Recalibrating Regulation of Colleges and Universities: Vanderbilt University’s In-depth Analysis on the Cost of Federal Regulatory Compliance

ORAU 2017 ANNUAL MEETING

March 8, 2017
Agenda

Background – what were we trying to accomplish?

Methodology

Vanderbilt findings

Public outreach and use of findings
Complexity in Number of Regulations, Laws and Agencies Increasing Burden on Institutions

> 35 different regulatory areas
  (e.g., Accreditation, Campus Safety, Financial Aid, Grants & Contracts, etc.)

~200 different statutes
  (e.g., ADA, FERPA, Higher Education Act, Title IX, etc.)

~20 different agencies to report to
  (e.g., Dept. of Education, NSF, NIH, etc.)

"HEA totals nearly 1,000 pages; there are over 1,000 pages in the official Code of Federal Regulations devoted to higher education...on average every workday ED issues one new sub-regulatory guidance directive or clarification...No one has taken the time to “weed the garden.”

- Senator Lamar Alexander
Since the 1950s, the magnitude of federal regulation has increased substantially.
And the regulatory administration and enforcement expenses are growing commensurately.

Budgetary Costs of Federal Regulation, Adjusted for inflation

Source: The George Washington University Regulatory Studies Center
Our Objectives
Where we started in July 2014

US colleges and universities are subject to significant federal regulation

While some regulation is valuable, compliance and reporting add a material cost burden to post-secondary education

- This is especially true for Tier One research institutions
- Some university officials hypothesize this cost to be as much as 5-10 percent of total operating budgets

We are interested in uncovering the cost and primary contributions to federal regulatory compliance, focusing on the following high-level questions

- What is the total cost of federal regulatory compliance for Vanderbilt University?
- What are the most likely areas where Vanderbilt can manage down its cost of regulatory compliance without a change in regulation and without bearing undue risk?
- What is estimated cost of federal regulatory compliance for all higher education institutions in the US? How does the cost differ by segment?
- Based on the findings about the regulatory compliance cost burden, what are the most relevant messages that should be conveyed to others (e.g., other universities, university associations, legislators, regulators, general public, etc…)?
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Methodology Anchored on Defining Scope, Employing Tools and Methods and Following Principles

1. **Categories of regulatory areas**
   - Research
   - Higher education
   - All-Sector

2. **Types of costs**
   - Labor
   - Non-labor
   - Indirect costs of labor

3. **Tools and Methods**
   - **Decentralized Costs:** incurred from academic depts. and research centers
   - **Centralized Costs:** incurred from central / admin offices
   - Survey instrument with detailed compliance activities and examples
   - Select interviews/worksheets
   - Interviews with key contacts and worksheets
   - Salary and benefits data and relevant budgets

4. **Principles**
   - Principles to determine if an activity is required to comply with federal regulation
## Scope of Regulatory Areas Assessed

### Research compliance
- Animal research compliance
- Environmental health and safety – research
- Export control
- Grants & contracts
- Human subjects

### Higher education compliance
- Accreditation (regional & programmatic)
- Clery Act
- FERPA
- Title IX (sexual misconduct)

### All-sector compliance
- Finance (tax, debt, financial solvency)
- FISMA
- HR (FLSA, ERISA, FLMA, labor relations, etc.)

### Cost concentration

<table>
<thead>
<tr>
<th>Less concentrated</th>
<th>More concentrated</th>
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<tr>
<td>• Conflict of interest</td>
<td>• Equity in athletics (EADA)</td>
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<tr>
<td>• Tech transfer</td>
<td>• Drug &amp; Alcohol prevention</td>
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<tr>
<td>• Research misconduct</td>
<td>• Financial aid</td>
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<tr>
<td>• Clery Act</td>
<td>• Immigration</td>
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<tr>
<td>• FERPA</td>
<td>• IPEDS reporting</td>
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<tr>
<td>• Title IX (sexual misconduct)</td>
<td>• State authorization</td>
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<tr>
<td></td>
<td>• Title IX (athletics)</td>
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1. Majority of foreign nationals on F or J visas, which are specific to higher education sector. Some foreign nationals on H-1B visas, which aligns more with all sector compliance.
## Tools and Methods

<table>
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<th>Cost type</th>
<th>Tool / Method</th>
<th>Description</th>
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| **Decentralized Costs: incurred from academic depts. and research centers** | Surveys                     | • Estimated time spent by faculty and admin staff in academic departments and research centers on compliance through survey  
  - Survey contained detailed description of specific activities and examples as relevant |
|                                                                          | Worksheets / Interviews     | • Gathered decentralized time costs in several areas where information collected centrally                                          |
|                                                                          | Data                        | • Leveraged budget and payroll data to inform estimates                                                                                   |
|                                                                          |                             |                                                                                                                                              |
| **Centralized Costs: incurred from central / admin offices**              | Worksheets / Interviews     | • Provided detailed worksheets to leadership of various administrative offices with example activities and instructions to complete  
  • Employed iterative process to resolve questions and to ensure methodology consistency |
|                                                                          | Data                        | • Leveraged budget and payroll data to inform estimates                                                                                   |

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- Provided detailed worksheets to leadership of various administrative offices with example activities and instructions to complete.
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- Leveraged budget and payroll data to inform estimates.
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Summary of Findings

Estimated regulatory cost of compliance at Vanderbilt of ~$146M or 11% of non-clinical expenditures

- ~70% of costs are marbled across broad swath of faculty, research staff, admin staff and trainees in academic departments
  - Faculty time comprises over half of the total marbled costs, with faculty in the School of Medicine having the highest burden on a percent of overall time basis
- ~30% of costs are centralized and contained in specific offices
- Areas with greatest cost burden include grants and contracts, human subjects research, environmental health and safety, animal research and accreditation
- Significant variation in burden between research (17% of relevant expenditures) and non-research areas (4% of relevant expenditures)
- Anticipate costs to increase in near-term due to regulatory changes

A significant share of the burden can potentially be addressed through regulatory reform

- ~80% of spend in areas where regulation is inefficient as written
- ~15% of spend in areas where intent of regulation is questionable
## Compliance Costs Estimated at ~11% of Total Expenditures

<table>
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<th>Total cost of compliance estimate ($M)</th>
<th>% of 2014 VU expenses, non-clinical ($1,365M(^1))</th>
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<tbody>
<tr>
<td>Centralized compliance costs</td>
<td>~39</td>
</tr>
<tr>
<td>Marbled compliance costs</td>
<td>~107(^2)</td>
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<tr>
<td><strong>Total</strong></td>
<td>~146M(^3)</td>
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A portion of the $146M recovered through federal sources (e.g., F&A) but large share funded through internal sources

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1. Total expenses (3,754M) less healthcare services (2,389M)
2. Mid-point for estimated range of 98 – 115M
3. Mid-point of estimated range of 137 – 155M

Source: 2014 VU consolidated financial statements; BCG analysis
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January 2015: Report of the Senate Task Force on Federal Regulation of Higher Education

- Regulations should be related to education, student safety, and stewardship of federal funds.
- Regulations should be **clear and comprehensible**.
- Regulations **should not stray from clearly stated legislative intent**.
- **Costs and burdens** of regulations should be accurately estimated.
- Clear **safe harbors** should be created.
- The Department should **recognize good faith** efforts by institutions.
- The Department should **complete program reviews and investigations in a timely manner**.
- Penalties should be imposed at a level **appropriate to the violation**.
- Disclosure requirements should focus on issues of widespread interest.
- All substantive policies should be subject to the **“notice-and-comment”** requirements of the Administrative Procedure Act.
- Regulations that consistently create compliance challenges should be **revised**.
- The Department should take all necessary steps to facilitate compliance by institutions.
Recalibrating Regulation of Colleges and Universities
Specific regulations of concern

- Verification of student eligibility for financial aid (prior year tax data)
- Return of Title IV funds (“R2T4”) (“required to take attendance”)
- Financial responsibility standards (did they even speak to a finance/accounting professional?)
- Institutional accreditation (stick to learning and educational quality)
- State authorization of distance education programs (limit to home state)
- Uniform definitions of Clery crimes (rely upon DOJ for crime definitions)
- Timely warnings about campus threats (allow campus police to apply professional judgment)
- Definition of “non-campus property” (limit to core campus)
- Consumer information (usefulness of information / overload)
- Regulations unrelated to education, safety or stewardship (limit to core mission)
We Are Beginning to See Some Change

Financial Aid Based on Last Year’s Tax Return

FACT SHEET: The President’s Plan for Early Financial Aid: Improving College Choice and Helping More Americans Pay for College

Earlier, Easier Process for Federal Financial Aid: Beginning on October 1, 2016, students can apply for financial aid a few months after they and their parents file their 2015 tax returns with reliable information retrieved electronically from the IRS, rather than waiting until the next year’s tax season to finalize their FAFSAs and to learn about their financial aid. Giving students and families the ability to submit their FAFSAs earlier and to use earlier income data, commonly referred to as “prior-prior” year, will have several important benefits:
Effort reporting changes on the horizon

National Science Foundation
March, 2014

- **Research Policy Board** – Calls on the OMB to create a new RPB with 10 federal members and 9-12 representatives from academic and non-profit research institutions that is charged with coordinating and improving regulations and policies, discussing policy, regulatory gaps and challenges, and ongoing assessment of regulatory burden.

National Academies
September, 2015

- **Sub-recipient Monitoring** – Calls for the NIH Director to reduce administrative burden.

- **Review Financial Conflict of Interest Policies**
  Requires review of COI within 2 years of enactment of the legislation to be led by the HHS Secretary.

- **Evaluation of Financial Reporting Procedures**
  Calls for avoiding duplication between HHS and NIH and minimizing burden.

- **Clarify or Affirm Alternatives to Effort Reporting**
  Directs the HHS Secretary to clarify the applicability of the Uniform Guidance for management and certification systems, including those for documentation of personnel expenses.