

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made by and between The University of Texas San Antonio (OPE ID 01011500) (UTSA or the University), and the United States Department of Education (Department), Federal Student Aid (FSA), acting through the Director of the Administrative Actions and Appeals Service Group, and is effective as of the last date written below (the “Effective Date”). UTSA and the Department are collectively referred to hereinafter as the “Parties,” and individually as a “Party.”

### RECITALS

A. On April 15, 2021, the Department issued a Final Audit Determination (FAD) (ACN 062017-19988), stating that UTSA had failed to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”) in §485(f) of the Higher Education Act of 1965, as amended (the “HEA”), and the Department’s regulations. The FAD identified specific violations of the Clery Act by UTSA. Under the HEA, the Department may impose a fine on an institution that violates the Clery Act.

B. Since the issuance of the FAD, UTSA and the Department have engaged in discussions aimed at resolving issues identified in the FAD and potential fines that could be imposed by the Department following completion of the review.

C. The Department acknowledges that, prior to the issuance of the FAD, beginning in early 2018 UTSA had already undertaken many measures to improve its Clery Act compliance and campus safety program, including but not limited to:

- Established a Clery Compliance Committee to provide additional oversight, with representatives from Business Affairs, Student Affairs, Academic Affairs, Inclusive Excellence, the Equal Opportunity Services/Title IX Office, the President’s Office and Athletics
- Established a Data Integrity Working Group, which includes stakeholders from across campus, to review records on a monthly basis to ensure cases are appropriately included in the Annual Security and Fire Safety Report and daily reviews of dispatch entries by Public Safety Department members to ensure all crimes are included on the crime log
- Implemented the ARMS Record Management System to enhance data management and UTSA’s daily crime log to better align with Clery requirements
- Implemented the Maxient records management system as an intake vehicle for Campus Security Authority (CSA) forms that were routed directly to the Clery Compliance Coordinator, Title IX Coordinator, and the EOS Analyst, and to improve tracking and documentation of Title IX-related complaints of sexual harassment and sexual misconduct

- Established the UTSA Behavioral Intervention Team (BIT) to address behavioral concerns related to faculty, students, and staff using the NaBITA Threat Assessment Tool, Wavr-21, and SAM (Stalking Assessment and Management)
- Established the Prevention Education Advocacy Consultation Empowerment (“PEACE”) Center which uses trauma-informed education programs and services that provide confidential advocacy support to students, faculty, and staff who have experienced issues related to sexual misconduct, intimate partner violence, and/or stalking among other situations and crimes
- Created a structure to identify, notify and certify training for UTSA’s Campus Security Authorities annually
- Revamped the Equal Opportunity Services/Title IX Office (EOS) and its alignment with Clery Act goals, reorganized its reporting structure with a direct reporting line to the president’s office, and added the Clery Compliance Coordinator to the EOS office to develop a more efficient and streamlined reporting structure within Clery Act compliance
- Established the UTSA Tracy Rule to codify its misconduct policy for student-athletes, the first university in the nation to take this step
- Implemented a practice of regular updates to the campus community regarding its work to prevent sexual assault and misconduct on campus and to raise awareness regarding advocacy services and reporting options
- Established a practice to ensure inventory of properties reflects the current geography and is updated regularly
- Developed a robust report writing and investigator training experience for police, Title IX, and student conduct staff to better identify matters that would be considered Clery reportable crimes
- Implemented a Timely Warning Decision Matrix to assist those responsible for issuing timely warnings, giving them the ability to analyze a situation and quickly issue warnings where appropriate and to maintain documentation for future improvement

In furtherance of its commitment to improve its Clery Act compliance and campus safety program, the Parties continue to work together to address additional appropriate enhancements to UTSA’s Clery Act related policies and practices, and to identify further steps that the University may undertake to ensure continued compliance in the future.

D. UTSA and the Department have now agreed to resolve the FAD without any further administrative procedures, other than those outlined in the Appendix to this Agreement.

E. The Parties have reached this Agreement in good faith and in furtherance of the shared belief that time, personnel, and other resource allocations are best served in fulfillment of the requirements set forth in the attached Appendix, all of which are intended to serve the UTSA community, rather than on protracted and costly review and legal procedures.

TERMS AND CONDITIONS

In consideration of the mutual covenants and conditions contained in this Agreement, the sufficiency of which is hereby expressly acknowledged, and intending to be legally bound to the terms hereof, the Parties agree as follows:

1. UTSA agrees that it will pay the Department a fine in the amount of \$670,000 (Six Hundred and Seventy Thousand Dollars and No Cents) (the "Fine") to resolve the potential fine that the Department believes it could impose as a result of the Review. UTSA will pay the Fine through FEDWIRE on or before the expiration of three business days following the Effective Date of this Agreement. UTSA should include the billing number **AAA202201024** on the FEDWIRE form to ensure proper accounting of the Fine payment.
2. UTSA agrees that it will implement the corrective actions specified in the Appendix to this Agreement.
3. The Department agrees not to initiate any administrative action against UTSA based on the findings outlined in the April 15, 2021 FAD. The agreed upon \$670,000 Fine is imposed in settlement of all findings set forth in the FAD, as well as any other potential noncompliance with the Clery Act and fire safety requirements that may have occurred during the review period, irrespective of whether such other potential noncompliance was noted in the FAD or otherwise disclosed to the Department.
4. UTSA acknowledges that by entering into this Agreement it is waiving its right to appeal any potential fine that could be imposed by the Department based on the findings set forth in the FAD. By entering into this Agreement, both Parties consider this matter resolved and no further action may be taken in regard to the FAD except with regard to post-review monitoring activity set forth in Appendix A.
5. UTSA affirms its intent to continue to comply with the requirements in the Clery Act, the HEA and the Department's implementing regulations.
6. Nothing in this Agreement constitutes an admission of liability or wrongdoing by UTSA.
7. This Agreement does not waive, compromise, restrict, or settle:

- a. Any past, present, or future violation of the criminal or civil fraud laws of the United States.
- b. Any presently pending or future action taken by the United States under the criminal laws or civil fraud laws of the United States.

The Department is not aware of any such actions pending against UTSA based on the issues addressed in the FAD.

- 8. This Agreement does not address or resolve any complaints filed with, or any investigations undertaken by, the Department's Office for Civil Rights under any applicable law or regulation.
- 9. The persons executing this Agreement on behalf of the Parties hereto warrant that they are fully authorized to do so on behalf of the Party for which they are signing this Agreement and to bind such Party to the terms hereof.
- 10. This Agreement and any documents referenced herein constitute the entire contract between the Parties with respect to the subject matter hereof.
- 11. Each Party has cooperated in the drafting of this Agreement, hence, if any construction is to be made of this Agreement, the same shall not be construed against any Party.
- 12. This Agreement may be executed in two or more duplicate counterparts, each of which shall be treated as an original, but all of which together shall constitute one and the same instrument. The counterparts of this Agreement and any amendments hereto may be executed and delivered by facsimile, .pdf attachment, or other electronic signature by either Party to the other Party, and the receiving Party may rely on the receipt of such document so executed and delivered by facsimile or other electronic method as if the original had been received.

**FOR THE UNIVERSITY OF TEXAS SAN ANTONIO:**

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Taylor Eighmy  
President  
The University of Texas San Antonio

11/3/2021  
Dated: \_\_\_\_\_

**FOR THE UNITED STATES DEPARTMENT OF EDUCATION:**



Susan D. Crim

Director, Administrative Actions and Appeals Service Group

Federal Student Aid/Enforcement  
U.S. Department of Education

Dated: 11/15/2021

## Appendix A

### University of Texas at San Antonio Clery Act Audit Resolution Programmatic Improvements and Post-Review Monitoring

The United States Department of Education (the Department) and University of Texas at San Antonio (UTSA; the University) (OPE ID: 01011500) have entered into the accompanying Agreement (the “Agreement”) to resolve the deficiencies identified during an audit conducted by the Department’s Office of the Inspector General (OIG). Federal Student Aid (FSA) is responsible for the resolution of audits conducted by the OIG regarding the administration of the Title IV, Higher Education Act (HEA) student financial assistance programs. On April 15, 2021, FSA issued a Final Audit Determination (FAD) (ACN: 06-2017-19988), sustaining the sole finding of the OIG’s report. The FAD documented 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*”) in §485(f) of the HEA, as amended, and the Department’s regulations. Under the HEA, the Department may impose a fine on an institution that violates the *Clery Act* and require additional remedial actions to provide reasonable assurance that such violations will not recur.

The Department takes note of UTSA’s stated commitment to fully address deficiencies and other areas of concern identified by the OIG or through the monitoring agreement described below. The Department is equally committed to assisting the University in its efforts and will provide appropriate advice and oversight. This plan is intentionally flexible to allow the parties to collaborate on operational details throughout the monitoring period. UTSA has retained an experienced campus safety consultant who will continue to work with University officials responsible for campus safety compliance. As part of the resolution process, Department officials evaluated the remedial actions taken by the University so far and has identified additional areas for improvement. The University also conducted a self-study and file review to further assess the accuracy and completeness of its crime statistics. As part of the monitoring program, the information developed through the self-study will be used to further evaluate UTSA’s compliance with the timely warning and emergency notification provisions and to determine if campus buildings and properties were categorized in accordance with the definitions of Clery Geography.

The purpose of Post-Review Monitoring (PRM) is to ensure that adequate remedial measures are developed, fully implemented, and sustained. Any violations, weaknesses, or other areas of concern that cannot be addressed completely through this Agreement will be addressed through the PRM process. The PRM program will remain in place for at least two (2) years or until all significant deficiencies and other areas of serious concern are addressed to the Department’s satisfaction. The Department anticipates that all PRM activities can be completed within two (2) years of the effective date of this Agreement. Information gathered during the monitoring period will inform the Department’s determinations about UTSA’s *Clery Act* compliance and Title IV eligibility going forward. Any serious lapses in *Clery Act* compliance in the future could

negatively affect the terms of the University's participation in the Title IV, student financial assistance programs.<sup>1</sup>

This Agreement provides a framework for the Department to review and validate UTSA's remedial actions so far and to require additional modifications to organizational structures and changes to existing campus safety and crime prevention policies, procedures, training programs, and systems, to address deficiencies and other vulnerabilities identified by the Department or the institution. The parties agree to work collaboratively to identify and address all such deficiencies and other areas of concern. This Appendix sets out the basic requirements and terms for such changes and the Department's role in monitoring the University's efforts to comply with the provisions of this Appendix.

- I. UTSA will cooperate with the Department in a review of the composition and practices of the Clery Compliance Committee and the Data Integrity Working Group. The Department will also assess how the University's other internal compliance structures interact with these two units. Additionally, the Department will examine all forms, processes, and systems used to intake reports of crime as well as those that are used to compile and disclose crime statistics. UTSA agrees to submit a detailed written explanation of any proposed changes to reporting forms, processes, or systems to the Department at least 60 days prior to the effective date of any such changes and to secure the Department's approval of the proposed change prior to implementation. The Department will respond to all such proposals within 30 days.
- II. UTSA and the Department will jointly assess the need for enhanced crisis intervention, behavioral threat assessment, and sexual assault prevention and advocacy resources on campus and will determine the proper composition, functions, and core duties of such resources and their specific roles in supporting the University's *Clery Act* compliance program.
- III. UTSA will engage in an institution-wide process to identify and notify all CSAs of their obligations as "mandatory reporters" under the *Clery Act*. The University will deliver mandatory annual training to all persons who meet the CSA criteria as well as all senior campus executives and board members. UTSA will also provide training to all public safety officers and supervisors on incident report writing, review, and approval. Moreover, the University will ensure all officials involved in the investigation and/or adjudication of any case involving an alleged act of sexual violence continue to receive specialized training in such matters each year. The specialized training for investigators and hearing officials must include instruction on understanding the trauma typically experienced by victims of violent crime, especially sexual assaults. The Department will review and approve all training materials and will monitor the University's delivery of the training and the tracking of participation. UTSA will be required to advise the Department about the number of officials that were trained in each semiannual report. The University must also disclose any issues that delay or prevent the delivery of this training to all employees and the reason for delay or failure to train in the semiannual report. As previously noted, the Department acknowledges the University's existing efforts to train staff.
- IV. In consultation with the Department, UTSA's Office of Facilities and other appropriate officials with responsibilities for the management of buildings and properties, will engage in an institution-wide process to identify all buildings, properties, and/or other parcels of land that are owned or controlled by the University and are used for educational purposes on the main campus

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<sup>1</sup> UTSA is fully certified to participate in the Title IV, student financial assistance programs as of the date of this Agreement. The University's current Program Participation Agreement expires on March 31, 2025.

or the Downtown campus. This information must then be used to determine if each property has been classified properly for *Clery Act* purposes, in accordance with the definitions of “on campus,” “non-campus building or property,” and “public property,” as those terms are defined in the *Clery Act* (collectively referred to as “Clery Geography”).

Additionally, UTSA is required to use the information gathered during the internal review of buildings and properties to produce maps for both of its campuses that clearly identify all categories of Clery Geography, including buildings and properties that are owned or controlled by recognized student organizations or by any foundations, holding companies, or affiliates that are part of the University. These maps must also show the regular patrol zones of UTSA Police officers. Copies of all maps created for these purposes will be provided to the Department. The University must also identify any buildings or properties that the University owns or controls on the campuses of other institutions of higher education. To the extent that they accurately depict and describe its real estate holdings, UTSA may utilize existing maps and schematics to meet this requirement.

This component of the monitoring program will also be used by the Department to evaluate UTSA’s efforts to coordinate crime reporting and campus safety operations at the main and Downtown campuses. The Department will test the University’s processes for classifying, compiling, and disclosing crime statistics and other campus safety information at both campuses and how statistical data and informational disclosures are developed, communicated, and managed.

- V. For each year of the monitoring program, the UTSA must submit a draft of its Annual Security Report for review by the Department no later than 30 days prior to the required distribution date. The University must identify any new policies and procedures as well as any that have undergone significant revision since the publication of the institution’s most recent ASR. UTSA must also submit an audit trail to substantiate the accuracy and completeness of its crime statistics for the three most recent calendar years. The Department agrees to provide feedback within 15 days of receipt of the draft ASR and all requested supporting documentation. The University will be permitted to make necessary adjustments to the ASR up to three (3) days prior to publication and distribution of the report.
- VI. The University will conduct up to two (2) limited scope assessments over the course of the post-review monitoring process to identify potential *Clery Act* violations and to examine other areas of concern. The Department will identify the areas and issues to be examined and provide instructions on how to conduct the assessment. At the conclusion of each assessment, the University will provide information about its findings to the Department in a format to be determined by the parties. The information from these assessments will be used solely to diagnose and remediate deficiencies and weaknesses in the University’s campus safety, crime prevention, and compliance programs.
- VII. UTSA will continue to engage its current *Clery Act* consultant<sup>2</sup> or another with equal knowledge, skills, and abilities, to lead the remedial action process and to serve as a facilitator and monitor of progress. If it so chooses, UTSA may appoint its own officers to oversee this process so long as it consults with the Department prior to making such appointments. The consultant must report any significant violations of the *Clery Act* to the Department within five (5) days of identifying or

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<sup>2</sup> If UTSA chooses to terminate its engagement with its current consultant, the University must notify the Department of its intentions in advance and advise the Department of the individual or entity that will assume the consultant role.



otherwise becoming aware of the infraction. Additionally, the Clery Coordinator will participate in periodic phone conference to provide general updates to the Department and, with the assistance of the consultant, will produce a report every six (6) months on the University's progress on reforms and enhancements to campus safety and Clery compliance programs. The report must include a section on new and ongoing violations, challenges and obstacles to progress, an assessment of the adequacy of resources committed to the remedial action program, and recommendations for future action. This report must be issued to the Department and submitted to UTSA's President and Board of Trustees every six months for the duration of the PRM period. Other details regarding information to be included in the semiannual reports will be determined during a meeting to be conducted between the parties at least 60 days prior to the due date of each report. The first report will be due on June 1, 2022, and every six months thereafter for the duration of the monitoring period, unless otherwise directed by the Department.

- VIII. The University will fully cooperate with the Department in the conduct of an on-site compliance assessment that will take place within two (2) years<sup>3</sup> of the effective date of this Agreement.

The Department will continue to monitor UTSA's remedial efforts and will remain engaged with the University until the agreed-upon reforms are designed and implemented fully. The Department anticipates that some violations and additional areas of concern will be identified during the monitoring period. Any such deficiencies and vulnerabilities that are not yet known and therefore, cannot be resolved through this Agreement will be addressed through the PRM process. The parties agree to first attempt to resolve any such deficiencies or program weaknesses through a collaborative process without the need for the Department to initiate a new compliance review.

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<sup>3</sup> The parties agree that the timing of the on-site visit could be affected by factors beyond the Department's control, including but not limited, the ongoing COVID-19 Pandemic or other emergency conditions.