The Clery Act Bites Back: Helping Your Organization Avoid Large Fines

By: Danielle Bundy and David Summerlin

About the Authors

Danielle Bundy is the Internal Audit Director at the Colorado Community College System (CCCS) with over 14 years of audit experience. Danielle worked for KPMG, a public accounting firm, in their assurance and forensic practices for 7 years. In 2012, she began working at CCCS. The CCCS Internal Audit Department performed Clery Act compliance audits at 5 System Colleges in fiscal year 2019, and presented common findings and best practices to key stakeholders in the process.

David Summerlin is the Internal Audit Senior Manager at the Colorado Community College System (CCCS). David has over 7 years of internal and IT audit experience with several institutions of higher education in Colorado and Louisiana. Over the past year he has planned and conducted audits at 5 of the 13 Colorado Community Colleges for compliance with the Clery Act, and presented findings and best practices to Colleges and CCCS leadership.

Have you ever had the feeling that something is lurking around you? Something that feels imminent and dangerous, but you just do not see it? Well, Clery Act compliance may be the cause of that uneasy feeling, and with it being part of the U.S. Department of Education Title IV reviews – the odds of repercussions from noncompliance are higher.

The Clery Act is campus safety legislation that requires institutions of higher education to inform students and parents about campus safety and over the years, other safety regulations have been added to the Clery Act, like the Violence Against Women Act (VAWA). With the expansion of the Clery Act’s scope, the need for keeping up with current guidance and requirements has become more difficult, and many institutions have neglected to stay compliant. This expansion of the Act’s requirements has been accompanied by fines per violation that exceed $57,000, which have increased every year. Further, Clery audits have been used as a means of levying hefty fines to institutions of higher education with egregious violations, such as Penn State which incurred over two million dollars in Clery non-compliance fines. Clery Act compliance has become like a shark that has been fed and grown to a massive size with extremely sharp teeth, and because of the vastness of the “compliance ocean” institutions are not concerned with the risk or do not know how large the shark has become. Those institutions that ignore the risk or believe that the shark is still small will be more damaged if they are bitten.

So, what can an institute of higher education do to protect themselves and prevent a catastrophic bite? It starts with learning how expansive the Clery Act has become and the areas of guidance that are more complicated. Getting training on the Clery Act will provide you with insight of the nuanced guidance and interpretations of the formal guidance. The Handbook for Campus Safety and Security Reporting 2016 will be the most instrumental piece of guidance and external training can be invaluable. The training will provide you with a greater understanding of the higher risk areas for hefty fines—such as campus security authorities (CSAs), emergency notifications and evacuation procedures, and crime statistics—and favorite areas of enforcement by the Department of Education, which include the institution’s policies presented in the Annual Security Report. The individuals responsible for Clery Act compliance at your institution should understand these areas and have processes for managing each one. If that understanding is lacking or completely missing, your institution could be one of those shark bite victims.
A way to avoid the big bite is to conduct an audit of the perceived areas of higher risk and those that are favorites of Department of Education audits. Test the process for identifying, training, and requiring Clery crime reporting from CSAs; look at the list of CSAs for completeness; review records of emergency notification and evacuation procedure testing; reconcile crime statistics to supporting documentation; or test for classification of crimes. Clery Act compliance audits can be scoped from simply looking at the processes established and documentation of those processes, to performing substantive testing of each crime statistic reported for completeness and accuracy of classification and count. It all depends on how much time you have, the level of training of your staff on Clery requirements, and your assessed risk of noncompliance.

The final part of Clery compliance to consider is whether your institution is committed to staying up to date on Clery Act requirements. Performing an internal audit, identifying areas of noncompliance, and ensuring those are corrected can prevent fines based on the current guidance, but guidance continues to change and an institution needs to be aware of those changes. Your institution needs to be committed to monitoring the guidance for changes, as well as including individuals throughout your organization in updating your Annual Security Report to ensure required policies are present and reflect your institution’s actual activities. So get out, get training, audit your institution’s Clery Act compliance, monitor for updates, and avoid the big shark attack.
What is the Clery Act?

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act or Clery Act, signed in 1990, is a federal law requiring disclosure of certain safety information.

All colleges and universities that participate in federal financial aid programs must disclose information about crime on and near their respective campuses.

Compliance is monitored by the United States Department of Education.

- Part of a Title IV Student Financial Aid review
Recent Updates to Clery

• In 2013, the Violence Against Women Reauthorization Act (VAWA) was signed into law, which included the Campus Sexual Violence Elimination Act (Campus SaVE Act) provision, and imposes new transparency obligations on colleges and universities, and affords additional rights to campus victims of sexual assault, dating violence, domestic violence, and stalking. Institutions are required to classify and disclose statistics related to dating violence, domestic violence, sexual assault and stalking as a result.

• The Handbook for Campus Safety and Security Reporting was updated in 2016 which clarified many requirements.

Why did we audit Clery?

• Clery is part of a Department of Education Title IV review
• High fines, up to $57,317 per violation
• Potential suspension or limiting of Title IV funding
• Federal Clery audits are public record
  • Negative reputational exposure
  • Institution’s name provided to Congress by the Secretary of ED

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Published Fines for Noncompliance

<table>
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<tr>
<th>Year</th>
<th>Institution</th>
<th>Fine Amount</th>
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<tbody>
<tr>
<td>2016</td>
<td>Penn State University</td>
<td>$2,397,500</td>
</tr>
<tr>
<td>2018</td>
<td>University of Montana</td>
<td>$ 966,614</td>
</tr>
<tr>
<td>2016</td>
<td>University of Jamestown</td>
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<td>2017</td>
<td>University of St. Thomas</td>
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<tr>
<td>2014</td>
<td>Sterling College</td>
<td>$ 165,000</td>
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<tr>
<td>2017</td>
<td>Delgado Community College</td>
<td>$ 125,750</td>
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Learning Objectives

• Identify resources to use in a Clery audit
• Develop an audit program guide for compliance with the Clery Act
• Recognize common areas of noncompliance and best practices

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Where to start: Clery Act Compliance Resources

- 34 C.F.R. Part 668 Student Assistance General Provisions
  - Consider using Appendix C as a basis for audit program guides
- The Clery Center website (https://clerycenter.org/policy-resources/the-clery-act/)
- The Campus Safety and Security Help desk (800) 435-5985 or e-mail at CampusSecurityHelp@Westat.com
- ACUA Kickstarter coming soon!

Audit Tip: Consider attending Clery specific training before beginning your audit.

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Key Components of the Clery Act

- Clery Geography
- Timely Warnings and Emergency Notifications
- Crime Statistics
  - Crime Log
  - Campus Security Authorities
- Annual Security Report
- Residence Hall Considerations
  - Missing Persons
  - Fire Safety

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Clery Geography

Geography within which Clery crimes are required to be disclosed and timely warnings must be made

1. On campus
   ✓ Owned or controlled buildings or property
   ✓ Reasonably contiguous to one another
   ✓ Directly support or relate to educational purposes

2. Public property immediately adjacent to campus

Best Practice: Clery Geography map assessed at least annually
Updated 2016 Guidance

- Be aware of updated 2016 guidance and its impact on the geography assessment.

“It is reasonable to consider locations within one mile of your campus border to be reasonably contiguous with your campus.”

Non-Campus Clery Geography

Does your College own or control any buildings or property located off campus?

1. Those owned by officially recognized or registered student organizations
2. Owned or controlled space located off campus
   - Examples:
     - Rented classroom space
     - Athletic Fields
     - Apartment building or hotel used for student housing

Off-Campus Trips

Are there any school-sponsored trips?

1. With repeated use of the same facility each year; or
2. For more than one night; and
3. Where the College controls the space
   - Examples:
     - Study Abroad
     - Class trips
     - Hotel rooms or housing
     - Classroom space
What does it mean? Non-campus geography scenarios

Your college takes debate club participants to Washington D.C. every year for a competition. Students stay at the same hotel each year.

Is the hotel a non-campus location?

The College’s law enforcement academy uses a local shooting range as part of the program.

Is the range a non-campus location?

Audit Steps

Compare the institution’s Clery geography assessment to a list of owned and leased properties to determine completeness. Review the institution’s website to identify non-campus locations.

Examples:
- Study Abroad
- Athletics
- Programs that use off campus sites

Common Findings

Clery Geography is not properly assessed. In particular, non-campus locations are not properly identified and therefore, crime statistics are not requested for those locations.

Be aware of the 2016 guidance changes
Timely Warnings and Emergency Notifications

Notifications to students and staff allowing them to adequately prepare for a threat against their safety

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Timely Warnings

“the intent of a warning regarding criminal incident(s) is to enable people to protect themselves...and will aid in the prevention of similar crimes”

**Scope:** Narrow focus on Clery Act crimes

**Why:** Timely warnings are triggered by crimes that have already occurred but represent an ongoing threat. Issue a timely warning for any Clery Act crime committed on your Clery Act geography that is reported to your campus or law enforcement, and that is a continuing threat to students and employees.

**Where:** Applies to crimes that occur anywhere on your Clery Act Geography (provided to the entire campus community)

**When:** Issue a warning as soon as the pertinent information is available
Emergency Notifications

“intended to notify your campus of an immediate threat or dangerous situation”

Best practice: Document timely warning and emergency notification decisions and ensure cross-training exists.

Scope: Wide focus on any significant emergency or dangerous situation (may include Clery Act crimes)

Why: Emergency notification is triggered by an event that is currently occurring on or imminently threatening the campus. Initiate emergency notification procedures for any significant emergency or dangerous situation occurring on the campus involving an immediate threat to the health or safety of students or employees.

Where: Applies to situations that occur on your campus (can be a segment of the campus)

When: Initiate procedures immediately upon confirmation that a dangerous situation or emergency exists or threatens

Test Emergency Response and Evacuation Procedures

Requirements:
1. Scheduled
2. Contain drills and exercises
3. Contain follow-through activities
4. Designed for assessment and evaluation of emergency plans and capabilities
5. Emergency response and evacuation procedures publicized in conjunction with at least one test per year
6. Documented for each test: a description of the exercise, the date, time and whether it was announced or unannounced

Is your College prepared for an emergency?
What does it mean?
Timely Warning/Emergency Notification scenarios

Last night, there was a carjacking at one of the college’s on-campus residence halls.

An unexpected and oddly shaped package was delivered to the college’s administration building. Students frequent the building to register for classes.

Should a timely warning be issued?

Does the situation warrant an emergency notification?

Audit Steps

• Select a sample of crimes from the crime log (if applicable) and ensure timely warning was made when appropriate
  • Review for patterns of crimes that could necessitate a warning
• Review the log of emergency testing (including fire drills) to ensure the testing occurs once per year and the log includes all required elements

Common Findings

• Timely warnings or emergency notifications not issued, or not issued timely
• Procedures for timely warnings and emergency notifications are not documented or the process documented is incomplete or non-compliant
• Emergency procedures not tested or all required elements of testing not included

Timely warning and emergency notification audit findings can directly impact student safety.
Crime Statistics

Crime incidents to be gathered, tracked and reported in the crime log and the Annual Security Report.

1. CSAs are identified by the college
   - Significant responsibility for student & campus activities
2. Collection of positive assurance that crimes were reported
   - Completed by each CSA
3. Training is highly encouraged
   - New CSAs at a minimum

Note: Fines can be levied per CSA

What does Clery require for CSAs?

Examples CSAs:
- Campus Security
- Dean of students who oversees student housing or student activities
- Athletic Director and Coaches
- Student RA
- Faculty advisors to student groups
- Title IX Coordinator
- Victim advocates

Best practice: Keep a detailed list of CSAs updated on a semester basis. Documented refresher training at least annually.
**Crime Log**

- Only required if you have campus security
- Includes all crimes reported to security that occurred on Clery geography
- Crimes must be recorded within 2 business days

**Quick checks for errors:**
- Updated Crime Log is available upon request
- Must include the last 60 days
- All fields are in the crime log (see example)
- No Personally Identifiable Information (PII) is included
- Notification of availability made to students and employees

**Statistics from Law Enforcement**
Crime statistics must be requested from law enforcement for Clery Geography. A good faith effort must be documented.

**Audit Steps**

- Review the list of CSAs for completeness, proper training and ensure that all crimes were reported or CSAs confirmed that they were aware of no crimes
- Ensure that the crime log is readily available, free of charge, for the last 60 days and includes all required elements
- Identify law enforcement with authority over Clery geography and ensure a good faith effort was made to obtain crime statistics

**Common Findings**

- CSAs are incomplete, not tracked, not trained and/or the institution does not require positive assurance from CSAs that they are not aware of any reportable crimes
- Crime log not maintained, not publicized or not available free of charge
- Crime log entries are not updated or do not include all required elements
- Crime statistics not requested from law enforcement or request not documented
Annual Security Report

Annual publication including crime statistics for Clery Geography and related safety and security policies

The Annual Security Report

- Publish and Distribute by October 1st
- Include all required policy statements
- Include three years worth of Clery Act statistics
- Required policy statements- Chapter 7 of the Handbook
- VAWA Policies, Procedures and Programs- Chapter 8 of the Handbook
Distributing the ASR

• Required Distribution by **Oct. 1st** to:
  • Current Students
  • Current Employees
• You must also make the ASR available to:
  • Prospective Students
  • Prospective Employees
• Notification of Availability

Administrative Capability

• Ensure the person with primary responsibility is properly trained and has a copy of the Handbook.
• Compliance Committee exists
• Sections are assigned to “owners” for review
• Robust review is done using Appendix C

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**Best practice:** Robust Management Review

• Verify all required policy statements are included
• Check statistic classification in ASR (2016 classification changes)
• Agree prior year crimes to prior year statistics in the current ASR
• Agree ASR statistics to those submitted to the Department of Education and to supporting documentation
Audit Steps

• Select a sample of crimes reported and agree to supporting documentation to ensure crimes were reported in the correct category and offenses are counted accurately
• Select a sample of crimes from the crime log (if applicable) and trace to the ASR to ensure completeness
• Ensure management reviewed the ASR and all required policy statements are included (consider using Appendix C in the Handbook for Campus Safety and Security Reporting)
• Interview key stakeholders to ensure processes in the ASR are operating as intended
• Review the notice of distribution of the ASR to ensure all required components were included

Common Findings

• Incomplete or missing ASR policy statements
• Information in the ASR does not reflect actual activities of the institution
• Inaccurate crime statistics reported in the ASR
• Notification of ASR availability not made or incomplete

Ensure prospective students and employees are made aware of the ASR’s availability.

Residence Halls

Missing person notifications, fire safety and the Annual Fire Safety Report
Residence Halls

Do you have residence halls?

1. Missing person procedures
   - Must allow students to specify a contact different from emergency contact
2. Fire drills need to occur regularly and be documented
3. Maintain a Fire Log

Audit Steps

• Ensure the institution allows student residents to designate an alternate contact in the event they are missing

• Review the fire log to ensure it is maintained, available to public, and includes all required elements

• Review documentation of each fire drill performed in the residence halls to ensure all required elements were recorded

Common Findings

• Alternate missing persons contact information not collected

• Fire logs not maintained, incomplete or entries do not include required elements

• Fire drills are not performed or documentation does not include all required elements
Contact Information

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