

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made by and between The Regents of the University of California on behalf of the Berkeley campus (OPE ID 00131200) (UC Berkeley or the University), and the United States Department of Education (Department), Federal Student Aid (FSA), acting through the Director of the Administrative Actions and Appeals Service Group, and is effective as of the last date written below (the "Effective Date"). UC Berkeley and the Department are collectively referred to hereinafter as the "Parties," and individually as a "Party."

### RECITALS

A. On September 17, 2019, the Department issued a Final Program Review Determination (FPRD) (PRCN 201440328749), stating that UC Berkeley had failed to comply with the requirements of 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 (the "HEA"), and the Department's regulations. The FPRD identified specific violations of the Clery Act by UC Berkeley. Under the HEA, the Department may impose a fine on an institution that violates the Clery Act.

B. Since the issuance of the FPRD, UC Berkeley and the Department have engaged in discussions aimed at resolving issues identified in the FPRD and potential fines that could be imposed by the Department following completion of the review.

C. The Department acknowledges that, prior to the issuance of the FPRD, UC Berkeley had already taken a number of measures to improve its Clery Act compliance and campus safety program, including but not limited to:

1. Hiring two campus Clery experts, a Campus Clery Coordinator and a Clery liaison, to increase expertise and ensure accountability in the University's compliance program;
2. Creating a Clery Act Compliance Committee that meets regularly to review policies and ensure compliance with the Clery Act;
3. Creating and updating Clery-related policies to ensure compliance; and
4. Developing and implementing various improvements to its sexual violence and sexual harassment (SVSH) processes, including increased and improved faculty, staff and student training and enhanced available resources for University staff and survivors.

In furtherance of its commitment to improve its Clery Act compliance and campus safety program, the Parties continue to work together to address additional appropriate enhancements to UC Berkeley's Clery Act related policies and practices, and to identify further steps that the University may undertake to ensure continued compliance in the future.

D. UC Berkeley and the Department have now agreed to resolve the FPRD without any further administrative procedures, other than those outlined in the Appendix to this Agreement.

E. The Parties have reached this Agreement in good faith and in furtherance of the shared belief that time, personnel, and other resource allocations are best served in fulfillment of the requirements set forth in the attached Appendix, all of which are intended to serve the UC Berkeley community, rather than on protracted and costly review and legal procedures.

#### TERMS AND CONDITIONS

In consideration of the mutual covenants and conditions contained in this Agreement, the sufficiency of which is hereby expressly acknowledged, and intending to be legally bound to the terms hereof, the Parties agree as follows:

1. UC Berkeley agrees that it will pay the Department a fine in the amount of \$2,350,000 (Two Million Three Hundred and Fifty Thousand Dollars and No Cents) (the "Fine") to resolve the matter short of going through the Department's issuance of fines, an appeal, potential hearing and litigation process. UC Berkeley will pay the Fine through FEDWIRE on or before the expiration of three business days following the Effective Date of this Agreement. UC Berkeley should include the billing number AAA00131200 on the FEDWIRE form to ensure proper accounting of the Fine payment.
2. UC Berkeley agrees to requirements of the post-monitoring review specified in the Appendix to this Agreement.
3. The Department agrees not to initiate any administrative action against UC Berkeley based on the findings outlined in the September 17, 2019 FPRD. The agreed upon \$2,350,000 Fine is imposed in settlement of all findings set forth in the FPRD, as well as any other potential noncompliance with the Clery Act and fire safety requirements that may have occurred during the review period of 2009-2016, irrespective of whether such other potential noncompliance was noted in the FPRD or otherwise disclosed to the Department.
4. UC Berkeley acknowledges that by entering into this Agreement it is waiving its right to respond to the FPRD and its opportunity to appeal any potential fine that could be imposed by the Department based on the findings set forth in the FPRD. By entering into this Agreement, both Parties consider this matter resolved and no further action may be taken in regard to the FPRD except with regard to post-review monitoring activity set forth in the Appendix.
5. UC Berkeley affirms its intent to continue to comply with the requirements in the Clery Act, the HEA and the Department's implementing regulations.
6. Nothing in this Agreement constitutes an admission of liability or wrongdoing by UC Berkeley.

7. This Agreement does not waive, compromise, restrict, or settle:
  - a. Any past, present, or future violation of the criminal or civil fraud laws of the United States.
  - b. Any presently pending or future action taken by the United States under the criminal laws or civil fraud laws of the United States.

The Department is not aware of any such actions pending against UC Berkeley based on the issues addressed in the FPRD.

8. This Agreement does not address or resolve any complaints filed with, or any investigations undertaken by, the Department's Office for Civil Rights under any applicable law or regulation. The Parties acknowledge that on April 2, 2020, the Office for Civil Rights (OCR) of the United States Department of Education ended its monitoring of a Resolution Agreement (Agreement) signed on February 20, 2018, to resolve compliance concerns identified in its four-year review of the University's compliance with Title IX. During the monitoring period, OCR confirmed that the University's actions conformed with the requirements of its revised SVSH policy and procedure, including providing notice to both parties and resolving complaints through a reasonably prompt timeframe and OCR closed its case.
9. The persons executing this Agreement on behalf of the Parties hereto warrant that they are fully authorized to do so on behalf of the Party for which they are signing this Agreement and to bind such Party to the terms hereof.
10. This Agreement and any documents referenced herein constitute the entire contract between the Parties with respect to the subject matter hereof.
11. Each Party has cooperated in the drafting of this Agreement, hence, if any construction is to be made of this Agreement, the same shall not be construed against any Party.
12. This Agreement may be executed in two or more duplicate counterparts, each of which shall be treated as an original, but all of which together shall constitute one and the same instrument. The counterparts of this Agreement and any amendments hereto may be executed and delivered by facsimile, .pdf attachment, or other electronic signature by either Party to the other Party, and the receiving Party may rely on the receipt of such document so executed and delivered by facsimile or other electronic method as if the original had been received.

**FOR THE UNIVERSITY OF CALIFORNIA AT BERKELEY:**

Carol T. Christ

CAROL T. CHRIST  
CHANCELLOR

The Regents of the University of California  
on behalf of the Berkeley campus

Dated: 9/9/20

**FOR THE UNITED STATES DEPARTMENT OF EDUCATION:**

Susan D. Crim

SUSAN D. CRIM  
DIRECTOR

Administrative Actions and Appeals Service Group  
Federal Student Aid/Partner Enforcement and Consumer Protection

Dated: 9/9/20

**Appendix A**  
**University of California, Berkeley**  
**Campus Crime Program Review**  
**Programmatic Improvements and Post-Review Monitoring**

The United States Department of Education (Department) and The Regents of the University of California, on behalf of the Berkeley campus (UC Berkeley; the University, the campus) (OPEID: 00131200) have entered into the accompanying Settlement Agreement (the “Agreement”) to resolve matters related to the fine imposed for violations of the Clery Act and other areas of concern identified during the Department’s Campus Crime Program Review associated with Program Review Control Number 201440328749.

The Department notes that the University has committed to fully addressing all such violations and other areas of concern. The Department is equally committed to assisting the University’s efforts and will provide appropriate advice and oversight. This plan is intentionally flexible to allow the parties to collaborate on operational details throughout the monitoring period.

The Department received an initial briefing on the University’s draft remedial measures. The University engaged with outside consultants, who have provided assistance with review of policy and procedures, data audits, several CSA training sessions, and other consulting related to the campus’s ASFSR and its campus safety, crime prevention, and Clery compliance program. The campus represents that it has implemented their recommendations, including hiring a Campus Clery Coordinator, who will continue to do the following during the monitoring period:

- provide substantive training to campus leadership, including the Chancellor’s cabinet and deans, the CCRT, UCPD, Student Conduct, OPHD, RSSP and other departments with more than 10 Campus Security Authorities (CSAs)
- provide ongoing monitoring of the adequacy of existing campus safety and crime prevention policies, procedures, and programs
- assist in the identification and notification of CSAs about their reporting obligations and to establish and/or refine the reporting mechanisms for CSAs
- work with the campus Capital Strategies' Real Estate team to review the accuracy of the University’s process for identifying and categorizing its Clery Geography.

Section C of the Agreement requires the parties to continue to work together to address additional appropriate enhancements to UC Berkeley’s Clery Act related policies and practices, and to identify further steps that the University may undertake to ensure continued compliance in the future. Any changes UC Berkeley makes will be made in consultation with the Department. This Appendix sets out the basic requirements and terms for such changes and the Department’s role in monitoring the University’s efforts to comply with the provisions of this Appendix (“Post-Review Monitoring”).

The purpose of Post-Review Monitoring is to ensure that adequate remedial measures are developed, fully implemented and sustained. Any violations, weaknesses, or other areas of concern that cannot be addressed completely through this Settlement Agreement will be addressed through Post-Review Monitoring. The monitoring program will begin on the effective

date of this Agreement and will remain in place through October 1, 2022 or the date that the final 2022 AFSSR is distributed to enrolled students and current employees. Information gathered during Post-Review Monitoring will inform the Department's determinations about Berkeley's Clery Act compliance and Title IV eligibility going forward. Any serious lapses in Clery Act compliance in the future could negatively affect the terms of the University's participation in the Title IV, student financial assistance programs.

Berkeley represents that it has formed a campus-wide Clery Compliance Committee (CCC) for which the Clery Coordinator serves as Chair. The CCC includes representation from all offices that are significantly involved in any aspect of the University's campus safety, crime prevention, emergency management, environmental health and safety, student and employee conduct, and Title IX programs. The CCC will include representation from the following departments, offices, and other functional areas: 1) University of California Police Department (UCPD); 2) Dean of Student's Office; 3) RSSP; 4) LEAD center; 5) University Health Services (Tang Center,); 6) Office for the Prevention of Harassment and Discrimination (Title IX); 7) Gender Equality Resource Center; 8) Athletics Department; 9) People & Culture (Human Resources); 10) Facilities Services/ Capital Strategies' Real Estate; 11) Student and Staff Ombuds Offices; 12) Office of Legal Affairs; 13) Communications and Public Affairs; 14) Risk Management; 15) CEP; 16) ECEP; 17) Berkeley Rec Sports; 18) University Extension; 19) Campus Fire Marshall and 20) Path to Care. The Department will review the composition, authority, and function of the CCC and will work with Berkeley to identify any necessary modifications.

I. UC Berkeley's Campus Clery Coordinator will engage in enhanced campus-wide efforts to identify and notify all CSAs of their obligations to provide information about certain crimes that are reported to them. The University will deliver mandatory CSA training to all persons who meet the CSA criteria as well as all senior campus leaders. The University currently complies with UC policy and California state law requirements that ensure appropriate officials involved in the investigation and/or adjudication of any case involving an alleged act of sexual violence continue to receive updated, specialized training in such matters each year. The specialized training for investigators and hearing officials must include training on understanding the trauma typically experienced by victims of violent crime, especially sexual violence. The Department will review all training materials and will monitor the University's delivery of the training and the tracking of participation. Berkeley will be required to advise the Department about the number of officials that were trained in each semiannual report. The University must also disclose any issues in identifying and training certain offices or groups of employees.

II. In consultation with the Department, the University will review the current design of its "Campus Security Authority Incident Report Form" to ensure that it is adequate and that it will facilitate the accurate and complete compilation of crime statistics and other Clery Act compliance requirements. The Campus Clery Coordinator has provided and will continue to provide incident report writing training for all UCPD personnel. If additional training is required, follow up training will be delivered to UCPD command staff, supervisors, officers, and other personnel with any responsibilities for writing, reviewing, and/or approving incident reports as well as any personnel responsible for the custody and control of such reports.

III. With the assistance of People & Culture (Human Resources) the Clery Coordinator will:

- Assist with the identification and the notification of CSAs at UC Berkeley campus locations, subdivisions, buildings, or other properties owned or controlled by the University that are used for educational purposes;
- Revise position descriptions, as needed, to include Clery Act-related duties;
- In the yearly communication to University employees regarding the University's whistleblower protection policies, the campus's Chief Ethics Risk Compliance Officer and Chief People and Culture Officer will encourage the reporting of suspected criminal activity and misconduct with a clear description of the options for reporting and an explanation of the University's whistleblower protection policies and its efforts to protect employees from retaliation or intimidation. The University will provide an advance copy of the notice to the Department before it is issued.

IV. In consultation with the Campus Clery Coordinator, Facilities Services and/or Capital Strategies' Real Estate will continue to engage in an institution-wide process to identify all buildings, properties, or other parcels of land that Berkeley owns or controls and uses for educational purposes. This information is used by Berkeley to review and verify that all such buildings or parcels are classified properly for Clery Act purposes. Such determinations are made in accordance with the definitions of "on campus," "non-campus building or property," and "public property," as those terms are defined under the Clery Act ("Clery Geography"). The University will continue to update and improve the UC Berkeley Clery map.

V. UC Berkeley asserts that it engaged consultants for several years to help review its procedures and protocols related to campus safety, crime prevention, fire safety, and substance abuse prevention policies and to ensure compliance with all Federal regulations governing Berkeley's Title IV program participation. Berkeley also represents that their Clery compliance recommendations have been implemented during this review period. The University must review and revise all statistical and informational disclosures that will be included in its 2021 Annual Security Report (ASR), 2021 Annual Fire Safety Report (or a combined ASR/AFSR publication), and its Drug and Alcohol Abuse Prevention program materials for 2021. The systemwide Office of the President (including the systemwide Title IX Officer) and the Office of General Counsel already have carefully reviewed, and enhanced policies, procedures, and programs required by the Violence Against Women Reauthorization Act of 2013 (VAWA). Finally, the campus will specifically describe the steps ensure the institution's disclosures related to sexual assault prevention and response and its investigative and adjudication procedures comply with VAWA and the Department's new Title IX regulations. The Department will review this material and provide feedback and instructions regarding modifications, as needed.

VI. A copy of all new and revised policies and procedures and an explanation of any necessary revisions to the University's crime statistics for calendar years 2016-2020 will be produced to the Department. All revised statistics from this time period must be first reported to the Department prior to publication in the ASR or the University's website. After review and validation, the Department will direct the University to disclose the revised statistics to the campus community. In addition, for the 2021 and 2022 ASR, the University must submit a draft

of its ASR for review by the Department no later than 45 days prior to the required distribution date. The Department agrees to provide its feedback within 15 days of receipt of the draft ASR.

VII. The University will conduct up to two (2) limited scope assessments over the course of the post-review monitoring process to identify potential Clery Act violations and to examine other areas of concern related to the review period. The Department will identify the areas and issues to be assessed. At the conclusion of each assessment, the University will provide information about its findings to the Department. The information from these assessments will be used to diagnose and remediate deficiencies and weaknesses in the University's campus safety, crime prevention, and compliance programs.

VIII. The Clery Coordinator must report any significant violations of the Clery Act, the HEA fire safety rules, or the DFSCA to the Department within three days of identifying or otherwise becoming aware of the infraction. Additionally, the Clery Coordinator will produce a summary report to the Department every six (6) months regarding the University's progress on reforms and enhancements to its compliance program and participate in periodic phone conferences with the Department during the monitoring period. The report must include challenges and obstacles to progress, an assessment of the adequacy of resources committed to the remedial action program, and recommendations for the next phase of the program. This report must also be submitted to the Chancellor and the UCOP systemwide Senior Vice President and Chief Compliance and Audit Officer during the Post-Review Monitoring Period. The first report is due on March 1, 2021.

IX. The Department will monitor UC Berkeley's remedial action efforts and will remain engaged with the University while the agreed-upon reforms are designed and implemented. The Department will make one site visit to the campus (if pandemic conditions are abated) during this timeframe. The Department anticipates that additional violations and other areas of concern may be identified during the monitoring period. Any additional violations, weaknesses, or other areas of concern that are not yet known and therefore, cannot be resolved through this Settlement Agreement will be addressed through the post-review monitoring process. The parties agree that exceptions and weaknesses that are identified for the first time during the Post-Review Monitoring period will not result in additional civil penalties and will be addressed through a collaborative and transparent process.