

May 2000

TO: Executive Addressed

FR: James E. Lukaszewski, APR, Fellow PRSA Chairman

RE: Federal Sentencing Guidelines: A Motivator for Better Business Behaviors

The striking increase in criminal prosecution of business and business people makes it imperative that executives become familiar with the basis on which to prevent, detect, and deter potential criminal activity within their organization. An "effective program to prevent, detect, and deter violations of law" means a program that has been reasonably designed, implemented, and enforced so that it will be generally effective in preventing and detecting criminal conduct. The hallmark of an effective program is that the organization has exercised due diligence in seeking to prevent and detect criminal conduct by its employees and other agents. Due diligence requires that at a minimum the organization must have taken the following types of steps:

1. The organization must establish 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 be assigned overall responsibility to oversee compliance with such standards and procedures.
3. The organization must use 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 take steps to effectively communicate 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 take 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. Standards must be 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.

After an offense is detected, the organization must take 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.

Copyright © 2000, James E. Lukaszewski. All rights reserved.

The Lukaszewski Group Inc. ■ Ten Bank Street, Suite 530, White Plains, NY 10606-1952
Telephone 914.681.0000 ■ Facsimile: 914.681.0047 ■ tlg@e911.com ■ www.e911.com