

**UNITED STATES SENTENCING COMMISSION ADOPTS MORE STRINGENT  
REQUIREMENTS FOR CORPORATE COMPLIANCE PROGRAMS**

On April 8, 2004, the United States Sentencing Commission unanimously adopted amendments to the Organizational Sentencing Guidelines codifying and toughening the requirements for an effective corporate compliance program. If approved by Congress, the amendments will take effect November 1, 2004. These are the first proposed amendments to the Organizational Sentencing Guidelines since their adoption.

The amendments codify in a new guideline, §8B2.1, the seven requirements for an effective corporate compliance program.<sup>1</sup> All companies should review their compliance programs to ensure they meet these standards. An effective compliance program can be a significant factor influencing a prosecutor's decision whether to charge a company and can help mitigate fines or other punishment in the event misconduct is prosecuted. The seven requirements of an effective compliance program are:

(1) establishment of adequate compliance standards and procedures to prevent and detect violations of law;

(2) high-level company leadership knowledgeable about the content and operation of the compliance program;

(3) reasonable efforts and due diligence to ensure that substantial authority is not entrusted to any individual whom the organization knew, or should have known, has a history of engaging in violations of law or other conduct inconsistent with an effective program;

(4) effective training programs and dissemination of information regarding compliance standards and procedures;

(5) periodic monitoring and auditing to evaluate the effectiveness of the compliance program and the availability of methods of reporting potential violations of law without fear of retaliation, including the availability of anonymous reporting methods;

(6) consistent promotion and enforcement of the organization's compliance program through appropriate incentives and disciplinary measures; and

(7) procedures and mechanisms to respond appropriately to potential violations of law and to prevent similar violations through appropriate corrective action.

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<sup>1</sup> These seven factors were originally set forth in commentary under the Guidelines.

Within the foregoing provisions and elsewhere, the amendments adopt a number of new standards and emphasize others reflective of the “post-Enron” corporate compliance environment, including:

- creation of a rebuttable presumption that a violation of law by high-level personnel is inconsistent with a determination that the company had an effective compliance program;
- additional emphasis on compliance-related training, monitoring, and auditing;
- that waiver of the attorney-client privilege and work product protections may be required to receive full credit for cooperation in a government investigation;
- that an effective compliance program is one designed to detect and prevent not only criminal violations, but “violations of any law, whether criminal or noncriminal (including a regulation), for which the organization is, or would be, liable”;
- that the board of directors and senior management oversee and monitor the implementation and effectiveness of the compliance program; and
- periodic risk assessments to ensure appropriate design, implementation, and modification of an effective compliance program.

We anticipate Congress will approve the proposed amendments. Accordingly, we urge you to examine your compliance program closely to ensure that it meets the foregoing standards. Your review should include the active involvement of the board of directors and senior management.

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If you have any questions or would like additional information, please call Martin J. Weinstein (Chair, Compliance & Enforcement Practice Group) at 202-303-1122, or Robert J. Meyer (Vice-Chair) at 202-303-1123.

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May 3, 2004

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