Compliance in Higher Education

Governance & Compliance Committee

April 6, 2018

WRIGHT STATE UNIVERSITY

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

Effective compliance program

1991 — U.S. Federal Sentencing Guidelines

1996 — *In re Caremark International Inc. Derivative Litigation*

Fiduciary duties for compliance

2002-2004 — Amendments to Federal Sentencing Guidelines, SOX

More detailed program requirements; ethical culture

Up to Present — Other federal laws & guidelines require ethics & compliance programs

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

*United State Sentencing Commission, Guidelines Manual, §8B2.1 (Nov. 2015).

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
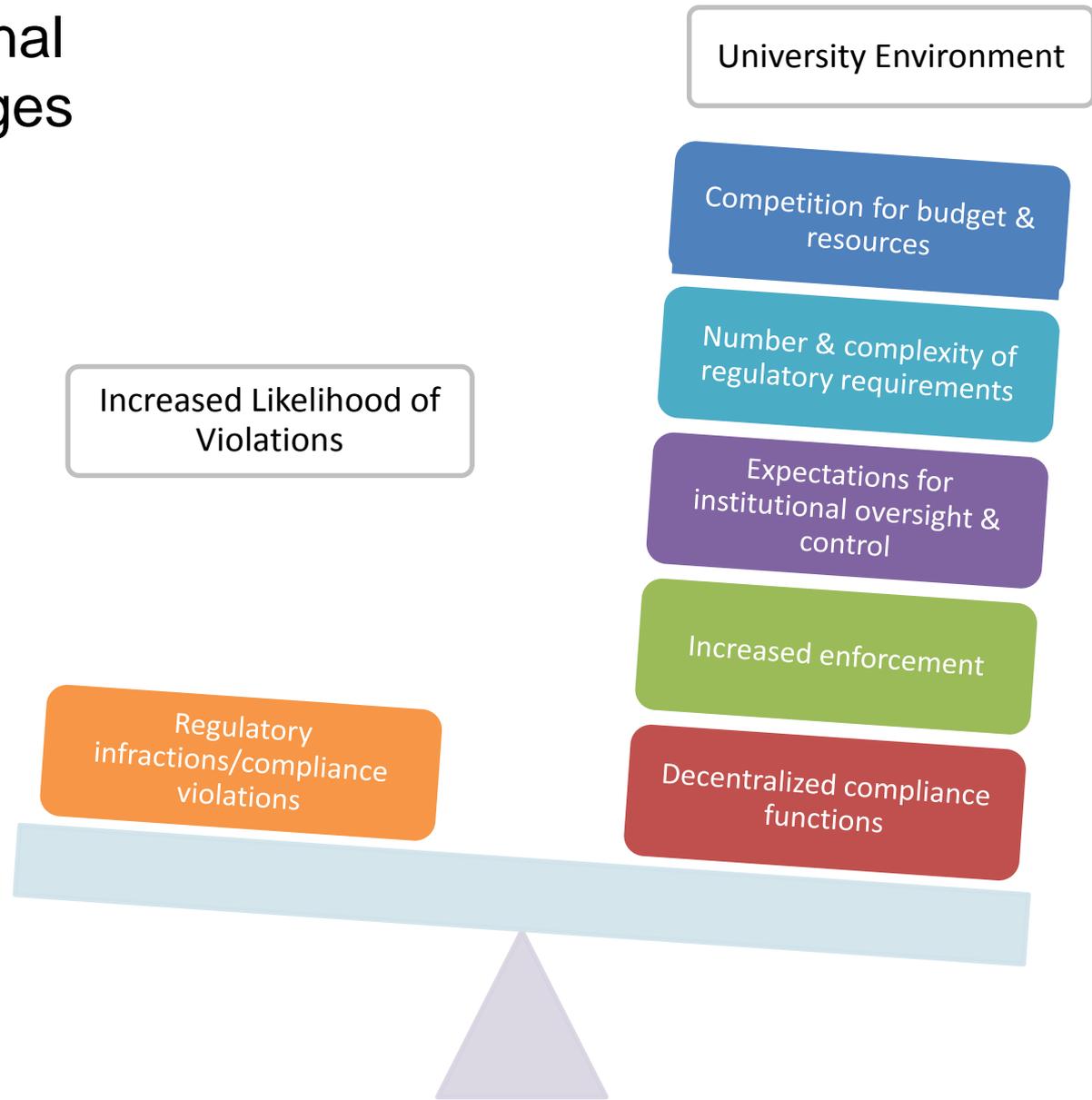
Enforcement Landscape

- **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

University Environment

Competition for budget & resources

Number & complexity of regulatory requirements

Expectations for institutional oversight & control

Increased enforcement

Decentralized compliance functions

Increased Likelihood of Violations

Regulatory infractions/compliance violations

⬆ **33%**

# of people in higher ed with "compliance officer" title between 2004-2014*

* Batkins, Sam, Chad Miller, & Ben Gitis, "Rising Tide of Education Rules Increases Costs," April 30, 2014, available at: http://www.americanactionforum.org/research/rising-tide-of-education-rules-increase-costs.
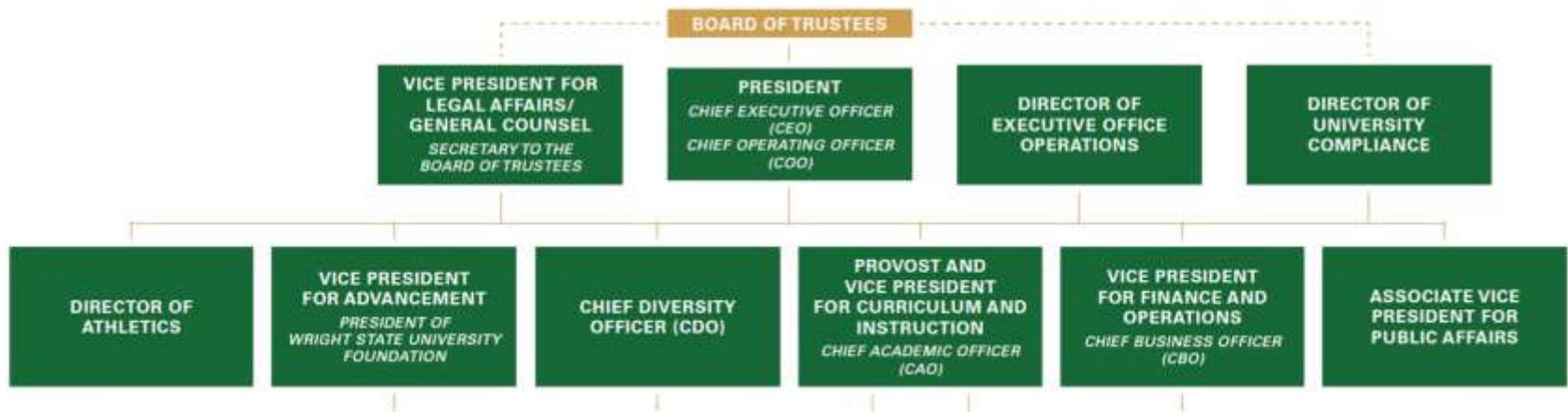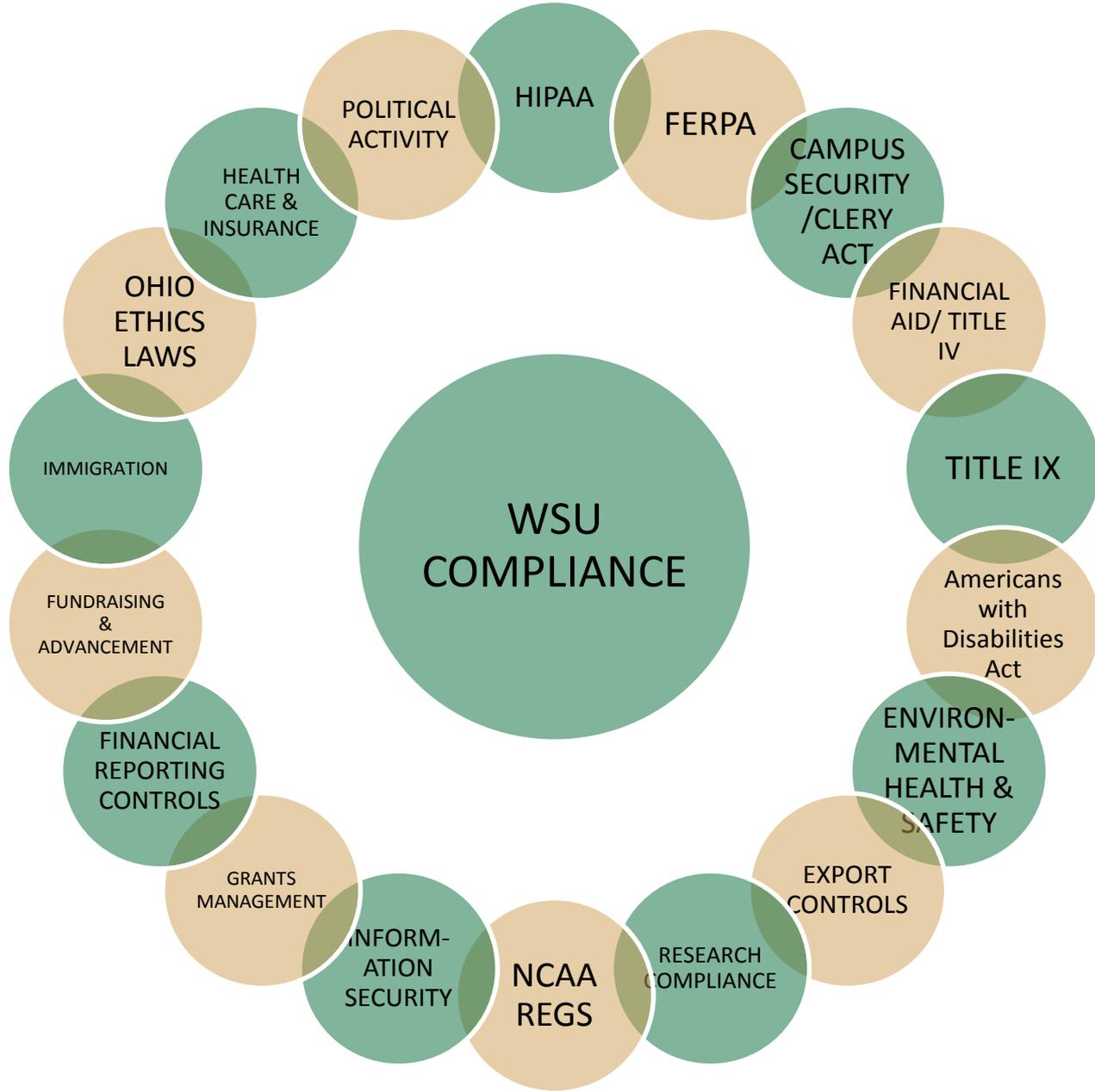
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Compliance Program Focus

- 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

Compliance at Wright State

ORGANIZATIONAL CHART
MARCH 2018

BOARD OF TRUSTEES

VICE PRESIDENT FOR LEGAL AFFAIRS/ GENERAL COUNSEL *SECRETARY TO THE BOARD OF TRUSTEES*

PRESIDENT *CHIEF EXECUTIVE OFFICER (CEO) CHIEF OPERATING OFFICER (COO)*

DIRECTOR OF EXECUTIVE OFFICE OPERATIONS

DIRECTOR OF UNIVERSITY COMPLIANCE

DIRECTOR OF ATHLETICS

VICE PRESIDENT FOR ADVANCEMENT *PRESIDENT OF WRIGHT STATE UNIVERSITY FOUNDATION*

CHIEF DIVERSITY OFFICER (CDO)

PROVOST AND VICE PRESIDENT FOR CURRICULUM AND INSTRUCTION *CHIEF ACADEMIC OFFICER (CAO)*

VICE PRESIDENT FOR FINANCE AND OPERATIONS *CHIEF BUSINESS OFFICER (CBO)*

ASSOCIATE VICE PRESIDENT FOR PUBLIC AFFAIRS

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Regulatory Categories

Research-Related	Other Higher Ed-Specific	All-Sector

• Human Subjects
• Export Controls
• Research Misconduct
• Grants Management
	• FERPA
	• NCAA
	• <u>Condition of Federal Funding</u>
	  • Clery Act
	  • Title IX
	  • Financial Aid/Title IV
		• 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

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