

FACILITATING UNIVERSITY COMPLIANCE USING REGULATORY POLICY INCENTIVES

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Abstract

Internal compliance programs have proliferated at colleges and universities in response to the federal government's regulatory expansion within higher education. Institutions increasingly utilize these programs in order to manage their myriad compliance obligations and the attendant increase in risk. Yet, even properly designed programs possess many areas of potential weakness that hinder their effectiveness. Concurrently, calls for regulatory reform have grown louder. Although several viable options have been proposed and should be taken seriously, none adequately leverage the compliance function so many universities have recently adopted.

Institutional policies are an inseparable component of an effective compliance program and their status as such justifies their inclusion as a central feature of higher education regulatory reform. In lieu of issuing mere affirmative or prohibitive compliance obligations, Congress and the Department of Education should strategically incentivize the development of university-level policies that address regulated issues in order to encourage the internal collaborative processes that lead to effective compliance outcomes.

In addition to examining the practical aspects and effects of compliance programs and institutional policies, this Article draws from institutional theory to demonstrate that the higher education sector benefits from the open exchange of policies and best practices among peer institutions. The federal government's use of regulatory policy incentives or mandates can facilitate this exchange and similar modeling behaviors, which in turn can increase efficiencies at the institutional level. In sum, this Article contends that a legal compliance mandate is more likely to be included within the scope of a university's compliance program (formal or informal as it may be) and implemented effectively if it takes the form of a policy disclosure obligation originating in statute or regulation.