New Compliance and Ethics Program Roundtable

Society for Corporate Compliance and Ethics
Higher Education Compliance Conference
June 4, 2017

Discussion Agenda

1. Opening Remarks (10 min)

2. Themes for Open Discussion
   a. Understanding your role (20 minutes)
      – Ethics and Culture at your school
      – Codes and Hotlines
      – Working with faculty (shared governance and academic freedom)
      – Defining authority and reporting relationships
      – Measuring effectiveness with data and analytics
   b. Getting Started (20 minutes)
      – Creating the first risk assessment, matrix, and work plan
      – Building trust and buy in
      – Compliance committees
      – Attorney-Client Privilege and Open Records laws
   c. Growing the Program (20 minutes)
      – Working with General Counsel, Internal Audit, and Enterprise Risk Management
      – Training and Records
      – Policy Management (Yes, you need a policy on policies)
   d. Other Topics? (20 min for additional Q&A or follow up)

Resource Appendices

1. Comparison of Compliance Programs at Three Institutions of Higher Education
2. A Roadmap for Starting a Higher Education Compliance Program
3. Practical Tips for Implementing the Seven Elements for an Effective Compliance and Ethics Program at Your College or University
4. Effective Institutional Compliance and Ethics Program Self-Review
5. Higher Education Compliance Resources and Links

Moderators

Kenneth J. Liddle  
Director of Compliance  
Rice University

Kate Miller  
Manager of Institutional Compliance  
Massachusetts Institute of Technology

Leyda L. Benitez  
University Compliance Officer  
Villanova University
### Appendix 1. Comparison of Compliance Programs at Three Institutions of Higher Education

<table>
<thead>
<tr>
<th>Topic</th>
<th>Rice</th>
<th>Villanova</th>
<th>MIT</th>
</tr>
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<tbody>
<tr>
<td><strong>School Facts</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public/Private</td>
<td>Private</td>
<td>Private</td>
<td>Private</td>
</tr>
<tr>
<td>Location</td>
<td>Urban</td>
<td>Suburban</td>
<td>Urban</td>
</tr>
<tr>
<td>Faculty (FT/PT)</td>
<td>679/170</td>
<td>657/402</td>
<td>1,036/827</td>
</tr>
<tr>
<td>Staff</td>
<td>Approx. 2,000</td>
<td>Approx. 2,000</td>
<td>Approx. 2,500</td>
</tr>
<tr>
<td>Total Students (UG/G)</td>
<td>6,719 (3,910/2,809)</td>
<td>10,842 (6,469/3,057) Law: 786 Other: 530</td>
<td>11,376 (4,524/6,852)</td>
</tr>
<tr>
<td>Athletics Program</td>
<td>Yes, NCAA Division I</td>
<td>Yes, NCAA Division I</td>
<td>Yes, NCAA Division III (Except Rowing is DI)</td>
</tr>
<tr>
<td>Other School Attributes</td>
<td>Large research portfolio, no medical school, no religious affiliation</td>
<td>Religious affiliation (Catholic Augustinian), no medical school, small research portfolio</td>
<td>Very large research portfolio, no medical school, no religious affiliation</td>
</tr>
<tr>
<td>Accreditation</td>
<td>Southern Association of Colleges and Schools Commission on Colleges</td>
<td>Middle States Commission on Higher Education</td>
<td>New England Association of Schools and Colleges</td>
</tr>
<tr>
<td><strong>Compliance Program Attributes</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reporting Structure</td>
<td>The Director of Compliance Reports to the VP Finance/CFO, with a dotted line to the Board of Trustees Audit Committee, and is required to provide quarterly reports to the Audit Committee</td>
<td>University Compliance Officer reports to the University President and the Audit and Risk Committee of the Board of Trustees</td>
<td>The Manager of Institutional Compliance sits in the office of Risk Management &amp; Compliance Services and reports to the Institute Risk Officer, who reports to the VP/General Counsel. The office provides regular updates on risk and compliance to the Risk &amp; Audit Committee of the MIT Corporation.</td>
</tr>
<tr>
<td>Compliance Committee</td>
<td>The University Compliance Committee is made up of 30 individuals. This includes an Executive Committee, made up of 9 members of senior leadership. The full Committee met monthly for the first year, and now quarterly. The Executive Committee meets almost every month</td>
<td>There is a University Compliance and Ethics Program Advisory Committee with varied representation throughout campus including faculty members. Committee meets four times a year, unless additional meetings are deemed necessary by its Chair (University Compliance Officer).</td>
<td>We have established a Risk and Compliance Steering Group with 4 senior executives, which meets quarterly. We have also established a Risk and Compliance Advisory Team, with approximately 16 VP-level individuals from across the Institute, which also meets quarterly.</td>
</tr>
<tr>
<td>Matrix</td>
<td>Yes, Click Here</td>
<td>Yes, Compliance Directory Click Here</td>
<td>In progress</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Program Age</td>
<td>Began Spring 2015</td>
<td>Began Spring 2014</td>
<td>Began Fall 2014</td>
</tr>
<tr>
<td>Compliance Office FTE</td>
<td>1.25</td>
<td>4 (plus Title IX Coordinator)</td>
<td>1 (plus 2 for ERM)</td>
</tr>
<tr>
<td>Dedicated website</td>
<td>Yes, Click Here</td>
<td>Yes, Click Here</td>
<td>Yes, click here (Subpage of Risk &amp; Compliance Office website)</td>
</tr>
<tr>
<td>Hotline</td>
<td>Yes, allows for anonymous reporting by phone or online, 24/7. Hosted by EthicsPoint. The Hotline is administered by Internal Audit, with the Director of Compliance receiving all reports simultaneously.</td>
<td>Yes, allows for anonymous reporting by phone or online, 24/7. Hosted by EthicsPoint. University Compliance Officer administers the hotline with reports received simultaneously by UCO and designated OGC and HR representatives.</td>
<td>Yes, allows for anonymous reporting by phone or online, 24/7. Hosted by EthicsPoint. The Manager of Institutional Compliance administers the hotline and reviews all reports with the Institute Risk Officer, Institute Auditor, and an attorney from OGC.</td>
</tr>
<tr>
<td>University Code of Conduct/Ethics</td>
<td>Yes, Click Here</td>
<td>Yes, Click Here (various including comprehensive Mission and Values Statement)</td>
<td>Yes, click here</td>
</tr>
</tbody>
</table>

### Relationship to Other Areas

<p>| Enterprise Risk Management (ERM) | The ERM program is the responsibility of the VP Finance/CFO, and the Director of Compliance is the main administrator (i.e. manages the surveys and spreadsheets) | The ERM program is led by the Executive VP. University Compliance Officer supports the ERM program and is the sole overlapping member between the ERM Committee and the University Compliance and Ethics Program Advisory Committee. | ERM and compliance are housed in the same office, which reports to the VP/General Counsel. |
| Policy Management | Rice has a formal Policy Management Program, administered by the Director of Compliance. The policy can be found here. | Yes, Policy Management under development with the UCO acting as a clearinghouse for official University policies and procedures. | MIT does not have a policy office or a formal policy management program. MIT’s Institute Policies are maintained by the President’s Office, and employment policies are maintained by HR. |</p>
<table>
<thead>
<tr>
<th>Compliance Training</th>
<th>Compliance training is decentralized, although are implementing a central Learning Management System. Once completed, training content will remain decentralized, but delivery and record keeping will be centralized (for most compliance trainings)</th>
<th>Compliance training is decentralized. The University Compliance Officer reports on an annual basis on compliance-related training in major areas such as Athletics, EHS, IT, Minors, OGC, Research, Title IX, UCO</th>
<th>Compliance training is decentralized and handled at the local level. MIT has a learning management system which is used by certain areas very successfully (i.e. EHS) but many areas continue to manage and track their own training.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other functional areas under compliance</td>
<td>None</td>
<td>Yes: Minors on Campus—Youth Programs and Activities Criminal Background Screening Requirements for Student Volunteers Title IX Coordinator Policy Management (under development) Export Controls (under development)</td>
<td>None (although fairly involved with Minors on Campus issues)</td>
</tr>
<tr>
<td>Insider Tips</td>
<td>Reach out to your peers, and stay positive</td>
<td>Be patient and build trust</td>
<td>Establish strong connections with compliance stakeholders across the university; clarify your role v. the role of the people doing day-to-day compliance</td>
</tr>
<tr>
<td>You can quote me on that!</td>
<td>“Keep leaning forward, and you’ll get there”</td>
<td>“Slow and steady wins the race.”—Robert Lloyd</td>
<td>“Persistence pays off!”</td>
</tr>
</tbody>
</table>
A Roadmap for Starting a Higher Education Compliance Program

Kenneth J. Liddle
Director of Compliance
Rice University

Even for someone with experience in compliance or higher education, starting a program at a college or university can be a daunting task. I have read that a good first step is to “just do a compliance risk assessment,” which sounds like good advice until you stand in the middle of campus and try to figure out where to even begin. College campuses are essentially small towns, with different constituencies, gathered for various purposes, in a highly regulated industry that is constantly changing.

This article outlines a simple roadmap of practical steps that you can accomplish (or at least begin) in the first six months of your program. You should tailor this to your institution, your priorities, and your known risks – or to put that another way, this is one practical approach to reviewing all areas of compliance, but if you see that something’s on fire you might want to start there!

I. First Things First – Vision and Culture

You have to understand the vision, or why you are starting this program in the first place. Ask yourself, what are you trying to accomplish? Is the compliance program part of management or the board? Is the purpose of the program oversight or is it service and support (though these are not mutually exclusive)? What are the reporting relationships for compliance? How does this office/function relate to other offices such as internal audit and general counsel? How and when will compliance report findings or issues to the senior leadership, or the Board?

You have to understand the culture of your campus. How will leadership support the development of the program, and how will they support the program against pushback? Who has the authority to make change happen? It is also important to consider what other functions exist that support compliance objectives, such as an enterprise risk function or a training department, or offices such as internal audit, insurance, or general counsel. Many universities have a Compliance Committee which is an effective way to include stakeholders, break down stovepipes, and communicate about priorities and best practices.

These are questions you work out with your leadership, and discuss with your board. It is not necessary to understand everything at this point, but you want to ensure that you have a vision, and senior level support for that vision.

1 Copyright 2017, used by permission. A version of this article will appear in an upcoming issue of Compliance and Ethics Professional, a publication of the Society of Corporate Compliance and Ethics.
II. The Three Tiered Compliance Risk Assessment

Once you understand the vision and culture, you will need to begin to assess the compliance landscape on your campus. By following the “Three Tiered Compliance Assessment” you can identify roles and responsibilities, and determine what areas are at the highest risk (i.e. where to focus your early efforts).

You may find that many of the components of an effective ethics and compliance program already exist. For example, you may already have an anonymous hotline or a code of conduct, and you likely already have many successful internal controls in place. You will also likely find that the compliance efforts of some departments are being competently managed, whereas others are not.

1. Tier 1. High Level Compliance Risk Review – Who is who, who does what, and what is in place?

As a starting point, Compliance should lead a review against the elements for an effective compliance and ethics program (i.e. the Federal Sentencing Guidelines). Use this process to engage leadership and others on the concept of ethics, and discuss your values and Code (either an existing one, or the development of one). It is more than just assessing what is (i.e. that the box is checked), it is really about engaging leadership on what should be!

Another great way to get going is to have Compliance lead the development of a Compliance Matrix, which identifies a responsible party for each regulatory area. You will likely find while putting together the matrix that certain areas lack clear ownership either because everyone says “not my job” or because multiple people say “hey, that is my job.” It is important to involve senior leadership in resolving these orphans and custody battles, as they are a source of compliance risk (and one that can be eliminated).

The matrix should be widely disseminated and available to staff and faculty (remember to keep it up to date). If you will have a Compliance Committee, I would consider involving them in both of these reviews. It should get them interested and engaged in the program.

Finally, perhaps it goes without saying, but I would also include in Tier 1 any obvious and known risk (e.g. wait, we don’t have a Title IX program?!?).
2. **Tier 2. Mid-Level Compliance Risk Review – Understanding how your campus is currently managing various compliance areas/risks**

Early in the program Compliance should meet with the individuals responsible for each of the functional compliance areas to assess the basic function and risk in that area. It is important that these meetings be productive, and perhaps slightly provocative. You want to get beyond “what keeps you up at night” and really probe into policies, practices and “hot topics.”

It is important that you prepare for these meetings, and that cannot be overstated. You are speaking to a subject matter expert about their own area of expertise, so to be effective you should be both knowledgeable and respectful. Your goal is to understand the basic program and the risk, while demonstrating that you are knowledgeable, curious, and someone who understands the issues.

- Make sure you read any available policies or procedures on the area.
- Consult with your Internal Audit and Legal ahead of time and ask about their concerns in the compliance area (and get copies of reports, if you can).
- Read the news, and any recent government reports/memos. You must be aware of what is going on in their world.
- Be positive and friendly, and use words like we and ours (instead of you and yours) to communicate that you are part of the team and the solution.

### Sample Tier 2 questions that are better than “What keeps you up at night?”

- Do we have a policy? Is our policy up to date? Do you follow that policy? Do other people follow that policy? Should that policy be updated?
- Do you get the support you need from other departments?
- Do we train on that? Do you have a record of that training? Is it accurate?
- Has the Government (or relevant authority) reviewed us on this? How did we do (and please send me the report)? Do you think we are ready for a Government audit/review in this area?
- When the Government did X recently, how did we respond?
- University X just got fined/bad press for this, can that happen here? How do we ensure that it doesn’t?

3. **Tier 3. The Detailed Compliance Regulatory Review**

It is likely in any governmental review or audit that the auditor will have a long checklist of specific requirements. As such, it is important that Compliance (in conjunction with Internal Audit and others) review the university’s performance against individual regulations. Obviously, this type of detailed compliance review is time consuming, but nevertheless it is important to review every area at a detailed level, at least periodically. One way to simplify the process is to have the functional compliance area do a regulatory self-review and present it to Compliance (or perhaps the Compliance Committee). Compliance will then use this self-review as the basis for further review. Make sure they include citations and source documents.

In deciding what to review first, consider your initial risk assessment (Tiers 1 and 2), prior internal audit reports, prior regulator activity on campus, staff turnover concerns, and any recent government pronouncements, programs or activities at peer institutions, or anything else that may be relevant. In today’s climate, I would consider a detailed review of Title IX to be essential. Other early candidates for a detailed review include Clery Act or Title IV (including the Higher Education Opportunity Act).
III. Putting it all Together

As you identify areas that need improvement and noncompliant practices you will need to communicate your findings. It is important that the appropriate senior leadership or board committees are made aware of issues, as appropriate. As a practical matter, I usually like to share my concerns and a proposed resolution with the individual most directly involved before I report to a supervisor or leadership (unless there is a specific reason not to do so).

How involved Compliance is in implementing change in the functional areas will vary with the particular issue, individuals, and from school to school. Generally, the functional area has the primary responsibility for enacting change, with Compliance facilitating communication and scheduling (i.e. keep everyone moving towards the same goal). It is not uncommon for Compliance to be viewed by functional areas as a source for guidance or leadership, particularly with cross functional issues (such as minors on campus, or Title IX).

You should also develop a simple tool or spreadsheet to track issues and their current status. The Compliance program will likely be responsible for tracking actions items and deliverables from a variety of initiatives across multiple departments, and it may issue progress reports to leadership or to the board.

When thinking through your system for tracking and communicating, it is important to discuss it with your legal department. Compliance reports and records are usually not covered by the attorney-client privilege, and may be subject to state open records laws (in the case of public schools) or to subpoena in legal actions (in the case of all schools).

Finally, the two best pieces of advice I can give anyone starting a program are 1) keep leaning forward towards your goals, and 2) stay positive! It may seem daunting at first, but by taking a methodical and structured approach to understanding your institution, and the structures already in place, you can put together a work plan that will provide an enduring foundation for your success.
As you embark upon the journey of designing and implementing a compliance and ethics program at your institution, it is important to note that there are many and varied ways to achieve this goal. Though the general framework can be found in Chapter 8 of the U.S. Sentencing Guidelines, many of the program’s attributes will be unique to your institution based on where it is currently in terms of its compliance readiness and infrastructure, and its stated strategic and operational priorities. Once implemented, the program will provide many benefits, including to demonstrate the institution’s due diligence in preventing and detecting violations of law and to promote a culture that encourages ethical conduct and a commitment to compliance with the law.

The U.S. Sentencing Guidelines set out the seven elements that a compliance and ethics program must minimally include in order to be deemed effective. Basic questions to ask, as you start out, center on your institution’s commitment and readiness to create such a program. First, has your institution made the commitment to design and implement a compliance and ethics program though its senior leadership and governing board? The support that you receive from your senior leadership is essential to the success of your program. Second, will the program be designed, implemented and enforced in such a way as to be effective in preventing and detecting wrongful conduct? As you review the universe of existing compliance risks, you will come to better understand the role that your community must play in the promotion of a culture that stresses ethical conduct in all that they do. Third, how can the institution demonstrate that it has implemented each of the seven elements for an effective compliance and ethics program? Your institution likely already has some of the infrastructure in place to address compliance risks. You should seek to strengthen this existing infrastructure as you work to build out your program around the seven elements.

This article seeks to impart some practical tips on how to build your program and is based on my years of experience in the higher education legal and compliance fields, which include starting new programs at two institutions of higher education. I will first provide some general thoughts regarding building the program initially, followed by some considerations on the design and implementation of each of the seven elements.

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1 This article was originally presented at the New Compliance and Ethics Program Roundtable as part of the Society for Corporate Compliance and Ethics (SCCE) Higher Education Compliance Conference on June 4, 2017. The opinions expressed herein are the author’s own opinions and do not reflect the views of her current or any former employer.
I. **Starting Your Program at an Institution of Higher Education**

a. “Who are you and what are you doing at my institution?”
   
i. You need to know how you will answer this question, because it will be asked by members of your University community—faculty, staff, and students. It will also be asked by senior leadership, members of your board, alumni, and individuals external to the institution, but who have an interest to know (*e.g.*, your institution’s regulators).
   
ii. It is great that they ask, but you need to understand why they are asking—is it, because all of the sudden, you have become responsible for all things “compliance” at your institution? How often can you hear it be said, “Oh, we do not need to worry about that issue, it is a compliance issue, and we have a compliance officer now.”
   
iii. You will need to be able to explain your role which is, by all accounts, multi-faceted. For example, given your institution’s compliance readiness and infrastructure as a whole, your role may become operational in some instances such as when you are tasked with implementing a new law or regulation. For the most part, your role seeks to ensure that the institution is ready to address the compliance risks applicable to your institution, based on a thorough understanding of your environment.

b. “Compliance is everyone’s responsibility”
   
i. It is clear that a single person in his/her representative capacity cannot “own” institutional compliance. Rather, a properly functioning institution from a compliance and ethics perspective is one wherein its members, in this case employees and students, know enough about the compliance and ethical obligations of what they are bound to do so that at the very least they know when to take a pause, raise a question, voice a concern. Know enough, in essence, to understand when they should consult with someone else within the institution before putting themselves or others at risk of harm—whether operational, reputational or financial.

c. “It takes time, energy and patience to build trust”
   
i. As you start your new program, take the time to go out and meet as many individuals within your institution as possible…Ask to be invited to meetings, whether they be administrative or academic in nature, to describe what it is you are planning to do for the institution and who it is you really are (not the end all in compliance, but merely a conduit, a facilitator, an overseer, an advocate, at times, even a mediator, and many other roles).
   
ii. To build trust takes time, but once you do, your ability to build an effective program, and to serve your institution to its betterment, increases exponentially.

II. **Relying on an Established Framework**

a. “Don’t forget about the seven elements”
   
i. Not only should you not forget about the seven elements, you should go around campus educating as many individuals within your community as possible. The reason behind this is simple—the elements make sense! Think about the myriad of complex regulations that institutions of higher education have been responsible for implementing within the past five to ten years, and then think about the mechanisms they have used to do so—have they been as effective as if our institutions had adopted the compliance and ethics program framework in order to bring about this implementation or change?
ii. Much too often institutions of higher education have pushed forward on a compliance and ethics issue only after a tragic event or outcome brings to light the lack of internal controls existing to address the specific area of risk. In the area of safety and health some recent examples are hazing and Greek life, underage drinking, sexual assault, protection of minors visiting our campuses, and laboratory safety. In the non-safety or health related areas, examples include freedom of speech, financial conflicts of interest, disclosures related to financial aid processes, and copyright infringement, just to name a few.

iii. Why then not adopt a framework that allows institutions to proactively review their status of readiness for addressing these compliance risks, before they materialize, before they become a violation of law or worse, a tragedy? Institutions of higher education have, for time immemorial, prided themselves on being at the forefront of the advancement of knowledge. Why not also seek to position themselves to be at the forefront of the advancement of a framework that allows for the systematic review of risks and the institution’s state of readiness to address them?

b. “Elevating the visibility of the seven elements through your office’s work plan”
   i. So now we start addressing the mechanics of it all. One way to increase the visibility of the seven elements is to specifically make them a part of your office’s/function’s annual work plan. Once you have conducted a preliminary risk assessment, you should develop a work plan that will serve to provide notice, accountability and transparency regarding the areas that you will prioritize from a compliance and ethics perspective. The time that you have available to draft and present your priorities for the new fiscal year will determine to a great extent the level of detail and specificity in your initial work plan.
   ii. Don’t forget to include how you plan to build out the seven elements—If you are uncertain as to how all of the various “pieces” will fit together there is no shame in raising questions or concerns either as part of your plan or as part of your discussions with senior leadership. Their guidance and support are invaluable as you embark upon building the program.
   iii. At least one section of your work plan in subsequent years should address the elements you will focus on further developing and strengthening. For example, will you have an opportunity to focus on the status of your compliance policies as a whole, or code of conduct? Will you work with operational compliance leaders in streamlining compliance-related education and training? Is there room for improvement on the communication and utilization of the hotline services? Do you have a hotline and, if not, will this be the year that you focus your efforts on implementing one?

III. Practical Pointers for Implementing the Elements within an Institution of Higher Education

a. First Element: “Establish and Maintain Compliance Standards and Procedures”
   i. Get to know your institution’s policies, whether they are compliance-related or not. Only then will you be able to conduct a gap assessment as it relates to your compliance and ethics policies. And yes, you cannot enforce, or seek to enforce, what you do not know.
   ii. Get to know who your policy owners are. This is not always an easy task within institutions of higher education. Sometimes, policy statements overlap, contradict, or both because of the tendency of institutions of higher education to operate in silos. If you have a hard time understanding your policies, your institution needs to do more than just have a policy statement in place. More and more, the complexities of the regulations are leading institutions to develop lengthy, dense policies that are difficult to read and to understand. If
this is the case for a particular policy, what then does the oversight area have in place to explain this policy to the University community? Is education around the policy’s complexities taking place?

iii. Know your policy environment and, at the end of the day, you may end up owning it. There are a number of institutions wherein the policy function resides within the University Compliance Office. This does not need to be the case, but often ends up that way. This is an area where you should give careful thought and consideration as to what is the current status of policies, specifically those that are compliance-related. Are there well understood and followed processes around approval for new policies, review and revision cycles?

iv. Who owns the communication regarding the policy’s existence? Does this responsibility fall under the Vice President who has oversight for the policy, is it delegated to another operational area, or to your office? These are all important questions, the answers to which you need to know, understand and feel comfortable with. At the end of the day, the policies implementing compliance requirements are at the core of a healthy compliance and ethics environment.

b. Second Element: “Governing body knowledgeable about the compliance and ethics program and high-level personnel designated as responsible”

i. Reporting on a regular basis to the senior leadership and governing body is key. What form these reports take will depend upon the nature of your work plan and how you structure your periodic reports, in accordance with the reporting relationship that is established between your office and, in particular, the governing board. Identifying the most critical points of each compliance issue or initiative for purposes of communication is at times a difficult task, but always worthwhile.

ii. As we all know, we are living at a time of information overload. How to distill the information that the members of your governing board need to know as to how your institution is doing starts initially a bit as “trial and error.” Sometimes you may be viewed as providing too much detail while in other moments you may leave out something you are working on that then becomes the center of everyone’s attention. The goal here is to capture the essence of what you are doing, what you are encountering, and how you are going about addressing the issues as these come along. Integrity, timeliness, and accountability—these are all key ingredients in keeping your senior leadership and governing board informed. In return, the input you will receive from them will help you understand their worries, perceptions, and priorities.

c. Third Element: “Exercise due care in assignments with substantial discretionary authority”

i. In order to implement this element, you need to review and understand your policies and state laws regarding positions that require clearances including, without limitation, criminal background clearances. Once you have done this, you can review and assess whether these policies and laws have been appropriately implemented. You can also determine whether ethically there are areas where the institution should be doing more than the minimum (remember, the law is a floor, not a ceiling).

ii. In order to navigate this arena, you will need to work closely with your Office of the General Counsel and Human Resources leaders and, depending upon your institution’s hiring practices for faculty, your Office of the Provost or designated Academic Affairs representative.
d. Fourth Element: “Effectively communicate the standards and procedures (through dissemination of information, education and training tailored to respective roles and responsibilities)”

i. Develop a general presentation on compliance and ethics that is concise, to the point, and can be provided to multiple audiences.

ii. Become a part of new employee orientation. This will give you an opportunity to meet and greet new employees and to let them know about the compliance and ethics program and function. The training should cover the fact that employees can and should feel free to ask questions, without fear of retaliation and that your office is there to assist them should they have any concerns. This is also the time to let your new employees know of the existence of the compliance hotline.

iii. Seek an invitation to speak with faculty members during their orientation activities. This usually will take some time for buy-in, as institutions have precious little time with their faculty members during orientation and so many different topics to cover. Make your presentation to the faculty interesting, brief, and work at their level. For example, an interactive, case-based compliance and ethics education session may be better received than a lecture style Power Point presentation especially when the sessions give the opportunity for your various compliance functional leaders to interact with your new faculty.

iv. Work with operational compliance leaders to understand the type, nature, and frequency of education and training they are offering. Find ways to capture these offerings on an annual basis to inform your senior leadership and governing board.

e. Fifth Element: “Establish monitoring, auditing and reporting systems (complaints without fear of retaliation) and evaluate periodically the effectiveness of the program”

i. This one is a complex element to implement and what follows are some preliminary thoughts on how to get there. First, if your institution has not established a hotline, you are well served in spending the time needed to develop the support to establish one. In our institutions, in particular, there are specific concerns around anonymity and academic freedom. There is the thought that allowing individuals to voice their compliance-related concerns, anonymously, will destroy the fundamental ability and value of an academic environment which is open to discourse, dissent, disagreement and controversy. One way to allay these fears is to let the faculty members know, through the appropriate representatives, that the hotline does not supplant processes that otherwise exist at the institution to handle concerns based on their issue type, whether these concerns are based on civility, grade appeals, academic integrity issues, or other. Thus, the hotline serves as a conduit wherein the reports get referred to the appropriate processes (with due consideration of course to the fact that the person who is the subject of the hotline concern may also oversee the particular process, but in most instances core academic policies address these eventualities).

ii. Second, it is helpful for your community to know that it is not only the compliance officer who receives the hotline reports and determines next steps, but a hotline reports review committee. The committee should be small (3 individuals/offices is optimal). This would help to assure your community that these reports are received by individuals who care, have the requisite authority, and will take the matters reported seriously.

iii. Third, you must take every precaution to assure the hotline users and participants in any hotline report investigation that the institution does not tolerate retaliation of any kind for reports made in good faith.
iv. Fourth, you must start getting a sense for the types of compliance-related concerns that are coming in not only through the hotline, but through the various academic and administrative offices. This is indeed a complex undertaking and one for which you will need to understand all administrative and academic offices that are currently receiving and handling complaints at your college or university.

v. Fifth, you would do well to track, from the onset, information that will help you determine whether there are any patterns or trends around areas of compliance risk that are repeatedly coming to your attention—and what is your proposed course of action for addressing these matters as they come up.

vi. Sixth, and it is beyond the scope of today’s article, you should think of ways in which you can develop a “baseline” of where the institution is as you start your program, and how and in what direction it moves given the attention provided to the specific compliance area or concern through an initiative, a work plan, a corrective action, or other such prioritization.

f. Sixth and Seventh Elements: “Consistently enforce standards through appropriate mechanisms” and “Respond appropriately to the criminal conduct and to prevent further similar criminal conduct from taking place”

i. These elements are addressed together because they are two faces of the same coin. There is nothing more harmful to the credibility of a compliance and ethics program than for there to be a concern or a fear that by raising a compliance-related question some type of adverse employment action will result. Thus, it is critically important that the institution have processes in place that serve to fairly and objectively assess a set of facts, reach a conclusion or determination, and put a process in place to operationalize this determination.

ii. In this area, for institutions of higher education, one or more offices may come together to plan out a course of action or result including legal, compliance, audit and risk, depending on the facts at issue. In instances in which employment action is possible, Human Resources and other appropriate offices should be involved.

iii. It is critical for the compliance office to have strong, positive working relationships for the institution to be effective in addressing an instance of noncompliance. Other institutional representatives may also need to be involved depending upon the nature of the issue. For example, is it laboratory safety or research compliance related? Does it involve a matter of NCAA rules compliance? At the end of the day, the goal is to have institutional processes in place that are mature, understood, respected, followed and collaborative.

G. The Common Core to the Seven Elements: “Periodically conduct risk assessments and take reasonable appropriate steps to modify each requirement based on these risk assessments”

i. The greatest challenge for us all is understanding the compliance readiness of our institutions—not just one issue in one area, but all issues in all areas; not just things you know, but also things you do not know; not just laws and regulations that exist now, but laws and regulations that are being formulated; and finally, not just ethical principles and challenges that exist now, but those that are potentially lurking behind every new law, technological advance, research initiative, use of data, etc.

ii. We keep ourselves in check, on the right track, in helping our institutions navigate through these issues through the conduct of periodic risk assessments. The time that you spend in formulating how to conduct these, who to bring to the table, what information to elicit, and how to group this information together, will be well-spent.
iii. The risk assessment must inform each of the seven elements—e.g., do you have appropriate policies in place, do you need new training, are there new processes that need to be developed to address this eventuality?

IV. Conclusion

As you continue to move forward toward the implementation of your institution’s compliance and ethics program, you should expect it to be a long, complex, and intrinsically rewarding adventure. You are not alone in these efforts—the support of your senior leadership coupled with greater awareness of compliance risks by your community will serve to strengthen the existing compliance infrastructure. Remember that you will need to formulate your institution-specific answer to the simple question—“Who are you and what do you do?” By equipping you with this information early, from the start, it is my hope that you will be better prepared to respond, react, and thrive in your environment, as you work hard to build out your institution’s program and function.
Appendix 4. Effective Institutional Compliance and Ethics Program - Self Review

The following chart contains the text of the U.S. Federal Sentencing Guidelines, grouped into seven categories (typically thought of as the seven basic elements of an Effective Compliance and Ethics Program).

For each requirement, make a statement regarding how your institution would demonstrate that it meets that particular requirement. It is very important that for every assertion you make (e.g., “we always do ABC” or “XYZ is required”) you must cite to an appropriate policy or document that supports your claim. Many of these requirements are generally found within a Code of Ethical Conduct and/or the chartering documents for the Compliance and Ethics Program.

You will need to address any area where the current practice does not meet the requirement (or where you cannot produce a document or policy to back it up). Use the third column for your notes about necessary or practical improvements that may be needed (you may also keep this information as a separate document).

Tips:

- Be honest, and view the program with a skeptical eye;
- Be mindful of writing overly prejudicial statements, the main focus is on documenting what you have in place (as opposed to what you don’t have);
- This exercise is for the Compliance and Ethics Program at the institutional level, but you can use these basic elements to conduct a similar exercise for each functional area of compliance.
- For a different approach to the elements, the Department of Justice has also issued recent guidance on Evaluation of Corporate Compliance Programs
<table>
<thead>
<tr>
<th>US Federal Sentencing Guidelines Requirement</th>
<th>Review Questions (Must provide written documentation)</th>
<th>Necessary or Proposed Changes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Leadership, oversight and accountability</strong></td>
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<tr>
<td>(b)(2)(A) The organization’s governing authority shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program.</td>
<td>How are they knowledgeable? How do they exercise oversight? (NOTE: these questions are just for your information, you should delete them and use this box to document your responses)</td>
<td></td>
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<tr>
<td>(b)(2)(B) High-level personnel of the organization shall ensure that the organization has an effective compliance and ethics program, as described in this guideline. Specific individual(s) within high-level personnel shall be assigned overall responsibility for the compliance and ethics program.</td>
<td>Who is responsible, and how do they ensure effectiveness?</td>
<td></td>
</tr>
<tr>
<td><strong>2. Standards of conduct, policies and procedures</strong></td>
<td></td>
<td></td>
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<tr>
<td>(b)(1) The organization shall establish standards and procedures to prevent and detect criminal conduct.</td>
<td>What has been established to prevent? What has been established to detect?</td>
<td></td>
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<tr>
<td><strong>3. Education, communication and awareness</strong></td>
<td></td>
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<tr>
<td>(b)(4)(A) The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the individuals referred to in subparagraph (B) by conducting effective training programs and otherwise disseminating information appropriate to such individuals’ respective roles and responsibilities.</td>
<td>How is this program communicated to 1) The board? 2) Senior leadership? 3) Supervisors/Management? 4) Faculty? 5) Staff? 6) Students? 7) Third parties/vendors?</td>
<td></td>
</tr>
<tr>
<td>(B) The individuals referred to in subparagraph (A) are the members of the governing authority, high-level personnel, substantial authority personnel, the organization’s employees, and, as appropriate, the organization’s agents.</td>
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<td><strong>4. Appropriate delegation of authority</strong></td>
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<td>(b)(2)(C) Specific individual(s) within the organization shall be delegated day-to-day operational responsibility for the compliance and ethics program. Individual(s) with operational responsibility shall report periodically to high-level personnel and, as appropriate, to the governing authority, or an appropriate subgroup of the governing authority, on the effectiveness of the compliance and ethics program. To carry out such operational responsibility, such individual(s) shall be given adequate resources, appropriate authority, and direct access to the governing authority or an appropriate subgroup of the governing authority.</td>
<td>Who has operational responsibility? How do they report to high level personnel and the government authority? What is that person’s authority (and how is it documented)? What resources does this person have?</td>
<td></td>
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<tr>
<td>(b)(3) The organization shall use reasonable efforts not to include within the substantial authority personnel of the organization any individual whom the organization knew, or should have known through the exercise of due diligence, has engaged in illegal activities or other conduct</td>
<td>How do we screen for criminal conduct? When do we screen (e.g. at hire, at promotion, every 10 years…)?</td>
<td></td>
</tr>
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</table>
5. **Enforcement, discipline and incentives**

(b)(6) The organization’s compliance and ethics program shall be promoted and enforced consistently throughout the organization through

(A) appropriate incentives to perform in accordance with the compliance and ethics program; and

(B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.

- What incentives are there? (Note, keeping your job is not an incentive)
- What disciplinary measures are there?

6. **Auditing, monitoring and risk assessment**

(b)(5) The organization shall take reasonable steps—

(A) to ensure that the organization’s compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct;

(B) to evaluate periodically the effectiveness of the organization’s compliance and ethics program; and

(C) to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization’s employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.

- How do we evaluate or monitor the program’s effectiveness? And how often?
- What system do we have for anonymous reporting (e.g. hotline)? How is this system publicized?

§8B2.1(c) In implementing subsection (b) [the compliance and ethics program], the organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement, or modify each requirement set forth in subsection (b) to reduce the risk of criminal conduct identified through this process.

- What is our risk assessment process, specifically as it relates to criminal conduct?

7. **Ongoing program improvements**

(7) After criminal conduct has been detected, the organization shall take reasonable steps to respond appropriately to the criminal conduct and to prevent further similar criminal conduct, including making any necessary modifications to the organization’s compliance and ethics program.

- What have we done (or what would we do)?
- Where is this documented (e.g. Code, program charter)?
Appendix 5. Higher Education Compliance Resources and Links

General Compliance Resources
- Higher Education Compliance Alliance (mostly free)
- Society for Corporate Compliance (membership required to access resources)
- National Association of College and University Attorneys (membership required to access resources)
- Council on Governmental Relations (institutional membership required to access resources)
- Institutional Reporting and Disclosure Requirements (Free, and important!)

Ethics and Compliance Programs
- Can Universities Foster a Culture of Ethics? Some Are Trying (Free, Chronicle, 2017)
- Establishing an Effective Compliance Program: An Overview to Protecting Your Organization (Free, ACC)
- The Blueprint: Practical Steps for Rolling Out a Compliance Program, then Keeping it Moving Forward (NACUA, 2013)
- Department of Justice guidance on Evaluation of Corporate Compliance Programs (Free, DOJ, 2017)
- University Ethics: How Colleges Can Build and Benefit from a Culture of Ethics ($33 retail)

Enterprise Risk Management
- Building a Proactive Compliance Program in Higher Education (Free, URIMA, page 35)
- Good Risk Management is Good Governance (Free, AGB)
- Risk Management: An Accountability Guide for University and College Boards ($49, ABG)
- Enterprise Risk Management – Integrated Framework Executive Summary (Free, COSO)

Policy Management
- Association of College and University Policy Administrators (membership required to access resources)
- Policy Writing and Management (NACUA, 2015)
- Peer Examples (with other resources): Kansas; Minnesota; Purdue

University Compliance Matrix Examples
- Rice; Washington and Lee; Stanford; Dartmouth

Codes of Ethics and/or Conduct Examples
- Rice; NYU; Northeastern; Tennessee

Reporting Hotlines
- Hot to Build a Compliance Hotline Employees Actually Trust (Law 360)
- Some hotline providers provide analytics on hotline utilization and other significant data. One example is Navex Global (aka EthicsPoint). You may request their report here.

Measuring Effectiveness