



# A Basic Introduction to the Organizational Guidelines

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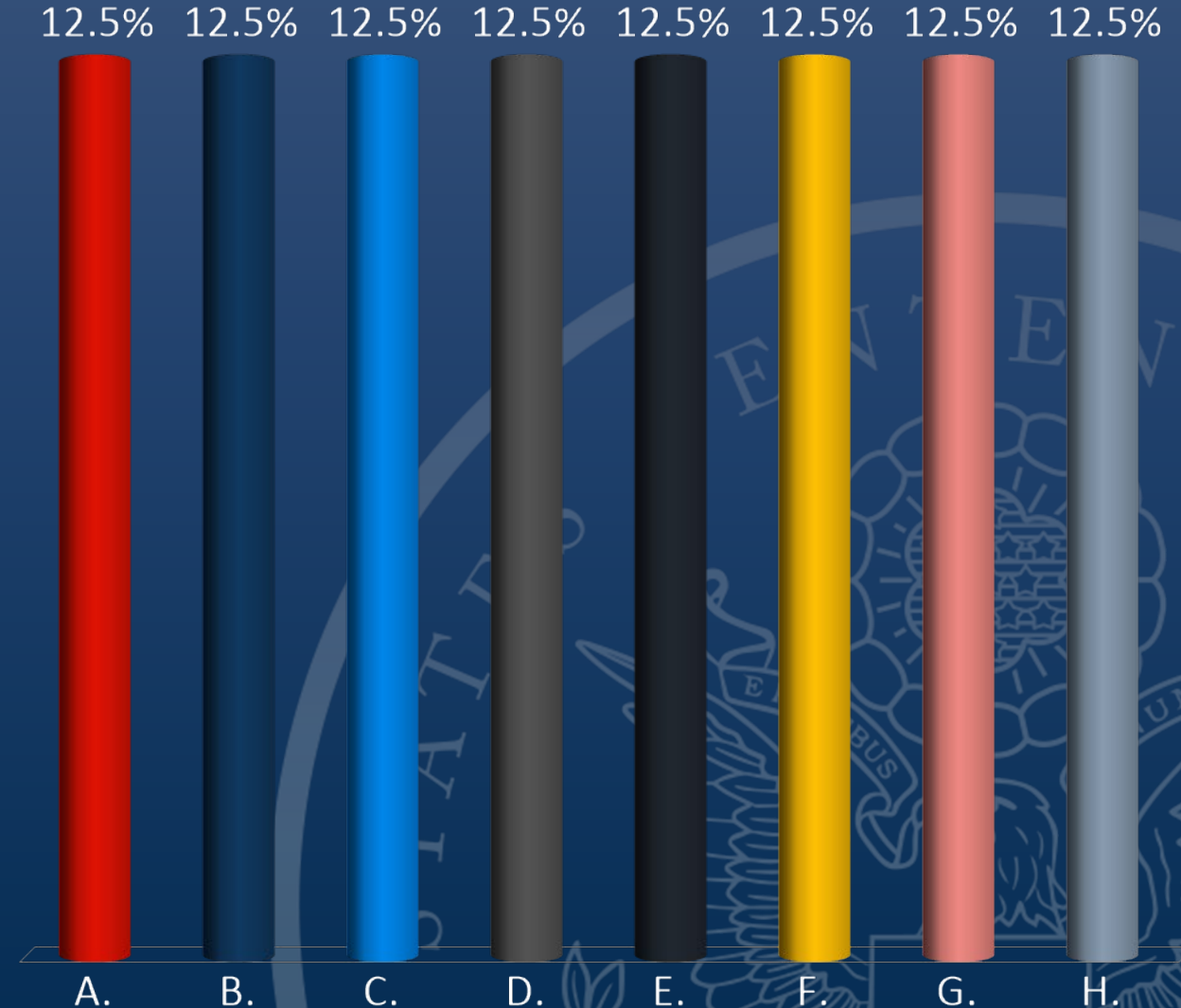


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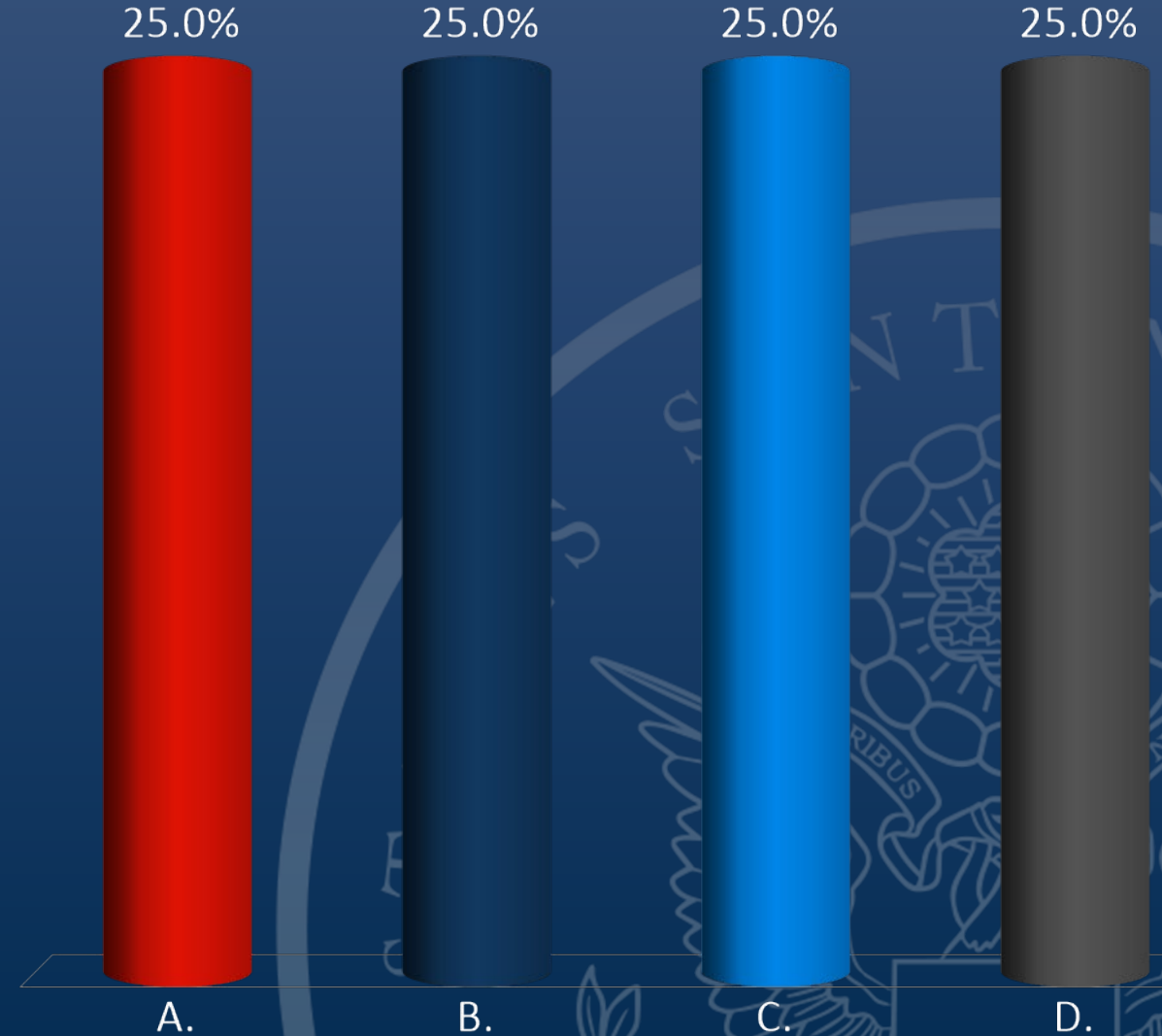
# Who is in the Audience?

- A. Circuit Staff Attorney
- B. CJA Panel Attorney/Private Defense Attorney
- C. Federal Public Defender
- D. Judge
- E. Law Clerk
- F. U.S. Probation Officer
- G. U.S. Attorney
- H. Other



# Years of Experience with Federal Sentencing?

- A. Less than 2 years
- B. 2 to 5 years
- C. 5 to 10 years
- D. More than 10 years



# There Are Organizational Guidelines???

In my previous experience, I have used Chapter 8 of the *Guidelines Manual*

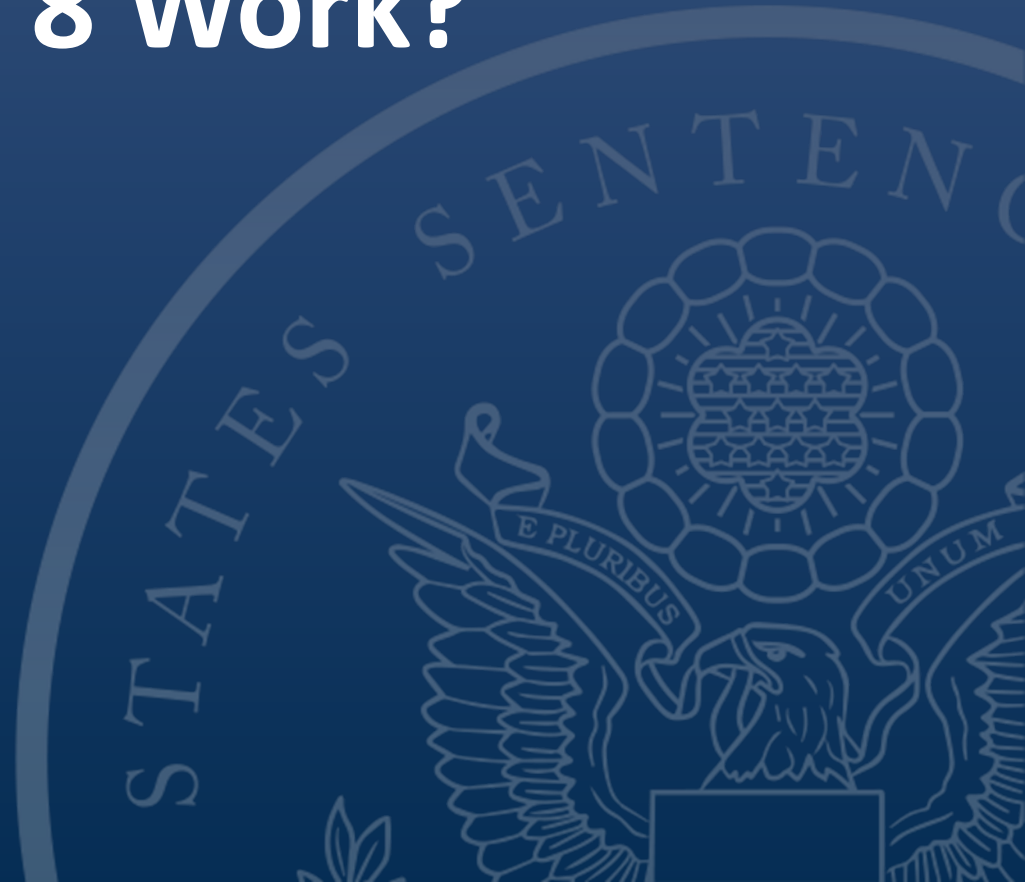
- A. Many times ...I've had lots of organizational cases.
- B. Not much, but I've had a case.
- C. I have a case now ... that's why I'm here!
- D. There is a Chapter 8 in the *Guidelines Manual*?!?



# Why Do I Need to Know About Chapter 8?

- Authorization: **The Sentencing Reform Act of 1984**
  - U.S. Sentencing Commission to develop sentencing guidelines for individuals and organizations
  - Like other GL calculations, courts must consider the guideline sentence where applicable.
- Chapter 8 has some differences from your typical GL calculations
  - **Avoid the common mistakes.**
- While there aren't that many cases each year, they do come up.

# How Does Chapter 8 Work?



# When Do I Turn To Chapter 8?

- Applies to “Organizations”
  - Corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions, and non-profit organizations
- Applies to felony and Class A misdemeanors (§8A1.1)



# General Principles

- Organizations should remedy harm caused by offense (§§8B1.1 - 8B1.4)
- Organizations with criminal purpose should be divested (§8C1.1)
- “Carrot and Stick Approach” - Fine ranges determined by seriousness of offense and culpability (§§8C2.1 - 8C2.10)
- Probation to implement sanctions and reduce recidivism (§§8D1.1 – 8D1.4)

# General Application Principles

- Apply Chapter 8 in order (§8A1.2)
  - Part B – Remedying Harm from Criminal Conduct
  - Part C – Fines
  - Part D – Probation
  - Part E – Special Assessments, Forfeitures, and Costs



# Restitution

## §8B1.1

- Requires identifiable victim
- If so, court shall either
  - Enter restitution order if authorized by specified statute  
OR
  - Impose term of probation or supervised release with condition requiring restitution if offense meets criteria for restitution order in § 3663(a)(1)
- Restitution paid before fine

# Remedial Order

## §8B1.2

- Imposed as a condition of probation
- Remedy harm caused by offense and eliminate or reduce risk that the instant offense will cause future harm
- Examples include a product recall for a food and drug violation or a cleanup order for an environmental violation

# Community Service

## §8B1.3

- Ordered as a condition of probation
- Must be reasonably designed to repair harm caused by the offense
- Must be preventive or corrective action directly related to the offense and serving one of the purposes of sentencing

# Order of Notice to Victims

## §8B1.4

- Court may order defendant to pay cost of giving notice to victims
- Cost may be set off against fine imposed if imposition of both sanctions is excessive



# Determining the Fine



# Organizational Fines

- Fine provisions are found in **Part C** of Chapter 8
- The step-by-step process for determining the guideline fine range is found in §§8C2.3 – 8C2.9

## **But Don't Jump Right In**

- Before calculating the fine range, there are a series of decision points.



# Organizational Fines

## Decision Point #1

Did the organization operate primarily for a criminal purpose or by criminal means?



# Criminal Purpose Organizations

## §8C1.1

- If court determines that organization operated primarily
  - For a criminal purpose, or
  - By criminal meansthen set the fine in an amount sufficient to divest the organization of all net assets
- Net assets means all assets remaining after payment of all legitimate claims by known innocent bona fide creditors

# Organizational Fines

## Decision Point #1

Did the organization operate primarily for a criminal purpose or by criminal means?

**YES**

Sufficient Fine to Divest  
Organization of All Net Assets  
§8C1.1

**NO**

Is the type of offense covered by  
the *Guidelines* fine provisions?  
§8C2.1

# Organizational Fines Decision Point #2

NO

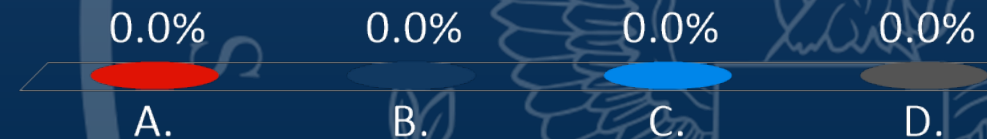
Is the type of offense covered by  
the *Guidelines* fine provisions?  
§8C2.1



# Scenario 1: Applicability of Fine Range Provisions

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?

- A. Yes
- B. No
- C. It depends
- D. You can't sentence a ship!



# Applicability of Fine Guidelines

## §8C2.1

- Apply §§8C2.2 through 8C2.9 to each count for which the offense level is determined under either
  - One of the Listed Chapter Two Guidelines
  - or*
  - RICO violations, attempts, solicitations, or conspiracies, aiding and abetting, accessory after the fact, and misprision of felony if offense level for underlying offense is determined under one of the Listed Chapter Two Guidelines

Note: Cross-references to or from one of the Listed Chapter Two Guidelines will affect this determination

# Types of Chapter Two Offenses

## Not Covered by Guidelines Fine Provisions

Environmental

Food, Drugs, Agricultural and Consumer Products

Civil/Individual Rights

Administration of Justice (*e.g.*, contempt, obstruction of justice,  
and perjury)

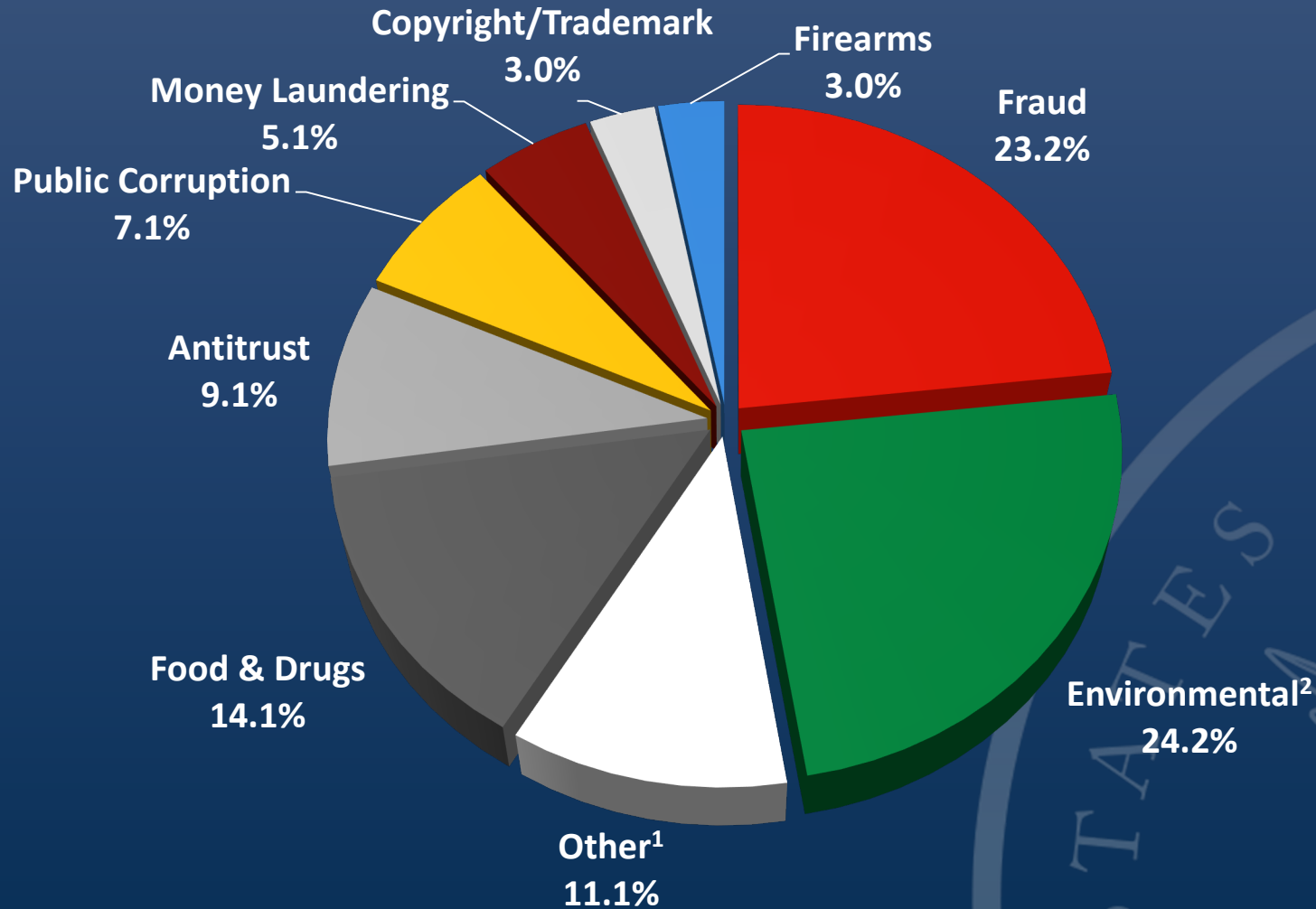
National Defense

# Types of Chapter Two Offenses Covered by Guidelines Fine Provisions

Fraud (§2B1.1)	Certain offenses involving criminal enterprises or racketeering (§§2E3.1, 2E4.1, 2E5.1, 2E5.3)
Insider Trading (§2B1.4)	Obscenity offenses (§2G3.1)
Trespass (§2B2.3)	Certain offenses involving explosive materials or firearms (§§2K1.1, 2K2.1)
Commercial Bribery (§2B4.1)	Smuggling, Transporting or Harboring an Unlawful Alien (§2L1.1)
Criminal Infringement of Copyright or Trademark (§2B5.3)	Odometer Laws and Regulations (§2N3.1)
Offenses involving altering or removing motor vehicle identification numbers (§2B6.1)	Antitrust (§2R1.1)
Certain offenses involving public officials (§§2C1.1, 2C1.2, 2C1.6)	Money laundering and structuring offenses (§§2S1.1, 2S1.3)
Offenses involving drug paraphernalia and drug regulatory offenses (§§2D1.7, 2D3.1, 2D3.2)	Certain tax offenses (§§2T1.1, 2T1.4, 2T1.6, 2T1.7, 2T1.8, 2T1.9, 2T2.1, 2T2.2, 2T3.1)



# Primary Offense in Organizational Cases Fiscal Year 2018



<sup>1</sup> The Other category includes the following offense types: Copyright/Trademark Infringement, Drugs (not FDA), Firearms, Food Stamps, Gambling, Obstruction of Justice, Racketeering, Tax, and Other.

<sup>2</sup> The Environmental category includes the following offense types: Environmental-Water Pollution, Environmental-Air Pollution, Environmental-Hazardous/Toxic Pollutants, and Environmental-Wildlife.

SOURCE: United States Sentencing Commission, 2018 Datafile. CORP18.

# Organizational Fines Decision Point #2

**NO**

Is the type of offense covered by  
the *Guidelines* fine provisions?  
§8C2.1

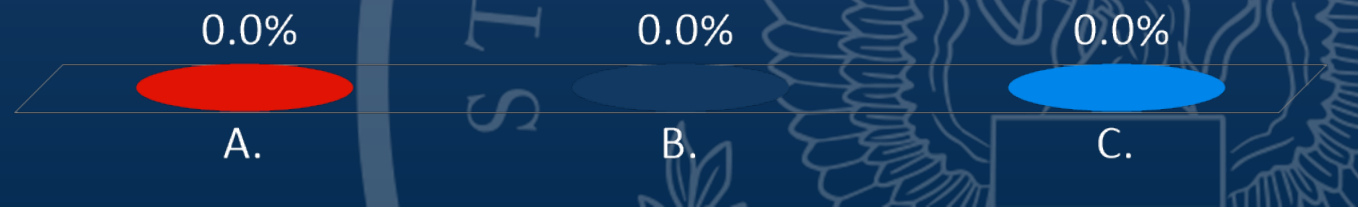
**NO**



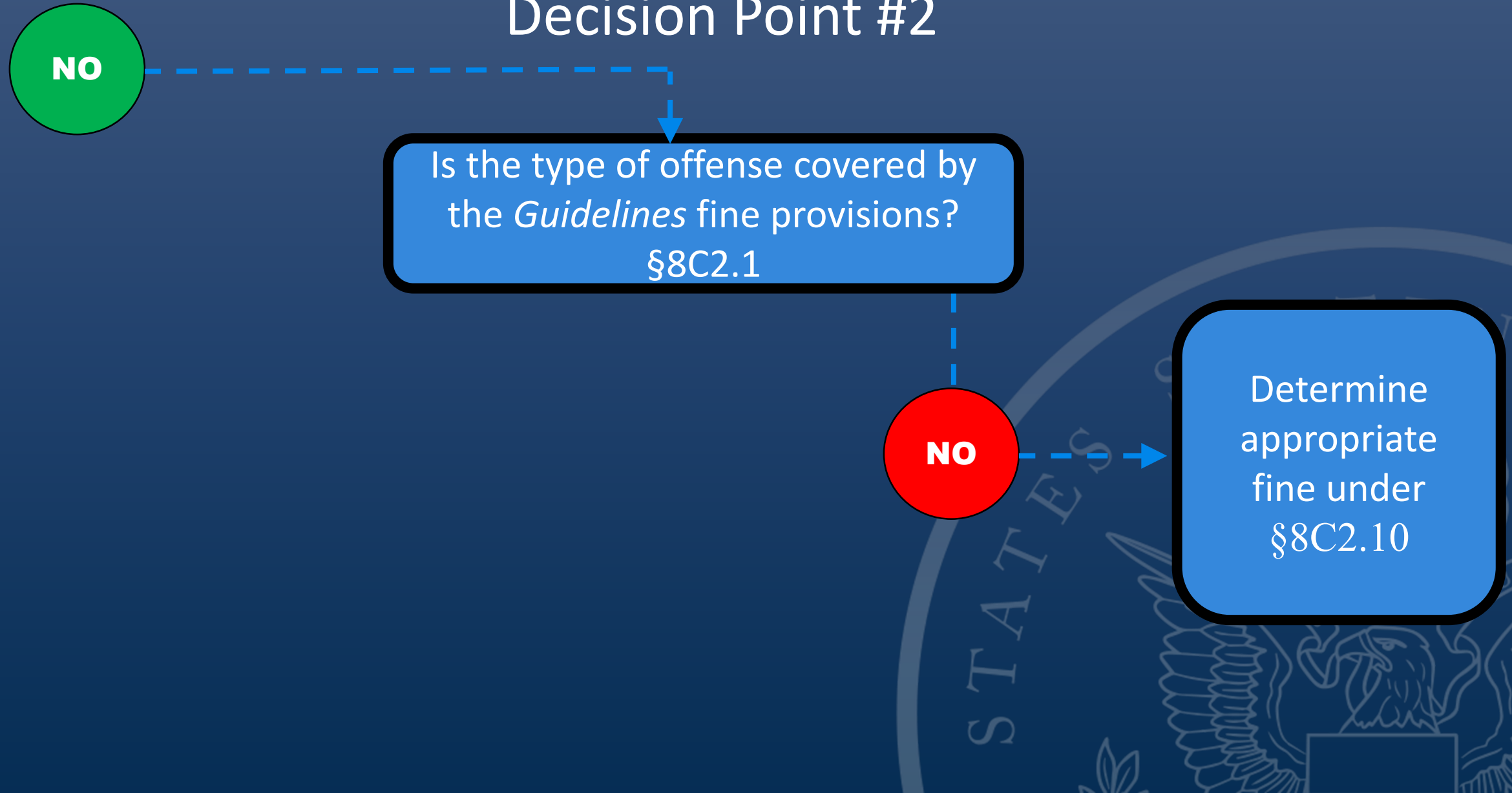
# Scenario 1: Applicability of Fine Range Provisions

Now that we know the court does not have to determine a fine range, how does the court proceed?

- A. There is no fine.
- B. The court is free to determine an appropriate fine without limitation.
- C. The court should determine an appropriate fine based upon statutory criteria.



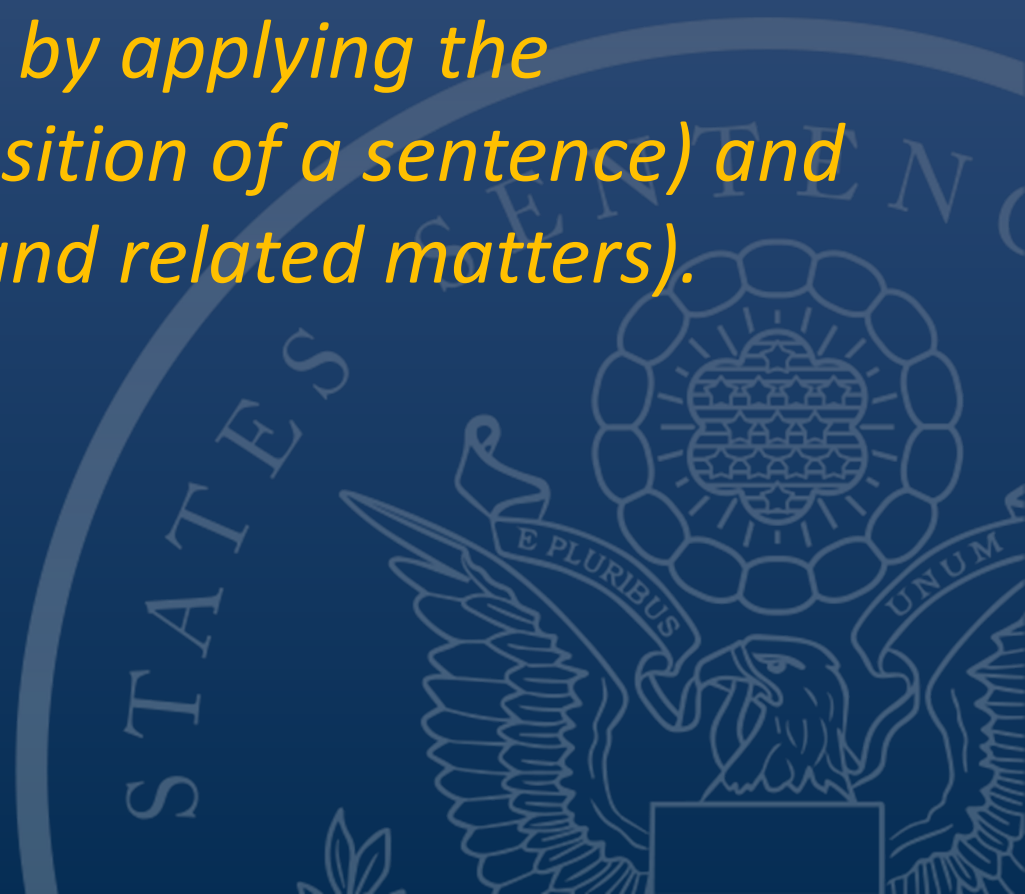
# Organizational Fines Decision Point #2



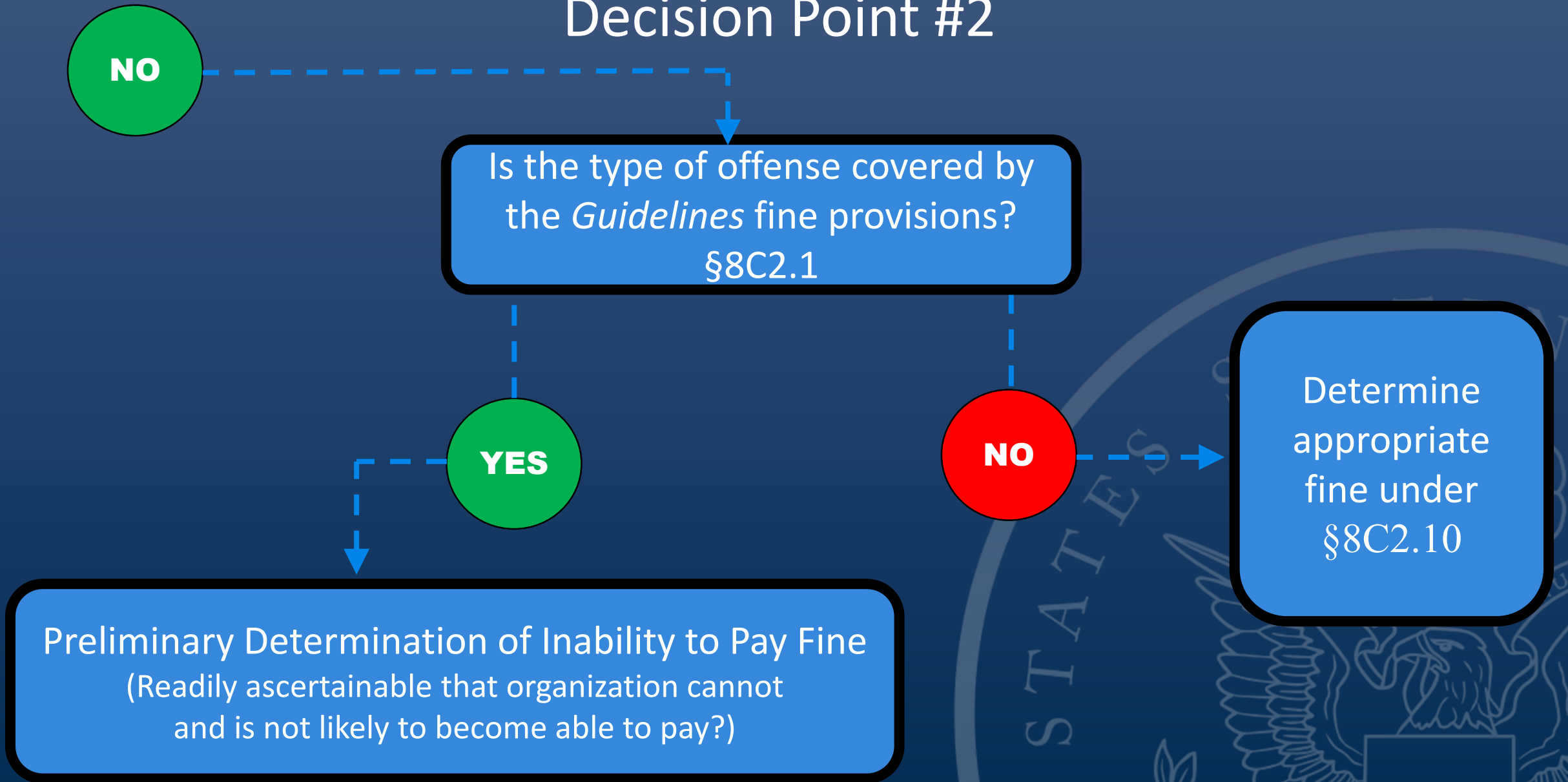
# Determining the Fine for Other Counts

## §8C2.10

*For any count or counts not covered under §8C2.1, the court should determine an appropriate fine by applying the provisions of 18 U.S.C. §§ 3553 (Imposition of a sentence) and 3572 (Imposition of sentence of fine and related matters).*



# Organizational Fines Decision Point #2



# Preliminary Determination of Inability to Pay Fine

## §8C2.2

No need to make guideline fine determination in case where either

- Organization cannot and is not likely to become able to pay restitution required under §8B1.1
- or
- Organization cannot and is not likely to become able to pay minimum guideline fine

# Organizational Fines

## Decision Point #3

Preliminary Determination of Inability  
to Pay Fine  
(Readily ascertainable that organization cannot  
and is not likely to become able to pay?)

**YES**

No fine or reduced fine imposed  
§8C2.2

**NO**

Determine Guideline Fine  
Range  
§§8C2.3–8C2.9



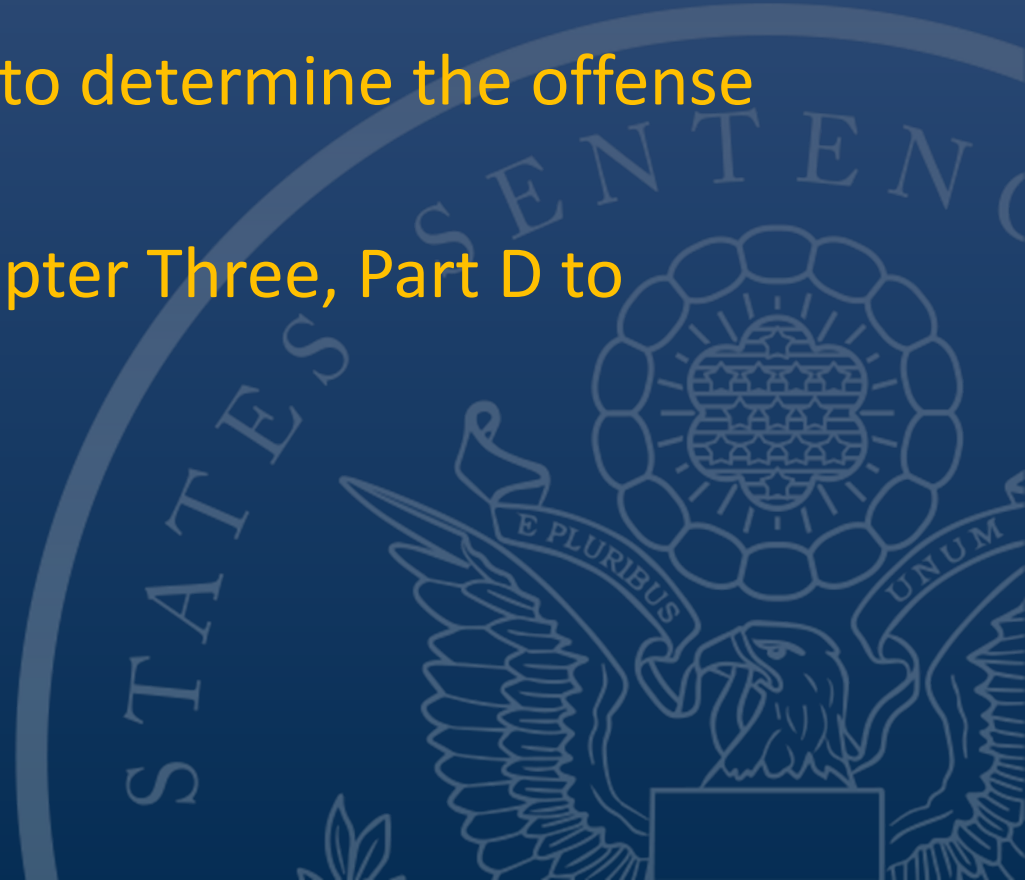
# Step One – Determining the Fine Range

## Calculate the Chapter Two Offense Level

### §8C2.3

For counts covered by §8C2.1

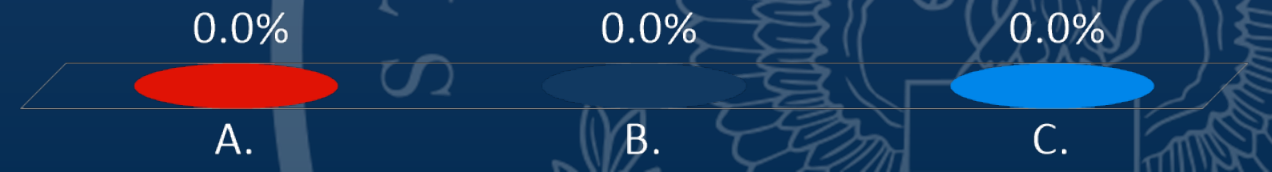
- Use the applicable Chapter Two guideline to determine the offense level (BOL and all applicable SOC's)
- If there is more than one count, apply Chapter Three, Part D to determine combined offense level



## Scenario 2: Determining the Fine Range

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?

- A. 29 [7 (BOL) + 20 (Loss) + 2 (Victims)]
- B. 26 [7 (BOL) + 20 (Loss) + 2 (Victims) – 3 (Acceptance)]
- C. It isn't necessary to calculate the Offense Level



# Step One – Determining the Fine Range

## Calculate the Chapter Two Offense Level

### §8C2.3

For counts covered by §8C2.1

- Use the applicable Chapter Two guideline to determine the offense level (BOL and all applicable SOC's)
- If there is more than one count, apply Chapter Three, Part D to determine combined offense level
- **Do not** apply any other parts of Chapter Three (e.g., Acceptance of Responsibility or Obstruction)

# Step Two – Determining the Fine Range

## Base Fine §8C2.4

Apply the greater of

- Amount from Offense Level Fine Table
- Pecuniary gain to organization, *or*
- Pecuniary loss from offense intentionally, knowingly, or recklessly caused by organization

Unless

- Chapter Two guideline includes special instruction for organizational fines, *or*
- Calculation of pecuniary gain or loss would unduly complicate or prolong sentencing process

# Step Two – Determining the Fine Range

## Base Fine §8C2.4

(d)

OFFENSE LEVEL FINE TABLE

Offense Level	Amount
<b>6 or less</b>	<b>\$8,500</b>
<b>7</b>	<b>\$15,000</b>
<b>8</b>	<b>\$15,000</b>
<b>9</b>	<b>\$25,000</b>
<b>10</b>	<b>\$35,000</b>
<b>11</b>	<b>\$50,000</b>
<b>12</b>	<b>\$70,000</b>
<b>13</b>	<b>\$100,000</b>
<b>14</b>	<b>\$150,000</b>
<b>15</b>	<b>\$200,000</b>
<b>16</b>	<b>\$300,000</b>
<b>17</b>	<b>\$450,000</b>
<b>18</b>	<b>\$600,000</b>
<b>19</b>	<b>\$850,000</b>
<b>20</b>	<b>\$1,000,000</b>

<b>21</b>	<b>\$1,500,000</b>
<b>22</b>	<b>\$2,000,000</b>
<b>23</b>	<b>\$3,000,000</b>
<b>24</b>	<b>\$3,500,000</b>
<b>25</b>	<b>\$5,000,000</b>
<b>26</b>	<b>\$6,500,000</b>
<b>27</b>	<b>\$8,500,000</b>
<b>28</b>	<b>\$10,000,000</b>
<b>29</b>	<b>\$15,000,000</b>
<b>30</b>	<b>\$20,000,000</b>
<b>31</b>	<b>\$25,000,000</b>
<b>32</b>	<b>\$30,000,000</b>
<b>33</b>	<b>\$40,000,000</b>
<b>34</b>	<b>\$50,000,000</b>
<b>35</b>	<b>\$65,000,000</b>
<b>36</b>	<b>\$80,000,000</b>
<b>37</b>	<b>\$100,000,000</b>
<b>38 or more</b>	<b>\$150,000,000.</b>

# Step Three – Determining the Fine Range

## Culpability Score

### §8C2.5

<b>BASE OFFENSE LEVEL</b>	<b>5 POINTS</b>
<b>Involvement in or Tolerance of Criminal Activity</b>	+5/ +4/ +3/ +2/ +1
<b>Prior History</b>	+2 or +1
<b>Violation of an Order</b>	+2 or +1
<b>Obstruction of Justice</b>	+3
<b>Effective Program to Prevent and Detect Violations of Law</b>	-3
<b>Self-Reporting, Cooperation <u>and</u> Acceptance of Responsibility</b>	-5/ -2/ -1



# Step Four – Determining the Fine Range

## Minimum & Maximum Multipliers

### §8C2.6

CULPABILITY SCORE	MINIMUM MULTIPLIER	MAXIMUM MULTIPLIER
<b>10</b> or more	2.00	4.00
<b>9</b>	1.80	3.60
<b>8</b>	1.60	3.20
<b>7</b>	1.40	2.80
<b>6</b>	1.20	2.40
<b>5</b>	1.00	2.00
<b>4</b>	0.80	1.60
<b>3</b>	0.60	1.20
<b>2</b>	0.40	0.80
<b>1</b>	0.20	0.40
<b>0</b> or less	0.05	0.20.

# Step Five – Putting the Pieces Together

## Guideline Fine Range

### §8C2.7

40

= MIN. FINE  
§8C2.7(A)

MIN.  
X MULTIPLIER  
§8C2.6

BASE FINE X  
§8C2.4

MAX.  
MULTIPLIER =  
§8C2.6

BASE FINE  
MAX. FINE §8C2.4  
§8C2.7(B)



# Other Guideline Provisions Relating to Calculation of the Fine

## Determining the Fine Within the Range – §8C2.8

- §8C2.8(a): identifies factors the court should consider
- §8C2.8(b): court may consider the relative importance of any factor used to determine the range

## Disgorgement – §8C2.9

- Add to fine any gain that has not or will not be paid as restitution or for other remedial measures

# Scenario 3 – Putting the Pieces Together

Defendant A was convicted of one count of money laundering in violation of 18 U.S.C. § 1956 (covered under USSC §2S1.1), which carries a statutory maximum fine of \$500,000. Is it necessary to calculate a fine range under the guidelines?

- A. No, the defendant is a criminal purpose organization.
- B. No, the Fine Guidelines do not apply.
- C. No, the defendant is unable to pay.
- D. Yes.



## Scenario 3 – Putting the Pieces Together (cont.)

Defendant A is a successful advertising agency with over \$3 million in assets and has 200 employees. Without providing services, Defendant A received \$10,000 checks from Neighbor, returning \$9,000 in cash. The Owner of Defendant A took in over \$250,000 in checks from Neighbor, before Neighbor was arrested for being part of a criminal operation. What is Defendant A's base fine under §8C2.4?

*The total Chapter Two offense level under §2S1.1 is **22** [8 (BOL) + 12 (\$250,000 in laundered funds) + 2 (convicted under 18 U.S.C. § 1956)].*

- A. \$25,000
- B. \$250,000
- C. \$850,000
- D. \$2,000,000



# Scenario 3 – Putting the Pieces Together (cont.)

What is the Defendant's culpability score under §8C2.5?

*Hint: Owner committed the offense; Company has 200 employees; Defendant cooperated and Accepted Responsibility*

- A. 0
- B. 1
- C. 5
- D. 6



# Step Three – Determining the Fine Range

## Culpability Score

### §8C2.5

<b>BASE OFFENSE LEVEL</b>	<b>5 POINTS</b>
<b>Involvement in or Tolerance of Criminal Activity</b>	+5/ +4/ +3/ +2/ +1
<b>Prior History</b>	+2 or +1
<b>Violation of an Order</b>	+2 or +1
<b>Obstruction of Justice</b>	+3
<b>Effective Program to Prevent and Detect Violations of Law</b>	-3
<b>Self-Reporting, Cooperation <u>and</u> Acceptance of Responsibility</b>	-5/ -2/ -1

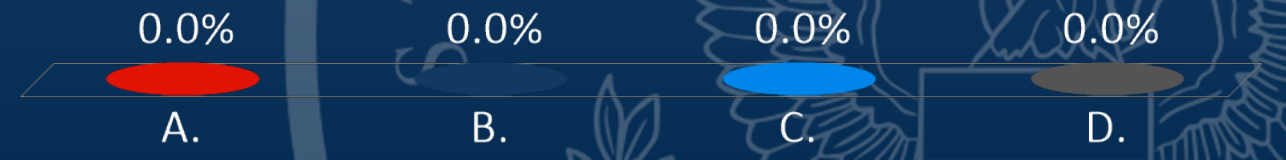
# Scenario 3 – Putting the Pieces Together (cont.)

What is the minimum of the Defendant's guideline's fine range?

**Hint:** Base fine is \$2,000,000

*Culpability Score is 6, resulting in a minimum multiplier of 1.20 and maximum multiplier of 2.40*

- A. \$250,000
- B. \$500,000
- C. \$2,400,000
- D. \$4,800,000



# Imposing A Fine

## §8C3.1

- Use guideline fine range as determined under §§8C1.1 and 8C1.9, or §8C1.10 *unless*
  - Guideline minimum fine exceeds statutory maximum fine, in which case statutory maximum fine becomes guideline fine
  - or
  - Guideline maximum fine is lower than statutory minimum fine, in which case statutory minimum fine becomes guideline fine



# Scenario 3A – Putting the Pieces Together

Assume the same facts, except Defendant A has pleaded guilty to 25 counts of money laundering and the crime occurred prior to November 1, 2015. What is the Defendant's fine range?

- A. \$500,000
- B. \$1,440,000 to \$2,880,000
- C. \$2,400,000 to \$4,800,000
- D. I don't even know which *Manual* applies





## Base Fine - Special Instruction §8C2.4(e)

- Fine Table in this guideline, along with other monetary tables in the *Guidelines Manual*, revised for inflation, pursuant to Amendment 791, which took effect on November 1, 2015.
- Of Note – Special Instruction  
“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 offense level fine table set forth in subsection (d) above.”

# Scenario 4 – Putting the Pieces Together

Company B is convicted of one count of price-fixing in a three-year conspiracy, a violation of 15 USC § 1. The total volume of commerce in the goods affected by the violation over the three years was \$12 million. What is the Defendant's base fine under §8C2.4?

**Hint:** Relevant Chapter Two guideline is §2R1.1

- A. \$300,000
- B. \$2,400,000
- C. \$12,000,000
- D. The fine guidelines provisions (§§8C2.2 – 8C2.9) do not apply

0.0%

A.

0.0%

B.

0.0%

C.

0.0%

D.

(a) Apply the greater of fine table, pecuniary gain or pecuniary loss

(b) *Provided*, that if the applicable offense guideline in Chapter Two includes a special instruction for organizational fines, that special instruction shall be applied, as appropriate



special instructions

**§2R1.1(d):** In lieu of the pecuniary loss under subsection (a)(3) of §8C2.4 (Base Fine), use 20 percent of the volume of commerce affected.

- ❑ **§2B4.1** (Bribery in Procurement of Bank Loan)
- ❑ **§2C1.1** (Bribery)
- ❑ **§2C1.2** (Offering/Soliciting Gratuity)
- ❑ **§2E5.1** (Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan)

# Implementing the Fine



# Payment of the Fine

## §8C3.2

- Immediate for organizations operating as criminal purpose or by criminal means
- Otherwise, immediate unless organization is financially unable or the immediate payment would pose undue burden on organization; then payment at earliest possible date, either by date certain or installment schedule

# Organizational Fines Decision Point #4

**NO**

Determine Guideline Fine  
Range

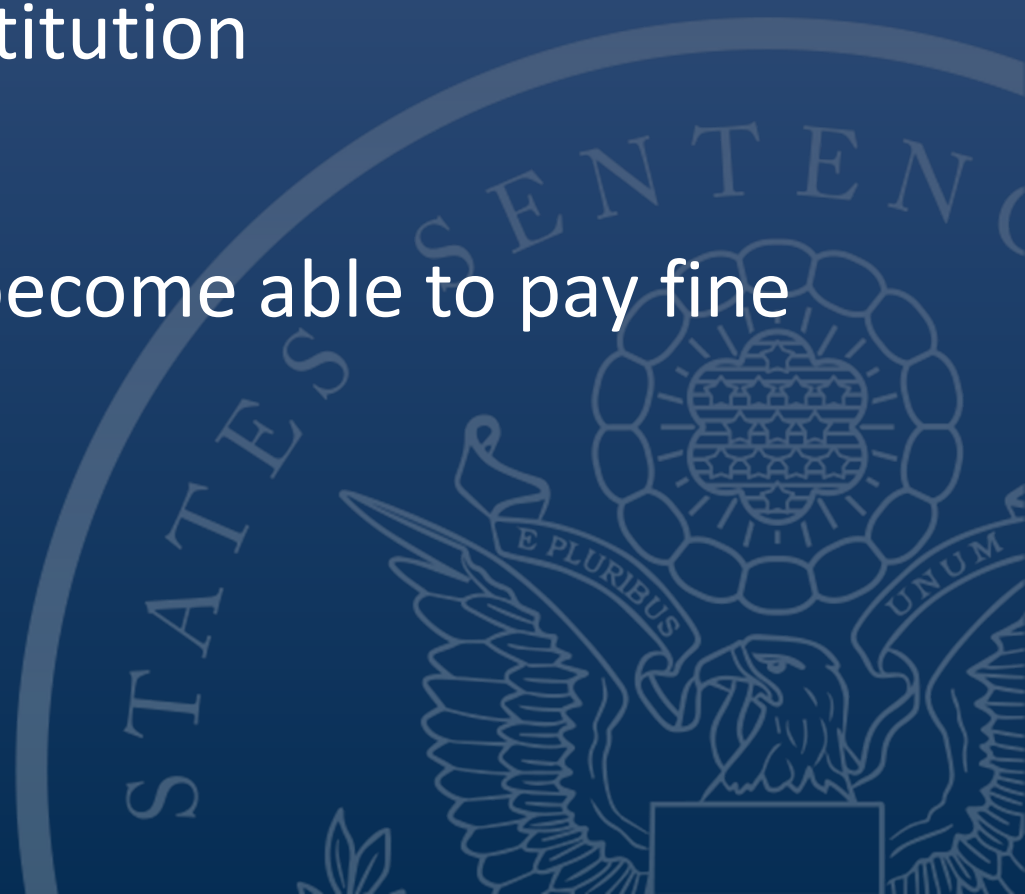
Is the defendant able to pay a  
fine within the fine range?



# Reduction of Fine Based on Inability to Pay

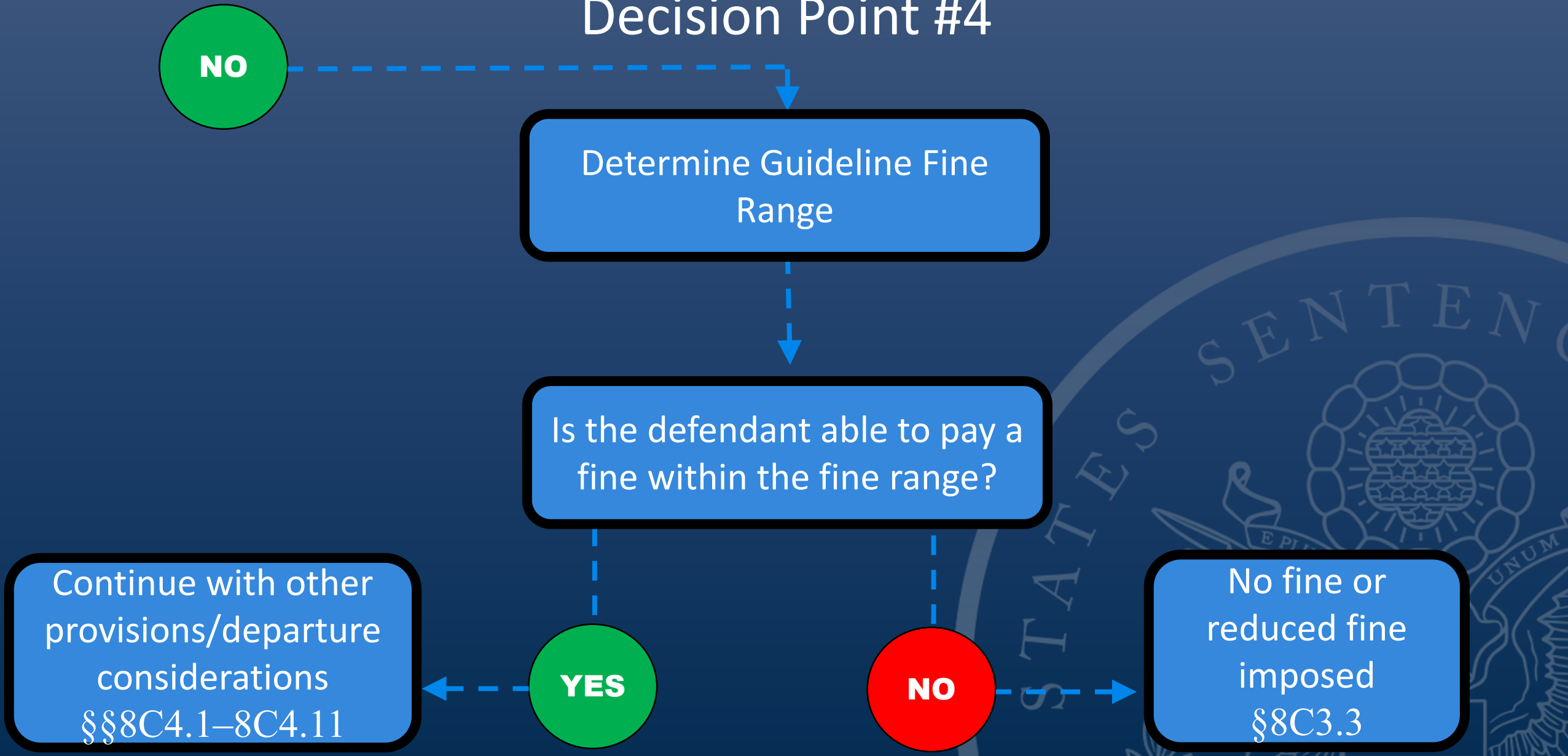
## §8C3.3

- If fine would impair ability to make restitution
- or
- If organization unable and unlikely to become able to pay fine





# Organizational Fines Decision Point #4





# Fines Paid by Owners of Closely Held Organizations

## §8C3.4


Organization's fine may be offset by owners' fines for same offense conduct

- *“The court may offset the fine imposed upon a closely held organization when one or more individuals, each of whom owns at least a 5 percent interest in the organization, has been fined in a federal criminal proceeding for the same offense conduct for which the organization is being sentenced.”*

# Departures from the Guideline Fine Range



# Upward Departure Provisions

- Substantial Assistance – §8C4.1
  - Risk of Death or Bodily injury – §8C4.2
  - Threat to National Security – §8C4.3
  - Threat to Environment – §8C4.4
  - Threat to a Market – §8C4.5
  - Official Corruption – §8C4.6
  - Mandatory Program to Prevent and Detect Violations of the Law – §8C4.10
  - Exceptional Organizational Culpability – §8C4.11 (if culpability score > 10)
- 

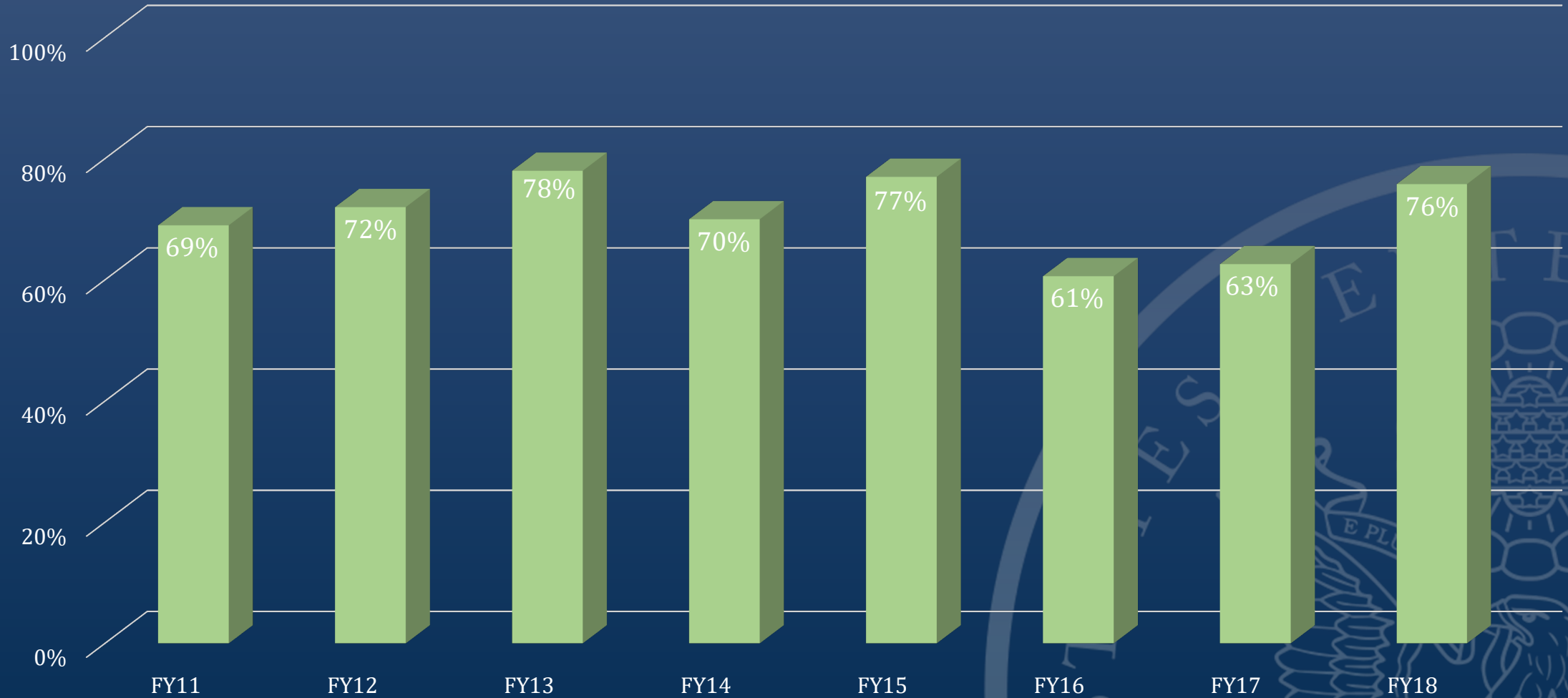
# Downward Departure Provisions

- Public Entity – §8C4.7
- Members or Beneficiaries of Organization as Victims – §8C4.8
- Remedial Costs that Greatly Exceed Gain – §8C4.9
- Exceptional Organizational Culpability – §8C4.11 (if no substantial authority involved and had effective program)

# Organizational Probation



# Percentage of Organizational Cases Receiving Probation Fiscal Years 2013-2017



SOURCE: United States Sentencing Commission, 2011-2018 *Sourcebooks of Federal Sentencing Statistics*.

# Imposition of Probation

## §8D1.1

### Court shall order probation

- If necessary to secure any remediation required by court (restitution, remedial order, community service)
- If payment of monetary penalty is required, which is not paid in full at sentencing
- If organization has 50 or more employees, is required to have E&C program, and does not
- If within five years, organization engaged in similar criminal misconduct and instant offense occurred after adjudication



# Imposition of Probation

## §8D1.1

Court shall order probation (cont.)

- If high level personnel involved in offense engaged in similar criminal misconduct within five years of instant offense and instant offense occurred after adjudication
  - To ensure changes made within organization to reduce likelihood of future criminal conduct
  - If sentence does not include fine
- or*
- If necessary to accomplish one or more of the purposes of sentencing



# Term of Probation

## §8D1.2

For Felony Offenses

**One – Five years**

For Class A misdemeanors

**No more than five years**



# Mandatory Conditions of Probation

## §8D1.4

- §8D1.3(a): No new federal, state or local crimes
- §8D1.3(b): Unless fine is imposed or court makes finding that condition is plainly unreasonable, impose at least one of the following conditions for felony offenses:
  - Restitution, *or*
  - Community service

# Recommended Conditions of Probation

## §8D1.4

- §8D1.3(c): Other conditions reasonably related to
  - nature and circumstances of offense or history or characteristics of organization; and
  - involving only deprivation of liberty and property necessary to effect purposes of sentencing
- §8D1.4: provides a list of recommended conditions

## PRIMER



# FINES UNDER THE ORGANIZATIONAL GUIDELINES

February 2019

Prepared by the Office of General Counsel, U.S. Sentencing Commission

**Disclaimer:** This document is intended to assist in understanding and applying the sentencing guidelines. The information in this document should not be considered definitive or comprehensive. In addition, the information in this document does not represent an official Commission position on any particular issue or case, and it is not binding on the Commission, the courts, or the parties in any case. To the extent this document includes unpublished cases, practitioners should be cognizant of Fed. R. App. P. 32.1, as well as any corresponding rules in their jurisdiction.

**UNITED STATES SENTENCING COMMISSION**

GUIDELINES | RESEARCH | POLICYMAKING | EDUCATION | ABOUT | BY TOPIC

## ORGANIZATIONAL GUIDELINES

### Chapter Eight Overview

- Overview of the Organizational Guidelines
- Chapter Eight of the Current Guidelines Manual
- Primer on the Organizational Guidelines Fines
- Guideline Application Worksheets for Organizational Offenses

### Organizational Offender Sentencing Statistics

- Quick Facts on Organizational Offenders
- Datatables for Organizational Offenders
- Sourcebook Tables and Figures

### Additional Resources

- Chair Saris Remarks Annual Compliance and Ethics Institute (October 2013)
- Public Meeting Panel Discussion (November 2005)
- Ad Hoc Advisory Group on Organizational Guidelines (October 2003)
- The Sentencing Commission's Implementation of the Sarbanes-Oxley Act (2003)
- 2001 Conference Paper by Vice Chair John R. Steer on the Organizational Sentencing Guidelines (February 2002)
- The Federal Sentencing Guidelines for Organizations: A Decade of Promoting Compliance and Ethics (January 2002)
- Corporate Crime Symposium Proceedings Book (September 1995)
- Food & Drug Working Group Final Report (February 1994)
- Report from Advisory Group on Environmental Sanctions (December 1993)
- Supplementary Report on Sentencing Guidelines for Organizations (August 1991)
- Discussion Materials on Organizational Sanctions (July 1988)

### ORGANIZATIONAL WORKSHEET A OFFENSE LEVEL

Defendant: \_\_\_\_\_ District/Office: \_\_\_\_\_

Docket Number: \_\_\_\_\_ U.S. Code Title & Section: \_\_\_\_\_

Count Number(s): \_\_\_\_\_ (Note: The Worksheets are keyed to the November 1, 2016 Guidelines Manual)

**Preliminary Determination of Inability to Pay Fine**

- 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 §801.1, a determination of the guideline fine range is unnecessary (See §8C2.2(a)). In such a case, skip to Worksheet D, item 1.
- 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:**

- 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 §8D1.2(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 §8D1.3(a) and (d)).
- For counts of conviction (or stipulated offenses) not listed at §8C2.1, skip to Worksheet D, item 1 (See §8C2.1(c)).

**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.\*

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 cases, Worksheet B need not be completed.

\*Except Chapter Nine Parts A, B, C, and E, do not apply to organizational defendants.

U.S. Sentencing Commission Worksheets (November 1, 2016)

hyperlinks  
legal  
research  
commentary

# Guidelines Annotated

online  
access  
provisions  
Manual  
history  
improved



### Fiscal Year 2018 Overview of Federal Criminal Cases

UNITED STATES SENTENCING COMMISSION  
Published June 2019

### UNITED STATES SENTENCING COMMISSION GUIDELINES MANUAL

Guidelines Manual 2016

APPENDIX A: STATUTORY INDEX SEARCH

APPENDIX B: SENTENCING STATUTES

APPENDIX C: AMENDMENTS

GUIDELINE RANGE

DRUG QUANTITY

DRUG EQUIVALENCY

Frequently Used Tables

Archive PREVIOUS GUIDELINES MANUALS

<https://www.ussc.gov/guidelines/organizational-guidelines>

# Monograph: Presentence Report for an Organizational Defendant

## Guide to Judiciary Policy

Vol. 8: Probation and Pretrial Services  
Pt. D: Presentence Investigation Report (Monograph 107)  
Ch. 1: Overview

### Appx 1E: Presentence Report for an Organizational Defendant

(Note: No unauthorized disclosure of this policy guidance outside the judiciary is permitted.)

The presentence report designed for the sentencing of an individual defendant does not easily accommodate the application of the guidelines for organizations. Since organizations are not subject to the same sanctions as an individual defendant, the structure of the guidelines for organizations is different. This document provides a format for a presentence report on an organization that is intended to provide the factual information necessary for application of the guidelines for organizations and to assist the court in making an informed sentencing decision.

This document has two distinct sections. The first section presents an outline of the format and content of the presentence report for an organization. The elements of information included in each section of the report are outlined with the rationale for organizing the report in this manner. The outline is intended as a reference and checklist for the required content of the report. Figure 1 provides a topical outline of the sections of the report with the pertinent subheadings.

Following the outline, the section entitled "Conducting a Financial Investigation of an Organization" provides a discussion of techniques for gathering information about organizations, focusing primarily on collection and analysis of financial data. Since the principal sanctions available to the court for sentencing an organization are fines and restitution, it is important that the probation officer provide a complete and accurate analysis of the organization's financial profile. Determining an organization's ability to pay financial sanctions requires a process of analysis that differs from the analysis of an individual's ability to pay. A step-by-step discussion of the process is provided in this chapter.

#### Outline and Contents of the Organizational Presentence Report

##### Face Sheet

- Information related to the sentencing hearing includes:
  - Court of jurisdiction
  - Identification of the defendant
  - Sentencing Judge
  - U.S. Probation Officer

Last substantive revision ([Transmittal GR-14](#)) December 22, 2009  
Last revised (minor technical changes) December 26, 2010

JNET



The Guide to  
Judiciary Policy

- Outline of the format and content of the presentence report for an organization
- “Conducting a Financial Investigation of an Organization” – techniques for gathering information about organizations
  - Chapter 8: Probation and Pretrial Services, Part D: Presentence Investigation Report, Appx. 1E - Presentence Report for an Organizational Defendant



# Questions or Comments?



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