



JUN - 3 2015

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

Sent: United Parcel Service
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Dear Mr. Beier:

In a letter dated February 13, 2015, the U.S. Department of Education (Department) notified First Institute of its intent to fine First Institute \$42,500 for its failure to comply with 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 (HEA). The proposed fine was based on the findings in a Final Program Review Determination (FPRD) issued on August 21, 2012. The FPRD found that First Institute had failed to comply with the Clery Act.

In a letter dated March 3, 2015, Mr. Eric Beier, Executive Director, submitted a written response to that fine notice on First Institute's behalf and requested that the Department reconsider the amount of the proposed fine. First Institute did not request for a hearing on the proposed fine.

The Department has considered the arguments and facts presented in your letter. This letter provides the Department's final decision on First Institute's request that the proposed fine amount be reconsidered.

In the February 13, 2015 fine notice, the Department proposed to fine First Institute a total of \$42,500 based on two findings:

1. The Department proposed to impose a fine of \$15,000 for First Institute's failure to prepare, publish and distribute complete crime statistics in its 2011 Annual Security Report (ASR) in violation of the Clery Act and 34 C.F.R. §668.41(e) (2011)¹.
2. First Institute failed to include six (6) required policy statements in its 2011 ASR. First Institute's 2011 ASR did not include the following required policy statements:

¹ The Department published new regulations for the Clery Act on October 20, 2014. However, the findings on which the proposed fines are based rely on the regulations in place at the time of the violation as reflected in this citation. Unless otherwise noted, all of the regulations cited are dated 2011.

Federal Student Aid

An OFFICE of the U.S. DEPARTMENT of EDUCATION

Administrative Actions and Appeals Service Group
830 First St., N.E. Washington, D.C. 20002-8019
StudentAid.gov

- 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 for victims of sex offenses and of the 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.
- A statement that both the accuser and the accused will be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense.
- Sanctions the institution may impose following a final determination of any institutional disciplinary proceeding regarding an alleged sex offense.

The Department proposed to impose a fine of \$27,500 for First Institute's failure to include these policy statements in the ASR it distributed for calendar year 2011.

The Department's letter notifying First Institute of the proposed fine also notified the institution that it could request a hearing or submit written material contesting the proposed fine. First Institute did not request a hearing, but in Mr. Beier's letter dated March 13, 2015, First Institute requested that the fine amount be reconsidered. First Institute did not contest the Department's findings that it violated the Clery Act but raised a number of points and requested that the fine amount be reconsidered. We address each of First Institute's points below.

1. First Institute requested that the Department consider its small size in imposing a fine.

As discussed in our letter of February 13, 2015, the Secretary has established the rule that in determining the amount of a fine to be imposed, 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. See In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993). The Department determined that First Institute is a small institution because the amount of funding it received through the Federal Direct Loan program, and Pell funds using the most recent complete year for which data is available (2012-2013) are below the median funding levels for those programs. First Institute did not challenge the data on which we relied but stated that "First is not just below the 'small institution' threshold, it actually received roughly 1/3 of

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the median funding level for Title IV programs.” The small size of the institution was already taken into consideration in computing the proposed fine amount; therefore, there is no basis for reducing the fine based on the institution’s size.

2. First Institute contended that its failure to prepare, publish and distribute complete crime statistics in its 2011 ASR “was an isolated administrative error by an employee.”

In its response to the notice of the proposed fines, First Institute contended that the crime statistics missing from its 2011 ASR “was a series of zeros as there was nothing to report in any of the required categories.” First Institute claimed that the problem was caused by an administrative error by an employee. First Institute claimed that it took immediate corrective actions upon learning of the missing information in its 2011 ASR.

Both the HEA and the Department’s regulations require that institutions provide a complete and comprehensive ASR that includes all the required policies and statistics. See §485(f) of the HEA, 34 C.F.R. §§ 668.41 and 668.46 and *The Handbook for Campus Crime Reporting*, U.S. Department of Education, 2005 at 85-114. In its response to the letter proposing the fine, First Institute did not question these findings. The fact that First Institute claims that the statistics would all be zeros does not change the fact that no statistics were reported. First Institute’s efforts to comply after the fact does not excuse its earlier failures to comply with the requirements of the Clery Act and the Department’s regulations. Thus, First Institute did not provide any basis for reducing or eliminating the proposed fine based on its failure to properly report and disclose crime statistics to students, employees and potential students and employees.

In its response to the proposed fines, First Institute did not address or challenge the proposed fines based on the institution’s failure to include required policy statements in the 2011 ASR.

Final Decision

For the reasons discussed above, the Department affirms the proposed fines identified in our letter of February 13, 2015 which included: \$15,000 for First Institute’s failure to prepare, publish and distribute complete crime statistics in its 2011 ASR; and \$27,500 for First Institute’s failure to include 6 required policy statements in its 2011 ASR.

Therefore, First Institute must pay a total fine of \$42,500.

First Institute may request an installment payment arrangement to pay the fine over a 12-month period. If First Institute chooses to request an installment payment arrangement, a payment agreement will be provided with terms and conditions of the payment plan.

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The \$42,500 fine is due to the Department within 30 days of the date of this letter. Payment must be in the form of a certified or cashier's check, and made payable to the U.S. Department of Education. If payment is not received by the Department within that 30-day time period, interest will accrue in monthly increments until payment is received.

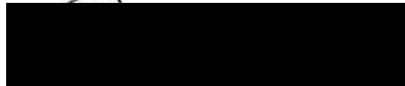
Please send your fine payment to me **to the attention of Lawrence Mwethuku** at the following address:

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

Please identify the payment as Bill No. AAA201503023 to ensure proper crediting of your payment account.

If you have any questions about this letter, please contact Lawrence Mwethuku of my staff at 202/377-3684.

Sincerely,

A black rectangular box redacting the signature of Robin S. Minor.

Robin S. Minor, Acting Director
Administrative Actions and Appeals Service Group
Federal Student Aid/Program Compliance
U.S. Department of Education

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