

# Compliance & Ethics Professional<sup>®</sup>

September  
2017



A PUBLICATION OF THE SOCIETY OF CORPORATE COMPLIANCE AND ETHICS

[www.corporatecompliance.org](http://www.corporatecompliance.org)

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by Kenneth J. Liddle, Esq., MBA, CCEP, CFCM

# A road map for starting a higher education compliance program<sup>1</sup>

- » Getting started is a challenge, so use your peers and the resources available.
- » Take a methodical approach to understanding your culture, compliance structure, and requirements.
- » Use the three-tiered compliance risk assessment to identify and prioritize your early efforts.
- » Be prepared to ask probing and well-informed questions beyond, “What keeps you up at night?”
- » Keep leaning forward toward your goals, and stay positive.



Liddle

**E**n even for someone with experience in compliance or higher education, starting a program at a college or university can be a daunting task. I have read that a good first step is to “just do a compliance risk assessment,” which sounds

like good advice until you stand in the middle of campus and try to figure out where to even begin. College campuses are essentially small towns, with different constituencies, gathered for various purposes, in a highly regulated industry that is constantly changing.

This article outlines a simple road map of practical steps that you can accomplish (or at least begin) in the first six months of your program. You should tailor this to your institution, your priorities, and your known risks—or to put that another way, this is one practical approach to reviewing all areas of compliance, but if you see that something’s on fire, you might want to start there!

## I. First things first: Vision and culture

You have to understand the vision, or why your institution is starting this program in

the first place. Ask yourself, what are you trying to accomplish? Is the compliance program part of management or the board? Is the purpose of the program oversight, or is it service and support (though these are not mutually exclusive)? What are the reporting relationships for Compliance? How does this office/function relate to other offices such as internal audit and general counsel? How and when will Compliance report findings or issues to the senior leadership or the board?

You have to understand the culture of your campus. How will leadership support the development of the program, and how will they support the program against pushback? Who has the authority to make change happen? It is also important to consider what other functions exist that support compliance objectives, such as an enterprise risk function or a training department, or offices such as internal audit, insurance, or general counsel. Many universities have a Compliance Committee, which is an effective way to include stakeholders, break down stovepipes, and communicate about priorities and best practices.

These are questions you work out with your leadership and discuss with your board. It is not necessary to understand everything at this point, but you want to ensure that you have a vision and senior-level support for that vision.

## II. The three-tiered compliance risk assessment

Once you understand the vision and culture, you will need to begin to assess the compliance landscape on your campus. By following the three-tiered compliance assessment, you can identify roles and responsibilities and determine what areas are at the highest risk (i.e., where to focus your early efforts).

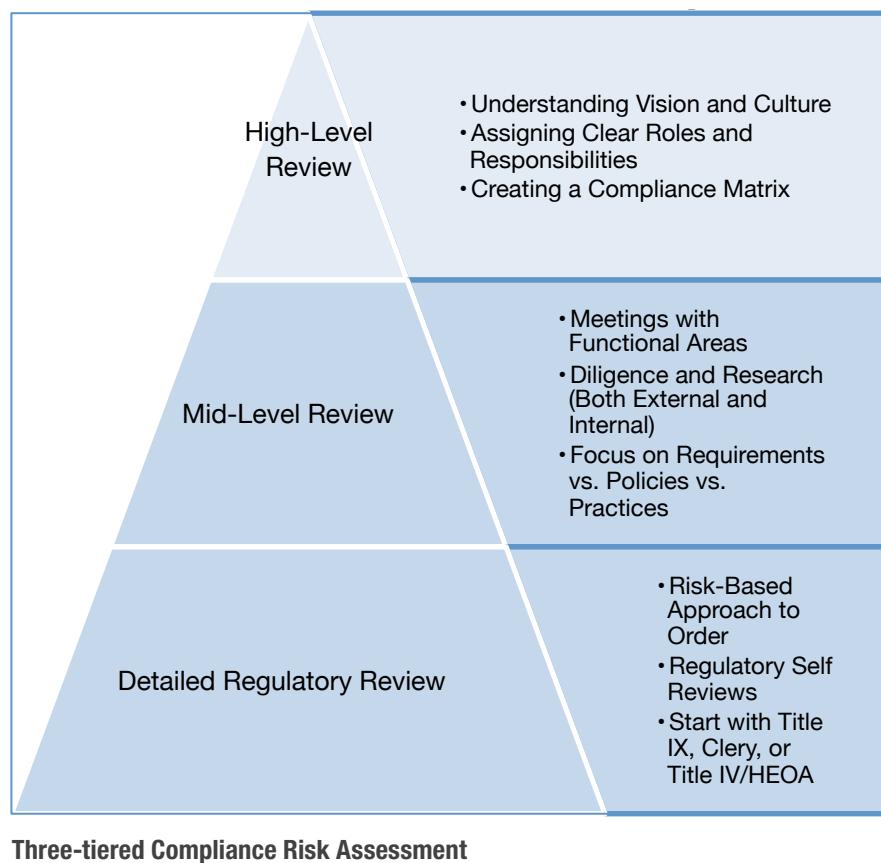
You may find that many of the components of an effective ethics and compliance program already exist. For example, you may already have an anonymous hotline or a code of conduct, and you likely already have many successful internal controls in place. You will also likely find that the compliance efforts of some departments are being competently managed, whereas others are not.

**1. Tier 1: High-level compliance risk review:**  
**Who is who, who does what, and what is in place?**  
As a starting point, Compliance should lead a review against the elements for an effective compliance and ethics program (i.e., the Federal Sentencing Guidelines). Use this process to engage leadership and others on the concept of ethics,

and discuss your values and code (either an existing one or the development of one). It is more than just assessing what is (i.e., that the box is checked); it is really about engaging leadership on what *should be!*

Another great way to get going is to have Compliance lead the development of a compliance matrix, which identifies a responsible party for each regulatory area. You will likely find while putting together the matrix that certain areas lack clear ownership either because everyone says “not my job” or because multiple people say “hey, that is my job.” It is important to involve senior leadership in resolving these orphans and custody battles, as they are a source of compliance risk (and one that can be eliminated).

The matrix should be widely disseminated and available to staff and faculty (remember to keep it up to date).



If your institution will have a Compliance Committee, I would consider involving them in both of these reviews. It should get them interested and engaged in the program.

Finally, perhaps it goes without saying, but I would also include in Tier 1 any obvious and known risk (e.g., wait, we don't have a Title IX program?!).

**2. Tier 2: Mid-level compliance risk review:**  
**Understanding how your campus is currently managing various compliance areas/risks**  
 Early in the program, Compliance should meet with the individuals responsible for each of the functional compliance areas to assess the basic function and risk in that area. It is important that these meetings be productive and perhaps slightly provocative. You want to get beyond "what keeps you up at night" and really probe into policies, practices, and hot topics.

It is important that you prepare for these meetings, and that cannot be overstated. You are speaking to a subject-matter expert about their own area of expertise, so to be effective you should be both knowledgeable and respectful. Your goal is to understand the basic program and the risk, while demonstrating that you are knowledgeable, curious, and someone who understands the issues.

- ▶ Make sure you read any available policies or procedures on the area.
- ▶ Consult with your Internal Audit and Legal departments ahead of time and ask about their concerns in the compliance area (and get copies of reports, if you can).
- ▶ Read the news and any recent government reports/memos. You must be aware of what is going on in their world.
- ▶ Be positive and friendly, and use words like we and ours (instead of you and yours) to communicate that you are part of the team and the solution.

**Sample tier 2 questions that are better than "What keeps you up at night?"**

- Do we have a policy? Is our policy up to date? Do you follow that policy? Do other people follow that policy? Should that policy be updated?
- Do you get the support you need from other departments?
- Do we train on that? Do you have a record of that training? Is it accurate?
- Has the government (or relevant authority) reviewed us on this? How did we do (and please send me the report)? Do you think we are ready for a government audit/review in this area?
- When the government did X recently, how did we respond?
- University X just got fined/bad press for this, can that happen here? How do we ensure that it doesn't?

**3. Tier 3: The detailed compliance regulatory review**

It is likely in any governmental review or audit that the auditor will have a long checklist of specific requirements. As such, it is important that Compliance (in conjunction with Internal Audit and others) review the university's performance against individual regulations. Obviously, this type of detailed compliance review is time consuming, but nevertheless it is important to review every area at a detailed level, at least periodically. One way to simplify the process is to have the functional compliance area do a regulatory self-review and present it to Compliance (or perhaps the Compliance Committee). Compliance will then use this self-review as the basis for further review. Make sure they include citations and source documents.

In deciding what to review first, consider your initial risk assessment (tiers 1 and 2); prior internal audit reports; prior regulator activity on campus; staff turnover concerns; any recent government pronouncements, programs, or activities at peer institutions; or anything else that may be relevant. In today's climate, I would consider a detailed review of Title IX to be essential. Other early candidates for a detailed review include Clery Act or Title IV (including the Higher Education Opportunity Act).

### **III. Putting it all together**

As you identify areas that need improvement and noncompliant

practices, you will need to communicate your findings. It is important that the appropriate senior leadership or board committees are made aware of issues, as appropriate. As a practical matter, I usually like to share my concerns and a proposed resolution with the individual most directly involved before I report to a supervisor or leadership (unless there is a specific reason not to do so).

How involved Compliance is in implementing change in the functional areas will vary with the particular issue, individuals, and from school to school. Generally, the functional area has the primary responsibility for enacting change, with Compliance facilitating communication and scheduling (i.e., keep everyone moving toward the same goal). It is not uncommon for Compliance to be viewed by functional

areas as a source for guidance or leadership, particularly with cross-functional issues (such as minors on campus or Title IX).

You should also develop a simple tool or spreadsheet to track issues and their current status. The compliance program will likely be responsible for tracking action items and deliverables from a variety of initiatives

across multiple departments, and it may issue progress reports to leadership or to the board.

When thinking through your system for tracking and communicating, it is important to discuss it with your legal department. Compliance reports and records are usually not covered by the attorney-

client privilege and may be subject to state open records laws (in the case of public schools) or to subpoena in legal actions (in the case of all schools).

Finally, the two best pieces of advice I can offer anyone starting a program are (1) keep leaning forward toward your goals and (2) stay positive! It may seem daunting at first, but by taking a methodical and structured approach to understanding your institution, and the structures already in place, you can put together a work plan that will provide an enduring foundation for your success. \*

1. A version of this paper was presented at the Society for Corporate Compliance and Ethics Higher Education Compliance Conference June 4, 2017, in Baltimore, Maryland.

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