

Minding the Gaps:

UNDERTAKING A LARGE-SCALE COMPLIANCE GAP ANALYSIS IN
HIGHER EDUCATION

Minding the Gaps

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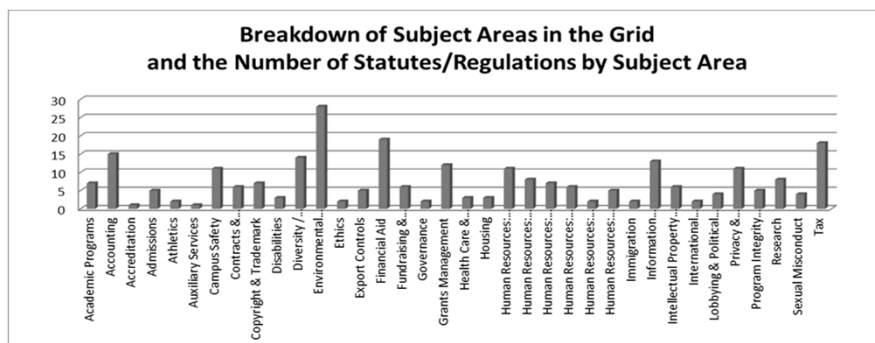
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Background: Why We Undertook a Gap Analysis

- Newly unified compliance office combining:
 - Research Compliance Function
 - Non-research Compliance Function
- Office adjusting to new and expanded scope and the need to set priorities
- Where/how to begin?

The Higher Education Compliance Alliance Compliance Matrix

- The Matrix contains 200+ major federal laws and regulations that govern universities



Available at <http://www.higheredcompliance.org/matrix/>

The Matrix as a Starting Point

- The What – the matrix identifies federal laws / regulations that apply to colleges and universities
- The Who?
- The How?

The Gap Analysis

- Identify the operational owner of issues and conduct a gap analysis
- Purpose of the Gap Analysis:
 - Shed light on the current state of compliance
 - Guide prioritization of future efforts
- Benefits:
 - Uncovering “opportunities”
 - Planning (setting priorities) - finite resources/infinite scope
 - Building relationships

The Higher Education Compliance Alliance Matrix

- Topic
- Statute
- Regulation
- Statutory Summary
- Reporting Requirements & Deadline

Topic	Statute	Regulation	Statutory Summary	Reporting Requirements & Deadlines
Accounting	Clayton Antitrust Act of 1914 15 U.S.C. §§ 12-27		Enacted as a supplement to the Sherman Act. Prohibits price discrimination, conditioning sales on exclusive dealing, mergers and acquisitions when they may substantially reduce competition, and serving on the board of directors for non-competing	Not Applicable
Contracts & Procurement	Anti-Kickback Act of 1986 41 U.S.C. §§ 8701-8707	48 C.F.R. § 3.502-2	Prohibits any payment or gratuity made for the purpose of inducing award of a subcontract or prime contract with the Federal Government	Not Applicable
Contracts & Procurement	Copeland Anti-Kickback Act 18 U.S.C. 876 40 U.S.C. § 3145	29 C.F.R. § 9	Requires contractors and subcontractors on public buildings or works financed by loans or grants from the U.S. to furnish a weekly statement of wages paid	Requires contractors and subcontractors on public buildings or works financed by loans or grants from the U.S. to furnish a weekly statement of wages paid
Contracts & Procurement	Trading with the Enemy Act 22 U.S.C. §§ 7202-7211 (currently affects Cuba & N. Korea)	31 C.F.R. § 500	Assets Control Regulations of the U.S. Department of Treasury require persons subject to U.S. jurisdiction to have a license to engage in certain transactions related to travel to, from and within regulated countries	Not Applicable
Copyright & Trademark	Small Webcasters Settlement Act of 2002 Law No. 107-321	37 Fed. Reg. 45,239	Applies to "Noncommercial Webcasters" and to "Small Commercial Webcasters." Requires SoundExchange, the recording industry's royalty collection organization, to enter into royalty rate agreements with small commercial and noncommercial webcasters.	Stations that average under 75 simultaneous users will have the option of submitting reports of use that do not require any audience data (SR or AR) or paying a \$200 annual fee in lieu of any reporting. Stations with an average concurrent audience of over 75 will be required to submit reports of use, but they will not have to submit audience data. The fee for these stations remains at \$500 annually through 2010 unless the station has an AR or SR, SR or SR average concurrent users in any month.

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Conversion to Gap Analysis

- **Responsible Office/Unit:** name(s) of the university unit(s) determined to have operation responsibility for compliance with the statutory/regulatory provisions

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Conversion to Gap Analysis

- Confirmation Law/Regulation Falls within Unit's Scope:**
 Statement of confirmation from the unit that it acknowledges law/regulation falls within its scope or a note explaining how/why the regulation does not fall within the unit's scope.

Conversion to Gap Analysis

- Statement as to Whether or not the Requirements of the Laws/Regulations are Being Fulfilled:** Description of the manner in which the unit is meeting the applicable legal/regulatory requirements, along with comments, if any, as to portions of the requirements that are not being met.

Conversion to Gap Analysis

- Mechanism/Process for Ensuring Compliance:** Description of the policy, process, training program, or other activity that is used to ensure compliance with the legal/regulatory provision at issue.

Conversion to Gap Analysis

- Description of Records Maintained to Document Compliance:** Description of documentation the unit maintains to demonstrate compliance.

From Matrix to Gap Analysis

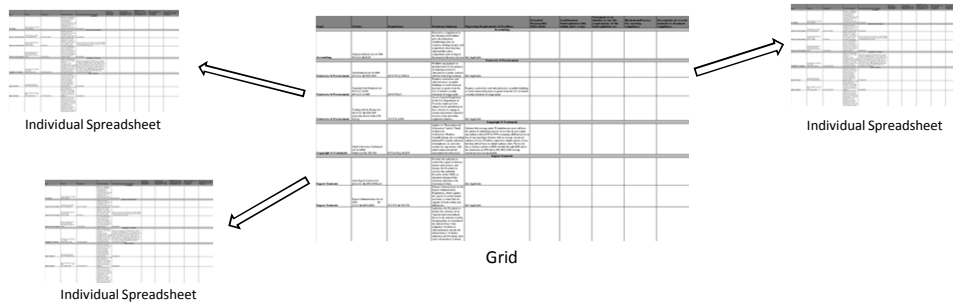
The modified matrix allows you to:

- Identify and categorize federal laws and regulations
- Identify the operational unit(s) that have primary responsibility for ensuring compliance
- Undertake high level review of units' compliance with the laws and regulations within their jurisdiction

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Starting Point

1. Identified possible operational home(s) for each law/regulation
2. Divided the Grid into individual spreadsheets
3. If more than one unit may be responsible for compliance with a law, it was included in each spreadsheet

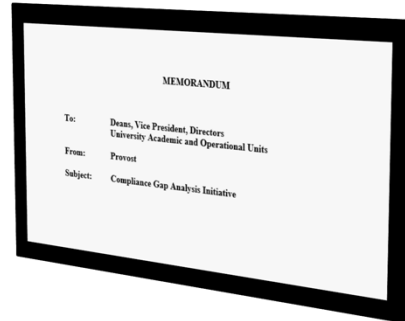


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Outreach & Communication Plan

Email to leadership/point person for each unit:

- A project announcement from the Provost
- A copy of their section of the Grid
- A request for their participation and input



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Outreach & Communication Plan

Organized into two categories:

- I. For units with ≥ 10 items
 - one meeting to answer any initial questions
 - one close-out meeting to review responses
 - II. For units with < 10 items
 - close-out meeting to review responses
- Additional meetings as needed

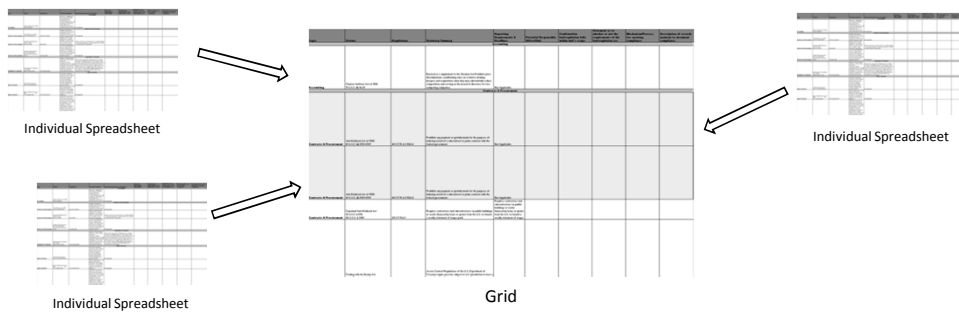
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Data Review

- Responses reviewed prior to close-out meeting
- Items for clarification flagged for discussion
- Occasional follow-up beyond the close-out conducted via in-person discussion, email, and/or telephone
- New leads tracked down as the information-gathering stage progressed

Data Compilation

- Compiled individual spreadsheets (organized by owner) back into master grid (organized by issue)
- Laws with multiple owners are identified and flagged



Analysis & Risk Assessment

Analyzed information provided and sorted the findings into one of four categories:

- 1) Appropriately Addressed
- 2) Lacking an Operational Home
- 3) Requiring Additional Action
- 4) Requiring Further Review

Analysis & Risk Assessment

Category 1 – Appropriately Addressed

- Defined compliance home within an identified operational unit
- Unit demonstrates, via appropriate documentation, that it has taken steps to ensure compliance with the specified law/regulation

Analysis & Risk Assessment

Category 2 – Lacking an Operational Home

- Cannot be linked to a specific operational unit's scope

Analysis & Risk Assessment

Category 3 – Requiring Additional Action

- Can be linked to an operational unit's scope, but additional action on the part of the unit required to ensure compliance with the applicable laws and regulations.
- Unable to provide sufficient assurance that appropriate policies, processes, training, or other measures were being taken to ensure compliance.

Analysis & Risk Assessment

Category 4 – Requiring Further Review

- Information gathered from unit was insufficient to determine whether additional action was necessary to ensure compliance
- Two major reasons:
 - Item had complex requirements that were spread over multiple units and it was impossible to tell from basic interviews whether compliance efforts were sufficient
 - Unit failed to provide adequate information, making it difficult to determine whether compliance requirements were being met

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Analysis & Risk Assessment

For Category 2 (Items Lacking an Operational Home) and Category 3 (Items Requiring Additional Action) we assigned one of two risk levels:

- (a) Higher Risk
- (b) Lower Risk

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Analysis & Risk Assessment

Items with one or more of the following features were considered higher risk:

- (a) currently the subject of significant review/enforcement efforts by regulators or significant litigation at the university
- (b) currently the subject of significant review/enforcement efforts by regulators or significant litigation at other institutions with activities similar to those of our university
- (c) identified and assigned high priority by internal audits/reviews and/or ERM process
- (d) stems from the introduction of a new law or regulation that does not fit into current structures
- (e) large potential for financial or reputational damage and high likelihood of occurring within the next two years

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Lessons Learned & Observations

- Manageable project/can be scaled
- Messaging and tone are important
- Enthusiasm will vary
- Great opportunity to establish relationships across the university

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Lessons Learned & Observations

- There may be “hot potatoes”
- You will have a lay of the land
- You will learn a lot
- Manage expectations: “Appropriately Addressed” doesn’t preclude potential for future compliance concerns

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Additional Considerations

- Consult with leadership/Office of General Counsel before you start
- State institutions and open records laws
- This does not replace auditing and monitoring
- State/local laws not included in the Matrix
- Opportunities for further application such as state law, NIH Grants Policy Statement
- An ongoing exercise

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The Road Ahead

- Remember – finite resources/infinite scope
- Focus on risk areas when setting office goals – for the next several years
- Recognize there will always be emerging issues
- Set a timetable to revisit

Questions?