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Part II

Department of Education

34 CFR Part 668
Violence Against Women Act; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AD16

[Docket ID ED–2013–OPE–0124]

Violence Against Women Act

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations issued under the Higher Education Act of 1965, as amended (HEA), to implement the changes made to the Clery Act by the Violence Against Women Reauthorization Act of 2013 (VAWA). These proposed regulations would update, clarify, and improve the current regulations.

DATES: We must receive your comments on or before July 21, 2014.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. *Please do not submit the PDF in a scanned format.* Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Jean-Didier Gaina, U.S. Department of Education, 1990 K Street NW., Room 8055, Washington, DC 20006–8502.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jessica Finkel, U.S. Department of Education, 1990 K Street NW., Room 8031, Washington, DC 20006–8502. Telephone (202) 502–7647 or by email at: *Jessica.Finkel@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action

On March 7th, 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 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 their participation in the title IV, HEA programs. Notably, VAWA amended the Clery Act to require institutions to compile statistics for incidents of dating violence, domestic violence, sexual assault, and stalking and to include certain policies, procedures, and programs pertaining to these incidents in their annual security reports. We propose to amend § 668.46 of title 34 of the Code of Federal Regulations (CFR) in order to implement these statutory changes. Additionally, we propose to update this section by incorporating provisions added to the Clery Act by the Higher Education Opportunity Act of 2008, deleting outdated deadlines and cross-references, and making other changes to improve the readability and clarity of the regulations.

Summary of the Major Provisions of This Regulatory Action

The proposed regulations would—

- Require institutions to maintain statistics about the number of incidents of dating violence, domestic violence, sexual assault, and stalking that meet the proposed definitions of those terms.
- Revise the definition of ''rape'' to reflect the Federal Bureau of Investigation's (FBI) recently updated definition in the UCR Summary Reporting System, which encompasses the categories of rape, sodomy, and sexual assault with an object that are used in the UCR National Incident-Based Reporting System.
- Revise the categories of bias for the purposes of Clery Act hate crime reporting to add gender identity and to separate ethnicity and national origin into independent categories.
- Require institutions to provide and describe in their annual security reports primary prevention and awareness programs to incoming students and new employees. These programs must include: A statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking; the definition of these terms in the applicable jurisdiction; the definition of consent, in reference to sexual activity, in the applicable jurisdiction; a description of safe and positive options for bystander intervention; information on risk reduction; and information on the institution's policies and procedures after a sex offense occurs;
- Require institutions to provide and describe in their annual security reports ongoing prevention and awareness campaigns for students and employees. These campaigns must include the same information as in the institution's primary prevention and awareness program;
- Define the terms ''awareness programs,'' ''bystander intervention,'' ''ongoing prevention and awareness campaigns,'' ''primary prevention programs,'' and ''risk reduction.''
- Require institutions to describe each type of disciplinary proceeding used by the institution; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; 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;
- Require institutions to list all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceedings for an allegation of dating violence, domestic violence, sexual assault, or stalking;
- Require institutions to describe the range of protective measures that the institution may offer following an allegation of dating violence, domestic violence, sexual assault, or stalking;
- Require institutions to provide for a prompt, fair, and impartial disciplinary proceeding in which (1) officials are appropriately trained and do not have a

conflict of interest or bias for or against the accuser or the accused; (2) the accuser and the accused have equal opportunities to have others present, including an advisor of their choice; (3) the accuser and the accused receive simultaneous notification, in writing, of the result of the proceeding and any available appeal procedures; (4) the proceeding is completed in a reasonably prompt timeframe; (5) the accuser and accused are given timely notice of meetings at which one or the other or both may be present; and (6) the accuser, the accused, and appropriate officials are given timely access to information that will be used after the fact-finding investigation but during informal and formal disciplinary meetings and hearings.

• Define the terms ''proceeding'' and ''result.''

• Specify that compliance with these provisions does not constitute a violation of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), commonly known as the Family Educational Rights and Privacy Act of 1974 (FERPA).

Please refer to the Summary of Proposed Changes section of this preamble for more details on the major provisions contained in this notice of proposed rulemaking (NPRM).

Costs and Benefits: A benefit of these proposed regulations is that they would strengthen the rights of victims of dating violence, domestic violence, sexual assault, and stalking on college campuses. Institutions would be required to collect and disclose statistics of crimes reported to campus security authorities and local police agencies that involve incidents of dating violence, domestic violence, sexual assault, and stalking. This would improve crime reporting. In addition, students, prospective students, families, and employees and potential employees of the institutions, would be better informed about each campus's safety and procedures.

Institutions would incur costs under the proposed regulations in two main categories: Paperwork costs of complying with the regulations, and other compliance costs that institutions may incur as they attempt to improve security on campus. Under the proposed regulations, institutions would incur costs involved in updating the annual security reports; changing crime statistics reporting to capture additional crimes, categories of crimes, differentiation of hate crimes, and expansion of categories of bias reported; and the development of statements of policy about prevention programs and institutional disciplinary actions. Institutions would also incur additional costs in attempting to comply with the new regulations. Costs to improve safety on campus would include annual training of officials on issues related to dating violence, domestic violence, sexual assault, and stalking as well as training on how to conduct disciplinary proceeding investigations and hearings. The proposed regulations are not estimated to have a significant net budget impact in the title IV, HEA student aid programs over loan cohorts from 2014 to 2024.

Invitation to Comment: We invite you to submit comments regarding the proposed regulations. In particular, we request comment on additional ways to identify where one incident of stalking has ended and another has begun, on how to count stalking that crosses calendar years, and on how to report incidents of stalking by location, as discussed under ''Recording Stalking.'' We also request comment about whether the proposed approach to counting some or all of the primary Clery Act crimes should be modified to capture information about the relationship between a perpetrator and a victim, as discussed under ''Crimes that must be Reported and Disclosed.''

To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses, and provide relevant information and data whenever possible, even when there is no specific solicitation of data and other supporting materials in the request for comment. We also urge you to arrange your comments in the same order as the proposed regulations. Please do not submit comments outside the scope of the specific proposals in this notice of proposed rulemaking, as we are not required to respond to comments that are outside of the scope of the proposed rule. See **ADDRESSES** for instructions on how to submit comments.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 8055, 1990 K Street NW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

On March 7th, 2013, President Obama signed VAWA (Pub. L. 113–4). VAWA included amendments to section 485(f) of the HEA, the Clery Act. The Clery Act requires institutions of higher education to comply with certain campus safety- and security-related requirements as a condition of their participation 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 of the number of incidents of dating violence, domestic violence, and stalking reported to campus security authorities or local police agencies, in addition to the crimes currently identified. Institutions also must include certain policies, procedures, and programs pertaining to these incidents in their annual security reports. We propose to amend 34 CFR § 668.46 to implement these statutory changes. Additionally, we propose to update this section by incorporating certain provisions added to the Clery Act by the Higher Education Opportunity Act of 2008, deleting outdated deadlines and cross-references, and making other changes to improve the readability and clarity of the regulations.

Public Participation

On April 16, 2013, we published a notice in the **Federal Register** (78 FR 2247), which we corrected on April 30, 2013 (78 FR 25235), announcing topics for consideration for action by a negotiated rulemaking committee. The topics for consideration were: Cash management of funds provided under the title IV Federal Student Aid programs; State authorization for programs offered through distance

education or correspondence education; State authorization for foreign locations of institutions located in a State; clock to credit hour conversion; gainful employment; changes to the campus safety and security reporting requirements in the Clery Act made by VAWA, and the definition of ''adverse credit'' for borrowers in the Federal Direct PLUS Loan Program. In that notice, we announced three public hearings at which interested parties could comment on the topics suggested by the Department and could suggest additional topics for consideration for action by a negotiated rulemaking committee.

On May 13, 2013, we announced in the **Federal Register** (78 FR 27880) the addition of a fourth hearing. The hearings were held on May 21, 2013, in Washington, DC; May 23, 2013, in Minneapolis, Minnesota; May 30, 2013, in San Francisco, California; and June 4, 2013, in Atlanta, Georgia. We also invited parties unable to attend a public hearing to submit written comments on the topics and to submit other topics for consideration. Transcripts from the public hearings are available at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html*. Written comments submitted in response to the April 16, 2013, notice may be viewed through the Federal eRulemaking Portal at *www.regulations.gov,* within docket ID ED–2012–OPE–0008. You can link to the ED–2012–OPE–0008 docket as a related docket inside the ED–2013–OPE–0124 docket associated with this notice of proposed rulemaking. Alternatively, individuals can enter docket ID ED–2012–OPE–0008 in the search box to locate the appropriate docket. Instructions for finding comments are also available on the site under ''How to Use Regulations.gov'' in the Help section.

Negotiated Rulemaking

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without alteration a defined group of regulations on which the negotiators reached consensus unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html*.

On September 19, 2013, the Department published a notice in the **Federal Register** (78 FR 57571) announcing our intention to establish a negotiated rulemaking committee to prepare proposed regulations to address the changes to the Clery Act made by VAWA. The notice set forth a schedule for the committee meetings and requested nominations for individual negotiators to serve on the negotiating committee.

The Department sought negotiators to represent students; legal assistance organizations that represent students; consumer advocacy organizations; State higher education executive officers; State Attorneys General and other appropriate State officials; institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA; two-year public institutions of higher education; four-year public institutions of higher education; private, non-profit institutions of higher education; private, for-profit institutions of higher education; institutional campus public safety officials; institutional student affairs/disciplinary divisions; institutional centers for women, lesbian, gay, bisexual, and transgendered individuals; institutional attorneys; Indian tribal governments; and campus safety advocates. The Department considered the nominations submitted by the public and chose negotiators who would represent various interested constituencies and the negotiated rulemaking committee met to develop proposed regulations on January 13–14, 2014, February 24–25, 2014, and March 31–April 1, 2014. At its first meeting, the committee reached agreement on its protocols, which generally set out the committee membership, and the standards by which the committee would operate. These protocols provided, among other things, that the non-Federal negotiators would represent the organizations listed after their names in the protocols. The committee included the following members:

Laura Dunn, SurvJustice, and John Kelly (alternate), Know Your IX, representing students.

Fatima Goss Graves, National Women's Law Center, and Bridget Harwood (alternate), Network for Victim Recovery of DC, representing legal assistance organizations that represent students.

Nancy Chi Cantalupo, Victim Rights Law Center, and Denice Labertew (alternate), Los Angeles Valley College and Los Angeles Mission College, representing consumer advocacy organizations.

S. Daniel Carter, VTV Family Outreach Foundation's 32 National Campus Safety Initiative, and Alison Kiss (alternate), Clery Center for Security on Campus, Inc., representing campus safety advocates.

Connie Best, Medical University of South Carolina, and Jessica Ladd-Webert (alternate), University of Colorado-Boulder, representing mental health services providers.

Michael Heidingsfield, University of Texas System Police, and Paul Denton (alternate), Ohio State University Police Division, representing institutional campus safety officials.

Cat Riley, University of Texas Medical Branch Galveston, and Caroline Fultz-Carver (alternate), University of South Florida System, representing institutional student affairs/disciplinary divisions.

Lisa Erwin, University of Minnesota Duluth, and Dennis Gregory (alternate), Old Dominion University, representing institutional centers for women, lesbian, gay, bisexual, and transgendered individuals.

Dana Scaduto, Dickinson College, and Jerry Blakemore (alternate), Northern Illinois University, representing institutional attorneys.

Anthony Walker, Norfolk State University, and Julie Poorman (alternate), East Carolina University, representing minority-serving intuitions and other title III institutions.

Rick Amweg, University System of Ohio, and Gary Lyle (alternate), Anne Arundel Community College, representing two-year public institutions.

Jill Dunlap, UC Santa Barbara, and Holly Rider-Milkovich (alternate), University of Michigan, representing four-year public institutions.

Stephanie Atella, Loyola University Chicago, and Michael Webster (alternate), McDaniel College, representing private, non-profit institutions.

Deana Echols, Ultimate Medical Academy, and Christine Gordon (alternate), Graham Webb Academy, representing private, for-profit institutions.

Gail McLarnon, U.S. Department of Education, representing the Department.

The protocols also provided that the committee would operate by consensus. The protocols also specified that consensus means that there must be no dissent by any members. Under the

protocols, if the committee reached a final consensus on all issues, the Department would use the consensus-based language in its proposed regulations or, in the alternative, the Department would reopen the negotiated rulemaking process or provide a written explanation to the committee members regarding why it has decided to depart from that language.

During the committee meetings, the committee reviewed and discussed the Department's drafts of regulatory language and the committee members' alternative language and suggestions. At the final meeting on April 1, 2014, the committee reached consensus on the Department's proposed regulations. For more information on the negotiated rulemaking sessions, please visit *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/vawa.html*.

Summary of Proposed Changes

The proposed regulations would—

- Add and define the terms ''Clery Geography,'' ''dating violence,'' ''domestic violence,'' ''Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) program (FBI's UCR program),'' ''hate crime,'' ''Hierarchy Rule,'' ''programs to prevent dating violence, domestic violence, sexual assault, and stalking,'' ''sexual assault,'' and ''stalking.''
- Require institutions to address in their annual security reports their current policies concerning campus law enforcement, including the jurisdiction of security personnel, as well as any agreements, such as written memoranda of understanding between the institution and those police agencies, for the investigation of alleged criminal offenses.
- Require institutions to address in their annual security reports their policies to encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies when the victim of a crime elects to or is unable to make such a report.
- Require institutions to provide written information to victims about the procedures that one should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred, including written information about:
  - ○ 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;
  - ○ How and to whom the alleged offense should be reported;
  - ○ The victim's options about the involvement of law enforcement and campus authorities, including the options to notify proper law enforcement authorities, be assisted by campus authorities in notifying law enforcement authorities, and decline to notify authorities; and
  - ○ The victim's rights and the institution's responsibilities with respect to orders of protection or similar orders issued by a court or by the institution.
- Require institutions to address in their annual security reports how the institution will complete publicly available recordkeeping requirements, including Clery Act reporting and disclosures, without the inclusion of identifying information about the victim;
- Require institutions to address in their annual security reports how the institution will maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures.
- Require institutions to specify in their annual security reports that they will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, and other services available for victims both within the institution and in the community.
- Require institutions to specify in their annual security reports that they will provide written notification to victims about options for, and available assistance in, changing academic, living, transportation, and working situations and clarify that the institution must make these accommodations if the victim requests them and if they are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.
- Require institutions to specify in their annual security reports that, when a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options.
- Require institutions to maintain statistics about the number of incidents of dating violence, domestic violence, sexual assault, and stalking that meet the proposed definitions of those terms.
- Revise the definition of ''rape'' to reflect the FBI's recently updated definition in the UCR Summary Reporting System, which encompasses the categories of rape, sodomy, and sexual assault with an object that are used in the UCR National Incident-Based Reporting System.
- Revise and update the definitions of ''sex offenses,'' ''fondling,'' ''incest,'' and ''statutory rape'' in Appendix A to subpart D of part 668 to reflect the FBI's updated definitions.
- Emphasize that institutions must, for the purposes of Clery Act reporting, include in their crime statistics all crimes reported to a campus security authority.
- Clarify that an institution may not withhold, or subsequently remove, a reported crime from its crime statistics based on a decision by a court, coroner, jury, prosecutor, or other similar noncampus official.
- Specify that Clery Act reporting does not require initiating an investigation or disclosing identifying information about the victim.
- Revise the categories of bias for the purposes of Clery Act hate crime reporting to add gender identity and to separate ethnicity and national origin into independent categories.
- Specify how institutions should record reports of stalking, including how to record reports in which the stalking included activities in more than one calendar year or in more than one location within the institution's Clery Act-reportable areas, and how to determine when to report a new crime of stalking involving the same victim and perpetrator.
- Create an exception to the requirements of the Hierarchy Rule in the UCR Reporting Handbook for situations in which an individual is a victim of a sex offense and a murder during the same incident so that the incident will be included in both categories.
- Clarify that an institution must withhold as confidential the names and other identifying information of victims when providing timely warnings.
- Implement the requirements pertaining to an institution's educational programs to promote the awareness of dating violence, domestic violence, sexual assault, and stalking by:
  - ○ Requiring institutions to describe in their annual security reports the institution's primary prevention and awareness programs for incoming students and new employees, which must include: A statement that the institution prohibits the crimes of dating

violence, domestic violence, sexual assault, and stalking; the definition of these terms in the applicable jurisdiction; the definition of consent, in reference to sexual activity, in the applicable jurisdiction; a description of safe and positive options for bystander intervention; information on risk reduction; and information on the institution's policies and procedures after a sex offense occurs;

○ Requiring institutions to provide and describe in their annual security reports ongoing prevention and awareness campaigns for students and employees, which must include the same information as in the institution's primary prevention and awareness program; and

○ Defining the terms ''awareness programs,'' ''bystander intervention,'' ''ongoing prevention and awareness campaigns,'' ''primary prevention programs,'' and ''risk reduction.''

• Implement requirements pertaining to an institution's procedures for campus disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking by:

○ Requiring institutions to describe each type of disciplinary proceeding used by the institution; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; 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;

○ Requiring institutions to list all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceedings for an allegation of dating violence, domestic violence, sexual assault, or stalking;

○ Requiring institutions to describe the range of protective measures that the institution may offer following an allegation of dating violence, domestic violence, sexual assault, or stalking;

○ Requiring institutions to provide for prompt, fair, and impartial disciplinary proceedings in which: (1) Officials are appropriately trained and do not have a conflict of interest or bias for or against the accuser or the accused; (2) the accuser and the accused have equal opportunities to have others present, including an advisor of their choice; (3) the accuser and the accused receive simultaneous notification, in writing, of the result of the proceeding and any available appeal procedures; (4) the proceeding is completed in a reasonably prompt timeframe; (5) the accuser and accused are given timely notice of meetings at which one or the other or both may be present; and (6) the accuser, the accused, and appropriate officials are given timely access to information that will be used after the fact-finding investigation but during informal and formal disciplinary meetings and hearings;

○ Defining the terms ''proceeding'' and ''result;'' and

○ Specifying that compliance with these provisions does not constitute a violation of FERPA.

• Prohibit retaliation by an institution or an officer, employee, or agent of an institution against any individual for exercising their rights or responsibilities under any provision under the Clery Act.

Significant Proposed Regulations

Very generally, section 304 of VAWA amended section 485(f) of the HEA, otherwise known as the Clery Act, to: Expand reporting of crime statistics to capture a more accurate picture of dating violence, domestic violence, sexual assault, and stalking on our nation's campuses; strengthen institutional policies related to these crimes; provide greater support and accommodations for victims; and protect the rights of both parties (accuser and accused) during institutional disciplinary proceedings. During the negotiated rulemaking process that resulted in these proposed regulations, the committee was guided by several key principles.

First, VAWA amended the Clery Act, but it 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).[1] While the Clery Act and title IX overlap in some areas relating to requirements for an institution's response to reported incidents of sexual violence, the two statutes and their implementing regulations and interpretations are separate and distinct. Nothing in these proposed regulations alters or changes an institution's obligations or duties under title IX as interpreted by OCR.

Second, the committee set out to develop inclusive, effective, and fair regulations that protect the rights of all students. The negotiators worked hard to craft regulatory language that takes into account the unique needs of diverse communities and individuals, paying careful attention to words that might be viewed as insensitive or unwelcoming.

And third, the committee recognized that, while there is important and urgent work being done in the sexual violence prevention field, the Clery Act and VAWA do not require institutions to use specific materials for prevention policies and procedures. The committee believed strongly that institutions should use practices that have been shown through research and assessment to be effective. The Department expects that best practices information will be released a separate document following issuance of final regulations.

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Definitions

Definition of Clery Geography

Statute: Section 485(f)(1)(F) of the HEA requires an institution to report to the Department and disclose in its annual security report statistics regarding certain crimes reported to campus security authorities or local police agencies that occur on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year and during the two preceding calendar years for which data are available. Additionally, section 485(f)(4)(A) of the HEA requires institutions that maintain a campus police or security department of any kind to make, keep, and maintain a daily crime log that records all crimes reported to that police or security department.

Current Regulations: Section 668.46(a) contains definitions of the terms ''campus'' ''noncampus building or property'' and ''public property.'' ''Campus'' is defined as (1) 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 (2) any building or property that is within or reasonably contiguous to the area identified in clause (1) that is owned or controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor). ''Noncampus building or property'' is defined as (1) any building or property owned or controlled by a student organization that is officially recognized by the institution; or (2) any 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

[1] Title IX prohibits discrimination on the basis of sex in federally funded education programs or activities.

within the same reasonably contiguous geographic area of the institution. ''Public property'' is defined as all public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

Section 668.46(f) requires institutions that have a campus police or security department to maintain a daily crime log that records any crime reported to that department that occurred on campus, on a noncampus building or property, on public property (as those terms are defined in § 668.46(a)), or within the patrol jurisdiction of the campus police or security department.

Proposed Regulations: We propose to add and define the term ''Clery Geography'' to § 668.46(a). For the purposes of the annual crime statistics, ''Clery Geography'' would be defined as including the areas that meet the definitions of ''campus,'' ''noncampus building or property,'' or ''public property.'' For the purposes of maintaining a daily crime log as required under § 668.46(f), Clery Geography would be defined to also include areas within the patrol jurisdiction of the campus police or security department. We also propose to replace both the reference in § 668.46(c)(1) to ''campus, in or on noncampus buildings or property, and on public property'' and the reference in § 668.46(f)(1) to ''campus, on a noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department'' with the term ''Clery Geography.''

Reasons: The proposed use and definition of the term ''Clery Geography'' would provide a concise way of referring collectively to the physical locations for which an institution is responsible for collecting reports of crimes for inclusion in its annual crime statistics and, if applicable, its daily crime log. The Department has used the term ''Clery Geography'' in *The Handbook for Campus Safety and Security Reporting* (the Handbook), which provides guidance on complying the Clery Act, and in training materials to refer to an institution's ''campus,'' ''noncampus building or property,'' or ''public property'' for many years, and the term is commonly used by institutional officials and other individuals familiar with the Clery Act. We stress that this proposed definition of ''Clery Geography'' would not alter the existing, long-standing definitions of ''campus,'' ''noncampus building or property,'' or ''public property.'' Instead, we are adding this term to improve the readability and understandability of the regulations.

Definition of Consent

Statute: None.

Current Regulations: None.

Proposed Regulations: None.

Reasons: During the negotiated rulemaking sessions, the committee debated whether to propose a definition of the word ''consent'' in these regulations. During the first session, several negotiators strongly urged the Department to develop a definition of ''consent'' for the purposes of the Clery Act. They asserted that establishing a definition of consent would help set a national standard for what it means to consent to sexual activity. Several negotiators also argued that a definition of consent would provide clarity for institutions, students, and employees with regard to when a reported sex offense would need to be included in the institution's Clery Act statistics.

Other negotiators, however, objected to the proposed addition of a definition of consent. They argued that a definition would create ambiguity and confusion for institutional officials, students, employees, and the public, particularly in jurisdictions which either do not define consent or have a definition that differed from the one that would be in the regulations. Some negotiators, particularly those representing law enforcement and institutional attorneys, believed that it would be difficult and create a burden for law enforcement officials to classify crimes based on two different standards, and that campus public safety officials would be expected to make decisions about consent based on situations outside their areas of expertise and without a bright-line standard. One of the negotiators argued that it would not be reasonable to add a definition of consent for Clery Act reporting purposes when VAWA specifically added a reference to the definition of consent in the applicable jurisdiction for the purposes of prevention and training. Along these lines, some negotiators noted that some institutions use their own definition of ''consent'' for purposes of their institutional disciplinary procedures. These officials asserted that adding a definition of consent to these regulations could cause confusion by creating situations where an institution might have three separate definitions of consent relating to sexual activity for different purposes.

After considering these arguments, the Department decided to include a definition of consent in the Department's initial draft regulations presented to the negotiators. Drawing on materials from other Federal agencies, State statutes, and institutions, we drafted language to define ''consent'' as the affirmative, unambiguous, and voluntary agreement to engage in a specific sexual activity during a sexual encounter. Under this definition, an individual who was asleep, or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, or who was under duress, threat, coercion, or force, would not have been able to give consent. Further, one would not be able to infer consent under circumstances in which consent was not clear, including but not limited to the absence of ''no'' or ''stop,'' or the existence of a prior or current relationship or sexual activity. Several of the negotiators endorsed this draft language as a starting point and some made suggestions to strengthen it. On the other hand, some negotiators vigorously objected to including the definition, reiterating concerns about the potential for confusion caused by multiple definitions.

After further consideration, the Department decided to remove the definition of consent from the draft regulations. At the third session of the negotiations, we explained that, while we believed that our draft language is a valid starting point for other efforts related to the prevention of campus sexual assaults, we were not convinced that it would be helpful to institutions for purposes of complying with the Clery Act. Specifically, we noted that for purposes of Clery Act reporting, all sex offenses that are reported to a campus security authority must be recorded in an institution's Clery Act statistics and, if reported to the campus police, must be included in the crime log, regardless of the issue of consent. Thus, while the definitions of the sex offenses in Appendix A to subpart D of part 668 include lack of consent as an element of the offense, for purposes of Clery Act reporting, no determination as to whether that element has been met is required.

Some of the negotiators disagreed, arguing that the references to a lack of consent in various parts of the proposed regulations, such as the definitions of the sex offenses in Appendix A to subpart D of part 668, demands an affirmative definition of consent in order to permit determinations of when consent is absent. In the end, however, the negotiators agreed not to include a definition of consent in these regulations, but they requested that the Department include further clarification and guidance around the issue of consent in future documents and

publications. We intend to provide this guidance, and also note that other Federal, State, and local agencies have materials in this area that may be instructive.

Definition of Dating Violence

Statute: Section 304 of VAWA added a requirement to the Clery Act that institutions include statistics on dating violence in their crime statistics reported to the Department and in the annual security report. In addition, VAWA amended sections 485(f)(6)(A) and 485(f)(7) of the HEA to specify that the term ''dating violence'' has the meaning given in § 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)). The Violence Against Women Act of 1994 defines the term ''dating violence'' to mean violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; where the existence of such a relationship is determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Current Regulations: None.

Proposed Regulations: We propose to add a definition of the term ''dating violence'' in § 668.46(a). Dating violence would be defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship would be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence would include, but would not be limited to, sexual or physical abuse or the threat of such abuse. Additionally, the proposed definition would specify that dating violence does not include acts that meet the definition of ''domestic violence.'' Finally, the proposed definition would clarify that, for the purposes of complying with the requirements of the Clery Act, including for statistical purposes, any incident that meets this definition of dating violence would be considered a crime.

Reasons: The changes made to the Clery Act by VAWA include requirements relating to programs, policies, procedures, and statistics related to incidents of dating violence, domestic violence, sexual assault, and stalking. Accordingly, we propose to add definitions of these terms to the regulations.

While the term ''dating violence'' is defined in the Violence Against Women Act of 1994, the Department received numerous requests at the public hearings, during the public comment period and from some of the negotiators, to further define some of the words used in the statutory definition of the term. In particular, we were asked to clarify how institutions should determine whether individuals were in a dating relationship when the violence occurred, specify what types of behavior would be considered violence, clarify the interaction between dating violence and domestic violence, and explain how to address incidents of dating violence in jurisdictions where dating violence is not a crime.

The negotiators had a substantial discussion on how to determine whether individuals were in a dating relationship when the violence occurred. In particular, the negotiators suggested three possible approaches to determining whether a dating relationship exists: (1) Accepting the determination of campus safety officials, (2) using a ''reasonable person'' standard, or (3) basing the determination on the victim's perspective.

Under the first approach, campus law enforcement or a campus security department would make the determination of whether a dating relationship existed after considering the factors outlined in the statutory definition of dating violence, specifically, the length and type of the relationship, and the frequency of interaction. Several of the negotiators supported this approach because they believed that it would give these officials the authority to make a professional judgment about the nature of the relationship, for purposes of crime reporting. Other negotiators disagreed with this approach, however, arguing that generational differences in terminology and culture (e.g., ''going steady,'' ''seeing each other,'' ''hooking up,'' or ''hanging out'') could create situations in which an incident of dating violence would be incorrectly omitted from the crime statistics and the crime log. They noted that, in some cases, the reporting party and the institutional official receiving the report may have different concepts about what constitutes dating.

Under the second approach, an institution would make the determination of whether a dating relationship existed based on whether or not a ''reasonable person'' would consider the individuals to be dating. Some of the negotiators advocated this approach, arguing that it would reflect a standard that is frequently used in other areas of the law. Several other negotiators strongly disagreed, however, arguing that a reasonable person standard has traditionally reflected a perspective that may not adequately meet the needs of diverse populations of students.

Under the third approach, an institution would make the determination based on whether or not victim considered themselves himself or herself to be in dating relationships. Several of the negotiators supported this approach, arguing that it would be clear and simple. They argued that leaving it to the victim to define the relationship would avoid problems caused by differences in terminology between the victim and campus officials or in the perception of the relationship between the victim and the perpetrator. Other negotiators believed that this was a reasonable approach, but they raised concerns that leaving the determination solely to the victim would not be supportable under the statute, which requires consideration of several factors, namely, the length of the relationship, the type of relationship, and the frequency of interaction.

In the end, the negotiators agreed to a compromise definition that allows both the reporting party and law enforcement to be involved in determining whether a reported crime constitutes an incident of dating violence. Under the proposed definition, an institution would determine whether the individuals were in a dating relationship by considering the reporting party's statement, as well as the other factors included in the statutory definition—the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. We believe that this proposed definition appropriately allows institutions to give considerable weight to the view of the victim or, if someone other than the victim reports the incident, to the view of the reporting party, but also allows campus law enforcement or a campus security department flexibility to consider the statutory factors specifically listed in VAWA in deciding whether an incident meets the definition of dating violence.

Next, with regards to the types of behavior that would be considered violence for purposes of this definition, some of the negotiators strongly believed that the definition of ''dating violence'' should include not only physical and sexual violence but also emotional or psychological abuse. These

negotiators noted that emotional or psychological abuse are commonly included in the definitions of ''dating violence'' or similar terms used by other Federal agencies such as the Department of Justice and the Centers for Disease Control and Prevention, States, and by practitioners in the field of sexual violence prevention. The negotiators also stressed that emotional or psychological abuse can have a severe impact on a victim, limiting the victim's ability to access school in a healthy way, and that emotional or psychological abuse often escalates to physical or sexual violence.

Other negotiators believed that the definition of ''dating violence'' should be limited to physical and sexual abuse. They argued that, from a practical standpoint, it would be difficult for campus law enforcement and other institutional officials to determine whether a report of emotional or psychological abuse meets the standard of ''violence,'' and accordingly whether or not to include it in the institution's Clery Act statistics. Some of the negotiators also argued that including emotional and psychological abuse in the definition of dating violence would exceed the limits established by statutory language.

In this proposed definition, we have specified that, for the purposes of including incidents of dating violence in an institution's Clery Act statistics, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. While the Department strongly supports the inclusion of emotional or psychological abuse in definitions of dating violence used for research, prevention, victim services, or intervention purposes, we are not proposing to explicitly include these forms of abuse in this definition for purposes of Clery Act reporting for several reasons. First, the Department recognizes that some instances of emotional and verbal abuse may not rise to the level of ''violence'' which is a part of the statutory definition of dating violence under VAWA. Second, we acknowledge the implementation challenges that including these forms of abuse in the regulatory definition would present for campus security authorities, including law enforcement for purposes of Clery Act reporting. In particular, the Department recognizes the difficulties that campus security authorities may encounter when attempting to identify incidents of reported emotional or psychological abuse, as these forms of abuse may not be visibly apparent, but instead may require the input of mental health professionals and counselors. We believe that the proposed definition reflects the statutory requirements and strikes a balance between creating a clear, enforceable regulation and allowing institutions to include instances of emotional or psychological abuse where the abuse constitutes a threat of physical or sexual abuse.

Further, some negotiators requested clarification on how institutions should record incidents that meet the definitions of both ''dating violence'' and ''domestic violence'' for Clery Act statistical purposes. Specifically, the negotiators noted that, because certain acts of violence by an intimate partner of the victim meet both the definitions of ''dating violence'' and ''domestic violence'', a particular incident could be double-counted where the act is committed by an ''intimate partner'' and is an act of violence that also constitutes a felony or misdemeanor crime, thus meeting both definitions. To address concerns about the overlap of the definitions of ''dating violence'' and ''domestic violence'' and to avoid double-counting, we have proposed to include the language clarifying that for purposes of Clery Act reporting, ''dating violence does not include acts covered under the definition of domestic violence.''

Finally, the negotiators requested clarification about how to treat incidents of dating violence in jurisdictions where dating violence is not a crime. During the committee's discussions on this point several negotiators noted the discrepancy between the statutory definitions of ''dating violence,'' which refers to ''violence'' and does not require that a crime be committed, and the definition of ''domestic violence,'' which is defined as ''a felony or misdemeanor crime of violence.''

In these proposed regulations we would provide that any incident that meets the definition of ''dating violence'' is a ''crime'' for the purposes of the Clery Act. We have included this provision to make it clear that all such incidents would have to be recorded in an institution's statistics, regardless of whether or not dating violence is a crime in the institution's jurisdiction. We also believe this provision improves the readability of the regulations.

Definition of Domestic Violence

Statute: Section 304 of VAWA added a requirement to the Clery Act that institutions include statistics on domestic violence in their crime statistics reported to the Department and included in the annual security report. In addition, VAWA amended sections 485(f)(6)(A) and 485(f)(7) of the HEA to specify that the term ''domestic violence'' has the meaning given in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)). The Violence Against Women Act of 1994 defines the term ''domestic violence'' to mean a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by 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 by 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.

Current Regulations: None.

Proposed Regulations: We propose to add a definition of the term ''domestic violence'' in § 668.46(a). ''Domestic violence'' would be defined as it is in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)). Additionally, the proposed definition would clarify that, for the purposes of complying with the requirements of the Clery Act, including for statistical purposes, any incident that meets this definition of ''domestic violence'' would be considered a crime.

Reasons: As discussed, in contrast to dating violence, an incident is considered to be domestic violence under the statutory definition only if it is a felony or misdemeanor crime of violence in the jurisdiction. Additionally, as with dating violence, under these proposed regulations any incident that meets the definition of domestic violence would be considered to be a ''crime'' for the purposes of the Clery Act. We have included this provision to make it clear that all such incidents would have to be recorded in an institution's statistics and to improve the readability of the regulations.

Definition of the Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) program (FBI's UCR program)

Statute: Section 485(f)(7) of the HEA specifies that institutions must compile their crime statistics in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, FBI, and the modifications in those definitions as implemented pursuant to the Hate Crime Statistics Act (28 U.S.C. 534 note).

Current Regulations: The regulations in § 668.46(a) do not currently define

the term ''FBI's UCR program.'' However, the current § 668.46(c)(7) specifies that institutions must compile crime statistics using the definitions of the crimes provided in Appendix A to subpart D of part 668 and guidance in the FBI's UCR Handbook (Summary Reporting System) or the UCR Reporting Handbook: National Incident-Based Reporting System (NIBRS), and, for the purposes of compiling hate crime statistics, the FBI's UCR Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Data Collection.

Proposed Regulations: We propose to add a definition of the term ''Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) Program'' (FBI's UCR program) to § 668.46(a). This proposed definition would define the FBI's UCR program as a nationwide, cooperative statistical effort in which city, university and college, county, State, Tribal, and Federal law enforcement agencies voluntarily report data on crimes brought to their attention. The proposed addition would also clarify that the FBI's UCR program serves as the basis for the definitions of crimes in Appendix A to subpart D of part 668 and the requirements for classifying crimes in subpart D.

Reasons: The current regulations and, to an even greater extent, the proposed regulations, refer to the FBI's UCR program in several places, and we believe that adding a definition of the term ''FBI's UCR program'' at the beginning of the section will improve the clarity of the regulations.

Definition of Hate Crime

Statute: Prior to the enactment of VAWA, section 485(f)(1)(F)(ii) of the HEA required institutions to compile statistics about the number of cases of murder; manslaughter; sex offenses; robbery; aggravated assault; burglary; motor vehicle theft; arson; larceny-theft; simple assault; intimidation; destruction, damage, or vandalism of property; or other crimes involving bodily injury reported to campus security authorities or local police agencies in which the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability. Under the HEA, institutions must record these statistics according to the category of prejudice.

Section 304 of VAWA amended section 485(f)(1)(F)(ii) of the HEA to add national origin and gender identity as categories of prejudice that may be identified as the basis for a hate crime.

Current Regulations: Section 668.46(a) does not currently include a definition of ''hate crime.'' However, the current regulations in § 668.46(c)(3) specify that institutions must include in their statistics the number of cases of criminal homicide; sex offenses; robbery; aggravated assault; burglary; motor vehicle theft; arson; larceny-theft; simple assault; intimidation; damage, destruction, or vandalism of property; and any other crimes involving bodily injury that are reported to campus security authorities or local police agencies that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability. Section 668.46(c)(7) directs institutions to use the definitions in the FBI's UCR Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Data Collection in compiling the Hate Crime statistics.

Proposed Regulations: We propose to add a definition of ''hate crime'' to § 668.46(a). The proposed regulations would define ''hate crime'' to mean a crime reported to local police agencies or to a campus security authority that manifests evidence that the victim was intentionally selected because of the perpetrator's bias against the victim. For the purposes of the Clery Act, the categories of bias that may serve as the basis for a determination that a crime is a hate crime would include the victim's actual or perceived race, religion, gender, gender identity, sexual orientation, ethnicity, national origin, and disability.

Reasons: As discussed under ''Recording Crimes Reported to a Campus Security Authority,'' we are proposing to re-structure paragraph (c) to make the regulations easier to understand. Those changes would result in references to hate crimes in multiple places in this section, and we believe that adding a definition of ''hate crime'' in § 668.46(a), using the existing description of hate crimes in § 668.46(c)(3), will help clarify the regulations by explicitly defining this term, as well as making the definition easy to find.

Definition of Hierarchy Rule

Statute: None.

Current Regulations: The current regulations in § 668.46(c)(7) specify that institutions must compile the crime statistics for certain crimes using the definitions of crimes in Appendix A to subpart D of part 668 and the guidelines in the UCR Reporting Handbook. The UCR Reporting Handbook requires that, when recording crimes when more than one offense was committed during a single incident, the Hierarchy Rule applies. Under the Hierarchy Rule, only the most serious offense is recorded. For example, under the Hierarchy Rule, if a perpetrator commits both an aggravated assault and a robbery during a single incident, only the robbery would be recorded because it is considered to be the more serious offense.

Proposed Regulations: We propose to add a definition of ''Hierarchy Rule'' to § 668.46(a). The proposed regulations would define ''Hierarchy Rule'' as the requirement in the FBI's UCR program that, for purposes of reporting crimes in that system, when more than one criminal offense is committed during a single incident, only the most serious offense is to be included in the institution's Clery Act statistics.

Reasons: The Department has long required institutions to apply the FBI's UCR program's Hierarchy Rule when calculating their annual Clery Act statistics. The current regulations reflect this policy by referring to the guidelines in the UCR Reporting Handbook. As discussed more fully under ''Using the FBI's UCR Program and the Hierarchy Rule,'' we are proposing to create an exception to the Hierarchy Rule in proposed § 668.46(c)(9) that would apply only in cases where a sexual assault and a murder occur in the same incident. We believe that adding this definition in § 668.46(a) will improve the clarity of the regulations, particularly given the proposed exception to the Hierarchy Rule.

Definition of Programs To Prevent Dating Violence, Domestic Violence, Sexual Assault, and Stalking

Statute: Prior to enactment of VAWA, section 485(f)(8)(A) of the HEA required an institution to include in its annual security report a statement of policy including, among other things, information about the institution's campus sexual assault programs aimed at preventing sex offenses. This statement had to address the institution's education programs to promote the awareness of rape, acquaintance rape, and other sex offenses. Section 304 of VAWA amended section 485(f)(8)(A) of the HEA to require that this statement of policy describe, among other things, the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking. VAWA also expanded the information that the institution must include in its statement of policy to include descriptions of the institution's primary prevention and awareness programs for all incoming students and new employees and its ongoing prevention and awareness campaigns for students and faculty. Both primary prevention and awareness

programs and ongoing prevention and awareness campaigns must include: (1) A statement that the institution prohibits dating violence, domestic violence, sexual assault, and stalking; (2) the definitions of dating violence, domestic violence, sexual assault, and stalking in the applicable jurisdiction; (3) the definition of consent, in reference to sexual activity, in the applicable jurisdiction; (4) safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking against a person other than the individual; (5) information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and (6) information about the procedures that victims should follow, and that the institution will follow, after an incident of dating violence, domestic violence, sexual assault, or stalking has occurred.

Current Regulations: None.

Proposed Regulations: We propose to add a definition of ''programs to prevent dating violence, domestic violence, sexual assault, and stalking'' in § 668.46(a). This term would be defined as ''comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome.'' These programs must also ''consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.'' Programs to prevent dating violence, domestic violence, sexual assault, and stalking would also ''include both primary prevention and awareness programs directed at incoming students and new employees and ongoing prevention and awareness campaigns directed at students and employees.''

Reasons: During the negotiated rulemaking sessions, the committee formed a subcommittee focused on issues related to the new prevention and training requirements that VAWA added to the HEA. This subcommittee met several times to discuss possible definitions of the terms relevant to these requirements, as discussed under ''Programs to Prevent Dating Violence, Domestic Violence, Sexual Assault, and Stalking (§ 668.46(j)).'' As a result of its work, the subcommittee recommended that the full committee consider adding a definition of the term ''programs to prevent dating violence, domestic violence, sexual assault, and stalking'' in paragraph (a) of § 668.46 to serve as an umbrella term for the primary prevention and awareness programs and the ongoing prevention and awareness campaigns that institutions must now provide.

The committee members discussed the definition of this term, focusing in particular on how to ensure that these programs will reflect the best current thinking on the issues of sexual violence prevention. Several negotiators argued that many institutions use programs and practices that have been shown to be ineffective and that reinforce and perpetuate outdated myths about gender roles and behaviors, among other things. These negotiators believed that the regulations should require institutions to design programs using approaches and strategies that research has proven effective in preventing dating violence, domestic violence, sexual assault, and stalking. Most of the negotiators agreed that institutions should not implement programs that have been proven ineffective or harmful, but some urged that the term ''research'' should be given a broad interpretation to include research conducted according to scientific standards as well as assessments for efficacy carried out by institutions and other organizations. After consideration of these arguments, the committee agreed to propose that these prevention programs must be informed by research or assessed for value, effectiveness, or outcome.

Similarly, the negotiators stressed the need to move away from programs that inappropriately place the burden on individuals to protect themselves, instead of focusing on ways to reduce the risk of perpetration. With this in mind, the negotiators agreed to specify that programs to prevent dating violence, domestic violence, sexual assault, and stalking must address environmental factors that increase the risk of violence on numerous levels (i.e., risk factors) and factors that decrease the risk of violence or mitigate the effects of a risk factor (i.e., protective factors).

The negotiators also discussed the need to emphasize that institutions should develop their prevention programs thoughtfully and deliberately, taking into account the particular circumstances of their communities. Generally, the negotiators agreed that it is critical that institutions tailor their programs for their students and employees and their needs.

Please see ''Programs to Prevent Dating Violence, Domestic Violence, Sexual Assault, and Stalking (§ 668.46(j))'' for additional discussion of programs to prevent dating violence, domestic violence, sexual assault, and stalking.

Definition of Sexual Assault

Statute: Section 304 of VAWA amended section 485(f) of the HEA to require an institution to include in its annual security report certain policies, procedures, and programs pertaining to incidents of dating violence, domestic violence, sexual assault, and stalking. VAWA also added a provision to section 485(f)(6)(A) defining ''sexual assault'' as an offense classified as a forcible or nonforcible sex offense under the FBI's UCR program.

Current Regulations: None.

Proposed Regulations: We propose to add a definition of the term ''sexual assault'' in § 668.46(a). This term would be defined as ''an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program and included in Appendix A'' to subpart D of part 668.

Reasons: Section 485(f)(6)(A)(v) of the HEA defines sexual assault to mean ''an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.'' Our proposed regulations reflect this definition. However, for the reasons discussed under ''Crimes That Must Be Reported and Disclosed,'' we have removed references to ''forcible'' and ''nonforcible'' sex offenses. We have also proposed to identify the sex offenses that ''sexual assault'' would include to make this definition clear.

Definition of Stalking

Statute: Section 304 of VAWA amended sections 485(f)(6)(A) and 485(f)(7) of the HEA to specify that the term ''stalking'' has the meaning given the term in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)). The Violence Against Women Act of 1994 defines the term ''stalking'' to mean ''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.''

Current Regulations: None.

Proposed Regulations: We propose to add a definition of the term ''stalking'' in § 668.46(a). This definition would mirror the definition in section 40002(a) of the Violence Against Women Act of 1994 while also defining some of the terms within that definition. ''Course of

conduct'' would be defined to mean two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. ''Substantial emotional distress'' would mean significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. ''Reasonable person'' would mean a reasonable person under similar circumstances and with similar identities to the victim. Finally, the proposed regulations would clarify that, for the purpose of complying with the requirements of the Clery Act, including for statistics purposes, any incident that meets this definition of stalking would be considered a crime.

Reasons: The proposed definition of stalking is based largely on the work of a subcommittee that was created to focus on issues related to the definition of stalking and counting incidents of stalking. This subcommittee, which included experts from the Stalking Resource Center, suggested that the Department add clarifying language to the VAWA definition of stalking based on the recommendations in the ''Model Stalking Code'' issued by the National Center for Victims of Crime.[2] In particular, the subcommittee focused on defining several terms within VAWA's definition of stalking, which had substantial overlap with the definition in the Model Stalking Code.

First, the subcommittee suggested that the Department adopt the definition of ''course of conduct'' from the Model Stalking Code which is ''two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.'' The full committee accepted this suggestion because this comprehensive description appropriately covers the wide range of behaviors that a perpetrator might exhibit when stalking a victim. In particular, the committee agreed that this definition would appropriately include means of stalking that are particularly troubling on college campuses, such as cyberstalking and the public distribution (e.g., online) of materials of a personal or intimate nature about a victim to humiliate, degrade, or expose the victim. While the committee initially discussed developing a special rule to address cyberstalking, the negotiators representing law enforcement and members of the subcommittee from the Stalking Resource Center strongly recommended against doing so, noting that cyberstalking is simply one form of stalking and is typically treated under the law the same way as any other stalking course of conduct, and that stalking someone through electronic means is frequently intertwined with other forms of stalking.

Second, the subcommittee suggested adding clarifying language to explain the phrase ''substantial emotional distress.'' In particular, the subcommittee suggested defining ''emotional distress'' similarly to the Model Stalking Code, which defines the term to mean ''significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.'' Because the Model Stalking Code uses the term ''significant'' in defining ''emotional distress'' the Committee was satisfied with adopting that language to define ''substantial emotional distress'' in the proposed regulations.

Third, the subcommittee discussed the phrase ''would cause a reasonable person to fear for his or her safety or the safety of others.'' In particular, the subcommittee noted that the definition of stalking does not require a victim to actually suffer substantial emotional distress, but instead only that the course of conduct would cause a reasonable person to suffer distress. Further, the subcommittee suggested that the Department adopt the Model Stalking Code's definition of a ''reasonable person'' to mean ''a reasonable person in the victim's circumstances.'' The Department did not initially incorporate this definition of ''reasonable person'' in the draft regulations presented to the negotiators during the second session because the term ''reasonable person'' is generally understood and we were not convinced that further elaboration was needed. Some of the negotiators agreed that the ''reasonable person'' standard is a concept used in law and in a number of situations over hundreds of years and that trying to nuance it to fit a particular set of circumstances would weaken the generality and adaptability of the standard. Other negotiators, however, argued that a reasonable person, for Clery Act purposes, should be defined in a way that would speak to the identities and experiences of all members of the campus community. Ultimately, the committee agreed to define the term ''reasonable person'' within the definition of stalking to mean a reasonable person under similar circumstances and with similar identities to the victim. The negotiators felt that this definition would produce the best outcomes in terms of ensuring that the perspective from which an institution evaluates a report of stalking reflects the experience of the victim.

Finally, as with dating violence and domestic violence, the proposed regulations provide that any incident that meets the definition of stalking would be considered a ''crime'' for the purposes of the Clery Act. We have included this provision to make it clear that all such incidents would have to be recorded in an institution's statistics and to improve the readability of the regulations.

Annual Security Report

Memorandum of Understanding

Statute: Prior to the passage of the Higher Education Opportunity Act of 2008 (HEOA), institutions were required to include in their annual security reports a statement of current policies concerning campus law enforcement. Among other things, this statement had to include information about the ''enforcement authority of security personnel, including their working relationship with State and local police agencies.'' Section 488(e)(1)(B) of the HEOA amended section 485(f)(1)(C) of the HEA to explicitly require institutions to include in this policy statement information about any agreements, such as written memoranda of understanding, that they have with State and local law enforcement agencies with respect to the investigation of alleged criminal offenses.

Current Regulations: Section 668.46(b)(4)(i) currently requires an institution to include in its annual security report a statement of current policies concerning campus law enforcement that addresses the enforcement authority of security personnel, including their relationship with State and local police agencies and whether those security personnel have the authority to arrest individuals.

Proposed Regulations: We propose to revise § 668.46(b)(4)(i) to reflect the changes made by the HEOA and to further clarify the existing requirements. Specifically, we propose to require institutions to address in the statement of current policies concerning campus law enforcement the jurisdiction of security personnel, as well as any agreements, such as written memoranda of understanding between the institution and State and local police

[2] *www.victimsofcrime.org/docs/src/model-stalking-code.pdf?sfvrsn=0.*

agencies, for the investigation of alleged criminal offenses.

Reasons: The Department had previously not reflected the statutory provision regarding agreements between campus security agencies and State and local police in the regulations. Over the last several years, however, the Department has received requests to incorporate this provision into the regulations to make the regulations more complete. As a result, we are proposing to add this provision to the regulations.

Additionally, we are proposing to add the words ''and jurisdiction'' in § 668.46(b)(4)(i) to make it explicit that institutions must include information about jurisdiction when addressing the enforcement authority of campus law enforcement. We believe that this will provide the campus community with a better understanding of the physical locations in which campus law enforcement will patrol or otherwise carry out its duties.

Elects To or Is Unable To Report

Statute: Prior to the enactment of VAWA, section 485(f)(1)(C)(iii) of the HEA required institutions to include in their annual security reports a statement of current policies concerning campus law enforcement that addresses, among other things, policies that encourage accurate and prompt reporting of all crimes to the campus police and the appropriate law enforcement agencies. Section 304 of VAWA amended this provision to clarify that this policy statement must address accurate and prompt reporting of all crimes to the campus police and the appropriate law enforcement agencies when the victim of the crime elects or is unable to make such a report.

Current Regulations: Current § 668.46(b)(4)(ii) requires institutions to include in their annual security reports a statement of current policies concerning campus law enforcement that, among other things, encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies.

Proposed Regulations: In proposed § 668.46(b)(4)(iii), which modifies current § 668.46(b)(4)(ii), we require institutions to address in their statement of policy concerning campus law enforcement their policies to encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies, when the victim of a crime elects to or is unable to make such a report.

Reasons: During the negotiated rulemaking sessions, one negotiator raised concerns that institutions have historically misinterpreted the provision in current § 668.46(b)(4)(ii) to mean that they must encourage students and employees to report crimes to law enforcement, even when the victim does not wish to initiate a criminal report. The negotiator was particularly troubled that a third party would report a crime to a responsible employee at the institution (for purposes of title IX) against the victim's wishes, triggering a title IX investigation or police investigation that could compromise the victim's confidentiality. The negotiator asserted that this misinterpretation has exacerbated the problem of underreporting of sex offenses on college campuses.

Additionally, some of the negotiators suggested going a step further by defining ''unable to report'' to mean that a victim is physically unable to make a report, such as when the victim is in a coma. They felt that this would address the situation in which a member of the campus community would report a crime against the victim's wishes after deciding that the victim was psychologically unable to make a report out of fear or coercion. Other negotiators, while agreeing that it is important to empower victims to make these decisions for themselves, opposed adding ''physically'' as a qualifier because they believed that it would be interpreted to exclude situations where a victim is mentally incapacitated and unable to make a report.

Ultimately, in considering these concerns, the negotiated rulemaking committee agreed to incorporate the statutory language into the regulations, with the slight modification of adding the word ''to'' in the phrase ''elects to or is unable to report,'' for clarity, to emphasize that, for the purposes of reporting crimes to the campus police and the appropriate police agencies, institutions must encourage accurate and prompt reporting of all crimes when the victim of the crime elects to report the crime or when the victim is unable to make a report.

We believe that it is important for institutions to encourage members of the campus community to report crimes to campus security authorities to ensure that all crimes are included in the institution's Clery Act statistics. Our longstanding policy is that institutions must record reports of the Clery Act crimes in their statistics, regardless of whether the report comes from the victim or a third party. On the other hand, we understand that, particularly at institutions with sworn police officers, the same individuals or departments may be responsible for compiling the institution's Clery Act statistics and for initiating title IX investigations or pursuing criminal charges. To address these concerns, in the Handbook we will encourage institutions to emphasize and make clear to students and employees what opportunities exist for making confidential reports of crimes for inclusion in the institution's Clery Act statistics, for filing a title IX complaint at the institution, and for obtaining counseling or treatment without initiating a title IX investigation or criminal investigation.

Programs and Procedures Regarding Dating Violence, Domestic Violence, Sexual Assault, and Stalking—Policy Statement

Statute: Prior to the enactment of VAWA, section 485(f)(8)(A) of the HEA required institutions to include in their annual security reports a statement of policy regarding their programs to prevent sexual assaults on campus and the procedures that they will follow once a sex offense has occurred. Section 304 of VAWA revised and expanded the types of information that institutions must include in this policy statement. The following chart summarizes the changes that VAWA made to this required policy statement in the HEA:

Pre-VAWA	Post-VAWA
Each institution of higher education participating in any program under this title, other than a foreign institution of higher education, shall develop and distribute as part of the annual security report a statement of policy regarding—	Each institution of higher education participating in any program under this title and title IV of the Economic Opportunity Act of 1965, other than a foreign institution of higher education, shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding—
(i) The institution's campus sexual assault programs, which shall be aimed at the prevention of sex offenses; and	(i) The institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking; and

Pre-VAWA	Post-VAWA
(ii) Procedures followed once a sex offense has occurred.	(ii) The procedures that the institution will follow once an incident of dating violence, domestic 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 the report.
The policy statement shall address the following areas:	The policy statement shall address the following areas:
(i) Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses.	(i) Education programs to promote the awareness of rape, acquaintance rape, dating violence, domestic violence, sexual assault, and stalking, which shall include—
	(I) Primary prevention and awareness programs for all incoming students and new employees, which shall include—
	(aa) A statement that the institution of higher education prohibits the offenses of dating violence, domestic violence, sexual assault, and stalking;
	(bb) The definition of dating violence, domestic violence, sexual assault, and stalking in the applicable jurisdiction;
	(cc) The definition of consent, in reference to sexual activity, in the applicable jurisdiction;
	(dd) Safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking against a person other than such individual;
	(ee) Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and
	(ff) The information in clauses (ii) through (vii).
	(II) Ongoing prevention and awareness campaigns for students and faculty that provide the information provided in the primary prevention and awareness programs.
(ii) Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or non-forcible.	(ii) Possible sanctions or protective measures that the institution may impose following a final determination of an institutional disciplinary procedure regarding rape, acquaintance rape, dating violence, domestic violence, sexual assault, or stalking.
(iii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.	(iii) Procedures victims should follow if a sex offense, dating violence, domestic violence, sexual assault, or stalking has occurred, including information in writing about—
	(I) The importance of preserving evidence as may be necessary to the proof of criminal dating violence, domestic violence, sexual assault, or stalking, or in obtaining a protection order.
	(II) To whom the alleged offense should be reported.
(iv) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.	(III) Options regarding law enforcement, including notification of the victim's option to—
	(aa) Notify proper law enforcement authorities, including on-campus and local police.
	(bb) Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses.
	(cc) Decline to notify such authorities.
	(IV) Where applicable, the rights of victims and the institution's responsibilities regarding orders of protection, no-contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.
(iv) Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that—	(iv) Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, which shall include a clear statement that—
	(I) Such proceedings shall—
	(aa) Provide a prompt, fair, and impartial investigation and resolution; and
	(bb) Be conducted by officials who receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.
(A) The accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and	(II) The accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice; and
(B) Both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.	(III) Both the accuser and the accused shall be simultaneously informed, in writing, of—
	(aa) The outcome of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking;
	(bb) The institution's procedures for the accused and the victim to appeal the results of the institutional disciplinary proceeding;
	(cc) Any change to the results that occurs prior to the time that the results become final; and
	(dd) When such results become final.
(v) (See the 8th row in this table above)	(v) Information about how the institution will protect the confidentiality of victims, including how publicly available recordkeeping will be accomplished without the inclusion of identifying information about the victim, to the extent permissible by law.
(iv) Notification of students of existing counseling, mental health, or student services for victims of sexual assault, both on campus and in the community.	(vi) Written notification of students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims both on-campus and in the community.

Pre-VAWA	Post-VAWA
(vii) Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.	(vii) Written notification of victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

Current Regulations: The current regulations in § 668.46(b)(11) largely mirror the statutory provisions as they existed prior to the enactment of VAWA by requiring institutions to include in their annual security reports a statement of policy regarding the institution's sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The regulations also outline the items that the statement of policy must address, including: (1) A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses; (2) procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported; (3) information on a student's option to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel; (4) notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses; (5) notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available; (6) procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding and that both the accuser and the accused must be informed of any institutional disciplinary proceeding brought alleging a sex offense; and (7) sanctions the institution may impose following a final determination of any institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offense. Additionally, the current regulations specify that informing both the accuser and the accused of the outcome of a disciplinary proceeding does not constitute a violation of FERPA and state that the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused.

Proposed Regulations: We are proposing to revise and re-structure § 668.46(b)(11) to reflect the changes made to the HEA by VAWA. First, we would revise the regulations to require institutions to include in their annual security reports a statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking and the procedures that the institution will follow when one of these crimes is reported. We would similarly replace references to ''sex offenses,'' ''campus sexual assault,'' and ''criminal sexual assault,'' with references to ''dating violence, domestic violence, sexual assault, and stalking,'' where applicable, in § 668.46(b)(11)(i) through (vii). Second, in proposed § 668.46(b)(11)(i), we propose to replace the current provisions in § 668.46(b)(11)(i) with a cross-reference to proposed new paragraph (j), which would address the requirements pertaining to an institution's educational programs to promote the awareness of dating violence, domestic violence, sexual assault, and stalking. Third, we propose to replace the current provisions in § 668.46(b)(11)(vi) and (vii) with a cross-reference to proposed new paragraph (k), which would address an institution's procedures for campus disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking and the possible resulting sanctions. Fourth, we would revise the remaining provisions in paragraphs (b)(11)(ii), (iii), (iv), and (v) to reflect the new statutory language. Finally, we would add new paragraph (b)(11)(vii) to require institutions to state in their annual security reports that, when a student or employee reports to the institution that the individual was a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide that victim with a written explanation of the student's or employee's rights and options, as described in proposed paragraphs (b)(11)(ii) through (vi).

Please see the discussions under ''Preserving Evidence, Reporting Offenses to Law Enforcement and Campus Authorities, and Protection Orders,'' ''Confidentiality of Victims,'' ''Notification of Assistance and Services,'' ''Notification of Accommodations,'' ''Written Statement of Rights and Options,'' ''Programs to Prevent Dating Violence, Domestic Violence, Sexual Assault, and Stalking,'' and ''Institutional Disciplinary Proceedings in Cases of Alleged Dating Violence, Domestic Violence, Sexual Assault, or Stalking'' for detailed descriptions of the changes and additions we are proposing in paragraphs (b)(11)(ii), (iii), (iv), (v), and (vii) and in paragraphs (j) and (k) of § 668.46.

Reasons: Generally, we are proposing to revise the current provisions in § 668.46(b)(11) to reflect the VAWA amendments.

We are also proposing to replace current paragraph (b)(11)(i) with a cross-reference to proposed new paragraph (j), and current paragraphs (b)(11)(vi) and (vii) with a cross-reference to proposed new paragraph (k), to streamline paragraph (b)(11) and help institutions and the public better understand and follow these regulations. This is the same approach we took when implementing changes that the HEOA made to the Clery Act in 2008 of using cross-references to direct readers to later paragraphs for information pertaining to policy statements on missing student notification and emergency response and evacuation procedures.

Preserving Evidence, Reporting Offenses to Law Enforcement and Campus Authorities, and Protection Orders

Statute: Prior to the enactment of VAWA, section 485(f)(8)(B)(iii) of the HEA required institutions to address in their annual security reports the procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported. Further, section 485(f)(8)(B)(v) of the HEA required institutions to inform students of their

options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying law enforcement authorities, if the student chose to do so. VAWA amended section 485(f)(8)(B) of the HEA to require institutions to provide this information to ''victims''—not just to ''students''—in writing; to require that this information be provided after an incident of dating violence, domestic violence, sexual assault, or stalking—not just after a ''sex offense''—occurs; to add information about the importance of preserving evidence that may be necessary to prove criminal dating violence, domestic violence, sexual assault, or stalking or to obtain a protection order; and to add that institutions must notify victims of their right to decline to notify law enforcement authorities of such incidents.

Current Regulations: Section 668.46(b)(11)(ii) of the current regulations specifies that an institution's statement of policy pertaining to campus sexual assaults must include information about procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported. Section 668.46(b)(11)(iii) requires institutions to further include in this statement of policy information on a student's option to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests that assistance.

Proposed Regulations: We propose to revise § 668.46(b)(11)(ii) to require institutions to provide written information to victims about the procedures that one should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred. In complying with this proposed provision, institutions would have to keep in mind that dating violence, domestic violence, and stalking would include, for Clery Act purposes, any incident that meets the definitions of those terms in proposed § 668.46(a). Accordingly, institutions would be required to provide certain procedural information to victims after one of these incidents occurs, regardless of whether the incident would be considered a crime for other, non-Clery Act purposes.

In proposed § 668.46(b)(11)(ii)(A), which modifies current § 668.46(b)(11)(ii), we would specify that institutions must include as part of these procedures information about 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.

In proposed § 668.46(b)(11)(ii)(B), which modifies current § 668.46(b)(11)(ii), we would clarify that, in disclosing to victims to whom they should report an alleged offense, institutions must specify how a victim should make that report.

In proposed § 668.46(b)(11)(ii)(C), which modifies current § 668.46(b)(11)(ii), we would add that institutions must inform victims not only of their options to notify proper law enforcement authorities, including on-campus and local police, and to be assisted by campus authorities in doing so, but also of their option to decline to notify such authorities.

Finally, we would add § 668.46(b)(11)(ii)(D) to provide that institutions must inform victims of their rights and, where applicable, the institution's responsibilities for orders of protection, no-contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by the institution.

Reasons: Generally, we are proposing the changes and additions in § 668.46(b)(11)(ii) to implement the amendments to the HEA made by VAWA; however, we are proposing some additional clarifications based on the discussions at the negotiated rulemaking sessions.

First, we are proposing in § 668.46(b)(11)(ii)(B) to clarify that institutions must include information about how a victim should report an alleged offense of dating violence, domestic violence, sexual assault, or stalking. Many negotiators indicated that victims often are unaware of the processes they must follow to report one of these offenses. The negotiators agreed that, in addition to knowing who to notify, it would be helpful for victims to have information in an institution's annual security report about any processes in place for notifying the appropriate officials.

Second, we are proposing in § 668.46(b)(11)(ii)(D) to specify that institutions must address in its statement of policy in the annual security report victims' rights and the institution's responsibilities for enforcing orders of protection, no-contact orders, restraining orders, or similar lawful orders issued by courts and by the institution. Some of the negotiators felt strongly that victims should be informed of the types of orders that an institution may impose to protect a victim after an allegation of dating violence, domestic violence, sexual assault, or stalking. During the discussions, a few of the negotiators asked the Department to clarify what an institution's responsibility would be to enforce orders of protection or similar orders issued by a court. Institutions are responsible for understanding their legal responsibilities based on the circumstances of a particular order. The Department is not in a position to provide guidance to institutions on individual protection orders.

Confidentiality of Victims

Statute: Section 304 of VAWA amended section 485(f)(8)(B)(v) of the HEA to require institutions to address in their annual security reports how they will protect the confidentiality of victims, including how publicly available recordkeeping will be accomplished without the inclusion of identifying information about the victim, to the extent permissible by law.

Current Regulations: None.

Proposed Regulations: We propose to add § 668.46(b)(11)(iii) to specify that institutions must address in their annual security reports how the institution will: (1) Complete publicly available recordkeeping, including for the purposes of Clery Act reporting and disclosure, without the inclusion of identifying information about the victim; and (2) maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures. ''Identifying information about the victim'' would have the same meaning as ''personally identifying information'' or ''personal information'' in section 40002(a)(20) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)(20)), which is defined to mean individually identifying information for or about an individual, including information likely to disclose the location of a victim of dating violence, domestic violence, sexual assault, or stalking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including: (1) A first and last name; (2) a home or other physical address; (3) contact information (including a postal, email, or Internet protocol address, or telephone or facsimile number); (4) a social security number, driver license number, passport number, or student identification number; and (5) any other information, including date of birth, racial or ethnic background, or religious

affiliation, that would serve to identify an individual.

Reasons: During the negotiated rulemaking sessions, several negotiators expressed concerns that some institutions mistakenly believe that they may, or must, disclose identifying information about victims to comply with Federal and State open records requirements and that information about accommodations and protective measures available for victims need not be kept confidential. These negotiators stressed the importance of emphasizing in the regulations that institutions should preserve the confidentiality of victims to the maximum extent possible to avoid re-victimization and retribution and to protect a victim's right to privacy. They also noted that several of the provisions that VAWA added to the HEA reflect this concern. As a result, the proposed regulations would build on the provisions in VAWA by requiring institutions to provide information about how they will protect the confidentiality of victims and other necessary parties and complete publicly available recordkeeping—including the Clery Act statistical and crime log requirements—without including information about the victim. Institutions should strive to protect a victim's confidentiality to the maximum extent possible when providing accommodations or instituting protective measures for the victim. We believe that the proposed regulations would appropriately balance the need to protect a victim's safety and privacy while also ensuring the safety of the campus community. These proposed regulations are also consistent with section 485(f)(10) of the HEA, which specifies that nothing in this section shall be construed to require the reporting or disclosure of privileged information.

Notification of Assistance and Services

Statute: Prior to the enactment of VAWA, section 485(f)(8)(B)(vi) of the HEA required institutions to address in their annual security reports notification of students of existing counseling, mental health, or student services for victims of sexual assault, both on campus and in the community. VAWA amended this provision to require institutions to include in their annual security reports written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims both on campus and in the community.

Current Regulations: Section 668.46(b)(11)(iv) requires institutions to include in their annual security reports a statement on notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses.

Proposed Regulations: In proposed § 668.46(b)(11)(iv), which modifies current § 668.46(b)(11)(iv), we would require institutions to specify in their annual security reports that they will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, and other services available for victims within the institution and in the community.

Reasons: We propose these changes to implement the changes made by VAWA in this area. We are also proposing, however, to expand the list of services about which institutions must provide information to victims, if those services are available. Specifically, in addition to the types of accommodations that VAWA added, we propose that institutions must notify victims of any available assistance at the institution or in the community with visa or immigration issues. One of the negotiators recommended that we add this category because many institutions have international students, and these students—and their partners and children—if victims of dating violence, domestic violence, sexual assault, and stalking may face significant barriers in receiving needed services or support due to concerns regarding their visa and immigration status. Other committee members agreed that this would be valuable information for international students, but also noted that, as with the other types of services, institutions would be required to provide this information only if the services are available. Another negotiator suggested clarifying that institutions could provide information about other types of services that may be available, arguing that institutions might believe that the topics listed in the regulations are the only topics that they should address when providing information to students and employees. We agree with the negotiator and believe that the regulatory language in proposed § 668.46(b)(11)(iv) makes it clear that, in addition to the categories listed, institutions may provide additional safety and security information to their students and employees.

Notification of Accommodations

Statute: Prior to the enactment of VAWA, section 485(f)(8)(B)(vii) of the HEA required institutions to address in their annual security reports notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault, if requested by the victim and if such changes are reasonably available. VAWA expanded and clarified this provision to require institutions to include in their annual security reports written notification to victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

Current Regulations: Section 668.46(b)(11)(v) requires institutions to include in their annual security reports notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available.

Proposed Regulations: In proposed § 668.46(b)(11)(v), which modifies current § 668.46(b)(11)(v), we would require institutions to also specify in their annual security reports that they will provide written notification to victims about options for, and available assistance in, changing transportation and working situations, in addition to academic and living situations. The regulations would clarify that the institution must make these accommodations if the victim requests them and if they are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

Reasons: We are proposing these changes to implement the changes made by VAWA. Some negotiators were concerned that some institutions believe that they are not required to provide accommodations if a victim chooses not to report the crime to local law enforcement. To address this concern, we are proposing to clarify in this provision that institutions must provide these accommodations if they are requested by the victim, regardless of whether the victim reports the crime to local law enforcement.

Written Statement of Rights and Options

Statute: VAWA added section 485(f)(8)(C) to the HEA to require an institution to provide a student or employee who reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking with a written explanation of that person's rights and options, as described in sections 485(f)(8)(B)(ii) through

(f)(8)(B)(vii) of the HEA. Institutions must provide this written explanation to these victims, regardless of whether the offense occurred on or off campus.

Current Regulations: None.

Proposed Regulations: We propose to add § 668.46(b)(11)(vii) to require institutions to specify in their annual security reports that, when a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee with a written explanation of the student's or employee's rights and options, as described in proposed § 668.46(b)(11)(ii) through (b)(11)(vi).

Reasons: We are proposing these changes to implement VAWA.

Annual Crime Statistics

Crimes That Must Be Reported and Disclosed

Statute: Prior to VAWA, section 485(f)(1)(F) of the HEA required institutions to report to the Department and disclose in their annual security reports the most recent three years' worth of statistics concerning the occurrence of certain crimes on campus, in or on noncampus buildings or property, and on public property that are reported to campus security authorities or local police agencies. VAWA expanded the list of crimes for which institutions must report and disclose statistics to include incidents of dating violence, domestic violence, and stalking that were reported to campus security authorities or local police agencies. The following chart summarizes the reportable crimes under the Clery Act prior to and subsequent to VAWA:

Pre-VAWA	Post-VAWA
Primary crimes:	Primary crimes:
Murder	Murder.
Sex Offenses	Sex Offenses.
Robbery	Robbery.
Aggravated Assault	Aggravated Assault.
Burglary	Burglary.
Motor Vehicle Theft	Motor Vehicle Theft.
Manslaughter	Manslaughter.
Arson	Arson.
If determined to be a hate crime:	If determined to be a hate crime:
Larceny-Theft	Larceny-Theft.
Simple Assault	Simple Assault.
Intimidation	Intimidation.
Destruction, Damage, or Vandalism of Property	Destruction, Damage, or Vandalism of Property.
Any Other Crime Involving Bodily Injury	Any Other Crime Involving Bodily Injury.
Arrests and referrals for disciplinary action for:	Arrests and referrals for disciplinary action for:
Weapons Possession	Weapons Possession.
Liquor Law Violations	Liquor Law Violations.
Drug Law Violations	Drug Law Violations.
	VAWA crimes:
	Dating Violence.
	Domestic Violence.
	Stalking.

Current Regulations: The current regulations in § 668.46(c) require institutions to report to the Department statistics for the three most recent calendar years concerning the occurrence on campus, in or on noncampus buildings or property, and on public property of certain crimes.

- § 668.46(c)(1) requires institutions to report the following incidents that are reported to local police agencies or to a campus security authority: criminal homicide (including murder and nonnegligent manslaughter and negligent manslaughter), sex offenses (including forcible and nonforcible sex offenses), robbery, aggravated assault, burglary, motor vehicle theft, arson, and arrests and referrals for disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.
- § 668.46(c)(3) requires institutions to report to the Department, by category of prejudice, any of the crimes reported to local police agencies or to a campus security authority under paragraph (c)(1), the crimes of larceny-theft, simple assault, intimidation, and destruction, damage, and vandalism of property, and any other crimes involving bodily injury, that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.

Under § 668.46(b)(1), institutions must also disclose these statistics in their annual security reports.

In defining the crimes that must be included in the statistics on sex offenses, the Department has historically used the definitions of sex offenses in the National Incident-Based Reporting System (NIBRS) Edition of the FBI's UCR program. Under that approach, the Department has collected statistics for crimes that meet the definitions in NIBRS for four types of forcible sex offenses—forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling—and two nonforcible sex offenses—incest and statutory rape.

Proposed Regulations: We propose to make several changes to § 668.46(c) regarding the crimes that must be included in the Clery Act statistics reported to the Department and included in the institution's annual security report. First, we would require institutions to maintain statistics about the number of incidents of dating violence, domestic violence, and stalking that meet the definitions of those terms, as proposed in § 668.46(a). This change is reflected in proposed § 668.46(c)(1)(iv).

Second, we propose to require institutions to report and disclose instances of rape, fondling, incest, and statutory rape. Specifically, we would revise the definition of ''rape'' in Appendix A to reflect the FBI's recently updated definition in the UCR Summary Reporting System (SRS), which incorporates the NIBRS categories of rape, sodomy, and sexual assault with

an object. Because instances of rape, sodomy, and sexual assault with an object would all be included under the definition of rape, we would no longer collect statistics for those crime categories separately. We would continue to use the definitions of ''sex offenses,'' ''fondling,'' ''incest,'' and ''statutory rape'' from the NIBRS edition of the UCR; however, we would revise these definitions to reflect the FBI's updated definitions. Additionally, we would eliminate the distinction between forcible and nonforcible sex offenses and refer simply to sex offenses. With these changes, the sex offenses and their definitions for the purposes of the Clery Act would be:

- Sex Offenses (from NIBRS): Any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent.
- Rape (from SRS): The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- Fondling (from NIBRS): The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- Incest (from NIBRS): Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape (from NIBRS): Nonforcible sexual intercourse with a person who is under the statutory age of consent.

The following chart summarizes the proposed changes to the collection of statistics regarding sex offenses:

Current approach	Proposed approach
Sex Offenses—	Sex Offenses:
Forcible:	
Forcible Rape	Rape.
Forcible Sodomy	
Sexual Assault with an Object	
Forcible Fondling	Fondling.
Sex Offenses—	
Nonforcible:	
Incest	Incest.
Statutory Rape	Statutory Rape.

Finally, we propose to restructure the paragraph by consolidating all of the reportable Clery Act crimes under § 668.46(c)(1). Under this proposed structure, we would: group the primary crimes of criminal homicide (including murder and nonnegligent manslaughter and negligent manslaughter), sex offenses (rape, fondling, incest, and statutory rape), robbery, aggravated assault, burglary, motor vehicle theft, and arson under § 668.46(c)(1)(i); move arrests and disciplinary actions for liquor law violations, drug law violations, and illegal weapons possession to § 668.46(c)(1)(ii); move the reportable hate crimes to § 668.46(c)(1)(iii); and add the crimes added by VAWA in § 668.46(c)(1)(iv).

Reasons: We are proposing these changes to implement VAWA, to reflect updates to the FBI's definitions of crimes in the UCR program and to improve the clarity of the regulations. The negotiators considered two primary approaches to collecting statistics on incidents of dating violence, domestic violence, and stalking that meet the proposed definitions discussed under the Definitions section. First, the negotiators discussed a proposal initially presented by the Department in which the new crimes would be counted as a subset of the primary crimes and hate crimes. For example, if an individual reported that her coworker was the victim of an aggravated assault and that this coworker's husband was the perpetrator, and if the aggravated assault was a felony in that jurisdiction, the crime would be reported as an aggravated assault with an additional descriptor identifying it as a case of domestic violence. Under this approach, the data would provide more context and detail about each particular incident and an incident would not appear more than once in an institution's statistics. Several of the negotiators supported this approach because it would reduce the perception that a particular campus had more crimes than had actually occurred. Some negotiators, however, argued that the information presented using this approach would be too complicated and that people would be less inclined to use the data, reducing its utility. Others argued that the statute did not contemplate connecting cases of dating violence, domestic violence, and stalking to the primary crimes and the hate crimes and that doing so would exceed the Department's authority under the HEA. These negotiators proposed an alternate approach of requiring institutions to simply provide tallies of the number of incidents of each of dating violence, domestic violence, and stalking. They believed that this approach would be more in line with the statutory intent, less burdensome, and easier to understand, though they acknowledged that it would require institutions to count a single incident in more than one Clery Act crime category. Ultimately, the committee agreed to use the second approach as reflected in these proposed regulations. The negotiators noted, however, that institutions may opt to provide more detailed information as part of the annual security report about incidents of dating violence, domestic violence, and stalking on their campuses if they choose. Some institutions currently provide hate crime data in their annual security reports in a narrative or descriptive format instead of in a tabular format to provide more context for each crime. Similarly, we will permit institutions to present their statistical information for incidents of dating violence, domestic violence, and stalking in a narrative or descriptive format, as long as they include statistics for the three most recent calendar years, disclosed by geographic location and crime category.

We remain concerned that the approach for reporting and disclosing the number of incidents of dating violence, domestic violence and stalking in these proposed regulations will not capture critical information about the relationship between the perpetrator and the victim. We believe it would be helpful for prevention and research purposes for the Clery Act statistics to reflect whether the victim was murdered by a spouse or other intimate partner. We invite comment on whether the approach in these proposed regulations should be modified to require institutions to identify the relationship between the perpetrator and the victim for some or all of the Clery Act crimes.

We are also proposing these changes to reflect updates to the FBI's UCR program definitions. The FBI has moved away from terminology characterizing sex offenses as ''forcible'' or ''nonforcible'' to combat the suggestion that a sex offense has not occurred if physical force was not involved. Accordingly, we propose to remove the term ''forcible'' from the definitions in part 668. Additionally, under the proposed regulations, institutions would record any crime that meets the NIBRS definition of rape, sodomy, or sexual assault as a ''rape'' in their annual statistics. Historically, we have used the definitions in the NIBRS Edition of the UCR program because the definitions were more inclusive with respect to who could be a victim and what types of crimes would be considered than in the SRS. However, the FBI recently modernized the definition of ''rape'' in the SRS to

capture gender neutrality and the penetration of any bodily orifice, penetration by any object or body part, and offenses in which physical force is not involved. We believe, and the negotiators agreed, that using the new definition of rape would best capture the various types of behaviors and circumstances that are now understood to constitute rape, align the Department's regulations with the approach taken by other Federal agencies, avoid overlap in the definitions that could cause double-counting, and avoid using outdated terminology some may find offensive. We also note that the FBI does not consider ''fondling'' to meet the SRS definition of rape, so we are proposing that institutions must continue to report incidents of fondling separately. We would continue to use the NIBRS definition of ''fondling,'' as well as the NIBRS definitions of ''statutory rape'' and ''incest,'' but we would update the definitions of those terms to match the FBI's revised definitions.

Lastly, we are proposing to restructure paragraph (c) to improve the clarity of the regulations. First, we would add the term ''primary crimes'' in paragraph (c)(1) in order to provide a standard, simple way to refer to criminal homicide, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson as a group. Law enforcement officials often refer to these as ''part 1'' crimes, while other individuals refer to these as ''Clery crimes'' or ''main crimes.'' We believe that providing a label for this group of crimes will make it easier for the Department to describe and explain these regulations to the public. Second, we would create a subparagraph specifically containing arrests and referrals for disciplinary action. We believe that this change will make it clearer to readers that this category is distinct from the primary crimes. We are also proposing to restructure the regulations to make it explicitly clear that arrests and referrals for disciplinary action are a distinct category of Clery Act crimes from the primary crimes. Third, we are proposing to create a subparagraph specifically containing the hate crimes that are reportable under the Clery Act, which would incorporate the primary crimes and the four additional crimes added by the HEOA. Lastly, we would create paragraph (c)(1)(iv) containing the crimes of dating violence, domestic violence, and stalking added by VAWA. We believe that the proposed structure clarifies that there are four categories of Clery Act crimes and makes it clear that the Hierarchy Rule only applies to the primary crimes.

Recording Crimes Reported to a Campus Security Authority

Statute: Section 485(f)(1)(F) of the HEA requires institutions to collect statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the two preceding calendar years for which data are available of certain criminal offenses and of dating violence, domestic violence, and stalking that are reported to campus security authorities or local police agencies. Additionally, section 485(f)(12) of the HEA specifies that, for the purposes of reporting the statistics described in section 485(f)(1)(F) of the HEA, an institution must distinguish among whether the criminal offense occurred on campus, in or on a noncampus building or property, on public property, and in dormitories or other residential facilities for students on campus.

Current Regulations: Section 668.46(c)(1) of the regulations specifies that institutions must report statistics for the three most recent calendar years concerning the occurrence on campus, in or on noncampus buildings or property, and on public property of certain criminal offenses that are reported to local police agencies or campus security authorities. Section 668.46(c)(2) requires institutions to record a crime statistic in its annual security report for the calendar year in which the crime was reported to a campus security authority. Section 668.46(c)(4) requires institutions to provide a geographic breakdown of the statistics reported according to whether they occurred on campus, in dormitories or other residential facilities for students on campus, in or on a noncampus building or property, or on public property.

Proposed Regulations: We propose to revise and reorganize § 668.46(c) to improve the clarity of these regulations and to incorporate changes made by VAWA. First, proposed § 668.46(c)(2), which modifies current § 668.46(c)(2), would clarify that institutions must include in their crime statistics all crimes reported to a campus security authority for purposes of Clery Act reporting. We would further clarify that an institution may not withhold, or subsequently remove, a reported crime from its crime statistics based on a decision by a court, coroner, jury, prosecutor, or other similar noncampus official. Additionally, we would specify that Clery Act reporting does not require initiating an investigation or disclosing identifying information about the victim, as that phrase is defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)(20)).

Second, proposed § 668.46(c)(3), which modifies current § 668.46(c)(2) (''Recording crimes''), would clarify that a reported crime is included in the statistics for the calendar year in which the crime was reported to local police agencies or to a campus security authority and would direct readers to proposed § 668.46(c)(6) for information about the regulations for recording stalking by calendar year.

We would also direct readers to proposed § 668.46(c)(6) for information about recording stalking by location.

Finally, we propose to revise, renumber, and expand current § 668.46(c)(3) (''Reported crimes if a hate crime''). As noted earlier, we propose to add a definition of ''hate crime'' in § 668.46(a) and to remove the language describing a hate crime from § 668.46(c)(3). We also propose to expand the categories of bias in § 668.46(c)(4)(iii) and (vii) to include ''gender identity'' and ''national origin'' to reflect the addition of these categories by VAWA.

Reasons: We are proposing these changes to implement changes that VAWA made to the HEA, and to improve the overall clarity of these regulations. Over the last several years, the Department has stressed to institutions the importance of including all Clery Act crimes that are reported to campus security authorities in their statistics, regardless of whether an incident was reported by a victim or by a third party, and regardless of the results of any decision by a court, coroner, jury, prosecutor, or other similar noncampus official. Some negotiators reported that institutions have misunderstood the Clery Act reporting provisions to mean that they must begin to investigate a report of a crime or take other steps that may disclose identifying information about a victim before including the crime in their Clery Act statistics. While we have addressed these misperceptions in the Handbook and through other forms of guidance, we believe that adding a provision in the regulations to explicitly state that institutions must record all reported crimes will alleviate some of the confusion in the field.[3]

[3] There is one rare situation in which it is permissible for an institution to omit a Clery Act crime from its statistics. If, after fully investigating a reported crime, authorized law enforcement authorities make a formal determination that the crime is ''unfounded'' as described in the Handbook

We are proposing to add cross-references in paragraphs (c)(3)(ii) and (c)(5)(iii) to the regulations for recording stalking by calendar year and location to implement changes that VAWA made to the HEA. Please see the discussions under ''Recording Stalking'' for more information.

Lastly, we are proposing to restructure paragraph (c) to make the regulations easier to understand. We believe that using subparagraph titles that more readily convey what each provision addresses and that minimizing confusing cross-references will help the public better understand and comply with these regulations.

We are proposing to add ''gender identity'' and ''national origin'' to the list of categories of bias that apply for the purposes of hate crime reporting in paragraph (c)(4) in order to implement changes that VAWA made to the HEA.

Recording Stalking

Statute: As amended by VAWA, section 485(f)(1)(F)(iii) of the HEA requires institutions to report on, and disclose in their annual security reports, the number of incidents of dating violence, domestic violence, and stalking reported to campus security authorities or to local police agencies that occur on campus, in or on noncampus buildings or property, and on public property.

Current Regulations: None.

Proposed Regulations: We propose to add § 668.46(c)(6) to clarify how institutions should record reports of stalking, which, under the proposed definition in § 668.46(a), involves a pattern of incidents. First, we would specify that, when recording reports of stalking that include activities in more than one calendar year, an institution must include stalking in the crime statistics only for the calendar year in which the course of conduct is first reported to a local police agency or to a campus security authority. If the course of conduct in a pattern continues into a subsequent year, the stalking would be recorded in the subsequent year as well. Second, we would clarify that an institution must record each report of stalking as occurring at only the first location within the institution's Clery Geography in which either the perpetrator engaged in the stalking course of conduct or the victim first became aware of the stalking. Third, we would require that a report of stalking be counted as a new and distinct crime that is not associated with a previous report of stalking when the stalking behavior continues after an official intervention including, but not limited to, an institutional disciplinary action or the issuance of a no-contact order, restraining order, or any warning by the institution or a court.

Additionally, as described under the Recording Crimes Reported to a Campus Security Authority section, we would add cross-references to this provision in proposed §§ 668.46(c)(3) and (c)(5) to direct readers to additional information pertaining to recording reports of stalking.

Reasons: We are proposing these changes to implement the changes that VAWA made to the HEA and to address several challenges that arise when determining how to count incidents of stalking. As discussed under the Definitions section, we are proposing to define stalking as a pattern of behavior. This differs from the definitions of the other reportable crimes under the Clery Act, where each incident is counted as a unique crime for the purposes of the annual crime statistics. As a result, we need a regulation specifically to address how stalking should be considered in calculating crime statistics.

For example, under both the current and the proposed regulations, an institution would typically record a statistic for a crime in the calendar year in which the crime occurred. With stalking, however, a pattern of behavior sometimes spans multiple weeks or months, and a pattern that begins in one calendar year may continue into another calendar year. Similarly, under both the current and proposed regulations, an institution would typically specify whether a crime occurred on campus (and, if so, whether it occurred in a dormitory or other student housing facility on campus), in or on a noncampus building or property, or on public property. With stalking, this rule does not always apply clearly. A perpetrator could engage in a single type of behavior or a variety of behaviors in multiple parts of the institution's Clery Geography. Alternatively, the perpetrator could initiate stalking behavior in one part of the institution's Clery Geography and the victim could become aware of that behavior while on another part of the institution's Clery Geography. For instance, the perpetrator could send the victim a menacing text message while on campus, and the victim could receive that text message while walking on a public sidewalk across the street from the campus. Additionally, stalking poses challenges for identifying when one pattern has ended and another one has begun. For instance, a perpetrator might stalk a victim intensively over the course of two days, cease the behavior for a week, and then begin the stalking behavior again.

The negotiators discussed these various challenges and how to best operationalize the new requirement in the HEA to collect statistics on stalking. First, some of the negotiators believed that stalking that includes activities in more than one calendar year should generally be included only in the statistics for the calendar year in which a local police agency or campus security authority first learns of the behaviors. While many negotiators agreed that this would be a reasonable approach, some believed that stalking that continues into subsequent calendar years should be included in the statistics for each year. These negotiators argued that this approach would be more appropriate because including stalking in only one year could artificially deflate the numbers of reported crimes. These negotiators said that while it would not be appropriate to include a separate report for each behavior within a course of conduct, at least including a statistic in each year in which the stalking occurs would provide a fuller picture of the stalking occurring on campus. Ultimately, the negotiating committee agreed to the approach reflected in these proposed regulations. Under the proposed regulations, stalking would be counted only in the first calendar year in which it is reported unless it continues into a new calendar year. For example, if a victim reports stalking to local police or a campus security authority in December 2014 and another report is made in February 2015, the institution would record the stalking in both calendar years 2014 and 2015. Although the committee reached consensus on this language, the Department is concerned that these proposed regulations are not clear and we request comment specifically on the issue of how to count stalking that crosses calendar years.

Second, the negotiators discussed how to address issues related to the location of the stalking and how to determine when a pattern of behavior becomes reportable for Clery Act purposes. Some of the negotiators suggested that, for the purposes of counting reports of stalking, the Department should expand beyond the traditional physical locations that make up an institution's reportable areas (i.e., on campus, noncampus buildings or

for Campus Safety and Security Reporting, the institution may exclude the reported crime from its statistics. Consistent with other recordkeeping requirements that pertain to the title IV HEA programs, if an institution omits a Clery Act crime from its Clery Act statistics because the crime was officially determined to be 'unfounded,' the institution must maintain accurate documentation that demonstrates the basis for unfounding the crime.

property, and public property) to require institutions to count courses of conduct in which the perpetrator uses institutional computer networks, servers, or other services to stalk a victim. These negotiators believed that, given the unique nature of stalking, which frequently includes online means of targeting victims, these instances should be counted. Other negotiators disagreed, arguing that, under the HEA, only crimes that occur in the physical locations enumerated in the statute should be reported. Further, they believed that it would be difficult to define in the regulations a situation that does not touch the institution's reportable locations. They acknowledged, however, that stalking would be included in the institution's crime statistics as soon as one behavior in the course of conduct occurs in or on the institution's campus, noncampus buildings or property, or public property.

The negotiators also discussed how an institution should record stalking in terms of location for Clery reporting purposes. Generally, the negotiators felt that it was clear that if a stalking course of conduct appeared to have occurred in only one Clery Geography location (for example, the conduct occurred only on campus) then the crime would be included in the statistics for that area. However, some negotiators questioned how an institution should categorize a report of stalking that touches multiple reportable locations (for example, both on campus and public property). Along these lines, the negotiators considered how institutions should record the location of a report of stalking if both the perpetrator and the victim were in reportable, but different, locations.

After discussing these issues, the negotiators reached consensus on the approach reflected in proposed § 668.46(c)(6)(ii), which would require an institution to record each report of stalking as occurring in the first location in which either the perpetrator engaged in the stalking course of conduct, or the victim first became aware of the stalking. If a stalker uses institutional computer networks, servers, or other such electronic means to stalk a victim, the electronic stalking behavior would be reportable *where the stalker makes use of these means while on Clery geography.* In other words, the fact that a stalker uses institutional computer networks, servers, or other such electronic means to stalk a victim would not, automatically in and of itself, make the crime reportable under the Clery Act. We invite public comment on whether this approach of applying the existing Clery geography requirements to incidents of stalking using electronic means would adequately capture stalking that occurs at institutions.

Third, the negotiators considered how to determine when one stalking course of conduct ends and another stalking course of conduct begins, particularly when the stalking involves the same victim and perpetrator. The committee discussed two main approaches—counting a report of stalking as a separate crime either after an official intervention or once a specified period of time has elapsed. The negotiators offered a variety of ways to define ''official intervention.'' Some suggested defining official intervention to mean that someone at the institution with authority to take preventive action to stop the behavior notifies the perpetrator to cease the conduct, while others suggested that a victim's request to the perpetrator to cease the conduct would be sufficient. Other negotiators believed that official intervention should include protection orders or restraining orders issued by a court. In considering these approaches, however, the negotiators and members of the public raised a variety of concerns, including that institutions might avoid intervening to avoid the risk of having to include another count of stalking in their statistics if the perpetrator re-offended after the intervention; that requiring a victim to contact their stalker to notify them to stop the behavior could cause a rapid escalation in violence; and that the means of intervention should be flexible to accommodate the ways in which a victim might prefer to handle a situation.

As one approach to this issue, the negotiators discussed the possibility that an institution should record a new incident of stalking after a significant amount of time passes between stalking behaviors. Along these lines, some of the negotiators recommended specifying a bright-line period of time, such as two weeks or three months, after which an institution would record another instance of stalking in its statistics if the course of conduct continued. Other negotiators supported leaving a more flexible standard of ''significant amount of time'' or otherwise not specifying a standard period because they felt that some cases might be better evaluated on a case-by-case basis. Along these lines, some of the negotiators argued that any standard interval of time would be arbitrary and would not be able to accommodate all of the various patterns of stalking in a way that would produce an accurate report of the number of stalking crimes at a particular institution.

Ultimately, the negotiators agreed to the approach reflected in these proposed regulations. Under these regulations, a stalking course of conduct would be recorded as a new crime for Clery Act statistical reports after an official intervention. ''Official intervention'' would be defined broadly to include formal and informal interventions and those initiated by institutional officials or a court. The proposed regulations do not include a specific time period as a way of marking the end of one incident of stalking and the start of another because any time frame would be arbitrary. The Department is particularly interested in feedback as to whether there are other ways to address this issue, and we invite comment on this.

Lastly, the negotiators discussed how to count incidents of stalking when two campuses are involved; that is, when the victim is on one institution's reportable locations and the perpetrator is on another institution's reportable locations. Some negotiators expressed concern that, if both campuses reported the crime, the result would be a ''double-report'' of the same incident. However, other negotiators noted that the main issue is not overreporting but underreporting and that it is important to reflect the crime in the statistics for each campus at which the stalking behavior or results occur. Under proposed § 668.46(c)(2), an institution would be required to include all reported crimes in its statistics. In applying this rule, if stalking were reported to a campus security authority at more than one campus, both institutions would have to include the stalking report in their Clery Act crime statistics.

Using the FBI's UCR Program and the Hierarchy Rule

Statute: Section 485(f)(7) of the HEA specifies that the Clery Act statistics for murder; sex offenses; robbery; aggravated assault; burglary; motor vehicle theft; manslaughter; arson; arrests for liquor law violations, drug-related violations, and weapons possession; larceny-theft; simple assault; intimidation and destruction; damage; or vandalism of property must be compiled in accordance with the definitions used in the FBI's UCR program, and the modifications in those definitions as implemented pursuant to the Hate Crime Statistics Act. The statute does not address the use of other aspects of the FBI's UCR program, such as the Hierarchy Rule.

Current Regulations: Section 668.46(c)(7) requires institutions to compile statistics for the crimes listed

under current paragraphs 668.46(c)(1) and (c)(3) using the definitions of crimes provided in Appendix A to subpart D of part 668 and the FBI's UCR Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Data Collection. The regulations also specify that institutions must use either the UCR Reporting Handbook or the UCR Reporting Handbook: NIBRS Edition for guidance concerning the application of definitions and classification of crimes; however, the regulations require institutions to apply the UCR Reporting Handbook in determining how to report crimes committed in a multiple-offense situation. In a multiple-offense situation (when multiple crimes are committed in a single incident), the UCR Reporting Handbook would apply the Hierarchy Rule. Under the Hierarchy Rule, institutions would include in their statistics only the crime that ranks the highest in the Hierarchy. For example, if a victim is raped and then murdered during a single incident, the murder would be included in the institution's Clery Act statistics, but the rape would not.

Proposed Regulations: In proposed § 668.46(c)(9), which modifies current § 668.46(c)(7), we explicitly state that, in compiling and reporting Clery Act crime statistics, institutions must conform to the requirements of the Hierarchy Rule in the UCR Reporting Handbook. However, we also propose to create an exception to this requirement for situations in which a sex offense and a murder occur during the same incident. For example, if a victim is raped and murdered in a single incident, the institution would include both the rape and the murder in its statistics instead of including only the murder. Additionally, as discussed under the Definitions section, we propose to add a definition of ''Hierarchy Rule'' to § 668.46(a).

Reasons: We are proposing these changes to implement the changes that VAWA made to the HEA and to improve the clarity of the regulations. First, we believe that creating a narrow exception to the methodology used in the UCR Reporting Handbook in cases where an individual is the victim of both a sex offense and a murder reflects the goal of the changes that VAWA made to the HEA. In amending the Clery Act, Congress emphasized the importance of improving the reporting of sex offenses at institutions of higher education. To provide the most accurate picture possible of sexual assaults on college campuses, all sex offenses reported to campus security authorities must be included in the statistics. Without the proposed exception to the Hierarchy Rule, if both a sex offense and a murder occur in a single incident, the sex offense would not be reflected in the statistics. This result would be inconsistent with Congress' goal. We note that it should be rare that this exception will apply, but we believe that it will contribute toward the goal of ensuring that all sexual assaults are included in the Clery Act statistics.

Second, we believe that explicitly referring to the Hierarchy Rule in the regulations will improve the clarity of the regulations. Including this requirement in the regulations will help institutions understand how to compile their statistics. Further, we believe that defining the term ''Hierarchy Rule'' and specifying in the regulations how it applies will help members of the public to better understand the Clery Act requirements and statistics.

Timely Warning—Withholding Identifying Information

Statute: Section 485(f)(3) of the HEA requires institutions to make timely reports to the campus community on Clery Act crimes reported to campus security or local police agencies that pose a threat to other students and employees. These warnings must be provided in a manner that is timely and that aids in the prevention of similar crimes. VAWA amended section 485(f)(3) of the HEA to specify that timely warnings must withhold the names of victims as confidential.

Current Regulations: Section 668.46(e)(1) requires institutions to notify the campus community when crimes in current paragraphs 668.46(c)(1) and (3) are reported to campus security authorities or local police agencies, and the institution considers the crime to represent a threat to students and employees. The institution must provide the notice in a manner that is timely and that will aid in the prevention of similar crimes.

Proposed Regulations: Proposed § 668.46(e)(1), which modifies current § 668.46(e)(1), would clarify that an institution must withhold as confidential the names and other ''personally identifying information or personal information'' of victims (as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)(20))), when providing timely warnings.

Reasons: We are proposing these changes to implement the change that VAWA made to the HEA in this area. During the negotiated rulemaking sessions, some of the negotiators raised concerns that withholding only the name of a victim might not sufficiently protect the victim's confidentiality if others could still identify the victim based on other information included in the warning. Other negotiators, although generally supportive of this goal, noted that, in some cases, it could be difficult to provide enough information to allow other members of the campus community to take steps to protect themselves while withholding all information that could make it possible to identify the victim.

We agree with the negotiators that it is critical to protect a victim's confidentiality to the extent possible; however, the safety of the campus community must also be a priority. We believe that, in most cases, institutions will be able to provide a timely warning without including information that will identify the victim.

We are proposing to adopt the definition of ''personally identifying information or personal information'' in section 40002(a)(20) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)(20)). That definition refers to identifying information for or about an individual including information likely to disclose the location of a victim of dating violence, domestic violence, sexual assault, or stalking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including: (1) A first and last name; (2) a home or other physical address; (3) contact information (including a postal, email or Internet protocol address, or telephone or facsimile number); (4) a social security number, driver license number, passport number, or student identification number; and (5) any other information, including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify the individual.

We acknowledge that, to provide an effective timely warning in some instances, an institution will have to provide information about the location of a crime or, in response to a hate crime, other information such as a victim's racial or ethnic background or religious affiliation. In these cases, we stress that institutions should carefully consider the content of their timely warnings and protect the confidentiality of the victim to the extent possible while balancing the need to ensure the safety of the campus community.

Programs To Prevent Dating Violence, Domestic Violence, Sexual Assault, and Stalking (§ 668.46(j))

Statute: Section 304(a)(5) of VAWA amended section 485(f)(8) of the HEA to require that each institution of higher education that participates in any title IV, HEA program, other than a foreign institution, include a statement of

policy in the institution's annual security report regarding an institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking. In accordance with newly amended section 485(f)(8)(B) of the HEA, the statement of policy must specifically address education programs to promote the awareness of rape, acquaintance rape, dating violence, domestic violence, sexual assault, and stalking and must include primary prevention and awareness programs for all incoming students and new employees as well as ongoing prevention and awareness campaigns for students and faculty, respectively.

Under new section 485(f)(8)(B)(i)(I) of the HEA, an institution's primary prevention and awareness programs for all incoming students and new employees must include:

- A statement that the institution of higher education prohibits the offenses of dating violence, domestic violence, sexual assault, and stalking;
- The definition of dating violence, domestic violence, sexual assault, and stalking in the applicable jurisdiction;
- The definition of consent, in reference to sexual activity, in the applicable jurisdiction;
- Safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault or stalking against a person other than that individual;
- Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and
- The information in HEA sections 485(f)(8)(B)(ii) through (vii) regarding: Possible sanctions or protective measures that an institution may impose following a final determination of an institutional disciplinary procedure; procedures victims should follow if a sex offense, dating violence, domestic violence, sexual assault, or stalking occurs (see the discussion under ''Annual Security Report'' for full details on this subject); where applicable, the rights of victims and the institution's responsibilities regarding orders of protection, no-contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court; procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault or stalking (see the discussion under ''Institutional Disciplinary Proceedings in Cases of Alleged Dating Violence, Domestic Violence, Sexual Assault, or Stalking'' for full details on this subject); information about how the institution will protect the confidentiality of victims, including how publicly available recordkeeping will be accomplished without the inclusion of identifying information about the victim; written notification of students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims both on-campus and in the community; and written notification of victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus policy or local law enforcement.

Under new section 485(f)(8)(B)(i)(II) of the HEA, an institution's ongoing prevention and awareness campaigns for students and faculty must include the same information covered by the institution's primary prevention and awareness programs for all incoming students and new employees.

Current Regulations: Under current § 668.46(b)(11), an institution must prepare an annual security report that contains a statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement must include a description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses.

Proposed Regulations: Proposed § 668.46(j) would implement the changes VAWA made to section 485(f)(8) of the HEA with regard to programs to prevent dating violence, domestic violence, sexual assault, and stalking. Specifically, proposed § 668.46(j) would require an institution to include a statement of policy in its annual security report that addresses the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking.

Proposed § 668.46(j)(1) would specify the items that must be included in the statement of policy, and proposed § 668.46(j)(2) would define the terms used in the requirements for the statement of policy, discussed below under ''Statement of Policy Requirements in Proposed § 668.46(j)(1)'' and ''Definitions of Terms in Proposed § 668.46(j)(2),'' respectively. Proposed § 668.46(j)(3) would specify that an institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking must include, at a minimum, the information described in paragraph (j)(1).

Statement of Policy Requirements in Proposed § 668.46(j)(1)

Under proposed § 668.46(j)(1)(i)(A) through (j)(1)(i)(F), the statement must include a description of the institution's primary prevention and awareness programs for all incoming students and new employees, which in turn must include a statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking; the definition of ''dating violence,'' ''domestic violence,'' ''sexual assault,'' and ''stalking'' in the applicable jurisdiction; the definition of ''consent,'' in reference to sexual activity, in the applicable jurisdiction; a description of safe and positive options for bystander intervention; information on risk reduction; and the information described in § 668.46(b)(11) and (k)(2) of these proposed regulations. The information in proposed § 668.46(b)(11) consists of a statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking and the procedures that the institution will follow when one of these crimes is reported. The information in proposed § 668.46(k)(2) consists of a statement of policy that addresses procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault or stalking.

Under proposed § 668.46(j)(1)(ii), the statement of policy must also describe the institution's ongoing prevention and awareness campaigns for students and employees, which must include the information described in paragraphs (j)(1)(i)(A) through (j)(1)(i)(F) of the proposed regulations.

Definitions of Terms in Proposed § 668.46(j)(2)

Proposed § 668.46(j)(2) would define the terms ''awareness programs'', ''bystander intervention'', ''ongoing prevention and awareness campaigns'', ''primary prevention programs'', and ''risk reduction.''

Under proposed § 668.46(j)(2)(i), the term ''awareness programs'' is defined to mean community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.

Proposed § 668.46(j)(2)(ii) would define the term ''bystander intervention'' to mean safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk

of dating violence, domestic violence, sexual assault, or stalking. Proposed § 668.46(j)(2)(ii) would further define bystander intervention to include recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

Proposed § 668.46(j)(2)(iii) would define the term ''ongoing prevention and awareness campaigns'' to mean programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to, and skills for addressing, dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution and including information described in paragraph proposed §§ 668.46(j)(1)(i)(A) through (j)(1)(i)(F).

Proposed § 668.46(j)(2)(iv) would define the term ''primary prevention programs'' to mean programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.

Under proposed § 668.46(j)(2)(v), the term ''risk reduction'' means options designed to decrease perpetration and bystander inaction and to increase empowerment for victims to promote safety and to help individuals and communities address conditions that facilitate violence.

Reasons: The negotiators discussed these new provisions with a focus on who would need to receive this training and by what means, how several terms in the statute should be defined, and how to ensure that these programs reflect the best practices in the field of sexual violence prevention. At the end of the first session, the committee agreed to form a subcommittee to develop proposals regarding programs to prevent dating violence, domestic violence, sexual assault, and stalking. The subcommittee met several times to develop proposals for regulatory language on this issue.

First, the negotiators discussed several practical questions with respect to the target audiences for these programs, whether these programs would be mandatory, and whether institutions could offer these programs through computer-based training modules. Noting that the statute requires institutions to provide primary prevention and awareness programs for incoming students and new employees, and ongoing prevention and awareness campaigns to students and faculty, the negotiators suggested clarifying who would be considered a ''student'' or an ''employee''. Several negotiators also wondered if institutions were expected to provide prevention and awareness programs to distance education students and short-term, continuing education students. Some negotiators in particular were concerned that mandating this training for all students could pose a significant burden for institutions like community colleges, where many students take only non-credit courses and may be on campus only once for a single four-hour class. Along these lines, some negotiators were concerned that it would be very difficult to ensure that all students, including distance education students, have received training, particularly if the training had to be offered in person. From a victim's perspective, one negotiator suggested that the programs should be available—but not mandatory—because the programs could be traumatizing for some victims.

On the other hand, some negotiators believed strongly that every student, regardless of whether they are taking a class for credit, should be required to complete training, arguing that this type of training is critical because it focuses on violence that can destroy lives. They believed that these programs can be designed in a way that avoids re-traumatization, and that it can support victims and non-victims by educating them about what is a crime and what rights and options exist. They further argued that anyone can be a victim of dating violence, domestic violence, sexual assault, or stalking, even if they are on campus briefly only one time, and that it would still be important for those individuals to know what rights and options they have and what procedures to follow with respect to these crimes, as outlined in the statute.

In addressing these concerns, the Department decided to interpret the statute consistent with other Clery Act requirements by requiring institutions to offer these types of training to ''enrolled'' students. Under §§ 668.41 and 668.46, institutions must distribute the annual security report to all enrolled students. Applying that same approach here would make it clear that the same students who must receive the annual security report must also be offered the training. The Department's regulations in 34 CFR § 668.2 define ''enrolled'' to mean a student who (1) has completed the registration requirements (except for the payment of tuition and fees) at the institution that he or she is attending; or (2) has been admitted into an educational program offered predominantly by correspondence and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the institution. The negotiators agreed with this approach.

In response to the discussion during the first negotiation session, the Department initially agreed to consider developing a definition of ''employee'' to clarify which individuals working for the institution would need to be offered training. However, we subsequently decided not to propose a definition of employee for several reasons. First, we note that institutions have had to distribute their annual security reports to their current employees under §§ 668.41 and 668.46 for many years, and we have not previously defined the term for those purposes. Therefore, institutions should know who they consider to be an employee for the purposes of the Clery Act, and we expect that these employees will now be offered the new training required by the HEA. Second, given the wide variety in arrangements and circumstances in place across institutions for providing services to students, other employees, and the public, we believe that institutions are best positioned to determine who is an ''employee.'' With regards to the requirement that institutions provide ongoing prevention and awareness campaigns to students and faculty, the negotiators generally agreed that the term ''faculty'' should be considered equivalent to ''employee.'' The proposed regulations in § 668.46(j)(1)(ii) reflect this recommendation.

The Department also noted that, while the statute requires institutions to describe the programs focused on prevention and awareness of rape, acquaintance rape, dating violence, domestic violence, sexual assault, and stalking in their annual security reports, it does not require that institutions require every student and employee to take the training. We note, however, that institutions may adopt policies requiring that all students and employees take this training, for example, before completing registration.

With regard to the means of providing training, the negotiators ultimately agreed that programs to prevent dating violence, domestic violence, sexual assault, and stalking could be delivered electronically so the programs are able

to reach all of the intended audiences. They acknowledged that students enrolled in programs by distance education would be unlikely to be able to access these programs in person, and they noted that it could be similarly challenging to ensure that all employees receive this training in person as well.

Second, the negotiators urged the Department to clarify several of the terms used in the statute, including ''primary prevention,'' ''bystander intervention,'' and ''risk reduction.'' The subcommittee focused much of its work on defining these terms, drawing heavily on the work and definitions of the Centers for Disease Control and Prevention. Many of the negotiators supported the first set of suggestions that the subcommittee offered at the second negotiating session. They suggested that the regulations require institutions to adopt programs that reflect best practices and methods that have proven effective for the prevention of gender violence. Others, however, were concerned that the subcommittee's proposals were more prescriptive than would be useful given the variety and size of institutions across the country. Some of the negotiators also believed that making the definitions simple and clear would help individuals and institutions better understand, and subsequently comply with, the regulations.

The subcommittee continued to meet between the second and third sessions, and the draft that the Department provided to the committee at the start of the third session incorporated the subcommittee's revisions. Generally, the revised proposal more closely tracked the statutory language and added a definition of ''programs to prevent dating violence, domestic violence, sexual assault, and stalking'' to § 668.46(a), as discussed under the Definitions section. The committee generally accepted the revised draft, though some changes were made to the language to address concerns raised by some of the negotiators. We note that, while the draft regulations generally restate the statutory language, institutions are free to go beyond these requirements, for example to include bystander intervention training on a variety of topics, such as alcohol and drug use, hazing, bullying, and other behaviors. We also note that institutions would not be required to provide bystander training separately on each crime of dating violence, domestic violence, sexual assault, and stalking and that they may provide training that focuses on all four crimes —- or more —- as part of a more comprehensive program.

With regards to proposed § 668.46(j)(3), we are adding this provision in order to make it clear that an institution's ''programs to prevent dating violence, domestic violence, sexual assault, and stalking,'' which under our proposed definition in § 668.46(a) would include primary prevention and awareness programs and ongoing prevention and awareness campaigns, must include the information described in proposed paragraph (j)(1).

Institutional Disciplinary Proceedings in Cases of Alleged Dating Violence, Domestic Violence Sexual Assault or Stalking (§ 668.46(k))

Statute: Section 304(a)(5) of VAWA amended section 485(f)(8) of the HEA to require that each institution of higher education that participates in any title IV, HEA program, other than a foreign institution, include a statement of policy in the institution's annual security report addressing the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking. The statement of policy must describe the standard of evidence that the institution will use during the proceeding as well as possible sanctions or protective measures that the institution may impose after a final determination is made. Section 304(a)(5) of VAWA amended section 485(f)(8)(iv) of the HEA to require an institution to include in its annual security report a clear statement that the institution's disciplinary proceedings shall provide a prompt, fair, and impartial investigation and resolution that is conducted by officials who receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking, and annual training on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. Section 304(a)(5) further amended section 485(f)(8)(iv) of the HEA to require that the accuser and the accused be entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice and that both the accuser and the accused be simultaneously informed, in writing, of the outcome of any disciplinary proceeding; the institution's procedures for both parties to appeal the results of the proceeding; of any change to the results that occurs prior to the results becoming final; and, when such results become final.

Current Regulations: Under current § 668.46(b)(11)(vi)(A), an institution must provide a clear statement in its annual security report that, in the institution's campus disciplinary proceedings in cases of an alleged sex offense, the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding. Current § 668.46(b)(11)(vi)(B) requires that an institution's annual security report clearly state that both the accused and the accuser must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense; that compliance with § 668.46(b)(11)(vi)(B) does not constitute a violation of FERPA on the part of the institution; and, that, for purposes of this notification, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused. Lastly, current § 668.46(b)(11)(vii) requires an institution's annual security report to clearly disclose the sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

Proposed Regulations: The proposed regulations in § 668.46(k) would implement the statutory changes requiring an institution that participates in any title IV, HEA program, other than a foreign institution, to include a statement of policy in its annual security report addressing the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault or stalking.

Proposed § 668.46(k)(1)(i) provides that the statement of policy must describe each type of disciplinary proceeding used by the institution, including the steps, anticipated timelines, and decision-making process for each, and how the institution determines which type of disciplinary hearing to use. Proposed § 668.46(k)(1)(ii) provides that the statement of policy must describe the standard of evidence that will be used during any disciplinary proceeding involving alleged dating violence, domestic violence, sexual assault or stalking. Proposed § 668.46(k)(1)(iii) provides that the statement of policy must list all possible sanctions an institution may impose following the results of any disciplinary proceeding in cases of alleged dating violence, domestic violence, sexual assault or stalking. Proposed § 668.46(k)(1)(iv)

provides that the policy statement must describe the range of protective measures that the institution may offer following an allegation of dating violence, domestic violence, sexual assault or stalking.

An institution's statement of policy must provide that its disciplinary proceeding will include a prompt, fair, and impartial process from the initial investigation to the final result under proposed § 668.46(k)(2)(i). The policy statement must provide that the proceeding will be conducted by officials who receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and annual training on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability under proposed § 668.46(k)(2)(ii). Under proposed § 668.46(k)(2)(iii), an institution's statement of policy must provide that its disciplinary proceeding will afford the accuser and the accused the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice. Under proposed § 668.46(k)(2)(iv), an institution cannot limit the accuser's or accused's choice of an advisor or the advisor's presence at a proceeding, but the institution may establish restrictions regarding the advisor's participation in the proceedings as long as those restrictions are applied equally to both the accuser and the accused. Finally, under proposed § 668.46(k)(2)(v), an institution's statement of policy must require simultaneous notification, in writing, to both the accuser and the accused of the result of the institutional disciplinary proceeding, the institution's procedures for the accused and the victim to appeal the result, any change to the result, and when such results become final.

Proposed § 668.46(k)(3) defines the terms ''prompt, fair, and impartial proceeding,'' ''advisor,'' ''proceeding,'' and ''result.'' Under proposed § 668.46(k)(3)(i), a ''prompt, fair, and impartial proceeding'' includes a proceeding that is: (1) Completed within reasonably prompt timeframes designated by an institution's policy, including a process that allows for the extension of timeframes for good cause with written notice to the accuser and the accused of the delay and the reason for the delay; (2) conducted in a manner that is consistent with the institution's policies and transparent to the accuser and accused, includes timely notice of meetings at which the accuser or accused, or both, may be present, and provides timely access to the accuser, the accused, and appropriate officials to any information that will be used after the fact-finding investigation but during informal and formal disciplinary meetings and hearings; and (3) conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused.

Under proposed § 668.46(k)(3)(ii), the term ''advisor'' is defined as any individual who provides the accuser or the accused support, guidance, or advice.

Under proposed § 668.46(k)(3)(iii), the term ''proceeding'' means all activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings.

Finally, under proposed § 668.46(k)(3)(iv), the term ''result'' means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The definition provides that the ''result'' must include any sanctions imposed by the institution and, notwithstanding FERPA (20 U.S.C. 1232g), the rationale for the result and the sanctions. Having defined the term ''result,'' for consistency purposes the proposed regulations would also insert the word ''result'' where appropriate to replace the existing statutory and regulatory references to the terms ''outcomes,'' ''resolution,'' and ''final determinations.''.

Reasons: Proposed § 668.46(k) would implement the statutory changes requiring each institution of higher education that participates in any title IV, HEA program, except foreign institutions, to include a statement of policy in the institution's annual security report addressing the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking.

Definition of Terms in Proposed § 668.46(k)(3)

Proposed § 668.46(k)(3) defines the terms ''prompt, fair, and impartial proceeding,'' ''advisor,'' ''proceeding,'' and ''result.''

At the first session of negotiated rulemaking, several of the non-Federal negotiators asked that the Department define a ''prompt, fair, and impartial'' disciplinary proceeding in proposed § 668.46(k). These negotiators requested that the Department consider including, as part of the definition, a provision that requires an institution's disciplinary proceeding to mirror OCR's title IX guidance, especially as that guidance relates to the use of the preponderance of the evidence standard in disciplinary proceedings used to resolve a title IX complaint. Other non-Federal negotiators suggested that VAWA was not intended to codify the required use of the preponderance of the evidence standard, but instead required only that an institution state the standard of evidence that will be used.

In response to this request by non-Federal negotiators, the Department introduced proposed language defining the term ''prompt, fair and impartial disciplinary proceeding'' to mean a proceeding that is completed within the timeframe designated by an institution's policy and without undue delay; conducted in a manner that is consistent with the institution's policies and transparent to all parties; conducted by officials who do not have a real or perceived conflict of interest or bias for or against the accused or the accuser; and, at the request of non-Federal negotiators, at a minimum, comply with guidance issued by OCR. One non-Federal negotiator suggested that the Department eliminate the reference to a ''real or perceived'' conflict of interest because the terms ''real or perceived'' are too subjective and would be difficult to operationalize at a small campus. Several non-Federal negotiators suggested using the standard of actual or potential conflict of interest instead.

With regard to the requirement that a disciplinary hearing comply at a minimum with guidance issued by OCR, some non-Federal negotiators strongly supported the provision, while others were strongly opposed to including this provision. Those arguing against the inclusion of this provision stated that, in enacting VAWA, Congress did not require institutions to use the preponderance of the evidence standard under the Clery Act, but only required that an institution disclose what standard of evidence it would use at a disciplinary proceeding for conduct covered by the Clery Act. Still others were not comfortable with including in these proposed Clery Act regulations a reference to guidance issued by OCR under other laws and regulations. It was suggested that we cite the statutory language amending the Clery Act instead. One non-Federal negotiator voiced her view that title IX is largely interpreted judicially or by the Department, and that whether or not a provision requiring compliance with title IX in disciplinary hearings mandated under the HEA is included in the Clery Act regulations does not change title IX requirements. This view

is consistent with the Department's explanation to the negotiators at the start of the rule-making that the Clery Act amendments and implementing regulations in no way affect or conflict with Title IX requirements, including those interpreted by OCR in its guidance documents.

At the last session of negotiations, the Department presented amended draft language in § 668.46(k)(3)(i) defining a ''prompt, fair and impartial proceeding'' to include a proceeding that is completed within a reasonable timeframe designated by the institution's policy and without undue delay, and that is conducted in a manner that: (1) Is consistent with the institution's policies and transparent to the accuser and accused; (2) includes timely notice to the accuser and accused of all meetings relevant to the proceeding; and (3) provides timely access to both the accuser and the accused to any information that will be used during the proceeding. These changes were met with general agreement from the non-Federal negotiators although several changes to the specific language were requested. The committee agreed to revise the regulations to permit an institution to exceed the timeframe in its policy for good cause with written notice to the accuser and the accused of the delay and the reason for the delay. This language was added in recognition that some delays are unavoidable. The proposed requirement for written notice of the delay and the reasons for the delay, however, is appropriate to ensure a fair proceeding. The Department also notes that, as it relates to § 668.46(k)(3)(i)(B)(*2*), the phrase ''timely notice to the accuser and accused of all meetings relevant to the proceeding'' is intended to ensure that the accuser and the accused have time to adequately prepare or to arrange to have an advisor present at all of these meetings, if they desire.

At the third session, the negotiators continued to debate the Department's draft language requiring an institution's disciplinary proceedings to be conducted by officials who do not have a real or perceived conflict of interest or bias, for or against, the accuser or the accused. The committee decided to modify this language slightly by removing the words ''real or perceived,'' as reflected in proposed § 668.46(k)(3)(i)(C); thus, the revised language addresses only those officials with an actual conflict of interest or bias. The concerns that a perceived conflict of interest may limit the officials who can conduct such hearings on small campuses or that some parties in a proceeding might abuse the rule by claiming that whoever is acting as the official is perceived to be biased convinced the committee to agree to this change. Although the prohibition is now limited to those officials who have a conflict of interest or bias, the Department expects that an institution will make every effort to ensure that officials conducting proceedings do not have a perceived conflict of interest or bias against either the accused or the accuser.

The negotiators discussed defining who would be considered an ''official'' for the purposes of an institutional disciplinary proceeding to add clarity to the regulation. Some of the negotiators suggested specifying that students could be ''officials'' in this context, noting that at many institutions, students often serve as officials during a disciplinary proceeding. Other negotiators strongly disagreed with this practice, raising concerns that having students serve as officials during disciplinary proceedings calls into question the possibility of having a prompt, fair, and impartial process, and that it can result in re-victimization of the accuser or secondary or vicarious traumatization for the student officials. These negotiators did not believe that a definition of ''official'' should include students. While the Department declined to add a definition of ''official'' to the proposed regulations, we stress that when an institution involves students in a disciplinary proceeding, the students are serving as officials of the institution during that proceeding and nothing about being a student changes that role. In that vein, we note that the requirements in proposed § 668.46(k)(2)(ii) pertaining to training for officials and § 668.46(k)(3)(i)(C) pertaining to conflicts of interest in a disciplinary proceeding would apply to students as well as other individuals serving as officials during an institutional disciplinary proceeding.

Lastly, after consideration of the discussion at the second session, the Department removed the reference to § 668.46(k)(3)(i)(D) which would have required that, in order for an institution's disciplinary proceeding to be considered prompt, fair, and impartial under the Clery Act, the proceeding must, at a minimum, comply with guidance issued by OCR. As the Department explained to the negotiators at the start of the rule-making, the Clery regulations address only an institution's responsibilities under the Clery Act, and do not affect or conflict with the requirements under Title IX as interpreted by OCR in its guidance documents. In order to meet Clery Act requirements, as amended by VAWA, an institution must only state in its annual security report what standard of evidence it uses in its disciplinary proceedings regarding sexual assault, dating violence, domestic violence, and stalking. This Clery Act requirement does not conflict with the Title IX obligation to use the preponderance of the evidence standard in Title IX proceedings. A recipient can comply with Title IX and the Clery Act by using a preponderance of evidence standard in disciplinary proceedings regarding Title IX complaints and by disclosing this standard in the annual security report required by the Clery Act.

Please see the section on *Advisor of Choice* below for a full discussion of the definition of ''advisor.''

Some non-Federal negotiators also indicated at the first session of negotiations that it would be helpful for the regulations to define the term ''proceeding'' because institutions use a variety of approaches when conducting a disciplinary proceeding. In response to the discussion at the first session, the Department introduced draft regulations at the second session of negotiations defining the term ''proceeding'' to mean all activities related to the resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings. The definition of ''proceeding'' was modified at the last session of negotiations to mean all activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings to clarify that institutional disciplinary proceedings are not courts of law that resolve criminal matters.

Lastly, at the first session of negotiated rulemaking the non-Federal negotiators requested that the Department develop proposed regulations in § 668.46(k) that would harmonize the terms ''results,'' ''outcomes,'' ''resolution,'' and ''final determinations,'' with regard to an institution's disciplinary proceeding because they found the interchangeable use of these terms confusing. In response to this request, the Department introduced draft language at the second session that defined the term ''result.'' As proposed in § 668.46(k)(3)(iv), ''result'' was defined as an initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The result must include any sanctions imposed by the institution.

The proposed definition of ''result'' was generally well-received, however, the negotiators debated whether to mandate the inclusion of the rationale for the result in the disclosure provided to the parties (and therefore in the definition) so that if an institution has an appeals process, the accused and the accuser will have a basis for the appeal. One non-Federal negotiator felt that including the rationale for the result in the proposed regulations would be contrary to the definition of ''final results'' in the Department's FERPA regulations at 34 CFR 99.39. At the third and last session of negotiations, the Department introduced new draft language in § 668.46(k)(3)(iv) to amend the definition of ''result'' to require that, notwithstanding FERPA (20 U.S.C. 1232g), the result must also include the reason for the result. The Department explained that the regulations under FERPA do not specifically address whether the permissible disclosure to the victim of the ''final results'' of a disciplinary proceeding with respect to a crime of violence or a non-forcible sex offense under 34 CFR 99.31(a)(13) and 99.39 includes the reason for the result. However, the Department has decided that, in light of the increased disclosures and rights provided to the accuser under VAWA, including potentially the right to appeal if the institution's procedures provide an appeal, it is vital that the accuser be informed of the reason for the result. A non-Federal negotiator, while agreeing that the reason for the result should be included in the definition of ''result,'' suggested that the definition should also include the rationale for the sanctions and the committee reached consensus on this additional language.

General Institutional Disciplinary Proceedings in Proposed § 668.46(k)(1)

As stated previously, section 304(a)(5) of VAWA amended section 485(f)(8) of the HEA to require that each institution of higher education that participates in any title IV, HEA program, other than a foreign institution, include a statement of policy in the institution's annual security report addressing the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking. As a result of the discussions at the first session of negotiations, the Department introduced draft language for § 668.46(k) that reflected all of the statutory changes outlined under the *Statute* heading. The draft language included new § 668.46(k)(1)(i), which would require an institution to describe each type of disciplinary proceeding used by the institution; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; and how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, sexual assault, or stalking. This provision was included to provide greater transparency for students and the public around which types of disciplinary proceedings may be used, how the institution will determine which one is most appropriate to use, and what timelines and processes to expect for each one.

At the last session of negotiated rulemaking, the committee reviewed revised draft language developed by the Department. A non-Federal negotiator suggested that the Department remove the words ''in detail'' from the description of each type of disciplinary proceeding used by an institution in § 668.46(k)(1)(i). The same non-Federal negotiator suggested that the Department remove the words ''reported incident of an alleged crime'' and substitute the words ''an allegation of dating violence, domestic violence, sexual assault, or stalking'' in § 668.46(k)(1)(i), (k)(1)(ii), and (k)(1)(iii) because institutions do not adjudicate crimes. After discussion, the committee agreed to these suggestions.

The Department also included, in the draft language provided during the second negotiating session, a new § 668.46(k)(1)(iii), which tracks newly amended section 485(f)(8)(B)(ii) of the HEA and requires that the institution describe the possible sanctions or protective measures that the institution may impose following the results of any institutional disciplinary procedure regarding these incidents. The negotiating committee's discussion on this provision focused on whether the institution should provide the possible sanctions as opposed to a list of all sanctions that an institution may impose. Several non-Federal negotiators thought that providing an exhaustive list of sanctions would hamper an institution's ability to strengthen sanctions or be innovative in imposing sanctions, while others felt that requiring an exhaustive list would require institutions to be more transparent about the types of sanctions they impose and permit students and employees to consider whether those sanctions are appropriate under the circumstances.

At the last session, several non-Federal negotiators continued to argue against requiring an institution to list all sanctions because if only a small number of sanctions were imposed, disclosing such a list might trigger FERPA violations or a title IX complaint. Other non-Federal negotiators argued that if an institution is not required to list all possible sanctions, the institution may abuse its discretion and impose an inappropriately light sanction. One non-Federal negotiator pointed out that, since 2005, the Handbook has provided guidance suggesting that institutions list all sanctions imposed, meaning that listing all sanctions was not an entirely new approach.

The committee debated whether to require an institution to describe the range of sanctions and protective measures rather than provide an exhaustive list to allow the institution to retain flexibility in providing a sanction or protective measure that may be unique to a certain situation. In response to the concerns that institutions should retain some flexibility, the Department noted that institutions have the authority to change their policies during the year, including after they publish their annual security report. In this case, if an institution changes its policies to include or remove sanctions during the year, the Department would expect the institution's next annual security report to reflect the institution's revised list of sanctions. Some of the non-Federal negotiators favored requiring an exhaustive list of sanctions, to ensure transparency, but a range of protective measures in order to preserve the confidentiality of a victim and also to preserve flexibility to provide ad hoc protective measures for victims. The committee ultimately agreed that sanctions for perpetrators and protective measures available to victims should be addressed in separate paragraphs at §§ 668.46(k)(1)(iii) and (k)(1)(iv) in this NPRM, which requires an institution to list all possible sanctions and a range of protective measures, respectively.

Advisor of Choice

As stated previously, section 304(a)(5) of VAWA amended section 485(f)(8)(iv) of the HEA to require that the accuser and the accused be entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice. At the first session of negotiated rulemaking, several non-Federal negotiators stated that the term ''advisor'' should be defined and that the role of the advisor and the extent to which an advisor can participate in a disciplinary proceeding should be clearly delineated in the proposed regulations. Several non-Federal

negotiators argued that institutions should have discretion to limit who can accompany the parties involved in a disciplinary hearing and the extent to which such an advisor can participate. Other non-Federal negotiators stated that they believed that the statutory language entitles both the accuser and the accused to be accompanied to any meeting or proceeding by the advisor of their choice, and that proposed regulations should reflect that entitlement.

At the second session of negotiations, the Department presented draft language for proposed § 668.46(k)(2)(iii) that would require an institution to 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. Based on the discussion of this topic in the first session, we also defined the term ''advisor'' in § 668.46(k)(3)(ii) of the draft to mean an individual who provides the accused or accuser support, guidance, or advice. The draft regulations provided that an institution may not limit the choice of advisor for either party but that an institution could limit the extent to which an advisor may participate in the proceedings, such as restricting cross-examination of witnesses or prohibiting advisors from addressing the decision-maker, as long as the limits apply equally to both parties. Several non-Federal negotiators supported this approach and agreed with the Department's view that the statutory language was intended to allow the accuser and the accused to have the advisor of their choice. Other non-Federal negotiators felt that allowing the accused or the accuser to bring an attorney to a disciplinary proceeding created an advantage for that party and would intimidate the party that chose not to bring an attorney or who could not afford to bring an attorney. Additionally, these non-Federal negotiators expressed concern that the presence of attorneys would change the tenor of institutional disciplinary proceedings. There was general agreement that an institution could place limits on the participation of an advisor; however, one non-Federal negotiator objected to the Department's choice of the words ''restricting cross-examination of witnesses'' because of the concern that such language gave the impression, falsely, that disciplinary proceedings are criminal legal proceedings.

The Department's final draft regulation, presented at the third and last session, simplified the proposed definition of ''advisor'' in § 668.46(k)(3)(ii) by defining the term to mean an individual who provides the accuser or accused support, guidance, or advice. The Department's draft language moved substantive provisions from the prior definition of ''advisor'' into a new § 668.46(k)(2)(iv) to provide that an institution may not limit the choice of advisor for either the accuser or the accused; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties. This change was intended to separate the definition of the term ''advisor'' from the role the advisor plays in a disciplinary hearing. At the outset of the discussion of this issue, the Department made clear that its interpretation of the statutory language was that the accused and the accuser are entitled to an advisor of their choice, including an attorney. One non-Federal negotiator suggested that the Department add language to new § 668.46(k)(2)(iv) to bar an institution from limiting the choice or presence of an advisor for either the accuser or the accused to make it clear that both parties in the proceeding are entitled to be accompanied by an advisor. Other non-Federal negotiators felt this was redundant given that § 668.46(k)(2)(iii) states that the accuser and the accused have 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. The non-Federal negotiators expressed strong concerns on both sides of this issue. Several non-Federal negotiators characterized the restriction on an institution's ability to limit the choice of an advisor as a significant change that would create a serious burden on institutions while others characterized the requirement as a long-overdue protection for victims of sexual violence. Ultimately, the negotiators agreed to the language in proposed § 668.46(k)(2)(iii), which would provide that the institution cannot limit the choice or presence of advisor for either the accuser or the accused in any meeting or institutional disciplinary proceeding. However, proposed § 668.46(k)(2)(iv) would allow institutions to establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties. We note that the proposed definition of ''advisor'' to mean someone who provides the accuser or accused support, guidance, or advice is not intended to include individuals acting as interpreters or translators. For example, a victim with limited English proficiency involved in a campus disciplinary proceeding who requires an interpreter to understand the proceedings would still be entitled to bring an advisor of their choice.

Training for Disciplinary Proceeding Officials

The non-Federal negotiators debated the merits of including regulatory standards for the training that officials who conduct disciplinary proceedings must receive during the first session of negotiations. There was strong agreement that such training is necessary but that the training content should be flexible to reflect the diversity of institutional environments, that it should incorporate existing evidence-based research or practice, and that it should emphasize the need for both impartiality and sensitivity in dealing with the accused and the accuser. Several non-Federal negotiators questioned whether standards for training should be included in the Handbook or other best practices document as opposed to the proposed regulations. The subcommittee formed to further explore the issue of prevention and awareness programs agreed to add the topic of training on disciplinary proceedings to its agenda and report back to the negotiated rulemaking committee on their findings in the second session.

At the second negotiated rulemaking session, the subcommittee that was formed to address prevention and awareness programs as well as training on disciplinary hearings shared with the whole committee a list of training standards they had developed for officials who conduct disciplinary proceedings. Although the list was comprehensive and well-received, it was the general feeling of the negotiated rulemaking committee that such a list should be included in a best practices document or the Handbook rather than the proposed regulations because the level of detail went beyond the scope of the Department's rulemaking authority.

Notification of Disciplinary Proceeding Results

As stated previously, section 304(a)(5) of VAWA amended section 485(f)(8)(iv) of the HEA to require that both the accuser and the accused be simultaneously informed, in writing, of the outcome of any disciplinary proceeding; the institution's procedures for both parties to appeal the results of

the proceeding; of any change to the results that occurs prior to the results becoming final, and when such results become final. There was general agreement during the first session of negotiations that there should be flexibility in how institutions implement this requirement. The Department noted that it generally interprets the term ''in writing'' to mean either a hard copy document or an electronic document. Some non-Federal negotiators outlined a variety of approaches that they thought institutions could take when notifying the accuser and the accused of the outcome, including providing hard copy documents in back-to-back in-person meetings or at separate meetings scheduled at the same time but in a different location so that the parties are separated, sending letters by simultaneous email to the accuser and the accused, or mailing letters to both the accuser and the accused at the same time. The Department indicated its support for a flexible approach. During the first session of negotiations, the non-Federal negotiators also debated whether the statute required schools to have an appeals process or simply required the institution to disclose the existence of an appeals process, if the institution allowed appeals.

The draft regulatory language that the Department presented at the second session included a provision reflecting statutory language that an institution must require simultaneous notification, in writing, to both the accuser and the accused, of the result of any institutional disciplinary proceeding that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking and the institution's procedures for the accused and the victim to appeal the result of the institutional disciplinary proceeding, if such procedures are available. The Department considered including a requirement that institutions provide for an appeal process but decided that such a requirement is not supported by the statute. One non-Federal negotiator expressed concern that the proposed regulations may be interpreted as requiring that a police incident report may have to be included in the final result of a disciplinary proceeding. The Department assured the negotiator that the regulations were not intended to require an incident report to be part of the final result. Another non-Federal negotiator was concerned that the language did not allow a victim to opt out of receiving the final results while several other negotiators felt that notifying victims of the outcome should always be required.

In its draft regulations presented to the committee during the third session, the Department proposed a new provision in § 668.46(k)(2)(v)(A), which would exempt an institution from the requirement that it simultaneously notify, in writing, both the accuser and the accused of the result of a disciplinary proceeding if the accuser or the accused requested not to be informed of the result. This draft language was strongly criticized by several members of the committee because they believed that requiring notification was an important part of the process for victims, who sometimes have been left in the dark as to the result of a disciplinary proceeding. These committee members recognized that some victims might not want to actually view the results, but they suggested that there are ways in which an institution could send the victim the results, such as in a sealed envelope, which would allow the victim to make the decision of whether or not to view them. For these reasons, the Department agreed to remove the provision.

Anti-Retaliation Clause

Statute: Section 488(e)(3) of the HEOA added section 485(f)(17) to the HEA to specify that nothing in the Clery Act could be construed to permit an institution or an officer, employee, or agent of an institution, participating in any title IV program to retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual with respect to the implementation of any provision under the Clery Act.

Current Regulations: None.

Proposed Regulations: We propose to add § 668.46(m) to prohibit retaliation by specifying that ''an institution or an officer, employee, or agent of an institution, may not retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights or responsibilities under any provision in this section.''

Reasons: The Department had not previously reflected the statutory provision regarding anti-retaliation in the regulations. Over the last several years, however, the Department has received requests to incorporate this provision into the regulations to make the regulations more complete. As a result, we are proposing to add this provision to the regulations, to reflect these statutory requirements.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Introduction

Institutions of higher education that participate in the Federal student financial aid programs authorized by title IV of the HEA are required to comply with the Clery Act. According to the most current IPEDS data, a total of 7,508 institutions were participating in title IV programs in 2012. The Department reviews institutions for compliance with the Clery Act and has imposed fines for significant non-compliance. The Department expects that these proposed changes will be beneficial for students, prospective students, and employees, prospective employees, the public and the institutions themselves.

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

This Regulatory Impact Analysis is divided into five sections. The ''Need for Regulatory Action'' section discusses why these implementing regulations are necessary to define terms and improve upon the methods by which institutions count crimes within their Clery geography.

The ''Discussion of Costs and Benefits'' section considers the cost and benefit implications of these regulations for students and institutions. There would be two primary benefits of the proposed regulations. First, we expect students and prospective students and employees and prospective employees to be better informed and better able to make choices in regards to higher education attendance and employment because the proposed regulations would improve the method by which crimes on campuses are counted and reported. Second, we would provide further clarity on students' and employees' rights and procedures by requiring institutions to design and disclose policies and institutional programs to prevent sexual assault.

Under ''Net Budget Impacts,'' the Department presents its estimate that the final regulations would not have a significant net budget impact on the Federal government.

In ''Alternatives Considered,'' we describe other approaches the Department considered for key provisions of the proposed regulations, including definitions of ''outcomes,'' ''initial and final determinations,'' ''resolution,'' ''dating violence,'' ''employees,'' ''consent,'' and ''sodomy and sexual assault with an object.''

The ''Initial Regulatory Flexibility Analysis'' considers the effect of the proposed regulations on small entities.

Finally, the ''Clarity of the Regulations'' provides guidance to commenters when reviewing the proposed regulations for ease of understanding.

Need for Regulatory Action

Executive Order 12866 emphasizes that ''Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' In this case, there is indeed a compelling public need for regulation. The Department's goal in regulating is to incorporate the provisions in VAWA into the Department's Clery Act regulations.

On March 7, 2013, President Obama signed VAWA into law. Among other provisions, this law amended the Clery Act. The statutory changes made by VAWA require institutions to compile statistics for certain crimes that are reported to campus security authorities or local police agencies including incidents of dating violence, domestic violence, sexual assault, and stalking. Additionally, institutions will be required to include certain policies, procedures, and programs pertaining to these crimes in their annual security reports.

During the negotiated rulemaking process, non-Federal negotiators discussed issues relating to the new provisions in the Clery Act addressing dating violence, domestic violence, sexual assault and stalking including:

- Methods of compiling statistics of incidents that occur within Clery geography and are reported to campus security authorities.
- Definitions of terms.
- Programs to prevent dating violence, domestic violence, sexual assault, and stalking.
- Procedures that will be followed once an incident of these crimes has been reported, including a statement of the standard of evidence that will be used during any institutional disciplinary proceeding arising from the report.
- Educational programs to promote the awareness of dating violence, domestic violence, sexual assault, and stalking, which shall include primary prevention and awareness programs for incoming students and new employees, as well as ongoing prevention and awareness programs for students and faculty.
- The right of the accuser and the accused to have an advisor of their choice present during an institutional disciplinary proceeding.
- Simultaneous notification to both the accuser and the accused of the outcome of the institutional disciplinary proceeding.
- Informing victims of options for victim assistance in changing academic, living, transportation, and working situations, if requested by the victim and such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

As a result of these discussions, the proposed regulations would require institutions to compile statistics for certain crimes (dating violence, domestic violence, sexual assault, and stalking) that are reported to campus security authorities or local police agencies. Additionally, institutions would be required to include certain policies, procedures, and programs pertaining to these crimes in their annual security reports (ASRs).

The purpose of the disclosures required by the Clery Act is to give prospective and current students information to help them make decisions about their potential or continued enrollment in a postsecondary institution. Prospective

and current students and their families, staff, and the public use the information to assess an institution's security policies and the level and nature of crime on its campus. Institutions are required to disclose this data to students, employees, and prospective students and employees and to provide the crime statistics to the Department, which then makes it available to the public.

Discussion of Costs and Benefits

A benefit of these proposed regulations is that they would strengthen the rights of students and employees in connection with reported incidents of dating violence, domestic violence, sexual assault, and stalking. Institutions would be required to collect statistics for crimes reported to campus security authorities and local police agencies that involve incidents of dating violence, domestic violence, sexual assault, and stalking. This would improve crime reporting. In addition, students, prospective students, families, and employees and potential employees of the institutions, would be better informed about each campus's safety and procedures.

These proposed regulations would require institutions to include in their annual security report information about the institution's policies and programs to prevent sexual assault, which would cover programs that address dating violence, domestic violence, sexual assault, and stalking. This information would help students and employees understand these rights and procedures. Prevention and awareness programs for all new students and employees, as well as ongoing prevention and awareness campaigns for enrolled students and faculty would be beneficial in providing additional information to students and employees.

The revised provisions related to institutional disciplinary proceedings in cases of alleged dating violence, domestic violence, sexual assault, and stalking would protect the accuser and the accused by ensuring an equal opportunity to have an advisor at meetings and proceedings, an equal right to appeal if appeals are available, and the right to learn of the outcome of the proceedings, including the rationale. Accusers would gain the benefit of a required written explanation of their rights and options, including information about the possible sanctions an institution may impose on perpetrators and the range of protective measures an institution may make available to victims.

Institutions would largely bear the costs of these proposed regulations, which would fall into two categories: Paperwork costs of complying with the regulations, and other compliance costs that institutions may incur as they attempt to improve security on campus. Under the proposed regulations, institutions would have to include in the annual security report, descriptions of the primary prevention and awareness programs offered for all incoming students and new employees and descriptions of the ongoing prevention and awareness programs provided for enrolled students and employees. To comply, some institutions may need to create or update material about the availability of prevention programs while others may already provide sufficient information. Awareness and prevention programs can be offered in a variety of formats, including electronically, so the costs of any changes institutions would make in response to the proposed regulations could vary significantly and the Department has not attempted to quantify additional costs associated with awareness and prevention programs.

Another area in which institutions could incur costs related to the proposed regulations involves institutional disciplinary proceedings in cases of alleged dating violence, domestic violence, sexual assault, or stalking. Institutions will be required to have a policy statement describing the proceedings that would have to describe the standard of evidence that applies; the possible sanctions; that the accused and the accuser will have an equal right to have others present, including advisors of their choice; and that written notice of the outcomes of the proceedings would be given simultaneously to both the accused and the accuser. The proceedings would be conducted by officials who receive annual training on issues related to dating violence, domestic violence, sexual assault, and stalking as well as training on how to conduct investigations and hearings in a way to protect the safety of victims. Depending upon their existing procedures, some institutions may have to make changes to their disciplinary proceedings. The Department has not attempted to quantify those potential additional costs, which could vary significantly amongst institutions.

In addition to the costs described above, institutions would incur costs associated with the reporting and disclosure requirements of the proposed regulations. This additional workload is discussed in more detail under the *Paperwork Reduction Act of 1995* section. We expect this additional workload would result in costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. Under the proposed regulations, these costs would involve updating the annual security reports; changing crime statistics reporting to capture additional crimes, categories of crimes, differentiation of hate crimes, and expansion of categories of bias reported; and the development of statements of policy about prevention programs and institutional disciplinary proceedings. In total, the proposed regulations are estimated to increase paperwork burden on institutions participating in the title IV, HEA programs by 77,725 hours annually. The monetized cost of this additional paperwork burden on institutions, using wage data developed using BLS data available at: *www.bls.gov/ncs/ect/sp/ecsuphst.pdf*, is $2,840,849. This cost was based on an hourly rate of $36.55 for institutions.

Given the limited data available, the Department is particularly interested in comments and supporting information related to the estimated burden stemming from the proposed regulations. Estimates included in this notice will be reevaluated based on any information received during the public comment period.

Net Budget Impacts

The proposed regulations are not estimated to have a significant net budget impact in the title IV, HEA student aid programs over loan cohorts from 2014 to 2024. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

In general, these estimates were developed using the Office of Management and Budget's (OMB) Credit Subsidy Calculator. The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a ''basket of zeros'' methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used government-

wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these regulations.

We are not estimating that the proposed regulations will have a net budget impact on the title IV aid programs. We assume that institutions will generally continue to comply with Clery Act reporting requirements and such compliance has no net budget impact on the title IV aid programs. In the past, the Department has imposed fines on institutions that violate the Clery Ac but those fines do not have a net budget impact. Therefore, we estimate that the proposed regulations will have no net budget impact on the title IV, HEA programs.

Alternatives Considered

The Department determined that regulatory action was needed in order to implement the changes made to the Clery Act by VAWA, reflect the statutory language in the regulations and make some technical and clarifying changes to the Department's existing Clery Act regulations.

During the development of the proposed regulations, a number of different approaches to implement the amendments made to the Clery Act were discussed by the Department during the negotiated rulemaking process. Some of these approaches included the addition of clarifying definitions for ''outcomes,'' ''initial and final determinations,'' ''resolution,'' ''dating violence,'' ''employees,'' ''consent,'' and ''sodomy and sexual assault with an object.'' These alternative approaches are discussed below.

Definitions of Outcomes, Initial and Final Determinations, and Resolution

The Department considered harmonizing the terms, ''outcomes'', ''initial and final determinations'', and ''resolution'', used throughout the Clery Act regulations for internal consistency and to provide clarity for institutions. These terms are often being used interchangeably, along with the term ''results.'' The Department considered an alternative definition of ''outcomes'' as one or more parts of the results. The Department also considered an alternative definition of ''initial and final determinations,'' which would have defined the term ''initial determinations'' to include those decisions made before the appeals process, if the institution had such process. A ''final determination'' would be the decision made after the appeals process had been completed. Adding a definition of the term ''resolution'' was also considered by the Department. The Department ultimately decided to use the term ''results'' in the proposed regulations to refer to the initial, interim, and final decisions.

Alternative Definition of Dating Violence

The Department considered several alternatives to the definition of ''dating violence.'' The inclusion of emotional and psychological abuse, along with sexual and physical abuse, was considered. The Department decided to include only sexual or physical abuse or the threat of such abuse in the definition. The Department decided that some instances of emotional and psychological abuse do not rise to the level of ''violence'' which is part of the statutory definition of the term ''dating violence'' under VAWA. The Department also has concerns over implementation by campus security authorities of a definition of the term if it included these forms of abuse.

The Department also considered how to define ''dating violence'' as a crime for Clery Act purposes when it may not be a crime in some jurisdictions. To address this concern, the Department added a statement that any incident meeting the definition of ''dating violence'' was considered a crime for the purposes of Clery Act reporting.

Definitions of Employees

The Department considered adding a definition of ''employee'' to the proposed regulations. Some negotiators requested that the Department define this term to provide clarity to institutions. The Department decided not to define this term, however, since the existing regulations already effectively require institutions to determine who current employees are for the purposes of distributing their annual security reports.

Definition of Consent

The Department considered adding a definition of ''consent'' for the purposes of the Clery Act to the proposed regulations. Some negotiators indicated that a definition of ''consent'' would provide clarity for institutions, students, and employees for when a reported sex offense would need to be included in the institution's Clery Act statistics. However, a definition of ''consent'' might also create ambiguity in jurisdictions that either do not define ''consent'' or have a definition that differed from the one that would be in the regulations. The Department decided against including the definition of ''consent'' in the proposed regulations as we were not convinced that it would be helpful to institutions in complying with the Clery Act. For purposes of Clery Act reporting, all sex offenses that are reported to a campus security authority must be recorded in an institution's Clery Act statistics and, if reported to the campus police, must be included in the crime log, regardless of the issue of consent.

Definitions of Sodomy and Sexual Assault With an Object

The Department had initially separated the terms ''sodomy'' and ''sexual assault with an object'' into two distinct definitions for which separate statistics would be reported by institutions. However, the Department decided to adopt the FBI's new definition of ''rape.'' This new definition of rape covers acts including rape, sodomy, and sexual assault with an object. Under this new definition of rape, all instances of sodomy and sexual assault with an object would be included in the definition of ''rape.'' Therefore, separate statistics would not be collected for these crime categories, and the Department therefore decided not to define these terms separately.

Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Analysis presents an estimate of the effect on small entities of the proposed regulations. The U.S. Small Business Administration Size Standards define ''for-profit institutions'' as ''small businesses'' if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. They define ''non-profit institutions'' as ''small organizations'' if they are independently owned and operated and not dominant in their field of operation, or as ''small entities'' if they are institutions controlled by governmental entities with populations below 50,000. The Secretary invites comments from small entities as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Description of the Reasons That Action by the Agency Is Being Considered

This proposed regulatory action would implement the changes made to the Clery Act by VAWA, reflect the statutory language in the regulations and make some technical and clarifying changes to the Department's existing Clery Act regulations. The proposed regulations would reflect the statutory requirement that institutions compile

and report statistics for incidents of dating violence, domestic violence, sexual assault, and stalking that are reported to campus security authorities or local police agencies. Additionally, institutions would be required to include certain policies, procedures, and programs pertaining to these crimes in their annual security reports.

The purpose of these data collections is to give prospective and current students information to help them make decisions about their potential or continued enrollment in a postsecondary institution. Prospective and current students and their families, staff, and the public use the information to assess an institution's security policies and the level and nature of crime on its campus. In addition to the disclosure to students and employees institutions must provide campus crime data to the Department annually.

Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Regulations

On March 7, 2013, President Obama signed the Violence Against Women Reauthorization Act of 2013 (VAWA) (Pub. L. 113–4). Among other provisions, this law amended section 485(f) HEA, otherwise known as the Clery Act. These statutory changes require institutions to compile statistics for incidents of dating violence, domestic violence, sexual assault, and stalking that are reported to campus security authorities or local police agencies. Additionally, the proposed regulations would require institutions to include certain policies, procedures, and programs pertaining to these crimes in their annual security reports.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Regulations Would Apply

The proposed regulations would apply to institutions of higher education that participate in the title IV, HEA student aid programs, other than foreign institutions of higher education. From the most recent data compiled in the 2012 Campus Safety and Security Survey, we estimate that approximately 7,230 institutions would be subject to the proposed regulations, including 2,011 public, 1,845 private not-for-profit, and 3,365 private for-profit institutions. Of these institutions, we consider all of the private not-for-profit institutions and approximately 40 percent of private for-profit institutions as small entities. We do not believe any of the public institutions meet the definition of ''small entity.''

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Regulations, Including an Estimate of the Classes of Small Entities That Would Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

Table 1 shows the estimated burden of each information collection requirement to the hours and costs estimated and discussed in more detail in the *Paperwork Reduction Act of 1995 section.* Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In total, by taking 100 percent (for the private non-profit institutions) and 40 percent (for the private for-profit institutions) of the estimated burden hours for paragraphs 668.46(b), (c), (j), and (k), detailed in the Paperwork Reduction Act section of this preamble, these changes are estimated to increase the burden on small entities participating in the title IV, HEA programs by 34,401 hours annually. The monetized cost of this additional paperwork burden on institutions, using a $36.55 wage rate developed using BLS data available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $1,257,357.

TABLE 1—ESTIMATED PAPERWORK BURDEN ON SMALL ENTITIES

Provision	Reg section	OMB control No.	Hours	Costs
Annual Security Report	668.46(b)	1845–0022	8,000	292,407
Crime Statistics	668.46(c)	1845–0022	4,800	175,447
Statement of Policy—awareness and prevention programs	668.46(j)	1845–0022	12,800	467,840
Statement of Policy—institutional disciplinary proceedings	668.46(k)	1845–0022	8,801	321,662
Total			*34,401*	*1,257,357*

Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap, or Conflict With the Proposed Regulations

The proposed regulations are unlikely to conflict with or duplicate existing Federal regulations.

Alternatives Considered

As discussed in the ''Regulatory Alternatives Considered'' section of the *Regulatory Impact Analysis,* several different definitions for key terms were considered. The Department did not consider any alternatives specifically targeted at small entities.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 668.46 Institutional security policies and crime statistics.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents. Table 1 summarizes the estimated burden on small entities, primarily institutions and applicants, arising from the paperwork associated with the proposed regulations.

Section 668.46 contains information collection requirements. Under the PRA, the Department has submitted a copy of these sections, related forms, and Information Collections Requests (ICRs) to OMB for its review. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure the OMB gives your comments full consideration, it is important that OMB receives your comments by July 21, 2014. The same docket ID number is used for commenting on both the NPRM and the information collection request.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Discussion

Based on the most recent data compiled in the 2012 Campus Safety and Security Survey, there are 7,230 total institutions. This figure includes 2,011 Public, 1,845 Private Not-for-Profit, and 3,365 Private For-Profit institutions. This data was collected from August to October 2013 and represents the most current information available. The PRA section will use these figures in assessing burden.

Section 668.46 Institutional Security Policies and Crimes Statistics

Requirements: Under proposed § 668.46(b) *Annual security report,* we have revised and expanded existing language and added new requirements for items to be reported annually. We propose to revise § 668.46(b)(4)(i) to require institutions to address in their statements of current policies concerning campus law enforcement the jurisdiction of security personnel for the investigation of alleged criminal offenses, as well as any agreements, such as written memoranda of understanding between the institution and those police agencies. This proposed change incorporates modifications made to the HEA by the HEOA and responds to requests the Department has received regarding the memorandum of understanding between campus security personnel and State and local law enforcement.

We propose to expand § 668.46(b)(4)(iii) to include, in the statement of policy, the requirement that the institution encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agency when a victim of a crime elects to or is unable to make such a report. This proposed change incorporates modifications made to the HEA by VAWA, ensures complete reporting of crime statistics in the institution's annual security report and provides for a safer campus community whether a crime is reported by the victim or a third-party.

We propose to revise and restructure § 668.46(b)(11). Specifically, we propose to require institutions to include in their annual security report a statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking as well as the procedures that the institutions would follow when one of these crimes is reported. This proposed change incorporates modifications made to the HEA by VAWA.

In § 668.46(b)(11)(ii) we propose that institutions must provide written information to the victim of dating violence, domestic violence, sexual assault, and stalking. This includes information regarding: The preservation of evidence to assist in proving the alleged criminal offense or obtaining a protective order; how and to whom an alleged offense is to be reported; options for the involvement of law enforcement and campus authorities; and where applicable the victim's rights or institution's responsibilities for orders of protection. This proposed change incorporates modifications made to the HEA by VAWA as well as changes discussed during the negotiations.

In § 668.46(b)(11)(iii) we propose to add a section to specify that institutions must address in their annual security report how they will complete publicly available recordkeeping for the purposes of Clery Act reporting while not including identifying information about the victim and while maintaining the confidentiality of any accommodations or protective measures given to the victim, to the extent that such exclusions would not impair the ability of the institution to provide such accommodations or protective measures. This proposed change incorporates modifications made to the HEA by VAWA as well as discussions during negotiations.

We propose to revise § 668.46(b)(11)(iv) to require institutions to specify in their annual security reports that they will provide a written notification of an expanded list of services to students and employees if the services are available. These services include existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration services for the victim, and other services that may be available at the institution and in the community. This proposed change incorporates modifications made to the HEA by VAWA as well as discussions during negotiations.

We propose to revise current § 668.46(b)(11)(v) to require institutions to specify in their annual security report that written notification would be provided to victims of dating violence, domestic violence, sexual assault, and stalking regarding their options for, and the availability of, changes to academic, living, transportation, and working situations. These options would have to be afforded any victim, regardless of whether the victim reports the crime to campus police or law enforcement. This proposed change incorporates modifications made to the HEA by VAWA, as well as discussions during negotiations.

We propose to add a new § 668.46(b)(11)(vii) to require institutions to specify in their annual security reports that when a student or employee of the institution reports to the institution that a person is a victim of dating violence, domestic violence, sexual assault, or stalking that victim will be provided a written explanation of their rights and options under this subsection, whether the offense occurred on campus or off campus. This proposed change incorporates modifications made to the HEA by VAWA.

Burden Calculation: On average, we estimate that the proposed changes in § 668.46(b)(11) would take each institution 2.5 hours of additional burden. As a result, reporting burden at public institutions would increase by 5,028 hours (2,011 public institutions time 2.5 hours per institution). Reporting burden at private non-profit institutions would increase by 4,635 hours (1,854 private non-profit institutions times 2.5 hours per institution). Reporting burden at private for-profit institutions would increase by 8,413 hours (3,365 private for-profit institutions times 2.5 hours per institution).

Collectively, burden would increase by 18,076 hours under OMB Control Number 1845–0022.

Requirements: Under proposed § 668.46(c), *Crime statistics,* we have revised existing language and added new reporting requirements for items to be reported in the annual survey.

The proposed revisions to § 668.46(c)(1) would add the VAWA crimes of dating violence, domestic violence, and stalking to the crimes for which an institution must collect and disclose statistics as part of their annual crime statistics reporting process. The Department is modifying its approach for the reporting and disclosing of sex offenses to reflect updates to the FBI's (Uniform Crime Reporting) UCR program and to improve the clarity of § 668.46(c)(1). The Department is proposing a restructuring of the paragraph to consolidate all the reportable Clery Act crimes and to appropriately reflect the categories of crimes.

While institutions would continue to be required to report statistics for the three most recent calendar years, the proposed reporting requirements have been expanded because of the addition of new crimes added by VAWA.

We have revised § 668.46(c)(4)(iii) and § 668.46(c)(vii) to include gender identity and national origin as two new categories of bias that serve as the basis for a determination of a hate crime. The institution would have to identify the category of bias that motivated the crime.

Under proposed § 668.46(c)(6), we added stalking as a reportable crime. The Department would define ''stalking'' in the proposed regulations.

These proposed changes implement the changes VAWA made to the HEA and improve the overall clarity of this paragraph. We believe that additional burden would be added because there are additional crimes, categories of crimes, differentiation of hate crimes, and expansions of the categories of bias that must be reported.

Burden Calculation: On average, we estimate that the proposed changes to the reporting of crime statistics would take each institution 1.50 hours of additional burden. As a result, reporting burden at public institutions would increase by 3,017 hours (2,011 reporting public institutions times 1.50 hours per institution). Reporting burden at private non-profit institutions would increase by 2,781 hours (1,854 private non-profit institutions times 1.50 hours). Reporting burden at private for-profit institutions would increase by 5,048 hours (3,365 private for-profit institutions times 1.50 hours per institution).

Collectively, burden would increase by 10,846 hours under OMB Control Number 1845–0022.

Requirements: Under proposed § 668.46(j), *Programs to prevent dating violence, domestic violence, sexual assault, and stalking,* we are proposing to include in the regulations particular requirements for the required description of the institution's programs and ongoing campaigns about prevention and awareness in the institution's annual security report.

Proposed § 668.46(j)(1)(i) would require that the institution's statement would have to contain certain elements in the description of the primary prevention and awareness programs for incoming students and new employees including the institution's prohibition of dating violence, domestic violence, sexual assault, or stalking, definitions of those crimes and a definition of ''consent'' according to the applicable jurisdiction, a description of safe and positive options for bystander intervention, information on risk reduction, and other elements of paragraphs 668.46(b)(11)(ii)–(vii) and (k)(2). This is being done to incorporate changes made to the HEA by VAWA.

Proposed § 668.46(j)(1)(ii) would require that the institution's statement must contain certain elements in the description of the ongoing prevention and awareness campaigns for students and employees, including the institution's prohibition of dating violence, domestic violence, sexual assault, or stalking; definitions of those crimes; a definition of consent according to the applicable jurisdiction, a description of safe and positive options for bystander intervention; information on risk reduction; and other elements of paragraphs 668.46(b)(11)(ii)–(vii) and (k)(2). This is being done to incorporate changes made to the HEA by VAWA.

Burden Calculation: On average, we estimate that the proposed changes to the institution's statements of policy and description of programs and ongoing campaigns would take each institution four hours of additional burden. As a result, reporting burden at public institutions would increase by 8,044 hours (2,011 reporting public institutions times 4 hours per institution). Reporting burden at private non-profit institutions would increase by 7,416 hours (1,854 private non-profit institutions times 4 hours). Reporting burden at private for-profit institutions would increase by 13,460 hours (3,365 private for-profit institutions times 4 hours per institution).

Collectively, burden would increase by 28,920 hours under OMB Control Number 1845–0022.

Requirements: Under proposed § 668.46(k), *Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking,* we would implement the statutory changes requiring an institution that participates in any title IV, HEA program, other than a foreign institution, to include a statement of policy in its annual security report addressing the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking.

Proposed § 668.46(k)(1) would require various additions to the institution's statement of policy that must be included in the annual security report. While a statement of policy is required under current regulations (see § 668.46(b)(11)(vii)), the proposed regulations would require the following additions to the statement of policy.

Proposed § 668.46(k)(1)(i) provides that the statement of policy must describe each type of disciplinary proceeding used by the institution including the steps, anticipated timelines, and decision-making process for each, and how the institution determines which type of disciplinary hearing to use. Proposed § 668.46(k)(1)(ii) would provide that the statement of policy must describe the standard of evidence that would be used

during any disciplinary proceeding. Proposed § 668.46(k)(1)(iii) provides that the statement of policy must list all possible sanctions an institution may impose following the results of any disciplinary proceeding. Proposed § 668.46(k)(1)(iv) provides that the policy statement must describe the range of protective measures that the institution may offer following an allegation of dating violence, domestic violence, sexual assault, or stalking.

Under proposed § 668.46(k)(2), the institution would have to provide additional information regarding its disciplinary proceedings in the statement of policy. An institution's statement of policy would have to provide that its disciplinary proceeding includes a prompt, fair, and impartial process from the initial investigation to the final result under proposed § 668.46(k)(2)(i). The policy statement would have to provide that the proceeding will be conducted by officials who receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking, and annual training on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability under proposed § 668.46(k)(2)(ii). Under proposed § 668.46(k)(2)(iii), an institution's statement of policy must provide that its disciplinary proceeding will afford the accuser and the accused the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice. As proposed under § 668.46(k)(2)(iv), an institution cannot limit the choice or presence of an advisor, however, the institution may establish restrictions regarding the advisor's participation in the proceedings as long as those restrictions apply equally to both the accuser and the accused. Finally, under proposed § 668.46(k)(2)(v), an institution's statement of policy would 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 the accused and the victim's right to appeal the result, any change to the result, or when such results become final.

Burden Calculation: On average, we estimate that the proposed changes to the institution's statement of policy would take each institution 2.75 hours of additional burden. As a result, reporting burden at public institutions would increase by 5,530 hours (2,011 reporting public institutions times 2.75 hours per institution). Reporting burden at private non-profit institutions would increase by 5,099 hours (1,854 private non-profit institutions times 2.75 hours). Reporting burden at private for-profit institutions would increase by 9,254 hours (3,365 private for-profit institutions times 2.75 hours per institution).

Collectively, burden would increase by 19,883 hours under OMB Control Number 1845–0022.

Consistent with the discussion above, Table 4 describes the sections of the proposed regulations involving information collections, the information that would be collected, the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions and borrowers, using BLS wage data available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $2,840,849, as shown in the chart below. This cost was based on an hourly rate of $36.55 for institutions.

TABLE 4—COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB Control number and estimated burden [change in burden]	Estimated costs
§ 668.46(b) Annual security report	Revises and expands existing language and adds new requirements for items to be reported annually.	OMB 1845–0022 We estimate that the burden would increase by 18,076 hours.	$660,678
§ 668.46(c) Crime statistics	Revises and expands existing language and adds new reporting requirements for items to be reported in the annual survey.	OMB 1845–0022 We estimate that the burden would increase by 10,846 hours.	396,421
§ 668.46(j) Programs to prevent dating violence, domestic violence, sexual assault, and stalking.	Specifies the elements of the required statement of policy on and description of the institution's programs and ongoing campaigns about prevention and awareness regarding these crimes that must be included in the institution's annual security report.	OMB 1845–0022 We estimate that the burden would increase by 28,920 hours.	1,057,026
§ 668.46(k) Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, and stalking.	Implements the statutory changes requiring an institution that participates in any title IV, HEA program to include a statement of policy in its annual security report addressing the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking.	OMB 1845–0022 We estimate that the burden would increase by 19,883 hours.	726,724

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: June 16, 2014.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

■ 2. Section 668.46 is amended by:

■ a. In paragraph (a), adding definitions of ''Clery Geography'', ''Dating violence'', ''Domestic violence'', ''Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) program'', ''Hate crime'', ''Hierarchy Rule'', ''Programs to prevent dating violence, domestic violence, sexual assault, and stalking'', ''Sexual assault'', and ''Stalking''; in the definition of ''Professional counselor'', removing the words ''his or her license'' and adding, in their place, ''the counselor's license'';

■ b. Revising paragraph (b)(4);

■ c. In paragraph (b)(7), removing the words ''criminal activity in which students engaged at'' and adding, in their place, ''criminal activity by students at'' and removing both occurrences of the word ''off-campus'' and adding in their place ''noncampus'';

■ d. Revising paragraph (b)(11);

■ e. In paragraph (b)(12), removing the words ''Beginning with the annual security report distributed by October 1, 2003, a'' and adding in their place the word ''A'' and removing the words and punctuation ''section 170101(j) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(j)),'' and adding in their place ''section 121 of the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16921),'';

■ f. In paragraph (b)(13), removing the words ''Beginning with the annual security report distributed by October 1, 2010, a'' and adding in their place the word ''A'' and removing the words ''as described in'' and adding in their place the words ''as required by'';

■ g. In paragraph (b)(14), removing the words ''Beginning with the annual security report distributed by October 1, 2010, a'' and adding in their place the word ''A'' and removing the words ''as described in'' and adding in their place the words ''as required by'';

■ h. Revising paragraph (c);

■ i. In paragraph (e)(1), adding the words ''that withholds as confidential the names and other identifying information of victims, as defined in section 40002(a)(20) of the Violence Against Women Act of 1994 (42 U.S.C 13925(a)(20)), and that'' between the words ''and'' and ''will'';

■ j. In paragraph (e)(1)(i), removing the word and number ''and (3)'';

■ k. In paragraph (f)(1), removing the words ''on campus, on a noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department'' and adding in their place ''within its Clery Geography and that'';

■ l. In paragraph (h)(1)(vi), removing the words and punctuation ''Advise students that,'' and adding in their place ''Advise students that'';

■ m. Adding a reserved paragraph (i); and

■ n. Adding paragraphs (j) and (m).

The additions and revisions read as follows:

§ 668.46 Institutional security policies and crime statistics.

(a) * * *

Clery Geography: (1) For the purposes of collecting statistics on the crimes listed in paragraph (c) of this section for submission to the Department and inclusion in an institution's annual security report, Clery Geography includes—

(i) Buildings and property that are part of the institution's campus;

(ii) The institution's noncampus buildings and property; and

(iii) Public property within or immediately adjacent to and accessible from the campus.

(2) For the purposes of maintaining the crime log required in paragraph (f) of this section, Clery Geography includes, in addition to the locations in paragraph (1) of this definition, areas within the patrol jurisdiction of the campus police or the campus security department.

Dating violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

(1) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(2) For the purpose of this definition—

(i) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(ii) Dating violence does not include acts covered under the definition of domestic violence.

(3) For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

Domestic violence: (1) A felony or misdemeanor crime of violence committed—

(i) By a current or former spouse or intimate partner of the victim;

(ii) By a person with whom the victim shares a child in common;

(iii) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;

(iv) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or

(v) By 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 in which the crime of violence occurred.

(2) For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) program: A nationwide, cooperative statistical effort in which city, university and college, county, State, Tribal, and federal law enforcement agencies voluntarily report data on crimes brought to their attention. The UCR program also serves as the basis for the definitions of crimes in Appendix A to this subpart and the requirements for classifying crimes in this subpart.

Hate crime: A crime reported to local police agencies or to a campus security authority that manifests evidence that the victim was intentionally selected because of the perpetrator's bias against the victim. For the purposes of this section, the categories of bias include the victim's actual or perceived race, religion, gender, gender identity, sexual orientation, ethnicity, national origin, and disability.

Hierarchy Rule: A requirement in the FBI's UCR program that, for purposes of reporting crimes in that system, when more than one criminal offense was committed during a single incident, only the most serious offense be counted.

* * * * *

Programs to prevent dating violence, domestic violence, sexual assault, and stalking: (1) Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that—

(i) Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and

(ii) Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.

(2) Programs to prevent dating violence, domestic violence, sexual assault, and stalking include both primary prevention and awareness programs directed at incoming students and new employees and ongoing prevention and awareness campaigns directed at students and employees, as defined in paragraph (j)(2).

* * * * *

Sexual assault: An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program and included in Appendix A of this subpart.

Stalking: (1) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(i) Fear for the person's safety or the safety of others; or

(ii) Suffer substantial emotional distress.

(2) For the purpose of this definition—

(i) *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(ii) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

(iii) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.

(3) For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

* * * * *

(b) * * *

(4) A statement of current policies concerning campus law enforcement that—

(i) Addresses the enforcement authority and jurisdiction of security personnel;

(ii) Addresses the working relationship of campus security personnel with State and local police agencies, including—

(A) Whether those security personnel have the authority to make arrests; and

(B) Any agreements, such as written memoranda of understanding between the institution and such agencies, for the investigation of alleged criminal offenses.

(iii) Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies, when the victim of a crime elects to or is unable to make such a report; and

(iv) Describes procedures, if any, that encourage pastoral counselors and professional counselors, if and 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.

* * * * *

(11) A statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking and of procedures that the institution will follow when one of these crimes is reported. The statement must include—

(i) A description of the institution's educational programs and campaigns to promote the awareness of dating violence, domestic violence, sexual assault, and stalking, as required by paragraph (j) of this section;

(ii) 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—

(*1*) Notify proper law enforcement authorities, including on-campus and local police;

(*2*) Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and

(*3*) Decline to notify such authorities; and

(D) Where applicable, the rights of victims and the institution's responsibilities for orders of protection, no-contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by the institution.

(iii) Information about how the institution will protect the confidentiality of victims and other necessary parties, including how the institution will—

(A) Complete publicly available recordkeeping and, for purposes of Clery Act reporting and disclosure, without the inclusion of identifying information about the victim, as defined in section 40002(a)(20) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)(20)); and

(B) Maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures.

(iv) 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, and other services available for victims, both within the institution and in the community;

(v) A statement that the institution will provide written notification to victims about options for, and available assistance in, changing academic, living, transportation, and working situations. The institution must make such accommodations if the victim requests them and if they are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement;

(vi) An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as required by paragraph (k) of this section; and

(vii) A statement that, when a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section.

* * * * *

(c) *Crime statistics*—(1) *Crimes that must be reported and disclosed.* An institution must report to the Department and disclose in its annual security report statistics for the three most recent calendar years concerning the number of each of the following crimes that occurred on or within its Clery Geography and that are reported to local police agencies or to a campus security authority:

(i) Primary crimes, including—

(A) Criminal homicide:

(*1*) Murder and nonnegligent manslaughter, and

(*2*) Negligent manslaughter.

(B) Sex offenses:

(*1*) Rape,

(*2*) Fondling,

(*3*) Incest, and

(*4*) Statutory rape.

(C) Robbery.

(D) Aggravated assault.

(E) Burglary.

(F) Motor vehicle theft.

(G) Arson.

(ii) Arrests and disciplinary actions, including—

(A) Arrests for liquor law violations, drug law violations, and illegal weapons possession.

(B) Persons not included in paragraph (c)(1)(ii)(A) of this section who were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

(iii) Hate crimes, including—

(A) The number of each type of crime in paragraph (c)(1)(i) of this section that are determined to be hate crimes; and

(B) The number of the following crimes that are determined to be hate crimes:

(*1*) Larceny-theft.

(*2*) Simple assault.

(*3*) Intimidation.

(*4*) Destruction/damage/vandalism of property.

(iv) Dating violence, domestic violence, and stalking as defined in paragraph (a) of this section.

(2) *All reported crimes must be recorded.* (i) An institution must include in its crime statistics all crimes reported to a campus security authority for purposes of Clery Act reporting. Clery Act reporting does not require initiating an investigation or disclosing identifying information about the victim, as defined in section 40002(a)(20) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)(20)).

(ii) An institution may not withhold, or subsequently remove, a reported crime from its crime statistics based on a decision by a court, coroner, jury, prosecutor, or other similar noncampus official.

(3) *Crimes must be recorded by calendar year.* (i) An institution must report and disclose a crime statistic for the calendar year in which the crime was reported to local police agencies or to a campus security authority.

(ii) When recording crimes of stalking by calendar year, an institution must follow the requirements in paragraph (c)(6) of this section.

(4) *Hate crimes must be recorded by category of bias.* For each hate crime recorded under paragraph (c)(1)(iii) of this section, an institution must identify the category of bias that motivated the crime. For the purposes of this paragraph, the categories of bias include the victim's actual or perceived—

(i) Race,

(ii) Gender,

(iii) Gender identity,

(iv) Religion,

(v) Sexual orientation,

(vi) Ethnicity,

(vii) National origin, and

(viii) Disability.

(5) *Crimes must be recorded by location.* (i) An institution must specify whether each of the crimes recorded under paragraph (c)(1) of this section occurred—

(A) On campus,

(B) In or on a noncampus building or property, or

(C) On public property.

(ii) An institution must identify, of the crimes that occurred on campus, the number that took place in dormitories or other residential facilities for students on campus.

(iii) When recording stalking by location, an institution must follow the requirements in paragraph (c)(6) of this section.

(6) *Recording reports of stalking.* (i) When recording reports of stalking that include activities in more than one calendar year, an institution must record a crime statistic only for the calendar year in which the course of conduct was first reported to a local police agency or to a campus security authority. If the course of conduct continues in a subsequent year, it must be recorded for that year.

(ii) An institution must record each report of stalking as occurring at only the first location within the institution's Clery Geography in which:

(A) A perpetrator engaged in the stalking course of conduct; or

(B) A victim first became aware of the stalking.

(iii) A report of stalking must be counted as a new and distinct crime and is not associated with a previous report of stalking when the stalking behavior continues after an official intervention including, but not limited to, an institutional disciplinary action or the issuance of a no-contact order, restraining order or any warning by the institution or a court.

(7) *Identification of the victim or the accused.* The statistics required under this paragraph (c) may not include the identification of the victim or the person accused of committing the crime.

(8) *Pastoral and professional counselor.* An institution is not required to report statistics under paragraph (c) of this section for crimes reported to a pastoral or professional counselor.

(9) *Using the FBI's UCR program and the Hierarchy Rule.* (i) An institution must compile the crime statistics required under paragraphs (c)(1)(i) and (iii) of this section using the definitions of crimes provided in Appendix A to this subpart and the Federal Bureau of Investigation's UCR Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Data Collection. For further guidance concerning the application of definitions and classification of crimes, an institution must use either the UCR Reporting Handbook or the UCR Reporting Handbook: National Incident-Based Reporting System (NIBRS) EDITION,

except as provided in paragraph (c)(9)(ii) of this section.

(ii) In counting crimes when more than one offense was committed during a single incident, an institution must conform to the requirements of the Hierarchy Rule in the UCR Reporting Handbook, with one exception: In counting sex offenses, the Hierarchy Rule does not apply. For example, if a victim is both raped and murdered in a single incident, then an institution must include both the rape and the murder in its statistics.

(10) *Use of a map.* In complying with the statistical reporting requirements under this paragraph (c), an institution may provide a map to current and prospective students and employees that depicts its campus, noncampus buildings or property, and public property areas if the map accurately depicts its campus, noncampus buildings or property, and public property areas.

(11) *Statistics from police agencies.* In complying with the statistical reporting requirements under this paragraph (c), an institution must make a reasonable, good faith effort to obtain the required statistics and may rely on the information supplied by a local or State police agency. If the institution makes such a reasonable, good faith effort, it is not responsible for the failure of the local or State police agency to supply the required statistics.

* * * * *

(i) [Reserved]

(j) *Programs to prevent dating violence, domestic violence, sexual assault, and stalking.* As required by paragraph (b)(11) of this section, an institution must include in its annual security report a statement of policy that addresses the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking.

(1) The statement must include—

(i) A description of the institution's primary prevention and awareness programs for all incoming students and new employees, which must include—

(A) A statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking;

(B) The definition of ''dating violence,'' ''domestic violence,'' ''sexual assault,'' and ''stalking'' in the applicable jurisdiction;

(C) The definition of ''consent,'' in reference to sexual activity, in the applicable jurisdiction;

(D) A description of safe and positive options for bystander intervention;

(E) Information on risk reduction; and

(F) The information described in paragraphs (b)(11) and (k)(2) of this section; and

(ii) A description of the institution's ongoing prevention and awareness campaigns for students and employees, including information described in paragraph (j)(1)(i)(A) through (F) of this section.

(2) For the purposes of this paragraph—

(i) *Awareness programs* means community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.

(ii) *Bystander intervention* means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

(iii) *Ongoing prevention and awareness campaigns* means programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution and including information described in paragraph (j)(1)(i)(A) through (F) of this section.

(iv) *Primary prevention programs* means programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.

(v) *Risk reduction* means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

(3) An institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking must include, at a minimum, the information described in paragraph (j)(1) of this section.

(k) *Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking.* As required by paragraph (b)(11)(vi) of this section, an institution must include in its annual security report a clear statement of policy that addresses the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking and that—

(1)(i) Describes each type of disciplinary proceeding used by the institution; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; 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;

(ii) Describes 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;

(iii) Lists all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceeding for an allegation of dating violence, domestic violence, sexual assault, or stalking; and

(iv) Describes the range of protective measures that the institution may offer following an allegation of dating violence, domestic violence, sexual assault, or stalking;

(2) Provides that the proceedings will—

(i) Include a prompt, fair, and impartial process from the initial investigation to the final result;

(ii) 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;

(iii) 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;

(iv) Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the

proceedings, as long as the restrictions apply equally to both parties; and

(v) Require simultaneous notification, in writing, to both the accuser and the accused, of—

(A) The result of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking;

(B) The institution's procedures for the accused and the victim to appeal the result of the institutional disciplinary proceeding, if such procedures are available;

(C) Any change to the result; and

(D) When such results become final.

(3) For the purposes of this paragraph—

(i) A prompt, fair, and impartial proceeding includes a proceeding that is—

(A) Completed within reasonably prompt timeframes designated by an institution's policy, including a process that allows for the extension of timeframes for good cause with written notice to the accuser and the accused of the delay and the reason for the delay;

(B) Conducted in a manner that—

(*1*) Is consistent with the institution's policies and transparent to the accuser and accused;

(*2*) Includes timely notice of meetings at which the accuser or accused, or both, may be present; and

(*3*) Provides timely access to the accuser, the accused, and appropriate officials to any information that will be used after the fact-finding investigation but during informal and formal disciplinary meetings and hearings; and

(C) Conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused.

(ii) *Advisor* means any individual who provides the accuser or accused support, guidance, or advice.

(iii) *Proceeding* means all activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings.

(iv) *Result* means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The result must include any sanctions imposed by the institution. Notwithstanding section 444 of the General Education Provisions Act (20 U.S.C. 1232g), commonly referred to as the Family Educational Rights and Privacy Act (FERPA), the result must also include the rationale for the result and the sanctions.

(l) Compliance with paragraph (k) of this section does not constitute a violation of FERPA.

(m) *Prohibition on retaliation.* An institution, or an officer, employee, or agent of an institution, may not retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights or responsibilities under any provision in this section.

* * * * *

■ 3. Revise appendix A to subpart D to read as follows:

Appendix A to Subpart D of Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program

The following definitions are to be used for reporting the crimes listed in § 668.46, in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting Program. The definitions for *murder; robbery; aggravated assault; burglary; motor vehicle theft; weapons: carrying, possessing, etc.; law violations; drug abuse violations;* and *liquor law violations* are from the Uniform Crime Reporting Handbook. The definitions of the sex offenses are excerpted from the National Incident-Based Reporting System Edition of the Uniform Crime Reporting Handbook. The definitions of *larceny-theft (except motor vehicle theft), simple assault, intimidation,* and *destruction/damage/vandalism of property* are from the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook.

Crime Definitions From the Uniform Crime Reporting Handbook

Arson

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Criminal Homicide—Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide—Murder and Nonnegligent Manslaughter

The willful (nonnegligent) killing of one human being by another.

Robbery

The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

Aggravated Assault

An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)

Burglary

The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: Unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.

Motor Vehicle Theft

The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned—including joyriding.)

Weapons: Carrying, Possessing, Etc.

The violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons.

Drug Abuse Violations

The violation of laws prohibiting the production, distribution, and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use. The unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance. Arrests for violations of State and local laws, specifically those relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs.

Liquor Law Violations

The violation of State or local laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages, not including driving under the influence and drunkenness.

Sex Offenses Definitions From the Uniform Crime Reporting Program

Sex Offenses

Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

A. *Rape*—The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

B. *Fondling*—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

C. *Incest*—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

D. *Statutory Rape*—Nonforcible sexual intercourse with a person who is under the statutory age of consent.

Definitions From the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook

Larceny-Theft (Except Motor Vehicle Theft)

The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Attempted larcenies are included. Embezzlement, confidence games, forgery, worthless checks, etc., are excluded.

Simple Assault

An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

Intimidation

To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

Destruction/Damage/Vandalism of Property

To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

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