

IS IT GOVERNMENT'S RESPONSIBILITY?

RETHINKING REGULATION, RISK, AND RESPONSIBILITY
IN STATE GOVERNMENT

The best government is that which governs least.

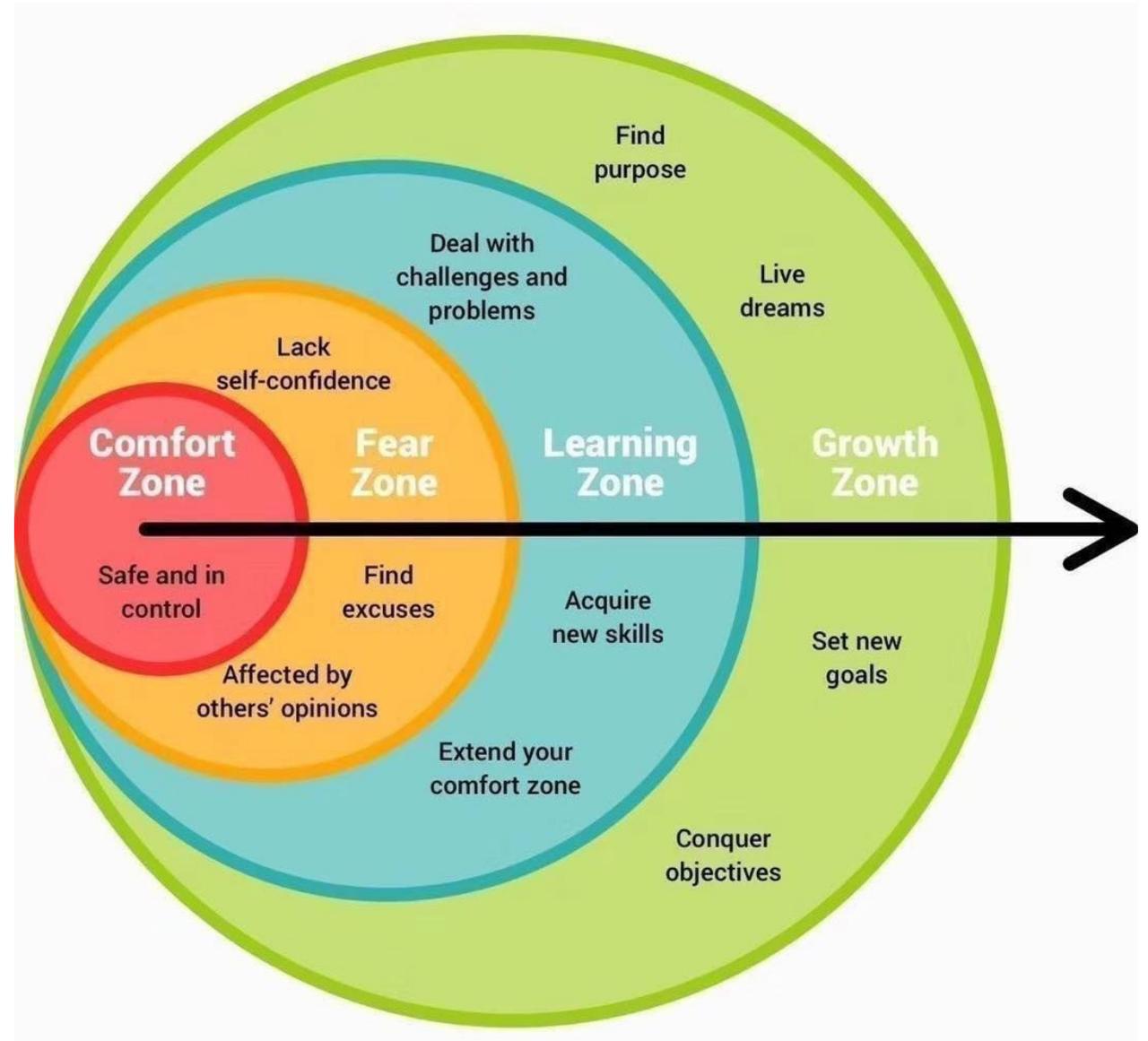
John L. O'Sullivan, The United States Magazine and Democratic Review, Vol. 1 (1837)

LEARNING OBJECTIVES

- Rethink options to manage risk
- Break out of comfort zone
- Hear different perspectives
- Enable you to:
 - Evaluate current and proposed management strategies
 - Propose statute, regulation, or administrative changes to the existing regulatory landscape

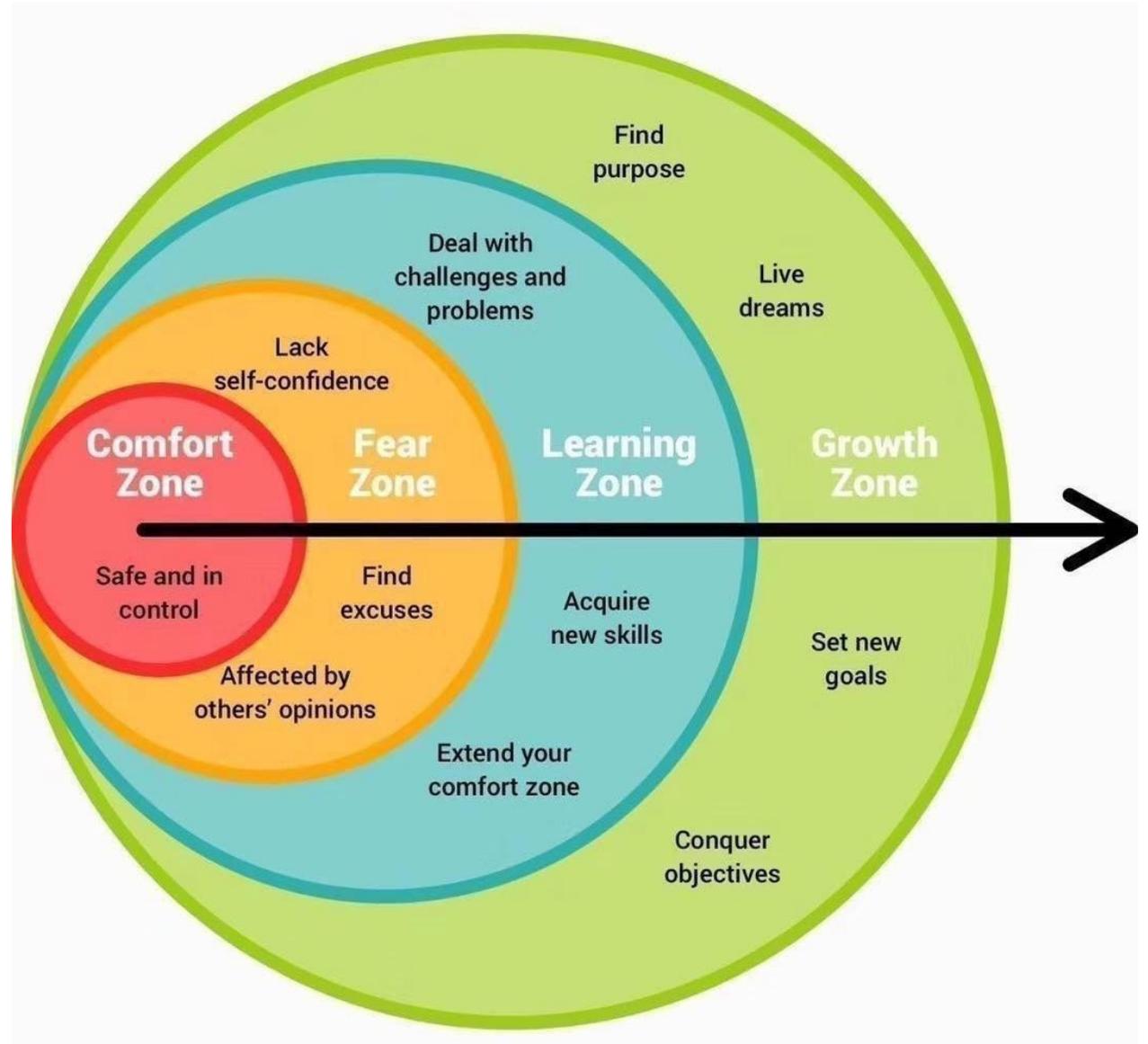
THIS EXERCISE WILL:

- prompt you to consider new ideas to solve problems
- expose you to fresh perspectives
- encourage deep dives into alternatives to regulation
- provide a framework for further discussion
- provide justification and reinforcement of management decisions



THIS EXERCISE WILL NOT:

- tell you how to solve the problem
- make you feel comfortable
- force you to change



WHAT IS THE ROLE OF GOVERNMENT?

- Form a more perfect union
- Establish justice
- Insure domestic tranquility
- Provide for the common defense
- Promote the general welfare
- Secure the blessings of liberty
- Secure and transmit to succeeding generations our heritage of political, civil, and religious liberty within the union of states

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**Preamble to the Constitution
of the United States of
America**

**Preamble to the Alaska
Constitution**

SO, WHY DO WE DO WHAT WE DO?

- Limit risk before it happens
- Provide remedy & redress of wrongs
- Gather, disseminate, and analyze data
- Ensure public process
- Create a revenue stream to pay for services
- Ensure transparency
- Provide public services
- Create stability and maintain order
- Set forth common boundaries, rights, and systems for governance
- Other reasons?

IS IT *REALLY* GOVERNMENT'S RESPONSIBILITY?

Is it a **proper activity** of government?

Does it **duplicate work** performed in the private sector?

Does it **require a monopoly**, or can multiple entities do it?

Is it **mandated by the federal government**?

For the purpose of this exercise, include any activity performed by your agency.

IS IT *REALLY* GOVERNMENT'S RESPONSIBILITY?

Or, do we ask government to perform our activity because:

We have always done it that way?

We can't think of another way to do it?

We feel ownership over the activity?

We don't have the resources to do explore options?

We don't have the resources to do manage the change?

Statutory change is too volatile and cumbersome?

Stakeholders want us to do it / no alternatives?

The public is complacent?

Other legitimate reasons, weak excuses, unexposed biases?

ARE WE DOING IT WELL?

Is the way we perform our activity:

The most { **effective**
cost-efficient
time-efficient
customer-friendly
inclusive } way to do it?

RIGHT-TOUCH REGULATION

**A RISK-MANAGEMENT APPROACH TO EVALUATING
REGULATORY ACTIVITY**

Time to use your workbook!

SECTION A: IDENTIFY THE PROBLEMS

The following bad things could happen when this activity is performed:

- 1.
- 2.
- 3.
- 4.
- 5.

SECTION B: CREATE A *HAZARD PROFILE*

What are the inherent (intrinsic) hazards present when the problem occurs?

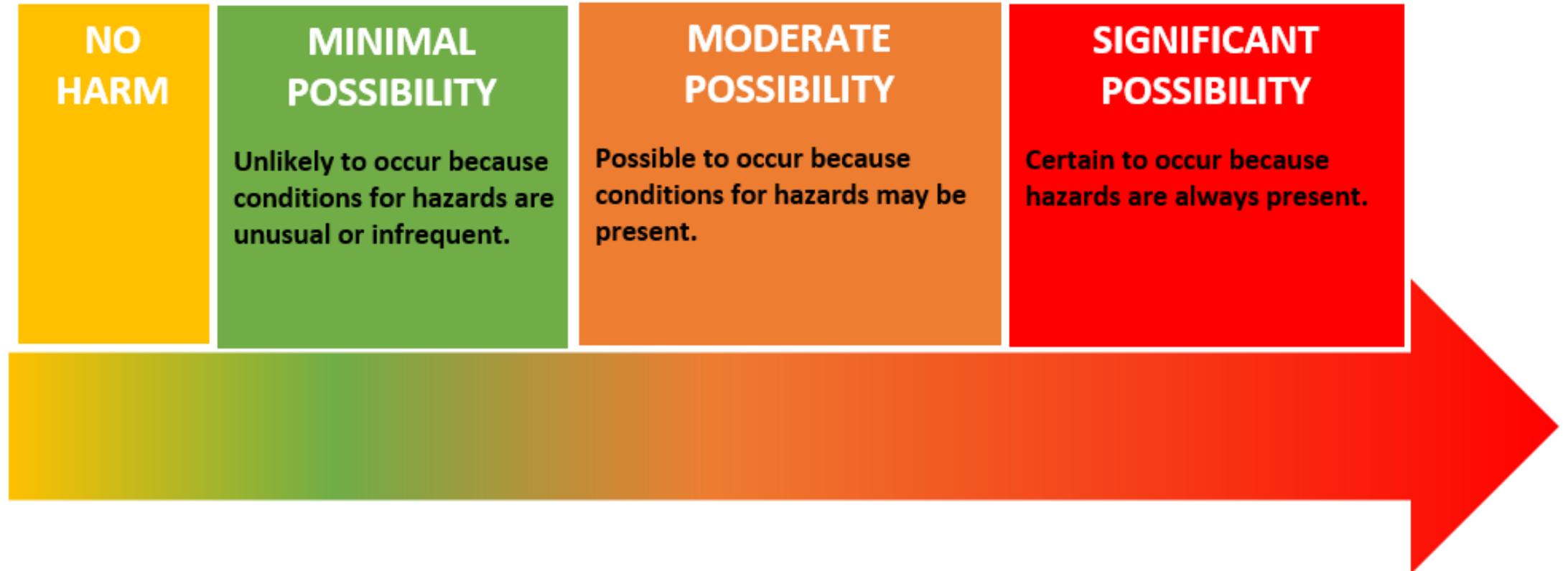
- Complexity
- Context
- Agency

What are the external (extrinsic) hazards present when the problem occurs?

- Scale
- Perception
- Impact of regulation
- Unintended consequences

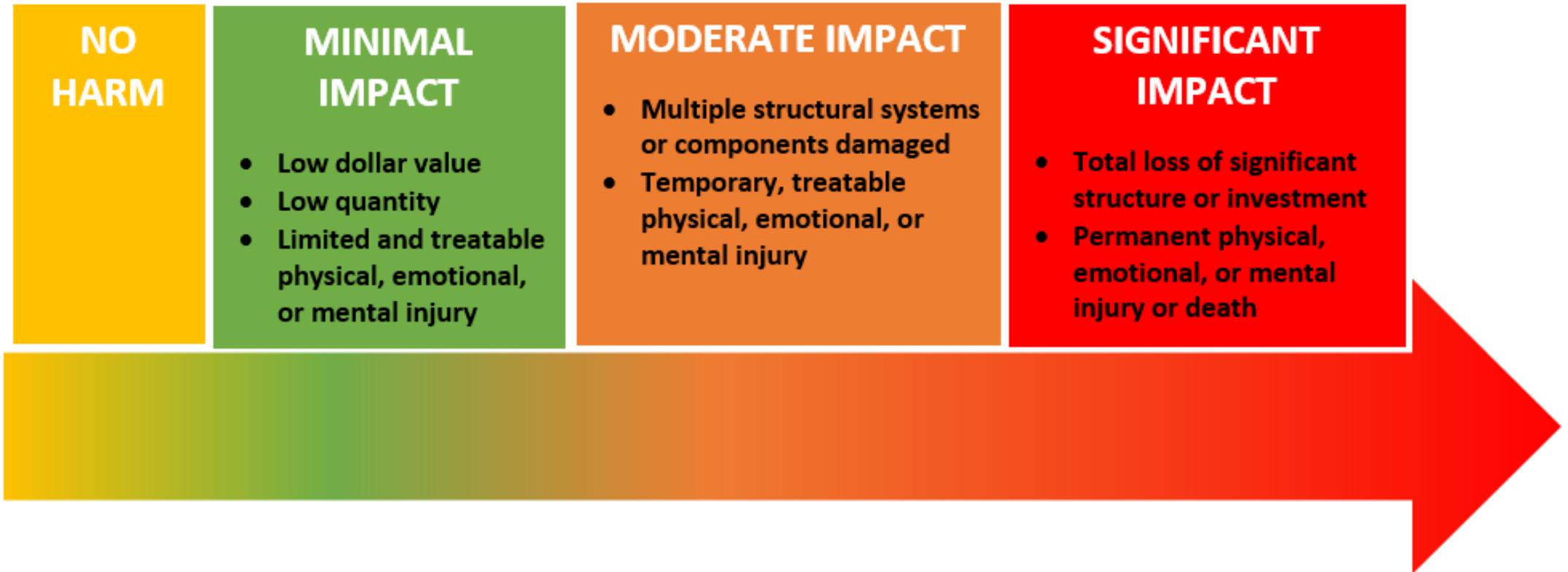
SECTION C: HARM POSSIBILITY

What is the *possibility* for the hazard to lead to creation of a harm?



SECTION D: HARM SIGNIFICANCE

If a harm occurs, what is its significance?



SECTION D: HARM RATINGS

Harm Possibility + Harm Significance = Total Harm Rating

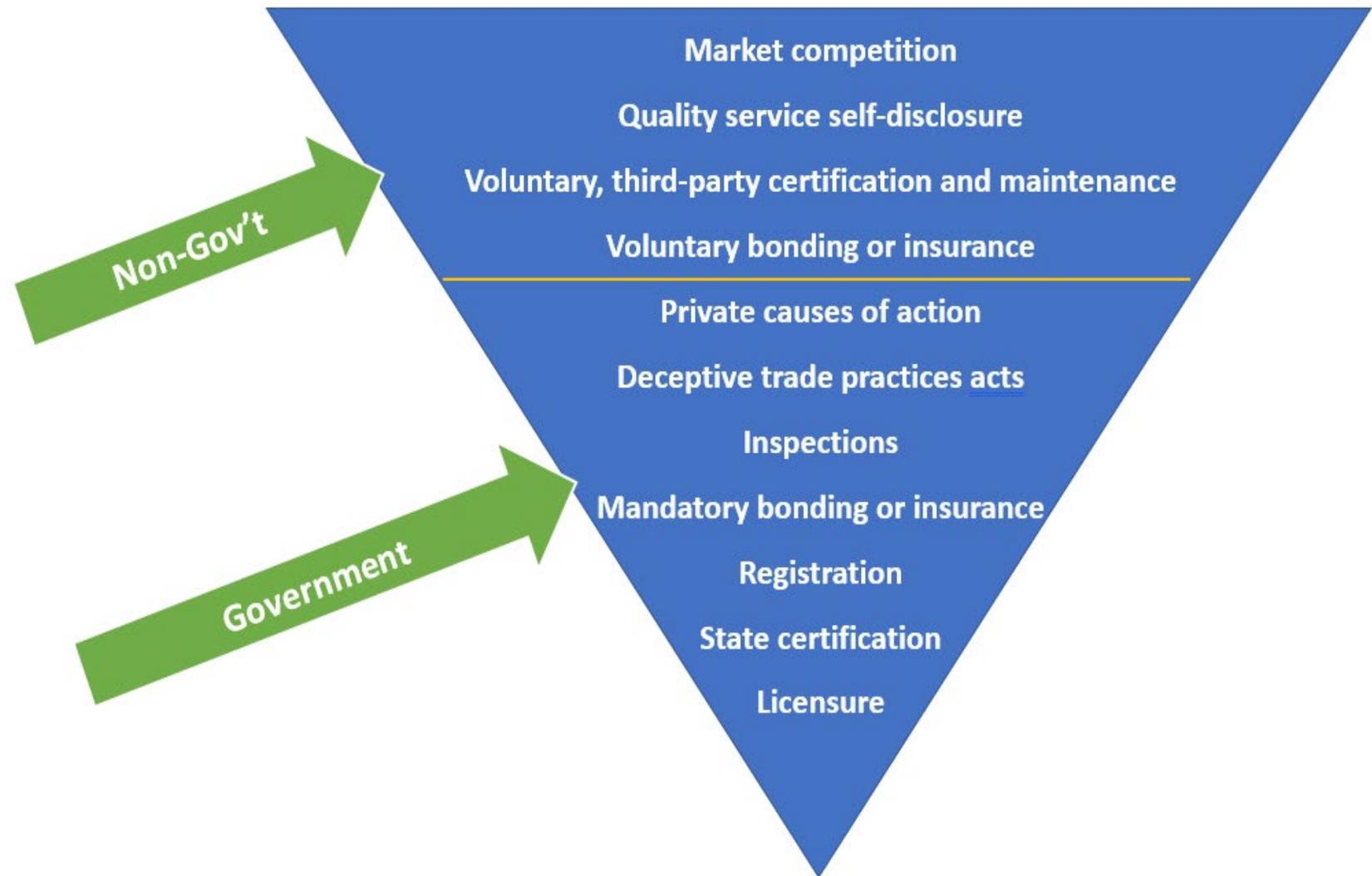
There is no scientific “high” or “low” harm rating for any particular regulated program or activity.

Compare your score with others:

- Did you have similar ratings?
- If not, what data is missing?
- What opinions or biases exist?
- Note any observations and make appropriate changes.

SECTIONS E & F: HAZARD MANAGEMENT

Examples from the world of professional licensure



SECTIONS E & F: HAZARD MANAGEMENT

The good, the bad, and the ugly: What is an acceptable level of risk? Oversight? Expense? Flexibility?

MARKET

- Yelp, Angie's List, Facebook
- Written warranty or money-back guarantee
- Better Business Bureau, Good Housekeeping Seal, national accreditation
- Employer/facility oversight
- Voluntary proof of insurance or bond

PALLIATIVE REGULATION

- Law requires proof of insurance or bonding
- Legal grounds for court action, may enjoin the state
- May be disciplined for violations

PREVENTATIVE REGULATION

- Must appear on an approved state list
- Periodic safety or compliance reviews by state agency
- Must meet state criteria



SECTIONS G & H: HAZARD MANAGEMENT

The good, the bad, and the ugly: What is an acceptable level of risk? Oversight? Expense? Flexibility?

Non-governmental regulation	Governmental regulation
Many options available	Fewer options available
Assumes an element of risk	Presumed safe
Less predictable, more agile	Predictable, slow to change
Less transparent, public process is optional	More transparent, public process is mandatory
Based on policy and practice	Based on statute and regulation
Accountable to the market/consumer	Accountable to state processes and agencies
Recourse through litigation, social media campaigns	Recourse through Administrative Procedures Act
May be unclear who is controlling quality, safety	Identity of the regulator is usually obvious
Cost depends on situation, funding can be fluid	Cost is set in state budget, statute, or regulation

SECTION I: MANAGEMENT RATINGS

Type of Management + Restrictiveness + Flexibility
= Total Management Rating

There is no scientific “high” or “low” management rating for any particular regulated program or activity.

Compare your score with others:

- Below your ratings, write down your observations and opinions.
- Are you surprised that a particular hazard has a higher number—and therefore a more regulatory management response—than others?
- Reconsider any changes.

SECTION J: NEXT STEPS

What are the next steps to adjust the climate of regulation of the profession you are reviewing?

Compare your score with others:

- Review the documentation you have created in the previous exercises.
- What changes are needed to implement new management strategies?
- What are current inhibitors to improvement in management of relevant hazards?
- Reconsider any changes.
- Create a written, time-bound plan to accomplish next steps

THANK YOU!

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