Mr. Seth A. Bodnar
President
University of Montana
University Hall 109
Missoula, MT 59812-0001

SEP 25 2018

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Dear Mr. Bodnar:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine the University of Montana (UM; the University) a total of $966,614 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 maximum fine of $35,000 for each violation that occurred from October 2, 2012 – November 2, 2015 and a maximum fine of $55,907 for violations that occurred from November 3, 2015 to present, for which civil penalties were assessed after January 15, 2018. 34 C.F.R. § 668.84.[1] As detailed below, this fine action is based on UM'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.

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 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). Institutions must distribute the ASR to current students and employees and make it 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 also submit the crime statistics annually to the Department, which makes them publicly available. 34 C.F.R. § 668.41(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

[1] The maximum fine cited in 34 C.F.R. § 668.84(a) has increased according to the Federal Civil Penalties Inflation Adjustment Act. See 77 Fed. Reg. 60047 (October 2, 2012); 81 Fed. Reg. 50321 (August 1, 2016); 82 Fed. Reg. 18559 (April 20, 2017); and 83 Fed. Reg. 2062 (January 16, 2018).

Data Collection. 34 C.F.R. § 668.46(c)(7). During calendar years 2011-2014, institutions were required to report the following crimes: criminal homicide; sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests and referrals for liquor law violations, drug law violations and illegal weapons possession. 34 C.F.R. 668.46(c).

Effective July 1, 2015, the Department amended the crime classifications to include: criminal homicide; sex offenses (rape, fondling, incest, and statutory rape); robbery; aggravated assault; burglary; motor vehicle theft; arson; arrests and referrals for liquor and drug law violations and for illegal weapons possession; hate crimes; dating violence; domestic violence; and stalking. Accordingly, institutions were expected to report on these crime classifications as of October 1, 2015. In the 2015 ASR, institutions were to amend the previously reported 2012 and 2013 statistics to conform to the new crime classifications.

I. UM FAILED TO PUBLISH ACCURATE CRIME STATISTICS IN ITS ANNUAL SECURITY REPORTS

The Department conducted a campus crime program review at UM from July 12, 2011 to July 14, 2011. Among other findings, the Department found that in calendar years 2009-2011, the University did not classify crimes properly and did not compile and publish accurate and complete crime statistics. Based on this information and multiple media reports that indicated serious underreporting and mishandling of numerous sex offenses by UM and the Missoula City Police Department (MPD), the Department expanded the program review to include the 2012-2015 calendar years.[2]

On January 27, 2017, the Department issued a Program Review Report (PRR) requesting UM to conduct a full file review of the crime statistics it reported for the 2012-2015 calendar years to determine the extent of underreported and misclassified crimes. On April 25, 2017, UM responded to the PRR and acknowledged that it misclassified and underreported numerous crime statistics in calendar years 2009 through 2011. The University also conceded that its own file review revealed that the crime statistics it reported in its ASRs for calendar years 2012 through 2015 contained multiple discrepancies for each of these reporting years. In its response, UM stated that it had corrected its reported crime statistics for calendar years 2012 through 2015 when it distributed UM's ASR as of October 1, 2017.

Based on this response, the Department issued a Final Program Review Determination (FPRD) letter on December 5, 2017. In the FPRD, the Department determined that UM violated the

[2] It is important to note that the University's mismanagement and underreporting of sex offenses prompted an independent investigation of the institution's practices related to Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §§1681-1688. Montana Supreme Court Justice Diane G. Barz investigated these allegations and made several recommendations based on her findings. The University ultimately entered into an agreement with the U.S. Department of Justice to ensure implementation of the recommendations and Title IX compliance.

HEA, the Clery Act, and the Department's regulations because it failed to properly classify and disclose accurate crime statistics for calendar years 2009 through 2015 in its ASRs.[3] The FPRD is incorporated by reference into this fine action. (Enclosure 1).

The Department is initiating this fine action based on the findings in the FPRD. The Clery Act and the Department's regulations require institutions to ensure the accuracy of the crime statistics that they report to current and prospective students and employees and to the public at large because people rely on this data to make decisions affecting their personal safety. Students and employees must be able to rely on the institution's reported statistics. An institution's correction of violations after the fact does not diminish the seriousness of reporting inaccurate data on campus crime statistics at the time the crimes occurred. Because UM omitted numerous crime statistics for calendar years 2009 through 2015, it violated its obligation to provide students and employees accurate information regarding the crime activity on and surrounding its campuses.[4]

The following tables represent the number of underreported crimes that the University identified for calendar years 2012-2015. This table differs from Table 4.1 in the FPRD because these statistics were taken from the 2013-2015 ASRs that UM posted on its website and the corrections that UM reported in its 2017 ASR. . Enclosures 2-5 document the crime statistics contained in the 2013-2016 ASRs, which are reflected in the "Original Statistical Data" column below. Enclosure 6 documents the corrected statistical data contained in the 2017 ASR, which are reflected in the "New Totals" column below.

Incidents omitted from the University's campus crime statistics, 2012 – 2015

All Geographical Categories	Original Statistical Data Count in 2013 ASR	Net Increase after program review	New Totals in 2017 ASR with Caveats
Forcible Sexual Offenses	9	**+1**	10
Non-forcible Sexual Offenses	0	**+1**	1
Burglaries	9	**+14**	23
Motor Vehicle Thefts	3	**+2**	5

[3] The FPRD included additional findings for which FSA is not proposing fines due in part to the application of the statute of limitations.

[4] Although the Department found that UM failed to report accurate crime statistics in the 2009-2016 ASRs, it is only assessing fines for missing information in the 2013-2016 ASRs. A fine action regarding the 2009-2012 ASRs is time barred by the statute of limitations, 28 U.S.C. § 2462. See also, *In the Matter of Lincoln University,* Decision of the Secretary, April 25, 2016, Docket No. 13-68-SF.

Drug Law Arrest	53	**+7**	60

All Geographical Categories	Original Statistical Data Count in 2014 ASR	File Review Results	New Totals in 2017 ASR with Caveats
Burglary	9	**+4**	13
Stalking	9	**+1**	10
Liquor Law Referrals	389	**+52**	441
Drug Law Referrals	182	**+34**	216

All Geographical Categories	Original Statistical Data Count in 2015 ASR	File Review Results	New Totals in 2017 ASR with Caveats
Rape	0	**+6**	6
Fondling	0	**+4**	4
Burglary	14	**+6**	20
Motor Vehicle Theft	1	**+1**	2
Domestic Violence	11	**+1**	12
Stalking	3	**+4**	7

All Geographical Categories	Original Statistical Data Count in 2016 ASR	File Review Results	New Totals in 2017 ASR with Caveats
Burglary	16	**+1**	17
Stalking	5	**+2**	7

INITIATED 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 UM is the 2016-2017 award year. According to the Department's records, UM received approximately $14,472,901 in Federal Pell Grant (Pell) funds; $66,716,329 in Federal Direct Loan funds; and $2,144,372 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 $1,422,335; for institutions participating in the Federal Direct Loan programs, the median funding level is $2,693,037; and for institutions participating in the Campus-Based programs, the

median funding level is $257,591. Accordingly, UM is a large institution because its funding levels for Federal Pell Grant, Federal Direct Loan, and Campus-Based funds exceed the median funding levels for each of those Title IV, HEA programs.

As detailed in this letter, UM's violations of the Clery Act and the Department's regulations are very serious. UM's current and prospective students and employees rely on the institution to provide accurate disclosures of campus crime statistics so they can make informed decisions about their personal safety. UM provided its current students and employees, as well as its prospective students and employees, with inaccurate and misleading crime statistics for calendar years 2012 through 2015 as part of its 2013, 2014, 2015 and 2016 ASRs.

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

In determining the appropriate fine amounts in this case, I took 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 and that the maximum fine amount may be imposed when the unreported crimes are violent crimes.

As indicated in the charts below, I have assessed a $35,000 fine for each violent crime that UM did not report in the ASRs. I have assessed $5,500 for each of the other non-reported crime incidents, as well as $650 to $5,000 for each of the omitted disciplinary referrals and arrests that UM failed to report. For the 2015 statistics I have assessed a $55,907 fine for each violent crime that UM did not report and $8,500 for each of the other non-reported crime incidents.

Year	Number of Incidents Omitted from Crime Statistics
2012	**18 Crime Statistics Omitted in the 2013 ASR:** 1 Forcible Sex Offense - $35,000 x 1 = $35,000 1 Nonforcible Sex Offenses - $35,000 x 1 = $35,000 14 Burglaries - $5,500 x 14 = $77,000 2 Motor Vehicle Thefts - $5,500 x 2 = $11,000 7 Drug Law Arrests - $5,000 x 7 = $35,000 **Total = $193,000**

2013	**90 Crime Statistics Omitted in the 2014 ASR:** 4 Burglaries - $5,500 x 4 = $22,000 1 Stalking[5] 52 Liquor Law Referrals - $650 x 52 = $33,800 34 Drug law Referrals - $1,000 x 34 = $34,000 **Total = $89,800**
2014	**22 Crime Statistics Omitted in 2015 ASR** 6 Forcible Sex Offenses/Rape - $35,000 x 6 = $210,000 4 Fondling - $35,000 x 4 = $140,000 6 Burglaries - $5,500 x 6 = $33,000 1 Motor Vehicle Theft - $5,500 x 1 = $5,500 1 Domestic Violence – $35,000 x 1 = $35,000 4 Stalking - $35,000 x 4 = $140,000 **Total = $563,500**
2015	**3 Crime Statistics Omitted in 2016 ASR** 1 Burglary - $8,500 x 1 = $8,500 2 Stalking - $55,907 x 2 = $111,814 **Total = $120,314**

[5] The Department notes that stalking was not a required category of crime to be reported in the 2014 ASR. Therefore, a fine will not be assessed for failure to report the 2013 stalking incident in the 2014 ASR.

The fine of $966,614 will be imposed on October 18, 2018, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. UM may submit both a written request for a hearing and written material indicating why a fine should not be imposed.

If UM 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/Enforcement
830 First Street, NE – UCP-3, Room 84F2
Washington, DC 20002-8019

If UM 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 UM's case to a hearing official who will conduct an independent hearing. UM is entitled to be represented by counsel during the proceedings. If UM does not request a hearing but submits written material instead, I will consider that material and notify UM of the amount of fine, if any, that will be imposed.

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT UM SUBMITS MUST BE RECEIVED BY OCTOBER 18, 2018; OTHERWISE, THE $966,614 FINE WILL BE EFFECTIVE ON THAT DATE.

If you have any questions or desire any additional explanation of UM's rights with respect to this action, please contact Lawrence Mwethuku of my staff at 202/377-3684.

Sincerely,

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

Enclosures

cc: Dr. Marlene Moore, Interim President, NWCCU, via mmoore@nwccu.org
Blair Fjeseth, Communications Director, MT Commissioner of Higher ED, via blair@montana.edu