Compliance in Higher Education

Governance & Compliance Committee

April 6, 2018
What is “Compliance”?*

Conformity in fulfilling official requirements *

Certification or confirmation that the doer of an action…meets the requirements of accepted practices, legislation, prescribed rules and regulations, specified standards, or the terms of a contract **

*Merriam-Webster Dictionary  
**Business Dictionary
Brief History of Compliance

- **1980s**: Defense Industry Initiative on Ethics and Conduct
- **1996**: In re Caremark International Inc. Derivative Litigation
- **2002-2004**: Amendments to Federal Sentencing Guidelines, SOX
- **Up to Present**: Other federal laws & guidelines require ethics & compliance programs

- Effective compliance program
- More detailed program requirements; ethical culture
- Fiduciary duties for compliance
Elements of an Effective Compliance Program

1. Oversight of Governing Authority - Compliance Officer & Compliance Committee
2. Policies, Procedures, & Standards of Conduct
3. Effective Training & Education
4. Effective Lines of Communication - Hotline
5. Incentives & Discipline
6. Internal Monitoring and Auditing - Ensure program is being followed
7. Corrective Action to Address Deficiencies

Periodically assess the compliance program and modify appropriately

Regulatory Environment

- Increasing regulatory demands and expectations
- Growing **number & complexity** of requirements
  - Federal and state laws
  - International laws
  - Accreditation requirements
  - Industry standards
  - Advisory opinions
  - Dear Colleague letters
  - FAQs & guidance documents
  - Handbooks
  - Resolution agreements
Regulatory Environment

- Institutional **accountability**
- Government **oversight**
- Regulator expectations of **internal** institutional oversight and control of regulatory requirements
Enforcement Landscape

• More aggressive enforcement initiatives
  – Civil & administrative fines & penalties
    • (Clery, DFSCA, Title IV- $55,907 per violation)
  – Criminal penalties (not common)
  – Exclusion from participation in government programs (likely most significant penalty)
  – Integrity or resolution agreements (often in lieu of, or in conjunction with, other fines or penalties; 3-5 year term)
  – Reputational harm
Federal Agency Enforcement

- Federal Drug Administration (FDA)
- Office for Human Research Protections (OHRP)
- Centers for Medicare & Medicaid Services (CMS)
- Federal Communications Commission (FCC)
- Office for Civil Rights (OCR)
  - HIPAA, Dept. of Education
- Internal Revenue Service (IRS)
- Department of Education (DOE)
- Dept. of Homeland Security
- Department of Justice (DOJ)
- Office of Inspector General (OIG)
- Immigration & Customs Enforcement (ICE)

And More!
Creation of Institutional Compliance at Colleges & Universities

Increased Likelihood of Violations

- Competition for budget & resources
- Number & complexity of regulatory requirements
- Expectations for institutional oversight & control
- Increased enforcement
- Decentralized compliance functions

33%
# of people in higher ed with “compliance officer” title between 2004-2014*

Compliance Program Focus

- Process-oriented vs. issue-specific set of facts
- Create a culture that supports compliance and ethics in every day decision making
- Educate employees/stakeholders on what they need to know about the law to perform their roles
- Proactive risk management based on audit & assessment metrics, past performance, national enforcement actions
- Identifying regulatory issues that may have already occurred and implementing corrective action measures
- Cross-functional and inter-departmental in nature
WSU COMPLIANCE

POLITICAL ACTIVITY

HIPAA

FERPA

CAMPUS SECURITY / CLERY ACT

FINANCIAL AID / TITLE IV

Americans with Disabilities Act

ENVIRONMENTAL HEALTH & SAFETY

EXPORT CONTROLS

TITLE IX

FINANCIAL REPORTING CONTROLS

FUNDRAISING & ADVANCEMENT

INFORMATION SECURITY

GRANTS MANAGEMENT

NCAA REGS

RESEARCH COMPLIANCE

IMMIGRATION

OHIO ETHICS LAWS

HEALTH CARE & INSURANCE

WASHINGTON STATE UNIVERSITY
## Regulatory Categories

**Research-Related**
- Human Subjects
- Export Controls
- Research Misconduct
- Grants Management

**Other Higher Ed-Specific**
- FERPA
- NCAA
- [Condition of Federal Funding](#)
  - Clery Act
  - Title IX
  - Financial Aid/Title IV

**All-Sector**
- Americans with Disabilities Act
- Family & Medical Leave Act
- Internal Revenue Code
Compliance at Wright State

- Compliance Department created- Nov. 2016
- Central coordination of departmental compliance functions in implementing existing and upcoming requirements
- Independent oversight and monitoring of university compliance functions
- Assist in compliance policy and training creation and implementation
- HIPAA compliance
- Compliance council
- Website
- EthicsPoint reporting hotline