

THE UNITED STATES SENTENCING GUIDELINES

WHAT AN ORGANIZATION'S MANAGEMENT AND
OMBUDSMEN MIGHT WANT TO KNOW

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INTRODUCTION

The way corporations and other organizations are punished for violations of federal criminal law changed fundamentally on November 1, 1991--the effective date of the Federal Guidelines for Sentencing Organizations ("Sentencing Guidelines" or "Guidelines") promulgated by the United States Sentencing Commission.¹

The United States Sentencing Commission was created by the Sentencing Reform Act of 1984,² in what has been referred to as "the most dramatic criminal justice reform of this century"³ to develop guidelines that greatly reduce the discretion given to federal judges in sentencing criminal defendants. By 1987, the Commission had developed sentencing guidelines for individuals that radically transformed the sentencing process. The issuance of guidelines in 1991 for organizations convicted of crimes created a similar formal structure that federal judges must follow in the sentencing process and represents no less of a radical change. The new structure imposed by these Guidelines rewards "good" corporate behavior by greatly reducing a potential fine where certain conditions are met. Conversely, the potential fines are greatly increased for organizations that have not developed mechanisms to deter and report criminal activity. Thus, the Sentencing Guidelines have created powerful incentives for organizations to adopt self-policing policies and procedures that include programs to prevent and detect violations of law and to report promptly any such violations that do occur.

In direct response to the Sentencing Guidelines, many corporations developed compliance programs, complete with a senior compliance or ethics officer, whose responsibilities include monitoring compliance with the organization's code of ethics, conducting internal investigations of any suspected criminal activity, and coordinating the reporting of any such activity to appropriate authorities. In addition to formal compliance programs, many companies also have ombuds offices, but the impact of the Sentencing Guidelines on how the ombuds' offices operate often has not been fully appreciated either by

the ombuds or by senior management, including the compliance officers. Moreover, by implementing compliance programs without an ombuds office, many corporations have failed to take advantage of the valuable role that ombuds can have in assisting it to prevent and detect violations of law without creating a fear of retribution among its employees.

Before discussing how an ombuds program can work effectively with a compliance program, however, some background is necessary both on the general legal principles applicable to corporate liability for criminal activity and on the step-by-step analysis that the Sentencing Guidelines require federal judges to follow before imposing a criminal fine. This background provides the context in which the activities of an ombuds may then be analyzed.

BACKGROUND

Much of our American law today traces its origin to English common law--law marked on a case-by-case basis by the courts. One such common law concept is the idea that a principal may be held liable for the conduct of agents acting on its behalf. This doctrine of *respondeat superior* was invoked under English common law to impose civil liability on a corporation for the acts of its employees intended to benefit the corporation, so long as the employees were acting within the scope of their employment.⁴

American courts, however, took the doctrine of *respondeat superior* beyond its English common law roots and applied it to create corporate criminal liability. The seminal 1909 decision by the United States Supreme Court in New York Central & Hudson River Railroad v. United States⁵ clearly established the principle that a corporation could be found guilty of a crime intended to benefit the corporation by employees acting within the scope of their employment. Over the years, federal courts have expanded this principle to hold corporations criminally liable even where low-level employees were acting in contravention of express

company policies and the company received no actual benefit, so long as the activity had some relation to the employee's job and was in some way intended to benefit the company.⁶

Despite the expansive scope of potential corporate criminal liability, federal prosecution of corporations remained at fairly minimal levels for most of the Twentieth Century. The penalties for a corporate criminal conviction, however, were increased substantially by Congress's enactment of the Criminal Fine Enforcement Act of 1984.⁷ The greatly increased fine levels in this and subsequent legislation (including consideration given to fines based on the defendant's gain or the victim's loss) coincided with the much publicized securities fraud and procurement fraud scandals of the 1980s to increase the visibility of corporations as potential criminal targets.

THE ORGANIZATIONAL SENTENCING GUIDELINES

The Introductory Commentary to the chapter of the Sentencing Guidelines relating to organizations is clear that sentencing organizations for criminal activity rests upon four basic principles:

Restitution "To remedy any harm caused by the offense"

Deterrence Imposition of "a penalty sufficiently high" to divest an organization operated primarily for criminal purposes or by criminal means of all of its assets

Punishment Imposition of fines based on "seriousness of the offense and the culpability of the organization," including consideration of the organization's activities before the offense occurred and after its detection

Probation As appropriate to insure compliance with other sanctions.⁸

As the name suggests, the Organizational Sentencing Guidelines apply to entities other than just corporations. They apply to "partnerships, associations, joint stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof, and nonprofit organizations."⁹ The Guidelines also apply to most federal felony and serious misdemeanor crimes. Certain offenses involving environmental laws, food and drug laws, and export controls, are not presently included and special rules apply to criminal antitrust violations; but the list of crimes to which the Guidelines do apply remains a long one. Appendix A sets forth many of the offenses to which the Guidelines apply.

Section 8A1.2 of the Guidelines contains the specific steps that must be followed by a federal court to determine the penalty for an organization convicted of an covered crime. Before considering an appropriate fine, the court must determine the most appropriate remedy for the harm caused by the criminal violation. While this almost always includes restitution to the victim, it may also include other remedial orders, community service, and notice to the victims.¹⁰ Even without consideration of the fine, the cost of restitution alone in some cases can be sizable. Most of the remaining steps, however, focus on the calculation of the fine, generally the most significant component of the sentence.

Determining the amount of the fine is a complicated, multi-step process. In broad overview, it requires the court (1) to determine what an appropriate "base fine" should be for a particular offense; (2) to determine what the organization's "culpability score" should be, after consideration of various specified aggravating and mitigating factors; (3) to multiply the "base fine" by the "multiplier range" corresponding to the "culpability score"; and (4) to thereby determine the maximum and minimum fines to be used for the sentencing, from which the court can make upwards or downwards adjustments. While a detailed study of this process is

beyond the scope of this article, elaboration of each of these steps is necessary to understand the incentives in the Guidelines for corporations to minimize their exposure to substantial fines.

Step One in the process is to determine the "offense level" for the particular offense on which the conviction is based. The "offense level" is a number assigned to each crime by the Sentencing Guidelines, roughly corresponding to the severity of the crime.

Step Two is to take the "offense level" for the crime and to determine the "base fine." The amount of the base fine is, of course, critical in the calculation of the appropriate sentence, since it is the initial dollar amount of the fine from which further adjustments are made. While there is a table in the Guidelines that correlates each offense level with a preliminary amount of a base fine, the "base fine" used for further calculations is the greatest of the amount listed on the table, the pecuniary gain to the organization from the offense, or the pecuniary loss caused by the offense, to the extent that the loss was caused intentionally, knowing, or recklessly. Thus, while the offense level for one count of submitting a false claim to the government, for example, would be \$5,000, the base fine may be substantially higher than \$5,000, depending on the organization's gain or the government's loss caused by the violation.

Step Three is to determine the organization's culpability score. Each organization starts with a culpability score of five points. Additional points are added to the score based on:

- (1) The level of criminal involvement within the organization (zero to five points--the higher the level of criminal involvement within the organization, the greater the number of points);
- (2) The size of the organization (zero to five points--the more employees in the organization, the greater the number of points);
- (3) Whether the criminal conduct violated a previous court order (one or two additional points); and
- (4) Whether the organization engaged in any activity constituting an obstruction of justice (up to three additional points).

Points are deducted from the "culpability score" for various mitigating factors. The court will reduce the score if it finds that the organization had instituted an effective program to prevent and detect violations of law prior to the criminal activity (minus three points). If an organization voluntarily reported the criminal activity to federal authorities, cooperated with the prosecution, and accepted responsibility for the crime, the court may deduct as many as five points from the culpability score. If an organization did not report itself to the authorities, but nevertheless cooperated with the federal investigation and accepted the responsibility for the criminal activity, the court may deduct up to two points. Only one point is deducted, however, if the organization is found to have neither reported itself nor cooperated in the investigation but does accept responsibility for the violation.

The culpability score is thus adjusted up or down from the initial five-point level. Once the various aggravating and mitigating factors are considered and the final culpability score determined, Step Four is to determine the appropriate minimum and maximum multipliers from the following table:

Culpability Score	Minimum Multiplier	Maximum 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 ¹¹

Step Five is to multiply the amount of the base fine by the minimum and maximum multipliers to determine the minimum and maximum fine that can be imposed, subject to limited upward or downward adjustments. Since the highest maximum multiplier (4.00 for a culpability score of ten or more) is *80 times higher* than the lowest minimum multiplier (.05 for a culpability score of 0 or less) *for the same offense*, it becomes clear why it is so critically important for organizations to adopt programs that minimize their culpability score.

A simple example will drive this point home. Assume that a company is convicted of four instances of intentionally filing false claims with the federal government, as a result of which the company received a total of \$200,000 in additional compensation from the government. Restitution of \$200,000 is, therefore, a virtual certainty, regardless of any fine calculation. Since the benefit received by the company is greater than the base fine in the table corresponding to the offense level (4 times \$5,000), the \$200,000 again is also used as the amount for the base fine (unless the loss to the government was greater than \$200,000).

If the company had in place an effective program to prevent and detect violations of law and both cooperated with the federal government and accepted responsibility for the offense, its

culpability score would be zero. The culpability could even be less than zero if the company had first brought the crime to the government's attention. With a culpability score of zero, however, the minimum fine would be \$10,000 (.05 times \$200,000). The maximum fine would be \$40,000 (.2 times \$200,000).

Now assume that the fraud occurred at a senior level of a large corporation that did not have an effective program to prevent and detect violations of law. Also assume that there had been at least one other criminal violation by the company in the past. With the culpability score now in excess of ten, the minimum fine would be \$400,000 (2 times \$200,000) and the maximum fine would be \$800,000 (4 times \$200,000). Thus, under the best of circumstances, the company's fine would be \$10,000, while under the worst of circumstances it could be as high as \$800,000.

AN EFFECTIVE PROGRAM TO PREVENT AND DETECT VIOLATIONS OF LAW

A reduction of three points in the culpability score is given to an organization that has in place prior to the criminal activity an "effective program to prevent and detect violations of law."¹² The Official Commentary for the Sentencing Guidelines is very explicit in describing what must be included in such a program:

An "effective program to prevent and detect violations of law" means a program that has been reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal conduct. Failure to prevent or detect the instant offense, by itself, does not mean that the program was not effective. The hallmark of an effective program to prevent and detect violations of law is that the organization exercised due diligence in seeking to prevent and detect criminal conduct by its employees and other agents. Due diligence requires at a minimum that the organization must have taken the following types of steps:

- (1) The organization must have established compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal conduct.

- (2) Specific individual(s) within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures.
- (3) The organization must have used due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in illegal activities.
- (4) The organization must have taken steps to communicate effectively its standards and procedures to all employees and other agents, e.g., by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.
- (5) The organization must taken reasonable steps to achieve compliance with its standards, e.g., by utilizing monitoring and auditing systems reasonably designed to detect criminal conduct by its employees and other agents *and by having in place and publicizing a reporting system whereby employees and other agents could report criminal conduct by others within the organization without fear of retribution.*
- (6) The standards must have been consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect an offense. 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.¹³
- (7) After an offense has been detected, the organization must have taken all reasonable steps to respond appropriately to the offense and to prevent further similar offenses--including any necessary modifications to its program to prevent and detect violations of law.

The precise actions necessary for an effective program to prevent and detect violations of law will depend upon a number of factors. Among the relevant factors are:

- (i) Size of the organization--The requisite degree of formality of a program to prevent and detect violations of law will vary with the size of the organization: the larger the organization, the more formal the program typically should be. A larger organization generally should have established written policies defining the standards and procedures to be followed by its employees and other agents.
- (ii) Likelihood that certain offenses may occur because of the nature of its business--If because of the nature of an organization's business there is a

substantial risk that certain types of offenses may occur, management must have taken steps to prevent and detect those types of offenses. For example, if an organization handles toxic substances, it must have established standards and procedures designed to ensure that those substances are properly handled at all times. If an organization employs sales personnel who have flexibility in setting prices, it must have established standards and procedures designed to prevent and detect price-fixing. If an organization employs sales personnel who have flexibility to represent the material characteristics of a product, it must have established standards and procedures designed to prevent fraud.

(iii) Prior history of the organization--An organization's prior history may indicate types of offenses that it should have taken actions to prevent. Recurrence of misconduct similar to that which an organization has previously committed casts doubt on whether it took all reasonable steps to prevent such misconduct.

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 program to prevent and detect violations of law.¹⁴

Despite all of the advantages of an ombuds office to enable employees to report concerns about improper or illegal activity, a company's compliance program will not benefit unless the suspected activity can be brought to the attention of the company. Providing notice to the company is complicated by the fact that most ombuds take the position that, because of their neutrality and promise of confidentiality, notice to them does not constitute notice to the company.¹⁵ Ombuds have successfully asserted that their employer is not "on notice" for matters brought to the attention of ombuds, and thus the company cannot be charged with such knowledge and a resulting duty to investigate.

How then can an ombuds office "bridge this gap" to put the company on notice or provide the company with information to investigate potential criminal activity without violating the principles of neutrality and confidentiality?

To receive the three-point reduction in its culpability score for "an effective program to prevent and detect violations of law," each of the elements identified in the Commentary must be present. Indeed, this list often comprises the main components of the job description for a corporation's ethics or business practices officer. Of particular concern to the corporation, the ethics officer, and the ombuds, however, is the italicized language in subparagraph 5, requiring an effective program to both initiate and publicize a system that allows employees to report violations "without fear of retribution."

OPTIONS FOR REPORTING SYSTEMS

Formal compliance programs are the means most frequently used by corporations to comply with the Sentencing Guidelines. These programs, headed by a senior corporate officer, typically include the promulgation of a code of business practices and the development of a formal complaint handling system, whereby employees can notify the company of any perceived illegalities in conduct. Once notified of suspected criminal activity, the compliance officer must assume responsibility for an internal investigation of it. The compliance officer must also coordinate any necessary follow-up action, such as reporting the conduct to senior management, the board of directors and to the government.

While such formal compliance programs are necessary to obtain the "effective program" credit under the Guidelines, a critical concern is whether they truly permit employees to report suspected crime "without fear of retribution." Since the corporation has a duty to investigate fully the matters reported to it and must discipline the individuals responsible for criminal activity, an employee who invokes this process must be prepared for the possible consequences-- identification of the employee as the person instituting the investigation, hostility by co-workers or supervisors who may be involved, probable corporate discipline (reprimand, demotion or firing) for those involved--possibly including the employee himself; and the

potential individual criminal liability of himself or others. These considerations alone are a high barrier for an employee to cross to report suspected criminal activity. If the company may be subjected to debarment as a government contractor or if the company has been convicted of criminal activity in the past, the institutional barriers to employee reporting may be even higher. Moreover, the internal corporate culture is a significant consideration. It is not unusual for a company to have a culture of hostility to employees who "rat" on other employees or the company, regardless of what the official policies may be.

Another option for meeting the conditions of an "effective program" is external mediation.

[Tom to expand on what this involves and on its limitations.]

Thus, there are significant barriers to employee reporting of suspected criminal activity, even under the best of circumstances. This should be of concern to companies because a court may determine that these barriers are not adequately addressed by a formal compliance program, once the criminal conduct is brought to light. Especially where the company may be on notice that its policies are not always implemented or that it has a culture of hostility to employees who report their concerns, the company may need to do more to overcome the barriers to an employee's fear of making a report of suspected criminal activity.

CHARACTERISTICS OF AN OMBUDSMAN PROGRAM

An ombuds program is one means many companies have used to overcome these institutional barriers, even apart from the company's concern with its potential criminal liability. The essential characteristics of such an office are that it is an independent entity either within or outside a company to which employees may discuss concerns on a strictly confidential basis.¹⁶ The ombud is not a part of management and is designed to be a neutral

element that can provide assistance to an employee in making known his or her concerns to the company or in obtaining responses to questions. Thus, the ombuds program is often created as an alternate means of employee communication and does not displace the more formal communication channels within the company, such as the ethics or compliance office, the human resources or personnel office, or reporting concerns directly to a supervisor through the usual chain of command. The important public policy served by the creation of ombuds offices is the encouragement of informal resolution of employee concerns through a program that provides employees a way to discuss concerns with trained, nonmanagement problem solvers on a confidential basis. Accordingly, an effective ombuds program is anchored in the dual principles of neutrality and confidentiality.

NEUTRALITY [Tom to draft; outline of potential points]

- not a part of management
- access to senior management
- effectiveness in resolving disputes rests on perception that ombuds is not taking sides
- allows discussion and coaching
 - use of other channels
 - employees skills
- cite to TOA booklet on neutrality

CONFIDENTIALITY [Tom to draft; outline of potential points]

- distinguishing characteristic of ombuds in contrast to other channels

- privilege based on Rule 501 and implied contract
- critical to overcoming employee fear of retribution
- discussion of techniques needed by ombuds to protect confidentiality
- breaches in only the most limited situations - TOA Code of Ethics

BRIDGING THE GAP

discussion of how ombuds may put the company on notice without violating principles of neutrality and confidentiality. Include examples.

The potential benefits of an ombuds program as an adjunct to a formal compliance program are obvious. To the extent that there are institutional impediments to employee reports of suspected criminal activity or fears of retribution in making such a report, the assurance of confidentiality and the opportunity to discuss concerns with a nonmanagement employee do much to alleviate employee fear. Since an employee who suspects illegal or improper activity may, in many cases, have only an incomplete or incorrect understanding of all of the relevant facts, an ombuds may be able to alleviate the employee's concerns or respond to the situation before the employee takes his or her concerns to a prosecutor and a formal inquiry is commenced, with all of the resulting diversion of time and effort in responding to the criminal investigation process, even where the concern is meritless. Moreover, while the focus of this article is on the benefits of an ombuds program in connection with the reduction of potential penalties should a criminal violation occur, the ombuds have similar benefits in self-policing and informal dispute resolution in other, work-related areas such as discrimination claims.

¹ The Sentencing Guidelines themselves do not contain an express effective date, but the Justice Department took the position that it would not seek to apply them retroactive. As discussed below at page ____, the Sentencing Guidelines are applicable to a wide variety of organizations in addition to corporations. For ease of reference, however, this article will refer to both organizations and corporations interchangeably.

² Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987 (1984) (Codified at 28 U.S.C. §§991-998 (1988); 18 U.S.C. §§3551-3673 (1988)).

³ Ilene H. Nagel and Winthrop M. Simpson, "The Federal Sentencing Guidelines for Corporations: Their development, Theoretical Underpinnings, and Some Thoughts About Their Future, 71 Washington University Law Quarterly 205 (1993).

⁴ Hon. Jed S. Radoff, et al., Corporate Sentencing Guidelines: Compliance and Mitigation, (1996) §1.02[1] n.5, at 1-5.

⁵ New York Central & Hudson River Railroad v. United States, 212 U.S. 481, 29 S.Ct. 304 53 LED 613 (1909).

⁶ Radoff, et al, supra, note 4, §1.02[3] at 1-8 - 1-9.

⁷ Criminal Fine Enforcement Act of 1984, Pub. L. No. 95-596, 98 Stat. 3134.

⁸ United States Sentencing Commission Guidelines Manual ("U.S.S.G.") Introductory Commentary, Chapter 8 Sentencing of Organizations

⁹ U.S.S.G. §8A1.1, comment (n.1)

¹⁰ U.S.S.G. §8A1.2.(1) A corporation's ability to pay is a consideration both in restitution orders and in departures from the minimum and maximum fines. See United States v. Emeka Laboratories, Inc., 103 F.3d 908 (9th Cir. 1996) (So long as company had assets sufficient to make restitution, the Guidelines did not prevent court from imposing a fine that could completely bankrupt the company or imposing a fine payable over time.)

¹¹ U.S.S.G. §8C2.6

¹² U.S.S.G. §8C2.5(f)

¹³ U.S.S.G. §8A-1.2 (Commentary §3(k))

¹⁴ Cite to the other booklets in the TOA Series.

¹⁵ [Cite to case]

¹⁶ Cite to the other booklets in the TOA Series.

APPENDIX A

List of offenses by organizations to which the guidelines apply:

According to U.S.S.G. § 8C2.1(a), the provisions of §§ 8C2.2 - 8C2.9 apply to each count for which the applicable guideline offense level is determined under the subsections listed below:

Part	Subsec.	Description of Offense
Part B	2B1.1	Larceny, Embezzlement and Other Forms of Theft (Receiving, Transporting, Transferring, Transmitting or Possessing Stolen Property)
	2B1.3	Property Damage or Destruction
	2B2.3	Trespass
	2B4.1	Bribery in Procurement of Bank Loan and Other Commercial Bribery
	2B5.3	Criminal Infringement of Copyright or Trademark
	2B6.1	Altering or Removing Motor Vehicle Identification Numbers, or Trafficking in Motor Vehicles or Parts with Altered or Obliterated Identification Numbers
Part C	2C1.1	Offering, Giving, Soliciting or Receiving a Bribe; Extortion Under Color of Official Right
	2C1.2	Offering, Giving, Soliciting or Receiving a Gratuity
	2C1.4	Payment or Receipt of Unauthorized Compensation
	2C1.6	Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper
	2C1.7	Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions
Part D	2D1.7	Unlawful Sale or Transportation of Drug Paraphernalia; Attempt or Conspiracy
	2D3.1	Regulatory Offenses Involving Registration Numbers; Unlawful Advertising Relating to Schedule I Substances; Attempt or Conspiracy
	2D3.2	Regulatory Offenses Involving Controlled Substances or Listed Chemicals; Attempt or Conspiracy
Part E	2E3.1	Gambling Offenses
	2E4.1	Unlawful Conduct Relating to Contraband Cigarettes
	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
	2E5.3	False Statements and Concealments of Facts in Relation to Documents Required by ERISA; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act
Part F	2F1.1	Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Bearer Obligations of the US
	2F1.2	Insider Trading
Part G	2G3.1	Importing, Mailing, or Transporting Obscene Matter
Part K	2K1.1	Failure to Report Theft of Explosive Materials; Improper Storage of Explosive Materials
	2K2.1	Unlawful Receipt, Possession or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition

Part L	2L1.1	Smuggling, Transporting or Harboring an Unlawful Alien
Part N	2N3.1	Odometer Laws and Regulations
Part R	2R1.1	Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors
Part S	2S1.1	Laundering of Monetary Instruments
	2S1.2	Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity
	2S1.3	Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports
Part T	2T1.1	Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements or Other Documents
	2T1.4	Aiding, Assisting, Procuring, Counseling, or Advising Tax Fraud
	2T1.6	Failing to Collect or Truthfully Account For and Pay Over Tax
	2T1.7	Failing to Deposit Collected Taxes in Trust Account as Required After Notice
	2T1.8	Offenses Relating to Withholding Statements
	2T1.9	Conspiracy to Impede, Obstruct, or Defeat Tax
	2T2.1	Non-Payment of Taxes
	2T2.2	Regulatory Offenses
	2T2.3.1	Evading Import Duties or Restrictions (Smuggling); Receiving or Trafficking in Smuggled Property

Per U.S.S.G. § 8C2.1 (b), §§ 8C2.2 - 8C2.9 also apply to the following additional sections of Chapter Two, when the underlying offense is determined under one of the offenses listed in the table above (i.e., listed in § 8C2.1 (a)):

Part	Subsec	Description of Offense
Part E	2E1.1	Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations
Part X	2X1.1	Attempt, Solicitation, or Conspiracy (Not Covered by a Specific Offense Guideline)
	2X2.1	Aiding and Abetting
	2X3.1	Accessory After the Fact
	2X4.1	Misprision of Felony

Notable offenses *excluded* from the coverage of §§ 8.C2.2 - 8.C2.9:¹

1. Environmental Offenses under Part Q
2. Most food, drug and agricultural product offenses under Part N
3. Export violations
4. Contempt
5. Obstruction of justice

¹ According to *Corporate Sentencing Guidelines*, § 2.02 (updated through Release 5)