

ORGANIZATIONAL GUIDELINE SCENARIOS

1. The Defendant company, a multi-million dollar business, operated cargo ships that knowingly operated in U.S. waters without required equipment to separate oil and other waste from bilge water before being pumped into open waters. Company was charged with failure to maintain an accurate oil record book and unlawful discharge in violation of 33 U.S.C. § 1908(a)).

Is it necessary to calculate a fine range under the guidelines?

2. The Defendant company, a multi-million dollar business, was convicted of wire fraud (18 U.S.C. § 1343) resulting in \$10M in loss to 15 victims. The government notified the court that Defendant fully cooperated and accepted responsibility.

What is the offense level for purposes of calculating a fine range under the guidelines?

3. Defendant A has pleaded guilty to one count of money laundering in violation of 18 U.S.C. § 1956. Defendant A is a successful advertising agency that employs 200 people. The sole owner of the advertising agency (Owner) was approached by his neighbor (Neighbor) who stated that he needed "help cashing some checks." Neighbor proposed that he would write \$10,000 checks to Defendant A, and that Defendant A need not provide any advertising services. Instead, Neighbor asked Defendant A to return \$9,000 in cash to Neighbor and to keep the remainder for itself. Owner agreed, and this arrangement continued for several months, with Defendant A taking in over \$250,000 in checks from Neighbor, before Neighbor was arrested for being part of a criminal operation.

During the period in which Defendant A was involved in the scheme, it continued to conduct its other legitimate business. There is no other evidence of illegal activity in the company's past.

The current market value of Defendant A's assets is approximately \$3 million. The company's annual net income was approximately \$200,000.

Defendant A has cooperated with the investigation and Owner has written a statement accepting responsibility on behalf of the company.

The court has previously sentenced Owner to a prison term and a \$20,000 fine for this activity.

How would the company's guidelines be calculated in this case?

- 3A.** Assume the same facts as Fact Pattern 3, except Defendant A has pleaded guilty to 25 counts of money laundering (one for each check) and the crime occurred prior to November 1, 2015.

How will the guideline fine be calculated?

- 4.** Defendant B has pleaded guilty to one count of price-fixing in violation of 15 U.S.C. § 1. Defendant B is a successful automotive component manufacturer that employs 150 people. Defendant B also manufactures commercial lighting products, but the violation did not involve this aspect of the business.

During a three-year period, Defendant B and three other manufacturers conspired to fix prices for taillights and other automotive components sold to customers in the United States and elsewhere. Defendant B, through its Owner, regularly communicated with competitors to agree on product pricing and pricing structures designed to limit competition and maintain high prices. Records demonstrate that the total volume of commerce affected by the conspiracy and attributable to Defendant B over the three-year period was \$12 million in automotive components.

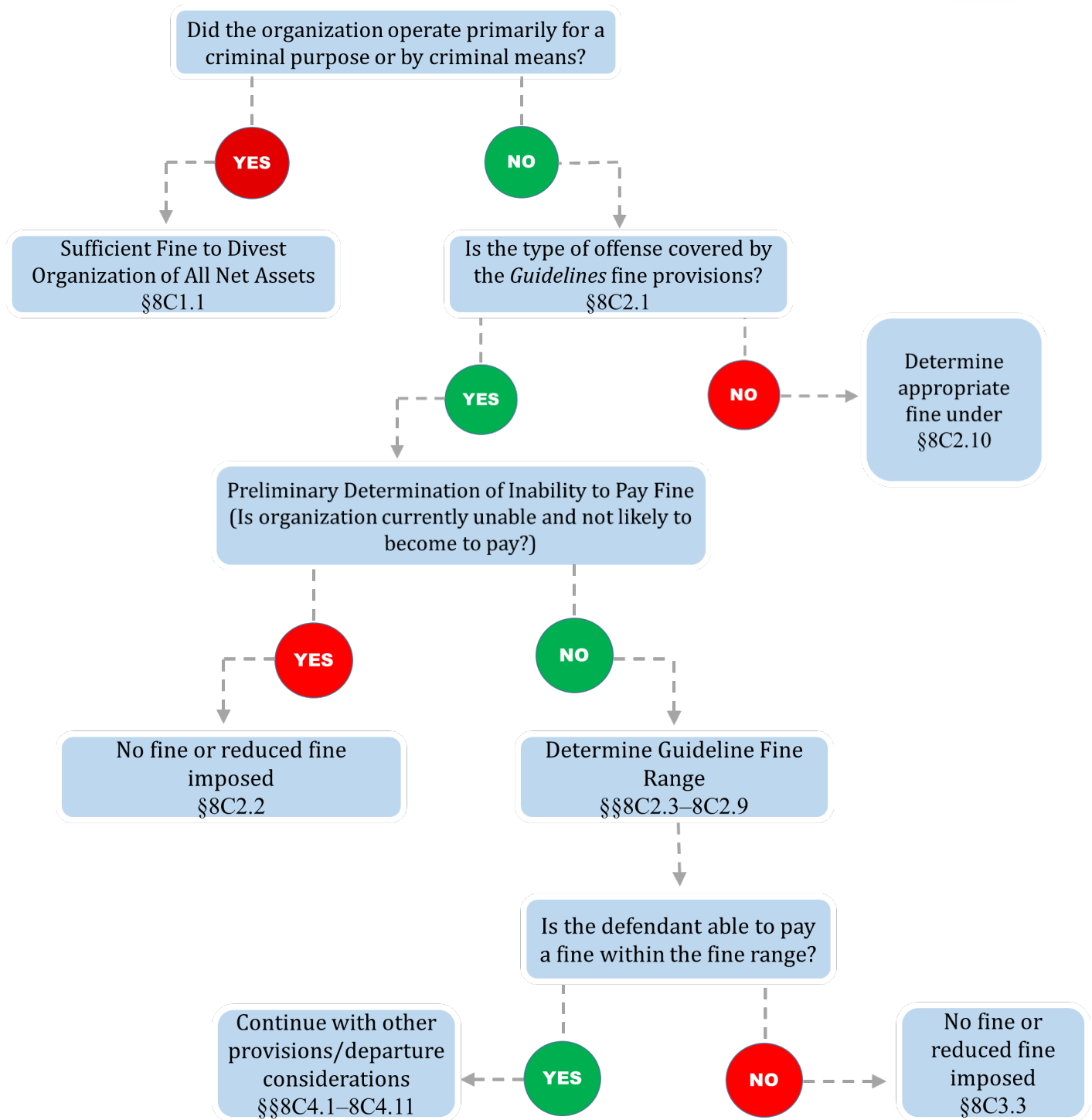
There is no evidence of other misconduct in the company's 15-year history. The current market value of the company's assets is approximately \$20 million. The company's annual net income is approximately \$1,750,000.

The company has cooperated with the investigation and the company's president has written a statement accepting responsibility on behalf of the company.

How would the company's guidelines be calculated in this case?

Organizational Guidelines

Determining the Fine



Organizational Worksheet A (Offense Level)

Defendant _____ Docket Number _____

Docket Number (Year-Sequence-Defendant No.) _____ - _____ - _____

Count Number(s) _____ U.S. Code Title & Section _____ : _____
 _____ : _____

Guidelines Manual Edition Used: 20 _____ (NOTE: Worksheets keyed to the Manual effective November 1, 2015)

Preliminary Determination of Inability to Pay Fine:

1. If it is readily ascertainable that the organization cannot and is not likely to become able (even on an installment schedule) to pay restitution required under §8B1.1, a determination of the guideline fine range is unnecessary (See §§8C2.2(a), 8C3.3(a)). In such a case, skip to Worksheet D, Item 1.
2. If it is readily ascertainable through a preliminary determination of the minimum guideline fine range that the organization cannot and is not likely to become able (even on an installment schedule) to pay such minimum guideline fine, a further determination of the guideline fine range is unnecessary (See §8C2.2(b)). In such a case, skip to Worksheet D, Item 1.

Instructions:

For each count of conviction (or stipulated offense listed at §8C2.1), complete a separate Worksheet A.

Exceptions:

1. Use only a single Worksheet A where the offense level for a group of closely related counts is based primarily on aggregate value or quantity (See §3D1.2(d)) or where a count of conspiracy, solicitation, or attempt is grouped with a substantive count that was the sole object of the conspiracy, solicitation, or attempt (See §3D1.2(a) and (b)).
2. For counts of conviction (or stipulated offenses) not listed at §8C2.1, skip to Worksheet D, Item 1 (See §8C2.10).

Offense Level (See §8C2.3).

Enter the applicable base offense level and any specific offense characteristics from Chapter Two and explain the bases for these determinations. Enter the sum, the adjusted offense level, in the box provided below. **Note: Chapter Three Parts A, B, C and E, do not apply to organizational defendants.**

| Guideline | Description | Level |
|-----------|-------------|-------|
| | | |
| | | |
| | | |

If this worksheet does not cover all counts of conviction or stipulated offenses listed at §8C2.1, complete Worksheet B. Otherwise, enter this sum on Worksheet C, Item 1.

Sum:
(Adjusted Offense Level)

Notes: _____

Check if the defendant is convicted of a single count. In such case, Worksheet B need not be completed.

Organizational Worksheet B

(Multiple Counts or Stipulation to Additional Offenses)

Defendant _____

Docket Number _____

Instructions:

Step 1: Determine if any of the counts group. (Note: All, some, or none of the counts may group. Some of the counts may have already been grouped in the application under Worksheet A, specifically, (1) counts grouped under §3D1.2(d), or (2) a count charging conspiracy, solicitation, or attempt that is grouped with the substantive count of conviction (See §3D1.2(a)). Explain the reasons for grouping:

Step 2: Using the box(es) provided below, for each group of closely related counts, enter the highest adjusted offense level from the various “A” Worksheets (Worksheet A, Item 1) that comprise the group (See §3D1.3). (Note: A “group” may consist of a single count that has not grouped with any other count. In those instances, the offense level for the group will be the adjusted offense level for the single count.)

Step 3: Enter the number of units to be assigned to each group (See §3D1.4) as follows:

- One unit (1) for the group of closely related counts with the highest offense level
- An additional unit (1) for each group that is equally serious or 1 to 4 levels less serious
- An additional half unit (1/2) for each group that is 5 to 8 levels less serious
- No increase in units for groups that are 9 or more levels less serious

1. Adjusted Offense Level for the First Group of Closely Related Counts

Count number(s): _____

_____(unit)

2. Adjusted Offense Level for the Second Group of Closely Related Counts

Count number(s): _____

_____(unit)

3. Adjusted Offense Level for the Third Group of Closely Related Counts

Count number(s): _____

_____(unit)

4. Adjusted Offense Level for the Fourth Group of Closely Related Counts

Count number(s): _____

_____(unit)

5. Adjusted Offense Level for the Fifth Group of Closely Related Counts

Count number(s): _____

_____(unit)

6. Total Units:

(Total units)

7. Increase in Offense Level Based on Total Units (See §3D1.4)

| | | | |
|-----------|--------------|--------------------|--------------|
| 1 unit: | no increase | 2½ - 3 units: | add 3 levels |
| 1½ units: | add 1 level | 3½ - 5 units: | add 4 levels |
| 2 units: | add 2 levels | More than 5 units: | add 5 levels |

8. Highest of the Adjusted Offense Levels from Items 1-5 Above

9. Combined Adjusted Offense Level (See §3D1.4)

Enter the sum of Items 7 and 8 here and on Worksheet C, Item 1.

Organizational Worksheet C (Base Fine, Culpability Score and Fine Range)

Defendant _____ Docket Number _____

1. Offense Level Total

If Worksheet B is required, enter the combined adjusted offense level from Worksheet B, Item 9. Otherwise, enter the sum (the adjusted offense level) from Worksheet A, Item 1.

2. Base Fine (See §8C2.4(d))

(a) Enter the amount from the Offense Level Fine Table (See §8C2.4(d)) corresponding to the offense level total in Item 1 above.

Note: For offenses committed prior to November 1, 2015, use the offense level fine table that was set forth in the version of §8C2.4(d) that was in effect on November 1, 2014 (See §8C2.4(e)(1)).

\$ _____

(b) Enter the pecuniary gain to the organization (See §8C2.4(a)(2)).

\$ _____

(c) Enter the pecuniary loss caused by the organization to the extent the loss was caused intentionally, knowingly, or recklessly (See §8C2.4(a)(3)).

Note: The following Chapter Two guidelines have special instructions regarding the determination of pecuniary loss: §§2B4.1, 2C1.1, 2C1.2, 2E5.1, 2E5.6, and 2R1.1.

\$ _____

(d) Enter the amount from Item (a), (b), or (c) above, whichever is greatest.

\$ _____

3. Culpability Score (See §8C2.5)

(a) Start with five points and apply (b) through (g) below. (See §8C2.5(a))

(b) Involvement/Tolerance (See §8C2.5(b))

Enter the specific subdivision and points applicable. If more than one subdivision is applicable, use the greatest. If no adjustment is applicable, enter "0".

\$ _____

(c) Prior History (See §8C2.5(c))

Enter the specific subdivision and points applicable. If both subdivisions are applicable, use the greater. If no adjustment is applicable, enter "0".

\$ _____

Enter the earliest date of relevant conduct for the instant offense: _____

Organizational Worksheet C, Page Two

Defendant _____

Docket Number _____

- (d) Violation of an Order (See §8C2.5(d))

Enter the specific subdivision and points applicable. If both subdivisions are applicable, use the greater. If no adjustment is applicable, enter "0".

§ _____

- (e) Obstruction of Justice (See §8C2.5(e))
If no adjustment is applicable, enter "0".

§ _____

- (f) Effective Program to Prevent and Detect Violations of Law (See §8C2.5(f))
If no adjustment is applicable, enter "0".

§ _____

- (g) Self-Reporting, Cooperation, and Acceptance of Responsibility (See §8C2.5(g))

Enter the specific subdivision and points applicable. If more than one subdivision is applicable, use the greatest. If no adjustment is applicable, enter "0".

§ _____

4. Total Culpability Score

Enter the total of Items 3(a) through 3(g). _____

5. Minimum and Maximum Multipliers (See §8C2.6)

Enter the minimum and the maximum multipliers from the table at §8C2.6 corresponding to the total culpability score in Item 4 above.

Note: If the applicable Chapter Two guideline is §2R1.1, neither the minimum nor the maximum multiplier shall be less than 0.75. (See §2R1.1(d)(2)).

- (a) Minimum Multiplier _____

- (b) Maximum Multiplier _____

Organizational Worksheet C, Page Three

Defendant _____

Docket Number _____

6. Fine Range (See §8C2.7)

- (a) Multiply the base fine (Item 2(d) above) by the minimum multiplier (Item 5(a) above) to establish the minimum of the fine range. Enter the result here and at Worksheet D, Item 4(a).

Minimum of fine range \$ _____

- (b) Multiply the base fine (Item 2(d) above) by the maximum multiplier (Item 5(b) above) to establish the maximum of the fine range. Enter the result here and at Worksheet D, Item 4(a).

Maximum of fine range \$ _____

7. Disgorgement (See §8C2.9)

Skip this item if any pending or anticipated civil or administrative proceeding is expected to deprive the defendant of its gain from the offense.

- (a) Enter the amount of pecuniary gain to the defendant from Item 2(b) above

\$ _____

- (b) Enter the amount of restitution already made and remedial costs already incurred.

\$ _____

- (c) Enter the amount of restitution and other remedial costs to be ordered by the court.
(See §§8B1.1 and 8B1.2.)

\$ _____

- (d) Add Items (b) and (c) and enter the sum.

- (e) Subtract the sum of restitution and remedial costs (Item (d)) from the amount of pecuniary gain to the defendant (Item (a)) to determine undisgorged gain. Enter the result here and at Worksheet D, Item 4(b).

\$ _____

Note: If the amount of undisgorged gain is less than zero, enter zero

Organizational Worksheet D (Guideline Worksheet)

Defendant _____ Docket Number _____

Note: Unless otherwise specified, all items on Worksheet D are applicable to **all** counts of conviction.

1. Restitution (See §8B1.1)

- a. If restitution is applicable, enter the amount. Otherwise enter "N/A" and the reason:

- b. Enter whether restitution is statutorily mandatory or discretionary:

- c. Enter whether restitution is by an order of restitution or solely as a condition of supervision. Enter the authorizing statute:

2. Remedial Orders (See §8B1.2), **Community Service** (See §8B1.3), **Order of Notice to Victims** (See §8B1.4)

List if applicable. Otherwise enter "N/A".

3. Criminal Purpose Organization (See §8C1.1)

If a preliminary determination indicates that the organization operated primarily for a criminal purpose or primarily by criminal means, enter the amount of the organization's net assets. This amount shall be the fine (subject to the statutory maximum) for all counts of conviction.

\$ _____

4. Guideline Fine Range (Only for counts listed under §8C2.1)

- (a) Enter the guideline fine range from Worksheet C, Item 6 \$ _____ to \$ _____

- (b) Disgorgement (See §8C2.9)

Enter the result from the Worksheet C, Item 7(e). The court shall add to the fine determined under §8C2.1 (Determining the Fine Within the Range) any undisgorged gain to the organization from the offense.

\$ _____

Check if guideline fine range was not calculated because of preliminary determination of inability to pay fine (See §8C2.2).

5. Counts Not Listed Under §8C2.1 (See §8C2.10)

Enter the counts not listed under §8C2.1 and the statutory maximum fine for each count. The court **may** impose an additional fine for these counts.

Organizational Worksheet D, Page Two (Guideline Worksheet)

Defendant _____

Docket Number _____

6. Reduction of Fine Based on Inability to Pay (See §8C3.3)

Check the applicable box(es):

There is evidence that the imposition of a fine within the guideline fine range would impair the organization's ability to make restitution to victims. In such a case, the court **shall** reduce the fine below that otherwise required (See §8C3.3(a)).

There is evidence that the organization, even with use of a reasonable installment schedule, is not able or likely to become able to pay the minimum guideline fine. In such a case, the court **may** impose a fine below that otherwise required (See §8C3.3(b)).

7. Fine Offset (See §8C3.4)

Multiply the total fines imposed upon individuals who each own at least five percent (5%) interest in the organization by those individuals' total percentage interest in the organization, and enter the result. The court **may** reduce the fine imposed on a closely held organization by an amount not to exceed the fine offset.

\$ _____

8. Imposition of a Sentence of Probation (See §8D1.1)

(a) Probation is required if any of the following apply. Check the applicable box(es):

- (1) Probation is necessary as a mechanism to secure payment of restitution (§8B1.1), enforce a remedial order (§8B1.2), or ensure completion of community service (§8B1.3).
- (2) Any monetary penalty imposed (i.e., restitution, fine, or special assessment) is not paid in full at the time of sentencing and restrictions appear necessary to safeguard the defendant's ability to make payments.
- (3) At the time of sentencing the organization has 50 or more employees and does not have an effective program to prevent and detect violations of law.
- (4) Within the last five years prior to sentencing, the organization has engaged in similar misconduct, as determined by a prior criminal adjudication, and any part of the misconduct underlying the instant offense occurred after that adjudication.
- (5) An individual within high-level personnel of the organization or the unit of the organization within which the instant offense was committed participated in the misconduct underlying the instant offense; and that individual within five years prior to sentencing engaged in similar misconduct, as determined by a prior criminal adjudication; and any part of the misconduct underlying the instant offense occurred after that adjudication.
- (6) Probation is necessary to ensure that changes are made within the organization to reduce the likelihood of future criminal conduct.
- (7) The sentence imposed upon the organization does not include a fine.
- (8) Probation is necessary to accomplish one or more of the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2). State purpose(s):

Special Instruction for Organizational Guidelines Base Fine Calculation

USSG § 8C2.4(e)



- (1) For offenses committed prior to November 1, 2015, use the offense level fine table that was set forth in the version of §8C2.4(d) that was in effect on November 1, 2014, rather than the offense level fine table set forth in subsection (d) above.

OFFENSE LEVEL FINE TABLE (EFFECTIVE NOV. 1, 2014)

| OFFENSE LEVEL | AMOUNT |
|----------------------|---------------|
| 6 or less | \$5,000 |
| 7 | \$7,500 |
| 8 | \$10,000 |
| 9 | \$15,000 |
| 10 | \$20,000 |
| 11 | \$30,000 |
| 12 | \$40,000 |
| 13 | \$60,000 |
| 14 | \$85,000 |
| 15 | \$125,000 |
| 16 | \$175,000 |
| 17 | \$250,000 |
| 18 | \$350,000 |
| 19 | \$500,000 |
| 20 | \$650,000 |
| 21 | \$910,000 |
| 22 | \$1,200,000 |
| 23 | \$1,600,000 |
| 24 | \$2,100,000 |
| 25 | \$2,800,000 |
| 26 | \$3,700,000 |
| 27 | \$4,800,000 |
| 28 | \$6,300,000 |
| 29 | \$8,100,000 |
| 30 | \$10,500,000 |
| 31 | \$13,500,000 |
| 32 | \$17,500,000 |
| 33 | \$22,000,000 |
| 34 | \$28,500,000 |
| 35 | \$36,000,000 |
| 36 | \$45,500,000 |
| 37 | \$57,500,000 |
| 38 or more | \$72,500,000 |