



U.S. Department of Justice

Antitrust Division

Main Justice Building
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

November 6, 2001

Re: Federal Register Notice 9/19/01
on "Issues Related to Organizational Guidelines"

Public Affairs Office
United States Sentencing Commission
One Columbus Circle, NE
(Suite 2-500 South Lobby)
Washington, DC 20002-8002

Dear Sentencing Commission:

This letter is in reply to your request for comments on "Issues Related to Organizational Guidelines" that appeared in the *Federal Register* on 9/19/01. Since I just last week learned of this request (from Mark Allenbaugh), I will unfortunately be able to offer you little in the way of substantive remarks by today, the last day of your official comment period. Yet this is an important topic, so I want to offer a few remarks and to thank you for calling this initiative to my attention. (Note that this does not reflect any official views of the Justice Department).

Your *Federal Register* notice indicates that the Commission's organizational guidelines have had a "tremendous impact on the implementation of compliance and business ethics programs over the past years." Indeed, people with a variety of perspectives will be interested in the future of these programs.

My perspective is that of an economist whose past research has focused on corporate compliance and, indeed, on the effect of the Federal Sentencing Guidelines for Organizations.

From that perspective, my suggestion is that you include within the scope of your advisory group's activities careful consideration of how the Guidelines' treatment of compliance programs – and, indeed, the presence of these programs – actually affects the incentives of individuals within corporations to comply. The incentive for corporate actors to comply has many sources, as an extensive economics literature on this subject recognizes. For a critical evaluation of this issue that usefully highlights some of the questions the advisory group might beneficially address, please see the 1999 article by William S. Laufer, "Corporate Liability, Risk Shifting, and the Paradox of Compliance," 52 *Vanderbilt Law Review* 1343.

I would be happy to discuss with your staff (with more advance notice) other sources that they may find helpful in developing an agenda for its advisory group, which appears to be an important and useful initiative for the Commission to pursue.

Best regards,

Cindy R. Alexander, PhD