

Minding the Gaps:

UNDERTAKING A LARGE-SCALE COMPLIANCE GAP ANALYSIS IN HIGHER EDUCATION

Minding the Gaps

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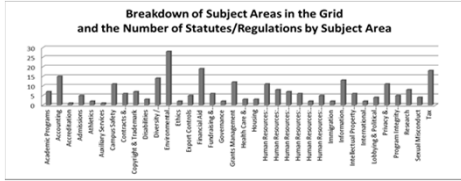
Background: Why We Undertook a Gap Analysis

- 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?

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The Higher Education Compliance Alliance Compliance Matrix

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



Available at <http://www.highereducationalliance.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

Law	Topic	Statute	Regulation	Reporting Requirements & Deadline
Higher Education Act of 1965 (HEA)	Higher Education Act of 1965 (HEA)	20 USC 1001-1008	34 CFR 600-10.1-600-10.9	Annual Report to Congress on the Status of Higher Education in the United States
Higher Education Act of 1972 (HEA)	Higher Education Act of 1972 (HEA)	20 USC 1091-1098	34 CFR 600-10.1-600-10.9	Annual Report to Congress on the Status of Higher Education in the United States
Higher Education Act of 1986 (HEA)	Higher Education Act of 1986 (HEA)	20 USC 1101-1108	34 CFR 600-10.1-600-10.9	Annual Report to Congress on the Status of Higher Education in the United States
Higher Education Act of 1992 (HEA)	Higher Education Act of 1992 (HEA)	20 USC 1121-1128	34 CFR 600-10.1-600-10.9	Annual Report to Congress on the Status of Higher Education in the United States
Higher Education Act of 1998 (HEA)	Higher Education Act of 1998 (HEA)	20 USC 1141-1148	34 CFR 600-10.1-600-10.9	Annual Report to Congress on the Status of Higher Education in the United States
Higher Education Act of 2002 (HEA)	Higher Education Act of 2002 (HEA)	20 USC 1161-1168	34 CFR 600-10.1-600-10.9	Annual Report to Congress on the Status of Higher Education in the United States
Higher Education Act of 2008 (HEA)	Higher Education Act of 2008 (HEA)	20 USC 1181-1188	34 CFR 600-10.1-600-10.9	Annual Report to Congress on the Status of Higher Education in the United States
Higher Education Act of 2014 (HEA)	Higher Education Act of 2014 (HEA)	20 USC 1201-1208	34 CFR 600-10.1-600-10.9	Annual Report to Congress on the Status of Higher Education in the United States
Higher Education Act of 2020 (HEA)	Higher Education Act of 2020 (HEA)	20 USC 1221-1228	34 CFR 600-10.1-600-10.9	Annual Report to Congress on the Status of Higher Education in the United States

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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.

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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.



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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.



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Conversion to Gap Analysis

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



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From Matrix to Gap Analysis

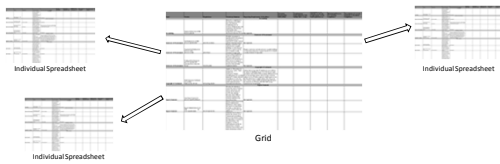
The modified matrix allows you to:

- 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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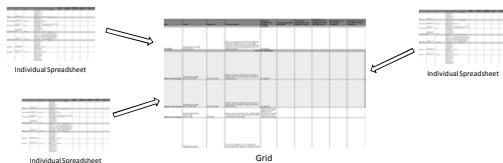
Data Review

- 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

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Data Compilation

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



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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

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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

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Analysis & Risk Assessment

Category 2 – Lacking an Operational Home

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

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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.

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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

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Questions?

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