

# WEATHERING TOUGH TIMES

TOUGH TIMES







# THE ROLE OF THE INSTITUTIONAL COMPLIANCE OFFICER

IN NAVIGATING INSTITUTIONAL CRISIS



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If you think that **compliance** is expensive,  
try non-compliance.

Paul McNulty  
(Former US Deputy Attorney General)



It take less time to do things right than to explain why you did it wrong.

Henry Wadsworth Longfellow  
(Poet)



# MAJOR INSTITUTIONAL RISKS

## Introduction

- A. Financial Crisis and/or Enrollment Loss
- B. Investigation by a Governmental Agency
- C. Act of God
- D. Staff Disruption—
  - A. Presidential departure
  - B. Significant layoffs
  - C. Corporate restructuring
- E. Internal Wrongdoing



# THE SITUATION—FIRST CASE

## Introduction

**An email arrives in the Compliance Mailbox from parents of a student athlete who has an institutionally recognized disability and associated Letter of Accommodation. They allege their daughter has been sexually harassed by a coach using offensive language. The coach encourages other student-athletes to use explicit language and problematic behavior.**

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**Their daughter also notes that the coach makes fun of her disability. They allege the coach has interfered in her communication with professors or the Disability Office, which has led to confusion about her academic adjustment. Her grades have gone down, and her athletic scholarship is at risk.**



# THE SITUATION—SECOND CASE

## Introduction

**An employee you don't know well buttonholes you on the way to the parking garage. He notes he is trying to get someone's attention about a serious University matter but has concluded he is getting a run-around from various offices. He insists he remain anonymous. Here are his concerns:**

**1) Employees taking tuition payments directly through personal banking accounts; 2) US Dept. of Education loan funds & student loan refunds used to pay operational expenses; 3) employees holding financial records in their home offices; 4) notices from the IRS about unpaid payroll taxes; 5) unauthorized draws from endowment; and 6) other practices he indicates are "sketchy."**





# THE SITUATION—THIRD CASE

## Introduction

**You get a call from a Trustee informing you that the President of the institution has left suddenly due to “health reasons”. The Trustee further informs you that there will be an immediate appointment of an interim president who turns out to be a current Trustee. There are some other problems, some of which you are already aware.**

**Many people have lost their jobs in the past year in an atmosphere at the College that the community describes as fear and distrust. The former President has had significant anger management issues and is alleged by several women to have engaged in harassing and bigoted behavior. He contracted with supporters in the community in some big deals outside of the normal contract approval process. There are many questions about his leadership.**



# YOUR RESPONSE

## Introduction

- A. Such matters usually don't amount to much. Things do work themselves out.
- B. These matters should be of concern to the Board, the CEO, the General Counsel, and others key administrators, but probably not to Compliance.

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- C. There is limited risk here from outside entities in Washington, D.C. or the local capital, especially to private institutions. And why would the media be interested?
- D. Time to get to work. We have been preparing for years to address institutional crisis, if necessary, and now it's here.





# ROLE OF CHIEF COMPLIANCE OFFICER

## AGENDA

1.

Introduction

2.

Evaluating What You Have & The Plan

3.

Internal Entities & Internally-Designated Outside Entities

4.

External Entities w Interest & Jurisdiction

5.

Outcome Risks

6.

Preparation, Preparation, & Compliance Check

7.

Final Thoughts



# THE PLAN

EVALUATING WHAT YOU HAVE



# FIRST STEPS-THE PLAN

Time is of the Essence!

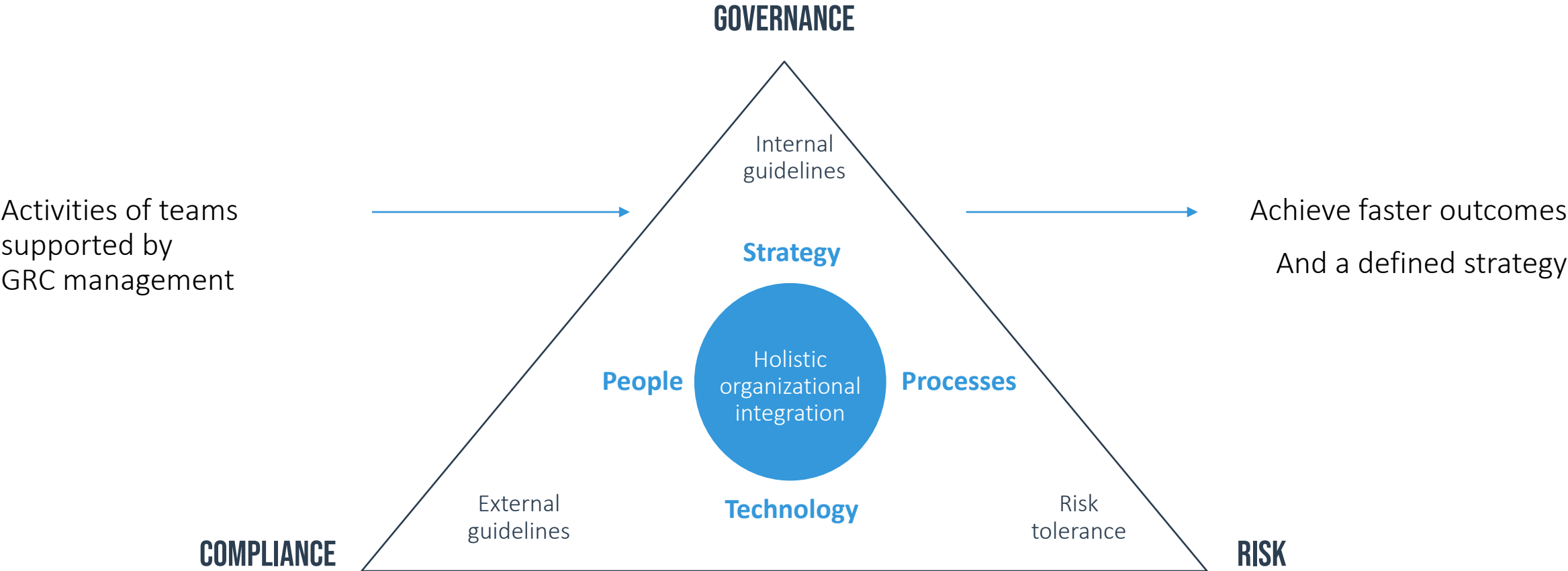
- A. Assess what you have
  - 1. Preliminary investigation
  - 2. Original source & other sources
  - 3. Department leaders
  - 4. “Early Evidence”-documentation & corroboration

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- B. Develop your TEAM to consider the risk
- C. External resources--consult
  - A. Law enforcement, US attorney
  - B. Law & accounting firms
- D. Preliminary recommendations to decision-makers



# COMPLIANCE PARTNERS

Governance, risk management and compliance





# SECOND STEPS-THE PLAN

- A. Set initial parameters of investigation
  1. Goals—What you need to determine or accomplish
  2. Timeline
- B. Sequester & hold potential evidence
  - 1. Tech—sequestering documents & emails
  - 2. Physical/HR—sequester paper files/records
  - 3. Limit access by other personnel
  - 4. Monitor access
- C. Identify relevant contacts/witnesses



# SECOND STEPS-THE PLAN

- D. Consider HR implications
  - 1. Policies and procedures
  - 2. Leave of absence
- E. Information strategy
  - 1. Messaging
  - 2. Develop and enforce confidentiality plan
- F. Lay out work steps
- G. Work cooperatively with external law, accounting firms



# INTERNAL ENTITIES & INTERNALLY-DESIGNATED OUTSIDE ENTITIES



# INTERNAL ENTITIES

## A. Internal audit

1. In Finance or Executive Vice President office
2. Independent assurance of situation or risk
3. Four roles
  - a. Review adequacy of internal controls
  - b. Recommend improvements
  - c. Assess compliance w policies/procedures and good practice
  - d. Assess compliance with state/federal laws and regulations
  - e. Not a fraud examination necessarily/specialized knowledge to identify fraud/schemes
4. Types of audits
  - a. Compliance audit
  - b. Internal financial audit
  - c. Environmental audit
  - d. IT audit
  - e. Performance audit



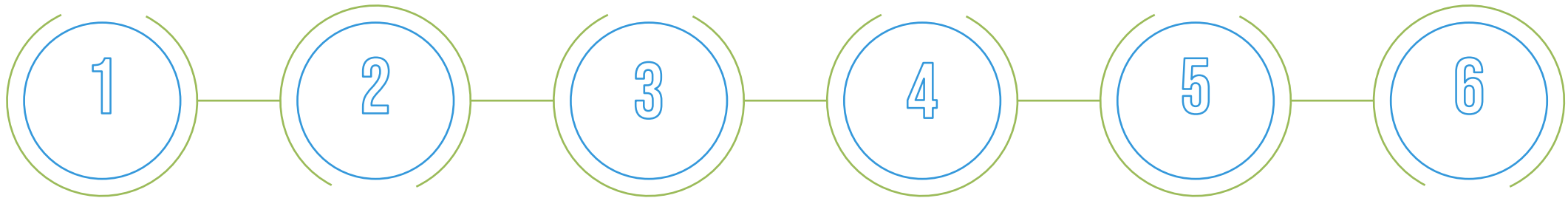
# INTERNAL AUDIT: PROCESS

Compliance management

Collect information  
on the company's  
operational activities

Perform a compliance  
check against state  
and federal laws

Clarify how the  
measures can be  
implemented  
effectively



Monitor and analyze  
the company's risks  
and control  
mechanisms

Review information  
and present plans for  
improvement

Focus on  
corporate progress

# INTERNAL ENTITIES

## Introduction

### B. Compliance Audit

1. In General Counsel/Legal or Investigations
2. Review of compliance in a situation or department
3. Four functions
  - a. Reputational-determines what the damage might be to the University's name or brand
  - b. Legal-assesses compliance w laws
  - c. Regulatory-assesses compliance w regulations
  - d. Political-assesses impact on legislative or political goals
4. Compliance audit tasks
  - a. Assess compliance with internal policies/procedures
  - b. Identify non-compliance with laws and regulations
  - c. Review specific situations where there is evidence of non-compliance
  - d. Reach conclusions in individual or departmental situations





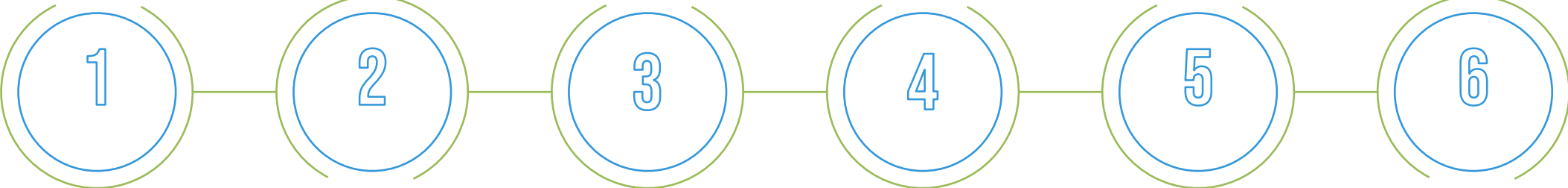
# COMPLIANCE AUDIT: PROCESS

Compliance management

Check compliance against state and federal laws

Evaluate policies and procedures against legal requirements

Clarify how the policies and procedures can be implemented effectively



Monitor and analyze the company's risks and control mechanisms

Review programs to see if they train to policies and procedures

Focus on improved compliance

# INTERNALLY-DESIGNATED ENTITIES

## C. Hybrid (typical for major institutional issues)

1. Possibly under the control of the Board or external counsel
2. Must be independent
3. May involve components of Compliance and Internal Audit
4. Hybrid features
  - a. Identify specific facts in the situation under investigation
  - b. Assess compliance with internal policies/procedures
  - c. Identify non-compliance with laws and regulations
  - d. Assess against internal controls
  - e. Reach conclusions about individual or corporate wrongdoing
  - f. Major risk assessment and mitigation strategy
  - g. Recommend legal strategies, HR actions, and related outcomes MAYBE process improvements

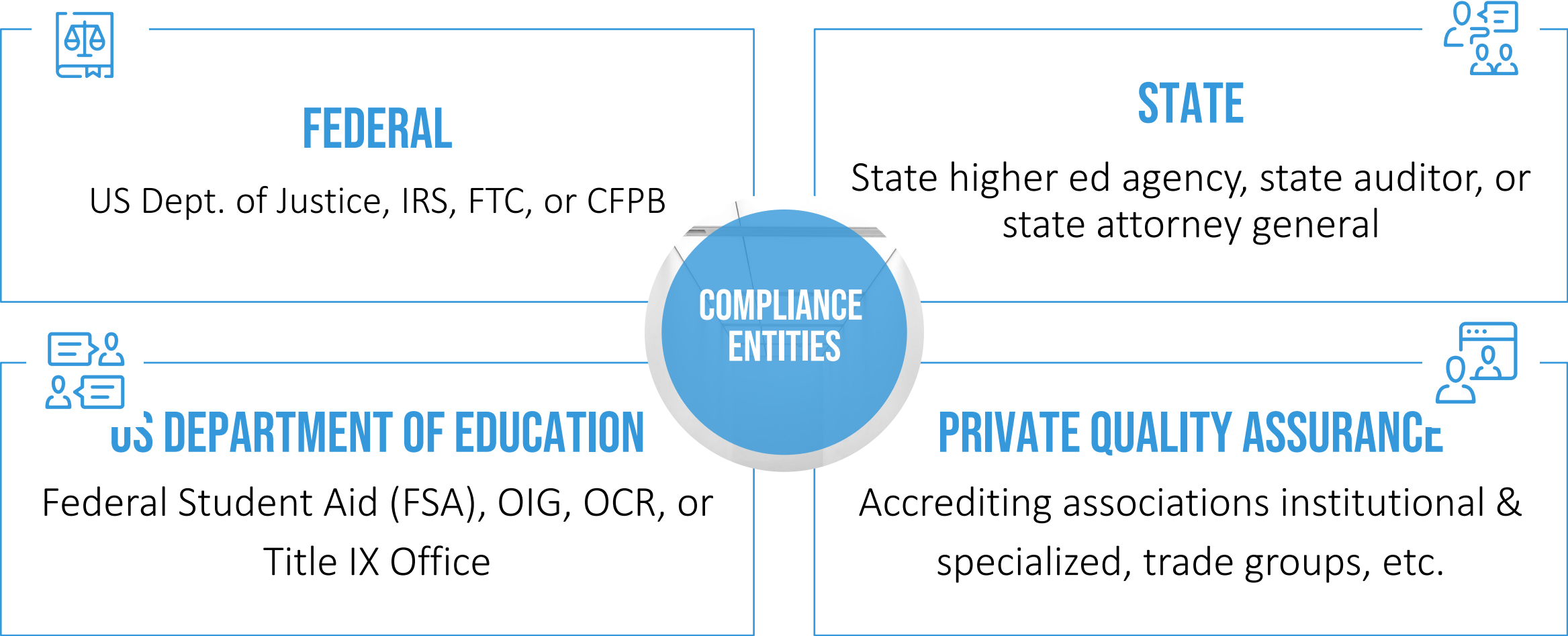


# EXTERNAL ENTITIES W INTEREST & JURISDICTION



# GOVERNMENTAL ENTITIES W INTEREST IN HIGHER ED

Compliance applications



# US DEPARTMENT OF EDUCATION

## ■ FSA PROGRAM REVIEW

- Section 498A of the HEA, 20 U.S.C. § 1099c
- **To strengthen administrative and financial responsibility provisions of the Title**
- Systematic basis to all institutions
- Priority to the following—
  - High default rates
  - Fluctuations in Stafford/Pell volume
  - Deficiencies identified by the accreditor or state
  - Risk of “failure to comply with administrative or financial responsibility provisions”

## ■ OFFICE OF INSPECTOR GENERAL (OIG)

- 5 USC §2 Inspector General Statute
- Purposes of the office—
  - Conduct & supervise audits & investigations
  - **Prevent & detect fraud & abuse**
  - Keep Congress informed about administration & efficiency of federal-funded offices & programs including USDE
- USDE has its own OIG as do most federal agencies

# US DEPARTMENT OF EDUCATION

## ■ OFFICE OF CIVIL RIGHTS (OCR)

- Section 504 of the Rehabilitation Act of 1973
- Title II of Americans w Disabilities Act
- Title VI of the Civil Rights Act of 1964
- Age Discrimination Act of 1975
- Areas of focus
  - Individual complaints
  - Group complaints
  - Other

## ■ TITLE IX

- Title IX of the Education Amendments Act of 1972
- “Title IX Office”
  - Part of OCR
  - Processes Title IX complaints
  - Individual or group complaints



# OTHER FEDERAL AGENCIES

## ■ U.S. DEPARTMENT OF JUSTICE

- Educational Opportunities Section of
  - Civil Rights Division
- Overlapping jurisdiction w OCR of USDE
- May intervene in private lawsuits
- Represents USDE in lawsuits filed by colleges
- Qui Tam Lawsuits—
  - Private right of action in Higher Ed Act
  - Whistleblower may sue college & DOJ may prosecute

## ■ OTHER

- Consumer Financial Protection Bureau (CFPB)
  - Private lending practices as of 1/2022
- Federal Trade Commission (FTC)
  - Student loan debt scams
  - Education tech provider re data security
- Internal Revenue Service (IRS)
  - Tax issues of various types
  - Payroll taxes

# STATE & PRIVATE

## ■ STATES

### ■ State Higher Ed Agencies

- Governing or coordinating
- Initial approvals
- Program & location approvals

### ■ State Auditors (annual or biennial cycles)

- Audit or inspection processes

### ■ State Attorney General

- E.g., civil rights matters, consumer protection
- Coordinate w other state attorneys general

## ■ PRIVATE QUALITY ASSURANCE AGENCIES

### ■ Accrediting Agencies

- Higher Learning Commission (AZ)
- Six other “regional” and several other institutional accrediting agencies
- Investigation, sanctions, withdrawal of status

### ■ Private Membership Organizations

- NCAA, for example
- Investigations into practices of colleges

## ■ DO NOT FORGET THE POLITICAL RISK

# OUTCOME RISKS

LINE

2022/2025/1/1

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# RISKS RELATED TO UNIVERSITY MISCONDUCT

## Introduction

### CORPORATE MISCONDUCT

Damage to reputation	Imprisonment, Fines, Debarment	Compensation for damages
Negative publicity, written reports, rumor	Violation of law, regulations	Violations causing damage to other parties
Decreased contributions, enrollment decline, lost direct revenue Difficulty in doing business w USDE, state higher ed agencies, etc. Missed opportunity costs	Accounting violations e.g. failure to pay payroll taxes Non-compliance w FSA regs Discrimination findings	Successful civil litigation Qui Tam Legal action by DOJ or States Attorneys General Findings of fraud

# PREPARATION, PREPARATION

AND COMPLIANCE CHECK

# PREPARATION: BUILDING STRONG COMPLIANCE

Governance, risk management and compliance

Governance, risk management and compliance collect **information** that is **mutually relevant**.

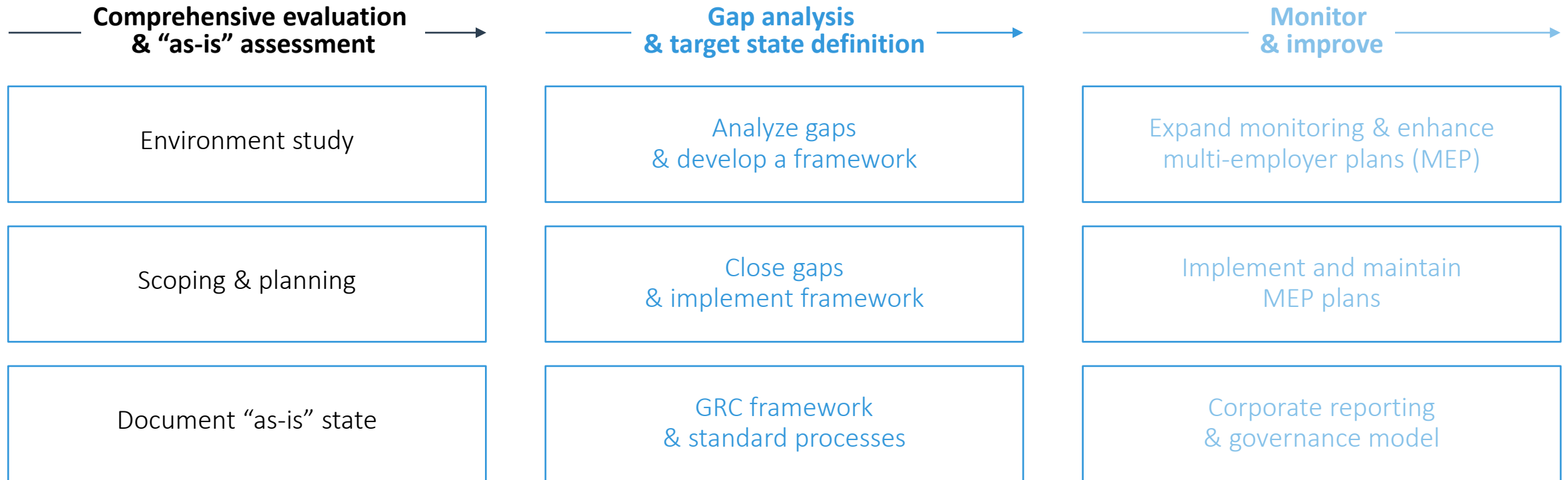
These three areas affect the same people and activities, resulting in **overlapping responsibilities**.

Handling the three areas separately leads to task redundancy and **wasted resources**.



# PREPARATION: GRC IMPLEMENTATION

Governance, risk management and compliance



**ORGANIZATION-SPECIFIC RISKS, LAWS AND REGULATIONS**



# COMPLIANCE GUIDELINES: AREAS

Compliance management

## IN-HOUSE STANDARDS

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Guidelines

Corporate standards

Process instructions

Service-level agreements

## LEGAL REQUIREMENTS

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Jurisprudence

Laws and regulations

Referenced standards

Contracts

Administrative regulations

## EXTERNAL STANDARDS

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Codes

Norms

Industry standards

Union standards

# PREPARATION: RISK MATRIX

Compliance management

**DAMAGE LEVEL**

Extreme	5	L	A	H	VH	VH
Significant	4	L	A	H	VH	VH
Moderate	3	L	A	H	H	H
Marginal	2	L	L	A	A	A
Incidental	1	L	L	L	L	L
		1	2	3	4	5

- L – Low
- A – Average
- H – High
- VH – Very high

Rare                      Unlikely                      Possible                      Probable                      Often

**LIKELIHOOD OF OCCURRENCE**

# FEDERAL SENTENCING GUIDELINES MARCH 2023 DOJ

## ■ THREE KEY QUESTIONS

– 1. Is the corporation's compliance program well designed?

– 2. Is the program being applied earnestly and in good faith?

In other words, is the program adequately resourced and empowered to function effectively?

– 3. Does the corporation's compliance program work in practice?

– [Compliance \(justice.gov\)](https://www.justice.gov/criminal/corporate/compliance)

# FEDERAL SENTENCING GUIDELINES MARCH 2023 DOJ

- EMPHASES IN SENTENCING GUIDELINES (SOME NEW, SOME OLD)
  - 1. Incentives for compliance & disincentives for non-compliance
  - 2. Attach compensation or lack thereof to conduct
  - 3. End bonuses to executives who do not model non-compliance
  - 4. Develop a policy on use of personal devices
  - 5. Pay particular attention to DOJ use of a monitor



# FINAL THOUGHTS

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# INSTITUTIONAL CRISIS

## Conclusion

- A. Institutional crisis is a reality—don't ignore its likelihood.
- B. Best defense is an excellent offense.
- C. Preparation is key.

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- D. Make Compliance a key player in institutional crisis.
- E. Compliance Officer can't stop wrongdoing, but a great Compliance Program can stop or deter it!

