Institution-wide Compliance Assessment: What It Is and Why You Need to Do It

June 3, 2020

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Today's speakers

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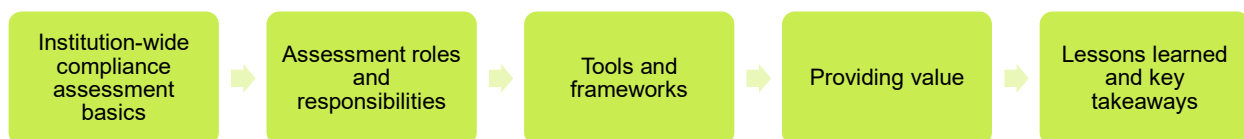
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Learning objectives

- **Understand the key elements (e.g., structures, processes, key activities) and benefits of performing an institution-wide compliance program assessment**

- **Discuss the role of the compliance function, as well as other stakeholders, in executing an institution-wide compliance program assessment**

- **Learn how to leverage the results of a compliance program assessment within the organization's risk management framework to provide value to institutional stakeholders**

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Agenda

Institution-wide compliance assessment basics	Assessment roles and responsibilities	Tools and frameworks	Providing value	Lessons learned and key takeaways

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Does your institution have a centralized, institutional compliance program?

A. Yes

B. No, but we are considering establishing an institutional compliance program

C. No, and we have no plans at this time to create an institutional compliance program

D. Unsure
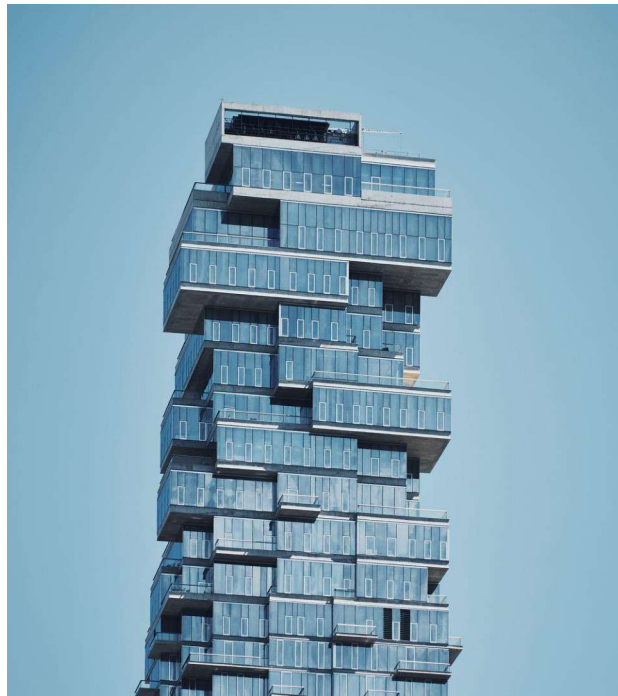
Institution-wide compliance assessment basics

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INSTITUTION-WIDE COMPLIANCE ASSESSMENT BASICS

Introduction to institution-wide compliance assessments

Primary objectives of compliance assessments are to:
- **Evaluate the effectiveness and alignment** of an institution's compliance structure and processes with the institution's current and future needs
- **Inform decision-making** for institutional leadership

The engagement team **assesses the structure** of the institution's compliance function **relative to industry leading practices and federal expectations** for compliance programs via a combination of documentation review and interviews of stakeholders

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INSTITUTION-WIDE COMPLIANCE ASSESSMENT BASICS

Benefits of compliance assessment

1. Enhance strategic compliance oversight and **improve alignment of resources** with strategic priorities

2. **Evolve compliance monitoring** and improve responsiveness to compliance and strategic needs

3. Gain clear and **optimized roles and reporting structures**

4. **Expand collaboration efforts** across various compliance functions to drive improvements across the institution

5. **Communicate roles and expectations** for the institution's compliance function to better position itself to support the institution in the future

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Benefits of a compliance program assessment at the University of Tennessee (UT)

Having an independent, outside assessment:

Provides assurance to executive management

Helps evaluate how you are doing now (current state), but also provides insight into where you need to be headed (future state)

Helps achieve objectives that require executive management buy-in and support

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Overview of UT's compliance program

The UT Institutional Compliance program was formed in 2008 at the request of the Board of Trustees' Audit Committee

Component of the Office of Audit and Compliance, operates independently
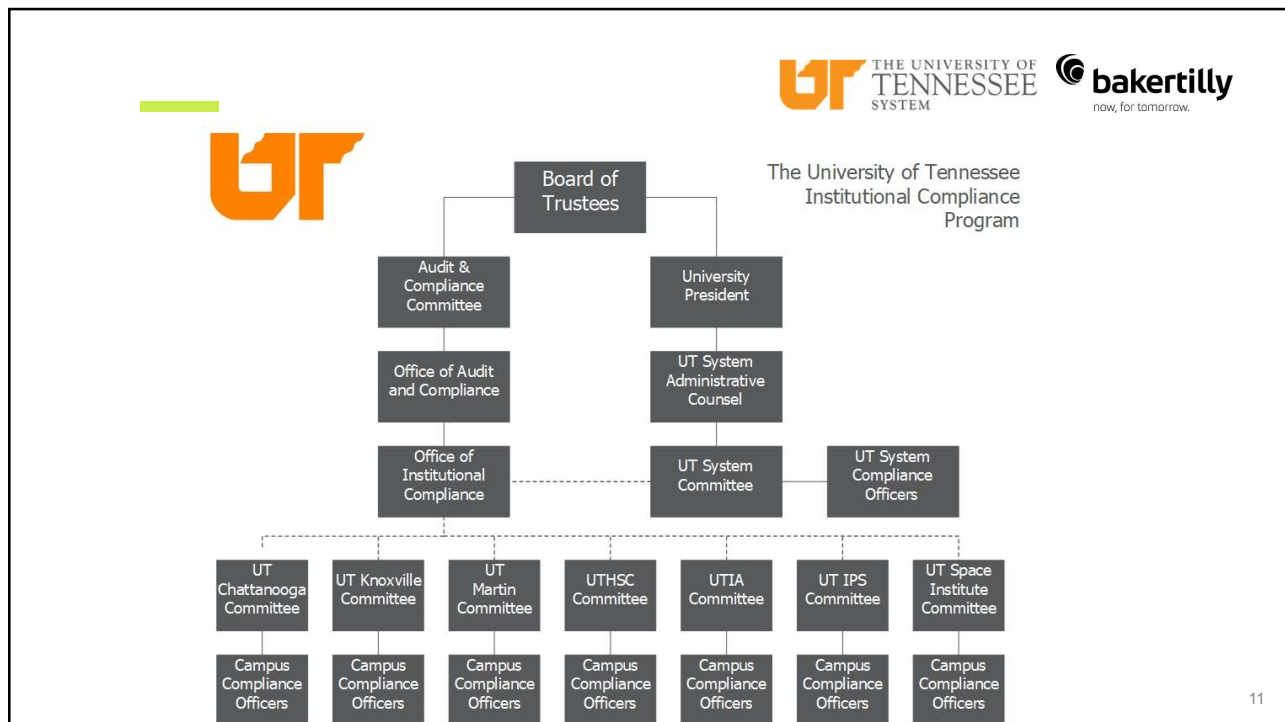
UT Compliance

The program forms the organizational infrastructure and reporting mechanisms to support a "culture of compliance" at the University.
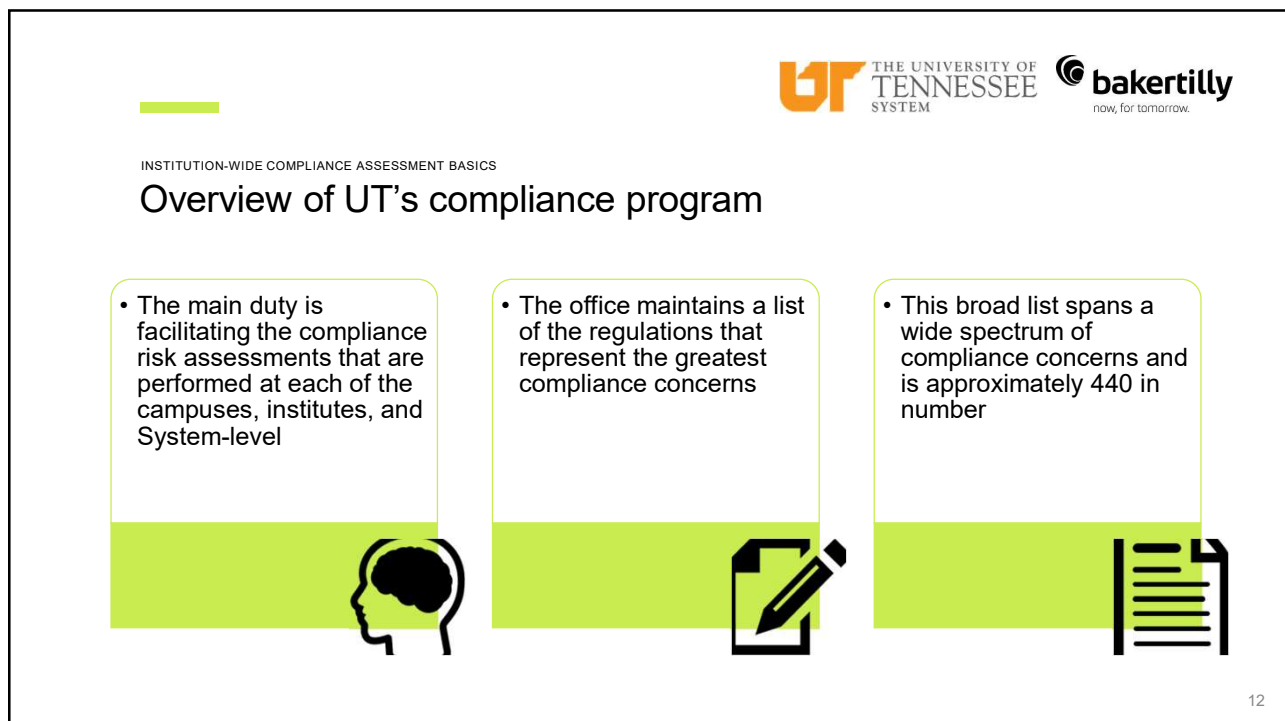
The program is built on the standards established by the *Federal Sentencing Guidelines*.

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INSTITUTION-WIDE COMPLIANCE ASSESSMENT BASICS

Overview of UT's compliance program

- The main duty is facilitating the compliance risk assessments that are performed at each of the campuses, institutes, and System-level

- The office maintains a list of the regulations that represent the greatest compliance concerns

- This broad list spans a wide spectrum of compliance concerns and is approximately 440 in number

Overview of UT's compliance program

A primary tenet of the compliance program is that an individual is assigned primary responsibility for compliance at each campus and institute for each regulation in our "compliance universe"

We perform a comprehensive compliance risk assessment at each campus and institute every five years

We facilitate Campus- and System-level committees

Reports presented to the Audit and Compliance Committee

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Overview of UT's compliance program

In summary, the program provides management assurance that:

Regulations with potentially significant compliance risk have been identified

Individuals have been assigned responsibility for compliance

The University has made a good faith effort to identify our compliance risks

Risk mitigation plans have been developed and are being tracked where appropriate

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What are your compliance priorities right now during COVID-19?

A. CARES Act

B. Online education

C. Reimbursements to students

D. All of the above are priorities

E. Other

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INSTITUTION-WIDE COMPLIANCE ASSESSMENT BASICS

Impetus for conducting an assessment at UT

Need for an **independent review of the effectiveness of the structure and processes of the University system's institutional compliance program**, including:

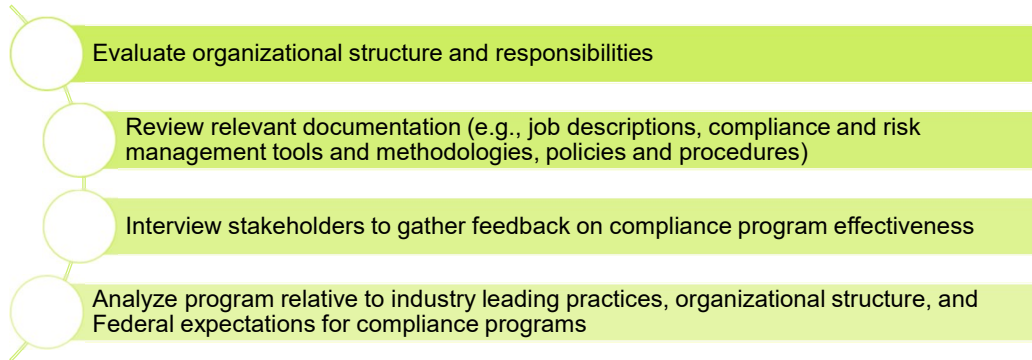| Review of the **governance structure** for the UT system's institutional compliance function | Assessment of the **organizational structure of the compliance program**, including: program governance, composition and responsibilities of the various compliance committees, and responsibilities of campus compliance officers | Inclusion of the **Federal Sentencing Guidelines** of Organizations related to Effective Compliance and Ethics Program requirements as it applies to the UT system's Institutional Compliance Program |

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Institution-wide compliance assessment process

Evaluate organizational structure and responsibilities

Review relevant documentation (e.g., job descriptions, compliance and risk management tools and methodologies, policies and procedures)

Interview stakeholders to gather feedback on compliance program effectiveness

Analyze program relative to industry leading practices, organizational structure, and Federal expectations for compliance programs

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Assessment considerations for institutions wanting to implement a university-wide compliance program

Review existing compliance management activities across the university's many operational areas

Understand perspectives of senior leadership regarding structure and alignment of compliance governance and oversight functions

Develop a roadmap for formalizing and enhancing existing processes into an evolved, university-wide compliance program

Facilitate conversation on recommended holistic institutional compliance approaches with executive stakeholders

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Assessment roles and responsibilities

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ASSESSMENT ROLES AND RESPONSIBILITIES

Assessment team

| INTERNAL		EXTERNAL
• **Self-assessment** performed by compliance team	• **Combination** of internal and external	• **Compliance leaders** from other institutions • **Subject matter experts** (e.g., professional services, associations) • Combination of institutional leaders and subject matter experts

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Has your institution conducted an assessment of its institutional compliance program?

A. Yes, recently

B. Yes, but it is probably time to do so again

C. No, but are planning to do one soon

D. No, and we currently do not plan to do so

E. Unsure or not applicable
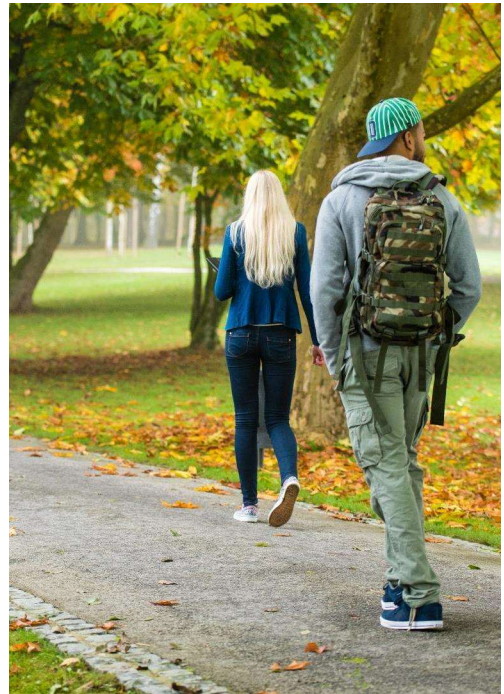
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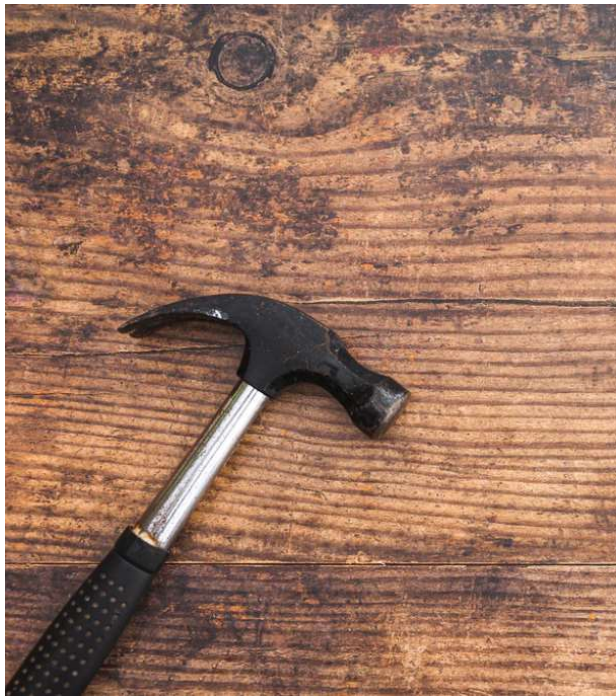
Tools and templates

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Technical considerations for compliance assessments

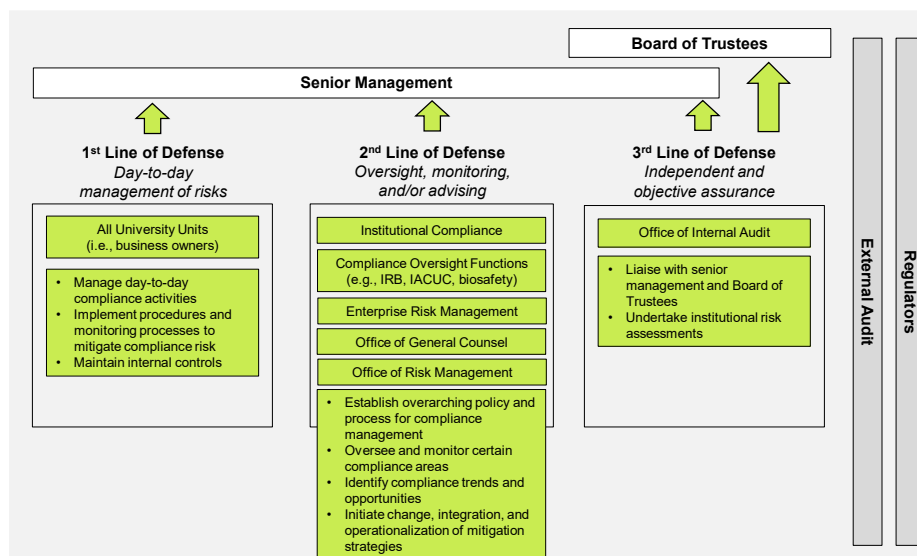| Three Lines of Defense model | Federal Sentencing Guidelines | Collaboration with stakeholders to best meet institutional needs |

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Three Lines of Defense model

Board of Trustees

Senior Management

1st Line of Defense
Day-to-day management of risks

All University Units
(i.e., business owners)

- Manage day-to-day compliance activities
- Implement procedures and monitoring processes to mitigate compliance risk
- Maintain internal controls

2nd Line of Defense
Oversight, monitoring, and/or advising

Institutional Compliance

Compliance Oversight Functions
(e.g., IRB, IACUC, biosafety)

Enterprise Risk Management

Office of General Counsel

Office of Risk Management

- Establish overarching policy and process for compliance management
- Oversee and monitor certain compliance areas
- Identify compliance trends and opportunities
- Initiate change, integration, and operationalization of mitigation strategies

3rd Line of Defense
Independent and objective assurance

Office of Internal Audit

- Liaise with senior management and Board of Trustees
- Undertake institutional risk assessments

External Audit

Regulators

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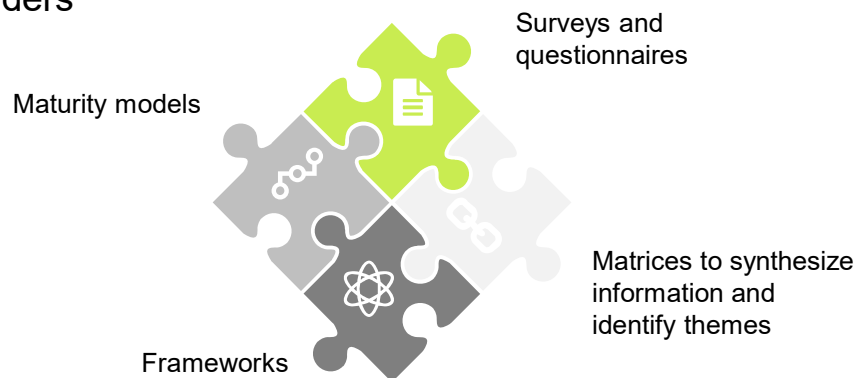## Important elements of a compliance program: Federal Sentencing Guidelines

- Prevention and detection of criminal conduct
- Leadership oversight of the compliance program
- Reject individuals with a history of misconduct from leadership positions
- Effective training on compliance program
- Monitoring of the mechanism used for reporting
- Positive reinforcement/punishment for misconduct
- Initiate investigations in a timely manner
- Implement periodic modifications to compliance program

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Tools and templates to support analysis: Collaboration with stakeholders

Maturity models

Surveys and questionnaires

Matrices to synthesize information and identify themes

Frameworks

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Example survey questions

Question	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know
The compliance function adds value and helps the university accomplish its objectives.					
I know where to find the university's confidential or anonymous mechanisms (e.g., hotline) to report misconduct.					
Hotline reports are kept confidential and only shared on a need-to-know basis.					
I can make a report or seek guidance regarding potential misconduct without fear of retaliation.					
Compliance responds quickly and appropriately to allegations of misconduct.					

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Example matrix

Key Elements	Work Steps	Assessment Questions	Assessment Answer
Standards and Procedures • Prevent and detect criminal conduct • State clearly and visibly what is prohibited in policies	(1) Review the university's practices by interviewing key officials to discuss procedures and reviewing current policies. (2) Perform gap analysis/assessment against expected policies compared to major regulatory requirements. (3) Review the university's policy governance practices (i.e. policy-on-policy).	(1) Are compliance expectations included in a written code of conduct or code of ethics? (2) Has the compliance program been implemented within the organization? (3) Does the compliance program provide guidance to employees and others associated with the university on how to identify and communicate compliance issues to compliance personnel?	
Communication and Education • Communicate standards and procedures periodically and in a practical manner • Host trainings and continuing advice sessions for all members of the university	(1) Check the university's training procedures, and determine whether or not they are adequate. (2) Understand who is subject to training, what training they receive and compare it to the training that is required. (3) Review training materials for consistency with regulatory expectations and university policy. (4) Test that a subset of employees have received the required trainings.	(1) Is there evidence of compliance training program which includes the Code of Conduct/Ethics; expectations of the compliance program; and how the compliance program operates? (2) Are there accessible mechanism(s) for the governing board, management, employees and others associated with the university to communicate compliance related concerns to the responsible compliance position? What examples exist of how the Compliance Officer discusses those points? (3) Do the accessible mechanisms include methods for anonymous or confidential communication?	

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Example framework*

Number	Category	Description
1	Written policies and procedures	Does the compliance program describe how potential compliance problems are investigated and resolved?
2	Designate an employee vested with responsibility	Does the responsible compliance position report to the CEO or other senior staff (and not through the legal department or the CFO)?
3	Training and education	Are new employees, board members and affiliates trained in compliance so that they could identify circumstances of fraud, waste and abuse?
4	Communication lines to the responsible compliance position	Are there accessible mechanism(s) for the governing board, management, employees and others associated with the organization to communicate compliance related concerns to the responsible compliance position? What examples exist of how the Compliance Officer discusses those points?
5	Disciplinary policies to encourage good faith participation	If disciplinary action was taken, was discipline fairly and consistently applied regardless of the perpetrator's position with the organization?
6	A system for routine identification of compliance risk areas	Does the organization routinely evaluate potential or actual non-compliance as a result of its self-evaluations and audits?
7	A system for responding to compliance issues	Does a system or methodology exist to periodically prioritize compliance oversight of activities that are the most serious or most likely to occur?
8	A policy of non-intimidation and non-retaliation	Are allegations of intimidation or retaliation fully and completely investigated? What history exists associated with investigations of allegations of intimidation or retaliation?

Source: New York State Office of Medicaid Inspector General

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Example maturity model

|	Standards and Procedures	Oversight	Due Diligence Over Delegation of Authority	Communi-cation and Education	Monitoring and Auditing	Enforceme-nt and Discipline	Response and Prevention
Level 5: Optimized Processes continually improved upon through incremental and innovative advancement.							
Level 4: Managed Management uses defined metrics to monitor and control processes.							
Level 3: Defined Processes are defined, documented, and communicated.							
Level 2: Repeatable Processes are repeatable, possibly with consistent results.							
Level 1: Initial Processes are ad hoc, rarely defined, and dependent on individual accountability.							

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How has COVID-19 affected your institution's focus on compliance?

A. My institution is more focused on compliance

B. My institution is less focused on compliance due to competing priorities

C. No change

D. Other
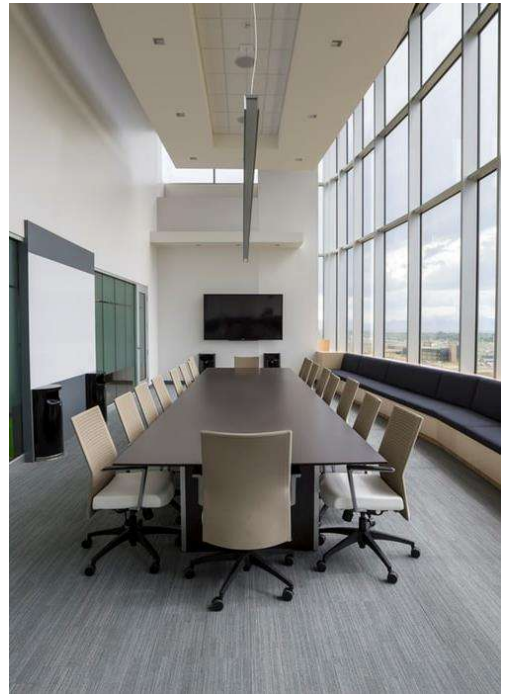
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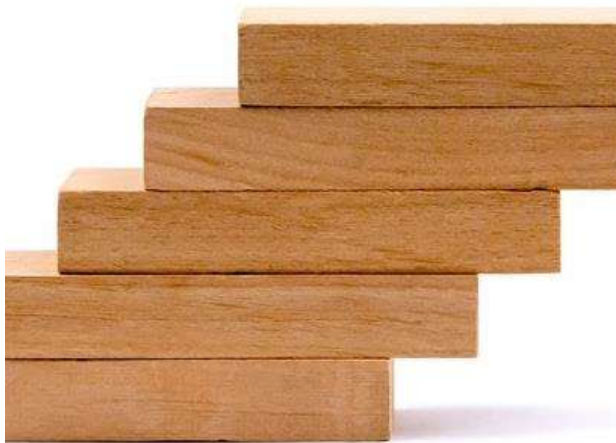
Providing value

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Enhancements made to UT's compliance program as a result of the assessment and recommendations

Increasing management involvement in verifying compliance priorities, including the campus Chancellors' cabinets and the system President's staff

Establishing the analysis and reporting infrastructure for addressing strategic compliance concerns at both the campus and system level

Improving senior management feedback to include executive management and compliance officer supervisors; previously, we only collected feedback from the compliance officers

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Enhancements made to UT's compliance program as a result of the assessment and recommendations, *cont.*

Clarifying the role of institutional compliance to collaborate with the various campuses and institutes in compliance initiatives – *now have the directive to do this*

Coordinating involvement with the Enterprise Risk Management (ERM) process

Discussing with the Board Audit and Compliance Committee "re-awakened" the emphasis on ERM at the system level

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Combined office including internal audit, ERM and compliance

• Synergies in strategic executive leadership requirements	• Independence considerations
	• View of compliance as "policing"
• Similar areas of focus and reporting, monitoring capabilities, and requirements	• Need for cross-campus relationship and influence
• Need for cross-campus relationship and influence	• Balance of leadership time and resources among the various components

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Hybrid office of ERM and compliance

• Combined focus of risk and compliance to drive organization discussion and management	• Limited experience related to monitoring activities
	• Balance of time and resources between the various components
	• Need to establish and build influence with Board and senior leaders

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PROVIDING VALUE

Stand-alone office of compliance

- Dedicated and clear focus on compliance and ethics program

- Fewer synergies may carry heavier resource requirements
- Must ensure appropriate reporting lines are in place
- Need to establish and build relationships and influence
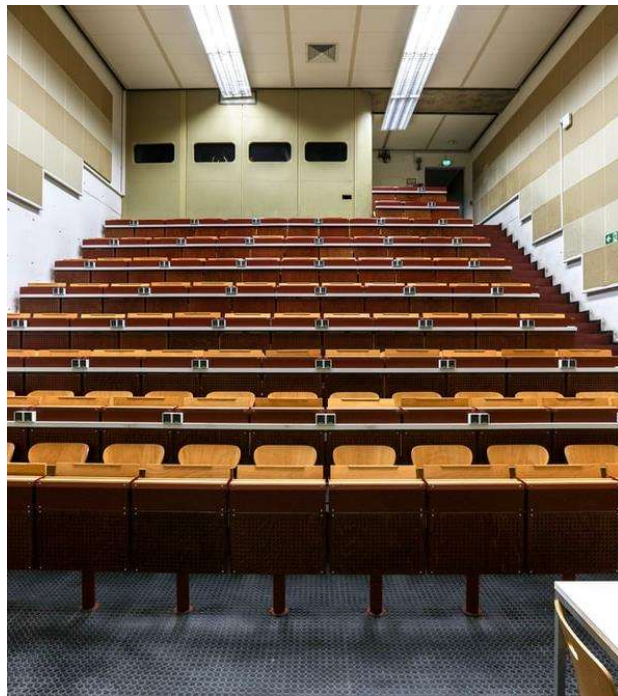- Lack of automatic integration with ERM

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POLLING QUESTION

Where does your institutional compliance program reside?

A. Umbrella organization with Internal Audit **and** ERM

B. Umbrella organization with just Internal Audit **or** ERM

C. Standalone institutional compliance office

D. Other or not applicable

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Lessons learned and key takeaways

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LESSONS LEARNED

Potential outcomes from an institution-wide assessment

✓ **Enhance strategic compliance oversight**
  - Involve senior leaders in strategic compliance considerations
  - Streamline the risk assessment process

Evolve compliance monitoring and analytics

Expand collaboration efforts and communicate roles and expectations for the Office of Institutional Compliance
  - Expand opportunities for sharing leading practices across the university's system
  - Coordinate ERM efforts with compliance and internal audit activities

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Possible institution-wide assessment challenges

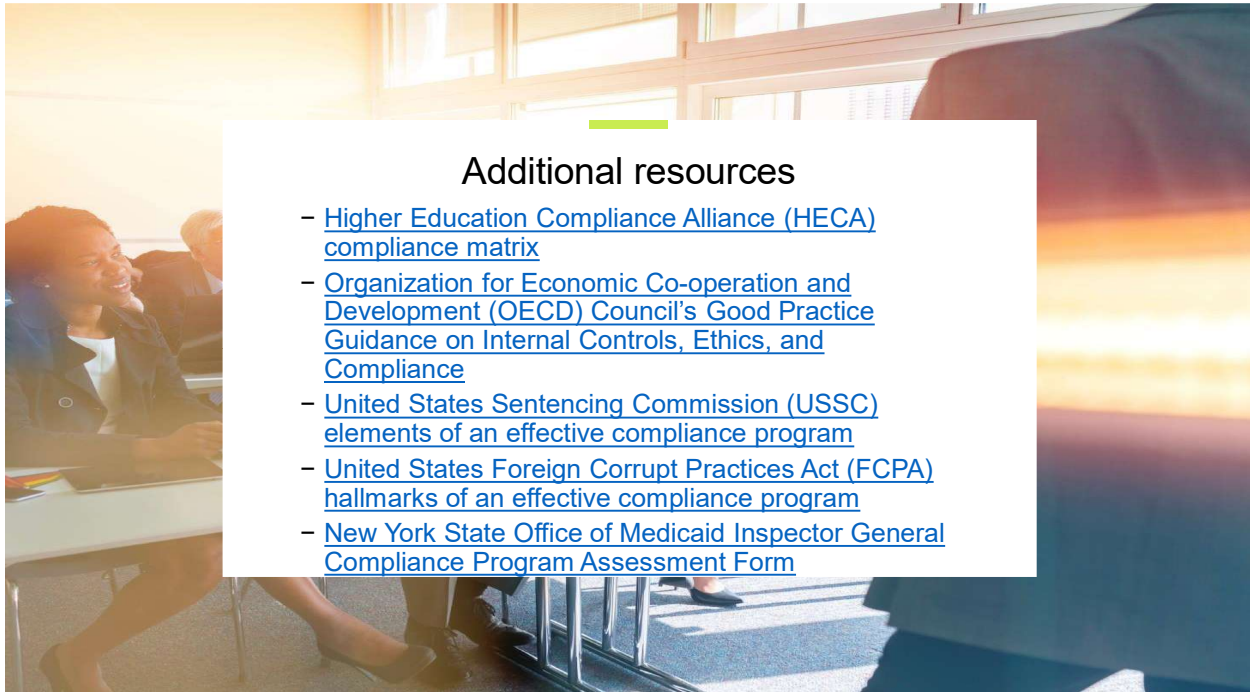|	
1.	Obtaining buy-in from the compliance program and institutional leadership
2.	Selecting the right assessment team
3.	Identifying the right interviewees and sequencing interviews effectively
4.	Considering assessment team and interviewee availability
5.	Keeping interviews focused

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Key takeaways

- Gain institution-wide buy-in from the start
- Involve the right stakeholders
- Compare against leading practices and standards for compliance programs
- Monitor implementation of recommendations

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Additional resources

- Higher Education Compliance Alliance (HECA) compliance matrix
- Organization for Economic Co-operation and Development (OECD) Council's Good Practice Guidance on Internal Controls, Ethics, and Compliance
- United States Sentencing Commission (USSC) elements of an effective compliance program
- United States Foreign Corrupt Practices Act (FCPA) hallmarks of an effective compliance program
- New York State Office of Medicaid Inspector General Compliance Program Assessment Form

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