

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Request for public comment.

SUMMARY: On April 29, 2010, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2010, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the Federal Register, 75 FR 27388 (May 14, 2010). One of the amendments, specifically Amendment 5 pertaining to the use of recency as a factor in the calculation of the criminal history score, has the effect of lowering guideline ranges. The Commission requests comment regarding whether that amendment should be included in subsection (c) of §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants.

DATE: Public comment should be received on or before September 13, 2010.

ADDRESS: Send comments to: United States Sentencing Commission, One Columbus Circle, NE, Suite 2-500, South Lobby, Washington, DC 20002-8002, Attention: Public Affairs-Retroactivity Public Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, 202-502-4597.

SUPPLEMENTARY INFORMATION: Section 3582(c)(2) of title 18, United States Code, provides that "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

The Commission lists in §1B1.10(c) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. § 3582(c)(2). The background commentary to §1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under §1B1.10(b) as among the factors the Commission considers in

selecting the amendments included in §1B1.10(c). To the extent practicable, public comment should address each of these factors.

The text of the amendments referenced in this notice also may be accessed through the Commission's website at www.ussc.gov.

AUTHORITY: 28 U.S.C. § 994(a), (o), (u); USSC Rules of Practice and Procedure 4.1, 4.3.

William K. Sessions III

Chair