Practitioners Advisory Group

A Standing Advisory Group of the United States Sentencing Commission

March 22, 2010

Honorable William K. Sessions, III, Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002

RE: Response to Request for Comments on Proposed Amendments for 2010

Dear Judge Sessions:

On behalf of the Practitioners Advisory Group, we submit the following written comments to several of the Commission's proposed amendments and requests for comment in the 2010 amendment cycle. This letter includes the comments we made in our written hearing testimony specific to Chapter 5H and Chapter 8. The comments incorporated from the written testimony are found in Sections 2.A through 2.C and Section 5 below. In addition to the new topics covered by the other sections of this letter, we have supplemented our written testimony on Chapters 5H and 8. For ease of reference, each paragraph in Section 2.A though 2.C and Section 5 that contains new material has an opening sentence containing the words "**March 17, 2010 hearing**" in bold font.

1. EXPANDING THE SCOPE OF NON-PRISON OPTIONS

The Commission proposes amendments to the Manual that would formally incorporate the propriety of substance abuse treatment for a select class of offenders and that would increase the availability of non-prison sentences through enlargement of Zones B and C of the Chapter Five Sentencing Table. The Commission also requests comment on five issues pertinent to the expansion and use of non-prison sanctions.

The PAG supports amendments to the Manual that engender greater flexibility consistent with the recognized need to impose individualized sentences. *See Gall v. United States*, 552 U.S. 38, 49-50 (2007); *Koon v. United States*, 518 U.S. 81, 113 (1996); 18 U.S.C. § 3553(a). We therefore support Part A and Part B of the proposed amendment. Concurrently, we believe that these changes must be approached as a first step in a larger reform of the Manual that expands meaningfully the use of community-based sanctions within the structure of the guidelines, and we also recommend that the Commission avoid giving judges the impression that the Commission believes substance abuse treatment alternative is never appropriate unless a defendant meets all of the proposed criteria.

A. Part A — Treatment for Drug Offenders

The PAG understands this proposed amendment to reflect the Commission's interest in diverting low-level drug offenders, who suffer from chemical dependency problems, into treatment. We agree that the Manual should prioritize rehabilitation and specific deterrence over retribution in appropriate circumstances, such as in cases involving nonviolent offenses committed by individuals with no or a minimal criminal history. Although we encourage adoption of Part A, we are concerned about the practical implementation of the proposal relative to services that a defendant may have received before trial. Additionally, we believe strongly that the formalization of treatment alternatives should not be limited to persons convicted of drug offenses.

DSM-IV criteria rather than "addiction"

The proposed amendment couches the controlling consideration as "addiction." We recommend that the Commission opt for broader, more accepted clinical concepts. In particular, the PAG submits that the proposed § 5C1.3(a)(1) should read:

> the defendant committed the offense while ~~addicted to a controlled substance~~ *suffering from a diagnosed substance abuse disorder*.

In terms of what constitutes a substance abuse disorder, the commentary should direct courts to determine whether a defendant meets the diagnostic criteria for abuse or dependence indicated in the *Diagnostic and Statistical Manual of the Mental Disorders, Fourth Edition, (DSM - IV)*. Such an approach supports uniformity of definition and application.

Making the proposal available in a greater number of instances in which the benefits can be realized

The PAG opposes the nexus language suggested for the proposed § 5C1.3(a)(1). Research supports the widespread acceptance of the link between chemical dependency and crime, as well as the need for treatment. *See* The National Center on Addiction and Substance Abuse at Columbia University, *Behind Bars II: Substance Abuse and America's Prison Population* (Feb. 2010) (although 65 percent of all U.S. prisoners meet DSM-IV criteria for substance abuse, only 11 percent receive treatment) (available at http://www.casacolumbia.org/templates/publications_reports.aspx). That a defendant suffered from a diagnosed disorder at the time of the offense is all that should need be shown. Courts should not be required to assess whether and to what extent a defendant's problem or problems contributed to the commission of the underlying offense. Aside from inherent difficulties in evaluating self-reported and/or corroborating information, such a scenario inappropriately invites a degree of subjectivity incompatible with uniform application of the provision. Courts should not be unnecessarily hindered in assessing whether treatment of the defendant's substance abuse disorder would better serve the purposes of sentencing.

Similarly, the alternate language suggested for the proposed § 5C1.3(a)(2) is unnecessary. It is inarguable that for those who suffer from chemical dependency issues, treatment not only lessens the chance of relapse but also lowers the risk of recidivism. *See* Pelissier, et al., *Triad Drug Treatment Evaluation*, 65 Federal Probation 3, 6 (Dec. 2001) (female graduates 18 percent less likely to re-offend or use drugs). Said another way, courts should not be compelled to take notice of the "likely benefit" of treatment; it is inherent. Since judges would only order treatment if they believed there was a likely benefit, the proposed language could prompt judges to search for a way to give the words a different meaning, in the process adding a more rigorous requirement to the guideline and thereby unnecessarily curtailing the option's availability.

The PAG supports making treatment available to defendants whose total offense level is 16, the high end of the proposed § 5C1.3(a)(3). With respect to the proposed § 5C1.3(b), we oppose limiting treatment to residential programs. Experience shows that defendants who suffer from substance abuse disorders at the time of arrest or indictment and who are released on bond are likely to obtain residential treatment while under, and frequently as a condition of, pre-trial supervision. In such instances, an earlier residential placement will likely obviate the need for residential services after sentencing. Moreover, for that very reason a facility seeking to allocate limited bed space would likely turn such a defendant down for post-sentence placement. Along these lines, the Commission should consider commentary that directs courts to account for treatment a defendant received prior to sentencing, including, but not limited to, crediting pre-sentencing treatment as having partially or fully satisfied § 5C1.3(b)'s programming requirement (akin to time served).

Finally, the PAG is concerned about the low number of defendants who will be eligible annually for consideration under Part A. In short, to qualify a defendant must be a "safety valve" eligible drug offender suffering from chemical abuse or dependency issues at the time of the offense, who is receptive to treatment and whose total offense level is no greater than 16. Putting to the side for the moment the fact that courts have been free to impose non-guidelines sentences that achieve this envisioned outcome regardless of any action that the Commission may take, the foregoing criteria appear to create a very small pool of eligible federal criminal defendants. Accordingly, the PAG agrees with those who have questioned limiting such relief to those convicted of drug offenses, rather than making it available to all other defendants with substance abuse disorders who otherwise meet the relevant criteria.

In this regard, the PAG continues to advocate for an amendment to the Manual that authorizes a sentence reduction for all federal offenders — similar to, but more widely available than that in place for drug offenders under Section 5C1.2. Specifically, we previously proposed adoption of "§ 5C1.3 – Limitation on Applicability of the Guideline Range in Certain Cases" to effectuate Congress's mandate that the Commission establish non-prison sentences for first time, nonviolent offenders who do not stand convicted of serious offenses. PAG Ltr. to Hon. Ricardo H. Hinojosa re: Proposed 2009 Priorities (July 23, 2008) (incorporated herein by reference); *see* 28 U.S.C. § 994(j). The Commission has found that "[p]ossible sentencing reductions for 'first offenders' are supported by the recidivism data and would recognize their lower re-offending

rates." USSC, *Measuring Recidivism: The Criminal History Component of the Federal Sentencing Guidelines*, 15 (May 2004); *id.* 9-10 (listing criteria generally associated with less culpable criminal conduct). Furthermore, the federal Bureau of Prisons (BOP) recently adopted changes to its controlling program statement precluding participation in its 500-hour 'residential' substance abuse program by those sentenced to 24 months' imprisonment or less. *See* BOP Program Statement 5330.11, *Psychology Treatment Programs*, Ch. 2.5.5 (Mar. 16, 2009).

B. Part B — Zone Expansion / Treatment Effectiveness

The Commission proposes to expand Zone B in Chapter Five's Sentencing Table by one level and, correspondingly, shift Zone C out one level. The PAG supports the proposed amendment because expansion of the Zones facilitates imposition of individualized sentences. *See* 18 U.S.C. § 3553(a). At the same time, we believe that this amendment does not go far enough in affording courts the greater flexibility necessary to do justice within the framework of the guidelines. *See* 28 U.S.C. § 991(b)(1)(B) ("sufficient flexibility to permit individualized sentences when warranted"). The PAG maintains that the Sentencing Table and associated guidelines are in need of significant amendment to reflect the reality that first-time and nonviolent federal offenders are imprisoned at a rate disproportionate with their State cohorts and that, as drafted, the Manual runs counter to the congressional mandate that it reflect the appropriateness of imposing a sentence other than imprisonment in such cases. *See* 28 U.S.C. § 994(j); *see*, *e.g.*, Nora V. Demleitner, *Smart Public Policy: Replacing Imprisonment with Targeted Nonprison Sentences and Collateral Sanctions* in *A More Perfect System: Twenty-Five Years of Guidelines Sentencing Reform*, 58 Stanford L.R. 1, 344 (2005) ("The federal criminal justice system only offers limited forms of alternative sanctions.") (citing, GAO, *Intermediate Sanctions in Sentencing Guidelines* (NIJ May 1997)).

Notably, 16.9 percent of the federal prison population (approximately 34,053 of 201,498 prisoners) are classified as "minimum security" and 39.4 percent (approximately 79,390 prisoners) are designated "low security". BOP, *State of the Bureau 2008*. At an average annual cost of $24,992 per prisoner, according the Administrative Office of the U.S. Courts, that results in a cost to taxpayers of over $2.5 billion per year. Equally significant, according to the BOP's FY 2009 Performance Budget, the federal prison system is running at more than 40 percent over rated capacity, as we understand it has for some years. This is important because the BOP advises that "[c]rowding is a very real danger in prisons — causing frustration and anger for inmates whose access to basic necessities like toilets, showers, and meals becomes very limited and who face hours of idleness resulting from a limited availability of productive work and program opportunities." U.S. Department of Justice, Federal Prison System, FY 2009 PERFORMANCE BUDGET, Congressional Submission, Salaries and Expenses at 8. Moreover, the FY 2009 budget references a study that indicates "a one percentage point increase in a Federal prison's crowding (inmate population as a percent of the prison's rated capacity) corresponds with an increase in the prison's annual serious assault rate by 4.09 assaults per 5,000 inmates." *Id.* at 4.

The PAG believes that considerations such as these are what have prompted a growing numbers of States to expand the use of community-based sanctions as part of structured

sentencing schemes. Although the Commission has historically recognized the need to develop further the suite of options available to courts, it has taken few concrete steps to make community-based sanctions available within the constructs of the Manual. *See* USSC, *Summary Report: U.S. Sentencing Commission's Survey of Article III Judges*, p. 5 (Dec. 2002); USSC and BOP, *Report to Congress on the Maximum Utilization of Prisons Resources*, p. 10 (June 30, 1994) (describing a "full service" concept intended to offer "a range of supervision, accountability, and program options to reach a much broader spectrum of offenders"); USSC, *The Federal Offender: A Program of Intermediate Punishments*, p. 4 (Dec. 28, 1990).

In response to the fifth Issue for Comment, we propose an amendment consistent with the attached draft Sentencing Table, which would fold together the traditional Zone B and Zone C while increasing the availability of "straight probation" for low-level offenders as well as of intermittent and split sentences, especially for those under Criminal History Categories I and II.

The Commission is uniquely able to take the lead in devising advisory guidelines that are smart on crime and that reflect evidence-based research which establishes what works by way of community-based penalties. *Cf.* The Pew Center on the States, *Arming the Courts with Research: 10 Evidence-Based Sentencing Initiatives to Control Crime and Reduce Costs* (May 2009). In creating the broader parameters that courts desire, the Commission will not compel the imposition of non-prison sentences. Rather, prison will remain an option by statute — one which, according to Commission data, courts will use even when a defendant is eligible for a less stringent sentence under the sentencing guidelines. The PAG believes that the issue has become one of fostering renewed respect for the Manual by providing courts the discretion they seek and deserve, therein lessening the call or need for non-guidelines sentences. *See Survey of Article III Judges* at 2; FJC, *The U.S. Sentencing Guidelines: Results of the Federal Judicial Center's 1996 Survey*, p. 15 (1997) (approximately two-thirds of district court judges and chief probation officers assert that more offenders should be eligible for alternatives to incarceration).

Turning attention to the proposed Application Note 6 to § 5C1.1 (and the third Issue for Comment), the PAG does not see a need for the Commission to define "effective program." For one, experience shows that federal judges and the probation officers who advise them are loathe to place defendants into treatment programs if there is any question concerning the program's operation. Likewise, most (if not all) programs that accept court referrals are duly licensed, certified, accredited, etc. or the judicial system will not work with them, and program staff abide by "established ethical or professional standards" or risk jeopardizing their livelihood. Finally, the Commission should not direct courts to determine whether treatment programs operate "on the best available scientific knowledge"; the Commission should inform courts of the best available scientific knowledge that exists, thereby enabling courts to make appropriate decisions.

C. Issues for Comment

Amendment to § 5H1.4

The Commission questions whether Section 5H1.4 should be amended if Part A is promulgated. To avoid confusion, we would add a reference to the new Section 5C1.3 within Section 5H1.4. We also note that the current version of Application Note 6 to § 5C1.1 [Note 7 under the proposed amendments] already reflects the propriety of non-Guidelines sentences to accomplish a particular treatment purpose.

The use of treatment should be expanded under the Guidelines

The Commission questions whether defendants suffering from mental or emotional conditions should be eligible for community-based treatment programs. The PAG supports such an approach, which comports with the Commission's responsibility to ensure that the Guidelines reflect the inappropriateness of prison sentences to rehabilitate defendants or to provide medical care or other correctional treatment. 28 U.S.C. § 994(k); *see United States v. Anderson*, 15 F.3d 278, 282 (2d Cir. 1994); 18 U.S.C. § 3582(a) ("imprisonment is not an appropriate means of promoting correction and rehabilitation). Such an approach also fits with Application Note 6 to § 5C1.1, which does not constrain the use of community-based treatment options to those suffering from substance abuse disorders.

There should not be broad categorical exclusions to the Zone changes

The Commission questions whether restrictions should be placed on the proposed amendments, such as "to exempt public corruption, tax, and other white-collar offenses." The PAG opposes such exclusions. Experience shows that the "white-collar" label, while popular as a shorthand, would be misleading here. "Blue collar" defendants commit "white collar" (financial) crimes, just as "white collar" defendants (presumably meant as a reference to the affluent) commit "blue collar" offenses. Accordingly, we doubt seriously the ability to devise a workable mechanism without adding undue complexity to the Manual. Also, the Zones affected by the proposed amendment cover those who are properly seen as low-level offenders — individuals already on the cusp of imprisonment. Courts are well suited to determine whether such individuals require straight imprisonment, which both Zone B and Zone C allow, or a different mix of options that would be sufficient, but not greater than necessary, to achieve the purposes of sentencing.

2. SPECIFIC OFFENDER CHARACTERISTICS

A. Introduction

By way of introduction, we note that Chapter 5, Part H, as currently written, is described in the Introductory Commentary as reflecting the Sentencing Commission's view that "certain circumstances are not ordinarily relevant to the determination of whether a sentence *should be*

outside the applicable guideline range." (Emphasis added) But this same Commentary goes on to make clear that "*this does not mean* that the Commission views such circumstances as necessarily inappropriate to the determination of the sentence within the applicable guideline range or to the determination of various other incidents of an appropriate sentence." (Emphasis added)

Accordingly, as currently written, and even before *Booker*, Part H takes no position on whether the identified offender characteristics are relevant to determining the appropriate sentence; the only view expressed is that such characteristics are "ordinarily not relevant" or "not relevant" in "determining whether a *departure*" from the guideline range is warranted. (Emphasis added)

B. Analysis

The PAG approaches the issue of specific offender characteristics from a practical perspective, based on our experience with how the Part H language impacts sentencing – both within and outside the Guidelines framework, and both expressly and in more subtle ways.

We believe that maintaining Part H in its current form, where the specified characteristics are deemed "ordinarily not relevant" or simply "not relevant" to a Guidelines departure analysis, is at a minimum confusing. Take military service as an example. From a practitioner's perspective, an argument for leniency on behalf of a defendant with an exemplary record of military service to this country encounters a number of contradictions along the way. Under Section 3553(a), military service appears to be plainly relevant, because the judge must consider a number of factors including "the history and characteristics of the defendant." 18 U.S.C. § 3661 reinforces the overarching mandate that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." But under Section 5H1.11, we are told that a distinguished record of service is "not ordinarily relevant" to a departure analysis.

So what do we do as defense lawyers? We argue for a variance, under Section 3553(a). But often, notwithstanding that Chapter 5H is limited to departures, we are met with the argument – whether from the government or the judge or both – that the Sentencing Commission, as a matter of policy, has already determined that such service is "not ordinarily relevant." We recognize that the courts are doing better at explaining how characteristics may be considered in the context of a variance under Section 3553(a) even where discouraged or forbidden as departure grounds under the Guidelines. But in our experience and estimation the Guidelines language has continued (and will continue) to be used, expressly or *sub silentio*, to unjustifiably discourage individualized sentencing decisions based on many relevant aspects of a defendant's "history and characteristics."

Simply put, as to specific offender characteristics such as military service that are discouraged or forbidden under Chapter 5H, the PAG believes that Guidelines as currently written undermine and are inconsistent with the command of Section 3553(a) to consider the

defendant's "history and characteristics." This inconsistency not only damages the coherence and legitimacy of the current sentencing regime, it also leads to disparity of treatment of defendants depending on whether their particular sentencing judge is more inclined to consider such personal characteristics and history under the discouraging if not forbidding Guidelines rubric or instead under the inclusive umbrella of Section 3553(a).

Another concern we have is that Chapter 5H fails to explain the penological and other bases for the Commission's determinations that the specified characteristics are "ordinarily not" or never "relevant" to a departure analysis. This lack of explanation weakens the persuasive force of these Guidelines pronouncements and prevents litigants from confronting head on whether in a particular case the rationale for the discouragement or prohibition of the consideration of certain characteristics makes sense and should be followed.

Justice Stevens' concurring opinion in *Rita v. United States*, 551 U.S. 338, 364-65 (2007), which was joined by Justice Ginsburg, identified many of these same tensions. Justice Stevens explained that while "[m]atters such as age, education, mental or emotional condition, medical condition (including drug or alcohol addiction), employment history, lack of guidance as a youth, family ties, or military, civic, charitable, or public service are not ordinarily considered under the Guidelines," "[t]hese are, however, matters that § 3553(a) authorizes the sentencing judge to consider." Justice Stevens went on to observe that Rita's substantial record of military service to his country was neither "taken into consideration in the sentencing guidelines" nor mentioned by the sentencing judge in explaining his choice of the sentence Rita received, calling this a "serious omission." The majority opinion too recognized the relevance of Rita's "lengthy and distinguished military record," among other personal circumstances, framing the issue on review as whether these circumstances were "special enough" to justify a sentence below the Guidelines pursuant to Section 3553(a).

Part of the problem, which helps point the way to a solution, is the current language's ambiguity regarding the role of Chapter 5H. In the wake of *Booker* the Commission should clarify that it is addressing offender characteristics within the departure context. After a court considers the possibility of a departure as required by Section 3553(a)(4)-(5), it then will move on to conducting an analysis of the other factors that fall outside of either calculating or departing from a Guidelines range.

C. Proposed Language

To reconcile the existing tensions and inconsistencies, we respectfully urge the Commission to (a) eliminate that portion of Part H that states (without explaining why) that the specified characteristics are "ordinarily not relevant" or more broadly "not relevant" to departure decisions (and thereby eliminate the suggestion that such characteristics are generally not relevant at all to the sentencing decision) and (b) preserve and expand that portion of Part H that recognizes, at the same time, and consistent with the mandate of Section 3553(a), that these characteristics should be considered and are *not* "necessarily inappropriate to the determination" of both whether a departure is warranted and other critical aspects of the sentence -- including its length and other features and attributes.

Specifically, and with respect to the five specific offender characteristics as to which comment is currently being sought, we recommend that the Commission revise the Chapter 5H language as follows:

> In determining whether a departure is warranted, as well as in determining the length and other attributes of a sentence within the applicable guideline range, the court may consider, individually or in combination, the following factors, among other relevant aspects of the defendant's history and characteristics: (1) age; (2) mental and emotional condition; (3) physical condition, including drug dependence; (4) military, civic, charitable or public service, employment-related contributions, record of prior good works; and (5) lack of guidance as a youth.

For the same reasons mentioned earlier, and especially because of the tension with Section 3553(a), the PAG also urges the Commission to substantially revise Section 5K2.0(a)(4) and Application Note 3(C), and in particular to remove the language reserving for only "exceptional" cases departures that are based on offender characteristics deemed "not ordinarily relevant."

As discussed at the **March 17, 2010 hearing,** although the Commission's request for comments suggests the possibility that the Guidelines Manual might be amended to provide further *specific guidance* as to when and how each identified characteristic or set of characteristics ought to impact the sentencing decision in individual cases, the PAG respectfully suggests that such an endeavor is unwise and impractical. Whether it is the circumstances of a defendant's upbringing, mental, emotional, or physical condition, military service or other good works, or age, the relevance of these characteristics is, in our view, too individualized and too varied from defendant to defendant to translate into describable or quantifiable or one-size-fits-all categories. Providing specific but necessarily limited examples or categories of circumstances where departures may be justified has the undesirable tendency to suggest (or to be misused to argue) that departures in all other contexts are discouraged if not forbidden. In addition, we believe that the "history and characteristics" of a defendant should be viewed – and typically are viewed by sentencing courts – in combination with the other facts and circumstances of the offense and the offender, rather than in isolation. Finally, in our view the overall assessment of each defendant's "history and characteristics" and the relevance of that assessment, if any, to the purposes and goals of sentencing, are matters that are best left to the sentencing court to consider on an individualized case-by-case basis in the exercise of its sound discretion. *See United States v. Gall*, 552 U.S. 38, 51 (2007) ("The sentencing judge is in a superior position to find facts and judge their import under § 3553(a) in the individual case. The judge sees and hears the evidence, makes credibility determinations, has full knowledge of the facts and gains insights not conveyed by the record. . . . The sentencing judge has access to, and greater familiarity with, the individual case and the individual defendant before him than the Commission or the appeals court.") (citations omitted).[1]

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[1] It is true that Congress tasked the Commission, when it drafts and revises the Manual, to

As we suggested at the **March 17, 2010 hearing,** the PAG believes that the Commission can and should play a central role in educating and guiding litigants and judges *more generally* as to the range of considerations and collected learning with respect to the range of potential relationships between these (and other) specific offender characteristics and the goals of sentencing. We encourage and support the Commission serving as a central repository and resource to which practitioners and judges can turn for the most current and comprehensive collection of learning, studies, analyses and judicial decision making relating to specific offender characteristics. We believe the results will be improved advocacy and improved and more consistent decision making as to the relevance and impact of such specific offender characteristics on the sentencing decision in each unique case. As the Supreme Court noted in *United States v. Booker*, 543 U.S. 220, 263 (2005), the Commission "will continue to collect and study appellate court decision making. It will continue to modify its Guidelines in light of what it learns, thereby encouraging what it finds to be better sentencing practices. It will thereby promote uniformity in the sentencing process." We believe that this process of informing judges and practitioners is better accomplished through such things as an online collection of case summaries, studies and literature that can be consulted for guidance rather than by trying to spell out in the Manual the circumstances in which (and the extent to which) each possible offender characteristic could ever be considered as a ground for departure.

To the extent the Commission is concerned that the PAG's proposed language, set forth above, might "open the floodgates" to departures from the Guidelines based on specific offender characteristics or the "history and characteristics" of the defendant more generally, and might undermine the Sentencing Reform Act's goal of reducing disparities between similarly situated defendants, the PAG would propose the Commission adding language along the lines of the following:

> The sentencing court should consider whether the defendant's history and characteristics, individually or as a whole, are sufficiently mitigating or aggravating to warrant a departure, taking into account the extent to which such history and characteristics differentiate the defendant from those who do not have the same or similar history and characteristics.

The PAG also would not object to adding language along the following lines with respect to so-called "forbidden" factors:

> "consider whether" age, education, vocational skills, or other listed characteristics, "among others, with respect to a defendant, have any relevance to the nature, extent, place of service, or other incidents of an appropriate sentence," and further directs that the Commission "shall take them into account only to the extent they have relevance." 28 U.S.C. § 994(d). That part of the Sentencing Reform Act, however, does not tell judges how they should or should not treat the same characteristics when imposing individual sentences. Section 3553(a), instead, refers more generally to a defendant's history and characteristics and provides a separate framework for considering them.

To the extent the Court considers such history and characteristics, it shall not use them to base a sentence on the improper considerations of a defendant's race, sex, national origin, creed, or socioeconomic status, all of which are not relevant to determining a sentence.

D. Issue For Comment – Collateral Consequences Of Non-Citizen Status

The Commission seeks commentary regarding "when, if at all, the collateral consequences of a defendant's status as a non-citizen may warrant a downward departure." In our experience, there are a number of ways in which a non-citizen faces more severe punishment merely by virtue of being a non-citizen. Because, as the Commission notes, some circuits imposed pre-*Booker* limits on the types of consequences a court could consider, we believe the Commission should clarify that a court may consider downward departures in such cases. We also believe that the Commission should not create artificial limits on the types of adverse collateral consequences that a court may consider when deciding whether to depart based on collateral consequences.

E. Issue For Comment – Cultural Assimilation

The Commission seeks commentary regarding "when, if at all, a downward departure may be warranted in an illegal reentry case [8 U.S.C. § 1326] on the basis of 'cultural assimilation.'" As the Commission points out in its "Issues For Comment: Specific Offender Characteristics" publication, there is some lack of clarity on this matter in the different circuits. "Cultural assimilation" as a basis for downward departure refers to departures in which the illegal reentry defendant contends that he is not the typical illegal reentry defendant because of his strong cultural ties to the United States. *United States v. Lipman*, 133 F.3d 726, 731 (9th Cir. 1998).

As stated in *United States v. Rivas-Gonzalez*, 384 F.3d 1034, 1044 (9th Cir. 2004), cultural assimilation is a proper basis for granting a downward departure in 8 U.S.C. § 1326 cases for defendants who "were brought to the United States as children, who had adopted to American culture in a strong way and who, after deportation, returned to the United States for cultural rather than economic reasons." Typically, the departure is sought by illegal reentry defendants who, in addition to having been brought here in their youth, might have only minimal ties to the country of their birth, and who might even face language barriers upon their return to the country of their birth. *See, e.g., United States v. Melendez-Torres*, 420 F.3d 45, 51 (1st Cir. 2005) (defendant, a Mexican national, had lived in the United States for 52 years, had four children, and neither wrote nor spoke the Spanish language); *United States v. Rodriguez-Montelongo*, 263 F.3d 429 (5th Cir. 2001) (defendant, a 25-year old Mexican national, was brought to the United States when he was 3, became legal resident, was educated here, and settled with his wife and four children here).

The cultural assimilation departure is now permitted only in those illegal reentry cases in which the defendant's legal circumstances have rendered him, to phrase it biblically, "a stranger in a strange land." The Practitioners Advisory Group submits that the Commission's guidance

would help in this area of law, and it therefore supports clarifying and removing artifical restraints on this ground for departure.

Guidance from the Commission on this ground for departure is of critical importance given the increased role illegal reentry prosecutions play in federal criminal justice. In a relatively short time, the number of illegal reentry prosecutions has increased exponentially. In 1992, there were only 652 defendants sentenced for this offense, accounting for less than 2 percent of the federal criminal docket.[2] By 2008, illegal reentry prosecutions accounted for 13,575 defendants, or 18 percent of the total federal criminal docket.[3] A striking example of this growth is found in the Western District of Texas, which has one of the nation's busiest criminal dockets. As pointed out by the Western District's Federal Public Defender Henry Bemporad, fully 47 percent of the district's cases are immigration prosecutions, and these account for more than the combined *national* total of *all* federal prosecutions for murder, manslaughter, kidnaping, sexual abuse, assault, robbery, arson, burglary, and racketeering/extortion cases.[4]

The Sentencing Commission should recognize cultural assimilation as a basis for departure in certain illegal reentry cases. The courts wrestle with these issues day in and day out. As noted by U.S. District Court Judge Kathleen Cardone of the Western District of Texas in her recent testimony before the Sentencing Commission, the current framework for considering cultural assimilation is too restrictive, as it presumes that the type of defendant who would meet the criteria is an anomaly. In reality, as she stated, courts along the U.S./Mexico border deal with this type of illegal reentry defendant all the time.[5] Unfortunately, there is no collection of empirical data showing how much time illegal reentry defendants have lived in the United States or when they were brought here. In the absence of such data, the Commission should turn to the everyday experience of practitioners and judges.

The Practitioners Advisory Group suggests an approach in which the Commission offers a subsection under either Chapter 5, or as a commentary to §2L1.2, which states:

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[2]Statement of John R. Steer, Vice-Chair, U.S. Sentencing Commission, Before the Subcommittee on Criminal Justice Oversight, U.S. Senate Judiciary Committee, Exhibit 8 (Oct. 13, 2000).

[3]U.S. Sentencing Commission, *2008 Sourcebook of Sentencing Statistics*, tbl. 50, at 123.

[4]Written Statement of Henry J. Bemporad, Federal Public Defender, before the U.S. Sentencing Commission Phoenix, Arizona January 21, 2010.

[5]Written Statement of the Honorable Kathleen Cardone, U.S. District Judge for the Western District of Texas, El Paso Division, before the U.S. Sentencing Commission Austin, Texas November 20, 2009.

> *Where a significant motivating factor for a defendant's illegal reentry is his or her significant ties to this country, including family or community ties, and where the defendant's history shows strong, long-standing ties to the United States as a resident and relatively minimal ties to another country, a downward departure may be warranted.*[6]

Such language would help to promote consistency in the sentencing of offenses that account for a large portion of the federal criminal caseload.

3. APPLICATION INSTRUCTIONS

Consistent with the approach we have recommended for Chapter 5H, we propose the following new version of Chapter 1B1.1. It incorporates and modifies the Commission's proposed approach.

1B1.1 Application Instructions:

(a) Under the Supreme Court's decision in *United States v. Booker*, the Court determines the appropriate sentence after taking into consideration the applicable factors in 18 U.S.C. §3553(a).

(b) Among the applicable factors in 18 U.S.C. §3553(a) is the advisory guideline range. (See 18 USC §3553(a)(4)).

(c) To consider this factor, the Court shall determine the kinds of sentence and the advisory guideline range as set forth in the guidelines by applying the provisions of this manual in the following order, except as specifically directed:

> (1) Determine pursuant to §1B1.2 (Applicable Guidelines) the offense guideline section from Chapter Two (Offense Conduct) applicable to the offense of conviction. (See §1B1.2.)
>
> (2) Determine the base offense level and apply any appropriate specific offense characteristics, cross references, and special instructions contained in the particular guideline in Chapter Two in the order listed.
>
> (3) Apply the adjustments as appropriate related to victim, role and obstruction of justice from Parts A, B and C of Chapter Three.

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[6] Judge Cardone suggests a three level adjustment on the basis of cultural assimilation, presumably under Section 2L1.2 of the Guidelines. We mention it as another approach to this issue.

(4) If there are multiple counts of conviction, repeat steps (a) through (c) for each count. Apply Part D of Chapter Three to group the various counts and adjust the offense level accordingly.

(5) Apply the adjustment as appropriate for the defendant's acceptance of responsibility from Part E of Chapter Three.

(6) Determine the defendant's criminal history category as specified in Part A of Chapter Four. Determine from Part B of Chapter Four any other applicable adjustments.

(7) Determine the guideline range in Part A of Chapter Five that corresponds to the offense level and criminal history category determined above.

(8) For the particular guideline range, determine from Parts B through G of Chapter Five the sentencing requirements and options related to probation, imprisonment, supervision conditions, fines and restitution.

(d) The Court shall then consider Parts H and K of Chapter Five, Specific Offender Characteristics and Departures, and any other policy statements or commentary in the guidelines that might warrant consideration in deciding whether to depart from the applicable guideline range. (See 18 U.S.C. §3553(a)(5)).

(e) The Court then determines the sentence, including whether it should be outside the guideline range (either because of a departure, a variance or a combination of departure and variance). By statute, the sentence must be sufficient, but not greater than necessary, to comply with the purposes set forth in 18 U.S.C. § 3553(a)(2), *i.e.*, "the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner."

* * *

In the PAG's view, this framework will assist judges in conducting the required Guidelines calculations and analysis, including consideration of grounds for departure, before reaching the final steps required under Section 3553(a).

4. RECENCY UNDER CRIMINAL HISTORY

The PAG supports option 1 found in the Commission's proposal that would reduce the unnecessary cumulative impact of recency points when computing a criminal history score. The written testimony from others fully set forth the ways in which recency points fail to reflect, in a reliable and meaningful manner, differences between defendants. We merely wish to add that this conclusion is confirmed by the experience of practitioners who see firsthand the ways in which recency (as well as status) points exaggerate the supposed differences between defendants with prior records.

The period soon after completion of an earlier sentence, especially the period after one has served time in prison for the first time, is a fragile one for many of our clients. The Guidelines currently put those who recidivate while still under supervision or within two years of release in a higher Criminal History Category than those whose current offense comes after a somewhat longer period. In our experience, that distinction is not meaningful. Often, circumstances beyond the client's control – and unrelated to blameworthiness or likelihood to offend again – account for the difference in the timing of recidivism. In short, our practical experience matches the results of the Commission's research. We would eliminate the recency provision. We also encourage the Commission to continue its work in this area by considering expansion of the proposed change to eliminate separate "status" points under Section 4A1.1(d).

5. ORGANIZATIONAL GUIDELINES

Some context is important before getting to our comments on the Chapter 8 proposals and issues. This part of the Manual differs in a significant way from the provisions that govern sentencing of individual defendants. In contrast to the extensive body of caselaw interpreting and applying Chapters 1 through 7 of the Manual, there are almost no judicial decisions specific to Chapter 8 provisions.

There are three main reasons for this. First, the government investigates far fewer organizations than it does individuals. Second, even in those instances where the government takes action it often does so through non-prosecution or deferred prosecution agreements (NPAs and DPAs). In those cases there is no opportunity for a judge to determine the applicable guideline range or any other aspect of Chapter 8. Finally, even in cases that result in convictions of organizations, the parties usually negotiate a plea that avoids rulings on how to interpret or apply the Chapter 8 provisions. Although guilty pleas by individuals generate a large number of appeals, the same has not been true for organizations.

As a result, the Commission receives very little formal feedback on the operation of Chapter 8. In other words, the Commission speaks through the provisions it places in Chapter 8, but it hears very little – and almost nothing at all from judicial opinions – about how well it has spoken, including whether the provisions are easy to apply or result in appropriate sentence ranges. And practitioners are therefore left to apply those provisions without the benefit of caselaw that, by resolving ambiguities, might promote more consistent application. That reality

makes it very important for the Commission to exercise care whenever it considers changing the language in Chapter 8.

The Commission has published proposals and an issue for comment that deal generally with two aspects of Chapter 8: (1) effective compliance and ethics programs; and (2) conditions of probation. These two areas, in turn, touch upon issues such as the appropriate role of monitors and document management policies.

A. Monitors

The Commission's proposals would have the Manual refer to monitors for the first time, and it would do so in two contexts. It would refer to retention of an independent monitor as a way to "ensure adequate assessment and implementation of the modifications" to a compliance program in the wake of detection of criminal conduct, and it would add appointment of a monitor as an available condition of probation.

The PAG recommends that the Commission not make these changes related to the use of monitors. They would serve no useful purpose, and they would insert the Commission in the middle of an ongoing dispute over the proper use of this controversial tool.

Monitors can be very costly to a corporation, in large part because there is no effective way to restrict their scope once their work has begun. No corporation wants to be accused of interfering with their decisions, and the usual cost-benefit constraints operate very poorly in this context. Also, in our experience and in the experience of others in the private practitioners community, rarely is there a need to impose such a costly condition on a corporation. The courts can instead achieve the desired results – usually implementing post-conviction remedial measures – by having the defendant pay for an expert who would help the probation department in its duties to supervise the corporation's compliance with conditions of probation.

Making explicit reference to monitors will also create pressure to include them as a prophylactic measure in NPAs and DPAs, lest prosecutors be accused of being too lenient or careless. That risk is heightened by the proposed reference to monitors in the context of the seventh requirement for an effective compliance program. The proposal would mention that an organization may want to use monitors when it uncovers criminal conduct even in situations that presumably were not serious enough to lead to prosecution. Before the Commission makes references to monitors for the first time, it should first review carefully the available data to determine whether it is worth the possible negative consequences. That course is especially warranted given that, to our knowledge, not a single court has concluded both that (a) appointment of a monitor was needed, and (b) it lacked the power to require one because the Manual is silent on the subject.[7]

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[7] Similarly, it is not clear that a court's power to require a monitor could turn on whether the Manual mentions them. The authority to impose conditions of probation is statutorily derived. If judges can order use of a monitor over a defendant's objection, it is because

B. Steps Required In Response To Criminal Conduct

As noted above, one of the references to monitors would come in the context of a new application note that addresses steps an organization should take after detection of criminal conduct. These steps are part of the seventh requirement of an effective compliance and ethics program.

We are aware of no problems in applying this part of the Manual—certainly none that would warrant adding an application note on the seventh requirement. If the Commission elects to adopt something in this area, though, we would make changes to the proposed language, as indicated here:

> The seventh minimal requirement for an effective compliance and ethics program provides guidance on the reasonable steps that an organization should take if, after a reasonable opportunity to investigate, it determines that ~~detection of~~ criminal conduct has occurred. First, the organization should respond appropriately to the criminal conduct. In the event the criminal conduct has an identifiable victim or victims the organization should take reasonable steps, as warranted under the circumstances, to remedy the harm resulting from the criminal conduct including, where appropriate, ~~to provide~~ providing restitution to the victims ~~and otherwise remedy the harm resulting from the criminal conduct~~. Other appropriate responses may include self-reporting, cooperation with authorities, and other forms of remediation. Second, to prevent further similar criminal conduct, the organization should assess the compliance and ethics program and make modifications necessary to ensure the program is more effective.

These changes would accomplish two things. First, they would ensure that organizations are given a reasonable opportunity to investigate whether suspicions or reports of criminal conduct are corroborated by the facts, which usually requires an opportunity to investigate. Application note 10 to Section 8C2.5 recognizes this in a comparable context. Second, they would provide needed flexibility in assessing whether remedial steps, including restitution, are appropriate to the particular circumstances. For example, there may well be instances involving identifiable victims in which restitution is inappropriate (*e.g.*, because of the nature of the harm, liability issues, or other sources of remedy).[8]

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that remedy is within the scope of 18 U.S.C. § 3563(b). In any event, because we are unaware of any case where the power to impose a monitor condition was questioned, there is no imminent need for the Commission to act in this area.

[8] With the benefit of the testimony and comments at the Commission's **March 17, 2010 hearing**, we have identified an additional point that we believe the Commission should emphasize regarding the application note to (b)(7). We would leave references to restitution and remedies in the new application note (as modified above) only if the

C. Records Maintenance

Two proposed additions to the Manual would address document retention policies. As is the case with monitors, many in the private practitioner community have found it troubling that the Commission would propose new language where, to our knowledge, there has been no apparent problem that would prompt the addition.

The Manual sets forth the attributes of an effective compliance and ethics program. Organizations receive credit for such a program only under certain circumstances. We are unaware of any organizations that, while able to earn credit for such a program, had deficient document retention policies. If there were such cases, we would understand a proposal that singles out this type of policy for special mention.

The Supreme Court has recognized legitimate reasons for corporations to have policies that govern the orderly management of electronic and paper data. *See Arthur Andersen v. United States*, 544 U.S. 696, 704 (2005) (noting that such policies "are created in part to keep certain information from getting into the hands of others, including the Government," and "are common in business"; "[i]t is, of course, not wrongful for a manager to instruct his employees to comply with a valid document retention policy under ordinary circumstances"). The wording of the proposal gives the impression that such policies are inherently nefarious and therefore must be carefully restricted. There is no basis for applying that presumption. Moreover, requiring that the policy be conformed to "reduce the risk of liability under the law," as proposed, puts the corporation in the position of having to err on the side of keeping data, because surely that is less risky from a liability standpoint than allowing data to be destroyed.

Finally, there is an odd phrasing in the second bracketed language (proposed application note 7(A)(iv)) that would seem to require "all employees" to "conform any such [document retention] policy to meet the goals of an effective compliance program under the guidelines and

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Commission explains the change from the original proposed language in its Reasons for Amendment. The explanation could be along these lines:

> There are legitimate reasons an organization might not provide restitution to identifiable victims after criminal conduct is detected. These include, but are not limited to, the adverse consequences to shareholders of making payments before the completion of related potential civil litigation. The Commission has modified the original proposed language to allow judges the flexibility to assess all of the relevant circumstances in determining whether the organization failed to take reasonable steps to address detected criminal conduct. The change is also consistent with the judgment that the inquiry into the reasonableness of the steps taken to comply with (b)(7) should be more heavily focused on the second aspect: preventing future similar criminal conduct by assessing the organization's compliance and ethics program and making modifications necessary to ensure, where possible, that it is more effective.

to reduce the risk of liability under the law." Presumably not every employee in a corporation is expected to implement changes to its document retention policy—only those who have responsibility for the policy.

D. Issue For Comment Regarding Method For Encouraging Self Reporting

The Commission also seeks comment on whether it should amend the Manual to allow an organization to receive the three-point reduction in its culpability score for an effective compliance program even if high-level personnel were involved in the offense. Three conditions would apply: (1) "the individual(s) with operational responsibility for compliance in the organization" must "have direct reporting authority to the board level (*e.g.*, an audit committee of the board)"; (2) the compliance program must have been "successful in detecting the offense prior to discovery or reasonable likelihood of discovery outside of the organization"; and (3) the organization must have "promptly reported the violation to the appropriate authorities."

We applaud the Commission for its efforts to make this three-point reduction in the culpability score available in more cases. The Commission's data for FY 1995 through FY 2008 show that *only three* organizations have *ever* received this reduction. It is not possible to tell from the publicly available data what accounts for the extreme rarity of this credit. Anecdotally, we understand that the automatic disqualifier for high-level personnel being involved in, aware of, or willfully ignorant of the offense frequently stops the analysis from going any further.

The effect of this disqualification is felt well beyond the sentencing context. In negotiating NPAs and DPAs, the government frequently requires the payment of hefty fines, which it calculates starting with the Chapter 8 fine range. That range becomes a benchmark for gauging the final fine that is imposed under such agreements. An organization that has earned a lower culpability score will see its fine in such a case reduced accordingly.

The disqualifier based on the role of high-level personnel can do violence to proportionate sentencing. Imagine two large corporations in a particular industry – corporation A and corporation B – whose employees collude to fix the prices they charge customers. Assume that they are equally culpable in all respects but two:

> First, the employee who engages in the crime at corporation A is able to carry out the scheme without the awareness or willful ignorance of anyone who is deemed high-level personnel or substantial authority personnel. At corporation B, however, a single high-level person (the price-fixer's manager) ignores warning signs of his subordinate's criminal conduct.
>
> Second, the leadership at corporation A has steadfastly resisted putting *any* sort of compliance program in place despite frequent urging by outside counsel. Corporation B, on the other hand, has implemented a state-of-the-art compliance program, investing millions of dollars and thousands of person-hours into making it as effective as possible. In fact, it was because of systems that

corporation B put in place under the program that the wrongdoer's unit manager received warning signs of trouble.

Even though corporation B is plainly less culpable given all of its efforts to put an effective compliance and ethics program in place, it would get no credit for those efforts. Its fine range would be calculated as if it had no compliance program at all, just like corporation A. And it would suffer that fate solely because of the willful ignorance of a single high-level person. Worse yet, it would get an *aggravating* adjustment to the fine because the compliance program alerted the high-level person to the offense, while corporation A would avoid the increase. The result would be a significantly higher sentence for the corporation that did the right thing.

The issue for comment suggests a revision that would help to avoid that anomaly. We endorse adopting that revision, with two changes. First, we would not automatically disqualify corporations whose compliance programs vest the usual direct reporting authority with someone other than the person with "operational responsibility" for the program. We believe that the Commission's current direct-report requirements for an effective compliance and ethics program are sufficient. The Manual reserves the effective compliance and ethics program credit for those organizations where the individual(s) with operational responsibility "report periodically" to high-level personnel and, as appropriate, to the governing authority," which includes an audit committee of the board. § 8B2.1(b)(2)(C). The application notes state that "typically" such reporting by the individual(s) with operational responsibility should occur "no less than annually." *Id.*, n. 3.

In our view, the Manual already strikes a fair balance on the direct-report issue. Rather than create rigid dictates, it sets general requirements containing the flexibility needed to account for the wide variations between the smallest of companies and the largest of multinational corporations. Details of a compliance program that work well for a single-site manufacturing facility with fewer than 50 employees are not necessarily the right details for companies like AT&T or Exxon Mobil.

We are aware of no data showing that organizations following the reporting requirements in the current Manual are failing in their responsibilities. Nor have we seen assessments of the advantages and disadvantages of changing this reporting requirement. If the concern is that compliance programs meeting the current requirements are deficient, a better solution would be to create a *presumption* that the proposed new requirement suffices, and then allow defendants to establish that it is unlikely the new requirement would have produced a meaningfully different result under the circumstances. This would prevent *per se* disqualification of organizations that acted appropriately and for which greater direct reporting by an individual with operational authority for compliance would not have mattered.

The second and third proposed requirements in the issue for comment deal with detection and self-reporting of the underlying offense conduct. The danger with this requirement is that it would further exaggerate the value of the self-reporting factor in comparison to other mitigating and aggravating factors . The Manual already provides what is, in effect, a three-point credit for self-reporting. (Section 8C2.5(g)(3) gives a one-point credit for acceptance of responsibility.

Section 8C2.5(g)(2) gives a two-point credit for acceptance of responsibility plus full cooperation. Section 8C2.5(g)(1) gives a five-point credit if timely self-reporting is added to cooperation and acceptance of responsibility.) It is fair to ask whether self-reporting (three additional points) is really three times as valuable as full cooperation (one additional point if the organization also accepts responsibility). Under the approach suggested in the issue for comment, a corporation with an effective compliance and ethics program would lose a total of *six* points—on a scale that runs only from 0 to 10—if an imminent threat of the disclosure of the conduct arises before the corporation finds itself capable of self-reporting.

There is no reason to place that much weight on a single factor, especially where the difference between a corporation that qualifies and one that does not can be as insignificant as waiting an extra day to marshal the relevant facts. Indeed, a corporation could have the best compliance program and still not find out about an offense, or find out about it after an investigation was already underway because a person with knowledge elected to take that information to the authorities. It is also significant that such a restriction would likely frustrate the purpose of making effective compliance and ethics program credit more available. Of the more than 1,400 organizations sentenced between 1995 and 2008, *only 22* received credit for self-reporting. If anything, the Commission should reconsider whether self-reporting credit is too restrictive, rather than expand that restrictiveness to other credits.

If some aspect of self-reporting is incorporated into the three-point adjustment, it would be better to focus on whether the corporation engaged in conduct *inconsistent* with the compliance program credit at issue. For example, the three-point effective compliance and ethics program credit could be disallowed if management learned of the criminal conduct yet failed, without a valid basis, to report the conduct. Such a formulation would correctly place attention on whether the corporation's culpable conduct undermines its case for receiving credit, rather than whether some *other* mitigating (or even fortuitous) circumstance was present.

CONCLUSION

On behalf of our members, who work with the guidelines on a daily basis, we appreciate the opportunity to offer the PAG's input on the proposed amendments and issues for comment. We would be happy to discuss them further as the Commission prepares to vote on these proposals next month.

Sincerely,

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Judith Sheon, Chief of Staff
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SENTENCING TABLE
(in months of imprisonment)

	Offense Level	Criminal History Category (Criminal History Points) I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
Zone A	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
	7	0-6	2-8	4-10	8-14	12-18	15-21
	8	0-6	4-10	6-12	10-16	15-21	18-24
	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
Zone B	14	15-21	18-24	21-27	27-33	33-41	37-46
	15	18-24	21-27	24-30	30-37	37-46	41-51
	16	21-27	24-30	27-33	33-41	41-51	46-57
	17	24-30	27-33	30-37	37-46	46-57	51-63
	18	27-33	30-37	33-41	41-51	51-63	57-71
	19	30-37	33-41	37-46	46-57	57-71	63-78
	20	33-41	37-46	41-51	51-63	63-78	70-87
	21	37-46	41-51	46-57	57-71	70-87	77-96
	22	41-51	46-57	51-63	63-78	77-96	84-105
	23	46-57	51-63	57-71	70-87	84-105	92-115
	24	51-63	57-71	63-78	77-96	92-115	100-125
	25	57-71	63-78	70-87	84-105	100-125	110-137
	26	63-78	70-87	78-97	92-115	110-137	120-150
	27	70-87	78-97	87-108	100-125	120-150	130-162
Zone C	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life