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## **Building a Proactive Compliance Program in Higher Education**

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**Complexity is the enemy of transparency.**

—HENRY PAULSON,

AMERICAN BANKER AND FORMER US SECRETARY OF THE TREASURY

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# Building a Proactive Compliance Program in Higher Education

| Nedra Abbruzzese-Werling and Joseph Storch, State University of New York

## Introduction

Complying with the myriad legal requirements colleges and universities are subject to on a day-to-day basis is not an easy task. Similarly, creating an enterprise-wide compliance program to systematically tackle compliance obligations of a college or university cannot be accomplished overnight. However, a thoughtful and carefully planned effort for a compliance program can bring any institution into better overall compliance. This article is intended to help college and university officials in developing and implementing plans for compliance programs. While the positive results that come from implementing a compliance program may not be immediately noticed, it will only be a matter of time before your institution starts to directly see and feel the benefits of a centralized, more systematic approach to compliance.

## Defining Compliance

At the outset, we need to define what the term “compliance” actually means. Within higher education, institutions must comply with a myriad of laws and rules. This is not just limited to federal and state laws and regulations. Compliance for a higher education institution also means following relevant case law and accreditation standards as well as an institution’s own internal rules, policies and procedures, and even contractual obligations of the institution as a result of agreements codified into business contracts, employment contracts, and collective bargaining agreements if the institution is in a unionized environment.

Additionally, although the term compliance has a very specific meaning in the context of higher education, there is a definition of a “compliance program” that is generally accepted across all industries and is not limited to higher

education. The definition comes from the *Federal Sentencing Guidelines* (hereinafter *Guidelines*), a publication of the United States Sentencing Commission. While the original intent of Congress in creating the *Guidelines* was to develop a “fair sentencing system” with more consistency and uniformity,<sup>1</sup> a portion of the *Guidelines* on what constitutes an “effective compliance and ethics program” has

become the blueprint for the elements that a compliance program should encompass. Within the *Guidelines*, a “compliance and ethics program” is defined as “a program designed to prevent and detect criminal conduct” that consists of seven key elements. The elements, commonly referred to in the compliance industry as the “seven elements,” are the minimum elements needed to form an effective compliance program.<sup>2</sup>

These seven elements are: (1) standards and procedures—defined as “standards of conduct and internal controls that are reasonably capable of reducing the likelihood of criminal conduct;” (2) organizational leadership and culture; reasonable efforts to exclude bad actors from managerial ranks; (3) training and education; (4) monitoring, auditing, and evaluation of program effectiveness; (5) performance incentives and disciplinary

measures; (6) appropriate remedial action; and (7) risk assessment.<sup>3</sup>

The original intent of these seven elements was to help provide a framework for federal judges who were determining culpability of a corporation that was convicted of wrongdoing under the premise that the more robust a compliance and ethics program, the less severe the corporation’s punishment should be, given their efforts to follow the rules. While these elements were originally for the limited purpose of reducing sentencing for bad corporate action at the punishment phase, they have now become

**Originally for the limited purpose of reducing sentencing for bad corporate action, the *Federal Sentencing Guidelines* have now become synonymous with the elements of an effective compliance program.**

synonymous with the elements of an effective compliance program across all industries.

Since the *Guidelines* first introduced the idea of an effective compliance program in 2004, the idea that an industry could and should be rewarded for having an established compliance process has proliferated into the higher education context. On an anecdotal level, various institutions have noticed that oversight agencies seem to be more lenient when the institution can show a formalized process to address compliance. Formally, this idea was recently codified into a federal task force report specifically commissioned to evaluate the federal regulation of colleges and universities. The report was commissioned by a bipartisan group of U.S. senators who formed a task force of college and university presidents and chancellors to identify potential improvements within federal higher education regulation.<sup>4</sup> The task force recommended that colleges and universities that have created a process for effective oversight should enjoy clear safe harbors and have good-faith efforts acknowledged. The recommendation to create a compliance program to handle laws, regulations, and policies is not new to higher education, but perhaps the formality of the task force report illustrated that the idea is gaining more traction even among policy makers. The task force only reaffirmed in a public way what higher education officials have been saying for years, especially institutions that have implemented robust compliance programs and have seen the benefits firsthand.

### **Growing Compliance Obligations**

The overall growth of compliance obligations in higher education has been well documented. Even as other industries have seen de-regulation,<sup>5</sup> the *Regulation Task Force Report* confirms the growth of higher education compliance obligations by commenting on the expansion of the federal regulations—as just one source of compliance obligations—where between 1970 and 2014 the *Code of Federal Regulations* more than tripled in sheer page volume from 55,000 pages to 175,000 pages.<sup>6</sup> By way of actual percentage, from 1997 to 2012 the number of federal requirements higher education must abide by grew by 56 percent.<sup>7</sup>

Federal research funding for higher education has increased by billions of dollars annually since programs began in the late 1940's.<sup>8</sup> Alongside this additional

funding comes an increase in the financial burdens being placed upon colleges and universities as a result of compliance requirements—institutions responding to a survey estimated that their average costs for compliance, based upon employee hours, has risen from \$66,528 in 2011-2012, to \$95,568 in 2013-2014.<sup>9</sup> Institutions spend 26.1 million hours annually completing Department of Education mandates, and this statistic only includes the actual complying, not the development and implementation of compliance policies, processes, and guidance at the institutions.<sup>10</sup> The bipartisan task force report concluded in their findings that “compliance with regulations is inordinately costly.”<sup>11</sup> Even with the additional compliance costs, research funding is likely still a decent trade-off when compared with the federal support for higher education.<sup>12</sup>

It has been acknowledged in recent years that “colleges and universities today are probably the most heavily regulated organizations in the United States in terms of the number and types of statutes and judicial precedents with which they must comply.”<sup>13</sup> The *Higher Education Act of 1965* provides a good example. The law was initially passed in 1965 and was 52 pages. It grew through its eight reauthorizations and in 2008 weighed in at 432 pages. The current proposed reauthorization is about 785 pages and counting. Trying to comply with the myriad existing laws is difficult enough, but Congress, regulators, and states add new requirements each year. Beyond laws and regulations, there is also sub-regulatory guidance, letters, handbooks, opinions, and advisories issued by oversight agencies. These are just some of the sources of compliance from outside an organization and do not take into account an institution's own internal policies, procedures, and contractual obligations. Given the immensity and perplexity of the higher education compliance landscape, the question that many institutions have been grappling with is simply, “where does one even begin?”

### **The Rise of the Formal Compliance Function From Reactive to Proactive – The Shift in How Higher Education Approaches to Compliance and Risk**

For many years, the trend in higher education was to be reactive, primarily when it came to specific national incidents—to respond after a devastating, worst-case scenario occurrence made the national headlines. There are many

examples of this reactionary approach in recent years. In 2008 the Virginia Tech shooting tragedy—and the questions being asked in the aftermath about campus safety—led institutions to develop emergency management protocols for their campuses, including notice procedures to better protect the safety of campuses in potential situations of danger. The federal government followed with their own reform to the *Family Educational Rights and Privacy Act of 1974* (FERPA) to ensure that student privacy laws did not impede an institution from alerting their campuses when a dangerous situation arose, and Congress amended the *Higher Education Act of 1965*<sup>14</sup> to require “emergency notifications” in certain situations.<sup>15</sup>

It happened again in 2010 with a death of a research assistant in a science lab in California.

The incident was attributed to inadequate safety protocols, and criminal charges were filed against both the University of California Board of Regents (the governing oversight body for the University of California system of campuses) and the professor who had ultimate supervisory duties. Suddenly, institutions across the country were working to ensure proper safety protocols in their labs and adequate training so that those working in the labs were following the industry standards for safety protocols.

In 2012 it was the Pennsylvania State University child sex abuse scandal that led many institutions to develop child protection policies and protocols—and even led to increased athletics oversight and reporting changes—given the implication that inadequate oversight and institutional control of Penn State’s athletics programs could have contributed to the failed reporting and investigation of the incidents of abuse on Penn State’s campus. Many state governments followed suit as well, enacting mandatory reporting laws and other restrictions and protocols to govern child protection in higher education.

Most recently, 2014 was marked by an intensified national and political focus on sexual assault and Title IX, following a handful of articles published in various

national news sources that began to question campus safety and institutional responses to sexual assault occurring on and around college campuses. This focus has led to institutions across the country working to hire Title IX coordinators who could be solely focused on an institution’s Title IX efforts. It also led to the federal government enacting significant regulatory reforms that expanded higher education’s compliance obligations regarding sexual violence and crime reporting.<sup>16</sup>

Ebola was another crisis of 2014 whereby a handful of Ebola cases in the United States led institutions to assemble leadership groups to enact protections and ensure their institutions prepared for any outbreaks; they were also ready to follow the latest Centers for Disease Control protocols should they experience a scare in their region.

With each of these issues, higher education institutions scrambled to respond—with increased lab safety focus, with child safety protocols, and with increased attention to the *Clery Act*, Title IX, and Ebola by institutions large and small. The federal and state governments also reacted with legal and regulatory reforms that significantly expanded the compliance obligations of colleges and universities. The trend is to be reactionary—to scramble in the midst of a crisis that gains national attention.

The alternative to this reactionary approach is one of proactivity—to have a system in place for addressing a crisis, whether national or specific to the institution, prior to any major incident arising. This proactivity is manifesting itself in the form of compliance and enterprise risk management programs at institutions. The concept of these programs is to create a structure around all compliance obligations and risks so that institutions proactively understand them and make efforts to mitigate them in a consistent and proactive way before a crisis arises.

### **Cost of Non-Compliance**

It is also important to note here that the costs of compliance incidents are not just reputational. There are signifi-

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cant actual costs to incidents that have occurred at various institutions. Take the previous national compliance incidents as examples.

At Penn State, the university publicly stated that the cost of the scandal regarding child abuse that was occurring on their campus was \$3.2 million as of February 2012 for legal, consultant, and public relation fees.<sup>17</sup> That figure was released in the midst of the ongoing situation. Since that time, Penn State has fought with the NCAA to have certain team victories reinstated to the Penn State football record, and they have hired many personnel to build and cover the compliance structure that was required by the settlement agreements the institution entered into.

In California the defense of the UCLA professor—who was criminally charged for the death of the research lab assistant as a result of compliance failures that led to the injury—cost the institution \$4.5 million.<sup>18</sup> This figure was only attributed to the professor’s defense, not the costs of defending the board of regents or the expense of developing better processes and protocols at campuses as a result of the settlement agreement that was reached between the UC System and prosecutors. California, Penn State, and other compliance examples illustrate how the costs of compliance failings are actual costs that the institution must absorb.

Even compliance issues that are less prominent end up costing an institution. For example, an Office for Civil Rights (OCR) review can cost an institution hundreds of hours of personnel time, and that is before a finding is made. If a finding favors the complainant, the institution will inevitably have to devote resources—both personnel and monetary—to comply with the findings of an investigation.<sup>19</sup>

### **Compliance and Enterprise Risk Management Functions**

Given the ever-growing landscape of compliance laws and regulations that institutions are subject to and the costs associated with non-compliance both financially and in reputational harm, a general consensus has emerged: institutions need to formalize a better process for handling their compliance obligations. The 2015 Task Force on

Federal Regulation of Higher Education report concluded that “effective oversight [of compliance obligations] can help colleges and universities keep costs down, keep students safe, focus on educating students, and be good stewards of federal funds.”<sup>20</sup>

Campuses across the country are in agreement as formal compliance offices and functions have become the norm rather than the exception. A 2013 study conducted by the National Association of College and University Attorneys<sup>21</sup> showed that of the responding institutions, 17 percent had a formal compliance function in place for more than three years with 14 percent having created a new function in the last three years. Twenty percent had reported having a compliance function in active development, with another 18 percent reporting that they planned to develop a program. This means that nearly 70 percent of institutions who responded had or were creat-

ing a formal compliance function. These formal compliance functions are leading to formal compliance positions. In the last 10 years, the number of employment positions in higher education with a “compliance officer” in their title has grown by 33 percent.<sup>22</sup> This study also only contemplates an ‘officer’ title, not other positions (director, vice president, etc.).

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### **Roadmap for How to Create a Compliance Function at Your Institution**

Significant value can be derived from creating an independent compliance function for your campus that seeks to be proactive in compliance efforts, including avoiding monetary loss from issues of non-compliance, preventing damage to reputation, and avoiding the demands on executive time that come with compliance crises. Institutions can prepare before an incident occurs, whether the incident is in the form of an audit, investigation, request for information, litigation, or an occurrence that gains the attention of the press. It is only a matter of time before the concept of being rewarded for having a compliance process will take hold formally in the higher education world, just as it has in corporations and the medical industry. The dilemma faced by an institution that has de-

cided to create a compliance process is, “with all of these issues and requirements, where does one begin?”

### ***Take it One Step at a Time – Eating the Enormous Elephant***

There is an old joke about the problem with eating an elephant: you can’t figure out where to begin. Compliance programs create a similar predicament in that there are so many requirements in so many disparate areas that it is hard to know where to start, and it is easy to throw up one’s hands and save compliance for another day.

Institutions working to develop compliance programs must not get caught up in the enormity of the project. The work of a compliance office is never completely finished since laws, regulations, sub-regulatory guidance, and institutional policies will be ever-changing. In other words, the goal posts will always move. Therefore, an institution is best served if they recognize the enormity of the task, set reasonable and realistic goals for progress, and keep moving forward to effect change.

One such acknowledgment is to understand that an institution will not be able to guarantee complete compliance immediately. In fact, many in compliance agree that a full-fledged compliance program takes 3 to 5 years to become fully functional. Therefore, an institution should focus less on complete, 100 percent compliance as a goal and instead focus more on building methods, processes, and reporting structures to help departments with their own compliance. To use a sports analogy, think of the process in terms of football: if a football team does not huddle and formulate a plan prior to the start of the play, their chances of success go down. In other words, compliance will be much easier to establish when there is a plan and the university staff is working together as a team with the ultimate goal of getting the institution into compliance.

### ***Silos Must Come Down***

Just as “it takes a village to raise a child,” it takes an entire campus to comply with laws and regulations. Traditionally at many colleges, some departments do not interact with one another (and some refuse to even speak) for historical, financial, or personality reasons. With all due respect to those reasons, to comply with the current panoply of legal and regulatory requirements, silos must come down.

The days are gone where a college president could assign *Clery Act* compliance to the police chief or director of security, Title IX to the athletics director, and OSHA compliance to the head of facilities and rest easy. Today’s regulatory regime requires cross-campus efforts and regular meetings and interactions between staff that otherwise may never interact.

Take *Clery Act* compliance, for example. While your institution’s annual security report is likely issued by campus police or security, proper compliance requires obtaining certain statistics from the conduct office, student affairs, residence life and housing, and international programs as victim notifications may come from a variety of offices. Mandatory trainings may be conducted by still other offices. Some of the law interacts with Title IX, while other aspects require interactions with local and distant law enforcement. This is not the job for a single person or even a single office. Colleges that have used such a method have paid dearly financially and in reputation when major incidents occurred. Many colleges that have cross-institutional teams that communicate regularly have prevented such incidents. It takes an entire college administration working together to comply. Reducing the effect of silos is a necessary step in developing a compliance program.

### **Steps to Create a Compliance Function**

For most institutions developing compliance programs, the question of where to begin is daunting. As much as the beginning process will be dependent upon each institution and what they already have in place, there are a few universal steps that are good starting points for all institutions embarking on the task of creating a compliance function or structure:

#### ***1. Build a Compliance Matrix***

A compliance matrix is the idea of creating a spreadsheet of all of the federal and state laws and regulations, local municipal laws, case law, accreditation standards, and all the internal institutional policies, procedures, and rules, all of which together comprise the compliance obligations for your institution. The reason a matrix is a natural first step is because before you can create a process to attempt to establish compliance for your institution, you need to first understand the universe of what exactly you must comply with.

The matrix is not only a good exercise to determine the “what,” but it should also be used to identify the “who” – as in who at your institution is responsible for compliance with the specific law, regulation, policy, procedure, or rule. The “who” could be an office, a role (specific title), or a specific employee. This office/role/person is often referred to as the compliance “owner” because they own the function of satisfying a particular operational compliance function. This step of determining who owns the compliance function is important to the process of creating a matrix because it establishes accountability for particular compliance actions and also communicates to the “owner” that just because the institution is going through the process of creating a compliance function with staff members devoted to compliance, this does not mean the responsibility for completing the compliance has shifted to another person or office. The offices need to understand that they will still be responsible for “doing” compliance, but now they will have help with determining what the compliance looks like and creating a matrix whereby the office/role/person knows that they are ultimately responsible for ensuring that the compliance obligation is fulfilled.

Note that an extensive matrix already exists for all of the federal laws and regulations that apply to higher education. It is available on the Higher Education Compliance Alliance website for download (see the URMIA website at [my.urmia.org](http://my.urmia.org) for the link or check the list of resources at the end of this article). Refer to the website as the matrix is continually being updated. If your institution utilizes this matrix for your federal obligations, you should note that you need to add one more column to the chart: A column that allows you to denote who at your institution is the “owner” of the compliance function.

In 2015 the U.S. Department of Education issued its own “Compliance Calendar,”<sup>23</sup> but it is published as a single PDF document, is limited to certain specific compliance requirements, and is not organized in a database manner that can be searched or re-organized to best meet the needs of different institutions.

In addition to creating a matrix of resources, your

institution should decide upon broader categories to bring together particular compliance obligations. The idea is to create some sort of organization to your matrix. It should be noted that sometimes compliance obligations will fit into more than one category for an institution. As an example, your institution may have a “financial compliance” category, and a “student compliance” category. Financial aid and tuition compliance obligations could fit under either of these categories. There will be inevitable overlap, just as there is overlap of duties for compliance obligations among offices at your institution. The question of which category tuition falls under is not as important as ensuring that it is included on your matrix, whatever categorization structure you choose.

A potential format for institutions to use for their own compliance matrix is available in Appendix A to this

article. Since a federal matrix of laws and regulations is a resource that already exists, you should capitalize on it by using this resource to map the federal compliance obligations. Therefore, any matrix your institution creates should incorporate the already existing federal matrix in addition to local laws (state and municipal), internal policies and procedures, accreditation requirements, and any contractual obligations.

Once the matrix template is created, the institution will have to fill in the matrix with information specific to the institution. A good first step is to conduct interviews with the institution’s

functional areas. In these interviews, you will be trying to ascertain who is fulfilling specific compliance functions. Some potential questions for the interview subjects are the following: (1) What are your key compliance functions/areas of expertise/areas of involvement? (2) What laws/regulations/policies/accreditation standards must you comply with? (3) Which compliance obligations require active action on your part? (4) What resources do you rely on (internal and external) to help comply? (5) How well documented is the compliance? (6) Who documents the compliance? (7) When a compliance question comes up, who do you turn to? (8) What communication on compliance issues occur at the institution? (9) Who

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are the experts in the compliance subject area? (10) What type of compliance activity or resources would improve your area—examples include a new policy, an internal audit, guidelines, a template form, a new guidance document, more staffing, and more support from leaders. (11) What Internal Controls are in place for your area? (12) What training takes place to ensure compliance obligations are met? (13) What oversight do you have, internally and externally? (14) Who is your direct report?

All of these interview questions will help your institution to get started on determining who is doing what for compliance. When gaps in compliance responsibility are identified, this list will help you determine who would be best suited to fulfill the compliance obligation that does not yet have an “owner.”

## **2. Define Your Compliance Program’s Mission and Roles – Oversight or Resource?**

Another crucial first step for an institution to determine is what the mission of the compliance function or program will be, what role it will fulfill in relation to other departments on campus, and the charge of those working for or participating in the program. This should be set and communicated at the outset of the program because a lack of mission and defined roles will result in confusion about what the program is attempting to achieve and who is going to be doing the actual compliance.

To determine the mission, an institution will need to decide whether the compliance function will operate as a resource or oversight function—whether it will be set up to help or whether departments will have an obligation to report to the compliance office on their activities in a structured way. Both models have their challenges. A resource office will need to establish relationships with the offices to encourage that they are used for the office’s compliance needs and issues. In contrast, an oversight office needs to be given the proper authority—and have the perception of authority from the employees—to operate effectively.

It may seem like a minor distinction, but it makes a

big difference. Resource offices strike less fear in departments across the campus and colleagues believe they can ask questions openly and honestly, but ultimately, each of those stakeholders will have to affirmatively choose to take steps towards compliance. As a supervisor, one can demand that departments and professionals move into compliance quickly or immediately, but it may be a pyrrhic victory as those professionals and departments may not run all issues to ground and significant (and avoidable) problems may arise later. Ultimately, whether a resource or oversight office, or a mix, the type of compliance function an institution chooses is a policy and value judgment. The institution should think about whether they want a facilitator, advisor, and helper that inspires offices to come into compliance or whether they would prefer a supervisor that requires and tracks compliance across the

institution. You should consider your current culture and whether or not a resource model or an oversight model would be best to address any compliance deficiencies.

Additionally, the institution will need to determine how many personnel they will need to devote specifically to the compliance function and what titles those personnel will have. Typically, the title of “compliance officer” denotes more of a direct oversight function, where a “compliance director” or “compliance manager” would be a coordinator with the offices and stakeholders—but there are no rules about what each title means

within higher education. Compliance at each institution is not one-size-fits-all. Creating a compliance structure at your institution is about leveraging your existing structures, including audit, enterprise risk management, hotline administration, and your policy office, while creating a compliance function that monitors, communicates, and keeps track of ongoing and new institutional compliance issues. Whatever form that may take is a decision made by the institution after considering the current structure of the campus.

One concept that should be universal in creating a compliance function regardless of whether it is a resource or oversight office is clearly communicating that the com-

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pliance obligations of particular offices remain unchanged. Any compliance personnel hired to support the institutional compliance function will not suddenly be doing all the complying; that would be an impossible feat given the growth of compliance obligations over the years. Instead, it should be clearly communicated that the compliance personnel are there to help with existing compliance including reviewing, monitoring, prioritizing, and keeping up with any changes, but they will not be taking on all of the compliance responsibilities.

In determining the mission, roles, and structure of a compliance program, your institution will also need to consider the following:

#### *Who will the compliance function report to?*

It is considered a best practice to have the compliance function report to high-level personnel in order to establish direct access to leadership, to establish tone at the top, and to allow for sufficient authority to the compliance function. Ideally, the compliance function would also have a direct reporting line to the institution's oversight board—to create accountability on the campus—where the compliance projects and priorities would be reported and then followed up on with reports of progress. Additionally, this direct line to the board would allow for the compliance personnel to report any instances of wrongdoing at the institution that need to be brought to the board's attention.

#### *What is your compliance structure?*

In addition to any compliance personnel hired to specifically support the compliance function, a good way to get others at the institution involved is to create a committee of higher-level administrators at the institution who oversee compliance within their areas. Membership of the committee should try to encompass all key compliance areas. This committee helps to allow for leaders around the institution to hear what other areas of the institution are doing for compliance and will help to make individual departments feel as though they are a part of the compliance effort.

### **3. Motivate Your Institution and Get Buy-In from the Top**

We have found that the best method for compliance is to spend less time telling higher education colleagues what they are doing wrong and more time teaching them how to do things right—and even better—how to meet best practices in the field. It should be remembered that the most important part of a compliance program isn't simply the ability to check a box that you minimally meet the requirements of a law or regulation. More important is building a culture where participants “do the right thing” in service of the campus community and create an effective, safe, enjoyable space in which to learn, live, teach, research, and continually grow and improve.

### **4. Assess your Institutional Risks, Prioritize Projects, and Develop An Annual Compliance Plan**

Your institution should use an assessment to determine the biggest compliance risks. Compliance assessments can take many forms. They can be a formal survey asking institutional leaders and employees to rank their risks or interviews asking those same personnel what “keeps them up at night;” in other words, what are their biggest compliance worries? However the assessment is conducted, an institution must assess itself in order to identify priorities.

After your risks and priorities are established, you will need to analyze what structure would best mitigate the compli-

ance risk. This mitigation plan can come in many forms: a policy and/or procedure; additional staff/more resources; enhanced training; stronger leadership in the area; a best practices document; increased audits; or other methods to help mitigate the risk. When these projects are decided upon, they should be formally included in an annual compliance plan. This plan will become the framework for the priority compliance projects for the year. The plan should discuss the exact compliance project, the timeline goals, the personnel who are contributing, and any other considerations. The follow-up to the plan will provide a framework for any formal reporting the compliance function does, whether to the board or a high-level supervisor.

**The most important part of compliance is building a culture where participants “do the right thing” in service of the campus community.**

## Important Considerations for your Institutional Compliance Function

### *Tone from the Top*

The term “tone from the top” is used frequently in the compliance field. Originally an accounting principle, the idea is that an organization’s ethical tone comes from its leaders and senior management. Applied to compliance, the idea is that if your leaders are saying to do the right thing and doing the right thing themselves, then that ethical tone will trickle down to the middle- and entry-level employees.

There is a story that best illustrates this principle of “tone from the top.” The story, retold from other versions, goes something like this: A corporation could not determine why their employees had low morale and had trouble with following specific rules. The corporation hired consultants, who came in and evaluated the company. The senior leaders were always acting ethically and in compliance with company rules and laws, so the consultants could not figure out where this unethical “mood at the middle” was coming from until they asked the employees directly: “Why is it that the company employees do not always act ethically and follow the rules despite the tone from senior leadership?” The response was surprising: the employees watched every day as the company president pulled his car into the spot right out front labeled “No Parking.” The consultants were surprised to learn that all the ethical and rule-following behavior of the senior management didn’t mean a thing when the simple act of parking in a “No Parking” zone communicated to the employees that the rules didn’t matter. That story is one of the best ways to illustrate just how important the tone at the top can be in determining the ethical culture of the company and that even simple acts of wrongdoing can affect employee perception in a negative way, which can impact the ethics and compliance climate of the company.

### *Why Ethics is a Part of Compliance*

Often times, the term compliance and ethics are used hand-in-hand, and many compliance programs, especially

in higher education, call themselves “compliance and ethics programs.” Aside from the *Federal Sentencing Guidelines* defining the seven elements of a “compliance and ethics program,” there are other reasons why these terms fit naturally together. First, the idea of being compliant is similar to the premise of acting ethically—if we are ethical, we want to do the right thing because it is the right thing to do. Additionally, compliance structures are in place not only to be sure we do the actual complying but also to help us determine what is the right and compliant thing when faced with new compliance challenges. When ethics is taken out of the compliance equation, we have no incentive to be compliant as an institution. An ethical culture fosters a culture of accountability, and accountable employees are more likely to do the right things when it comes to compliance. At institutions of higher education, where colleges and universities are always striving to do better (often as a result of their underlying educational mission), it makes sense that ethics is part of the equation of a compliance program.

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### *Use Existing Resources – Because You Aren’t Reinventing the Wheel*

Your campus will not be the first institution that struggles to comply with laws and regulations and you do not need to reinvent the wheel. While specific requirements and how to comply with them can differ significantly based upon your campus and its culture, there are myriad resources available to use in whole or in part to get you much of the

way towards compliance:

#### *1. Higher Education Compliance Alliance - [www.higheredcompliance.org](http://www.higheredcompliance.org)*

The Higher Education Compliance Alliance is a project of several national higher education associations that collects and organizes compliance and legal resources and makes them available. The website also features a compliance matrix that can be organized by topic or by calendar, a crucial resource in not “eating the elephant” all at once.

#### *2. URMIA - [my.urmia.org](http://my.urmia.org)*

The University Risk Management and Insurance Association (publisher of this article) has a deep library available to mem-

bers and offers programming in live and online formats over the course of the year.

**3. Society for Corporate Compliance and Ethics - [www.corporatecompliance.org](http://www.corporatecompliance.org)**

The Society for Corporate Compliance and Ethics offers an annual conference solely on higher education issues as well as a number of annual and specialized conferences. The organization also offers members a library of resources.

**4. National Association of College and University Attorneys - [www.nacua.org](http://www.nacua.org)**

The National Association of College and University Attorneys offers members and their institutions resources and programming, much of it in the area of compliance.

**5. SUNY Compliance Site - [system.suny.edu/compliance](http://system.suny.edu/compliance)**

The SUNY Compliance Website (maintained by one of the authors) is a comprehensive site of resources on various higher education compliance issues. Resources prepared by SUNY may be freely adapted for non-commercial higher education use with attribution. A sister Office of General Counsel site with additional legal information and relevant articles is located at [system.suny.edu/counsel](http://system.suny.edu/counsel).

**6. Catholic University General Counsel - [counsel.cua.edu](http://counsel.cua.edu)**

Similar to the SUNY site but with a longer history, the Catholic University site is well-recognized for comprehensive and well-organized resources, written by Catholic U. staff and others, that can provide information on a number of topics. The content is covered by a Creative Commons license.

Any of the above-listed resources will take a campus professional fairly far down the road of compliance, but it must be remembered that while requirements are often national or regional, best practices may differ by campus. Two colleges a few miles apart may have very different resources, programs, and cultures, and therefore may (properly) comply with requirements in very different

ways. This isn't to say that a compliance officer should not start with samples and documents prepared by others, it is simply to say that while one can start there, one must not end there. Each document, policy, and procedure should be carefully tailored to meet the institutional goals, methods, and governance requirements.

**Communication Is Key to a Successful Program**

A compliance initiative by an institution cannot overlook a key element – effective communication. Communication is so crucial to compliance because it helps to inform your institution's personnel about your compliance efforts and simultaneously helps to create buy-in. Communication should be improved and streamlined so that people at the institution know where to find compliance information, including the institution's policies and procedures, guidance documents, forms, deadlines, and other useful information to help them with their compliance obligations.

**A compliance initiative by an institution cannot overlook a key element—effective communication.**

**Document Your Institution's Compliance Efforts**

If you are exercising stellar compliance practices every day and have a structure in place and designated responsibility but you are not documenting your efforts, it may seem like you did nothing when an oversight agency comes knocking at your door. All this is to say that you should not overlook creating documentation with any and all of the compliance efforts

your institution embarks upon.

**Continually Assess and Monitor**

As we mentioned previously, the goal posts move in higher education compliance. That is why a critical function of any compliance program is to continually monitor and assess compliance efforts. Slight shifts in personnel and job roles can change good compliance into non-compliance. Additionally, the compliance function needs to re-assess for new issues and risks at least annually and assess the effectiveness of the compliance structures they have put in place. This re-assessment is critical to ensure the effectiveness of your efforts and because, as an institution, you cannot fix what you do not measure.

## Conclusion

The creation of a compliance program or function at your higher education institution is not something that will happen overnight. It will take careful time and planning to determine how the function will operate within the existing organization and how you will define that role and communicate it to your institution. The goal is to create a function that acts as a resource or oversight for your campus' efforts regarding compliance, to help your institution proactively meet its compliance obligations, and to mitigate and help prevent compliance risks at your institution. There is no one-size-fits-all program, so institutions will have to evaluate their needs and wants when creating a compliance function that will support their institution. The ultimate goal is to create process and structure that fosters a culture of compliance at your institution so that when faced with daunting compliance challenges, as most higher education institutions are today, there is already a framework for, and resources devoted to, ensuring compliance. In the long term, any college or university that devotes resources to create a proactive compliance function will be well served.

## About the Authors

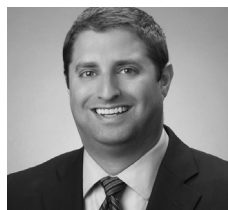


Nedra Abbruzzese-Werling joined the State University of New York System Administration on March 1, 2012. Her duties are to establish, coordinate, and maintain a university-wide compliance program that

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## Endnotes

- <sup>1</sup> *Guidelines Manual*, United States Sentencing Commission, November 1, 2014, pg. 2.
- <sup>2</sup> The seven elements of an effective compliance and ethics program are what the court is supposed to consider when determining the culpability of an organization convicted of wrongdoing. The court is supposed to review the compliance structure of the convicted corporation, and offer a reduced sentence if it finds that the company had established elements of an effective compliance program. The idea is that the corporation's punishment will be less severe if they have a set process for compliance. *Guidelines Manual*, United States Sentencing Commission, November 1, 2014. Sec.8B2.1, pg. 502.
- <sup>3</sup> *Guidelines Manual*, United States Sentencing Commission, November 1, 2014. Sec.8B2.1, pg. 502 – 505.
- <sup>4</sup> *Recalibrating Regulation of Colleges and Universities: Report of the Task Force on Federal Regulation of Higher Education*, February 2015.
- <sup>5</sup> Stephen Dunham, "Government Regulation of Higher Education: The Elephant in the Middle of the Room," 36 *Journal of College and University Law* 749, 750, 2010.
- <sup>6</sup> *Recalibrating Regulation of Colleges and Universities: Report of the Task Force on Federal Regulation of Higher Education*, February 2015, pg. 7.
- <sup>7</sup> *Recalibrating Regulation of Colleges and Universities: Report of the Task Force on Federal Regulation of Higher Education*, February 2015, pg. 7.
- <sup>8</sup> Dunham at 752.
- <sup>9</sup> *Recalibrating Regulation of Colleges and Universities: Report of the Task Force on Federal Regulation of Higher Education*, February 2015, pg. 141
- <sup>10</sup> *Recalibrating Regulation of Colleges and Universities: Report of the Task Force on*

*Federal Regulation of Higher Education*, February 2015.

<sup>11</sup> *Recalibrating Regulation of Colleges and Universities: Report of the Task Force on Federal Regulation of Higher Education*, February 2015.

<sup>12</sup> See Dunham at 763, 783.

<sup>13</sup> Barbara A. Lee, "Fifty Years of Higher Education Law: Turning the Kaleidoscope," 36 *Journal of College and University Law*, 649-651, 2010.

<sup>14</sup> *Higher Education Opportunity Act*, Public Law 110-135.

<sup>15</sup> Codified at 20 USC 1092(f).

<sup>16</sup> See e.g. 2013 *Reauthorization of the Violence Against Women Act*, <http://www.govtrack.us/congress/bills/113/s47/text>; Department of Education Office for Civil Rights April 2011 Dear Colleague Letter, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.

<sup>17</sup> Penn State Scandal Fast Facts, CNN.com, updated Jan. 26, 2015. <http://www.cnn.com/2013/10/28/us/penn-state-scandal-fast-facts/>.

<sup>18</sup> UCLA spent \$4.5 million on legal costs in Sangji case, *Chemistry World*, Oct. 20, 2014, Royal Society of Chemistry. [URL: <http://www.rsc.org/chemistryworld/2014/10/ucla-spent-45-million-legal-costs-sangji-harran-case>].

<sup>19</sup> The Office for Civil Rights of the United States Department of Education is an oversight agency of the federal government that has jurisdiction over higher education institutions with regard to Federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education, including Title IX. Penalties for non-compliance can include an institution being deprived of the Federal funds they receive. U.S. Department of Education, Office for Civil Rights website, <http://www2.ed.gov/about/offices/list/ocr/index.html>.

<sup>20</sup> *Recalibrating Regulation of Colleges and Universities: Report of the Task Force on Federal Regulation of Higher Education*, February 2015, pg. 5.

<sup>21</sup> "2013 NACUA Compliance Survey," compiled by the National Association of College and University Attorneys.

<sup>22</sup> *Recalibrating Regulation of Colleges and Universities: Report of the Task Force on Federal Regulation of Higher Education*, February 2015.

<sup>23</sup> United States Department of Education, "Institutional Reporting and Disclosure Requirements for Federal Student Assistance Programs," <http://www.nacua.org/documents/DOEComplianceCalendar.pdf>

SOURCE OF COMPLIANCE: Federal Statute State Statute State Executive Order Institutional: Policy Procedure Contract Obligation Accreditation Requirement Other	CORRESPONDING REGULATION:	REPORTING REQUIREMENTS AND DEADLINES:	ADDITIONAL RESOURCES:	CAMPUS "OWNER" OF THE OPERATIONAL COMPLIANCE: Position Specific person Office
Academic Programs and Instruction				
Environmental Health and Safety/ Facilities				
Student Affairs Issues				
International Programs				
Immigration Issues				
Employee Relations				
Human Resources – recruiting and hiring, benefits, retirement, wages				
Tax and Finance				
Research				
Athletics				
Campus Affiliates/ Foundations				
Campus Safety				
Contracts and Procurement				
Accessibility/ Disability				
Diversity/ Affirmative Action				
Grants Management				
Governance				
Healthcare				
Insurance				
Information Technology, Security & Privacy				
Intellectual Property, Copyright & Technology Transfer				
Audit				
Governance				

**Appendix A:** One potential format for your institution's compliance matrix.

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