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U.S. DEPARTMENT OF EDUCATION**

Before the  
U.S. Senate Committee on Health, Education, Labor, and Pensions

Hearing on  
“Sexual Assault on Campus: Working to Ensure Student Safety”

June 26, 2014

Good afternoon Chairman Harkin, Ranking Member Alexander, and Members of the Committee. Thank you for inviting me to discuss the Department of Education’s (Department) and specifically Federal Student Aid’s (FSA) role in enforcing the Clery Act and the implementation of the amendments to the Clery Act in Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013).

**Clery Act**

The Clery Act promotes consumer protection and transparency about crime and other public safety matters by requiring institutions which participate in the federal student financial aid programs under Title IV of the Higher Education Act of 1965, as amended (HEA) to provide accurate and complete information about campus safety and crime prevention to the campus community. The Clery Act requires schools to:

- Collect and disclose statistics for the most serious incidents of crimes against persons and property that are reported to Campus Security Authorities and local law enforcement agencies that occur on the campus or in the near-campus community;
- Prepare, publish, and distribute to students and employees an accurate and complete Annual Security Report that includes three years of campus crime statistics, policy statements, and other safety-related information;
- Issue Timely Warnings and Emergency Notifications in response to serious ongoing threats;
- Maintain an open and easily-understood daily crime log (if they have a campus police or campus security office);
- Submit crime statistics to the Secretary of Education annually for inclusion in the Department’s publicly available websites;
- Comply with fire safety requirements, including statistics, policies, and drills (if the school maintains on-campus student residential facilities); and
- With the passage of the amendments to the Clery Act in the VAWA 2013 reauthorization, take additional specific steps to disclose statistics, policy statements and other safety-related information on sexual assaults, dating and domestic violence, and stalking on campus.

The Department’s Clery Act Compliance Division (Clery Division) within FSA has developed a monitoring and enforcement program to assess compliance with these requirements. The Clery

Division conducts in-depth campus crime program reviews to identify any violations of the Clery Act or the Department's regulations and appropriate responsive corrective actions that need to be taken by the institution. There are 47 open Clery Act-focused program reviews or investigations. Additionally, many reviews are the result of complaints filed by victims of campus crime or their advocates—we are currently assessing 46 complaints filed by students or other stakeholders.

The Department proactively conducts non-complaint-based reviews. Some of these latter reviews are conducted jointly with staff from the Federal Bureau of Investigation (FBI) under a Memorandum of Understanding between FSA and the audit unit of the FBI's Criminal Justice Information Service. Of the 47 open Clery-Act focused program reviews or investigations, 17 are part of our Quality Assurance Review (QAR) partnership with the FBI.

In addition, FSA's Office of Program Compliance also conducts approximately 300 program reviews each fiscal year to evaluate selected institution's compliance with the Department's regulations. While these reviews focus primarily on financial aid issues, a Clery Act and Drug-Free Schools and Communities Act testing component is a part of each general assessment review. We developed procedures for regional teams to guide the conduct of the compliance checks and provide training to regional office staff as well. In addition, we review each finding of non-compliance for accuracy and completeness and revise them as needed. Since we implemented this consultation process in June 2012, we have completed work on 531 program review and audit findings.

The Clery Division also monitors media coverage of campus crime activity and conducts a preliminary assessment of major campus crimes to determine if any additional investigation is needed to determine if the institution complied with the Clery Act in response to these incidents. Since this program was put into place in January 2012, 477 incidents requiring an assessment have been identified. To support this work, the Clery Division has developed a strategic plan through which they are leveraging crime analytics and other technology to more effectively monitor crime trends and identify possible compliance failures.

The Department also utilizes the services of Westat, a Federal contractor, to collect campus crime statistics from institutions and to provide customer support services. At the beginning of each year, Westat assists the Department in collecting annual crime and fire safety data from postsecondary institutions. In January, Westat sends a broadcast email to all institutions participating in the Title IV programs, reminding them of their responsibility under the Clery Act to make a good-faith effort to collect crime statistics from local and state law enforcement agencies. The process includes reminding institutions of their obligations, administering the on-line data collection of crime statistics, monitoring submissions by institutions, and data review and correction, if necessary.

Westat also maintains a year-round Help Desk to provide assistance to postsecondary institutions and agencies without interruption. All Help Desk staff members receive annual training on all Clery Act requirements, the content of the annual data collection, and the online data collection tool. In 2013, the Help Desk responded to 5,207 incoming phone calls and 1,684 incoming emails from postsecondary institutions or agencies looking for guidance on Clery Act compliance or seeking assistance in submitting their annual statistics.

### **VAWA 2013**

Over the years, Congress has amended and expanded the Clery Act to confront new and emerging security threats, and to address impediments to campus safety. In March 2013 President Obama signed VAWA 2013, which strengthened Clery to more effectively address, and ultimately reduce, all forms of violent campus crime, including many insidious 21<sup>st</sup> Century safety threats such as cyber-stalking and other acts of harassment and intimidation that are committed by electronic means.

Soon after VAWA 2013 was signed into law, the Department developed a strategy to ensure that these new provisions were implemented as quickly as possible and in a manner that ensured that the specific goals of Section 304 were achieved. Like each of you, we at the Department are very concerned about the crisis of sexual violence on college campuses. Because of that concern, we have focused a great deal of time and attention on issues of campus crime, including a particular focus on campus sexual assault.

First, in May 2013, the Department provided guidance to institutions explaining the basic requirements of the law, and how they would be impacted by the rulemaking process. Because we knew the changes made to the Clery Act would take effect before we had an opportunity to finalize our regulations, we informed institutions that they should prepare to make a “good faith effort” to comply with the law in this year’s reports, which are due on October 1, 2014. As schools begin to compile those reports over the next few months, the Department will be reaching out with more detailed guidance on how best to comply with the law in the absence of final regulations. This outreach will include direct communication with institutions’ chief executive officers, financial aid administrators, and chief campus safety officers at all Title IV institutions. The Department will continue to offer support and technical assistance to institutions as they make their good faith effort to comply with the new requirements between now and October.

At the same time, the Department has been working to finalize the regulations that will fully implement the changes made to the Clery Act under VAWA 2013.

I can tell you that in my 17+ years in this agency, I have never been more impressed or proud of a rulemaking effort. Planning efforts began immediately after VAWA’s 2013 passage, and we strove from the beginning to gather as much input directly from the people who have been most affected by campus sexual assault and from those with expertise in addressing this problem. In May and June last year, the Department solicited written comment and held public hearings, where we heard from student advocates and institutional officials on a range of topics, from the appropriate level of enforcement to the need to balance transparency with requests for confidentiality. In the fall of 2013, in anticipation of our negotiated rulemaking sessions, we reached out to students, survivors, campus safety advocates, campus public safety officials, and other institutional officials to learn more about the issues they believed were most critical to the implementation of the law and to deepen our understanding of their concerns. We also built relationships with colleagues across the government and higher education, including the Departments of Justice and Health and Human Services (HHS), and the Centers for Disease Control and Prevention in HHS, so that our rulemaking effort and enforcement program could benefit from their expertise.

From January through March of this year, we brought together 28 negotiators representing a broad range of experience, interests, and perspectives including campus law enforcement and security professionals, victim advocates, school attorneys, Title IX coordinators, student affairs professionals, and most importantly, students themselves, for three negotiating sessions to develop the regulations.

Working together under considerable time pressures, the committee reached agreement on proposed regulations that would:

- Clarify definitions for dating violence, domestic violence, and stalking;
- Develop instructions for counting incidents of the new VAWA 2013 crimes – especially patterns of stalking;
- Specify requirements for prevention and awareness programs and campaigns;
- Ensure that institutional disciplinary proceedings are prompt, fair, and impartial;
- Set standards for the protection of survivor confidentiality while still ensuring survivors have access to the support, treatment, and disciplinary and legal options they need; and
- Ensure that accused individuals are treated fairly in student disciplinary proceedings.

After careful consideration and extensive discussion, the committee reached consensus on proposed regulatory language on April 1st. This is a great accomplishment - while we always strive to reach consensus during our negotiated rulemaking sessions, it is often difficult to do so with so many competing and affected stakeholders. We published the proposed regulations in mid-June to once again receive feedback and guidance from the public. After reviewing and considering the public comments we receive, we plan to publish final regulations by November 1, 2014.

In the rulemaking process for VAWA 2013, the Department made clear that the VAWA 2013 amendments to the Clery Act in no way alter on a school's obligations under Title IX. Nothing in Section 304 or any other part of VAWA 2013 relieves a school of its obligation to comply with the requirements of Title IX, including those set forth in Q&A documents, Dear Colleague Letters, or forms of guidance issued by the Department.

The Department is confident that the new VAWA 2013 provisions will provide powerful tools for preventing and addressing campus sexual assaults, dating and domestic violence, and stalking. These changes will ensure a fairer and more orderly path for survivors and their advocates to seek redress through campus disciplinary processes, and will help to ensure better access to the accommodations and services to which survivors are entitled.

### **Compliance**

In addition to our recent rulemaking effort, institutions that participate in our programs have been put on notice that the Department has expanded and enhanced its compliance monitoring and enforcement program—we now have 13 staff dedicated to ensuring Clery compliance. For example, FSA and the Office for Civil Rights have formalized an agreement to ensure the most efficient and effective handling of complaints and to facilitate information sharing. The

Department takes its responsibility to monitor and enforce compliance with the Clery Act very seriously, because all students should have the opportunity to pursue their education without fear.

For that reason, we also continue to work proactively with institutions to develop effective campus safety operations and to enhance their Clery Act compliance programs. In recent years, we have enhanced our guidance on Clery Act compliance and will be publishing a new version of our *Handbook for Campus Safety and Security Reporting* to inform institutional officials about the new VAWA 2013 requirements. We have also ramped up our training efforts on compliance with the Clery Act and the Drug-Free Schools and Communities Act, a companion law that we also enforce. We have had the opportunity to train institution officials at several national and regional training conferences including FSA's National Training Conference, which consistently draws more than 5,500 institutional officials each year. In an effort to complement this work, FSA is in the process of developing a new online Clery Act compliance training module that will be available to all schools free of charge.

### **White House Task Force**

In addition to my work at Federal Student Aid, I am honored to serve on the White House Task Force to Protect Students from Sexual Assault. As part of the Task Force's work, we have had the chance to hear from many of our key stakeholders and have had the unique opportunity to contribute to an ambitious effort that has as its ultimate goal to finally put an end to campus sexual assault. All of us at the Department will continue to partner with each other and to collaborate with this Committee, the advocacy and law enforcement communities, and, most importantly, with our students, in pursuit of that goal.

### **Conclusion**

Once again, it is an honor to have this opportunity to be here and on behalf of Secretary Duncan and my colleagues at the Department, I thank you for your leadership on this issue and for all that this Committee is doing to make America's college campuses safer and I welcome the Committee's questions.