Act reporting should be consistent with these definitions.

Background: The Clery Act, enacted in 1990, has an important goal: to improve safety on campus. The impetus for the law was the rape and murder of Jeanne Clery, a Lehigh University freshman, in her dorm room by a fellow student. Under the law, colleges and universities must, among other things, count and report crimes that occur on campus and publish an Annual Security Report to advise students accordingly. We support the dissemination of this important safety information. Over time, however, burgeoning reporting requirements and policy disclosures added to this legislation have become onerous and confusing, diverting institutional resources away from student safety and toward compliance reporting.

[33] *APSCU v. Duncan*, D.C. Circuit, June 5, 2012.

[34] See question 7 in the Department's July 27, 2012 "Dear Colleague" letter at http://ifap.ed.gov/dpcletters/attachments/GEN1213Attach.pdf.

The Clery Act has been expanded to require institutions to report on a number of incidents that are not "crimes" under the DOJ's UCR program or NIBRS. Without a single and consistent form for reporting, campus officials spend significant time attempting to determine whether and how a particular incident should be reported in the Annual Security Report required by Clery. In addition, conflicting definitions and determinations, based on incidents that are not crimes outside of Clery reporting requirements, result in inaccuracies and inconsistencies in the data and mean that campus crime statistics cannot be compared with crime statistics gathered from other state and local law enforcement agencies across the country, as the law intended.

For example, both the Clery Handbook and the UCR handbook define "burglary" and "larceny-theft" over a number of pages by the use of examples. However, because the guidance varies in important ways, incidents with particular fact patterns are classified as burglary under one system and larceny under another. Adding to the confusion, under Clery, institutions do not report larcenies unless they occur as part of a hate crime. They are only required to report burglaries.

Task Force staff visited with safety officials from several campuses to discuss this confusion. The police officers were asked, "If someone were to come into the room and steal a laptop, would that be a burglary or a larceny under Clery?" Intense debate ensued, and no consensus was reached among the various campus security officials about how it should be classified for the Department of Education. By contrast, there was instant and unanimous agreement that the theft would be classified as a larceny for purposes of the UCR.

In addition, the 2013 amendments to the Violence Against Women Act require institutions to report on stalking, domestic violence, and dating violence, none of which are defined in the UCR as crimes. As a result of this statutory change and the 2014 regulations issued by the Department, universities must deal with two issues: Reporting on incidents that are crimes only under the Clery Act, and using Department of Education definitions for crime reporting that vary significantly from state law. Stalking, for example, is normally defined as a crime in state statutes, but the definitions vary across jurisdictions and do not match the definition in the new regulations released by the Department. Domestic violence is referenced in many state laws but not normally as a standalone crime. Dating violence is absent from virtually all state criminal statutes. Thus, campus safety officers must now interpret incidents not listed in the UCR as crimes for Clery purposes, and they must use federal definitions that can conflict with their own state laws. Given this complexity, reporting errors are inevitable.

Campus law enforcement officials rely on training they receive regarding UCR/NIBRS crime reporting and their home state's definitions of crimes. When the Clery requirements for reporting crimes stray from these conventions, campus officials must spend substantial extra time trying to determine how to report the crime properly for the Department's purposes. Each time the Department or Congress deviates from the UCR/NIBRS framework, Clery crime reporting becomes less consistent and less accurate, statistics become more difficult to compare to local and national crime data, and the time officials need to spend on compliance—instead of patrolling—increases.

Recommendations: The federal government should rely on the expertise of the Department of Justice in creating the standard definitions for crimes, and the Clery Act should require reporting on crimes as they are defined in the UCR or NIBRS. This would allow for statistics that are comparable across institutions

and provide useful information to consumers, while also ameliorating the need for campus police to juggle competing definitions of crimes.

If Congress believes campuses should report on other "crimes" that are not currently a part of the UCR or NIBRS, it should instruct DOJ to modify the UCR/NIBRS to include these definitions. This would ensure that new crime definitions would be developed by experts in law enforcement and crime reporting protocols, and would provide a common definition for both local police and campus security officials.

Timely Warnings About Threats to Campuses

Summary: The Clery Act mandates that colleges and universities send out Timely Warnings to the campus community to notify students and employees about "serious or continuing" safety threats based on reported crimes. However, in order for these warnings to be most effective, institutions need greater deference about when they are appropriate and what information they should include.

Background: Each school must have a Timely Warning notification process for Clery crimes considered by the institution to be a serious or continuing threat to other students and employees that occur anywhere in the boundaries defined by the Clery Act. To aid in the prevention of similar occurrences, such warnings must be issued "as soon as the pertinent information is available." Warnings are typically issued via email or text message and are posted on campus web pages.[35]

The Timely Warning notification process can be an important tool for helping ensure safety on campus. Unfortunately, however, the Department's regulations and guidance surrounding Timely Warnings has created substantial confusion, which can undercut the student safety purpose they were designed to serve.

Two specific points in this area are important. First, there is lack of clarity about the conditions constituting a "continuing threat" that would warrant a Timely Warning. As a result, many institutions issue Timely Warnings in an abundance of caution, concerned about a retrospective audit finding. That can render certain notifications moot—some Timely Warnings are issued even if the perpetrator of the event in question has already been apprehended or has been suspended and banned from campus. Furthermore, it can be nearly impossible to issue a warning that is truly "timely" when a reportable crime happens on noncampus property—often, institutions do not learn of these incidents for several days or weeks. Because institutions are concerned about the Department issuing fines in hindsight, seemingly without acknowledging the circumstances at the time, they often send out notices they feel are not necessary, such as the instances noted above. Campus security officials fear that too-frequent issuance of Timely Warnings creates "warning fatigue," a condition where students and staff become somewhat inured to these alerts because they receive so many of them.[36]

Second, the rules around timing are not clear: How quickly must the warnings be released in order to be

[35] The Clery Act requires institutions to have two separate procedures to notify a campus community of potential dangers. In addition to the Timely Warning process, each institution must also have an Emergency Notification procedure, used for dangerous situations that may threaten the health or safety of the campus community. Such notifications are issued "immediately upon confirmation that a dangerous situation or emergency exists or threatens" and are sent via text, email, siren or alarm systems, and campus bulletins. This discussion only relates to the Timely Warning requirement.

[36] For example, see "Students, Faculty Don't Always React Quickly to Emergency Alerts," by Jake New, *Inside Higher Ed*, December 9, 2014, available at: https://www.insidehighered.com/news/2014/12/09/students-faculty-dont-always-react-quickly-emergency-alerts.

compliant with the rules? Despite good faith efforts on the part of colleges and universities to get important messages out to the campus community expeditiously, the Department second-guesses the judgment of campus officials and appears to have unreasonable expectations. Virginia Tech's Timely Warning was issued two hours after the initial shooting on campus in April 2007, as soon as the university was able to verify the relevant facts, and the Department found the university in violation of the Clery Act because that was not fast enough.[37] Sometimes, there can be negative consequences when notifications are released too quickly. In at least one case, a Timely Warning tipped off a potential perpetrator of a sexual assault on campus that an investigation was under way, thereby interfering with an investigation by local police. In that case, the Timely Warning strained the relationship between campus police and local law enforcement authorities. Another institution sent a Timely Warning after a tragic incident involving the death of a student in an off-campus homicide. Even though the primary suspect was in custody, a notification including the name of the deceased was released so quickly that family members had not yet been informed. By forcing institutions to issue warnings before they are ready, the Department undermines standards of good police work.

Recommendations: Campus law enforcement should have clear authority to use their own expert judgment to determine when a serious or continuing threat exists and when they have the appropriate information to issue a Timely Warning. The Department, except in cases of clear negligence, should give deference to the judgment of the law enforcement professionals who implement these rules on campus day in and day out, and it should acknowledge good faith efforts by institutions to protect their campus communities by appropriately informing them of safety threats.

Definition of "Noncampus Property"

Summary: The definition of "noncampus property" is unclear and overly broad, and should be narrowed to make it more meaningful and useful.

Background: The Clery Act requires colleges and universities to report the crimes that occurred on campus in an Annual Security Report. They also must report incidents occurring on "noncampus property," defined as a building or property owned or controlled by an institution and used in direct support of or in relation to the institution's educational purpose. However, this broad definition has created enormous confusion, and guidance from the Department has created many instances where institutions have had to spend considerable time obtaining information from third parties, such as hotels abroad and police departments across the country and around the world.

Guidance from the Department both in the *Handbook for Campus Safety and Security Reporting* and subsequent directives indicate that colleges and universities must report crimes that happen in any building or property they rent, lease, or have any written agreement to use (including an informal agreement, such as one that might be found in a letter, email, or hotel confirmation). Even if no payment is involved in the transaction, any written agreement regarding the use of space gives an institution "control" of the space for the time period specified in the agreement. The handbook requires colleges and universities to disclose statistics for crimes that occur during the dates and times specified in the agreement, including the specific area of a

[37] That determination was ultimately overturned and Virginia Tech was fined under a different, albeit equally flawed, rationale. Please also note that the Emergency Notification requirement was not included in the law until 2008, largely as a result of these tragic events.

building used (e.g., the third floor and common areas leading to the spaces used, such as the lobby, hallways, stairwells, and elevators). Department guidance mandates that schools report on study abroad locations when the school rents space for students in a hotel or other facility, and on locations used by an institution's athletic teams in successive years (e.g., the institution uses the same hotel every year for the field hockey team's away games).

As a consequence, institutions must attempt to collect crime data from dozens, if not hundreds, of locations where students may reside or study for short periods of time if the institution uses the space in successive years or if students are present there for what the Department calls a "stay of long duration." (While advising campuses that they must report stays of "long duration," the Department has not offered a definition of this term.)

The result is that institutions expend significant time and resources tracking these myriad locations and gathering crime data annually, only to have to settle for incomplete data. One institution has indicated that it requests data from 69 police departments, covering 348 locations in 13 states and five countries, including police at airports and on military bases. The mandate that colleges and universities must collect data from foreign entities is particularly troublesome. Apart from the administrative burdens that such regulations create, many foreign law enforcement authorities often simply ignore requests from institutions. In response to one such request, a foreign government accused a U.S. institution of espionage.

Because noncampus crime statistics are reported in the aggregate (a single number), the data provide little useful information for consumers. For example, when the Annual Security Report states that "four burglaries" took place in a noncampus location last year, a prospective student or parent has no way of knowing whether that crime occurred in a research facility on an island in the South Pacific, at a building the institution rents across town, at a study abroad location, or at an off-campus sorority house. Clarification of what data must be collected—and, particularly, why they are important to collect, what value they will provide and to whom, and how they should be reported—could improve current practices.

Recommendation: The definition of "noncampus property" should be clarified and narrowed to focus more directly on property that is a core part of a college or university. At a minimum, it should exclude all foreign locations[38] as well as short-term stays in domestic hotels.

Consumer Information

Summary: Institutions of higher education overload consumers with an enormous amount of federally mandated information. Some of it is useful, and some of it is relatively trivial. Congress and the Department should ensure that the required information is of interest to a significant number of consumers.

Background: Institutions of higher learning are required to collect and disclose increasing amounts of information to students and prospective students. The goal is admirable—to equip students and families with valuable information about an institution. Too often, however, meeting current requirements means that institutions provide considerable information that is of marginal value or very limited interest.[39]

[38] Some universities have branch campuses overseas. Clery Act reporting is appropriate for those foreign locations.
[39] Ben-Shahar, Omri. *More Than You Ever Wanted to Know: The Failure of Mandated Disclosure,* 2014.