

Federal Student Aid

An OFFICE of the U.S. DEPARTMENT of EDUCATION

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SUBJECT: Rescission of and Replacement for the 2016 Handbook for Campus Safety and Security Reporting (Updated Jan. 19, 2021)

Note: On Jan. 19, 2021, we replaced the “Clery Act Appendix for FSA Handbook” attachment to this announcement.

This electronic announcement addresses the rescission of and replacement for the 2016 Handbook for Campus Safety and Security Reporting (“2016 edition”). This announcement also identifies and explains the significant changes between the 2016 edition and the new Clery-related Appendix of the Federal Student Aid (FSA) Handbook.

Other than the statutory and regulatory requirements included in this document, the contents of the new Appendix do not have the force and effect of law and are not meant to bind the public. The document is intended only to provide clarity to the public regarding existing requirements under the applicable statutory and regulatory provisions.

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”) contains specific campus safety- and security-related requirements that can be challenging for some institutions of higher education to understand and satisfy. The 2016 edition, as well as the previous versions, created additional requirements and expanded the scope of the statute and regulations. Despite the fact that the guidance found in the 2016 edition did not have the force of law or regulations, some institutions may have felt pressured to satisfy the non-regulatory or non-statutory based aspects of the guidance, calculating that the financial and reputational consequences of non-compliance were too great. This is precisely one of the concerns raised in Executive Order 13891, “Promoting the Rule of Law Through Improved Agency Guidance Documents,” which noted that “[e]ven when accompanied by a disclaimer that it is non-binding, a guidance document issued by an agency may carry the implicit threat of enforcement action if the regulated public does not comply.” See: Exec. Order No. 13891, Sec. 1, 84 FR 55235.

Similarly, the Senate Report of the Task Force on Federal Regulation of Higher Education, “Recalibrating Regulation of Colleges and Universities,” specifically identified the Clery Handbook as an example of guidance that is “unnecessarily voluminous.” For some institutions, the result was an overriding focus on lengthy annual statistical reports, which may have taken resources away from the mission of campus safety, including potentially reallocating resources on hiring additional security staff.

As part of Secretary DeVos’s commitment to reducing the regulatory burden on institutions, her efforts to respond to the recommendations of the Senate Task Force on Federal Regulation of Higher Education, and consistent with Exec. Order 13891, the Department evaluated its interpretation of the Clery Act and listened to legitimate concerns that the Department’s enforcement actions were an example of regulatory overreach. Our goal was to provide guidance to institutions that would enable them to focus on maintaining a safe and secure environment, rather than spending time and resources generating reports that few students or parents consult, and that could overwhelm them with excessive data that obscures the most important and helpful parts of these reports. Though no statutory or regulatory requirements related to Clery Act reporting have changed, this revised approach is consistent with the goals of Exec. Order 13891, which emphasizes that agencies may use guidance to “clarify existing obligations” and promotes transparency in agencies’ guidance documents. See: Exec. Order No. 13891, Sec. 1.

The Department has made the determination that the 2016 edition did not achieve the Department’s goal of ensuring that adequate information is available to the public to foster improved campus safety and security. Following an extensive review of the 2016 edition, the Department concluded that much of the guidance provided was outside of the scope of the relevant statutory (20 U.S.C. 1092) and regulatory (34 CFR 668.41 and 668.46) authority. As a result, the Department began a holistic process of eliminating guidance that extended beyond the statutory and regulatory requirements from the 2016 edition with the intention of reducing regulatory confusion, and carefully tailoring the guidance to language directly supported by statute and regulation. While this rescission will inform the Department’s views moving forward, the rescission will not retroactively apply to previous Department determinations regarding Clery Act violations, fines, enforcement actions, or any other related actions by the Department.

In addition, the new Appendix in the FSA Handbook will be accompanied by a renewed emphasis on technical assistance, including a robust schedule of future webinar offerings. These Department supports will assist institutions in satisfying the strict statutory and regulatory requirements, while reversing the overreach of past guidance and reducing the complexity and confusion surrounding Clery compliance.

The Department recognizes that many Clery practitioners have become accustomed to the 2016 edition, as well as previous editions, and may continue to rely on it for direction. Instead of rescinding all Clery-related guidance, the Department has determined that the better path forward is to provide direction in the Federal Student Aid (FSA) Handbook. The language in the Appendix will replace the limited Clery language already present in the current FSA Handbook. In addition, moving forward, while the Department will not advise institutions to rely upon it, the 2016 edition will be archived on the Department's website, but, where appropriately applied to prior calendar years, will continue to be referenced in program review reports, final program review determinations, and final audit determinations.

The following is a list of the significant changes to the 2016 edition that are found in the new Appendix. A brief explanation accompanies each change or deletion.

- **Clery Geography –**

For many institutions, determining what does – and does not – constitute Clery geography can be very difficult. While Chapter 2 of the 2016 edition attempts to clarify some of the details, it may have expanded the definition beyond the intent and authority of the legislation and resulted in confusion and unhelpful over-reporting. The revised language applies the specific regulatory requirements and attempts to provide clarity, without additional requirements, to terms defined in 34 CFR 668.46(a).

As an example of our revised approach, the Department will no longer apply any specific measurable distance definition to “reasonably contiguous” geographic area. For example, the 2016 edition states that, with some exceptions, “generally speaking, it is reasonable to consider locations within one mile of your campus border to be reasonably contiguous with your campus.” (Pg. 2-3) The 2016 edition similarly advises that, with limited exceptions, institutions “extend the reporting area one mile into the area of” a public park and “a river, lake, ocean, etc., that borders your campus.” (Pg. 2-15) This is an expansion of the scope of the Clery Act and goes beyond any reasonable expectation a student or parent might have regarding the institution's responsibility for ensuring student safety.

The Appendix also emphasizes the regulatory definitions for “public property” (Pg. 2-11) and “non-campus building or property.” (pg. 2-18) Further, it removes definitions not found in regulation or statute, such as “owned or controlled by” (Pg. 2-2) and “directly supports.” (Pg. 2-4)

The 2016 edition explanation of the definition of public property in 34 CFR 668.46(a) (“within or immediately adjacent to and accessible from the campus”) – including the “sidewalk, street, sidewalk” instruction (Pg. 2-12) – is not provided for in statute or regulation and, therefore, is not included in the Appendix.

The Appendix has also addressed the issues identified in the above-referenced Senate Report regarding reporting crimes that occur during institution sponsored stay-away trips and similar mandates placed upon trips to international destinations, that require institutions to obtain crimes statistics from foreign law enforcement agencies.

Finally, while potentially helpful to some institutions with very similar circumstances, the illustrations provided in Chapter 2 of the 2016 edition are not generally applicable and may create more confusion than they resolve. Thus, the illustrations are not included in the Appendix.

- **Clery Crimes –**

The new Appendix has deleted all definitions for Clery crimes from Chapter 3 of the 2016 edition and replaced them with references to the appropriate regulatory-defined sources at 34 CFR 668.46(c)(9) and Appendix A to subpart D of part 668. The explanations, summaries, and examples provided may have, at times, created misperceptions and confusion for institutions attempting to properly interpret and apply the definitions.

- **Campus Security Authorities –**

The Appendix will strictly adhere to the definition of campus security authority (CSA) and will respect institutions' discretion in their reasonable determinations of who constitutes a CSA. The 2016 edition expanded the definition of a CSA to include individuals on campus that should likely not be designated so under a strict interpretation of the regulatory framework. The 2016 edition took an expansive view of the phrase “significant responsibility for student and campus activities” found at 34 CFR 668.46(a). As a result, it captured groups of individuals who did not have “significant responsibility.” Even if the 2016 edition's guidance was drawn from Department experience, it was not applicable to every situation and may have resulted in creating more confusion than clarity. As a result, the Department's new guidance makes clear that it is up to an institution to identify which individuals are CSAs and it is beyond the Department's authority to disagree with that reasonable determination.

The Clery Act is an important part of the regulatory framework on campus safety. The Department anticipates that this rescission and publication of the new Appendix will help simplify Clery compliance. The Appendix will ensure that campuses can devote resources to the primary goal of keeping students, faculty, and staff safe, while also recognizing that most members of their community are adults who share responsibility for their personal safety and security. The Appendix will also help students understand the limits of campus safety responsibilities so that they do not take unnecessary risks under a mistaken assumption about the reach of campus safety and security. Finally, the Appendix will assist institutions that are working hard to satisfy the regulatory requirements, and to keep students and their families safe and well-informed.

Note: None of the changes in the Appendix impact the July 10, 2020 temporary extension (to December 31, 2020) that the Department provided, regarding Clery reporting due to COVID-19.

Attachments

[Clery Act Appendix for FSA Handbook in PDF Format, 13 Pages, 245KB](#)