(Excerpted from: U.S. Sentencing Commission's 1999 *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 offenses. In addition, the sentencing guidelines for antitrust violations, money laundering offenses, and most bribery and kickback offenses contain specific formulations for calculating fines for organizations.[3]

The organizational guidelines do not presently contain fine provisions for most offenses involving the environment, food, drug, agricultural and consumer products, individual rights, administration of justice, and national defense.[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 1999, the Commission received information on 255 organizations that were sentenced under Chapter Eight, a 15.9 percent increase from 1998 and a 14.9 percent increase from 1997.[5] Fines were imposed on 200 organizations. The sentenced organizations pled guilty in 91.4 percent of the cases; 8.2 percent were convicted after trial. There was one case in which the organization pled *nolo contendere*.

Offense Characteristics

As in 1998, fraud was the most frequent offense committed by an organization, accounting for 33.7 percent of the cases sentenced. Other significant offense categories included: environmental pollution (23.5%), tax (7.1%), antitrust (7.1%), and national defense (5.5%).

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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 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.

Offender Characteristics

In those cases in which the offender organization has the ability to pay and the fine provisions of section 8C2.5 apply to the offense, the court calculates a culpability score that may reduce or increase the applicable offense level. Culpability score calculations are contained in either the sentencing court's Judgment of Conviction or the probation office's Presentence Report. Of the 255 cases sentenced in 1999, 151 cases involved offenses covered by the fine provisions of section 8C2.5. The Commission received detailed culpability score information for 92 of those cases.

In numerous cases, the organization's culpability score was reduced based on the presence of certain culpability factors. Of the 92 cases with detailed culpability score calculations, one organization received a one-point reduction in its culpability score for having in place an "effective program to prevent and detect violations of law," as provided by section 8C2.5(f) of the sentencing guidelines. It is not clear, however, that the "program" credited in that case was instituted prior to the organization's commission of the offense or the government's investigation of the offense. Once under investigation by the authorities, 53.2 percent of the organizations were given credit at sentencing for cooperating with the government's investigation, pursuant to section 8C2.5(g)(2) of the sentencing guidelines, and another 33.7 percent were given credit for accepting responsibility for their wrongdoing, pursuant to section 8C2.5(g)(3). Two organizations received full credit, pursuant to section 8C2.5(g)(1), for reporting the offense to governmental authorities, cooperating with the investigation, and accepting responsibility for the offense.

In numerous cases, the organization's culpability score also was increased based on the presence of culpability factors. Specifically, the culpability score of three organizations was increased, pursuant to section 8C2.5(c) of the sentencing guidelines, because they had a history of prior criminal or administrative offenses during the past ten years. Two organizations violated a judicial order, injunction, or condition of probation pursuant to section 8C2.5(d), and three organizations obstructed justice pursuant to section 8C2.5(e), which resulted in increased culpability scores for sentencing purposes.

Sanctions Imposed

The highest fine in 1999 ($500 million) was imposed on a corporation convicted of antitrust violations. In addition to monetary penalties and restitution, defendants sentenced under the organizational guidelines were subject to other sanctions. Specifically, 60.9 percent of the organizations sentenced in 1999 were placed on probation.