

Clery Act Appendix for FSA Handbook

In 1990, Congress passed the Crime Awareness and Campus Security Act (CACSA) amendments to the Higher Education Act of 1965 (HEA). Amendments to CACSA in 1998 renamed the law the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in memory of a student who was murdered in her dorm room. In 2013, Congress passed the Violence Against Women Reauthorization Act (VAWA), which included additional amendments to the Clery Act.

The Clery Act requires that all postsecondary institutions participating in Title IV student financial assistance programs disclose campus crime statistics and other security information to students and the public. The VAWA amendments added requirements that institutions disclose statistics, policies and programs related to dating violence, domestic violence, sexual assault, and stalking, among other changes.

Consistent with the statutory and regulatory framework, and interpretive principles, the Department will continue to apply the plain meaning of terms contained within each Clery requirement. The Department will accept an institution’s reasonable interpretation of terms as long as those terms are defined clearly to individuals who review the campus’ Clery Act reports. In the event that the Department believes that more specific definitions are required, it will engage in future negotiated rulemaking to ensure that institutions and the public have an opportunity to comment on those definitions.

The Clery Act requires institutions to develop and implement specific campus safety and crime prevention policies and procedures. Previous versions of the Department’s Clery guidance created additional requirements or expanded the scope beyond what is strictly required by statute or regulation. Despite the fact that guidance does not have the force of law or regulations, institutions felt pressured to satisfy requirements found in the guidance or risk serious financial and reputational consequences. This Appendix provides simple, plain-language explanations of Clery Act requirements found in, and adherent to, relevant statutory and regulatory authority.

| Clery Act Requirements – The Basics | |
|---|---|
| <ul style="list-style-type: none"> • Collect, classify, and count crime reports and statistics | |
| <ul style="list-style-type: none"> • Issue campus alerts and warning notices | <ul style="list-style-type: none"> • Publish an Annual Security Report (Due date: October 1) |
| <ul style="list-style-type: none"> • Disclose missing student notification procedures, when applicable | <ul style="list-style-type: none"> • Submit crime and fire statistics to the Department, when applicable |
| <ul style="list-style-type: none"> • Disclose procedures for institutional disciplinary actions | <ul style="list-style-type: none"> • Provide educational programs and campaigns |
| <ul style="list-style-type: none"> • Keep a daily crime log, when applicable | <ul style="list-style-type: none"> • Disclose fire safety information, when applicable |

The Department is committed to ensuring institutional compliance with the Clery Act and providing guidance to institutions that will enable them to maintain a safe and secure campus environment. This Appendix is intended to assist institutions in satisfying the statutory and regulatory requirements.

Other than the statutory and regulatory requirements included in this document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

As appropriate, this Appendix is effective for the reporting year following publication. The Appendix describes and incorporates the above basic requirements into the following sections: I) Clery Crimes and Reporting; II) Clery Geography; and III) Reporting, Procedures, Policy, and Notification Requirements.

Part I: Clery Crimes and Reporting –

Under the Clery Act, a school must report to the Department and disclose in its Annual Security Report statistics for the three most recently completed calendar years. Institutions also must submit their crime statistics to the Department as part of the annual data collection and survey, including the number of each of the following crimes – listed in the box below – that occurred on or within its Clery Geography and that are reported to local police agencies or to another official (as determined by the institution) campus security authority (CSA). As outlined in 34 CFR 668.46(c)(2), Clery Act reporting does not require the institution to initiate an investigation or disclose personally identifiable information (PII) about the victim.

The following chart provides a list of the crimes that must be reported and resources for where definitions for each Clery Crime can be found.

| Clery Crime Definitions by Source: | | | | |
|--|----------------------------|---|--------|-----------------|
| <u>Summary Reporting System User Manual:</u> | | <u>National Incident-Based Reporting System User Manual:</u> | | |
| Criminal Homicide | Rape | Fondling | Incest | Statutory Rape |
| Robbery | Aggravated Assault | <u>Uniform Crime Reporting Hate Crime Data Collection Guidelines and Training Manual:</u> | | |
| Burglary | Motor Vehicle Theft | All Hate Crimes | | |
| Arson | Drug Law Violations | | | |
| Liquor Law Violations | Illegal Weapons Possession | <u>Violence Against Women Act of 1994:</u> | | |
| Note: The FBI has announced that it will retire the SRS and transition to using only the NIBRS in January 2021. | | Domestic Violence | | Dating Violence |
| | | Stalking | | Sexual Assault |

Note: Per 34 CFR 668.46 (c)(1)(iii)(B), institutions must disclose hate crime statistics for all Clery-reportable offenses and the crimes of larceny-theft, simple assault, intimidation, and vandalism/destruction of property that are determined to be hate crimes.

Campus Security Authorities: 34 CFR 668.46(a) –

While not defined in statute, regulations provide that CSAs include: (i) campus police or security department personnel; (ii) individuals with security-related responsibilities; and (iii) individuals or organizations identified in institutional security policies as an individual or organization to which students and employees should report criminal offenses. The definition at § 668.46(a)(iv) states that a CSA also includes an official “who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings.”

The Department will defer to an institution’s designation of CSAs as authoritative and provide any technical assistance necessary to work with institutions to help ensure proper identification and notification of CSAs consistent with the regulations. The regulations do not require that an employee with minimal responsibilities for student and campus activities *necessarily* be considered CSAs. On a case by case basis, institutions may apply the regulations to not designate CSA responsibilities for Clery Act reporting purposes to an individual. Individuals determined not to have significant responsibility for student and campus activities may, in some cases, include those individuals who, for example, have irregularly scheduled duties or duties that are not part of an employee’s primary job description. If paragraphs (i)-(iii) of the definition of CSAs are not applicable, institutions should focus on the “significant responsibilities” of an employee when determining whether that employee is a CSA for Clery purposes. Note that a CSA for Clery purposes will include employees who meet the definition of “any official...who has the authority to institute corrective measures” for Title IX purposes under 34 CFR 106.30(a).

Part II: Clery Geography –

In the Annual Security Report, institutions are required to record crimes by location. Explained below, the three categories of locations subject to reporting are: 1) on-campus; 2) noncampus building or property; or 3) public property.

- 1) “Campus” is defined in 34 CFR 668.46(a) as “(i) Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution’s educational purposes, including residence halls; and (ii) any building or property that is within or reasonably contiguous to the area identified in paragraph (i) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).”

The Department does not apply any specific or measurable distance definition to “reasonably contiguous geographic area.” Many institutions employ an approach that any property included on a campus map or designated by signage as a campus facility is considered to be included in the definition of “reasonably contiguous geography area.” If an additional location, branch campus, school within the institution, or an administrative location is not within a reasonably contiguous area, such location would be considered a separate campus for reporting purposes.

- 2) “Noncampus building or property,” as defined in 34 CFR 668.46(a), means “(i) [a]ny building or property owned or controlled by a student organization officially recognized

The Purpose of Clery Geography –

Clery Geography requirements are intended to inform the campus community of crimes so that members of the community are aware of safety issues and may take steps to protect their own safety. In the past, institutions have struggled with the complexities of Clery Geography has resulted in institutions taking different approaches to the reporting requirement. While it is important that institutions adhere to the statute and regulations, too much information may have a detrimental effect because information overload may prevent a student or parent from identifying the most significant or serious threats. For institutions seeking to avoid findings of underreporting, the result was an overwhelming amount of statistics and information that could often cause students, employees, and their families to tune out critical campus safety information, such as timely warnings. For Clery Geography reporting purposes, remember these principles:

- 1) Consistent with the regulatory framework, institutions should determine which buildings, facilities, parking lots, and real estate are included in the definition of the “campus.”
- 2) Too much information can be just as detrimental as too little information.
- 3) When in doubt, apply the plain meaning of regulatory and statutory requirements.

by the institution; or (ii) [a]ny building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution’s educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.”

Institutions have asked questions about what is meant by the term “officially recognized.” Regulations do not define this term; therefore, institutions should determine how they identify recognized organizations. Some institutions, for example, limit the list of officially recognized organizations to those that receive financial support from the institution.

Examples of noncampus buildings or property that satisfy the first part of the definition include, but are not limited to, officially recognized fraternity and sorority-owned chapter houses, institution-owned campus bookstores that are located off-campus, apartment buildings that are owned or controlled by the university, or campus-owned event facilities that support activities that include students who work in or utilize the facility.

To satisfy the second part of the definition, the property must: 1) be owned or controlled by the institution (e.g., leased by the institution); 2) be used in direct support of or in relation to the institution’s educational purposes; 3) be frequently used by students; and 4) not be within a reasonably contiguous geographic area of the institution. Examples of this type of property would include, but not be limited to, institution-owned, off-campus apartment units that are rented to students, ancillary research or athletic facilities utilized by students and faculty, and event facilities located off-campus and utilized for campus activities.

- 3) “Public Property” is defined in statute as “all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution’s educational purposes.” The regulatory definition of “public property” in 34 CFR 668.46(a) includes “all public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.”

In order for this definition to apply, the property in question must satisfy all three conditions: 1) public (e.g., publicly-owned); 2) within or immediately adjacent to campus; and 3) accessible from campus. This definition excludes any private property, and may in some cases exclude areas such as property divided by a fence or wall, or property with clearly posted signs indicating that it is not part of the campus or that trespassing is prohibited. Private property where students have established regular usage – whether legal, illegal, open, or inconspicuous – that is not otherwise campus or noncampus property, is not public property for Clery reporting purposes. The Department applies no specific measurable distance definition into adjacent public property. When the campus is adjacent to a public park, that does not otherwise meet the definition of a public property, some

institutions have employed the practice of clearly designating campus boundaries through posted signage, such as warnings that individuals are entering a “non-campus area” or through “no trespassing” signs, where applicable.

Clery Geography and Title IX –

Under Title IX, an institution’s obligations to address sexual harassment in a recipient’s “education program or activity” is a separate inquiry from an institution of higher education’s obligations with respect to Clery Geography. While the two concepts may overlap, they are not coterminous and the two laws (Clery Act and Title IX) serve separate purposes and have separate obligations for entities covered by both laws.

When an institution has officially recognized a student organization, and sexual harassment occurs in an off-campus location *not* owned or controlled by the student organization but involving members of the officially recognized student organization, the recipient’s Title IX obligations depend upon whether the recipient exercised substantial control over the respondent and the context of the harassment, or whether the circumstances may otherwise be determined to have been part of the “operations of” the institution. Sexual harassment, under Title IX and as defined in 34 CFR 106.30(a), covers a wider range of misconduct than the sex offenses covered under the Clery Act.

At 34 CFR 106.44(a), the Title IX regulations cover incidents in an institution’s “education program or activity,” which includes “locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.” The 2020 Title IX regulations do not impose a geographical limit on an institution’s responsibilities, with the exception of the limitation of Title IX’s scope to incidents that occur “against a person in the United States.”

Part III: Reporting, Procedures, Policy, and Notification Requirements –

Institutions must publish and disseminate an Annual Security Report by October 1st of each year. Institutions that have on-campus residential facilities must also publish, by that same date, a Fire Safety Report. The required contents of those reports, along with related notification, procedures, and policy requirements, are discussed in this section.

Each year, the Department sends a letter to presidents or chief executive officers of institutions with information on accessing the Campus Safety and Security Survey website (*See*: <https://surveys.ope.ed.gov/security>), where schools submit Clery Act crime statistics for the three most recent calendar years for which there is available data. The website explains how to tabulate these statistics. The letter explains any changes to the survey, the collection dates for the survey, the name of the person who completed the reporting at the school the previous year, and a new ID and password for completing the survey.

Schools with on-campus student housing facilities must also submit an annual Fire Safety Report to the Department. The report must include statistics on the number of fires and causes of each fire, as well as fire-related injuries, deaths, and/or fire-related property damage for each on-campus student housing facility. The Fire Safety Report is due at the same time as the Annual Security Report.

The Annual Security Report 34 CFR 668.46(b) and Crime Statistics 34 CFR 668.46(c) –

Each institution's Annual Security Report must include a list of titles of each person or organization to whom students and employees should report Clery Act crimes for the purpose of making both timely warning reports and the annual statistical disclosure. The Annual Security Report must also include institutional policies or procedures for victims or witnesses to report Clery Act crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics. Additionally, institutions must include current policies concerning the security of, and access to, campus facilities and residencies, as well as security considerations in the maintenance of campus facilities.

An institution is not required to include (or may remove) a reported crime from its statistics when sworn or commissioned law enforcement personnel have fully investigated the reported crime and have made a formal determination that the crime report is false or baseless and, therefore, "unfounded." Institutions must report to the Department and disclose in their Annual Security Report statistics that include the total number of crime reports that were "unfounded" and subsequently withheld from its crime statistics during each of the three most recently completed calendar years.

The following are required contents of the Annual Security Report. Note that this chart is not intended to be all-inclusive and institutions must review the statute and regulations to identify all the information that must be included in their Annual Security Report.

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| <ol style="list-style-type: none">1) Policies regarding alcoholic beverages and underage drinking laws2) Policies regarding illegal drugs and applicable federal and state drug laws3) Programs on substance abuse4) Programs to prevent dating violence, domestic violence, sexual assault and stalking, and the procedures institutions will follow when such crimes are reported5) Information regarding sex offenders6) Descriptions of emergency response and evacuation procedures7) Policies regarding missing student notifications | <ol style="list-style-type: none">8) Campus crime statistics9) Policies regarding procedures for reporting criminal actions or other emergencies on campus10) Policies on security of and access to campus facilities11) Policies on enforcement authority of security personnel; working relationship of campus security personnel with State and local police agencies; accurate and prompt reporting of crimes; pastoral and professional counselors12) Programs on campus security procedures and practices |
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Policies Regarding Campus Law Enforcement 34 CFR 668.46(b) and Statements Regarding Disciplinary Proceedings 34 CFR 668.46(k)(2)(v) –

The HEA and the Department’s regulations require that institutions include, in the Annual Security Report, several statements of policy. These policies cover a range of campus safety and crime prevention topics, including the law enforcement authority and jurisdiction of security personnel, including their working relationship with state and local law enforcement agencies. Institutions must also publish their current institutional policies that encourage accurate and prompt reporting of all crimes to the campus police or safety offices, other campus security authorities and local law enforcement officials. Schools must also provide a description of any procedures that exist that encourage pastoral and professional counselors, when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics. The Annual Security Report must include a description of programs designed to inform students and employees about the prevention of crimes, the types and frequency of programs designed to inform the campus community of security procedures as well as practices to encourage students and employees to be responsible for their own security and the security of others.

Policies concerning the monitoring and recording, through local police agencies, of criminal activity by students at noncampus locations of officially recognized student organizations must also be included in the Annual Security Report.

Institutions must include policies regarding the possession, use, and sale of alcoholic beverages and illegal drugs, as well as policies regarding the enforcement of State underage drinking laws and Federal and State drug laws. Such policies must provide a description of any drug or alcohol abuse education programs required by § 120(a) – (d) of the HEA and the Department’s regulations at 34 CFR Part 86.

An institution must include a clear policy statement that addresses procedures for disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, including: 1) descriptions of types of proceedings (and how determined), the steps, timelines, decision-making processes, and how to file a complaint; 2) the standard of evidence; 3) the list of possible sanctions; 4) the range of protective measures; 5) a requirement that the proceedings – conducted by trained officials – will include a prompt, fair, and impartial process; 6) assurance that the accuser and accused will have the same opportunities to have others present, including an advisor of the individual’s choosing, in any disciplinary-related meeting; and 7) the requirement of simultaneous written notification to both parties of the result of the proceedings, process for appeal, and when such findings become final.

The institution must provide a statement that it will simultaneously provide in writing to both the accused and accuser: the results of any disciplinary proceeding conducted by such institution against a student accused of dating violence, domestic violence, sexual assault, or stalking. The institution must also provide the institution’s procedures for the accused and accuser to appeal the result of the institutional disciplinary hearing, if such procedures are available; any changes to the result; and when the results become final.

The Daily Crime Log: 34 CFR 668.46(f) –

Any institution that has a campus police or security department must create, maintain, and make available an easily understood daily crime log. The daily crime log must include the nature, date, time, general location of each crime that occurs within the institution’s Clery Geography, and the disposition of the complaint, if known. Entries must be made within two business days of the report of the information, unless the disclosure is prohibited by law or would jeopardize the confidentiality of the victim. An institution may withhold this information if there is clear and convincing evidence that releasing it would jeopardize an ongoing criminal investigation or safety of the individual, cause the suspect to flee or evade detection, or result in the destruction of evidence. The school must disclose any withheld information once the adverse effect is no longer likely to occur. An institution is required to make the crime log for the most recent 60-day period open to public inspection during normal business hours. The school must make any portion of the log older than sixty days available within two business days of a request for public inspection.

Statement of Policy and Procedures for Specific Offenses: 34 CFR 668.46(b)(11) –

Each institution’s Annual Security Report must include a statement of policy that addresses institutional programs to prevent dating violence, domestic violence, sexual assault, and stalking, as well as the procedures the institution will follow when one of these crimes is reported.

The statement of policy must include the following components:

- 1) A description of the institution’s educational programs and campaigns to promote the awareness of dating violence, domestic violence, sexual assault, and stalking. The statement must describe the institution’s primary prevention and awareness programs for all incoming students and new employees. Primary prevention and awareness programs must define said crimes, state that the institution prohibits such crimes, provide a definition of “consent” in reference to sexual activity, in the applicable jurisdiction, describe safe and positive options for bystander intervention, and information on risk reduction.
- 2) The procedures victims should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred, including written information about:
 - a. The importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order
 - b. How and to whom the alleged offense should be reported
 - c. Options about the involvement of law enforcement and campus authorities, including notification of the victim’s option to:
 - i. Notify proper law enforcement authorities, including on-campus and local police;
 - ii. Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
 - iii. Decline to notify such authorities
 - d. Rights of victims and institutional responsibilities for orders of protection or similar lawful orders

The statement must also include information about how the institution will protect the confidentiality of victims and other necessary parties, including how the institution will complete publicly available recordkeeping, while maintaining as confidential any accommodations or protective measures provided to the victim. The statement must also state that the institution will provide written notification to student and employees about existing counseling, health, advocacy, and other services available for victims, both within the institution and in the community. Institutions must include that they will notify victims about options for requests for changes to academic, living, transportation, and working situations or protective measures.

Annual Fire Safety Report: 34 CFR 668.49(b) –

As stated above, if an institution maintains an on-campus student housing facility, it must also publish an Annual Fire Safety Report. The report must contain the following:

- 1) Fire statistics submitted to the Department
- 2) Description of on-campus housing facilities fire safety systems
- 3) Number of fire drills during the previous calendar year
- 4) Policies on portable electrical appliances, smoking, and open flames in housing facilities

- 5) Procedures for evacuation due to fires in student housing
- 6) Policies on fire safety education and training programs
- 7) List of titles of persons to report fires on campus, for purposes of inclusion in statistics
- 8) Plans for future improvement in fire safety, if necessary

The Fire Log: 34 CFR 668.49(d) –

Any institution that maintains on-campus housing facilities must maintain a fire log. The fire log must be a written and easily understood record of any fire that occurred in an on-campus student housing facility. The log must include the nature, date, time, and general location of each fire. Fires must be recorded in the log within two business days. Institutions must make the fire log for the most recent 60-day period open to public inspection, and any portion of the log older than 60 days available within two business days of a request for public inspection.

Notice and Distribution of Reports –

Institutions must provide notice of the availability of the Annual Security Report and the Annual Fire Safety Report (if applicable) to all current and prospective students and employees. This notice must include: 1) a statement of the report's availability; 2) a statement that a paper copy will be provided upon request and how to obtain one; 3) a brief description of the contents; and 4) the exact electronic address of the report. The two reports may be published together or separately. If separate, each report must contain information on how to directly access the other report.

Appropriate publications and mailings of the Annual Security Report and the Annual Fire Safety Report include:

- Direct mail to each individual through the post office, campus mail, or e-mail
- Publications provided directly to individuals
- Posting on an Internet or intranet website (subject to specifications in 34 CFR 668.41(e)(2) and (3))

Missing Persons Policies and Procedures: 34 CFR 668.46(h) –

If an institution maintains on-campus housing, the institution must establish a missing student notification policy and include a description of the policy in its Annual Security Report.

In short, the policy must include the following:

- 1) List of titles of persons to which individuals should report that a student has been missing for 24 hours
- 2) Require that any missing student report be referred immediately to campus security or, in the absence of an institutional police or campus security department, to the local law enforcement agency that has jurisdiction in the area
- 3) Include an option for each student to identify a contact person, whom the institution will notify within 24 hours upon a determination that the student is missing

Each student must be advised that: their contact information will be kept confidential (except to authorized campus officials and law enforcement); if they are under 18 years of age and not emancipated, the institution must notify, within 24 hours, a custodian, parent, or guardian that the student is missing; and the institution will notify law enforcement within 24 hours that the student is missing.

Emergency Response, Evacuation Notifications, and Timely Warnings: 34 CFR 668.46(g) –

Each institution must develop emergency response and evacuation procedures, and include a description of its procedures in its Annual Security Report. The statement must include the procedures the institution will use to immediately notify the campus community 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. At a minimum, an institution must have procedures to: (1) confirm significant emergencies or dangerous situations; (2) determine the appropriate community to notify and the content of the notification, including the withholding as confidential the names and other identifying information of victims; and (3) initiate the notification system. The institution must also compile a list of persons or organizations responsible for these activities. In addition, the institution must have procedures for disseminating emergency information to the larger community and must test emergency and evacuation procedures on at least an annual basis.

In an emergency or a dangerous situation, an institution must, without delay and accounting for the safety of the community, determine the content of the notification and initiate the notification system, unless such notification will compromise efforts to assist a victim or contain, respond to, or mitigate the emergency.

An institution must develop procedures to immediately notify the campus community 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 are required to provide emergency notifications or timely warnings based upon the circumstances. Emergency notifications are required to provide immediate notification to the

campus community upon confirmation of a significant emergency or dangerous situation occurring on campus that involves an immediate threat to the health or safety of students or employees. Timely warnings are required for all Clery Act crimes that occur on Clery Geography that are reported to CSAs or local police agencies and are considered by the institution to represent a serious or continuing threat to students and employees.

The following chart identifies the differences between emergency notifications and timely warnings:

| | Emergency Notifications | Timely Warnings |
|---------------------|---|--|
| Scope | Significant emergency or dangerous situation | Clery crimes, reported to CSAs |
| Triggered by? | Event that is currently occurring on or imminently threatening campus | Crimes that occurred and represent an ongoing threat |
| Where event occurs? | Only on campus | Anywhere on Clery Geography |
| How soon to issue? | Immediately upon confirmation of situation | As soon as information is available |