

Records Management Team

To: Our Clients and Friends

March 24, 2010

Proposed Amendments to the Federal Sentencing Guidelines Emphasize the Importance of Having an Effective and Compliant Records Management Program

What Every Business Needs to Know

In January, the United States Sentencing Commission published proposed changes to the Federal Sentencing Guidelines. Public hearings on the proposed amendments were held last week. The Commissioners will take final action on the proposals next month. The amendments will be effective in November, unless Congress intervenes. A major focus of the proposed amendments is on the document retention component of records management.

One proposed change clarifies what is expected of corporate executives and so-called “substantial authority personnel”. They “should be aware of the organization’s document retention policies and conform any document retention policy to meet the goals of an effective compliance program under the guidelines and to avoid any liability under the law”.

The Commission also offers, as an “Issue for Comment,” whether the sentencing guidelines should be amended to allow companies that meet three specific criteria to get credit for having an effective records management compliance program even if a corporate executive is involved in wrongdoing with respect to records retention. Currently, companies in that predicament—which happens often in cases of corporate misconduct—do not. The three criteria are: that the individual with operational responsibility for compliance in the organization has “direct reporting authority to the board level;” that the compliance program must have detected the offense “prior to discovery or reasonable likelihood of discovery outside of the organization;” and the company must have alerted the appropriate authorities about the violation promptly.

The proposed amendments are important in that they reveal an increasing focus on the part of federal law enforcement upon records management misconduct.

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Every business should consider assuring that its records management program is fully compliant with all applicable law, and that its chief compliance officer or other person with overall responsibility for records management compliance is a high-ranking person in the organization, with a direct line of reporting to whatever committee of the board of directors (such as the audit committee) has responsibility for monitoring and oversight of corporate integrity matters.

Learn how Bryan Cave can help significantly reduce your exposure through reviewing your current records management program or helping you create a new one, by clicking on this link:

<http://www.bryancave.com/rmt/>, or by contacting Edwin S. ("Ned") Fryer at 314-259-2397 (or by email to esfryer@bryancave.com).

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