



The evolving role of compliance in higher education: A practical guide

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THE EVOLVING ROLE OF COMPLIANCE
IN HIGHER EDUCATION

Introductions



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THE EVOLVING ROLE OF COMPLIANCE
IN HIGHER EDUCATION

Session Objectives

1. Discuss some of the unique challenges compliance presents for institutions of higher education
2. Explore various organizational and reporting structures for compliance at colleges and universities
3. Discover how compliance offices facilitate and/or support enterprise risk management (ERM) processes



Part I:
**Unique challenges
compliance presents for
institutions of higher
education**

Compliance Topics

- Academic Programs
- Accounting
- Accreditation
- Admissions
- Athletics
- Auxiliary Services
- Campus Safety
- Contracts & Procurement
- Copyright & Trademark
- Disabilities
- Discrimination
- Diversity/Affirmative Action
- Employee Compensation and Benefits
- Environmental Health and Safety
- Ethics
- Export Controls
- Financial Aid
- Fundraising & Development
- Governance
- Grants Management
- Healthcare and Insurance
- Housing
- Human Resources
- Immigration
- Information Technology
- Intellectual Property and Technology Transfer
- International Activities and Programs
- Lobbying and Political Activities
- Privacy & Information Security
- Program Integrity Rules
- Recruitment, Hiring, & Termination
- Research
- Retirement
- Sexual Misconduct
- Tax
- Unions
- Wages

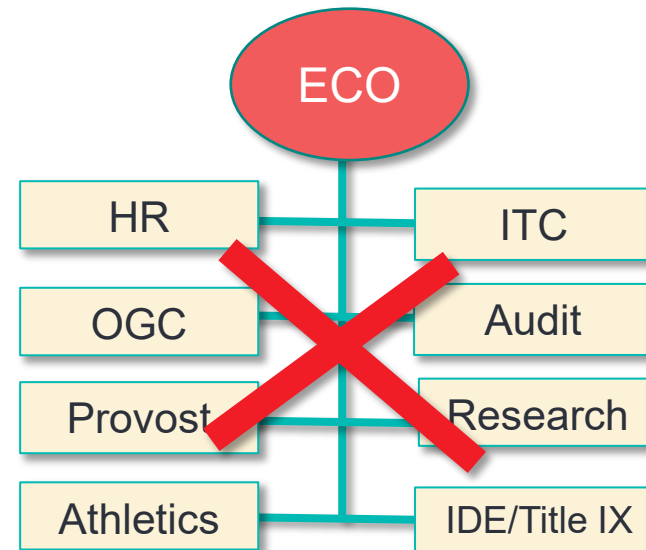
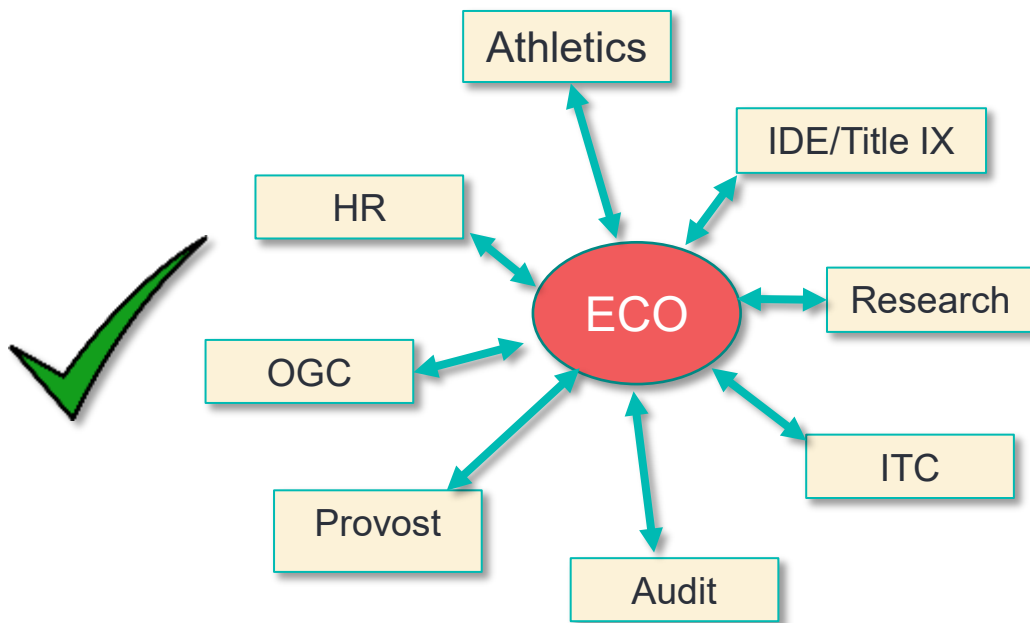


Challenges in higher ed.

- Historically decentralized governance and operational models
 - Limits the ability to adequately and timely adapt to the changing landscape
 - Creates difficulties in obtaining broad and sustained support
 - Restricts a comprehensive awareness of compliance requirements and process owners
- Skepticism around implementation of something new to higher education (e.g., a centralized compliance function)

Collaboration is key

- Cooperation and communication from the various compliance functions throughout the institution is essential to the success of the program.



Consequences of non-compliance

Reputational

Financial

Going Concern

Lawsuits

Criminal Charges

Prison Time





Part II:

**Organizational and
reporting structures
for compliance at
colleges and
universities**



What are the Goals?

Build and maintain a comprehensive ethics and compliance function that:

- Fosters a culture of integrity and respect
- Manages risk and protects the value and reputation of the College
- Meets/exceeds the standards for an effective compliance program under the US Federal Sentencing Guidelines and DOJ guidance.

Ensure an appropriate information flow to senior leadership and the board.

- Support the Board's compliance oversight responsibility

Organizing your program

- US Federal Sentencing Guidelines elements:

| | | |
|-------------------------|---|--|
| Risk Assessment | Confidential Reporting and Investigations | Robust Training and Communication |
| Autonomy and Resources | Incentives and Disciplinary Measures | Commitment by Senior and Middle Management |
| Policies and Procedures | Third Party Management | Continuous Improvement |

- DOJ Guidance requires customization to our specific risks:
 - *An organization’s compliance program must be “appropriately ‘designed to detect [and prevent] the particular types of misconduct most likely to occur in a particular corporation’s line of business” and ‘complex regulatory environment’.”**

* U.S. Department of Justice Criminal Division *Evaluation of Corporate Compliance Programs* (Updated March 2023) at p. 2 (citing Justice Manual 9-28.000 Principles of Federal Prosecution of Business Organizations, available at <https://www.justice.gov/jm/jm-9-28000-principlesfederal-prosecution-business-organizations>).



Getting Started

Job One: To conduct a gap analysis of our current state vs. DOJ requirements

Systematically assess each compliance area; Identify gaps

- Start with HECA Compliance Matrix
- Develop and implement templates as foundation for annual risk assessment

Understand current culture

- Understand employee engagement; attitudes on institutional justice
- Engagement surveys
- Feedback sessions

Assess current matter resolution processes

- Case management
- Due process
- Escalation
- Lessons learned

Find quick wins

- Hotline to helpline?
- Web presence
- Communications

Operating state

Ethics and Compliance Office

Compliance Management

- Compliance activities led by Specialist Offices
- Coordinated through ECO
- ECO constant monitoring and reporting

• Board Reporting

Helpline and Matter Resolution

- Resolution efforts led by Specialist Offices and ECO
- Support “speak up” culture
- Capture risk data
- Ensure escalation
- Best practices / process improvement

• Continuous Improvement

Training and Communication

- Led by ECO
- Coordinated with HR and other offices
- Foster culture of integrity
- Annual code training
- Risk-based curriculum
- Lessons learned

• Program Evaluation

Where Does the CCO report?

- Minimum requirement = Unfettered access to government authority
- Gold standard = Functional reporting to the Board
- Success can be dependent upon professional relationships
- The CCO **must** provide reasonable assurance to senior management and the Board that there are effective and efficient policies and procedures in place, well understood and respected by all employees, and that the company is complying with all regulatory requirements.
- Red flags must reach the Board.

Board Oversight is Critical

US Federal Sentencing Guidelines:

- “[An institution’s] governing authority *shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight.*”¹
- FSG expressly applicable to non-profit organizations

Delaware Corporation Law is instructive

- “[I]t is now settled doctrine that a board of director’s fiduciary duties include establishing that management has an effective corporate compliance program in place, exercising oversight of that program, and taking regular steps to stay informed of the program’s content and operation.”²

[1] USSG § 8B2.1(b)(2)(A)-(C) (emphasis added)

[2] Board oversight of corporate compliance: Is it time for a refresh? (available at <https://www2.deloitte.com/us/en/pages/center-for-board-effectiveness/articles/audit-committee-board-oversight-of-corporate-compliance.html>)

You must have access

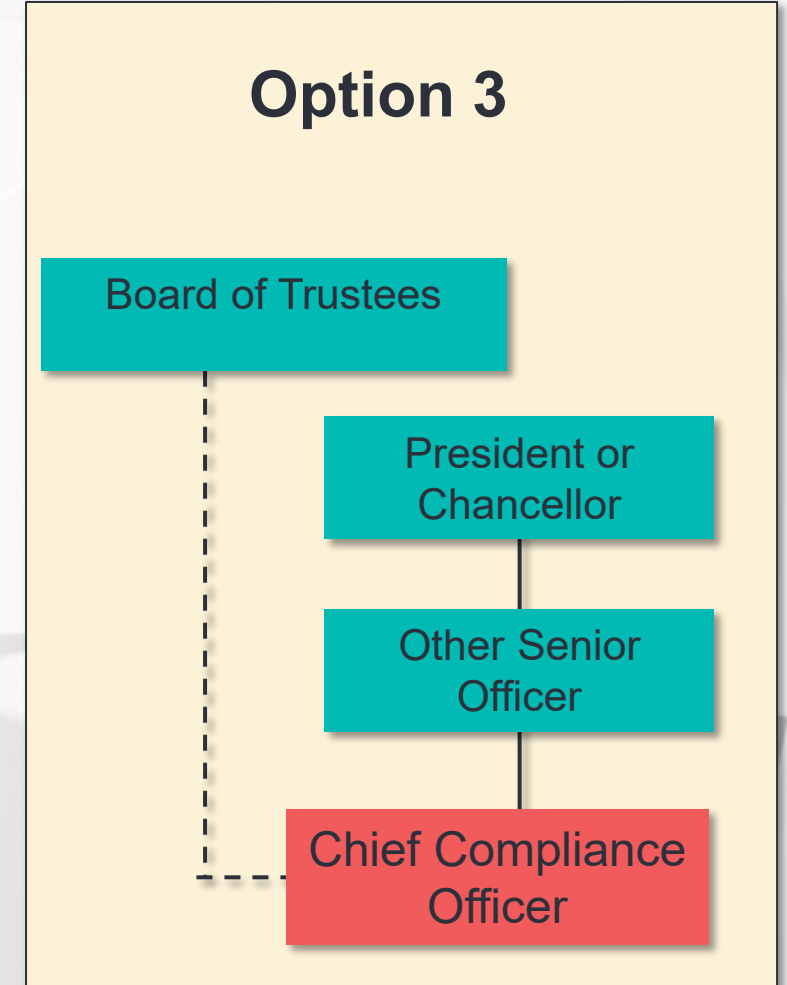
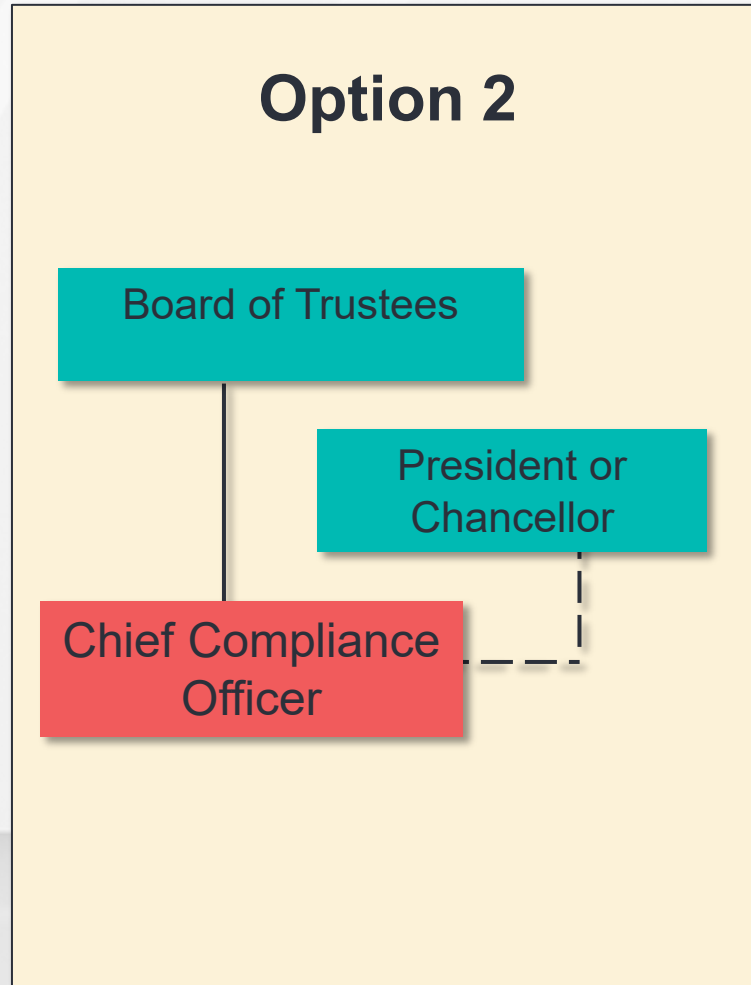
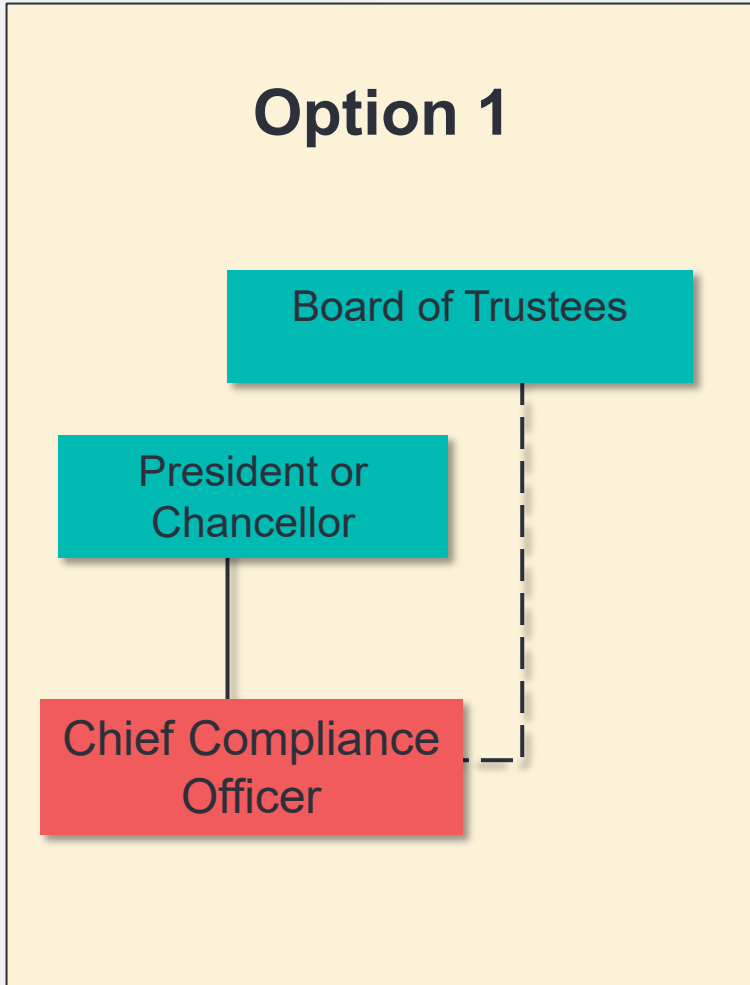
Harvard Law School Forum on Corporate Governance

“Delaware law recognizes that directors are not involved in the day-to-day management of their companies and protects them when they rely in good faith on information provided by officers and employees, among others. *However, the board still has to be involved, and must take reasonable steps to **establish a compliance system** (the first prong of Caremark) and then must **monitor that system** (the second prong). “Caremark envisions some degree of board-level monitoring system, not blind deference to and complete dependence on management.”*”

- Directors are most vulnerable to suits where they have not established oversight processes for monitoring risks in “mission critical” aspects of the business or where “red flags” arguably should have alerted the board to looming problems.

Source: What It Means for a Board To Exercise Oversight *Posted in Harvard Law School Forum on Corporate Governance* by Stephen F. Arcano, Jenness E. Parker, and Matthew P. Majarian, Skadden, Arps, Slate, Meagher & Flom LLP, on Sunday, October 9, 2022 (emphasis added)

Example Organizational Structures



Example Reporting Structure

- What gets reporting?
- What is the frequency of reporting?
- Which other committees does the Chief Compliance Officer lead?
- Who else does the compliance office work with?



**Part III:
Facilitating and/or
supporting enterprise risk
management (ERM)
processes**

Understanding Risk is Essential

To ensure appropriate management of compliance risk, we must answer:

- What are the **areas of significant compliance risk** at the institution?
- Who are the **people** monitoring and managing these risks?
- Do we have the right **policies and processes**?
- What are the **gaps and opportunities**?
- What is our **risk appetite**?
- How do we monitor **evolving regulatory requirements**?

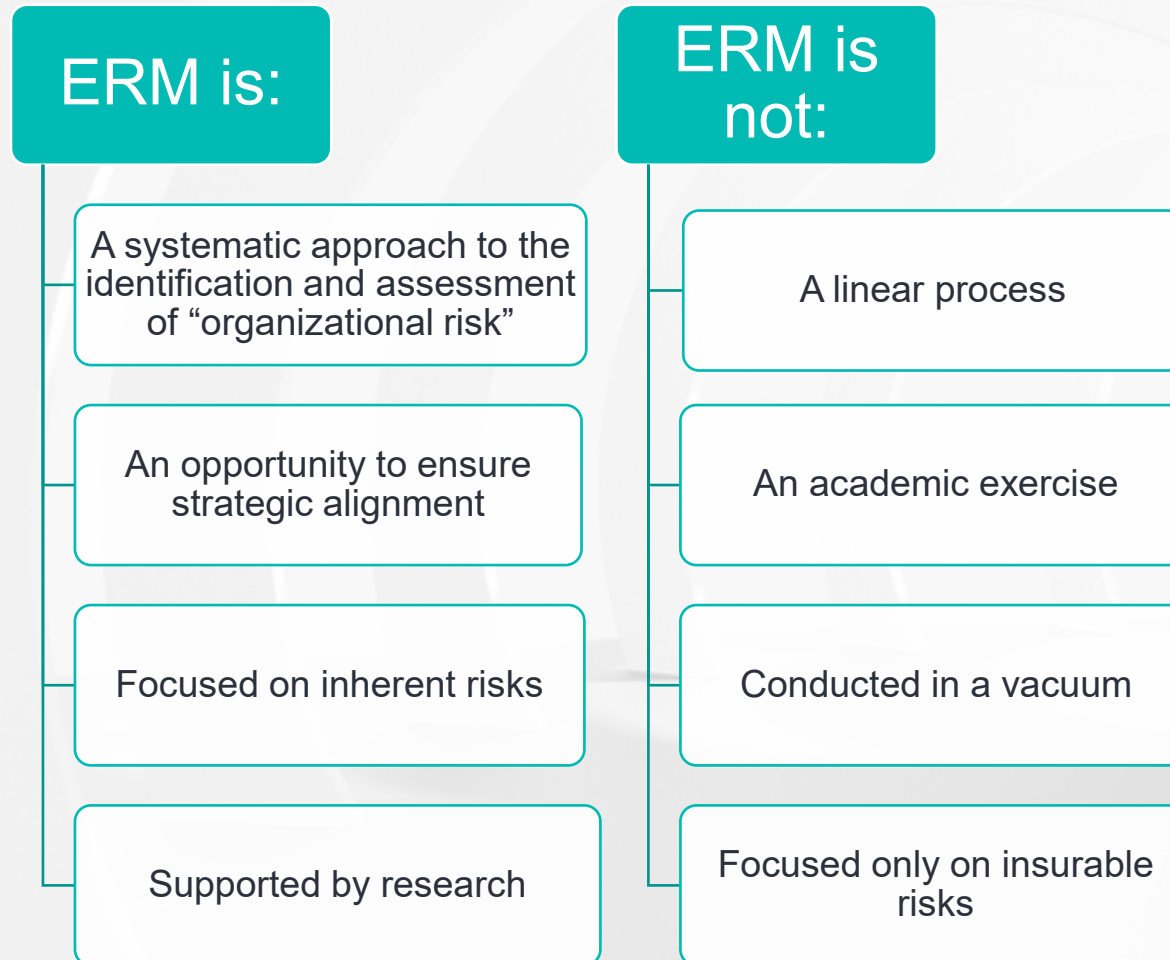
“[W]e closely examine an institution’s process for assessing risk and building a program that is tailored to manage its specific risk profile.”

Asst. Atty. Gen. Kenneth A. Polite Jr. Remarks at NYU Law’s Program on Corporate Compliance and Enforcement (March 25, 2022).

What is ERM?

- Enterprise Risk Management (ERM)
 - The process by which organizations identify, measure, manage, and disclose all key risks to increase value to stakeholder
 - *Source: Committee of Sponsoring Organizations of the Treadway Commission (COSO)*
 - Should be aligned with an organizations strategic plan

What is ERM and what isn't it?

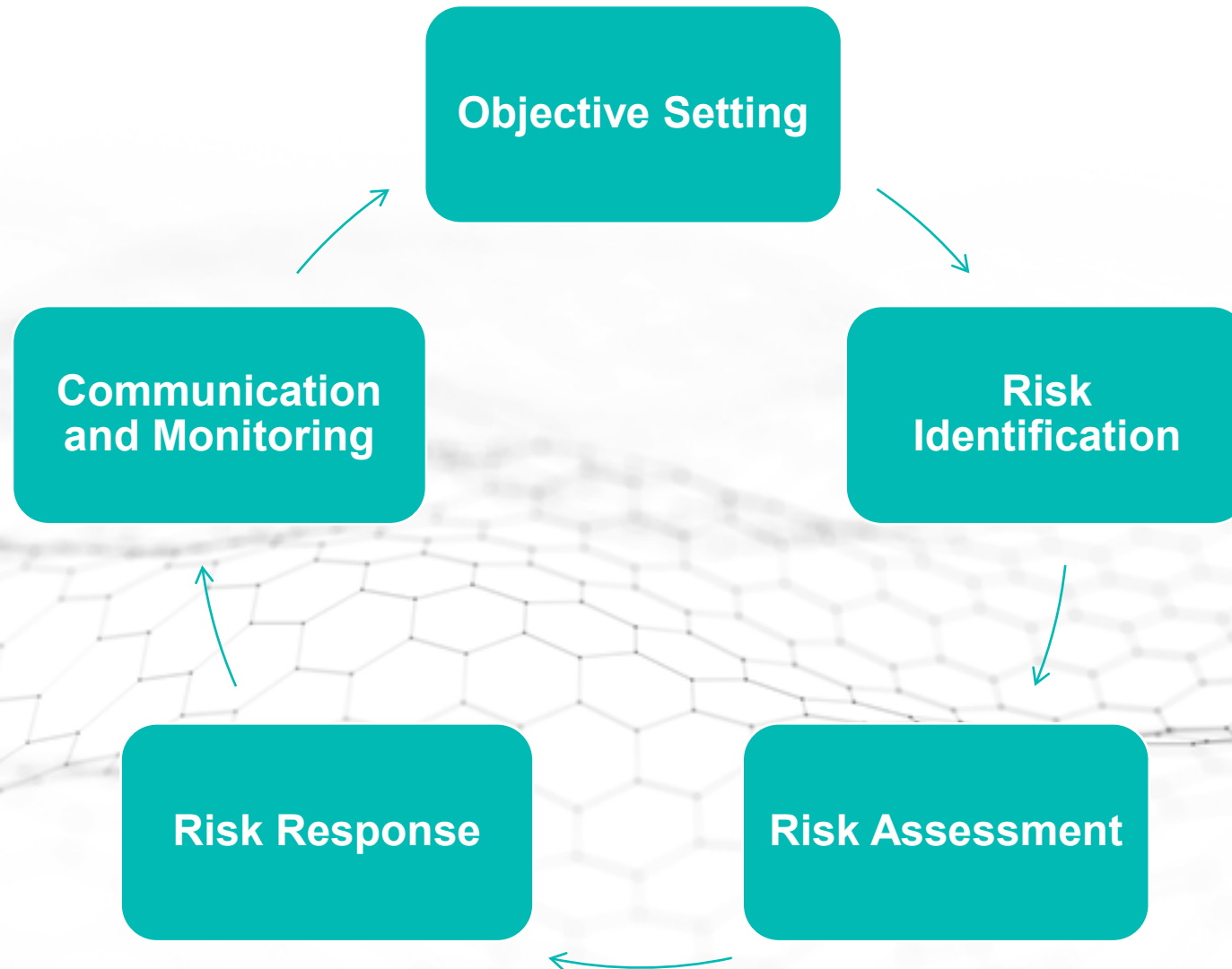


Intersection of Compliance and ERM

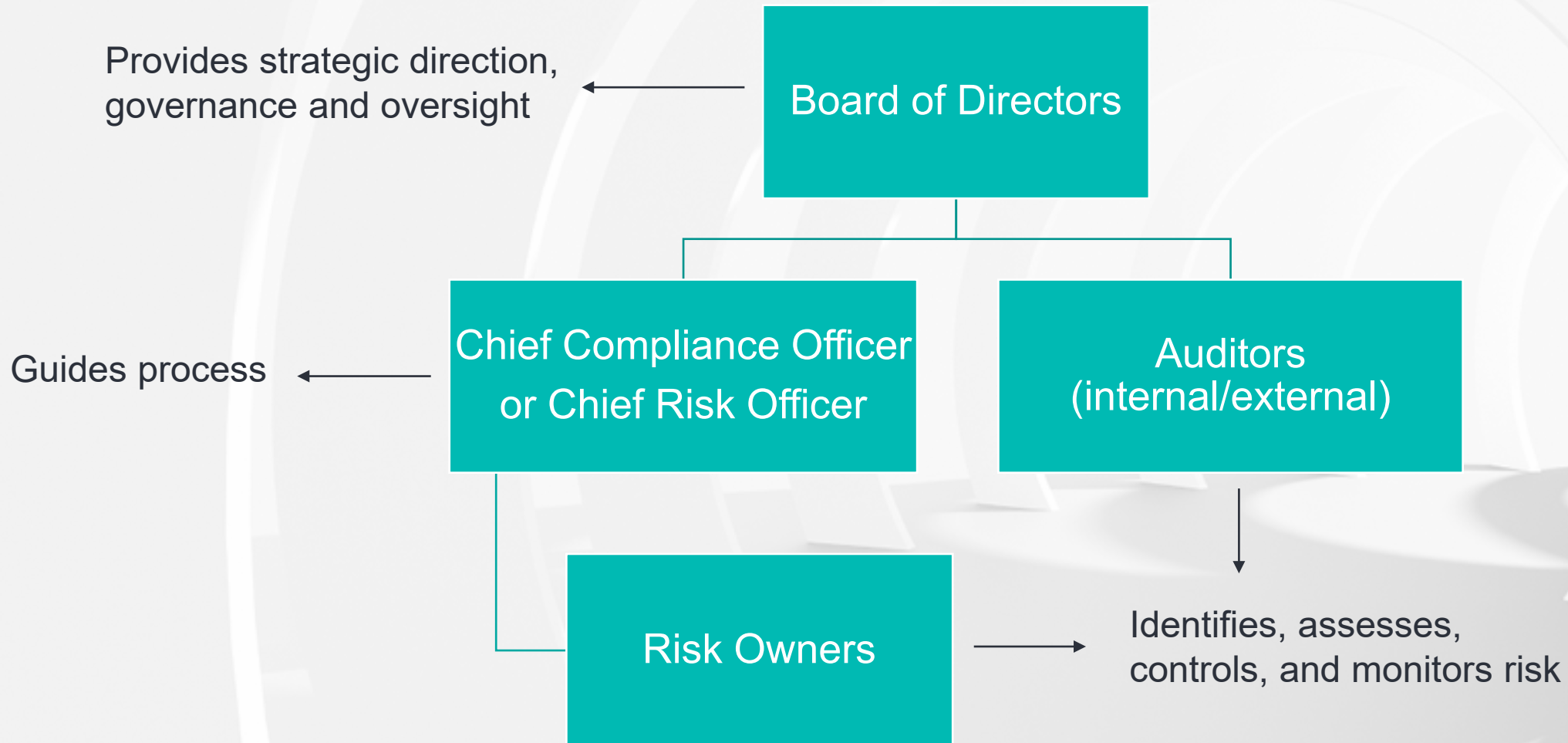


In Higher Ed – and many other industries – the Compliance Risk Assessment is the first institution-wide effort to map risk

Elements of an effective ERM process



Key ERM roles and responsibilities



Understanding the risk universe

Reputation

Compliance

Finance

Cybersecurity

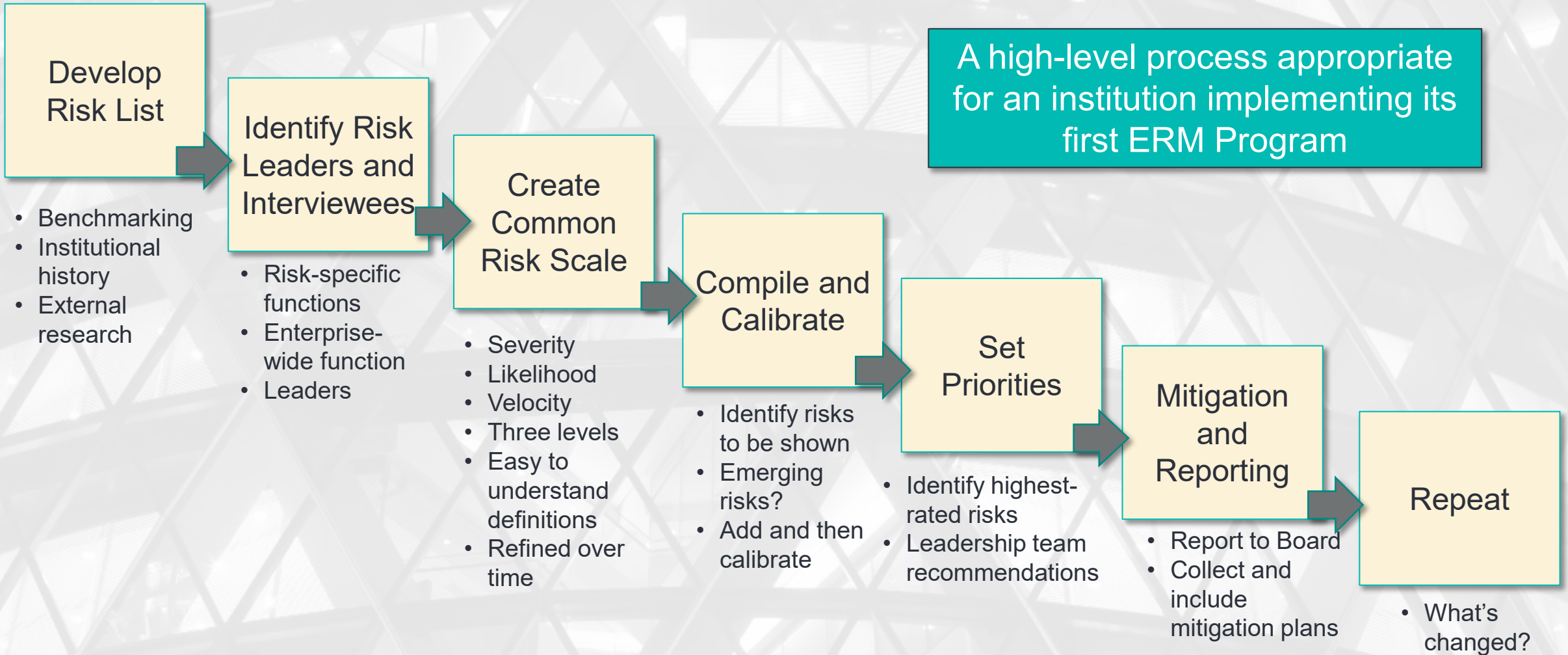
Research

Environment

Human
Resources

Governance

Keeping it simple: a straightforward process



The Assessment Cycle

| Ref. | Risk Area | Risk Subgroups/Details | Proposed Risk Champion | Proposed Risk Owner | Additional SMEs |
|------|--------------------------------|---|---|--|--|
| 1. | Academic Integrity and Honesty | • Academic dishonesty | JuAnne Epps VP & Provost | Mary Louise (Vivian) Eton Deputy Provost | Stephanie Nee - Assoc VP & Dean of Students Megan Patrick - Assistant Dean of Students Kevin O'Leary - Vice Provost, Academic Affairs |
| 2. | Enrollment Management | • Admissions • Decline in enrollment | JuAnne Epps VP & Provost | Shawn Abbott Vice Provost Enrollment Management | Karen Mormando - Director of Admissions Shawna Barnbrooks - University Registrar |
| 3. | Data Verification | • Data accuracy • Verification process • Scope of data | Alex Diaz Chief Compliance Officer | Jim Bodalido (Outside Consultant) Director Data Verification Richard Ichniowski Director, Data Analysis and Reporting | Jodi Levine Ludvigsen - Vice Provost Cameron Ezeedy - Associate University Counsel Members of Data Council? |
| 4. | IT and Cybersecurity | • Fishing • Ransomware • Data security • IT governance and controls • IT Disaster recovery • Identity access • Mobile devices | Cindy Lewitt VP & CIO | Seth Shestak - Deputy CISO Anise VP & CISO | Shirley Thomas - University Privacy Officer |
| 5. | Athletics | • NCAA Compliance • Student athlete health and wellness | Pat Huff Athletic Director | Kristy Barron Sr. Assoc Athletic Director, Compliance | Tim Thies - Sr. Assoc Athletic Director Teresa Covington - Assistant Athletic Director Keith Holt - Director Compliance and Student Athletes |
| 6. | Security | • Campus safety • Clery compliance • Building access • Theft | Kevin Clark VP & CIO | Charlie Leone Executive Director Public Safety | Dorsey Wilhelm - Deputy Director Public Safety Sarah Howell - Director of Emergency Management Scott Brannan - Director Outcall Office Kathleen Lewis - Campus Safety Michael Gebhardt (or delegate) - VP & University Counsel |
| 7. | Title IX Compliance | | Valerie Harrison Sr. Advisor, Diversity Equity Inclusion | | |

Risk Matrix
Identifies risks and interviewees

- Questions to Facilitate Risk Discussions**
1. What risks impact your unit's ability to achieve its strategic goals, initiatives, or key functions?
 2. Have there been any recent major changes to your area of responsibility or control (new regulations, new programs/activities, organizational changes, etc.) that pose new risks?
 3. How are these risks addressed currently?
 4. What are your key compliance functions/areas of expertise/areas of involvement?
 5. Who is ultimately responsible for ensuring compliance in these areas?
 6. Which compliance obligations require active action on your part?
 7. What actions are taken?
 8. What resources do you rely on (internal and external) to help comply?
 9. List any current compliance training that is within your area of responsibility
 10. Is the training conducted by internal or external sources?
 - a. If internal, who determines adequacy of training?
 11. How well documented is the compliance?
 12. Who documents the compliance?
 13. Do you have a filing obligation with an outside entity?
 - a. Who is responsible for compiling data for the filing?
 14. What internal Controls are in place for your area?
 15. 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.
 16. Do you do any testing or audits?
 - a. How often?
 17. How do you measure the effectiveness of your compliance program(s)?

Guiding Questions
Ensures collaborative discussions on risk

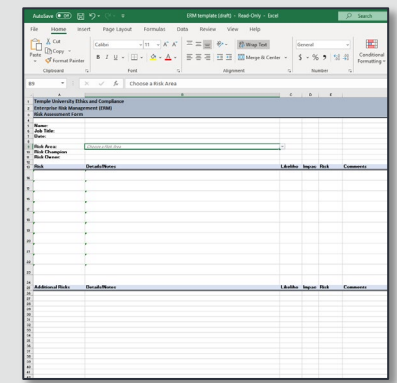
Risk Rating Criteria

| Score | Category | Likelihood |
|-------|----------|--|
| 1 | Low | Unlikely or rare. Likely to occur only once in the next 5-10 years |
| 2 | Medium | Likely to occur at some time in the next 3-5 years |
| 3 | High | Will likely occur at least once in the next 12 months, or is already occurring |

| Score | Category | Financial Impact | Operational Impact | Reputational Impact |
|-------|----------|---|--|---|
| 1 | Low | Annual loss of < \$1 million in current fiscal year | Disruption at the department level lasting 3 to 24 days | Negative publicity at the local level |
| 2 | Medium | Annual loss of \$1 million to \$10 million in current fiscal year | Disruption in multiple departments or an entire School/College lasting up to 1 month | Negative publicity at the regional level and/or damage to TU reputation lasting less than or equal to two years |
| 3 | High | Annual loss > \$10 million in current fiscal year | Disruption at the institutional level lasting 1 or more | Negative publicity at the national level and/or damage to TU reputation lasting more than two years |

Impact can be measured a number of ways. Using one of the above categories to assess severity can assist in determining how risk impact should be viewed. Scales for Financial, Operational, and Reputational impact are provided for guidance and do not amount to an exact measurement.

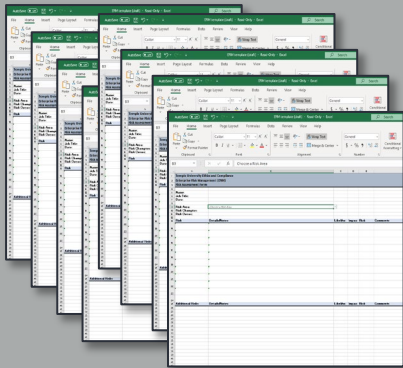
Risk Ratings
Ensures a common scale for all risks



Assessment Form
Captures data in a standard format across all risks

Compilation and Reporting begins after assessments are complete

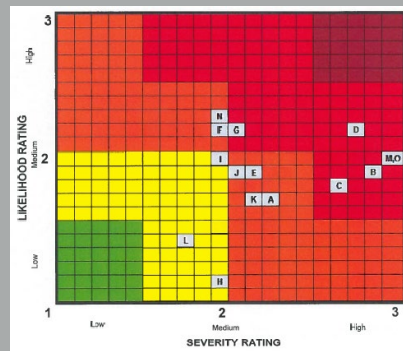
- We collect and aggregate individual responses
 - A calibration session will validate scores
 - Final report with heat map will be sent to leadership to identify priorities
 - ECO will coordinate with risk leaders to establish mitigation plans and quarterly reporting for all priorities



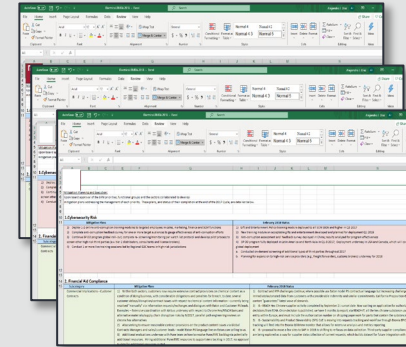
Ratings collected and aggregated to determine combined ratings for each risk area

| | Legend | Severity Score | Likelihood Score |
|---|--------------------------------|----------------|------------------|
| A | Academic Integrity and Honesty | x | X |
| B | Enrollment Management | X | X |
| C | Data Verification | X | X |
| D | IT and Cybersecurity | X | X |
| E | Athletics | X | X |
| F | Security | X | X |
| G | Title IX Compliance | X | X |
| H | Academic Integrity and Honesty | X | X |
| J | Enrollment Management | X | X |
| J | Data Verification | X | x |

Combined ratings reviewed by calibration committee; Adjustments made as appropriate



Calibrated scores for each risk plotted on a heat map to identify priorities

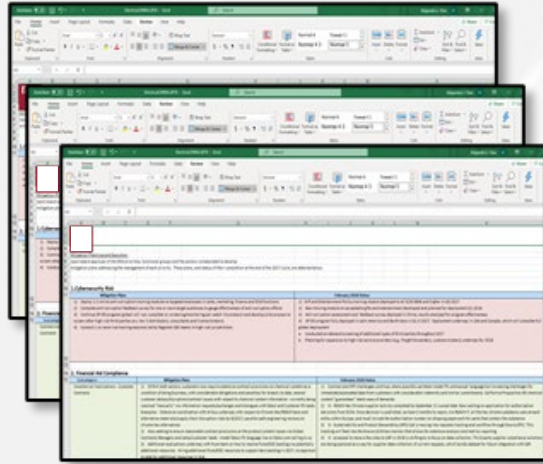


Mitigation plans and progress on risk priorities reported quarterly to leadership

Assessment, compilation and reporting cycles repeat annually



A continuous cycle of assessment, reporting, and mitigation



When assessment is complete, we will work with risk owners to compile, record and report on **mitigation plans**

Ongoing Activities

- **Monitor key risks**
 - Has the mitigation strategy been implemented?
 - Has the level of risk (likelihood and impact) changed?
 - What metrics can be measured to determine effectiveness?
 - Should alternative strategies be considered?
- **Identify emerging risks**
 - Have industry changes or new regulation created new risks?
 - Have there been internal changes that increase the level of existing risks?
 - Has technology impacted our level of risk?
- **Repeat**
 - What's changed?
 - Each risk area should be reviewed at least once annually

Common ERM challenges

- Decentralized nature of institutions
- Absence of formalized roles and responsibilities
- No champion or owner
- Limited or no buy-in at the top
- Ease of over-engineering the process
- Bubble charts, COSO cubes, and influence diagrams aren't for everyone
- Priorities change over time due to internal and external factors

Key success factors

Engage senior management and board of directors

Establish policies, systems, and processes supported by a strong and engaged culture

Consider using compliance management as a starting point

Align ERM and the strategic plan

Institute an active process for monitoring and measuring ERM and the strategic plan

Maintain positive accountability

Stay in touch



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