VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013

FEDERAL REGISTER

Vol. 79 No. 202
Monday, October 20, 2014

Part III

Department of Education

34 CFR Part 668
Violence Against Women Act; Final Rule

This document has been reformatted from its original version.

https://www.federalregister.gov/articles/2014/10/20/2014-24284/violence-against-women-act

DEPARTMENT OF EDUCATION
34 CFR Part 668
[Docket ID ED–2013–OPE–0124]
RIN 1840–AD16

Violence Against Women Act

AGENCY: Office of Postsecondary Education, Department of Education.
ACTION: Final regulations.

SUMMARY: The Secretary amends 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 regulations are intended to update, clarify, and improve the current regulations.

DATES: These regulations are effective July 1, 2015.

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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. L. 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 are amending § 668.46 of title 34 of the Code of Federal Regulations (CFR) to implement these statutory changes. Additionally, we are updating this section by incorporating provisions added to the Clery Act by the Higher Education Opportunity Act, enacted in 2008, deleting outdated deadlines and cross-references, and making other changes to improve the readability and clarity of the regulations. We have published 34 CFR 668.46 in its entirety at the end of these regulations for our readers' convenience.

Summary of the Major Provisions of This Regulatory Action: The final regulations will—
- Require institutions to maintain statistics about the number of incidents of dating violence, domestic violence, sexual assault, and stalking that meet the definitions of those terms;
- Clarify the very limited circumstances in which an institution may remove reports of crimes that have been ''unfounded'' and require institutions to report to the Department and disclose in the annual security report the number of ''unfounded'' crime reports;

- Revise the definition of ''rape'' to reflect the Federal Bureau of Investigation's (FBI) 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 separate categories;
- Require institutions to provide to incoming students and new employees and describe in their annual security reports primary prevention and awareness programs. These programs must include: a statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking, as those terms are defined in these final regulations; the definitions 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 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; how to file a disciplinary complaint; and how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking;
- 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 and equal access to information that will be used during informal and formal disciplinary meetings and hearings;
- Define the terms ''proceeding'' and ''result''; and
- 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).

Costs and Benefits: A benefit of these final regulations is that they will strengthen the rights of victims of dating violence, domestic violence, sexual assault, and stalking on college campuses. Institutions will 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 will improve crime reporting and will help ensure that students, prospective students, families, and employees and potential employees of the institutions will be better informed about each campus' safety and security procedures. Ultimately, the improved reporting and transparency will promote safety and security on college campuses.

Institutions are likely to incur two types of costs under the final regulations: Paperwork costs of complying with the regulations, and other compliance costs that institutions may incur as they take required steps to improve security on campus. Institutions will incur paperwork costs involved in: Changing the reporting of crime statistics 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 will also incur additional compliance costs. Costs to improve safety on campus will 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 final regulations are not estimated to have a significant net budget impact on the title IV, HEA student aid programs over loan cohorts from 2014 to 2024.

On June 20, 2014, the Secretary published a notice of proposed rulemaking (NPRM) for these regulations in the **Federal Register** (79 FR 35418). The final regulations contain several changes from the NPRM. We fully explain the changes in the *Analysis of Comments and Changes* section of the preamble that follows.

Implementation date of these regulations: Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1, prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulations may choose to implement earlier and the conditions for early implementation. The Secretary has not designated any of the provisions in these final regulations for early implementation. Therefore, these final regulations are effective July 1, 2015.

Public Comment: In response to our invitation in the NPRM, approximately 2,200 parties submitted comments on the proposed regulations. In addition, approximately 3,600 individuals submitted a petition expressing their support for comments submitted by the American Association of University Women. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address technical or other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

General

Comments: The great majority of the commenters expressed strong support for the proposed regulations. They believed that these regulations would: Improve the data related to incidents of dating violence, domestic violence, and stalking at institutions; foster greater transparency and accountability around institutional policies and procedures; strengthen institutional efforts to prevent dating violence, domestic violence, sexual assault, and stalking; and ensure proper training for individuals who are involved in institutional disciplinary proceedings. The commenters believed that these changes would lead to greater institutional accountability and result in better information for students and families. They also believed that these regulations would foster more supportive environments for victims of dating violence, domestic violence, sexual assault, and stalking to come forward to report these crimes. Although generally supportive of the regulations, a few commenters urged the Department to consider the needs and perspectives of an accused student, particularly in regard to the regulations pertaining to institutional disciplinary proceedings.

Several commenters noted that the changes that VAWA made to the Clery Act did not alter an institution's obligations to comply with 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 However, many commenters noted that institutions' obligations

under the Clery Act and under title IX overlap in some areas, and they urged the Department to provide as much guidance as possible about how to comply with both laws to promote best practices and to reduce regulatory burden.

Finally, some of the commenters stressed the need for institutions to consider students and employees with disabilities when designing their campus safety policies, especially their campus sexual assault policies. The commenter noted that women with disabilities are at a high risk for sexual and other forms of violence.

Discussion: We appreciate the commenters' support. We note that the White House Task Force to Protect Students from Sexual Assault, which was established on January 22, 2014, has released and continues to develop guidance and model policies for institutions to use in working to comply with the Clery Act and title IX. Those resources are available to institutions at the Web site *www.notalone.gov* under the ''Schools'' tab. The Department intends to build on these resources and provide additional tools and guidance where possible for institutions, including by updating *The Handbook for Campus Safety and Security Reporting* (*http://www2.ed.gov/admins/ lead/safety/handbook.pdf*).

Changes: None.

Implementation

Comments: Several of the commenters requested clarification regarding the implementation of these new regulations. Some commenters wondered whether institutions would be expected to identify whether crimes included in statistics in previous calendar years met the definitions of ''dating violence,'' ''domestic violence,'' or ''stalking'' or to revise their statistics pertaining to rape using the revised definition. Other commenters stressed that institutions should be given significant time to develop or revise procedures, learn how to categorize the new crimes, and update their annual security reports to comply with these final regulations.

Discussion: As first explained by the Department in an electronic announcement published on May 29th, 2013, and later reiterated in Dear Colleague Letter GEN–14–13 (*http:// ifap.ed.gov/dpcletters/GEN1413.html*), institutions must make a good-faith effort to include accurate and complete statistics for dating violence, domestic violence, sexual assault, and stalking as defined in section 40002(a) of the Violence Against Women Act of 1994 for calendar year 2013 in the annual security report that must be published by October 1, 2014. Institutions will not be required to revise their statistics for calendar years 2013 or 2014 to reflect the final regulations.

Section 485(f)(1)(F) and (f)(5) of the Clery Act requires institutions to disclose and report crime statistics for the three most recent calendar years in each annual security report. Consistent with the approach that we took when implementing the changes to the Clery Act and the annual fire safety report added by the Higher Education Opportunity Act, we will phase in the new statistical requirements. The first annual security report to contain a full three years of data using the definitions in these final regulations will be the annual security report due on October 1, 2018. Section 304(b) of VAWA specified that the amendments made to the Clery Act would be effective with respect to the annual security report prepared by an institution of higher education one calendar year after the date of enactment of VAWA, and each subsequent calendar year. Accordingly, institutions are legally required to update their policies, procedures, and practices to meet the statutory requirements for the annual security report issued in 2014.

These final regulations will become effective on July 1, 2015, providing institutions at least seven months after the regulations are published to further update or refine their policies, procedures, and programs before the next annual security report is due on October 1, 2015. We believe that this is sufficient time for institutions to come into compliance.

Changes: None.

Burden

Comments: Several commenters raised concerns about the burden on institutions imposed by these regulations, particularly by the requirements for the development of prevention programs and the requirements for campus disciplinary proceedings. The commenters believed that the cost to institutions of complying with these regulations could be significant. One commenter noted that these regulations would result in higher tuition costs because it would require institutions to divert funds from the delivery of education to hiring administrative staff and legal support.
These and other commenters urged the Department to provide best practices and model policies and programs to help reduce the costs associated with implementing these changes.

Discussion: We understand the commenters' concerns about the burden associated with implementing these regulations. However, these requirements are statutory and institutions must comply with them to participate in the title IV, HEA programs. As discussed previously under ''General,'' the Department is committed to providing institutions with guidance where possible to minimize the additional costs and burdens. For additional information about the costs and burden associated with these regulations, please see the discussion under ''Paperwork Reduction Act of 1995.''

Changes: None.

Availability of Annual Security Report and Statistics

Comments: Several commenters made suggestions for changes in how institutions must make their annual security reports and statistics available. One commenter suggested that institutions should have to publish their statistics on their Web sites so that parents and students can make informed decisions about where to enroll. Another commenter noted that it is often difficult to find the required policies and procedures on an institution's Web site. One commenter recommended requiring institutions to post all information related to an institution's policies for dating violence, domestic violence, sexual assault, and stalking in one place on its Web site. If related information appears on other pages of an institution's Web site, the commenter recommended requiring institutions to provide links to the text of its policy to prevent misunderstandings about the school's policy or procedures. Another commenter urged the Department to require institutions to provide information to students and employees in languages other than English, particularly where a dominant portion of the campus community speaks a language other than English. Several commenters raised concerns about whether and how students, employees, and prospective students and employees would know when an institution updated its policies, procedures, and programs—particularly those related to campus disciplinary proceedings Finally, one commenter suggested that the annual security report is unlikely to be effective or to influence behavior because it is just one of numerous disclosures that institutions must provide and is easily overlooked.

Discussion: With regard to the commenters' concerns that campus safety- and security-related statistics and policies can be difficult to find, we note that this information must all be contained in an institution's annual security report. Institutions must distribute the annual security report every year to all enrolled students and employees through appropriate publications and mailings, including direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail; by providing a publication directly to each individual; or by posting it on the institution's Web site. Institutions must also distribute the annual security report to all prospective students and employees upon request.

Although institutions are not required by the Clery Act to post their annual security report on their Web site, the Department collects the crime statistics from institutions each fall and makes the data available to the public on the

Department's College Navigator Web site at www.collegenavigator.gov, and on the Office of Postsecondary Education's Data Analysis Cutting Tool at http:// www.ope.ed.gov/security/. We encourage institutions that post annual security reports on their Web site to place related information on the same central Web site or to provide a link to this related information from the site where the annual security report is posted so individuals will have easy access to the institution's policies. Although not required by the Clery Act, consistent with Federal civil rights laws, institutions must take appropriate measures to ensure that all segments of its community, including those with limited English proficiency, have meaningful access to vital information, such as their annual security reports.

In response to the comments about requiring notification when an institution updates its campus security policies and procedures, we note that the Clery Act requires an institution to distribute its annual security report annually (by October 1 each year). If an institution changes its policies during the year, it should notify its students and employees. Institutions that publish their annual security reports on an Intra- or Internet site would be able to post the new version of any changed policies or procedures on a continuing basis throughout the year, and they could notify the campus community of the changes through a variety of means (such as, electronic mail, an announcement on the institution's home page or flyers).

Finally, although we understand the commenter's concern that the campus safety disclosures may be overlooked by students and employees, the commenter did not provide any recommendations for how to ensure that these disclosures are not overlooked.
Changes: None.

668.46(a) Definitions

Clery Geography

Comments: Several commenters supported the inclusion of a definition of ''Clery geography'' in the interest of making these regulations more user- friendly and succinct. A few commenters, however, raised some questions and concerns about the proposed definition. One commenter was unsure about what areas would be considered ''public property'' for Clery Act reporting purposes, particularly for institutions located in strip malls or office buildings, and requested additional clarification. Another commenter believed that the definition is confusing and suggested instead creating one definition pertaining to locations for which an institution must maintain crime statistics and another definition pertaining to locations for which an institution must include incidents in its crime log. A third commenter requested clarification about what the phrase ''within the patrol jurisdiction of the campus police or the campus security department'' would include.

Discussion: We appreciate the support from the commenters, and reiterate that we are not changing the long-standing definitions of ''campus,'' ''noncampus buildings or property,'' and ''public property'' in § 668.46(a). Instead, we have added the definition of ''Clery geography'' to improve the readability and understandability of the regulations. The definition of ''public property'' continues to include all public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus. The *Handbook for Campus Safety and Security Reporting* includes several examples of what would be considered a part of a school's ''Clery geography,'' including how to determine a school's ''public property,'' but we will consider including additional examples when we update that guidance in the future.

We disagree with the commenter that it would be more appropriate to separate the definition of ''Clery geography'' into two definitions. We believe that the definition as written makes it clear that institutions must consider campus,

noncampus, and public property locations when recording the statistics required under § 668.46(c), and that they must consider campus, noncampus, public property, and locations within the patrol jurisdiction of the campus police or campus security department when recording crimes in the crime log required under § 668.46(f). To clarify, the phrase ''patrol jurisdiction of the campus police or campus security department'' refers to any property that is regularly patrolled by the campus public safety office but that does not meet the definitions of campus, noncampus, or public property. These patrol services are typically provided pursuant to a formal agreement with the local jurisdiction, a local civic association, or other public entity.

Changes: None.

Consent

Comments: We received numerous comments regarding our decision not to define ''consent'' for the purposes of the Clery Act. Many of the commenters disagreed with the Department's conclusion that a definition of ''consent'' is not needed because, for purposes of Clery Act reporting, institutions are required to record all reported sex offenses in the Clery Act statistics and the crime log regardless of any issue of consent. The commenters strongly urged the Department to define ''consent'' in these final regulations to provide clarity for institutional officials and to promote consistency across institutions. The commenters noted that the definition of ''consent'' varies by locality, and that some States do not have a definition. These commenters believed that establishing a Federal definition in these regulations would inform State efforts to legislate on this issue. In States that do not have a definition of ''consent,'' some commenters argued, schools are left to determine their own definitions and have inappropriately deferred to local law enforcement for determinations about whether ''consent,'' was provided based on a criminal evidentiary standard.

Other commenters argued that including statistics about offenses in reports without considering whether there was consent ignores a critical part of the definition of some VAWA crimes, rendering the crime statistics over inclusive. In other words, they believed that not considering consent in the categorization of an incident would result in some actions being reported regardless of whether a key component of the crime existed.

Some other commenters believed that the Department should define ''consent'' because it is an essential part of education and prevention programming. They argued that, even if a definition is not needed for recording sex offenses, not having a definition ignores current conversations about campus sexual assault. Some of the commenters who supported including a definition of ''consent'' provided definitions for the Department's consideration. Several commenters recommended using the definition that the Department included in the draft language provided to the non-Federal negotiators at the second negotiating session. One commenter recommended defining ''consent'' as was proposed at the second negotiating session but making a slight modification to clarify that one's agreement to engage in a specific sexual activity during a sexual encounter can be revoked at any time. Another commenter made a similar recommendation but suggested clarifying that consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person and that incapacitation could include having an intellectual or other disability that prevents an individual from having the capacity to consent. One commenter suggested that, at a minimum, the Department should provide that the applicable jurisdiction's definition of ''consent'' applies for purposes of reporting under these regulations.

By contrast, some commenters agreed with the Department that a definition of ''consent'' should not be included in these regulations. These commenters urged the Department to provide guidance on the definition of ''consent,'' rather than establish a regulatory definition.

Discussion: During the second negotiation session, we presented draft language that would have defined ''consent'' to mean ''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 be able to 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. We continue to believe that this draft language is a valid starting point for other efforts to define consent or for developing education and prevention programming, and we will provide additional guidance where possible to institutions regarding consent.

However, we do not believe that a definition of consent is needed for the administration and enforcement of the Clery Act. Section 485(f)(1)(F)(i) of the HEA requires schools to include in their statistics crimes that are reported, not crimes that are reported and proven to have occurred. We reiterate that, for purposes of Clery Act reporting, all sex offenses that are reported to a campus security authority must be included 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.

We note the comments suggesting that a definition of ''consent'' was needed so institutions do not defer to law enforcement for determining whether there was consent. However, as discussed earlier, a definition of ''consent'' is not needed for purposes of reporting crimes under the Clery Act. If an institution needs to develop a definition of ''consent'' for purposes of its proceedings it can develop a definition that is appropriate to its administrative proceedings based on the definition we discussed at negotiated rulemaking sessions and definitions from experts in the field.

Changes: None.

Dating Violence

Comments: We received numerous comments related to the definition of ''dating violence.'' In particular, the commenters addressed: The basis for determining whether the victim and the perpetrator are in a social relationship of a romantic or intimate nature; what would be considered ''violence'' under this definition; and how to distinguish between dating violence and domestic violence.

Social Relationship of a Romantic or Intimate Nature

Several individuals commented on the proposal in the NPRM that, for Clery Act purposes, the determination of whether or not the victim and the perpetrator were in a social relationship of a romantic or intimate nature would be made based on the reporting party's statement and taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Some of the commenters expressed support for this provision. While supporting this approach, other commenters stressed the need for the institution to place significant weight on the reporting party's statement and to allow for a balanced and flexible determination of the relationship status. However, these commenters were also concerned that institutional officials making judgments about the length of the relationship, the type of relationship, and the frequency of the relationship may omit dating relationships where the reporting party describes the relationship as ''talking,'' ''hanging out,'' ''seeing one another,'' ''hooking up,'' and so on. Along these lines, some of the commenters recommended expanding the definition of ''dating''

to encompass social or romantic relationships that are casual or serious, monogamous or non- monogamous, and of long or short duration.

One commenter raised concerns about using a third party's assessment when determining whether the victim and the accused were in a social relationship of a romantic or intimate nature. The commenter argued that, absent the victim's characterization of the relationship, third party reporters would be unable to make an accurate evaluation of the relationship and that statistics would therefore be inaccurate. The commenter suggested that it would be inappropriate to rely on a third party's characterization of a relationship, and that in this situation the incident should be included as a ''sex offense'' and not as dating violence. Further, the commenter asserted that the lack of State standards for determining what constitutes dating violence, combined with the need to determine the nature of a relationship, would complicate the question of how to categorize certain incidents and could lead to inconsistencies in statistics, making comparisons across institutions difficult.

Inclusion of Psychological or Emotional Abuse

Some commenters supported the proposal to define ''dating violence'' to include sexual or physical violence or the threat of such abuse. These commenters expressed concerns about how institutions would operationalize a definition that included more subjective and less concrete behavior, such as psychological and emotional abuse. However, numerous commenters raised concerns about our proposal not to include psychological or emotional abuse in the definition of ''dating violence.'' Many of these commenters urged the Department to expand the definition of ''dating violence'' to explicitly include emotional and psychological abuse. The commenters argued that an expanded definition would more accurately reflect the range of victims' experiences of abuse and recognize the serious and disruptive impact that these forms of violence have. The commenters believed that the reference to the threat of sexual or physical abuse did not sufficiently describe these forms of violence and that victims would not feel comfortable reporting or pressing charges for cases in which they were psychologically or emotionally abused if the definition did not explicitly speak to their experiences. Along these lines, some commenters believed that not including these forms of abuse would exclude significant numbers of victimized students from the statistics, and they recommended revising the definition to encompass the range of abuse that all victims face.

Some of the commenters argued that it is inappropriate to exclude psychological or emotional abuse from the definition of ''dating violence'' simply because they are ''invisible'' forms of violence. In particular, they noted that a victim's self-report of sexual or physical abuse would be included, even if that abuse is not immediately and visibly apparent. They argued that, similarly, a victim's self- report of emotional or psychological abuse should also be included in an institution's statistics.

Other commenters disagreed with the Department's view that including emotional and psychological abuse would be inconsistent with the statute. In arguing for a broader interpretation of ''violence'' for the purposes of ''dating violence,'' they cited Supreme Court Justice Sotomayor's opinion for the Court in *U.S. v. Castleman,* 134 S.Ct. 1405 (2014) that, ''whereas the word 'violent' or 'violence' standing alone connotes a substantial degree of force; that is not true of 'domestic violence.' 'Domestic violence' is a term of art encompassing acts that one might not characterize as violent in a nondomestic context.'' 134 S.Ct. at 1411.

Some of the commenters were concerned that the proposed regulations would set an inadequate starting point for prevention programming by not portraying psychological or emotional abuse as valid forms of violence on which to focus prevention efforts, even though research indicates that emotional or psychological abuse often escalates to physical or sexual violence. They argued that it was important to recognize psychological and emotional abuse as forms of violence

when training students to look for, and to intervene when they observe, warning signs of behavior that could lead to violence involving force.

Relationship Between Dating Violence and Domestic Violence

A few commenters raised concerns about the statement in the definition of ''dating violence'' that provides that dating violence does not include acts covered under the separate definition of ''domestic violence.'' Some commenters expressed support for this approach. However, one commenter argued that using this approach would result in most dating violence incidents being included in the domestic violence category. As a result, institutions would report very few dating violence crimes. This commenter recommended specifically identifying which types of relationship violence would be included under dating violence rather than including this ''catch-all'' provision.

One commenter was concerned that defining ''dating violence'' as ''violence,'' but defining ''domestic violence'' as ''a felony or misdemeanor crime of violence'' would create a higher threshold to report domestic violence than dating violence and would treat the two types of incidents differently based on the status of the parties involved. The commenter believed that, from a compliance perspective, the only determining factor between recording an incident as dating violence or domestic violence should be the relationship of the parties, not the nature of the underlying incident. As a result, the commenter suggested that institutions should be required to count dating violence and domestic violence crimes only where there is a felony or misdemeanor crime of violence. The commenter recommended that the Department provide additional guidance for institutions about what would constitute ''violence'' when the incident is not a felony or misdemeanor crime of violence.

Discussion:

Social Relationship of a Romantic or Intimate Nature

We appreciate the commenters' support for our proposal that the determination of whether or not the victim and the perpetrator were in a social relationship of a romantic or intimate nature would be made based on the reporting party's statement and taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Institutions are responsible for determining whether or not an incident meets the definition of dating violence, and they must consider the reporting party's characterization of the relationship when making that determination. We stress that generational or other differences in terminology and culture may mean that a reporting party may describe a dating relationship using different terms from how an institutional official might describe ''dating.'' When the reporting party asserts that there was a dating relationship, institutions should err on the side of assuming that the victim and the perpetrator were in a dating relationship to avoid incorrectly omitting incidents from the crime statistics and the crime log. The victim's use of terms such as ''hanging out'' or ''hooking up'' rather than ''dating,'' or whether or not the relationship was ''monogamous'' or ''serious'' should not be determinative.

We disagree with the commenter who was concerned that a third party who makes a report would be unable to accurately characterize a relationship. Third parties who are reporting an incident of dating violence are not required to use specific terms to characterize the relationship or to characterize the relationship at all; however, they should be asked whether they can characterize the relationship. Ultimately, the institution is responsible for determining whether the incident is an incident of dating violence. Furthermore, the commenter's suggestion to classify all third-party reports as sexual assaults is unworkable because dating violence does not always involve a sexual assault. Lastly, this commenter's concern that the lack of State laws criminalizing dating violence will lead to inaccurate statistics is unwarranted because schools must use the definition of ''dating violence'' in these final regulations when compiling their statistics.

Inclusion of Psychological or Emotional Abuse

Although we fully support the inclusion of emotional and psychological abuse in definitions of ''dating violence'' used for research, prevention, victim services, or intervention purposes, we are not persuaded that they should be included in the definition of ''dating violence'' for purposes of campus crime reporting. We are concerned that such a broad definition of ''dating violence'' would include some instances of emotional and verbal abuse that do not rise to the level of ''violence'' which is a part of the statutory definition of dating violence under VAWA. With respect to the Supreme Court's opinion in *U.S. v. Castleman,* Justice Sotomayor's statement was made in a very different context and that case, which interpreted an entirely different statute, is in no way controlling here. Furthermore, we continue to believe that including emotional and psychological abuse in the definition would pose significant challenges in terms of compliance and enforcement of these provisions.

Relationship Between Dating Violence and Domestic Violence

We disagree with the recommendation to remove the provision specifying that dating violence does not include acts covered under the definition of domestic violence. This provision is needed to prevent counting the same incident more than once, because incidents of dating violence include a subset of incidents that also meet the definition of domestic violence.

Lastly, in response to the concern that the threshold for an incident to meet the definition of ''domestic violence'' is higher than for ''dating violence,'' we note that this aspect of the definitions is consistent with the definitions in section 40002(a) of the Violence Against Women Act of 1994. We also note that an incident that does not constitute a felony or misdemeanor crime of violence committed by an individual in a relationship specified in the definition of ''domestic violence'' nevertheless could be recorded as dating violence. We believe that this would still provide valuable information about the extent of intimate partner violence at the institution.

Changes: None.

Domestic Violence

Comments: The commenters generally supported the proposed definition of ''domestic violence.'' However, one commenter believed that the definition, as written, would require institutions in some States to include incidents between roommates and former roommates in their statistics because they would be considered household members under the domestic or family laws of those jurisdictions. This commenter was concerned about inadvertently capturing situations in which two individuals are living together, but are not involved in an intimate relationship in the statistics.

Discussion: We appreciate the commenters' support. With regard to the comment about roommates, the final definition of ''domestic violence,'' consistent with the proposed definition, requires more than just two people living together; rather, the people cohabitating must be spouses or have an intimate relationship.

Changes: None.

FBI's UCR Program

Comments: A few commenters expressed support for including this definition, agreeing that it added clarity to the regulations.

Discussion: We appreciate the commenters' support.

Changes: None.

Hate Crime

Comments: A few commenters supported the inclusion of a definition of ''hate crime'' in § 668.46(a) to improve the clarity of these regulations. The commenters also supported the inclusion of gender identity and national origin as categories of bias that would serve as the basis for identifying a hate crime, as discussed under ''Recording hate crimes.''

Discussion: We appreciate the commenters' support.

Changes: None.

Hierarchy Rule

Comments: The commenters generally supported the inclusion of a definition of the term ''Hierarchy Rule'' in § 668.46(a). One commenter, however, recommended that we clarify in the definition that a case of arson is an exception to the rule that when more than one offense is committed during a single incident, only the most serious offense is counted. The commenter said that arson is always counted.

Discussion: We appreciate the commenters' support. The commenter is correct that there is a general exception to the Hierarchy Rule in the Summary Reporting System from the FBI's UCR Program for incidents involving arson. When multiple reportable incidents are committed during the same incident in which there is also arson, institutions must report the most serious criminal offense along with the arson. We have not made the treatment of arson explicit in the definition of ''Hierarchy Rule,'' however, because we believe that it is more appropriate to state the general rule in the definitions section and clarify how arson must be recorded in § 668.46(c)(9), which explains how institutions must apply the Hierarchy Rule. Please see ''Using the FBI's UCR Program and the Hierarchy Rule'' for additional discussion.

Changes: None.

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

Comments: Many commenters strongly supported the proposed definition of ''programs to prevent dating violence, domestic violence, sexual assault, and stalking.'' They believed that the definition would promote the development of effective prevention programs that focus on changing social norms and campus climates instead of focusing on preventing single incidents of abuse from occurring, and it would promote programs that do not engage in stereotyping or victim blaming. In particular, many commenters expressed support for the language requiring that an institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking be culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome.

Other commenters recommended several changes to the definition. Several commenters recommended requiring that an institution's prevention programs be informed by research and assessed for value, effectiveness or outcome, rather than allowing one or the other. One commenter, although agreeing that it is important for programs to be research- based, stressed the need to identify the source of research and what would qualify as ''research-based.'' This commenter was also concerned that institutions without the funding to support home-grown prevention education staff would use ''check-the- box'' training offered by third party training and education vendors to meet this requirement.

One commenter supported the definition but urged the Department to explicitly require institutions to include programs focused on the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community to meet this requirement. The commenter believed that it is important to name LGBTQ community programs in this definition because evidence suggests that LGBTQ students are frequently targets of sexual violence. Several other commenters stressed that prevention programs need to address the unique barriers faced by some of the communities within an institution's population.

One commenter stated that computer-based prevention programs can be effective, but believed that such training would not satisfy the requirement that prevention training be comprehensive, intentional, and integrated. Another commenter stated that the regulations should specify that a ''one-time'' training does not comply with the definition because a comprehensive prevention framework requires an ongoing prevention strategy, in partnership with local rape crisis centers or State sexual assault coalitions, or both.

One commenter was concerned that the phrases ''culturally relevant'' and ''informed by research or assessed for value, effectiveness, or outcome'' were ambiguous, and that it could cost institutions significant time and resources to develop programs that meet this definition. Several commenters stressed the need for the Department to provide information on best practices and further guidance about effective programs to support institutions in complying with the definition, to help ensure that programming reaches all parts of an institution, and to help minimize burden. Other commenters stated that the definition exceeded the scope of the statute and would be time- consuming and expensive to implement, especially for small institutions.

Discussion: We appreciate the commenters' support, and we believe that this definition is consistent with the statute and will serve as a strong foundation for institutions that are developing primary prevention and awareness programs and ongoing prevention and awareness campaigns, as required under § 668.46(j). We agree with the commenters that these programs should focus on changing the social norms and stereotypes that create conditions in which sexual violence occurs, and that these programs must be tailored to the individual communities that each school serves to ensure that they are culturally relevant and inclusive of, and responsive to, all parts of a school's community. As discussed in the NPRM, this definition is designed to provide that institutions must tailor their programs to their students' and employees' needs (i.e. that the programs must be ''culturally relevant''). We note that these programs include ''ongoing prevention and awareness campaigns,'' which, as defined in § 668.46(j)(2)(iii), requires that programs be sustained over time.

We do not agree with the recommendations to require that these programs be both informed by research and assessed for value and that we set standards for the research or prohibit certain forms of training. During the negotiations, the negotiators discussed the extent to which an institution's prevention programs must be based on research and what types of research would be acceptable. Ultimately, they agreed that ''research'' should be interpreted broadly to include research conducted according to scientific standards as well as assessments for efficacy carried out by institutions and other organizations. There is a relative lack of scientific research showing what makes programs designed to prevent dating violence, domestic violence, sexual assault, and stalking effective. Adopting the limitations suggested by the commenter could significantly limit the types of programs that institutions develop, and could preclude the use of promising practices that have been assessed for value, effectiveness, or outcome but not subjected to a scientific review.

We believe that this definition will help to guard against institutions using approaches and strategies that research has proven to be ineffective and that reinforce and perpetuate stereotypes about gender roles and behaviors, among other things.

We do not agree with the recommendations to specify in the definition that these programs must include a component focused on LGBTQ students. We believe that the requirement that institutions consider the needs of their campus communities and be inclusive of diverse communities and identities will ensure that the programs include LGBTQ students, students with disabilities, minority students, and other individuals.

With respect to the comment asking whether computer-based programming could be ''comprehensive, intentional, and integrated'', the statute requires institutions to provide these programs and to describe them in their annual security reports. However, the Department does not have the authority to mandate or prohibit the specific content or mode of delivery for these programs or to endorse certain methods of delivery (such as computer based programs) as long as the program's content meets the definition of ''programs to prevent dating violence, domestic violence, sexual assault, and stalking.'' Similarly, institutions may use third party training vendors so long as the actual programs offered meet the definitions for ''programs to prevent dating violence, domestic violence, sexual assault, and stalking.''

We encourage institutions to draw on the knowledge and experience of local rape crisis centers and State sexual assault coalitions when developing programs. Over time, we hope to share best practices based on research on effective approaches to prevention that institutions may use to inform and tailor their prevention programming.

Although we understand institutions' concerns about the burden associated with developing prevention programs, the statute requires institutions to develop these programs. In terms of providing programs that meet this specific definition, we reiterate that we are committed to providing institutions with guidance where possible to clarify terms such as ''culturally relevant'' and to minimize the additional costs and burden. As discussed previously under ''General,'' the White House Task Force to Protect Students from Sexual Assault has developed guidance and continues to develop model policies and best practices related to preventing sexual assault and intimate partner violence on college campuses. We expect that these resources will help schools to develop the types of programs that these regulations require, resulting in less burden.

Changes: None.

Sexual Assault

Comments: The commenters generally supported our proposal to include this definition in the regulations. They agreed that specifying that, for the purposes of the Clery Act statistics, ''sexual assault'' includes rape, fondling, incest, or statutory rape, as those crimes are defined in the FBI's UCR program, would clarify the regulations and ensure more consistent reporting across institutions.

Discussion: We appreciate the commenters' support.

Changes: None.

Stalking

Comments: The commenters generally supported the proposed definition of ''stalking.'' In particular, many of the commenters supported defining the term ''course of conduct'' broadly to include all of the various forms that stalking can take and the range of devices or tactics that perpetrators use, including electronic means. These commenters also supported the proposed definition of ''reasonable person'' as a reasonable person under similar circumstances and with similar identities to the victim.

One commenter suggested modifying the definition of stalking to include consideration of the extent to which the victim indicates that the stalking has affected them or interfered with their education.

Other commenters raised concerns about the proposed definition. Some commenters believed that the proposed definition was overly broad. One commenter argued that the proposed definition was inconsistent with the description of stalking in 18 U.S.C. 2261A, as amended by VAWA, which prohibits actions committed with a criminal intent to kill, injure, harass, or intimidate. This commenter believed that the final regulations should require that to be included as stalking in the institution's statistics, there had to be a determination that the perpetrator had the intent to cause substantial emotional distress rather than requiring that the course of conduct have the effect of causing substantial emotional distress. Otherwise, the commenter believed that the proposed definition raised First Amendment concerns by impermissibly restricting individual speech.

Lastly, several commenters expressed concern that the proposed definition of ''substantial emotional distress'' risked minimizing the wide range of responses to stalking and trauma. The commenters believed that institutions would overlook clear incidences of stalking in cases where the victim is not obviously traumatized or is reacting in a way that does not comport with the decision maker's preconceived expectations of what a traumatic reaction should look like. Along these lines, some commenters believed that the definition was too subjective and were concerned that it could make it challenging for institutions to investigate a report of stalking.

Discussion: We appreciate the commenters' support for our proposed definition. The statutory definition of ''stalking'' in section 40002(a) of the Violence Against Women Act of 1994 (which the Clery Act incorporates by reference) does not refer to or support taking into account the extent to which the stalking interfered with the victim's education.

We disagree with the commenters who argued that the definition of stalking is overly broad, and raises First Amendment concerns. Section 304 of VAWA amended section 485(f)(6)(A) of the Clery Act to specify that the term ''stalking'' has the meaning given that term in section 40002(a) of the Violence Against Women Act of 1994. Thus, the HEA is clear that the definition of ''stalking'' in section 40002(a) of the Violence Against Women Act of 1994 should be used for Clery Act purposes— *not* the definition in the criminal code (18 U.S.C. § 2261A). Section 40002(a) of the Violence Against Women Act of 1994 defines ''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.'' In these final regulations, we have defined the statutory phrase ''course of conduct'' broadly to capture the wide range of words, behaviors, and means that perpetrators use to stalk victims, and, as a result, cause their victims to fear for their personal safety or the safety of others or suffer substantial emotional distress. This definition serves as the basis for determining whether an institution is in compliance with the Clery Act and does not govern or limit an individual's speech or behavior under the First Amendment.

We appreciate the commenters' concern that the definition would lead institutions to undercount the number of stalking incidents based on a misunderstanding of the victim's reaction. We encourage institutions to consider the wide range of reactions that a reasonable person might have to stalking. Institutions should not exclude a report of stalking merely

because the victim's reaction (or the description of the victim's reaction by a third party) does not match expectations for what substantial emotional distress might look like.

Changes: None.

Sec. 668.46(b) Annual Security Report

Policies Concerning Campus Law Enforcement (§ 668.46(b)(4))

Comments: The commenters generally supported the proposed changes in § 668.46(b)(4) that would: Clarify the term ''enforcement authority of security personnel;'' require institutions to address in the annual security report any memoranda of understanding (MOU) in place between campus law enforcement and State and local police agencies; and clarify that institutions must have a policy that encourages the reporting of crimes to campus law enforcement when the victim elects to or is unable to report the incident. They believed that these changes would clearly define for students and employees the different campus and local law enforcement agencies and the reporting options based on Clery geography, improve transparency about any relevant MOUs, and empower victims to make their own decisions about whether or not to report an incident.

One commenter requested guidance on the applicability of § 668.46(b)(4) to smaller institutions and institutions without campus law enforcement or campus security personnel.

Several commenters raised concerns about the phrase ''elects to or is unable to make such a report'' in §668.46(b)(4)(iii). Some believed that the language could be confusing without additional context and could be incorrectly interpreted to include situations in which a victim is unwilling to make a report. These commenters recommended clarifying in the final regulations that ''unable to make such a report'' means physically or mentally incapacitated and does not refer to situations in which someone may be unwilling—i.e., psychologically unable—to report because of fear, coercion, or any other reason. One commenter asked how this provision would apply in situations in which an institution is subject to mandatory reporting of crimes against children or individuals with certain disabilities occurring on an institution's Clery geography.

Several commenters urged the Department to mandate, or at a minimum, encourage institutions to make clear to students and employees what opportunities exist for making confidential reports for inclusion in the Clery Act statistics, for filing a title IX complaint with the institution, or for obtaining counseling or other services without initiating a title IX investigation by the institution or a criminal investigation. These commenters explained that providing information about the range of options for reporting to campus authorities would empower victims to make informed choices and would foster a climate in which more victims come forward to report. Along these lines, one commenter requested that the Department provide a model or suggestion for a reporting regime that institutions could use to satisfy the confidential reporting provisions in the Clery Act and title IX.

Discussion: We appreciate the commenters' support for these provisions. All institutions participating in the title IV, HEA programs, regardless of size or whether or not they have campus law enforcement or security personnel, must address their current policies concerning campus law enforcement in their annual security report. This information will vary significantly in terms of detail, content, and complexity based on the school's particular circumstances. However, all institutions must address each of the elements of this provision. If an institution does not have a policy for one of these elements because, for example, it does not have campus law enforcement staff, the institution must provide this explanation.

With regard to the concerns about the phrase ''elects to or is unable to make such a report,'' we note that the negotiators discussed this issue extensively and ultimately agreed to include the statutory language of ''unable to report,'' in the regulations. The negotiators believed that this language captured both physical and mental incapacitation. The committee did not intend for ''unable to report'' to include situations where a victim is unwilling to report, consistent with the commenter's suggestion. We believe that this language appropriately strikes a balance between empowering victims to make the decision about whether and when to report a crime and encouraging members of the campus community to report crimes of which they are aware.

Additionally, as required under § 668.46(c)(2), all crimes that occurred on or within an institution's Clery geography that are reported to local police or a campus security authority must be included in the institution's statistics, regardless of whether an institution is subject to mandatory reporting of crimes against children or individuals with certain disabilities. The requirement in § 668.46(c)(2) is unaffected by § 668.46(b)(4)(iii), which addresses an institution's policies on encouraging others to accurately report crimes.

We agree with the commenters that it is important for institutions to make clear to students and employees how to report crimes confidentially for inclusion in the Clery Act statistics. We note that institutions must address policies and procedures for victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics. The Clery Act does not require institutions to include in their annual security report procedures for filing a title IX complaint with the institution or how to obtain counseling or other services without initiating a title IX investigation by the institution or a criminal investigation. The White House Task Force to Protect Students from Sexual Assault has developed some materials to support institutions in complying with the requirements under the Clery Act and title IX, and we intend to provide additional guidance in the *Handbook for Campus Safety and Security Reporting.*

Changes: None.

Procedures Victims Should Follow If a Crime of Dating Violence, Domestic Violence, Sexual Assault, or Stalking Has Occurred (§ 668.46(b)(11)(ii))

Comments: The commenters expressed support for the requirement that institutions inform victims of dating violence, domestic violence, sexual assault, or stalking of: 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; their options and how to notify law enforcement authorities; and their option to decline to notify those authorities. The commenters believed that providing this information would dramatically improve the clarity and accessibility of criminal reporting processes for students and employees, and they strongly urged the Department to retain these provisions.

Some commenters suggested expanding these provisions to require institutions to provide additional information to victims. One commenter recommended requiring institutions to include information about where to obtain a forensic examination at no cost when explaining the importance of preserving evidence. The commenter further recommended requiring institutions to inform victims that completing a forensic examination does not require someone to subsequently file a police report.

Another commenter recommended revising § 668.46(b)(11)(ii)(C) to also require institutions to inform victims of how to request institutional protective measures and pursue disciplinary sanctions against the accused, including filing a title IX complaint with the institution.

One commenter recommended requiring institutions to go beyond assisting a victim in notifying law enforcement and to also help them while they are working with prosecutors and others in the criminal justice system by allowing flexible scheduling for completing papers and exams and by providing transportation, leaves of absence, or other supports.

Another commenter recommended modifying § 668.46(b)(11)(ii)(D) to further require institutions to disclose the definitions of dating violence, domestic violence, sexual assault, stalking, and consent that would apply if a victim wished to obtain orders of protection, ''no-contact'' orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by the institution.

Finally, one commenter was unsure about how institutions should implement § 668.46(b)(11)(ii)(C)(*3*) which would require institutions to explain to victims that they can decide not to notify law enforcement authorities, including on-campus and local police. The commenter was particularly concerned about how this would be applied in States with mandatory reporting requirements.

Discussion: We appreciate the commenters' support. We believe that the requirement that institutions provide this information will improve the clarity and accessibility of criminal reporting processes for students and employees.

Institutions must provide information to victims about the importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or that may be helpful in obtaining a protection order. The statute does not require institutions to provide information specifically about where to obtain forensic examinations; however, we urge institutions to provide this information when stressing the importance of preserving evidence. We encourage institutions to make clear in their annual security report that completing a forensic examination would not require someone to file a police report. While some victims may wish to file a police report immediately after a sexual assault, others may wish to file a report later or to never file a police report. Regardless, institutions may wish to advise students that having a forensic examination would help preserve evidence in the case that the victim changes their mind about how to proceed. For further discussion on forensic evidence please see ''Services for victims of dating violence, domestic violence, sexual assault, or stalking''.

With regard to the recommendation to modify § 668.46(b)(11)(ii)(C) to require institutions to inform victims of how to request institutional protective measures, we note that this provision is intended to ensure that victims understand that they can choose whether or not to notify appropriate law enforcement authorities, and that if they choose to notify those authorities, campus authorities will help them to do so. We do not believe that information about how to request institutional protective measures belongs in this provision. However, an institution must provide victims of dating violence, domestic violence, sexual assault, and stalking with written notification that it will make accommodations and provide protective measures for the victim if requested and reasonably available under § 668.46(b)(11)(v). As part of this notification, an institution must inform victims of how to request those accommodations or protective measures.

Additionally, under § 668.46(b)(11)(vi) and (k), an institution must include information about its disciplinary procedures for allegations of dating violence, domestic violence, sexual assault, and stalking in its annual security report. We agree with the commenter that this statement should include information for how to file a disciplinary complaint, and we have modified § 668.46(k)(1)(i) to make this clear.

We believe that the provisions in § 668.46(b)(11)(ii) and (v) adequately address the commenter's concern about providing institutional supports for victims who opt to file a criminal complaint after dating violence, domestic violence, sexual assault, or stalking. In particular, institutions must provide accommodations related to the victim's academic, living,

transportation, and working situation if the victim requests those accommodations and if they are reasonably available. Institutions may provide additional accommodations. We strongly encourage institutions to provide these types of accommodations to support students while they are involved with the criminal justice system, and we encourage them to work with victims to identify the best ways to manage those accommodations.

We disagree with the recommendation to require institutions to provide the definitions of dating violence, domestic violence, sexual assault, stalking, and consent that would apply for someone to obtain a protection order or similar order from a court or the institution. This provision is intended to ensure that individuals understand what an institution's responsibilities are for enforcing these types of orders. Jurisdictions vary widely in the standards that they use when issuing a protection order or similar order, and it would not be reasonable to expect an institution to identify all of these possible standards in its annual security report. Institutions must provide the definitions of dating violence, domestic violence, sexual assault, and stalking, as defined in § 668.46(a), as well as the definitions of dating violence, domestic violence, sexual assault, stalking, and consent (in reference to sexual activity) in their jurisdiction in their annual security report. We believe that it will be clear in the annual security report what definitions would apply if an institution is asked to issue a protection order or similar order and that additional clarification in § 668.46(b)(11)(ii)(D) is not needed.

Lastly, these regulations require institutions to explain in their annual security report a victim's options for involving law enforcement and campus authorities after dating violence, domestic violence, sexual assault, or stalking has occurred, including the options to notify proper law enforcement authorities, to be assisted by campus authorities in notifying law enforcement authorities, and to decline to notify law enforcement authorities. This requirement does not conflict with an institution's obligation to comply with mandatory reporting laws because the regulatory requirement relates only to the victim's right not to report, not to the possible legal obligation on the institution to report.

As discussed previously under ''Policies concerning campus law enforcement,'' institutions must describe any policies or procedures in place for voluntary, confidential reporting of crimes for inclusion in the institution's Clery Act statistics. Although this requirement applies only to Clery Act crimes, institutions may wish to reiterate or reference their policies and procedures that are specific to dating violence, domestic violence, sexual assault, and stalking to ensure that victims are aware of where they can go to report any crime confidentially.

Changes: We have revised § 668.46(k)(1)(i) to make it explicit that institutions must also provide information in the annual security report on how to file a disciplinary complaint.

Protecting Victim Confidentiality (§ 668.46(b)(11)(iii))

Comments: The commenters generally supported requiring institutions to address, in their annual security report, how they will protect the confidentiality of victims and other necessary parties when completing publicly available recordkeeping requirements or providing accommodations or protective measures to the victim. These commenters asserted that protecting victim confidentiality is critical to efforts to support a campus climate in which victims feel safe coming forward. Additionally, several commenters expressed support for incorporating the definition of ''personally identifying information'' in section 40002(a)(20) of the Violence Against Women Act of 1994 in these regulations.

Several commenters, however, raised some concerns and questions about this requirement. Some commenters believed that the Department should limit institutions' discretion in determining whether maintaining a victim's confidentiality would impair the ability of the institution to provide accommodations or protective measures. These commenters believed that institutions should have to obtain the informed, written, and reasonably time-limited consent of the victim before sharing personally identifiable information that they believe to be necessary to provide the accommodation or

protective measures or, at a minimum, notify the victim when it determines that the disclosure of that information is needed.

A few commenters noted that it can be very difficult to provide a victim with total confidentiality. One commenter asserted that, in some cases, merely including the location of a rape, for instance, as part of a timely warning, can inadvertently identify the victim.

Another commenter noted that some institutions, particularly those with very small populations or very limited numbers of reportable crimes, might not be able to achieve the goals of the Clery Act without disclosing the victim's identity. The commenters requested guidance on how to implement the proposed requirements in these circumstances, when it might be impossible to fully protect confidentiality.

Discussion: We appreciate the commenters' support. We believe that this provision makes it clear that institutions must protect a victim's confidentiality while also recognizing that, in some cases, an institution may need to disclose some information about a victim to a third party to provide necessary accommodations or protective measures. Institutions may disclose only information that is necessary to provide the accommodations or protective measures and should carefully consider who may have access to this information to minimize the risk to a victim's confidentiality. We are not requiring institutions to obtain written consent from a victim before providing accommodations or protective measures, because we do not want to limit an institution's ability to act quickly to protect a victim's safety. However, we strongly encourage institutions to inform victims before sharing personally identifiable information about the victim that the institution believes is necessary to provide an accommodation or protective measure.

As discussed under ''Timely warnings,'' we recognize that in some cases, an institution may need to release information that may lead to the identification of the victim. We stress that institutions must balance the need to provide information to the campus community while also protecting the confidentiality of the victim to the maximum extent possible.

Change: None.

Services for Victims of Dating Violence, Domestic Violence, Sexual Assault, or Stalking (§ 668.46(b)(11)(iv))

Comments: The commenters expressed support for the proposed provision requiring institutions to provide victims of dating violence, domestic violence, sexual assault, and stalking with information about available services and assistance both on campus and in the community that could be helpful and informative. In particular, several commenters supported the requirement that institutions provide victims with information about visa and immigration services. Some of the commenters recommended also requiring institutions to provide student victims with financial aid information, noting that this can be critical to a student's persistence in higher education.

Discussion: We appreciate the commenters' support. We also agree that it is critical for schools to provide student victims with financial aid- related services and information, such as information about how to apply for a leave of absence or about options for addressing concerns about loan repayment terms and conditions and are revising the regulations accordingly. An institution must address in its annual security report what services are available. This notification should provide information about how a student or employee can access these services or request information, such as providing a contact person whom student victims may contact to understand their options with regard to financial aid.

We also note that information about health services that are available on campus and in the community would include information about the presence of, and services provided by, forensic nurses, if available. We recommend that institutions

provide information to victims about forensic nurses who may be available to conduct a forensic examination, but we also suggest that they inform victims that having a forensic examination does not require them to subsequently file a police report. Including this information will improve the likelihood that victims will take steps to have evidence preserved in case they file criminal charges or request a protection order.

Additionally, we encourage institutions to reach out to organizations that assist victims of dating violence, domestic violence, sexual assault, and stalking, such as local rape crisis centers and State and territorial coalitions against domestic and sexual violence, when developing this part of the annual security report. These types of organizations might provide resources and services to victims that can complement or supplement the services available on campus.

Changes: We have added ''student financial aid'' to the list of services about which institutions must alert victims.

Accommodations and Protective Measures for Victims of Dating Violence, Domestic Violence, Sexual Assault, or Stalking (§ 668.46(b)(11)(v))

Comments: The commenters strongly supported proposed § 668.46(b)(11)(v), which would require institutions to specify in their annual security reports that they will provide written notification to victims of dating violence, domestic violence, sexual assault, or stalking of accommodations available to them and that the institution will provide those accommodations if requested by the victim, regardless of whether the victim chooses to report the crime to the campus public safety office or to local law enforcement. The commenters stated that these accommodations are critical for supporting victims and for reducing barriers that can lead victims to drop out of school or leave a job.

Some of the commenters recommended strengthening this provision by requiring institutions to also disclose the process the victim should use to request accommodations. One commenter asked for guidance about what schools could require from a student who requests accommodations and whether it would be appropriate to expect that the student will disclose sufficient information to determine the potential nature of the crime and whether or not the student has sought support, such as counseling, elsewhere. Other commenters requested additional guidance around the meaning of ''options for'' accommodations and what would be considered ''reasonably available.'' Additionally, some commenters noted that institutions could offer accommodations other than those listed in the regulations.

Discussion: We appreciate the commenters' support. We agree that the proposed regulations did not make it sufficiently clear that, in notifying victims of dating violence, domestic violence, sexual assault, and stalking that they may request accommodations, institutions must specify how to request those accommodations. We have clarified the regulations to provide that institutions must explain how to request accommodations and protective measures. In complying with this requirement, we expect institutions to include the name and contact information for the individual or office that would be responsible for handling these requests so that victims have easy access to this information.

We note that institutions must provide victims with written notification of their option to request changes in their academic, living, transportation, and working situations, and they must provide any accommodations or protective measures that are reasonably available once the student has requested them, regardless of whether the student has requested or received help from others or whether the student provides detailed information about the crime. An accommodation or protective measure for a victim must be reasonably available, and what is ''reasonably available'' must be determined on a case-by-case basis. Institutions are expected to make reasonable efforts to provide acceptable accommodations or protective measures, but if a change of living or academic situation or protective measure requested by a victim is unreasonable, an institution is not required to make the change or provide the protective measure.

However, institutions are not required to list all examples of acceptable accommodations or protective measures in the annual security report.

We stress that institutions may provide information about accommodations or protective measures beyond those included in these final regulations.

Changes: We have revised § 668.46(b)(11)(v) to specify that an institution must notify victims of dating violence, domestic violence, sexual assault, and stalking of how to request changes to academic, living, transportation, and working situations and how to request protective measures.

Written Explanation of Rights and Options (§ 668.46(b)(11)(vii))

Comments: Several commenters supported providing victims of dating violence, domestic violence, sexual assault, or stalking with written notification of their rights and options. A few other commenters made suggestions for modifying or strengthening this provision. One commenter suggested specifying in the regulations that institutions may meet their obligations by providing a victim with a copy of the annual security report, noting that the annual security report contains all of the information required to be in the written notification. Another commenter believed that this written notification should be provided to all students each year, not just to those who are victims of dating violence, domestic violence, sexual assault, or stalking, and that the notification should be posted on line. The commenter opined that highlighting victims' rights could help to educate the campus community and suggested that it could also serve as a deterrent to potential assailants by reminding them of the possibility of institutional sanctions and criminal prosecution.
Lastly, one commenter recommended requiring institutions to provide students and employees who are accused of perpetrating dating violence, domestic violence, sexual assault, or stalking with clear, detailed information about their rights and options, particularly with regard to institutional disciplinary procedures.

Discussion: We appreciate the commenters' support for this provision. We disagree with the commenter who suggested that institutions should be considered in compliance with this provision if they provide a victim with a copy of the annual security report. Institutions must distribute the annual security report to all enrolled students and current employees and to all prospective students and employees. However, the annual security report contains a great deal of information beyond an institution's campus sexual assault policies. We believe that Congress intended for institutions to provide a specific document to individuals who report that they were victims of dating violence, domestic violence, sexual assault, or stalking with information that they would specifically want or need to know. This targeted information would be more helpful and supportive for victims than directing them to the longer, broader annual security report. For the general campus community, the statute requires institutions to distribute their annual security report. The statute does not support requiring institutions to provide the more personalized written explanation to the general campus community, although an institution may choose to make this information widely available. The different types of information the statute requires institutions to provide strikes an appropriate balance between ensuring that victims have relevant information when they are most likely to need it and ensuring that the campus community has general access to information.

As discussed under ''Availability of Annual Security Report and Statistics,'' we do not have the authority to require institutions to publish their annual security reports online. However, we encourage institutions to do so in order to make the annual security reports as accessible to students, employees, and prospective students and employees as possible.

We agree that it is critical for individuals who are accused of committing dating violence, domestic violence, sexual assault, or stalking to be informed of their rights and options, particularly as they relate to the institution's disciplinary

policies. Additionally, we note that responding to these sorts of allegations, whether in the criminal justice system or in an institution's disciplinary procedures will likely be very stressful for the accused as well as the accuser.
Therefore, institutions should consider providing the accused with information about existing counseling, health, mental health, legal assistance, and financial aid services both within the institution and in the community.
Although we encourage institutions to provide written notification of this sort to an accused student or employee, the statute does not refer to or support requiring it.

Changes: None.

Other Comments Pertaining to Campus Sexual Assault Policies

Comments: One commenter recommended requiring institutions to specify in their annual security reports that victims of sexual assault will not be charged with misconduct related to drugs or alcohol. The commenter explained that since drugs and alcohol render an individual incapable of consenting to a sexual activity, to the extent that an institution has such a policy, students and employees would benefit from having this explicitly stated in the annual security report.
Discussion: We agree with the commenter that it would be helpful for victims to know an institution's policies for handling charges of misconduct that are related to drugs or alcohol in the case of a sexual assault, particularly because some victims may not seek support or report a sexual assault out of fear that they may be subjected to a campus disciplinary proceeding for breaking an institution's code of conduct related to drug and alcohol use. We encourage institutions to consider whether their disciplinary policies could have a chilling effect on students' reporting of sexual assault or participating as witnesses where drugs or alcohol are involved, and to make their policies in this area clear in the annual security report or through other communications with the campus community about their sexual assault- related polices. However, although we encourage institutions to include this information in their annual security reports, the statute does not refer to or require it.

Changes: None.

Sec. 668.46(c) Crime Statistics

Crimes That Must Be Reported and Disclosed (§ 668.46(c)(1))

Comments: The commenters overwhelmingly supported including the requirement for the reporting and disclosure of statistics for dating violence, domestic violence, and stalking, explaining that the enhanced statistics would elevate the seriousness of these behaviors and would provide important information about the extent of these incidents on campuses for students, faculty, prospective students and their parents, community members, researchers, and school administrators. However, a few commenters raised concerns about how these new requirements would be implemented. One commenter expressed concern about including dating violence as a reportable crime when it is only so designated in one State. This commenter believed that including these ''incidents'' instead of reporting behaviors that are ''crimes'' under criminal statutes dilutes the purpose of the Clery Act.

We received several comments in response to our question about whether the proposed regulations should be modified to capture information about the relationship between a perpetrator and a victim for some or all of the Clery Act crimes. Some of the commenters urged the Department to maintain the approach in the proposed regulations, which would not capture detail about the relationship between a perpetrator and a victim. These commenters believed that this approach protects a victim's right to privacy and the victim's right to choose how much detail to include when reporting a crime; would make it simpler for institutions to comply with the regulations; and would provide clear, easy-to-understand data

for students, families, and staff. Other commenters, however, recommended that the Department require institutions to report and disclose the relationship between the offender and the victim. They believed that this detail would provide a more complete picture of the nature of crime on college campuses and help institutions craft the most appropriate response and target their prevention resources effectively.

We also received several comments about our proposal to replace the existing list of forcible and nonforcible sex offenses with rape, fondling, incest, and statutory rape to more closely align with the FBI's updated definitions and terminology. Numerous commenters strongly supported using the definition of ''rape'' in the FBI's Summary Reporting System (SRS) because they believed that it is more inclusive of the range of behaviors and circumstances that constitute rape. Other commenters disagreed with the proposal, arguing that defining sex or intimate touching without advance ''consent'' as ''sexual assault'' when it would otherwise not be defined as such under State law would go beyond the Department's authority. Additionally, some commenters requested additional clarification about what types of incidents would be considered rape or sexual assault and which would not.

One commenter recommended that we replace the term ''fondling'' with the term ''molestation,'' arguing that this term more accurately portrays the gravity of the crime and the seriousness of such an allegation. Lastly, one commenter recommended combining ''incest'' and ''statutory rape'' into a single category for the Clery Act statistics, opining that the disaggregation of these statistics could create confusion about the statistics and that these two crimes are rare on college campuses.

Discussion: We appreciate the commenters' support. In response to the commenters who were concerned that these regulations would require institutions to maintain statistics on incidents that may not be considered ''crimes'' in many jurisdictions, we note that the statistical categories are required by section 485(f)(1)(F)(iii) of the Clery Act. Further, the HEA specifies that ''dating violence,'' ''domestic violence,'' ''sexual assault,'' and ''stalking'' are to be defined in accordance with section 40002(a) of the Violence Against Women Act of 1994. Although we recognize that these incidents may not be considered crimes in all jurisdictions, we have designated them as ''crimes'' for the purposes of the Clery Act. We believe that this makes it clear that all incidents that meet the definitions in § 668.46(a) must be recorded in an institution's statistics, whether or not they are crimes in the institution's jurisdiction.

Although we believe that capturing data about the relationship between a victim and a perpetrator in the statistics could be valuable, we are not including this requirement in the final regulations given the lack of support for, and controversy around, this issue that was voiced during the negotiations and the divergent views of the commenters. However, we note that institutions may choose to provide additional context for the crimes that are included in their statistics, so long as they do not disclose names or personally identifying information about a victim. Providing this additional context could provide a fuller picture of the crimes involving individuals who are in a relationship to anyone interested in such data. In particular, as discussed under ''Recording stalking,'' providing narrative information related to statistics for stalking may be valuable.

We appreciate the commenters' support for our proposal to use the FBI's updated definition of ''rape'' under the SRS. With respect to the comments objecting to specific aspects of the FBI's definitions, section 485(f)(6)(A)(v) of the Clery Act specifies that sex offenses are to be reported in accordance with the FBI's UCR program, which these regulations reflect. With respect to the commenters who requested additional clarification on the types of incidents that would constitute ''rape'' or a ''sex offense'' we refer to the definitions of these terms in Appendix A.

Although not raised by the commenters, we have made a slight modification to the regulations in § 668.46(c)(1)(ii) to clarify that, consistent with section 485(f)(1)(i)(IX) of the HEA, institutions must report arrests *and referrals* for disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

Changes: We have revised § 668.46(c)(1)(ii) to require institutions to report statistics for referrals (in addition to arrests) for disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

All Reported Crimes Must Be Recorded (§ 668.46(c)(2))

Comments: We received a few comments on our proposal that all crimes reported to a campus security authority be included in an institution's crime statistics. One commenter recommended that the Department specify that an institution may withhold, or subsequently remove, a reported crime from its crime statistics if it finds that the report is false or baseless (that is, ''unfounded'').

Another commenter requested clarification about whether third-party reports that are provided anonymously and that cannot be confirmed should be included in an institution's statistics. The commenter was concerned that requiring these reports could give rise to unsubstantiated accusations from those who do not identify themselves as victims.

One commenter was concerned that institutions with numerous campus security authorities could receive multiple reports of the same incident and that the duplication could result in data that do not accurately represent the number of crimes occurring on campus. This commenter urged the Department to require institutions to review their reports to eliminate duplication.

One commenter believed that institutions should be able to remove statistics for crimes if a jury or coroner has decided that an accused individual did not commit the crime. The commenter accused the Department of designing the regulations to artificially inflate the number of reported crimes on campuses, and they believed that maintaining this type of report would not help students accurately judge the safety of an institution.

Finally, one commenter suggested clarifying that an institution must include all reports of crimes occurring on or within the institution's Clery geography, not just ''all crimes reported.''

Discussion: Pursuant to section 485(f)(1)(F)(i) of the Clery Act, institutions must include all reports of a crime that occurs on or within an institution's Clery geography, regardless of who reports the crime or whether it is reported anonymously. For example, if an institution provides for anonymous reporting through an online reporting form, the institution must include in its statistics crimes that occurred within the Clery geography that are reported through that form. We also note that institutions must record all reports of a single crime, not all reports. If after investigating several reports of a crime, an institution learns that the reports refer to the same incident, the institution would include one report in its statistics for the crime that multiple individuals reported. In addition, we do not believe it is necessary to require institutions to review their reports to eliminate duplication in their statistics, as such a requirement is difficult to enforce and institutions have an incentive to do this without regulation.

We agree with the commenter that there is one rare situation—so-called ''unfounded'' reports—in which it is permissible for an institution to omit a reported Clery Act crime from its statistics, and we have added language to the regulations to recognize this exemption. However, we are concerned that some institutions may be inappropriately unfounding crime reports and omitting them from their statistics. To address this concern, we have added language to the regulations to require an institution to report to the Department and disclose in its annual security report statistics the number of crime

reports that were ''unfounded'' and subsequently withheld from its crime statistics during each of the three most recent calendar years. This information will enable the Department to monitor the extent to which schools are designating crime reports as unfounded so that we can provide additional guidance about how to properly ''unfound'' a crime report or intervene if necessary.

We remind institutions that they may only exclude a reported crime from its upcoming annual security report, or remove a reported crime from its previously reported statistics after a full investigation. Only sworn or commissioned law enforcement personnel can make a formal determination that the report was false or baseless when made and that the crime report was therefore ''unfounded.'' Crime reports can be properly determined to be false only if the evidence from the complete and thorough investigation establishes that the crime reported was not, in fact, completed or attempted in any manner. Crime reports can only be determined to be baseless if the allegations reported did not meet the elements of the offense or were improperly classified as crimes in the first place. A case cannot be designated ''unfounded'' if no investigation was conducted or the investigation was not completed. Nor can it be designated unfounded merely because the investigation failed to prove that the crime occurred; this would be an inconclusive or unsubstantiated investigation.

As stated above, only sworn or commissioned law enforcement personnel may determine that a crime reported is ''unfounded.'' This does not include a district attorney who is sworn or commissioned. A campus security authority who is not a sworn or commissioned law enforcement authority cannot ''unfound'' a crime report either. The recovery of stolen property, the low value of stolen property, the refusal of the victim to cooperate with law enforcement or the prosecution or the failure to make an arrest does not ''unfound'' a crime. The findings of a coroner, court, jury (either grand or petit), or prosecutor do not ''unfound'' crime reports of offenses or attempts.

Consistent with other recordkeeping requirements that pertain to the title IV, HEA programs, if a crime was not included in the Clery Act statistics because it was ''unfounded,'' the institution must maintain accurate documentation of the reported crime and the basis for unfounding the crime. This documentation must demonstrate that the determination to ''unfound'' the crime was based on the results of the law enforcement investigation and evidence. The Department can and does request such documentation when evaluating compliance with Federal law.

We also remind institutions that have a campus security or police department that all reported crimes must be included in their crime log, as required by § 668.46(f). The crime log must include the nature, date, time, and general location of each crime, as well as the disposition of the complaint. If a crime report is determined to be ''unfounded,'' an institution must update the disposition of the complaint to ''unfounded'' in the crime log within two business days of that determination. It may not delete the report from the crime log.

We disagree with the commenter that institutions should be able to remove statistics for crimes where an accused individual is exonerated of committing a crime. A verdict that a particular defendant is not guilty of a particular charge (or, more technically, that there was not sufficient admissible evidence introduced demonstrating beyond a reasonable doubt that the accused committed the crime) does not mean that the crime did not occur. The Clery Act statistics are not based on the identity of the perpetrator. Therefore, all reports of crimes must be included in the statistics, except in the rare case that a crime report is ''unfounded,'' as discussed earlier in this section.

Lastly, in response to the recommendation for greater specificity about which crimes must be reported, we have clarified that an institution must include all reports of Clery Act crimes occurring on or within the institution's Clery geography. We believe that this adds clarity to the regulations.

Changes: We have revised § 668.46(c)(2)(iii) to clarify that, in rare cases, an institution may remove reports of crimes that have been ''unfounded'' and to specify the requirements for unfounding. We have added new § 668.46(c)(2)(iii)(A) requiring an institution to report to the Department, and to disclose in its annual security report, the number of crime reports listed in § 668.46(c)(1) that were ''unfounded'' and subsequently withheld from its crime statistics pursuant to § 668.46(c)(2)(iii) during each of the three most recent calendar years. We have also reserved § 668.46(c)(2)(iii)(B). Lastly, we have also clarified throughout § 668.46(c) that an institution must include all reports of Clery Act crimes that occurred on or within the institution's Clery geography.

Recording Crimes by Calendar Year (§ 668.46(c)(3))

Comments: The commenters expressed support for this proposed provision.

Discussion: We appreciate the commenters' support.

Changes: None.

Recording Hate Crimes (§ 668.46(c)(4))

Comments: The commenters generally supported the inclusion of ''gender identity'' and ''national origin'' as categories of bias for the purposes of recording hate crime statistics. One commenter recommended collecting and disaggregating information on the actual or perceived race, ethnicity, and national origin of victims of hate crimes. This commenter believed that this information would improve public awareness and knowledge of the prevalence of certain forms of abuse, including hate crimes, directed at certain populations, such as the Latino/ Latina college population.

Discussion: We appreciate the commenters' support for adding ''gender identity'' and ''national origin'' as categories of bias and for adding a definition of ''hate crime.'' Section 485(f)(1)(F)(ii) of the Clery Act requires institutions to collect and report crimes that are reported to campus security authorities or local police agencies ''according to category of prejudice.'' Accordingly, institutions collect and report hate crimes according to the bias that may have motivated the perpetrator. At this time, we do not believe it is necessary to also require institutions to collect and report data about, for example, the victim's actual race, ethnicity, or national origin.

Changes: None.

Recording Reports of Stalking (§ 668.46(c)(6))

Comments: We received numerous comments in response to our request for feedback about how to count stalking that crosses calendar years, how to apply an institution's Clery geography to reports of stalking, and how to identify a new and distinct course of conduct involving the same perpetrator and victim.

Stalking Across Calendar Years

Some of the commenters supported the approach in the proposed regulations, arguing that it would provide an accurate picture of crime on campus for each calendar year. The commenters suggested, however, modifying the language to clarify that an institution must include a statistic for stalking in each and every year in which a particular course of conduct is reported to a local police agency or campus security authority. One commenter recommended requiring institutions to report stalking in only the first calendar year in which a course of conduct was reported, rather than

including it each and every year in which the conduct continues and is reported. Another commenter suggested requiring institutions to disaggregate how many incidents of stalking are newly reported in that calendar year and how many are continuations from the previous calendar year to avoid a misinterpretation of the crime statistics.

Stalking by Location

The commenters provided varied feedback with regards to recording stalking by location. Some of the commenters supported the approach in the proposed regulations that would require institutions to include stalking at only the first location within the institution's Clery geography in which a perpetrator engaged in the stalking course of conduct or where a victim first became aware of the stalking. Other commenters generally agreed with this approach but urged the Department to modify the regulations so that stalking using an institution's servers, networks, or other electronic means would be recorded based on where the institution's servers or networks are housed. These commenters were concerned that, without this change, some instances of stalking would not be accounted for in the statistics if the perpetrator or the victim is never physically located on or within the institution's Clery geography.

Some of the commenters recommended reporting stalking based only on the location of the perpetrator. These commenters argued that using the location of the victim would result in institutions including reports of stalking where the perpetrator was nowhere near the institution but the victim was on campus. They believed that this information would not be meaningful because it would not help members of the campus community protect themselves while on the school's Clery geography. Along these lines, one commenter suggested giving institutions the option to exclude reports of stalking if the perpetrator has never been on or near the institution's Clery geography if the institution can document its reasons for doing so. Other commenters believed that reporting based on the location of the perpetrator would be more consistent with how other crimes are reported under the Clery Act. The commenter noted, for example, that motor vehicle theft is only included in an institution's statistics if the perpetrator stole the car from a location within the institution's Clery geography, regardless of whether the car's owner learned of the theft while within the institution's Clery geography.

Some of the commenters recommended recording stalking based only on the location of the victim. These commenters argued that it would be much easier for institutions to determine the location of the victim than the location of the perpetrator.

Lastly, a few commenters addressed our discussion in the NPRM about how stalking involving more than one institution should be handled. The commenters supported our statement that, when two institutions are involved, both institutions should include the stalking report in their Clery Act statistics. One commenter, however, requested clarification about an institution's responsibility to notify another institution if the stalking originated on the other institution's Clery geography.

Stalking After an ''Official Intervention''

We received several comments related to when an institution should count a report of stalking as a new and distinct crime in its statistics. Some of the commenters supported the approach in the NPRM under which stalking would be counted separately after an official intervention. An official intervention would include any formal or informal intervention and those initiated by school officials or a court. One commenter generally supported this approach but was concerned that an institution might not be aware when an ''official intervention'' has occurred if that intervention did not involve the institution, such as when a court has issued a no-contact order or a restraining order. The commenter recommended revising the regulations to specify that an institution would record stalking in these cases as a new and distinct crime only to the extent that the institution has actual knowledge that an ''official intervention'' occurred.

Other commenters urged the Department to remove § 668.46(c)(6)(iii), arguing that counting a new incident of stalking after an official intervention would not be consistent with treating stalking as a course of conduct. They explained that stalking cases often have numerous points of intervention, but that despite those interventions, it is still the same pattern or course of conduct, and that recording a new statistic after an ''official intervention'' would be arbitrary. The commenters believed that requiring that stalking be recorded in each and every subsequent year in which the victim reports the same stalking course of conduct would appropriately capture the extent of stalking without introducing an arbitrary bright line, such as an ''official intervention'' or a specific time period between stalking behaviors.

Several commenters recommended encouraging institutions to provide narrative information about each incident of stalking in their reports to provide context. They believed that this narrative would provide more useful information by explaining whether a particular course of conduct spanned several years, whether it continued after one or multiple interventions, and how many behaviors or actions on the part of the perpetrator made up the single course of conduct.

Discussion: We thank the commenters for their feedback.

Stalking Across Calendar Years

We appreciate the commenters' support for our proposal to record incidents of stalking that cross calendar years. This approach strikes a balance by ensuring that stalking is adequately captured in an institution's statistics without inflating the number of incidents of stalking by counting each behavior in the pattern. In response to recommendations from the commenters, we have modified § 668.46(c)(6)(i) to clarify that an institution must record a report of stalking in each and every year in which the stalking course of conduct is reported to local police or a campus security authority. An institution is not required to follow up with victims each year to determine whether the behavior has continued, although institutions are not precluded from doing so. If, as a result of following up with a stalking victim, the institution learns that the behavior has continued into another year, the institution must record the behavior as a new report of stalking in that year. Otherwise, institutions must record only reports that they receive in each year.

We appreciate the suggestion that institutions should disaggregate statistics for stalking each year based on which incidents were continuations for stalking reported in a previous calendar year and which were new reports of stalking, but we believe that the approach in the final regulations is simpler for institutions to understand and implement. However, we encourage institutions to provide additional detail, such as whether a report represents a continuation of a previous year's report, in their annual security report.

Stalking By Location

With regard to recording stalking based on the location of either the victim or perpetrator, we note that the negotiating committee reached consensus on the proposed language, which accounts for the location of both the victim and the perpetrator. Given the disagreement among the commenters about how to modify these provisions, we have decided to adopt the approach approved by the negotiating committee. We do not believe that the analogy to motor vehicle theft is appropriate because the crime of stalking is not a crime perpetrated against property and, thus, it presents different considerations.

We are not persuaded that we should include stalking based on the use of the institution's servers or networks, but where neither the victim nor the perpetrator was on or within the institution's Clery geography. Including these incidents would be inconsistent with our traditional approach in regard to the Clery Act, which uses physical location as the determining

factor. Moreover, it may not always be clear whether a particular message used a particular institution's computer servers or networks. Of course, an institution may still be able to take action to address a stalking incident that used its servers or networks. Many institutions have terms of use associated with the use of those networks, and violations of those terms of use may subject an individual to disciplinary action.

Lastly, if stalking occurs on more than one institution's Clery geography and is reported to a campus security authority at both institutions, then both institutions must include the stalking in their statistics. Although the statute does not require an institution that learns of stalking occurring on another campus to alert the other campus, we strongly encourage an institution in this situation to do so.

Stalking After an ''Official Intervention''

We agree with the commenters who argued that requiring institutions to record stalking involving the same victim and perpetrator as a new crime after an official intervention would be arbitrary. We also agree that it could be difficult for institutions to track stalking incidents if the institution does not have actual knowledge of the intervention. As a result, we have not included proposed § 668.46(c)(6)(ii) in the final regulations. We believe that the requirement that institutions record stalking in each and every year in which it is reported is an effective, straightforward, and less arbitrary approach than including the concept of an ''official intervention.'' We encourage institutions to provide narrative information in their annual security reports about incidents of stalking to the extent possible to provide individuals reading the annual security report with a fuller picture of the stalking. In addition to explaining whether a report represents stalking that has continued across multiple calendar years, institutions may provide additional context for these statistics by explaining, for example, whether the stalking continued despite interventions by the institution or other parties, whether it lasted for a short but intense period or occurred intermittently over several months, and whether the perpetrator or the victim was located on or within the institution's Clery geography.

Changes: We have revised § 668.46(c)(6)(i) to clarify that stalking that crosses calendar years must be recorded in each and every year in which the stalking is reported to a campus security authority or local police. We have also removed proposed § 668.46(c)(6)(iii), which would have required institutions to record a report of stalking as a new and distinct crime when the stalking behavior continues after an official intervention.

Using the FBI's UCR Program and the Hierarchy Rule (§ 668.46(c)(9))

Comments: We received several comments on our proposal to modify the application of the Hierarchy Rule under the FBI's UCR Program, as well as comments about how to further update and clarify § 668.46(c)(9). First, with regard to applying the Hierarchy Rule, some of the commenters supported our proposal to create an exception so that when both a sex offense and murder are committed in the same incident, both crimes would be counted in the institution's statistics. These commenters believed that this approach would more accurately reflect the full range of incidents involving intimate partner violence. One commenter recommended clarifying that the exception would apply only to cases involving rape and murder, noting that every rape would involve fondling.

Other commenters, however, disagreed with our proposal to create an exception to the Hierarchy Rule, arguing that if the Department continues to use the Hierarchy Rule, it should do so in its entirety. These commenters recommended having subcategories under the primary crimes so that they could report elements of each crime as a subset, rather than as a freestanding incident. For example, one commenter believed that instead of requiring an institution to record a statistic for a murder and for dating violence if a victim was murdered by someone the victim was dating, the Department should

require an institution to record a murder and to include dating violence as an element of that murder. The commenter believed that this would reduce double-counting and would make the data more transparent.

Another commenter recommended abandoning the Hierarchy Rule altogether, arguing that it detracts from the value and clarity of the Clery Act statistics and leads to an underrepresentation of the extent of crimes on a given college campus.

With regards to clarifying the regulation, one commenter noted that proposed § 668.46(c)(9) referred to outdated guidance and documents issued by the FBI for the UCR program. They recommended replacing references to the ''UCR Reporting Handbook'' and the ''UCR Reporting Handbook: National Incident-Based Reporting System (NIBRS) EDITION'' with references to the ''Criminal Justice Information System (CJIS) Division Uniform Crime Reporting (UCR) Program Summary Reporting System (SRS) User Manual,'' and the ''Criminal Justice Information System (CJIS) Division Uniform Crime Reporting (UCR) Program National Incident-Based Reporting System (NIRBRS) User Manual,'' respectively. The commenter recommended also updating the references in Appendix A to refer to the appropriate User Manuals and to identify the correct system source (SRS or NIBRS) for the definitions of rape, fondling, statutory rape, and incest.

One commenter recommended importing the breadth of the UCR program into the regulations to provide more clarity and guidance for campus security authorities to help them in categorizing crimes, particularly at institutions that do not have a campus law enforcement division.

Discussion: We appreciate the commenters' support. We have decided to retain the Hierarchy Rule and the exception to that rule for situations involving a sex offense and murder. We believe that the Hierarchy Rule provides a useful approach for recording the numbers of crimes without overreporting and note that it is used by other crime reporting systems. However, in light of the statute's purpose and the appropriate public concern about sex offenses on campus, we have determined that an exception to ensure that all sex offenses are counted is necessary for Clery Act purposes. Without this exception, under the Hierarchy Rule, an incident that involves both a rape and a murder, for example, would be recorded only as a murder, obscuring the fact that the incident also included a sexual assault. We believe that Congress intended to capture data about sexual assaults at institutions participating in the title IV, HEA programs, and this exception will ensure that all cases of sexual assault are included in an institution's statistics. Some of the commenters misinterpreted the proposed regulations to mean that an institution would have to include all of the elements of a sex offense in its statistics. For example, they believed that an institution would include both fondling and rape in its statistics in any incident involving rape. We intended for the exception to the Hierarchy Rule to apply when a rape, fondling, incest, or statutory rape occurs in the same incident as murder. As a result, we have clarified § 668.46(c)(9)(vii) to make it clear that this exception to the Hierarchy Rule would apply only when a sex offense and murder are involved in the same incident, and that, in these cases, an institution would include statistics for the sex offense and murder, rather than including only the murder.

As discussed under ''Hierarchy Rule,'' we agree with the commenter who recommended clarifying in the regulations that, consistent with treatment in the FBI's UCR program, an arson that occurs in the same incident as other crimes must always be included in an institution's statistics. As a result, we have clarified in § 668.46(c)(9)(vi) that an institution must always record an arson in its statistics, regardless of whether or not it occurs in the same incident as other crimes. We believe that including this provision related to arson in the same place as the exception for sex offenses will make it easier for readers to understand how to apply the Hierarchy Rule.

We agree with the commenter who argued that the references to the FBI's UCR Program may be confusing for institutions that do not have a campus law enforcement division that is familiar with the UCR Program. We have clarified in § 668.46(c)(9)(i) that an institution must compile the crime statistics for murder and nonnegligent manslaughter, negligent

manslaughter, rape, robbery, aggravated assault, burglary, motor vehicle theft, arson, liquor law violations, drug law violations, and illegal weapons possession using the definitions of those crimes from the ''Summary Reporting System (SRS) User Manual'' from the FBI's UCR Program. We also have clarified in § 668.46(c)(9)(ii) that an institution must compile the crime statistics for fondling, incest, and statutory rape using the definitions of those crimes from the ''National Incident-Based Reporting System (NIBRS) User Manual'' from the FBI's UCR Program. Further, we have specified in § 668.46(c)(9)(iii) that an institution must compile the crime statistics for the hate crimes of larceny- theft, simple assault, intimidation, and destruction/damage/vandalism of property using the definitions provided in the ''Hate Crime Data Collection Guidelines and Training Manual'' from the FBI's UCR Program. We have made corresponding changes to Appendix A to reflect the UCR Program sources from which the Clery Act regulations draw these definitions. Finally, we have reiterated in § 668.46(c)(9)(iv) that an institution must compile the crime statistics for dating violence, domestic violence, and stalking using the definitions provided in § 668.46(a). We believe that these changes, combined with our revisions to Appendix A and the updated references to the FBI's UCR Program materials will make clear to institutions which definitions they must use when classifying reported crimes. We intend to include additional guidance on these issues when we revise the *Handbook for Campus Safety and Security Reporting.*

Changes: We have revised paragraph § 668.46(c)(9) to clarify how the definitions in the FBI's UCR Program apply to these regulations, updated references to the FBI's UCR Program materials, revised the exception to the Hierarchy Rule to clarify that it applies in cases where a sex offense and a murder occur during the same incident, and that under the Hierarchy Rule an institution must always include arson in its statistics.

Statistics From Police Agencies (§ 668.46(c)(11))

Comments: One commenter was concerned that the proposed regulations would require an institution to gather and review individual reports from municipal police authorities and to determine whether the offenses described in the reports meet the definition of ''dating violence,'' ''domestic violence,'' or ''stalking'' in the regulations, even if they do not constitute criminal offenses in the jurisdiction. The commenter opined that such a collection and review would be very burdensome for institutions and would require significant cooperation by municipal police authorities.

Discussion: Initially, we note that the requirement to collect crime statistics from local or State police agencies has been a longstanding requirement under the Clery Act. Under § 668.46(c)(11) of the regulations, institutions are required to make a good-faith effort to obtain the required statistics and may rely on the information supplied by a local or State police agency. We would consider an institution to have made a good-faith effort to comply with this requirement if it provided the definitions in these regulations to the local or State police agency and requested that that police agency provide statistics for reports that meet those definitions with sufficient time for the local or State police agency to gather the requested information. As a matter of best practice, we strongly recommend that institutions make this request far in advance of the October 1 deadline for publishing their annual security reports and follow up with the local or State police agency if they do not receive a response. As long as an institution can demonstrate that it made a good-faith effort to obtain this information, it would be in compliance with this requirement.

Changes: None.

Timely Warnings (§ 668.46(e))

Comments: The commenters strongly supported our proposal to clarify that institutions must keep confidential the names and personally identifying information of victims when issuing a timely warning. Some commenters, however, requested additional guidance for how institutions can most effectively comply with this requirement.

Discussion: We appreciate the commenters' support. Generally, institutions must provide timely warnings in response to Clery Act crimes that pose a continuing threat to the campus community. These timely warnings must be provided in a manner that is timely and that will aid in the prevention of similar crimes. Under these final regulations, institutions must not disclose the names and personally identifying information of victims when issuing a timely warning. However, in some cases to provide an effective timely warning, an institution may need to provide information from which an individual might deduce the identity of the victim. For example, an institution may need to disclose in the timely warning that the crime occurred in a part of a building where only a few individuals have offices, potentially making it possible for members of the campus community to identify a victim. Similarly, a perpetrator may have displayed a pattern of targeting victims of a certain ethnicity at an institution with very few members of that ethnicity in its community, potentially making it possible for members of the campus community to identify the victim(s). Institutions must examine incidents requiring timely warnings on a case-by- case basis to ensure that they have minimized the risk of releasing personally identifying information, while also balancing the safety of the campus community.

Changes: None.

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

General

Comments: One commenter sought clarification regarding the proposed language in § 668.46(j)(1) that states that 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 and that the statement must include a description of the institution's primary prevention and awareness programs for all incoming students and new employees, which must include the contents of § 668.46(j)(1)(i)(A)–(F). The commenter sought clarification as to whether this language meant simply that the description of an institution's primary prevention and awareness programs had to contain these elements or if it meant that the actual programs, as administered on an institution's campus, had to incorporate and address these elements.

Several commenters asked that the final regulations be modified to redefine who would be considered a ''student'' for the purposes of the institution's obligation to provide primary prevention and awareness programs and ongoing prevention and awareness campaigns. Noting that the Department interprets the statute in this regard consistent with other Clery Act requirements by requiring institutions to offer training to ''enrolled'' students, as the term ''enrolled'' is defined in § 668.2, the commenters were concerned about the burden of providing prevention training to students who are enrolled only in continuing education courses, online students, and students who are dually enrolled in high school and community college classes and suggested that prevention training should be focused on students who are regularly on campus.

One commenter was concerned that institutions may allow collective bargaining agreements to be a barrier to offering primary prevention and awareness programs and ongoing prevention and awareness campaigns to current employees who belong to a union.

Another commenter asked the Department to clarify whether an institution must require and document that every member of its community attend prevention programs and training or whether it is mandatory that an institution simply make such programming widely available and accessible for members of its community and maintain statistical data on the frequency, type, duration, and attendance at the training.

One commenter opined that the final regulations should require institutions to work with local and State domestic violence and sexual assault coalitions to develop ''best practice'' training models, access programs for confidential services for victims, and serve on advisory committees that review campus training policies and protocols for dealing with sexual violence issues.

Lastly, one commenter believed that the final regulations should require prevention programs to focus on how isting technology can be used to help prevent crime. This commenter believed that such a focus will ultimately reduce institutional burden to report, classify, and respond to reports of dating violence, domestic violence, sexual assault, and stalking.

Discussion: In response to the first comment, the actual prevention programs administered on an institution's campus must incorporate and address the contents of § 668.46(j)(1)(i)(A)–(F) as well as meet the definition of ''programs to prevent dating violence, domestic violence, sexual assault, and stalking'' in § 668.46(a) of these final regulations. It is important to note that the Department's Clery Compliance staff will verify an institution's compliance with both §§ 668.46(a) and (j) during a Clery Act compliance review.

We do not agree that we should redefine who would be considered a ''student'' for the purposes of providing primary prevention and awareness programs and ongoing prevention and awareness campaigns. We believe that every enrolled student should be offered prevention training because anyone can be a victim of dating violence, domestic violence, sexual assault, or stalking, not just students regularly on campus. As we stated in the preamble to the NPRM, under §§ 668.41 and 668.46, institutions must distribute the annual security report to all ''enrolled'' students, as defined in § 668.2. Applying that same standard for prevention training makes it clear that the same students who must receive the annual security report must also be offered the training.

Without further explanation by the commenter, we cannot see any reason why collective bargaining agreements could be a barrier to offering prevention training to employees who belong to a union. We note that institutions have distributed their annual security reports to ''current employees'' under §§ 668.41 and 668.46 for many years regardless of whether an employee is a member of a union, and we expect that these employees will now be offered the new prevention training in the same manner as they were offered the training in the past.

In response to the question about whether an institution must require mandatory attendance at primary and ongoing prevention programs and campaigns, we note that neither the statute nor the regulations require that every incoming student, new employee, current student, or faculty member, take or attend the training. The regulations require only that institutions offer training to all of these specified parties and that the training includes the contents of § 668.46(j)(1)(i)(A)–(F) and meets the definition of ''programs to prevent dating violence, domestic violence, sexual assault, and stalking''. Institutions must be able to document, however, that they have met these regulatory requirements. Although the statute and regulations do not require that all students and employees take or attend training, we encourage institutions to mandate such training to increase its effectiveness. Lastly, the final regulations do not require institutions to maintain statistical data on the frequency, type, duration, and attendance at the training, although if an institution believes that maintaining such data is informative, we would encourage such efforts.

We do not believe that we have the statutory authority to require institutions to work with local and State domestic violence and sexual assault coalitions to develop policies and programs. The statute requires only that institutions provide 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. However, we strongly

encourage institutions and local and State domestic violence and sexual assault coalitions to form such relationships so that victims of sexual violence will be better served.

We disagree that the final regulations should be changed to emphasize the use of existing technology in prevention programs. The Department cannot require the specific content of an institution's prevention training, although we strongly encourage institutions to consider including information on existing technology so as to better inform their audiences.

Changes: None.

Definition of ''Applicable Jurisdiction'' (§ 668.46(j)(1)(i)(B) and (C))

Comments: Section 668.46(j)(1)(i)(B) and (C) requires an institution to include, in its annual security report policy statement on prevention programs, the applicable jurisdiction's definitions of ''dating violence,'' ''domestic violence,'' ''sexual assault,'' ''stalking,'' and ''consent.'' Several commenters asked for guidance on how to comply with § 668.46(j)(1)(i)(B) and (C) when those terms are not defined by the local jurisdiction. Several commenters requested that the Department clarify in the final regulations whether institutions must use the definitions in criminal statutes or whether institutions can reference definitions from other sources of law, such as domestic abuse protection order requirements, or from State and local agencies. These commenters noted that applicable criminal codes often do not define these terms, but that reference to the definitions in statutes outside the criminal law or from State and local agencies are appropriate to provide in this policy statement. One commenter requested that the proposed regulations be changed to allow institutions to incorporate by reference the definitions in the applicable jurisdiction, to avoid confusing language in their prevention program materials. This commenter noted that legal definitions can be long and complicated, and that allowing incorporation by reference would increase the chance that these definitions will remain accurate.

Discussion: If an institution's applicable jurisdiction does not define ''dating violence,'' ''domestic violence,'' ''sexual assault,'' ''stalking,'' and ''consent'' in reference to sexual activity, in its criminal code, an institution has several options. An institution must include a notification in its annual security report policy statement on prevention programs that the institution has determined, based on good-faith research, that these terms are not defined in the applicable jurisdiction. An institution would need to document its good-faith efforts in this regard. In addition, where the applicable jurisdiction does not define one or more of these terms in its criminal code, the institution could choose to provide definitions of these terms from laws other than the criminal code, such as State and local administrative definitions. For example, an institution could provide a definition officially announced by the State's Attorney General to provide relevant information about what constitutes a crime in the jurisdiction.

We do not believe that simply referencing the definition meets the requirement that institutions provide the definition of the terms ''dating violence,'' ''domestic violence,'' ''sexual assault,'' ''stalking,'' and ''consent'' in reference to sexual activity in the applicable jurisdiction. Section 485(f)(8)(B)(i)(I)(bb) and (cc) of the Clery Act, as amended by VAWA, require an institution to provide the definitions, not a cross-reference or link, to the definition of these terms.

Changes: None.

Definitions of ''Awareness Programs,'' ''Bystander Intervention,'' ''Ongoing Prevention and Awareness Campaigns,'' ''Primary Prevention Programs,'' and ''Risk Reduction'' (§ 668.46(j)(2)(i)–(v))

Comments: One commenter stated that the definitions of ''awareness programs,'' ''bystander intervention,'' ''ongoing prevention and awareness campaigns,'' ''primary prevention programs,'' and ''risk reduction'' in paragraphs 668.46(j)(2)(i)–(v) assume a context of student-on-student sexual assault, making the definitions inadequate in cases in which the offender is an employee of the institution. The commenter stated that prevention activities should include instruction on healthy boundaries, power differentials, and exploitation to address situations where the perpetrator is an employee.

One commenter asked for clarification of the terms ''institutional structures and cultural conditions that facilitate violence,'' and ''positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality,'' in § 668.46(j)(2)(ii) and (iv). Another commenter stated that bystander intervention trainings should be mandatory for incoming students and that the Department should establish basic guidelines and strategies to ensure uniformity and quality of bystander intervention training across institutions. Lastly, one commenter recommended that the definition of ''risk reduction'' in § 668.46(j)(2)(v) be removed from the regulations because risk reduction efforts, unless coupled with empowerment approaches, leave potential victims with the false impression that victimization can be avoided. The commenter believed that this was tantamount to victim blaming.

Discussion: We disagree that the definitions of ''awareness programs,'' ''bystander intervention,'' ''ongoing prevention and awareness campaigns,'' ''primary prevention programs,'' and ''risk reduction'' in § 668.46(j)(2)(i)–(v) assume a context of student-on-student sexual assault. We believe that the language in the definitions is broad and covers situations where the perpetrator is an employee and the commenter did not specifically identify any language for us to revise.

In response to the commenter who asked for clarification of certain terms in § 668.46(j)(2), we believe that examples of ''institutional structures and cultural conditions that facilitate violence,'' might include the fraternity and sports cultures at some institutions. We believe that examples of ''positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality,'' might include the promotion of good listening and communication skills, moderation in alcohol consumption, and common courtesy.

As for the commenter who suggested that bystander intervention training be mandatory for incoming students and that the Department should establish basic guidelines and strategies to ensure uniformity and quality for that training, the statute does not mandate student or employee participation in prevention training, nor does the statute authorize the Department to specify what an institution's training must contain. The statute and the regulations contain broad guidelines and definitions to assist institutions in developing training that takes into consideration the characteristics of each campus.

Lastly, we disagree with the commenter who recommended that the definition of ''risk reduction'' in § 668.46(j)(2)(v) be removed. Empowering victims is incorporated into the definition of risk reduction. The term ''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.

Changes: None.

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

Comments: Many commenters supported proposed § 668.46(k) regarding institutional disciplinary proceedings. These commenters believed that the proposed regulations properly reflected the importance of transparent, equitable procedures for complainants and accused students, provided clear and concise guidance on the procedures an institution must follow to comply with the VAWA requirements, and would lead to more accurate reporting of campus crime statistics. Several commenters also expressed appreciation for the Department's statements in the NPRM that an institution's responsibilities under the Clery Act are separate and distinct from those under title IX, and that nothing in the proposed regulations alters or changes an institution's obligations or duties under title IX as interpreted by OCR.

Other commenters did not support proposed § 668.46(k). These commenters stated that only the criminal justice system is capable of handling alleged incidents of dating violence, domestic violence, sexual assault, and stalking, not institutions of higher education. These commenters also believed that the proposed regulations eliminate essential due process protections, and entrust unqualified campus employees and students to safeguard the interests of the parties involved in adjudicating allegations. Several commenters also stated that the proposed regulations would place a considerable compliance burden on small institutions and asked the Department to consider mitigating that burden in the final regulations.

One commenter asked the Department to clarify in the final regulations that disciplinary procedures apply more broadly than just to student disciplinary procedures and suggested adding language specifying that the procedures apply to student, employee, and faculty discipline systems.

One commenter asked the Department to clarify whether an institution's disciplinary procedures must always comply with § 668.46(k) or just the procedures related to incidents of dating violence, domestic violence, sexual assault, and stalking. Another commenter asked that we clarify that there need not be an allegation of crime reported to law enforcement for the accused or accuser to receive the procedural protections afforded through a campus disciplinary proceeding. This commenter suggested that we replace ''allegation of dating violence, domestic violence, sexual assault, or stalking'' in proposed § 668.46(k)(1)(ii) with ''incident arising from behaviors that may also be allegations of the crimes of dating violence, domestic violence, sexual assault, or stalking.''

Finally, one commenter requested that the final regulations affirm that a complainant bringing forth a claim of dating violence, domestic violence, sexual assault, or stalking cannot be subject to any legal investigation of their immigration status because that would discourage undocumented students from reporting incidents and participating in a disciplinary proceeding.

Discussion: We appreciate the commenters' support. In response to the commenters who objected to institutional disciplinary procedures in cases involving dating violence, domestic violence, sexual assault, or stalking under the regulations, section 485(f)(8)(B)(iv) of the Clery Act clearly requires institutions to have disciplinary procedures in place for these incidents. We disagree with the comments that the procedures under § 668.46(k) violate due process rights and entrust unqualified employees with adjudicatory responsibility. The statute and these final regulations require that: an institution's disciplinary proceedings be fair, prompt, and impartial to both the accused and the accuser; the proceedings provide the same opportunities to both parties to have an advisor of their choice present; and the proceedings be conducted by officials who receive training on sexual assault issues and on how to conduct a proceeding that protects the safety of victims and promotes accountability. Thus, these procedures do provide significant protections for all parties. We also note that institutions are not making determinations of criminal responsibility but are determining whether the institution's own rules have been violated. We note that there is no basis to suggest that students and employees at small institutions should have fewer protections than their counterparts at larger institutions.

We do not agree that the final regulations should be revised to clarify that disciplinary procedures apply to student, employee, and faculty discipline systems. Section 668.46(k)(1)(i) requires an institution's annual security report policy statement addressing procedures for institutional disciplinary action in cases of dating violence, domestic violence, sexual assault, and stalking to describe each type of disciplinary proceeding used by the institution. If an institution has a disciplinary proceeding for faculty and staff, the institution would be required to describe it in accordance with § 668.46(k)(1)(i).

We agree with the commenters who suggested that we clarify which incidents trigger a ''disciplinary'' proceeding under § 668.46(k) because many institutions have a disciplinary process for incidents not involving dating violence, domestic violence, sexual assault, and stalking. We have revised the introductory language in § 668.46(k) to specify that an institution's policy statement must address disciplinary procedures for cases of alleged dating violence, domestic violence, sexual assault, and stalking, as defined in § 668.46(a). We believe that making this clear up front best clarifies the scope of the paragraph.

Lastly, with respect to the suggestion that § 668.46(k) state that a complainant bringing forth a claim of dating violence, domestic violence, sexual assault, or stalking is not subject to any legal investigation of their immigration status, the Department does not have the authority to provide or require such an assurance, though the Department reminds institutions of the Clery Act's prohibition against retaliation in this regard. Specifically, institutions should be aware that threatening an individual with deportation or invoking an individual's immigration status in an attempt to intimidate or deter the individual from filing or participating in a complaint of dating violence, domestic violence, sexual assault, or stalking would violate the Clery Act's protection against retaliation as reflected in § 668.46(m).

Changes: We have revised the introductory language in § 668.46(k) to specify that an institution's policy statement must address disciplinary procedures for cases of alleged dating violence, domestic violence, sexual assault, and stalking, as defined in § 668.46(a).

Standard of Evidence (§ 668.46(k)(1)(ii))

Comments: Proposed § 668.46(k)(1)(ii) requires an institution to describe in its annual security report policy statement 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. Several commenters supported requiring institutions to use the preponderance of evidence standard for institutional disciplinary proceedings under the Clery Act to be consistent with the standard of evidence required to comply with title IX. The commenters believed that requiring the use of the preponderance of evidence standard would reduce confusion and would eliminate disputes over whether a criminal standard of proof should be applied. One commenter felt that using any other standard of proof, such as ''clear and convincing'' or ''beyond a reasonable doubt'' would send a message that one student's presence at the institution is more valued than the other's. Other commenters did not believe the preponderance of evidence standard should be specified in the regulations because they asserted that Congress considered requiring the use of the preponderance of evidence standard and rejected it when debating the VAWA amendments to the Clery Act. One commenter stated that the ''clear and convincing'' standard of evidence should be used because this standard better safeguards due process.

Discussion: We disagree that final § 668.46(k)(1)(ii) should require that to comply with the Clery Act, institutions use the preponderance of evidence standard or any other specific standard when conducting a disciplinary proceeding. Unlike title IX, the Clery Act only requires that an institution describe the standard of evidence it will use in a disciplinary proceeding. A recipient can comply with both 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.

Changes: None.

Sanctions Resulting From a Disciplinary Proceeding (§ 668.46(k)(1)(iii))

Comments: Several commenters supported the requirement in § 668.46(k)(1)(iii) that institutions list 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 in its annual security report policy statement. These commenters stated that some institutions use sanctions such as suspensions for a summer semester only or expulsions issued after the perpetrator has graduated which minimize the perpetrator's accountability. These commenters believed that listing all possible sanctions would make the imposition of inappropriate sanctions untenable.

Other commenters did not support listing all possible sanctions because they believe that such a listing would limit an institution's ability to effectively adjudicate these cases on an individual basis, hamper the institution's ability to strengthen sanctions, and limit the institution's ability to be innovative in imposing sanctions. Other commenters requested that this requirement be phased in to give institutions additional time to review current practices relating to sanctions and so that institutions are not forced to list hypothetical penalties to address situations of dating violence, domestic violence, sexual assault, and stalking that they have not imposed before.

Discussion: We appreciate the commenters' support for § 668.46(k)(1)(iii), which requires institutions to list 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 in its annual security report policy statement.

We have not been persuaded to change this requirement. We believe that listing all possible sanctions that an institution may impose following the results of a disciplinary proceeding in cases of dating violence, domestic violence, sexual assault, and stalking will deter institutions from listing (and subsequently imposing) inappropriately light sanctions. As noted in the NPRM, § 668.46(k)(1)(iii) does not prohibit an institution from using a sanction not listed in its most recently issued annual security report, provided the institution's list is updated in its next annual security report. We do not believe that phasing in this requirement is appropriate. The regulations are effective on July 1, 2015, which will give institutions at least seven months to implement the requirement to list all possible sanctions that an institution may impose following the results of a disciplinary proceeding.

Changes: None.

Training for Officials Who Conduct Disciplinary Proceedings (§ 668.46(k)(2)(ii))

Comments: Several commenters supported the requirement that an institution's disciplinary proceedings 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. The commenters believed that proper training will minimize reliance on stereotypes about victims' behavior and will ensure that officials are educated on the effects of trauma.

Other commenters did not support the training requirement because they considered it to be an unfunded mandate. One commenter stated that the training requirement goes beyond congressional intent. Another commenter believed that the

costs to obtain the training would have a negative impact on small institutions and asked the Department to provide a waiver of the annual training requirement for small institutions. Alternatively, the commenter asked that the Department develop and provide the required training at no cost to institutions through a Webinar or computer-assisted modular training.

Discussion: The Department appreciates the support of commenters and agrees that ensuring that officials are properly trained will greatly assist in protecting the safety of victims and in promoting accountability.

We disagree with the commenter who asserted that the training requirement goes beyond congressional intent. The training requirement in § 668.46(k)(2)(ii) reflects what is required by section 485(f)(8)(B)(iv)(I)(bb) of the Clery Act as amended by VAWA. We acknowledge that there will be costs associated with the training requirement and we urge institutions to work with rape crisis centers and State sexual assault coalitions to develop training that addresses the needs and environments on small campuses. Lastly, we cannot waive this requirement for small institutions or provide the training as requested. We note that all title IV institutions are already required to ensure that their officials are trained and are knowledgeable in areas such as Federal student financial aid regulations. Congress added this new training requirement to protect students. We note that these final regulations are effective July 1, 2015, which will give institutions ample time to implement this requirement in a compliant and cost-effective manner.

Changes: None.

Advisor of Choice (§ 668.46(k)(2)(iii) and (iv))

Comments: We received many comments on proposed § 668.46(k)(2)(iii) and (iv). Proposed § 668.46(k)(2)(iii) would require that an institution's disciplinary proceeding provide the accuser and the accused with the same opportunities to have others present, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. Proposed § 668.46(k)(2)(iv) would prohibit the institution from limiting the choice of advisor, or an advisor's presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding, although the institution may establish restrictions on an advisor's participation as long as the restrictions apply equally to both parties.

Many commenters supported proposed § 668.46(k)(2)(iii) and (iv) but asked that the regulations allow institutions to remove or dismiss advisors who are disruptive or who do not abide by the restrictions on their participation to preserve the decorum, civility, and integrity of the proceeding. Other commenters asked that the regulations be revised to detail the extent to which an advisor can participate in a disciplinary proceeding or the type of restrictions an institution can place on an advisor's participation in the proceeding, such as prohibiting an advisor to speak or to address the disciplinary tribunal, or question witnesses, to ensure an efficient and fair process. One commenter asked that the regulations be revised to allow an institution to define a pool of individuals, including members of the campus community, who may serve as an advisor. Another commenter asked that the regulations require that an advisor be willing and able to attend disciplinary proceedings in person as scheduled by the institution and that an advisor can be present in meetings or disciplinary proceedings only when the advisee is present to ensure that disciplinary proceedings are not unnecessarily delayed. One commenter stated that the regulations should allow an advisor only at an initial meeting or documentation review of a disciplinary proceeding. Another commenter believed that allowing an advisor to be present at ''any related meeting or proceeding'' would cause unreasonable delays if an institution was forced to schedule meetings at an advisor's convenience. One commenter asked that the regulations prohibit an advisor from acting as a proxy for either the accused or the accuser so as to not compromise their privacy rights. One commenter asked that § 668.46(k)(2)(iv) be revised to prohibit immigration agents from serving in a disciplinary proceeding as an advisor. This commenter was concerned that if, for example, the accused had an immigration agent as an advisor and the accuser was not a U.S. citizen, the threat of

an immigration enforcement action would pose a significant barrier to participation in a disciplinary proceeding for the accuser.

Discussion: We do not believe that any changes to the regulations are necessary. Institutions may restrict an advisor's role, such as prohibiting the advisor from speaking during the proceeding, addressing the disciplinary tribunal, or questioning witnesses. An institution may remove or dismiss advisors who become disruptive or who do not abide by the restrictions on their participation. An institution may also form a pool of individuals, including members of the campus community, who may serve as advisors as long as the choice of an advisor by the accused or the accuser is not limited to such a pool. We believe that regulating an institution's actions in these areas would restrict their flexibility to protect the interests of all parties.

We do not believe that the regulations should specify that an advisor must attend disciplinary proceedings in person. Section 668.46(k)(2)(iii) does not require an advisor to be present but merely requires that each party have the same opportunity to have an advisor present. An institution would not need to cancel or delay a meeting simply because an advisor could not be present, so long as the institution gave proper notice of the meeting under § 668.46(k)(3)(i)(B)(*2*); however we encourage institutions to consider reasonable requests to reschedule. We also do not believe that the final regulations should specify that an advisor cannot be present in meetings or disciplinary proceedings unless the advisee is present. An institution is not required to permit an advisor to attend without the advisee but may find that permitting an advisor to attend with the advisee's agreement will make it easier to arrange procedural meetings.

We do not believe that permitting an institution to limit an advisor to attend only an initial meeting or documentation review of a disciplinary proceeding is supported by the statute. Section 485(f)(8)(B)(iv)(II) of the Clery Act provides that the accuser and the accused are entitled to the opportunity to be accompanied ''to any related meeting or proceeding'' by an advisor of their choice.

We do not believe that the regulations need to prohibit an advisor from acting as a proxy for either the accused or the accuser in the interest of protecting the parties' privacy. Assuming an institution allowed an advisor to act as a proxy, if the accused or accuser authorized their advisor to serve as a proxy and consented to any disclosures of their records to their advisor, this would alleviate any privacy concerns.

Lastly, we believe that including in the final regulations a general prohibition on immigration agents serving as an advisor to the accused or the accuser in a disciplinary proceeding is not supported by the statute. As stated above, section 485(f)(8)(B)(iv)(II) of the Clery Act, as amended by VAWA, provides that the accuser and the accused are entitled to the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice. However, institutions should be aware that allowing an immigration agent to serve as an advisor in order to intimidate or deter the accused or the accuser from participating in a disciplinary proceeding to resolve an incident of dating violence, domestic violence, sexual assault, or stalking would violate the Clery Act's protection against retaliation as reflected in § 668.46(m).

Changes: None.

Attorney as Advisor of Choice (§§ 668.46(k)(2)(iii) and (iv)

Comments: Many commenters supported the Department's interpretation of the statutory language in section 485(f)(8)(B)(iv)(II) of the Clery Act, as amended by VAWA, that the accuser or the accused may choose to have an attorney act as their advisor in an institution's disciplinary proceeding. The commenters believed that this interpretation protects the rights of both parties and the integrity of the proceedings. Several commenters stated that the final regulations

should detail the type of restrictions an institution may impose on an attorney advisor; other commenters believed that no restrictions on an attorney should be permitted.

Other commenters did not support allowing attorneys to act as advisors and stated that such an interpretation goes beyond the statutory intent. These commenters stated that section 485(f)(8)(B)(iv)(II) of the Clery Act provides only ''the opportunity'' for the accused or the accuser to have an advisor present during meetings or proceedings. Commenters believed that allowing attorneys to participate as advisors in an institution's disciplinary proceeding will create inequities in the process if one party has an attorney advisor and the other party does not and the presence of attorneys will make the campus disciplinary proceeding more adversarial and more like a courtroom than an administrative proceeding. One commenter believed that allowing attorney advisors would create a chilling effect for complainants and discourage them from reporting or going forward with a disciplinary process to resolve that complaint. Another commenter believed that allowing attorney advisors would force schools to hire court reporters and have legal representation present, which would drain resources. Another commenter believed that allowing attorneys to act as advisors would compromise the privacy rights of individuals involved in the process. One commenter asked that the final regulations require institutions to provide legal representation in any meeting or disciplinary proceeding in which the accused or the accuser has legal representation but the other party does not. One commenter stated that the proposed regulations incorrectly suggest that State laws providing students with a right to counsel in disciplinary hearings, like North Carolina's Student and Administration Equality Act, are inconsistent with VAWA and requested that the language be amended in the final rule.

Discussion: We are not persuaded that any changes are necessary to the regulations with regard to allowing attorneys to participate in an institution's disciplinary proceeding as advisors. Section 485(f)(8)(B)(iv)(II) of the Clery Act clearly and unambiguously supports the right of the accused and the accuser to be accompanied to any meeting or proceeding by ''an advisor of their choice,'' which includes an attorney. Section 668.46(k)(2)(iv) allows an institution to establish restrictions on an advisor's participation in a disciplinary proceeding. As stated earlier in the preamble, we believe that specifying what restrictions are appropriate or removing the ability of an institution to restrict an advisor's participation would unnecessarily limit an institution's flexibility to provide an equitable and appropriate disciplinary proceeding. Nothing in the regulations requires institutions to hire court reporters or have their own legal representation. Nor do we believe that allowing attorneys to act as advisors would compromise the privacy rights of individuals involved in the process, as explained previously. We do not believe that the statute permits us to require institutions to provide legal representation in any meeting or disciplinary proceeding in which the accused or the accuser has legal representation but the other party does not. Absent clear and unambiguous statutory authority, we would not impose such a burden on institutions. We would note, however, that the statute does require institutions to provide written notification to students and employees about legal assistance available for victims, both on-campus and in the community. We encourage institutions to also provide information about available legal assistance to the accused. We also note that the ability of the institution to restrict the role of all advisors means that all advisors are equal and that the presence of an attorney should not have a chilling effect on complainants. Before a proceeding is scheduled, schools should inform the parties of any limitations on the advisor's role so that both parties understand and respect these limitations. Lastly, we do not believe that the proposed regulations incorrectly suggested that State laws providing students with a right to counsel in disciplinary hearings are inconsistent with VAWA. The regulations do not require an institution to impose restrictions on the advisor's participation, they merely permit the institution to do so. Where State law prohibits such a restriction, State law would trump any institutional policy intended to restrict the advisor's participation that would otherwise be permissible under these regulations.

Changes: None.

Simultaneous Notification (§ 668.46(k)(2)(v))

Comments: Several commenters supported proposed § 668.46(k)(2)(v) which would 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 dating violence, domestic violence, sexual assault, or stalking; the institution's procedures for appeal of the result; any change to the result; and when the result becomes final. The commenters stated that having simultaneous notification will eliminate the possibility of unannounced, secret proceedings at which testimony or evidence adverse to the accused is gathered without his or her knowledge. Another commenter asked the Department to issue public guidance that incorporates the preamble discussion in the NPRM on what constitutes ''written simultaneous notification''.

Discussion: We appreciate the support of commenters. We also intend to include guidance on what constitutes ''written simultaneous notification'' in the updated *Handbook for Campus Safety and Security Reporting.*

Changes: None.

Definition of ''Prompt, Fair, and Impartial'' (§§ 668.46(k)(3)(i))

Comments: One commenter argued that the requirement in § 668.46(k)(3)(i)(B)(*1*) that an institution's disciplinary proceeding must be ''transparent'' to the accuser and the accused does not have legal meaning, and creates ambiguities and unrealistic expectations. One commenter believed that the requirement for timely notice of meetings in § 668.46(k)(3)(i)(B)(*2*) should be revised to specify that the timely notice applies only to meetings in which both the accused and the accuser will be present. Several commenters believed the timely notice provision interferes with an institution's ability to contact the accused student upon receipt of an incident report to schedule a meeting and, if necessary, take immediate action such as imposing an interim suspension, relocation from a dormitory, or removal from class. The commenters considered this a safety issue for both the accuser and the community.

Several commenters were concerned that the requirement in § 668.46(k)(3)(i)(C) that an institution's disciplinary proceeding be conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused does not address situations in which inappropriately partial or ideologically inspired people dominate the pool of available participants in a proceeding. This commenter suggested that the accused or the accuser be afforded an appeal or opportunity to object if a member of the adjudicating body is biased. Several commenters suggested that the final regulations should prohibit adjudicating officials with responsibility for administering informal resolution procedures from having any involvement in, or contact with, a formal disciplinary board that has responsibility for resolving the same complaint, to reduce the appearance that officials are trying to influence the outcome of a proceeding in favor of either party.

Lastly, one commenter recommended that the final regulations should provide that the accused or the accuser have the right to appeal the results of an institutional disciplinary proceeding, for an institution's proceeding to be considered prompt, fair, and impartial. This commenter stated that appeals are part of any well-functioning disciplinary process and ensure that any unfairness in the process is addressed by university leadership.

Discussion: We do not believe it is necessary to clarify the term ''transparent.'' With respect to a disciplinary proceeding, the term ''transparent'' means a disciplinary proceeding that lacks hidden agendas and conditions, makes appropriate information available to each party, and is fair and clear to all participants.

We do not believe that the requirement for timely notice of meetings in § 668.46(k)(3)(i)(B)(*2*) should be modified to apply to only meetings in which both the accused and the accuser will be present. We believe that an institution should

provide timely notice for meetings at which only the accused or the accuser will be present so that the parties are aware of meetings before they occur. Furthermore, we do not believe that the timely notice provision compromises an institution's ability to schedule a meeting with an accused student after receiving an incident report. In this context, ''timely'' just means that the institution must notify the accuser of this meeting as quickly as possible, but it does not mean that the institution must unreasonably delay responsive action to provide advance notice to the accuser.

We are not persuaded that we should revise the requirement in § 668.46(k)(3)(i)(C) that an institution's disciplinary proceeding be conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused to be considered prompt, fair, and impartial. With respect to the specific scenarios described by the commenters where they believe certain institutions' proceedings are being conducted by officials with bias, without more facts we cannot declare here that such scenarios present a conflict of interest, but if they did, § 668.46(k)(3)(i)(C) would prohibit this practice. The Clery compliance staff will monitor the presence of any conflicts of interest and we may revisit these regulations if we identify significant problems in this area.

Lastly, we disagree with the commenters who recommended that the final regulations should provide the accused or the accuser with the right to appeal the results of an institutional disciplinary proceeding. We do not believe we have the statutory authority to require institutions to provide an appeal process.

Changes: None.

Definition of ''Proceeding'' (§ 668.46(k)(3)(iii))

Comments: One commenter recommended that the definition of ''proceeding'' should expressly exclude communications between complainants and officials regarding interim protective measures for the complainant's protection. Another commenter suggested changing the definition to clarify that ''proceeding'' includes employee and faculty disciplinary proceedings as well as student disciplinary proceedings.

Discussion: We agree that the definition of ''proceeding'' should be modified to not include communications regarding interim protective measures. In many cases protective measures may be necessary for the protection of the accuser and treating these communications as ''proceedings'' could lessen that protection. We do not agree that changing the definition of ''proceeding'' to reflect employee and faculty disciplinary proceedings is necessary. Nothing in the definition limits a proceeding to only one involving students, and an institution is already required to describe each type of disciplinary proceeding used by the institution in its annual security report policy statement in accordance with § 668.46(k)(1)(i).

Changes: We have revised the definition of ''proceeding'' by adding that a ''proceeding'' does not include communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim.

Definition of ''Result'' (§ 668.46(k)(3)(iv))

Comments: Several commenters believed that the Department's reasoning in the NPRM for defining ''result'' to include the rationale for the result, that the accused or the accuser could use the result as the basis for an appeal, was flawed and not supported by statute. The commenters requested that the Department change the definition of ''result'' to require institutions to provide the rationale for the result to the accuser if it does so for the accused.

Discussion: We do not agree that the reasoning in the NPRM for defining ''result'' to include the rationale for the result is flawed. That either the accused or the accuser could use the result for the basis of an appeal is common sense. We also do not agree that the definition of ''result'' needs to be modified because § 668.46(k)(2)(v)(A) requires an institution to simultaneously notify both the accuser and the accused of the result of any institutional disciplinary proceeding.

Changes: None.

§ 668.46(m) Prohibition on Retaliation

Comments: One commenter expressed support for incorporating section 485(f)(17) of the Clery Act into the regulations.

Discussion: We appreciate the commenter's support.

Changes: None.

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 Integrated Postsecondary Education Data System (IPEDS) data, a total of 7,508 institutions were participating in title IV programs in 2012.2 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 final 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 on 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 final regulations only on a reasoned determination that their benefits 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 final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

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 six 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 and provide crime prevention and safety information to students and employees.

The section titled ''Summary of Changes from the NPRM'' summarizes the most important revisions the Department made in these final regulations since the NPRM. These changes were informed by the Department's consideration of over approximately 2,200 parties who submitted comments on the proposed regulations, along with approximately 3,600 individuals who submitted a petition expressing support for comments submitted by the American Association of University Women. The changes are intended to clarify the reporting of stalking across calendar years, remove the requirement by institutions to report stalking as a new and distinct crime after an official intervention, and clarify cases in which an institution may remove from its crime statistics reports of crimes that have been unfounded.

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 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 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 institutional 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 features of the regulations, including definitions of ''outcomes,'' ''initial and final determinations,'' ''resolution,'' ''dating violence,'' ''employees,'' and ''consent.''

Finally, the ''Final Regulatory Flexibility Analysis'' considers issues relevant to small businesses and nonprofit institutions. Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

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 VAWA provisions 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 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.

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.

Summary of Changes From the NPRM

Reporting Stalking Crossing Calendar Years

The Department modified § 668.46(c)(6)(i) to clarify that stalking which crosses calendar years should be recorded in each and every year in which the stalking is reported to a campus security authority or local police. While commenters supported the approach in the proposed regulations, arguing that it would provide an accurate picture of crime on campus for each calendar year, they also suggested modifying the language to clarify that an institution must include a statistic for stalking in each and every year in which a particular course of conduct is reported to a local police agency or campus security authority. The modification was made to address this concern.

Stalking After an ''Official Intervention''

The Department removed proposed § 668.46(c)(6)(iii) which would have required institutions to record a report of stalking as a new and distinct crime, and not associated with a previous report of stalking, when the stalking behavior continues after an official intervention.

Some of the commenters supported the approach in the NPRM under which stalking would be counted separately after an official intervention, including formal and informal intervention and those initiated by school officials or a court.

Other commenters urged the Department to remove § 668.46(c)(6)(iii) and argued that the proposed approach would be inconsistent with treating stalking as a course of conduct. They explained that stalking cases often have numerous points of intervention, but that despite one or multiple interventions, it is still the same pattern or course of conduct, and that recording a new statistic after an ''official intervention'' would be arbitrary. The Department agreed with this argument.

Recording All Reported Crimes (§ 668.46(c)(2))

The Department received comments asking us to clarify how the regulation that provides that all crimes reported to a campus security authority must be included in an institution's crime statistics relates to ''unfounded'' crime reports. The Department has clarified in the final regulations that an institution may remove from its crime statistics (but not from its