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WRITTEN TESTIMONY©

By Lynzy Wright, Legal Criminalist

When I received the Request for Additional Public Comment regarding Chapter Eight, I was elated about the opportunity to submit public comment. However, upon reviewing the Questions presented by the Advisory Group of the Commission, I realized that our vision for corporate criminal liability compliance differed from that of the Advisory Group and the Commission. Therefore, instead of addressing the Questions posed, recommendations for amendments to Chapter Eight of U.S. Sentencing Guidelines will follow for your review.

These suggested amendments arise from many years of participation in corporate compliance, both internally and externally. Our goal remains preventive in nature, and, yet, structured. Any business entity, whether small or large, public or private, must constantly strive for compliance and lawfulness at the expense of heavy fines, possible jail time and felony prosecution of, not just the organization, but the officers and directors of the business entity. As you well know, most legal business entities are specifically designed to limit the liability of its officers and board of directors and those

designs have been pivotal to the growth of United States business commerce. The future of compliant and lawful business entities lies in our hands and we must rise to the occasion by implementing a new Chapter Eight designed to bring compliance and lawfulness to fruition.

REPLACEMENT RECOMMENDATIONS

§8A1.2, comment 3(e)

An individual “condoned” an offense if the individual knew of the offense and did not take reasonable steps to prevent the offense, terminate the offense or report the offense to the corporate criminal liability compliance officer of the organization.

§8A1.2, comment 3(j)

An individual was “willfully ignorant of the offense” if the individual did not investigate nor advise the corporate criminal liability compliance officer of the possible occurrence of unlawful conduct despite knowledge of circumstances that would lead a reasonable person to investigate or advise whether unlawful conduct had occurred.

§8A1.2, comment 3(k)(2)

A specific individual within high-level personnel of the organization must be designated as corporate criminal liability compliance officer, who accepts full responsibility and possesses complete authority from organization to oversee compliance with such standards and procedures. This compliance officer reports to the president ONLY and shall fulfill the role of designated company-authorized representative for all external and internal claims inquiries, lawsuits and administrative proceedings involving the organization outside of the purview of inside or outside counsel for the organization.

§8A1.2, comment 3(k)(4)

The organization must have taken steps to communicate effectively its compliance standards and procedures to all employees and other agents, e.g. by publicizing internally and externally the name of the corporate criminal liability compliance officer, requiring participation in training programs relating to prevention, reporting and investigation of criminal conduct and disseminating publications that explain in an informative manner the procedures to follow relating to compliance.

§8A1.2, comment 3(insert)

“Corporate criminal liability compliance officer” means the designated individual within the organization who possesses the investigative, civil, criminal and administrative law expertise to deter organizational criminal conduct.

§8B1.2(insert)

The organization shall be required to submit mandatory compliance reporting to the Court for a minimum period of two (2) years and designate a corporate criminal liability compliance officer.

§8C2.5(b)(insert)

If the organization had between 1 and 10 employees and an individual with substantial authority participated in, condoned, or was willfully ignorant of the offense, add 1 point.

§8C2.5(insert)

Ineffective Program to Prevent and Detect Violations of Law

If the offense occurred and the program to prevent and detect violations of law was grossly inadequate and willfully ignored by the majority of the high-level personnel of the organization, add 10 points.

