

Congress of the United States

Washington, DC 20515

January 26, 2024

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary Cardona,

As members of Congress who are committed to due process and accountability, we write to express our deep concern about how the U.S. Department of Education (“Department”) seems to be targeting religious institutions through program reviews and fines that greatly exceed established and documented precedent. Specifically, we have questions about the substance and process of the Department’s ongoing review of Liberty University’s compliance with the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* (Clery Act) during the period of 2016-2022.

It has become increasingly evident that the Department is prepared to make an example of Liberty University by issuing an exorbitant and unprecedented fine. The departure from the Department’s process became apparent when the preliminary program review report was leaked to the Washington Post last year.¹ Typically, an institution is able to review a program review report and has the opportunity to respond to every finding before the Department issues a Final Program Review Determination.² The leaking of this preliminary report, or of any such pre-decisional report, undermines the due process that institutions are entitled to in a program review.

Additionally, we understand the Department proposed a fine of \$37.5 million to Liberty University, the highest fine ever recorded for any *Clery Act* violation.³ We also are aware that the Department may be attempting to establish a new fining regime that seizes or presumes authority to fine for continuing violations beyond the applicable statute of limitations apparently without any prior public notice or precedent. It is well established that pursuant to 28 U.S. Code § 2462 a five-year statute of limitations is applied to statutory penalties and forfeitures associated with the Department’s fining authority. This federal statute is broadly applied in situations where there is not a specific limitations period, and an act of Congress would be needed to increase this time period.⁴ Prior to issuing *Clery Act* fines using any new methodology, we request that the Department provide the basis for the authority that would be relied on to impose this penalty and to disregard the limitations under 28 U.S. Code § 2462.

¹ <https://www.washingtonpost.com/education/2023/10/03/liberty-university-clery-act/>

² <https://fsapartners.ed.gov/sites/default/files/attachments/programrevguide/2017ProgramReviewGuide.pdf#page=49>

³ <https://www.christianpost.com/news/liberty-u-facing-375m-fine-over-alleged-clery-act-violations.html>

⁴ [28 U.S.C. § 2461](#), [28 U.S. Code § 2462](#)

It is imperative that we understand the Department's justification for the recent unilateral changes to *Clery Act* proceedings as they apply both to the case of Liberty University, and to future cases involving other institutions. Before issuing any final decision on Liberty University's *Clery* Program Review, we are requesting a staff briefing from the Department that addresses the following topics:

1. An explanation of and legal authority for any expansion of previous authority or any methodology changes used by the Department to calculate *Clery Act* fine amounts;
2. Justification and legal authority for imposing statutory penalties that disregard established limitations under 28 U.S. Code § 2462;
3. An explanation of efforts the Department has taken to identify the source of the leaked findings with respect to Liberty University and how the Department plans to prevent future leaks.

Given the unprecedented nature of these proceedings, we request that the Department conduct a briefing to staff that provides thorough answers to these questions before any further action is taken with respect to any *Clery Act* proceeding. We look forward to working with your staff to set up the requested briefing promptly to receive these answers. Please contact Chairwoman Foxx's committee staff, Mary Christina Riley at marychristina.riley@mail.house.gov, and Hans Bjontegard at Hans.Bjontegard@mail.house.gov with any questions and to schedule the requested briefing.

Sincerely,



Virginia Foxx
Chairwoman
U.S. House Committee on Education and the
Workforce



James Comer
Chairman
U.S. House Committee on Oversight and
Accountability



Bob Good
Member of Congress