



Publication Date: July 14, 2014

DCL ID: GEN-14-13

Subject: Implementation of Changes to the Clery Act made by the Violence Against Women Reauthorization Act of 2013 (VAWA)

Summary: Guidance to Institutions Regarding their Responsibility to Comply with Section 485(f) of the Higher Education Act of 1965, as amended by VAWA, before Final Regulations are Effective

Dear Colleague:

On March 7, 2013, President Obama signed the Violence Against Women Reauthorization Act of 2013 (VAWA) (Pub. Law 113-4), which, among other provisions, amended section 485(f) of the Higher Education Act of 1965, as amended (HEA), otherwise known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). The Clery Act requires institutions of higher education to comply with certain campus safety- and security-related requirements as a condition of participating in the Federal student financial aid programs authorized by Title IV of the HEA. Notably, VAWA amended the Clery Act to require institutions to compile statistics for incidents of domestic violence, dating violence, sexual assault, and stalking and to include certain policies, procedures, and programs pertaining to these incidents in their annual security reports (ASRs). The statute requires institutions to include this new information in the ASR beginning with the ASR that must be provided to students, employees, and prospective students and employees by October 1, 2014.

VAWA did not affect in any way Title IX of the Education Amendments of 1972 (Title IX), its implementing regulations, or associated guidance issued by the Department's Office for Civil Rights (OCR). 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. ¹

Rulemaking Process

The U.S. Department of Education (Department) initiated the process to develop regulations to implement the VAWA changes in May of 2013. The negotiated rulemaking committee held three negotiating sessions in January, February, and March of 2014. Ultimately, the committee reached consensus on the set of draft regulations. More information about our public hearings, outreach activities, and negotiating sessions is available on the Office of Postsecondary Education's Web site at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/vawa.html>.

We published a Notice of Proposed Rulemaking (NPRM) for public comment on June 20, 2014. After completing our review of those comments, we expect to publish final regulations by November 1, 2014. Those final regulations would be effective July 1, 2015.

Guidance

We have received numerous inquiries from institutions asking us to clarify their responsibilities under the Clery Act, as amended by VAWA, particularly because the statutory changes affect the ASR that institutions must issue by October 1, 2014. We reiterate the guidance that we provided in our Electronic Announcement on May 29, 2013, that, until final regulations are published and effective, institutions must make a good-faith effort to comply with the statutory provisions as written. Until the Department has published the final regulations, institutions should use the statute as the basis for revising or developing policies, procedures, and programs in advance of the ASR that must be issued by October 1, 2014.

For example, the statute requires institutions to specify in their ASRs the procedures that they will follow once an incident of domestic violence, dating violence, sexual assault, or stalking has been reported, including a statement of the standard of evidence that will be used during any institutional conduct proceeding arising from such a report. Accordingly, as part of a good-faith effort to comply with the statute, institutions are expected to revise their policy statements to include those procedures and to identify the standard of evidence that the institution will use. Similarly, the statute requires institutions to include in their ASRs expanded information about a victim's options for, and available assistance in, changing academic, living, transportation, and working situations if requested and reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement. To show a good-faith effort, institutions are expected to expand their existing policy statements to include information about how the institution will facilitate changes in a victim's transportation and working situations, in addition to academic and living situations, if requested by the victim.

The HEA defines the new crime categories of domestic violence, dating violence, and stalking in accordance with section 40002(a) of the Violence Against Women Act of 1994 as follows:

"Domestic violence" means a "felony or misdemeanor crime of violence committed by—

- a current or former spouse or intimate partner of the victim,
- a person with whom the victim shares a child in common,
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
-

a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies [under VAWA], or

- any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.”

“Dating violence” means “violence committed by a person—

- who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - the length of the relationship;
 - the type of relationship; and
 - the frequency of interaction between the persons involved in the relationship.”

“Stalking” means “engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- fear for his or her safety or the safety of others; or
- suffer substantial emotional distress.”

Institutions must make a good-faith effort to include these statistics for these crimes for calendar year 2013 in the ASR that must be issued later this year. Institutions must also make a good-faith effort to ensure that the statistics for the new crime categories are accurate and complete; however, we understand that institutions may not have complete statistics for 2013. While institutions must include calendar year 2013 statistics for domestic violence, dating violence, and stalking in their ASRs to be issued to students, employees, and prospective students and employees later this year, they will not report these new crimes to the Department in the Web-based data collection this year. Instead, institutions will report the statistics for both calendar years 2013 and 2014 to the Department during the data collection period in Fall 2015. We have delayed the reporting of statistics for incidents of domestic violence, dating violence, and stalking for one year because, once the final regulations are in place, the Department must follow certain procedures required under the Paperwork Reduction Act to revise the Web-based data collection instrument. ²

The Clery Act requires institutions to disclose and report three calendar years’ worth of statistics. As we have done in the past, we will phase in the new statistical requirements by collecting data until three years are represented, as shown in the chart below.

--	--	--	--	--

	Calendar Year 2013 Statistics	Calendar Year 2014 Statistics	Calendar Year 2015 Statistics	Calendar Year 2016 Statistics
ASR issued by October 1, 2014	X			
ASR issued by October 1, 2015	X	X		
ASR issued by October 1, 2016	X	X	X	
ASR issued by October 1, 2017		X	X	X
Data Collection October 2014	--			
Data Collection October 2015	X	X		
Data Collection October 2016	X	X	X	
Data Collection October 2017		X	X	X

We understand that outside parties may be offering training to institutions on how to comply with the new requirements under the Clery Act. None of this training has been reviewed or endorsed by the Department and the Department is not bound by any statements made by these parties. Moreover, we also remind institutions that the proposed regulations included in the NPRM may be changed after we review the public comments. Therefore, training which relies on the proposed regulations may not fully capture what is required for compliance once the final regulations are effective.

We thank you for your patience as we complete our rulemaking process, and we understand that this transition may be difficult. We urge you to contact our Help Desk for guidance if you have questions. The Help Desk will provide guidance on the VAWA changes based on the statutory language. You may contact our Help Desk by telephone at 800-435-5985 or by e-mail at campussafetyhelp@westat.com. Additionally, for your convenience, we are enclosing a copy of the Clery Act showing the amendments made by VAWA.

Sincerely,

Lynn B. Mahaffie
Acting Assistant Secretary
Office of Postsecondary Education

¹ Please see [OCR's website](#) for more information and resources related to Title IX. In particular, please review the [Dear Colleague Letter](#) published on April 4, 2011, and the [Questions and Answers on Title IX and Sexual Violence](#) released on April 29, 2014.

² The Office of Postsecondary Education issues this guidance to provide institutions with information regarding the ASR requirements under VAWA. This guidance represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. If you are interested in commenting on this guidance, please e-mail us your comment at campussafetyhelp@westat.com or write to us at the following address: *Jessica Finkel, 1990 K St NW, room 8031, Washington, DC 20006.*

Attachments/Enclosures:

[GEN-14-13: Implementation of Changes to the Clery Act made by the Violence Against Women Reauthorization Act of 2013 \(VAWA\) in PDF Format, 203KB, 5 Pages](#)

[The Clery Act with the VAWA Amendments in Word Format, 57KB, 8 Pages](#)