

**Ethics Office
FSGO Compliance Review
Check List**

This checklist enumerates the components of an “effective program to prevent and detect violations” as proscribed by US Federal Sentencing Guidelines for Organizations (FSGO).

It is intended as a “self-assessment” tool for Ethics and Compliance Officers (ECO) interested in evaluating their own organization’s practices as compared to “commonly accepted” or “best” practices.

It is included here as an example of one approach to assessing perceived FSGO compliance as part of creating a broader understanding of the US Federal mandates facing an organization and how they currently work towards meeting those mandates.

The recommended process is for the ECO to complete the checklist and indicate where the LRN reviewers might find supporting evidence to substantiate each response.

LRN would then independently validate the responses, using the completed Check List and supporting collateral. This results in two valuable outcomes:

1. The process forces the ECO to engage in some level of introspection regarding Federal compliance
2. The process provides the ECO with objective feedback that both “validates” where appropriate and identifies shortcomings in the internal FSGOP compliance mechanisms, where they might exist.

For ease of use the general reference in FSGO to the function responsible for ethics and compliance operational oversight is abbreviated ECO (Ethics and Compliance Office) in the following check list. The person/office responsible for that function is abbreviated ECMO (Ethics and Compliance Manager).

FSGO Standard	Comments/ Reference to Supporting Evidence
<p>Compliance Standards and Procedures. The organization must have established compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal conduct. Has the organization clearly articulated its ethical standards and procedures to follow in order to meet those standards?</p> <p>§8B2.1 (b)(1)</p>	
1. Does your organization have a mission and/or vision a statement?	
2. Does your organization have a statement of core values/principles?	
3. Are the stated values/principles clearly defined (associated with specific behaviors versus simply named or stated)?	
4. Are the definitions of the stated values/principles unique to your organization (versus generic or dictionary definitions)?	
5. Was the values/principles statement developed by a committee or group (versus an individual) from within the organization?	
6. Was the values/principles statement approved by senior management?	
7. Was the values/principles statement approved by the Board of Directors (or equivalent)?	
8. Does your organization have a Code of Ethics?	
9. Does the Code include the organization’s mission, vision and values/principles?	
10. Does the Code include an introductory letter from the CEO or equivalent?	
11. Does the Code include a table of contents to facilitate ease of use?	
12. Does the Code include a purpose statement – why the organization opted to create the Code?	
13. Does the Code include instructions on how it is to be used?	
14. Does the Code include specific behavioral examples of how each value/principle applies to employee actions and decisions?	
15. Does the Code include references to specific company policies or procedures where more detailed information might be useful (e.g., financial policies, HR policies, employee handbook)?	
16. Does the Code include information on whom to contact if a person has questions – requires an interpretation of the Code?	
17. Does the Code include information on whom to contact if a person has observed or suspect’s misconduct?	
18. Does the Code include reassurances regarding the safety of asking questions to ensure proper conduct?	
19. Does the Code include reassurances regarding the safety of reporting misconduct?	
20. Does the Code include an ethical reasoning or decision making process – e.g., sample questions to test a decision?	

FSGO Standard	Comments/ Reference to Supporting Evidence
<p>High-level Personnel Responsible. The Board shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight with respect to program implementation and effectiveness. High level personnel shall ensure that the organization has an effective compliance and ethics program. Specific individual(s) within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures. Is there a clear distinction between the Board’s oversight role, assignment of overall management responsibility to a senior executive and the designation of individual(s) for day-to-day operational responsibility? In addition, has the individual with operational responsibility been given adequate resources, appropriate authority, and direct access to the Board?</p> <p>§8B2.1 (b)(2)</p>	
<p>21. Does your Board have an appropriate mechanism (e.g., EC Committee) to ensure it is knowledgeable re the content and operations of the EC function?</p>	
<p>22. Does your organization have a high level person designated to oversee the effectiveness of the EO program – and thru that program assure compliance with the appropriate standards?</p>	
<p>23. Does this oversight responsibility address EC process, content and effectiveness in meeting the ethics and compliance standards?</p>	
<p>24. Does the ECO function have appropriate resources to allow for successful implementation of the ECO program?</p>	
<p>25. Does the ECO have appropriate authority to allow for successful implementation of the ECO program?</p>	
<p>26. Does the ECO have ready access to senior management?</p>	
<p>27. Does the ECO have ready access to the CEO (or equivalent)?</p>	
<p>28. Does the ECO have ready access to the Board of Directors (or equivalent)?</p>	
<p>29. Is this person invited to review key executive decisions?</p>	
<p>30. Is this person invited to review key Board decisions?</p>	
<p>31. Does the organization have an EC coordinating committee – Human Resources – Legal – Finance/Audits, etc., to ensure uniformity of implementation</p>	
<p>Due Care in Assignments. The organization must have used due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in illegal activities or other conduct inconsistent with an effective compliance and ethics program. Does the organization exercise due care in the delegation of significant decision-making authority?</p> <p>§8B2.1 (b)(3)</p>	

FSGO Standard	Comments/ Reference to Supporting Evidence
32. Does your organization have a process for determining a person's general readiness/fitness to assume substantial discretionary authority?	
33. Does that process include some form of independent verification (e.g., background security check, verification of resume entries)?	
34. Does that process apply equally to situations where a person's discretionary authority is to be increased?	
35. Does your organization have effective processes to identify who is granted authority re interpretation of the Code	
36. Does your organization have effective processes to who is granted authority re discipline for violations of the Code	
<p>Communicate Standards and Procedures. The organization must take steps to communicate effectively its standards and procedures to all employees, officers and directors and, as appropriate, other agents. Specifically, are training programs conducted and other dissemination approaches used that effectively convey the organization's E&C standards and procedures relevant to each group?</p> <p>§8B2.1 (b)(4)</p>	
37. Does your organization ensure that every employee, officer, director and appropriate agent has received a copy of the organization's mission, vision and statement of values/principles?	
38. Does your organization ensure that every employee, officer, director and appropriate agent has received a copy of the organization's Code of Ethics?	
39. Has your organization provided existing employees, officers, directors and appropriate agents with training that includes the organization's mission, vision and stated values/principles?	
40. Has your organization provided existing employees, officers, directors and appropriate agents with training that includes the organization's Code of Ethics?	
41. Does your organization provide new employees, officers, directors and appropriate agents with an orientation that includes the organization's mission, vision and statement of values/principles?	
42. Does your organization provide new employees, officers, directors and appropriate agents with an orientation that includes the organization's Code of Ethics?	
43. Does your organization advise all new employees, officers, directors and appropriate agents with an orientation that includes regarding their responsibilities to abide by the Code of Ethics?	
44. Does your organization advise all new employees, officers, directors and appropriate agents with an orientation that includes regarding their responsibilities to seek guidance when they are uncertain of the ethics of a situation?	

FSGO Standard	Comments/ Reference to Supporting Evidence
45. Does your organization advise all new employees, officers, directors and appropriate agents with an orientation that includes regarding their responsibilities to report suspected or observed violations of the Code of Ethics?	
46. Does your organization advise all new employees, officers, directors and appropriate agents with an orientation that includes regarding the possible consequence of failing to report suspected or observed violations the Code of Ethics?	
47. Does your reporting process have provisions to allow for caller anonymity?	
48. Does your reporting process have provisions to clearly define the limits of confidentiality a caller can reasonably expect?	
49. Does your reporting process have provisions to clearly define the process used to conduct independent investigations including the role of the Ethics Office in the oversight of those investigations?	
50. Does your organization provide ethics awareness training for all employees, officers, directors and appropriate agents	
51. Does your organization updated and reissue ethics awareness training in a regular basis (e.g., annual, biennial)?	
52. Does your organization provide specialized ethics awareness for specific functions such as accounting, security, procurement, sales and marketing?	
53. Does your organization regularly communicate ethical standards and expectations to all vendors and suppliers?	
54. Is a signed agreement to abide by the stated ethics standards a routine aspect of all vendor/supplier contracts and/or agreements?	
55. Does your organization regularly provide information, articles, stories, explanations regarding ethics and ethical expectations to employees, officers, directors and appropriate agents (e.g., in a company newsletter, in-house magazine, emails, on the web-site)?	
56. Is ethics a regular topic of communication at routine staff meetings and briefings (e.g., as regular as discussions of productivity, quality, safety, etc.)?	
57. Is ethics regularly discussed when setting employee performance goals (e.g., as regular as discussions of productivity, quality, safety, etc.)?	
58. Is ethics regularly discussed when reviewing employee performance (e.g., as regular as discussions of productivity, quality, safety, etc.)?	
59. Does your organization advise all employees, officers, directors and appropriate agents regarding their responsibilities to seek guidance when they are uncertain of the ethics of a situation?	
60. Does your organization advise all employees, officers, directors and appropriate agents regarding their responsibilities to report suspected or observed violations of the Code of Ethics?	

FSGO Standard	Comments/ Reference to Supporting Evidence
61. Does your organization advise all employees, officers, directors and appropriate agents regarding the possible consequence of failing to abide by the Code of Ethics?	
62. Does your organization advise all employees, officers, directors and appropriate agents regarding the possible consequence of failing to report suspected or observed violations of the Code of Ethics?	
<p>Establish Monitoring and Auditing Systems. The organization must have taken reasonable steps to achieve compliance with its standards, e.g., by utilizing monitoring and auditing systems reasonably designed to detect criminal conduct by its employees and other agents. Do effective systems for monitoring and overseeing the actions and behavior of the organization and its employees exist within the organization? Do they provide adequate systems for upward communication of issues and concerns?</p> <p>§8B2.1 (b)(5)(A)</p>	
63. Does the ethics function in your organization regularly provide reports to senior management and/or the Board regarding its progress and efficiency as measured against established performance standards?	
64. Does the ethics function in your organization regularly provide reports to senior management and/or the Board regarding numbers/percentage of employee receiving the Code of Ethics	
65. Does the ethics function in your organization regularly provide reports to senior management and/or the Board regarding numbers/percentage of employee attending required ethics training	
66. Does the ethics function monitor (including the compiling of relevant data relating to) and regularly provide reports to senior management and/or the Board on the consistency of disciplinary responses to ethics violations across the organization?	
67. Does the ethics function monitor (including the compiling of relevant data relating to) and regularly provide reports to senior management and/or the Board the consistency of disciplinary responses to ethics violations between departments/functions?	
68. Does the ethics function monitor (including the compiling of relevant data relating to) and regularly provide reports to senior management and/or the Board the consistency of disciplinary responses to ethics violations between locations?	
69. Does the ethics function monitor (including the compiling of relevant data relating to) and regularly provide reports to senior management and/or the Board the consistency of disciplinary responses to ethics violations between hierarchical levels?	

FSGO Standard	Comments/ Reference to Supporting Evidence
70. Does the ethics function monitor (including the compiling of relevant data relating to) and regularly provide reports to senior management and/or the Board regarding the consistency of disciplinary responses to ethics violations between genders/ nationalities/ races, etc.?	
71. Does the ethics function monitor (including the compiling of relevant data relating to) and regularly provide reports to senior management and/or the Board regarding the consistency of how values are reflected in organizational decision-making (e.g., strategic decision that are consistent or inconsistent with the stated values)?	
72. Does the EC function in your organization compile data and regularly provide reports to senior management and/or the Board regarding the number/percent of employees, officers, directors and appropriate agents who have contacted the Ethics Office report suspected or observed misconduct?	
73. Does the ECs function in your organization compile data and regularly provide reports to senior management and/or the Board regarding the nature of the misconduct raised in incoming calls?	
74. Does the ECs function in your organization compile data and regularly provide reports to senior management and/or the Board regarding the disposition (resolution) of the ethics issues raised in incoming calls?	
75. Does the EC function in your organization compile data and regularly provide reports to senior management and/or the Board regarding disciplinary actions resulting from ethics issues raised in incoming calls?	
76. Does the ECs function monitor and regularly provide reports to senior management and/or the Board regarding the consequences to callers reporting suspected or observed misconduct – e.g., absence of retaliation and/or retribution	
77. Does the ethics function monitor and regularly provide reports to senior management and/or the Board regarding the perceptions of employees, officers, directors and appropriate agents regarding the effectiveness of the helpline/hotline function?	
78. Does the ethics function monitor and regularly provide reports to senior management and/or the Board regarding the perceptions of employees, officers, directors and appropriate agents regarding the safety of the helpline/hotline function?	
Preventing Recurrences. Te organization shall take reasonable steps to respond to and prevent further similar offenses upon detection of a violation	
79. Does the ethics function monitor and regularly provide reports to senior management and/or the Board regarding the organization’s efforts to identify and address the causes/motivations for observed misconduct?	

FSGO Standard	Comments/ Reference to Supporting Evidence
80. Does the ethics function monitor and regularly provide reports to senior management and/or the Board regarding the organization's effectiveness in reducing/removing the causes/motivations for observed misconduct?	
81. Does the organization seek to learn from the experiences of the ethics program and seek continuous improvement in the program's management?	
82. Are efforts to improve ethics program management regularly evaluated to determine their effectiveness?	
<p>Periodic Assessment. The organization shall evaluate periodically the effectiveness of its compliance and ethics program. Does the individual assigned overall responsibility judge and report on current program effectiveness at least annually? Is an objective evaluation carried out periodically?</p> <p>83. §8B2.1 (b)(5)(B)</p>	
84. Does the EC function in your organization compile data and regularly provide reports to senior management and/or the Board regarding the number/percent of employees, officers, directors and appropriate agents who have contacted the Ethics Office report suspected or observed misconduct?	
85. Does the ECs function in your organization compile data and regularly provide reports to senior management and/or the Board regarding the nature of the misconduct raised in incoming calls?	
86. Does the ECs function in your organization compile data and regularly provide reports to senior management and/or the Board regarding the disposition (resolution) of the ethics issues raised in incoming calls?	
87. Does the EC function in your organization compile data and regularly provide reports to senior management and/or the Board regarding disciplinary actions (including assessment of the consistency of such actions) resulting from ethics issues raised in incoming calls?	
88. Does the EC function monitor and regularly provide reports to senior management and/or the Board regarding the consequences to callers reporting suspected or observed misconduct – e.g., absence of retaliation and/or retribution	
89. Does the ethics function monitor and regularly provide reports to senior management and/or the Board regarding the perceptions of employees, officers, directors and appropriate agents regarding the effectiveness of the helpline/hotline function?	
90. Does the ethics function monitor and regularly provide reports to senior management and/or the Board regarding the perceptions of employees, officers, directors and appropriate agents regarding the safety of the helpline/hotline function?	
91. Does the ethics function monitor the consistency of disciplinary responses to ethics violations between hierarchical levels?	

FSGO Standard	Comments/ Reference to Supporting Evidence
92. Does the ethics function monitor the consistency of how values are reflected in organizational decision-making (e.g., strategic decisions that are consistent or inconsistent with the stated values)?	
<p>Reporting System including Hotline. The organization shall have and publicize a system for reporting or seeking guidance regarding potential or actual criminal conduct without fear of retaliation. Such a system may allow for anonymity or confidentiality.</p> <p>8B2.1 (b)(5)(C)</p>	
93. Does your organization publicize a “safe” place to call with questions regarding the Code of Ethics or to report observed or suspected misconduct?	
94. Is that resources available in all appropriate languages?	
95. Is that resource available at all hours?	
96. Does your organization routinely advise callers of the limits to which caller confidentiality can be guaranteed?	
97. Does your organization routinely advise callers of the option to anonymously seek guidance and/or report suspected or observed misconduct?	
98. Are investigations of known or suspected misconduct independently carried out – e.g., such that the investigator is not the aggrieved party or in any otherwise “conflicted” relationship?	
<p>Risk Assessment. The organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to reduce the risk of criminal conduct identified through this process.</p> <p>§8B2.1 (c)</p>	
99. Does this organization regularly engage in assessment to determine ethics program effectiveness?	
100. Does this organization routinely implement recommendations resulting from that assessment?	
101. Does this organization formally evaluate the impact of implementing recommendations from that assessment?	
102. Does the ethics function monitor the organization’s effectiveness in reducing/removing the causes/motivations for observed misconduct?	
103. Does the organization’s make an effort to learn from the experience of the ethics program and seek continuous improvements in the program’s management?	
104. Are efforts to improve ethics program management regularly evaluated to determine their effectiveness?	
<p>Self Reporting. The organization shall disclose significant ethical violations to its employees, regulators, shareholders ad the public</p>	
105. Does the ethics function have responsibility to identify and disclose significant ethical violations to the organization’s employees, regulators, shareholders and the public?	

FSGO Standard	Comments/ Reference to Supporting Evidence
<p>Other Considerations The organization ought to be aware of the considerations outlined in the McNulty Memo (which supersedes the Thomson Memo). These factors are typically not examined in detail during ECO assessment as they tend to apply <i>after a violation of law has been discovered</i> and are more legitimately the concern of Corporate Counsel acting in a specific legal capacity than those of the ECM. They are shown here to ensure that the organization is aware of them and has taken them in consideration.</p>	
<p>1. The nature and seriousness of the offense, including the risk of harm to the public, and applicable policies and priorities, if any, governing the prosecution of corporations for particular categories of crime</p>	1.
<p>2. The pervasiveness of wrongdoing within the corporation, including the complicity in, or condoning of, the wrongdoing by corporate management</p>	2.
<p>3. The corporation's history of similar conduct, including prior criminal, civil, and regulatory enforcement actions against it</p>	3.
<p>4. The corporation's timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the investigation of its agents</p>	
<p>5. The existence and adequacy of the corporation's pre-existing compliance program</p>	
<p>6. The corporation's remedial actions, including any efforts to implement an effective corporate compliance program or to improve an existing one, to replace responsible management, to discipline or terminate wrongdoers, to pay restitution, and to cooperate with the relevant government agencies;</p>	
<p>7. Collateral consequences, including disproportionate harm to shareholders, pension holders and employees not proven personally culpable and impact on the public arising from the prosecution</p>	
<p>8. The adequacy of the prosecution of individuals responsible for the corporation's malfeasance; and</p>	
<p>9. The adequacy of remedies such as civil or regulatory enforcement actions</p>	