



April 15, 2021

President Taylor Eighmy  
University of Texas at San Antonio  
One UTSA Circle  
San Antonio, TX 78249

via email  
president@utsa.edu

Re: **Final Audit Determination**  
OPE ID: 01011500  
ED-OIG/A09T0008  
Audit Control Number: 06-2017-19988

Dear President Eighmy:

This letter advises the University of Texas at San Antonio (UTSA) of the U.S. Department of Education's (Department's) final audit determination concerning the federal Final Audit Report entitled "*University of Texas at San Antonio's Controls Over Reporting Clery Act Crime Statistics (Control Number: ED-OIG/A09T0008)*." The audit evaluated certain aspects of UTSA's compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*) and the Department's implementing regulations. The audit covers the reporting period for the Department's 2018 Campus Safety and Security Data Collection and Survey, which included crime data for calendar years 2015–2017. The audit was conducted by the Department's Office of Inspector General for Audit (OIG) in Washington, DC.

The Department reviewed UTSA's response and remedial action plan that was provided with the audit report. The audit resolution team also conducted meetings with institutional officials and requested additional documents and information to aid our evaluation of the OIG's findings and the University's remedial efforts. The supporting documentation submitted with UTSA's written response is not included as part of this final audit determination; however, it will be retained and available for inspection by UTSA upon request. Copies of the final audit determination, the institution's response, and supporting documentation may be subject to release under the Freedom of Information Act (FOIA) and may be provided to other oversight entities after this final audit determination is issued.

Enclosed is the Department's final audit determination for this audit. Although the enclosure to this letter may not address each of the auditor's findings, UTSA must take the necessary actions to correct all the deficiencies noted in the audit report. Sections 200.315(b) and 200.320(c) of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards require UTSA to prepare and submit as part of the reporting package a *Summary Schedule of Prior Audit Findings* that reports the status of prior audit findings. In preparing that

Schedule, UTSA must comment on all actions taken to correct each finding noted in this audit report, including any action required in the enclosures to this letter.

This final audit determination contains one or more findings regarding UTSA's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the *Clery Act*) at § 485(f) of the Higher Education Act (HEA), 20 U.S.C. § 1092(f), and 34 C.F.R. §§ 668.41 and 668.46. Because a *Clery Act* finding does not result in a financial liability, this finding may not be appealed.

Due to the serious nature of the enclosed finding, this final audit determination will be referred to the Department's Administrative Actions and Appeals Service Group (AAASG) for its consideration of possible adverse action. Such action may include a fine, and/or the limitation, suspension, or termination of the eligibility of the institution. Such action may also include the revocation of the institution's program participation agreement (if provisional), or, if the institution has an application pending for renewal of its certification, denial of that application. If AAASG initiates an action, UTSA will be notified under separate cover. AAASG's notification will also include information regarding the institution's appeal rights and procedures on how to contest that action.

Program records relating to the period covered by this audit must be retained until the later of the resolution of any loans, claims, or expenditures questioned in the audit, 34 C.F.R. § 668.24(e)(3)(i), or the end of the retention period applicable to the record under 34 C.F.R. §§ 668.24(e)(1) and (e)(2).

UTSA's continued cooperation throughout the audit resolution process is appreciated. If you have questions or concerns, please contact Jesus Moya, Branch Chief, at 214-661-9472 or via email at [Jesus.Moya@ed.gov](mailto:Jesus.Moya@ed.gov).

Sincerely,

Cynthia Thornton  
Division Chief  
Dallas School Participation Division

CT/bs

Enclosure: Final Audit Determination

cc: Arnoldo Trejo, Financial Aid Director  
Southern Association of Colleges and Schools Commission on Colleges  
Texas Higher Education Coordinating Board

**Final Audit Determination**

**University of Texas at San Antonio - OPE ID: 01011500**

ACN: 06-2017-19988

**Institution:** University of Texas at San Antonio

**Finding 1:** San Antonio Did Not Have Effective Controls to Ensure that it Reported Complete and Accurate *Clery Act* Crime Statistics, Page 10

**Audit Finding:**

The OIG cited UTSA for significant weaknesses in its internal controls that resulted in multiple violations of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the *Clery Act*) and the Department’s regulations. As part of its audit, the OIG examined a sample of approximately 353 incident reports selected from the record management systems used by the University’s police department, the offices with responsibilities for student and employee conduct, student housing, and Title IX compliance for calendar years 2015-2017. The OIG also evaluated the University’s policies, procedures, and other activities related to the classification, compilation, and disclosure of campus crime statistics. These statistics identify the number and type of Clery-reportable offenses that were reported to the institution’s campus security authorities and local law enforcement.

All Title IV-eligible domestic institutions are required to include these statistics in their Annual Security Report (ASR) and actively distribute this report to enrolled students and current employees. An institution’s crime statistics also must be submitted to the Secretary as part of the annual data collection and survey. The data submitted by institutions is posted on the Department’s Campus Safety and Security (CSS) website for review by the public. The OIG’s examination covered the statistical disclosures for three calendar years (2015 to 2017).

Based on its testing, the OIG determined that UTSA’s internal control weaknesses resulted in the following:

- I. UTSA did not compile and disclose accurate and complete campus crime statistics in its ASR and in its reporting to the Department during the audit period; and

OIG’s analysis indicated that UTSA failed to disclose 55 Clery-reportable incidents during the audit period. Table 2<sup>1</sup> below summarizes the 55 incidents in the audit sample that were not included in the University’s statistical disclosures:

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<sup>1</sup> All tables referenced in this final audit determination are excerpted from the OIG audit report.

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**Table 2. Reportable Incidents by Crime Classification from 2015–2017**

Clery Act Crime Classification	Number of Unreported Incidents	Number of Reported Incidents	Total Number of Reportable Incidents	Unreported Incidents as a Percentage of Classification Total
Rape <sup>a</sup>	2	16	17 <sup>c</sup>	12 percent
Fondling <sup>a</sup>	7	10	17	41 percent
Dating Violence <sup>a</sup>	12	20	32	38 percent
Domestic Violence <sup>a</sup>	1	9	10	10 percent
Stalking <sup>a</sup>	25	9	34	74 percent
Aggravated Assault	2	2	4	50 percent
Burglary	3	20	23	13 percent
Motor Vehicle Theft	3	26	29	10 percent
All Other Crimes <sup>b</sup>	0	7	7	0 percent
Total	55	119	173 <sup>c</sup>	-

<sup>a</sup> The unreported incidents in these crime classifications were VAWA crimes.

<sup>b</sup> Includes the total of crimes reported in all other crime classifications: robbery (5), arson (1), and statutory rape (1). We did not identify reporting errors for these other crime classifications.

<sup>c</sup> San Antonio reported one rape incident in error that did not occur within the school's Clery Act geography. Because this incident should not have been reported, we excluded it from the total number of reportable incidents for rape and for all crime classifications.

*See the full audit report for additional details.*

To evaluate the accuracy of UTSA's *Clery Act* crime statistics, the OIG reviewed the supporting documentation for each of the 119 criminal incidents and six unfounded incidents that UTSA reported at its campuses between 2015-2017. The auditor determined that four incidents were not classified in accordance with applicable *Clery Act* reporting requirements, as shown in Table 3.

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**Table 3. Clery Act Crimes Not Reported Accurately**

How Incident Was Reported	How Incident Should Have Been Reported
Unfounded Rape and Rape	Rape (not unfounded)*
Unfounded Rape and Rape	Rape (not unfounded)*
Fondling	Rape
Rape	Not Reportable (not within Clery Geography)

\* San Antonio reported these two incidents as both rape and unfounded rape. They should only have been reported as rape, so the two counts of unfounded rape were accuracy discrepancies because they were not reported in the correct crime classification.

The OIG found that UTSA did have processes in place to issue its ASRs and respond to the annual data collection by the due date; however, UTSA lacked adequate internal controls to provide reasonable assurances that its crime statistics were accurate and complete. Among the contributing factors, the OIG found that UTSA did not:

- have effective processes for identifying campus security authorities (CSA);
- communicate CSA roles and responsibilities effectively;
- have processes to identify and periodically review all relevant campus sources;
- implement effective controls to ensure it identified other information, such as local law enforcement related to *Clery Act* crimes;
- design and implement effective processes to collect, record, and track reported allegations related to *Clery Act* crime statistics;
- design and implement effective or timely processes to collect and report all crime information from CSAs;
- have effective processes for recording, tracking, and reconciling crime incidents so they could be readily and reliably identified for reporting purposes;
- have effective controls over its processes for analyzing crime information to identify and compile the annual *Clery Act* crime statistics;
- run reports or queries to identify relevant incidents due to relying on manual processes;
- have effective processes for retaining documentation of its analyses and summaries of criminal incidents included in its *Clery Act* crime statistics;

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- have effective internal controls for management, oversight, and quality assurance over its *Clery Act* crime reporting processes;
- have encompassing, detailed policies and procedures that covered all significant aspects of the *Clery Act* crime reporting processes;
- have effective management oversight, quality assurance, and verification processes to review completeness and accuracy of the reported *Clery Act* crime statistics;
- have an effective monitoring process for its *Clery Act* crime reporting functions;
- solicit or receive feedback from officials possessing appropriate internal control, information management, or Federal education compliance experience in the design of its *Clery Act* reporting; and
- maintain consistency with personnel in key *Clery Act* positions, which led to frequent personnel changes during the implementation of UTSA's *Clery Act* reporting processes.

Due to the weaknesses in UTSA's internal controls over its reporting of *Clery Act* crime statistics, the OIG auditor concluded that the actual number of reportable *Clery Act* crimes could be higher than the number of exceptions noted in the audit report. The OIG also found that UTSA lacked sufficient controls to ensure that *Clery Act* incidents were recorded properly in the school's record management systems and that such records could be reliably identified and retrieved for compilation and reporting purposes.

(Questioned Cost: \$0.00)

The *Clery Act* is first and foremost a consumer protection law based on the idea that students, employees, parents, and other stakeholder are entitled to accurate, complete, and timely campus safety and crime prevention information. Any failure by an institution to provide this information or to administer its campus safety program in a transparent manner deprives students, employees, and other interested parties of important safety information to which they are entitled. Access to this information permits campus community members to make informed decisions about where to work, study, and reside and empowers them to play a more active role in their own safety and security.

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**FINAL AUDIT DETERMINATION:**

The *Clery Act* and the Department's regulations require all institutions that receive Title IV, HEA funds to publish an ASR that contains, at a minimum, all of the statistical and policy elements described in 34 C.F.R. § 668.46(b) and to distribute the report to enrolled students and current employees through appropriate publications and mailings.

Acceptable means of distribution include U.S. Mail, hand delivery, or via campus mail to required recipients, or by posting on the institution's website. If an institution chooses to distribute its report by posting to an internet or intranet site, the institution must, by October 1st of each year, distribute a notice to all recipients that includes a statement of the report's availability and its exact electronic address, a description of its contents, as well as an advisement that a paper copy will be provided upon request. 34 C.F.R. § 668.41(e)(1). The Department's regulations also require participating institutions to provide a notice to all prospective students and employees that includes a statement about the ASR's availability, its contents, and its exact electronic address if posted to a website. This notice must also advise interested parties of their right to request a paper copy of the ASR and to have it furnished upon request. 34 C.F.R. § 668.41(e)(4).

The ASR must include statistics for incidents of crimes reported during the most recent three calendar years. The covered crime categories include (1) criminal homicide, (2) certain sex offenses (rape, fondling, incest, and statutory rape), (3) robbery, (4) aggravated assault, (5) burglary, (6) motor vehicle theft, and (7) arson. The *Clery Act* also requires the separate disclosure of all Part I offenses and certain other offenses where an individual or group is targeted for their actual or perceived membership in one or more of the following categories: race, gender, religion, sexual orientation, ethnicity or national origin, and disability. Institutions also must disclose statistics for arrests and disciplinary referrals made for violations of Federal or State drug, liquor, and weapons laws. For *Clery Act* reporting purposes, participating institutions must classify incidents of crime based on the definitions in 34 C.F.R. Part 668, Subpart D, Appendix A. Beginning with the 2015 ASR, institutions were also required to disclose statistics for incidents of dating violence, domestic violence, and stalking offenses as defined in Section 40002(a)(20) of the Violence Against Women Reauthorization Act of 2013 (VAWA). Crime statistics must be organized by the following geographical categories: 1) on-campus; 2) on-campus student residential facilities; 3) certain non-campus buildings and property; and 4) certain adjacent and accessible public property. 34 C.F.R. § 668.46(c).



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Per 34 C.F.R. § 668.46(b), the ASR must also include several statements of institutional policy and procedure. These disclosures are intended to inform users of the report about the institution's safety policies, procedures, programs, and resources as well as information about channels for victims of crime to seek recourse. In general, these policies cover topics such as law enforcement authority and practices of campus police and safety officials, incident reporting procedures for students and employees, and policies that govern the preparation of the report itself. Institutions must also disclose detailed statements about the issuance of timely warnings, emergency notifications, and evacuation procedures. Information about the institution's drug and alcohol abuse prevention and education programs must also be included in the ASR.

Section 304 of VAWA also amended the *Clery Act* to require more detailed disclosures about intimate partner violence and sexual assault prevention and response. In summary, these rules require the following informational disclosures to be included in the ASR, starting with the 2015 report:

A clear statement of policy regarding the institution's policies, procedures, programs, and protocols required by the Campus Sexual Assault Victim's Bill of Rights including the following: 1) a description of educational programs and campaigns about these offenses that are provided to students and employees; 2) a statement about the importance of preserving evidence; 3) information on the student's option to notify law enforcement authorities and that institutional officials will assist victims or witnesses to navigate the reporting process; 4) information on how to secure an order of protection, "no-contact" orders, restraining order, or similar lawful orders issued by a criminal, civil, or tribal court or by the institution; 5) information on how to access existing counseling, health, mental health, victim advocacy, legal assistance, and other services; 6) information on how to request changes to academic, living, transportation, and working situations or protective measures and the fact that the institution must make such accommodations or provide such protective measures if the victim requests them and if they are reasonably available, regardless of whether the incident is reported to local law enforcement; 7) information about the institution's procedures for campus disciplinary actions in cases of an alleged crime of sexual or intimate partner violence; and, 8) a statement of policy that the institution will provide a student or employee that has been a victim of dating violence, domestic violence, sexual assault, or stalking, on or off campus, will receive a written explanation of the student's or employee's rights and options. 34 C.F.R. § 668.46(b)(11).

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- A clear statement of policy that addresses the institution’s programs to prevent dating violence, domestic violence, sexual assault, and stalking and that includes the following elements: 1) a description of primary prevention and awareness programs for all incoming students and new employees that included a statement that the institution prohibits all acts of dating violence, domestic violence, sexual assault, and stalking, and 2) the definitions for dating violence, domestic violence, sexual assault, and stalking in the applicable jurisdiction; the definition of “consent” in reference to sexual activity in the applicable jurisdiction; a description of safe and positive options for bystander intervention; information on risk reduction programs and trainings. 34 C.F.R. § 668.46(j).
- A clear statement of the procedures that will be used in an institutional disciplinary proceeding in a case of an alleged incident of dating violence, domestic violence, sexual assault, or stalking. This disclosure must address each type of disciplinary proceeding used by the institution, the standard of evidence that will apply, the steps in the hearing process, anticipated timelines, decision-making process for each type of disciplinary proceeding, how to file a disciplinary complaint, and how the institution determines which type of proceeding to use based on the circumstances of the allegations. The disclosure must also describe the range of possible sanctions and a list of available protective measures. 34 C.F.R. § 668.46(k)(1).
- A clear statement that in a case of an alleged incident of dating violence, domestic violence, sexual assault, or stalking that the institution will provide a prompt, fair, and impartial process from initial investigation to final result. This disclosure must describe the annual training that will be provided to all persons that will participate in investigations and/or proceedings. The disclosure also must advise that both the accuser and the accused will have the same opportunities to have others present during any disciplinary proceeding or meeting. The notice must clearly state that each party is entitled to be accompanied by an advisor of their choice and must spell out the restrictions that will apply to the advisor’s participation and that such limitations will apply to all such advisors. Finally, the ASR must state that the accuser and the accused will receive simultaneous notification, in writing, which provides the result of the disciplinary proceeding, appeal procedures, information about any changes to the result, and notification of when the results become final. 34 C.F.R. § 668.46(k)(2).

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For more information on VAWA, please see the Final Rule at:

<http://ifap.ed.gov/fregisters/attachments/FR102014FinalRuleViolenceAgainstWomenAct.pdf>.

As noted above, the OIG found that UTSA violated multiple provisions of the *Clery Act*, as a result of its failure to compile and submit accurate and complete crime statistics to the Department in response to the 2018 data collection and survey. This inaccurate crime data was released to the public on the CSS website. The audit team attributed these deficiencies to significant weaknesses over internal controls related to *Clery Act* compliance. To address these deficiencies, the OIG recommended that UTSA take the following actions:

- 1.1 Allocate sufficient personnel with appropriate internal control, information management, and Federal education compliance knowledge to timely design and implement the internal controls described in Recommendation 1.2;
- 1.2 Define objectives specific to reporting complete and accurate Clery Act crime statistics in accordance with the requirements of the Clery Act and the standards of effective internal control, identify risks to meeting those objectives, and design and implement internal controls to mitigate those risks and address the control weaknesses included in this finding;
- 1.3 Establish written policies and procedures covering all significant aspects of the internal controls described in Recommendation 1.2 and at a sufficient level of detail to ensure the performance of related activities, including the continuity of operations, personnel, and records specific to reporting complete and accurate Clery Act crime statistics; and
- 1.4 Review school records for calendar years 2015–2017 to identify all incidents of reportable Clery Act crimes that should be included in San Antonio’s Clery Act crime statistics. Amend the reported crime statistics to correct any errors in the reported Clery Act crime statistics. Corrections should include, but are not limited to, the specific reporting errors identified in the report.

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UTSA provided a detailed response to the OIG audit on October 5, 2020, which stated that UTSA was committed to addressing the finding and recommendations outlined in the draft report. UTSA did not explicitly agree or disagree with the OIG's recommendations; however, UTSA provided a summary of the remedial actions that it planned to take in response to recommendations 1.1, 1.2, 1.3, and 1.4. Additionally, UTSA detailed other improvements to its *Clery Act* compliance program that it had initiated during the audit period and while the OIG audit was underway. As stated previously, OIG's analysis indicated that UTSA failed to disclose 55 *Clery*-reportable incidents at its campuses during the audit period. UTSA disagreed with the OIG's *Clery Act* reporting determinations on 25<sup>2</sup> of the 55 unreported criminal incidents identified, stating that the 25 incidents did not meet the elements of the applicable crime reporting classifications or did not definitively occur on UTSA's *Clery* Geography.

In its response to the OIG's initial recommendations, UTSA described the remedial actions it had taken, and provided detailed information about ongoing process improvements, several of which are scheduled to be completed in the near term. Additionally, as noted in UTSA's response to the OIG report, UTSA undertook a comprehensive data audit of its crime statistics and supporting documents for calendar years 2016, 2017, and 2018, which included records relating to all UTSA public safety case files from 2016-2017, all equal opportunity services and Title IX (EOS) case filed from 2016-2018, all student conduct and community standards records from 2016-2018, and additional review of incidents initially reported to other offices. In a March 1, 2021 teleconference with Federal Student Aid (FSA), UTSA officials represented that the revised statistical data was included in the University's 2020 ASR and its response to the Department's 2020 data collection.

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<sup>2</sup> In its official response to the OIG dated October 5, 2020, UTSA asserted that 25 incidents were improperly included in its finding. In its supplemental response to FSA dated December 18, 2020, UTSA adjusted the number of disputed incidents to 24. The disputed cases included 14 incidents of Stalking, five incidents of Dating Violence, four incidents of Fondling, and one incident of Sexual Assault. Regarding the Sexual Assault case (C-77), the disagreement was based on location, not the classification of the reported offense. The Stalking cases at issue are as follows: C-04, C-12, C-14, C-15, C-20, C-28, C-31, C-33, C-41, C-49, C-57, C-70, I-20, and I-31. For Dating Violence, the disputed cases are: C-34, C-46, C-47, C-52, and C-71. And finally, the disputed Fondling incidents are: C-44, C-45, C-58, and C-76.

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To further assess UTSA's claims that it had fully implemented its remedial action plan, enhanced its internal controls, and revised its crime statistics, the Department issued a Preliminary Audit Determination Letter (PADL) on December 17, 2020, to collect additional documents and information about the University's actions since the issuance of the OIG's audit report. UTSA responded to the PADL on January 4, 2021. UTSA's responses addressed the Department's questions and included records relating to the disputed incidents<sup>3</sup>, UTSA's original and revised crime logs, and other records. UTSA requested an extension to submit the additional items listed in the PADL on December 17, 2020. The Department approved UTSA's extension request on January 4, 2021, which set a deadline for submission of the additional items requested for January 29, 2021. UTSA submitted its second response, which included the additional items requested in the PADL, on January 30, 2021. After the Department reviewed UTSA's submitted materials, the Department requested additional documentation related to various PADL requests on February 4, 2021, with a submission deadline of February 8, 2021. UTSA submitted the documentation for this additional information request on February 8, 2021. The Department reviewed the audit report, UTSA's PADL responses and remedial actions and determined that UTSA has satisfactorily addressed and implemented its remedial actions as stated in its response to the OIG.

As mentioned previously, OIG indicated that UTSA failed to disclose 55 Clery-reportable incidents at its campuses during the audit period. UTSA disagreed with the OIG's *Clery Act* reporting determinations on 25 of the 55 unreported criminal incidents identified, stating that the 25 incidents<sup>4</sup> did not meet the elements of the applicable crime reporting classifications or did not definitively occur on UTSA's Clery Geography. Specific to this matter, the Department requested and reviewed source documents, incident reports, and crime logs generated by UTSA, as part of its independent audit resolution activities.

Based on this review and the University's partial admissions, the OIG's finding is sustained. The audit report, the institution's responses, and FSA's independent analysis show that at least 30 incidents were improperly excluded from UTSA's response to the Department's

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<sup>3</sup> As noted, UTSA disputed 24 of the reporting exceptions cited by the OIG. The Department will conduct additional analysis to determine the exact number of violations that occurred and will request information from the institution, as needed, to aid in this determination. Information about this determination will be incorporated into the referral to AAASG for consideration of a fine action.

<sup>4</sup> As noted, UTSA adjusted this to 24 incidents.

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2018 campus crime statistics data collection for calendar years 2015-2017, primarily as a result of classification and data management errors and inadequate internal controls.

FSA also finds that these violations necessarily resulted in deficiencies in the University's daily crime log. These determinations are more than sufficient to sustain the finding.

Moreover, FSA agrees with OIG that UTSA did not solicit or receive adequate feedback from officials possessing appropriate experience and expertise in the areas of *Clery* compliance, information management, Federal education compliance, and internal controls. Second, frequent personnel changes, including key positions responsible for *Clery Act* crime reporting, resulted in officials not performing certain reporting activities during the audit period. In the main, FSA also agrees with the OIG that most of the deficiencies can be attributed to weaknesses in UTSA's internal controls. These issues were significant and adversely impacted the institution's controls over compliance, operations, and most notably in this case, reporting. In upholding this finding, FSA also notes the following:

- Although the available information is adequate to sustain the finding, FSA will have to thoroughly review UTSA's 2019 and 2020 responses to the Department's data collection and survey, its 2019 and 2020 ASRs, and other supporting documentation to further evaluate the extent of the reporting violations identified by the OIG. Additional examination of applicable reports, the institution's recent data collection and survey responses, and supporting documentation will be required to fully ascertain the extent of the deficiencies noted by the OIG, ensure adequate remediation, and facilitate appropriate consideration of possible sanctions and next steps. Additionally, the Department notes that UTSA's recent statistical revisions, ongoing remedial efforts, and FSA's ongoing analysis are in furtherance of Recommendation 1.4. Such efforts on the part of FSA to independently document errors in UTSA's crime statistics under the applicable statutes, regulations, industry standards, and internal procedures is essential to the integrity of our oversight processes and are particularly important given OIG's recommendation 1.5 that FSA consider the imposition of a fine for these violations. This process will also facilitate FSA's consideration of claims made by UTSA that some of the exceptions cited by the audit team should not have been included in the final report. UTSA continues to claim that as many as 24 incidents should not have been included therein.

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- Relatedly, FSA acknowledges that while the *Clery Act* requires institutions to compile statistics for certain crimes that are reported to CSAs or local law enforcement agencies as occurring on Clery Geography, the law does not require schools to classify or label its incident reports in accordance with the *Clery Act* crime definitions so long as the crime statistics compiled and disclosed are in fact accurate and complete.
- The Department also notes the following related to the “Other Matter, San Antonio’s Daily Crime Log Did Not Meet Requirements.” The Department concurs with the audit team that the daily crime log maintained by UTSA did not meet minimum requirements during the audited period. Based on the audit report and the Department’s analysis, it is clear that the log could not function as a useful control in furtherance of the compilation and disclosure of accurate and complete crime statistics. However, FSA notes that neither the Clery statute nor the regulations specifically require institutions to enter all reports received from non-law enforcement CSAs onto the log. Instead, this was a recommendation that was included in the 2016 edition of the “Handbook for Campus Safety and Security Reporting<sup>5</sup>” as a best practice that has proven to be an effective means of organizing and de-duplicating reported incidents. In any case, UTSA’s responses indicate that the institution has satisfactorily addressed this “Other Matter” identified by OIG.

To be deemed administratively capable, institutions must, among other requirements, be in substantial compliance with all applicable laws and regulations, employ an adequate number of qualified staff, and carry out required functions with adequate checks and balances in a system of internal controls. Institutions also must develop and implement written policies and procedures and be able to produce accurate and complete reports and information to the Secretary upon request. These requirements apply to all aspects of Title IV administration, including an institution’s Clery compliance program. In its Program Participation Agreement (PPA), UTSA affirmed that it would comply with all applicable regulations and requirements, including the campus crime reporting requirements.

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<sup>5</sup> The current version of this guidance document was rescinded on October 8, 2020. The Department will provide guidance on requirements and best practices, as needed.

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To achieve and maintain this level of compliance, institutions must have effective internal controls over their *Clery Act* reporting processes to provide reasonable assurance that required disclosures will be accurate, complete, and timely and that deficiencies will be detected and adequately addressed without unnecessary delay. Notwithstanding these points about the standards of administrative capability, FSA acknowledges that the approaches to internal control referenced in the audit report also provide a sound basis for designing and evaluating internal controls. UTSA's responsive documents also show that it has integrated some of these principles into its new and revised policies, procedures, programs, and work processes.

Notwithstanding the seriousness of the identified deficiencies, the assessment performed by the Audit Resolution Specialist (ARS) indicated that the identified violations were, for the most part, satisfactorily addressed by UTSA's remedial actions and its new and revised internal policies, procedures, training programs, and systems.

UTSA management represented that specific remedial measures were initiated in response to the OIG's recommendations. For example, since the exit conference, the University indicated that it has taken several intentional actions to address its internal control weaknesses and improve overall compliance. Among other actions, the institution has engaged a well-regarded *Clery Act* consultant to conduct a data audit and to review and enhance policies and procedures. In October 2018, UTSA hired and empowered a permanent *Clery* Compliance Coordinator with the requisite knowledge and experience to lead this important office. In a conference with UTSA on March 1, 2021, University officials indicated that the current plan is to have the consultant provide additional support to the Coordinator and the *Clery Act* Compliance Committee that was formed in January 2020.

The Department has confirmed that UTSA has begun the process of implementing the remedial actions and process improvements described in its response to the OIG Audit Report and was able to demonstrate significant progress in this regard. Therefore, the Department has determined that UTSA's remedial action plan meets minimum requirements and for the stated reasons, has accepted UTSA's response and considers this finding to be closed for the purposes of resolving this audit.

Despite the closure of this finding for audit resolution purposes, the officials and directors of UTSA are advised that they must continue to develop the University's campus safety and



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*Clery Act* compliance programs, enhance its system of internal controls, and take any other action that may be needed to reasonably ensure that these or similar violations do not recur. Department officials will continue to work with UTSA officials to ensure that the crime statistics submitted by the University for inclusion on the CSS website are accurate and complete going forward. Moreover, FSA will continue to monitor UTSA until all needed remedial measures and process improvements are in place.

UTSA is reminded that the exceptions identified by the OIG resulted in serious violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly “correct” violations of this type once they occur. The audit team recommended certain actions that should be taken to address these violations, and the University asserted that adequate action was taken to bring its operations into compliance with the *Clery Act* as required by its PPA. The Department will continue to work with the institution to ensure that its Corrective Action Plan is fully implemented, and that accurate and complete crime data is submitted in response to the annual date collection and survey. Notwithstanding the University’s reforms, UTSA management must understand that the exceptions resulted in a failure to provide important campus safety information to members of the campus community, the Department, and the general public in violation of Federal law. For these reasons, UTSA is advised that its remedial actions cannot and do not diminish the seriousness of these violations, nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require other remedial measures as a result.

As noted in the audit report and this FAD, OIG recommended that FSA consider the imposition of a civil penalty as a result of these deficiencies. Such penalties are specifically authorized by the *Clery Act* and 34 C.F.R. § 668, Subpart G. The audit resolution team has determined that such a referral is warranted. The referral to the Administrative Action and Appeals Service Group (AAASG) will include information about deficiencies identified by the OIG and FSA’s independent assessment of those identified exceptions. This additional work will help to ensure that the referral is based on the best available evidence and accurately reflects confirmed exceptions based on examination and testing of compliance attributes related to the deficiencies identified by the OIG. If AAASG determines that a fine action is appropriate, the University will be so notified under separate cover.

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Because of the consequences of a serious compliance failure, the Department strongly recommends that UTSA officials re-examine the institution's campus safety and general Title IV policies and procedures on a regular basis to ensure that they continue to reflect current institutional practices and are compliant with Federal requirements. The Department provides a number of other *Clery Act* training resources. UTSA officials can access these materials at <http://www2.ed.gov/admins/lead/safety/campus.html> and <https://fsatraining.ed.gov>. The *Clery Act* regulations can be found at 34 C.F.R. §§ 668.14, 668.41, and 668.46.