

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of Extension of the Deadline for Public Comment Regarding Retroactivity.

SUMMARY: The United States Sentencing Commission submitted a series of amendments to the federal sentencing guidelines to Congress on May 1, 2007. Notice of such amendments was published in the Federal Register on May 21, 2007 (72 FR 28558). On July 31, 2007, the Commission published a notice (72 FR 41794) requesting comment regarding whether either Amendment 9, which pertains to offenses involving cocaine base ("crack"), or Amendment 12, which pertains to certain criminal history rules, should be included in subsection (c) of §1B1.10 [Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)] as amendments that may be applied retroactively to previously sentenced defendants. The Commission further requested comment regarding whether, if it amends §1B1.10(c) to include either amendment, it also should amend §1B1.10 to provide guidance to the courts on the procedure to be used when applying an amendment retroactively under 18 U.S.C. § 3582(c)(2).

The Commission is issuing this notice to advise the public that the period for public comment regarding retroactivity has been extended to November 1, 2007. The deadline was initially October 1, 2007.

The Commission plans to publish on its website, www.ussc.gov, data related to possible retroactivity that may assist interested parties in preparing their comment. This comment period is extended to ensure sufficient time for interested parties to consider any such data and to submit comment for Commission review and consideration.

DATE: Comment should be received not later than November 1, 2007.

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.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

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. In addition, data relating to possible retroactivity will be posted on the Commission's website.

The Commission issued a notice for public comment regarding retroactivity of Amendments 9 and 12 on July 31, 2007 (72 FR 41794). Comment was initially due to the Commission on October 1, 2007. The Commission hereby invites additional comment from any person or group who has interest in the issues surrounding the retroactivity of either the cocaine base or criminal history guideline amendment. Comment must be received by the Commission not later than November 1, 2007.

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

Ricardo H. Hinojosa,

Chair