

[The following is excerpted from Chapter Four of the Sentencing Commission's 2005 Annual Report.]

Organizational Guidelines Training

In 2005, commissioners and staff made numerous keynote addresses and presentations regarding the recently amended organizational sentencing guidelines at more than 21 programs and seminars attended by more than 3,600 participants. These discussions focused on the more rigorous standards for effective ethics and compliance programs promulgated by the Commission in 2004.

Commissioners and staff organized and participated in programs and symposia with representatives of the private business sector, the Department of Justice, and other federal enforcement agencies to discuss the effect of these guidelines in deterring corporate crime and improving corporate governance.

[The following is excerpted from Chapter Five of the Sentencing Commission's 2005 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.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.

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.

Changes from Prior Annual Reports

As with the individual data, pre-*Booker* and post-*Booker* 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 make compliance and ethics-related improvements as a condition of probation. Also beginning with the 2000 Annual Report, the Commission instituted new designations for some offense types, which continue to be refined to more accurately report the data captured. Consequently, some direct comparisons of the 2005 *Annual Report* to prior annual reports may not be possible.

Overall Organizational Data for Fiscal Year 2005

In 2005, the Commission received information on 187 organizations that were sentenced under Chapter Eight, a 43.8 percent increase from 2004 and a 6.5 percent decrease from 2003.⁶ Fraud was the most frequent type of offense committed by an organization sentenced in federal court (27.8%), followed by environmental pollution (25.1%), antitrust (8.0%), and import/export offenses (7.5%). Of the 187 cases sentenced in 2005, 45 were sentenced before the *Booker* decision (“pre-*Booker* cases”) and 142 were sentenced after the *Booker* decision (“post-*Booker* cases”).

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 32.