

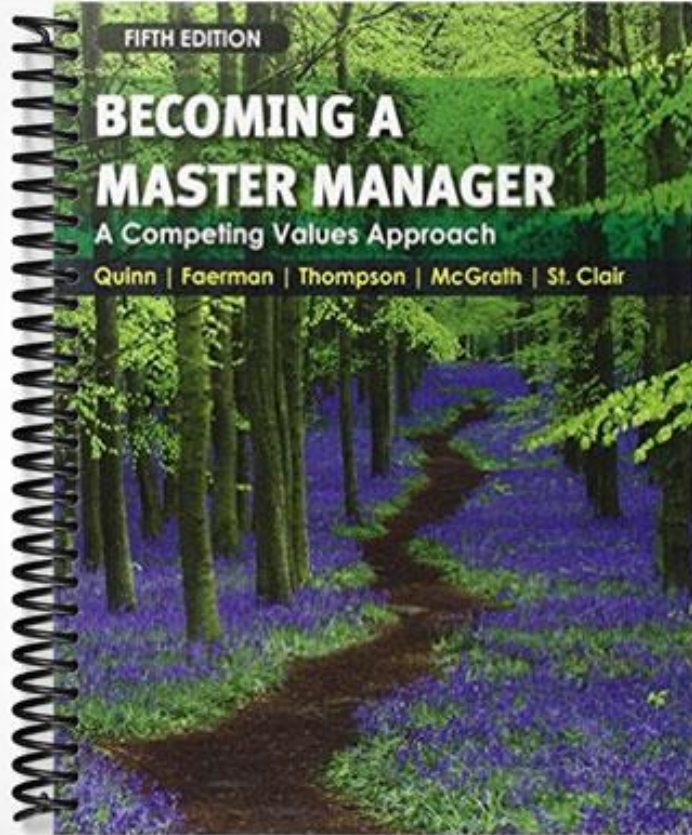
SOLUTIONS MANUAL

FIFTH EDITION

BECOMING A MASTER MANAGER

A Competing Values Approach

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MODULE 2

Establishing and Maintaining Stability and Continuity

1. **Organizing Information Flows**
2. **Working and Managing Across Functions**
3. **Planning and Coordinating Projects**
4. **Measuring Performance and Quality**
5. **Encouraging and Enabling Compliance (NEW TO FIFTH EDITION)**

Internal Process Model	
Criteria of Effectiveness	Stability, continuity
Means-ends theory	Routinization leads to stability
Action Imperative	Control
Emphasis	Defining responsibility, measurement, documentation
Climate	Hierarchical
Culture	Bureaucracy

Remind students that the internal process model tends to view organizations as closed systems. Attention is focused on organizing and controlling tasks and people. The manager is responsible for organizing and maintaining information and work flows. Planning and coordination activities are central to this approach to management. Stability is sought through the use of rules and procedures. Effective control depends on measurement systems and feedback to ensure that work is being done efficiently.

The competencies associated with the internal process quadrant have formed the basis for the concept of management for decades. These competencies may not be the current focus of most trade books and magazines, but they are essential to organizational and managerial functioning.

The internal focus and emphasis on control contrasts dramatically with the external focus and emphasis on flexibility in the open systems model. Perhaps the most important paradox for students to recognize and grapple with here is the fundamental paradox of freedom and constraint. It is important for students to understand the human side of control. The basic dilemma is between the organization's need for some measure of control over employees' behavior and employees' needs for some measure of autonomy over their own situations. Students need to understand both sides of this argument and to find solutions that address both sets of concerns.

KEY PARADOXES AND CURRENT ISSUES ASSOCIATED WITH THE CONTROL ACTION IMPERATIVE

- Paradoxes**
- Complex control systems that are seen as having excessive constraints on employees can actually reduce compliance and result in attempts to circumvent controls.
 - Even if excessive controls are effective, they may result in getting the details right but failing to achieve broader objectives because of the time spent on minutia.
 - Controls can also come into conflict when special projects need to be accomplished at the same time regular daily activities still need to be accomplished.
 - The overarching paradox of control is that the control mechanisms that we initially implement to improve effectiveness and efficiency often result in bureaucratic red tape that has the opposite result for the organization.
- Values and Ethics**
- Managers may face ethical issues related to communicating bad news because an emphasis on control comes into direct tension with the human relation concerns associated with collaborating with employees.
 - Managers who focus too intently on control may find themselves tempted to make tradeoffs at the expense of customers or employees, particularly when it would be difficult to detect those decisions
 - The types of things that organizations choose to measure and communicate about send a powerful message about what is valued.
 - As more regulations both in the U.S. and other countries are created to reduce unethical behavior, organizations must divert resources from other, potentially more productive, uses.
- Diversity**
- When organizing information flows, managers should be careful to avoid disseminating information in ways that privilege some groups over others.
 - Managing a diverse workforce requires a skilled manager who can be responsive to individual needs while still adhering to organizational policies.

- Managers can use measurement and monitoring to make sure that the organization is recruiting a diverse set of employees and providing all employees an opportunity to excel.

Technology

- As advancing technology has given managers unprecedented access to data about organizational activities, managers need to be even more selective about what data to review and share.
- As new methods of communication emerge, managers must choose whether those methods are worth adding to their communication systems, either as a replacement for an existing method or an additional way to communicate with others.

Globalization

- In today's global environment, managers may have teams and projects that are not co-located but operate in multiple places around the world.
- Coordinating projects becomes even more complex when organizations are operating in a global environment. Seemingly simple differences can result in major organizational failures if coordination mechanisms are not appropriately aligned.
- International standards for quality, environmental responsibility, and ethical behavior, all need to be taken into account by managers who operate in organizations that wish to remain competitive in today's global marketplace.

Some questions to consider in this module are:

1. How do the competencies associated with the human relations model help to balance the tendency toward negative forms of control that might result in employee resistance?
2. Is the concept of self-managed teams inconsistent with an emphasis on control?
3. How is "output" defined differently in different types of organizations (e.g. business firms, public agencies, charitable organizations, religious organizations, etc.)? What is the relationship between control and productivity in these different types of organizations?
4. What is likely to happen to an organization's ability to maintain stability and continuity in the wake of some of the trends we have seen such as:
 - downsizing headcount without eliminating any work
 - outsourcing work to operators in other countries
 - shifting work from permanent, full-time employees to temporary contract workers
 - shifting work from employees to customers (e.g., self-serve soft drink machines, self-checkout lanes in grocery stores)

Module 2, Competency 1: Organizing Information Flows

ASSESSMENT Identifying Data Overload and Information Gaps

PURPOSE: This activity is designed to help students assess how much information they are being exposed to and how they are sorting, ignoring, or using that information. Students are asked to consider how they deal with incoming information, and what they do when they feel overwhelmed with information.

KEY TOPICS: Many people feel deluged by information; TRAF

TIME ESTIMATE: 15-20 minutes to respond to the questions and discuss.

FORMAT: Individual activity followed by a large group discussion in class.

SPECIAL NEEDS: None.

SEQUENCE:

1. Introduce the activity on page 109-110 of the text and have students individually complete the questions in writing.
2. Conduct large group discussion based on their responses, focusing on what strategies students presently use to handle information, barriers to using strategies, and the extent to which these strategies are useful. Additional discussion questions may include:
 - A. How do you know if you are experiencing information overload?
 - B. As you look to your future, do you expect the amount of information to which you are exposed to automatically increase or decrease without any action on your part? Why?
 - C. What causes the overload and how do you recover from it?
 - D. What problems do you now have in handling information?
 - E. What techniques and skills have you found helpful in handling routine information?
 - F. Are there things that you can do to reduce the information overload of others in your organization?
3. Summarize the major problems that students voiced in handling information. Note any skills that they may have found helpful in handling information. This discussion leads into the learning activity where TRAF can be presented as a proven strategy.

VARIATION:

1. The questionnaire may be completed as homework, with the large group discussion beginning at the next class session.

KEY POINTS:

1. The amount of information to which we are exposed will likely increase instead of lessen.
2. New trends in communication, such as Twitter, that rely on short messages with a limited number of characters can greatly increase the number of interruptions that we experience if we allow them to command our attention.
3. Information overload is a problem common to many people, managers and students alike.
4. There are systems and techniques that can help handle information overload.

A NOTE FROM ONE OF THE AUTHORS: This section on dealing with information overload can be very stimulating and helpful to the class, or it can be deadly - depending upon how it is introduced and handled. For background information, I would suggest two books: *Information Anxiety* (see references) By Richard Saul Wurman, and *Organized To Be The Best* by Susan Silver (Adams Hall, 1989). Wurman's book is a provocative and creative discussion about the blessing and curse information is in our lives, and how we can cope with it. I've loaned my copy to many people, and they have been grateful for the help Wurman offers. I use Wurman when I teach sections on writing. He has great things to say about displaying and presenting information.

Silver's book is a fundamental, hands-on, how-to book on channeling and sorting mountains of paper. Both books are very practical and help students immensely.

I have found that there are always three or four "structure freaks" (I use the term with affection) in the class who are great resources on handling routine information. Recruit them to help teach the others. Have some students give presentations on filing and record keeping systems; on setting up files on their personal computers, or tricks and strategies for handling the information a college student often gets buried under.

The main point I make when I teach this stuff is that we have to find a match between our personality type and the organizing methods we use. A highly structured, compulsively organized person will do this stuff almost reflexively; others, like, me, will never be able to tolerate a system that requires too much maintenance and too much attention to detail. We must be realistic. I like some ambiguity and a little confusion in my life, but I don't like waking up in Pittsburgh when I'm supposed to be in Chicago, or missing meetings, or forgetting my son's birthday.

ANALYSIS Deciding What to Do with Data Inflows Using the Traffing Method

PURPOSE: The purpose of this in-basket (physical and e-mail) activity is to allow students to deal with a number of documents quickly.

KEY TOPICS: The TRAF system

TIME ESTIMATE: 15 minutes.

FORMAT: Individual activity, then 4-5 person groups, followed by large group discussion.

SEQUENCE:

1. Direct students to the activity as described on pages 117-118 of the text.
2. Remind them of the TRAF system and other points in the learning section of the module.
3. Instruct students to individually complete the activity (about 3 minutes) and then go into 4-5 person groups to compare responses and to reflect on what the differences mean.
4. Conduct large group discussion regarding the differences and similarities of responses and what might account for the differences.

KEY POINTS:

1. Traffing is a method of handling documents, including electronic ones, that can help managers become more efficient and more effective.
2. What choices we make regarding the documents may reflect our priorities and values on some issues.
3. Organizational context matters when deciding how to categorize information flows.
4. To the extent that procrastination may be related to indecisiveness, effective use of the TRAF method may allay some procrastination tendencies.

PRACTICE Making Messages Clear, Concise, and Complete

PURPOSE: The purpose of this activity is to allow students to practice effective voicemail messages using the OABC method.

KEY TOPICS: Handling electronic data; the OABC method.

TIME ESTIMATE: 15 minutes

FORMAT: Three-person groups followed by large group discussion.

SEQUENCE:

1. Divide students into three-person groups.
2. Explain the activity as outlined on pages 118-119 of the text.
3. Remind students of the challenges involved in handling electronic data, and of the OABC method.
4. Also refresh students regarding basic guidelines of effective feedback from Module 1, Competency 3 - Mentoring and Developing Others competency.
5. Conduct large group discussion, asking students to volunteer their messages and how their group helped them improve.

KEY POINTS:

1. Designing effective electronic messages using the OABC method helps others to deal with information overload.
2. Electronic data transmission is a critical skill in the workplace, and will increasingly be so.
3. Although electronic communications have tended to become more casual, particularly with the advent of texting, more formal messages provide more clarity and also present a more professional image.

APPLICATION Directing Your Own Data and Information Traffic

PURPOSE: This activity allows students to apply the information processing concepts explained in this module.

KEY TOPICS: Information overload

TIME ESTIMATE: 35 minutes.

FORMAT: Individual reflection activity

SEQUENCE:

1. Direct students to the activity on pages 119-120 of the text.
2. Remind them briefly of the information overload strategies explained in the text.
3. Direct them to write their responses to the questions and give them to you to review.

KEY POINTS:

1. Understanding the culture of the organization is important when evaluating the relative importance of different pieces of data and information.
2. Consequences of ineffectively handling information and documents range from simple embarrassment and time wasting to lost opportunities.
3. Developing strategies for handling information is important to managerial and leadership effectiveness.

Module 2, Competency 2: Working and Managing Across Functions

ASSESSMENT Mapping Your Organization

PURPOSE: To help students understand where they fit within the organization structure and the different parts of the organization.

KEY TOPICS: Organization structure

TIME ESTIMATE: Introduction to assignment in class 5 minutes; outside of class time 30 minutes; in class discussion of assignment 20 minutes

FORMAT: Individual homework assignment followed by in class discussion

SPECIAL NEEDS: Students will need time to get copies of organization charts, so be sure to assign this exercise in advance of the scheduled discussion class period.

SEQUENCE:

1. Explain to students the purpose of the assignment on pages 120-121 and remind them that it may take some time to get copies of their organization charts. Specify the due date for the students.
2. For the in-class discussion, ask students if they had difficulty obtaining organization charts. If they did, ask about the explanations they were given for why this document was not available to all employees (or students).
3. Talk about what is and is not apparent from organization charts in general, particularly with respect to power in the organization.
4. Ask students how many connections to other areas of the organization they included on their re-drawn charts. Probe to see how thorough students have been in this regard.

KEY POINTS:

1. Organization documents do not always accurately reflect the existing structure.
2. Although it may not be obvious at first glance, employees typically rely on a complex network of individuals throughout the organization to get their jobs done.

VARIATION:

1. This exercise provides an excellent opportunity for discussing the concept of the informal organization. Student can be asked to draw an organization chart that they feel more accurately reflects how things are done in the organization.

ANALYSIS Errors in the Design?

PURPOSE: In this activity students analyze a case involving a real situation of managing across functional areas. This activity demonstrates real issues that surface in managing across functions.

KEY TOPICS: Cross-functional teams in traditional structures.

TIME ESTIMATE: 20 minutes.

FORMAT: Individual activity, followed by large group discussion.

SPECIAL NEEDS: Optional: blank transparencies and overhead projector.

SEQUENCE:

1. Introduce the activity by directing students to the instructions on page 127 of the text. Explain that they will be reading a case involving errors made in managing across functions. Note that at the end of the case, they will be required to write their analysis by responding to the questions following the case.
2. After completion of the activity, ask for volunteers to share their analysis with the class. These may be written on blank transparencies and used with an overhead projector.
3. Compare their findings and conduct a large group discussion based on their findings and conclusions.
4. Summarize students' major points. Additional discussion questions may include:
 - A. How can you apply the key guidelines for managing cross-functionally to this case?
 - B. What are the real issues underlying the errors?
 - C. What task versus people issues were involved?

VARIATION:

1. Assign the activity as homework. The next class session, place students into 4-5 person groups to discuss their responses to the questions and to generate their responses to the questions.

KEY POINTS:

1. In managing cross-functional teams, the potential for error is great but the potential payoffs of success are also great.
2. Effective planning and coordination can help to prevent fatal errors at implementation time.

PRACTICE Student Orientation

PURPOSE: This activity permits students to identify issues related to managing across functions, and how they would handle such a responsibility

KEY TOPICS: Task- and people-related issues, internal and external integration.

TIME ESTIMATE: 30 minutes

FORMAT: Individual activity followed by large group discussion.

SPECIAL NEEDS: None.

SEQUENCE:

1. Introduce the activity on pages 127-128 and explain that it gives students an opportunity to explore the dynamics of managing cross-functional teams within traditional structures.
2. Give students some time to draft their one page outline of how they would coordinate all of the orientations across the university and jot down responses to the questions.
3. Conduct a large group discussion focusing on their responses to the four process questions. These can be written on the white/chalkboard.
4. Additional discussion questions may include:
 - A. What difficult issues are raised with cross-functional teams in traditional organizations?
 - B. What issues regarding control in organizations are raised by this activity?
 - C. What possible sources of tension could there be in these situations?
 - D. What evaluation issues arise with regards to cross-functional teams?
5. Summarize the students' key observations as well as the key points below.

VARIATIONS:

1. Assign step 2 above to be completed as homework.
2. In between steps 2 and 3, break the class into 4-5 person groups to discuss their outlines and their responses to the questions.
3. The discussion can be expanded to include a more general discussion of the purposes, benefits, and challenges of any type of orientation process.

KEY POINTS:

1. There are special challenges to managing cross-functional teams within traditional organizational structure that relate to both task issues and people issues.

2. Control of individual effort must be considered in different ways when managing across functions.

APPLICATION Examining a Cross Functional Team

PURPOSE: This activity permits students to apply what they have learned regarding managing cross-functional teams to a real situation.

KEY TOPICS: Managing across functions

TIME ESTIMATE: In class set up time: 10 minutes; outside of class: 3 hours; in class follow up discussion: 20 minutes.

FORMAT: Individual activity followed by large group discussion.

SPECIAL NEEDS: Exposure a cross-functional team. Time to gather information and write a memo focused on improving that team's processes.

SEQUENCE:

1. Direct students to the instructions on pages 128-129 of the text. Explain that they will apply what they have learned to a cross-functional organizational project that they will be observing. It may be necessary to assist them in finding an organization project to observe if they are not currently employed.
2. If necessary, review with them the guidelines for managing across functions.
3. Set a date when the written memo is due and discussion will take place.
4. On the day that the assignment is due, ask for volunteers to share their experience with the class.
5. Drawing on students' major points, conduct a large group discussion. Additional questions might include:
 - A. What were the successful elements in the situation you observed?
 - B. What dynamics account for that success?
 - C. What were the dysfunctional aspects of the situation you observed?
 - D. What dynamics account for those dysfunctions?
 - E. How can the dysfunctions be remedied?
 - F. Which aspects of this module would you recommend to the persons involved in the situation you observed?
6. Summarize, using students' main ideas.

VARIATION:

1. Students may be assigned to work in teams to complete the activity, submitting a team report.

KEY POINTS:

1. Attention to process is critical for managing cross-functional teams.
2. Team composition in real world situations does not always match the theoretically optimal mix of individuals.

Module 2, Competency 3: Planning and Coordinating Projects

ASSESSMENT Project Planning

PURPOSE: This activity gives students the opportunity to surface some of the steps and skills involved in planning projects. This activity demonstrates the need to plan complex tasks, and the tendency to neglect details.

KEY TOPICS: Different levels of planning, coordination, and time lines.

TIME ESTIMATE: 45 minutes.

FORMAT: Individual activity followed by large group discussion.

SEQUENCE:

1. Introduce the activity on page 129 of the text by telling students that this activity will help them begin to focus on coordination by giving them an opportunity to consider a project that they had planned or managed. Explain that tasks and projects may appear easy to coordinate and complete if we do not analyze all of the needed components. There is great risk in failure to give attention to detail and timelines
2. Allow students 20 minutes to complete the activity individually.
3. Ask for 5-7 volunteers to record their plans on the board and present to the class.
4. Conduct a large group discussion and summarize. While the questions in the text form the basis of this discussion, additional questions may include:
 - A. What about this activity surprised you?
 - B. Why do people tend to overlook some necessary details?
 - C. What were the first three things you did in planning this project?
 - D. Was your approach similar to or different from the way you usually approach tasks?
 - E. To what extent did you consider the resources you would need to complete this project?
 - F. Did you use any kind of schedule or time line? Why or why not?
 - G. Did you determine how to check your progress? Explain?
 - H. What are some of the differences associated with planning for events involving many people vs. events involving a small number of people?

VARIATION:

1. This activity can be completed as homework and then discussed in the next class.

KEY POINTS:

1. Often tasks that appear to be simple need to be broken down into task components, planned, and coordinated.
2. Operational planning involves translation of a big idea into detailed plans.
3. It is easy to neglect some simple details.

ANALYSIS Planning a Training Course

PURPOSE: This activity permits students to analyze a situation of a manager who is responsible for a project and who turns to the tools and concepts in the learning section for help. For simplicity, only one time estimate is given, rather than the three estimates (most likely time, pessimistic time, and optimistic time) that typically are used in a traditional PERT approach

KEY TOPICS: Task relationship diagrams; Gantt charts; PERT/CPM.

TIME ESTIMATE: 50 minutes.

FORMAT: Individual activity, small group discussion, followed by large group discussion.

SPECIAL NEEDS: Make physical or electronic copies of the CPM Procedure handout, CPM Chart Table, and the Critical path diagram that are shown on the following pages and provide them to class.

SEQUENCE:

1. Introduce the activity by referring students to the case and questions on pages 143-144 of the text. Explain that they will be analyzing a situation where the manager is responsible for a project and needs to use planning tools. Give each student a copy of the CPM Procedures handout (see page after Key Points for this Analysis).
Note: the Steering Committee (activity 1,4) and the Advisory Committee (activities 4,9; 10,12; 11,13;12,14;13,14) are the same entity.
2. Allow students 20 minutes to read the case and respond in writing to the questions which follow it.
3. Place students into 4-5 person groups, if desired, and allow the groups to discuss their solutions. Note that the drawings may look somewhat different, but everyone should obtain the same critical path. (see table of chart data that follows)
4. Conduct a large group discussion based on the group reports and the questions in the text. Summarize major points. Additional questions may include:
 - A. What are some psychological consequences of lack of planning skills?
 - B. Which planning tools did you find to be the most useful and why?
 - C. What were some of cultural assumptions that could lead to neglect of planning skills? Note that unlike some other societies, in our society we do not tend to focus on the detailed preparation of an event; we tend only to celebrate the event, or the finished product. As an example of our preoccupation with the finished product and neglect of the process, while

some societies celebrate pregnancy, American society tends to celebrate birth. Attention to the process, then, requires conscious effort.

VARIATIONS:

1. Step 2 can be completed as a homework assignment. This typically works well because some students are much more adept at working through the solutions than other students.
2. If students have access to project management software such as MS Project, encourage them to use the software for this assignment. Because MS Projects uses number for tasks, rather than for nodes, student will need to re-number the task so that 1, 2 = 1; 1,4 =2; 1,5= 3; etc. through 14,15 = 20.
3. Step 3 can be eliminated; proceed directly from the individual activity to the large group discussion.

KEY POINTS:

1. Planning requires care, diligent attention to detail, and accurate input from others.
2. Neglecting planning can result in major difficulties as far as the project is concerned, as well as a degree of undue stress and psychological distress.
3. The longer we let something go without attention to planning, the more difficult the situation often becomes. In order to get things back on track, we sometimes have to go back to the beginning.

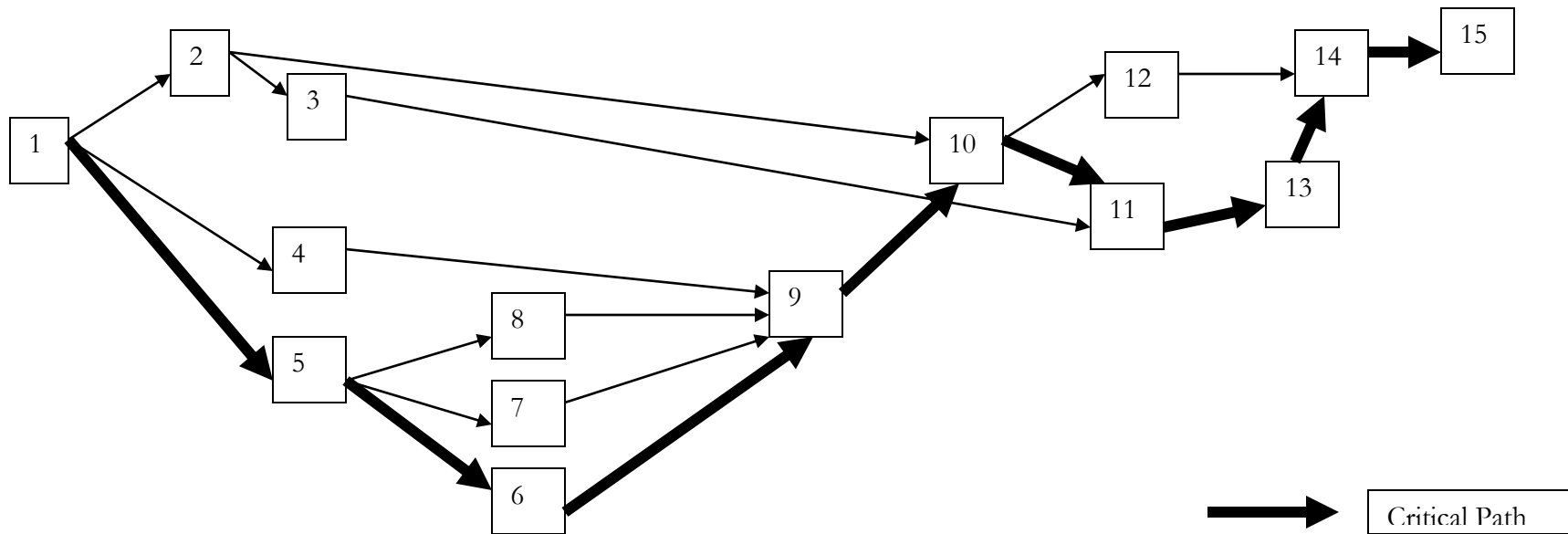
Critical Path Method Procedure Handout

1. List activities in sequence with time estimate for each. Note activities that proceed in parallel from the same preceding activity.
2. Calculate earliest start time (EST) and earliest finish time (EFT) for each activity.
EST for the first activity(ies) to be performed = 0.
EFT for each activity = EST + Est. Time
EST for each activity = EFT for preceding activity
3. Identify activity sequence that consumes the longest time. This is the Critical Path (CP).
4. Calculate latest start time (LST) and latest finish time (LFT) for each activity. For CP activities, LST = EST and LFT = EFT (by definition). For non-CP activities, LFT = EST for the next succeeding activity, and LST = LFT - Est. Time.
5. Float (also referred to as Slack) for CP activities = 0 (by definition).
Float for non-CP activities = LST - EST.

Critical Path Method Chart Data

Activity	Earliest Finish Time	Latest Finish Time	Earliest Start Time	Latest Start Time	Time Estimate	Float or Slack	On critical path?	Numbering for MS Project
1,2	4	19	0	15	4	15		1
1,4	1	18	0	17	1	17		2
1,5	2	2	0	0	2	0	YES	3
2,3	5	22	4	21	1	17		4
2,10	4	19	4	19	0	15		5
3,11	5	22	5	22	0	17		6
4,9	2	18	1	17	1	16		7
5,6	6	6	2	2	4	0	YES	8
5,7	4	6	2	4	2	2		9
5,8	4	6	2	4	2	2		10
6,9	9	9	6	6	3	0	YES	11
7,9	6	9	4	7	2	3		12
8,9	6	9	4	7	2	3		13
9,10	19	19	9	9	10	0	YES	14
10,11	22	22	19	19	3	0	YES	15
10,12	21	23	19	21	2	2		16
11,13	24	24	22	22	2	0	YES	17
12,14	23	25	21	23	2	2		18
13,14	25	25	24	24	1	0	YES	19
14,15	29	29	25	25	4	0	YES	20

Path Diagram



PRACTICE The Job Fair

PURPOSE: This activity allows students to practice planning concepts explained in this module, and to consider what planning tools they have at their disposal and how they can use those tools.

KEY TOPICS: Work breakdown structures, task relationship diagrams; Gantt charts

TIME ESTIMATE: 40 minutes.

FORMAT: Small group activity followed by large group discussion.

SEQUENCE:

1. Introduce the activity by directing students to the instructions on page 145 of the text. This is their chance to identify and put planning tools to work.
2. Place students into 4-5 person groups. Direct students to complete the activity and draw up the written work.
3. After their written work is completed, ask for volunteers to share their work breakdown structures and Gantt charts. They may wish to write them on the chalkboard, or if possible, write them on blank transparencies for use with an overhead projector.
4. Conduct a large group discussion comparing the project plans created by different teams. Additional discussion questions may include:
 - A. Did anything surprise you about completing this activity? Many students report that at first glance it seemed difficult and overwhelming, but once they got into it, it was easier than expected. A point here is that this response is not unusual with regards to planning.
 - B. What applications do you see for these skills in the future?
 - C. What are sources of individual resistance to planning?

KEY POINTS:

1. This competency incorporates a number of skills generic to many situations: social, job, project, and personal.
2. Careful planning has the effect of changing our perceptions of a task from overwhelming to manageable.
3. Life is easier when we plan, break down the task into component parts, and pay attention to the details.

APPLICATION Managing Your Own Project

PURPOSE: This activity gives students the opportunity to apply planning principles to a project with which they are involved. This activity demonstrates to students the applicability of project management tools to their activities, and the value of such tools for the effective implementation of those activities.

KEY TOPICS: Statement of work; WBS; Gantt Chart; PERT/CPM.

TIME ESTIMATE: 45 minutes.

FORMAT: Individual activity followed by large group discussion.

SPECIAL NEEDS: Students may need time to identify a project and gather information regarding what tasks need to be completed to accomplish the project.

SEQUENCE:

1. Introduce the activity by directing students to the instructions on pages 145-146 of the text. Note that this activity represents a summation of the competency, essentially involving students in applying the key points of the learning section to improve their effectiveness on a personal project.
2. Discuss with the class what their choice of projects might be. Encourage them to select a project which is currently facing them.
3. Indicate that they are required to submit a final report of 3-5 pages, and set a date that the report is due.
4. On the day the final report is due, conduct a large group discussion and summarize. Discussion questions might include:
 - A. How did applying planning tools to your project affect your attitude towards that project?
 - B. What would you surmise to be the relationship between the use of planning tools and one's tendency to procrastinate?
 - C. Someone has said that the act of starting a project takes 50% of the effort to complete it. While this statement may not have scientific validity, do you think it has some merit? How does the use of the planning competency apply to this statement?
 - D. What do you feel are the advantages of consistent, efficient planning?

VARIATION

1. Divide the class into 4-5 person teams. Instruct them to plan a project for completion by the end of the term. The project might entail some service to the community or to the campus.

KEY POINTS:

1. Planning tools are not unique to management in organizations. They are generic to many aspects of life and assist in implementing a wide array of projects or activities.
2. Project management is a valuable competency that applies to many aspects of life, and not only to a managerial career.
3. The act of planning is an important aspect of all complex projects.

Module 2, Competency 4: Measuring Performance and Quality

ASSESSMENT Identifying Appropriate Performance Criteria

PURPOSE: This activity emphasizes the idea that achieving desired outcomes depends on designing appropriate processes and obtaining feedback about how effectively those processes are being implemented.

KEY TOPICS: Hierarchy of measures, exact and proxy measures, outcome, process, and initiative measures

TIME ESTIMATE: 15 minutes

FORMAT: Individual assignment followed by group discussion

SPECIAL NEEDS: none

SEQUENCE:

1. Introduce students to the assignment on pages 146-147 of the text. Explain that they need to identify critical outcomes of their job, the tasks that they are required to do as part of their jobs, and the feedback that they receive about their performance.
2. Using the initial outcomes and tasks that they identified as a starting point, have them identify what type of feedback they received as they were attempting to reach those outcomes.
3. Direct the discussion to focus on the reciprocal nature of feedback and performance.

KEY POINTS:

1. Appropriate performance criteria are needed to guide decisions about process design.
2. Accurate feedback is critical successful performance.

VARIATIONS:

1. This activity can be assigned for homework.
2. In addition to focusing on feedback and performance, this exercise can also be used to identify tasks that are not truly necessary to achieve the critical outcomes associated with a job. This can lead to an interesting discussion about why people often find themselves doing things that are not truly relevant to their personal goals or the goals of the organization.

WATCH FOR: This activity can be very effective for talking about student's desired outcomes for course grades. Instructors can use the syllabus requirements and grading

system to demonstrate how feedback throughout the semester is provided to help ensure that students can achieve their grade objectives for the course. Be prepared, however, for some students to argue that the feedback is insufficient or the criteria for attaining a specified grade is unclear.

ANALYSIS Improving Performance in the Health Care Industry

PURPOSE: This activity gives students a chance to improve their understanding of key performance metrics.

KEY TOPICS: Performance metrics, Baldrige Criteria

TIME ESTIMATE: 10 minutes to introduce; 2 hours out of class time; 30 minutes in-class discussion

FORMAT: Homework followed by in-class discussion. This assignment can be done individually or in teams.

SPECIAL NEEDS: none

SEQUENCE:

1. Students should be directed to page 154 and asked to complete the analysis outside of class.
2. Emphasize that in writing their report they need to clearly identify the types of measures that they are proposing.
3. Provide a due date and let students know whether or not they will be presenting their reports (see Variation)
4. For in-class discussion, encourage students to debate the quality of the different measures that are proposed.
5. Summarize the suggestions for measures and link them to the measurement hierarchy outlined in the text.

KEY POINTS:

1. Evaluating subjective outcomes such as patient satisfaction can benefit from using multiple measures.
2. Objective measures are important, but are often not sufficient to fully understand client/customer/patient attitudes.

VARIATION:

1. The in-class discussion can include a presentation by individuals or teams where the class acts as the Hospital Board and questions the choices of metrics proposed by the presenters.

PRACTICE Developing Education Performance Metrics

PURPOSE: To develop personal performance metrics for the student's education objective.

KEY TOPICS: Strategic objectives, performance metrics

TIME ESTIMATE: 20 minutes

FORMAT: Individual assignment followed by group discussion

SPECIAL NEEDS: none

SEQUENCE:

1. Review the directions on page 155 with students. If a written paper is assigned, provide a due date.
2. Class discussion can be used to identify similarities and differences in students objectives and the metrics that they propose to use to help them reach those objectives.
3. Summarize the discussion and emphasize the benefit of using multiple metrics, rather than just relying on a single measure.

KEY POINTS:

1. Individuals rarely have complete control over the outcomes they are working towards.
2. Using multiple performance metrics can help direct our actions toward desired outcomes.

VARIATION:

1. This activity can be assigned as homework and then discussed in class.

WATCH FOR: It is important, however, not to allow this discussion to devolve into a "gripe" session about how they are being graded in this class or any of their other classes.

Note from one of the Authors: I have always found discussions of students about their goals and expectations versus my goals and expectations to be very valuable. It can also be very enlightening for students to hear their peers' goals and expectations. Some students assume that no one would be satisfied with less than an "A" while other students can't believe that anyone would work to get a higher grade than necessary to pass the course. --*LSS*

APPLICATION Developing Performance Metrics for Your Job

PURPOSE: This activity is designed to encourage students to take what they are learning about performance metrics into the workplace.

KEY TOPICS: Objective, Complete, and Responsive measures

TIME ESTIMATE: 1-2 hours outside class to develop performance metric form; 20 minute in-class discussion; 30 minute meeting with supervisor if deemed appropriate

FORMAT: Individual assignment, followed by in-class discussion

SPECIAL NEEDS: Students need to have a trusting relationship with their supervisor at work if they wish to discuss their proposed performance metric form with them.

SEQUENCE:

1. As described on pages 155-156, have students develop a performance evaluation form for their jobs. Students who are not currently working may wish to write about a former job or a job they hope to obtain in the future. Alternatively, they can write a performance evaluation for themselves as students.
2. Set a due date for the performance metric form.
3. On date when the assignment is due, open the discussion and ask for volunteers to describe the performance metric form that they prepared.
4. Query students about how they think their supervisor would respond to the proposed metrics.
5. Summarize the benefits of having thoughtful and thorough performance metrics for directing and measuring job performance.

KEY POINTS:

1. Performance evaluation forms often fail to adequately measure key aspects of job performance.
2. When measures are not objective, complete, and responsive, employees will have a difficult time improving their performance.
3. If employees believe that performance evaluation systems are not accurate, they may become demotivated.

WATCH FOR: Students who are working may wish to discuss their performance evaluation form with the instructor prior to discussing it with their supervisor.

Module 2, Competency 5: Encouraging and Enabling Compliance

THIS COMPETENCY IS NEW TO THE FIFTH EDITION

ASSESSMENT Reactions to Methods of Encouraging Compliance

PURPOSE: This activity helps to demonstrate how individual differences as well as situational factors can influence an individual's decision to comply with a law, rule, or policy.

KEY TOPICS: Individual and situational variables, rationales for noncompliance, methods for increasing compliance

TIME ESTIMATE: 10 minutes

FORMAT: Individual assignment followed by group discussion

SPECIAL NEEDS: None.

SEQUENCE:

1. Introduce the activity on pages 156-157 of the text and have students individually rate each of the items.
2. Conduct a large group discussion to explore their responses. Probe for the assumptions behind their ratings. Try to encourage debate among the students related to their assumptions about compliance in these different situations.
3. Summarize the discussion by highlighting the impact of both individual differences and situational factors that can affect compliance.

KEY POINTS:

1. Individuals may respond to compliance situations in different ways.
2. Managers may be able to alter situational variables in ways that encourage (or discourage) compliance.

VARIATION:

1. Students can complete the assessment for homework. Additional issues, such as illegally downloading music and videos, also can be added by instructors who wish to delve more deeply into issues of legality and ethics.

WATCH FOR: This activity can generate some interesting class discussions about how laws, rules, and policies are interpreted. Some students may be somewhat strident in their views, particularly if they feel they are being judged negatively because of their responses.

ANALYSIS Strategies used by the United States to Increase Compliance

PURPOSE: This exercise is intended to give students an opportunity to evaluate an example of the type of federal regulations that organizations are subject to. In addition to exposing students to the complexity of regulatory compliance, the exercise also gives students an opportunity to demonstrate their understanding of the different strategies for encouraging compliance.

KEY TOPICS: U.S. Federal Guidelines for Organizations, compliance strategies (remunerative, punitive, preventative, generative, cognitive, normative)

TIME ESTIMATE: 10 minutes to introduce; 2 hours outside class; 30 minutes in-class discussion

FORMAT: Homework followed by in-class discussion. This assignment can be done individually, but given the length of the guidelines, having students work together in teams can be helpful.

SPECIAL NEEDS: Access to the Chapter 8 guidelines (pages 487 – 531 of the November 1, 2007 version of the *Guidelines Manual*). In case the online version is no longer available at <http://www.ussc.gov/2007guid/CHAP8.pdf> a copy is included as an Appendix at the end of this section of the *Instructor's Manual*.

SEQUENCE:

1. Students should be directed to pages 167-168 and asked to access the Federal Guidelines and complete the analysis outside of class.
2. In class, have students report on the strategies to encourage compliance that they identified in the Guidelines.
3. After identifying the strategies, lead a discussion with respect to the expected efficacy of the different strategies in the Guidelines.
4. Summarize by reviewing the six strategies for compliance in the text and indicating how frequently they appeared in the students' analysis of the Federal Guidelines.

VARIATION:

1. You may wish to direct students to a particular portion of the Guidelines, rather than having them read the entire document. Students can also be asked to engage in a role-play to debate the relative merits of different strategies in the guidelines, as though they were members of the committee assigned to develop the Guidelines.

KEY POINTS:

1. Ensuring compliance is extremely difficult in situations where there is limited oversight.
2. Using multiple compliance strategies is often preferable to using only a single approach to encouraging compliance.

PRACTICE Moving Compliance Outside the Workplace

PURPOSE: This activity gives students an example of a real-world attempt by an organization to influence employees' behavior outside of the workplace. By writing a memo evaluating the proposed program, students can practice their written communication skills and their ability to give feedback, as well as their understanding of the motivational implications of different compliance strategies.

KEY TOPICS: Compliance strategies, giving feedback

TIME ESTIMATE: 5 minutes to introduce the exercise; 60 minutes outside of class; 30-35 minutes for in-class discussion

FORMAT: Individual assignment followed by group discussion

SPECIAL NEEDS: None.

SEQUENCE:

1. Review the directions on page 168 and have students write the memo outside of class.
2. In class, have students identify the strengths and weaknesses that they wrote about in their memos. A key issue that should be raised is the lack of any real oversight in this program unless the fitness activities are completed as part of a University program.
3. After all the strengths and weaknesses have been identified, ask students for their suggestions for improvements.
4. Summarize the discussion and emphasize the importance of keeping in mind both the purpose of the program and the risk of making employees feel over controlled.

VARIATIONS:

1. In addition to discussing the compliance aspects of this proposed organizational program, you may also have students discuss and debate whether programs that try to influence behavior outside the workplace are appropriate or inappropriate.
2. Rather than having students write memos, if you prefer to have only a class discussion they should be asked to simply list strengths, weaknesses, and suggestions for improvement.

KEY POINTS:

1. Trying to get employees to participate in programs outside typical organizational activities may lead to employee concerns about constraining their individual freedom and invading their privacy.
2. Efforts to encourage compliance that do not provide any mechanism for oversight are subject to abuse and may result in employee cynicism and resistance.

APPLICATION Your Organization's Compliance Policies and Practices

PURPOSE: This activity is designed to help students gain a better understanding of how organizations they belong to address compliance issues.

KEY TOPICS: Compliance policies

TIME ESTIMATE: 10 minutes to introduce exercise; 60 -90 minutes outside class; 20 minutes in-class discussion

FORMAT: Individual assignment, followed by in-class discussion

SPECIAL NEEDS: Students will need time to interview people in their organization or university about compliance issues, so be sure to assign this activity well in advance of the in-class discussion.

SEQUENCE:

1. Direct the students to the exercise on page 169 of the text. and explain to them that they may need to talk with multiple people to learn about how compliance is handled in their organizations.
2. When leading an in-class discussion, probe students to learn whether or not they experienced any difficulties in obtaining information about compliance policies and practices. Ask if they received any responses that suggested that the person they were speaking with did not feel that compliance was an important issue for their organization.
3. In summarizing the discussion, remind students that just because an organization does not have written compliance documents or an office of Compliance and Ethics, that does not necessarily mean that the organization has a poor record of actual compliance, but it does suggest that, if legal or ethical violations occur, the organization may face more significant penalties because of the lack of a meaningful compliance program consistent with U.S. Federal Guidelines.

VARIATIONS:

1. If the majority of students are not currently employed, you can ask them to work together in small teams and use these questions as part of an informational interview with someone employed in a local organization.
2. Alternatively, if students are not currently employed, you can assign small teams to interview people in different positions at the University to see how much people know about compliance at their institution.

KEY POINTS:

1. Effective compliance systems typically depend upon all employees having clear, accessible information about organizational policies and procedures.

2. Without a meaningful compliance program, organizations may be subjected to more severe penalties if illegal or unethical activities are discovered.

WATCH FOR: Students may become frustrated if they are unable to obtain any documents related to compliance from their organizations. They should be reassured that just because they were not able to obtain the information they were seeking, that does not mean that they did a poor job on the assignment.

Module 2 Control-Focused Competency Evaluation Matrix

THIS EXERCISE WAS PREVIOUSLY ASSIGNED AT THE END OF THE TEXT

PURPOSE: This activity helps students begin working on their plan for mastery by assessing their current level of performance with respect to the five competencies in Module 2 and identifying steps they can take to become more effective.

KEY TOPICS: Review of competencies associated with the internal process quadrant and the Control action imperative. Preparation for designing a plan for mastery to be used in the future.

TIME ESTIMATE: 5 minutes to introduce in class; 50-75 minutes outside of class

FORMAT: Individual assignment

SPECIAL NEEDS: None.

SEQUENCE:

1. Introduce the evaluation matrix activity on pages 169-170 of the text and ask students to individually respond to the seven questions listed for each of the five competencies in Module 2.
2. Explain that this matrix provides a summary of where they are with regard to the competencies associated with the internal process model and the Compete action imperative. It also provides an organized plan for self-improvement, with specific steps that can be pursued now, as well as after the conclusion of the course.
3. Remind students to keep this matrix. They will need it for the Application exercise in the concluding chapter of the text which asks them to focus on their future by preparing detailed strategy for mastery self-development plan.

VARIATION:

1. Because the evaluation matrix is a very individualized activity, instructors may not wish to take class time to discuss this activity. If, however, the class is small and the students are comfortable with one another, it may be beneficial to discuss these matrices so students can get additional ideas from other students for things they may wish to include in their plan for mastery.

KEY POINT:

1. Becoming a master manager is a journey that requires us to regularly review our competencies and identify ways to improve our performance.

APPENDIX

Federal Guidelines to be used for Module 2, Competency 5 Analysis Exercise

(accessed 10 September 2010 from <http://www.ussc.gov/2007guid/CHAP8.pdf>)

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CHAPTER EIGHT - SENTENCING OF ORGANIZATIONS

Introductory Commentary

The guidelines and policy statements in this chapter apply when the convicted defendant is an organization. Organizations can act only through agents and, under federal criminal law, generally are vicariously liable for offenses committed by their agents. At the same time, individual agents are responsible for their own criminal conduct. Federal prosecutions of organizations therefore frequently involve individual and organizational co-defendants. Convicted individual agents of organizations are sentenced in accordance with the guidelines and policy statements in the preceding chapters. This chapter is designed so that the sanctions imposed upon organizations and their agents, taken together, will provide just punishment, adequate deterrence, and incentives for organizations to maintain internal mechanisms for preventing, detecting, and reporting criminal conduct.

This chapter reflects the following general principles:

First, the court must, whenever practicable, order the organization to remedy any harm caused by the offense. The resources expended to remedy the harm should not be viewed as punishment, but rather as a means of making victims whole for the harm caused.

Second, if the organization operated primarily for a criminal purpose or primarily by criminal means, the fine should be set sufficiently high to divest the organization of all its assets.

Third, the fine range for any other organization should be based on the seriousness of the offense and the culpability of the organization. The seriousness of the offense generally will be reflected by the greatest of the pecuniary gain, the pecuniary loss, or the amount in a guideline offense level fine table. Culpability generally will be determined by six factors that the sentencing court must consider. The four factors that increase the ultimate punishment of an organization are: (i) the involvement in or tolerance of criminal activity; (ii) the prior history of the organization; (iii) the violation of an order; and (iv) the obstruction of justice. The two factors that mitigate the ultimate punishment of an organization are: (i) the existence of an effective compliance and ethics program; and (ii) self-reporting, cooperation, or acceptance of responsibility.

Fourth, probation is an appropriate sentence for an organizational defendant when needed to ensure that another sanction will be fully implemented, or to ensure that steps will be taken within the organization to reduce the likelihood of future criminal conduct.

These guidelines offer incentives to organizations to reduce and ultimately eliminate criminal conduct by providing a structural foundation from which an organization may self-police its own conduct through an effective compliance and ethics program. The prevention and detection of criminal conduct, as facilitated by an effective compliance and ethics program, will assist an organization in encouraging ethical conduct and in complying fully with all applicable laws.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 2004 (see Appendix C, amendment 673).

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PART A - GENERAL APPLICATION PRINCIPLES

§8A1.1. Applicability of Chapter Eight

This chapter applies to the sentencing of all organizations for felony and Class A misdemeanor offenses.

Commentary

Application Notes:

1. "Organization" means "a person other than an individual." 18 U.S.C. § 18. The term includes corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof, and non-profit organizations.

2. The fine guidelines in §§8C2.2 through 8C2.9 apply only to specified types of offenses. The other provisions of this chapter apply to the sentencing of all organizations for all felony and Class A misdemeanor offenses. For example, the restitution and probation provisions in Parts B and D of this chapter apply to the sentencing of an organization, even if the fine guidelines in §§8C2.2 through 8C2.9 do not apply.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8A1.2. Application Instructions - Organizations

(a) Determine from Part B, Subpart 1 (Remedying Harm from Criminal Conduct) the sentencing requirements and options relating to restitution, remedial orders, community service, and notice to victims.

(b) Determine from Part C (Fines) the sentencing requirements and options relating to fines:

(1) If the organization operated primarily for a criminal purpose or primarily by criminal means, apply §8C1.1 (Determining the Fine - Criminal Purpose Organizations).

(2) Otherwise, apply §8C2.1 (Applicability of Fine Guidelines) to identify the counts for which the provisions of §§8C2.2 through 8C2.9 apply. For such counts:

(A) Refer to §8C2.2 (Preliminary Determination of Inability to Pay Fine) to determine whether an abbreviated determination of the guideline fine range may be warranted.

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(B) Apply §8C2.3 (Offense Level) to determine the offense level from Chapter Two (Offense Conduct) and Chapter Three, Part D (Multiple Counts).

(C) Apply §8C2.4 (Base Fine) to determine the base fine.

(D) Apply §8C2.5 (Culpability Score) to determine the culpability score. To determine whether the organization had an effective compliance and ethics program for purposes of §8C2.5(f), apply §8B2.1 (Effective Compliance and Ethics Program).

(E) Apply §8C2.6 (Minimum and Maximum Multipliers) to determine the minimum and maximum multipliers corresponding to the culpability score.

(F) Apply §8C2.7 (Guideline Fine Range - Organizations) to determine the minimum and maximum of the guideline fine range.

(G) Refer to §8C2.8 (Determining the Fine Within the Range) to determine the amount of the fine within the applicable guideline range.

(H) Apply §8C2.9 (Disgorgement) to determine whether an increase to the fine is required.

For any count or counts not covered under §8C2.1 (Applicability of Fine Guidelines), apply §8C2.10 (Determining the Fine for Other Counts).

(3) Apply the provisions relating to the implementation of the sentence of a fine in Part C, Subpart 3 (Implementing the Sentence of a Fine).

(4) For grounds for departure from the applicable guideline fine range, refer to Part C, Subpart 4 (Departures from the Guideline Fine Range).

(c) Determine from Part D (Organizational Probation) the sentencing requirements and options relating to probation.

(d) Determine from Part E (Special Assessments, Forfeitures, and Costs) the sentencing requirements relating to special assessments, forfeitures, and costs.

Commentary

Application Notes:

1. Determinations under this chapter are to be based upon the facts and information specified in the applicable guideline. Determinations that reference other chapters are to be made under the standards applicable to determinations under those chapters.

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2. The definitions in the Commentary to §1B1.1 (Application Instructions) and the guidelines and commentary in §§1B1.2 through 1B1.8 apply to determinations under this chapter unless otherwise specified. The adjustments in Chapter Three, Parts A (Victim-Related Adjustments), B (Role in the Offense), C (Obstruction), and E (Acceptance of Responsibility) do not apply. The provisions of Chapter Six (Sentencing Procedures and Plea Agreements) apply to proceedings in which the defendant is an organization. Guidelines and policy statements not referenced in this chapter, directly or indirectly, do not apply when the defendant is an organization; e.g., the policy statements in Chapter Seven (Violations of Probation and Supervised Release) do not apply to organizations.

3. The following are definitions of terms used frequently in this chapter:

(a) "Offense" means the offense of conviction and all relevant conduct under §1B1.3 (Relevant Conduct) unless a different meaning is specified or is otherwise clear from the context. The term "instant" is used in connection with "offense," "federal offense," or "offense of conviction," as the case may be, to distinguish the violation for which the defendant is being sentenced from a prior or subsequent offense, or from an offense before another court (e.g., an offense before a state court involving the same underlying conduct).

(b) "High-level personnel of the organization" means individuals who have substantial control over the organization or who have a substantial role in the making of policy within the organization. The term includes: a director; an executive officer; an individual in charge of a major business or functional unit of the organization, such as sales, administration, or finance; and an individual with a substantial ownership interest. "High-level personnel of a unit of the organization" is defined in the Commentary to §8C2.5 (Culpability Score).

(c) "Substantial authority personnel" means individuals who within the scope of their authority exercise a substantial measure of discretion in acting on behalf of an organization. The term includes high-level personnel of the organization, individuals who exercise substantial supervisory authority (e.g., a plant manager, a sales manager), and any other individuals who, although not a part of an organization's management, nevertheless exercise substantial discretion when acting within the scope of their authority (e.g., an individual with authority in an organization to negotiate or set price

levels or an individual authorized to negotiate or approve significant contracts). Whether an individual falls within this category must be determined on a case-by-case basis.

(d) "Agent" means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

(e) An individual "condoned" an offense if the individual knew of the offense and did not take reasonable steps to prevent or terminate the offense.

(f) "Similar misconduct" means prior conduct that is similar in nature to the conduct underlying the instant offense, without regard to whether or not such conduct violated the same statutory provision. For example, prior Medicare fraud would be misconduct similar to an instant offense involving another type of fraud.

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(g) "Prior criminal adjudication" means conviction by trial, plea of guilty (including an Alford plea), or plea of nolo contendere.

(h) "Pecuniary gain" is derived from 18 U.S.C. § 3571(d) and means the additional before-tax profit to the defendant resulting from the relevant conduct of the offense. Gain can result from either additional revenue or cost savings. For example, an offense involving odometer tampering can produce additional revenue. In such a case, the pecuniary gain is the additional revenue received because the automobiles appeared to have less mileage, i.e., the difference between the price received or expected for the automobiles with the apparent mileage and the fair market value of the automobiles with the actual mileage. An offense involving defense procurement fraud related to defective product testing can produce pecuniary gain resulting from cost savings. In such a case, the pecuniary gain is the amount saved because the product was not tested in the required manner.

(i) "Pecuniary loss" is derived from 18 U.S.C. § 3571(d) and is equivalent to the term "loss" as used in Chapter Two (Offense Conduct). See Commentary to §2B1.1 (Theft, Property Destruction, and Fraud), and definitions of "tax loss" in Chapter Two, Part T (Offenses Involving Taxation).

(j) An individual was "willfully ignorant of the offense" if the individual did not investigate the possible occurrence of unlawful conduct despite knowledge of circumstances that would lead a reasonable person to investigate whether unlawful conduct had occurred.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422); November 1, 1997 (see Appendix C, amendment 546); November 1, 2001 (see Appendix C, amendment 617); November 1, 2004 (see Appendix C, amendment 673).

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PART B - REMEDYING HARM FROM CRIMINAL CONDUCT, AND EFFECTIVE COMPLIANCE AND ETHICS PROGRAM

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 2004 (see Appendix C, amendment 673).

1. REMEDYING HARM FROM CRIMINAL CONDUCT

Historical Note: Effective November 1, 2004 (see Appendix C, amendment 673).

Introductory Commentary

As a general principle, the court should require that the organization take all appropriate steps to provide compensation to victims and otherwise remedy the harm caused or threatened by the offense. A restitution order or an order of probation requiring restitution can be used to compensate identifiable victims of the offense. A remedial order or an order of probation requiring community service can be used to reduce or eliminate the harm threatened, or to repair the harm caused by the offense, when that harm or threatened harm would otherwise not be remedied. An order of notice to victims can be used to notify unidentified victims of the offense.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8B1.1. Restitution - Organizations

- (a) In the case of an identifiable victim, the court shall --
- (1) enter a restitution order for the full amount of the victim's loss, if such order is authorized under 18 U.S.C. § 2248, § 2259, § 2264, § 2327, § 3663, or § 3663A; or
 - (2) impose a term of probation or supervised release with a condition requiring restitution for the full amount of the victim's loss, if the offense is not an offense for which restitution is authorized under 18 U.S.C. § 3663(a)(1) but otherwise meets the criteria for an order of restitution under that section.
- (b) *Provided*, that the provisions of subsection (a) do not apply --
- (1) when full restitution has been made; or
 - (2) in the case of a restitution order under § 3663; a restitution order under 18 U.S.C. § 3663A that pertains to an offense against property described in 18 U.S.C. § 3663A(c)(1)(A)(ii); or a condition of restitution imposed pursuant to subsection (a)(2) above, to the extent the court finds, from facts on the record, that (A) the number of identifiable victims is so large as to make restitution impracticable; or (B) determining complex issues

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- of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.
- (c) If a defendant is ordered to make restitution to an identifiable victim and to pay a fine, the court shall order that any money paid by the defendant shall first be applied to satisfy the order of restitution.
- (d) A restitution order may direct the defendant to make a single, lump sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments. See 18 U.S.C. § 3664(f)(3)(A). An in-kind payment may be in the form of (1) return of property; (2) replacement of property; or (3) if the victim agrees, services rendered to the victim or to a person or organization other than the victim. See 18 U.S.C. § 3664(f)(4).
- (e) A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.
- (f) Special Instruction
- (1) This guideline applies only to a defendant convicted of an offense committed on or after November 1, 1997. Notwithstanding the provisions of §1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing), use the former §8B1.1 (set forth in Appendix C, amendment 571) in lieu of this guideline in any other case.

Commentary

Background: Section 3553(a)(7) of Title 18, United States Code, requires the court, "in determining the particular sentence to be imposed," to consider "the need to provide restitution to any victims of the offense." Orders of restitution are authorized under 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663,

and 3663A. For offenses for which an order of restitution is not authorized, restitution may be imposed as a condition of probation.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422); November 1, 1997 (see Appendix C, amendment 571).

§8B1.2. Remedial Orders - Organizations (Policy Statement)

(a) To the extent not addressed under §8B1.1 (Restitution - Organizations), a remedial order imposed as a condition of probation may require the organization to remedy the harm caused by the offense and to eliminate or reduce the risk that the instant offense will cause future harm.

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(b) If the magnitude of expected future harm can be reasonably estimated, the court may require the organization to create a trust fund sufficient to address that expected harm.

Commentary

Background: The purposes of a remedial order are to remedy harm that has already occurred and to prevent future harm. A remedial order requiring corrective action by the organization may be necessary to prevent future injury from the instant offense, e.g., a product recall for a food and drug violation or a clean-up order for an environmental violation. In some cases in which a remedial order potentially may be appropriate, a governmental regulatory agency, e.g., the Environmental Protection Agency or the Food and Drug Administration, may have authority to order remedial measures. In such cases, a remedial order by the court may not be necessary. If a remedial order is entered, it should be coordinated with any administrative or civil actions taken by the appropriate governmental regulatory agency.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8B1.3. Community Service - Organizations (Policy Statement)

Community service may be ordered as a condition of probation where such community service is reasonably designed to repair the harm caused by the offense.

Commentary

Background: An organization can perform community service only by employing its resources or paying its employees or others to do so. Consequently, an order that an organization perform community service is essentially an indirect monetary sanction, and therefore generally less desirable than a direct monetary sanction. However, where the convicted organization possesses knowledge, facilities, or skills that uniquely qualify it to repair damage caused by the offense, community service directed at repairing damage may provide an efficient means of remedying harm caused.

In the past, some forms of community service imposed on organizations have not been related to the purposes of sentencing. Requiring a defendant to endow a chair at a university or to contribute to a local charity would not be consistent with this section unless such community service provided a means for preventive or corrective action directly related to the offense and therefore served one of the purposes of sentencing set forth in 18 U.S.C. § 3553(a).

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

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§8B1.4. Order of Notice to Victims - Organizations

Apply §5F1.4 (Order of Notice to Victims).

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

2. EFFECTIVE COMPLIANCE AND ETHICS PROGRAM

Historical Note: Effective November 1, 2004 (see Appendix C, amendment 673).

§8B2.1. Effective Compliance and Ethics Program

(a) To have an effective compliance and ethics program, for purposes of subsection (f) of §8C2.5 (Culpability Score) and subsection (c)(1) of §8D1.4 (Recommended Conditions of Probation - Organizations), an organization shall—

- (1) exercise due diligence to prevent and detect criminal conduct; and
- (2) otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

Such compliance and ethics program shall be reasonably designed, implemented, and enforced so that the program is generally effective in preventing and detecting criminal conduct. The failure to prevent or detect the instant offense does not necessarily mean that the program is not generally effective in preventing and detecting criminal conduct.

(b) Due diligence and the promotion of an organizational culture that encourages ethical conduct and a commitment to compliance with the law within the meaning of subsection (a) minimally require the following:

(1) The organization shall establish standards and procedures to prevent and detect criminal conduct.

(2) (A) The organization's governing authority shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program.

(B) High-level personnel of the organization shall ensure that the organization has an effective compliance and ethics program, as described in this guideline. Specific individual(s) within high-level personnel shall be assigned overall responsibility for the compliance and ethics program.

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(C) Specific individual(s) within the organization shall be delegated day-to-day operational responsibility for the compliance and ethics program. Individual(s) with operational responsibility shall report periodically to high-level personnel and, as appropriate, to the governing authority, or an appropriate subgroup of the governing authority, on the effectiveness of the compliance and ethics program. To carry out such operational responsibility, such individual(s) shall be given adequate resources, appropriate authority, and direct access to the governing authority or an appropriate subgroup of the governing authority.

(3) The organization shall use reasonable efforts not to include within the substantial authority personnel of the organization any individual whom the organization knew, or should have known through the exercise of due diligence, has engaged in illegal activities or other conduct inconsistent with an effective compliance and ethics program.

(4) (A) The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the individuals referred to in subdivision (B) by conducting effective training programs and otherwise disseminating information appropriate to such individuals' respective roles and responsibilities.

(B) The individuals referred to in subdivision (A) are the members of the governing authority, high-level personnel, substantial

authority personnel, the organization's employees, and, as appropriate, the organization's agents.

(5) The organization shall take reasonable steps—

(A) to ensure that the organization's compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct;

(B) to evaluate periodically the effectiveness of the organization's compliance and ethics program; and

(C) to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.

(6) The organization's compliance and ethics program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program; and (B) appropriate disciplinary measures for engaging in

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criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.

(7) After criminal conduct has been detected, the organization shall take reasonable steps to respond appropriately to the criminal conduct and to prevent further similar criminal conduct, including making any necessary modifications to the organization's compliance and ethics program.

(c) In implementing subsection (b), the organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement, or modify each requirement set forth in subsection (b) to reduce the risk of criminal conduct identified through this process.

Commentary

Application Notes:

1. Definitions.—For purposes of this guideline:

"Compliance and ethics program" means a program designed to prevent and detect criminal conduct.

"Governing authority" means the (A) the Board of Directors; or (B) if the organization does not have a Board of Directors, the highest-level governing body of the organization.

"High-level personnel of the organization" and "substantial authority personnel" have the meaning given those terms in the Commentary to §8A1.2 (Application Instructions - Organizations).

"Standards and procedures" means standards of conduct and internal controls that are reasonably capable of reducing the likelihood of criminal conduct.

2. Factors to Consider in Meeting Requirements of this Guideline.—

(A) In General.—Each of the requirements set forth in this guideline shall be met by an organization; however, in determining what specific actions are necessary to meet those requirements, factors that shall be considered include: (i) applicable industry practice or the standards called for by any applicable governmental regulation; (ii) the size of the organization; and (iii) similar misconduct.

(B) Applicable Governmental Regulation and Industry Practice.—An organization's failure to incorporate and follow applicable industry practice or the standards called for by any applicable governmental regulation weighs against a finding of an effective compliance

and ethics program.

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(C) The Size of the Organization.—

(i) In General.—The formality and scope of actions that an organization shall take to meet the requirements of this guideline, including the necessary features of the organization's standards and procedures, depend on the size of the organization.

(ii) Large Organizations.—A large organization generally shall devote more formal operations and greater resources in meeting the requirements of this guideline than shall a small organization. As appropriate, a large organization should encourage small organizations (especially those that have, or seek to have, a business relationship with the large organization) to implement effective compliance and ethics programs.

(iii) Small Organizations.—In meeting the requirements of this guideline, small organizations shall demonstrate the same degree of commitment to ethical conduct and compliance with the law as large organizations. However, a small organization may meet the requirements of this guideline with less formality and fewer resources than would be expected of large organizations. In appropriate circumstances, reliance on existing resources and simple systems can demonstrate a degree of commitment that, for a large organization, would only be demonstrated through more formally planned and implemented systems.

Examples of the informality and use of fewer resources with which a small organization may meet the requirements of this guideline include the following:

(I) the governing authority's discharge of its responsibility for oversight of the compliance and ethics program by directly managing the organization's compliance and ethics efforts; (II) training employees through informal staff meetings, and monitoring through regular "walk-arounds" or continuous observation while managing the organization; (III) using available personnel, rather than employing separate staff, to carry out the compliance and ethics program; and (IV) modeling its own compliance and ethics program on existing, well-regarded compliance and ethics programs and best practices of other similar organizations.

(D) Recurrence of Similar Misconduct.—Recurrence of similar misconduct creates doubt regarding whether the organization took reasonable steps to meet the requirements of this guideline. For purposes of this subdivision, "similar misconduct" has the meaning given that term in the Commentary to §8A1.2 (Application Instructions - Organizations).

3. Application of Subsection (b)(2).—High-level personnel and substantial authority personnel of the organization shall be knowledgeable about the content and operation of the compliance and ethics program, shall perform their assigned duties consistent with the exercise of due diligence, and shall promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

If the specific individual(s) assigned overall responsibility for the compliance and ethics program does not have day-to-day operational responsibility for the program, then the individual(s) with day-to-day operational responsibility for the program typically should, no less than annually, give the governing authority or an appropriate subgroup thereof information on the implementation and effectiveness of the compliance and ethics program.

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4. Application of Subsection (b)(3).—

(A) Consistency with Other Law.—Nothing in subsection (b)(3) is intended to require

conduct inconsistent with any Federal, State, or local law, including any law governing employment or hiring practices.

(B) *Implementation.*—In implementing subsection (b)(3), the organization shall hire and promote individuals so as to ensure that all individuals within the high-level personnel and substantial authority personnel of the organization will perform their assigned duties in a manner consistent with the exercise of due diligence and the promotion of an organizational culture that encourages ethical conduct and a commitment to compliance with the law under subsection (a). With respect to the hiring or promotion of such individuals, an organization shall consider the relatedness of the individual's illegal activities and other misconduct (i.e., other conduct inconsistent with an effective compliance and ethics program) to the specific responsibilities the individual is anticipated to be assigned and other factors such as: (i) the recency of the individual's illegal activities and other misconduct; and (ii) whether the individual has engaged in other such illegal activities and other such misconduct.

5. *Application of Subsection (b)(6).*—Adequate discipline of individuals responsible for an offense is a necessary component of enforcement; however, the form of discipline that will be appropriate will be case specific.

6. *Application of Subsection (c).*—To meet the requirements of subsection (c), an organization shall:

(A) Assess periodically the risk that criminal conduct will occur, including assessing the following:

(i) The nature and seriousness of such criminal conduct.

(ii) The likelihood that certain criminal conduct may occur because of the nature of the organization's business. If, because of the nature of an organization's business, there is a substantial risk that certain types of criminal conduct may occur, the organization shall take reasonable steps to prevent and detect that type of criminal conduct. For example, an organization that, due to the nature of its business, employs sales personnel who have flexibility to set prices shall establish standards and procedures designed to prevent and detect price-fixing. An organization that, due to the nature of its business, employs sales personnel who have flexibility to represent the material characteristics of a product shall establish standards and procedures designed to prevent and detect fraud.

(iii) The prior history of the organization. The prior history of an organization may indicate types of criminal conduct that it shall take actions to prevent and detect.

(B) Prioritize periodically, as appropriate, the actions taken pursuant to any requirement set forth in subsection (b), in order to focus on preventing and detecting the criminal conduct identified under subdivision (A) of this note as most serious, and most likely, to occur.

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(C) Modify, as appropriate, the actions taken pursuant to any requirement set forth in subsection (b) to reduce the risk of criminal conduct identified under subdivision (A) of this note as most serious, and most likely, to occur.

Background: This section sets forth the requirements for an effective compliance and ethics program. This section responds to section 805(a)(2)(5) of the Sarbanes-Oxley Act of 2002, Public Law 107–204, which directed the Commission to review and amend, as appropriate, the guidelines and related policy statements to ensure that the guidelines that apply to organizations in this chapter "are sufficient to deter and punish organizational criminal misconduct."

The requirements set forth in this guideline are intended to achieve reasonable prevention and detection of criminal conduct for which the organization would be vicariously liable. The prior

diligence of an organization in seeking to prevent and detect criminal conduct has a direct bearing on the appropriate penalties and probation terms for the organization if it is convicted and sentenced for a criminal offense.

Historical Note: Effective November 1, 2004 (see Appendix C, amendment 673).

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PART C - FINES

1. DETERMINING THE FINE - CRIMINAL PURPOSE ORGANIZATIONS

§8C1.1. Determining the Fine - Criminal Purpose Organizations

If, upon consideration of the nature and circumstances of the offense and the history and characteristics of the organization, the court determines that the organization operated primarily for a criminal purpose or primarily by criminal means, the fine shall be set at an amount (subject to the statutory maximum) sufficient to divest the organization of all its net assets. When this section applies, Subpart 2 (Determining the Fine - Other Organizations) and §8C3.4 (Fines Paid by Owners of Closely Held Organizations) do not apply.

Commentary

Application Note:

1. "Net assets," as used in this section, means the assets remaining after payment of all legitimate claims against assets by known innocent bona fide creditors.

Background: This guideline addresses the case in which the court, based upon an examination of the nature and circumstances of the offense and the history and characteristics of the organization, determines that the organization was operated primarily for a criminal purpose (e.g., a front for a scheme that was designed to commit fraud; an organization established to participate in the illegal manufacture, importation, or distribution of a controlled substance) or operated primarily by criminal means (e.g., a hazardous waste disposal business that had no legitimate means of disposing of hazardous waste). In such a case, the fine shall be set at an amount sufficient to remove all of the organization's net assets. If the extent of the assets of the organization is unknown, the maximum fine authorized by statute should be imposed, absent innocent bona fide creditors.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

* * * * *

2. DETERMINING THE FINE - OTHER ORGANIZATIONS

§8C2.1. Applicability of Fine Guidelines

The provisions of §§8C2.2 through 8C2.9 apply to each count for which the applicable guideline offense level is determined under:

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(a) §§2B1.1, 2B1.4, 2B2.3, 2B4.1, 2B5.3, 2B6.1;

§§2C1.1, 2C1.2, 2C1.6;

§§2D1.7, 2D3.1, 2D3.2;

§§2E3.1, 2E4.1, 2E5.1, 2E5.3;

§2G3.1;

§§2K1.1, 2K2.1;

§2L1.1;

§2N3.1;

§2R1.1;

§§2S1.1, 2S1.3;

§§2T1.1, 2T1.4, 2T1.6, 2T1.7, 2T1.8, 2T1.9, 2T2.1, 2T2.2, 2T3.1; or

(b) §§2E1.1, 2X1.1, 2X2.1, 2X3.1, 2X4.1, with respect to cases in which the offense level for the underlying offense is determined under one of the guideline sections

listed in subsection (a) above.

Commentary

Application Notes:

1. *If the Chapter Two offense guideline for a count is listed in subsection (a) or (b) above, and the applicable guideline results in the determination of the offense level by use of one of the listed guidelines, apply the provisions of §§8C2.2 through 8C2.9 to that count. For example, §§8C2.2 through 8C2.9 apply to an offense under §2K2.1 (an offense guideline listed in subsection (a)), unless the cross reference in that guideline requires the offense level to be determined under an offense guideline section not listed in subsection (a).*

2. *If the Chapter Two offense guideline for a count is not listed in subsection (a) or (b) above, but the applicable guideline results in the determination of the offense level by use of a listed guideline, apply the provisions of §§8C2.2 through 8C2.9 to that count. For example, where the conduct set forth in a count of conviction ordinarily referenced to §2N2.1 (an offense guideline not listed in subsection (a)) establishes §2B1.1 (Theft, Property Destruction, and Fraud) as the applicable offense guideline (an offense guideline listed in subsection (a)), §§8C2.2 through 8C2.9 would apply because the actual offense level is determined under §2B1.1 (Theft, Property Destruction, and Fraud).*

Background: The fine guidelines of this subpart apply only to offenses covered by the guideline sections set forth in subsection (a) above. For example, the provisions of §§8C2.2 through 8C2.9 do not apply to counts for which the applicable guideline offense level is determined under Chapter Two, Part Q (Offenses Involving the Environment). For such cases, §8C2.10 (Determining the Fine for Other Counts) is applicable.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 1992 (see Appendix C, amendment 453); November 1, 1993 (see Appendix C, amendment 496); November 1, 2001 (see Appendix C, amendments 617, 619, and 634); November 1, 2005 (see Appendix C, amendment 679).

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§8C2.2. Preliminary Determination of Inability to Pay Fine

(a) Where it is readily ascertainable that the organization cannot and is not likely to become able (even on an installment schedule) to pay restitution required under §8B1.1 (Restitution - Organizations), a determination of the guideline fine range is unnecessary because, pursuant to §8C3.3(a), no fine would be imposed.

(b) Where it is readily ascertainable through a preliminary determination of the minimum of the guideline fine range (see §§8C2.3 through 8C2.7) that the organization cannot and is not likely to become able (even on an installment schedule) to pay such minimum guideline fine, a further determination of the guideline fine range is unnecessary. Instead, the court may use the preliminary determination and impose the fine that would result from the application of §8C3.3 (Reduction of Fine Based on Inability to Pay).

Commentary

Application Notes:

1. *In a case of a determination under subsection (a), a statement that "the guideline fine range was not determined because it is readily ascertainable that the defendant cannot and is not likely to become able to pay restitution" is recommended.*

2. *In a case of a determination under subsection (b), a statement that "no precise determination of the guideline fine range is required because it is readily ascertainable that the defendant cannot and is not likely to become able to pay the minimum of the guideline fine range" is recommended.*

Background: Many organizational defendants lack the ability to pay restitution. In addition, many organizational defendants who may be able to pay restitution lack the ability to pay the minimum fine called for by §8C2.7(a). In such cases, a complete determination of the guideline fine range may be

a needless exercise. This section provides for an abbreviated determination of the guideline fine range that can be applied where it is readily ascertainable that the fine within the guideline fine range determined under §8C2.7 (Guideline Fine Range - Organizations) would be reduced under §8C3.3 (Reduction of Fine Based on Inability to Pay).

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8C2.3. Offense Level

- (a) For each count covered by §8C2.1 (Applicability of Fine Guidelines), use the applicable Chapter Two guideline to determine the base offense level and apply, in the order listed, any appropriate adjustments contained in that guideline.
- (b) Where there is more than one such count, apply Chapter Three, Part D (Multiple Counts) to determine the combined offense level.

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Commentary

Application Notes:

- 1. In determining the offense level under this section, "defendant," as used in Chapter Two, includes any agent of the organization for whose conduct the organization is criminally responsible.*
- 2. In determining the offense level under this section, apply the provisions of §§1B1.2 through 1B1.8. Do not apply the adjustments in Chapter Three, Parts A (Victim-Related Adjustments), B (Role in the Offense), C (Obstruction), and E (Acceptance of Responsibility).*

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8C2.4. Base Fine

- (a) The base fine is the greatest of:
- (1) the amount from the table in subsection (d) below corresponding to the offense level determined under §8C2.3 (Offense Level); or
 - (2) the pecuniary gain to the organization from the offense; or
 - (3) the pecuniary loss from the offense caused by the organization, to the extent the loss was caused intentionally, knowingly, or recklessly.
- (b) *Provided*, that if the applicable offense guideline in Chapter Two includes a special instruction for organizational fines, that special instruction shall be applied, as appropriate.
- (c) *Provided, further*, that to the extent the calculation of either pecuniary gain or pecuniary loss would unduly complicate or prolong the sentencing process, that amount, i.e., gain or loss as appropriate, shall not be used for the determination of the base fine.

(d) Offense Level Fine Table

Offense Level Amount

6 or less \$5,000

7 \$7,500

8 \$10,000

9 \$15,000

10 \$20,000

11 \$30,000

12 \$40,000

13 \$60,000

14 \$85,000

15 \$125,000

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- 16 \$175,000
- 17 \$250,000
- 18 \$350,000
- 19 \$500,000
- 20 \$650,000
- 21 \$910,000
- 22 \$1,200,000
- 23 \$1,600,000
- 24 \$2,100,000
- 25 \$2,800,000
- 26 \$3,700,000
- 27 \$4,800,000
- 28 \$6,300,000
- 29 \$8,100,000
- 30 \$10,500,000
- 31 \$13,500,000
- 32 \$17,500,000
- 33 \$22,000,000
- 34 \$28,500,000
- 35 \$36,000,000
- 36 \$45,500,000
- 37 \$57,500,000
- 38 or more \$72,500,000.

Commentary

Application Notes:

1. "Pecuniary gain," "pecuniary loss," and "offense" are defined in the Commentary to §8A1.2 (Application Instructions - Organizations). Note that subsections (a)(2) and (a)(3) contain certain limitations as to the use of pecuniary gain and pecuniary loss in determining the base fine. Under subsection (a)(2), the pecuniary gain used to determine the base fine is the pecuniary gain to the organization from the offense. Under subsection (a)(3), the pecuniary loss used to determine the base fine is the pecuniary loss from the offense caused by the organization, to the extent that such loss was caused intentionally, knowingly, or recklessly.
2. Under 18 U.S.C. § 3571(d), the court is not required to calculate pecuniary loss or pecuniary gain to the extent that determination of loss or gain would unduly complicate or prolong the sentencing process. Nevertheless, the court may need to approximate loss in order to calculate offense levels under Chapter Two. See Commentary to §2B1.1 (Theft, Property Destruction, and Fraud). If loss is approximated for purposes of determining the applicable offense level, the court should use that approximation as the starting point for calculating pecuniary loss under this section.

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3. In a case of an attempted offense or a conspiracy to commit an offense, pecuniary loss and pecuniary gain are to be determined in accordance with the principles stated in §2X1.1 (Attempt, Solicitation, or Conspiracy).
4. In a case involving multiple participants (i.e., multiple organizations, or the organization and individual(s) unassociated with the organization), the applicable offense level is to be determined without regard to apportionment of the gain from or loss caused by the offense. See §1B1.3 (Relevant Conduct). However, if the base fine is determined under subsections (a)(2) or (a)(3), the court may, as appropriate, apportion gain or loss considering the defendant's relative culpability and other pertinent factors. Note also that under §2R1.1(d)(1), the volume

of commerce, which is used in determining a proxy for loss under §8C2.4(a)(3), is limited to the volume of commerce attributable to the defendant.

5. Special instructions regarding the determination of the base fine are contained in §§2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery); 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions); 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity); 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations); and 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors).

Background: Under this section, the base fine is determined in one of three ways: (1) by the amount, based on the offense level, from the table in subsection (d); (2) by the pecuniary gain to the organization from the offense; and (3) by the pecuniary loss caused by the organization, to the extent that such loss was caused intentionally, knowingly, or recklessly. In certain cases, special instructions for determining the loss or offense level amount apply. As a general rule, the base fine measures the seriousness of the offense. The determinants of the base fine are selected so that, in conjunction with the multipliers derived from the culpability score in §8C2.5 (Culpability Score), they will result in guideline fine ranges appropriate to deter organizational criminal conduct and to provide incentives for organizations to maintain internal mechanisms for preventing, detecting, and reporting criminal conduct. In order to deter organizations from seeking to obtain financial reward through criminal conduct, this section provides that, when greatest, pecuniary gain to the organization is used to determine the base fine. In order to ensure that organizations will seek to prevent losses intentionally, knowingly, or recklessly caused by their agents, this section provides that, when greatest, pecuniary loss is used to determine the base fine in such circumstances. Chapter Two provides special instructions for fines that include specific rules for determining the base fine in connection with certain types of offenses in which the calculation of loss or gain is difficult, e.g., price-fixing. For these offenses, the special instructions tailor the base fine to circumstances that occur in connection with such offenses and that generally relate to the magnitude of loss or gain resulting from such offenses.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 1993 (see Appendix C, amendment 496); November 1, 1995 (see Appendix C, amendment 534); November 1, 2001 (see Appendix C, amendment 634); November 1, 2004 (see Appendix C, amendments 666 and 673).

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§8C2.5. Culpability Score

(a) Start with 5 points and apply subsections (b) through (g) below.

(b) Involvement in or Tolerance of Criminal Activity

If more than one applies, use the greatest:

(1) If --

(A) the organization had 5,000 or more employees and

(i) an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense; or

(ii) tolerance of the offense by substantial authority personnel was pervasive throughout the organization; or

(B) the unit of the organization within which the offense was committed had 5,000 or more employees and

(i) an individual within high-level personnel of the unit participated in, condoned, or was willfully ignorant of the

offense; or

(ii) tolerance of the offense by substantial authority personnel was pervasive throughout such unit,

add **5** points; or

(2) If --

(A) the organization had 1,000 or more employees and

(i) an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense; or

(ii) tolerance of the offense by substantial authority personnel was pervasive throughout the organization; or

(B) the unit of the organization within which the offense was committed had 1,000 or more employees and

(i) an individual within high-level personnel of the unit participated in, condoned, or was willfully ignorant of the offense; or

(ii) tolerance of the offense by substantial authority personnel

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was pervasive throughout such unit,

add **4** points; or

(3) If --

(A) the organization had 200 or more employees and

(i) an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense; or

(ii) tolerance of the offense by substantial authority personnel was pervasive throughout the organization; or

(B) the unit of the organization within which the offense was committed had 200 or more employees and

(i) an individual within high-level personnel of the unit participated in, condoned, or was willfully ignorant of the offense; or

(ii) tolerance of the offense by substantial authority personnel was pervasive throughout such unit,

add **3** points; or

(4) If the organization had 50 or more employees and an individual within substantial authority personnel participated in, condoned, or was willfully ignorant of the offense, add **2** points; or

(5) If the organization had 10 or more employees and an individual within substantial authority personnel participated in, condoned, or was willfully ignorant of the offense, add **1** point.

(c) Prior History

If more than one applies, use the greater:

(1) If the organization (or separately managed line of business) committed any part of the instant offense less than 10 years after (A) a criminal adjudication based on similar misconduct; or (B) civil or administrative adjudication(s) based on two or more separate instances of similar misconduct, add **1** point; or

(2) If the organization (or separately managed line of business) committed

any part of the instant offense less than 5 years after (A) a criminal adjudication based on similar misconduct; or (B) civil or administrative adjudication(s) based on two or more separate instances of similar misconduct, add **2** points.

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(d) Violation of an Order

If more than one applies, use the greater:

(1) (A) If the commission of the instant offense violated a judicial order or injunction, other than a violation of a condition of probation; or (B) if the organization (or separately managed line of business) violated a condition of probation by engaging in similar misconduct, i.e., misconduct similar to that for which it was placed on probation, add **2** points; or

(2) If the commission of the instant offense violated a condition of probation, add **1** point.

(e) Obstruction of Justice

If the organization willfully obstructed or impeded, attempted to obstruct or impede, or aided, abetted, or encouraged obstruction of justice during the investigation, prosecution, or sentencing of the instant offense, or, with knowledge thereof, failed to take reasonable steps to prevent such obstruction or impedance or attempted obstruction or impedance, add **3** points.

(f) Effective Compliance and Ethics Program

(1) If the offense occurred even though the organization had in place at the time of the offense an effective compliance and ethics program, as provided in §8B2.1 (Effective Compliance and Ethics Program), subtract **3** points.

(2) Subsection (f)(1) shall not apply if, after becoming aware of an offense, the organization unreasonably delayed reporting the offense to appropriate governmental authorities.

(3) (A) Except as provided in subdivision (B), subsection (f)(1) shall not apply if an individual within high-level personnel of the organization, a person within high-level personnel of the unit of the organization within which the offense was committed where the unit had 200 or more employees, or an individual described in §8B2.1(b)(2)(B) or (C), participated in, condoned, or was willfully ignorant of the offense.

(B) There is a rebuttable presumption, for purposes of subsection (f)(1), that the organization did not have an effective compliance and ethics program if an individual—

(i) within high-level personnel of a small organization; or

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(ii) within substantial authority personnel, but not within high-level personnel, of any organization, participated in, condoned, or was willfully ignorant of, the offense.

(g) Self-Reporting, Cooperation, and Acceptance of Responsibility

If more than one applies, use the greatest:

(1) If the organization (A) prior to an imminent threat of disclosure or government investigation; and (B) within a reasonably prompt time after

becoming aware of the offense, reported the offense to appropriate governmental authorities, fully cooperated in the investigation, and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct, subtract **5** points; or
(2) If the organization fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct, subtract **2** points; or
(3) If the organization clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct, subtract **1** point.

Commentary

Application Notes:

1. *Definitions.*—For purposes of this guideline, "condoned", "prior criminal adjudication", "similar misconduct", "substantial authority personnel", and "willfully ignorant of the offense" have the meaning given those terms in Application Note 3 of the Commentary to §8A1.2 (Application Instructions - Organizations).

"Small Organization", for purposes of subsection (f)(3), means an organization that, at the time of the instant offense, had fewer than 200 employees.

2. For purposes of subsection (b), "unit of the organization" means any reasonably distinct operational component of the organization. For example, a large organization may have several large units such as divisions or subsidiaries, as well as many smaller units such as specialized manufacturing, marketing, or accounting operations within these larger units. For purposes of this definition, all of these types of units are encompassed within the term "unit of the organization."

3. "High-level personnel of the organization" is defined in the Commentary to §8A1.2 (Application Instructions - Organizations). With respect to a unit with 200 or more employees, "high-level personnel of a unit of the organization" means agents within the unit who set the policy for or control that unit. For example, if the managing agent of a unit with 200 employees participated in an offense, three points would be added under subsection (b)(3); if that organization had 1,000 employees and the managing agent of the unit with 200 employees

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were also within high-level personnel of the organization in its entirety, four points (rather than three) would be added under subsection (b)(2).

4. Pervasiveness under subsection (b) will be case specific and depend on the number, and degree of responsibility, of individuals within substantial authority personnel who participated in, condoned, or were willfully ignorant of the offense. Fewer individuals need to be involved for a finding of pervasiveness if those individuals exercised a relatively high degree of authority. Pervasiveness can occur either within an organization as a whole or within a unit of an organization. For example, if an offense were committed in an organization with 1,000 employees but the tolerance of the offense was pervasive only within a unit of the organization with 200 employees (and no high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense), three points would be added under subsection (b)(3). If, in the same organization, tolerance of the offense was pervasive throughout the organization as a whole, or an individual within high-level personnel of the organization participated in the offense, four points (rather than three) would be added under subsection (b)(2).

5. A "separately managed line of business," as used in subsections (c) and (d), is a subpart of a for-profit organization that has its own management, has a high degree of autonomy from higher managerial authority, and maintains its own separate books of account. Corporate subsidiaries and divisions frequently are separately managed lines of business. Under subsection (c), in determining the prior history of an organization with separately managed

lines of business, only the prior conduct or criminal record of the separately managed line of business involved in the instant offense is to be used. Under subsection (d), in the context of an organization with separately managed lines of business, in making the determination whether a violation of a condition of probation involved engaging in similar misconduct, only the prior misconduct of the separately managed line of business involved in the instant offense is to be considered.

6. Under subsection (c), in determining the prior history of an organization or separately managed line of business, the conduct of the underlying economic entity shall be considered without regard to its legal structure or ownership. For example, if two companies merged and became separate divisions and separately managed lines of business within the merged company, each division would retain the prior history of its predecessor company. If a company reorganized and became a new legal entity, the new company would retain the prior history of the predecessor company. In contrast, if one company purchased the physical assets but not the ongoing business of another company, the prior history of the company selling the physical assets would not be transferred to the company purchasing the assets. However, if an organization is acquired by another organization in response to solicitations by appropriate federal government officials, the prior history of the acquired organization shall not be attributed to the acquiring organization.

7. Under subsections (c)(1)(B) and (c)(2)(B), the civil or administrative adjudication(s) must have occurred within the specified period (ten or five years) of the instant offense.

8. Adjust the culpability score for the factors listed in subsection (e) whether or not the offense guideline incorporates that factor, or that factor is inherent in the offense.

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9. Subsection (e) applies where the obstruction is committed on behalf of the organization; it does not apply where an individual or individuals have attempted to conceal their misconduct from the organization. The Commentary to §3C1.1 (Obstructing or Impeding the Administration of Justice) provides guidance regarding the types of conduct that constitute obstruction.

10. Subsection (f)(2) contemplates that the organization will be allowed a reasonable period of time to conduct an internal investigation. In addition, no reporting is required by subsection (f)(2) if the organization reasonably concluded, based on the information then available, that no offense had been committed.

11. "Appropriate governmental authorities," as used in subsections (f) and (g)(1), means the federal or state law enforcement, regulatory, or program officials having jurisdiction over such matter. To qualify for a reduction under subsection (g)(1), the report to appropriate governmental authorities must be made under the direction of the organization.

12. To qualify for a reduction under subsection (g)(1) or (g)(2), cooperation must be both timely and thorough. To be timely, the cooperation must begin essentially at the same time as the organization is officially notified of a criminal investigation. To be thorough, the cooperation should include the disclosure of all pertinent information known by the organization. A prime test of whether the organization has disclosed all pertinent information is whether the information is sufficient for law enforcement personnel to identify the nature and extent of the offense and the individual(s) responsible for the criminal conduct. However, the cooperation to be measured is the cooperation of the organization itself, not the cooperation of individuals within the organization. If, because of the lack of cooperation of particular individual(s), neither the organization nor law enforcement personnel are able to identify the culpable individual(s) within the organization despite the organization's efforts to cooperate fully, the organization may still be given credit for full cooperation.

13. Entry of a plea of guilty prior to the commencement of trial combined with truthful admission of involvement in the offense and related conduct ordinarily will constitute significant evidence

of affirmative acceptance of responsibility under subsection (g), unless outweighed by conduct of the organization that is inconsistent with such acceptance of responsibility. This adjustment is not intended to apply to an organization that puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse. Conviction by trial, however, does not automatically preclude an organization from consideration for such a reduction. In rare situations, an organization may clearly demonstrate an acceptance of responsibility for its criminal conduct even though it exercises its constitutional right to a trial. This may occur, for example, where an organization goes to trial to assert and preserve issues that do not relate to factual guilt (e.g., to make a constitutional challenge to a statute or a challenge to the applicability of a statute to its conduct). In each such instance, however, a determination that an organization has accepted responsibility will be based primarily upon pretrial statements and conduct.

14. In making a determination with respect to subsection (g), the court may determine that the chief executive officer or highest ranking employee of an organization should appear at sentencing in order to signify that the organization has clearly demonstrated recognition and affirmative acceptance of responsibility.

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Background: The increased culpability scores under subsection (b) are based on three interrelated principles. First, an organization is more culpable when individuals who manage the organization or who have substantial discretion in acting for the organization participate in, condone, or are willfully ignorant of criminal conduct. Second, as organizations become larger and their managements become more professional, participation in, condonation of, or willful ignorance of criminal conduct by such management is increasingly a breach of trust or abuse of position. Third, as organizations increase in size, the risk of criminal conduct beyond that reflected in the instant offense also increases whenever management's tolerance of that offense is pervasive. Because of the continuum of sizes of organizations and professionalization of management, subsection (b) gradually increases the culpability score based upon the size of the organization and the level and extent of the substantial authority personnel involvement.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 2004 (see Appendix C, amendment 673); November 1, 2006 (see Appendix C, amendment 695).

§8C2.6. Minimum and Maximum Multipliers

Using the culpability score from §8C2.5 (Culpability Score) and applying any applicable special instruction for fines in Chapter Two, determine the applicable minimum and maximum fine multipliers from the table below.

Culpability Minimum Maximum

Score Multiplier Multiplier

10 or more 2.00 4.00

9 1.80 3.60

8 1.60 3.20

7 1.40 2.80

6 1.20 2.40

5 1.00 2.00

4 0.80 1.60

3 0.60 1.20

2 0.40 0.80

1 0.20 0.40

0 or less 0.05 0.20.

Commentary

Application Note:

1. A special instruction for fines in §2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation

Agreements Among Competitors) sets a floor for minimum and maximum multipliers in cases covered by that guideline.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

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§8C2.7. Guideline Fine Range - Organizations

(a) The minimum of the guideline fine range is determined by multiplying the base fine determined under §8C2.4 (Base Fine) by the applicable minimum multiplier determined under §8C2.6 (Minimum and Maximum Multipliers).

(b) The maximum of the guideline fine range is determined by multiplying the base fine determined under §8C2.4 (Base Fine) by the applicable maximum multiplier determined under §8C2.6 (Minimum and Maximum Multipliers).

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8C2.8. Determining the Fine Within the Range (Policy Statement)

(a) In determining the amount of the fine within the applicable guideline range, the court should consider:

(1) the need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, and protect the public from further crimes of the organization;

(2) the organization's role in the offense;

(3) any collateral consequences of conviction, including civil obligations arising from the organization's conduct;

(4) any nonpecuniary loss caused or threatened by the offense;

(5) whether the offense involved a vulnerable victim;

(6) any prior criminal record of an individual within high-level personnel of the organization or high-level personnel of a unit of the organization who participated in, condoned, or was willfully ignorant of the criminal conduct;

(7) any prior civil or criminal misconduct by the organization other than that counted under §8C2.5(c);

(8) any culpability score under §8C2.5 (Culpability Score) higher than 10 or lower than 0;

(9) partial but incomplete satisfaction of the conditions for one or more of the mitigating or aggravating factors set forth in §8C2.5 (Culpability Score);

(10) any factor listed in 18 U.S.C. § 3572(a); and

(11) whether the organization failed to have, at the time of the instant offense, an effective compliance and ethics program within the meaning of §8B2.1 (Effective Compliance and Ethics Program).

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(b) In addition, the court may consider the relative importance of any factor used to determine the range, including the pecuniary loss caused by the offense, the pecuniary gain from the offense, any specific offense characteristic used to determine the offense level, and any aggravating or mitigating factor used to determine the culpability score.

Commentary

Application Notes:

1. Subsection (a)(2) provides that the court, in setting the fine within the guideline fine range, should consider the organization's role in the offense. This consideration is particularly appropriate if the guideline fine range does not take the organization's role in the offense into

account. For example, the guideline fine range in an antitrust case does not take into consideration whether the organization was an organizer or leader of the conspiracy. A higher fine within the guideline fine range ordinarily will be appropriate for an organization that takes a leading role in such an offense.

2. Subsection (a)(3) provides that the court, in setting the fine within the guideline fine range, should consider any collateral consequences of conviction, including civil obligations arising from the organization's conduct. As a general rule, collateral consequences that merely make victims whole provide no basis for reducing the fine within the guideline range. If criminal and civil sanctions are unlikely to make victims whole, this may provide a basis for a higher fine within the guideline fine range. If punitive collateral sanctions have been or will be imposed on the organization, this may provide a basis for a lower fine within the guideline fine range.

3. Subsection (a)(4) provides that the court, in setting the fine within the guideline fine range, should consider any nonpecuniary loss caused or threatened by the offense. To the extent that nonpecuniary loss caused or threatened (e.g., loss of or threat to human life; psychological injury; threat to national security) by the offense is not adequately considered in setting the guideline fine range, this factor provides a basis for a higher fine within the range. This factor is more likely to be applicable where the guideline fine range is determined by pecuniary loss or gain, rather than by offense level, because the Chapter Two offense levels frequently take actual or threatened nonpecuniary loss into account.

4. Subsection (a)(6) provides that the court, in setting the fine within the guideline fine range, should consider any prior criminal record of an individual within high-level personnel of the organization or within high-level personnel of a unit of the organization. Since an individual within high-level personnel either exercises substantial control over the organization or a unit of the organization or has a substantial role in the making of policy within the organization or a unit of the organization, any prior criminal misconduct of such an individual may be relevant to the determination of the appropriate fine for the organization.

5. Subsection (a)(7) provides that the court, in setting the fine within the guideline fine range, should consider any prior civil or criminal misconduct by the organization other than that counted under §8C2.5(c). The civil and criminal misconduct counted under §8C2.5(c) increases the guideline fine range. Civil or criminal misconduct other than that counted under §8C2.5(c) may provide a basis for a higher fine within the range. In a case involving a pattern

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of illegality, an upward departure may be warranted.

6. Subsection (a)(8) provides that the court, in setting the fine within the guideline fine range, should consider any culpability score higher than ten or lower than zero. As the culpability score increases above ten, this may provide a basis for a higher fine within the range.

Similarly, as the culpability score decreases below zero, this may provide a basis for a lower fine within the range.

7. Under subsection (b), the court, in determining the fine within the range, may consider any factor that it considered in determining the range. This allows for courts to differentiate between cases that have the same offense level but differ in seriousness (e.g., two fraud cases at offense level 12, one resulting in a loss of \$21,000, the other \$40,000). Similarly, this allows for courts to differentiate between two cases that have the same aggravating factors, but in which those factors vary in their intensity (e.g., two cases with upward adjustments to the culpability score under §8C2.5(c)(2) (prior criminal adjudications within 5 years of the commencement of the instant offense, one involving a single conviction, the other involving two or more convictions).

Background: Subsection (a) includes factors that the court is required to consider under 18 U.S.C. §§ 3553(a) and 3572(a) as well as additional factors that the Commission has determined may be

relevant in a particular case. A number of factors required for consideration under 18 U.S.C. § 3572(a) (e.g., pecuniary loss, the size of the organization) are used under the fine guidelines in this subpart to determine the fine range, and therefore are not specifically set out again in subsection (a) of this guideline. In unusual cases, factors listed in this section may provide a basis for departure.
Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 2004 (see Appendix C, amendment 673).

§8C2.9. Disgorgement

The court shall add to the fine determined under §8C2.8 (Determining the Fine Within the Range) any gain to the organization from the offense that has not and will not be paid as restitution or by way of other remedial measures.

Commentary

Application Note:

1. This section is designed to ensure that the amount of any gain that has not and will not be taken from the organization for remedial purposes will be added to the fine. This section typically will apply in cases in which the organization has received gain from an offense but restitution or remedial efforts will not be required because the offense did not result in harm to identifiable victims, e.g., money laundering, obscenity, and regulatory reporting offenses. Money spent or to be spent to remedy the adverse effects of the offense, e.g., the cost to retrofit defective products, should be considered as disgorged gain. If the cost of remedial efforts made or to be made by the organization equals or exceeds the gain from the offense, this section will not apply.

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Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8C2.10. Determining the Fine for Other Counts

For any count or counts not covered under §8C2.1 (Applicability of Fine Guidelines), the court should determine an appropriate fine by applying the provisions of 18 U.S.C. §§ 3553 and 3572. The court should determine the appropriate fine amount, if any, to be imposed in addition to any fine determined under §8C2.8 (Determining the Fine Within the Range) and §8C2.9 (Disgorgement).

Commentary

Background: The Commission has not promulgated guidelines governing the setting of fines for counts not covered by §8C2.1 (Applicability of Fine Guidelines). For such counts, the court should determine the appropriate fine based on the general statutory provisions governing sentencing. In cases that have a count or counts not covered by the guidelines in addition to a count or counts covered by the guidelines, the court shall apply the fine guidelines for the count(s) covered by the guidelines, and add any additional amount to the fine, as appropriate, for the count(s) not covered by the guidelines.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

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3. IMPLEMENTING THE SENTENCE OF A FINE

§8C3.1. Imposing a Fine

- (a) Except to the extent restricted by the maximum fine authorized by statute or any minimum fine required by statute, the fine or fine range shall be that determined under §8C1.1 (Determining the Fine - Criminal Purpose Organizations); §8C2.7 (Guideline Fine Range - Organizations) and §8C2.9 (Disgorgement); or §8C2.10 (Determining the Fine for Other Counts), as appropriate.
- (b) Where the minimum guideline fine is greater than the maximum fine authorized by statute, the maximum fine authorized by statute shall be the guideline fine.
- (c) Where the maximum guideline fine is less than a minimum fine required by statute, the minimum fine required by statute shall be the guideline fine.

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Commentary

Background: This section sets forth the interaction of the fines or fine ranges determined under this chapter with the maximum fine authorized by statute and any minimum fine required by statute for the count or counts of conviction. The general statutory provisions governing a sentence of a fine are set forth in 18 U.S.C. § 3571.

When the organization is convicted of multiple counts, the maximum fine authorized by statute may increase. For example, in the case of an organization convicted of three felony counts related to a \$200,000 fraud, the maximum fine authorized by statute will be \$500,000 on each count, for an aggregate maximum authorized fine of \$1,500,000.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8C3.2. Payment of the Fine - Organizations

(a) If the defendant operated primarily for a criminal purpose or primarily by criminal means, immediate payment of the fine shall be required.

(b) In any other case, immediate payment of the fine shall be required unless the court finds that the organization is financially unable to make immediate payment or that such payment would pose an undue burden on the organization. If the court permits other than immediate payment, it shall require full payment at the earliest possible date, either by requiring payment on a date certain or by establishing an installment schedule.

Commentary

Application Note:

1. When the court permits other than immediate payment, the period provided for payment shall in no event exceed five years. 18 U.S.C. § 3572(d).

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8C3.3. Reduction of Fine Based on Inability to Pay

(a) The court shall reduce the fine below that otherwise required by §8C1.1 (Determining the Fine - Criminal Purpose Organizations), or §8C2.7 (Guideline Fine Range - Organizations) and §8C2.9 (Disgorgement), to the extent that imposition of such fine would impair its ability to make restitution to victims.

(b) The court may impose a fine below that otherwise required by §8C2.7 (Guideline Fine Range - Organizations) and §8C2.9 (Disgorgement) if the court finds that the organization is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay the minimum fine required by §8C2.7 (Guideline Fine Range - Organizations) and §8C2.9 (Disgorgement).

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Provided, that the reduction under this subsection shall not be more than necessary to avoid substantially jeopardizing the continued viability of the organization.

Commentary

Application Note:

1. For purposes of this section, an organization is not able to pay the minimum fine if, even with an installment schedule under §8C3.2 (Payment of the Fine - Organizations), the payment of that fine would substantially jeopardize the continued existence of the organization.

Background: Subsection (a) carries out the requirement in 18 U.S.C. § 3572(b) that the court impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the organization to make restitution for the offense; however, this section does not authorize a criminal purpose organization to remain in business in order to pay restitution.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8C3.4. Fines Paid by Owners of Closely Held Organizations

The court may offset the fine imposed upon a closely held organization when one or more individuals, each of whom owns at least a 5 percent interest in the organization, has been fined in a federal criminal proceeding for the same offense conduct for which the organization is being sentenced. The amount of such offset shall not exceed the amount resulting from multiplying the total fines imposed on those individuals by those individuals' total percentage interest in the organization.

Commentary

Application Notes:

1. For purposes of this section, an organization is closely held, regardless of its size, when relatively few individuals own it. In order for an organization to be closely held, ownership and management need not completely overlap.
2. This section does not apply to a fine imposed upon an individual that arises out of offense conduct different from that for which the organization is being sentenced.

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Background: For practical purposes, most closely held organizations are the alter egos of their owner-managers. In the case of criminal conduct by a closely held corporation, the organization and the culpable individual(s) both may be convicted. As a general rule in such cases, appropriate punishment may be achieved by offsetting the fine imposed upon the organization by an amount that reflects the percentage ownership interest of the sentenced individuals and the magnitude of the fines imposed upon those individuals. For example, an organization is owned by five individuals, each of whom has a twenty percent interest; three of the individuals are convicted; and the combined fines imposed on those three equals \$100,000. In this example, the fine imposed upon the organization may be offset by up to 60 percent of their combined fine amounts, i.e., by \$60,000.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

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4. DEPARTURES FROM THE GUIDELINE FINE RANGE

Introductory Commentary

The statutory provisions governing departures are set forth in 18 U.S.C. § 3553(b). Departure may be warranted if the court finds "that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described." This subpart sets forth certain factors that, in connection with certain offenses, may not have been adequately taken into consideration by the guidelines. In deciding whether departure is warranted, the court should consider the extent to which that factor is adequately taken into consideration by the guidelines and the relative importance or substantiality of that factor in the particular case. To the extent that any policy statement from Chapter Five, Part K (Departures) is relevant to the organization, a departure from the applicable guideline fine range may be warranted. Some factors listed in Chapter Five, Part K that are particularly applicable to organizations are listed in this subpart. Other factors listed in Chapter Five, Part K may be applicable in particular cases. While this subpart lists factors that the Commission believes may constitute grounds for departure, the list is not exhaustive.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8C4.1. Substantial Assistance to Authorities - Organizations (Policy Statement)

(a) Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another organization that has committed an offense, or in the investigation or prosecution of an individual not directly affiliated with the defendant who has committed an offense, the court may depart from the guidelines.

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(b) The appropriate reduction shall be determined by the court for reasons stated on the record that may include, but are not limited to, consideration of the following:

- (1) the court's evaluation of the significance and usefulness of the organization's assistance, taking into consideration the government's evaluation of the assistance rendered;
- (2) the nature and extent of the organization's assistance; and
- (3) the timeliness of the organization's assistance.

Commentary

Application Note:

1. Departure under this section is intended for cases in which substantial assistance is provided in the investigation or prosecution of crimes committed by individuals not directly affiliated with the organization or by other organizations. It is not intended for assistance in the investigation or prosecution of the agents of the organization responsible for the offense for which the organization is being sentenced.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8C4.2. Risk of Death or Bodily Injury (Policy Statement)

If the offense resulted in death or bodily injury, or involved a foreseeable risk of death or bodily injury, an upward departure may be warranted. The extent of any such departure should depend, among other factors, on the nature of the harm and the extent to which the harm was intended or knowingly risked, and the extent to which such harm or risk is taken into account within the applicable guideline fine range.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8C4.3. Threat to National Security (Policy Statement)

If the offense constituted a threat to national security, an upward departure may be warranted.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

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§8C4.4. Threat to the Environment (Policy Statement)

If the offense presented a threat to the environment, an upward departure may be warranted.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8C4.5. Threat to a Market (Policy Statement)

If the offense presented a risk to the integrity or continued existence of a market, an upward departure may be warranted. This section is applicable to both private markets (e.g., a financial market, a commodities market, or a market for consumer goods) and public markets (e.g., government contracting).

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8C4.6. Official Corruption (Policy Statement)

If the organization, in connection with the offense, bribed or unlawfully gave a gratuity to a public official, or attempted or conspired to bribe or unlawfully give a gratuity to a public official, an upward departure may be warranted.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8C4.7. Public Entity (Policy Statement)

If the organization is a public entity, a downward departure may be warranted.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8C4.8. Members or Beneficiaries of the Organization as Victims (Policy Statement)

If the members or beneficiaries, other than shareholders, of the organization are direct victims of the offense, a downward departure may be warranted. If the members or beneficiaries of an organization are direct victims of the offense, imposing a fine upon

the organization may increase the burden upon the victims of the offense without achieving a deterrent effect. In such cases, a fine may not be appropriate. For example, departure may be appropriate if a labor union is convicted of embezzlement of pension funds.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

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§8C4.9. Remedial Costs that Greatly Exceed Gain (Policy Statement)

If the organization has paid or has agreed to pay remedial costs arising from the offense that greatly exceed the gain that the organization received from the offense, a downward departure may be warranted. In such a case, a substantial fine may not be necessary in order to achieve adequate punishment and deterrence. In deciding whether departure is appropriate, the court should consider the level and extent of substantial authority personnel involvement in the offense and the degree to which the loss exceeds the gain. If an individual within high-level personnel was involved in the offense, a departure would not be appropriate under this section. The lower the level and the more limited the extent of substantial authority personnel involvement in the offense, and the greater the degree to which remedial costs exceeded or will exceed gain, the less will be the need for a substantial fine to achieve adequate punishment and deterrence.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8C4.10. Mandatory Programs to Prevent and Detect Violations of Law (Policy Statement)

If the organization's culpability score is reduced under §8C2.5(f) (Effective Compliance and Ethics Program) and the organization had implemented its program in response to a court order or administrative order specifically directed at the organization, an upward departure may be warranted to offset, in part or in whole, such reduction.

Similarly, if, at the time of the instant offense, the organization was required by law to have an effective compliance and ethics program, but the organization did not have such a program, an upward departure may be warranted.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 2004 (see Appendix C, amendment 673).

§8C4.11. Exceptional Organizational Culpability (Policy Statement)

If the organization's culpability score is greater than 10, an upward departure may be appropriate.

If no individual within substantial authority personnel participated in, condoned, or was willfully ignorant of the offense; the organization at the time of the offense had an effective program to prevent and detect violations of law; and the base fine is determined under §8C2.4(a)(1), §8C2.4(a)(3), or a special instruction for fines in Chapter Two (Offense Conduct), a downward departure may be warranted. In a case meeting these criteria, the court may find that the organization had exceptionally low culpability and therefore a fine based on loss, offense level, or a special Chapter Two instruction results in a guideline fine range higher than necessary to achieve the purposes of sentencing. Nevertheless, such fine should not be lower than if determined under §8C2.4(a)(2).

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

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PART D - ORGANIZATIONAL PROBATION

Introductory Commentary

Section 8D1.1 sets forth the circumstances under which a sentence to a term of probation is required. Sections 8D1.2 through 8D1.4, and 8F1.1, address the length of the probation term, conditions of probation, and violations of probation conditions.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 2004 (see Appendix C, amendment 673).

§8D1.1. Imposition of Probation - Organizations

(a) The court shall order a term of probation:

- (1) if such sentence is necessary to secure payment of restitution (§8B1.1), enforce a remedial order (§8B1.2), or ensure completion of community service (§8B1.3);
 - (2) if the organization is sentenced to pay a monetary penalty (e.g., restitution, fine, or special assessment), the penalty is not paid in full at the time of sentencing, and restrictions are necessary to safeguard the organization's ability to make payments;
 - (3) if, at the time of sentencing, (A) the organization (i) has 50 or more employees, or (ii) was otherwise required under law to have an effective compliance and ethics program; and (B) the organization does not have such a program;
 - (4) if the organization within five years prior to sentencing engaged in similar misconduct, as determined by a prior criminal adjudication, and any part of the misconduct underlying the instant offense occurred after that adjudication;
 - (5) if an individual within high-level personnel of the organization or the unit of the organization within which the instant offense was committed participated in the misconduct underlying the instant offense and that individual within five years prior to sentencing engaged in similar misconduct, as determined by a prior criminal adjudication, and any part of the misconduct underlying the instant offense occurred after that adjudication;
 - (6) if such sentence is necessary to ensure that changes are made within the organization to reduce the likelihood of future criminal conduct;
 - (7) if the sentence imposed upon the organization does not include a fine; or
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- (8) if necessary to accomplish one or more of the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2).

Commentary

Background: Under 18 U.S.C. § 3561(a), an organization may be sentenced to a term of probation. Under 18 U.S.C. § 3551(c), imposition of a term of probation is required if the sentence imposed upon the organization does not include a fine.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 2004 (see Appendix C, amendment 673).

§8D1.2. Term of Probation - Organizations

(a) When a sentence of probation is imposed --

- (1) In the case of a felony, the term of probation shall be at least one year but not more than five years.
- (2) In any other case, the term of probation shall be not more than five years.

Commentary

Application Note:

1. Within the limits set by the guidelines, the term of probation should be sufficient, but not more than necessary, to accomplish the court's specific objectives in imposing the term of probation.

The terms of probation set forth in this section are those provided in 18 U.S.C. § 3561(b).

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8D1.3. Conditions of Probation - Organizations

- (a) Pursuant to 18 U.S.C. § 3563(a)(1), any sentence of probation shall include the condition that the organization not commit another federal, state, or local crime

during the term of probation.

(b) Pursuant to 18 U.S.C. § 3563(a)(2), if a sentence of probation is imposed for a felony, the court shall impose as a condition of probation at least one of the following: (1) restitution, (2) notice to victims of the offense pursuant to 18 U.S.C. § 3555, or (3) an order requiring the organization to reside, or refrain from residing, in a specified place or area, unless the court finds on the record that extraordinary circumstances exist that would make such condition plainly unreasonable, in which event the court shall impose one or more other conditions set forth in 18 U.S.C. § 3563(b).

Note: Section 3563(a)(2) of Title 18, United States Code, provides that, absent

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unusual circumstances, a defendant convicted of a felony shall abide by at least one of the conditions set forth in 18 U.S.C. § 3563(b)(2), (b)(3), and (b)(13). Before the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, those conditions were a fine ((b)(2)), an order of restitution ((b)(3)), and community service ((b)(13)). Whether or not the change was intended, the Act deleted the fine condition and renumbered the restitution and community service conditions in 18 U.S.C. § 3563(b), but failed to make a corresponding change in the referenced paragraphs under 18 U.S.C. § 3563(a)(2). Accordingly, the conditions now referenced are restitution ((b)(2)), notice to victims pursuant to 18 U.S.C. § 3555 ((b)(3)), and an order that the defendant reside, or refrain from residing, in a specified place or area ((b)(13)).

(c) The court may impose other conditions that (1) are reasonably related to the nature and circumstances of the offense or the history and characteristics of the organization; and (2) involve only such deprivations of liberty or property as are necessary to effect the purposes of sentencing.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 1997 (see Appendix C, amendment 569).

§8D1.4. Recommended Conditions of Probation - Organizations (Policy Statement)

(a) The court may order the organization, at its expense and in the format and media specified by the court, to publicize the nature of the offense committed, the fact of conviction, the nature of the punishment imposed, and the steps that will be taken to prevent the recurrence of similar offenses.

(b) If probation is imposed under §8D1.1(a)(2), the following conditions may be appropriate to the extent they appear necessary to safeguard the organization's ability to pay any deferred portion of an order of restitution, fine, or assessment:

(1) The organization shall make periodic submissions to the court or probation officer, at intervals specified by the court, reporting on the organization's financial condition and results of business operations, and accounting for the disposition of all funds received.

(2) The organization shall submit to: (A) a reasonable number of regular or unannounced examinations of its books and records at appropriate business premises by the probation officer or experts engaged by the court; and (B) interrogation of knowledgeable individuals within the organization. Compensation to and costs of any experts engaged by the court shall be paid by the organization.

(3) The organization shall be required to notify the court or probation officer immediately upon learning of (A) any material adverse change in its business or financial condition or prospects, or (B) the commencement of any bankruptcy proceeding, major civil litigation, criminal prosecution,

or administrative proceeding against the organization, or any investigation or formal inquiry by governmental authorities regarding the organization.

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(4) The organization shall be required to make periodic payments, as specified by the court, in the following priority: (A) restitution; (B) fine; and (C) any other monetary sanction.

(c) If probation is ordered under §8D1.1(a)(3), (4), (5), or (6), the following conditions may be appropriate:

(1) The organization shall develop and submit to the court an effective compliance and ethics program consistent with §8B2.1 (Effective Compliance and Ethics Program). The organization shall include in its submission a schedule for implementation of the compliance and ethics program.

(2) Upon approval by the court of a program referred to in subdivision (1), the organization shall notify its employees and shareholders of its criminal behavior and its program referred to in subdivision (1). Such notice shall be in a form prescribed by the court.

(3) The organization shall make periodic reports to the court or probation officer, at intervals and in a form specified by the court, regarding the organization's progress in implementing the program referred to in subdivision (1). Among other things, such reports shall disclose any criminal prosecution, civil litigation, or administrative proceeding commenced against the organization, or any investigation or formal inquiry by governmental authorities of which the organization learned since its last report.

(4) In order to monitor whether the organization is following the program referred to in subdivision (1), the organization shall submit to: (A) a reasonable number of regular or unannounced examinations of its books and records at appropriate business premises by the probation officer or experts engaged by the court; and (B) interrogation of knowledgeable individuals within the organization. Compensation to and costs of any experts engaged by the court shall be paid by the organization.

Commentary

Application Note:

1. In determining the conditions to be imposed when probation is ordered under §8D1.1(a)(3) through (6), the court should consider the views of any governmental regulatory body that oversees conduct of the organization relating to the instant offense. To assess the efficacy of a compliance and ethics program submitted by the organization, the court may employ appropriate experts who shall be afforded access to all material possessed by the organization that is necessary for a comprehensive assessment of the proposed program. The court should approve any program that appears reasonably calculated to prevent and detect criminal conduct, as long as it is consistent with §8B2.1 (Effective Compliance and Ethics Program), and any applicable statutory and regulatory requirements.

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Periodic reports submitted in accordance with subsection (c)(3) should be provided to any governmental regulatory body that oversees conduct of the organization relating to the instant offense.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 2004 (see Appendix

C, amendment 673).

§8D1.5. [Deleted]

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422); was moved to §8F1.1 effective November 1, 2004 (see Appendix C, amendment 673).

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PART E - SPECIAL ASSESSMENTS, FORFEITURES, AND COSTS

§8E1.1. Special Assessments - Organizations

A special assessment must be imposed on an organization in the amount prescribed by statute.

Commentary

Application Notes:

1. *This guideline applies if the defendant is an organization. It does not apply if the defendant is an individual. See §5E1.3 for special assessments applicable to individuals.*

2. *The following special assessments are provided by statute (see 18 U.S.C. § 3013):*

For Offenses Committed By Organizations On Or After April 24, 1996:

(A) *\$400, if convicted of a felony;*

(B) *\$125, if convicted of a Class A misdemeanor;*

(C) *\$50, if convicted of a Class B misdemeanor; or*

(D) *\$25, if convicted of a Class C misdemeanor or an infraction.*

For Offenses Committed By Organizations On Or After November 18, 1988 But Prior To April 24, 1996:

(E) *\$200, if convicted of a felony;*

(F) *\$125, if convicted of a Class A misdemeanor;*

(G) *\$50, if convicted of a Class B misdemeanor; or*

(H) *\$25, if convicted of a Class C misdemeanor or an infraction.*

For Offenses Committed By Organizations Prior To November 18, 1988:

(I) *\$200, if convicted of a felony;*

(J) *\$100, if convicted of a misdemeanor.*

3. *A special assessment is required by statute for each count of conviction.*

Background: Section 3013 of Title 18, United States Code, added by The Victims of Crimes Act of 1984, Pub. L. No. 98-473, Title II, Chap. XIV, requires courts to impose special assessments on convicted defendants for the purpose of funding the Crime Victims Fund established by the same legislation.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422); November 1, 1997 (see Appendix C, amendment 573).

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§8E1.2. Forfeiture - Organizations

Apply §5E1.4 (Forfeiture).

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

§8E1.3. Assessment of Costs - Organizations

As provided in 28 U.S.C. § 1918, the court may order the organization to pay the costs of prosecution. In addition, specific statutory provisions mandate assessment of costs.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422).

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PART F - VIOLATIONS OF PROBATION - ORGANIZATIONS

Historical Note: Effective November 1, 2004 (see Appendix C, amendment 673).

§8F1.1. Violations of Conditions of Probation - Organizations (Policy Statement)

Upon a finding of a violation of a condition of probation, the court may extend the term of probation, impose more restrictive conditions of probation, or revoke probation and

resentence the organization.

Commentary

Application Notes:

- 1. Appointment of Master or Trustee.—In the event of repeated violations of conditions of probation, the appointment of a master or trustee may be appropriate to ensure compliance with court orders.*
- 2. Conditions of Probation.—Mandatory and recommended conditions of probation are specified in §§8D1.3 (Conditions of Probation - Organizations) and 8D1.4 (Recommended Conditions of Probation - Organizations).*

Historical Note: Effective November 1, 2004 (see Appendix C, amendment 673).