



**December 22, 2011**

James D. Spaniolo, J.D.  
President  
University of Texas at Arlington  
701 South Nedderman Drive  
Arlington, TX 76013

**Certified Mail  
Return Receipt Requested**

**No. 7011 2000 0000 8054 4097**

**RE: Final Program Review Determination  
OPE ID: 00365600  
PRCN: 201020627157**

Dear President Spaniolo:

The U.S. Department of Education's (Department's) School Participation Team - Dallas issued a program review report on December 17, 2010, covering University of Texas at Arlington's (UTA's) compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), in §485(f) of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070, 1085(f) during the 2007, 2008, and 2009 calendar years. UTA's response was received on February 22, 2011.

A copy of the program review report and UTA's response are attached. Any supporting documentation submitted with the response is being retained by the Department and is available for inspection by UTA upon request. Additionally, this Final Program Review Determination (FPRD), related attachments, and any supporting documentation may be subject to release under the Freedom of Information Act (FOIA) and can be provided to other oversight entities after this FPRD is issued.

**Purpose:**

Final determinations have been made concerning all of the outstanding findings of the program review report. The purpose of this letter is to notify UTA of the Department's determinations and to provide instructions for providing the necessary documentation to the Department in order to close the review. Due to the serious nature of the finding, this FPRD is being referred to the Department's the Administrative Actions and Appeals Service Group (AAASG) for consideration of possible adverse administrative action. Such action may include a fine, or the limitation, suspension or termination of the eligibility of the institution pursuant to 34 C.F.R.

Federal Student Aid, School Participation Team - Dallas  
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Part 668, Subpart G. If AAASG initiates any action, the institution will be notified under separate cover of that action. AAASG's notification will also include information regarding the institution's appeal rights and procedures on how to contest that action.

**Record Retention:**

Program records relating to the period covered by the program review must be retained until the later of: resolution of the violations, weaknesses, and other issues identified during the program review as delineated at 34 C.F.R. § 668.24 (e)(3); or the end of the retention period applicable to Title IV-related records under 34 C.F.R. § 668.24 (e)(1) and (e)(2).

A copy of this FPRD and its attachments will be posted to the Department's Data Center website at [www.federalstudentaid.ed.gov/datacenter/cleryact.html](http://www.federalstudentaid.ed.gov/datacenter/cleryact.html) for the public to review and download.

The Department expresses its appreciation for the courtesy and cooperation extended during the review. If the institution has any questions regarding this letter, please contact Jackie Shipman at 214.661.9489.

Sincerely,



Cynthia Thornton  
Area Case Director  
School Participation Team-Dallas

cc: Mr. Robert Hayes, Chief of Police, UTA Police Department  
Ms. Karen Krause, Director of Financial Aid, UTA  
Mr. Frank Lamas, Director of Residence Life, UTA

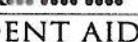
Enclosures:

Final Program Review Determination  
Institution's Response to the Program Review Report  
Program Review Report

Prepared for  
**University of Texas at Arlington**

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**FEDERAL STUDENT AID**

**OPE ID: 00365600**  
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Prepared by  
**U.S. Department of Education**  
**Federal Student Aid**  
**School Participation Team - Dallas**

# Final Program Review Determination December 22, 2011

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**A. Institutional Information**

University of Texas at Arlington  
701 South Nedderman Drive  
Arlington, TX 76013

**Type:** Public

**Highest Level of Offering:** Master's or Doctor's Degrees

**Accrediting Agency:** Southern Association of Colleges and Schools Commission on Colleges

**Current Student Enrollment:** 28,085 (2008-2009)

**% of Students Receiving Title IV:** 60% of undergraduate students (2008-2009)

**Title IV Participation, Per U.S. Department of Education Data Base**

**2008-2009 Award Year**

Federal Pell Grant Program	\$ 19,521,660
Federal Family Education Loan Program	96,760,465
Federal Perkins Loan Program	925,001
Federal Work-Study Program	1,183,457
Federal Supplemental Education Opportunity Grant Program	1,640,684
Federal ACG	402,995
Federal SMART Grant	452,629
Federal TEACH Grant	18,838
	<u>\$120,905,729</u>

**FFEL Default Rate:** 2007 – 5.4%  
2006 – 4.8%  
2005 – 4.8%

**Perkins Default Rate:** As of:  
6/30/2009 - 15.58%  
6/30/2008 - 10.0%  
6/30/2007 - 11.9%

The University of Texas at Arlington's (UTA's, the University's) campus is protected by the UTA Police Department (UTAPD), which has a staff of 111 and includes 37 sworn officers. The UTAPD operates 24 hours a day, 365 days a year. Authority of the sworn officers is derived from state statutes, which allow for full police powers on UTA property. In addition, the UTAPD has a mutual aid agreement with the City of Arlington that allows the UTAPD and Arlington Police Department to assist each other in the conduct of law enforcement activities on an as-needed basis. The UTAPD also maintains an excellent working relationship with other Federal, state, and local law enforcement agencies.

## **B. Scope of Review**

The U.S. Department of Education (the Department) conducted a campus security program review at UTA from March 23, 2010 to March 25, 2010. The review was conducted by Ms. Linda Shewack, Ms. Jackie Shipman, and Mr. James L. Moore, III.

The focus of the review was to evaluate UTA's compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). The Clery Act is included in §485(f) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1092(f). The Department's implementing regulations are at 34 C.F.R. §§668.41-668.46. UTA was selected for review from a list of institutions of higher education in the state of Texas with sworn police departments; the review was not the result of any specific complaint or allegation of non-compliance. The review included an examination of UTA's police incident reports, arrest records, and disciplinary files as well as the University's policies and procedures related to the Clery Act. The reviewers also interviewed appropriate UTA staff.

The Department's program review coincided with the Quality Assurance Review (QAR) that the Federal Bureau of Investigation (FBI)'s Criminal Justice Information Service (CJIS) Audit Unit conducted at UTA. The U.S. Department of Education is partnering with the CJIS Audit Unit (CAU) to ensure accurate crime reporting on America's college campuses. The CAU reviews law enforcement agencies' reporting practices, and audits crime statistics that are reported by the states through their participation in the Uniform Crime Reporting (UCR) program. The results of the QAR are shared with the Department for a comparative analysis of the annual crime statistics data received from participating postsecondary institutions. The CAU reviewed a total of 21 Part I Offenses and 20 Part II Offenses that were recorded from January 1, 2009 through June 30, 2009. A copy of the CJIS report is attached to the Program Review Report.

The Department reviewed a sample of 95 UTAPD incident and arrest reports generated in the course of UTAPD's operations during calendar year 2008. These reports documented incidents of Part I and Part II offenses as described under the Uniform Crime Reporting Program (UCR) and reported to the UTAPD, including a sample of Part II arrests for violations of certain laws pertaining to illegal drugs, illegal usage of controlled substances, liquor, and weapons. Both random and judgmental sampling techniques were used to select reports for this review. Approximately 50 incident reports from the initial sample also were cross-checked against the daily crime log to ensure that crimes occurring within the patrol jurisdiction were entered properly on the log.

## **Disclaimer:**

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning UTA's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve UTA of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs.

## **C. Findings with Final Determination**

At the conclusion of each finding is a summary of UTA's response to the finding and the Department's final determination for that finding. A copy of the program review report issued on December 17, 2010 is attached as Appendix A and UTA's Response is attached as Appendix B.

### **Finding # 1: Failure to Properly Classify, Compile, and Disclose Crime Statistics**

#### ***Citation Summary:***

*The Clery Act and the Department's regulations require institutions participating in the Title IV, HEA programs to compile and publish statistics concerning the occurrence on campus of the following crimes: criminal homicide, manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. In addition, institutions are required to disclose arrests and disciplinary actions related to violations of Federal or State drug, liquor and weapons laws. 34 C.F.R. § 668.46(c)(1) and (7). The Department's regulations require that, for Clery Act reporting purposes, participating institutions are required to compile crime statistics using the definitions of crimes in the Department's regulations at 34 CFR Part 668, Subpart D, Appendix A.*

*Institutions are required to also provide a geographic breakdown of crime statistics according to the following categories: 1) on campus; 2) as a subset of the on campus category, dormitories or other residential facilities for students on campus; 3) certain non-campus building or property; and, 4), adjacent and accessible public property. 34 C.F.R. § 668.46(c)(4).*

#### ***Noncompliance Summary:***

##### ***A. Improper Crime Classifications***

*UTA did not compile and publish accurate and complete crime statistics for calendar year 2008 as a result of errors in classifying crimes for reporting purposes. Specifically, UTA improperly classified a forcible sex offense (FSO) as an "Assault." The incident report (200809316) indicates that the victim stated that an "unknown male grabbed her thigh and female intimate area through her clothing." Based on this fact, this incident should have been classified as a case of Forcible Fondling. The crime of Forcible*

*Fondling includes, "the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against the person's will." Forcible Fondling is a sub-category of the Clery-reportable forcible sexual assault crime classification and therefore was required to be included in the Annual Security Report (ASR) statistical disclosures. The improper classification of the "Forcible Sexual Assault" as an "Assault" resulted in the crime statistic not being reported in UTA's ASR and crime statistics to the Department for Calendar year 2008.*

*Incident # 200805595 was improperly classified as "Assault of a Family Member." The incident report indicates that UTAPD responded to a report of domestic violence. The complainant, "Roommate # 1" indicated that "Roommate # 2," the aggressor, stated, "I'm going to beat you; I'm going to hit you." Roommate #2 then stated, "If I hit you, I'm going to kill you." Mutual combat ensued with Roommate # 2 striking Roommate # 1 in the head and midsection. Roommate # 1 was held over a stove burner by her hair. Roommate # 2 then stated, "If you don't let go of me, I'm going to turn this on." Roommate # 2 also attempted to strangle Roommate # 1, tore out a large section of her hair, and ripped her earrings out, all of which resulted in fear, pain, injury and bleeding. On the basis of these facts, this incident should have been classified as an Aggravated Assault. The improper classification of the "Aggravated Assault" as an "Assault of a family member" resulted in the crime statistic not being reported in UTA's ASR and crime statistics to the Department for Calendar year 2008.*

*Incident # 2008848270 was classified as a single case of "Unauthorized Use of a Motor Vehicle," however the incident report clearly indicates that two motor vehicle thefts (MVT) occurred in the Centennial Court parking lot at about the same time. The incident report focused primarily on the MVT committed by the suspect who was arrested at the scene. The second reported car theft is noted in the narrative but was not coded into the record management system in a manner that would result in the second incident being counted for Clery Act purposes*

*Errors were also identified in UTA's audit trail for Part I offenses both in terms of the number of reported incidents and in the geographical breakdown regarding the site of those incidents. For example, the review team was unable to determine from UTA's supporting documentation which of the six reported aggravated assaults occurred on campus and which occurred on public property. Moreover, the UTAPD's dispatch report lists 3 more aggravated assaults that were not identified on the audit trail (incident numbers 200805269, 200838833, 200838813).*

### ***B. Inaccurate Arrest and Disciplinary Referral Statistics***

*UTA did not report accurate arrest and disciplinary referral statistics to the Department's online crime statistics database for calendar year 2008. In its submission to the Department's online crime statistics database, UTA identified 29 arrests for liquor law violations (24 on campus; 5 on public property). This is the same number that was published in UTA's 2009 ASR. However, UTA's supporting documentation did not substantiate its liquor law violation (LLV) arrest statistics. According to UTA's audit*

trail, some of the 24 liquor law arrests on campus actually occurred on sidewalks and are duplicative of arrests reported as occurring on public property. It also appears that one LLV arrest occurred in a fraternity house.

Similarly, UTA's submission to the Department's online campus crime database indicated that a total of 16 arrests were made for drug law violations (DLV). However, UTA's supporting documentation listed 18 DLV arrests. UTA reported 5 on campus arrests in calendar year 2008; however, the audit trail reflects 11 on campus arrests even after one such arrest that occurred on a sidewalk was excluded by the review team. UTAPD incident reports show that one of these 11 arrests occurred in a residence hall but no DLV arrests were identified in the ASR or in UTA's online reporting to the Department as occurring in residence halls.

Regarding weapons law violation (WLV) arrests, UTA's submission to the Department's online campus crime database reported zero WLV arrests on public property; however the audit trail indicates that two such arrests were affected during a traffic stop. These two WLV arrests were not included in any of the geographical reporting categories. UTA reported one WLV arrest to the online database; however this reporting conflicted with the three WLV arrests identified from UTA's audit trail.

UTA was also unable to substantiate its disciplinary referral (DR) statistics for drug and liquor law violations. UTA's audit trail records cited 47 DRs as occurring in calendar year 2008; however UTA only reported 46 DLV referrals, 24 of which were included in the residence hall category. The review team's analysis of UTA's supporting documentation indicated that only 22 referrals should have been included in the residence hall category. Similar errors were identified in the statistics and supporting documentation for LLV DR's. UTA reported 142 LLV referrals to the online database. However, UTA's audit trail only accounts for 129 such referrals. Institutional officials acknowledged that reporting errors had occurred and that referrals for LLV were over-reported.

#### **Required Action Summary:**

UTA was required to correct all errors in its crime statistics. The requirement applied to the exceptions noted above and any other errors identified during UTA's preparation of its response to the December 17, 2010 Program Review Report. UTA was required to reclassify the crimes and violations identified above and correct the errors in its crime statistics as published in the ASR and as submitted to the Department's online database. As part of its response preparation, UTA was required to re-examine the reported location of all Clery-countable incidents to ensure that all crime statistics are disclosed by geographical category in accordance with 34 C.F.R. § 668.46 (c)(4).

To ensure that UTA can substantiate its crime statistics for calendar year 2008 and in all future years, UTA was required to develop a means of compiling and recording the data so that an accurate and complete audit trail is developed and maintained. The revised 2008 audit trail document was to accompany the University's response. The production

*of these records is necessary for UTA to demonstrate its compliance with the Clery Act's statistical requirements.*

*Additionally, the University was required to examine and improve its policies, procedures, internal controls, and training programs to ensure that all incidents of crime reported to the UTAPD, non-law enforcement campus security authorities, and other local law enforcement agencies are properly classified and included in the UTA's ASR, which will have to be amended and re-distributed in accordance with instructions that will be provided in our Final Program Review Determination letter. A copy of all such revisions was to accompany the University's response.*

*The University was required to also clarify how it applied the geographical definitions to residence halls, University-owned apartments, and buildings and/or property owned and/or controlled by recognized student organizations during calendar year 2008. This statement was required to also explain any changes in the University's application of these definitions for calendar year 2009 based either on its own due diligence and/or UTA's ongoing dialogue with Department officials.*

*If UTA believed that any of the initial crime classifications challenged in this finding are correct, the University was required to provide an explanation along with documentation in support of its position that shows that the incident was in fact classified and reported properly.*

### **UTA Response:**

#### ***A. Improper Crime Classifications***

UTA's response to each incident is summarized below.

- Incident 200809316: UTA agreed that the definition of Forcible Fondling includes the touching of private body parts of another person for the purpose of sexual gratification. However, UTA disagreed that this incident met that definition. UTA's response states, "During our review of incident report 200809316, we found that neither the investigating officer nor the victim provided any information to affirmatively indicate the touching was for the purpose of sexual gratification. Moreover, neither the officer nor the victim indicated that the suspect was tumescent or made remarks to indicate that the touching was for the purpose of sexual gratification. Further, studies indicate that sexual assaults are not always for sexual gratification, but are for the purpose of exerting power over or humiliating the victim." Therefore, in the absence of any evidence the suspect was in a state of tumescence or made utterance to indicate his touching was for sexual gratification, UTA believes the original designation of Assault is correct.
- Incident 200805595: UTA agreed that the stove burner could have caused serious injury and, therefore, the correct classification should have been Aggravated Assault-

Other Dangerous Weapon. UTA stated that the appropriate change will be made to its 2008 ASR.

- Incident 200848270: UTA indicated that the report listed the incident as Unauthorized Use of a Motor Vehicle, which is the charge filed by the state. The incident was reported in UTA's 2008 ASR as a Motor Vehicle Theft (MVT). UTA states that the information submitted to the review team did not contain all the relevant incident information. The correct document notes that the second vehicle was not stolen, but used by suspect #2 to transport suspect #1 to the scene of the MVT. UTA believes the incident was properly classified and reported in its 2008 ASR.

UTA maintains in its response that only one incident, 200505595, was under-reported and that it was unintentional and the correction will be made to the 2008 ASR.

In addition, UTA responded to the issue regarding the audit trail for Part I offenses both in terms of the number of reported incidents and in the geographical breakdown regarding the site of those incidents. UTA determined that incident numbers 200805269, 200838833, 200838813 occurred on the UTA Campus. The other three assaults were determined to have occurred on Public Property (Incidents 080048561 and 080073398 were reported to the Arlington Police Department and Incident 080148145 was reported to the Fort Worth Police Department).

UTA agreed that the audit trail for these incidents was incomplete but that the incidents were reported correctly on the ASR. UTA also improved the manner in which it will maintain a more accurate audit trail of reported crimes.

### ***B. Inaccurate Arrest and Disciplinary Referral Statistics***

In regard to the inaccurate arrest and disciplinary referral statistics reported to the Department's online crime statistics database for calendar year 2008 as described in Part B of Finding 1, UTA's response included the following:

- Liquor Law Violations (LLV)-UTA determined that 36 arrests for LLV's occurred rather than the 29 reported.
- Drug Law Violations (DLV)-UTA determined that the number was inaccurately reported. There were 5 reported to have occurred on campus and 11 on public property for a total of 16 on the 2008 statistics. The correct number was 15 on campus and 17 on public property for a total of 32. In addition, UTA determined that software used in 2008 failed to capture all charges associated with an arrest. UTA responded that new software installed in February 2009 depicts all charges associated with an arrest.
- Weapons Law Violations (WLV)-UTA determined that 3 On-Campus and 1 Public Property WLV arrests occurred instead of the one reported. Of the three

incidents not reported, one involved a juvenile and the other two were secondary charges. Again, the software used in 2008 failed to compile all charges.

- Drug and Liquor Law Violations-Disciplinary Referrals (DLLV-DR)-UTA determined that 141 referrals for DLLV occurred instead of the 142 reported. UTA installed new software in 2009 and initiated a new Referral Reporting form.

In addition, UTA responded to the issue regarding the audit trail for Part I offenses as noted by the FBI's CJIS Audit Unit. In regard to Incidents #s 2009-05970, 2009-06964, and 2009-07021 which were classified as Forcible Rape-Rape by Force, UTA maintains that the incidents occurred on properties controlled by the university. One incident occurred at a UTA residential housing facility and the other two are considered part of the UTA campus through a land lease. UTA concurred that Incident # 2009-06352 was incorrectly classified, but was correctly submitted on the 2009 ASR.

### **Final Determination:**

After a careful review of UTA's response, the Department has determined that Incident # 200809316 was not classified correctly and that this offense must be re-classified as a case of Forcible Fondling. Based on this determination, UTA must also include this offense in the category of "Forcible Sex Offense" in its crime statistics for [put in the appropriate year] as published in the ASR. UTA's response does not assert that the complainant consented in any way to the touching of her private body parts. An unwanted and/or nonconsensual touching is an essential element of a sexual assault or battery. UTAPD officials based their classification of the crime on assumptions of the perpetrator's intent. However, Forcible Sex Offenses are general intent crimes; the perpetrator's intention to commit the forcible sex offense can be inferred from his conduct. For these reasons, the Department has determined that this component of the finding is sustained.

The Department accepts the remainder of UTA's response to this finding. UTA must correct its crime statistics for calendar years 2008 and accurately and completely disclose them in its next ASR. Specifically, UTA must re-classify Incidents # 200809316 and # 200805595 as well as the 27 under-reported arrests (7 LLVs, 16 DLVs and 4 WLVs) as noted in the response. For guidance on making corrections to the Department's online data base, UTA may contact the Campus Safety and Security Help Desk at (800) 435-5985 or email at [campussafetyhelp@westat.com](mailto:campussafetyhelp@westat.com). UTA must submit a copy of its next ASR and supporting documents to substantiate the accuracy and completeness of its crime statistics by February 1, 2012. Once this requirement is met, this finding will be considered to be closed.

### **Finding # 2: Failure to Report Separately for Non-Contiguous Locations**

#### **Citation Summary:**

*An institution's ASR must include statistics of incidents of Clery-reportable crimes that occurred in any buildings or on any property covered by the definitions in 34 C.F.R. § 668.46(c)(4). The geographical categories are on campus including residence halls, non-campus buildings and property, and certain public property.*

*The Clery Act and the Department's regulations require that all participating institutions must also compile, publish, and distribute a separate crime statistics disclosure for each of its campuses. 34 C.F.R. 668.46 (d)*

**Noncompliance:**

*UTA did not report crime statistics separately for all of its non-contiguous locations. Specifically, the review team identified at least one additional location, the University of Texas at Arlington – McLennan Community College in Waco, Texas, for which the University did not compile, publish, and distribute separate crime statistics. This location is listed on UTA's Eligibility and Certification Approval Report and was approved as an additional location on April 15 2004. UTA's 2009 ASR only included crime statistics for the main campus.*

*The Department takes notice that UTA's 2010 ASR does include statistical fields for three grouping of buildings and properties under the heading, "UTA Properties – Fort Worth."*

**Required Action Summary:**

*UTA was required to review and revise its policies and procedures for preparing its campus security report with special attention to the proper application of the geographical definitions in 34 C.F.R. 668.46 (a) to ensure proper categorization. To ensure full and accurate disclosure to all students and employees, the statistical grids prepared by location should be made part of one consolidated ASR.*

*As part of to review and to reduce the likelihood of recurrence, UTA was required to identify all buildings and property that meet any of applicable geographical definitions, take steps to ensure accurate classification of each building and/or property, identify any buildings or property that constitute separate campuses and then ensure that separate crime statistics disclosures are compiled, published, and distributed for all non-contiguous locations.*

**UTA Response:**

UTA replied that it would begin printing a comment on any subsequent ASRs regarding the additional location at McLennan Community College (MCC) in Waco, TX until the time it is no longer necessary. The comment will note that UTA offers classes but does not own or control any property at that location. It will also note that the crime policies and statistics for that location can be found at the MCC website (address will be listed).

In addition, UTA agreed that it will begin reporting the statistics for the UTA facilities in Fort Worth separately from the main campus beginning with the 2010 ASR.

**Final Determination:**

The Department accepts UTA's response. **After careful examination of UTA's response, the Department has determined that UTA was not required to report crime statistics for McLennan Community College (MCC) in Waco, TX.** UTA must submit a copy of its 2011 ASR to the Department by February 1, 2012. Upon the Department's receipt and acceptance of UTA's submission, this finding will be considered to be closed.