

**College and University
Business Administration**



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Risk Management

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PART 1:

RISK MANAGEMENT PROGRAM

THE EVOLUTION OF RISK

There has always been a tension within higher education around risk. Faculty and students are inclined toward pushing the boundaries of risk in the mission of generating knowledge through academic pursuits and student activities. Institutions, however, are often risk adverse, carrying a fiduciary responsibility that guides the governing boards; are often slow to change; and answer to many constituents. Responding to increased scrutiny from the public, demographic changes, and pressure to become more innovative, institutions are embracing a new risk profile and increasing the role of the chief business officer (CBO) in both enterprise risk management (ERM) and operational risk management.

As higher education's risk profile has increased, the concept of risk management has undergone several striking shifts in emphasis. From its original focus on insurance and financial loss, risk management has expanded to include a much broader range of assessments about reputation and strategic objectives. Highly publicized events over the past several years—e.g., sexual assaults, student protests, athletic injuries, cyberattacks, and international events—have sensitized boards, presidents, and business officers to the multiple dangers threatening higher education institutions.

As a result, leaders now ask a broader set of questions about how the institution is at risk:

- Not just, “Are we covered if that building burns down?” but also, “What happens if the entire campus has to close for an extended period?”
- Not just, “Do we have enough accident coverage for the athletic buses?” but also, “How do we manage our reputation if the athletic department is embroiled in scandal?”
- Not just, “Have we complied with federal regulations?” but also, “Could violations of testing on human subjects imperil our entire research enterprise?”
- Not just, “Is our computer network available 24/7?” but also, “How do we ensure that a hacking doesn't threaten the integrity of our systems and databases?”
- Not just, “Does the president have enough life insurance?” but also, “What do we do if the president engages in inappropriate behavior?”
- Not just, “Do we have an alcohol policy?” but also, “Do we have the programs in place to comply with federal regulations for preventing and investigating sexual assault?”
- Not just, “Is our student health center adequately staffed?” but also, “Are we in jeopardy of a wrongful death suit if a student commits suicide?”

The set of potential questions could fill this chapter, but the point should be clear: Risk management is not just about insurance or financial loss. This operational risk management continues and will be discussed later in the chapter, but the evolution of risk now includes an enterprise view and is about identifying, assessing, managing, and communicating the events or trends that could prevent the institution from achieving its strategic plan and, ultimately, its mission as well as enhancing its ability to do so. ERM can focus an institution on both the downside risks and the opportunities of events, trends, and policies an institution may encounter.

The expansion of risk management to include a view across the entire enterprise includes acknowledgment that risk management is a shared responsibility with all levels of the institution. This enterprise-wide approach works to remove the traditional siloed and decentralized nature of higher education administration. Because risk can occur anywhere and for multiple, sometimes unrelated, reasons, its mitigation and avoidance cannot be just the responsibility of the institutionally designated risk manager. It is impossible for any one individual or unit to be everywhere, see everything, and monitor everyone's activities.

Similarly, institutions cannot get by with just assigning oversight of specific kinds of risks to particular functions. Legal risks are not just the responsibility of legal services; financial risks do not just involve the treasurer or controller; environmental risks are not just the concern of the environment, health, and safety (EHS) staff; and research risks are not just the job of the institutional review board. Everyone—whether a manager, staff, faculty, or student—must appreciate the importance of identifying, assessing, and managing risks. External forces, social media, the severity of natural catastrophes, and cultural divisions add layers of complexity to risk management not imagined 10 years ago, necessitating both an enterprise-wide and operational approach to risk management.

This chapter is designed to serve as a resource for business officers with oversight of risk management. Although it addresses some of the more conventional topics (e.g., insurance), its basic message is that risk managers need to understand the broad array of risks faced by the entire institution and work with multiple stakeholders to find ways to mitigate or control them.

THE RISK MANAGEMENT PROGRAM

Institutions seeking to build or improve their risk management function typically address two questions: Where does risk management belong in the organization? What skills and competencies should the institutional risk manager possess?

Where Does Risk Management Belong?

Oversight for risk management must be assigned to someone within the organization—but where? Some have placed it within business and finance, others within legal services, EHS, human resources, purchasing, or public safety. A rationale can be provided for embedding the risk management process within each of these functions.

Institutions have come up with different solutions. One of the most critical variables affecting the decision is size, with larger institutions more likely to have a dedicated risk management department with a full-time director and staff. Most NACUBO members do not have a dedicated risk manager. In most cases, the responsibility falls to the chief financial officer (CFO) and/or other business officers as only one of many roles they must fulfill. Other variables include the complexity of the institution, the importance leaders place on managing risk, historical experience, staffing, and budgets. Sometimes the decision on where to place the risk management function depends on who has the time, interest, and resources in areas that are tied to risk management. Some institutions utilize the services of an outside consultant to manage the program. And some institutions collaborate on risk management through a consortium arrangement.

However the program is structured, it will need a strong advocate, top-level support, and collaboration across functional boundaries. For this reason, a reporting relationship at a high level is critical to the risk manager's ability to command attention and resources. A direct report to the vice president of finance will have more clout than someone who reports to the assistant director of facilities.

What Skills Are Important for Risk Managers?

Effective risk managers display a variety of competencies. Risk managers need technical skills and knowledge related to insurance, policy analysis, indemnification, and the like—and a demonstrated interest in the wide variety of activities and the mission of the institution.

As the field of risk management has evolved, other managerial and leadership competencies have assumed much greater importance for professional success:

Effective communication skills. Risk managers need to be articulate about the importance of the program, especially among constituencies who would rather be doing other things. Through written policies and verbal persuasion, the risk manager must convince others to pay attention and to share the responsibility. Individuals charged with overseeing risk management need to have the resources and respect to work effectively with all academic and administrative areas, communicate across the institution, and develop and deliver effective training programs.

Strong analytical skills. Risk managers need to collect, analyze, and act upon data to shepherd limited resources for the highest return on investment. The importance of gathering and analyzing data to identify trends and craft prevention programs has escalated significantly in recent years.

Good relationship skills. Risk management requires collaboration with others. The risk manager may develop travel guidelines for students driving to events off campus, but he or she must rely on student affairs administrators, organization advisors, and the students themselves to follow those guidelines. The risk manager, therefore, needs to work with people across the campus to understand their risks and how new developments, regulations, and activities impact their work. This requires good listening skills and a willingness to learn about a range of academic, research, and administrative activities. Risk managers must also know what they don't know and work collaboratively with lawyers, brokers, agents, and others to incorporate their knowledge and skills.

Creativity and judgment. Risk management is about more than buying the right kind of insurance. It involves weighing a variety of risks, prioritizing them, and then recommending the appropriate approach to accept, share, control, or mitigate them. This requires an appreciation for matching the level of risk with the most appropriate solution.

Forceful advocacy to senior management. Successful risk management programs start with strong support from the governing board, president, and senior academic and financial administrators. Unfortunately, presidents and governing boards are bombarded with unceasing problems and demands, and there can be a tendency for them to view risk managers as people who are paid to expose still more problems. The effective risk manager is one who mitigates the right issues with the right sense of urgency so that proper attention is paid by senior leadership.

As both risks and anxiety about risks have escalated, the risk manager has assumed a more important role in the health of the college or university. In the final analysis, the best risk management program is one in which no one says, "We should have. . . ."

ENTERPRISE RISK MANAGEMENT (ERM)

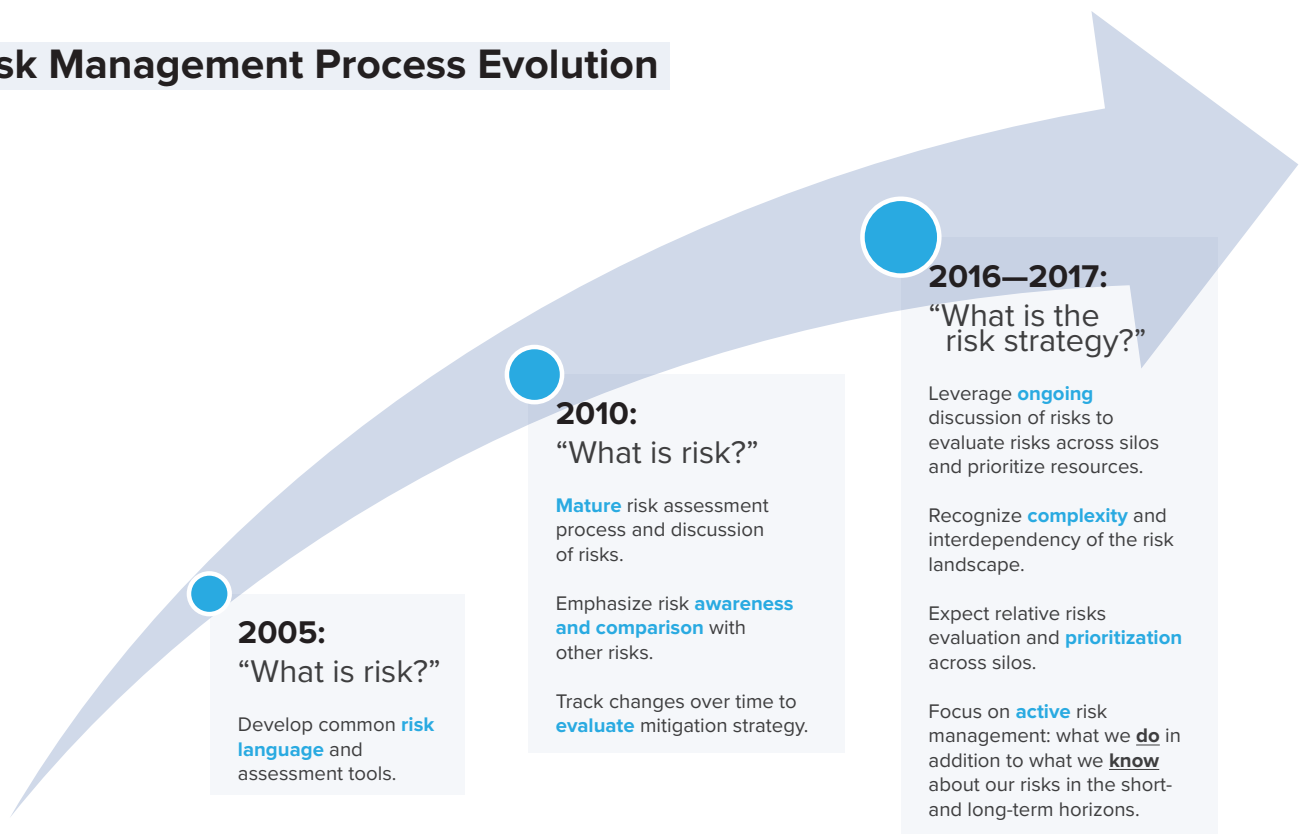
Colleges and universities were introduced to ERM initially as governing board members brought their corporate experience to higher education. Corporations, either publically traded or privately owned, incorporated ERM into the work of the senior leadership and board governance, mandated by regulations and financial institutions. The Committee of Sponsoring Organizations of the Treadway Commission (COSO) defines ERM as, “The culture, capabilities, and practices, integrated with strategy-setting and its execution, that organizations rely on to manage risk in creating, preserving, and realizing value.” COSO updated its ERM Framework in 2017 <https://www.coso.org/Pages/default.aspx>. The focus on the update is on integrating strategic planning and ERM and addresses issues of governance, accountability, and oversight of ERM. Many of the strategy and operational issues raised in the 2017 COSO ERM Framework can be adapted to higher education. In the higher education setting, ERM is a process owned by senior leadership and provides a structure to identify, assess, mitigate, and communicate risks that could hinder an institution’s ability to achieve its mission. ERM is also a

vehicle to identify opportunities for adding new programs or initiatives that support the mission of the institution. Higher education institutions can be risk adverse (although students and faculty often take significant risks in their behaviors and research respectively).

Board members brought this strategic focus to risk through their volunteer service at colleges and universities, setting in motion a process that has elevated risk management, focused on strategic risks, and assigned ownership of risks to senior leadership.

CBOs have a unique perspective and responsibility in ERM. Within the risk management rubric fiduciary, reputational, compliance, strategic, and operational activities come together to support the institution’s mission. The business officer has the opportunity, through ERM and operational risk management, to manage risk in three ways: outward to the decentralized activities of the institution and leadership council/cabinet, upward to the president/chancellor and governing boards who maintain ultimate authority for the financial health and strategic direction of the institution, and downward to the operating departments and auxiliaries.

Risk Management Process Evolution



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ERM should be part of every institution's planning. As noted in *Risk Management: An Accountability Guide for Universities and College Boards*, an institution without an ERM discipline and structure is comparable to an institution without a plan. ERM is a discipline for campus administrators—led by the president—for risk identification; risk assessment; risk mitigation and reporting responsibilities; and, ultimately, informing board members of the most significant institutional risks.

Without the discipline of identifying risks, assigning ownership, consulting with subject matter experts, and monitoring progress to reduce risks, institutions will fall behind when the inevitable crisis occurs and will not be well positioned to take advantage of opportunities that may arise.

There are four steps in risk management that are used both for an ERM program and to manage operational risks. The four steps include:

1. Risk Identification – Compiling a Risk Register
2. Risk Assessment – Scoring the Risks
3. Risk Mitigation – Developing the Risk Plan
4. Monitoring and Risk Reports

These four steps will be discussed first for an ERM program, followed by using the steps for an operational risk management program.

ERM Risk Identification

Risk can be identified in many ways, but starting from a blank slate is the least efficient way. Colleges and universities have openly shared risk registers and use these registers (some are included in *Risk Management: An Accountability Guide for Universities and College Boards*) as a starting point for tailoring risks to a specific campus. Many ERM programs began with a broad, campus-wide identification of risks, asking the question, “What keeps you up at night?” The result was lists of 600-plus items without any clear sense of priority. It is better to use risk registers developed by others and put more energy into steps three and four, mitigation and monitoring. Assembling a senior ERM committee to review the risk register and assign ownership of each risk brings buy-in for the ERM progress.

Sample Risk Registers

1. Research University Risk Register

- A. Workforce Sustainability
 - I. Compensation
 - II. Recruitment/Retention
- B. Infrastructure
 - I. Deferred Maintenance
 - II. IT
 - III. Security
- C. Compliance
 - I. Research
 - II. Institutional Policy

2. Liberal Arts College Risk Register

- A. Enrollment
- B. Succession Planning for Leadership
- C. Facilities
- D. Student Behavior
- E. IT Infrastructure, Security, and Renewal
- F. Development-Engaging Millennials

3. Comprehensive University Risk Register

- A. Information Security
- B. Emergency Response/Business Continuity
- C. International Expansion
- D. Behavioral Risk
- E. Reputational Risk

4. University Risk Register

- A. Adequacy of Financial Resources
- B. Age and Condition of Facilities and Physical Plant Resources
- C. Student Behaviors and Mental Health
- D. Recruitment and Retention of Top Personnel
- E. Execution of Strategic Plan

5. Public University Risk Register

- A. Governance
- B. Student Enrollment
- C. Health Care Costs
- D. Administration Turnover
- E. Disaster Recovery and Business Continuity

6. Community College Risk Register

- A. Lack of Disaster Preparedness/Business Continuity Planning
- B. Outside Violence Coming to Campuses
- C. Minors on Campus
- D. Succession Planning
- E. Control of Data and Cyber Risk

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ERM Risk Assessment

Not all risks are created equal. The next step is to evaluate and prioritize the risks listed on the institution’s risk register and identify the risks that need immediate attention. The ERM committee can assess the likelihood and impact of each risk using a simple heat map (axes of Impact/Likelihood) or other scoring mechanism. Assessing the risks will focus the attention of the institution on the most likely events to cause significant harm.

The assessment tool further refines the risk register to result in no more than 10 risks to share with the governing board committees for review, discussion, and monitoring. As a starting point, using the assessment tool to rank the top-five primary risks and the next five as secondary risks allows the senior administration and board to focus on the most pressing risks.

The risk assessment chart below highlights the scope and involvement of various levels of engagement in ERM at the University of Vermont, with the darker shades indicating the higher likelihood and impact of specific risks.

Impact:

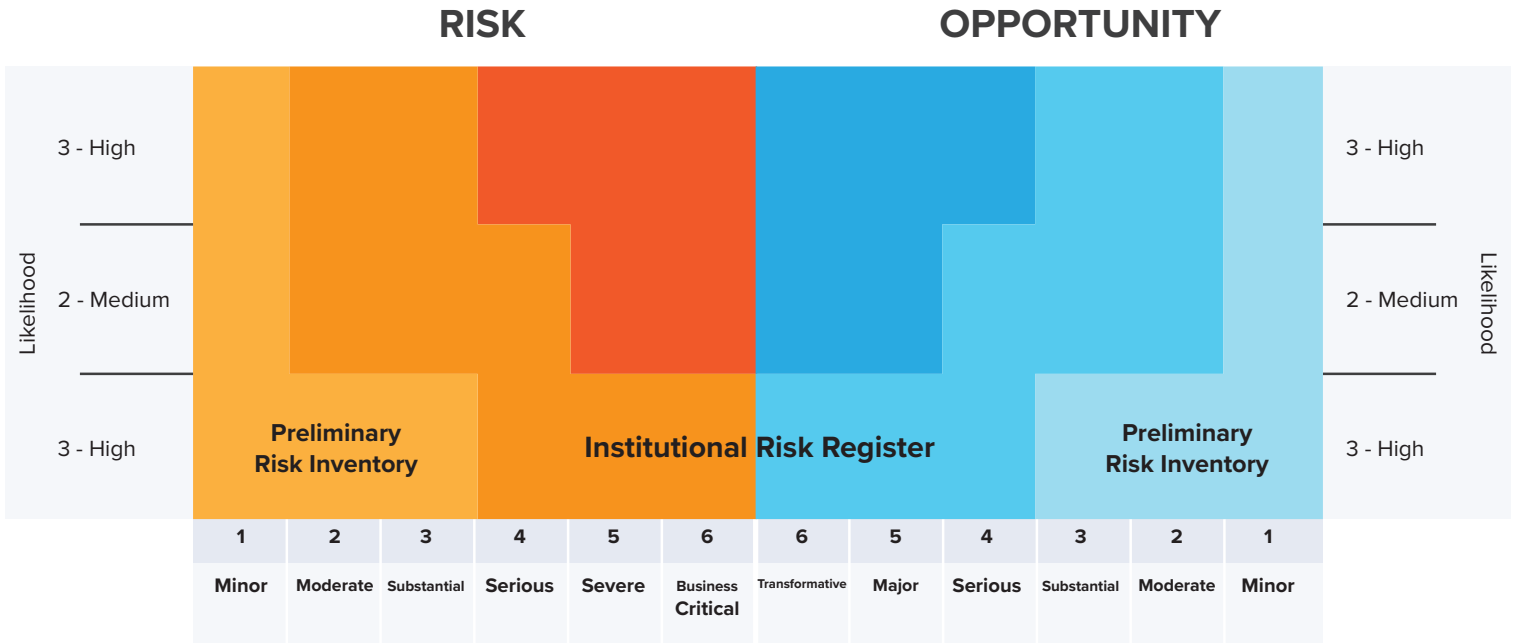
- 1–2 Insignificant/Mild
- 3 Moderate
- 4–5 Significant/Catastrophic

Likelihood:

- 1–2 Unlikely
- 3 More Likely
- 4–5 High Probability

AREA OF SENIOR MANAGEMENT FOCUS:

INSTITUTIONAL RISK PORTFOLIO



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ERM Risk Mitigation

No risk management program is expected to eliminate all risks from an institution. Rather, through the identification and assessment process, the risks that are more likely to disrupt the institution and prevent it from achieving its goals are targeted for mitigation. As noted in *Risk Management: An Accountability Guide for Universities and College Boards*, risk mitigation is best described as problem solving: What course correction or programs should be put in place to either reduce the risk or capitalize on the opportunity? Many of the risks identified in ERM cannot be dealt with in the same manner as the operational risk management techniques described below. Insurance isn't available to address long-term shifts in demographics or declines in federal support for research. The owners of the key risks developed through the ERM process should develop a plan, noting metrics and milestones, to reduce the risk to a level acceptable to the institution.

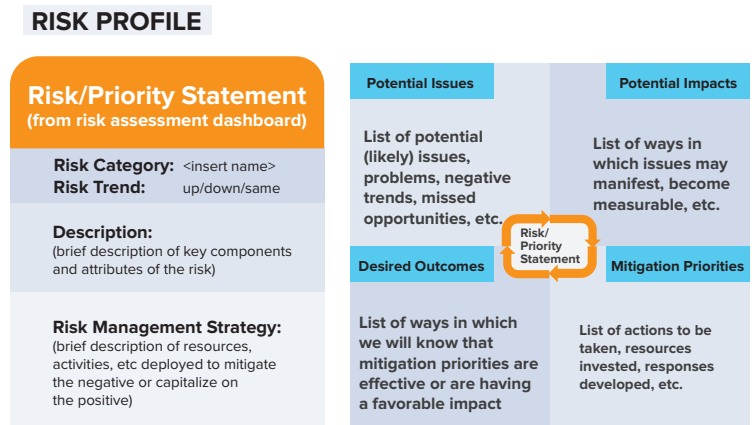
Many institutions who began ERM in the early part of the 21st century spent the majority of the time on the risk identification process, leaving little energy or political capital to tackle the most important step in an ERM program, risk mitigation. Using the risk registers developed by others and moving to focus on mitigation, monitoring, and communication is a best practice for higher education ERM.

ERM Risk Monitoring/Reporting/Communication

The risk mitigation plans developed by the owner of the risk should be regularly monitored to measure both effectiveness and progress toward mitigating the risk. There are internal and external stakeholders in ERM, and messages should be crafted to communicate both the institution's commitment to ERM and the progress being made. The effective use of a project management discipline can be invoked to encourage identification of the milestones, co-dependencies, and timelines needed to achieve the risk mitigation goals. Communicating with respective board committees allows boards to understand and monitor the risks without becoming involved in tactical decision making.

Risk monitoring also includes the discipline to regularly scan the horizon to ensure that the institution has a current risk register and that emerging risks are identified and addressed through the ERM or operational risk management processes. Ask the question, "If this event (fill in the most recent scandal or event from another higher education institution) occurred here, how would we respond?" Developing a reporting mechanism to describe the risk and identifying the potential impact and likelihood of the risk, the

mitigation steps in progress, and the desired outcome are illustrated in this chart developed by Duke University.



ERM Role of Chief Financial Officer (CFO), President/Chancellor, and Boards

Understanding and respecting the appropriate roles in a robust ERM program will allow the administration and board to work toward a robust, thorough ERM program without duplication of effort but with the appropriate oversight. Best practices reveal that the following roles in Senior administration owned ERM, with the president/chancellor having ultimate authority for the ERM process: A 2017 United Educators/AGB survey revealed that the CFO/business officer had ERM oversight responsibility in 40 percent of the respondents. In the other 19 percent of the respondents, the business officer shared this responsibility with the president, and in the remaining respondents, either the president (69 percent) or the chief risk officer (12 percent) had oversight responsibility. Each individual risk identified by the ERM process is assigned an owner who is a member of the senior administration. An internal audit can play a vital role in ERM by supporting the board and ensuring compliance with the process identified by the senior administration and the board.

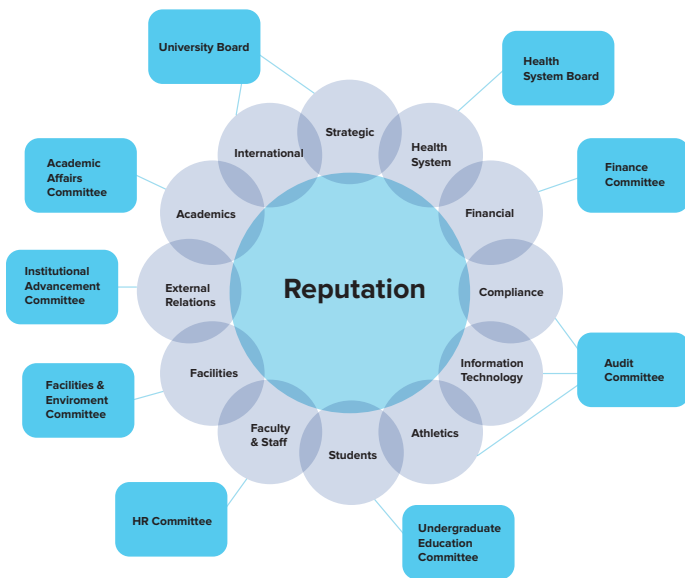
The full board and executive committee sets the tone, addresses strategic risks, and fills in the gaps not covered by board committees. In the 2017 survey noted above, 70 percent of the institutions surveyed have a formal ERM process and structure in place. The full board in this survey conducts discussions on ERM in 69 percent of the respondents. The audit committee has a unique role in ERM for the governing board in reviewing both the risks identified in its purview (990, internal controls, conflicts

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of interest, etc.) as well as board oversight for monitoring the engagement of other board committees in providing a review of the risk assigned to the committees. The Campus Life/Student Affairs committee may have student behavioral issues and athletics as two top risks; Academic Affairs may have oversight for research growth and faculty retirements. More information on the role of board committees in ERM can be found in *Risk Management: An Accountability Guide for Universities and College Boards*.

The following chart highlights how board committees and the university board can address specific risks that together support a board review of ERM with a focus on reputation risk.



OPERATIONAL RISK MANAGEMENT

The four risk management steps identified in ERM—identify, assess, mitigate, and monitor/communicate—are the basic steps in operational risk management programs. Many business officers have the responsibility for both managing the ERM program and the operational risk management function.

Operational Risk Identification

There are several ways operational risks can be identified. Inspections, interviews, tracking, and analyzing through accident reports, security logs, and other reporting mechanisms can identify trends and areas where increased training or other changes are needed to reduce risks across the campus. Building a process to track and analyze all incidents (e.g., vehicle, campus falls, employment

grievances, transports of students to local hospitals, public safety reports) helps to focus resources on reoccurring concerns. Creating a risk culture where faculty, staff, and students report conditions they don't feel are quite right extends the limited reach of a dedicated risk management team. Creating anonymous reporting of incidents can encourage individuals to come forward to report when they may otherwise feel intimidated or not comfortable sharing information. Athletic student organizations, medical centers, and employee tip lines have shed light on practices that should be investigated.

Operational Risk Assessment

As noted above, all risks are not the same, and assessing the likelihood and impact of a risk will provide a guide on how best to address the risk.

	Low Likelihood	High Likelihood
High Impact	Reduce risk Transfer risk/ increase training	Avoid risk/ implement control activities
Low Impact	Accept risk	Reduce risk/ increase training

Low impact/low likelihood. The risk doesn't happen very often, and when it does, it isn't critical. For example: In exceptionally heavy rains, a basement floods, but nothing important is stored there—and the machinery is protected. In this situation, the cost of repairing the building is likely not worth the benefits.

Low impact/high likelihood. The risk happens often, but the impact can be contained. As examples, consider fleet drivers who receive numerous traffic tickets or researchers who typically overspend their funds. In these cases, interventions might include training on better driving habits or better budget management. The risk can also be reduced by revoking driving privileges or process improvements that get out more timely and user-friendly budget reports.

High impact/low likelihood. If something catastrophic happens infrequently (e.g., fires, earthquakes, or—an active shooter), a sensible approach might be to share the risk through insurance and focusing on recovery from the incident. For campus buildings, the institution may decide to control the risk by investing in new sprinklers or retrofitting a building to withstand earthquakes. Training for first responders and upgrading security and notification systems can be implemented. Focusing on recovery so the mission of teaching, research, and service can begin quickly after an event should be a priority. Developing redundancies in systems, including generators, cloud storage, etc.; practicing drills for response and recovery; and taking note of lessons

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learned from other institutions from high-impact events are essential parts of high-impact/low-likelihood events.

High impact/high likelihood. Where the risks occur often and pose major threats, institutions must avoid or invest in more effective control programs. A college can decide, for example, to invest more program resources in an alcohol and drug prevention program or not to sponsor a study-abroad program in a volatile country. Workers' compensation claims can fall into this category, though it may be difficult to detect, since it may take 10 years for claims' experience to develop into millions of dollars in losses.

Operational Risk Mitigation

Risks are inevitable, but there are options available to mitigate the risks based on the nature of the risk, the impact and likelihood of it occurring, and the alignment of the activity/risk to the mission of the institution.

The most obvious way to control risk is to avoid it. If an assessment indicates that the risks associated with a certain activity are just too great, an institution may decide not to do it. No, there will be no study abroad program in a country where a terrorist event recently occurred. No, there will not be a skydiving club. And no, a research center on infectious diseases will not be built underneath dining halls. Avoidance, however, is not always a viable option, especially in an academic environment where (for example) faculty may argue that the study of the Ebola virus is an important contribution to the advancement of knowledge.

A familiar risk management adage states that "the best time to prevent a loss is before it occurs." Examples of loss prevention efforts include the purchase of ergonomic keyboards, driver training programs, routine equipment maintenance, and facility fire safety inspections. Proactive loss prevention is the foundation of a strong risk management program, and a large part of the risk management effort should be devoted to activities that eliminate or reduce the opportunity for loss to occur.

Reduction efforts are designed to minimize the severity of a loss. For example, following a major flood, quick action to implement protective measures and to initiate salvage efforts can limit the extent of the damages and reduce the cost of the loss. Likewise, fire sprinklers can contain the spread of a fire and increase opportunity for evacuation. On a larger scale, activation of an emergency response plan (for example, through evacuation) can protect students, faculty, and staff and keep losses as low as possible.

Institutions use separation to control risks by organizing activities or dispersing assets so that no single loss can completely disrupt their operation. For example, an institution may have a policy that prohibits key leaders from flying together on the same airplane.

Duplication/redundancies utilizes some type of backup system. This is an increasingly common tactic for IT departments, in the form of separate sites for mission-critical systems should their primary sites go down. The increase in weather-related natural catastrophes prompts researchers to become more aware of the need to maintain data and backup generators to support research labs.

Staff, faculty, and student training can be a highly effective loss-control method. For example, if workers' compensation data analyzed during the assessment process show a high incidence of back injury claims, a training program on proper lifting techniques and fall-prevention methods could prevent strains, sprains, and injuries. Training for all staff working with minors on campus will alert them to mandatory reporting requirements and best practices for dealing with children. Training for supervisors on conducting performance appraisals, or on harassment and discrimination prevention, can be effective prevention for a frequent employment claim. Supervisory training has also been confirmed by the courts as an affirmative defense in protecting the institution if an employee alleges discrimination or harassment at work.

Formal policies and procedures can mitigate risks and losses by preempting problems. These can range from simple signs that signal a "smoke-free environment" to elaborate policies on the handling of dangerous chemicals. Having policies in place will not be effective, however, if they are ignored or not known, so communication and training are also important. An institution should never have policies that it can't or won't enforce. That can lead to "wrongful act" claims, with allegations of discrimination from inconsistent adherence to policies.

Outsourcing avoids exposure by transferring the risk to someone else. For example, if the institution has had numerous accidents in its bus fleet, it may choose to contract the work out to a professionally managed transportation company. Outsourcing is becoming increasingly common across higher education for financial reasons, and the risk management implications should also be considered as part of the business case. It is important to assess the viability of the vendor and to ensure contracts are in order.

Contractual transfer can reduce risks by specifying and transferring both the legal and the financial responsibility for a loss. (Contracts will be discussed more extensively later.) Contracts should be reviewed to include appropriate language regarding the responsibilities of each party with regard to personal or property losses. An indemnification clause or a hold harmless agreement specifies that one party to the contract holds the other party harmless from any claims or losses through activities covered by the contract. A requirement to provide evidence of a certain level and type of insurance coverage will provide proof that

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the other party also has the financial ability to respond to the indemnification offered as part of the contract.

Another form of transfer involves shifting responsibility to an individual or entity for specific activities. For example, asking students to sign a release and waiver of liability before they go on a trip sponsored by the mountain climbing club can limit institutional liability in the event of an accident. The release acknowledges that the student knows that climbing mountains entails risks and consciously accepts responsibility for the risks unless there is a specific negligent action by the institution. While waivers may be useful in a court of law to show the voluntary assumption of risk, courts may not necessarily enforce them, but they can add to mitigation of the ultimate loss. State courts are more likely to accept waivers that are specific to the event or activity and that identify the potential risks of the activity involved.

Finally, there is the conscious assumption of risk. After the risk control methods discussed above are considered and applied to the extent possible, institutions are left with the choice of whether to move ahead with activities knowing full well that any activity presents inherent risks. Some risks are necessary if the institution is going to meet its mission. Sharing the decision to consciously assume a risk should be communicated to senior leadership and, in some cases, with governing boards.

PART 2:

RISK TRANSFER AND SHARING: INSURANCE OPTIONS

RISK TRANSFER AND SHARING: CONTRACTS

Contracts are usually regarded as a mechanism for formalizing an agreement between two parties, but they can also serve as an important means to share risk and protect the institution.

Allocating Risk Through Contracts

Contracts define the goods, services, and/or money that will be exchanged between two parties. Implied within contracts are assumptions of responsibility and liability. If a contractor falls off a roof, who is responsible? If a student from another institution suffers an injury on your study abroad program, who is liable? If a software firm does not deliver the promised functionality on time, who pays the penalty? Contracts should delineate very clearly the responsibilities and liabilities of each party, and risk managers should make sure that their institution does not assume more of the risk than is necessary. Higher education institutions are especially vulnerable because of the perception that they have deep pockets.

The provision of a contract that addresses the allocation of risk goes by several names: indemnification, release, waiver, hold harmless, or exculpatory provision. All contracts should contain a clear provision for indemnification that avoids ambiguity or a one-sided allocation of risk. The extent to which an institution can insert language favorable to itself depends on a number of factors, including its tolerance for risk, bargaining power, state law, and the potential for injury. Oral contracts or “handshake agreements” should be avoided. Confusion and misunderstanding on who is responsible if the unexpected event occurs is unavoidable without a well-written contract.

When the contract shifts some or all of the liability to the other party, the institution needs to be sure that party can cover the potential liability. The prudent risk manager will, therefore, require proof of insurance with adequate policy limits from a reliable carrier.

Based on the scope of the contract, a review of the insurance requirements should address the following:

1. Types of coverage needed
2. Limits needed
3. Alignment of the insurance provided and the term of the contract

Proof of insurance is generally made available by way of a Certificate of Insurance. It is important to understand, however, that this is only a snapshot of the policy at the time the certificate was created. If you are contracting for

something with a high exposure and/or for multiple years, such as building a new residence hall, you may want to consider asking for an annual copy of the Additional Insured Endorsement, which is an endorsement onto the policy itself providing you the requested coverage.

In addition to the desired financial limits, the institution should make sure that the other party’s policy covers the types of liabilities that are being assumed in the contract. If that policy does not cover those risks, then the college or university may not receive the anticipated protection from liability. By example, policies provided by summer camps operating on campus may not contain coverage for sexual molestation, an important coverage for the camps. But even a Certificate of Insurance from the other party may not be enough if your institution is not named as an Additional Insured, which gives you rights of coverage.

The contracts should also specifically separate insurance and indemnity clauses and should have a clause in the insurance section that states that indemnity shall not be limited in any way by the mandating of minimum levels of insurance. If there are specific types and limits, these should all be clearly spelled out with the requirement for the Certificate of Insurance. There should also be provision for notice in the event of a cancellation or change in coverage. Under some circumstances, a cancellation or change should be designated as a breach of contract. Care should be taken to obtain a copy of the Certificate of Insurance and set up a process for monitoring multiyear contracts to ensure that insurance remains in place.

It is also important to ensure other clauses in the contract do not limit, or negate, the insurance and indemnity clauses. This could include clauses such as the Primary and Noncontributory and Waiver of Subrogation. A more recent trend is for third parties to add a Limitation of Liability clause, generally limiting their responsibility to the cost of the contract. This clause can potentially limit the other party’s responsibility to a fixed amount prior to an event occurring.

As one might expect, the confluence of the legal and insurance professions has ensured that indemnification provisions have become both a science and an art. Risk managers should work closely with legal counsel to ensure that risk is allocated in appropriate ways.

Managing Internal Risks from Contracts

Although contracts are a way of managing risks with outside parties, a flawed set of contracting practices within the institution can create its own risks. To minimize exposure from the contracting process itself, colleges and universities should enlist the following best practices:

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Establish a contracting policy for the institution. Such a policy should state clearly who has the authority to sign a contract. Even if a person with no signatory authority signs a contract, the institution may still be liable. The policy should also establish a procedure for reviewing contracts, especially if they are nonstandard or complex.

Establish a library of model contracts or put a group of standard form contracts online, with clear instructions about what clauses may and may not be changed. Many contracts within higher education are routine, such as professional services, facilities use, or copyright licenses. Making these models and forms available within the institution saves time, reduces the risk of errors, and raises flags when nonstandard clauses need to be inserted.

Create checklists for employees who are negotiating contracts. Many employees are experts in their particular field but are not familiar with either contract language or institutional policies. Some institutions, such as the University of North Carolina Charlotte (www.legal.uncc.edu/contract.html), have provided detailed checklists that alert employees to the types of clauses that should or should not be present in contracts.

Conduct education and training. An ounce of prevention is worth years of litigation, and periodic sessions on contracting basics can help managers across the institution avoid common mistakes. Prime candidates might include staff in deans' offices, business officers in research centers, and heads of operating units.

RISK TRANSFER AND SHARING: COMMERCIAL INSURANCE

Commercial insurance is a risk transfer option that shifts the responsibility for loss to an insurance company in exchange for a premium that has been paid in advance. Many institutions use commercial insurance policies as their risk financing backbone but also utilize one or more other options discussed above to reduce the overall cost of risk. Again, the risk manager must pursue a strategy that is consistent with the institution's interests and risk management philosophy. For instance, an institution may select to self-insure an exposure if it has purposefully adopted a high tolerance for risk, decided to minimize its insurance premium expense, and has resources readily available to recover from a significant loss. (See "RISK TRANSFER AND SHARING: SELF-INSURANCE AND OTHER OPTIONS" for more on self-insurance.) Another institution, facing the same exposure, may elect to buy commercial insurance because it has fewer resources available and is more concerned with maintaining consistent costs over time.

It is also useful to think about insurance in terms of first-party or third-party coverage. First-party insurance provides protection for property owned by the institution. Examples of first-party insurance include policies that cover buildings and contents or auto physical damage. Third-party insurance provides an institution with protection for claims made against it by others. Some examples of third-party insurance include general liability, educators' legal liability, employment practices liability, professional practices liability (health provider, attorney, architect, engineer), workers' compensation, and excess or umbrella insurance. Some policies provide both first-party and third-party protection in the same policy, such as auto, aircraft, or watercraft insurance.

As an example, a marine policy covering a research vessel can include coverage in the event the vessel sustains physical damage as well as coverage for claims made by others if they are injured in an accident involving the vessel. Small institutions may carry a business package policy, which can combine general liability, property, and auto in one policy.

Categories of Insurance

There are a number of broad categories of insurance, each of which has different types of policies and coverage. Property insurance covers the institution for physical damage to or loss of buildings, fixtures, and contents due to such perils as fire, flood, or earthquake. Most property policies are classified as "all risk" contracts that cover damage or loss for any reason, unless it is specifically excluded through specific clauses or through the use of definitions in the policy. Most also have coverage for the replacement value of the property; however, if the institution decides not to replace the property, then reimbursement is usually limited to the actual cash value. Property policies usually have significant sublimits on certain coverages, including flood and earthquake.

Most property policies contain a coinsurance clause (not to be confused with the coinsurance co-pay of medical insurance) that prevents the institution from intentionally understating property values to save on premiums. Coinsurance is a penalty that can be exercised by the insurance company if it is determined that the institution has not insured its property to an agreed percentage of full value. Some property insurers will add an "agreed amount clause" to the policy, indicating that the insurer agrees that the insurance limit is sufficient, thus eliminating the coinsurance worry.

Property policies may include coverage for business interruption as an option. This involves reimbursement for the loss of revenue as a result of damage from a covered property loss. Extra expense reimburses the institution for

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additional expenses incurred due to the loss. For example, if a fire occurs in a residence hall, the property policy covers the costs of repairing the facility and replacing damaged contents owned by the institution. Business interruption provides compensation for the loss of tuition or rent that normally would have been paid by students to live in the facility. Extra expense provides reimbursement to the institution for the expenses associated with having to temporarily relocate students to hotels or off-campus apartments.

Many commercial property policies also include builder's risk, which provides coverage for damages during construction of a new facility or the renovation of existing facilities. This is becoming more important as building activity increases on campuses. The institution can cover the builder's risk through the institution's own property policy, through a stand-alone program, or by requiring it from the contractor.

Crime coverage insures against the direct loss of money, securities, or other property caused by theft or forgery by an employee acting alone or in collusion with others. Examples of items covered by a crime policy include: destruction, disappearance, or wrongful abstraction of money or securities within or from the institution's premises, banking premises, or night-deposit safe and forgery or alteration of any check, draft, promissory note, bill of exchange, or similar written document.

Cyber insurance covers an institution's liability for a data breach in which the institution's student, faculty, staff, or donors' personal information, such as Social Security, health, or credit card numbers, is exposed or stolen by a hacker or other criminal who has gained access to the firm's electronic network. Coverage can also include the institution's costs from losses, such as data destruction, extortion, theft, and hacking, and other benefits, including regular security audits, postincident public relations, and investigative expenses. One of the most expensive aspects of a breach is providing ongoing credit monitoring to individuals affected by the data breach. Care should be taken to have the cyber insurance include cost of notification (which varies by state) and ongoing credit monitoring.

Colleges and universities may also want to consider property insurance policies that cover specific items associated with the campus, such as:

- Fine arts
- Boilers and machinery
- Valuable papers
- Mobile equipment
- Transit and cargo
- Vehicle, watercraft, and aircraft
- Student property (renter's insurance)

Liability or casualty insurance covers a wide variety of claims made against the institution by another party. Every institution faces potential liability as a result of its activities and operations. These policies are needed because there is a high likelihood of claims, the claims are not predictable, and the claims are often not controllable. Many exposures cannot be fully avoided, since they arise from the activities and operations essential to carrying out the mission of the institution. There are many different types of casualty policies, but most are designed to provide defense and settlement coverage when a third party claims a loss due to an action or omission by the institution.

The most common casualty insurance is commercial general liability. This provides protection from a third party claiming negligent acts or omissions from operation of the premises and from negligent acts that result in bodily injury or property damage. Slips and falls by students and visitors are among the most common claims made. Sexual assault is another area with both high likelihood and impact. General liability policies will usually also cover personal injury that includes libel or slander. Two limits are associated with general liability policies: per occurrence and aggregate. Per occurrence is the maximum amount that will be paid for a single incident, while aggregate is the maximum that will be paid during the entire policy period for all losses.

Colleges and universities may want to consider the need for other components to a commercial general liability policy or separate and specific liability policies:

- Premises
- Products
- Police
- Foreign activities
- Publishing and broadcasting
- Pollution
- Special events
- Student organizations
- Owners and contractors
- Garage and garage keepers
- Nuclear
- Aviation and marine

Auto liability policies provide coverage for losses to third parties arising from the operation of a motor vehicle or driver insured by the policy. The institution should be sure that its auto liability insurance extends to nonowned, hired, and borrowed vehicles. A commonly asked question is whether an institution's auto liability policy provides coverage if an employee or student uses his or her personal vehicle on business for the institution. In most cases, the employee's or student's personal auto policy will provide

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the primary coverage and the institution's policy will be secondary, or "excess." Auto liability policies can also provide coverage for property damage to the institutional vehicle, but institutions with large fleets tend to self-insure for this physical damage coverage.

Workers' compensation covers claims by employees under the state's Workers' Compensation Act. These acts usually make an employer responsible for medical care and lost wages for employees who are injured on the job or develop an occupational disease. This coverage is unique because the worker does not need to prove that the institution is at fault to file a claim. Some policies cover "statutory limits" or whatever the statute requires without a specific dollar limit. In most states, workers cannot sue for damages in excess of the statutory limits.

Employer's liability insurance also covers employee claims—in this case, claims against an employer made directly or indirectly by an employee. For example, an employee may sue the manufacturer of a machine, alleging the machine was defective, but the manufacturer may in turn sue the employer, alleging poor maintenance as the cause. Educators' legal liability policies are known by a variety of names, including directors' and officers' liability, school board liability, and employment practices liability. Their function is to protect the institution from financial loss as a result of wrongful acts for which the institution and its governing board, officers, or other employees are held liable. Common examples of claims covered by these policies are discrimination, denial of tenure, failure to educate, and wrongful termination.

Fiduciary liability insurance covers the institution when claims are made for financial losses arising from the failure to properly act as a fiduciary with regard to its employee benefit plans, including the defined contribution or defined benefit pension plans, under the Employee Retirement Income Security Act. The policy can also cover errors in administration of benefits.

Professional liability insurance covers claims alleging injury or damage arising from a breach of a professional standard, e.g., medical malpractice. Institutions may need this insurance for exposures from professional schools such as medical, legal, social work, accounting, architecture, or engineering. Institutions may also need professional liability insurance in order to place interns at other institutions or companies. The institution should consider coverage for other professional services it renders such as the student infirmary, a counseling center, notaries, realty services, and attorneys.

Excess or umbrella policies can be purchased to protect the institution from liability claims that exceed the limit of the various primary policies.

Title insurance protects the purchaser of real estate against loss from defects in title or preexisting liens. When purchasing a building or even vacant land, many institutions purchase title insurance to defend against a lawsuit claiming the property is owned by another or reimburse the insured for actual monetary loss incurred. This is important because many people assume that colleges and universities have deep pockets and will pay up to avoid the hassle of litigation.

Surety insurance provides a financial backup to a promise to perform a particular action or service. For instance, many times an institution will require contractors to purchase performance and payment bonds in connection with a construction project. These bonds protect the institution in case the contractor does not complete the project for any reason, including bankruptcy. These bonds include bid bonds, performance bonds, and notary bonds.

Life and health insurance provides payment to the covered individual in the event of a covered accident or illness, or to a beneficiary in the event of the covered individual's death. At some institutions, these types of insurance are viewed as benefits and are managed outside the risk management area, i.e., in Human Resources or Athletics. Some examples of life and health insurance include:

- Student health
- Travel and accident
- Repatriation and medical evacuation
- Athletic accident and illness
- Employee life and health
- Disability
- Long-term care
- Dental and eye

Limits and Deductibles

Two important elements of commercial insurance policies are insurance limits and deductibles. A review of policies can ensure that appropriate limits and reasonable deductibles are used to protect the institution in the most economical way.

Limits stipulate how much the insurance company will pay. Occurrence limits stipulate how much a policy will pay for each incident or accident. Aggregate limits stipulate how much the policy will pay out for all losses that occur within the policy period. Every institution would like to have sufficient limits on each insurance policy so that no loss will ever exceed the amount of coverage. At the same time, no institution wants to pay excessive premiums for limits higher than necessary. Because of the financial implications of being under-insured, most institutions would like to think

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that they have erred on the side of too high a limit. Most primary liability policies (general liability, auto, professional, malpractice, etc.) have standardized limits, but institutions usually elect to purchase excess or umbrella policies to increase these limits. Often, the incremental cost is at a progressively lower rate. There may be times, however, when the excess policies will exclude certain coverages provided by the primary policy.

The limits on the excess policies have increased over the years as jury verdicts and legal settlements have increased. How much insurance (how high of limits) an institution should buy depends on the location, size of endowment, size of institution, state immunity laws (recognizing that state immunity laws often do not protect an institution from federal law suits or suits brought in other jurisdictions), and breadth of programs offered. Benchmarking limits of coverage with comparable institutions provides guidance. It is a best practice to explain the limits of coverage purchased with governing boards but not the wider campus community. The institution must evaluate the appropriate limit on each of its policies, again basing decisions on tolerance for risk and funding reserve potential.

Deductibles are the amount of a loss that the institution pays before the insurance company makes its payment. The deductible on any policy depends on several factors, including an institution's loss history, appetite for risk, the financial incentive that the underwriter (insurance company) gives in exchange for assumption of the risk, the predictability of loss, and the willingness of the underwriter to accept certain levels of risk. Bidding a program at various deductible levels can assist in determining the most cost-effective deductible level to select. This provides a comparison of the premium cost at each deductible level to see if retaining more of the risk can be cost-effective. Deductibles are highly effective for exposures with moderate to high frequency and mixed severity like workers' compensation and general liability.

Deductibles can sometimes be confused with self-insured retentions (SIR). Generally, deductibles are associated with claims that are the immediate responsibility of the insurance company and are technically paid by the insurance company and reimbursed by the university, although in practice this may be handled in different ways by different companies. SIRs are the sole responsibility of the institution until the amount is exhausted and the insurance company begins paying on the claim.

Insurance companies are usually willing to charge a lower premium if the institution agrees to a higher deductible. Selecting a higher deductible can save premium dollars, but the institution must be willing to

realize these savings with the knowledge that it accepts the financial responsibility of all claims that are less than the deductible. If the amount saved is greater than the additional cost incurred due to the higher deductible, then this would be a good business decision. No one can predict exactly what the cost associated with losses will be, but factors such as loss histories within the various deductible ranges, along with the potential effectiveness of loss prevention and control efforts to reduce the frequency and severity of losses, can assist in the decision-making process.

Using Agents and Brokers

Agents and brokers can be useful partners in the purchase of commercial insurance. Agents are representatives of the insurance company and sell that company's products. An agent may represent several companies or be dedicated to one company. Brokers represent the insurance buyer and are able to access all insurance markets. Whether a company is an agent or broker may be defined by state law or by the company itself. Some companies can act as an agent for some lines of insurance while acting as a broker on other lines. It is important to understand the relationship the agent or broker has with the insurance company and with your institution.

Agents and brokers are evolving from sellers of insurance to providers of comprehensive risk management services. There are a number of reasons for this, including competitive market conditions among insurers and the realization that clients need more sophisticated risk management advice. The result is that in addition to placing insurance coverage, the majority of agencies and brokerage firms now offer a range of risk management support services from risk assessment to loss control recommendations to claims management.

A well-qualified insurance agent or broker can assist with the evaluation of policies and compare the scope of coverages. While price may be a compelling consideration, it is only one criterion, and agents/brokers can help evaluate the trade-offs. The quality of insurance companies can vary, and each has its own strengths and services. Agents and brokers can help the institution check references and the rating of insurers.

Different lines of insurance can require different types of service and expertise, something not every broker possesses. For example, auto insurance is highly regulated, is state specific, and demands a lot of hands-on local service. Institutions with complex liability issues or multistate locations may need a high level of technical skill and market knowledge in their agent or broker. The institution should establish a good working relationship with the agency's or broker's representative, or "key contact," and ensure access

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to other specialists in the firm.

When deciding whether to use an agent or broker, the risk manager should assess competency gaps: What skills or analyses are needed to supplement what is available in-house? The institution should buy only those services that complement and enhance what can be done internally. Institutions may use the services of only one agency or brokerage firm or may opt to use several various sources to meet their needs.

Some key considerations when selecting an agent or broker include the following:

Services needed. Services such as policy placement, claims management, loss prevention, and control are common, but others such as record management, cost analysis, and loss forecasting might be needed as well.

Range of knowledge needed. Agents and brokers vary widely in their technical knowledge and in their claims expertise, higher education experience, and market access. They also vary in their ability to appropriately apply policy language and explain legal implications of various courses of action.

Size. Size and reach may or may not be a factor in an institution's selection. A small rural college may not need a broker with a global network. A university with campuses all over the world needs an agent who can call on global expertise. Dedicated support services and technical expertise can potentially be found in any organization, and size may or may not affect the quality of service or the attentiveness of an agent or broker. Again, the risk manager needs to assess agents and brokers against the specific needs of his or her institution.

When selecting an agent or a broker, the risk manager should ask potential firms a common set of core questions:

- What other institutions like ours do you serve?
- What are the emerging risks and trends for institutions like ours?
- Have you conducted a risk assessment for a comparable institution?
- Would you be willing to be paid by fee rather than commission?

Some institutions use brokers with a tie to the campus, such as an alumnus. This may be a disadvantage if the broker does not have the array of experience needed by the institution, such as expertise in athletics or faculty contracts. Using a donor or parent as a broker also raises the potential for conflict of interest.

It is important to consider whether to pay the broker by commission (typically 10 to 15 percent of the premium) or by fee. Paying by commission creates different incentives for the broker and institution, since more insurance sold and higher premiums work to the benefit of the broker. Paying the agent or broker on a fee basis better aligns the agent's/broker's and the institution's interests and may eliminate the need to hire an additional consultant to review policies. Whatever the basis, full annual disclosure and negotiation of the agent's or broker's total compensation, including all payments from the insurance company, is a best practice.

Occasional meetings with agents and brokers can be useful for gathering market intelligence and surveying available options. Risk managers should also discuss alternative services with colleagues at other institutions to find out whom they use and why.

Institutions should meet with their agent or broker on a regular basis to review their program as well as discuss program options and new ideas. In addition, institutions should engage in an annual performance evaluation of the services provided.

The Bidding Process

The bidding process can be done in two ways. One approach is to select an agent, broker, or consultant to provide services, but it does not include the insurance policies themselves as part of the selection process. In this focus, agencies or brokers are measured on such criteria as services available, staff expertise, availability, price, and size or market access of the organization. The criteria applied should be consistent with the priorities of both the institution and the risk management program. The second approach combines the selection of the agent or broker, along with the selection of insurance products.

Either way, it is usually beneficial to issue a formal request for proposal (RFP) when bidding for insurance products and/or services from agents or brokers. Designing an effective RFP can be challenging, but the more specific the requirements and needs, the more likely that the responses will address the needs of the institution. The RFP should include:

- A description of the coverages desired, including any options to be bid (such as optional coverages, limits, or deductibles). It can be helpful or even desirable also to invite the participants to submit any changes or options that they think would enhance or improve the program. Responses may give insight into the respondent's commitment to getting the business, creativity, or technical skill.

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- Information about the evaluation process, such as how the contract will be awarded and the primary contact at the institution. Requests for information about the agent/broker organization, especially if they have not been prequalified, are important.
- Expectations on how the written proposal should be presented

Underwriting information includes exposure data (the metrics that insurers use for calculating premium) such as loss history, particulars on any large losses, identification of any loss control or prevention programs relevant to the coverage, and relevant information about the institution. Risk managers may also choose to include detailed information about the current program, especially if a comparative coverage analysis is desired. Usually, expiring premiums are not disclosed. Language can also be added stating that the institution is not responsible for any costs the broker may incur in responding to the RFP and that it is free to do anything it likes with the responses.

Once the responses are in, they need to be evaluated against clear and objective criteria that are based on institutional goals and priorities. If several people are involved in the selection decision (and especially if they are not insurance specialists), it is helpful to have the responses organized in a common and comparable format. The number of available insurance markets can help determine a reasonable number of service providers to involve in the process. For example, in auto insurance, 20 markets may be willing to bid on the institution's business, and so four agents can each be assigned five markets. However, for directors' and officers' coverage, only three markets may be available, and no more than two brokers would be used. Once the bidding brokers have been determined, each should be asked to submit a list of markets, in order of preference, they would like to approach. The brokers should be advised that markets will be assigned by the institution and that no markets are to be approached by brokers until they receive their assignments, on penalty of forfeiture. Generally, the incumbent broker is assigned the incumbent market. Following that, brokers should be assigned their first choice, second choice, and so forth.

The frequency of the bidding process will depend on a number of factors. Some institutions, especially those in the public sector, have mandated requirements on bidding frequency and specific procedures that must be followed during the process. However, other issues must be considered, even if the institution has no specified requirements. A risk manager may elect to market the program to improve coverage, improve service, change service providers, reduce costs, or benchmark the existing program. But unless there are specific mandates on the

frequency, it is usually not a good idea to market a program too often. Underwriters view frequent bidding with no apparent change negatively and may choose not to bid on a program. Because the bidding process is so labor-intensive and costly, it makes good business sense to market a program only periodically.

A decision to switch insurers is also not to be taken lightly, but there are often compelling reasons for doing so. If an insurer cancels a policy (which can happen because of poor loss history), the institution has no choice but to seek a new insurer. An institution may choose to move a policy from one insurer to another for such reasons as the deteriorating financial condition of the insurer, unacceptable service, or acquisition of the company by another insurer.

In addition, risk managers should monitor the costs of insurance to determine if the price charged and the coverage and other risk management services provided for that charge are consistent with the competition. If an institution experiences an unreasonable price increase, if the long-term price is above the current market, or if broader coverage for the same price is available in the marketplace, then switching insurers may be a good business decision.

Prior to changing insurers, however, it may be advantageous to see if the existing carrier has the capability to revise the existing policy in response to new needs. Depending on the reason changes are needed, it may be beneficial to remain with the current insurance company since it is already familiar with the institution.

There are advantages to having a good relationship with the insurance company's underwriters. Very often, the manner in which information is presented to an underwriter will provide a better indication of the actual risk exposures that the company is deciding to accept. This can be a valuable factor in obtaining the best coverage for the best price.

Documentation

Proper documentation is a critical component of an insurance program. Institutions should receive binders or other evidence of insurance when coverage is first ordered. The instructions to the agent or broker should be in writing confirming what insurance is to be provided, and the binders should be complete enough to confirm the insurer is providing the requested insurance. The most important point is that the transmission is from the agent, not the insured. Institutions should insist that the agent or broker deliver the insurance policies within a reasonable time and before 90 days of inception. Liability policies and crime policies should be retained in the institution's permanent records. Some insurance claims, including sexual molestation and traumatic brain injuries, are covered by

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insurance policies in place when the event occurred, not when the institution learns of the injury or event.

Certificates of Insurance provide evidence that contract partners have insurance policies in place. They state the types of insurance, amounts of coverage, and expiration dates of the policies. They are often required when an institution needs to prove that it has coverage. For example, an institution may want to hold an activity off campus, and the facility wants to verify that the institution is insured. Similarly, a college or university may want to request Certificates of Insurance from all third parties such as tenants and vendors of services. It is particularly important that the institution receive a current Certificate of Insurance from any third party where risk is transferred through indemnification or hold harmless language.

Colleges and universities enter into many types of contracts and agreements: professional service agreements, real estate leases, service contracts, affiliation agreements, and the like. Ideally, risk managers should be involved in the early draft stages of such documents. However, this can be difficult to achieve given the volume of contractual documents at most institutions. At a minimum, risk management and/or general counsel should review all contracts and agreements prior to their finalization for language related to indemnification and hold harmless clauses, insurance, risk of loss, and limitations to liability.

Claims Management

Claims management refers to the tracking and monitoring of all claims on policies. Claims can come from any area of the institution and are as varied as the insurance or self-insurance programs that cover them. The areas on campus that generate the highest frequency of claims are workers' compensation, automobile liability, and general liability. Areas that generate claims with the highest severity involve employment practices, catastrophic property loss, and catastrophic athletic injury. Risk managers should be responsible for tracking all claims and either managing them or (if handled by a third-party administrator) monitoring them.

Cost Allocation

One way to get people's "skin in the game" is to allocate the cost of insurance and deductibles to units and auxiliaries. The argument is that if costs are centralized and entities are not responsible for premium costs or deductibles, then they have less incentive to exercise loss control, require training, and reduce the overall cost of risk. On the other hand, if departments feel risk as a real cost, they have a strong incentive to proactively reduce risks. Institutions that have charged back the cost of insurance have done so for two primary reasons:

- To allocate costs back to the units that incurred them. The principle is not new to higher education, which routinely charges back costs related to telecommunications and information technology.
- To provide units with an incentive to reduce risky behavior. If managers are held accountable through their budgets, they may be more attentive to managing risk.

When implementing a cost allocation program, the risk manager will need to consider several questions:

- Will the program just focus on the operating and auxiliary departments or extend to the academic units as well?
- Which lines of insurance will be included? Will the program be designed and enforced from the top down, or will it be developed by a broad-based committee?

When working with a campus-based advisory group, it is also useful to articulate principles for guiding the cost allocation program. These might include the following:

- The allocation should reflect relative risk both in premium and deductibles.
- The allocation should be no more than the unit would pay if it were freestanding.
- The methodology should be designed to minimize budget swings from year to year.

RISK TRANSFER AND SHARING: SELF-INSURANCE AND OTHER OPTIONS

For a variety of reasons, an institution may decide that it would rather self-insure than buy commercial insurance. These reasons might include high premium costs for a particular type of insurance, unavailability of insurance because of negative loss experiences or a noncovered exposure, or simply because an institution has a high tolerance for risk and has the resources to establish sufficient reserves.

The concept of self-insurance is sometimes confused with being uninsured. Lack of insurance occurs when an exposure is not recognized or is not perceived to be a particularly large threat. This "it won't happen to us" attitude can leave an institution highly vulnerable to loss, especially when funds must be diverted from another institutional activity to pay for recovery. A decision to self-insure, on the other hand, involves assessing the likelihood and impact of an exposure and then deciding that the institution can cover any loss on its own. Before an institution decides

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to self-insure, administrators must carefully assess the risk exposure, financial implications to the institution, and appropriate levels of funding. Once the viability of self-insurance is established, funds must be identified to respond to losses for that particular risk.

Institutions can finance a self-insurance program in two ways: through a funded reserve or an unfunded reserve. A funded reserve means that the institution has put aside dollars into an account that will be used to pay claims. An unfunded reserve means the institution knows that losses may occur and approximately at what level but will pay for losses out of general operating funds. The estimated loss amount is included in budgetary considerations, but actual funds are not earmarked or set aside. Use of either of these mechanisms must be a deliberate decision based on a careful assessment of the amount that needs to be available in the event of a loss.

Regardless of what funding mechanism is used, institutions that elect to self-insure should:

- **Establish guidelines for operation of the self-insurance program.** Self-insuring requires many of the same considerations used by commercial insurance companies in order to operate effectively. The types of claims paid, how they are paid, limits to coverage, and how funding is established are some of the components that need to be systematically structured into the program.
- **Ensure that the program complies with legal and accounting requirements.** Some types of insurance cannot be self-insured except with regulatory approval. Workers' compensation and auto liability are examples. In addition, the institution's external auditors or bond counsel may require that the institution calculate and book its self-insurance liabilities in ways that comply with accounting principles.
- **Conduct a periodic review of the program.** Since losses may be paid many years after an incident, reserves should be reevaluated each year until a final resolution occurs. An external actuarial service can be useful to establish these annual reserve amounts.
- **Purchase excess insurance.** An institution that decides to self-insure a particular category of risk (e.g., workers' compensation) should consider the purchase of excess or stop-loss insurance to limit its exposure to catastrophic loss in a particular year. This excess or stop-loss insurance can be specific to one claim or an aggregate for the total category for the year.

Other risk financing mechanisms can also be used in lieu of commercial insurance.

Captives are an alternative form of risk financing. Captives offer the benefit of more control over insurance costs, claims management, and investment of claims reserves. Although ostensibly a strategy for shifting the responsibility for losses to another entity, technically it is a risk retention mechanism. A captive is formed as a subsidiary to finance losses but financially is still a part of the institution. Some captives, such as Indiana University's Old Crescent Insurance Company, are set up by a single institution. Others are formed by groups of institutions. Professional liability/medical malpractice insurance is the most common form of captives for universities. Captives are designed to operate in the same manner as an insurance company and must conform to the insurance rules and regulations of its location. Some states, such as Vermont, have well-established captive insurance laws and support structures. Some captives are located outside of the United States in countries that are less regulated, such as Bermuda. The cost of operating an offshore captive should be included in the decision as to where to locate the captive.

None of these options are exclusive, and for any given set of risks, the manager will need to ask which technique or combination of techniques will be the most effective and economical. For example, an institution with a large vehicle fleet has several options for managing its auto exposure. It can:

- Buy commercial auto insurance
- Self-insure (either or both the physical damage and the liability)
- Develop a fleet safety program that includes driver training and motor vehicle record checks
- Outsource its vehicle exposure by leasing rather than owning its cars and vans
- Form a vehicle pool with other institutions
- Reduce the size of its fleet by promoting other means of transportation

Other examples abound. Risks in research labs can be reduced through regular inspections, clear policies, and mandatory training. Risks in residence halls can be mitigated through more rigorous selection and training of resident advisors, student committees, better orientation sessions, and the consistent enforcement of rules. Through the creative application of multiple solutions, risk can be limited in most situations.

The risk management options should be reviewed periodically to ensure that the control methods continue to serve the institution in the evolving risk environment.

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New risk exposures should be identified and managed appropriately. Where specific programs have been implemented (e.g., training to reduce the number of back injuries or more stringent rules for fleet drivers), periodic monitoring should ensure that the goals are being met. Some form of external review, from peers or specialized consultants, can also provide a useful perspective.

Of course, what works best in one situation or for one institution will not necessarily work best elsewhere. In some cases, more than one option works equally well. The effective risk manager must use his or her best judgment to recommend the optimal approach.

BUSINESS CONTINUITY AND EMERGENCY PLANNING

Institutions are becoming increasingly aware of the need for business continuity planning. If the more traditional approach to risk management asked focused questions—e.g., how do we protect our auto fleet? How do we mitigate the risk of a proposed study abroad program? How much insurance do we need to cover that building? Then, business continuity asks a more global question: In the event of a major catastrophe, how do we keep the institution going?

The Federal Emergency Management Agency (FEMA) Ready Campus (www.ready.gov/campus) states: “In times of disasters, colleges and universities serve as key emergency management partners to federal, state, local, tribal, territory and private sector organizations. Natural, technological, and health hazards can all affect daily campus operations. Institutions are encouraged to regularly review, update and exercise their emergency plans.”

The Department of Homeland Security (DHS) Ready Campus (www.ready.gov/campus) provides steps and resources for emergency planning, communication plans, business continuity plans, campus fire safety, cyber and mobility safety, pandemic planning, and other campus risks. The site also provides resources in support of the Community Emergency Response Team (CERT) to educate faculty, staff, and students about disaster preparedness.

Business continuity planning is not only about the development of “a plan,” but also the establishment of a culture and set of practices that prepare people across the enterprise to respond to major disruptions. While this may sound like a massive undertaking (and it is), the effort becomes more manageable if broken into its primary steps:

1. Secure senior leadership commitment.
2. Involve key constituencies in the community, including local first responders.
3. Identify and assess risks.
4. Develop the continuity plan.
5. Test the plan.
6. Analyze lessons learned from tests and drills and modify the plan based on lessons learned.

In going through these steps, managers need to recognize that disasters can vary in their impact. An earthquake may be of short duration and destroy much of the infrastructure, but recovery might begin almost immediately.

A pandemic, on the other hand, could leave all buildings and infrastructure intact, but it could last for weeks or months. For this reason, it is important to consider both specific and nonspecific risks so that the institution maintains flexibility in its planning.

Secure Senior Leadership Commitment

The most important resource to mobilize at the outset is the institution’s senior leadership. Because a business continuity plan is an enterprise-wide and high-stakes activity, the president/chancellor and the governing board must endorse and support the effort. Without senior-level support, it will be difficult to get others to commit the time and attention needed to develop, implement, and test the plan. The top of the organization should issue a formal charge that frames the importance and scope of the planning authority.

Involve Key Constituencies

The plan should be developed through broad-based participation. Most institutions have some sort of planning entity in place, and this should be leveraged to the extent possible. While each college and university has its own structure and organizational quirks, the risk manager may want to consider including representation from:

- The president’s office
- Institutional research
- Public affairs and communications, including a rapid response capability
- Public safety
- EHS
- Information technology
- Physical plant
- Academic affairs
- Student affairs/counseling

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In addition, the planning group should incorporate appropriate representation when needed from state and local governments, emergency management agencies, infrastructure providers (e.g., utilities, housing, transportation, telecommunications), and nonprofit organizations such as the Red Cross.

Because of the need for the involvement of multiple constituencies, it is critical that thought be given to governance. Who will constitute the core planning group? Who will be brought in for consultation on a periodic basis? What subgroups should be formed to deal with specific issues? In the absence of tight management of the process, the planning can easily become unwieldy. FEMA has developed *ICS100.HE: Introduction to the Incident Command System for Higher Education*. This course is designed to introduce campus responders to the Incident Command System and National Incident Management System. This knowledge will ensure that necessary members of the campus community can communicate with outside municipalities to respond effectively and efficiently to an emergency or crisis on campus.

Identify and Assess Risks

There are a number of methodologies to identify and inventory assets and to assess hazards, and each risk manager will need to develop an approach that works best for his or her institution. Methods that have proven effective include the following:

A **mapping exercise** of the campus can provide the platform for identifying structures and infrastructure, and the hazards that might accompany them. The map should show:

- All structures, including residence halls, classrooms, computer facilities, dining and food storage areas, health services, and the like
- Essential services, such as fire, police, shelters, medical facilities, and any other services that could be drawn on in an emergency
- Locations of hazardous materials, including labs and storage areas
- Critical infrastructure, such as power lines, water and sewer lines, communications facilities, and roads
- Important off-campus sites, such as student housing, fire stations, and health care facilities

When an emergency occurs, the risk manager should not have to start asking for locations of students, health services, or gas lines. All of that information should be at his or her disposal within a geographical information system (GIS).

An **asset inventory** enables the prioritization of risks. Once the physical components and infrastructure have been identified, it is important to identify the risks and their implications to each asset. Part of this exercise consists of the more “traditional” risk assessment of:

- Discovering where there are exposures to flooding, earthquakes, and the like
- Estimating possible losses
- Determining mitigation techniques

For business continuity planning, the asset inventory should also provide insights into those assets that will be critical to maintain the institution in the event of an emergency:

- Which buildings (or portions of buildings) need to have power?
- Which buildings house critical functions?
- Which parts of campus will need to be accessible?

Prioritizing the saliency of buildings and infrastructure will allow institutions to address key facilities and functions first.

The **business impact analysis** identifies the likely implications of a risk to the institution’s business processes. Within higher education, of course, those processes are more than just the traditional business functions and include educating students, housing and feeding residents, caring for lab animals, maintaining telecommunications, and many more.

Each unit, therefore, needs to go through the exercise to determine the impact of a disaster on them. Among the questions they need to ask are:

- What is the maximum allowable downtime?
- What are the costs associated with downtime?
- What should be the objectives for achieving recovery?

Not all processes and areas are equally vital, and the plan will need to prioritize processes based on strategic goals and safety. Advancement gift processing could reasonably stay down for days or weeks, while dining services on a residential campus need to be up and running almost immediately. Meeting payroll dates is critical for all institutions.

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Develop the Continuity/Recovery Plan

Once the critical threats are identified and prioritized, the business continuity team can begin to determine who must do what to keep the institution going in an emergency. A master response plan should document priority actions, contact information, and the availability of resources. That plan should be widely distributed across the institution. Each department should then develop its own specific plan of action, based on this master plan.

Because no one wants to carry a thick binder around during a disaster, targeted checklists are an important method for ensuring that all important actions are taken. Working with departments to develop the checklists can be an especially effective mechanism for ensuring that they take the planning exercise seriously. The Occupational Safety and Environmental Health unit at the University of Michigan, for example, created a pandemic business continuity plan that includes checklists for all of the major units, including housing, finance, dining services, international studies, security, and others.

Specific individuals need to be appointed as coordinators during a crisis, and they need to be given specific roles, such as incident reporter, liaison with the community fire department, media coordinator, and the like. Each critical role should have backup. There should be a clear chain of command.

Test the Plan and Make Adjustments from Lessons Learned

The most thoughtful business continuity plans are useless unless they are capable of being implemented when needed. Flexibility in the plan allows the institution the resiliency to respond to whatever catastrophic event occurs. An institution won't be able to guess exactly what the emergency event is—fire, downed aircraft or drone, active shooter, flood, cyberattack, etc. The plan should be broad enough and flexible enough to support a response, no matter what calamity strikes. This requires the risk manager, before an emergency occurs, to ensure that people across the institution are aware of the plan, knowledgeable about their roles, and confident that they can do their part. This ability to orchestrate the needed response implies that the risk manager has:

- Secured approval of the plan from senior leadership
- Developed a communications plan (with an emphasis of using social media to communicate) targeted to a range of stakeholders: key coordinators, local officials, heads of functional units, faculty, and students
- Secured access to the human and financial resources required to implement the plan

- Monitored and updated the plan on a regular basis
- Provided regular testing of the plan, using different scenarios to enforce flexibility and resiliency

Put appropriate documentation on the website and send out periodic reminders that it is there, especially during high-risk times of the year like tornado, hurricane, or fire season. Some aspects of the plan may be confidential and should be shared on a need-to-know basis only, including the location of the command center in the event of unrest or terrorist acts.

Meet with government emergency response agencies and community leaders so that there is a clear understanding about mutual expectations.

Making sure that the plan can be implemented when needed involves more than just sending out the binder. Key individuals should be trained on their roles. Two methods have proven to be especially effective:

1. **Tabletop exercises** bring together members of the business response and continuity team to discuss what they would do in the event of a specific disaster. Under the guidance of a facilitator, a specific scenario is outlined that details the disaster, the damage, and other circumstances. The more realistic the scenario, the more specific participants need to be in their response. In addition to team building, the exercise allows people to test their own actions and responses.
2. A **campus-wide drill** can test the plan under simulated circumstances. The simulated exercises seen on the TV news (complete with bandaged, ketchup-drenched victims) are a way of sensitizing the campus to the importance of the plan, making sure that key individuals are comfortable with their roles, and checking for vulnerabilities in the plan itself.

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Associations

National Association of College and University Business Officers (NACUBO)

1110 Vermont Avenue NW, Suite 800
Washington, DC 20005
202-861-2500 | www.nacubo.org

Risk and Insurance Management Society (RIMS)

5 Bryant Park, 13th floor,
New York, NY 10018
212-286-9292 | www.rims.org

United Educators Insurance a Reciprocal Risk Retention Group

7700 Wisconsin Avenue, Suite 500
Bethesda, MD 20815
800-346-7877 | www.ue.org

University Risk Management and Insurance Association (URMIA)

PO Box 1027
Bloomington, IN 47402
812-727-7130 | www.urmia.org

Periodicals

- Business Insurance (weekly)
- *Business Officer* (monthly)
- *Risk Management* (monthly)
- *URMIA Report* (quarterly)
- *URMIA Journal* (annual)

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