

available

at:

https://www.americanbar.org/content/dam/aba/publications/criminaljustice/economic_crimes.pdf

There are many facets of the ABA Proposal that we think merit careful study and adoption in some form, though signers of this letter might differ on any number of the detailed particulars. For this letter, we want to highlight a fundamental feature of the ABA Proposal that should be central to this Commission's work – namely, its emphasis on individual culpability. Though the ABA Proposal gives some attention to loss in the revised guideline, it centers the guideline calculation around “various culpability factors.” In so doing, the ABA Proposal seeks to deemphasize a mathematical focus on loss in order to ensure judges focus mostly on determining an “appropriate culpability level” which “for any given case will depend on an array of factors.” Notably, the ABA Proposal does not seek to define intricately and mechanistically all possible culpability factors, but rather soundly encourages and expects sentencing judges to carefully weigh the “almost limitless variety” of possible culpability considerations.

Conclusion

We are very encouraged by the Commission's recent efforts to modify the U.S. Sentencing Guidelines to better serve the statutory goals set forth by Congress and our nation's commitments to liberty and justice. The Guidelines' undue emphasis on loss in fraud cases has often resulted in excessively punitive sentence calculations that may bear little relation to traditional sentencing factors, thus undermining Congress's statutory sentencing instructions in 18 U.S.C. §3553(a) that judges impose sentences that are no greater than necessary to achieve the purposes of sentencing. We respectfully suggest that the Commission consider efforts, like the ABA Proposal, that seek to promote an emphasis on individual culpability to improve federal sentencing for fraud and theft offenses.

Thank you very much for your consideration of our views.

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