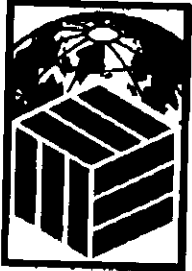


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If you experience any problems with this transmission, please call us at 202.737.2258.

Memo:

Although we submitted our comments yesterday,
we realized that we inadvertently included a copyright
stamp. Please disregard yesterday's version & accept
this one instead. We apologize for the inconvenience.

Sincerely,

Danielle Morris

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May 20, 2002

Advisory Group on Organizational Guidelines
c/o Office of Public Affairs
United States Sentencing Commission
Suite 2-500 South Lobby
One Columbus Circle, NE
Washington, DC 20002

Dear Advisory Group Member:

The Ethics Resource Center (ERC) is grateful for the public invitation to offer comment on the Federal Sentencing Guidelines for Organizations (FSGO). We echo the sentiment published recently by Judge Diana E. Murphy in the Iowa Law Review—the impact of these guidelines has certainly been profound for organizations throughout the United States, and we applaud the efforts of the Federal Sentencing Commission to revise this important document.

Given its definition of an “effective” program, the FSGO has been tremendously influential in shaping organizational ethics practices. Time has revealed that many organizations will comply with the standards as they understand them, but unfortunately, many of these standards create the components of an effective program but fail to implement them and integrate them in a way that yields the desired effectiveness. Furthermore, only infrequently are such efforts assessed so the organization can know how well the various components are working.

Clearly one of the outgrowths of the guidelines has been the establishment of many organizations and individuals with expertise in assisting organizations with compliance. The ERC has certainly participated in this effort, however, our organization pre-dates the FSGO, and our efforts extend beyond compliance to the establishment of values-based initiatives that can be applied in a global context. Given our background and expertise, we would like to offer several observations that we hope will inform you as you look to build on the FSGO for the future.

ERC Background

The ERC was instrumental in creating the first comprehensive corporate ethics program with the General Dynamics Corporation in 1985. We were the first reporters to the Defense Industry Initiative (DII) and were quick to recognize the influence of the General Dynamics program on the DII and subsequently on the 1991 FSGO. The ERC has continued as one of the premier providers of ethics and compliance advisory services to US corporations, multi-national and multi-lateral organizations, associations, governmental entities and non-US multi-nationals.

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Transparency International

Our mission is to be a leader and a catalyst in fostering ethical practices in individuals and institutions. Our vision is an ethical world.

The ERC has previously commented on FSGO matters. We had provided an earlier set of observations about specific elements of the FSGO in a memorandum to Judge Murphy dated May 30, 2001. This letter is in reference to three specific concerns not raised in the previous communication, namely:

- The strategies used to implement the components of an “effective program to prevent and detect violations” as outlined in the FSGO;
- The integration of the elements of the ethics and compliance program into the organizational climate/culture; and,
- How the effectiveness of that implementation and integration is assessed.

Modification to the FSGO

The ERC’s National Business Ethics Survey (NBES) has revealed several key findings relevant to the current efforts of the FSGO. Under a separate cover, we will be forwarding copies of this research to you, at the request of Advisory Group member Paul Fiorelli.

Perhaps most importantly, our research revealed that when organizations have the basic elements of a formal ethics program in place – written ethics standards, ethics training and a means to seek ethics advice (advice line or ethics office) – employees are:

- More likely to report misconduct they observe;
- More satisfied with their organization’s response to reported misconduct;
- More satisfied with their organization overall; and
- More likely to feel valued as an employee.

Clearly, these are the types of outcomes that the Federal Sentencing Commission hopes to achieve through its organizational guidelines. Nevertheless, our experience with several hundred organizations has also taught us that a range of implementation strategies exists among organizations that establish ethics programs.

The most effective strategies include at least seven components all of which taken together contribute to real and enduring change in an organization’s climate and culture. These seven strategies constitute a good faith effort where there can reasonably be a real expectation of change in organizational behavior. These strategies include:

1. Creating and communicating a set of standards, expectations, principles, values and/or procedures (as anticipated in the current FSGO).

2. Adopting formal systems for implementation, including high level oversight, care in the delegation of discretionary authority, monitoring, oversight, consistent enforcement and modification to the systems as experience is gained - as well as attention to how ethical conduct is measured and rewarded (also anticipated in the FSGO).
3. Creating mechanisms to tend to informal systems of the organization. Most notably the actions and behaviors of key leaders and implied priorities, standards and success criteria and the informal communications of what is expected and required for survival/success.
4. Training as to why this is important, how it applies to the individual employee and what employees are to do if they need guidance, observe misconduct, or believe an organizational system encourages unethical conduct (e.g. budgeting systems which encourage deception rather than absolute honesty).
5. Implementing comprehensive communications strategies which inform employees of the ethics initiative, its goals and resources, as well as their personal responsibilities.
6. Demonstrating both formal and informal commitment to ethics in the executive agenda and governance structures – such that it is eminently clear to key stakeholders that the leaders are committed to the stated standards and principles.
7. Applying organizational values and standards to critical events. The ultimate test of organizational commitment to the espoused ethical standards, and thus the degree to which the effort represents “good faith” is the reaction of the organization and its key leaders when faced with a critical event.

We cannot expect all organizations to implement all of these levels of strategy through mandate from the FSGO. However, it is the firm belief of the ERC that the ability of any organization to rise to these heights is predicated on the existence of two fundamental elements. It is our suggestion that these two elements be expected of organizations in any revision to the FSGO. They are:

1. Integration of ethics standards into all aspects of the organization.
2. Regular ethics program assessment to determine current effectiveness and areas for program improvement.

Recommendation

The presence of these two elements enables an organization to develop the perspective it needs to modify its culture. Both elements can be addressed through one addition to the current FSGO, namely a mandate that all organizations evaluate their programs according to several dimensions. It is our recommendation that the FSGO be amended to include a mandate that in order for a program to be deemed a good faith effort, it must include regular assessment and demonstrate improvement in the following areas:

- Employee recognition of company values and standards.
- Employee awareness of reporting mechanisms and supports.
- Employee perception of existing pressure to commit misconduct.
- Communication of how the standards and values are integrated into the daily decisions and actions of the organization, its management team and its employee body.
- Employee trust and confidence in the efficacy and safety of the reporting structures.

Conclusion

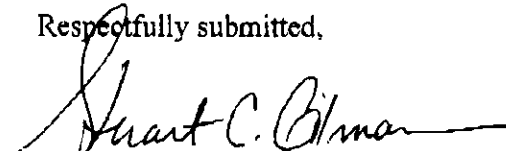
It has been our observation that the FSGO do have a real effect on the behavior of individuals and organizations. It is our opinion that this effect has been largely positive, resulting in numerous organizations attending to the issue of the ethics of their actions.

We further believe that the current language falls short because it narrowly defines the standards for an effective program to prevent and detect violations. It is not enough that the pieces are in place. There needs to be evidence of a good faith effort to ensure that those systems are effectively implemented, that the organization's behavior is consistent with the desired goals and that such behavior is yielding the desired outcomes.

To that end, we believe the panel reviewing the FSGO should consider amending the current language. Specifically, the revised FSGO should include details relating to the effective implementation and integration of the components of an effective program and should expand the references to audits and monitoring to address the assessment of the impact of those implementations and monitoring components similar to those described above.

Again, thank you for your invitation to offer comment in this important process. The ERC is fully committed to assisting the Federal Sentencing Commission as you revise these guidelines. It would be our great honor to provide further input to you at any time. Please do not hesitate to contact me with any questions you may have at 202-737-2258.

Respectfully submitted,



Stuart C. Gilman
President