



FEB 13 2015

Mr. Ronald Beier
President
First Institute
790 McHenry Avenue
Crystal Lake, IL 60014-7489

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Dear Mr. Beier:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine First Institute a total of \$42,500 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 or all 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 First Institute'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), and the Department's regulations 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 include a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b). 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 Department conducted a program review at First Institute from November 14, 2011 to November 18, 2011. The review included a general assessment of First Institute's compliance

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Administrative Actions and Appeals Service Group
830 First St., N.E. Washington, D.C. 20002-8019
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with statutes and regulations pertaining to the institution's administration of Title IV programs. The reviewers also examined First Institute's compliance with the Clery Act, including the accuracy and completeness of campus crime statistics and policy disclosures published in First Institute's 2011 ASR.

On April 13, 2012, the Department issued a Program Review Report (PRR) to First Institute. The review found that First Institute had not complied with the Clery Act and the Department's implementing regulations.¹ First Institute responded to the report on May 25, 2012. After reviewing First Institute's response, the Department issued its Final Program Review Determination (FPRD) letter to First Institute on August 21, 2012. The FPRD is incorporated by reference into this fine action. (Enclosure 1).

The Department is taking this fine action based on the findings in the FPRD, which concluded that First Institute's 2011 ASR violated the Clery Act by only including crime statistics for one (1) year instead of three (3). In addition, First Institute's 2011 ASR did not include six (6) required policy statements.

FIRST INSTITUTE FAILED TO PROPERLY COMPILE AND DISCLOSE CRIME STATISTICS 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 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).

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 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).

First Institute's 2011 ASR did not contain crime statistics for the three most recent calendar years. First Institute's 2011 ASR, which should have contained crime statistics for calendar years 2008, 2009 and 2010, only contained crime statistics for calendar year 2010. In its May 25, 2012 response to the PRR, First Institute did not contest the finding but stated that a revised and accurate 2011 ASR would be distributed about June 1, 2012.

The Clery Act and the Department's regulations require that institutions ensure the accuracy of the data when it is presented to current students and employees and potential students and employees who can use the data to make decisions affecting their personal safety. The Clery Act

¹ The Program Review Report also included other findings relating to First Institute's compliance with other Title IV program requirements. Those findings have been resolved.

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requires institutions to provide students and employees and potential students and employees with three years of crime data to ensure that they are given a comprehensive view of crime on campus and any trends. The data gives students and employees important information that can help them take steps to protect themselves. Current students and employees and potential students and employees must be able to rely on the institution's reported statistics. First Institute did not comply with the statutory requirements and deprived students, employees and potential students and employees of vital safety information. First Institute's eventual correction of the 2011 ASR does not diminish the seriousness of not preparing, publishing, and distributing a complete and accurate ASR at the time it was due. Even if First Institute had published complete and accurate data on June 1, 2012, it meant that students, employees and potential students and employees had been denied important safety information for nine months after the statutory due date.

FIRST INSTITUTE'S 2011 ASR DID NOT INCLUDE REQUIRED POLICY STATEMENTS

The Clery Act and the Department's regulations require that participating institutions prepare an ASR that contains the institution's security and safety policies and programs. The Clery Act and the Department's regulations specify the topics that must be addressed by an institution's ASR. Section 485(f) of the HEA, 20 U.S.C. §1085(f); 34 C.F.R. § 668.46(b)(2).

The Clery Act and the Department's regulations also require that an institution include a statement of policy regarding its emergency response and evacuation procedures in the ASR. Section 485(f)(1)(J) of the HEA, 20 U.S.C. §1085(f)((1)(J); 34 C.F.R. § 668.46(g).

First Institute's 2011 ASR did not include numerous required statements of its policies and procedures. In particular, the ASR did not include a description of education programs to promote the awareness of rape, acquaintance rape and other forcible and non-forcible sex offenses; procedures students should follow if a sex offense occurs; information on a student's option to notify appropriate law enforcement authorities, including local police and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests; notification to students of existing on- and off-campus counseling, mental health or other student services available; 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 that both the accuser and the accused will be informed of the outcome of any institutional disciplinary proceeding brought by alleging a sex offense; and sanctions the institution may impose following a final determination.

Additionally, at the time of the review, First Institute did not have required emergency response and evacuation procedures, including the positions (titles) of the individuals or organizations who would confirm that there is a significant emergency or dangerous situation, determine the

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content of the notification, determine when to send the notification, and initiate the notification system.

After receiving the PRR, First Institute revised the statement of its policies and procedures to address the policies that were not previously included. However, these efforts do not excuse First Institute's failure to have all the required policy statements in its 2011 ASR, as required by the Clery Act and the Department's regulations. By not including these statements, First Institute deprived students and employees and potential students and employees of important information about security policies and programs at the institution.

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 First Institute is 2012-2013 award year. According to the Department records, First Institute received approximately \$498,124 in Federal Pell Grant (Pell) funds, and \$1,364,692 in Federal Direct Loan funds. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$1,583,853, and for institutions participating in the Federal Direct Loan programs, the median funding level is \$3,105,978. Accordingly, First Institute is a small institution because its funding levels for Federal Direct Loan, or Pell funds are below the median funding levels for those Title IV, HEA programs.

As detailed in this letter, the Clery Act violations identified at First Institute are very serious and numerous. These failures endangered First Institute's students and employees who must be able to rely on the disclosures of campus crime statistics, policies and statements, to take precautions for their safety. Moreover, the Department considers an institution's compliance with the Clery Act requirements to be part of its administrative capability, and First Institute's failure to comply with those requirements constitutes an inability to administer properly the Title IV programs.

After considering the gravity of the violations and size of the institution, I have assessed \$15,000 for First Institute's failure to prepare, publish, and distribute complete crime statistics in its 2011 ASR. This is a serious violation because current and prospective students/employees must be able to rely on accurate and complete campus crime information. First Institute's 2011 ASR did not include two of the required three years of crime statistics. Without this data, students and employees and potential students and employees would not get a true picture of crime at the institution. Current students and employees and potential students and employees cannot make meaningful safety decisions based upon an ASR that contains only one year of crimes statistical data.

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I have assessed \$27,500 for First Institute's failure to include six (6) required policy statements in its 2011 ASR. This is a serious violation because by failing to include these required policy statements in its ASR, First Institute denied the campus community important information. Students and employees cannot take advantage of information that has not been provided to them. I impose a fine of \$5,000 for each missing policy statement up to a maximum of \$27,500. In this case, First Institute failed to include six (6) policy statements so I have assessed the maximum amount.

The fine of \$42,500 will be imposed on **March 9, 2015**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. First Institute may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If First Institute chooses to request a hearing or submit written material, you must write to me **to the attention of Lawrence Mwehuku** 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

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

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT FIRST INSTITUTE SUBMITS MUST BE RECEIVED BY MARCH 9, 2015; OTHERWISE, THE \$42,500 FINE WILL BE EFFECTIVE ON THAT DATE.

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

Sincerely,

Mary E. Gust, Director
Administrative Actions and Appeals Service Group
Federal Student Aid/Program Compliance
U.S. Department of Education

Enclosures

cc: Ms. Tibby Loveman, Executive Committee Chair, ACCET, via info@acct.org
Dr. James L. Applegate, Executive Director, Illinois Board of Higher Education, via applegate@ibhe.org