

Table 58

GUIDELINE INVOLVED IN ISSUES APPEALED BY THE GOVERNMENT¹
Fiscal Year 2010

GUIDELINE	N	%	Affirmance Rate²
TOTAL	156	100.0	35.3
18 U.S.C. § 3553(a) Factors	30	19.2	40.0
2D1.1 (Drug Trafficking)	15	9.6	6.7
2B1.1 (Larceny, Embezzlement, and Theft)	8	5.1	62.5
4B1.4 (Armed Career Criminal)	8	5.1	37.5
1B1.10 (Retroactivity of Amended Guideline Ranges)	7	4.5	0.0
1B1.4 (Information to be Used in Imposing Sentence)	6	3.8	16.7
5K1.1 (Substantial Assistance to Authorities)	5	3.2	0.0
2K2.4 (Use of Firearms During or in Relation to Certain Crimes)	4	2.6	100.0
2L1.2 (Unlawfully Entering or Remaining in the United States)	4	2.6	25.0
2T1.1 (Tax Evasion)	4	2.6	25.0
1B1.11 (Use of Guideline Manual in Effect at Sentencing)	3	1.9	100.0
2K2.1 (Firearms)	3	1.9	33.3
4B1.1 (Career Offender)	3	1.9	33.3
5E1.1 (Restitution)	3	1.9	66.7
1B1.3 (Relevant Conduct)	2	1.3	0.0
2C1.1 (Bribery: Extortion Under Color of Official Right)	2	1.3	100.0
2G2.2 (Trafficking in Material Involving Sexual Exploitation of a Minor)	2	1.3	50.0
4B1.2 (Definitions for Career Offender)	2	1.3	100.0
5G1.2 (Sentencing on Multiple Counts of Conviction)	2	1.3	100.0
Constitutional Issues	24	15.4	33.3
Other Guidelines	12	7.7	16.7
Other Non-guideline Issues	7	4.5	42.9

¹ Based on 86 appeals by the government with sentencing as at least one of the reasons for appeal. Often more than one issue was appealed; consequently, the number of issues is more than the number of defendants. The "Other Guidelines" category includes all issues appealed one time.

² Affirmance Rate includes all appeals cases not reversed or directly remanded by the courts of appeal.

SOURCE: U.S. Sentencing Commission, 2010 Appeals Datafile, APPFY10.