

July 3, 2024

Jennie M. Easterly, Director
Cybersecurity and Infrastructure Security Agency
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528

Re: Cyber Incident Reporting for Critical Infrastructure Act (CIRCI) Reporting
Requirements, CISA Docket Number CISA-2022-0010

Dear Director Easterly,

On behalf of the American Council on Education and the undersigned higher education associations, I write to offer comments on the Cyber Incident Reporting for Critical Infrastructure Act (CIRCI) reporting requirements. We also offer our support for the comments submitted by our colleagues at EDUCAUSE, addressing a number of specific concerns with the proposed rule.¹ These comments focus on the inclusion and sudden designation of the entire higher education sector as “covered entities” and the resulting impact across the incredibly diverse array of institutions. In particular, we are concerned that despite the fact that we have previously not been broadly considered a “covered entity,” the U.S. Department of Homeland Security and Cybersecurity and Infrastructure Security Agency (CISA) failed to fully engage with the higher education community in the development of this expansive proposed rule.

Within the proposed rule, under Section IV.2.(h) Government Facilities Sector, CISA proposes to include “three different sector-based criteria for entities in the Government Facilities Sector” including “State, Local, Tribal, or Territorial (SLTT) Government Entities,” “Education Subsector entities,” and “Elections Infrastructure Subsector entities.” The Education Subsector entities would include “(A) a local educational agency (LEA), educational service agency (ESA), or state educational agency (SEA) ... or (B) an institute of higher education (IHE) that receives funding under Title IV of the Higher Education Act.”²

According to the most recent data from the U.S. Department of Education, approximately 5,500 postsecondary institutions participate in the Title IV federal student aid programs.³ One of the strengths of American higher education is the great diversity of postsecondary institutions. Those 5,500 institutions include two-year and four-year institutions, private and public institutions, community colleges, small private religious schools, as well as large R1 research universities, among many others. The diverse structures of these institutions mean

¹ July 1, 2024 Comments submitted on CIRCI proposed rule from EDUCAUSE and other higher education associations: <https://www.regulations.gov/comment/CISA-2022-0010-0276>

² Section IV.2.(h) “Government Facilities Sector” page 23690 of Federal Register/ Vol. 89, No.66/ Thursday, April 4, 2024/ Proposed Rules

³ <https://studentaid.gov/data-center/school>

that they often serve different populations, may have different educational missions, may not participate in federally funded research activity, and often have vastly different footprints in their communities and regions. A large R1 institution may enroll tens of thousands of students and employ thousands of faculty and staff, while a small liberal arts school may have just as important an impact within its region. An institution may have a large physical presence with a sprawling campus with many buildings, or even multiple campuses, or have a small physical presence with a large number of students taking courses online. Institutions will have different levels of resources available to them, with many lacking funding for implementing expansive new reporting requirements, or indeed for employing those that have the expertise to implement these proposed requirements.

We are concerned that the proposed rule broadly includes every institution of higher education that receives Title IV student aid without consideration of size, population, or other factors, unlike it does for many of the other entities, including within the proposed definitions for SLTT and K-12 school covered entities. For example, the proposed rule would include “any SLTT Government entity for a jurisdiction with a population equal to or greater than 50,000 individuals” or a covered K-12 entity “with a student population of 1,000 or more students,” but no size limitations or other details further define which institutions of higher education would be considered a “covered entity.”

Through the proposed rule, CISA “seeks to ensure reporting from a sufficient cross-sector of entities to understand and be able to share information on threats to our nation’s education facilities.”⁴ Rather than capturing a cross-sector, this will capture almost every institution of higher education. Further, the proposed rule states, “many Education Subsector entities, primarily IHE, also own infrastructure or perform activities that support national security, public health and safety, and the reliable operations of critical infrastructure, such as hospitals, first responder organizations, water and wastewater treatment facilities, energy facilities, and research facilities.”⁵ But this description would not include the majority of campuses, which do not have vast operational infrastructure or research facilities for carrying out federally funded research.

We would also note that the proposed rule states that “CISA engaged each of the Sector Risk Management Agencies (SRMAs) to consult on potential criteria for their respective sector, as well as other Federal agencies with cybersecurity-related regulatory authorities focused on specific sectors.” However, we are unaware of any substantial engagement with the higher education community on the impact of these proposed rules, or indeed how they would be implemented across our sector. In addition, it is unclear if CISA engaged with the U.S. Department of Education through the Office of the Under Secretary or the Office of Postsecondary Education, the offices that work most closely with our institutions of higher education and include the Federal Student Aid office, which oversees the Title IV programs.

Given the great diversity across our sector, as well as the lack of engagement on this proposed rule, we ask that the final rule make further distinctions to narrow the institutions of higher education that are included under CIRCLIA. We also ask that CISA engage more fully with the

⁴ Page 23691 of Federal Register/ Vol. 89, No.66/ Thursday, April 4, 2024/ Proposed Rules

⁵ Ibid.

higher education community about the reporting requirements for our sector. Regarding the expansion of the reporting requirements, we again support the more detailed comments submitted by EDUCAUSE on behalf of all of higher education. We hope to work with you as CISA moves to finalize this rule.

Sincerely,



Ted Mitchell, President

On behalf of:

American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Catholic Colleges and Universities
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Career Education Colleges and Universities
Council for Christian Colleges & Universities
EDUCAUSE
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
UPCEA