



Implementing an Institutional Compliance Program at the University of Toledo: A "Matrix" Approach (September 2020)

Background

A comprehensive institutional compliance program is one which integrates and coordinates all significant requirements with which the institution must comply by law, regulation, or other binding rule or agreement. Comprehensive organizational compliance programs are common in highly regulated industries, and have become less rare recently in higher education as a result of highly publicized instances of alleged noncompliance in such areas as Medicare billing (e.g., Corporate Integrity Agreement imposed on the University of Pennsylvania by the Department of Justice).

The Federal Sentencing Guidelines (FSG) provided one of the first "models" for organizational compliance programs. They recommended that federal judges give "credit" for reduced penalties to organizations found guilty of violations if they had previously developed "an effective program to prevent and detect violations of law." Attachment A provides the definition of such a program from the FSG Section 8A1.2.

In response to the PATH investigations at university teaching hospitals, models based on the FSG were developed by the Department of Health and Human Services (DHHS) Office of Inspector General (OIG). A December 2019 survey of 17 university Chief Financial Officers indicated that formal compliance programs had been or were being established at 10 of the universities; many of these programs were initiated as a result of adoption of one or more elements of the DHHS/OIG model within their Medical Centers. An article in recent issues of the journal of the National Association of College and University Business Officers (NACUBO) provides an overview of such programs.

All these models contain various components aimed at enhancing and ensuring institutional compliance, including:

- Establishing institutional expectations and codes of conduct
- Developing and effectively communicating policies and procedures
- Designating a formal compliance office with suitable administrative powers
- Implementing a program to monitor compliance
- Identifying and applying sanctions for intentional noncompliance

The "Matrix" Framework for the University of Toledo's Institutional Compliance Program

Currently at the University of Toledo, programs containing components such as those bulleted above have evolved in several specific compliance areas (e.g., Environmental Health and Safety, sexual harassment, NCAA rules, research administration), but there is no single point of contact. This document summarizes the development of a "matrix" compliance program which connects these individual components, coordinates their operations, and represents the University's institutional perspective, but at the same time avoids the creation of a new bureaucracy which could be perceived by the faculty as unhelpful. We call this a "matrix" framework, because its goal is to enhance compliance primarily through the actions of a decentralized matrix of University offices and officers, coordinated and assisted by a small central compliance function with a reporting relationship to the University of Toledo Board of Trustees.

Attachments B and C provide an overview of the "matrix," showing the compliance components included (rows of Attachment B), compliance areas (i.e., clusters of laws, regulations, contractual requirements) to be included (the 16 columns of Attachment B), and the offices and individuals incorporated within the matrix (columns of Attachment C).

Steps Implemented

1. President re-designated the Director of Internal Audit as the Executive Director of Internal Audit and Chief Compliance Officer (the Director). Director continues to report to the CFO, with a direct reporting relationship to the President and the Finance and Audit Committee of the Board of Trustees.
2. Board of Trustees re-designated the Board accountability of the function from the Trusteeship, Governance, and Audit Committee to the Finance and Audit Committee.
3. Executive Director of Internal Audit and Chief Compliance Officer tasked with presentation of an annual institutional compliance report to the President, Senior Leadership Team, and Finance and Audit Committee.

4. Executive Vice President of Finance and Administration, President, and Chair of the Finance and Audit Committee of the Board Of Trustees appointed an Institutional Compliance Committee, staffed by the Director, made up of the persons functionally responsible for compliance in the 16 "matrix" areas (fourth column in Attachment C plus representatives of the Office of Legal Affairs). The primary purpose of this Committee is to meet at least quarterly to do risk assessments and ensure that all members are knowledgeable about pertinent noncompliance risks deriving from sources external to the University or from any one of the other 16 areas. Committee members are also responsible for consulting with and keeping the policy makers in the 16 areas (second column in Attachment C) apprised of compliance issues within their areas.
5. Director initiated Compliance Program activities, including:
 - Worked with the Institutional Compliance Committee to ensure that each cell of the "compliance matrix" (Attachment B) contains appropriate policies and processes and that the existence of policies or processes in that area is documented (this is critical to success of this model; in essence, the idea is to push most of the compliance activity "out" to the existing offices in the matrix, rather than doing it centrally).
 - Promoted compliance awareness through "ethics initiatives," either University-wide, or in concert with the faculty and staff training programs of the offices in the compliance "matrix."
 - Provided liaison with the Office of Legal Affairs, the Office of Marketing and Communications, and other responsible offices in addressing incidents of alleged noncompliance that arise.
 - Worked through the Internal Audit function to both monitor compliance and assess the adequacy of compliance activities in each area of the matrix. Included such information in the annual compliance report.
 - Implemented and publicized a "Compliance Help Line" program, which the University of Toledo employees who have concerns of any kind stemming from possible noncompliance can call to register their concerns, anonymously if desired. (This help line is contracted out to ComplianceLine. Call content is documented and reviewed; calls pertaining to any of the 16 areas in the "matrix" are forwarded to the responsible offices for handling, with later follow-up by the Director.)
 - Networked with other university compliance officers throughout the nation to keep apprised of emerging compliance issues, share best practices, etc.
 - Considered needed additions to the compliance matrix, if other important areas of compliance are identified, and kept the matrix up to date, as the UToledo organization changes and new individuals assume roles of responsibility.
 - Considered needed changes in the compliance program and brought them to Institutional Compliance Committee for review and transmittal to the President.
 - In cooperation with the Office of Legal Affairs, developed a formal policy, and procedures, to protect UToledo employees who make allegations of noncompliance.
 - Secured necessary funding from the Executive Vice President and Chief Financial Officer to carry out the above activities.

Attachment A
Excerpt from Federal Sentencing Guidelines
§8A1.2. Application Instructions - Organizations

(k) An "effective program to prevent and detect violations of law" means a program that has been reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal conduct. Failure to prevent or detect the instant offense, by itself, does not mean that the program was not effective. The hallmark of an effective program to prevent and detect violations of law is that the organization exercised due diligence in seeking to prevent and detect criminal conduct by its employees and other agents. Due diligence requires at a minimum that the organization must have taken the following types of steps:

(1) The organization must have established compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal conduct.

(2) Specific individual(s) within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures.

(3) The organization must have used due care not to delegate substantial discretionary authority to individuals whom the organization knew or should have known through the exercise of due diligence, had a propensity to engage in illegal activities.

(4) The organization must have taken steps to communicate effectively its standards and procedures to all employees and other agents, e.g., by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.

(5) The organization must have taken reasonable steps to achieve compliance with its standards, e.g., by utilizing monitoring and auditing systems reasonably designed to detect criminal conduct by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents could report criminal conduct by others within the organization without fear of retribution.

(6) The standards must have been consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect an offense. Adequate discipline of individuals responsible for an offense is a necessary component of enforcement; however, the form of discipline that will be appropriate will be case specific.

(7) After an offense has been detected, the organization must have taken all reasonable steps to respond appropriately to the offense and to prevent further similar offenses - including any necessary modifications to its program to prevent and detect violations of law.

The precise actions necessary for an effective program to prevent and detect violations of law upon several factors. Among the relevant factors are:

(i) Size of the organization - The requisite degree of formality of a program to prevent and detect violations of law will vary with the size of the organization: the larger the organization, the more formal the program typically should be. A larger organization generally should have established written policies defining the standards and procedures to be followed by its employees and other agents.

(ii) Likelihood that certain offenses may occur because of the nature of its business – If because of the nature of an organization's business there is a substantial risk that certain types of offenses may occur, management must have taken steps to prevent and detect those types of offenses. For example, if an organization handles toxic substances, it must have established standards and procedures designed to ensure that those substances are always properly handled. If an organization employs sales personnel who have flexibility in setting prices, it must have established standards and procedures designed to prevent and detect price-fixing. If an organization employs sales personnel who have flexibility to represent the material characteristics of a product, it must have established standards and procedures designed to prevent fraud.

(iii) Prior history of the organization - An organization's prior history may indicate types of offenses that it should have taken actions to prevent. Recurrence of misconduct like that which an organization has previously committed casts doubt on whether it took all reasonable steps to prevent such misconduct.

An organization's failure to incorporate and follow applicable industry practice or the standards called for by any applicable governmental regulation weighs against a finding of an effective program to prevent and detect violations of law.

Attachment C
University of Toledo Offices/Officers Responsible for Compliance Areas

Offices/Officers	Cognizant Policy Office	Cognizant Officer	Functionally Responsible Office	Functionally Responsible Person(s)	Primary Focus of Responsibility
Compliance Areas					
EH&S	Dir, Env Health & Rad Safety		Office of Public Safety		PI's
Medicare/Medical Billing	Chief Financial Officer-UTMC		Revenue Cycle (University of Toledo Medical Center)		Med Faculty UTMC Compliance Office
Research	Assoc Dir, Research Compliance		Research and Sponsored Programs		PI's Committee on Research
Research Administration	Assoc Dir, Research Compliance		Research and Sponsored Programs		PI's Departmental and College Administrators Research and Sponsored Programs
Scientific Misconduct	Assoc Dir, Research Compliance		Research and Sponsored Programs		PI's
Human/Animal Subjects	Assoc Dir, Research Compliance		Research and Sponsored Programs		PI's
HR/EEOC	Dir Labor/EE Rel/HR Compliance		Human Resources		Departments, Central HR
ADA	Director of Campus Accessibility and Student Disability Services		Internal Audit and Compliance		Building Administrators
NCAA	Senior Associate Athletics Director for Compliance		Internal Audit and Compliance		Coaches
Fire and Bldg. Safety	Dir, Env Health & Rad Safety		Office of Public Safety		EH&S/Colleges/Departments
IRS and OH Tax	Controller		Controller's Office		Controller's Office
Donor Gift Restrictions	President, University of Toledo Foundation		University of Toledo Foundation		Colleges/Departments/Faculty
Conflicts of Interest	Associate Director of Institutional Compliance		Internal Audit and Compliance		Colleges/Faculty, Controller, Director of Supply Chain
Immigration	Sr Assoc VP &CHRO		Human Resources		Departments, Central HR
Technology Licensing/Intellectual Property	AVP Technology Transfer/Assoc Gen Counsel		Research and Sponsored Programs		Office of Technology Transfer, Faculty
Land Use	President, University of Toledo Foundation		University of Toledo Foundation		University of Toledo Foundation

*Note: The college administrative deans also have functional responsibilities in most areas