

Violence Against Women Act Negotiated Rulemaking Committee

Issue Paper #4

Issue: Applicable Jurisdiction

Statutory Cites: §485(f) of the HEA, as amended by §304 of the Violence Against Women Reauthorization Act of 2013

Regulatory Cites: 34 CFR §668.41, §668.46, and Appendix A to Subpart D of Part 668

Summary Question(s): What is the applicable jurisdiction for purposes of certain disclosures?

Summary of Issue:

Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA) (Pub. Law 113-4) amended §485(f) of the Higher Education Act of 1965 (HEA), as amended, otherwise known as the Clery Act. Under new section 485(f)(8)(B)(i) of the HEA, institutions must provide education programs to promote the awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking for incoming students and new employees. Among other information these programs must include the definition of the terms “domestic violence,” “dating violence,” “sexual assault,” and “stalking” in the applicable jurisdiction and the definition of “consent,” in reference to sexual activity, in the applicable jurisdiction.

The statutes’ reliance on the law of the “applicable jurisdiction” raises several implementation issues. First, how can we best ensure that the required disclosures provide students and employees with useful information about the definitions of these terms? Different states have different definitions of the terms “domestic violence,” “dating violence,” “sexual assault” and “stalking,” and some states do not use some or all of these terms. Moreover, states have different definitions of “consent” in reference to sexual activity and, in some cases, the applicable definition relies on the age of the victim, the capacity of the victim, and the particular circumstances of the incident. These varying definitions raise questions about how to make this information as meaningful as possible for students and employees.

Second, the varying definitions pose enforcement challenges for the Department. What rules or guidelines, if any, should the Department establish for institutions to use in determining the applicable jurisdiction for purposes of these definitions? Should the Department require institutions to use a particular circumstance, such as the physical location of the campus where the student is attending or the employee is working, to determine applicable jurisdiction? What documentation should an institution be required to maintain to demonstrate that it has a reasonable basis for the jurisdiction it chooses to use as the applicable jurisdiction? Alternatively, should it be left to the institution’s discretion to determine the applicable jurisdiction that it will use in providing information?