

Table 58**GUIDELINE INVOLVED IN ISSUES APPEALED BY THE GOVERNMENT¹
Fiscal Year 2004**

GUIDELINE	Number	Percent	Affirmance Rate²
TOTAL	233	100.0	27.5
5K2.0 (Departures)	44	18.9	20.4
2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)	15	6.4	60.0
5H1.6 (Family Ties and Responsibilities)	13	5.6	23.1
3B1.2 (Mitigating Role)	11	4.7	54.6
2D1.1 (Drug Trafficking)	10	4.3	40.0
3E1.1 (Acceptance of Responsibility)	10	4.3	40.0
4A1.3 (Adequacy of Criminal History)	10	4.3	0.0
2L1.2 (Unlawfully Entering or Remaining in the United States)	7	3.0	14.3
4A1.2 (Definitions and Instruction of Criminal History)	6	2.6	33.3
5E1.1 (Restitution)	6	2.6	100.0
4B1.1 (Career Offender)	5	2.2	0.0
5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases)	5	2.2	40.0
5K2.13 (Diminished Capacity)	5	2.2	0.0
2F1.1 (Fraud)	4	1.7	0.0
3B1.1 (Aggravating Role)	4	1.7	25.0
3C1.1 (Obstruction of Justice)	4	1.7	75.0
5H1.1 (Age)	4	1.7	0.0
5K1.1 (Substantial Assistance to Authorities)	4	1.7	0.0
Constitutional Issues	7	3.0	57.1
Other Guidelines	48	20.6	22.9
Other Non-guideline Issues	11	4.7	27.3

¹Based on 4,608 appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 4,608 of these cases which cited 8,737 issues. Often more than one issue was appealed; consequently, the number of issues is more than the number of defendants. The "Other" category includes all issues appealed fewer than four times among relevant cases.

²Affirmance Rate includes all appeals cases not reversed by the circuit court.

SOURCE: U.S. Sentencing Commission, 2004 Appeals Datafile, APPFY04.