

[The following is excerpted from the Sentencing Commission's *2001 Sourcebook of Federal Sentencing Statistics*]

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.³ In addition, the sentencing guidelines for antitrust violations and most bribery and kickback offenses contain specific formulations for calculating fines for organizations.⁴

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.⁵ 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 2001, the Commission received information on 238 organizations that were sentenced under Chapter Eight, a 21.7 percent decrease from 2000 and a 6.7 percent decrease from 1999.⁶ Fines were imposed on 186 organizations. The sentenced organizations pled guilty in 92.4 percent of the cases; 7.1 percent were convicted after trial. There was one case in which the organization pled *nolo contendere*. See Tables 52 and 53 of the *2001 Sourcebook of Federal Sentencing Statistics*.

Changes from Prior Annual Reports

The organizational sentencing data reported in the *2000 Annual Report* marked the beginning

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

² See USSG §8A1.1.

³ See USSG §8C2.1.

⁴ See USSG §§2B4.1(c); 2C1.1(d); 2R1.1(d).

⁵ See USSG §8C2.1.

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. See page 42.

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 programs as a term of probation. Also beginning with that report, the Commission instituted new designations for some offense types. Consequently, some direct comparisons of the *2000* and *2001 Annual Reports* to prior annual reports may not be possible.

Offense Characteristics

As in 2000, fraud remained the most frequent offense committed by an organization, accounting for 72 of the 238 of the cases sentenced (30.3%). Other significant offense categories included – environmental pollution (21.8%),⁷ import/export (6.7%), food and drugs (6.7%), and antitrust (6.7%). See Table 52 of the *2001 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 8C2.1 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 238 cases sentenced in 2001, 150 cases involved offenses covered by the fine provisions of section 8C2.1. The Commission received detailed culpability score information for 94 of those cases. See Tables 52 and 54 of the *2001 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 94 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."⁸ Only two organizations were reported to have made any effort in the way of "compliance" or "ethics." In contrast, once under investigation by the authorities, 47 organizations (50.0%) were given credit at sentencing for cooperating with the government's investigation,⁹ and another 34 organizations (36.2%) were given credit for accepting responsibility for their wrongdoing.¹⁰ No organization received full credit for reporting the offense to governmental authorities,¹¹ cooperating with the investigation, and accepting responsibility for the offense. Additionally, 13 organizations (13.8%) received no mitigating credit inasmuch as they did not self-report, cooperate with the authorities, or accept responsibility. See Table 54 of the *2001*

⁷ Environmental pollution offenses refer to the aggregate of "Environmental-Water," "Environmental-Air," and "Environmental-Hazardous/Toxic Pollutants."

⁸ USSG §8C2.5(f).

⁹ See USSG pursuant to §8C2.5(g)(2).

¹⁰ See USSG §8C2.5(g)(3).

¹¹ See USSG §8C2.5(g)(1).

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In several cases, the organization's culpability score also was increased based on the presence of culpability factors. Specifically, the culpability score of two organizations was increased, pursuant to section 8C2.5(c) of the sentencing guidelines, because they had a history of prior criminal or administrative offenses. No organization received an increase under 8C2.5(e) for having violated a judicial order, injunction, or condition of probation; and three organizations received an increase pursuant to section 8C2.5(e) for having obstructed justice, which resulted in increased culpability scores for sentencing purposes. See Table 54 of the *2001 Sourcebook of Federal Sentencing Statistics*.

Sanctions Imposed

The two largest fines in 2001 were imposed for antitrust offenses, with fines of \$134 million and \$53 million respectively. The third largest fine imposed during 2001 was \$50.1 million in a fraud case. For the 238 cases overall, restitution was ordered in 78 cases, and a fine was imposed in 186 cases. The mean restitution ordered was \$4,081,994, and the mean fine imposed was \$2,154,929. See Table 52 of the *2001 Sourcebook of Federal Sentencing Statistics*.

For those offenses covered by the fine provisions of section 8C2.1, restitution was ordered in 54 cases and a fine was imposed in 106 cases. In those cases, the mean restitution ordered was \$5,507,914 and the mean fine imposed was \$3,399,151. Of those offenses not covered by the fine provisions of section 8C2.1, restitution was ordered in 24 cases, and a fine was imposed in 80 cases. In those cases, the mean amount of restitution ordered was \$873,673, and the mean fine ordered was \$506,335. See Table 52 of the *2001 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 238 cases sentenced pursuant to Chapter Eight, 169 (71.0%) received one month or more of probation. Of the 238 cases with compliance program information, 40 (16.8%) were ordered to make some sort of "ethics"-related or "compliance"-related improvement. See Table 53 of the *2001 Sourcebook of Federal Sentencing Statistics*.