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November 6, 2001

DELIVERED BY FACSIMILE

United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington DC 20002-8002
Attn: Public Affairs

Subj: Response to USSC Federal Register Notice 9/19/01

Dear Sir or Madam:

I would like to take this opportunity to offer my encouragement and support for the United States Sentencing Commission to undertake a review of the Federal Sentencing Guidelines for Organizations (FSGO) as set forth in its Federal Register Notice 9/19/01. Rather than set forth another list of specific issues that the Commission might consider in its review, suffice to say that I endorse the specific issues raised in the letters before the Commission, specifically those of the Ethics Resource Center, the Coalition for Ethics and Compliance Initiatives, and Mr. Charles Howard.

The commission is well aware that it has created the *de facto* framework for what defines the minimum requirements for an effective compliance program in the ethics and compliance "industry." As such, the USSC's "Effective Program" elements [USSG §8A1.2, comment, (n 2(k))] provide a structure for discussing both organizational ethics and compliance issues. This structure is widely followed by governmental agencies, organizations and consultants in designing, implementing, enforcing, and assessing ethics and compliance programs.

While they provide the essential core of a developing framework for organizational ethics that addresses organizational behavior beyond compliance, the Commission Chair, Judge Diana Murphy, and others have recognized that more than the minimum framework is required for a compliance program to be truly effective. In our industry, truly effective programs are coming to be referred to as "ethics and compliance programs." But beyond the more robust framework that the letters referred to above suggest that the Commission consider, there are two aspects that an ad hoc advisory group might assist the Commission in understanding and addressing: the applicability of the provisions to Native American Tribal Government and the practical aspects of designing and implementing effective ethics and compliance programs for the micro/small to medium enterprise and the Native American Tribal Governments as well.

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If it is the intent of the Commission that the FSGO apply to Native American Tribal Governments, it might be wise to engage them in considering if there are not unique matters to consider as it sets forth its minimum requirements. As one who has had experience working with tribal governments and who sees the advantages of having effective ethics and compliance programs on a model that reflects the dynamics of today's tribes, I would welcome specific language addressing the tribes.

Another area of concern to those who care deeply about the public policy implications of effective ethics and compliance programs are the challenges to micro/small to medium enterprises in designing and implementing such programs. The experience and lessons learned to date have been largely confined to the larger or even largest organizations. However, a significant number of the enterprises that have problems before either the Federal Courts or Federal Agencies, such as the Department of Defense or Health and Human Services, are smaller enterprises.

In my view, an ad hoc advisory group to the Commission should have membership reflecting the two groups and their bodies of challenges and concerns. I would welcome the opportunity to serve as a member of the ad hoc advisory group as a voice for those two groups. I do not hold myself out as an expert on the challenges and concerns of the Native American Tribes. I think few would do so boldly, but as a tribal member (Cherokee) and one who has written on tribal governance as early as my law review days, I am intensely interested in them and would work to engage voices that are truly representative. I do feel that I can speak for the small to medium enterprise having been a small businessman and represented small businesses earlier in life. Moreover, as part of a program I am in the midst of developing, I will begin hosting within the month an international e-conference addressing these issues as the first step in developing an effective guide for the micro/small to medium enterprise to design and implement a truly effective ethics and compliance program to meet its needs within its organizational context and organizational culture.

I will be pleased to make more information available to you upon request, but I bring a wealth of experience to such a group. In addition to being a lawyer who had largely small business clients in the 1980s, I have consulted in the ethics and compliance industry since 1993, was a principal proponent of the Coalition for Ethics and Compliance Initiatives by calling and arranging for its formative meetings in 2000, and have been an Ethics Resource Center Senior Fellow since its inception in 1997.

In sum, I wholeheartedly support such a review and pledge to support the Commission in its endeavors. Moreover, I see special value in the Commission staff's fostering a dialogue with industry and government regulators regarding the design, implementation, enforcement, and assessment of an effective program in order to lay a solid foundation for the Commission's review. In this regard, I believe that I offer unique value in working with the Commission in soliciting other experiences and learning.

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Please do not hesitate to contact me if I can offer any other support for this important endeavor.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Johnson", with a long horizontal flourish extending to the right.

KENNETH W. JOHNSON
Director, EPIC