An Inquiry into the Adoption of the Best Practices of Sarbanes-Oxley in Institutions of Higher Education

By

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Dedication

To my wife Lucie, for persevering and sacrificing her time as I completed this project, for her continued support, and the strength she provided me throughout this endeavor. Also, to my children, Jimmy, Kevin, and Danielle, for giving me the energy and support to always keep moving forward. I could not have taken on this project without all your support. Finally, to my parents who taught me to work hard and never quit. What is worthwhile is worth working for.

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Abstract

"An Inquiry into the Adoption of the Best Practices of Sarbanes-Oxley
in Institutions of Higher Education"
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The Sarbanes-Oxley Act is legislation enacted as a result of the financial criminal wrongdoings of companies such as Enron and WorldCom. As a result of such wrongdoings, the government intervened and legislation was passed in 2002 (the Sarbanes-Oxley act of 2002).

Although the act only applies to publicly traded companies, many institutions, including institutions of higher education, have adopted the "best practices" of the Sarbanes-Oxley Act. The concept underpinning the "best practices" is that transparency, accountability and ethical conduct in financial policies and practices are prevalent in every organization, and institutions of higher education are not exempt.

The research findings from our inquiry into institutions of Higher Education indicated that many of the institutions of higher education that implemented the best practices did so because they thought it was the "correct thing to do"- implying that best practices of the Sarbanes-Oxley Act - transparency, accountability and ethical conduct in financial polices and practices should be adopted.

As a second step, this study attempts to qualitatively determine why institutions of higher education decided to implement any of the best practices. What, if any perceived benefits were gained, and if the institutions believed that they have achieved those benefits as of the time of the interviews.

The findings made it clear that there is a general sense that implementing the best practices of Sarbanes-Oxley is important and the right thing to do. The implications of implementing the best practices of Sarbanes-Oxley will show employees and others outside the institution that the institution wants to do the right thing, that accountability and transparency are important. Also, it will likely help establish an ethical culture within the institutions of higher education through the institution's code of conduct that improper behavior will not be tolerated.

Based on current findings, we postulate that institutions of higher education that have implemented the best practices of Sarbanes-Oxley will be better poised should future regulation be enacted. Also, we expect that funding agencies will consider positively the fact that there are organizations that are exercising their fiduciary responsibilities by implementing the best practices of Sarbanes-Oxley.

Chapter 1: Introduction to the Study

1.1 Background:

Investors are continually demanding increased earnings from companies in which they invest their money. This places great pressure on company executives to increase their respective bottom lines in order to satisfy shareholders, governing boards and to ensure that executive bonuses are paid. As a result, some executives have turned to unethical practices in order to make the bottom line look good; therefore, ensuring their bonuses are paid and to satisfy shareholders and the governing board. This creates public concern and distrust throughout the general public. Because of recent scandals where bad acts have been so severe that the government had to step in.

According to Mazmanian (1989) "Normally, statutes are the result of heightened concern with a general problem" (p. 32). For example, the Foreign Corrupt Practices Act (FCPA) was enacted to prohibit bribes to foreign officials, foreign political parties, or candidates for foreign political office. According to Staggers (1977), Congress realized that there was a need for this legislation because "More than 400 corporations have admitted making questionable or illegal payments. The companies, most of them voluntarily, have reported paying out well in excess of $300 million in corporate funds to foreign government officials, politicians, and political parties" (p. 1).

Such is the case with the Sarbanes-Oxley Act of 2002. The Sarbanes-Oxley Act is legislation enacted as a result of the financial wrongdoings of a few large companies such as Enron and WorldCom. In the case of Enron, corporate executives "cooked the books" in order to increase stock prices and for personal gain. In the end, a very large company went bankrupt and thousands of employees lost their pensions and life savings.

Enron's public accounting firm, Arthur Andersen, attempted to assist in the cover up of the Enron scheme because of the strong relationship between the two companies. As a result, in June 2002, Arthur Andersen was convicted of obstruction of justice in the United States District Court. Although that conviction was overturned in May 2005, Arthur Anderson lost nearly all of its clients, and subsequently closed.

As a result of the Enron wrongdoing, the government intervened and legislation was passed in 2002 (The Sarbanes-Oxley act of 2002). The legislation mandates publicly traded companies to strengthen governance and document financial controls. The Act itself is 66 pages long and consists of eleven titles. The legislation has three overarching goals: (1) transparency--the financial information must be complete and accurate; (2) accountability--namely the principal executive officer (such as the Chief Executive Officer or the President), and the principal financial officer (such as the Chief Financial Officer) must be held responsible for the financial information, and the Board of Directors is held responsible for the proper oversight of the corporation's officers; and, (3) integrity--code of ethics for senior financial officials must be implemented and enforced. Although the act only applies to publicly traded companies, many institutions, including non-profit organizations and institutions of higher education, have adopted the "spirit" or the "best practices" (defined below) of the Sarbanes-Oxley Act.

According to Paul Sarbanes, co-author of the Act, in a speech given at Drexel University stated that Drexel was the first University in the country to formally adopt the best practices of the Sarbanes-Oxley Act. Institutions of higher education that have opted to implement such practices have done so for good reason. The adoption of the best practices of the Sarbanes-Oxley enables an institution to promote transparency by ensuring that its financial information is correct, through the implementation of internal controls that help detect errors in the accounting records if any errors occur. It also promotes accountability by affixing the responsibility for the accurateness of the financial information on the President and Chief Financial Officer of the institution, by requiring the President and Chief Financial Officer to sign certifications attesting that the annual financial information is correct under penalty of criminal law. Following the act's best practices encourages integrity by requiring all members within the institution to sign an annual *conflict of interest* statement and disclose any relationships that employees or family members of the employees have with anyone doing business with the institution. Additionally, adding a hot-line that enables employees to report suspected wrongdoing, and prohibits retaliation against whistle-blowers is also part of the Sarbanes-Oxley act and is a best practice.

Recent incidents among institutions of higher education have shown that they are subject to the very same public scrutiny such as that exhibited against public companies when bad acts are enacted against them by executives within these institutions. When this occurs similar public mistrust can happen, which negatively affects them as well. Recent incidents among non-profit institutions, specifically institutions of higher education are described in the next section, so as to provide a context for the question to be investigated.

Recent Incidents

In the last several years, there have been many cases of alleged financial impropriety at institutions of higher education. The Yale Daily News (December, 2008) reported that Yale University recently agreed to pay $7.6 million for allegedly making false claims on federal research grants. According to the Yale Daily News report, the Acting U.S. Attorney stated that “this settlement sends a clear message that the regulations applicable to federally-funded research grants must be strictly adhered to.”

The Chronicle of Higher Education (July, 2007) reported that a former physical-plant director at Rockhurst University was indicted on allegations he had accepted about $100,000 in bribes from companies that were doing business with the University. Overall, the University was overcharged about $1 million over a four-year period.

Trinity College in Connecticut is facing scrutiny from the government for planning to spend part of a $9 million endowment allegedly against the donor’s wishes. (Hechinger, 2009) The conflict, between the College and a professor show how current economic times can force an institution to look for ways to come up with alternative funding. Although the institution states that the family approved the plan, it also stated that is coming up with a new plan.

Also in 2007, two community-college presidents in Arizona were fired due to investigations into allegations of fraud, theft, and cover-ups (Keller, 2007). Top officials at the University of Medicine and Dentistry of New Jersey allegedly falsified the University’s financial statements in order to obtain their bonuses (Fischer, 2006). The President at Vanderbilt University was scrutinized for his spending on entertainment, travel, and the maintenance of his university-owned residence (Lublin & Golden, 2006).

However, the most highly publicized case of financial misconduct among institutions of higher education occurred when the President of American University was scrutinized for his salary and spending habits. Senator Charles Grassley, at that time the Chair of the Senate Finance Committee, expressed concerns over the egregious spending habits of the American University president specifically, and governance and oversight of non-profit organizations in general, particularly institutions of higher education. In a letter to the Chairman of the Trustees of American University, Chairman Grassley expressed his concern over the recent events at that university. In the letter, he stated, “The Finance Committee has been engaged in a bipartisan review of charities and reform of charities and it appears the AU board could be a poster child for why review and reform are necessary.” (Grassley, 2005) In an interview, Mr. Grassley explained, “This is not what I would expect from a university that benefits from tax-exempt status" (Fain, 2006, p. A33). Mr. Grassley’s reference to the lavish spending of the American University President, and his question about whether such conduct warrants an institution the privilege of tax exempt status suggest that, if institutions of higher education cannot regulate themselves and utilize the public’s money in a responsible manner, the federal government may step in, and impose laws to ensure that public funds are spent in the manner they were intended to be spent, or deny tax-exempt status.

Senator Grassley continued to put pressure on institutions of higher education. In an interview with the Chronicle of Higher Education, Senator Grassley stated that the National Institutes of Health should get tough with academic scientists by revoking their grants if they fail to report financial conflicts of interest to their institutions. (Brainard, 2008) The comment was a result of the Senator’s investigators finding discrepancies when they asked pharmaceutical companies to list their payments to researchers, and then asked Universities to describe financial disclosures by those same investigators. In that same interview Senator Grassley expressed his concerns that institutions were not spending enough money from their endowments on financial aid. In that interview, the Senator stated “I think I see an evolution of change of concern of universities toward the use of their endowment to a greater extent to help students” he said. “I want that to continue and to the extent to which it continues, it’s going to lessen the extent of my maybe writing legislation.” This is a sign that the Senate Finance Committee, under Senator Grassley’s direction, will continue to monitor the actions of institutions of higher education.

The federal government is not alone in its effort to demand accountability, transparency, and integrity. Several states have enacted or proposed Sarbanes-like legislation. For example, in 2004 California enacted legislation that the boards of non-profit organizations must approve executive compensation, and that an Audit Committee is required if revenues are greater than $2 million. However, the legislation enacted in California exempted colleges and universities as well as hospitals. New York proposed similar legislation, as did Massachusetts. According to the National Council of Non-profit Associations (NCNA) in 2004, 6 states enacted laws governing non-profit organizations, and 19 laws were considered. In 2005, 9 states enacted laws governing non-profit organizations and 25 laws were considered; and in 2006, eleven such laws were passed, and 35 considered but not passed. Although the laws in New York and Massachusetts were not enacted, and many of the laws governing non-profit organizations exempted institutions of higher education, the trend of such legislation, based on the numbers noted above, continue to increase.

In addition, the IRS has revised its form 990, which is an information return that non-profit organizations must file. The new form 990 asks more detailed questions, such as whether an institution has a hotline for employees to communicate possible wrongdoing, without fear of retribution, and whether an institution has a conflict of interest statement. From the increased scrutiny by the IRS, and the impending legislation contemplated by the various states, it is eminently clear that non-profit organizations must adopt policy and procedures that will show the public that they are exercising their fiduciary responsibility. Colleges and universities are no exception.

Policy Implementation

Policy implementation can be difficult, and if not properly implemented, will most likely fail. Mazmanian and Sabatier (1983) state that:

> legislation which seeks to significantly change a target group behavior in order to achieve its objectives, is most likely to succeed if (a) its objectives are precise and clearly ranked; (b) it incorporates an adequate causal theory; (c) it provides adequate funds to the implementing agencies; (d) there are few veto points in the implementation process and sanctions or inducements are provided to overcome resistance; (e) the decision rules of the implementing agencies are biased toward the achievement of statutory objectives; (f) implementation is assigned to agencies which support the legislation's objectives and will give the program high priority; and (g) participation by outsiders is encouraged through liberalized rules of standing and through provisions for independent evaluation studies (p. 29).

In the case of the Sarbanes-Oxley Act, the Act created the Public Company Accounting and Oversight Board (PCAOB) to oversee and monitor the implementation of the Act. The PCAOB has issued six auditing standards to help companies clarify what is expected regarding implementation of the act. Public companies that fail to implement the Sarbanes-Oxley Act face delisting from their respective stock exchange agencies.

Personal Perspective

I have written and spoken nationally on the need for higher educational institutions to adopt the best practices of the Sarbanes-Oxley Act. Based on my informal discussions with many individuals within institutions of higher education, it appears that many institutions have adopted select portions of the Act. I chose to study this topic for my dissertation research because it is an issue of growing concern based on the negative media coverage of higher education institutions. The issues of transparency, accountability, and ethical conduct have been the focus of government officials as well, as noted above in the comments of Senator Grassley and the work of the United States Senate Finance Committee, which stated that legislation may be enacted that requires institutions of higher education to implement processes similar to those of the Sarbanes-Oxley legislation. Also, as stated above, several states have enacted or proposed legislation requiring more accountability among public charities, including institutions of higher education. In addition, funding, rating, bonding agencies, as well as insurance agencies are requiring more accountability of how the agencies' funds are expended to ensure they are spent in a responsible manner.

Current Research

According to a 2005 survey conducted by the National Association of College and University Business Officers (NACUBO), 92 percent of the respondents had an audit committee or its equivalent, and 73 had an audit committee charter; 47 percent had a code of ethics in place and 49 percent had confidential complaint mechanisms (hotline) to protect employee whistleblowers. Additionally, 36 percent of the respondents required public certification of financial statements by the CFO while 35 percent require certification by managers with fiscal responsibility; however, only 28 percent have the CEO publicly sign off on financial statements. (Menditto & Shedd, 2005) This implies that CEOs are willing to implement institutional policies to adopt the best practices of Sarbanes-Oxley, but that they are not willing to sign-off on financial statements stating that they personally attest to the accuracy of the financial statements. This indicates that some CEOs are not willing to go so far as to put their reputation on the line that the financial statements are correct.

NACUBO conducted a follow-up to the above survey in 2008, which showed virtually no change in the institutions that responded had an audit committee (91%). The same held true for those respondents that have an audit committee charter (72%). However, the survey also showed that 46% of CEOs certify financial statements, compared to 28% in the 2005 study. More of the 2008 survey is discussed in Chapter 2. (Menditto & Gordon 2008)

Institutions that have implemented the best practices of Sarbanes-Oxley must have believed that there is an expected benefit to implementing the best practices of Sarbanes-Oxley other than just satisfying the demands of Trustees that "it be done"; appeasing trustees who believe that it is the right thing to do, or responding to pressure from the government to do so. This research looks at institutions of higher education that have chosen to implement the best practices of Sarbanes-Oxley, and what these institutions expect to gain as a result of this implementation. Also, it attempts to determine if the expected benefits were achieved.

This survey-based research study was intended to determine (1) what best practices relating to Sarbanes-Oxley institutions have implemented; and (2) what value they received or anticipate receiving as a result of the implementation. Interviews were conducted and subjected to a qualitative analysis. The intent was to interview a sample (discussed in Chapter 3) of those survey respondents to determine why they chose to implement certain best practices, and why they chose not to implement other best practices. In addition, many institutions have not implemented any best practices of

Sarbanes-Oxley. Interviews of a sample of individuals in institutions that have not implemented any portions of the Sarbanes-Oxley Act were conducted to determine why these institutions have not done so (see section 3.3). This understanding is critical to determining if the administrators at higher educational institutions believe that implementing best practices was and is the right thing to do.

1.2 Purpose of the Study and Conceptual Foundation:

There is increasing pressure on institutions of higher education from the federal government and states to promote better governance practices, and for the governing boards of these institutions to exercise their fiduciary responsibilities in a more efficient and effective manner. This is evidenced in the comments of Senator Grassley and the Senate Finance Committee, and the increasing legislations passed by the States regarding non-profits and accountability as noted earlier.

This research study demonstrated that many institutions of higher education did, in fact, implement portions (some or all of the best practices noted above) of the Sarbanes-Oxley Act. However, because this is relatively new legislation (July, 2002) and because institutions of higher education did not immediately adopt portions of the Act, the effects of the various experiences or data concerning the impacts of the Act on institutions of higher education were not readily available. This study attempts to qualitatively determine why institutions of higher education decided to implement, or not implement any of the best practices, what, if any perceived benefits were to be gained, and if the institutions believed that they have achieved those benefits as of the time of the interviews.

1.3 Significance of the Study

Based on the NACUBO study (see Review of the Literature in Chapter 2) that many institutions of higher education decided to adopt best practices of Sarbanes-Oxley, it is expected that the implementation of best practices will provide a competitive edge for these institutions. Such a move will allow the institutions to increase the trust of funding agencies, bond holders, insurance agencies, students, and donors, if they can prove that the implementation of sections of the Sarbanes-Oxley Act have made their institutions better stewards of their funds.

It is also expected that the implementation of the best practices of the Sarbanes-Oxley legislation will benefit institutions of higher education by providing better financial policy and therefore, better accounting oversight. This should provide for an increase in the institution's bottom line (net revenue over expenses). It will therefore enable the institutions to increase programs by providing more resources that will benefit academic programs through program spending, building academic buildings, laboratories or dormitories, or increase funding for teaching, or other worthwhile expenditures that will benefit the individual institutions.

Section 404 of the Sarbanes-Oxley Act (2002) requires that companies' financial processes be documented, and provide an annual assessment of the company's internal controls. In addition, the external audit firm is required to attest on management's assessment of its internal controls (p. 45). Since this is not a requirement for non-profit organizations, those that choose to implementation this section of the Act are afforded more time to do so. Therefore, it will enable institutions of higher education to take time to clearly understand their financial processes, which will enable them to understand where those processes allow risks or cause duplication, and to take remedial actions if necessary and streamline their processes, thus making them more efficient. It may also have an effect on student (customer) satisfaction by establishing better or more efficient billing processes that are easier to navigate.

However, policy implementation (even if voluntary) is not always easy to accomplish. Mazmanian and Sabatier (1983) state that “a statute or other policy decision seeking a substantial departure from the status quo will achieve its desired goals…” (p 41) and delineate six variables that must be in place. This will be explored more in Chapter 2; however, the first variable states that “The enabling legislation or other legal directive mandates policy objectives which are clear and consistent or at least provides substantive criteria for resolving goal conflicts.” (Mazmanian & Sabatier, 1983, p. 41) For this reason, the Sarbanes-Oxley Act established the Public Company Accounting Oversight Board (PCAOB). The PCAOB is responsible for enforcing the Act, but also for providing guidance as to its implementation. As of April 2009, the PCAOB has issued six guidelines, known as auditing standards, regarding implementation. Although for Universities implementing the Act is voluntary, the auditing standards issued by the PCAOB are very informative for them.

The PCAOB issued two auditing standards regarding documentation; Auditing Standard (AS) 2 was originally employed to assist public companies in implementing section 404 of the Act. The PCAOB later updated AS-2 with AS-5 that provided more guidance for public companies to document their financial processes. When Drexel University completed detailed documentation of its billing process, AS-2 (at the time) was utilized as a benchmark. This enabled Drexel University to clearly establish its processes, and to enhance or make the processes more efficient.

For example, in a 2006 survey conducted by the Gallup organization, Drexel found that one of the main complaints from students was not understanding the student bills, and not getting satisfactory answers from the billing office. Through the documentation of the billing process, Drexel found that academic advising was a root cause of the problem. That is, student advisors were not equipped to advise the students on how changes to the student's schedule affected a student's bill. Therefore, when students dropped a class or a lab, or changed their cooperative education (co-op), it had an effect on the student's bill. Cooperative education is when students are not in class for a semester, but instead are out working, gaining experience in their field of study. When the students went to the billing office to inquire about their bill, the billing office was not able to provide an immediate answer, thus causing student dissatisfaction as was indicated in the Gallup poll survey.

In this situation, it was recommended that Drexel inform the academic advisors on how a change in a student's schedule affects the student's bill. With some education, the advisors will be able to educate and inform students about this process. This example demonstrates the positive impact of implementing the best practices of the Sarbanes-Oxley Act. Although a follow-up survey has not been completed as yet, it is anticipated that student satisfaction will be increased, which will ultimately increase student retention.

Change is difficult in any organization, but can be executed if properly managed. As Holbeche explains "Typically, three stages are involved when initiating change;

1. Prepare the ground (scanning and choosing); 2. Diagnose the situation (planning); and, 3. Bring about change (implementing and reviewing)" (2006, p. 157). Holbeche states that preparing the ground involves the ability to read the signals identify the needs and decide on the desired outcomes. According to Holbeche, in preparing the ground, "The signals come from the politico-economic environment, markets, customers, trends, staff, shareholders, and other stakeholder." (p. 157). Like public companies that have shareholders, institutes of higher education have stakeholders, and there are other common elements. The politico-economic environment, markets, customers (students and parents), trends, and staff are common features of public and institutions of higher education. Diagnosing the situation involves "identifying and evaluating options and deciding on a change strategy. Activities will include consulting others, determining resource and time scales and getting commitment for action". (p. 157). These steps are action items for organizations, both public and private. Finally, bringing about change involves "implementing change and evaluating the outcomes" (p. 157). Evaluating outcomes is a critical step, and speaks to this research study. Institutions of higher education that implement the best practices of Sarbanes-Oxley must evaluate the outcomes of doing so, and determine next steps based on the outcomes. This research attempted to identify the expected outcomes, determine the actual outcomes to-date, and recommend next steps.

Marzano, Waters and McNulty (2005) distinguish between "incremental change" and "deep change". Incremental change fine-tunes the system through a series of small steps that do not depart radically from the past. In contrast, deep change alters the system in a fundamental way, offering a dramatic shift in direction and requiring new ways of thinking and acting" (Marzano et al., 2005, p. 66). Much of what has been discussed thus far refers to deep change. Certainly for public companies that must implement Sarbanes-Oxley or risk being delisted from the stock exchange, deep order change is required. However, for institutions of higher education that voluntarily implement the best practices of Sarbanes-Oxley, incremental change may be more suitable. Each institution must decide what works best for it.

In higher education, it is not all about the money; for a college or university, it is more often all about its reputation. As Oxholm (2005) explains, "Colleges and universities live and die on the basis of their reputations. Good faculty and good students will not go to bad places; alumni/ae and foundations will not give them gifts; government agencies and corporations will not give them grants; and scandal corrodes collegiality like almost nothing else" (p. 359) If institutions of higher education are to compete and survive, it is incumbent upon them to show their stakeholders that they care and make every effort to spend funds in an efficient and effective manner.

However, the effects are not merely about better corporate governance, but how better governance affects the institution. Better corporate governance is defined as *transparency*, the financial information must be complete and correct; *accountability*, someone will be held responsible for the financial information; and *integrity*, codes of ethical conduct must exist and must be enforced. Better corporate governance affects an institution in the following ways:

Transparency, accountability, and integrity in the management of finances should enable organizations to utilize their resources (money) more efficiently. This means that additional resources would be available to fund curricula. It also would enable an institution to utilize federal funds more efficiently, making more funding available for research. The institutional reputation of financial responsibility holds the opportunity to attract students whose parents know that tuition dollars are expended properly. In addition, long term implications may attract research dollars as funding agencies prefer to fund projects at institutions that spend money efficiently. Finally, it has the opportunity to attract donors who prefer to donate to institutions that spend their money with integrity. This would add to the endowment, which will eventually provide for additional student scholarships. At most institutions, it will add to operating income, and allow funding of operations such as deferred maintenance projects.

At this point, the effects of transparency, accountability, and integrity are mere observations based on the systematic approach of the long-term effect. In the recent NACUBO survey, the author states that "Although the detailed results of NACUBO's recent survey indicate improvement by higher education over the past three years, the reasons behind current practice are difficult to assess." (Menditto & Gordon, 2008) This research attempted to determine what institutions appear to have gained as a result of implementing the best practices of Sarbanes-Oxley, and if they believe those gains or (effects) have been realized.

1.4 General Research Question:

The purpose of this mixed method study was to investigate the following questions: (1) At institutions of higher education that have adopted the best practices of the Sarbanes-Oxley Act, what do those institutions perceive to have been the effects of adopting any or all of the best practices?

(2) At institutions of higher education that plan to adopt the best practices of Sarbanes-Oxley, what do those institutions believe will be the effect of implementing the best practices of Sarbanes-Oxley?

(3) Of those institutions of higher education that did not implement the best practices of Sarbanes-Oxley, why have they not done so?

1.5 Definition of Terms:

For the purpose of this study, “best practices” of Sarbanes-Oxley are considered as parts of Sarbanes-Oxley Act that are relevant to institutions of higher education and appropriate for them to implement as defined by the National Association of Colleges and University Business Officers (NACUBO) (see attachment A). For example, establishing an Audit Committee, and promoting a code of conduct and ethics policy would be relevant to institutions of higher education. Parts of the Act that pertain to Securities and Exchange Commission (SEC) reporting requirements would not be relevant to institutions of higher education. The NACUBO developed a checklist as guidance for Colleges and Universities in implementing best practices (NACUBO, 2003). It was developed based on the titles within the Act as noted in the left hand column. The checklist developed by NACUBO is listed in Appendix A. Appendix A also points out the sections of the Sarbanes-Oxley act that are not applicable to institutions of higher education.

Chapter 2: Review of the Literature

The following literature review first looks at a study that was conducted by the National Association of College and University Business Officers (NACUBO) which issued a research paper in 2005 on the status of colleges and universities that have adopted the best practices of Sarbanes-Oxley, and NACUBO's follow-up survey in 2008. Next, this chapter reviews various studies that were conducted regarding the implementation of governance practices within the non-profit arena, including institutions of higher education. It also discusses policy implementation and as well as planned approaches to change.

In 2003 NACUBO issued an advisory report outlining guidance to institutions of higher education on what relevance certain provisions of the Sarbanes-Oxley had to institutions of higher education. According to NACUBO the guidance issued was "intended to assist presidents, chief financial officers, and trustees with interpretation of the Act." (NACUBO, 2003)

Sarbanes-Oxley Adoption in Higher Education

Sarbanes-Oxley was enacted in July 2002, and applies to publicly traded companies. Some institutions of higher education decided to adopt the best practices of the Sarbanes-Oxley Act. Drexel University was the first University in the nation to adopt the best practices of Sarbanes-Oxley; however, the research related to this legislation and the research based on those higher education institutions that have adopted this legislation is relatively new. The literature review is based on this limited body of research.

In May 2005, NACUBO issued a research paper on the status of colleges and universities that have adopted best practices of Sarbanes Oxley. This research paper entitled, *On the Transparency Track* (Menditto & Shedd, 2005), was based on the results of a web-based survey developed by NACUBO and the Accounting Principles Council. It was e-mailed to the primary representatives at NACUBO's 2,178 member institutions. The survey remained open from October 8, 2004 through December 31, 2004. Surveys were returned by 353 (16.21%) of the member institutions.

The responding institutions approximate the demographic characteristics of NACUBO's membership. Independent institutions accounted for 60% of the responses and public institutions accounted for 40% of the responses. Institutions with less than 1,000 full time equivalent (FTE) students accounted for 13.6 % of the total respondents, while institutions with 1,000 to 9,999 accounted for 55.2%, and institutions with 10,000 or more students accounted for 30.3% of the respondents.

The findings of the survey indicated that 92% of the institutions that responded had an audit committee or its equivalent. In addition, 73% had an audit committee charter, and 81% of the institutions reported that they had at least one financial expert on the audit committee. However, only 43% of the respondents said that management periodically reported to the audit committee on internal controls, and 38% have performed risk assessments and documented their key financial controls (Menditto & Shedd, 2005). The report concluded that, although many institutions have adopted some of the Act's requirements, far fewer institutions have adopted the demanding accountability suggestions such as certifications by the CEO and/or CFO; nor have many documented or tested internal controls.

In August 2008 NACUBO issued a follow-up to the above noted survey. The follow-up survey was sent to 2,151 institutions, of which 398 responded. As stated in

Chapter 1, the follow-up showed virtually no change in the institutions that responded had an audit committee (91%). The same held true for those respondents that have an audit committee charter (72%). However, the follow-up survey showed that 89% of those responding had at least one member of the audit committee that is considered a "financial expert", which is up from 81% in the 2005 survey. Also, 49% of the respondents stated that management periodically reports on internal controls to the audit committee, this is up from 43% in the 2005 study. (Menditto & Gordon 2008)

In June 2005, NACUBO and PriceWaterhouseCoopers (PWC) held a summit for select business officers and presidents of institutions of higher education. The objective was to identify the provisions of the Act that made sense for institutions of higher education. In the report of the summit, *Taking the right path: Sarbanes Summit* (Broad, Cassidy, Mattie & Morley, 2005), it was noted that 95% of the independent institutions and 88% of public institutions had audit committees; 95% and 73% respectively had at least one financial expert; and, 99% and 89% respectively had audit committees that oversee annual financial statement audits. The survey was informal, and consisted of those that attended the summit. While the report did not mention the representation at the summit, it is clear from the report that institutions of higher education are moving to embrace strong governance practices.

When asked if management reported regularly on internal controls to the audit committee, the responses were 38% positive for independent institutions and 51% positive for public institutions. When asked if the institution planned how an assessment of internal controls on its campus (es) could be conducted, the positive responses were a mere 17% and 36% respectively (Broad et al., 2005). These findings are in agreement with those of the NACUBO survey noted above.

In a similar type of survey study, Grant Thornton (2005), a national accounting firm, conducted a study of not-for-profit organizations, where respondents of 860 not-for-profit executives and board members in 43 states and the District of Columbia found that 65% of the respondents made changes to their corporate governance policies as a result of Sarbanes Oxley; 67% implemented a conflict of interest policy; and 54% have an audit committee charter in place. In addition, 49% of the respondents have a whistle-blower policy (as part of establishing a conflict of interest policy); this figure is up from 26% in Grant Thornton's 2004 survey. The findings indicate that 68% of the responding organizations reported that an audit committee or board hires and oversees the external audit firm, and 52% established a policy that the audit committee must pre-approve the audit firm performing any special project beyond the scope of the audit (Grgetta, 2005). These numbers compare favorably and confirm those published in the NACUBO 2005 survey.

Furthermore, these numbers also compare favorably to a study conducted by The Urban Institute, which conducted a survey of 5,115 nonprofit organizations. Because of the variation in the size of the organizations, the numbers are difficult to interpret. For example, 19.9% of the respondents reported having a separate audit committee; however, for institutions with expenses greater than $40 million, 57.75% reported having a separate audit committee, while institutions with expenses less than $100,000 reported only 14.78% have an audit committee. The study found that 75.64% reported having a whistleblower policy, 96.89% with expenses greater than $40 million reported to have such a policy, compared to 20.61% for institutions with less than $100,000 (Ostrower & Bobowick, 2005). Overall, the Urban Institute study shows that non-profit institutions are moving in a positive direction.

Similar surveys conducted by Grant Thornton in 2006 and 2007 showed these numbers to increase positively as well. The Grant Thornton 2006 survey had respondents of 960 not-for-profit executives and board members from 46 states and the District of Columbia. The survey found that 54% of the respondents indicated that they have made changes to their governance policies in the last three years; and 78% adopted a conflict of interest policy, which is up from the prior year's response of 67%. Also, 64% reported as having audit committees compared to 60% the prior year (Kurre, 2006).

The 2007 Grant Thronton survey of 603 not-for-profit executives and board members from 47 states and the District of Columbia found that 92% of the respondents have implemented new accounting policies and procedures; 89% adopted a conflict of interest policy; and, 77% have an audit committee in place. In addition, 68% of the respondents have a whistle-blower policy (as part of establishing a conflict of interest policy) (Kurre, 2007).

In Grant Thronton's 2008 National Board Governance Survey for Not-for Profit Organizations (Kurre, 2008) 92% of the responding organizations now have a conflict of interest policy in place, this is up from 89% in the 2007 study. In addition, 72% have whistle-blower policies in place, and 74% of the organizations said they have an audit committee, up from 68% in 2007. Also, 74% of the respondents in the 2008 Grant Thronton study stated they have an Audit Committee, of those 66% stated that the audit committees included a CPA, 44% an attorney, and 84% included other business executives. This indicates that organizations are implementing the best practices of Sarbanes-Oxley by having a financially literate Audit Committees, with at least one financial expert. This includes institutions of higher education, which represented 16% of the 652 CEOs, CFOs, board members, and other senior officials included in this Grant Thronton survey.

The focus of three studies is very different (excluding the Grant Thornton 2006, 2007, and 2008 studies) ranging from non-profit organizations in general, to institutions of higher education specifically. However, all three studies show that all non-profits organizations, including institutions of higher education, are beginning to see the benefits of implementing the best practices of Sarbanes-Oxley, or at least beginning to understand the necessity of implementing the best practices of Sarbanes-Oxley. Grant Thornton's 2006 and 2007 surveys build on their prior surveys and confirm that more non-profit organizations continue to implement better corporate governance practices.

Michaelson (2005) discusses considerations on the negative side, such as the "scant evidence of abuse of authority by college and university fiduciaries. Although a few instances have been publicized intensely, abuse has been rare in higher education trusteeship" (p.2). However, Michaelson does recognize that higher education institutions are charitable enterprises that depend on public trust.

He continues to state that:

> *In some respects, Sarbanes-Oxley distracts from the most valuable risk management steps an institution can take, such as the rules main emphasis on process rather than the ethical standards and sound judgment of the people involved. No Sarbanes-Oxley rule compels application of common sense* (p. 2).

Michaelson's point is that colleges and universities need to stay focused on the reasons for implementing aspects of Sarbanes-Oxley. Institutions should look to the portions of the Act that works for them. One size does not fit all.

According to Mazmanian and Sabatier (1989), there are six conditions to effective implementation (p. 41):

1. The enabling legislation or other legal directive mandates policy objectives which are clear and consistent or at least provide substantive criteria for resolving goal conflicts.
2. The enabling legislation incorporates a sound theory identifying the principal factors and causal linkages affecting policy objectives and gives implementing officials sufficient jurisdiction over target groups and other points of leverage to attain, at least potentially, the desired goals.
3. The enabling legislation structures the implementation process so as to maximize the probability that implementing officials and target groups will perform as desired. This involves assignment to sympathetic agencies with adequate hierarchical integration, supportive decision rules, sufficient financial resources, and adequate access to supporters.
4. The leaders of the implementing agency possess substantial managerial and political skill and are committed to statutory goals.
5. The program is actively supported by organized constituency groups and by a few key legislators (or a chief executive) throughout the implementation process, with the courts being neutral or supportive.

6. The relative priority of statutory objectives is not undermined over time by the emergence of conflicting public policies or by changes in relevant socioeconomic conditions which weaken the statute's causal theory or political support.

These six conditions for effective implementation would hold true for the success of the implementation of the Sarbanes-Oxley Act. Although institutions of higher education are not required by legislation to implement the Act, those that choose to do so should monitor the aforementioned conditions as they implement best practices recommended by the Act. While monitoring these conditions is not the focus of this research, future research that affects effective implementation in institutions of higher education should be conducted.

In addition, the culture of institutions of higher education and how they implement such change must be taken into consideration. Holbeche (2006) discussed the planned approaches to change and the three stages involved. Holbeche also reminds us that "Success depends on extensive planning and design, precise assessment of the current situation, accurate anticipation of resistance to change and skill at overcoming this resistance" (p. 157). In order to make course corrections along the way, understanding the cultural aspect to the changes of implementing the best practices of the Sarbanes-Oxley Act in institutions of higher education is critical for organizations to understand.

Similarly, Marzano et al.'s (2005) research identified seven responsibilities associated with deep order change (p. 70):

1. Knowledge of Curriculum, Instruction, and Assessment
2. Optimizer
3. Intellectual Stimulation
4. Change Agent
5. Monitoring/Evaluating
6. Flexibility
7. Ideals/Belief

Marzano's research consisted of a meta-analysis designed to answer the question "What does the research tell us about school leadership?" (p 9). It appears that many of the responsibilities noted by Marzano compare favorably to the three stages noted by Holbeche (2006), and the six steps to effective policy implementation noted by Mazmanian & Sabatier (1989). Although the focus of this research is to determine the value derived from the implementation of the best practices of Sarbanes-Oxley, and not the steps necessary for the effective implementation, future research will be required in this area as implementation of the best practices matures.

In summary, it is expected that the adoption of Sarbanes-Oxley best practices will provide organizations with better governance and better fiduciary practices by enabling Board members to evaluate independently and objectively management's decisions, and with the ability to manage the institutions and the financial decisions made on behalf of the institution. This would include choosing trustees who would understand and assist in making decisions critical to the institution.

When institutions can show funding agencies, such as the National Institute of Health (NIH) or National Science Foundation (NSF), that the effects of implementing the best practices of Sarbanes-Oxley have made their institutions better stewards of the monies entrusted to them, it is speculated that the long term implications for such institutions should gain a competitive edge in obtaining funding over institutions that have chosen not to implement the best practices. Each institution must decide what works best for them.

Although many institutions of higher education have implemented some of the Acts' requirements, far fewer have adopted the accountability suggestions. At institutions that have adopted best practices, we do not know what benefits were derived from their adoption. The studies noted above such as the NACUBO study *On the Transparency Track* (Menditto & Shedd, 2005), and *Taking the right path: Sarbanes Summit* (Broad, Cassidy, Mattie & Morley, 2005) discuss institutions that have adopted the best practices or plan to adopt best practices, and show that some institutions do not plan on adopting any portions of the Act. Hence, this research addressed the needed understanding of the gains and the institutional value attained from implementing the best practices of Sarbanes-Oxley.

Chapter 3: Methodology

3.1 Overview

In regards to this proposed research, the intent was to utilize a mixed method approach. The primary research design was non-experimental quantitative research. This type of research is typically survey based research, often associated with studies involving questionnaires or interviews, has a broader definition in that it can encompass a wide variety of research studies, and no variables are manipulated. The goal was to survey the persons involved in the decision making processes of institutions of higher education (General Counsel) on (1) whether or not they have implemented best practices of Sarbanes Oxley as defined by the National Association of College and University Business Officers (NACUBO); (2) if they have, to study the effects of implementing the best practices; and (3) also investigate the underlying reasons behind not adopting the best practices of Sarbanes Oxley, among those who decided not to do so.

NACUBO conducted research in 2005 on whether or not institutions have implemented such best practices; however, there is a gap in the research as to whether or not such implementation has had an effect on the institutions. Thus, the critical question for this study was: has the institution experienced stronger corporate governance, more oversight over the financial records of the institution, and more integrity in the financial information of the institution, as a result of implementing the best practices of Sarbanes-Oxley?

The second phase of this research was qualitative, consisting of interviews of key figures within a sample of the institutions that replied to the quantitative survey. This part of the study strived to gain a more in-depth understanding as to why institutions made the decisions they made (see section 3.2 below). The interview information provided valuable insight as to why institutions made the decisions they made. The dissemination of this information will enable other institutions to understand why the institutions interviewed made the decisions they made, thus guide other institutions as they make similar decisions.

3.2 Research Paradigm

The assumptions guiding the research were that, if the institutions experienced positive effects of implementing the best practices of Sarbanes-Oxley, these effects would lead to a competitive edge in competing for research dollars, and an increase in the confidence of donors. Also, that these results would lead to an increase in institutional endowments and in the confidence of parents, which would, in turn, increase applicants to the institution, as well as boost the confidence of perspective board members, thus recruiting more competent board members. As stated in section 3.1, this study utilized a quantitative method to conduct survey research as the primary research method, and utilized a qualitative method as a secondary method of research. It was expected that the qualitative portion of the research would provide a deeper understanding of the reasons institutions of higher education choose to implement or not to implement the best practices of Sarbanes-Oxley, and whether they have experienced any benefits from doing so.

3.3 Site Selection and Sampling Plan

Conducting the survey in a web-based format is the most economical method possible. Also, it is the most secure practice, if a dedicated server is used. A web-based format was utilized to enable the survey to reach more institutions than if the survey were administered via U.S. mail. The National Association of College and University Attorneys (NACUA) was asked to assist in administering the survey to its members. This survey was different than the survey issued by NACUBO in that it attempted to determine if any benefits were gained as a result of implementation of the best practices of Sarbanes-Oxley. The NACUBO survey only determined whether or not institutions implemented the best practices.

Although there may be institutions that have implemented the best practices of Sarbanes-Oxley, and are not members of NACUA, bias does not enter into the study. The study was intended to determine the value (as defined above) of implementing best practices, not to determine how many institutions have implemented best practices. In developing the sampling frame, utilizing membership lists is an acceptable method.

Once the results of the survey were analyzed, qualitative interviews of the respondents were conducted to obtain an in-depth insight into the institutional administration's understanding of the benefits of implementing the Sarbanes-Oxley best practices. The intent was to classify all responses into two categories: institutions that implemented the best practices and those that chose not to implement any best practices. A random sample of five institutions from each stratum was to be taken and interviews with individuals from those institutions were to be conducted. However, no institutions that responded stated that they chose not to implement any of the best practices; therefore, individuals from ten institutions that responded were interviewed. The interviews provided a more in-depth understanding of why the institutions chose to make the decisions they made regarding implementing best practices of Sarbanes-Oxley. Adding this information to the research study added great value to the research. The value added will be in the form of communicating the research results to institutions of higher education as to why other institutions chose to implement best practices, and why some institutions decided to only implement a portion of the best practices. It will also help to identify next steps for the institutions selected. These “next steps” could include: adding additional best practices, refining current best practices and the reasons for doing so, and for some institutions that may not have implemented any of the best practices, why they may want to reconsider.

3.3.1 Site -Description

The National Association of College and University Attorneys (NACUA) was utilized in conducting the survey. The purpose of utilizing NACUA as the target population is that the General Counsel (the title of the head attorney at colleges and universities) is typically involved in decisions that involve the selection of Trustees and any planned changes in the corporate by-laws. This research will be valuable to both the institutions that have adopted the best practices of Sarbanes-Oxley, and those institutions that have not yet adopted the best practices. In essence, conducting the survey in this fashion enables the research to capture the intended population this research is interested in surveying.

3.3.2 Sample Methodology

In identifying the population, the National Association of College and University Attorneys were contacted to inquire about utilizing the association’s mailing lists for conducting the survey. As stated above, the survey was web-based; therefore, obtaining help in identifying e-mail addresses was critical to the success of the survey.

Open ended questions were incorporated into the survey as well. The survey was sent to a pilot group of approximately 5 schools to vett the survey, and refine as necessary (see below).

Once the results of the survey were analyzed, a qualitative analysis of the data from the responses was conducted. Ten institutions were selected and interviews were conducted with individuals from those institutions. This provided greater insight as to why the institutions made the decisions they made regarding the implementation of the best practices of Sarbanes-Oxley. Because the research was intended to probe for "reasons" why an institution did or did not implement best practices of Sarbanes-Oxley, open ended questions were utilized for this portion of the research.

3.4 Data Collection Procedures

As stated above, a web-based survey format is economical, and provides the ability to reach out to more institutions than if it were to be completed via U.S. mail. Additionally, web-based surveys can be returned in a more efficient, effective, and timely manner. That is, the web-based results will be clearer (legible and clearly marked) and returned on-line versus in the U.S. mail. SurveyMonkey was utilized for the survey.

The surveys were sent out to all NACUA member institutions via NACUANET, the organization's intranet (see Attachment B). Once the survey period was closed, the data was analyzed and the results tallied.

Mixed Method Approach

Once the results of the survey were analyzed, a qualitative analysis of the data was conducted. Ten institutions were randomly selected from the surveys that were returned, and agreed to participate in this portion of the research as discussed above in section 3.3.2. Those institutions were contacted and interviewed. Due to the distance of the institutions that agreed to be interviewed, telephone interviews were conducted. A pre-arranged time was set-up for the interviews, which were at the convenience of the interviewee, and a time limit of 1 hour for each interview was established. An interview protocol was developed and utilized during the interview process (see attachments C and D).

As stated above, adding this information to the research paper adds great value to the research. The value-added will be in the form of communicating to institutions of higher education why best practices were implemented by those that chose to do so, or why the decision was made not to implement the best practices of Sarbanes-Oxley by institutions that chose not to do so. The dissemination of this research will communicate any value perceived to-date, and communicate next steps for the institutions selected. These next steps could include: adding additional best practices, refining current best practices and the reasons for doing so, and for some institutions, the reasons the decision not to implement any of the best practices was made.

3.4.1 Data Collection Timeline and Budget

The initial survey was vetted though a pilot study (see Chapter 4). The survey pilot survey was administered to a group of local Universities. There were at least five area Universities that were willing participate in the pilot study. This helped determine if the survey questions were clear and concise. This pilot survey was administered within two weeks. An additional two weeks were needed to refine the study and structure it in its final form.

Once the results of the pilot study were analyzed, and the survey was refined as necessary, it was administered to the survey population through the National Association of College and University Attorneys (NACUA). The survey was administered in a one month timeframe via a web-based survey (SurveyMonkey). After two weeks, a reminder was sent out to remind the participants to complete the survey. After one month, the results were analyzed.

For the qualitative portion of the research, the surveys were to be stratified into those that implemented best practices of Sarbanes-Oxley, and those that chose not to implement the best practices. Since none of the respondents stated that they chose not to implement any of the best practices, ten individuals from institutions that agreed to be interviewed were selected for interview. Due to the distance of the responding institutions, the interviews were conducted via telephone, since none of the responding institutions were local.

The interviews took approximately one month to complete. Once the interviews were completed, approximately one month to analyze the results of the interviews was required. It was anticipated that it would take approximately two months to write the report. A conservative estimate was that it would take approximately six months to complete the research. A budget of approximately $5,000 was estimated in order to travel to institutions to conduct the interviews. Funding was not obtained, so as stated above, interviews were conducted via telephone.

3.5 Pilot Study Plan

The pilot study plan consisted of five local universities that were representative of the population. Since the Universities were known by the researcher, and a relationship between the Chief Audit Executives of the universities had already been established, the pilot study was successful. The universities utilized in the pilot study were eliminated from the actual survey. Pilot study data was utilized to refine the survey and the interview protocol.

3.6 Reliability and Validity – Survey Instrument

Reliability is defined as consistency. Validity is defined as whether or not the information obtained from the research instrument measures what it is supposed to measure. The instrument was presented to content experts in instrument development. In addition, the survey was reviewed by five pilot institutions (see Pilot Study Plan 3.5 above) to ensure that the survey questions were understood by the survey population.

Summary

Overall, this research will be of significant value to institutions of higher education. Institutions will gain an understanding of the importance of implementing the best practices of Sarbanes-Oxley, and the benefits from doing so. In addition, the results of the qualitative portion of the research will provide insight as to why institutions of higher education chose to implement best practices of the Act, and why other institutions of higher education chose to implement a portion the best practices of the Act.

Chapter 4: Analysis of Data

4.1 Introduction

This mixed method study investigated the following questions: At institutions of higher education that have adopted the best practices of the Sarbanes-Oxley Act, (1) what have been the effects of adopting any or all of the best practices? (2) Institutions that plan to adopt the best practices of Sarbanes-Oxley, what do those institutions believe will be the effect of implementing the best practices of Sarbanes-Oxley? (3) Of those institutions of higher education that did not implement the best practices of Sarbanes-Oxley, why have they not done so?

4.2 Instruments Used to Study the Above Questions

A survey consisting of 4 sections was conducted utilizing SurveyMonkey.com. The first section of the survey asked for contact information should the respondents choose to participate in the qualitative portion of the research. The second section set out to determine knowledge of and interest in implementing Sarbanes-Oxley best practices, to determine if best practices were implemented as a result of passage of the Sarbanes-Oxley Act, and/or whether some practices were established prior to passage of the Act. The third section of the survey attempted to determine if Sarbanes-Oxley had an effect on the institutions' governance. Finally, the last section sought to determine if Board members resigned as a result of the passage of Sarbanes-Oxley due to the added scrutiny placed on Boards as a result of Sarbanes-Oxley. If Board members did resign, were the members hard to replace?

4.2.1 The Pilot Study

Prior to implementing the survey, a pilot study was conducted and consisted of five local universities representative of the population (universities of various sizes). Since the universities are known by the researcher, a relationship between the Chief Audit Executives of the universities had already been established. The results of the pilot study helped determine the potential effectiveness of the survey. The avid use of colloquialism helped obtain feedback from participants and thus, helped improve the survey by refining it. The universities that responded to the pilot study were eliminated from the actual survey.

Nine institutions of higher education within the Philadelphia area were contacted and asked to participate in the pilot study. The group was informed that they were a test group, so in addition to responding to the survey, their comments were solicited regarding question clarity and direction, whether or not they think the questions answer the larger research questions, and whether questions should be added or deleted. They were informed that this is a survey regarding implementation of the best practices of Sarbanes-Oxley in institutions of higher education for the purpose of attempting to determine if there were anticipated benefits of implementing the best practices, and if those benefits were realized.

4.2.1.1 Results of Pilot Study

Nine Philadelphia area Chief Audit Executives (CAE's) of institutions of higher education were sent the questionnaire and asked to review, or to have someone in the institution with the subject knowledge to review the questionnaire. Five of the institutions responded, four CAE's and one General Counsel. The input provided was reviewed by the researcher and relevant suggestions were incorporated into the questionnaire.

Two respondents felt that the questionnaire was clear as stated. Another respondent pointed out several duplications. The duplications were removed. Another respondent suggested clearer language in the first question, and there was a final comment to combine a question via a checklist to provide clarity as to when certain practices were implemented. The above suggestions were incorporated in the survey. More detail of the changes is provided in attachment E. Once the suggestions were incorporated into the survey, it was submitted to NACUA for placement on the organization's intranet.

4.2.2 Demographics

Overall, there were 27 completed responses to the survey that was placed on the National Association of College and University Attorneys (NACUA) intranet for its members to complete (see Survey Administration, section 4.2.3 below). Twelve (44.4%) respondents provided their name and 11 (40.7%) respondents provided their position or title, 10 (37%) respondents provided the institution for which they work and their telephone number, and 14 (51.9%) respondents provided an e-mail address. Thirteen (48.2%) individuals skipped the question, indicating that they were not interested in participating in the qualitative portion of the research, and providing no explanation as to why they chose not to be interviewed. Responses represented a cross section of the country. Of those that responded to the survey and provided demographic information; 2 respondents from California, 2 from the State of Washington, 2 from Massachusetts, and one respondent each from Oregon, Kentucky, Mississippi, Tennessee, and New Jersey.

4.2.3 Survey Administration

At first, the National Association of College and University Business Officers (NACUBO) was asked in June 2008 if they would be interested in administering this survey. NACUBO has conducted surveys in the past as referenced in Chapter 3, and is the author of the best practices of Sarbanes-Oxley in Institutions of Higher Education; however, NACUBO declined to administer the survey. According to NACUBO, they send out many of their own surveys to their members, and did not want to send out this survey because they did not want to create what they termed “survey spam” for their membership.

In June 2008, the National Association of College and University Attorneys (NACUA) was contacted to ask if they would be interested in administering the survey. Their membership consists of approximately 700 institutions of Higher Education. It is generally not the policy of NACUA to send out non-legal surveys to its members, therefore the director of NACUA had to research as to what was done in the past regarding a non-legal survey to be administered by NACUA. Attempts were made by two NACUA members, on the researcher’s behalf, in an attempt to persuade NACUA to send the survey to its members via e-mail. In August 2008, NACUA responded that it has not been their practice to send surveys of this nature out to their membership via e-mail, and preferred not to do so. However, the Director of NACUA agreed to allow the survey to be posted to NACUNET (NACUA’s intranet site). The only requirements were that a NACUA member must post the survey to the intranet, and only one additional follow-up request would be allowed. The survey was posted to the NACUA intranet on October 31, 2008. There were 17 responses to the initial posting. The goal was to get as many responses as possible; therefore, a reminder was posted on the NACUA intranet on December 5, 2008, this yielded an additional 10 responses. Since NACUA only allows two postings to NACUANET, the survey was closed December 12, 2008. There were 27 responses from personnel from at least 11 separate institutions. The remaining 16 respondents did not provide institutional or demographic information.

4.2.4 Description of the Survey Results – Part I

When asked about familiarity see (Question 1, attachment B) with Sarbanes-Oxley 12 (44.4%) said that they were sufficiently familiar and 8 (29.6%) stated that they are very familiar. One (3.7%) stated that he/she was not familiar at all, and 6 (22.3%) did not respond to the question.

Sixty three percent of the respondents reported that their Board expressed interest to management in implementing some form of Sarbanes-Oxley, while 48.1% stated that their Senior Management Team expressed interest in implementing some form of Sarbanes-Oxley. In addition, 55.5% responded that there has been training at the Board level, while 22.2% responded that no board training was given. Fifty two percent responded that there had been training at the management level, with 26% responding no management training.

Additionally, 66.7% of the respondents stated that their institutions modified or implemented Sarbanes-Oxley practices subsequent to its passage, with 11.1% responding nothing was implemented. Based on the information provided in question 10 (figure 4.4 below) the modifications were likely due to the fact that the institutions believed the modifications would provide a) enhanced integrity, b) increasing confidence in the institutions' processes by current trustees and stakeholders; c) an increasing sense of transparency and responsibility, d) a feeling of confidence in the institutions' compliance practices, some general governance, oversight and risk management benefits, e) increased internal controls and financial oversight, and f) important to public perception/accountability (see figure 4.4, page 43 for a visual representation of these responses). Figure 4.1 below depicts the responses as to what practices were implemented as a result of Sarbanes-Oxley.

A full 66.7% of the respondents of this survey implemented some practices as a result of Sarbanes-Oxley; however, all already had some of the practices in place prior to the enactment of Sarbanes-Oxley. For example, the second question as noted in figure 4.2 (page 40) asked if the Audit Committee has a Charter that was developed and implemented as a result of Sarbanes-Oxley. Six (6) respondents said yes, while 5 said no. The 5 five negative responses do not elucidate whether the institution does not have an Audit Committee Charter for its Audit Committee, rather the negative responses to the question merely states that the Audit Committee Charter was not implemented as a result of Sarbanes-Oxley or the institutions do not have an Audit Committee Charter. However, figure 4.2 does illustrate how long the practices have been in place after the enactment of Sarbanes-Oxley.

Figure 4.1 – Question 8 - What practices were implemented or modified subsequent to the passage of Sarbanes-Oxley (choose all that apply)?

Implemented as a result of Sarbanes-Oxley?	Yes	No	N/A	Response Count
Public accounting firm that conducts your annual audit prohibited from performing non-audit services	**46.2% (6)**	30.8% (4)	23.1% (3)	13
Audit Committee has a charter	**54.5% (6)**	45.5% (5)	0.0% (0)	11
Audit Committee has at least one financial expert	**53.8% (7)**	38.5% (5)	7.7% (1)	13
Audit Committee pre-approves all services provided by the auditor	**50.0% (6)**	25.0% (3)	25.0% (3)	12
The lead audit partner rotates off the audit every seven years	**36.4% (4)**	**36.4% (4)**	27.3% (3)	11
The audit engagement letter is addressed to the audit committee	27.3% (3)	**54.5% (6)**	18.2% (2)	11
Audit Committee evaluates performance of external auditor	22.2% (2)	**66.7% (6)**	11.1% (1)	9
Hotline established	**41.7% (5)**	33.3% (4)	25.0% (3)	12
Code of Conduct/Code of Ethics Implemented	25.0% (3)	**66.7% (8)**	8.3% (1)	12
Independent Audit Committee	25.0% (3)	**66.7% (8)**	8.3% (1)	12
Financial processes documented	30.0% (3)	**50.0% (5)**	20.0% (2)	10
CEO certifies annual audit report	**46.2% (6)**	23.1% (3)	30.8% (4)	13
CFO certifies annual audit report	27.3% (3)	**63.6% (7)**	9.1% (1)	11

Figure 4.2 – Question 8 – How long practice has been in place after to Sarbanes-Oxley enactment?

How long practice has been in place after Sarbanes- Oxley enactment						
	1-2 years	3-4 years	5-6 years	Greater than 6 years	N/A	Response Count
Public accounting firm that conducts your annual audit prohibited from performing non-audit services	25.0% (3)	16.7% (2)	8.3% (1)	16.7% (2)	33.3% (4)	12
Audit Committee has a charter	9.1% (1)	27.3% (3)	18.2% (2)	18.2% (2)	27.3% (3)	11
Audit Committee has at least one financial expert	27.3% (3)	18.2% (2)	18.2% (2)	9.1% (1)	27.3% (3)	11
Audit Committee pre-approves all services provided by the auditor	33.3% (4)	16.7% (2)	16.7% (2)	16.7% (2)	16.7% (2)	12
The lead audit partner rotates off the audit every seven years	27.3% (3)	9.1% (1)	9.1% (1)	0.0% (0)	54.5% (6)	11
The audit engagement letter is addressed to the audit committee	20.0% (2)	10.0% (1)	20.0% (2)	10.0% (1)	40.0% (4)	10
Audit Committee evaluates performance of external auditor	0.0% (0)	12.5% (1)	25.0% (2)	12.5% (1)	50.0% (4)	8
Hotline established	38.5% (5)	23.1% (3)	0.0% (0)	0.0% (0)	38.5% (5)	13
Code of Conduct/Code of Ethics Implemented	20.0% (2)	0.0% (0)	30.0% (3)	10.0% (1)	40.0% (4)	10
Independent Audit Committee	10.0% (1)	10.0% (1)	20.0% (2)	10.0% (1)	50.0% (5)	10
Financial processes documented	0.0% (0)	22.2% (2)	33.3% (3)	11.1% (1)	33.3% (3)	9
CEO certifies annual audit report	10.0% (1)	30.0% (3)	10.0% (1)	0.0% (0)	50.0% (5)	10
CFO certifies annual audit report	0.0% (0)	33.3% (3)	11.1% (1)	11.1% (1)	44.4% (4)	9

As can be seen from figure 4.2 on page 40, 6 Audit Committee Charters were implemented within the last 6 years (see first three columns). This would indicate that an Audit Committee Charter was put in place as a result of Sarbanes-Oxley, and would confirm the results in figure 4.1 page 39, where 6 respondents responded affirmatively to the implementation of an audit Committee Charter as a result of Sarbanes-Oxley. Two (2) respondents stated that they had an Audit Committee Charter in place for more than 6 years and 3 answered N/A. This would also validate the results in figure 4.1, in which 5 respondents stated that an Audit Committee Charter was not put in place as a result of Sarbanes-Oxley. Also, we can draw from the data that 2 institutions had audit Committee Charters in place prior to the existence of Sarbanes-Oxley, and 3 have no Audit Committee Charter in place.

Figure 4.3 on page 42 depicts the number of years the responding organizations had particular practices in place prior to the enactment of Sarbanes-Oxley.

4.2.5 Description of the Survey Results – Part II

To determine if the implementation of the best practices of Sarbanes-Oxley had an effect on those institutions' governance process that have implemented Sarbanes-Oxley, the respondents were asked if they believe implementing the best practices of Sarbanes-Oxley strengthened the institutions' corporate governance. Corporate governance process is defined as how an institution is directed through its management, trustees, and the institution's policies and procedures that serve the needs of the stakeholders. A full 55.6% of the participants responded affirmatively, and 11.1% negatively, 33.3% did not respond to the question.

Figure 4.3 – Question 8 – How long practice has been in place prior to Sarbanes-Oxley enactment?

How long practice has been in place prior to Sarbanes- Oxley enactment						
	1-2 years	3-4 years	5-6 years	Greater than 6 years	N/A	Response Count
Public accounting firm that conducts your annual audit prohibited from performing non-audit services	7.1% (1)	0.0% (0)	7.1% (1)	21.4% (3)	**64.3% (9)**	14
Audit Committee has a charter	18.8% (3)	12.5% (2)	0.0% (0)	**43.8% (7)**	25.0% (4)	16
Audit Committee has at least one financial expert	0.0% (0)	7.7% (1)	7.7% (1)	**53.8% (7)**	30.8% (4)	13
Audit Committee pre-approves all services provided by the auditor	12.5% (2)	6.3% (1)	6.3% (1)	31.3% (5)	**43.8% (7)**	16
The lead audit partner rotates off the audit every seven years	23.1% (3)	0.0% (0)	7.7% (1)	15.4% (2)	**53.8% (7)**	13
The audit engagement letter is addressed to the audit committee	0.0% (0)	16.7% (2)	8.3% (1)	33.3% (4)	**41.7% (5)**	12
Audit Committee evaluates performance of external auditor	14.3% (2)	0.0% (0)	14.3% (2)	**35.7% (5)**	**35.7% (5)**	14
Hotline established	7.7% (1)	23.1% (3)	0.0% (0)	7.7% (1)	**61.5% (8)**	13
Code of Conduct/Code of Ethics Implemented	0.0% (0)	15.4% (2)	7.7% (1)	**38.5% (5)**	**38.5% (5)**	13
Independent Audit Committee	14.3% (2)	7.1% (1)	14.3% (2)	**50.0% (7)**	14.3% (2)	14
Financial processes documented	7.1% (1)	0.0% (0)	7.1% (1)	**57.1% (8)**	28.6% (4)	14
CEO certifies annual audit report	16.7% (2)	0.0% (0)	0.0% (0)	8.3% (1)	**75.0% (9)**	12
CFO certifies annual report	7.1% (1)	7.1% (1)	0.0%	**57.1% (8)**	28.6% (4)	14

The participants were asked if they believed that the result of implementing the best practices of Sarbanes-Oxley has added-value in the areas noted in figure 4.4 below, such as obtaining federal and other funding from various agencies, obtaining gifts from donors, attracted students, made it easier to recruit new trustees, or if no value was added to the institution.

Figure 4.4 – Question 10 - Do you believe that the result of implementing the best practices of Sarbanes Oxley has added value in the following areas (check all that apply)?		Response Percent	Response Count
Obtaining Federal and other funding form various agencies		28.6%	4
Obtaining gifts from donors		35.7%	5
Attract students		0.0%	0
Increase reputation		28.6%	4
Recruited Trustees that are financially competent		**42.9%**	**6**
No value obtained		28.6%	4
		Other (please explain)	6

As highlighted in figure 4.4 above, 42.9% of the participants responded that they believe implementing the best practices of Sarbanes-Oxley helped to recruit financially competent trustees, while 35.7% responded that implementing the best practices would assist in obtaining gifts from donors. Another 28.6% responded that implementing the best practices would assist in obtaining federal and other funding, while another 28.6% responded that implementing the best practices of Sarbanes-Oxley would increase the institution's reputation. None of the respondents believed that implementing the best practices of Sarbanes-Oxley would assist in attracting students.

In addition, six responses were noted under "other" that included the following comments:

- Integrity enhanced,
- Increasing confidence of current trustees and stakeholders in our processes; increasing, sense of transparency and responsibility,
- A feeling of confidence in our compliance practices,
- Some general governance, oversight and risk management benefits,
- Increased internal controls and financial oversight, and
- Important to public perception/accountability.

The above responses and comments are very compelling in that respondents state that implementing the best practices of Sarbanes-Oxley adds value through a) better governance, b) increased oversight and risk management, c) confidence in compliance practices, and d) a better public perception of more accountability within institutions of higher education.

When participants were asked if their institution attempted to monetarily quantify the value received from implementing the best practices of Sarbanes-Oxley, all respondents that answered the question responded in the negative. However, 16 (59.3%) respondents believed that implementation of the best practices of Sarbanes-Oxley has had a positive impact on higher education; with only 2 (7.4%) respondents stating that they believed it did not have an impact.

The Participants were asked how the implementation of the best practices of Sarbanes-Oxley has affected higher education. Overall, 12 of the participants responded to the question. The responses could be grouped into three categories; transparency, accountability, and better governance as a result of the implementation of the best practices of Sarbanes-Oxley. One respondent stated that their internal auditors had better access to the Board of Trustees as a result of implementing the best practices of Sarbanes-Oxley. Another respondent stated how the best practices of Sarbanes-Oxley have not affected higher education. The respondent stated:

"We do not particularly reference SOX in our practices [Sarbanes-Oxley best practices]; many of the questions asked should have been answered "no", but your questions assumed compliance with SOX, something not necessarily yet required."

The response above is important because it provides insight into the answer to question 3 of this research, "Of those institutions of higher education that did not implement the best practices of Sarbanes-Oxley, why have they not done so?" This response infers that some institutions that have not implemented the best practices of Sarbanes-Oxley have not done so because certain practices were already in place; therefore, the institution did not consider those practices as being affected by Sarbanes-Oxley. This was highlighted and researched further in the interviews to further elaborate upon as well (see section 4.3, page 48).

The Participants were asked if they believe Sarbanes-Oxley will affect higher education in the future. Fifteen respondents answered affirmatively, and 2 responded negatively. Thirteen of the participants who responded affirmatively provided the additional comments. The comments could be generally grouped in that 7 of the additional comments discussed possible future mandates and/or regulation by the government as the way in which Sarbanes-Oxley will impact higher education; and 4 stated the belief that there would be greater demands on transparency and accountability.

Two participants responded that Sarbanes-Oxley will not affect higher education in the future. One respondent stated that the "effects have been felt already" and the other response stated that "the wave has passed, and institutions have done what they are going to do." Although not directly related to research question 3, some of these responses do provide insight as to why institutions have not implemented the best practices of Sarbanes-Oxley.

4.2.6 Description of the Survey Results – Part III

In this part of the survey, participants were asked if any Board members resigned from the Board since the enactment of Sarbanes-Oxley. Seven participants responded affirmatively, and 11 responded in the negative. When asked if the Trustee provided a reason for resigning, 5 responded affirmatively, and 2 responded not applicable. Finally, the participants were asked if the resignations were due to Sarbanes-Oxley. Five no responses were recorded, and 22 skipped the question. When asked if the Trustees have been difficult to replace, 9 responded in the negative, and 8 responded not applicable.

Finally, the participants were asked if there were any other comments they wished to express. Three participants responded as noted below:

1. so many of our trustees live in the world of SOX, through their corporate employment or board memberships, that they do not find this troubling for some aspects of it to apply to colleges. Even if they find it irritating and unduly burdensome in their work worlds, they are not surprised or bothered by its coming to college.

2. I hear people at my institution talk as if SOX applies to us---it doesn't apply to universities except for the provision prohibiting document destruction and the provision prohibiting retaliation against whistleblowers. What they mean is that it's a good idea for us to apply SOX guidance. The problem is that without a real stick (a firm legal requirement), it is very hard to make change happen around here.

3. Sarbanes does not fit well with institutions of higher learning. The principles are important, but much of the details exalt form over substance.

4.2.7 Summary and Highlights of Quantitative Survey Responses

In attempting to answer the first research question the following responses were noted. Research question one, at institutions of higher education that have adopted the best practices of the Sarbanes-Oxley Act, what have been the effects of adopting any or all of the best practices? There were 18 respondents who stated their institutions modified or implemented practices suggested by the Sarbanes-Oxley Act subsequent to its passage. Four respondents replied that implementing the best practices of Sarbanes-Oxley would assist in obtaining Federal funding, while 5 respondents replied that implementing the best practices would add value in obtaining gifts from donors. Other respondents stated that implementation of the best practices of Sarbanes-Oxley enhanced integrity, thus increased confidence of current trustees and stakeholders, general governance, oversight and risk management benefits were gained, and public perception/accountability were also enhanced. These are very compelling comments that lead towards the perception that implementing the best practices of Sarbanes-Oxley enhanced integrity, transparency, and accountability.

Research question two attempted to determine: at institutions of higher education that plan to adopt the best practices of Sarbanes-Oxley, what do those institutions believe will be the effect of implementing the best practices of Sarbanes-Oxley? Participants responded that they believe possible future mandates and/or regulation by the government, stated the belief that there would be greater demands on transparency and accountability. In addition, there was a belief that implementing the best practices would provide improved financial controls and oversight, particularly in light of the greater demands for transparency and accountability.

One respondent stated that:

> *the public, federal agencies, Congress, and the IRS will continue to point to S-O [Sarbanes-Oxley] and like legislation for models of regulating and monitoring higher ed. Higher ed continues to play a crucial role in the success of our country, in terms of research, job growth, and quality of life. Financial practices and governance of the institutions will continue to be monitored as these affect how many institutions can operate, how many students can attend, and how much it will cost families and government as lender and subsidizer.*

Once again, the responses here are very compelling because they provide insight towards the view that implementing the best practices of Sarbanes-Oxley enhanced integrity, transparency, and accountability.

The third research question addressed those institutions of higher education that did not implement the best practices of Sarbanes-Oxley. In response to why have they not implemented the best practices of Sarbanes-Oxley, 2 participants responded that they believe Sarbanes-Oxley will not affect higher education in the future. One respondent believed that the “effects have been felt already” and another respondent stated that “the wave has passed, and institutions have done what they are going to do.” Yet, another participant responded that Sarbanes-Oxley could be construed “as rules for rules sake, as opposed to thoughtful regulation.”

4.3 Qualitative Interviews

In an attempt to obtain a more in-depth understanding as to the results of the quantitative survey, interviews were conducted. The goal was to interview one person from 10 institutions and to probe further into the responses obtained in the survey as to the reasons that the decisions were made to implement or not to implement the best practices of Sarbanes-Oxley. Fourteen participants provided contact information. These participants were contacted via e-mail and asked to provide times convenient for them to be interviewed via telephone. The interviews were conducted via telephone. The initial contact resulted in three responses. After one week, a second request was submitted to the participants. That request provided an additional six respondents, and after another week, a final request was submitted, which provided one additional participant. Overall, 10 of the 14 participants (71.4%) who provided contact information agreed to be interviewed. Respondents represented institutions from a cross-section of the United States. There were 2 institutions from California, 2 from Washington, and 2 from Massachusetts; and one each from Oregon, Kentucky, Tennessee, and New Jersey.

Because this portion of the research was intended to probe for "reasons" why an institution did or did not implement best practices of Sarbanes-Oxley, open ended questions were utilized. The Qualitative Questionnaire Protocol questions developed and noted in Chapter 3 were utilized (see attachments C and D).

4.3.1 Summary and Highlights of Qualitative Interviews

Overall, the qualitative portion of the research brought out, and highlighted, why institutions of higher education chose to make the decisions they made in terms of implementing any or all of the best practices of the Sarbanes-Oxley Act. The interviews also emphasized what the institutions' anticipated to be gained (or effects) for implementing any or all of the best practices, and if those gains or effects were achieved. In addition, insight was gained as to why institutions of higher education may not have chosen to implement any portions of the Act.

The following general themes that can be gleaned from the interviews are:

- All institutions implemented as least some of the best practices.
- The decision to implement the best practices of Sarbanes-Oxley was made by the Board, in consultation with management.
- Implementing the best practices of Sarbanes-Oxley was the right thing to do.
- There was value in implementing the best practices, and
- The expected value was achieved.

Eight respondents stated that implementing best practices was a direct result of Sarbanes-Oxley; however, 2 respondents stated that some of the best practices were implemented as part of the institution's ongoing review of its practices, but that Sarbanes-Oxley did play an indirect role. In all cases, the decision was made by the Board or a Committee of the Board, in consultation with management.

There were no respondents that agreed to be interviewed that had chosen not to implement any portions of the Sarbanes-Oxley Act. In an effort to gain further insight into this question, those interviewed were asked why they believe institutions that have chosen not to implement any of the best practices of Sarbanes-Oxley would chose to not do so. The interview responses varied. One respondent speculated that some general counsel take the position that nothing will be done until something has to be done (usually by private institutions) or until it is totally clear as to what has to be done. Also, some smaller schools do not have a general counsel. Another respondent stated that although they would be surprised if there were any institutions that did nothing regarding implementing best practices of Sarbanes-Oxley, there may be some institutions, such as public institutions that believe there are sufficient state laws and other regulations already in place. Yet, another institution stated that perhaps some institutions are not sophisticated enough; some do not have the staff to do it and feel that normal auditing processes address the kind of financial, operational, and compliance risk. These responses were consistent with the survey responses.

Finally, one respondent stated that it would be hard to believe that an institution that did not implement any of the practices would actually come out and say so. But again, the respondent did not believe that there were institutions that came to a singular decision point not to implement any of the best practices.

Additional detail regarding participants' responses to the interview protocol questions can be found in Attachment F.

4.3.2 Summary of Quantitative Survey and Qualitative Interviews

Section 4.2 attempts to answer the questions set forth in this chapter from the quantified portion of this research, section 4.3 was provided to add a broader, more in-depth perspective through interviews as to the questions answered in section 4.2. Research question one, at institutions of higher education that have adopted the best practices of the Sarbanes-Oxley Act, what have been the effects of adopting any or all of the best practices? In the quantitative portion of the research there were 18 (66.7%) respondents who stated their institutions modified or implemented practices suggested by the Sarbanes-Oxley Act subsequent to its passage. The responses during the interviews were consistent. Overall, 7 (70%) of those interviewed stated that their institution implemented the best practices after the enactment of Sarbanes-Oxley.

To answer the first research question an attempt was made to determine when the overall decision to implement the best practices was made, and who made the decision.

Through the interviews it was determined that generally the decision was made to implement the best practices of Sarbanes-Oxley within the first few years after enactment of the Act, and that the Board, or a Committee thereof (the Audit Committee) made the decision, but the decision was generally made in consultation with the President and/or management of the institution.

In the survey many believed that implementing the best practices of Sarbanes-Oxley would assist in obtaining Federal funding 28.6% and obtaining gifts from donors 35.7% (see figure 4.4, page 43). Other respondents stated that implementation of the best practices of Sarbanes-Oxley enhanced integrity, thus increased confidence of current trustees and stakeholders, general governance, oversight and risk management benefits were gained, and public perception/accountability were also enhanced. This was confirmed in the interviews, where overall the respondents believed it was the right thing to do, implementing the best practices of Sarbanes-Oxley would improve governance and accountability, and would enhance the reputation of the institution among consumers of the institution, donors, employees, and state legislators as well. Overall, and as noted in the quantitative survey, no monetary gains were quantified; however, based on the interviews, respondents noted that overall process improvements were made, which will enhance the institutions in terms of better transparency, accountability, and governance.

Research question two attempted to determine: at institutions of higher education that plan to adopt the best practices of Sarbanes-Oxley, what do those institutions believe will be the effect of implementing the best practices of Sarbanes-Oxley? For the quantitative portion of the research participants responded that they believe possible future mandates and/or regulation by the government, and stated that there would be greater demands on transparency and accountability. In addition, there was a belief that implementing the best practices would provide improved financial controls and oversight, particularly in light of the greater demands for transparency and accountability, which was confirmed by the interviews.

Generally, those interviewed stated that the overall reason for implementing the best practices was that the governance of the responding institutions believed it was the right thing to do (about 70%), while 30% of the respondents believed that it was proactive in light of possible future legislation. Although all respondents stated that their institutions did not monetarily quantify the value of implementing the best practices, all respondents stated that implementing the best practices did add value to the organization. The value noted was in the form of establishing an ethical tone at the top. For some institutions (40%) this was important for trustees, employees, donors, regulatory agencies, as well as consumers of the institution. When asked, most respondents believed that the expected gains were realized.

Finally, most respondents stated that no additional best practices would be implemented (80%); however, 60% of the respondents stated that they would continue to monitor existing practices and implement new practices if necessary. One institution did respond affirmatively, stating that it was establishing a centralized policy web-site, and now moving into the Federal Sentencing Guidelines portion of Sarbanes Oxley.

The third research question asked, of those institutions of higher education that did not implement the best practices of Sarbanes-Oxley, why have they not done so? In the quantitative portion of the research two participants responded they believe Sarbanes-Oxley will not affect higher education in the future. One respondent believed that the “effects have been felt already” and one respondent believed that “the wave has passed, and institutions have done what they are going to do.”

Chapter 5: Educational Implications

5.1 Background

The Sarbanes-Oxley Act is legislation enacted as a result of the financial criminal wrongdoings of companies such as Enron and WorldCom. As a result of such wrongdoings, the government intervened and legislation was passed in 2002 (the Sarbanes-Oxley act of 2002). The legislation mandates publicly traded companies to strengthen governance and document financial controls. The legislation has three overarching goals: (1) transparency--the financial information must be complete and accurate; (2) accountability--namely the principal executive officer (such as the Chief Executive Officer or the President), and the principal financial officer (such as the Chief Financial Officer) must be held responsible for the financial information, and the Board of Directors is held responsible for the proper oversight of the corporation’s officers; and, (3) integrity--codes of conduct must be implemented and enforced.

Although the act only applies to publicly traded companies, many institutions, including institutions of higher education, have adopted the “best practices” of the Sarbanes-Oxley Act. As stated in Chapter 1, for the purpose of this research “best practices” of Sarbanes-Oxley are considered as parts of Sarbanes-Oxley Act that are relevant to institutions of higher education and appropriate for them to implement as defined by the National Association of Colleges and University Business Officers (NACUBO). For example, establishing an Audit Committee, and promoting a code of conduct and ethics policy would be relevant to institutions of higher education. Parts of the Act that pertain to Securities and Exchange Commission (SEC) reporting requirements would not be relevant to institutions of higher education. The NACUBO developed a checklist as guidance for Colleges and Universities in implementing best practices (see attachment A).

As we learned from the research, many of those interviewed stated that they instituted the above noted best practices because they thought it was the right thing to do. The general belief was that transparency, accountability and ethical conduct are prevalent in every organization, and institutions of higher education are not exempt.

The purpose of this Chapter is to summarize the research questions answered in Chapter 4, to draw conclusions based on the research as they impact higher education, and to recommend future research. This research started with three questions: (1) At institutions of higher education that have adopted the best practices of the Sarbanes-Oxley Act, what have been the effects of adopting any or all of the best practices? (2) At institutions of higher education that plan to adopt the best practices of Sarbanes-Oxley, what do those institutions believe will be the effect of implementing the best practices of Sarbanes-Oxley? (3) Of those institutions of higher education that did not implement the best practices of Sarbanes-Oxley, why have they not done so?

However, because this is relatively new legislation (July, 2002) and because institutions of higher education did not immediately adopt portions of the Act, the effects of the various experiences or data concerning the impacts of the Act on institutions of higher education were not readily available. This study attempts to qualitatively determine why institutions of higher education decided to implement any of the best practices. What, if any perceived benefits were gained, and if the institutions believed that they have achieved those benefits as of the time of the interviews.

In order to answer these questions a quantitative survey was conducted utilizing SurveyMonkey.com. In August 2008 the National Association of College and University Attorneys (NACUA) agreed to administer the survey to their membership. Their membership consists of approximately 700 institutions of Higher Education. There were 27 institutions that responded to the survey.

In an attempt to obtain a more in-depth understanding as to the results of the quantitative survey, interviews were conducted with respondents that agreed to participate in this portion of the research. Overall, 10 of the fourteen (71.4%) participants that provided contact information agreed to be interviewed.

Because of the long-distance location of the respondents, the interviews were conducted via telephone. Responses represented a cross section of the country. Of those that responded to the survey and provided demographic information, there were 2 respondents from California, 2 from the State of Washington, 2 from Massachusetts, and one respondent each from Oregon, Kentucky, Mississippi, Tennessee, and New Jersey.

This portion of the research was intended to probe for “reasons” why an institution did or did not implement best practices of Sarbanes-Oxley; therefore, open ended questions were utilized. The Qualitative Questionnaire Protocol questions developed and noted in Chapter 3 were utilized (attachments C and D).

5.2 Discussion – Implications of the Survey Findings

1. Overall, Sarbanes-Oxley has had an impact on how institutions of higher education conduct business. For example, institutions developed or modified their Board Audit Committee Charters to include independent members on the committee, and to ensure members were financially literate, with at least one financial expert as

recommended in the best practices. In addition, institutions established hot-lines for staff and others to report suspected irregular activity, and established Codes of Conduct, which are signed by trustees, senior managers, and some institutions require the Codes of Conduct to be signed at the employee level. Institutions that implemented or modified the best practices of Sarbanes-Oxley Act subsequent to its passage began to do so within the first few years of enactment of the Act.

Implementation was driven by the Board or a Committee thereof, with consultation of Management. Many believed that implementing the best practices of Sarbanes-Oxley enhanced integrity, thus increased confidence of current trustees and stakeholders, enhanced general governance, oversight and risk management, and according to the respondents, public perception/accountability were also enhanced. These are very compelling comments that lead towards the perception that implementing the best practices of Sarbanes-Oxley in institutions of higher education enhanced integrity, transparency, and accountability.

2. The research findings indicated that many institutions of higher education already had some of these best practices in place prior to the enactment of Sarbanes-Oxley. For example, 66.7% of the survey respondents implemented additional practices as a result of Sarbanes-Oxley; however, all respondents already had some of the practices in place prior to the enactment of Sarbanes-Oxley. During the interviews participants responded that they reviewed current practices, the recommended best practices, identified any gaps between current practices and recommended best practices, and remediated any gaps as necessary. The research draws out the fact that, although institutions may have had some of these practices in place, such as having an audit committee, institutions still took time

to voluntary review and improve upon existing practices. In addition, institutions added additional best practices where necessary, such as instituting an employee hotline. This would be consistent with the findings in the 2008 NACUBO study, which stated that 67% of the respondents had a code of ethics policy for senior management, as compared to 47% in the 2005 study. The survey also showed that 65% on the responding institutions have a whistleblower or employee complaint mechanism, compared to 49% in the 2005 study. (Menditto & Gordon 2008)

The respondents stated their belief that there may be possible future mandates and/or regulation by the government, and that there would be greater demands on transparency and accountability. In addition, the respondents felt that implementing the best practices would provide improved financial controls and oversight, particularly in light of the greater demands for transparency and accountability. However, overall, the respondents stated that one of the reasons the best practices of Sarbanes-Oxley were implemented was because their board members and senior managers believed it was the right thing to do.

3. States are also beginning to enact legislation on non-profits. According to GuideStar (2008) regulation has already been enacted in many states, such as California's Nonprofit Integrity Act of 2004, which requires non-profit organizations that have revenue of at least $2 million to have an independent audit completed. Other states have also introduced or enacted legislation regarding non-profit institutions, such as Massachusetts, which changed the thresholds it requires non-profit organizations to have independents audits. New Hampshire requires every non-profit with revenues $500,000 or greater to submit audited financial statements along with the organization's IRS form

990. Maine requires every non-profit organization renewing its registration as a charitable organization to submit audited financial statements with its IRS form 990. Connecticut requires non-profit organizations with revenues greater than $200,000 to file audited financial statements, and Kansas requires those with contributions $500,000 or more to submit audited financial statements. Although most of this legislation is geared towards charities, and exempts institutions of higher education, it is clear that States are focusing on governance in non-profit organizations. This would also be consistent with the respondents' concerns that possible future mandates and/or regulation by the government, and that there would be greater demands on transparency and accountability.

In an article in the Michigan Law Review (2008) author Joseph Mead states that "those nonprofits that most need tighter financial management are unlikely to adopt the voluntary proposals because financial management is not a priority for them." Mead makes a valid point, and continues, "when a scandal develops at one of these nonprofits, the resulting media attention damages the entire sector. Mandatory legislation provides a way to prevent these nonprofits from tainting the entire sector." (p. 899). This reinforces the respondents' concerns as to the reasons possible future mandates and/or regulation by the government may occur.

4. Increased public perception was also noted as an anticipated gain for institutions of higher education implementing the best practices of Sarbanes-Oxley, and for good reason, the Yale Daily News (December, 2008) reported that Yale University recently agreed to pay $7.6 million for allegedly making false claims on federal research grants. According to the Yale Daily News report, the Acting U.S. Attorney stated that "this settlement sends a clear message that the regulations applicable to federally-funded

research grants must be strictly adhered to." This acts as a clear message that institutions that do not make an effort to improve financial controls and oversight to improve transparency and accountability may be subject to these types of investigations.

5. In Grant Thronton's 2008 National Board Governance Survey for Not-for Profit Organizations (Kurre, 2008) 92% of the responding organizations now have a conflict of interest policy in place, this is up from 89% in the 2007 study. In addition, 72% have whistle-blower policies in place, and 74% of the organizations said they have an audit committee, up from 68% in 2007. Also, 74% of the respondents in the 2008 Grant Thronton study stated they have an Audit Committee, of those 66% stated that the audit committees included a CPA, 44% an attorney, and 84% included other business executives. This indicates that organizations are implementing the best practices of Sarbanes-Oxley by having a financially literate Audit Committee, with at least one financial expert. This includes institutions of higher education, which represented 16% of the 652 CEOs, CFOs, board members, and other senior officials included in this Grant Thronton survey.

The IRS recently revised it Form 990. The Form 990 is an informational form filed by institutions of higher education and other non-profit organizations. Among many of the revisions are questions regarding the following: the number of voting members that are independent, and asks if the institutions have a conflict of interest policy, whistle blower policy, document retention and destruction policy, and about an institution's Compensation practices. In addition, the IRS form 990 asks if a copy of the 990 is provided to the organizations governing body before it is filed. Again, these inquiries on the IRS form 990 regarding governance practices, institutional polices, and compensation practices lead institutions to believe and is consistent with concerns noted in this research that possible future mandates and/or regulation by the government, and that there would be greater demands on transparency and accountability. In the 2008 Grant Thronton survey noted above 45% of the respondents said their organizations have established a policy for board members to review their From 990/990T. However, this is an increase from 30% in 2007 (Kurre, 2008).

5.3 Future Implications for Education

Although the Sarbanes-Oxley Act only applies to publicly traded companies, and is not directly applicable to institutions of higher education, institutions of higher education that have opted to implement such practices have done so for good reason. As stated in Chapter 1, the adoption of the best practices of Sarbanes-Oxley enables an institution to promote transparency by ensuring that its financial information is correct, through the implementation of internal controls that help detect errors in the accounting records if any errors occur. It also promotes accountability by affixing the responsibility for the accurateness of the financial information on the President and Chief Financial Officer of the institution, by requiring the President and Chief Financial Officer to sign certifications certifying that the annual financial information is correct. Additionally, following the act’s best practices encourages integrity by requiring all members within the institution to sign an annual *conflict of interest* statement and disclose any relationships that employees or family members of employees have with anyone doing business with the institution.

Also, establishing a hot-line for employees and others to report suspected inappropriate activity enables those that wish to report to do so anonymously if they desire to do so. It also provides the institution the opportunity to investigate the suspected activity in-house, as opposed to the suspected activity being reported to the federal government. For example, Oakland City University in Indiana agreed to pay $5.3 million to settle a whistle-blower's complaint that the University improperly offered incentives in the form of commission and bonuses for employees to enroll students. (Quill, 2007, p. A20)

In Chapter 2 we noted that according to Mazmanian and Sabatier (1989), there are six conditions to effective implementation (p. 41). These six conditions for effective implementation are critical to the success of the implementation of the Sarbanes-Oxley Act. Although institutions of higher education are not required by legislation to implement the Act, those that choose to do so should monitor the aforementioned conditions as they implement best practices recommended by the Act. While monitoring these conditions is not the focus of this research, future research that affects effective implementation in institutions of higher education should be conducted.

Board members of non-profit organizations are typically not paid, but volunteer to serve on such boards. As there is an increasing demand from the government for Boards to carry out their fiduciary responsibilities, future research as to how Board members are responding would glean insight as to how these Board members are coping with such demands. If organizations are finding it difficult to attract and retain qualified board members, and how is this effecting such organizations? According to Laura S. Trombley (2007) president of Pitzer College;

> …while measures mandated by the Sarbanes-Oxley Act are not required for nonprofit organizations, they have heavily influenced the current practice and policies of colleges. Many, like my own, have had to create a separate audit committee of the board to serve as the institution's fiduciary

> watchdog. All those aspects of board performance may prove daunting, particularly to new trustees." As institutions of higher education continue to implement the best practices of Sarbanes-Oxley, and with the demands placed on the institution's boards, will this limit the ability of institutions to attract and retain competent board members? (p. B20)

Ms. Trombley further adds that, at her own institution, she has "been fortunate to work with trustees who are actively interested in best practices in governance." (p. B20). However, Ms. Trombley, who is also a commissioner at the Western Association of Schools and Colleges, and has served on many college-review panels for the association, states that "I have seen the powerful and detrimental effect a poorly functioning board can have upon an institution." Research into how board members believe best practices in governance affect their decisions as to which boards to sit on, and which boards are no longer feasible to sit on due to greater demands, should prove beneficial.

It is clear through the IRS's revamping of Form 990 that the government is interested in knowing if non-profit organizations, including institutions of higher education, are creating a culture of transparency through the additional information that the 990 in now requesting. Those organizations that can answer such questions in the affirmative will be better poised should such Sarbanes-Oxley like legislation eventually be enacted within the non-profit environment.

The research made it clear that there is a general sense that implementing the best practices of Sarbanes-Oxley is the right thing to do. The short-term implications of implementing the best practices of Sarbanes-Oxley will show employees and others outside the institution that the institution wants to do the right thing, that accountability and transparency are important. Also, it will help establish an ethical culture within the institutions of higher education through the institution's code of conduct that improper behavior will not be tolerated.

As for long-term implications, it is postulated that institutions of higher education that have implemented the best practices of Sarbanes-Oxley will be better poised should future regulation be enacted by the federal or state legislators. As competition increases for a decreasing pool of federal funds, funding agencies will take into account the fact that there are organizations that are exercising their fiduciary responsibilities by implementing the best practices of Sarbanes-Oxley. Donors may be willing to give to institutions that show they are serious about exercising their fiduciary responsibilities, and have made attempts to be more transparent through implementing the best practices. These are areas where future research is needed.

However, it is also more likely that implementing the best practices of Sarbanes-Oxley may have an impact on higher education that establishes an overall culture within the institution that strives to do what is ethical and right. In more than one respect this will impact scientific research as well as institutional advancement, student enrollment, as well as athletics. As institutions set that ethical tone, this should attract higher caliber individuals to the institutions who want to work for such institutions, and also should motivate those that chose not to carry on in an ethical manner out of institutions. For example, in an interview with the Chronicle of Higher Education Senator Grassley, ranking member of the U.S. Senate Finance Committee stated that the National Institute of Health should get tough with academic scientists by revoking their grants if they fail to report financial conflicts of interest to their institutions. (Brainard, 2008) The comment was a result of the Senator's investigators finding discrepancies when they asked pharmaceutical companies to list their payments to researchers, and then asked Universities to describe financial disclosures by those same investigators.

In the most recent NACUBO (2008) study, the authors state that “Overall, it appears that SOX has served to underscore the importance of the traditional formal governance structures of colleges and universities while adding emphasis on ethical and transparent practices.” Future research in this area will determine if these practices have achieved what the institutions intended them to achieve. NACUBO states that it will continue to conduct follow-up surveys every two or three years, because it believes that “the many mandates affecting the industry do not seem to be trailing off, we have every reason to believe that higher education will continue to adjust and improve its practices.” (Menditto & Teresa, 2008)

As noted in Chapter 2 Holbeche (2006) discussed the planned approaches to change and the three stages involved. Holbeche also reminds us that “Success depends on extensive planning and design, precise assessment of the current situation, accurate anticipation of resistance to change and skill at overcoming this resistance” (p. 157). In order to make course corrections along the way, understanding the cultural aspect to the changes of implementing the best practices of the Sarbanes-Oxley Act in institutions of higher education is critical for organizations to understand.

Attachment A

Section	Sarbanes-Oxley Act of 2002	NACUBO recommendations
Title I	**Public Company Accounting Oversight Board**	***Not applicable***
Title II	**Auditor Independence**	
201	Public accounting firms are prohibited from performing these nonaudit services to financial statement audit clients: (1) Bookkeeping or other services related to the accounting records or financial statements; (2) Financial system design and implementation; (3) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (4) Actuarial services; (5) Internal auditing outsourcing services; (6) Management or human resource functions; (7) Broker or dealer, investment adviser, or investment banking services; (8) Legal services and expert services unrelated to the audit; (9) Any other service the Accounting Oversight Board determines, by regulation, is impermissible. A registered public accounting firm may engage in any other service, including tax services for an audit client, but *only if the Audit Committee approves the activity in advance.*	Institutions should prohibit their independent auditors from providing the nonaudit services prohibited by the Act unless extenuating circumstances exist and the audit committee approves the work in advance.
202	The audit committee must pre-approve all services provided by the auditor.	Institutions should require pre-approval by the audit committee for all prohibited, nonaudit services performed by the independent auditor.
203	The lead (or coordinating) audit partner and the reviewing audit partner of the public accounting firm must rotate off the audit every five years.	Institutions should require a rotation of the lead partner every seven years with a timeout of two years.
204	The public accounting firm must report to the audit committee: (1) All critical accounting policies and practices used by the client that have been discussed with management; (2) All alternative treatments of financial information, ramifications of such use, and the treatment preferred by the public accounting firm; (3) Other material written communication between the public accounting firm and management, such as the management letter or schedule of unadjusted differences.	Audit committee oversight is critical to ensure the independence of the audit decisions. The audit engagement letter should be addressed to the audit committee rather than internal management.
205	Conforming amendments to the SEC Act of 1934.	*Not applicable*
206	The public accounting firm cannot have employed the CEO, controller, CFO, chief accounting officer, or any person in an equivalent position, during the one-year	Institutions should carefully consider the benefits of employing a CFO or controller who has worked for the auditing firm within the last year and consider how the

	period preceding the audit.	position may relate to the institution's external audit. To forego the one-year waiting period, institutions should document the benefits and risks and seek board approval.
207	The GAO will do a study on the potential effects of mandatory rotation of public accounting firms.	The current emphasis is on rotation of audit partners (section 203) rather than rotation of firms. The audit committee should annually evaluate the performance of the external auditor. In addition, the committee should consider periodically recompeting the selection of the external audit firm.
208 - 209	SEC final authority for Section 10A and considerations by appropriate State regulatory authorities.	*Not applicable*
Title III	**Corporate Responsibility**	
301	(1) The Commission may prohibit the listing of securities of any firm found not to be in compliance with paragraphs 2 - 6 of this section. (2) The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by its company and the public accounting firm shall report directly to the audit committee. (3) Each member of the audit committee shall be a member of the Board of Directors and shall otherwise be independent. Independent is defined as not receiving, other than for service on the Board of Directors, any consulting, advisory, or other compensatory fee from the company, and not being an affiliated person of the company. (4) The audit committee shall establish procedures for: (a) The receipt, retention, and treatment of complaints received by the company regarding accounting, internal controls and auditing matters. (b) The confidential, anonymous submission by employees of questionable accounting or auditing matters. (5) The Audit Committee shall have the authority to engage independent counsel or other advisors, as necessary to carry out its duties. (6) Each company shall provide appropriate funding as determined by the Audit Committee for payment to the public accounting firm and any advisors employed by the Audit Committee under paragraph 5 above.	Institutions that do not have an audit committee should assign the audit function to another committee of the board of trustees, for example, the finance committee, or to the board as a whole. Institutions that assign audit committee functions to another committee should add "audit" to the committee title, for example, "Finance and Audit" committee. (1) Not applicable (2) Audit committee involvement is critical in the selection of auditors and the performance of the audit. (3) Independence of audit committee members is important. Management representatives should not be voting members of the committee. (4) A good practice would be the establishment of confidential complaint mechanisms for employees; for example, a hot line, anonymous e-mail/voicemail, secure complaint boxes, or extending existing employee grievance processes or communication channels to the institution's internal auditors. The audit committee should review the nature and disposition of reported matters. (5) The audit committee should have all necessary authority contained in its charter. (6) The charter should also specify that appropriate funding be available for the audit committee.
302	The CEO and CFO shall certify along with the annual audit report that: (1) They have reviewed the report; (2) Based on their knowledge, the report does not contain any untrue statement of a material fact or omission of a material fact that makes the statements misleading; (3) Based on their knowledge, the financial statements present in all material respects the financial condition	The provisions of the Act extend the current audit representation letter responsibilities. If institutions publicly disclose financial statements, they should consider these assertions. However, be warned that assertion 4 includes new and complex affirmations on the adequacy of internal controls over both financial reporting and financial disclosures. The degree of decentralization of financial operations is an important consideration for higher education. Business units' responsibility for financial reporting should be clearly

	and results of operations; (4) They are responsible for establishing and maintaining internal controls, ensuring that material information relating to the company and its consolidated subsidiaries is made known to officers and others within those entities; have evaluated the effectiveness of internal controls within 90 days prior to the report; and have presented their conclusions about the effectiveness of their internal controls based on their evaluation as of that date; (5) They have disclosed to the auditors and the audit committee all significant deficiencies and material weaknesses in the internal controls that could adversely affect the company's ability to record, process, summarize, and report financial data; (6) They have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions. Reincorporating outside of the United States does not lessen the requirements of Section 302.	defined, including policies for those activities. Institutions that are decentralized should consider implementing "sub-certification" requirements from financial leaders responsible for the financial results of units, departments, or schools. The sub-certification provides assurance on the underlying numbers and controls. Institutions should start documenting their financial reporting process; and identifying and evaluating the adequacy of controls over financial reporting and other financial disclosures. The audit committee should consider periodic inquiries of financial executives on the adequacy of controls.
303	It is unlawful for any officer or director of a company to take an action to fraudulently influence, coerce, manipulate, or mislead an auditor engaged in the performance of an audit for the purpose of rendering the financial statements materially misleading.	This should be addressed in the institution's code of conduct/code of ethics.
304	If an accounting restatement is necessary due to misconduct, the CEO and CFO shall reimburse the company for any bonus or other incentive or equity-based compensation received by that person during the 12-month period following the issuance of the financial statements, as well as reimburse the company for any profits realized from the sale of securities of the company during that same 12-month period.	*Not applicable*. However, the audit committee may want to review compensation arrangements for the CEO and CFO. Incentives related to financial results should be disclosed to the audit committee.
305	The SEC may issue an order to prohibit, conditionally or unconditionally, permanently or temporarily, any person who has violated section 10(b) of the 1934 Act from acting as an officer or director of a company if the SEC has found that such person is unfit.	*Not applicable*. However, institutions should consider any SEC action in connection with hiring officers and nominating trustees; and ensure that employment contracts of senior officers allow removal for financial impropriety.
306 - 308	Concerns sales of stock, fair funds for investors and attorneys practicing before the SEC.	*Not applicable*
Title IV	**Enhanced Financial Disclosures**	
401	SEC shall study off-balance sheet disclosures to determine their extent and whether GAAP results reflect the economics of such transactions.	Higher education should follow current and appropriate accounting standard guidance (i.e. FASB, GASB).
402	In general, it shall be unlawful for a company to extend personal loans to any director or executive officer.	The audit committee should be aware of and review policies on personal loans and understand that housing assistance included as part of compensation is not a personal loan.
403	Directors, officers, and 10%+ owners must report	The audit committee should be aware of and review policies

	designated equity security transactions by the end of the second business day following the day the transaction was executed.	on ownership interests in related ventures or start-ups. Existing conflict of interest policies can be leveraged and should be reviewed with the audit committee.
404	Each annual report shall contain an internal control report, which: (1) States the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and (2) Contains an assessment, as of the end of the fiscal year, of the effectiveness of the internal control structure and procedures of the company for financial reporting. The public accounting firm shall attest to and report on the internal control assessment made by management.	Identifying, designing, and maintaining controls and procedures that safeguard assets and minimize risk is sound business practice. A good business practice would be to start planning how an internal control assessment might be conducted. A few institutions have started doing risk assessments and documenting key financial processes. The audit committee should consider independence issues if contemplating using the external auditor for this review function. For reference, institutions can obtain a copy of the Committee of Sponsoring Organizations (COSO) model of an internal control framework. The COSO model is considered the most widely accepted model for controls. Institutions with internal audit departments should consider using them to periodically report on internal controls to the audit committee in addition to reporting to management. These activities should be coordinated with the risk assessment and internal control initiatives described above. The results of the internal control assessment should be tested to ensure compliance. A positive assertion on controls would require a large sustained effort and would require the external auditor to perform an attestation on internal controls, which would be expensive and time consuming. NACUBO does not recommend external auditor attestation or audit of internal controls. An alternative would be for management to provide the assertions and testing without the external audit attestation. NACUBO encourages institutions to take this topic seriously and start planning how an internal control assessment might be conducted. NACUBO will monitor the actions of institutions and communicate discoveries. At this point NACUBO and the APC are not aware of any institutions that have committed to this positive assertion on controls.
405	Sections 401, 402, and 404 do not apply to any investment company registered under section 8 of the Investment Company Act of 1940.	*Not applicable*
406	Requires each company to disclose whether it has adopted a code of ethics for its senior financial officers and the contents of the code of ethics.	A best practice is the adoption of a code of ethics for senior financial officers. Subsequently, the audit committee should review the adequacy of the code and periodically review how compliance is assured.
407	Companies are required to disclose whether at least one member of the audit committee is a "financial expert." The final rule also provides a definition of a financial expert. In the final rule, recognition was given that an audit committee financial expert can acquire the requisite attributes of an expert in many different ways and that experience, in addition to education, is an important	A best practice would be the inclusion of at least one financial expert on the audit committee. Institutions should consider the following in defining financial expertise: • familiarity with estimates, accruals, and reserves relevant to higher education • longevity and experience with a given institution can

	consideration.	be considered "other relevant experience" Colleges and universities should also consider rotating the financial expert and begin planning for the process and cost of recruiting, training, and retaining financial expertise. The recruitment and retention of a financial expert by public institutions might be limited when alumni or elected officials appoint the board.
408 - 409	Addresses enhanced and real time disclosure by issuers of securities.	*Not applicable*
Title V	**Analyst Conflicts of Interest**	
501	Treatment of security analysts by registered securities associations and national security exchanges.	*Not applicable*
Title VI	**Commission Resources and Authority**	
601 - 604	Appearance and practice before the SEC, funding, federal court authority and qualifications of brokers and dealers.	*Not applicable*
Title VII	**Studies and Reports**	
701 - 705	Concerns studies regarding accounting firms, credit rating agencies, violators, violations, investment banks, financial advisors, and enforcement of securities laws.	*Not applicable*
Title VIII	**Corporate and Criminal Fraud Accountability**	
801 - 807	Discusses securities fraud, penalties, statute of limitations, sentencing, and employee protection.	*Not applicable*, however regarding section 802, a good practice would be to ensure that documents and records sent or received in connection with the audit are retained for seven years.
Title IX	**White Collar Crime Penalty Enhancements**	
901 - 906	This section advances criminal penalties for fraudulent acts and the US Department of Justice jurisdiction of financial statement certification. The certification requirement under section 906 is separate from the requirement under section 302.	*Not applicable*
Title X	**Corporate Tax Returns**	
1001	The chief executive officer, per the "sense of the senate," should sign the federal income tax return of a corporation.	Institutions should review the level of authority of signers on the various tax returns; a senior financial manager with financial accountability for the information presented on the tax return should sign the return.
Title XI	**Corporate Fraud Accountability**	
1001 - 1004	Discusses fines, consequences, and sentencing for individuals and issuers.	*Not applicable*
1005	Gives the SEC the authority to prohibit anyone convicted of securities fraud from being an officer or director of any publicly traded company.	Institutions should consider securities fraud convictions relevant in background checks for new employees.
1006 - 1007	Addresses criminal penalties under the SEC Act of 1934 and penalties for retaliation against informants.	*Not applicable*

Attachment B

Survey – Implementing the Based Practices on Sarbanes-Oxley in Institutions of Higher Education

Please complete the survey below. Those that wish to receive a copy of the results, please indicate your e-mail and the results will be e-mailed to you once the survey is completed and analyzed. ***Confidentially is of the utmost importance, and all information in this survey will remain confidential.***

Once the results of the survey are analyzed, a qualitative analysis of the data will be conducted. A sample of the institutions that responded will be randomly selected. Those institutions will be contacted and interviewed. A pre-arranged time will be set-up for the interview, which will be at the convenience of the interviewee, and a time limit of 1 hour for each interview will be established. No individual or institution will be named in the survey.

If you do not wish to be contacted for further participation, do not complete the information below. If yes, please complete the information below to be contacted by the investigator.

Name:___________________________________

Title:______________________________________

Institution:__________________________________

Telephone Number:__________________________

e-mail Address:______________________________

Objective: The objective of this set of questions is to determine familiarity with Sarbanes-Oxley and whether or not your institution implemented best practices of Sarbanes-Oxley as defined by the National Association of College and University Business Officers (2003) *The Sarbanes-Oxley Act of 2002: Recommendations for Higher Education*. NACUBO Advisory Report 2003-3, (November 20, 2003).

1. How familiar are you with Sarbanes Oxley?

__ Not familiar at all __Sufficiently familiar __Very familiar

2. Has the Board of Trustees expressed interest to management in implementing some form of Sarbanes-Oxley?

___yes ___no

Has your Senior Management Team (Cabinet) expressed interest in implementing some form of Sarbanes-Oxley?

___yes ___no

Has there been any training at the Board Level regarding Sarbanes-Oxley?

___yes ___no

Has there been any training at for Management Level regarding Sarbanes-Oxley?

___yes ___no

3. Subsequent to the passage of the Sarbanes Oxley Act in 2002, did your institution modify or implement practices suggested or informed by the Sarbanes-Oxley Act?

__Yes __No

4. If your answer to 3 was yes, what practices were implemented or modified subsequent to the passage of Sarbanes-Oxley (choose all that apply)?

Practice	**How long practice has been in place** Prior to Sarbanes-Oxley enactment	After Sarbanes Oxley enactment	Implemented as a result of Sarbanes-Oxley? **Yes**	**No**
____ Public accounting firm that conducts your annual audit prohibited from performing non-audit services	_______	_______	_____	_____
____ Audit Committee has a charter	_______	_______	_____	_____

4. (continued)

Practice	Prior to Sarbanes-Oxley enactment	After Sarbanes Oxley enactment	Yes	No
____Audit Committee has at least one financial expert	_______	_______	_____	_____
____ Audit Committee pre-approves all services provided by the auditor	_______	_______	_____	_____
____ the lead audit partner rotates off the audit every seven years	_______	_______	_____	_____

Practice | **How long practice has been in place?**

Practice	Prior to Sarbanes-Oxley enactment	After Sarbanes Oxley enactment	Implemented as a result of Sarbanes-Oxley? **Yes**	**No**
____ the audit engagement letter is addressed to the audit committee	_______	_______	_____	_____
____ Audit Committee evaluates performance of external auditor	_______	_______	_____	_____
____ Hotline established	_______	_______	_____	_____
____ Code of Conduct/Code of Ethics Implemented	_______	_______	_____	_____
____ Independent Audit Committee	_______	_______	_____	_____
____ Financial processes documented	_______	_______	_____	_____
____ CEO certifies annual audit report	_______	_______	_____	_____
____ CFO certifies annual audit report	_______	_______	_____	_____

Objective: The objective of this next set of questions is to determine the value your institution gained or hopes to gain as a result of implementing the best practices of Sarbanes-Oxley. Value is defined as: as a result of implementing the best practices of Sarbanes-Oxley, has your institution experienced stronger corporate governance, more oversight over the financial records of the institution, and more integrity in the financial information of the institution.

5. Do you believe implementing the best practices noted in 4 above, strengthened your institution's corporate governance?

__ yes __ no

6.	Do you believe that the result of implementing the best practices of Sarbanes Oxley has added value in the following areas (check all that apply)? __ Obtaining Federal and other funding form various agencies __ Obtaining gifts from donors __ Attract students __ Increase reputation __ Recruited Trustees that are financially competent __ No value obtained __ Other (please explain)
7.	Have you quantified monetarily the value received from implementing the best practices of Sarbanes-Oxley? __ yes __ no
8.	If so, what is the quantified amount?
9.	Do you believe that implementation of the best practices of Sarbanes-Oxley has had a positive impact on Higher Education? __ yes __no
10.	If you answered yes to question 9, please describe how the implementation of best practices of Sarbanes-Oxley has affected higher education? Impact can be in the form of better governance in your organization, a heightened awareness of internal controls in your organization, or more efficiency in your financial processes as a result. Any other impact that you perceived as a result should also be listed.

11.	If you answered no to question 9, why? Utilize the same criteria as described in question 10 above.
12.	Do you believe Sarbanes-Oxley will affect higher education in the future? ___yes ___no Why or why not?

Objective: The objective of this next set of questions is to determine whether or not your institution's Board of Trustees have expressed interests or concerns regarding implementation of the best practices of Sarbanes-Oxley.

13.	Have any Board members resigned from the Board since the enactment of Sarbanes-Oxley (July 2, 2002)? ___yes ___no
14.	If your answer to question 13 was yes, did the Trustee provide a reason for resigning? ___yes ___no ___N/A
15.	If your answer to question 14 was yes, was it due to Sarbanes-Oxley? ___yes ___no ___N/A

16.	If your answer to question 15 was yes, please check all that apply? ___New demands on Boards regarding fiduciary responsibilities ___Independence rules (Trustee cannot do business with the Institution) ___Trustee not financially inclined ___Trustee not considered a financial expert (as defined by Sarbanes-Oxley) ___Potential Conflicts of Interest with the Institution ___Do not want to sign the Institution's conflict of interest statement ___Personal reasons ___Other (please explain) ___None of the above
17.	If your Institution has lost Trustees, have they been difficult to replace? ___yes ___no
18.	If your answer to question 17 is yes, approximately how long has it taken to replace a Trustee? ___0 to 6 months ___7 to 12 months ___greater than 12 months ___were not able to replace
Other – Please list any other comments you wish to express	

Thank you for taking the time to complete this survey.

Attachment C

The Effects of Implementing the Best Practices of Sarbanes-Oxley in Institutions of Higher Education – Institutions that have adopted the best practices

Introductory Protocol

To facilitate my note-taking, I would like to audio tape our conversation today. Please sign the release form. For your information, only researchers on the project will be privy to the tapes which will be eventually destroyed after they are transcribed. In addition, you must sign a form devised to meet our Institutional Research Board (IRB) requirements. Essentially, this document states that (1) all information will be held confidential, and (2) you participation is voluntary and you may stop at any time if you feel uncomfortable.

The interview is planned to last no longer than one hour.

Questions intended to determine whether on not the best practices were made after Sarbanes-Oxley was legislated in 2002.

1. When was the decision made to adopt the best practices of Sarbanes-Oxley?

2. Who made the decision?

General research question what were the expected gains surrounding the decision to adopt the best practices of Sarbanes-Oxley.

3. Why was the decision made to adopt the best practices of Sarbanes-Oxley?

4. What did the institution expect to gain from implementing the best practices of Sarbanes-Oxley?

Answers the question whether or not the institution realized any benefits from implementation.

5. Where those gains realized?

Probes:

Is the fact that you implemented the best practices of Sarbanes Oxley noted in the institution's grant proposals?

Are trustees more willing to sit on the institution's board?

Particularly for those institutions that have not implemented many best practices, do they plan to do so.

6. Do you plan on implementing best practices in the future?

Probes:

Why do you plan to implement best practices?

And, why have they waited?

7. What do you expect to gain from doing so?

Probes:

Increased donations?

Competitive edge in obtaining grant funding?

Stronger, more knowledgeable board members?

Nothing, merely the right thing to do?

Feel that legislation will force institutions to do so in the future?

Attachment D

The Effects of Implementing the Best Practices of Sarbanes-Oxley in Institutions of Higher Education – Institutions that have not adopted the best practices

Introductory Protocol

To facilitate my note-taking, I would like to audio tape our conversation today. Please sign the release form. For your information, only researchers on the project will be privy to the tapes which will be eventually destroyed after they are transcribed. In addition, you must sign a form devised to meet our Institutional Research Board (IRB) requirements. Essentially, this document states that (1) all information will be held confidential, and (2) you participation is voluntary and you may stop at any time if you feel uncomfortable.

The interview is planned to last no longer than one hour.

Questions intended to determine whether on not the best practices were made after Sarbanes-Oxley was legislated in 2002.

8. When was the decision made not to adopt the best practices of Sarbanes-Oxley?

9. Who made the decision?

General research question what were the expected gains surrounding the decision to adopt the best practices of Sarbanes-Oxley.

10. Why was the decision made to not adopt the best practices of Sarbanes-Oxley?

11. Do you plan on implementing any best practices in the future?

Answers the question whether or not the institution realized any benefits from implementation.

12. Why do you now believe there to be a benefit for implementing any of the best practices?

13. OR, why do you expect there to be no gain from doing so?

Probes:

Is the fact that you implemented the best practices of Sarbanes Oxley noted in the institution's grant proposals?

Are trustees more willing to sit on the institution's board?

Particularly for those institutions that have not implemented many best practices, do they plan to do so.

14. Do you plan on implementing best practices in the future?

Probes:

Why do you plan to implement best practices?

And, why have they waited?

15. What do you expect to gain from doing so?

Probes:

Increased donations?

Competitive edge in obtaining grant funding?

Stronger, more knowledgeable board members?

Nothing, merely the right thing to do?

Feel that legislation will force institutions to do so in the future?

Attachment E

In question one, "How familiar are you with Sarbanes-Oxley?" The respondent thought that "Not familiar at all, Sufficiently familiar, Very familiar" provided a clearer distention than "Not familiar at all, Somewhat familiar, Very familiar".

A respondent suggested that question 13 "Has the Board of Trustees expressed interest in implementing some form of Sarbanes-Oxley?" be moved up to question two. The reasoning was that an institution cannot move ahead with implementing best practices of Sarbanes-Oxley if the Board does not express interest.

Two respondents thought that there were many items in question three that may have been implemented prior to the enactment of Sarbanes-Oxley, and that combing question three with question four would present a clearer picture:

If so, what practices have been implemented (choose all that apply)?

__ Public accounting firms prohibited from performing non-audit services
__ Audit Committee established
__ Audit Committee has a charter
__ Audit Committee has at least one financial expert
__ Audit Committee pre-approves all services provided by the auditor
__ the lead audit partner rotates off the audit every seven years
__ the audit engagement letter is addressed to the audit committee
__ Audit Committee evaluates performance of external auditor
__ Hotline established
__ Code of Conduct/Code of Ethics implemented
__Independent Audit Committee
__Audit Committee Charter
__ Financial processes documented
__ CEO and CFO certify annual audit report

And question four:
How long have the practices been in place?

__ Less than one year
__ One to five years
__ More than five years
__ Prior to July 2002

These questions were combined.

Finally, a respondent stated that there is no way General Counsel will ever be able to answer questions seven and eight “Have you quantified monetarily the value received from implementing the best practices of Sarbanes-Oxley?” and “If so, what is the quantified amount?” The respondent does not believe meaningful information will be derived from these questions. However, these questions are critical to the survey as it is important to know whether the “believe” any monetary value was quantified.

Overall the responses were positive, and should prove valuable in making the survey clearer in attempting to attain the necessary information to answer the research question.

Attachment F

Description of Qualitative Interview Responses

The interview protocol consisted of the following questions:

Question 1 – When was the decision made to adopt the best practices of Sarbanes-Oxley?

The first question asked to the participants was, when was the decision made to adopt the best practices of Sarbanes-Oxley? The responses ranged from almost immediately after the Act was enacted, to a few years ago (2007). Overall, 7 of the respondents have implemented the best practices after the enactment of Sarbanes-Oxley. The other two respondents implemented such practices, but did not like to characterize their implementation of these practices as a "decision" to implement best practices of Sarbanes-Oxley.

For example, one respondent stated that there was no real "decision" to implement the best practices, that is, there was no singular point in time when there was a decision made. The institution was aware of the changes in the law, and it was a process of evaluating what made sense in higher education, what practices the institution had in place, and what practices needed to improve. Upon further discussion, although a decision was not made to adopt the best practices of Sarbanes-Oxley, through the institution's process of evaluating their processes, some of the best practices were adopted.

Another respondent stated that their institution had many of the practices in place before Sarbanes-Oxley was enacted because the State in which the institution resides has strong laws regarding audit as it applies to State entities.

Overall, all nine institutions had practices in place or implemented practices related to Sarbanes-Oxley. All institutions were aware of the Sarbanes-Oxley legislation, and none of the institutions stated that a decision was made not to implement any of the best practices.

Question 2 – Who made the decision to implement the best practices of Sarbanes-Oxley?

Question two inquired as to who made the decision to implement the best practices of Sarbanes-Oxley? Generally, the respondents stated that the Board made the decision, 4 institutions stated that the decision was made by the Audit Committee, and one institution stated that the Board Chairman made the decision. Four institutions stated that is was a joint decision between Management and the Board.

Question 3 – Why was the decision made to adopt the best practices of Sarbanes-Oxley?

The third question asked why the decision was made to implement the best practices of Sarbanes-Oxley. Overall, the respondents agreed that it was the right thing to do. Responses ranged from members of governance work in the for-profit environment day in and day out where Sarbanes-Oxley is a requirement, to policies were being updated and Sarbanes-Oxley was just one of the criteria utilized in updating the policies (2). One respondent felt that Sarbanes-Oxley might serve as the standard of fiduciary responsibility should an issue ever come up.   Another respondent believed their institution would be ahead of the curve should any State or Federal regulation be enacted. Overall, based on the responses there was a general sense that, upon review of the Sarbanes-Oxley act, many of the practices would benefit institutions of higher education.

One respondent stated that it was the right thing to do; also that it was the trend in America at the time.

Question 4 – What did the institution expect to gain from implementing the best practices of Sarbanes-Oxley?

Question four probed into what the institution expected to gain from implementing the best practices of Sarbanes-Oxley. Once again the responses varied; however, the overall sense was that public perception mattered. For example, one respondent stated that they teach business; therefore, they should operate consistent with what they teach. Yet another institution stated that it would help improve governance and accountability. In addition it helps assure the Audit Committee that it is fulfilling its fiduciary responsibility. Two respondents felt that implementing the best practices of Sarbanes-Oxley would establish an ethical tone for the institution, and enhance the reputation of the institution among consumers of the institution, such as donors, employees, and state legislators as well. Two institutions did not expect any gains; but, that implementing the best practices of Sarbanes-Oxley was a result of decisions made regarding implementing practices as part of on-going business.

Question 5 – Where those gains realized?

When asked if those gains (as noted above) were realized, responses once again varied. Overall, respondents believed that there had been gains as a result of implementing the best practices of Sarbanes-Oxley. One respondent stated that overall, oversight of financials had been achieved, that a compliance program had been established, and that governance practices had been strengthened. Another respondent believed that gains were made in principal and reputation in the view of legislators, trustees, donors, and employees. Yet another respondent stated that implementing the best practices has been very useful for the President of the institution and other senior executives of the institution to use in public speaking and with legislators for budgets, and to maintain autonomy. In addition, the institution has been able to say they are accountable to the public who provide public funding and tuition dollars. Two respondents believed that it was a straight business decision as part of on-going business. One institution stated that it drove public discussion, and caused institutions to examine its processes and make changes, and that's good.

Overall, and as noted in the quantitative survey, no monetary gains were calculated. However, based on the qualitative survey responses, overall process improvements were made, which will enhance the institutions in terms of better transparency, accountability, and governance.

Question 6 – Do you plan on implementing best practices in the future?

Question 7 – What do you expect to gain from doing so?

The last two questions pertained to whether or not participants planed to implement additional best practices in the future, and if so, what gains were expected as a result of implementing such additional best practices. Overall, there were no specific plans to implement any additional best practices; however, most institution believed that they would continue to monitor existing practices and implement new practices if necessary. For example, one institution stated that there were gaps between the suggested best practices of Sarbanes-Oxley and where the institution is currently; and, that this institution will continue to monitor and close those gaps. Another institution stated that there are no plans at the moment to implement additional best practices, but that the institution implementing a system-wide compliance program that will, among other things refine and implement more on-line training. Yet another institution stated that it had hit a good watermark as to what they are doing regarding Sarbanes-Oxley. The respondent stated that Sarbanes-Oxley may have been an over-reaction as to how far an institution needs to go, for non-profits there is no real requirement, so a let's wait and see what happens stance was taken, and see what will need to be done.

One institution did respond yes, there will be additional action taken, that it was establishing a centralized policy web-site, and now moving into the Federal Sentencing Guidelines, and would do so as resources permit. The respondent stated that policies were old and inefficient, and that the entire university will benefit from implementation of a centralized policy web-site.

Question 8 – For institutions that have not implemented any of the best practices of Sarbanes-Oxley, why do you think the decision was made not to do so?

Finally, due to the fact that there were no participants that responded that they did nothing regarding implementation of the best practices of Sarbanes-Oxley, one additional question was added. The participants were asked that, for those institutions that have not implemented any of the best practices of Sarbanes-Oxley, why do you (the participant) believe they chose not to do so? Once again, the responses varied. It was one respondent's belief that some general counsel take the position that nothing will be done until something has to be done (usually by private institutions) or until it is totally clear as to what has to be done. Also, some smaller schools do not have general counsel. Another respondent stated that although they would be surprised if there were any institutions that did nothing regarding implementing best practices of Sarbanes-Oxley, there may be some institutions, such as public institutions that believe there are sufficient state laws and other regulation. Yet another institution stated that perhaps some institutions are not sophisticated enough; some do not have the staff to do it and feel that normal auditing processes address the kind of financial, operational, and compliance risk.

One respondent stated that higher education is different in terms of decentralization of management, and from the faculty side, independence. There is a sense of independence in higher education that is inconsistent with oversight, so it is hard to overcome that sense (the respondent was referring to academic freedom).

Interestingly, one respondent stated that there are probably not many institutions that come to a singular decision point where the institution decides it is not going to do anything. The respondent stated that there may be many institutions that have read the materials, and reviewed things and took a wait and see attitude or took an attitude that the provisions that provide checks and balances are already sufficient in their institutions; therefore, they don’t need to go out and do more until the law becomes more explicitly applicable to them (the institution).

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Attachment A

Section	Sarbanes-Oxley Act of 2002	NACUBO recommendations
Title I	**Public Company Accounting Oversight Board**	***Not applicable***
Title II	**Auditor Independence**	
201	Public accounting firms are prohibited from performing these nonaudit services to financial statement audit clients: (1) Bookkeeping or other services related to the accounting records or financial statements; (2) Financial system design and implementation; (3) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (4) Actuarial services; (5) Internal auditing outsourcing services; (6) Management or human resource functions; (7) Broker or dealer, investment adviser, or investment banking services; (8) Legal services and expert services unrelated to the audit; (9) Any other service the Accounting Oversight Board determines, by regulation, is impermissible. A registered public accounting firm may engage in any other service, including tax services for an audit client, but *only if the Audit Committee approves the activity in advance.*	Institutions should prohibit their independent auditors from providing the nonaudit services prohibited by the Act unless extenuating circumstances exist and the audit committee approves the work in advance.
202	The audit committee must pre-approve all services provided by the auditor.	Institutions should require pre-approval by the audit committee for all prohibited, nonaudit services performed by the independent auditor.
203	The lead (or coordinating) audit partner and the reviewing audit partner of the public accounting firm must rotate off the audit every five years.	Institutions should require a rotation of the lead partner every seven years with a timeout of two years.
204	The public accounting firm must report to the audit committee: (1) All critical accounting policies and practices used by the client that have been discussed with management; (2) All alternative treatments of financial information, ramifications of such use, and the treatment preferred by the public accounting firm; (3) Other material written communication between the public accounting firm and management, such as the management letter or schedule of unadjusted differences.	Audit committee oversight is critical to ensure the independence of the audit decisions. The audit engagement letter should be addressed to the audit committee rather than internal management.
205	Conforming amendments to the SEC Act of 1934.	*Not applicable*
206	The public accounting firm cannot have employed the CEO, controller, CFO, chief accounting officer, or any person in an equivalent position, during the one-year	Institutions should carefully consider the benefits of employing a CFO or controller who has worked for the auditing firm within the last year and consider how the

	period preceding the audit.	position may relate to the institution's external audit. To forego the one-year waiting period, institutions should document the benefits and risks and seek board approval.
207	The GAO will do a study on the potential effects of mandatory rotation of public accounting firms.	The current emphasis is on rotation of audit partners (section 203) rather than rotation of firms. The audit committee should annually evaluate the performance of the external auditor. In addition, the committee should consider periodically recompeting the selection of the external audit firm.
208 - 209	SEC final authority for Section 10A and considerations by appropriate State regulatory authorities.	*Not applicable*
Title III	**Corporate Responsibility**	
301	(1) The Commission may prohibit the listing of securities of any firm found not to be in compliance with paragraphs 2 - 6 of this section. (2) The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by its company and the public accounting firm shall report directly to the audit committee. (3) Each member of the audit committee shall be a member of the Board of Directors and shall otherwise be independent. Independent is defined as not receiving, other than for service on the Board of Directors, any consulting, advisory, or other compensatory fee from the company, and not being an affiliated person of the company. (4) The audit committee shall establish procedures for: (a) The receipt, retention, and treatment of complaints received by the company regarding accounting, internal controls and auditing matters. (b) The confidential, anonymous submission by employees of questionable accounting or auditing matters. (5) The Audit Committee shall have the authority to engage independent counsel or other advisors, as necessary to carry out its duties. (6) Each company shall provide appropriate funding as determined by the Audit Committee for payment to the public accounting firm and any advisors employed by the Audit Committee under paragraph 5 above.	Institutions that do not have an audit committee should assign the audit function to another committee of the board of trustees, for example, the finance committee, or to the board as a whole. Institutions that assign audit committee functions to another committee should add "audit" to the committee title, for example, "Finance and Audit" committee. (1) Not applicable (2) Audit committee involvement is critical in the selection of auditors and the performance of the audit. (3) Independence of audit committee members is important. Management representatives should not be voting members of the committee. (4) A good practice would be the establishment of confidential complaint mechanisms for employees; for example, a hot line, anonymous e-mail/voicemail, secure complaint boxes, or extending existing employee grievance processes or communication channels to the institution's internal auditors. The audit committee should review the nature and disposition of reported matters. (5) The audit committee should have all necessary authority contained in its charter. (6) The charter should also specify that appropriate funding be available for the audit committee.
302	The CEO and CFO shall certify along with the annual audit report that: (1) They have reviewed the report; (2) Based on their knowledge, the report does not contain any untrue statement of a material fact or omission of a material fact that makes the statements misleading; (3) Based on their knowledge, the financial statements present in all material respects the financial condition	The provisions of the Act extend the current audit representation letter responsibilities. If institutions publicly disclose financial statements, they should consider these assertions. However, be warned that assertion 4 includes new and complex affirmations on the adequacy of internal controls over both financial reporting and financial disclosures. The degree of decentralization of financial operations is an important consideration for higher education. Business units' responsibility for financial reporting should be clearly

	and results of operations; (4) They are responsible for establishing and maintaining internal controls, ensuring that material information relating to the company and its consolidated subsidiaries is made known to officers and others within those entities; have evaluated the effectiveness of internal controls within 90 days prior to the report; and have presented their conclusions about the effectiveness of their internal controls based on their evaluation as of that date; (5) They have disclosed to the auditors and the audit committee all significant deficiencies and material weaknesses in the internal controls that could adversely affect the company's ability to record, process, summarize, and report financial data; (6) They have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions. Reincorporating outside of the United States does not lessen the requirements of Section 302.	defined, including policies for those activities. Institutions that are decentralized should consider implementing "sub-certification" requirements from financial leaders responsible for the financial results of units, departments, or schools. The sub-certification provides assurance on the underlying numbers and controls. Institutions should start documenting their financial reporting process; and identifying and evaluating the adequacy of controls over financial reporting and other financial disclosures. The audit committee should consider periodic inquiries of financial executives on the adequacy of controls.
303	It is unlawful for any officer or director of a company to take an action to fraudulently influence, coerce, manipulate, or mislead an auditor engaged in the performance of an audit for the purpose of rendering the financial statements materially misleading.	This should be addressed in the institution's code of conduct/code of ethics.
304	If an accounting restatement is necessary due to misconduct, the CEO and CFO shall reimburse the company for any bonus or other incentive or equity-based compensation received by that person during the 12-month period following the issuance of the financial statements, as well as reimburse the company for any profits realized from the sale of securities of the company during that same 12-month period.	*Not applicable*. However, the audit committee may want to review compensation arrangements for the CEO and CFO. Incentives related to financial results should be disclosed to the audit committee.
305	The SEC may issue an order to prohibit, conditionally or unconditionally, permanently or temporarily, any person who has violated section 10(b) of the 1934 Act from acting as an officer or director of a company if the SEC has found that such person is unfit.	*Not applicable*. However, institutions should consider any SEC action in connection with hiring officers and nominating trustees; and ensure that employment contracts of senior officers allow removal for financial impropriety.
306 - 308	Concerns sales of stock, fair funds for investors and attorneys practicing before the SEC.	*Not applicable*
Title IV	**Enhanced Financial Disclosures**	
401	SEC shall study off-balance sheet disclosures to determine their extent and whether GAAP results reflect the economics of such transactions.	Higher education should follow current and appropriate accounting standard guidance (i.e. FASB, GASB).
402	In general, it shall be unlawful for a company to extend personal loans to any director or executive officer.	The audit committee should be aware of and review policies on personal loans and understand that housing assistance included as part of compensation is not a personal loan.
403	Directors, officers, and 10%+ owners must report designated equity security transactions by the end of the	The audit committee should be aware of and review policies on ownership interests in related ventures or start-ups.

	second business day following the day the transaction was executed.	Existing conflict of interest policies can be leveraged and should be reviewed with the audit committee.
404	Each annual report shall contain an internal control report, which: (1) States the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and (2) Contains an assessment, as of the end of the fiscal year, of the effectiveness of the internal control structure and procedures of the company for financial reporting. The public accounting firm shall attest to and report on the internal control assessment made by management.	Identifying, designing, and maintaining controls and procedures that safeguard assets and minimize risk is sound business practice. A good business practice would be to start planning how an internal control assessment might be conducted. A few institutions have started doing risk assessments and documenting key financial processes. The audit committee should consider independence issues if contemplating using the external auditor for this review function. For reference, institutions can obtain a copy of the Committee of Sponsoring Organizations (COSO) model of an internal control framework. The COSO model is considered the most widely accepted model for controls. Institutions with internal audit departments should consider using them to periodically report on internal controls to the audit committee in addition to reporting to management. These activities should be coordinated with the risk assessment and internal control initiatives described above. The results of the internal control assessment should be tested to ensure compliance. A positive assertion on controls would require a large sustained effort and would require the external auditor to perform an attestation on internal controls, which would be expensive and time consuming. NACUBO does not recommend external auditor attestation or audit of internal controls. An alternative would be for management to provide the assertions and testing without the external audit attestation. NACUBO encourages institutions to take this topic seriously and start planning how an internal control assessment might be conducted. NACUBO will monitor the actions of institutions and communicate discoveries. At this point NACUBO and the APC are not aware of any institutions that have committed to this positive assertion on controls.
405	Sections 401, 402, and 404 do not apply to any investment company registered under section 8 of the Investment Company Act of 1940.	*Not applicable*
406	Requires each company to disclose whether it has adopted a code of ethics for its senior financial officers and the contents of the code of ethics.	A best practice is the adoption of a code of ethics for senior financial officers. Subsequently, the audit committee should review the adequacy of the code and periodically review how compliance is assured.
407	Companies are required to disclose whether at least one member of the audit committee is a "financial expert." The final rule also provides a definition of a financial expert. In the final rule, recognition was given that an audit committee financial expert can acquire the requisite attributes of an expert in many different ways and that experience, in addition to education, is an important consideration.	A best practice would be the inclusion of at least one financial expert on the audit committee. Institutions should consider the following in defining financial expertise: • familiarity with estimates, accruals, and reserves relevant to higher education • longevity and experience with a given institution can be considered “other relevant experience”

		Colleges and universities should also consider rotating the financial expert and begin planning for the process and cost of recruiting, training, and retaining financial expertise. The recruitment and retention of a financial expert by public institutions might be limited when alumni or elected officials appoint the board.
408 - 409	Addresses enhanced and real time disclosure by issuers of securities.	*Not applicable*
Title V	**Analyst Conflicts of Interest**	
501	Treatment of security analysts by registered securities associations and national security exchanges.	*Not applicable*
Title VI	**Commission Resources and Authority**	
601 - 604	Appearance and practice before the SEC, funding, federal court authority and qualifications of brokers and dealers.	*Not applicable*
Title VII	**Studies and Reports**	
701 - 705	Concerns studies regarding accounting firms, credit rating agencies, violators, violations, investment banks, financial advisors, and enforcement of securities laws.	*Not applicable*
Title VIII	**Corporate and Criminal Fraud Accountability**	
801 - 807	Discusses securities fraud, penalties, statute of limitations, sentencing, and employee protection.	*Not applicable*, however regarding section 802, a good practice would be to ensure that documents and records sent or received in connection with the audit are retained for seven years.
Title IX	**White Collar Crime Penalty Enhancements**	
901 - 906	This section advances criminal penalties for fraudulent acts and the US Department of Justice jurisdiction of financial statement certification. The certification requirement under section 906 is separate from the requirement under section 302.	*Not applicable*
Title X	**Corporate Tax Returns**	
1001	The chief executive officer, per the “sense of the senate,” should sign the federal income tax return of a corporation.	Institutions should review the level of authority of signers on the various tax returns; a senior financial manager with financial accountability for the information presented on the tax return should sign the return.
Title XI	**Corporate Fraud Accountability**	
1001 - 1004	Discusses fines, consequences, and sentencing for individuals and issuers.	*Not applicable*
1005	Gives the SEC the authority to prohibit anyone convicted of securities fraud from being an officer or director of any publicly traded company.	Institutions should consider securities fraud convictions relevant in background checks for new employees.
1006 - 1007	Addresses criminal penalties under the SEC Act of 1934 and penalties for retaliation against informants.	*Not applicable*

Attachment B

Survey – Implementing the Based Practices on Sarbanes-Oxley in Institutions of Higher Education

Please complete the survey below. Those that wish to receive a copy of the results, please indicate your e-mail and the results will be e-mailed to you once the survey is completed and analyzed. ***Confidentially is of the utmost importance, and all information in this survey will remain confidential.***

Once the results of the survey are analyzed, a qualitative analysis of the data will be conducted. A sample of the institutions that responded will be randomly selected. Those institutions will be contacted and interviewed. A pre-arranged time will be set-up for the interview, which will be at the convenience of the interviewee, and a time limit of 1 hour for each interview will be established. No individual or institution will be named in the survey.

If you do not wish to be contacted for further participation, do not complete the information below. If yes, please complete the information below to be contacted by the investigator.

Name:___________________________________

Title:_____________________________________

Institution:_________________________________

Telephone Number:__________________________

e-mail Address:_____________________________

Objective: The objective of this set of questions is to determine familiarity with Sarbanes-Oxley and whether or not your institution implemented best practices of Sarbanes-Oxley as defined by the National Association of College and University Business Officers (2003) *The Sarbanes-Oxley Act of 2002: Recommendations for Higher Education*. NACUBO Advisory Report 2003-3, (November 20, 2003).

1. How familiar are you with Sarbanes Oxley?

   __ Not familiar at all   __Sufficiently familiar   __Very familiar

2. Has the Board of Trustees expressed interest to management in implementing some form of Sarbanes-Oxley?
   ___yes   ___no

Has your Senior Management Team (Cabinet) expressed interest in implementing some form of Sarbanes-Oxley?
___yes   ___no

Has there been any training at the Board Level regarding Sarbanes-Oxley?
___yes   ___no

Has there been any training at for Management Level regarding Sarbanes-Oxley?
___yes   ___no

3. Subsequent to the passage of the Sarbanes Oxley Act in 2002, did your institution modify or implement practices suggested or informed by the Sarbanes-Oxley Act?
   __Yes   __No

4. If your answer to 3 was yes, what practices were implemented or modified subsequent to the passage of Sarbanes-Oxley (choose all that apply)?

Practice	**How long practice has been in place** Prior to Sarbanes-Oxley enactment	After Sarbanes Oxley enactment	Implemented as a result of Sarbanes-Oxley? **Yes**	**No**
____ Public accounting firm that conducts your annual audit prohibited from performing non-audit services	______	______	_____	_____
____ Audit Committee has a charter	______	______	_____	_____

4. (continued)

Practice	Prior to Sarbanes-Oxley enactment	After Sarbanes Oxley enactment	Yes	No
____Audit Committee has at least one financial expert	______	______	_____	_____
____ Audit Committee pre-approves all services provided by the auditor	______	______	_____	_____
____ the lead audit partner rotates off the audit every seven years	______	______	_____	_____

Practice	**How long practice has been in place?** Prior to Sarbanes-Oxley enactment	After Sarbanes Oxley enactment	Implemented as a result of Sarbanes-Oxley? **Yes**	**No**
____ the audit engagement letter is addressed to the audit committee	______	______	_____	_____
____ Audit Committee evaluates performance of external auditor	______	______	_____	_____
____ Hotline established	______	______	_____	_____
____ Code of Conduct/Code of Ethics Implemented	______	______	_____	_____
____ Independent Audit Committee	______	______	_____	_____
____ Financial processes documented	______	______	_____	_____
____ CEO certifies annual audit report	______	______	_____	_____
____ CFO certifies annual audit report	______	______	_____	_____

Objective: The objective of this next set of questions is to determine the value your institution gained or hopes to gain as a result of implementing the best practices of Sarbanes-Oxley. Value is defined as: as a result of implementing the best practices of Sarbanes-Oxley, has your institution experienced stronger corporate governance, more oversight over the financial records of the institution, and more integrity in the financial information of the institution.

5. Do you believe implementing the best practices noted in 4 above, strengthened your institution's corporate governance?
__ yes __ no

6. Do you believe that the result of implementing the best practices of Sarbanes

	Oxley has added value in the following areas (check all that apply)? __ Obtaining Federal and other funding form various agencies __ Obtaining gifts from donors __ Attract students __ Increase reputation __ Recruited Trustees that are financially competent __ No value obtained __ Other (please explain)
7.	Have you quantified monetarily the value received from implementing the best practices of Sarbanes-Oxley? __ yes __ no
8.	If so, what is the quantified amount?
9.	Do you believe that implementation of the best practices of Sarbanes-Oxley has had a positive impact on Higher Education? __ yes __no
10.	If you answered yes to question 9, please describe how the implementation of best practices of Sarbanes-Oxley has affected higher education? Impact can be in the form of better governance in your organization, a heightened awareness of internal controls in your organization, or more efficiency in your financial processes as a result. Any other impact that you perceived as a result should also be listed.

11.	If you answered no to question 9, why? Utilize the same criteria as described in question 10 above.
12.	Do you believe Sarbanes-Oxley will affect higher education in the future? ___yes ___no Why or why not?

Objective: The objective of this next set of questions is to determine whether or not your institution's Board of Trustees have expressed interests or concerns regarding implementation of the best practices of Sarbanes-Oxley.

13.	Have any Board members resigned from the Board since the enactment of Sarbanes-Oxley (July 2, 2002)? ___yes ___no
14.	If your answer to question 13 was yes, did the Trustee provide a reason for resigning? ___yes ___no ___N/A
15.	If your answer to question 14 was yes, was it due to Sarbanes-Oxley? ___yes ___no ___N/A

16. If your answer to question 15 was yes, please check all that apply?

___New demands on Boards regarding fiduciary responsibilities
___Independence rules (Trustee cannot do business with the Institution)
___Trustee not financially inclined
___Trustee not considered a financial expert (as defined by Sarbanes-Oxley)
___Potential Conflicts of Interest with the Institution
___Do not want to sign the Institution's conflict of interest statement
___Personal reasons
___Other (please explain)
___None of the above

17. If your Institution has lost Trustees, have they been difficult to replace?
___yes ___no

18. If your answer to question 17 is yes, approximately how long has it taken to replace a Trustee?

___0 to 6 months
___7 to 12 months
___greater than 12 months
___were not able to replace

Other – Please list any other comments you wish to express

Thank you for taking the time to complete this survey.

Attachment C

The Effects of Implementing the Best Practices of Sarbanes-Oxley in Institutions of Higher Education – Institutions that have adopted the best practices

Introductory Protocol

To facilitate my note-taking, I would like to audio tape our conversation today. Please sign the release form. For your information, only researchers on the project will be privy to the tapes which will be eventually destroyed after they are transcribed. In addition, you must sign a form devised to meet our Institutional Research Board (IRB) requirements. Essentially, this document states that (1) all information will be held confidential, and (2) you participation is voluntary and you may stop at any time if you feel uncomfortable.

The interview is planned to last no longer than one hour.

Questions intended to determine whether on not the best practices were made after Sarbanes-Oxley was legislated in 2002.

1. When was the decision made to adopt the best practices of Sarbanes-Oxley?

2. Who made the decision?

General research question what were the expected gains surrounding the decision to adopt the best practices of Sarbanes-Oxley.

3. Why was the decision made to adopt the best practices of Sarbanes-Oxley?

4. What did the institution expect to gain from implementing the best practices of Sarbanes-Oxley?

Answers the question whether or not the institution realized any benefits from implementation.

5. Where those gains realized?

Probes:
Is the fact that you implemented the best practices of Sarbanes Oxley noted in the institution's grant proposals?
Are trustees more willing to sit on the institution's board?

Particularly for those institutions that have not implemented many best practices, do they plan to do so.

6. Do you plan on implementing best practices in the future?

Probes:
Why do you plan to implement best practices?
And, why have they waited?

7. What do you expect to gain from doing so?

Probes:
Increased donations?
Competitive edge in obtaining grant funding?
Stronger, more knowledgeable board members?
Nothing, merely the right thing to do?
Feel that legislation will force institutions to do so in the future?

Attachment D

The Effects of Implementing the Best Practices of Sarbanes-Oxley in Institutions of Higher Education – Institutions that have not adopted the best practices

Introductory Protocol

To facilitate my note-taking, I would like to audio tape our conversation today. Please sign the release form. For your information, only researchers on the project will be privy to the tapes which will be eventually destroyed after they are transcribed. In addition, you must sign a form devised to meet our Institutional Research Board (IRB) requirements. Essentially, this document states that (1) all information will be held confidential, and (2) you participation is voluntary and you may stop at any time if you feel uncomfortable.

The interview is planned to last no longer than one hour.

Questions intended to determine whether on not the best practices were made after Sarbanes-Oxley was legislated in 2002.

1. When was the decision made not to adopt the best practices of Sarbanes-Oxley?

2. Who made the decision?

General research question what were the expected gains surrounding the decision to adopt the best practices of Sarbanes-Oxley.

3. Why was the decision made to not adopt the best practices of Sarbanes-Oxley?

4. Do you plan on implementing any best practices in the future?

Answers the question whether or not the institution realized any benefits from implementation.

5. Why do you now believe there to be a benefit for implementing any of the best practices?

6. OR, why do you expect there to be no gain from doing so?

Probes:

Is the fact that you implemented the best practices of Sarbanes Oxley noted in the institution's grant proposals?

Are trustees more willing to sit on the institution's board?

Particularly for those institutions that have not implemented many best practices, do they plan to do so.

7. Do you plan on implementing best practices in the future?

Probes:

Why do you plan to implement best practices?

And, why have they waited?

8. What do you expect to gain from doing so?

Probes:

Increased donations?

Competitive edge in obtaining grant funding?

Stronger, more knowledgeable board members?

Nothing, merely the right thing to do?

Feel that legislation will force institutions to do so in the future?

Attachment E

In question one, “How familiar are you with Sarbanes-Oxley?” The respondent thought that “Not familiar at all, Sufficiently familiar, Very familiar” provided a clearer distention than “Not familiar at all, Somewhat familiar, Very familiar”.

A respondent suggested that question 13 “Has the Board of Trustees expressed interest in implementing some form of Sarbanes-Oxley?” be moved up to question two. The reasoning was that an institution cannot move ahead with implementing best practices of Sarbanes-Oxley if the Board does not express interest.

Two respondents thought that there were many items in question three that may have been implemented prior to the enactment of Sarbanes-Oxley, and that combing question three with question four would present a clearer picture:

If so, what practices have been implemented (choose all that apply)?

__ Public accounting firms prohibited from performing non-audit services
__ Audit Committee established
__ Audit Committee has a charter
__ Audit Committee has at least one financial expert
__ Audit Committee pre-approves all services provided by the auditor
__ the lead audit partner rotates off the audit every seven years
__ the audit engagement letter is addressed to the audit committee
__ Audit Committee evaluates performance of external auditor
__ Hotline established
__ Code of Conduct/Code of Ethics implemented
__Independent Audit Committee
__Audit Committee Charter
__ Financial processes documented
__ CEO and CFO certify annual audit report

And question four:
How long have the practices been in place?

__ Less than one year
__ One to five years
__ More than five years
__ Prior to July 2002

These questions were combined.

Finally, a respondent stated that there is no way General Counsel will ever be able to answer questions seven and eight “Have you quantified monetarily the value received from implementing the best practices of Sarbanes-Oxley?” and “If so, what is the quantified amount?” The respondent does not believe meaningful information will be derived from these questions. However, these questions are critical to the survey as it is important to know whether the “believe” any monetary value was quantified.

Overall the responses were positive, and should prove valuable in making the survey clearer in attempting to attain the necessary information to answer the research question.

Attachment F

Description of Qualitative Interview Responses

The interview protocol consisted of the following questions:

Question 1 – When was the decision made to adopt the best practices of Sarbanes-Oxley?

The first question asked to the participants was, when was the decision made to adopt the best practices of Sarbanes-Oxley? The responses ranged from almost immediately after the Act was enacted, to a few years ago (2007). Overall, 7 of the respondents have implemented the best practices after the enactment of Sarbanes-Oxley. The other two respondents implemented such practices, but did not like to characterize their implementation of these practices as a “decision” to implement best practices of Sarbanes-Oxley.

For example, one respondent stated that there was no real “decision” to implement the best practices, that is, there was no singular point in time when there was a decision made. The institution was aware of the changes in the law, and it was a process of evaluating what made sense in higher education, what practices the institution had in place, and what practices needed to improve. Upon further discussion, although a decision was not made to adopt the best practices of Sarbanes-Oxley, through the institution’s process of evaluating their processes, some of the best practices were adopted.

Another respondent stated that their institution had many of the practices in place before Sarbanes-Oxley was enacted because the State in which the institution resides has strong laws regarding audit as it applies to State entities.

Overall, all nine institutions had practices in place or implemented practices related to Sarbanes-Oxley. All institutions were aware of the Sarbanes-Oxley legislation, and none of the institutions stated that a decision was made not to implement any of the best practices.

Question 2 – Who made the decision to implement the best practices of Sarbanes-Oxley?

Question two inquired as to who made the decision to implement the best practices of Sarbanes-Oxley? Generally, the respondents stated that the Board made the decision, 4 institutions stated that the decision was made by the Audit Committee, and one institution stated that the Board Chairman made the decision. Four institutions stated that is was a joint decision between Management and the Board.

Question 3 – Why was the decision made to adopt the best practices of Sarbanes-Oxley?

The third question asked why the decision was made to implement the best practices of Sarbanes-Oxley. Overall, the respondents agreed that it was the right thing to do. Responses ranged from members of governance work in the for-profit environment day in and day out where Sarbanes-Oxley is a requirement, to policies were being updated and Sarbanes-Oxley was just one of the criteria utilized in updating the policies (2). One respondent felt that Sarbanes-Oxley might serve as the standard of fiduciary responsibility should an issue ever come up. Another respondent believed their institution would be ahead of the curve should any State or Federal regulation be enacted. Overall, based on the responses there was a general sense that, upon review of the Sarbanes-Oxley act, many of the practices would benefit institutions of higher education.

One respondent stated that it was the right thing to do; also that it was the trend in America at the time.

Question 4 – What did the institution expect to gain from implementing the best practices of Sarbanes-Oxley?

Question four probed into what the institution expected to gain from implementing the best practices of Sarbanes-Oxley. Once again the responses varied; however, the overall sense was that public perception mattered. For example, one respondent stated that they teach business; therefore, they should operate consistent with what they teach. Yet another institution stated that it would help improve governance and accountability. In addition it helps assure the Audit Committee that it is fulfilling its fiduciary responsibility. Two respondents felt that implementing the best practices of Sarbanes-Oxley would establish an ethical tone for the institution, and enhance the reputation of the institution among consumers of the institution, such as donors, employees, and state legislators as well. Two institutions did not expect any gains; but, that implementing the best practices of Sarbanes-Oxley was a result of decisions made regarding implementing practices as part of on-going business.

Question 5 – Where those gains realized?

When asked if those gains (as noted above) were realized, responses once again varied. Overall, respondents believed that there had been gains as a result of implementing the best practices of Sarbanes-Oxley. One respondent stated that overall, oversight of financials had been achieved, that a compliance program had been established, and that governance practices had been strengthened. Another respondent believed that gains were made in principal and reputation in the view of legislators, trustees, donors, and employees. Yet another respondent stated that implementing the best practices has been very useful for the President of the institution and other senior executives of the institution to use in public speaking and with legislators for budgets, and to maintain autonomy. In addition, the institution has been able to say they are accountable to the public who provide public funding and tuition dollars. Two respondents believed that it was a straight business decision as part of on-going business. One institution stated that it drove public discussion, and caused institutions to examine its processes and make changes, and that's good.

Overall, and as noted in the quantitative survey, no monetary gains were calculated. However, based on the qualitative survey responses, overall process improvements were made, which will enhance the institutions in terms of better transparency, accountability, and governance.

Question 6 – Do you plan on implementing best practices in the future?

Question 7 – What do you expect to gain from doing so?

The last two questions pertained to whether or not participants planed to implement additional best practices in the future, and if so, what gains were expected as a result of implementing such additional best practices. Overall, there were no specific plans to implement any additional best practices; however, most institution believed that they would continue to monitor existing practices and implement new practices if necessary. For example, one institution stated that there were gaps between the suggested best practices of Sarbanes-Oxley and where the institution is currently; and, that this institution will continue to monitor and close those gaps. Another institution stated that there are no plans at the moment to implement additional best practices, but that the institution implementing a system-wide compliance program that will, among other things refine and implement more on-line training. Yet another institution stated that it had hit a good watermark as to what they are doing regarding Sarbanes-Oxley. The respondent stated that Sarbanes-Oxley may have been an over-reaction as to how far an institution needs to go, for non-profits there is no real requirement, so a let's wait and see what happens stance was taken, and see what will need to be done.

One institution did respond yes, there will be additional action taken, that it was establishing a centralized policy web-site, and now moving into the Federal Sentencing Guidelines, and would do so as resources permit. The respondent stated that policies were old and inefficient, and that the entire university will benefit from implementation of a centralized policy web-site.

Question 8 – For institutions that have not implemented any of the best practices of Sarbanes-Oxley, why do you think the decision was made not to do so?

Finally, due to the fact that there were no participants that responded that they did nothing regarding implementation of the best practices of Sarbanes-Oxley, one additional question was added. The participants were asked that, for those institutions that have not implemented any of the best practices of Sarbanes-Oxley, why do you (the participant) believe they chose not to do so? Once again, the responses varied. It was one respondent's belief that some general counsel take the position that nothing will be done until something has to be done (usually by private institutions) or until it is totally clear as to what has to be done. Also, some smaller schools do not have general counsel. Another respondent stated that although they would be surprised if there were any institutions that did nothing regarding implementing best practices of Sarbanes-Oxley, there may be some institutions, such as public institutions that believe there are sufficient state laws and other regulation. Yet another institution stated that perhaps some institutions are not sophisticated enough; some do not have the staff to do it and feel that normal auditing processes address the kind of financial, operational, and compliance risk.

One respondent stated that higher education is different in terms of decentralization of management, and from the faculty side, independence. There is a sense of independence in higher education that is inconsistent with oversight, so it is hard to overcome that sense (the respondent was referring to academic freedom).

Interestingly, one respondent stated that there are probably not many institutions that come to a singular decision point where the institution decides it is not going to do anything. The respondent stated that there may be many institutions that have read the materials, and reviewed things and took a wait and see attitude or took an attitude that the provisions that provide checks and balances are already sufficient in their institutions; therefore, they don’t need to go out and do more until the law becomes more explicitly applicable to them (the institution).

Vita

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Prior to coming to Drexel University College of Medicine, Mr. Seaman was the Vice President for Internal Audit Services and Corporate Compliance Officer for Mercy Health System. Before joining Mercy, Mr. Seaman was the Associate Director of Internal Audit for the University of Pennsylvania.

He has spoken on Internal Audit and Compliance for groups such as the Institute of Internal Auditors, The Pennsylvania Institute of Certified Public Accounts, and the Pennsylvania Bar Institute. He has written numerous articles, including: *What Works Best, A private University takes flight after selectively implementing best practices form the U.S. Sarbanes-Oxley Act* published in The *Internal Auditor* (2006); *Dollarizing Audits, Compliance Know-How; Learning as We Go; Compliance a Step by Step Approach; and, Compliance – Next Steps.*

Mr. Seaman is a Certified Public Account, and Certified Internal Auditor, and a Certified Fraud Examiner. He received his MS in Organizational Dynamics from the University of Pennsylvania, his BS from Villanova University, and is a Six Sigma Green Belt.