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Dear Dr. Barron:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine the Pennsylvania State University (Penn State; the University) a total of \$2,397,500 based on the violations of statutory and regulatory requirements outlined below. This fine action is taken in accordance with the procedures that the Secretary of Education (Secretary) has established for assessing fines against institutions participating in any of the programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (Title IV, HEA programs). As applicable here, under the Department's regulations, the Department may impose a fine of up to \$27,500 for each violation. 34 C.F.R. § 668.84. As detailed below, this fine action is based on Penn State's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA, 20 U.S.C. § 1092(f), as reflected in 34 C.F.R. §§ 668.41 and 668.46 (2011)<sup>1</sup>, and the Drug-Free Schools and Communities Act Amendments of 1989 (DFSCA), as reflected in 34 C.F.R. Part 86.

Under the Clery Act, institutions participating in the Title IV, HEA programs must prepare, publish and distribute an Annual Security Report (ASR) by October 1 of each year. 34 C.F.R. § 668.41(e). The ASR must include a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b). Specifically, the ASR must include: a list of the titles of each person or organization to whom students and employees should report criminal offenses for the purposes of making timely warning reports and annual statistical disclosures; a statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by the institution, including student organizations with off-campus housing facilities; notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available; a clear statement that the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; a statement that both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense; beginning with the ASR

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<sup>1</sup> The Department significantly revised 34 C.F.R. §668.46 in final regulations published on October 20, 2014. However, the fines proposed in this letter are based on violations of the regulations existing during the period covered by the program review.

**Federal Student Aid**

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distributed by October 1, 2010, a statement of policy regarding missing student notification procedures; and beginning with the ASR distributed by October 1, 2010, a statement of policy regarding emergency response and evacuation procedures. 34 C.F.R. § 668.46(b)(2011). In addition, the ASR must report statistics for the three most recent calendar years concerning the occurrence of certain crimes on campus, in or on certain non-campus buildings or property, and on public property. 34 C.F.R. § 668.46(c). An institution must compile and publish crime statistics for each separate campus. 34 C.F.R. § 668.46(d). The crimes that must be reported include: criminal homicide (murder and manslaughter); sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests for liquor law violations, drug law violations and illegal weapons possession. The ASR must be distributed to current students and employees and must be made available to applicants for admission and employment to provide them with accurate, complete and timely information about crime and safety on campus. 34 C.F.R. § 668.41(e). Institutions must submit the crime statistics annually to the Department, which makes them publicly available. 34 C.F.R. § 668.41(e)(5).

The Secretary considers an institution to have administrative capability if it administers the Title IV, HEA programs in accordance with all applicable statutory and regulatory provisions and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA. 34 C.F.R. § 668.16.

Beginning October 1, 2010, an institution that maintains any on-campus student housing facility, must prepare an Annual Fire Safety Report (AFSR). 34 C.F.R. §668.49(b). An institution that maintains on-campus student housing facilities must maintain a written, easily understood fire log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility. 34 C.F.R. §668.49(d). The AFSR must be published and distributed through appropriate publications and mailings in the same manner as the ASR. The AFSR must be a comprehensive publication in the same manner as the ASR; however, if an institution chooses to combine the ASR and AFSR and publish them as a single document, then the title of both reports must conspicuously appear on the cover page. 34 C.F.R. § 668.41(e).

The DFSCA and the Department's regulations require an institution of higher education to adopt and implement a drug prevention program for its students and employees. 34 C.F.R. § 86.100.

On November 4, 2011, the Pennsylvania Attorney General (PA AG) announced that an investigative Grand Jury had issued a Presentment (Indictment) against Mr. Gerald A. Sandusky (Sandusky), who served as an assistant football coach at Penn State from 1969 to 1999, on multiple charges related to acts of child sexual abuse beginning in 1998. The Presentment was posted on the PA AG's website on November 5, 2011. The charges included more than 50 felonies, including multiple counts of involuntary deviate sexual intercourse, aggravated indecent assault, and unlawful contact with minors, as well as additional charges for corruption of a minor and endangering the welfare of a minor. The Presentment indicated that several of these sex crimes occurred on the Penn State campus.

On November 5, 2011, the same day that Sandusky was arrested, the PA AG also announced charges against Mr. Timothy M. Curley, Penn State's Athletic Director, and Mr. Gary C. Schultz, Vice President at Penn State, on charges of failing to report the allegations against Sandusky to law enforcement and child protective services, and for committing perjury during their testimony before the Grand Jury. On November 9, 2011, the Department notified Penn State that it would begin conducting a program review at Penn State on November 28, 2011. The Department's decision to initiate a program review at Penn State was prompted by the indictment against Sandusky and charges against senior Penn State officials, indicating that serious sexual offenses against minors had occurred on the Penn State campus.

The Sandusky indictment and charges against senior Penn State officials culminated in the Penn State Board of Trustees' removal of Graham B. Spanier as President and the removal of Joseph V. Paterno as Head Coach of the football team. The Board also formed a Special Investigative Task Force (SITF) to conduct an internal investigation into the Sandusky matter. On November 21, 2011, the SITF retained Freeh, Sporkin, & Sullivan, LLP (the Freeh Group) as Special Investigative Counsel to investigate all issues and circumstances attendant to the Sandusky matter. The Freeh Group issued its report (the Freeh Report) on July 12, 2012. On November 1, 2012, the PA AG announced an eight-count indictment charging former Penn State President, Spanier, with perjury; endangering the welfare of children; obstruction; failure to report allegations of child sex abuse; and conspiracy. During a press conference called to announce the charges, the PA AG characterized the actions of Spanier, Schultz, and Curley as a "Conspiracy of Silence."

The Department's program review assessed Penn State's compliance with the Clery Act, the DFSCA, and the implementing regulations. The review included a careful examination of Penn State's publications, written agreements, police incident reports, investigative reports, arrest records, and disciplinary files as well as the University's policies, practices, procedures, and programs related to the Clery Act. The review team also interviewed several current and former institutional officials with Clery Act responsibilities. To gain a broad perspective, Department officials also attended the on-campus student forum at Penn State in the first week of December 2011 and an alumni town hall forum in January 2012 and spoke to several current and former Penn State students about their experiences and opinions. Department officials also carefully reviewed the Freeh Report. In addition, the Department reviewed many other documents and reports prepared by various authorities and groups, including a report by the Pennsylvania Auditor General and the "Critique of the Freeh Report" prepared at the request of the family of the late former Penn State football coach, Joe Paterno. The review team also carefully monitored all significant developments arising from the Sandusky trial as well as other related investigations.

The Department selected several samples of Penn State University Police Department (PSUPD) records, including approximately 854 incident reports as well as numerous arrest reports, disciplinary referral reports, photographs, email exchanges, and other relevant materials for the period from 1998 through 2011. The incident reports examined by Department officials

documented serious crimes reported to the PSUPD and/or the Office of Student Conduct. The Department also reviewed records of a sample of arrests and disciplinary referrals for violations of certain laws pertaining to illegal drugs, illegal usage of controlled substances, liquor, and weapons. All documents that were requested were from the University Park campus. Both random and judgmental sampling techniques were used to select reports for this review. Selected incident reports from these samples were cross-checked against the daily crime log to ensure that crimes occurring within the patrol jurisdiction were entered properly.

On July 11, 2013, the Department issued a Program Review Report (PRR) to Penn State. The review found that Penn State had not complied with the Clery Act, the DFSCA, and the Department's implementing regulations. Penn State responded to the PRR on March 31, 2014, June 2, 2014, and July 1, 2014. Pursuant to the Department's requests for additional information, the University submitted supplemental material on several occasions. The final production was received on September 12, 2016. After reviewing Penn State's responses, the Department issued its Final Program Review Determination (FPRD) letter to Penn State on November 3, 2016. The FPRD is incorporated by reference into this fine action. (Enclosure 1).

On October 13, 2016, Penn State, through counsel, informed the Department that its initial 2011 ASR was produced and posted on September 28, 2011, and distributed on October 3, 2011; the first revised version of the 2011 ASR, which corrected certain UCR numbers, was produced and posted at some point after October 3, 2011; and a final 2011 ASR was produced and posted on November 23, 2011. Based upon the institution's information, the Department determined that Penn State published its final 2011 ASR on November 23, 2011. The Department concluded that Penn State's earlier versions of the 2011 ASR were no longer expected to be relied upon after it published and posted its November 23, 2011 ASR. Therefore, the FPRD and the fine notice are based upon the information collected during the review, and the 2011 ASR Penn State produced and posted for its students and employees on November 23, 2011.

The Department is taking this fine action based on the findings in the FPRD, which concluded that Penn State violated the HEA and the Department's regulations when it did not issue an emergency notification to its students and employees after Penn State's senior officials learned of the forthcoming forcible sex offense and child sex abuse charges against Sandusky; lacked the administrative capability required under the Department's regulations; did not include required policy statements in its ASR for calendar year 2011; did not properly title its 2011 AFSR that was concurrently published with its 2011 ASR, thereby not informing students and employees that the reports were in one publication; failed to properly classify and disclose crime statistics in its 2011 ASR; failed to collect crime statistics from all required sources to be included in the 2011 ASR; failed to report accurate crime statistics in its 2011 ASR that matched the crime statistics submitted to the Department and made available to the public; failed to timely distribute the ASR for calendar year 2011; failed to notify prospective students and employees of the

availability of the 2011 ASR and 2011 AFSR; and failed to comply with the DFSCA and 34 C.F.R. Part 86.<sup>2</sup>

**I. FAILURE TO ISSUE AN EMERGENCY NOTIFICATION AFTER SENIOR PENN STATE OFFICIALS LEARNED OF THE FORTHCOMING FORCIBLE SEX OFFENSE AND CHILD SEX ABUSE CHARGES AGAINST SANDUSKY**

Beginning with the ASR distributed by October 1, 2010, any institution that participates in the Title IV programs must include a statement of policy regarding its emergency response and evacuation procedures in its ASR. The statement must include, among other things: the procedures the institution will use to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on campus; a description of the process the institution will use to confirm there is a significant emergency or dangerous situation, determine the appropriate segments of the campus community to receive a notification; a description of the process the institution will use to determine the content of the notification; and a description of the process the institution will use to initiate the notification system. Additionally, the institution's procedures must include a statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgement of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency; a list of the titles of the person or persons or organization or organizations responsible for confirming the emergency, determining who to receive the notifications, determining the content of the notification, and initiating the notification system. The ASR must also include the institution's procedures for: disseminating emergency information to the larger community; the institution's procedures to test the emergency response and evacuation procedures on at least an annual basis; publicizing its emergency response and evacuation procedures in conjunction with at least one test per calendar year; and documenting, for each test, a description of the exercise, the date, time, and whether it was announced or unannounced. 34 C.F.R. § 668.46(g).

Penn State did not issue an emergency notification to its students and employees after Penn State's senior officials learned of the forthcoming forcible sex offense and child sex abuse charges against Sandusky, who served as an assistant football coach at Penn State from 1969 to 1999. Sandusky continued to have a significant and regular presence on the University Park campus after his 1999 retirement. He had keys and full access to University athletic facilities; an office in the University's Lasch building; premium seating in the exclusive Nittany Lion Club at Beaver Stadium, which he used to bring children as his guests; and access to University golf courses for his personal use, where he also brought children as guests. In addition, Sandusky

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<sup>2</sup> The FPRD included additional findings for which FSA is not proposing fines due in part to the application of the statute of limitations.

conducted mentoring programs for the Second Mile organization on the University Park and Altoona campuses from 2006 to 2009; Second Mile Day Camps at the Altoona campus from 2001 to 2008/09; Sandusky Football Camps at the Behrend campus from 2000 to 2008; and the Harrisburg campus from 2007 to 2008. He also utilized the golf courses for Second Mile fundraising tournaments from 2003 to 2011; received game tickets to football games from the University; and had access to a football stadium skybox.

On November 4, 2011, the PA AG Grand Jury issued an indictment against Sandusky on multiple charges relating to acts of child sexual abuse beginning in 1998. The charges included more than 50 felonies, including multiple counts of involuntary deviate sexual intercourse, aggravated indecent assault, and unlawful contact with minors as well as additional charges for corruption of a minor and endangering the welfare of a minor. Several of these sex crimes occurred on the Penn State campus. The Department's review team determined that, even prior to the Sandusky indictment, the University had significant evidence that Sandusky posed a danger to the campus community but continued to provide him unfettered access to the campus buildings and facilities. A former senior official in the Athletic Department told the review team that, in early 2011, he was directed by the University's then-General Counsel to reclaim Sandusky's keys to the football operations building and other facilities. Sandusky refused to return the keys and no further attempts were made to terminate his access until the University changed the locks. This attempt to terminate Sandusky's access suggests that senior University officials did in fact perceive Sandusky as a possible threat to the campus community. Despite this knowledge, the University did not issue an emergency notification to its students and employees, hence endangering the health and safety of its campus community.

The PRR and the FPRD noted that in November 2008, Sandusky was removed as a volunteer coach at Central Mountain High School after allegedly engaging in inappropriate sexual conduct with a young boy. In May 2010, Sandusky was denied a volunteer coaching position at Juniata College after failing a routine background check. Individuals within Penn State's Department of Intercollegiate Athletics were aware of these events. Starting in January 2010, the PA AG began a steady stream of contacts with the University regarding Sandusky. The PA AG subpoenaed Sandusky's employment and personnel records, questioned University officials about past allegations of sexual impropriety by Sandusky, and eventually compelled several Penn State officials to testify before the Grand Jury. Penn State officials took the PA AG's contacts and requests for information seriously and coordinated responses through its legal counsel. By March 2011, articles about the Sandusky investigation began to appear in local newspapers.

Despite these events, at no point did Penn State take any action to warn the campus community about the potential risk posed by Sandusky's continued presence on campus. Privately, however, some senior officials, including the then-Chair of the Board of Trustees, expressed serious concern about Sandusky's presence on campus after seeing him at a Penn State football game shortly before the Presentment was released. As noted above, some minimal efforts were made to terminate, or at least limit, Sandusky's access to campus facilities, but these efforts were weak and unsuccessful.

When Department officials asked Penn State officials why Sandusky was allowed to continue to use University facilities, several current employees, legal counsel, and a former member of the Board of Trustees stated that Sandusky's access privileges were a condition of his retirement agreement and a normal part of the benefits conferred upon persons with emeritus status. However, the University's human resources officials told the Department that Sandusky did not meet the requirements for emeritus status and that his emeritus status was not conferred in the prescribed manner; it could have been rescinded or modified for cause. In any case, the granting of emeritus status to an individual does not excuse an institution from its legal obligation to comply with the Clery Act's emergency notification requirement, if that individual represents a threat to others.

In its various responses to the PRR on March, 31, 2014, June 2, 2014, July 1, 2014 and September 12, 2016, Penn State argued that Sandusky's presence on campus was not a significant emergency or a dangerous situation posing an immediate threat to the health and safety of students and employees. The University also argued that because Sandusky's access to the campus was intermittent, issuing an emergency notification would not have been feasible, and would likely have been prohibited by grand jury secrecy rules, if based on knowledge the University had due to grand jury subpoenas. However, Penn State did not suggest that it monitored Sandusky's appearances on campus, so it has no evidence to support its assertion that Sandusky's visits to those facilities were intermittent or limited, nor did the University provide any support for its claims that an emergency notification issuance was prohibited by grand jury secrecy rules. The emergency notification would have informed the campus community that there was a dangerous situation involving an immediate threat to the health or safety of students or employees occurring on campus, and the University has not provided any reasonable explanation for not issuing such a warning under these circumstances.

The Department's FPRD concluded that there was sufficient evidence to determine that Sandusky posed an immediate threat to the health and safety of Penn State's students, employees and others who used the campus. Yet the University failed to issue an emergency notification and continued to permit Sandusky full access and keys to University athletic facilities; an office in the Lasch building; and extensive access to campus buildings and facilities. He posed an immediate threat to students, employees, as well as to estimated 20,000 children participating in youth camps at Penn State every year, and the many thousands more attending concerts, sporting events, and other activities on the Penn State campus.

Clearly, Penn State knew that Sandusky was about to be charged with significant crimes against minors. The University knew that some of those vicious sex offenses against minors occurred on the Penn State campus while Sandusky had unfettered access to campus buildings and facilities. In short, a man who was about to be charged with violent crimes against defenseless minors was free to roam the Penn State campus, as he pleased. Reviewers determined that Penn State's University Park campus was a beehive of activity for children, yet the University failed to issue an emergency notification when senior officials knew of the forthcoming charges against Sandusky. Penn State denied its students and employees important information necessary for

them to make informed decisions relative to their personal safety, and the safety of minors on campus.

## **II. LACK OF ADMINISTRATIVE CAPABILITY**

To begin and to continue to participate in any Title IV, HEA program, an institution must demonstrate to the Secretary that it is capable of adequately administering the programs under each of the standards established by the Department's regulations. The Secretary considers an institution to have administrative capability if it administers the Title IV, HEA programs in accordance with all applicable statutory and regulatory provisions and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA. 34 C.F.R. § 668.16. The regulations also include a requirement that an institution must employ an adequate number of qualified staff to administer the Title IV, HEA programs. 34 C.F.R. § 668.16(b)(2). An institution is required to administer the programs with appropriate checks and balances in its system of internal controls. 34 C.F.R. § 668.16(c)(1). These standards apply to the institution's implementation of the Clery Act and the Department's implementing regulations as reflected in 34 C.F.R. § 668.46, and the DFSCA, as reflected in 34 C.F.R. Part 86.

Under the Clery Act and the Department's regulations, an institution participating in the Title IV, HEA programs must keep records relating to its administration of those programs for three years after the end of the award year for which aid was disbursed. 34 C.F.R. §668.24(e).

The FPRD found that Penn State lacked the administrative capability required of Title IV participating institutions because it substantially failed to comply with the Clery Act and the DFSCA throughout the review period. The regulations that govern the Title IV Federal student financial aid programs establish certain standards that all participating institutions must meet to be considered administratively capable. In regard to Penn State's administration of the Clery Act, the Department has determined that the University delegated nearly all responsibilities to the PSUPD, without providing sufficient funding or arranging for training, for many years, to support PSUPD compliance efforts.

The University also largely ignored many of its Clery-related responsibilities. The University did not have sufficient staff to ensure compliance with the Clery Act, and did not have a system of checks and balances to ensure compliance. The Department's reviewers asked Penn State for documentation to support that the crime statistics in its 2011 ASR matched the crime statistics it submitted to the Department for 2008, 2009, and 2010. In response, Penn State acknowledged, that it had not retained records relating to the data it had submitted to the Department and was, therefore, dependent on the Department to give its officials the details of its own data that it submitted to the Department for calendar years 2008, 2009, and 2010. Substantive steps to bring the University into full compliance with the law did not begin until after the Department's program review was initiated.



The University's failure to demonstrate administrative capability is also demonstrated by its failure to appropriately implement the DFSCA. During the period from 1998 to 2010, the University failed to develop, publish, and actively distribute to its students and employees, a comprehensive drug and alcohol prevention program (DAAPP) that addressed all five required subject areas. The University consistently failed to provide the statutorily-required accurate and complete written description of the legal sanctions imposed under local, State, or Federal law for unlawful possession or distribution of illicit drugs and alcohol, each year, from 1998 through and including 2010; and the University omitted a description of the health risks associated with the use of illicit drugs and the abuse of alcohol in 2001, 2002, 2003, 2004, 2005, 2006, 2007 and 2010.

In its various responses to the PRR, Penn State argued that the administrative capability provisions of the Department's regulations at 34 C.F.R. §668.16 are not applicable to the Clery Act. Penn State also denied the various findings made by the Department in the PRR to support its determination that the University lacked administrative capability. Penn State claimed that at all times, it acted in good faith to comply with the Clery Act. Penn State also noted the piecemeal efforts it has made over the years and argued those efforts were proof of its compliance with the Clery Act.

Penn State participates in the Title IV, HEA programs. Therefore, the University is required to demonstrate to the Secretary that it is capable of adequately administering the programs under each of the standards established by the Department's regulations. The Secretary considers an institution to have administrative capability if it administers the Title IV, HEA programs in accordance with all applicable statutory and regulatory provisions and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA. 34 C.F.R. § 668.16. The Clery Act, the DFSCA and the Department's implementing regulations are considered applicable statutory and regulatory provisions and Title IV institutions must comply with those requirements or face sanctions under Title IV. Moreover, compliance with the Clery Act is required by the Program Participation Agreement (PPA) which Penn State signed with the Department.

Under 34 C.F.R. § 668.24(e), an institution is required to keep records for at least three years after the award year in which it received Title IV aid. In addition, an institution must keep all records involved in an issue raised during a Department review until the issue is resolved or the retention period for the record expired. Penn State has acknowledged that it did not keep the records to support the crime statistics it submitted to the Department for 2008, 2009 and 2010. Penn State's failure to meet this requirement is evidence that it violated the administrative capability standards in the Department's regulations.

In responding to the PRR, Penn State further asserted that since the Department cannot require particular policies or programs in a compliance regime, there were no grounds for the Department to rule that the University's Clery compliance efforts were insufficient. The Department's determination that Penn State's compliance efforts were insufficient was based

upon the University's numerous failures to comply with provisions of the Clery Act, the DFSCA and the Department's regulations as reflected in the FPRD. The Department's conclusions are based on Penn State's failure to comply with those legal standards and not on its failure to adopt any particular policy.

The FPRD found that Penn State did not meet the regulatory standards necessary to demonstrate administrative capability. The University failed to properly record and compile accurate crime statistics for the 2011 ASR and prior years; failed to ensure that PSUPD officers received the necessary training and information to meet the University's obligations under the Clery Act; failed to properly identify and train Campus Security Authorities (CSAs); failed to develop and implement required crime reporting and security policies and procedures and include them in the ASR; failed to provide vital and timely security information to the campus community and the Department; and failed to exercise sufficient oversight, governance or coordination of University officials and departments responsible for the Clery Act. As of November 2011 when the Department's program review was announced, the University did not have a written or cohesive plan for ensuring compliance with the Clery Act. A draft plan was initiated in 2009, but it was not completed or finalized prior to the Department's review. Penn State acknowledged that it had not retained any records to support the crime statistics it submitted to the Department for calendar years 2008, 2009, and 2010 and which the Department made available to the public. During the period from 1998 to 2010, the University failed to develop, publish, and actively distribute to its students and employees, a comprehensive DAAPP that addressed all five required subject areas. These violations were numerous and systemic, and demonstrate that Penn State lacked administrative capability in implementing the Clery Act and DFSCA.

### **III. PENN STATE'S CALENDAR YEAR 2011 ASR DID NOT INCLUDE REQUIRED POLICY STATEMENTS**

Institutions participating in the federal student financial aid programs must have an ASR that includes its crime and security policies in a number of specific areas. The ASR must include this information so that students and employees have necessary information about the institution's security policies and procedures, and about their rights. 34 C.F.R. § 668.46(b).

Penn State's ASR for calendar year 2011 did not contain required statements of policy in the following areas:

1. The titles of each person or organization to whom students and employees should report criminal offenses for the purposes of making timely warning reports and annual statistical disclosures.
2. A statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by the institution, including student organizations with off-campus housing facilities.

3. Notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available.
4. Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense.

An institution that provides any on-campus student housing facility must include a statement of policy regarding missing student notification procedures for students who reside in on-campus student housing facilities in its ASR. The statement must include specific information about the institution's missing student policies and procedures. 34 C.F.R. § 668.46(h).

5. Penn State's 2011 ASR did not have a statement of its missing student notification procedures, as required by the Clery Act.

In the 2011 ASR, Penn State mentioned that it had a missing person's policy but referred the reader to another website to actually review the policy. The Clery Act requires that the ASR include all of the required information and not just referrals to other sources because it is vital that the information be easily available to students and employees in a single source. Referring the reader to another document does not comply with the regulations.

In addition, Penn State's policy statement did not include the following elements:

- A. a list of the titles of the persons or organizations to whom students, employees or other individuals should report that a student has been missing for 24 hours;
- B. the requirement that any missing student report must be referred immediately to the campus police department;
- C. a notice that each student living in an on-campus student housing facility has the option to identify a contact person for the University to notify, if the student is determined missing by the campus police department, or a local law enforcement agency;
- D. a statement that students' contact information will be registered confidentially;
- E. a statement that the University must notify a custodial parent or guardian if a missing student is under 18 years old and not emancipated; and
- F. that the University will notify local law enforcement agencies if a student is missing, regardless if the student has named a contact person.

In its response to the PRR, Penn State acknowledged that it did not include the missing student policy statements in its 2011 ASR. The University noted that it included these policy statements in its 2012 and 2013 reports. However, the revision of procedures after the Department alerted the University of its obligations does not excuse its earlier failure to comply with the law. As

required by the Department's regulations, Penn State's students and employees and potential students and employees should have had access to complete policy statements and procedures, in order to make important personal safety decisions, and to understand their rights and obligations.

Beginning with the ASR distributed by October 1, 2010, any institution that participates in the Title IV programs must include in its ASR a statement of policy regarding its emergency response and evacuation procedures. The statement must include, among other things: the procedures the institution will use to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on campus; a description of the process the institution will use to confirm there is a significant emergency or dangerous situation, determine the appropriate segments of the campus community to receive a notification; the process used to determine the content of the notification; and the process to initiate the notification system. Additionally, the institution's procedures must include a statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency; a list of the titles of the person or persons or organization or organizations responsible for confirming the emergency, determining who needs to receive the notification, determining the content of the notification, and initiating the notification system. The ASR must also include the institution's procedures for: disseminating emergency information to the larger community; the institution's procedures to test the emergency response and evacuation procedures on at least an annual basis; publicizing its emergency response and evacuation procedures in conjunction with at least one test per calendar year; and documenting, for each test, a description of the exercise, the date, time, and whether it was announced or unannounced. 34 C.F.R. § 668.46(g).

Penn State's 2011 ASR included only some of this required information. It did not include a statement of policy that the institution will, without delay, and taking into account the safety of the community, determine the content of an appropriate emergency notification and initiate the notification system. The ASR also did not have a description of the process Penn State would use for: (1) confirming that there is a significant emergency; (2) determining the content of the notification; and (3) determining when to send the notification.

In its responses to the PRR, Penn State conceded that its ASR for calendar year 2011 did not include all the required information. However, the University asserted that that the ASR "complied with the fundamental objectives and spirit of the pertinent regulations."

The Clery Act and the Department's regulations require any institution that participates in the Title IV programs to include in its ASR, all the specific required policy statements regarding emergency response and evacuation procedures.

The goal of the Clery Act is to allow current students/employees and prospective students and employees to use the ASR to assess an institution's campus safety policies, procedures and environment. The policy statements in the ASR are intended for use by the campus community to understand the institution's campus security policies and procedures. In the absence of the six (6) policy statements listed above, Penn State's students and employees were denied important safety information about where to report crime incidents; certain rights after an alleged sex offense has occurred; missing student notification information; and emergency notification procedures. Penn State's 2011 ASR was, therefore, incomplete and unreliable. Students and employees cannot be expected to benefit from policy procedures that have not been provided to them.

#### **IV. PENN STATE'S ASR/AFSR FOR CALENDAR YEAR 2011 WAS NOT PROPERLY TITLED AND PUBLISHED**

Beginning October 1, 2010, an institution that maintains any on-campus student housing facility must prepare and distribute an AFSR. 34 C.F.R. §668.49(b). The AFSR must be published and distributed through appropriate publications and mailings in the same manner as the ASR. The AFSR must be a comprehensive publication in the same manner as the ASR. However, an institution may combine the ASR and AFSR in a single document as long as the title of both reports conspicuously appears on the cover page of the document. 34 C.F.R. § 668.41(e).

The University published its 2011 AFSR and 2011 ASR in one document but the title of the document did not clearly state that the AFSR was included in the ASR, as required by 34 C.F.R. § 668.41(e)(6).

In its response, the University conceded that its 2010 and 2011 ASRs/AFSRs were not properly titled but claimed that its violation was insignificant because it would be obvious to any reader of the ASR that there was a separate section including the AFSR. The University also claimed that this error was not repeated in the 2012 and 2013 documents. The fact that the institution complied with the law in 2012 and 2013 after the Department alerted the University of its obligations does not excuse its earlier violations. The requirement is included in the regulations to ensure that students and employees can immediately see that the institution has combined the ASR and AFSR. Otherwise, the institution is burying the AFSR information in a place where someone needs to read the entire document to find this important security and safety information. Penn State's combined ASR/AFSR for calendar year 2011 was distributed in a manner that gave students and employees the impression that they were only reading the ASR. It is likely that many students and employees did not know that the AFSR was included in the document distributed as the ASR. Therefore, this failure is as serious as the failure to properly distribute the 2011 AFSR.

**V. PENN STATE DID NOT PROPERLY CLASSIFY REPORTED CRIMES FOR CLERY ACT PURPOSES AND DID NOT PROPERLY COMPILE AND DISCLOSE CRIME STATISTICS**

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must include in its ASR statistics of certain reported crimes and arrest and campus disciplinary referrals for alcohol, drug and illegal weapons possession violations. The statistics must be disclosed by location – on-campus in or on non-campus buildings or property, and on public property – and must be provided for the three most recent calendar years. 34 C.F.R. §§ 668.46(a), 668.46(c)(1) – (c)(4).

The statistics must be disclosed and made available as part of the institution's ASR by October 1 of each year, and must also be electronically submitted to the Department for its inclusion in the Campus Crime and Security Website. The Department has established timeframes within which institutions must electronically submit information. 34 C.F.R § 668.41(e)(1)-(e)(5). The statistics reported in the ASR and submitted to the Department are for the same period and the same crimes and should be exactly the same.

An institution must compile the required crime statistics using the definitions of crimes provided by the Department's regulations and the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Hate Crime Data Collection Guidelines and Training Guide for the Hate Crime Data Collection. 34 C.F.R. § 668.46(c)(7).

Penn State did not properly compile and publish accurate crime statistics in the 2011 ASR or report accurate crime statistics to the Department. As a result, students, employees, and the public were not provided with accurate crime statistics for 2008, 2009 and 2010 in Penn State's 2011 ASR, and the University did not report accurate information to the Department's Campus Crime and Security Website for those same years. Statistical data published in the institution's ASR and provided to the Department must be accurate and reliable.

In the PRR, the Department directed Penn State to conduct a full-file review to identify and correct all errors in its crime statistics for the years 2007 – 2011. As a result of this review, the University identified numerous incidents that were improperly omitted from its campus crime statistics during this timeframe (see table 1).<sup>3</sup>

Table 1  
Incidents omitted from the University's campus crime statistics, 2008 – 2011

Year	Number of Incidents Omitted from Crime Statistics
2011	40 Crimes Omitted from Data submitted to the Department:

<sup>3</sup> Table 1 in this document is the same as Table 5.4 in the FPRD. The statistics are from the full file review conducted by Penn State at the Department's request in the PRR.

	<p>1 Forcible Sex Offense (Incident # PSU2011-4349)</p> <p>2 Aggravated Assaults (Incident # PSU2011-4392 and # PSU2011-5319)</p> <p>3 Burglaries (Incident # PSU2011-0037, PSU2011-0044 and PSU2011-2754)</p> <p>34 Drug Abuse and Liquor Law Violations.</p>
2010	<p><b>53</b> Crimes Omitted from both the 2011 ASR and the data submitted to the Department:</p> <p>3 Forcible Sex Offense (Incident # PSU2010-834, PSU2010-1993, PSU2010-2172)</p> <p>4 Aggravated Assaults (Incident # PSU2010-1107, PSU2010-3907, PSU2010-4022, PSU2010-4062)</p> <p>2 Burglaries (Incident # PSU2010-491 and PSU2010-1512)</p> <p>1 Arson</p> <p>1 Motor Vehicle Theft</p> <p>42 Drug Abuse and Liquor Law Violations.</p>
2009	<p><b>137</b> Crimes Omitted from both the 2011 ASR and the data submitted to the Department:</p> <p>1 Aggravated Assault (Incident # PSU2009-3814)</p> <p>2 Burglaries (Incident # PSU2009-1304 and PSU2009-4207)</p> <p>1 Motor Vehicle Theft</p> <p>133 Drug Abuse and Liquor Law Violations.</p>
2008	<p><b>101</b> Crimes Omitted inform 2011 ASR and the Data submitted to the Department:</p> <p>1 Forcible Sex Offense (Incident # PSU20082446)</p>

	4 Aggravated Assaults (Incident # PSU2008-2539, PSU2008-3719, PSU2008-1188, PSU2008-742)
	1 Robbery (Incident # PSU2008-4658)
	2 Burglaries Incident # PSU2008-3322 and PSU2008-4048
	1 Motor Vehicle Theft
	92 Liquor Law/Drug Abuse/Weapons Violations

In its response to the PRR, the University alleged that the misclassification of criminal incidents identified by the Department was “often a result of an on-the-ground interpretation of nuanced facts, circumstances, and crime definitions.” The University claimed that classification of criminal incidents was “often inherently subjective, particularly when conducted years after the underlying incident.” The University argued that the most contemporaneous analysis of an incident was likely the most sound. This argument was proffered to account for many of the classification and disclosure violations identified by the Department in the PRR and discovered during its Department-ordered full-file review of incidents occurring from 2007 through 2011.

The Department disagrees with the University’s claim that retrospective analysis is unreasonable for determining compliance with crime classification and disclosure requirements. Similarly, the Department does not accept the assertion that the most contemporaneous analysis of an incident is likely the most sound for the purposes of statistical reporting provisions of the Clery Act. The Department’s findings are consistent with results of the University’s own full-file review, which identified a number of similar discrepancies and rebutted a number of other discrepancies identified in the PRR using the same after-the-fact analysis to which it now objects. More importantly, Penn State has not and cannot point to any logical or legal support for its claim that its characterization of crimes cannot be questioned. In conducting a review of an institution’s Clery Act statistics, the Department looks at the records maintained by the institution, which should reflect the same evidence that the institution considered in making the original judgment. The passage of time does not change the information included in those records, so there is no logical or legal basis for Penn State’s claim that the Department should defer to the most contemporaneous analysis.

In addition, concurrent with the Department’s review, the University installed processes for ongoing retrospective examination of criminal incidents occurring on campus with the specific intent to verify incident classifications and accounting. While this quality control measure presented an opportunity for development and improvement, it will be almost entirely dependent on inspection of previously-generated reports for compliance. Obviously, the University’s



adoption of a review process for quality control reasons contradicts the underlying basis of its defense that all deference should be paid to the initial classification of crimes by CSAs. Penn State also claimed that the review of its past records is affected by the expungement of criminal records of individuals in certain circumstances under state law. Under Pennsylvania law, an order of expungement officially requires the removal of the petitioner's criminal history record information from the central repository and any records of the incident. *18 PA C.S. §9122*. In the event a criminal incident involved more than one accused offender, only the petitioner's information is expunged and redacted. Removal of this information does not inherently render the file incomplete for the purposes of determining the nature of the *charged* offense or for conducting an analysis of the nature of offense for classification and disclosure compliance. Furthermore, many of the offenses listed as exempt from court-ordered expungements are reportable for purposes of the Clery Act. *18 PA C.S. §9122(b.1)*. Therefore, we do not accept Penn State's claim that the errors in its crime statistics are related to the expungement of criminal records.

Furthermore, the failure to implement measures to accurately capture statistical information from incident reports used to document multiple and distinct Clery-reportable offenses, resulted in the undercounting of crimes and distorted the University's crime statistics. Systemic misapplication of these requirements deprived the campus community, both current and prospective, of important safety information and in each instance was a violation of the Clery Act.

The FPRD found that Penn State failed to report in its 2011 ASR and in the statistics reported to the Department, the crimes referred to above. The crime statistics listed in the chart above are from the University's self- review in response to the PRR. The Clery Act and the Department's regulations require that institutions ensure the accuracy of the crime statistics which are presented to students and employees, potential students and employees and members of the public who can use the data to make decisions affecting their personal safety. Students and employees must be able to rely on the institution's reported statistics. The correction of violations by institutions after the fact does not diminish the seriousness of not correctly including these incidents in campus crime statistics at the time they occurred.

## **VI. PENN STATE DID NOT COLLECT CRIME STATISTICS FROM ALL REQUIRED SOURCES AND INCLUDE THEM IN THE 2011 ASR**

Under the Clery Act, institutions participating in the Title IV, HEA programs must prepare, publish and distribute an ASR by October 1 of each year. 34 C.F.R. § 668.41(e). The ASR must include reported crime statistics for the three most recent calendar years. 34 C.F.R. § 668.46(c). An institution must include in its statistics any crime reported to a CSA and the crime must be included in the statistics for the year in which it was reported to a CSA. 34 C.F.R. § 668.46(c)(2). A CSA is any official of the institution who has significant responsibility for student and campus activities, including but not limited to, student housing, student discipline, and campus judicial proceedings. 34 C.F.R. § 668.46(a).

The Clery Act and the Department's regulations require an institution participating in the Title IV, HEA programs to include in its crime statistics, reportable crimes that occur in areas defined as "Campus" and "Non-campus Buildings or Property," C.F.R §§ 668.46(a), 668.46(c), (c)(4), (c)(8). Specifically, an institution must include crime statistics from any building or property owned or controlled by the institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls. C.F.R § 668.46(a)(1). An institution must include the crime statistics in its ASR for each separate campus. C.F.R § 668.46(d).

The reviewers found that the University failed to establish a process for collecting of Clery crime data from all of its CSAs. This means that the crime statistics included in the ASR and provided to the Department did not include all Clery-reportable crimes. The FPRD found that Penn State did not collect and report crime statistics in its 2011 ASR for the following:

**Center for Women Students:**

Penn State did not include incidents of crime reported to staff of the University's Center for Woman Students (CWS) in its official campus crime statistics. The CWS failed to employ any form or method for tracking reported incidents, but the University nevertheless made the unsupported claim that "it would be an extremely small number of cases" which were reported to the CWS only. The CWS provided a critical role on campus - providing advocacy for women and advancing women's issues on campus, with a focus on sexual assault prevention and response advocacy services. Brochures and other promotional materials for the CWS confirm the purpose of the group. The program reviewers found that some victims of sexual assault chose to report these crimes to the CWS. However, CWS staff did not provide any information on those reported crimes to PSUPD which was responsible for compiling the Clery Act crime statistics for the University. As a result, the crimes reported to CWS were not included in the statistics provided to students and employees, prospective students and employees and the Department. The CWS staff did not qualify as professional counselors as defined in 34 CFR 668.46(b). Thus, there was no basis for not including these reported crimes in the statistics.

**Trauma Drops:**

Penn State did not include incidents of crime reported as a result of the University's "trauma drop" process in its crime statistics in the 2011 ASR. To request a trauma drop, a student must provide adequate information and evidence of a trauma that interferes with the student's ability to complete classes or assignments to a University official who is authorized to initiate a trauma drop. Many students base their request for a trauma drop on being a victim or witness of a serious crime. The PRR required the University to examine trauma drop documentation in regard to the trauma drops that were initiated during the 2007 to 2011 review period. After its review, the University indicated that 98 trauma drops had been authorized by the University during the review period and that 10 could be identified as being conclusively related to Clery-reportable crimes. Moreover, the Department notes that the trauma drop letters, as written, did

not, in some cases, include enough information to determine if a Clery-reportable crime occurred. This means that it is likely that there were more Clery-reportable crime statistics that were not identified and reported in the 2011 ASR and to the Department. Penn State did not have a process for requesting information about possible crimes from the trauma drop system even though the officials considering these requests would clearly be CSAs.

#### **Office of Human Resources:**

Penn State did not request statistics of Clery-reportable crimes that were brought to the attention of the institution's Office of Human Resources (OHR). The Clery Act requires institutions to disclose statistics of incidents that are reported to campus police or security, CSAs, and any other official or office that students and employees are directed to report such incidents. Penn State's process for disciplinary actions taken against employees resulted in employees reporting crimes to OHR. However, OHR did not report those crimes to the PSUPD for inclusion in the campus crime statistics. The University's OHR records were so scattered and far-flung that even the University's own file review could not identify the number of crimes reported to OHR.

In its response, the University conceded that it did not maintain any central tracking system for employee disciplinary cases and the only way to retrieve data would be to manually search hardcopy files maintained in the 64 separate and independently operating human resources departments across the University. The Department specifically requested that the University make a diligent search for documents but the University was unable to produce complete documentation. The University's counsel claimed that records related to 400 employee terminations that occurred between 2007 and 2011 were reviewed but apparently found no indication of infractions that might constitute a Clery-reportable crime. None of the documents covering some 292 separate incidents that were examined in reaching this conclusion were turned over to the Department. The only documentation provided to the Department consisted of 14 rows of HR data, which showed one forcible sexual assault that was never included in the University's campus crime statistics even though the incident was reported to PSUPD and documented in incident report #PSU 2010-834.

The Department determined that Penn State failed to collect and report in its 2011 ASR, Clery-reportable crimes that were brought to the attention of the institution's OHR. As a result, the 2011 ASR and the crime statistics reported to the Department did not include the crime statistics that were reported to OHR, in violation of the Clery Act.

#### **Office of Fraternity and Sorority Life:**

Penn State did not include in its Clery Act crime statistics incidents of crime reported to the Office of Fraternity and Sorority Life (FSL). Penn State has over 90 Greek Letter social organizations and Penn State's Greek organizations and their members have historically been charged with crimes ranging from drug sales and hazing to indecent assault. The PRR noted that

Penn State failed to include incidents of crime reported to the FSL in its Clery crime statistics and PSUPD failed to request crime statistics from the FSL office.

In its response to the PRR, the University asserted that, the Department's determination that the University failed to establish an adequate system for collecting crime statistics from all required sources has no basis in law. The University asserted that neither the Clery Act nor its implementing regulations impose any legal obligation on an institution to identify or train CSAs, nor do they prescribe the manner in which CSA training might be accomplished.

According to Penn State, during the time of the review there were generally seven employees of FSL (all CSAs) who served as advisors to the four independent Greek governing councils. The University maintained that the four Greek Governing Councils would not be considered CSAs and therefore they had no legal duty to report crimes to the PSUPD for Clery Act purposes. However, the University also claimed that all crimes adjudicated by the Greek Governing Councils under its authority to take certain University administrative action were reported to the PSUPD and the Office of Student Conduct.

None of the four Greek governing bodies or their leadership was ever identified as CSAs by Penn State. In an effort to further evaluate the governing body's role in student and group disciplinary matters, the Department required Penn State to request and compile information from those four Greek governing bodies. In response to the PRR the University claimed that the "vast majority" of incidents reported to the FSLs and the Governing Councils were also reported to other CSAs, including the PSUPD and the Office for Student Conduct, which would have included them in the statistics. However, the University did not provide any documentation to support that claim. Penn State was unable to provide any source documents to explain the role of the FSL and the Governing Councils its role in the student and organization conduct processes during the 14-year review period or the five years covered by the file reconstruction. The University did not provide any file reconstruction to substantiate their oft-repeated claim that "most" incidents were reported to other CSAs.

Penn State conceded that it did not report the number of crimes reported to all sources within the University. In its response to the PRR, the University asserted that the "overwhelming majority" of the crimes which occurred on Clery geography and were reported to the CWS, OHR and the FSL were also captured in the University's crime statistics. However, Penn State did not support this claim. Penn State did not produce any evidence that it had a system in place to identify all crimes that were reported to the CWS, OHR and the FSL and ensure that those crimes were included in the crime statistics in the 2011 ASR and the statistics reported to the Department and made available to the public. Therefore, those statistics were not accurate and complete. Current students and/employee, prospective students and employees and the public use these crime statistics to assess safety and security at an institution. By failing to collect crime statistics from all sources, Penn State denied its students/employees and prospective students/employees accurate crime statistics entitled to them.

**VII. THE CRIME STATISTICS IN PENN STATE'S 2011 ASR DID NOT MATCH THE CRIME STATISTICS SUBMITTED TO THE DEPARTMENT, AND BOTH THE STATISTICS IN THE 2011 ASR AND THE STATISTICS SUBMITTED TO THE DEPARTMENT WERE INACCURATE**

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must make available statistical information related to certain reported crimes and arrest/campus disciplinary referrals for alcohol, drug and illegal weapons possession violations. The statistics must be disclosed by location – on campus (including a separate statistic for dormitories and other residential facilities), in or on non-campus buildings or property, and on public property – and must be provided for the three most recent calendar years. 34 C.F.R §§ 668.46(a), 668.46(c)(1) – (c)(4).

The statistics must be disclosed and made available as part of the institution's ASR by October 1 of each year, and must be electronically submitted to the Department for its inclusion in the Campus Crime and Security Website. 34 C.F.R § 668.41(e)(1)-(e)(5).

Under the Clery Act and the Department's regulations, an institution participating in the Title IV, HEA programs must keep records relating to its administration of the Title IV, HEA programs for three years after the end of the award year for which aid was disbursed. 34 C.F.R. § 668.24(e).

The Department has determined that the crime statistics for 2008, 2009 and 2010 in Penn State's 2011 ASR did not match the crime statistics submitted to the Department in 2011 for those same years. Moreover, neither the statistics included in the ASR or reported to the Department were correct.

Penn State did not keep records supporting the crime statistics reported in 2011, as required by 34 C.F.R. § 668.24(e). The program reviewers asked the University's officials to produce records demonstrating that the crime statistics it submitted to the Department in 2011 matched the crime statistics included in the 2011 ASR. The University was unable to produce any documentation to help the Department to complete its verification of the 2011 ASR and the statistical data submitted to the Department. The Department required Penn State to conduct a file review of its crime statistics, including the 2011 crime statistics. In its report, the University acknowledged that its 2011 crime statistics did not include 40 reported crimes that should have been included in those statistics. Therefore, the Department concluded that not only did Penn State fail to keep its records as required by 34 C.F.R. § 668.24(e), it also submitted inaccurate crime statistics to the Department for calendar year 2011, and included incorrect statistics in the 2011 ASR.

In its response, Penn State concurred with part of the finding and challenged other parts. Penn State claimed that the annual crime statistics submitted online to the Department's campus crime statistics database were not made available to them "to access, revise, or correct," once the submission period was closed for the reporting year. In addition, Penn State claimed that it was

hampered in its ability to respond to the finding, because the University had not retained records relating to the data it had submitted and was therefore dependent on the Department to give officials the details about its own data. The University stated that the alleged discrepancies in the crime statistics were analyzed by reviewing the ASRs it issued during calendar years 1999 to 2011. Penn State said the Department should have taken into account the results of the University's "2012 Data Reconstruction" that analyzed crime statistics for calendar years 2009, 2010, and 2011, because a "Preliminary Report" from the Department showed a request for the data. Further in the response, Penn State revealed that complete historical data was unavailable for the University during the "2012 Data Reconstruction" and stated it was not possible to reconstruct the causes of some historical differences with any degree of certainty. However, the University claimed some causes were the result of: 1) lawful expungements; 2) incomplete information from outside law enforcement agencies, and 3) data losses during the University's 2009 software upgrade.

The Clery Act and the Department's regulations, require all institutions participating in the Title IV, HEA programs to keep records relating to their administration of the Title IV, HEA programs for three years after the end of the award year for which aid was disbursed. Penn State acknowledged that it had not retained records relating to the crime statistics it had submitted to the Department for calendar years 2008, 2009, and 2010. In fact, Penn State stated that its officials had to rely on the Department to give them the University's own statistical data that it submitted to the Department for 2008, 2009, and 2010. The University's failure to keep records relating to its crime statistics as required by 34 C.F.R. § 668.24(e) means that its statistics cannot be verified as accurate. The Department makes the crime statistics submitted by institutions available to the public through its Campus Crime and Security Website. The Department is unable to verify the accuracy of the crime statistics Penn State submitted and which were made available to the public. Potential students and employees, and members of the public were provided with crime statistics the Department could not verify because Penn State did not keep required records. Moreover, Penn State's own file review determined that the crime statistics it submitted to the Department and included in the ASR during 2011 did not include 40 reported crimes. Thus, Penn State's students and employees, and prospective students and employees, and the public were provided with crime statistics that were not only unverifiable by the Department, but also inaccurate, according Penn State's own file review. Thus, current and prospective students and employees were denied accurate and reliable information entitled to them as they make important safety decisions about their safety on the Penn State's campus.

#### **VIII. PENN STATE DID NOT TIMELY DISTRIBUTE ITS ASR FOR CALENDAR YEAR 2011**

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must distribute an ASR to all enrolled students and current employees through appropriate publications and mailings. The distribution must occur by October 1 of each year and must include direct mailing to each individual through the U.S. Postal Service, campus mail,

or electronic mail; a publication or publications provided directly to each individual; or posting on an Internet website or an Intranet website. 34 C.F.R. § 668.41(e).

If an institution chooses to distribute its ASR to enrolled students by posting the disclosure on an Internet website or an Intranet website, the institution must, by October 1 of each year, distribute to all current students a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request. 34 C.F.R. § 668.41(c)(2) and (e)(2).

If an institution chooses to distribute its ASR to current employees by posting the disclosure on an Internet website or an Intranet website, the institution must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request. 34 C.F.R. § 668.41(e)(3).

Penn State did not timely distribute its calendar year 2011 ASR to its students and employees by October 1, 2011, as required by the Department's regulations. Reviewers determined that from calendar year 2001 to 2011, Penn State consistently failed to distribute its ASR by the regulatory deadline.

In its response to the PRR, Penn State conceded that it did not distribute the 2011 ASR by the deadline of October 1. The University conceded that it did not begin the distribution of the 2011 ASR until October 3, 2011, by electronic mailing. Distribution to the individuals on Penn State's e-mail lists was not completed by October 7, 2011. The University argued that the Department should not base its determination of the ASR publication and distribution dates on the information from the University's Multimedia & Print Center (MPC) invoice, as reflected in the FPRD, but should use the MPC job tickets. The MPC job tickets provided to the Department were essentially receipts. The MPC ticket provided a job number, due date, customer account, customer name, contact information, and a brief description of the task performed. The job tickets on which Penn State relies however demonstrate that the final production date of the ASR was October 3, 2011, also beyond the October 1 deadline for distribution. Moreover it is not clear that job tickets provide appropriate evidence of distribution of the ASR. Penn State provided the Department with multiple job tickets relating to the 2011 ASR. One version in particular has President Graham Spanier's name removed from the ASR and a number of changes to the campus crime statistics in the report. Mr. Spanier was not removed from his position until November 9, 2011, which means that distribution or redistribution must have happened after that date and not by the October 3, 2011, date provided by the job ticket. The FPRD found that the job tickets cited by Penn State also demonstrate that the University consistently missed the statutory deadline of October 1 for distributing the ASR.

The Clery Act and the Department's regulations require institutions to provide the ASR by October 1 each year. The date is intended to ensure that students and employees have the necessary crime and safety information on a timely basis so that they can make informed decisions about their personal safety. Penn State consistently violated this requirement including in regard to the 2011 ASR. Thus, it failed to meet its legal obligation to provide timely safety information.

**IX. PENN STATE DID NOT PROPERLY NOTIFY PROSPECTIVE STUDENTS AND EMPLOYEES OF THE AVAILABILITY OF THE 2011 ASR AND THE 2011 AFSR**

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must distribute, to all prospective students/employees, its ASR/AFSR. For each of the reports, the institution must provide a notice to prospective students and prospective employees that includes a statement of the report's availability.

If the institution chooses to provide its ASR and AFSR to prospective students and prospective employees by posting the disclosure on an Internet website, the notice must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request. 34 C.F.R. § 668.41(e)(4).

The first AFSR had to be provided to prospective students and employees by October 1, 2010. In the AFSR, institutions must disclose fire statistics for each on-campus student residential facility for the three most-recent calendar years. An institution's statistics must accurately and completely identify the number of on-campus fires and the cause of each fire, the number of persons who sustained fire-related injuries that resulted in treatment at a medical facility (including on-campus health centers), the number of fire-related deaths, and the dollar value of property damage caused by such fires. 34 C.F.R. § 668.49(c).

The AFSR must include several fire safety information disclosures covering topics such as the type(s) of fire safety systems that are used in each student housing facility, the number of fire drills that were conducted during the previous calendar year, any institutional policies, procedures, and programs regarding: 1) the use and/or possession of portable electrical appliances; 2) smoking and the use/presence of open flames in student housing facilities; 3) evacuation procedures to be followed in the case of a fire; 4) fire safety education and training programs; 5) the institutional official(s) and departments to whom students and employees should report the occurrence of fires so that those incidents can be included in the institution's annual fire statistics; and 6) any plans for future improvements to the institution's fire safety program. 34 C.F.R. § 668.49(b).

The AFSR must be published and distributed through appropriate publications and mailings in the same manner as the ASR. The AFSR must be a comprehensive publication in the same



manner as the ASR; however, if an institution chooses to combine the ASR and AFSR and publish them as a single document, then the title of both reports must conspicuously appear on the cover page. 34 C.F.R. § 668.41(e).

The Department's reviewers determined that the University failed to properly notify all prospective students and employees about the availability of the 2011 ASR and AFSR. Department officials requested and carefully examined materials and information that Penn State provided to prospective students and employees during the application process. The documents covered several campuses, locations, and programs, including Penn State's graduate and professional schools, across several years, including 2011. This finding was based on the results of that review, which showed that Penn State failed to actively notify prospective students and employees of the availability of this information.

In its response, the university claimed "that the University has been providing clear and conspicuous notification of the availability of its ASRs to the vast majority of prospective students and prospective employees for years." In support of these claims, Penn State submitted copies of employment applications from various years, including forms from 2001, 2003, 2009, 2012, 2013 and 2014 and an undergraduate admissions application from 2014.

Penn State stated that it did not concur with the finding; however, its response acknowledges that it did not provide the required information to all prospective students and employees. On page 230 of its response, Penn State stated that the previously-referenced "robust processes and procedures" resulted in some type of notice to "most" prospective community members. Again, on page 248, Penn State claimed that it had "practices and procedures in place" to provide notice to "most prospective employees." Then again, on page 249, the University claimed that it has provided notice "to the vast majority of prospective students and prospective employees for years." All of these responses make it clear that even Penn State concedes that it did not notify all prospective students and employees about the availability of ASRs and AFSRs as required by the Clery Act and the Department's regulations. The Department also notes that the University has been unable to quantify in any meaningful way what it means by "most" or "the vast majority." With the exception of 2013 where Penn State claims that it notified "approximately 97% of applicants -- by e-mail" of the availability of the ASR and AFSR. However, even this claim did not address notification to graduate students or law school students. According to Penn State, law school students from 2007 until 2011 only received notification about the ASR if they received an offer, and 2012-2013 law school students received notification if they received an admission packet.

Penn State has reported that it consistently receives over 110,000 applications for enrollment each year. Specifically, for the 2011 year: 122,691 applications; 2012 year: 123,826 applications; and for the 2013 year: 114,453 applications. The Department remains concerned that even a small percentage of prospective students omitted from the University's distribution policies means that a significant number of prospective students are not notified of the availability of important crime and safety information.

A parallel failure happened in notifying prospective employees. Penn State asserted that prospective faculty and prospective executive level employees “could learn of the availability of the ASRs through the University’s main website, and in particular through information available on the University Police & Public Safety website” but it did not state that prospective employees were notified of the availability of the ASR, only that they could learn of it. Penn State also claims that “Historically, prospective hourly employees were hired directly through various business units within the University. Those hired through the Auxiliary and Business Services unit applied for positions online. As part of the application process, they were required to review and acknowledge a notice regarding availability of the ASR.” However, this fails to explain how other hires outside of Auxiliary and Business Services or others who applied via hardcopy were notified of the availability of the information.

Penn State did not produce any evidence that it had properly and timely notified prospective students and employees about the availability of the 2011 ASR and 2011 AFSR. Prospective students and employees were thus denied important security information they may have wanted to consider in making decisions about where to attend college or accept employment.

#### **X. PENN STATE DID NOT COMPLY WITH THE DRUG AND ALCOHOL ABUSE PREVENTION REQUIREMENTS**

The DFSCA and the Department’s regulations require institutions of higher education to adopt and implement a drug prevention program for its students and employees that, at a minimum, includes the annual distribution in writing to each employee, and to each student who is taking one or more classes for any type of academic credit (except continuing education units) standards of conduct that: clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities; describe the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol; describe the health risks associated with the use of illicit drugs and the abuse of alcohol; describe any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and include a clear statement that the institution will impose disciplinary sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions for violation of the standards of conduct. In addition, an institution must conduct a biennial review of its program to determine its effectiveness and implement changes to the program if they are needed and ensure that the disciplinary sanctions mentioned above are consistently enforced. 34 C.F.R. § 86.100.

The Department found that Penn State failed to comply with the DFSCA and 34 C.F.R. Part 86. Specifically, Penn State failed to develop, publish, and properly distribute to its students and employees, a comprehensive drug and alcohol abuse prevention program (DAAPP) that addressed all the required subject areas. Penn State incorrectly included its DAAPP information in ASRs produced during the referenced period, rather than in a separate disclosure. The PRR and FPRD found that Penn State relied on the distribution requirements that pertained to the

ASR, rather than undertaking a distribution program consistent with the regulatory requirements for distributing the DAAPP. The distribution requirements under the DAAPP are different from those for the ASR distribution since, under the DAAPP, every student who is enrolled for at least one credit must be notified of the available programs and resources. By only providing the information on the same schedule as the ASR (which the University distributed annually), the University did not insure that the required information was disseminated to the entire population of students and employees who are supposed to receive this information under the regulations. For example, a student who registered for only a summer semester would never receive a copy of these materials if they were only distributed via the ASR since that distribution is done in the fall to meet the October 1 regulatory deadline of the ASR.

The University was unable to provide any documentation to show that new and intermittently-enrolled students, including those who registered for one or more credits during terms other than the fall semester received the DAAPP disclosure on an annual basis. In addition, Penn State was similarly unable to explain how the DAAPP disclosure was actively distributed on an annual basis to employees, including new hires and those employed on a part-time or intermittent basis, such as adjunct faculty members, as required by 34 C.F.R. § 86.100.

The FPRD also found that Penn State did not provide a full description of legal sanctions for all alcohol-related offenses; and a description of the health risks associated with the use of illicit drugs and the abuse of alcohol, in its DAAPP. In addition, the university failed to conduct a biennial review of the DAAPP's effectiveness and produce a report of findings, as required by the law and the regulations.

In its responses to the PRR Penn State agreed with the Department's finding that its DAAPP lacked a full statement about the risks associated with alcohol abuse; it objected to any broader assertions that its overall drug and alcohol abuse prevention policy statements did not comply with the DFSCA.

The FPRD found that Penn State failed to comply with the DFSCA and 34 C.F.R. Part 86. The university failed to develop an appropriate method to distribute the DAAPP to include all students who enrolled or employees who were hired at any time during the year. Moreover, the University's biennial reviews did not address the effectiveness of the DAAPP as required by the DFSCA.

Congress enacted the DFSCA to ensure that students and employees had vital information about drug and alcohol prevention program at their institution. Moreover, a DAAPP that has not been tested in a biennial review is unlikely to be reliable and effective. Penn State's students and employees were not given drug and alcohol program information that would have helped them to understand the standards and code of conduct expected of them with regard to drugs and alcohol use, and sanctions to be imposed if the code of conduct is violated.

## IDENTIFICATION OF ASSESSED FINES

In determining the amount of a fine, the Department considers both the gravity of the offense and the size of the institution. 34 C.F.R § 668.92. Pursuant to the Secretary's decision In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is based on whether it is above or below the median funding levels for the Title IV, HEA programs in which it participates. The latest year for which complete funding data is available for Penn State is the 2014-2015 award year. According to the Department's records, Penn State received approximately \$84,170,937 in Federal Pell Grant (Pell) funds, \$463,899,288 in Federal Direct Loan funds and \$18,333,288 in Campus-Based funds. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$1,540,305, for institutions participating in the Federal Direct Loan programs, the median funding level is \$2,108,926, and for institutions participating in the Campus-Based programs, the median funding level is \$271,961. Accordingly, Penn State is a large institution because its funding levels for Federal Pell Grant, Federal Direct Loan, and Campus-Based funds exceeds the median funding levels for those Title IV, HEA programs.

As detailed in this letter, Penn State's violations of the, the Clery Act, the DFSCA and the Department's regulations are very serious. Penn State's students and employees must be able to rely on, emergency notifications, the disclosures of campus crime statistics, policies and statements; and accurate fire statistics. Penn State's students and employees were not notified that Sandusky, who was suspected of perpetrating violent sexual offenses against children on the Penn State campus, continued to have unfettered access to campus buildings and athletic facilities, anytime he wanted.

Congress enacted the DFSCA to ensure that students and employees had vital information about drug and alcohol prevention program at their institution. Moreover, a DAAPP that has not been tested in a biennial review is unlikely to be reliable and effective. Penn State's students and employees were not given drug and alcohol program information that would have helped them to understand the standards and code of conduct expected of them with regard to drug and alcohol use, and sanctions to be imposed if the code of conduct was violated.

Moreover, the Department considers an institution's compliance with the Clery Act, and the DFSCA requirements to be part of its administrative capability, and Penn State's failure to comply with those requirements constitutes an inability to properly administer the Title IV programs.

### I.

After considering the gravity of the violations and size of the institution, I have assessed \$27,500 for Penn State's failure to issue an emergency notification to its students and employees after Penn State's senior officials learned of the forthcoming forcible sex offense and child sex abuse charges against Sandusky. The University had already determined that Sandusky was a threat to

its campus long before his indictment, as reflected by the unsuccessful efforts to terminate, or at least limit, his access to campus facilities. Penn State failed to issue an emergency notification that there was a dangerous situation involving an immediate threat to the health or safety of students or employees. Penn State officials knew that a man who was about to be charged with more than 50 felonies, including multiple counts of involuntary deviate sexual intercourse, aggravated indecent assault, and unlawful contact with minors, as well as additional charges for corruption of a minor and endangering the welfare of a minor, had unfettered access to campus buildings and facilities.. Clearly a notification would have helped students, employees, their families and visitors make informed decisions about their personal safety and the safety of minors involved in various activities on campus. Many children, including those of Penn State employees, attended daycare and after-school programs on campus. Children also utilized the campus library, attended football games, and participated in sports camps. Penn State's failure to issue an emergency notification endangered the campus community and visitors. The maximum fine is appropriate in this case.

## II.

I have assessed a fine of \$27,500 for Penn State's lack of administrative capability. This is a serious violation because an institution must be capable of adequately administering the Title IV, HEA programs. The university failed to properly record and compile accurate crime statistics for the 2011 ASR ; failed to provide adequate compliance training on Clery to the PSUPD officers who had Clery responsibilities; failed to properly identify and train CSAs; failed to develop and implement required crime reporting and security policies and procedures and include them in the ASR; failed to provide vital and timely security information to the campus community and the Department; and failed to exercise sufficient oversight, governance or coordination of University officials and departments responsible for Clery Act compliance. The University also failed to meet the requirements of the DFSCA and the implementing regulations. Penn State's abysmal efforts to comply with the Clery Act and the DFSCA endangered students and employees by providing them with an inaccurate and misleading picture of crime on campus. Penn State also provided prospective students and employees, and the public with erroneous and misleading campus security information. The University also failed to retain records to support its crime statistics submitted to the Department for calendar years 2008, 2009, 2010. The maximum fine amount is appropriate for this violation of one of the basic standards for Title IV participation.

## III.

I have assessed a fine of \$27,500 for Penn State's failure to include six (6) required policy statements in its 2011 ASR. This is a serious violation because current students and employees, and prospective students and employees were denied information that would help them make informed decisions about safety and campus crime policies at Penn State. The Clery Act requires institutions to provide the various policy statements in one publication so that students and employees don't have to search for policies that may or may not exist elsewhere. Students

and employees could not be expected to take advantage of policies and procedures that Penn State did not appropriately disclose. Penn State's failure to include numerous policy statements in its 2011 ASR rendered the report woefully deficient, unreliable, and unhelpful to the campus community. I impose a fine of \$5,000 for each missing policy statement up to a maximum of \$27,500. In this case, Penn State failed to include 6 policy statements, so I have assessed the maximum amount.

#### IV.

I have assessed \$10,000 for Penn State's failure to properly title its combined 2011 ASR and 2011 AFSR. Penn State issued its 2011 ASR and 2011 AFSR as one publication but it failed to list the AFSR in the title as required by 34 C.F.R. § 668.41(e)(6). Current students and employees and prospective students and employees must be given the ASR and the AFSR in the manner specified by the Clery Act and the Department's regulations. Penn State's failure to comply with this requirement meant it was easy for students, employees and prospective students and employees to miss the 2011 AFSR entirely.

#### V.

The Department's PRR required Penn State to conduct a file review of its crime statistics for calendar years 2008, 2009, 2010, and 2011. Penn State's file review revealed that the University omitted numerous crimes from the statistics in its 2011 ASR and the statistics it submitted to the Department. I have assessed \$27,500 for each violent crime Penn State did not report in the 2011 ASR and its crime statistics to the Department. I have also assessed smaller fines for each of the non-violent crimes omitted from the statistics in the 2011 ASR and the crime statistics submitted to the Department as follows:

Year	Number of Incidents Omitted from Crime Statistics
	<b>40 Crime Statistics Omitted in Data to the Department:</b>
	1 Forcible Sex Offense (Incident # PSU2011-4349) - \$27,500
	2 Aggravated Assaults (Incident # PSU2011-4392 and # PSU2011-5319) - \$27,500 x 2 = \$55,000
	3 Burglaries (Incident # PSU2011-0037, PSU2011-0044 and PSU2011-2754) - 15,000 x 3 = \$45,000
	34 Drug Abuse and Liquor Law Violations \$5,000 x 34 = \$170,000
2011	
2010	<b>53 Crime Statistics Omitted in 2011 ASR &amp; Data to the</b>

	<p style="text-align: center;"><b>Department:</b></p> <p>3 Forcible Sex Offense (Incident # PSU2010-834, PSU2010-1993, PSU2010-2172) – <math>27,500 \times 3 = \\$82,500</math></p> <p>4 Aggravated Assaults (Incident # PSU2010-1107, PSU2010-3907, PSU2010-4022, PSU2010-4062) - <math>\\$27,500 \times 4 = \\$110,000</math></p> <p>2 Burglaries (Incident # PSU2010-491 and PSU2010-1512) - <math>\\$15,000 \times 2 = \\$30,000</math></p> <p>1 Arson - <math>\\$15,000</math></p> <p>1 Motor Vehicle Theft - <math>\\$15,000</math></p> <p>42 Drug Abuse and Liquor Law Violations – <math>\\$5,000 \times 42 = \\$210,000</math></p>
2009	<p style="text-align: center;"><b>137 Crime Statistics Omitted in 2011 ASR &amp; Data to the Department:</b></p> <p>1 Aggravated Assault (Incident # PSU2009-3814) - <math>\\$27,500</math></p> <p>2 Burglaries (Incident # PSU2009-1304 and PSU2009-4207) - <math>\\$15,000 \times 2 = \\$30,000</math></p> <p>1 Motor Vehicle Theft - <math>\\$15,000</math></p> <p>133 Drug Abuse and Liquor Law Violations - <math>\\$5,000 \times 133 = \\$665,000</math></p>
2008	<p style="text-align: center;"><b>101 Crime Statistics Omitted in 2011 ASR &amp; Data to the Department:</b></p> <p>1 Forcible Sex Offense (Incident # PSU20082446) - <math>\\$27,500</math></p> <p>4 Aggravated Assaults (Incident # PSU2008-2539, PSU2008-3719, PSU2008-1188, PSU2008-742) - <math>\\$27,500 \times 4 = \\$110,000</math></p> <p>1 Robbery (Incident # PSU2008-4658 - <math>\\$27,500</math></p> <p>2 Burglaries Incident # PSU2008-3322 and PSU2008-4048 -</p>

	$\$15,000 \times 2 = \$30,000$
	1 Motor Vehicle Theft - \$15,000
	92 Liquor Law/Drug Abuse/Weapons Violations - $\$5,000 \times 92 = \$460,000$

The failure to include reported crimes in the crime statistics is a serious violation because it denied students and employees, prospective students and employees, and the public with an accurate picture of crime at Penn State. Current and prospective students and employees must be able to rely on accurate and complete campus crime information to decide whether to attend an institution or accept employment, and to decide what steps they need to take for their own safety.

In determining the appropriate fine amounts in this case, FSA is also taking into account the Secretary's decisions in In the Matter of Tarleton State University, Dkt. No.09-56-SF (Dec. of the Secretary, June 1, 2012) and In the Matter of Washington State University, Dkt.No. 11-56-SF (Dec. of the Secretary, Aug. 29, 2012). Those decisions concluded that it is appropriate to impose a fine calculated on the basis of each missing criminal offense in an ASR or report to the Department and that the maximum fine amount should be imposed when the unreported crimes are violent crimes.

#### VI.

I have assessed \$27,500 for Penn State's failure to collect crime statistics from all required sources, including the CWS, OHR and the FSL for the 2011 ASR. Penn State's failure to meet its legal obligations means that the crime statistics provided in the 2011 ASR and to the Department do not include all Clery-reportable crimes. The FPRD found that Penn State did not collect information on crimes reported to the CWS, Trauma Drops, OHR, and FSL for inclusion in the statistics in the 2011 ASR. This is a serious violation because the 2011 ASR and prior years could not have accurate crime statistics when Penn State failed to collect crime statistics from all required sources. Current and prospective students and employees, and the public must be able to rely on accurate and complete campus crime information. A maximum fine is appropriate in this case.

#### VII.

I have assessed \$27,500 for Penn State's failure to include in its 2011 ASR and report to the Department, accurate crime statistics for 2008, 2009 and 2010. The Clery Act and the Department's regulations, require all institutions participating in the Title IV, HEA programs to keep records relating to their administration of the Title IV, HEA programs for three years after the end of the award year for which aid was disbursed. Penn State acknowledged that it had not



retained records relating to the statistical data it had submitted to the Department for calendar years 2008, 2009, and 2010. As a result of the University's failure to keep its required records, the crime statistics the University included in its 2011 ASR and the statistics submitted to the Department for calendar years 2008, 2009 and 2010 could not be verified or confirmed. This is a serious violation because crime statistics reported in the ASR must be accurate and must match the crime statistics submitted to the Department and made available to the public. This enables prospective students, employees and the public to make informed personal decisions about where to attend college or accept employment. A maximum fine is an appropriate sanction.

#### VIII.

I have assessed \$27,500 for Penn State's failure to timely distribute its calendar year 2011 ASR to its students and employees by October 1, 2011, as required by the HEA. In fact, the Department's reviewers determined that from calendar year 2001 to 2011, Penn State had never timely distributed its ASR. Congress set a clear deadline for institutions to distribute the ASR to students and employees. Penn State's failure to timely distribute the ASR denied students and employees the campus security information to which they are entitled under the law at the deadline established by the law. The maximum fine is appropriate in this case.

#### IX.

I have assessed \$27,500 for Penn State's failure to properly notify all prospective students and employees about the availability of the 2011 ASR and 2011 AFSR, which were distributed as a combined document. This is a serious violation because prospective students and employees were not provided important campus security information about Penn State. The HEA requires institutions to provide prospective students and their parents, and prospective employees with crime and security information by a specific date to ensure that the information is available from all institutions at the same time. This is particularly important for students and parents, many of whom may be considering what institutions the student will apply to for admission. Crime and security information is an important consideration for many prospective students and their families and the ASR is a vital source of that information. Prospective students and employees must be provided with information that is complete and accurate to enable them make important safety decisions. This is also serious because prospective students and employees were not provided with important campus fire safety information about Penn State. Prospective students and their parents, and prospective employees cannot be expected to make important decisions about where to attend college or accept employment without the fire safety information provided in the AFSR. Fire safety is an important consideration for many prospective students and their families and the AFSR is a vital source of that information. A maximum fine is appropriate in this case.

X.

I have assessed a fine of \$27,500 for Penn State's failure to distribute its complete DAAPP to its students and employees, and its failure to conduct a biennial review to evaluate the effectiveness of its DAAPP and to assess the consistency of sanctions imposed for violations of its disciplinary standards and codes of conduct related to drugs and alcohol. This is a serious violation because students and employees cannot make good use of a DAAPP that is incomplete, inaccurate, and which has not been properly distributed to them. Moreover, the failure to conduct a biennial review meant that Penn State's DAAPP is likely outdated and inadequate for its students and employees. A maximum fine is appropriate in this case.

The fine of \$2,397,500 will be imposed on **November 25, 2016**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. Penn State may submit both a written request for a hearing and written material indicating why a fine should not be imposed.

If Penn State chooses to request a hearing or submit written material, you must write to me at:

Administrative Actions and Appeals Service Group  
U.S. Department of Education  
Federal Student Aid/Program Compliance  
830 First Street, NE – UCP-3, Room 84F2  
Washington, DC 20002-8019

If Penn State requests a hearing, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of Penn State's case to a hearing official who will conduct an independent hearing. Penn State is entitled to be represented by counsel during the proceedings. If Penn State does not request a hearing but submits written material instead, I will consider that material and notify Penn State of the amount of fine, if any, that will be imposed.

**ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT PENN STATE SUBMITS MUST BE RECEIVED BY NOVEMBER 25, 2016; OTHERWISE, THE \$2,397,500 FINE WILL BE EFFECTIVE ON THAT DATE.**

Dr. Eric J. Barron  
Pennsylvania State University  
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If you have any questions or desire any additional explanation of Penn State's rights with respect to this action, please contact Lawrence Mwethuku of my staff at 202/377-3684.

Sincerely,

A black rectangular redaction box covering the signature of Susan D. Crim.

Susan D. Crim, Director  
Administrative Actions and Appeals Service Group  
Federal Student Aid/Enforcement Unit  
U.S. Department of Education

Enclosure

cc: Dr. Elizabeth H. Sibolski, President, MSACHE, via [info@msche.org](mailto:info@msche.org)  
Stacey Campbell, Government Relations, PA Department of ED, via  
[stacampbel@pa.gov](mailto:stacampbel@pa.gov)