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Before the

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Hearing on

“Reauthorizing the Higher Education Act: Combating Campus Sexual Assault”

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Good morning Chairman Alexander, Ranking Member Murray, and Members of the Committee. I appreciate the opportunity to join you to discuss the requirements of the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* (a.k.a. the “Clery Act”), including the newest requirements added by Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA Amendments) and the final implementing regulations published by the Department of Education on October 20, 2014. I also appreciate the chance to highlight some of the existing challenges faced by postsecondary institutions as they endeavor to get into and maintain compliance with the ever-evolving Clery Act.

My remarks today are informed by my 26-year career in the law enforcement and security industries, of which the last 18 years were spent as Chief of Police at The George Washington University until my retirement in 2010. Immediately prior to my service at GW, I served as the Assistant Chief of Police at Butler University. At both Butler and GW, I created, coordinated and supervised the Sexual Assault Response Team, which provided advocacy and support services for victims of sexual violence. In these capacities, I oversaw approximately 250 cases of sexual misconduct, from both an investigatory perspective as well as serving as an advocate and overseeing advocates who assisted victims. Providing comprehensive, intentional, effective and empowering response to sexual assault victims on college and university campuses has been a pillar of my campus law enforcement career. Since my retirement in 2010, I have continued to develop a professional consulting firm (through which I have provided Clery Act consulting services since 1997). Additionally, I serve as the founding Executive Director of the National Association of Clery Compliance Officers and Professionals (NACCOP). NACCOP is a professional association with 564 active institutional and general members that was launched in 2013 to help officials charged with Clery compliance efforts collaborate with each other, share resources and best practices, and participate in professional development opportunities pertaining to Clery Act compliance. I have taught more than 300 classes related to the Clery Act and I have

assisted more than 250 client institutions in enhancing their overall Clery Act compliance programs through reviews of Annual Security and Fire Safety Reports and by conducting independent audits.

Campuses expend significant effort and resources in bolstering campus safety. These efforts range from implementation of physical safety apparatuses (such as access control systems, intrusion detection systems, video surveillance cameras, and fire safety alarm systems) to other technological solutions such as social media, incident reporting platforms, public safety information systems, computerized automated dispatch systems, etc. Institutions consider principles of Crime Prevention Through Environmental Design (CPTED) during campus construction and renovation projects, and they develop operational policies, procedures and contingencies to plan for effective emergency and crisis scenarios. They train essential response personnel and members of the larger college or university community on applicable procedures and protocols for emergency situations. Institutions invest significant fiscal resources into hiring personnel across the institution to improve campus safety – from campus law enforcement/public safety personnel, to other individuals charged with providing education, advocacy and support for a wide range of safety-related issues (such alcohol and drug abuse prevention, sexual assault prevention, etc.). Many campuses have robust student conduct and employee discipline programs with professionals charged with overseeing these functions in order to provide swift, effective and fair institutional responses to misconduct that may undermine the safety or security of the campus. Institutions may conduct pre-employment or pre-enrollment screenings as part of the application processes for prospective students and employees in order to determine whether there is a criminal history of which the institution should be aware. Threat assessment and management teams as well as other behavioral intervention groups for students, faculty and staff have become an industry standard for responding to concerning behavior. Campuses form committees, teams, task forces, and town-gown organizations to resolve pressing issues related to campus safety and they consider best practices and research in formulating effective prevention and response strategies. Campus police and public safety units also engage in a variety of strategic and tactical approaches to preventing and solving campus crime by incorporating community oriented policing strategies, leveraging crime analytics and working collaboratively with other law enforcement agencies in the jurisdiction to address important public safety issues.

A cornerstone of contemporary safety and security efforts involves compliance with the Federal Clery Act. At its core, the Clery Act is a consumer right-to-know law first passed by Congress in 1990. Since its inception, the law has been amended six times, most recently by the VAWA Amendments. Three months prior to publication of the VAWA Amendment's implementing regulations, and 11 months prior to those regulations going into effect, a seventh amendment was proposed in the Senate and was reintroduced during the 114th Congress in February.

As you know, the purpose of the law is to provide prospective students and employees, as well as current members of the campus community, with timely, accurate and complete information about crime and the safety and security of the campus so that these populations can make informed decisions to keep themselves safe. To fulfill these goals, the Clery Act requires all postsecondary institutions that participate in Title IV student financial assistance programs under

the Higher Education Act of 1965, as amended (HEA), to comply with a constellation of annual, ongoing, and immediate requirements. Specifically, institutions must:

- **Assess and categorize the buildings and properties associated with an institution's campus (or campuses) as well as the public property within or immediately adjacent to the campus in order to determine how these locations correspond to Clery Act-specific geographic categories.** The Clery Act requires institutions to disclose statistics for select crimes that occur: on campus, on public property within or immediately adjacent to the campus, and in or on noncampus buildings or property that the institution (or an officially recognized student organization) owns or controls.
- **Annually identify, notify, train, and collect crime reports from Campus Security Authorities (CSAs).** CSAs are individuals or organizations associated with the institution that are considered by the Clery Act to be a person or entity likely to receive crime reports. According to ED, Campus Security Authorities include: all members of the campus police/security department of an institution; other individuals with responsibility for campus security (such as access monitors); officials of the institution with significant responsibility for student and campus activities (such as a Dean of Students, residential life personnel, athletic coaches/administrators, or a Title IX Coordinator), and; any other individual or office an institution identifies in its Annual Security Report as a reporting entity of the institution.
- **Record, collect, classify, count and disclose all reports of Clery Act crimes occurring on or within the institution's Clery Geography which are made to Campus Security Authorities or local law enforcement agencies.** Campuses are required to annually request reports of alleged criminal incidents from all CSAs. Crime statistics must also be requested from all local law enforcement agencies that have jurisdiction on or within any of the institution's Clery Geography, including both domestic and foreign locations owned or controlled by the institution. Crimes must be disclosed for all of the following 15 Clery Act crimes:
 - Murder and Nonnegligent Manslaughter
 - Negligent Manslaughter
 - Sex Offenses (Rape and Fondling)
 - Non-forcible Sex Offenses (Incest & Statutory Rape)
 - Robbery
 - Aggravated Assault
 - Burglary
 - Motor Vehicle Theft
 - Arson
 - Arrests for liquor, drug and weapons law violations
 - Referrals for disciplinary action for liquor, drug and weapons law violations
 - Dating Violence
 - Domestic Violence
 - Stalking, and
 - Hate Crimes

The most recent three calendar years' worth of crime statistics must be disclosed annually to the Department of Education (ED) via the online Campus Safety and Security Survey and to the campus community in the Annual Security Report.

- **Publish and distribute an Annual Security Report.** The Annual Security Report (ASR) must contain 111 separate policy statement disclosures (including three years' worth of crime statistics separated by crime type, year, and location). If a campus does not have any on-campus student housing facilities, only 92 disclosures are required. It is noteworthy that the VAWA Amendments to the Clery Act added an additional 47 policy statement disclosures to the ASR, nearly doubling the amount of required disclosures. All of this content must be contained within the report's front and back covers. Institutions must make the report available to all currently enrolled students and all employees by October 1 each year in addition to the ongoing requirement of providing a notice of the report's availability to all current and prospective students and employees.
- **Alert the campus community of recent, current or impending incidents that may adversely impact the wellbeing of students and employees.** Specifically, institutions are required to assess crime reports and issue a Timely Warning Notification for any Clery Act crime occurring on or within the institution's Clery Geography that is considered by the institution to represent a serious or continuing threat to students and employees. Additionally, institutions must issue an emergency (immediate) notification upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus. Institutions must describe their policies and procedures for issuing these alerts in the Annual Security Report and must follow these policies whenever circumstances warrant.
- **Create, maintain and make available a written Daily Crime Log** (if the institution has a campus police or security department). The most recent 60 days of the log must be immediately available to anyone requesting access, and the last 7 years of the log must be made available to the consumer within 2 business days of the complete log's request. The log is intended to be a more comprehensive, specific and timely disclosure of *all* criminal incidents reported to the campus police or security department that occur on or within the institution's Clery Geography. The log is not limited to the 15 Clery Act crimes for which the institution must also disclose crime statistics, and the log includes all crimes that are reported to the campus police or security department which occurred on or within the institution's Clery Geography, which includes the campus agency's expanded patrol jurisdiction, if one exists. An entry must be made to the log within 2 business days of receiving the information, and institutions are also required to update, within 2 business days, any dispositions of log entries recorded during the prior 60 days.
- **Develop, disclose, and annually test the institution's emergency response and evacuation procedures.** A test is defined as regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities. In conjunction with the annual test, the institution must provide the campus community with a summary of the drill and exercise that comprised

the test as well as a summary of the institution's emergency response and evacuation procedures.

- **Provide security awareness programs to students and employees.** These programs must address security procedures and practices and encourage the campus community to look out for the safety of themselves and each other, and must be described by type and frequency in the Annual Security Report. Campuses are also required to describe (in the Annual Security Report) any crime prevention programs offered to students and employees.

Additionally, campuses with on-campus student housing facilities are also required to:

- **Collect and disclose statistics of reported fires occurring in on-campus student housing facilities.** Statistics for each on-campus student housing facility must be published for the most recent three calendar years. Statistics must include the number of fires in each facility, the cause of each fire, the number of persons with fire-related injuries, the number of fire-related deaths, and the value of any property damage caused by each fire.
- **Publish and distribute an Annual Fire Safety Report.** The report must include the institution's current policies, procedures, practices and rules pertaining to fire safety in residential facilities, as well as the required fire statistics.
- **Create, maintain and make available a written Fire Log.** The most recent 60 days of the log must be immediately available to anyone requesting access, and the last 7 years of the log must be made available to the consumer within 2 business days of the complete log's request. The Fire Log records, by the date the fire was reported to an official, all fires in student housing facilities. The log must be immediately available to the consumer and must include the nature, date and time the fire occurred; the date reported and general location of each fire; and must be made available during normal business hours. An entry must be made to the log (or an addition to a prior entry) within 2 business days of receiving the information.
- **Develop, publicize and initiate required notification procedures pertaining to reports of missing students who reside in on-campus student housing facilities.** To meet these requirements, institutions must issue a policy statement in the Annual Security Report that addresses missing student notification for residential students and includes procedures the institution will follow if residential students are determined to be missing for 24 hours. At its core, the missing student procedures mandate that if a residential student is determined (by the campus police/public safety or local law enforcement) to have been missing for 24 hours, the campus police/security department has only 24 hours after receiving the report in which to initiate specific notification procedures, including notification of the local law enforcement agency that has jurisdiction. In order to facilitate this process, institutions must provide each residential student the opportunity to identify one or more confidential missing person contact(s) on an annual basis.

The 2013 VAWA Amendments to the Clery Act added the following requirements for all institutions:

- **New crime reporting requirements for Domestic Violence, Dating Violence and Stalking and expanded hate crime reporting requirements.** Specifically, institutions are now required to collect and disclose the number of Domestic Violence, Dating Violence and Stalking incidents reported to CSAs or local law enforcement agencies in the annual crime statistics. Additionally, “gender identity” was added as a category of bias for which hate crimes must now be reported, and the existing category of “ethnicity/national origin” was split into its component parts of “ethnicity” and “national origin,” bring the total number of bias categories from 6 to 8.
- **New reporting requirements regarding the number of Clery Act crime reports withheld from disclosure in the annual crime statistics.** All reported crimes made in good faith must be included, but on the rare occasion that sworn law enforcement determines a crime report to be unfounded (that is, false or baseless), institutions must now disclose the number of unfounded reports for all 15 Clery Act crime categories in the annual crime statistics.
- **Provide (and describe in the ASR) primary prevention and awareness programs made available to all incoming students and new employees which are designed to prevent incidents of Domestic Violence, Dating Violence, Sexual Assault and Stalking from occurring.** These programs must be: culturally relevant; inclusive of diverse communities and identities; sustainable; responsive to community needs; informed by research or assessed for value, effectiveness, or outcome, and; consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels. Primary prevention and awareness programs must address a myriad of required content areas including: Federal and jurisdictional definitions of Domestic Violence, Dating Violence, Sexual Assault, Stalking and consent; a statement that Domestic Violence, Dating Violence, Sexual Assault and Stalking is prohibited by the institution; a description of safe and positive options for bystander intervention; information on risk reduction; and the procedures the institution will follow, including procedures for disciplinary action, when a crime of Domestic Violence, Dating Violence, Sexual Assault or Stalking is reported to the institution.
- **Provide (and describe in the ASR) ongoing prevention and awareness campaigns made available to all current students and employees which are designed to prevent incidents of Domestic Violence, Dating Violence, Sexual Assault and Stalking from occurring.** These programs must share the same characteristics and address the same content areas as those primary prevention and awareness programs provided to incoming students and new employees. However, these programs must be sustained over time and have a more specific focus of enabling audiences to understand topics related to these crimes and to provide skills for addressing them.

- **Develop, implement and describe in the ASR procedures the institution will follow upon receipt of a report of Domestic Violence, Dating Violence, Sexual Assault and Stalking.** These procedures must include: the procedures victims should follow when one of these crimes occurs (including information regarding evidence preservation, reporting options, and rights and responsibilities pertaining to civil or institutional protection, restraining or “no contact” orders issued by the institution or any lawful authority); information regarding how the institution will protect the confidentiality of victims and other necessary parties; a statement that the institution will provide written notification to students and employees about existing 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; a statement that the institution will provide written notification to victims about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures (if requested by the victim and reasonable available, regardless of whether the victim reports the crime to law enforcement), and; an explanation of the procedures for institutional disciplinary action that may be used in cases of alleged Domestic Violence, Dating Violence, Sexual Assault or Stalking.
- **Provide students and employees reporting victimization related to Domestic Violence, Dating Violence, Sexual Assault and Stalking with a written notification of rights and options.** The information contained in this notification must include the same information required to be published in the ASR pertaining to the procedures the institution will follow upon receipt of a report of Domestic Violence, Dating Violence, Sexual Assault and Stalking.
- **Develop, implement and describe in the ASR procedures for institutional disciplinary action in cases of Domestic Violence, Dating Violence, Sexual Assault and Stalking.** Such procedures must include any procedures that could be used in student or employee disciplinary action in cases of Domestic Violence, Dating Violence, Sexual Assault or Stalking and must share common characteristics and features. Namely, these procedures must:

 - provide for a prompt, fair and impartial process from the initial investigation to the final result;
 - be conducted by officials who, at a minimum, receive annual training on the issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;
 - be completed in a reasonably prompt timeframe as designated by the institution’s policy;
 - be conducted by officials who do not have a conflict of interest or bias for or against either party;
 - be conducted in a manner consistent with the institution’s policy and transparent to the accuser and the accused;
 - include timely notice of meetings at which either party (or both) may be present, and;

- provide timely and equal access to both parties and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings.

Furthermore, the Clery Act requires parity of treatment between the accuser and accused in disciplinary proceedings such that the institution must:

- provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice (without limiting the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding), and;
- require simultaneous notification, in writing, to both the accuser and the accused, of the result of any institutional disciplinary proceeding, the institution's procedures for either party to appeal the result of the institutional disciplinary proceeding, if such procedures are available, any change to the result; and when such results become final.

Institutions must, in the Annual Security Report, describe each type of disciplinary proceeding used by the institution, including:

- the steps,
- anticipated timelines, and
- decision-making process for each type of disciplinary proceeding;
- how to file a disciplinary complaint; and
- 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.

Institutions must also describe the standard of evidence that will be used during any institutional disciplinary proceeding arising from an allegation of dating violence, domestic violence, sexual assault, or stalking, lists all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceeding for one of these offenses, and; describe the range of protective measures that the institution may offer to the victim following an allegation of dating violence, domestic violence, sexual assault, or stalking.

With the passage of the VAWA Amendments, the Clery Act and Title IX are forever linked. Many of the VAWA Amendments reflect the spirit, and in some cases the letter, of sub-regulatory guidance provided by the Department of Education's Office of Civil Rights (OCR) as it pertains to compliance with Title IX of the Education Amendments of 1972 ("Title IX"). For example, Title IX prohibits sex-based discrimination, including sexual harassment. Sexual harassment includes sexual violence, which has been defined by OCR as "physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol." The Clery Act requires institutions to adopt certain procedures in response to reports of sexual assault which, in this context, is effectively synonymous with sexual violence. Many of the procedures enumerated in OCR guidance documents are now the law of the land via the VAWA Amendments to the Clery Act. The VAWA Amendments also

require institutions to prohibit, report statistics, and implement appropriate response procedures for the additional crimes of Domestic Violence, Dating Violence and Stalking which are most often perpetrated on the basis of a victim's sex, therefore bringing the requirements of Title IX to a vast majority of these cases.

Both laws also require institutions to inform victims of their option to report the incident to law enforcement and be assured certain rights and protections independent of whether the victim chooses to report the crime to police. Furthermore, the Clery Act and Title IX each identify categories of personnel that have mandatory disclosure requirements when they learn of prohibited conduct (CSAs for the Clery Act and Responsible Employees for Title IX). When Responsible Employees are notified of sex-based misconduct, they have a duty to report that information to the Title IX Coordinator who, consequently, is a Campus Security Authority for Clery Act purposes and must, in turn, report the crime to the reporting structure established by the institution for potential inclusion in the annual crime statistics as well as an assessment of the need to issue a Timely Warning Notification on the basis of the crime report. The Title IX Coordinator must also take appropriate interim measures, including the provision of accommodations pertaining to the victim's academic, residential, transportation or working situations and other appropriate protective measures, which the Clery Act also compels be provided if requested by the victim and such accommodations and protective measures are reasonably available. Victims must also be apprised of their rights, options, and available support services under both laws when reporting victimization to the institution regardless of whether the victim chooses to report the crime to law enforcement.

Although ED is careful to note when discussing the VAWA Amendments that "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," Title IX's indelible influence can be seen throughout the VAWA Amendments. Many of the new requirements under Clery have been adapted, often wholesale, from pre-existing Title IX sub-regulatory guidance and elevated to VAWA's implementing regulations such that they carry the force of law under the Clery Act. This is perhaps most apparent when considering the new procedures institutions must implement as it relates to managing allegations of Domestic Violence, Dating Violence, Sexual Assault and Stalking. For example, personnel involved in the investigation or resolution of sexual assault/sexual violence complaints are expected to have sufficient training to perform these functions, and decision makers may not have a conflict of interest that would undermine their impartiality. Both laws compel institutions to adopt equitable resolution procedures that, among other things, establish reasonably prompt timeframes for the major steps of the procedures and that provide each party with an equal opportunity to:

- participate in the proceedings;
- have timely access to information that will be used during the proceedings;
- have the same opportunities to be accompanied by an advisor;
- receive contemporaneous written notification of the outcome of the proceedings;
- have the same opportunity to appeal the results of the proceedings, if any appeal option exists, and;
- be apprised of the final results of any appeal.

These examples are not exhaustive but rather a sampling of how inextricably linked Title IX and the Clery Act have become with the passage of the VAWA Amendments.

Contemporary Compliance Challenges

As you can see, each of the existing requirements of the Clery Act are multifaceted and extremely nuanced. The *Handbook for Campus Safety and Security Reporting*, most recently published in 2011, provides more than 300 pages of guidance to institutions as they attempt to comply with the state of the law prior to the enactment of the VAWA Amendments. While the guidance is necessary, and welcome, it is far from sufficient. The Handbook cannot be read as a “how-to” manual and instead serves as a reference guide for practitioners that seek to understand basic requirements and nuances of the law as interpreted by ED. Campuses have few other opportunities to enhance knowledge related to the Clery Act, as the Department does not provide sub-regulatory guidance (such as Dear Colleague Letters or “Questions and Answers”) with the frequency or specificity as it provides for other laws under its jurisdiction, such as Title IX.

Although the Department has sub-contracted with Westat to operate its Campus Safety & Security Help Desk, guidance provided by this entity is non-binding and, at times, appears to be inconsistent with the findings of the Department of Education’s Clery Act Compliance Division when that division conducts Clery Act program reviews. For example, an institution recently wrote the Help Desk to inquire whether or not to disclose a Clery Act crime that was reported to a CSA but for which the precise location of the crime was unknown, as the Handbook is silent on this point. The Help Desk advised the campus not to report the crime in the annual crime statistics, but when a similar circumstance arose at The Ohio State University in 2006, OSU was found to be in noncompliance and instructed by the auditors to “treat the incident as an on-campus incident” and disclose it accordingly in the annual crime statistics. These kinds of conflicts create compliance quandaries where campuses making earnest efforts to comply must decide whether to rely on Help Desk guidance, potentially to their detriment.

There are a plethora of unresolved questions that stem from the Clery Act’s final implementing regulations as it pertains to the new VAWA requirements related to classification and counting new crimes (especially Dating Violence); presentation of crime statistics (including “unfounded” statistics) in the Annual Security Report, required content and length of the written notification of rights and options for victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking; what constitutes “simultaneous, written notification” of results to the accuser and accused in disciplinary proceedings, etc. The forthcoming Handbook, which will be published after the effective date of the regulations, will surely address some of these foreseeable issues whereas others will present themselves after the Handbook’s publication and will require additional guidance from ED.

Yet there are lingering challenges that continue to hamper efforts to stay in compliance with the Clery Act. For example, the Help Desk clarified in a 2012 email to campuses that institutions must disclose statistics for buildings or properties that are not reasonably contiguous to the main campus which are owned or controlled by the institution, frequently used by students, and used in support of the institution’s educational purposes. This definition is well established in the statute, reiterated in the regulations, and discussed in the Department’s Handbook using primarily domestic examples of noncampus locations. However, the Department’s first attempt

at operationalizing the definition of “frequently used by students” did not occur in meaningful form until the 2012 email when it articulated that a location is considered “frequently used by students” when repeated use of the same location is made or when the duration of the use is sufficient to trigger the “frequently used by students” criterion. In the Help Desk email, it offered no guidance for whether gaps in time between usage would continue to meet the “repeated use” threshold. The Department’s example includes annual usage, but institutions are not afforded any guidance regarding whether use every other year, every 10 years, or at other sporadic intervals would also meet the “repeated use” standard.¹ Furthermore, the Help Desk’s email clarified that a “trip of longer duration” would satisfy the “frequently used by students” criterion, and offered an example of a three-week trip. However, in the email to campuses, the Help Desk conceded “there is no ‘magic number’ of days that must be met to be considered ‘frequently used by students.’” The “trip of a longer duration” language was offered in contrast to an example of a short-stay, overnight trip. Most practitioners would not regard a two- or three-night stay as being associated with “frequent use,” but the lack of clear standards from ED leaves institutions little choice but to do so. Therefore, in an abundance of caution, and absent additional specific guidance from ED, institutions must now track locations—often in the hundreds—being used for more than one night and treat these locations as Noncampus buildings or properties to ensure they are above reproach in an ED audit. ED could greatly diminish the confusion around this issue if they were to articulate a bright-line standard with which campuses would be expected to comply in order to meet this requirement.

To complicate matters further, the requirement to disclose statistics for noncampus locations of U.S. campuses had not been previously interpreted by institutions as applying to education abroad activities. Following the Help Desk email, campuses that have made an attempt to comply with this requirement were left with little choice but to develop elaborate systems to track all locations where the institution sends students as part of education abroad activities and write each local law enforcement agency at those locations to request crime statistics. In some instances, this results in campuses sending hundreds of letters to foreign law enforcement officials which frequently are ignored and divert important human and fiscal resources that could otherwise be invested in promoting *campus* safety. Even when campuses do receive responses from law enforcement agencies, these statistics are combined into a single statistic which provides the consumer with virtually no useful information about where in the world the crime occurred. It is hard to imagine this was the intent of Congress when the law and its amendments were passed.

While the issue of noncampus locations provides an example of latent “clarification” provided by ED, it is not the only occasion in which the Department has articulated expectations about which campuses were previously uninformed. In 2011, the Department indicated in the *Handbook for Campus Safety and Security Reporting* that the Daily Crime Log requires all crimes occurring in a single incident to be disclosed on the Daily Crime Log. This practice runs contrary to how crime statistics are compiled and reported annually for which the “Hierarchy Rule” commands that only the most serious crime reported in the incident be disclosed when multiple crimes are reported (with some notable exceptions, such as Arsons and Hate Crimes).

¹ Since institutions are only required to maintain Clery Act records for a period of seven years, it would seem reasonable for ED to adopt a standard equal to or less than usage of the same location 7 years apart.

The original Daily Crime Log requirement was the result of the 1998 Amendment to the Clery Act and was addressed in the Department's initial *Handbook for Campus Crime Reporting*, published in 2005. However, it was not until 2011 in the revised Handbook that the Department stated—for the first time—that all crimes occurring in a single incident are to be recorded in the log and therefore the Hierarchy Rule does not apply to the log. By that point, many campuses had made significant financial investments in electronic records management systems that were designed to implement the Hierarchy Rule when producing the Daily Crime Log, unknowingly in contravention to the Department's previously unspoken expectations. Neither the statute, the implementing regulations nor prior sub-regulatory guidance had ever alerted campuses to this distinction, but the Department took it upon itself to create this rule when it published the revised Handbook 13 years after the requirement went into effect.

Another example of contemporary challenges to compliance is how the Clery Compliance Division interprets Uniform Crime Reporting definitions and applies these to specific fact patterns for purposes of classifying and counting crimes for Clery Act purposes. In a recent Final Program Review Determination involving the University of Missouri – Kansas City, the Department found the institution in noncompliance for failure to properly classify and disclose crime statistics. Specifically, in one case, the Department noted that some of a student's belongings were missing after employees of a contract cleaning service packaged the student's property for storage. The Department indicated this offense should have been reported as a Burglary. It further opined that the offense “is a Constructive Burglary based on the facts in the report. While the cleaning service had legal access to the room, the subsequent illegal act converts the larceny to a crime against the habitation.” There is no such language in the UCR program that speaks to “Constructive Burglary” nor are there any conditions enumerated in the UCR Handbooks that would “convert” a theft from a structure committed by someone with lawful access from a Larceny to a Burglary. Additionally, this conclusion stands in stark contrast to guidance in ED's own Handbook which states that for an incident to be classified as a Burglary, “There must be evidence of unlawful entry (trespass). This means that the person did not have the right to be in the structure at the time the incident occurred.” The Department offers an example in its Handbook whereby a maintenance worker with a work order used his keys to enter an on-campus office to fix an air conditioner, and while he was there he decided to steal a laptop. The Department's guidance in this instance was to classify this incident as a Larceny because the maintenance worker had a right to be in the office at the time of the theft. The Clery Compliance Division's re-interpretation of UCR standards in the University of Missouri-Kansas City case is a clear deviation from established Burglary classification guidance provided by the Department and by the FBI's UCR Program, which the Department purports to use for Burglary offenses. These audit reports are among the few opportunities that campuses have at their disposal glean insights about compliance beyond the Handbook or institution-specific question posed to the Help Desk. As a result, ED needs to be painstakingly thorough and clear in describing the specific facts or circumstances giving rise to noncompliance findings, with detailed rationales as to how campuses fell short of requirements, so that all campuses can learn from these errors and correct any potentially problematic practices.

Need for Enhanced Clery Act Guidance

For a majority of the disclosure requirements in the Clery Act, campuses are not required to adopt specific policies or procedures, they are simply required to identify whether or not they

have certain policies, procedures or practices and, if so, describe them adequately to the consumer. VAWA introduced a series of very specific mandates related to policies, procedures and practices campuses must not only describe in their compliance documents, but implement in their day-to-day operations. As a result, campuses are going to need significantly more guidance and resources than what has been provided in the past, and they yearn for such guidance and resources. Campuses want to do right by all parties affected by these issues while remaining above reproach with regard to compliance. In order to do that effectively, campuses will need more clear and frequent guidance with regard to how the Department expects campuses to operate in response to sexual violence and related issues. The guidance should not, however, be overly prescriptive. The diversity of institutions—in size, mission, organization, governance, residential status, resources, and police/public safety capacities—commands the need for regulations, and the sub-regulatory guidance that follows, to allow for appropriate latitude so that institutions can remain nimble and respond to mandates within the context of their unique attributes.

Overly-prescriptive mandates and “guidance” has the potential to do more harm than good. This is one concern NACCOP has regarding the Campus Accountability and Safety Act (CASA). For example, CASA would compel institutions to develop their programs to prevent Domestic Violence, Dating Violence, Sexual Assault and Stalking in consultation with specific external groups. Not only does the list of required consultees overlook important constituent groups that would bring about critical expertise (such as higher education professional associations), but it diminishes any local expertise that may exist within the institution’s faculty or staff and privileges the voices of external groups who may not have the ability or willingness to collaborate. The presumption embedded in this requirement – as with many other requirements of CASA – is that institutions cannot be trusted to competently perform essential functions without external support and accountability. While institutions must be held accountable for meeting statutory and regulatory requirements consistent with the requirements of their Program Participation Agreements, they should be given the flexibility to meet these requirements within a framework of clear parameters and guidelines where discretion is carefully guided, not outsourced.

Campuses earnestly want to comply with the Clery Act, and many see it as a basement – not a ceiling – of campus safety efforts. Many of the new requirements proposed by the Campus Accountability and Safety Act are laudable and have great potential to enhance existing safety on campus. Each of these proposals will require thoughtful consideration of the implications, intended and otherwise, of adoption. As a professional association representing Clery compliance officer and professionals, NACCOP welcomes the opportunity to be involved in any efforts that help consider the practical implications of proposed or new legislation and any of the Department of Education’s efforts to provide much needed guidance to institutions as they endeavor to comply with the law.

I sincerely appreciate the opportunity to address the committee today and I welcome any questions you may have of me.