

Prepared Comments to the Advisory Group on Organizational Guidelines to the United States Sentencing Commission

Presented by:

**Gale C. Andrews Vice President of Ethics and Business Conduct
The Boeing Company**

Ladies and gentlemen of the Advisory Group,

First let me thank you for the opportunity to be heard on this issue. The Sentencing Guidelines are a major component of what forms ethics and compliance programs in industry, and your call for this public dialogue on the topic is to be applauded.

As I reviewed the specific questions you have asked me to comment on, I formed some general impressions on what we should be considering in the Guidelines as well as specific answers to your questions. At a general level, the Guidelines should be (and I contend are) written at a broad enough level to support a wide range of business types and sizes. That is, it is unrealistic to expect a small one thousand-person firm to implement the intentions of the Guidelines in the same manner that a two hundred thousand-person firm would. The level of formal control and resource allocation required would be dramatically different. Therefore, the Guidelines should focus on the desired results as opposed to specific implementation actions. It is, after all, the achievement of results that will change behaviors mitigate the risks.

On a more specific level, question 1e. regarding §8A1.2, comment 3(k)(4), is representative of the general observation. Is the type of training or communication the key issue, or is ensuring results from training and communications the point? I would contend that the Guidelines should focus on requiring training to occur and companies to demonstrate that employees have been trained. Training classes and company news communication channels will not impact behaviors unless there are appropriate monitoring of results. As to whether to require “training” or “communication” or both, I assert that they are one in the same with identical intentions.

Question 1f. regarding the need for a threat-free environment for individuals to report concerns again must be looked at from the standpoint of what is intended. Section 8A1.2, comment 3(k)(5), calls for “reasonable steps” to be taken to provide such an environment. At issue then are not the steps themselves, but the reasonableness of those steps. Reasonableness is very often in the eyes of the beholders, and therefore very difficult to quantify. I would suggest that a better position would be the requirement of an anti-retaliation policy and a demonstration that the policy is in effect. This could be accomplished via monitoring actions taken toward the reporting employee (raises, promotions, transfers, etc.) subsequent to any reporting event. Such a monitoring action would clearly demonstrate a companies commitment to an anti-retaliation environment , encouraging those who have concerns to come forward.

Regarding question 1g. on emphasizing monitoring, suffice to say that any control needs to be monitored and independently reviewed on a periodic basis to ensure its continued effectiveness and relevance. Most audit organizations currently have fraud related tests in their audit programs today, but articulating the need for such reviews in the Guidelines is probably still appropriate. Additionally, articulating a requirement for reviewing compliance programs on a periodic basis would support the continuance of a healthy program.

As to whether §81.2, comments 3(k)(6), should contain language giving “credit” for companies demonstrating positive actions towards supporting compliant behaviors, I would say yes. If we all subscribe to the theory of “what gets measured gets done,” then it would make sense to have a measurement and reward system around compliance results. While I think that, in many cases today, companies do have measurement and consequence for non-compliance, it would appear that there is a less direct correlation between reward and compliance. The reason for this is probably lodged in the belief that compliance is just part of the total job and therefore doesn’t require special attention. Placing verbiage in the Guidelines supporting efforts to bring special attention to positive compliance performance would provide leverage in changing the awareness in this area and ultimately changing behaviors. Again, whatever prescription is formulated for recognizing a company’s efforts in rewarding compliant behavior must be sufficiently broad enough to accommodate the vast array of compensation systems. However, I believe this can be successfully developed, and the desired result can be achieved.

As to question 3 of your writing, to address it properly requires some frank and delicate conversation. Question 3 poses the issue of the natural tension between the “correctness” of self-disclosures and the threat of punishment for same. To examine this, I am inclined to look at the issue from two points of view. First of all from the point of view of companies, the Guidelines should not have to stress the importance of independent assessment and making appropriate corrective actions. Companies that do not undertake this kind of open evaluation on their own are destined to suffer unforeseen compliance failures that can be devastating. The hallmark of any credible audit or monitoring control is complete access to information and absolute independence. If a company does not subscribe to this already, no amount of urging from the Guidelines will change their view. But on the other side of this is the question of the environment the companies operate within. The importance of auditing, monitoring and self-reporting can be stressed ten fold from its current position, and nothing will change if the actions don’t support the writings. To be more blunt, companies that energetically support and follow the Sentencing Guidelines must see specific benefit from their actions. Companies who are “on the fence” about supporting the Guidelines must also see tangible results for those who participate if we expect them to get off the fence. So this raises the question of what metrics should there be to support the desired behavior, and how should that be published? I know this is a very difficult question that will take more than the few minutes we have together to resolve. However, it is pivotal to attaining the level of trust and openness the Guidelines attempt to create, and therefore worth addressing in some manner.

This ends my prepared comments on the questions you had asked me to address. Again I would like to thank the Advisory Group for opportunity to speak on these topics, and compliment you on the effort and interest you are investing in this important work. I would be happy to answer any questions you might have at this time.