

[The following is excerpted from Chapter Two of the Sentencing Commission's 2004 *Annual Report*.]

Organizational Guidelines Ad Hoc Advisory Group

On October 8, 2003, the Organizational Guidelines Ad Hoc Advisory Group presented its final report to the Commission regarding the general effectiveness of the federal sentencing guidelines for organizations. The advisory group was comprised of 15 industry representatives, scholars, and experts in compliance and business ethics who examined the guidelines' criteria for an effective program to ensure an organization's compliance with the law. Mr. B. Todd Jones, former United States Attorney for Minnesota and now a partner at the law firm of Robins, Kaplan, Miller & Ciresi, served as chair of the group.

During its 18-month tenure, the advisory group conducted extensive research, solicited public comment, and held a public hearing. In concluding its service to the Commission, the advisory group recommended that the Commission amend the existing organizational guidelines in order to make the criteria for mitigation credit under the organizational guidelines more rigorous by incorporating contemporary legislative, regulatory, and corporate governance requirements into the guideline framework. The Commission adopted a substantial number of the advisory group's recommendations in the final amendments that it promulgated in 2004.

[The following is excerpted from Chapter Four of the Sentencing Commission's 2004 *Annual Report*.]

Organizational Guidelines Training

During the year, Commission staff conducted several presentations and participated in panel discussions (with representatives from the Department of Justice and the private business sector at 15 seminars with more than 1550 participants) on effective strategies for compliance, "Understanding the White Collar Crime Guidelines," proposed amendments, the 2004 Ethics Institute, the "Best Practices Forum," and corporate responsibility.

Throughout the year, the Commission and staff also participated in a variety of other symposia and programs on compliance and business ethics, discussing the proposed amendments to Chapter Eight and the significance of their application to corporations and other organizations.

[The following is excerpted from Chapter Five of the Sentencing Commission's 2004 *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.

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

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 environmental pollution, food, drugs, agricultural and consumer products, civil/individual rights, administration of justice (*e.g.*, contempt, obstruction of justice, and perjury), 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 sections 3553 and 3572 of title 18, United States Code, to determine an appropriate fine.

Changes from Prior Annual Reports

As with the individual data, pre-*Blakely* and post-*Blakely* data on organizations is reported separately. In addition, the organizational sentencing data reported in the *2000 Annual Report* marked 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 programs as a term of probation. Also, beginning with that report, the Commission instituted new designations for some offense types. The offense type designations continue to be refined to more accurately report the data captured. Consequently, some direct comparisons of the *2004 Annual Report* to prior annual reports may not be possible.

Overall Organizational Data for Fiscal Year 2004

In 2004, the Commission received information on 130 organizations that were sentenced under Chapter Eight, a 35-percent decrease from 2003 and a 48.4-percent decrease from 2002.⁶ Fraud was the most frequent offense type committed by an organization sentenced in federal court (27.7%), followed by environmental pollution (21.5%), money laundering (9.2%), and food, drug and agricultural product offenses (8.5%). Of the 130 cases sentenced in 2004, 86 were sentenced before the *Blakely* decision (“pre-*Blakely* cases”) and 44 were sentenced after the *Blakely* decision (“post-*Blakely* cases”).

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.