



March 18, 2015

The Honorable Patti B. Saris
Chair, United States Sentencing Commission
One Columbus Circle, N.E. Suite 2-500, South Lobby
Washington, DC 20002-8002

Re: Comments Concerning 2015 Proposed Guideline Amendments

Dear Chief Judge Saris:

On behalf of Prisology, I would like to offer the following comments concerning the Commission's proposed 2015 Guideline amendments.

First, we support the Commission's proposed amendment to U.S.S.G. § 1B1.3. Relevant conduct is currently too easily attributed to individuals involved with jointly undertaken criminal activity. The Commission's proposed amendment would allow relevant conduct to be attributed only if it is "within the scope of the criminal activity that the defendant agreed to jointly undertake." This is a common sense, practical change that will more properly gauge the culpability of defendants. This change should be adopted.

Second, we also support Option Two of the Commission's proposal to tie the loss tables across all economic offense guidelines to inflation. This proposed change will allow the Guidelines to better reflect the true seriousness and harm caused by economic offenses.

Third, we similarly support Option One of the Commission's proposal concerning "intended loss." The Commission's proposed amendment would define "intended loss" as loss "that the defendant purposely sought to inflict." This change should be adopted because it focuses the loss inquiry on what the defendant truly "intended," as opposed to other tests.

Fourth, we also support the Commission's proposed amendment to the "sophisticated means" enhancement. As the Commission noted in its request for public comment, some courts have found "sophisticated means" even when the defendant's conduct itself was not "sophisticated." That does not make sense. The proposal makes clear that "conduct that is common to offenses of the same kind ordinarily does not constitute sophisticated means," and requires that "the defendant engaged in or caused the conduct constituting sophisticated means" for the enhancement to apply. These changes should be adopted. Only offense conduct that is truly "sophisticated" should merit the enhancement.



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Fifth, we likewise support the Commission's proposed amendment to the "mitigating role" adjustment. This proposal will allow district courts to better consider the true role of low-level criminal participants. Sixth, we also support Option 2 of the Commission's proposed amendment to the victim's table.

Finally, we respectfully urge the Commission to designate each of these amendments for retroactive application, if approved. The legislative history of 28 U.S.C. § 994(u) indicates that amendments should be denied retroactive effect only when the "guidelines are simply refined in a way that might cause isolated instances of existing sentences falling above the old guidelines or when there is only a minor downward adjustment in the guidelines." S. Rep. 98-225, 98th Cong., 1st Sess. 180 (1983).

These proposed amendments, if adopted, would affect thousands of federal prisoners. Moreover, the potential sentence reductions flowing from these amendments would be more than "minor." Accordingly, consistent with the legislative history of § 994(u), and the Commission's statutory duty to "minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons," 28 U.S.C. § 994(g), the Commission should designate these amendments for retroactive application, if approved.

Thank you for taking the time to consider our comments.

Sincerely,

A handwritten signature in black ink that reads "Brandon Sample". The signature is written in a cursive, flowing style.

Brandon Sample
Executive Director