[Excerpted from: U.S. Sentencing Commission's 2000 *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 2000, the Commission received information on 304 organizations that were sentenced under Chapter Eight, a 19.2 percent increase from 1999 and a 38.2 percent increase from 1998.[5] Fines were imposed on 219 organizations. The sentenced organizations pled guilty in 87.5 percent of the cases; 12.2 percent were convicted after trial. There was one case in which the organization pled *nolo contendere*. See Table 53 of the 2000 *Sourcebook of Federal Sentencing Statistics*.

Changes from Prior Annual Reports

The organizational sentencing data reported in the 2000 *Annual Report* marks the beginning of a new system for recording organizational sentencing data, including the capturing of new data, such as the frequency with which courts ordered organizations to implement effective compliance

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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. See page 40.

programs as a term of probation. Also beginning with this report, the Commission has instituted new designations for some offense types. Consequently, some direct comparisons of the 2000 *Annual Report* to prior annual reports may not be possible.

Offense Characteristics

As in 1999, fraud remained the most frequent offense committed by an organization, accounting for 34.5 percent of the cases sentenced. Other significant offense categories included: environmental pollution (23.0%),[6] import/export violations (7.6%), and antitrust violations (6.3%). See Table 52 of the 2000 *Sourcebook of Federal Sentencing Statistics*.

Offender Characteristics

In those cases in which the offender organization both 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 304 cases sentenced in 2000, 201 cases involved offenses covered by the fine provisions of section 8C2.5. The Commission received detailed culpability score information for 133 of those cases. See Tables 52 and 54 of the 2000 *Sourcebook of Federal Sentencing Statistics*.

In numerous cases, the organization's culpability score was reduced based on the presence of certain culpability factors. Of the 133 cases with detailed culpability score calculations, none of the organizations received a reduction in its culpability score for having in place an "effective program to prevent and detect violations of law."[7] Only six organizations were reported to have made any effort in the way of "compliance" or "ethics." In contrast, once under investigation by the authorities, 74 organizations (55.6%) were given credit at sentencing for cooperating with the government's investigation,[8] and another 40 organizations (30.1%) were given credit for accepting responsibility for their wrongdoing.[9] One organization received full credit for reporting the offense to governmental authorities,[10] cooperating with the investigation, and accepting responsibility for the offense. However, 18 organizations (13.5%) received no mitigating credit inasmuch as they did not self-report, cooperate with the authorities, or accept responsibility. See Table 54 of the 2000 *Sourcebook of Federal Sentencing Statistics*.

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[6] Environmental pollution offenses refer to the aggregate of "Environmental-Water offenses," "Environmental-Air offenses," and "Environmental-Hazardous/Toxic Pollutants."

[7] USSG §8C2.5(f).

[8] *See* USSG pursuant to section 8C2.5(g)(2).

[9] *See* USSG §8C2.5(g)(3).

[10] *See* USSG §8C2.5(g)(1).

In numerous cases, the organization's culpability score also was increased based on the presence of culpability factors. Specifically, the culpability score of six organizations was increased, pursuant to section 8C2.5(c) of the sentencing guidelines, because they had a history of prior criminal or administrative offenses. One organization violated a judicial order, injunction, or condition of probation pursuant to section 8C2.5(d), and ten organizations obstructed justice pursuant to section 8C2.5(e), which resulted in increased culpability scores for sentencing purposes. See Table 54 of the 2000 *Sourcebook of Federal Sentencing Statistics*.

Sanctions Imposed

The highest fine in 2000 ($53 million) was imposed on a corporation convicted of antitrust violations. For those offenses covered by the fine provisions of section 8C2.5, the Commission received restitution information for 73 cases and fine information for 131 cases. In those cases, the mean restitution ordered was $846,102 and the mean fine was $2,316,732. Of those offenses not covered by the fine provisions of section 8C2.5, the Commission received restitution information for 25 cases, and fine information for 88 cases. In those cases, the mean amount of restitution ordered was $570,695, and the mean fine ordered was $522,684. See Table 52 of the 2000 *Sourcebook of Federal Sentencing Statistics*.

In addition to restitution and monetary penalties, offenders sentenced under the organizational guidelines were subject to other sanctions. Of the 304 cases sentenced pursuant to Chapter Eight, the Commission received probation information for 293 cases, of which 205 (70.0%) received probation. Of 300 cases with compliance program information, 42 (14.0%) were ordered to make some sort of "ethics"-related or "compliance"-related improvement. See Table 53 of the 2000 *Sourcebook of Federal Sentencing Statistics*.