October 3, 2007

To: Chair Hinojosa
Commissioners
Judith W. Sheon

From: Glenn Schmitt
Lou Reedt
Kenneth Cohen

Subject: Analysis of the Impact of the Crack Cocaine Amendment If Made Retroactive

I. Cocaine Base Amendment

On May 1, 2007, pursuant to 28 U.S.C. § 994(a) and (p), the United States Sentencing Commission (the "Commission") submitted to Congress amendments to the federal sentencing guidelines that, absent congressional action to the contrary, will become effective November 1, 2007. Amendment 9, which pertains to offenses involving cocaine base ("crack") has the effect of lowering the guideline sentencing range for certain categories of offenses and offenders.¹

The crack cocaine amendment adjusts downward by two levels the base offense level assigned to each threshold quantity of crack cocaine listed in the Drug Quantity Table in §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy). The amendment assigns, for crack cocaine offenses, base offense levels corresponding to guideline ranges that include the statutory mandatory minimum penalties for cocaine base. Accordingly, pursuant to the amendment, five grams of cocaine base are assigned a base offense level of 24 (51 to 63 months at Criminal History Category I, which includes the five-year (60 month) statutory minimum term of imprisonment for such offenses), and 50 grams of cocaine base are assigned a base offense level of 30 (97 to 121 months at Criminal History Category I, which includes the ten-year (120 month) statutory minimum term of imprisonment for such offenses).¹

¹ See 72 FR 28557 (May 21, 2007).
statutory minimum for such offenses). The amendment also includes a mechanism to determine a combined base offense level in an offense involving crack cocaine and other controlled substances.²

II. Legal Framework for Retroactively Reducing Sentences Based on Guideline Amendments

A. Statutory Authority

The Commission is statutorily authorized to determine whether a guideline amendment that reduces the sentencing range may be retroactively applied. Section 994(u) of title 28, United States Code, specifically provides that:

\[
\text{[i]f the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.}\]³

Furthermore, sentencing courts are statutorily precluded from applying a guideline amendment retroactively unless the Commission has designated such amendment for retroactive application. Section 3582(c)(2) of title 18, United States Code, provides that the court may not modify a term of imprisonment once it has been imposed except that

\[
\text{in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.}\]⁴


To implement 28 U.S.C. § 994(u) and to provide guidance for a court when considering a motion under 18 U.S.C. § 3582(c)(2), the Commission promulgated §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) (Policy Statement). Subsection (a) of §1B1.10 specifies when an 18 U.S.C. § 3582(c)(2) reduction is available:

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² In addition to publication of the amendment in the Federal Register, a reader friendly version is available on the Commission’s website at www.uscc.gov/FEDREG/may07final.pdf. See also, 72 FR 51882 (September 11, 2007).
Where a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (c) below, a reduction in the defendant’s term of imprisonment is authorized under 18 U.S.C. § 3582(c)(2). If none of the amendments listed in subsection (c) is applicable, a reduction in the defendant’s term of imprisonment under 18 U.S.C. § 3582(c)(2) is not consistent with this policy statement and thus is not authorized.

Application Note 1 further states: Eligibility for consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment listed in subsection (c) that lowers the applicable guideline range.®

Listing an amendment in §1B1.10(c) reflects policy determinations by the Commission that a reduced guideline range is sufficient to achieve the purposes of sentencing and that, in the sound discretion of the court, a reduction in the term of imprisonment may be appropriate for previously sentenced, qualified defendants.® The background commentary further provides that Authorization of such a discretionary reduction does not otherwise affect the lawfulness of a previously imposed sentence, does not authorize a reduction in any other component of the sentence, and does not entitle a defendant to a reduced term of imprisonment as a matter of right.®

Among the factors considered by the Commission in selecting the amendments included in subsection (c) are 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 subsection (b).®

In addition to specifying which guideline amendments may be retroactively applied, consistent with 28 U.S.C. § 994(u), §1B1.10 guides courts as to the amount by which a sentence may be reduced under 18 U.S.C. § 3582(c)(2). Subsection (b) of §1B1.10 states:

In determining whether, and to what extent, a reduction in the term of imprisonment is warranted for a defendant eligible for consideration under 18 U.S.C. § 3582(c)(2), the court should consider the term of imprisonment that it would have imposed had the amendment(s) to the guidelines listed in subsection (c) been in effect at the time the defendant was sentenced ….®

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6 USSG §1B1.10, Background.

7 Id.

8 Id.

9 USSG §1B1.10(b).
Commentary further directs how courts should proceed on 18 U.S.C. § 3582(c)(2) motions. Application Note 2 states: An determining the amended guideline range under subsection (b), the court shall substitute only the amendments listed in subsection (c) for the corresponding guideline provisions that were applied when the defendant was sentenced. All other guideline application decisions remain unaffected. Application Note 3 further provides that when the original sentence represented a downward departure, a comparable reduction below the amended guideline range may be appropriate.

Accordingly, the data presented below are based on the constraints imposed by 18 U.S.C. § 3582(c)(2) and §1B1.10 and its commentary on the extent of any reduction under § 3582(c)(2) to the amended guideline range, subject to the exception stated in the commentary for departures given in the original sentence. The data presented below, therefore, account only for the application of the two-level reduction provided by the crack cocaine amendment and do not assume any other reduction in the sentence, consistent with Application Note 2 of §1B1.10. The data do not account for the applicability, if any, of the United States Supreme Court decision in United States v. Booker, to 18 U.S.C. § 3582(c)(2) sentence modifications.

III. The Analysis of the Impact of the 2007 Crack Cocaine Amendment

A. Introduction to the Data Analysis

This section of the memorandum provides an analysis of the estimated impact of the Commission’s 2007 crack cocaine amendment on those offenders incarcerated as of November 1, 2007 in the federal prison system should the Commission vote to make that amendment retroactive. This analysis was prepared by the Commission's Office of Research and Data (ORD). ORD estimates that 19,500 offenders sentenced between October 1, 1991 and June 30, 2007 (fiscal years 1992 through third quarter 2007), would be eligible to seek a reduced

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10 USSG §1B1.10, comment (n.2).
11 USSG §1B1.10, comment (n.3).
13 References to the “2007 crack cocaine amendment,” “the amendment,” or any similar references mean the amendment the Commission submitted to Congress on May 1, 2007, that modified the guideline drug quantity thresholds for crack cocaine offenses.
14 The analysis is limited to data from fiscal year 1992 through the third quarter of fiscal year 2007 because the Commission did not collect information on the type of drug involved in the offense prior to fiscal year 1992. However, it is anticipated that relatively few offenders were sentenced for crack cocaine offenses prior to fiscal year 1992 because of the relatively low percentage of crack cocaine cases, vis-a-vis powder cocaine cases, occurring in fiscal year 1992. In fiscal year 1992, of the 7,873 cocaine offenses for which the Commission received information, 5,802 of these (73.7%) were powder cocaine offenses and 2,071 (26.3%) were crack
sentence if the Commission were to make the 2007 crack cocaine amendment retroactive. These offenders would be released over a period of more than three decades.

B. Estimate of Total Number of Incarcerated Offenders Eligible for Sentence Modification

The estimate of 19,500 offenders who would appear to be eligible to seek a reduced sentence under this amendment includes: (A) 17,127 offenders sentenced between fiscal years 1992 and 2006 who have been verified by the Federal Bureau of Prisons (BOP) as still incarcerated (as explained in further detail below); and (B) 2,373 offenders sentenced during the first three quarters of fiscal year 2007 (as explained in further detail below). Of the 19,500 offenders, more than one-third (n=7,187) were sentenced after the decision in Booker. This estimate was derived through the following process:

1. Examination of the Commission’s Files for Fiscal Years 1992 Through Third Quarter of 2007 to Determine the Number of Crack Cocaine Offenders in Those Years and, of Those, the Number Still Incarcerated Who Appear to Be Eligible For Sentence Modification

ORD examined the Commission’s datasets from fiscal years 1992 through the third quarter of 2007 to determine the number of cases in those datasets in which the offender appears to be eligible to seek a reduced sentence if the crack cocaine amendment were made retroactive. For purposes of this analysis, a case was considered to be eligible for retroactive application of the 2007 crack cocaine amendment if it met the following criteria:

(A) crack cocaine was involved in the offense;

(B) the base offense level was greater than level 12;16

(C) the base offense level was not level 43;17

cocaine offenses. In addition, information for fiscal year 2007 includes information on only those cases sentenced by June 30, 2007, and for which the Commission received, coded, and edited sentencing information by August 22, 2007.

15 This analysis does not include an estimate of the number of offenders who will be sentenced in the fourth quarter of fiscal year 2007 or first month of fiscal year 2008 (i.e., from October 1, 2007 through October 31, 2007).

16 Crack cocaine offenders with a base offense level (BOL) of 12 are excluded from the analysis because under the Drug Quantity Table in USSG §2D1.1 crack cocaine offenders cannot receive a lower BOL and so are unaffected by the amendment.

17 Offenders sentenced under USSG §2D1.1(a)(1) with a BOL of 43: (1) were convicted under 21 U.S.C § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3); and (2) the offense of conviction establishes that death or serious bodily injury resulted from use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense. The BOL in these cases will not be affected by the 2007 crack cocaine amendment because the BOL was not based on drug quantity. In contrast, offenders sentenced
(D) the quantity of crack cocaine involved in the offense was less than 4,500 grams;\(^{18}\)

(F) the offender’s final offense level was not derived from the career offender or armed career offender guideline;\(^{19}\)

(G) the offender’s original sentence was greater than any applicable statutory mandatory minimum punishment, unless the offender received relief from the mandatory minimum punishment pursuant to the statutory safety valve of 18 U.S.C. § 3553(f) (incorporated into the guidelines at §5C1.2) or the offender received a departure under §5K1.1 for substantial assistance when originally sentenced.\(^{20}\)

under USSG §2D1.1(a)(2) (i.e., those with a BOL of 38 who were convicted under 21 U.S.C § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3) and whose offense of conviction establishes that death or serious bodily injury resulted from use of the substance) are included in this analysis because the Commission’s data do not currently distinguish those offenders and offenders who received a BOL of 38 as determined under USSG §2D1.1(a)(3). This fact could result in a slight overestimate of the number of offenders affected by the amendment.

\(^{18}\) This quantity is the threshold in the Drug Quantity Table for base offense level 38 under the amendment, the highest BOL possible based on quantity alone. Cases in which the crack cocaine quantity is 4,500 grams or greater will not benefit from the Drug Quantity Table modification in the crack cocaine amendment as these offenders will remain at level 38. A case missing information on the quantity of drug involved in the offense is nevertheless included in the estimate because information on the applicable BOL is sufficient to draw an inference about the minimum quantity of drug involved in the offense. For purposes of this analysis, such cases are presumed to have the quantity of drug corresponding to the bottom of the BOL quantity range.

\(^{19}\) Offenders classified as career offenders or armed career criminals under USSG §4B1.1 and §4B1.4 of the guidelines receive final offense levels pursuant to either these guideline provisions or the applicable Chapter 2 and Chapter 3 guidelines, whichever is higher. Offenders whose original final offense level was controlled by the career offender or armed career criminal sections of the guidelines, therefore, were excluded from the analysis because the crack cocaine amendment to the drug guideline will not affect their sentencing range.

\(^{20}\) Offenders sentenced at the applicable mandatory minimum term of imprisonment, who did not receive relief under the statutory safety valve of 18 U.S.C. § 3553(f) (referenced in the Guidelines at USSG §5C1.2), or who did not receive a substantial assistance departure under USSG §5K1.1, were excluded because their sentence cannot be reduced below the existing mandatory minimum punishment. Despite a reduction in their guideline level based on the crack cocaine amendment, these offenders were originally sentenced to the shortest sentence of imprisonment available to the court, the statutory minimum for the offense. The Commission’s data do not reflect any reduction in sentence that may have occurred for crack cocaine offenders.
For the cases from fiscal years 1992 to 2006 that met these criteria, the number of offenders still incarcerated was estimated by adding to the date of sentencing the term of imprisonment imposed and then subtracting an estimate of the maximum amount of good-time credit that an offender can earn (currently 54 days per year served for imposed sentences greater than one year but not life imprisonment). Offenders sentenced during the first three quarters of fiscal year 2007 are assumed to be in prison.21

To ensure that all crack cocaine offenders sentenced between fiscal years 1992 through 2006 who were still incarcerated and who appear to be eligible to seek a reduced sentence if the amendment were made retroactive were included in its analysis, ORD conducted a comprehensive cross-check of Commission data with the BOP. ORD and BOP were able to match records for 97.9 percent (n=31,323) of the cases. Of these, the BOP identified 84.2 percent (n=26,383) as cases in which the offenders were still incarcerated. Of the 4,940 cases in Commission files that the BOP was able to match but where the offender was no longer incarcerated, the reasons for release were as follows:

(A) 48.5 percent (n= 2,397) were released due to the expiration of their sentence;22

after the date of the original sentence, for example, pursuant to Federal Rule of Criminal Procedure 35(b) based on an offender's substantial assistance to the government. Under this rule, the court may sentence an offender below any otherwise applicable mandatory minimum term of imprisonment. Therefore, an offender who received a sentence reduction pursuant to Rule 35(b) would be eligible to seek a reduced sentence under the crack cocaine amendment if it were to be made retroactive (assuming all other criteria above are met). Commission data do not include the information necessary to determine which offenders originally sentenced at a mandatory minimum term of imprisonment receive a reduced sentence pursuant to Rule 35(b) after the original sentence was imposed. Therefore, ORD's estimate of the number of offenders who appear to be eligible to seek a reduced sentence if the crack cocaine amendment were to be made retroactive may underestimate the actual number of such offenders.

21 Offenders sentenced in the first three quarters of fiscal year 2007 who meet the criteria described above were also included into the overall estimate of those offenders who appear to be eligible for retroactive application of the amendment. The number of 2007 offenders includes only those sentenced by June 30, 2007 and for whom the Commission received, coded, and edited sentencing information by August 22, 2007. These offenders were assumed to still be incarcerated and, therefore, ORD did not undertake to match these offenders to BOP records. The total number of offenders sentenced in fiscal year 2007 who would be eligible for retroactive application of the amendment will, of course, be higher than the number included in this analysis.

22 ORD had projected that these offenders would still be incarcerated based on information available in documents routinely submitted to the Commission by the courts. However, the actual start and release dates of an offender's sentence are not available to the Commission because the data that courts provide to the Commission do not include the date on which an offender actually begins serving a prison sentence or the amount of any sentence credit awarded for time already served. The Commission's data do not reflect any reduction in sentence that
(B) 22.5 percent (n=1,112) were released due to participation in a drug treatment program;23

(C) 22.9 percent (n=1,129) were released but information as to the reason for release is missing;

(D) 2.2 percent (n=110) were released for a variety of other reasons; and

(E) 3.9 percent (n=192) had died in custody.

As described on Figure A, 875,368 offenders have been sentenced under the guidelines since 1992. Of these, 39.0 percent (n=341,338) were sentenced under the drug guidelines. Of these 341,338 drug offenders, 22.3 percent (n=75,978) involved crack cocaine. Of the crack cocaine offenders, 26,383 met all the inclusion criteria described above and were identified in BOP records as still incarcerated.

After the matching process with BOP was completed, an additional 4,914 offenders were removed from this total because the final offense level that applied in those cases was derived from the career offender (USSG §4B1.1) or armed career criminal (USSG §4B1.4) guidelines rather than from the Drug Quantity Table of the drug guideline at §2D1.1.24 Therefore, the crack amendment to §2D1.1 would have no effect on the sentencing range that applies in those cases. After these offenders were excluded from the analysis, the number of offenders remaining for the analysis was 21,469.

may have occurred for crack cocaine offenders after the date of the original sentence, for example, pursuant to Federal Rule of Criminal Procedure 35(b) based on an offender's substantial assistance to the government. Therefore, for this analysis, ORD assumed that imprisonment began on the sentencing date and runs for the length of the sentence imposed, less the maximum amount of good time credit that can be awarded. For some offenders, however, the length of incarceration is actually less than this, because they earn credit for time served while detained prior to trial and/or sentencing, or because the sentence of some offenders is reduced after they are sentenced under Rule 35(b) as the result of continuing cooperation with the government. Because of this, ORD's projected release dates may overestimate the amount of time an offender will actually serve.

23 Section 3621(e)(2)(B) of title 18, United States Code, authorizes the BOP to reduce the sentence for any inmate convicted of a nonviolent offense when the inmate successfully completes a residential substance abuse treatment program. The reduction in sentence may not exceed one year.

24 See footnote 19 and accompanying text.
2. Total Number of Offenders Who Appear to Be Eligible for Retroactive Application of the Crack Cocaine Amendment

ORD initially identified 21,469 offenders who met all of the above criteria and, therefore, appeared eligible to seek a reduced sentence under 18 U.S.C. § 3582(c)(2) should the crack cocaine amendment be made retroactive. ORD then recalculated the sentence for these offenders using its Prison Impact Model (described below).

Using this model, it was determined that for 1,969 offenders who met the criteria for inclusion in the analysis, no change was observed in the sentencing range that would apply in their cases if the crack cocaine amendment were made retroactive. These offenders, therefore, were removed from further analysis. The reasons why these offenders would experience no change in the respective sentencing ranges applicable in their cases are as follows:

(A) 1,593 offenders were convicted of an offense in which more than one drug was involved and the combined weights of these drugs was sufficient so that the Base Offense Level did not change for those offenders;

(B) 208 offenders were sentenced at points on the Sentencing Table where a reduction of two levels to the applicable offense level would not result in a lower sentencing range;

(C) 77 offenders were sentenced under a statutory minimum term of life imprisonment;

(D) 74 offenders had an original BOL that was capped at level 30 under the “mitigating role cap provision” of the guidelines and would have the same level under the crack amendment;25

(E) three offenders were projected to die before the end of their sentence, even if those sentences were reduced under the crack cocaine amendment; and 26

(F) 14 offenders had a sentence reduction of less than one month.27

25 The mitigating role cap provision is found at USSG §2D1.1(a)(3). An offender convicted of a drug offense for which the base offense level as determined under the Drug Quantity Table of the USSG §2D1.1 drug guideline would be 32 or higher, and who receives a mitigating role adjustment under USSG §3B1.2, receives a base offense level capped at specified levels. There are 74 offenders whose original base offense level was capped at level 30 under this provision but whose base offense level under the Drug Quantity Table as modified by the crack cocaine amendment would now also be 30 and, therefore, would not receive a lower sentencing range under the amendment.

26 The Commission’s Prison Impact Model incorporates actuarial tables based on race and gender to predict life expectancy.

27 These offenders would be eligible to seek a sentence reduction for the fractional portion of the
Based on this, the total number of crack cocaine offenders currently incarcerated who appear to be eligible to seek a reduced sentence under 18 U.S.C. § 3582(c)(2) should the Commission's 2007 crack cocaine amendment be made retroactive, is 19,500.\textsuperscript{28} Figure A summarizes the manner by which this number was derived as described above.

\textsuperscript{28} This estimate includes 2,824 offenders for whom the information necessary to perform the analysis in the Commission’s Prison Impact Model was missing. They are included in the total number of offenders who appear to be eligible to seek a reduced sentence if the amendment were made retroactive because they meet all of the criteria for inclusion based on the information that is available.
Figure A
Summary Analysis of Retroactive Eligible Crack Cocaine Cases
Fiscal Years 1992 – 2007 (3rd Quarter)

Number of offenders in USSC dataset
N = 875,368

Number of 2D Guideline (drug) offenders in USSC dataset
N = 341,338

Number of 2D Guideline crack cocaine offenders in USSC dataset
N = 75,978

Number of 2D Guideline crack cocaine offenders with a BOL higher than 12 (1,540 offenders at BOL 12 removed)
N = 74,438

Remaining 2D Guideline crack cocaine offenders with a BOL of less than 43 (127 offenders at BOL 43 removed)
N = 74,311

Remaining offenders sentenced above any statutory mandatory minimum punishment
(9,034 at statutory mandatory minimums removed)
N = 65,277

Remaining offenders with crack cocaine as the primary drug type and drug weight below 4,500 grams
(2,941 offenders with a drug weight of 4,500 grams or more removed)
N = 62,336

Remaining offenders projected to be incarcerated after considering potential “good time” credit
(30,353 removed)
N = 31,983

Offenders who could be matched to a BOP record
(660 offenders removed for whom no record was found at the BOP)*
N = 31,323

Remaining offenders that BOP confirmed as currently incarcerated
(4,940 released offenders removed)
N = 26,383

Remaining offenders after excluding those for whom the sentencing range was controlled by
Career Offender and/or Armed Career Criminal status
(4,914 offenders as to whom this status controlled the sentencing range removed)
N = 21,469

Final number of offenders remaining after excluding those with no change in the sentencing range when analyzed
(1,969 removed due to no change in sentencing range)
N=19,500

* Of these 660 offenders, 212 were identified through other Department of Justice records, however, none met the criteria to be retained in this analysis.
C. Distribution of Offenders by Year of Sentence

Table 1 presents the number of offenders who appear to be eligible for retroactive application of the amendment by the year in which the offender was sentenced. As would be expected, the more recent the sentencing year, the greater the number of offenders who appear to be eligible to petition for a reduced sentence under § 3582(c)(2). As discussed above, the number of offenders for fiscal year 2007 is calculated only through the end of the third quarter of that year. Therefore, the actual number of offenders sentenced in that year who would be eligible will be higher.

Table 1
Retroactive Eligible Crack Cocaine Offenders

<table>
<thead>
<tr>
<th>FISCAL YEAR</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL</td>
<td>19,500</td>
<td>100.0</td>
</tr>
<tr>
<td>2007 (first three quarters)</td>
<td>2,373</td>
<td>12.2</td>
</tr>
<tr>
<td>2006</td>
<td>2,900</td>
<td>14.9</td>
</tr>
<tr>
<td>2005</td>
<td>2,484</td>
<td>12.7</td>
</tr>
<tr>
<td>2004</td>
<td>2,141</td>
<td>11.0</td>
</tr>
<tr>
<td>2003</td>
<td>2,023</td>
<td>10.4</td>
</tr>
<tr>
<td>2002</td>
<td>1,528</td>
<td>7.8</td>
</tr>
<tr>
<td>2001</td>
<td>1,238</td>
<td>6.4</td>
</tr>
<tr>
<td>2000</td>
<td>1,003</td>
<td>5.1</td>
</tr>
<tr>
<td>1999</td>
<td>890</td>
<td>4.6</td>
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<td>1998</td>
<td>730</td>
<td>3.7</td>
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<td>1997</td>
<td>590</td>
<td>3.0</td>
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<tr>
<td>1996</td>
<td>529</td>
<td>2.7</td>
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<tr>
<td>1995</td>
<td>448</td>
<td>2.3</td>
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<tr>
<td>1994</td>
<td>265</td>
<td>1.4</td>
</tr>
<tr>
<td>1993</td>
<td>209</td>
<td>1.1</td>
</tr>
<tr>
<td>1992</td>
<td>149</td>
<td>0.8</td>
</tr>
</tbody>
</table>

D. Geographic Distribution of Offenders and Year of Sentence

The 19,500 offenders who appear to be eligible to seek a reduced sentence, if the crack cocaine amendment were to be made retroactive, were sentenced across all federal judicial districts except Guam and Northern Marianas. The number of offenders in each district ranges from 1,404 offenders (Eastern District of Virginia, accounting for 7.2 percent of all eligible offenders) to one offender (District of North Dakota). Nineteen of the 94 federal judicial districts account for half of all offenders who appear to be eligible to seek a reduced sentence. Only three districts account for three percent or more of the total number of these offenders (Eastern District of Virginia, 7.2 percent; Middle District of Florida, 4.0 percent; and District of South Carolina, 3.9 percent).

Table 2 presents information on the judicial districts in which each of the 19,500 offenders was sentenced, and thus where the consideration of the issue of retroactive application of the amendment in their cases would most likely occur. This list presents the offenders in descending order by the number of offenders in each district.
Table 2
Geographic Distribution of Retroactive Eligible Crack Cocaine Amendment Offenders, By District

<table>
<thead>
<tr>
<th>District</th>
<th>n</th>
<th>%</th>
<th>District</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TOTAL</strong></td>
<td>19,500</td>
<td>100.0</td>
<td>Eastern New York</td>
<td>146</td>
<td>0.7</td>
</tr>
<tr>
<td>Eastern Virginia</td>
<td>1,404</td>
<td>7.2</td>
<td>Eastern New York</td>
<td>146</td>
<td>0.7</td>
</tr>
<tr>
<td>Middle Florida</td>
<td>772</td>
<td>4.0</td>
<td>Northern New York</td>
<td>142</td>
<td>0.7</td>
</tr>
<tr>
<td>South Carolina</td>
<td>753</td>
<td>3.9</td>
<td>Northern Georgia</td>
<td>136</td>
<td>0.7</td>
</tr>
<tr>
<td>Western Virginia</td>
<td>540</td>
<td>2.8</td>
<td>New Jersey</td>
<td>134</td>
<td>0.7</td>
</tr>
<tr>
<td>Western North Carolina</td>
<td>536</td>
<td>2.7</td>
<td>Eastern Wisconsin</td>
<td>134</td>
<td>0.7</td>
</tr>
<tr>
<td>Western Texas</td>
<td>509</td>
<td>2.6</td>
<td>Southern Iowa</td>
<td>127</td>
<td>0.7</td>
</tr>
<tr>
<td>Eastern North Carolina</td>
<td>489</td>
<td>2.5</td>
<td>Eastern Kentucky</td>
<td>127</td>
<td>0.7</td>
</tr>
<tr>
<td>Eastern Texas</td>
<td>484</td>
<td>2.5</td>
<td>Western Pennsylvania</td>
<td>126</td>
<td>0.6</td>
</tr>
<tr>
<td>Northern West Virginia</td>
<td>470</td>
<td>2.4</td>
<td>Eastern Arkansas</td>
<td>125</td>
<td>0.6</td>
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<tr>
<td>Eastern Missouri</td>
<td>445</td>
<td>2.3</td>
<td>Western Wisconsin</td>
<td>125</td>
<td>0.6</td>
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<tr>
<td>Middle North Carolina</td>
<td>436</td>
<td>2.2</td>
<td>Central California</td>
<td>124</td>
<td>0.6</td>
</tr>
<tr>
<td>Northern Ohio</td>
<td>396</td>
<td>2.0</td>
<td>Middle Alabama</td>
<td>120</td>
<td>0.6</td>
</tr>
<tr>
<td>Northern Illinois</td>
<td>377</td>
<td>1.9</td>
<td>Puerto Rico</td>
<td>116</td>
<td>0.6</td>
</tr>
<tr>
<td>Southern Illinois</td>
<td>370</td>
<td>1.9</td>
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<td>0.8</td>
<td>Northern Mariana Islands</td>
<td>0</td>
<td>0.0</td>
</tr>
</tbody>
</table>

Table 3 presents this same information displayed by the circuit in which the district court that imposed the sentence is located. More than 26 percent of the offenders were sentenced in district courts in the Fourth Circuit, more than in any other circuit. The fewest of the offenders were sentenced in the District of Columbia Circuit (which has only one district court) and the First Circuit.

Table 3  
Geographic Distribution of Retroactive Eligible Crack Cocaine Amendment Offenders, By Judicial Circuit

<table>
<thead>
<tr>
<th>CIRCUIT</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fourth Circuit</td>
<td>5,185</td>
</tr>
<tr>
<td>Eleventh Circuit</td>
<td>2,765</td>
</tr>
<tr>
<td>Fifth Circuit</td>
<td>2,612</td>
</tr>
<tr>
<td>Sixth Circuit</td>
<td>1,812</td>
</tr>
<tr>
<td>Seventh Circuit</td>
<td>1,645</td>
</tr>
<tr>
<td>Eighth Circuit</td>
<td>1,596</td>
</tr>
<tr>
<td>Second Circuit</td>
<td>1,028</td>
</tr>
<tr>
<td>Third Circuit</td>
<td>944</td>
</tr>
<tr>
<td>Ninth Circuit</td>
<td>584</td>
</tr>
<tr>
<td>Tenth Circuit</td>
<td>562</td>
</tr>
<tr>
<td>First Circuit</td>
<td>498</td>
</tr>
<tr>
<td>DC Circuit</td>
<td>269</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>19,500</td>
</tr>
</tbody>
</table>

E. Offender and Offense Characteristics

Table 4 presents information on the demographic characteristics of the offenders who appear to be eligible for retroactive application of the amendment. The vast majority are U.S. citizens (94.5%), male (94.2%), and African-American (85.9%). The average age of these offenders on November 1, 2007 will be 35 years.

Table 4
Demographic Characteristics of Retroactive Eligible Crack Cocaine Offenders (FY1992 through Third Quarter FY2007)29

<table>
<thead>
<tr>
<th>DEMOGRAPHICS</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Race/Ethnicity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>1,121</td>
<td>5.8%</td>
</tr>
<tr>
<td>Black</td>
<td>16,726</td>
<td>85.9%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>1,480</td>
<td>7.6%</td>
</tr>
<tr>
<td>Other</td>
<td>155</td>
<td>0.8%</td>
</tr>
<tr>
<td>Total</td>
<td>19,482</td>
<td>100%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Citizenship</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Citizen</td>
<td>18,403</td>
<td>94.5%</td>
</tr>
<tr>
<td>Non-Citizen</td>
<td>1,071</td>
<td>5.5%</td>
</tr>
<tr>
<td>Total</td>
<td>19,474</td>
<td>100%</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Gender</th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Male</td>
<td>18,371</td>
<td>94.2%</td>
</tr>
<tr>
<td>Female</td>
<td>1,125</td>
<td>5.8%</td>
</tr>
<tr>
<td>Total</td>
<td>19,496</td>
<td>100%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Average Age</th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>(as of November 1, 2007)</td>
<td>35</td>
<td>100%</td>
</tr>
<tr>
<td>(at sentencing)</td>
<td>30</td>
<td></td>
</tr>
</tbody>
</table>


In order to better understand the offense conduct of the offenders who appear to be eligible for retroactive application of the amendment, ORD staff analyzed offense-related factors that contributed to the sentence originally imposed on each offender, as well as the criminal history categories of these offenders, and the extent to which their original sentences were within the applicable guideline ranges. Table 5 displays these factors for the 19,500 offenders as a group.

Table 5A displays the average base offense level and guideline-relevant offense characteristics for these offenders sorted by the year in which the offender was sentenced for the

29 The analysis involves a total of 19,500 cases; however, cases missing information for any specific analysis are excluded from that analysis.
crack cocaine offense. Table 5B displays the criminal history category of these offenders by the year in which they were sentenced. Table 5C displays the position of the sentences relative to the guideline range each year for these offenders. The data in each of these tables does not represent the characteristics of all crack offenders sentenced in each of the years listed. The information presented is only for those offenders whose sentence was sufficiently long such that they would still be incarcerated as of November 1, 2007, and who otherwise met the criteria for inclusion in the analysis.

Table 5
Guideline Sentencing Characteristics, Criminal History, and Position Relative to the Guideline Range of Retroactive Eligible, Crack Cocaine Offenders
(FY1992 through Third Quarter FY2007)\textsuperscript{30}

<table>
<thead>
<tr>
<th>CHARACTERISTICS</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Average Base Offense Level</td>
<td>32</td>
<td></td>
</tr>
<tr>
<td>Weapon Specific Offense Character</td>
<td>4,729</td>
<td>24.3%</td>
</tr>
<tr>
<td>Safety Valve §5C1.2</td>
<td>1,750</td>
<td>9.0%</td>
</tr>
<tr>
<td>Firearms Mandatory Minimum Applied</td>
<td>2,179</td>
<td>11.3%</td>
</tr>
<tr>
<td>Aggravating Role §3B1.1</td>
<td>2,286</td>
<td>11.7%</td>
</tr>
<tr>
<td>Mitigating Role §3B1.2</td>
<td>630</td>
<td>3.2%</td>
</tr>
<tr>
<td>Obstruction Adjustment §3C1.1</td>
<td>1,291</td>
<td>6.6%</td>
</tr>
<tr>
<td>Career Offender Status §4B1.1</td>
<td>664</td>
<td>3.4%</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Criminal History Category</th>
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</thead>
<tbody>
<tr>
<td>I</td>
<td>4,252</td>
<td>21.9%</td>
</tr>
<tr>
<td>II</td>
<td>2,488</td>
<td>12.8%</td>
</tr>
<tr>
<td>III</td>
<td>4,411</td>
<td>22.7%</td>
</tr>
<tr>
<td>IV</td>
<td>3,227</td>
<td>16.6%</td>
</tr>
<tr>
<td>V</td>
<td>1,980</td>
<td>10.2%</td>
</tr>
<tr>
<td>VI</td>
<td>3,038</td>
<td>15.7%</td>
</tr>
<tr>
<td>Total</td>
<td>19,396</td>
<td>100.0%</td>
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</table>

<table>
<thead>
<tr>
<th>Sentence Relative to Guideline Range</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Within Range</td>
<td>13,348</td>
<td>69.4%</td>
</tr>
<tr>
<td>Above Range</td>
<td>101</td>
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</tr>
<tr>
<td>Substantial Assistance §5K1.1</td>
<td>4,317</td>
<td>22.5%</td>
</tr>
<tr>
<td>Otherwise Below Range</td>
<td>1,455</td>
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</tr>
<tr>
<td>Total</td>
<td>19,221</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

\textsuperscript{30} The analysis involves a total of 19,500 cases; however, cases missing information for any specific analysis are excluded from that analysis.
Table 5A
Guideline Sentencing Characteristics of Retroactive Eligible Crack Cocaine Offenders\(^1\)

<table>
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<tr>
<th></th>
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<th></th>
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<tbody>
<tr>
<td>Average Base Offense Level</td>
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<td>35</td>
<td>35</td>
<td>35</td>
<td>36</td>
<td>36</td>
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<tr>
<td>Weapon Specific Offense Characteristic</td>
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<td>47</td>
<td>53</td>
<td>67</td>
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<td>183</td>
<td>206</td>
<td>207</td>
<td>292</td>
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<td>497</td>
<td>524</td>
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<tr>
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<td>4</td>
<td>3</td>
<td>20</td>
<td>28</td>
<td>51</td>
<td>84</td>
<td>169</td>
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<td>n/a</td>
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<td>33.6</td>
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<td>77</td>
<td>157</td>
<td>155</td>
<td>162</td>
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<td>174</td>
<td>155</td>
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<td>164</td>
<td>174</td>
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<td>153</td>
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<td>8.6</td>
<td>6.9</td>
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<td>5.3</td>
<td>5.1</td>
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<td>13</td>
<td>21</td>
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<td>16</td>
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<td>36</td>
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<td>44</td>
<td>51</td>
<td>96</td>
<td>120</td>
<td>124</td>
</tr>
<tr>
<td>%</td>
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<td>2.3</td>
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<td>4.0</td>
<td>3.7</td>
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<td>2.3</td>
<td>3.6</td>
<td>1.6</td>
<td>2.5</td>
<td>2.2</td>
<td>3.9</td>
<td>4.1</td>
<td>3.3</td>
<td>3.2</td>
<td>5.2</td>
</tr>
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<td>64</td>
<td>73</td>
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<td>85</td>
<td>91</td>
<td>84</td>
<td>88</td>
<td>95</td>
<td>115</td>
<td>121</td>
<td>81</td>
<td>81</td>
<td>92</td>
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</tr>
<tr>
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<td>23.4</td>
<td>24.2</td>
<td>16.3</td>
<td>14.7</td>
<td>14.4</td>
<td>12.5</td>
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<td>8.8</td>
<td>7.7</td>
<td>7.5</td>
<td>6.0</td>
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<td>3.3</td>
<td>3.2</td>
<td>2.9</td>
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<tr>
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<td>15</td>
<td>32</td>
<td>30</td>
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<td>43</td>
<td>43</td>
<td>42</td>
<td>51</td>
<td>40</td>
<td>49</td>
<td>63</td>
<td>40</td>
<td>56</td>
<td>64</td>
<td>57</td>
</tr>
<tr>
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<td>2.2</td>
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</tr>
</tbody>
</table>

\(^1\) The analysis involves a total of 19,500 cases, however, cases missing information for any specific analysis are excluded from that analysis.

\(^2\) The statutory safety valve, codified as 18 U.S.C. §3553(f), was enacted in September 1994.

### Table 5B

Criminal History Category of Retroactive Eligible Crack Cocaine Offenders

<table>
<thead>
<tr>
<th></th>
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<td>161</td>
<td>180</td>
<td>162</td>
<td>221</td>
<td>276</td>
<td>391</td>
<td>435</td>
<td>532</td>
<td>712</td>
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<tr>
<td>I</td>
<td>%</td>
<td>33.1</td>
<td>34.7</td>
<td>22.8</td>
<td>29.6</td>
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<td>197</td>
<td>262</td>
<td>269</td>
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<td>13.3</td>
<td>15.1</td>
<td>10.7</td>
<td>14.2</td>
<td>11.7</td>
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<td>13.0</td>
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<td>14.0</td>
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<td>117</td>
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<td>205</td>
<td>232</td>
<td>273</td>
<td>362</td>
<td>466</td>
<td>509</td>
<td>570</td>
<td>661</td>
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<tr>
<td>III</td>
<td>%</td>
<td>17.6</td>
<td>19.9</td>
<td>20.1</td>
<td>21.9</td>
<td>23.3</td>
<td>20.8</td>
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<td>23.1</td>
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<td>22.1</td>
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<tr>
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<td>%</td>
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<td>13.1</td>
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<td>13.4</td>
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<td>175</td>
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<td>278</td>
<td>310</td>
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<tr>
<td>V</td>
<td>%</td>
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<td>7.7</td>
<td>7.0</td>
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<td>7.8</td>
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<td>9.7</td>
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<td>11.5</td>
<td>10.1</td>
<td>10.1</td>
<td>11.2</td>
<td>10.7</td>
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<td>200</td>
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<td>262</td>
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<td>300</td>
<td>346</td>
<td>398</td>
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<td>%</td>
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<td>11.7</td>
<td>22.0</td>
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<td>18.9</td>
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<td>15.8</td>
<td>14.0</td>
<td>13.9</td>
<td>13.7</td>
</tr>
</tbody>
</table>

1. The analysis involves a total of 19,500 cases, however, cases missing information for any specific analysis are excluded from that analysis. Total percentages for any specific year may not sum to exactly 100% due to rounding.

Table 5C
Position of Sentence Relative to the Guideline Range of Retroactive Eligible Crack Cocaine Offenders

<table>
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<th></th>
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<tbody>
<tr>
<td>Within Range</td>
<td>N</td>
<td>138</td>
<td>193</td>
<td>247</td>
<td>396</td>
<td>460</td>
<td>494</td>
<td>587</td>
<td>667</td>
<td>720</td>
<td>876</td>
<td>1052</td>
<td>1409</td>
<td>1468</td>
<td>1471</td>
<td>1769</td>
<td>1401</td>
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<tr>
<td></td>
<td>%</td>
<td>93.9</td>
<td>92.8</td>
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<td>89.4</td>
<td>87.3</td>
<td>85.5</td>
<td>82.2</td>
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<td>74.0</td>
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<td>59.1</td>
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<td>3</td>
<td>4</td>
<td>0</td>
<td>4</td>
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<td>3</td>
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<td>19</td>
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<td>13</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>0.7</td>
<td>1.4</td>
<td>1.5</td>
<td>0.0</td>
<td>0.8</td>
<td>0.7</td>
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<td>0.2</td>
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<td>0.4</td>
<td>0.2</td>
<td>0.8</td>
<td>0.7</td>
<td>0.6</td>
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<td>7</td>
<td>9</td>
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<td>45</td>
<td>60</td>
<td>96</td>
<td>163</td>
<td>191</td>
<td>226</td>
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<td>478</td>
<td>537</td>
<td>698</td>
<td>757</td>
<td>686</td>
</tr>
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<td>§5K1.1</td>
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<td>3.4</td>
<td>3.4</td>
<td>6.8</td>
<td>8.5</td>
<td>10.4</td>
<td>13.5</td>
<td>18.6</td>
<td>19.5</td>
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<td>78</td>
<td>73</td>
<td>103</td>
<td>107</td>
<td>276</td>
<td>349</td>
<td>271</td>
</tr>
<tr>
<td>Otherwise Below Range</td>
<td>%</td>
<td>2.7</td>
<td>2.4</td>
<td>1.9</td>
<td>3.8</td>
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<td>5.1</td>
<td>11.2</td>
<td>12.1</td>
<td>11.4</td>
</tr>
</tbody>
</table>

1The analysis involves a total of 19,500 cases, however, cases missing information for any specific analysis are excluded from that analysis. Total percentages for any specific year may not sum to exactly 100% due to rounding.

F. Extent of Possible Sentence Reduction and Projected Release Dates

As part of its analysis, ORD estimated the release date for each offender who appears to be eligible to seek a reduced sentence under 18 U.S.C. § 3582(c)(2) should the crack amendment be made retroactive, provided the documentation received for that offender’s case was sufficient to perform this analysis. This calculation provides an estimate of the number of offenders whose sentence would expire in each fiscal year, and for each federal judicial district, if the offender received retroactive application of the crack cocaine amendment to an extent consistent with the limitation of the reduction outlined in §1B1.10 of the guidelines.

1. Methodology for Determining Sentence Reduction and Release Dates

The methodology for this analysis is based on the Commission's Prison Impact Model, which has been in use in some form since the guidelines were first developed. This model is used to estimate the impact of proposed guideline amendments on newly sentenced offenders and to project into the future the impact of those amendments on bed space in the BOP. For this analysis, those offenders who appear to be eligible to seek a reduced sentence under 18 U.S.C. § 3582(c)(2) were hypothetically "resentenced" with the computer program as if the amended guideline had been in effect in the year in which they were sentenced. Their new sentences were then compared with their original (i.e., actual) sentences to determine the average reduction in sentence length. A new release date for each offender was also calculated in order to determine the year in which each offender would be eligible for release if they were provided the full reduction in sentence provided by the amendment.

In performing this analysis, ORD was required to make some assumptions concerning the decisions that courts would make in resentencing the offenders. Of course, these assumptions may not hold in every case. Further, this analysis does not account for the applicability, if any, of the Booker decision to 18 U.S.C. § 3582(c)(2) sentence modifications. The analysis accounts only for the application of the two-level reduction provided by the crack cocaine amendment and does not assume any other reduction in the sentence, consistent with Application Note 2 of §1B1.10. The assumptions are as follows:

(1) each offender would be resented at the same point in the new guideline range as they were when originally sentenced;
(2) offenders sentenced outside the applicable guideline range at the time they were sentenced would be resentenced to a new position outside the amended guideline range that is the same proportional distance above or below the amended guideline range as their original sentence was from the guideline range in effect at the original sentencing;

(3) offenders for whom the new estimated sentence is below an existing mandatory minimum, and where no safety valve or substantial assistance reduction was applied when the offender was originally sentenced, would be resentenced at the applicable mandatory minimum;34

(4) offenders classified as Career Offenders or Armed Career Criminals for whom the new estimated sentence is below the guideline minimums provided for those offenders would be resentenced in accordance with those guidelines;35

(5) the “mitigating role cap” on the base offense level of the guidelines36 would be applied, if appropriate, based upon the new the BOL;

required to impose a sentence at the same point in the new range as it did when first sentencing the offender. For offenders sentenced to a higher point in the new sentencing range than in the original range, the assumption discussed in the text above would overestimate the amount of the offender's sentence reduction. For offenders sentenced to a lower point in the new sentencing range than in the original range, the assumption discussed in the text above would underestimate the amount of the offender's sentence reduction.

34 This assumption is likely to underestimate the amount of the sentence reduction and projected release dates for some offenders. Because of limitations in Commission data, the final sentence imposed on offenders who received a reduced sentence pursuant to Federal Rule of Criminal Procedure 35(b) for cooperating with the government after they were incarcerated is unknown. Some offenders who received a resentencing under Rule 35(b) in this manner may currently have a sentence that is below the otherwise applicable statutory mandatory minimum penalty, because the court was authorized to impose a sentence without regard to that mandatory minimum punishment. For these offenders, ORD's assumption that any resentencing pursuant to the crack cocaine amendment would be limited by the statutory mandatory minimum punishment would be inaccurate and, therefore, underestimate the magnitude of sentence reduction for some offenders. In such cases, the actual release dates for these offenders would be earlier than the projected release dates used in this analysis. There were 3,570 offenders who were resentenced in accordance with a statutory mandatory minimum term of imprisonment.

35 USSG §§4B1.1 and 4B1.4. There were 125 offenders who were resentenced in accordance with those guidelines.

36 USSG §2D1.1(a)(3). There were 41 offenders in the analysis who continued to meet the criteria for application of the mitigating role cap.
(6) the sentence for each offender would be reduced based on the maximum good conduct credit allowed by the BOP; and

(7) offenders would serve the lesser of the newly calculated sentence or their life expectancy. \(^{37}\)

ORD also assumed that the effective date of the amendment if it were to be applied retroactively to these offenders would be November 1, 2007 (the date the amendment becomes effective for newly-sentenced offenders) and (2) that pursuant to 18 U.S.C. § 3582(c)(2) courts applying the amendment retroactively would adhere to the limitations of the extent of sentence reduction outlined in USSG §1B1.10.

2. Estimated Sentence Reduction

Based on these assumptions, the average sentence reduction for those offenders who appear to be eligible to seek a reduced sentence would be 27 months (from 152 months to 125 months). Table 6 shows that 10,605 offenders (63.5 %) would receive a sentence reduction of 24 months or less, with 4,776 (28.6%) offenders receiving a sentence reduction of one year or less. Conversely, 1,315 offenders (7.9 %) would receive a sentence reduction of 49 months or more.

\(^{37}\) The Commission’s Prison Impact Model incorporates actuarial tables based on race and gender to predict life expectancy. There are 365 offenders who are projected to die while incarcerated under their current sentence.
Table 6
Average Sentence Reduction for Retroactive Eligible Crack Cocaine Offenders

3. Projected Release Dates

Based on the assumptions discussed above, the offenders who appear to be eligible to seek a reduced sentence under 18 U.S.C. § 3582(c)(2) if the amendment were made retroactive are projected to be eligible for release at various times over a period of more than three decades. Approximately 3,804 offenders (22.8% of the offenders for whom the Commission had sufficient data to perform this analysis) are projected to be released at various points within the first year after November 1, 2007, if the amendment were made retroactive as of that date. Approximately 5,661 offenders (33.9%) are projected to remain incarcerated during the first five years, and 1,706 offenders (10.2%) are projected to remain incarcerated for ten or more years. ORD estimates that 321 offenders will be released who would otherwise die in prison if the amendment were not made retroactive.

Table 7 shows the projected release dates for these offenders by year and compares them to the estimated release dates for these same offenders if the crack cocaine amendment were not made retroactive. The most significant impact of the amendment is seen in the first year after the amendment becomes effective. In that year, 3,804 offenders would be released if the amendment were made retroactive and courts were to follow the assumptions regarding resentencing outlined above. If the amendment were not made retroactive, 1,284 of those offenders would be released, a difference of 2,520 offenders. In the second year, however, 2,218 of the offenders would be released if the amendment were made retroactive, but 1,995 of the offenders would be released if the amendment were not made retroactive.

Of the 19,500 offenders who appear to be eligible to seek a reduced sentence under the amendment, Commission records contained sufficient information to perform this analysis for 16,676.
Table 8 shows the projected release dates, by the year, circuit, and district in which each offender was sentenced, for all offenders who appear to be eligible to seek a reduced sentence should the amendment be made retroactive.

Table 7
Projected Year of Release for Retroactive Eligible Crack Cocaine Offenders

<table>
<thead>
<tr>
<th>Release Date</th>
<th>IF AMENDMENT RETROACTIVE</th>
<th>IF AMENDMENT NOT RETROACTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>within 1 yr</td>
<td>3,804</td>
<td>1,284</td>
</tr>
<tr>
<td>within 2 yr</td>
<td>2,118</td>
<td>1,995</td>
</tr>
<tr>
<td>within 3 yr</td>
<td>1,967</td>
<td>1,894</td>
</tr>
<tr>
<td>within 4 yr</td>
<td>1,773</td>
<td>1,833</td>
</tr>
<tr>
<td>within 5 yr</td>
<td>1,353</td>
<td>1,577</td>
</tr>
<tr>
<td>within 6 yr +</td>
<td>5,661</td>
<td>8,093</td>
</tr>
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</table>


39 Of the 19,500 offenders who appear to be eligible to seek a reduced sentence under the amendment, Commission records contained sufficient information to perform this analysis for 16,676 offenders.
### Table 8

POSSIBLE RELEASE TIMING FOR RETROACTIVE ELIGIBLE OFFENDERS BY DISTRICT

<table>
<thead>
<tr>
<th>CIRCUIT</th>
<th>Eligible for Immediate Release 11-1-2007</th>
<th>Eligible for Release in Year One</th>
<th>Eligible for Release in Year Two</th>
<th>Eligible for Release in Year Three</th>
<th>Eligible for Release in Year Four</th>
<th>Eligible for Release in Year Five</th>
<th>Eligible for Release in Six or More Years</th>
<th>TOTAL</th>
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<tbody>
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<td>30 13.9</td>
<td>35 16.2</td>
<td>33 15.3</td>
<td>29 13.4</td>
<td>10 4.6</td>
<td>47 21.8</td>
<td>216</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>32 14.8</td>
<td>30 13.9</td>
<td>35 16.2</td>
<td>33 15.3</td>
<td>29 13.4</td>
<td>10 4.6</td>
<td>47 21.8</td>
<td>216</td>
</tr>
<tr>
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<td>79 18.8</td>
<td>79 18.8</td>
<td>55 13.1</td>
<td>49 11.6</td>
<td>33 7.8</td>
<td>92 21.9</td>
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<td>13 17.6</td>
<td>20 27.0</td>
<td>5 6.8</td>
<td>5 6.8</td>
<td>7 9.5</td>
<td>20 27.0</td>
<td>74</td>
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<td>17 14.3</td>
<td>22 18.5</td>
<td>17 14.3</td>
<td>14 11.8</td>
<td>13 10.9</td>
<td>28 23.5</td>
<td>119</td>
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<tr>
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<td>8 12.3</td>
<td>19 29.2</td>
<td>16 24.6</td>
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<td>5 7.7</td>
<td>2 3.1</td>
<td>7 10.8</td>
<td>65</td>
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<td>17 19.3</td>
<td>16 18.2</td>
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<td>7 8.0</td>
<td>19 21.6</td>
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Of the 19,500 offenders identified as eligible for relief under the amendment, Commission records contained sufficient information to perform this analysis for 16,676.

Estimated release dates are determined using the Commission’s prison and sentencing impact model which applies proposed guideline changes to affected offenders and re-sentences these offenders in a proportional manner. Under the model, affected offenders: 1) receive a new offense level; 2) have a new sentencing range determined (using the ranges from the Sentencing Table); 3) are resentenced to the same relative position within (or outside) the original guideline range (e.g., an offender currently sentenced at the midpoint of the original guideline range then will be sentenced to the midpoint of the new guideline range); and, 4) receive statutory and guideline trumps when applicable. Other assumptions incorporated into the model include: 1) offenders earn the maximum allowable good-time (currently 54 days per year served for imposed sentences greater than one year but not life imprisonment); and 2) offenders serve the lesser of A) the sentence imposed less the maximum allowable good conduct time, or B) their estimated remaining life expectancy, based upon an actuary table incorporating age, race, and sex.