

§8C2.3

the guideline fine range is unnecessary because, pursuant to §8C3.3(a), no fine would be imposed.

- (b) Where it is readily ascertainable through a preliminary determination of the minimum of the guideline fine range (*see* §§8C2.3 through 8C2.7) that the organization cannot and is not likely to become able (even on an installment schedule) to pay such minimum guideline fine, a further determination of the guideline fine range is unnecessary. Instead, the court may use the preliminary determination and impose the fine that would result from the application of §8C3.3 (Reduction of Fine Based on Inability to Pay).

Commentary

Application Notes:

1. In a case of a determination under subsection (a), a statement that “the guideline fine range was not determined because it is readily ascertainable that the defendant cannot and is not likely to become able to pay restitution” is recommended.
2. In a case of a determination under subsection (b), a statement that “no precise determination of the guideline fine range is required because it is readily ascertainable that the defendant cannot and is not likely to become able to pay the minimum of the guideline fine range” is recommended.

Background: Many organizational defendants lack the ability to pay restitution. In addition, many organizational defendants who may be able to pay restitution lack the ability to pay the minimum fine called for by §8C2.7(a). In such cases, a complete determination of the guideline fine range may be a needless exercise. This section provides for an abbreviated determination of the guideline fine range that can be applied where it is readily ascertainable that the fine within the guideline fine range determined under §8C2.7 (Guideline Fine Range — Organizations) would be reduced under §8C3.3 (Reduction of Fine Based on Inability to Pay).

*Historical
Note*

Effective November 1, 1991 (amendment 422).

§8C2.3. Offense Level

- (a) For each count covered by §8C2.1 (Applicability of Fine Guidelines), use the applicable Chapter Two guideline to determine the base offense level and apply, in the order listed, any appropriate adjustments contained in that guideline.
- (b) Where there is more than one such count, apply Chapter Three, Part D (Multiple Counts) to determine the combined offense level.