

# The Evolving Relationship Between Ethics & Compliance and Internal Audit

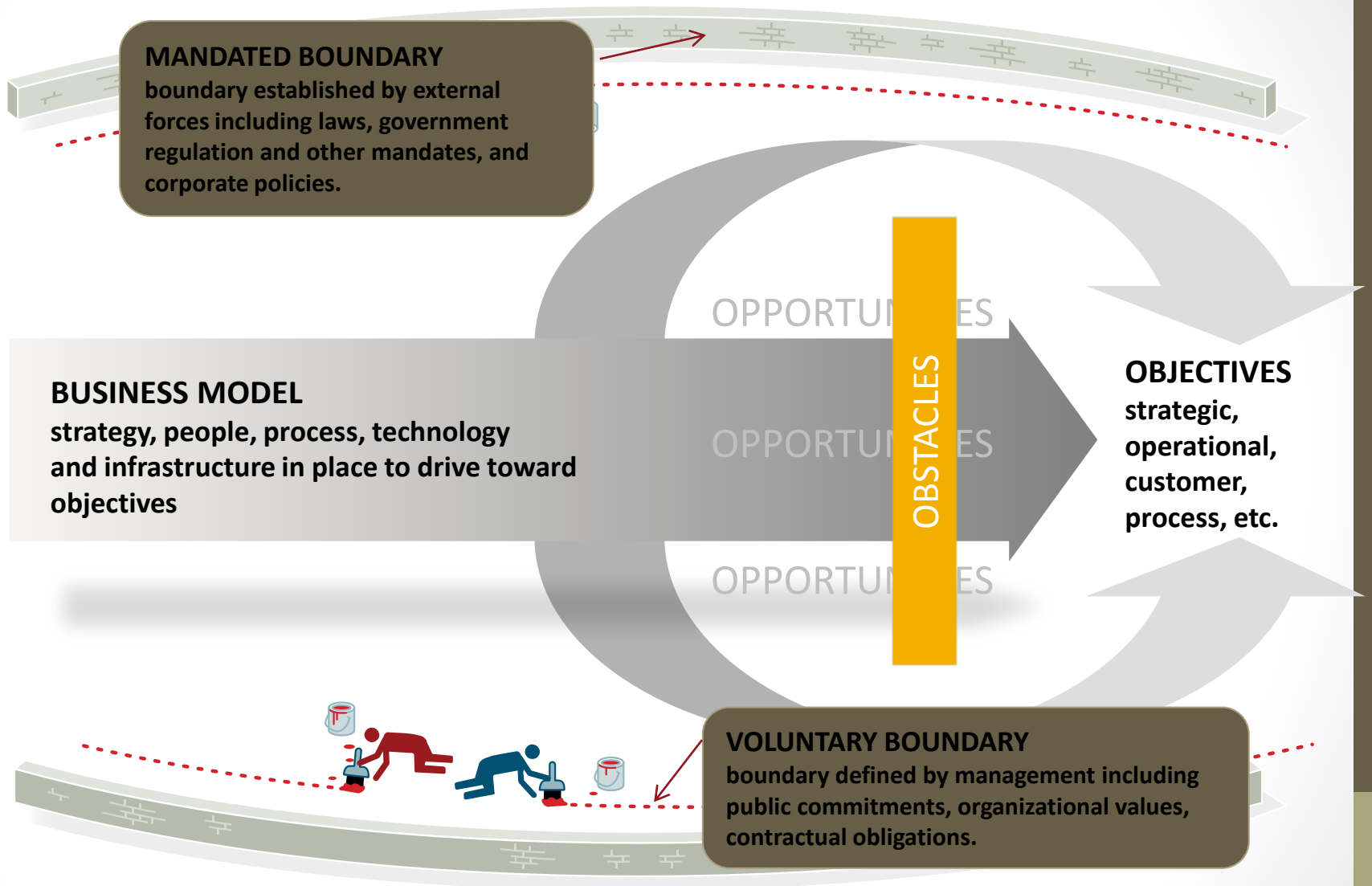
ISACA North Texas Chapter Meeting  
April 12, 2012

**Paul Liebman, OCEG Fellow**  
**Ladner & Associates**

Or...

**The Compliance & Ethics  
Department – Internal  
Audit's Little Brother!**

# The Big Picture



# The Big Picture Continued

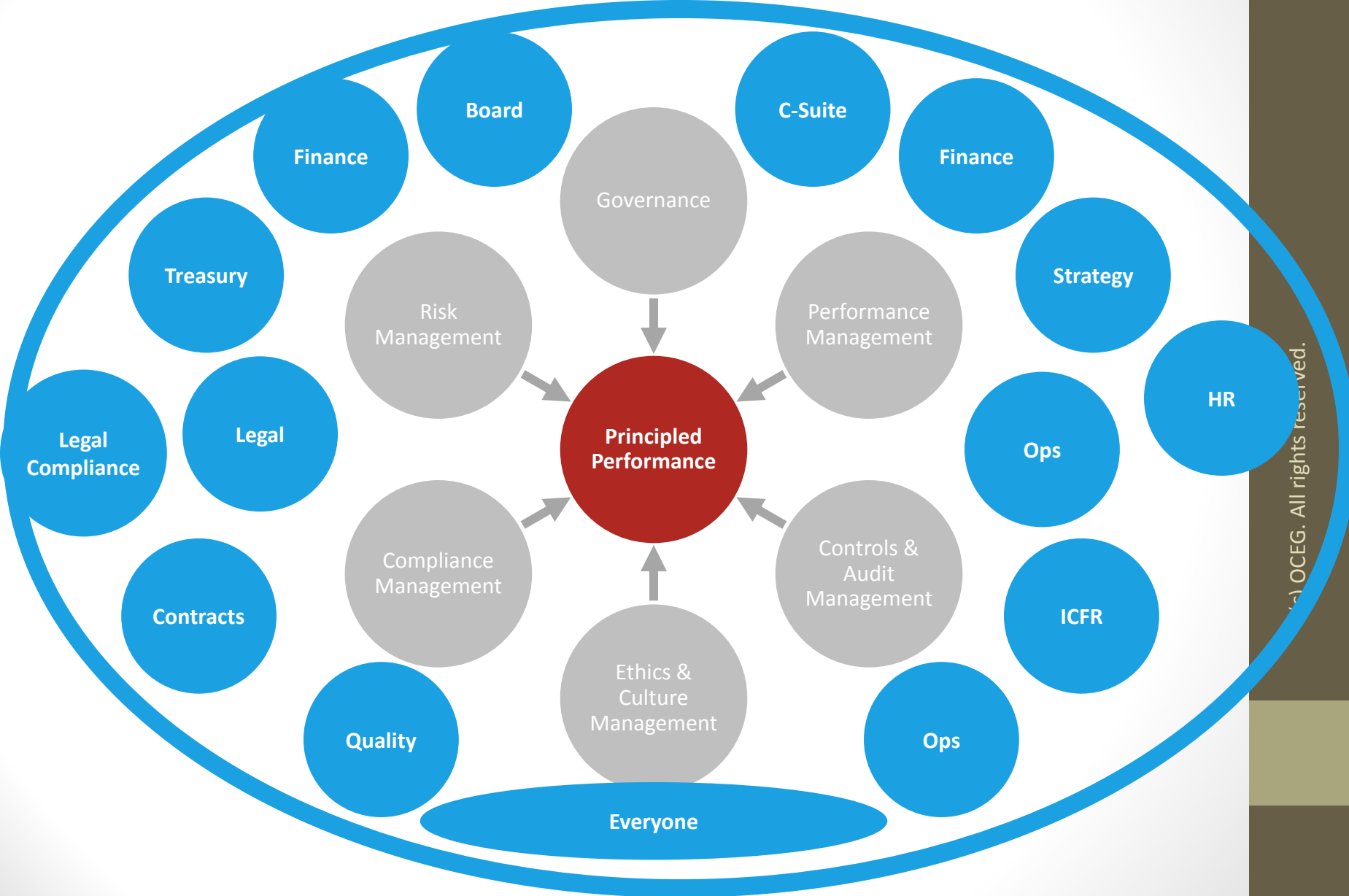
## Principled Performance

reliable achievement of objectives  
while addressing uncertainty  
and acting with integrity

# The Current Situation

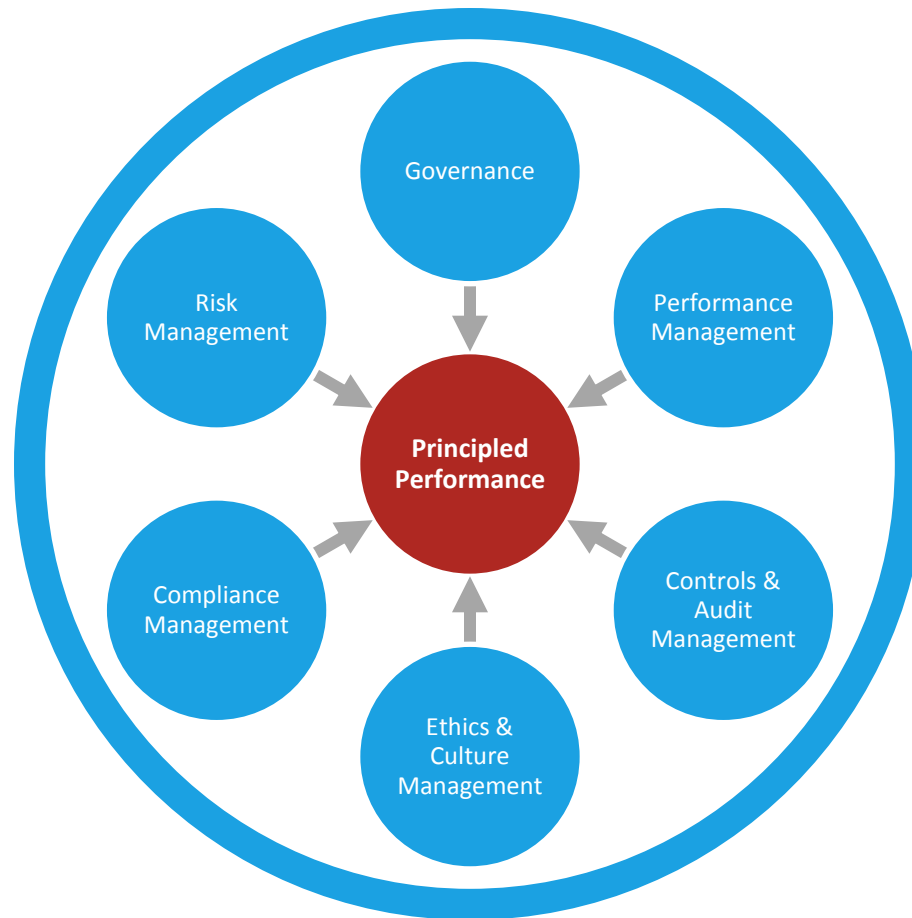


# The Problem?



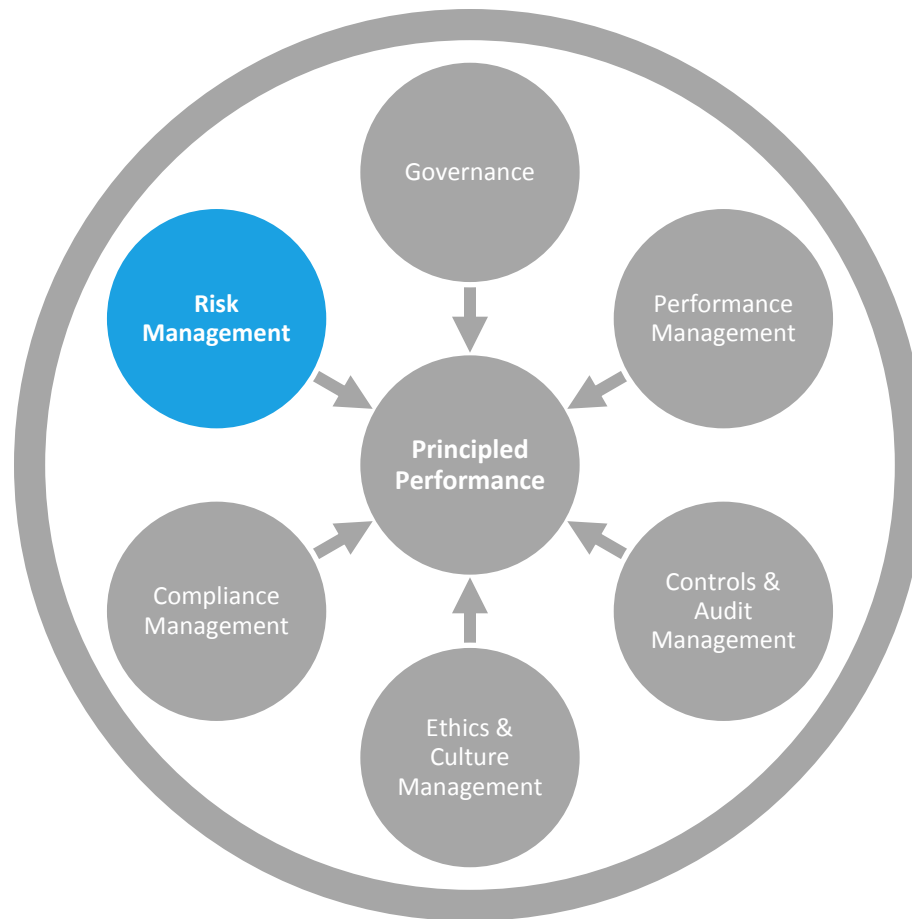
# The Challenge?

***NOBODY AGREES 100%***



# Key Challenge

*Even within the same discipline*





# GMA – The New GRC?

**Governance** is the act of **externally** directing, controlling and evaluating an entity, process or resource.

vs

**Management** is the act of **internally** directing, controlling and evaluating an entity, process or resource.

vs

**Assurance** is the act of **objectively** evaluating an entity, process or resource.

# Compliance & Ethics Defined

**Compliance** means following external laws and regulations as well as internally-adopted rules of behavior (e.g., Code of Conduct, policies and procedures, industry standards, contracts, etc.)

# Compliance & Ethics Defined

**Ethics** means acting according to Company's Values (e.g., honesty, respect, diversity, accountability, etc.) even in the absence of external laws and internally-adopted rules of behavior

# Why Do Companies Need A Compliance & Ethics Program?

Reduce risks and costly surprises by preventing Criminal Liability, and Significant Civil Liability, Reputation Damages, and Business Interruption and Loss

# Why Do Companies Need A Compliance & Ethics Program?

Enhance Company's brand and reputation for trustworthiness with customers, employees, business partners, shareholders, insurers, banks, and the investing community – and with other stakeholders like regulators and prosecutors

# Key Compliance & Ethics Program Drivers

US Federal Sentencing Guidelines for Organizations (1990; revised 2004)

imposes harsh penalties on corporations whose employees violate federal criminal law; permits leniency by prosecutors and judges if corporation can demonstrate it had an “*effective*” compliance program in place prior to triggering event; and, establishes required elements to prove effectiveness

# Key Compliance & Ethics Program Drivers

Caremark Decision of the Delaware Chancery Court (1986) held that corporate directors have a duty to ensure that corporation has an effective compliance program to deter, detect and address violations of law, and to exercise reasonable oversight over the program; and, that failure to do so could result in shareholder derivative suit liability arising from employees' non-compliance with applicable legal standards

# Key Compliance & Ethics Program Drivers

Sarbanes-Oxley (2002) added additional responsibilities on CEOs and CFOs to certify under penalty of personal criminal liability that the corporation has adequate controls systems in place to prevent, detect and address accounting and audit irregularities, that the systems are working properly, and that all financial reports to the investing community are truthful and accurate



# Key Compliance & Ethics Program Drivers

Aggressive worldwide enforcement of existing laws – see Siemens FCPA settlement (2008) resulting in \$1.7 billion in fines and penalties, \$850 million in investigation and legal defense costs, independent monitor for minimum of 4 years, hiring of 500 new, full-time compliance professionals worldwide

# Key Compliance & Ethics Program Objectives

**Effectiveness** – make sure that Company meets the 7+ elements of effectiveness set out in the US Federal Sentencing Guidelines for Organizations as the term has been defined by case law, non and deferred prosecution agreements, and relevant and accepted industry standards

# Key Compliance & Ethics Program Objectives

**Alignment** – Create value as a true business partner and be a catalyst (not an impediment) for success by addressing the most significant current and future risks of the business and by investing the right amount of resources on the right activities at the right time.

***No gaps. No waste. No surprises.***

# Key Compliance & Ethics Program Tasks

**Culture of Integrity** – help create an organizational culture that encourages legal and ethical behavior through tone at the top, middle and edges using our Code of Conduct, ethics messaging and training, investigation process, and incentives and accountability

# Key Compliance & Ethics Program Tasks

**Compliance with Laws** – help drive accountability for compliance & ethics performance into the business with meaningful identification and prioritization of the most significant current and future compliance risks, creation and ownership of business-specific activities and controls, clear expression of expectations, tracking of key milestones and metrics, and incorporation of results into operational and compensation discussions

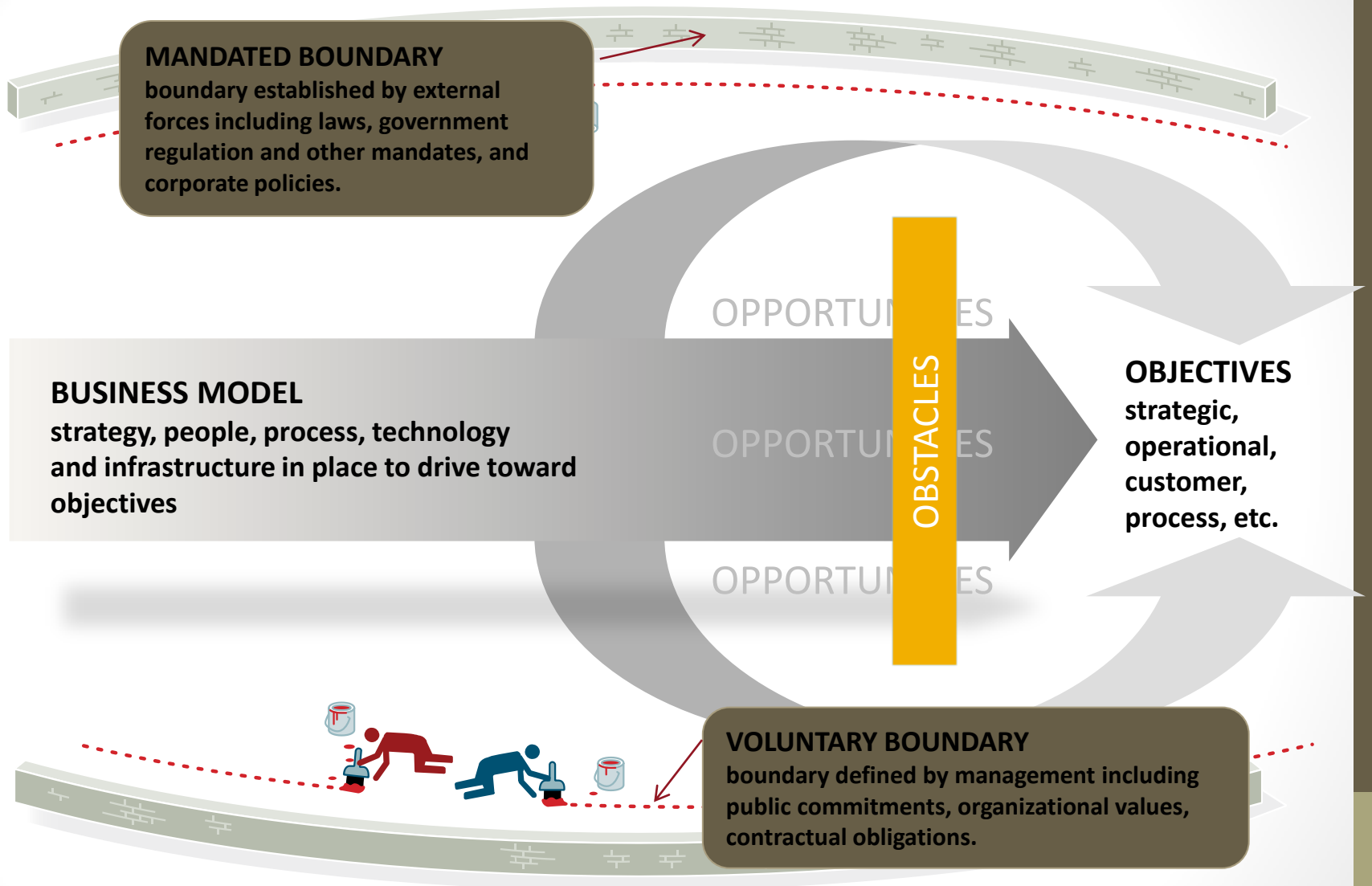
# Key Compliance & Ethics Program Tasks

**Credibility with Stakeholders** – help document the compliance and ethics program activities for ease of reference, and drive continuous improvement and sustainability

# Key Compliance & Ethics Program Activities

- ✓ Risk Assessment
- ✓ Codes, Policies, Procedures, and Controls
  - ✓ Education and Training
- ✓ Retaliation-Free Workplace (Internal Reporting)
  - ✓ Investigations
  - ✓ Remedial/Corrective Action
  - ✓ Knowledge-Sharing
- ✓ Linkage with Board, Businesses, Legal, ERM, Finance, Internal Audit, and HR

# The Big Picture





# The Race Car Metaphor

Each company business is like a race car going around a racetrack. Winning is not defined by how fast you can drive but by whether you cross the finish line ahead of your competition without crashing.

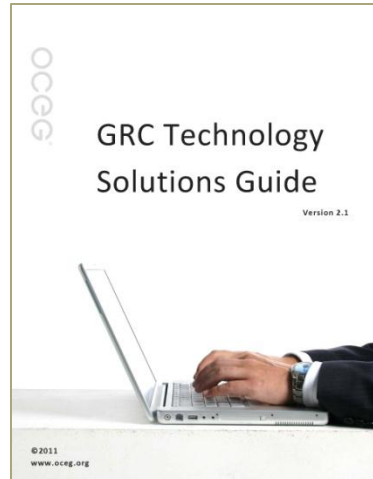
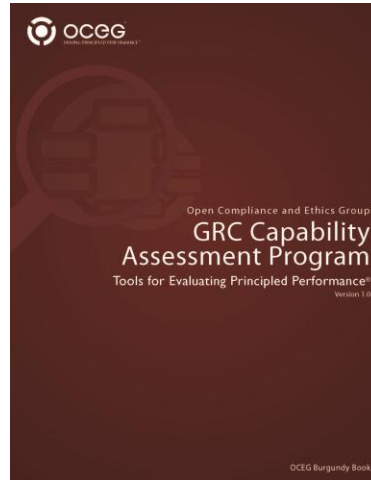
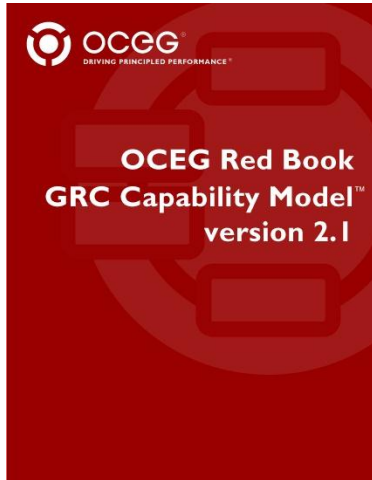
Compliance & Ethics activities are the brakes and steering.

*The trick is to adjust brakes and steering on fast-moving cars!*

# The Real Cost of Non-Compliance

Companies don't budget for non-compliance – money spent fixing otherwise preventable problems comes right off the bottom line and would be better spent on capital improvements, pursuing business opportunities, and retaining key talent

# Resources – [www.oceg.org](http://www.oceg.org)



- RED BOOK
  - Download free at [www.oceg.org](http://www.oceg.org)
  - Get a hard copy or spreadsheet version from the OCEG online store
- GRC Fundamentals
  - OCEG online learning series
- GRC Assessment Toolkit (Burgundy Book)
- GRC Technology Solutions Guide

# Questions?

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