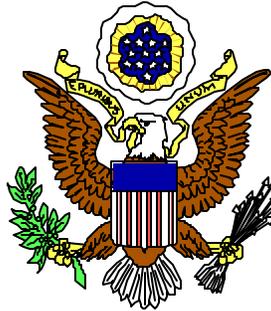


PROBATION OFFICERS ADVISORY GROUP to the United States Sentencing Commission

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October 4, 2002

Ms. Pam G. Montgomery
Director and Chief Counsel
Office of Education and Sentencing Practice
United States Sentencing Commission
One Columbus Circle, N.E.
Washington, D.C. 20002-8002

Dear Pam:

The Probation Officer's Advisory Group reviewed the request for additional public comment regarding organizational guidelines. POAG believes the Chapter Eight guidelines are working well at the present time, are easy to interpret, and offer few application problems to the field. That being said however, these guidelines appear to be geared to large organizations. The responses from several officers indicate that the "normal" organizational case is a small organization and sometimes already defunct. Therefore, many of the specific enhancements do not apply and they do not receive enough of a sanction. Perhaps, some changes to incorporate specific offense characteristics for small businesses (those with less than ten people) should be included in Chapter Eight.

Another comment submitted by POAG representatives, included a problem associated with U.S.S.G. § 8C2.5(c)(1)(B). It was felt that perhaps the Commission should look at the threshold requirement for prior civil adjudications. Some members believed that points should be assessed if the organization had one prior incident of similar misconduct. Currently, there is a floor of two or more separate instances of similar misconduct.

Comments from POAG members indicate a strong support for companies which have an effective detection/prevention program in place. Detention/prevention programs which foster "whistle blowers" without retribution is viewed as an effective deterrent.

Finally, POAG members noted that some of the problems associated with the organizational guidelines exist

post-sentencing. These cases can be very difficult for probation officers to supervise due to our lack of expertise in the variety of conduct committed by organizations. Furthermore, few remedies exist if the organization is found in violation, especially if the CEO has not been charged as an individual. There is little incentive for an organization to remain in compliance. During the term of supervision, if the company fails to meet its financial obligation, what is the penalty? Some courts appear to impose a contempt of court action against the individual who entered a plea on behalf of the company and others do not.

While not directly on point with the questions posed by Ad Hoc Organizational Guidelines Advisors, I hope these suggestions will assist the committee. Should you have any questions or require clarification of any issue, please do not hesitate to contact us. We appreciate the opportunity to participate with the Commission in this process.

Sincerely,

Cathy A. Battistelli
Chair