Ameliorating Amendments to U.S. Sentencing Guidelines
September 2015

Below is a list of ameliorating guideline amendments to assist you determining whether an applicant's guideline range would be lower if he were sentenced today. Part I contains amendments that may apply regardless of the offense. Part II contains amendments that apply to particular offenses.

To determine whether an ameliorating amendment is implicated, write down the components of the guideline calculation used at the original sentencing, using the PSR, any objections and addenda to the PSR, any sentencing motions/memoranda, and the sentencing transcript (to see how any objections were resolved), then check each component against the list of ameliorating amendments. When an ameliorating amendment appears to apply, compare the provision as it appeared in the Manual used to sentence the client with the provision as it appears in the current Manual. *See* http://www.ussc.gov/guidelines-manual/guidelines-manual. You can also look at the full text of the amendment, contained in Volume I, II, or III of, or the 2014 Supplement to, Appendix C of the Guidelines Manual, *id*., although this may or may not shed much light.

Some ameliorating amendments will obviously apply.

> **Example:** Before 2010, a defendant received 1 or 2 points under the criminal history rules at § 4A1.1(e) if she committed the instant offense less than 2 years after release from imprisonment or while in imprisonment or escape status. In 2010, the Commission amended § 4A1.1 to delete these "recency" points. USSG App. C, amend. 742 (Nov. 1, 2010). The amendment was not made retroactive. Any applicant who received 1 or 2 recency points would not receive them today, and may be in a lower Criminal History Category as a result.
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> **Example**: Before November 1, 1992, a defendant could receive only 2 levels off for acceptance of responsibility under USSG § 3E1.1. Effective November 1, 1992, the Commission allowed for a third level off based on the defendant's timely cooperation or guilty plea. *See* USSG App. C, amend. 459 (Nov. 1, 1992). The amendment was not made retroactive.
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> From November 1, 1992 to April 30, 2003, a defendant who timely notified the prosecutor of his intention to plead guilty may or may not have received the third level off, depending on other proceedings in the case and the state of the law in the relevant circuit.
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> In 2003, as part of the PROTECT Act, Congress amended § 3E1.1 to allow the third point only on the government's motion. *See* USSG App. C, amend. 649 (Apr. 30, 2003). From 2003 to 2013, the prosecutor may have refused to file a motion for the third level because the applicant would not waive his right to appeal or filed a suppression motion or challenged relevant conduct or in any other way made the government do any work, reasons that were not related to the

interests identified in § 3E1.1, i.e., to allow the government to avoid preparing for trial.

In 2013, the Commission added language to Application Note 6 to make clear that the government should not withhold the motion for reasons not identified in § 3E1.1, and that the court "should" grant the motion when made. *See* USSG, App. C, amend. 775 (Nov. 1, 2014). The amendment was not made retroactive.

An applicant sentenced before November 1, 1992 could not have received the third level at all. An applicant sentenced between November 1, 1992, and April 20, 2003 may have timely pled guilty but only received 2 levels for reasons that would not apply today. An applicant sentenced after April 30, 2003 may have been refused the third level for improper reasons. The upshot is that any applicant who timely notified the prosecutor of an intention to plead guilty but who only received 2 levels would likely receive the third level today.

Some ameliorating amendments apply less obviously, but can make a big difference. You may need to research cases interpreting the amendment to get a full understanding of its application in a particular case.

Example: In 1992, the Commission amended the "relevant conduct" rule at USSG § 1B1.3 to narrow the scope of conduct for which the defendant is held accountable in cases involving "jointly undertaken criminal activity." USSG App. C, amend. 439 (Nov. 1, 1992). After the amendment, relevant conduct involving jointly undertaken criminal activity is determined based only on "all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity" *and* that are within the scope of the jointly undertaken activity to which the defendant agreed. USSG § 1B1.3(a)(1)(B) & cmt.(n.2) (2014). The Commission also included new illustrations in commentary showing the limits of the new test. *See id.* cmt.(n.2) (2014). Importantly, this test is narrower than conspiracy liability under *Pinkerton v. United States*, 328 U.S. 640, 647-48 (1946). It applies not only to determine the scope of relevant conduct under the guidelines, but also for purposes of determining whether the mandatory minimum applies to the particular defendant a conspiracy case.[1] Thus, though described as a "clarification," this amendment often made a huge difference in later cases. The amendment was not made retroactive. An applicant sentenced before 1992 may well have been subject to an earlier, far more expansive interpretation of relevant conduct than would apply today.

[1] *See United States v. Jones*, 965 F.2d 1507, 1516-17 (8th Cir. 1992); *United States v. Martinez*, 987 F.2d 920, 924 (2d Cir. 1993); *United States v. Becerra*, 992 F.2d 960, 967 n.2 (9th Cir. 1993); *United States v. Young*, 997 F.2d 1204, 1210 (7th Cir. 1993); *United States v. Irvin*, 2 F.3d 72, 77-78 (4th Cir. 1993).

Further, an applicant sentenced after 1992 may not have benefited from the amendment due to mistake. Despite the amendment, courts and parties commonly overlooked the crucial step of determining the scope of the defendant's agreement, and held the defendant responsible for all acts of others that were merely "reasonably foreseeable." The result was guideline ranges (and mandatory minimums in conspiracy cases) that were not properly limited by the three-part test.[2] In April 2015, the Commission restructured § 1B1.3(a)(1)(B) and its commentary to set forth the three-part test more clearly. *See* USSC, Reader Friendly Amendments (Amend. 3), effective November 1, 2015.

The upshot is that in any drug conspiracy case in which a mandatory minimum was applied and/or case in which the guideline range was based on jointly undertaken activity under USSG §1B1.3, the defendant may not have properly benefited from the narrowed definition.

Example: In 2011, the Commission deleted two sentences from commentary at USSG § 3B1.2 regarding the mitigating role adjustment. Those two sentences read: (1) "As with any other factual issue, the court, in weighing the totality of the circumstances, is not required to find, based solely on the defendant's bare assertion, that such a role adjustment is warranted." USSG § 3B1.2 cmt. (n.3(C)) (2010); and (2) "It is intended that the downward adjustment for minimal participant will be used infrequently." USSG § 3B1.2 cmt. (n.4) (2010). Courts frequently relied on these sentences to deny the mitigating role adjustment, which the Commission said in 2011 was an "unintended effect." USSG, App. C, amend. 755 (Nov. 1, 2011).

In 2015, the Commission further amended § 3B1.2 in a number of ways to permit and encourage the adjustment in more cases. First, it defined "average participant" by reference to those persons who participated in the criminal activity at issue in the defendant's case. *See* USSC, Reader Friendly Amendments (Amend. 5), effective November 1, 2015. The Commission rejected the approach of the First and Second Circuits, which required a court to consider the defendant's culpability relative not only to his co-participants, but also to the typical participant in a similar crime.

Second, it added a non-exhaustive list of factors for the court to consider in determining whether to reduce the offense level by 4, 3, or 2 levels. Third, it provided examples supporting the downward adjustment. And fourth, it

[2] Moreover, because drug quantity is now recognized as an essential element of the offense, the jury must make the defendant-specific findings under the § 1B1.3 standard for purposes of determining the mandatory minimum in a conspiracy case. *See United States v. Pizarro*, 772 F.3d 284, 292-93 (1st Cir. 2014); *United States v. Collins*, 415 F.3d 304, 313-14 (4th Cir. 2005); *United States v. Randall*, 770 F.3d 358, 364-66 (5th Cir. 2014); *United States v. Banuelos*, 322 F.3d 700, 704-05 & n.3 (9th Cir. 2003).

> eliminated the "essential cog" analysis some courts used by amending commentary to positively state that a defendant who performs limited functions "may receive" the adjustment, rather than that she is "not precluded" from receiving it.
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> These amendments were not made retroactive. An applicant sentenced before 2011 may well have been subject to the more narrow interpretation of the provision and would receive the downward adjustment today.

A subsequent ameliorating amendment may have already been given effect in a client's case if the Commission made the amendment retroactive, and the court reduced the sentence under 18 U.S.C. § 3582(c)(2). The list below indicates whether or not the Commission made the amendment retroactive. *See also* USSG § 1B1.10(c) (listing all retroactive amendments). Check the docket sheet, any amended judgment, and any post-sentence motions and orders referencing § 3582 and/or sentence reduction/modification to determine whether a retroactive amendment has already been given effect in the client's case.

An ameliorating amendment will not have been given effect through a sentence reduction under 18 U.S.C. § 3582(c)(2) if the amendment was not made retroactive, or no one moved for a reduction although such a motion could have been made, or the reduction was denied because a mandatory minimum or the career offender guideline stood in the way.

In some cases, a retroactive ameliorating amendment was not given effect under § 3582(c)(2) due to unfortunate timing and/or reasons that would not apply today.

> **Example:** A defendant sentenced in 1992 was held accountable for 34 kilograms of crack. At the time, an offense involving 15 kilograms or more of crack corresponded to base offense level 42, the highest base offense level under the Drug Quantity Table. USSG § 2D1.1(c)(1) (1992). In Criminal History Category III (due to relatively minor prior offenses related to low-level drug trafficking), her mandatory guideline range was 360-life. She was sentenced to mandatory 360 months.
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> Effective November 1, 1994, the Commission capped the Drug Quantity Table at base offense level 38, which corresponded to 1.5 kilograms or more of cocaine, and made the change retroactive. *See* USSG App. C, amend. 505 (Nov. 1, 1994). At offense level 38, the defendant's range was 292-365 months. In 1996, the defendant moved for a reduction under § 3582(c)(2). The judge ruled that she was eligible for a reduction because her guideline range had been lowered, but exercised his discretion to deny the motion. This was at a time when courts adhered closely to the mandatory guidelines and still believed that the 100:1 ratio in the crack guideline was warranted. The judge noted that her offense involved "far more than 1.5 kilograms of crack," and her sentence still fell within the amended range. Though the Commission also made the 2007 and 2010 crack

amendments retroactive, and the defendant moved for a reduction in light of both amendments, the district court ruled each time (reluctantly) that she was not eligible for a reduction because her guideline range, though lowered from the range that applied at her *original* sentencing, had not been lowered from the range that applied at her first § 3582(c)(2) proceeding and remained 292-365 months. The amount of crack involved in her case, 34 kilograms, was still greater than the amended quantity thresholds corresponding to base offense level 38 (4.5 kilograms in 2007, then 8.4 kilograms in 2010).

If she had never filed for § 3582(c)(2) relief based on the 1994 amendment, but had waited until 2008 or 2010 to file based on the crack amendments, it is highly likely that the judge would have reduced her sentence to 292 months, the bottom of the amended guideline range. Moreover, though her base offense level would remain 38 under Drugs Minus 2, *see* USSG § 2D1.1(c) (2014), if she were sentenced today, it is highly unlikely that the judge would sentence her to more than the bottom of the range, and would likely vary at least a third below that under *Booker* and its progeny. *See* How the Supreme Court's Decisions Rendering the Guidelines Advisory Would Result in a Lower Sentence Today.

Finally, in some cases, you may find that the guideline range would be higher today, despite an ameliorating amendment, because of offsetting increases. If that occurred, acknowledge that the guideline range would be higher today, but then go to a *Booker/Kimbrough* analysis to explain why the judge would not follow it today and would impose a sentence below even the original guideline range.

Example: In 2001, a defendant was sentenced for conspiracy to manufacture MDMA. The statutory penalty range is 0-20 years. 21 U.S.C. § 841(b)(1)(C). Based on information from a cooperating co-defendant and the testimony of a chemist, the judge found that the conspiracy involved a theoretical yield of 370 kg of MDMA.

Under USSG § 2D1.1, the base offense level for offenses involving MDMA is calculated by converting the amount of the mixture of substance of MDMA involved in the offense to its "marijuana equivalent." Before May 1, 2001, 1 gram of MDMA was equivalent to 35 grams of marijuana. *See* USSG § 2D1.1 (2000). On May 1, 2001, the Commission promulgated an emergency amendment increasing the marijuana-to-MDMA ratio from 35:1 to 500:1, *see* USSG App. C, amend. 609, and made the amendment permanent effective November 1, 2001, *see* USSG App. C, amend. 621.

Though the defendant was sentenced in September 2001, the conspiracy ended when he was arrested in November 2000. The judge was required to apply the less severe version of the Manual in effect at the time the offense was committed.

See USSG § 1B1.11(b)(1); *Miller v. Florida*, 482 U.S. 423 (1987). Under the 2000 Manual, 370 kg of MDMA was equivalent to 12,950 kg of marijuana, which corresponded to base offense level 36. In Criminal History Category III (he had two relatively minor state drug convictions), with a 2-level increase for being a "supervisor" under § 3B1.1(c) (he directed a co-conspirator to help with menial tasks during the manufacturing process), and 2 levels off for acceptance of responsibility (on the prosecutor's urging, the court declined to apply the third point because he challenged drug quantity and the court held an evidentiary hearing), the defendant's offense level was 36. The corresponding guideline range was 235-293 months. The judge sentenced him to 235 months.

Under the 500:1 ratio in effect today, 370 kg of MDMA would be equivalent to 185,000 kg of marijuana, and the client's base offense level under the November 1, 2014 Manual would go up to 38. Though the prosecutor today would likely move for, and the court would likely grant, the third level of reduction for acceptance of responsibility, USSG § 3E1.1 cmt.(n.6) (2014), the defendant's total offense level would be 37 (base offense level 38, plus 2 for role, minus 3 for acceptance), corresponding in Criminal History Category III to a higher range of 262-327 months.

While the range would be higher today, you can show, with reliable evidence, that the Commission's decision to increase the marijuana-to-MDMA ratio to 500:1 was not based on empirical evidence and that judges impose below-guideline sentences in the vast majority of MDMA cases. *See* How the Supreme Court's Decisions Rendering the Guidelines Advisory Would Result in a Lower Sentence Today.

PART ONE
Generally Applicable Guideline Amendments

Guideline Affected	Eff. Date/ Amendment	Description	Retro-active?
Relevant Conduct			
1B1.3	11/1/1992 Amend. 439	Amended § 1B1.3 to add the narrowing provision for a "jointly undertaken criminal activity," limiting relevant conduct to "all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity," and adding commentary to make clear that these acts of others must also be within the scope of the defendant's agreement. *See* USSG § 1B1.3(a)(1)(B) & cmt. (nn.1, 2) (2014).	No
1B1.3	11/1/2015 Amend. ___	Restructured the guideline and commentary to more clearly state the three-step analysis for defendant-specific findings. The guideline itself now provides that in order to include the acts and omissions of others under 1B1.3(a)(1)(B) as "relevant conduct," court must find that those acts and omissions were (1) "within the scope of the jointly undertaken activity," *i.e.,* within the scope of *the defendant's agreement*; (2) "in furtherance of that criminal activity," *i.e.*, of the activity *to which the defendant agreed*; (3) "reasonably foreseeable in connection to that criminal activity," *i.e.*, reasonably foreseeable *to the defendant* in light of his agreement. *See* USSC Reader Friendly Amendments (Amend. 3) (Apr. 9, 2015) (effective Nov. 1, 2015).	No
Proffered Information			
1B1.8	11/1/1991 Amend. 390	Amended the commentary to § 1B1.8 to make clear that incriminating information furnished by a defendant in the context of a plea agreement in which the defendant has been promised immunity in exchange for providing information about others' unlawful activity cannot be used in determining the guideline range. *See* USSG § 1B1.8 cmt. (nn.5, 6) (2014).	No

Guideline Affected	Eff. Date/ Amendment	Description	Retro-active?
Retroactive Application Policy / Substantial Assistance			
1B1.10	11/1/2014 Amend. 780	Resolving a circuit conflict, amended § 1B1.10 to provide that, in cases involving a mandatory minimum where the court had the authority to impose a sentence below the mandatory minimum pursuant to a substantial assistance motion, the "amended guideline range" is determined without regard to the trumping mechanism of § 5G1.1 and § 5G1.2. *See* USSG § 1B1.10(c) (2014).	n/a

Guideline Affected	Eff. Date/ Amendment	Description	Retro-active?
Vulnerable Victim			
3A1.1	11/1/1992 Amend. 454	Amended commentary to § 3A1.1 to clarify that "a bank teller is not an unusually vulnerable victim solely by virtue of the teller's position in a bank." *See* USSG § 3A1.1 cmt. (n.2) (2014).	Yes 11/1/1993
Aggravating Role			
3B1.1	11/1/1993 Amend. 500	Limited application of aggravating role adjustment at § 3B1.1 to a defendant who actually managed another participant in the scheme (but suggests upward variance may apply if defendant did not manage, supervise, etc., but had management responsibility). *See* USSG § 3B1.1 cmt. (n.2) (2014).	No
3B1.1	11/1/1991 Amend. 414	Added commentary to make clear that a person not criminally responsible for the offense (e.g., informant or undercover agent) is not a "participant" for purposes of § 3B1.1. *See* USSG § 3B1.1 cmt. (n.1) (2014).	No
Mitigating Role			
3B1.2	11/1/2011 Amend. 755	Eliminated two sentences from the commentary to § 3B1.2, as follows: (1) ~~"As with any other factual issue, the court, in weighing the totality of the circumstances, is not required to find, based solely on the defendant's bare assertion, that such a role adjustment is warranted."~~ USSG § 3B1.2 cmt. (n.3(C)) (2010); and (2) "~~It is intended that the downward adjustment for minimal participant will be used infrequently."~~ USSG § 3B1.2 cmt. (n.4) (2010); The Commission explained that the eliminated commentary had "the unintended result of discouraging	No

Guideline Affected	Eff. Date/ Amendment	Description	Retro-active?
		courts from applying the adjustment." *See* USSG § 3B1.2 cmt. (nn.3, 4) (2014).	
3B1.2	11/1/2001 Amend. 635	Modified commentary to § 3B1.2 (now Application Note 3(A)) so that a defendant who is accountable under the relevant conduct rules in § 1B1.3 "only for the conduct in which the defendant personally was involved and who performs a limited function in concerted criminal activity is not precluded from consideration for an adjustment under this guideline." Example: "[A] defendant who is convicted of a drug trafficking offense, whose role in that offense was limited to transporting or storing drugs and who is accountable under § 1B1.3 only for the quantity of drugs the defendant personally transported or stored is not precluded from consideration for an adjustment under this guideline." Example (added in 2011, amend. 749): "[A] defendant in a health care fraud scheme, whose role in the scheme was limited to serving as a nominee owner and who received little personal gain relative to the loss amount, is not precluded from consideration for an adjustment under this guideline." *See* USSG § 3B1.2 cmt. (n.3(A)) (2014).	No
3B1.2	11/1/2015 Amend. ___	Resolved a circuit split to define "average participant" as the "average participant in the criminal activity." Rejected the less favorable approach of First and Second Circuits that compared the defendant to co-participants and to the typical participant in the universe of similar crimes. Added in commentary a non-exhaustive list of factors to consider: • Degree to which the defendant understood the scope and structure of the criminal activity • Degree to which the defendant participated in planning or organizing the criminal activity	No.

Guideline Affected	Eff. Date/ Amendment	Description	Retro-active?
		• Degree to which the defendant exercised or influenced the exercise of decision-making authority • Nature and extent of the defendant's participation in the commission of the criminal activity • Degree to which the defendant stood to benefit from the criminal activity. Included as an example that "a defendant who does not have a proprietary interest in the criminal activity and who is simply being paid to perform certain tasks should be considered for an adjustment under this guideline." Eliminated the "essential cog" analysis some courts used: "The fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative. Such a defendant may receive an adjustment under this guideline if he or she is substantially less culpable than the average participant in the criminal activity." Amended (again) Application Note 3(A) to positively state that a defendant who does no more than transport or store drugs and is held accountable under § 1B1.3 only for the drug quantity that the defendant personally transported or stored ~~is not precluded from consideration for~~ may receive an adjustment. *See* USSC Reader-Friendly Amendments (Amend. 5) (Apr. 9, 2015).	
Obstruction of Justice			
3C1.1	11/1/1998 Amend. 582	Amended the commentary to § 3C1.1 to resolve a circuit conflict and establish that lying to a probation officer about drug use while released on bail does not warrant an obstruction of justice enhancement (although it may be relevant in determining acceptance of responsibility). *See* USSG § 3C1.1 cmt. (n.5(E)) (2014).	No

Guideline Affected	Eff. Date/ Amendment	Description	Retro-active?
Acceptance of Responsibility			
3E1.1	11/1/2013 Amend. 775	Added language to Application Note 6 to § 3E1.1 making clear that "[t]he government should not withhold [the] motion [for the third level of reduction] based on interests not identified in § 3E1.1, such as whether the defendant agrees to waive his or her right to appeal," and that "[i]f the government files such a motion, and the court also determines that the defendant has "timely notif[ied] authorities of his intention to enter a plea of guilty," the sentencing court "should grant the motion." *See* USSG § 3E1.1 cmt. (n.6) (2014).	No
3E1.1	11/1/1992 Amend. 459	Allowed for a third level to be deducted for acceptance of responsibility if the government files a motion based on defendant's timely cooperation or guilty plea, and if offense level 16 or greater. *See* USSG § 3E1.1(b) (2014).	No
3E1.1	11/1/1989 Amend. 258	Revised the application notes to §3E1.1 to explain that, in extraordinary cases, the adjustment may apply even if the defendant also received an adjustment for obstruction of justice under §3C1.1. Previously, § 3E1.1 had provided that an acceptance of responsibility adjustment "is not warranted" where the defendant obstructed the administration of justice. *See* USSG § 3E1.1 cmt. (n.4) (2014).	No
Criminal History			
4A1.1 Recency points	11/1/2010 Amend. 742	Deleted the "recency" points, i.e., the 1 or 2 criminal history points that were added if the defendant committed the instant offense less than 2 years after release from imprisonment on a sentence counted under § 4A1.1(a) or (b) or while in imprisonment or escape status on such a sentence. *See* USSG § 4A1.1 (2014).	No

Guideline Affected	Eff. Date/ Amendment	Description	Retro-active?
4A1.2 Related cases	11/1/2007 Amend. 709	Eliminated the term "related cases" and using instead the terms "separate" and "single" sentence. Under this amendment, sentences for prior convictions are counted as a "single sentence" if (1) the sentences were imposed for offenses that were not separated by an intervening arrest and (2) the sentences either "resulted from offenses contained in the same charging instrument" or "were imposed on the same day." *See* USSG § 4A1.2(a)(2) (2014). ******Note that effective November 1, 2015, the Commission added commentary at USSG § 4A1.2 cmt. (n.3(A)) to provide that "[f]or purposes of determining predicate offenses, a prior sentence included in a single sentence should be treated as if it received criminal history points." As a result, "an individual prior sentence may serve as a predicate under the career offender guideline [] or other guidelines with predicate offenses, if it independently would have received criminal history points." The practical result is that in some cases (likely not many), a sentence that would not count for career offender purposes under this amendment because it is included in a single sentence and was not the sentence assigned criminal history points ***will*** nevertheless count for purposes of the career offender guideline after November 1, 2015. *See* USSG App. C, amend. ___ (2015). Amended § 4A1.2 so that fish and game violations and local ordinance violations (except those local ordinance violations that are violations of state law) are no longer counted in criminal history. *See* USSG § 4A1.2 (2014).	No
4A1.2 Prior probation-ary sentences	11/1/2007 Amend. 709	Amended § 4A1.2 so that the enumerated minor offenses are counted only if the sentence was a term of probation of "more than one year" instead of "at least one year." *See* USSG § 4A1.2(c)(1) (2014).	No
4A1.2 Offenses excluded	11/1/1990 Amend. 352	Added "careless or reckless driving" and "insufficient funds check" to the list of sentences that may, in certain circumstances, be excluded for purposes of computing criminal history.	No

Guideline Affected	Eff. Date/ Amendment	Description	Retro-active?
		See USSG § 4A1.2(c)(1) (2014).	
4B1.1 Career Offender	11/1/1989 Amend. 266	Authorized reduction for acceptance of responsibility under § 3E1.1 from the offense level under the career offender guideline. *See* USSG § 4B1.1(b) (2014).	No
4B1.2 Career Offender	11/1/1989 Amend 268	Deleted reference to 21 U.S.C. § 856 from the definition of "controlled substance offense" and defined "controlled substance offense" to exclude federal and state offenses involving simple possession, use, or possession with intent to use. *See* USSG § 4B1.2(b) (2014).	No
4B1.2 Career Offender	11/1/1991 Amend. 433	Provided that unlawful possession of a firearm by a felon is not a "crime of violence." *See* USSG § 4B1.2 cmt. (n.1) (2014).	Yes 11/1/1992
4B1.2 Career offender	11/1/1997 Amend. 568	Added commentary stating that the federal offense of violating 21 U.S.C. § 856 "is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense facilitated) was a 'controlled substance offense.'" *See* USSG § 4B1.2 cmt. (n.1) (2014).	No
4B1.3 Criminal Livelihood	11/1/1989 Amend. 269	Revised to require that offense be committed as part of "a pattern of criminal conduct *engaged in as a livelihood*" (replacing "from which he derived a substantial portion of his income"). Inserted a new definition of "engaged in as a livelihood," which today provides as follows: (A) the defendant derived income from the pattern of criminal conduct that in any twelve-month period exceeded 2,000 times the then-	Yes 11/1/1990

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		existing hourly minimum wage under federal law; and (B) the totality of circumstances shows that such criminal conduct was the defendant's primary occupation in that twelve-month period (e.g., the defendant engaged in criminal conduct rather than regular, legitimate employment; or the defendant's legitimate employment was merely a front for the defendant's criminal conduct). Deleted sentence in Application Note as follows: "~~This guideline is not intended to apply to minor offenses~~." *See* USSG § 4B1.3 & cmt. (n.2) (2014).	
4B1.4 Armed Career Criminal	11/1/2004 Amend. 674	Applied a lower base offense level in § 4B1.4 where the defendant is also subject to a mandatory minimum consecutive penalty under 18 U.S.C. §§ 844(h), 924(c), or 929(a). *See* USSG § 4B1.4(b)(3) (2014).	No
Undischarged/ Anticipated Terms of Imprisonment			
5G1.3	11/1/2014 Amend. 787	Amended § 5G1.3(b) so that the court "shall" *adjust the sentence downward* for any period of imprisonment already served on an undischarged term of imprisonment and "shall" *impose concurrent sentences with the remainder of the undischarged term* when the undischarged term resulted from another offense that is relevant conduct to the instant offense of conviction under subsections (a)(1), (a)(2), or (a)(3) of § 1B1.3, eliminating the requirement that the other offense was the basis for an increase in the offense level for the instant offense under Chapter Two or Chapter Three. *See* USSG § 5G1.3(b) (2014). Added new subsection to provide that, unless a consecutive sentence is required under § 5G1.3(a), when "a state term of imprisonment is anticipated to result	No

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		from another offense that is relevant conduct to the instant offense of conviction under the provisions of subsections (a)(1), (a)(2), or (a)(3) of §1B1.3 (Relevant Conduct), the sentence for the instant offense shall be imposed to run concurrently to the anticipated term of imprisonment." This subsection will apply where the "court anticipates that, after the federal sentence is imposed, the defendant will be sentenced in state court and serve a state sentence before being transferred to federal custody for federal imprisonment." *See* USSG § 5G1.3(b) (2014).	
5G1.3	11/1/2003 Amend. 660	Expanded the universe of undischarged terms of imprisonment for which a court is instructed to reduce a defendant's sentence; specified that if the conduct giving rise to the undischarged term of imprisonment was the basis for any increase in the defendant's offense level in the current sentence, the court should reduce the sentence accordingly (some courts had held that a smaller offense level increase was not sufficient to require a reduction). *See* USSG § 5G1.3(b) (2014).	No

PART TWO
Guideline Amendments Applicable to Specific Offense Conduct

Guideline Affected	Eff. Date/ Amendment	Description	Retro-Active?
Drugs			
2D1.1 2D1.11 All drugs	11/1/2014 Amend. 782	Reduced base offense levels in Drug Quantity Table at § 2D1.1(c) and precursor table at § 2D1.11 by 2 levels, but the ceilings remain at level 38 and certain drugs retain a floor of level 12. Level 38 will still apply to offenses involving, *e.g.*, at least 90 kg of heroin, 450 kg of cocaine, 25.2 kg of crack, 45 kg of methamphetamine, 4.5 kg of methamphetamine (actual), and 90,000 kg of marijuana. *See* USSG § 2D1.1(c)(1) (2014).	Yes Eff. Nov. 1, 2015
2D1.1 All drugs Mitigating role	11/1/2010 Amend. 748 11/1/2011 Amend. 750	Added base offense level cap of 32 for a "minimal participant" under § 3B1.2(a), in response to § 7(1) of the FSA. *See* USSG § 2D1.1(a)(5) (2014).	No
2D1.1 All drugs Mitigating role	11/1/2010 Amend. 748 11/1/2011 Amend. 750	Added 2-level decrease for a "minimal participant" under § 3B1.2(a) who meets additional specified criteria, in response to § 7(2) of the FSA. *See* USSG § 2D1.1(b)(15) (2014).	No
2D1.1 All drugs Reverse sting	11/1/2004 Amend. 667	Resolved circuit split by excluding from the drug quantity, in a reverse sting operation, any amount the defendant could prove he did not intend to or could not purchase, where the rule had previously applied only to defendants who agreed to sell drugs. *See* USSG § 2D1.1 cmt. (n.5) (2014).	No

Guideline Affected	Eff. Date/ Amendment	Description	Retro-Active?
2D1.1 All drugs Safety valve	11/1/2001 Amend. 624	Expanded eligibility for 2-level safety-valve reduction to defendants with offense levels less than 26. *See* USSG § 2D1.1(b)(16) (2014).	No
2D1.1 All drugs Safety valve	11/1/1995 Amend. 515	Added 2-level decrease for defendants involved in drug trafficking who meet the criteria in § 5C1.2(1)-(5) & whose offense level is 26 or greater. *See* USSG § 2D1.1(b)(16) (2014).	No
2D1.1 All drugs Drug Quantity Table	11/1/1994 Amend. 505	Reduced the upper limit of the Drug Quantity Table from level 42 to level 38. *See* USSG § 2D1.1(c)(1) (2014).	Yes 11/1/1994
2D1.1 All drugs Weight of mixture or substance	11/1/1993 Amend. 484	Clarified that the term "mixture or substance" does not include the materials that must be separated from the controlled substance before the controlled substance can be used, such as fiberglass in a cocaine/fiberglass bonded suitcase. *See* USSG § 2D1.1 cmt. (n.1) (2014).	Yes 11/1/1993
2D1.1 All drugs Multiple drugs & marijuana equiva-lency	11/1/1991 Amend. 396	Provided that when multiple drugs are involved, convert each to its marijuana equivalency, add the converted marijuana quantities together, and obtain combined offense level. Expressly limited the combined equivalent weight of Schedule I or II depressants and Schedule III, IV, and V substances to the marijuana amount consistent with the highest offense level for such substances provided in the Drug Quantity Table. *See* USSG § 2D1.1 cmt. (n.8(B) (2014).	No

Guideline Affected	Eff. Date/ Amendment	Description	Retro-Active?
2D1.1 Crack	11/1/2010 Amend. 748 11/1/2011 Amend. 750	Reduced base offense levels in Drug Quantity Table for most crack offenses in response to § 8 of the FSA, incorporating the 18:1 ratio applying to the statutory mandatory minimums. *See* USSG § 2D1.1(c) (2014). Amended drug equivalency conversion ratio in cases involving crack and other drugs so that 1 gram of crack now equates to 3,571 grams of marijuana. *See* USSG § 2D1.1 cmt. (n.8(D)) (2014).	Yes 11/1/2011
2D1.1 Crack	11/1/1993 Amend. 487	Clarified that, for guideline purposes, the term "cocaine base" in § 2D1.1 means only crack cocaine, not other forms of cocaine base such as coca paste. *See* USSG § 2D1.1(c), note D (2014).	No
2D1.1 Marijuana	11/1/1995 Amend. 516	Eliminated difference between marijuana equivalency for offenses involving 50 or more marijuana plants (where each plant equaled 1 kg marijuana) and those involving fewer than 50 plants (each plant equaled 100 g of marijuana) and applying to all offenses the equivalency of each marijuana plant equaling 100 g of marijuana. *See* USSG § 2D1.1(c), note E (2014).	Yes 11/1/1995
2D1.1 oxycodone	11/1/2003 Amend. 657	Changed the methodology for determining quantity under the Drug Equivalency Table for oxycodone offenses from using the weight of the entire mixture or substance containing oxycodone (i.e., the total weight of the pills) to using the actual weight of oxycodone in the pills, regardless of pill type. This had the effect of reducing penalties for offenses involving Percocet. *See* USSG § 2D1.1(c), note B (2014).	Yes 11/5/2003
2D1.1	11/1/1993 Amend. 488	Established a uniform weight of 0.4 mg per dose of LSD for purposes of the Drug Quantity Table to be used	Yes

Guideline Affected	Eff. Date/ Amendment	Description	Retro-Active?
LSD		instead of the weight of the LSD plus its carrier medium. *See* USSG § 2D1.1(c), note G (2014). As a result, the weight of LSD and its carrier medium for purposes of the statutory penalty range may be greater than the weight of the LSD and its carrier medium for purposes of the guideline range. *See Neal v. United States*, 516 U.S. 284 (1996); *Chapman v. United States*, 500 U.S. 453 (1991).	11/1/1993
2D1.1 PCE	11/1/1993 Amend. 499	Reduced the marijuana equivalency from 5.79 kg marijuana to 1 kg marijuana for 1 gram of PCE. *See* USSG § 2D1.1 cmt. (n.8(D)) (2014).	Yes 11/1/1993
2D1.1 Pharma-ceuticals	11/1/1992 Amend. 446	Directed that pharmaceuticals in schedule III/IV/V be categorized as such for guideline purposes even if they contain a small amount of a schedule I or II drug. *See* USSG § 2D1.1 cmt. (n.3) (2014).	No
2D1.1 Schedule III	11/1/1989 Amend. 130	Increased the amount of certain Schedule III substances, such as hydrocodone cough syrup and paregoric, for purposes of the marijuana equivalency. *See* USSG § 2D1.1 cmt. (n.8(D)) (2014).	Yes
2D1.1 Fentanyl & analogues	11/1/1989 Amend. 126	Amended equivalency table to conform the equivalency for fentanyl and fentanyl analogues to that set forth in the Drug Quantity Table and thus reduced the heroin equivalency (now marijuana equivalency) for both substances. *See* USSG § 2D1.1 cmt. (n.8(D)) (2014).	Yes
2D1.2 Protected location	11/1/2000 Amend. 591	Addressed circuit conflict to make clear that the enhanced penalties in § 2D1.2 apply only in a case in which the defendant was convicted of an offense referenced to that guideline.	Yes 11/1/2000

Guideline Affected	Eff. Date/ Amendment	Description	Retro-Active?
		See USSG § 2D1.2 cmt. (n.1) (2014).	
2D1.2 Protected location	11/1/1990 Amend. 319	Amended § 2D1.2(a)(2) in a manner that, in some cases, lowers the offense level when only part of the relevant conduct involves a protected location or an underage or pregnant individual. *See* USSG § 2D1.2(a)(2) & cmt. (n.1) (2014)	No
2D1.6 Use of a commun-ication facility	11/1/1990 Amend. 320	Changed the base offense level from 12 to the base offense level applicable to the underlying offense. This may increase or decrease the sentence for offenses depending on the underlying offense. *See* USSG § 2D1.6(a) (2014).	No
2D1.8 Drug involved premises	11/1/1992 Amend. 448	Restructured § 2D1.8 so that the base offense level is the level from §2D1.1 *unless* the defendant had no participation in the underlying offense, in which case the base offense level is 4 levels lower than the level from § 2D1.1, and in no case greater than 16. *See* USSG § 2D1.8(a)(2) (2014).	No
2D1.11 Chemical precursors & safety valve	11/1/2012 Amend. 763	Added 2-level "safety valve" reduction that parallels the 2-level "safety valve" provision in § 2D1.1. *See* USSG § 2D1.11(b)(6) (2014).	No
2D1.11 Mitigating role	11/1/2004 Amend. 668	Added a mitigating role cap. *See* USSG § 2D1.11(a) (2014).	No
2D1.11	11/1/2004 Amend. 667	Added 21 U.S.C. § 960(d)(3), (d)(4) to the list of statutes to which the 3-level reduction in § 2D1.11(b)(2) applies.	No

Guideline Affected	Eff. Date/ Amendment	Description	Retro-Active?
		See USSG § 2D1.11(b)(2) (2014).	
2D1.11 Chemical Table	11/1/2000 Amend. 606	Corrected typographical error in § 2D1.11 chemical quantity table to indicate that the ranges should be in kilograms not grams for Isosafrole and Safrole. *See* USSG § 2D1.11(d) (2014).	Yes 11/1/2000
2D1.11 d-lysergic acid	11/1/1995 Amend. 519	Removed d-lysergic acid from § 2D1.11 because the Domestic Chemical Diversion Act of 1993 removed it from the list of controlled substances.	No
2D1.12 Equipment	11/1/1995 Amend. 520	Added lower alternative base offense level of 9 for defendants who had reasonable cause to believe, but not actual knowledge or belief, that equipment was to be used to manufacture a controlled substance. *See* USSG § 2D1.12(a)(2) (2014).	No
Robbery			
2B3.1 Inflationary Adjustments	11/1/15	Adjusted the loss table to account for inflation. It will now take larger amounts of loss to trigger each enhancement. *See* USSC, Reader Friendly Amendments (Amend. 4) (Apr. 9. 2015).	No
Firearms			
2K2.1 Felon in possession	11/1/2014 Amend. 784	Provided that the cross-reference at § 2K2.1(c) applies only if the firearm or ammunition is "cited in the offense of conviction." *See* USSG § 2K2.1(c)(1) (2014). Provided that the adjustment for possession of any firearm or ammunition "in connection with another felony offense" applies only if the other offense was part of the same course of conduct or common scheme	No

Guideline Affected	Eff. Date/ Amendment	Description	Retro-Active?
		or plan. *See* USSG § 2K2.1(b)(6) (2014).	
2K1.3 2K2.1	11/1/2001 Amend. 630	Clarified that, in § 2K1.3(a)(1) & (a)(2) and § 2K2.1(a)(1), (a)(2), (a)(3), & (a)(4)(A), an offense committed after commission of any part of the instant offense cannot be counted as a prior felony conviction. *See* USSG §§ 2K1.3(a)(1)-(2), 2K2.1(a)(1)-(4) (2014).	No
2K1.3 2K2.1	11/1/2001 Amend. 629	Revised definition of "prohibited person" in § 2K1.3(a)(3) and § 2K2.1(a)(4)(B) & (a)(6) and clarify that the pertinent alternative base offense level applies only when the offender attains "prohibited person" status prior to committing the instant offense. *See* USSG §§ 2K1.3(a)(3) & cmt. (n.3), 2K2.1(a)(4)(B), (a)(6) & cmt. (n.3) (2014).	No
2K1.3 2K2.1 2K2.4 § 924(c)	11/1/2000 Amend. 599	Clarified circumstances under which defendants sentenced for violating § 924(c) in conjunction with convictions for other offenses may receive weapon enhancements contained in guidelines for other offenses. No weapon enhancements should be applied when determining sentence for crime of violence or drug trafficking offense underlying § 924(c) conviction. Also clarifies that defendants sentenced under § 2K2.4 should not receive enhancements under § 2K1.3(b)(3) or § 2K2.1(b)(5) with respect to any weapon, ammunition, or explosive connected to offense underlying conviction sentenced under § 2K2.4. *See* USSG § 2K2.4 cmt. (n.4) (2014).	Yes 11/1/2000
Fraud			
2B1.1, 2F1.1 Theft and	11/1/2001 Amend. 617	Consolidated §§ 2F1.1 & 2B1.1 into one guideline at § 2B1.1. Most amendments worked to increase penalties, including increased levels on the loss table; however, (1) the enhancement for "more than minimal planning"	No

Guideline Affected	Eff. Date/ Amendment	Description	Retro-Active?
fraud		was eliminated, (2) the enhancement for personally deriving more than $1,000,000 from a financial institution decreased from 4 levels to 2 levels, *see* USSG § 2B1.1(b)(16) (2014); and (3) fraud offenses involving fewer than 10 victims are no longer subject to a 2-level increase, *see id.* § 2B1.1(b)(2) (2014).	
2B5.3 Copyright infringe-ment	5/1/2000 Amend. 590	Amended § 2B5.3 to provide a 2-level reduction, subject to a floor of 8, in intellectual property cases if the offense was not committed for commercial advantage or private financial gain. *See* USSG § 2B5.3(b)(4) (2014).	No
2B1.1 Theft and fraud	11/1/2015	Eliminated the enhancement for 50 or more victims and 250 or more victims. *See* USSC, Reader Friendly Amendments (Amend. 7) (Apr. 9. 2015).	No
2B1.1 Theft and fraud Intended loss	11/1/2015	Amended the definition of intended loss to limit intended loss to the pecuniary harm "that the defendant purposely sought to inflict." *See* USSC, Reader Friendly Amendments (Amend. 7) (Apr. 9. 2015).	No
2B1.1 Theft and fraud Sophistica ted means	11/1/2015	Narrowed the scope of the enhancement for "sophisticated means" so that it applies if "the offense otherwise involves sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means." *See* USSC, Reader Friendly Amendments (Amend. 7) (Apr. 9. 2015).	No
2B1.1 Theft and fraud Inflationar y	11/1/2015	Adjusted the loss table to account for inflation. It will now take larger amounts of loss to trigger each enhancement. *See* USSC, Reader Friendly Amendments (Amend. 4) (Apr. 9. 2015).	No

Guideline Affected	Eff. Date/ Amendment	Description	Retro-Active?
Adjustments			
Immigration			
2L1.1 Alien smuggling	5/1/1997 Amend. 543	Added 3-level decrease under § 2L1.1 if the offense involved smuggling only the defendant's spouse or child, in response to § 203(e)(2)(F) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. *See* USSG § 2L1.1(b)(1) (2014). **Note**, that at the same time, the Commission increased the base offense level by 3 levels, offsetting future reductions. Due to a typographical error, however, a defendant may not have received the reduction after the amendment was promulgated. That typographical error was corrected effective Nov. 1, 2007, and the correction was made retroactive effective the same date. *See* USSG App. C, amend. 702.	No [see note]
2L1.1 Alien smuggling	11/1/1992 Amend. 450	Eliminated the 2-level enhancement if the defendant previously had been convicted of smuggling, transporting, or harboring an unlawful alien. **Note**, however, that in 1997, a 2-level increase was added "[i]f the defendant committed any part of the instant offense after sustaining [] a conviction for a felony immigration and naturalization offense," and "felony immigration and naturalization offense" was defined as "any offense covered by Chapter Two, Part L." *See* USSG App. C, amends. 543, 561. *See* USSG § 2L1.1(b)(3) (2014).	No
2L1.1 Alien smuggling	11/1/1990 Amend. 335	Eliminated the requirement that the defendant "did not know that the alien was excludable as a subversive" for purposes of the 3-level reduction if the defendant committed the offense other than for profit. *See* USSG § 2L1.1(b)(1) (2014).	No

Guideline Affected	Eff. Date/ Amendment	Description	Retro-Active?
2L1.2 Illegal reentry	11/1/2012 Amend. 764	Resolved a circuit conflict by amending the definition of "sentence imposed" in Application Note 1 to include terms of imprisonment given upon revocation of probation, parole, or supervised release but only if the revocation occurred before the defendant was deported or unlawfully remained in the United States. *See* USSG § 2L1.2 cmt. (n.1) (2014).	No
2L1.2 Illegal reentry	11/1/2011 Amend. 754	Limited the applicability of the enhancements in § 2L1.2(b)(1)(A) & (B) to level 12 and 8, respectively, where the predicate offense does not receive criminal history points. *See* USSG § 2L1.2(b)(1)(A) & (B) (2014)	No
2L1.2 Illegal reentry	11/1/2003 Amend. 658	Excluded from application of the 16-level enhancement at § 2L1.2(b)(1) prior offenses committed before the defendant was 18 years old, unless the defendant was tried as an adult. *See* USSG § 2L1.2 cmt. (n.1(a)(iv)) (2014).	No
2L1.2 Illegal reentry	11/1/2001 Amend. 632	Reduced the enhancement for some aggravated felonies in § 2L1.2 from 16 to 12 or 8 levels. *See* USSG § 2L1.2(b)(1) (2014).	No
Money Laundering			
2S1.1 2S1.2	11/1/2001 Amend. 634	Consolidated § 2S1.1 and § 2S1.2 into one guideline and decreased penalties for some defendants who laundered funds derived from "less serious underlying conduct." *See* USSG § 2S1.1 (2014).	No
Tax Offenses			
2T4.1 Tax table	11/1/15	Adjusted the loss table to account for inflation. It will now take larger amounts of loss to trigger each enhancement.	No

Guideline Affected	Eff. Date/ Amendment	Description	Retro-Active?
Inflationary Adjustments		*See* USSC, Reader Friendly Amendments (Amend. 4) (Apr. 9. 2015).	