(Excerpted from: U.S. Sentencing Commission's 1998 *Annual Report*)

Organizational Sentencing Practices

Sentencing guidelines for organizations convicted of federal offenses became effective November 1, 1991.[1] The organizational guidelines establish fine ranges to deter and punish illegal conduct; require full payment of remedial costs to compensate victims for any harm and the disgorgement of illegal gains; regulate probationary sentences; and implement other statutory penalties such as forfeiture and the assessment of prosecution costs.

The Chapter Eight organizational guidelines apply to all federal felonies and Class A misdemeanors committed by organizational offenders.[2] The fine provisions of Chapter Eight are limited to offenses for which pecuniary loss or harm can be more readily quantified, such as fraud, theft, and tax violations. In addition, the sentencing guidelines for bribery and kickbacks, antitrust violations, and money laundering offenses contain specific formulations for calculating fines for organizations.[3]

The organizational guidelines do not presently contain fine provisions for most environmental, food and drug, and export control violations.[4] In those cases in which the Chapter Eight fine guidelines do not apply, courts must look to the statutory provisions of title 18, sections 3553 and 3572, to determine an appropriate fine.

In 1998, the Commission received information on 218 organizations that were sentenced under Chapter Eight,[5] a one-percent decrease from 1997 and a 39-percent increase from 1996.[6] Fines were imposed upon 160 organizations.[7] In 86.3 percent (44) of the cases in which no fines were imposed, the organization was unable to pay the fine. The sentenced organizations pled guilty

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1 *See Guidelines Manual*, Chapter Eight – Sentencing of Organizations.

2 *See* USSG §8A1.1.

3 *See* USSG §§2B4.1(c); 2C1.1(d); 2R1.1(d); 2S1.1(c); and 2S1.2(c).

4 *See* USSG §8C2.1.

5 The Commission also received one antitrust case that was sentenced under the former organizational fine component of USSG §2R1.1 because the offense conduct occurred before the November 1, 1991, effective date of Chapter Eight. Of the 220 cases received, one case was missing guideline application information.

6 As with individual defendants, the Commission datafile describing organizational defendants is available through the Inter-University Consortium for Political and Social Research at the University of Michigan.

7 This number is greater than the number of cases with Fines Imposed shown in Table 51 of the accompanying *1998 Sourcebook of Federal Sentencing Statistics* because it includes six cases that received fines but that were excluded from those counted under Table 51 because of missing primary offense category information.

in 89.4 percent of the cases; 10.1 percent were convicted after trial. There was one multiple count case that included both a plea and a trial.

Offense Characteristics

As in 1997, fraud was the most frequent offense committed by an organization, accounting for 32.4 percent of the cases sentenced. Other significant offense categories included: environmental waste discharge (21.1%), tax (11.3%), money laundering (7.5%), antitrust (6.1%), and environmental wildlife violations (4.2%).[8] Comparing cases sentenced in 1997 and 1998, the proportion of organizational money laundering cases increased from 4.1 percent in 1997 to 7.5 percent in 1998, and the proportion of organizational tax cases increased from 6.3 to 11.3 percent.

Offender Characteristics

The majority of organizations sentenced in 1998 were closely held private corporations. In addition, four publicly traded corporations (the largest employing 70,000 individuals) and three municipalities were among the organizational offenders sentenced in 1998.

Information on the number of individuals employed by the organizations sentenced in 1998 is available for 144 of the 220 cases provided to the Commission. Of those cases, 30.6 percent employed fewer than ten individuals; 45.8 percent employed at least ten but fewer than 100 individuals; 10.4 percent employed at least 100 but fewer than 200 individuals; 9.7 percent employed at least 200 but fewer than 1,000 individuals; and 3.5 percent employed at least 1,000 individuals.

A total of 452 individuals were sentenced in connection with the same offense conduct as 141 of the organizational cases reported for 1998.[9] Occupational information was provided for 437 of these individuals. These data reflect that 60 were owners of their respective organizations and 86 were officers.

Of those organizations sentenced pursuant to the fine guidelines, in 58.5 percent, personnel with substantial authority were involved in or tolerant of the criminal activity. None of the organizations sentenced in 1998 had in place an "effective program to prevent and detect violations of law" as provided by §8C2.5(f) of the sentencing guidelines. Once under investigation by the authorities, 54.2 percent of the organizations were given credit at sentencing for cooperating with the government's investigation, and another 30.5 percent were given credit for accepting responsibility for their wrongdoing. No organizations received credit for self-reporting. One

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8 *See* Table 51 in accompanying *1998 Sourcebook of Federal Sentencing Statistics*.

9 The guidelines provide that fines imposed upon owners of closely held organizations who are convicted of the same offense conduct as the corporation may offset the total amount of the corporate fine. If an individual was still awaiting sentence as of September 30, 1998 (the end of fiscal year 1998), that information is not reflected in these data.

organization had a history of prior criminal or administrative offenses in the past five years, which resulted in an increased culpability score for sentencing purposes.[10]

Sanctions Imposed

The five highest fines in 1998 were imposed on corporations convicted of antitrust violations. The highest fine was $110 million, and the second highest fine was $49 million. The two highest fines for fraud offenses, $8 million and $4,230,000, were imposed on corporations for making illegal campaign contributions. In both of those cases, executives of the corporate offenders also were sentenced individually for campaign finance violations. The largest fine for an environmental/waste discharge offense, which is not determined in accordance with the Chapter Eight fine tables, was $1.5 million. Considering all case types, in five instances, the fines imposed on organizations were partially offset by the fines imposed on their respective owners in connection with related criminal convictions.[11]

Restitution was imposed as part of the offending organization's sentence in 74 cases[12] and ranged from a high of $12,306,000 in connection with a bribery conviction to a low of $408 for larceny. The average restitution amount for fraud offenses was $631,131, a decrease of 46.4 percent from 1997.[13] Restitution was imposed in 13 (28.9%) of the environmental/waste discharge cases sentenced in 1998, and public notices of apologies to the communities affected by the waste discharge were required as part of the criminal sentence in eight (18.2%) instances.

In addition to monetary penalties and restitution, defendants sentenced under the organizational guidelines were subject to other sanctions. Specifically, 67.4 percent of the organizations were placed on probation.[14] In 1998, a number of organizations sentenced under the guidelines were suspended from government contracting, were prohibited from participating in Medicare and Medicaid programs, or were subject to asset forfeiture. Certain organizations were required to conduct employee safety programs, provide environmental training, develop and implement compliance programs, or sponsor both in-house and outside training. Organizations were also required to provide the court and government regulators access to financial, operational, and accounting information; submit to unannounced inspections; allow for interrogation of

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[10] *See* USSC §8C2.5(c). Additional information about offender characteristics is found at Table 52 in the accompanying *1998 Sourcebook of Federal Sentencing Statistics*.

[11] *See* USSC §8C3.4.

[12] This number differs from the number of cases under Restitution Imposed shown in Table 51 of the accompanying *1998 Sourcebook of Federal Sentencing Statistics* because it includes two cases that received a restitution order but that were excluded from those counted under Table 51 because of missing primary offense category information.

[13] When restitution or remedial costs were paid prior to criminal conviction or in connection with a prior or subsequent civil or administrative action, that information is not necessarily furnished to the Commission.

[14] *See* USSC §§8D1.1–8D1.5.

employees; and hire compliance officers.