

17 S. De VILLIERS ST.
SUITE 100
PENSACOLA, FL 32501-5511
(850)435-8430
Fax (850)432-0577

111 N. ADAMS ST.
SUITE 100
TALLAHASSEE, FL 32301-7717
(850)521-3551
Fax (850)521-3579

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PROBATION OFFICE**

W. STEPHEN TOWNLEY
CHIEF PROBATION OFFICER
17 S. De VILLIERS ST., SUITE 200
PENSACOLA, FL 32501-5511
(850)470-8202

401 S.E. 1ST AVENUE
SUITE 228
GAINESVILLE, FL 32601-6892
(352)380-2425
Fax (352)380-2433

210 FEDERAL BUILDING
30 W. GOVERNMENT ST.
PANAMA CITY, FL 32401-2739
(850)769-8069
Fax (850)769-0267

PLEASE REPLY TO: TALLAHASSEE

February 13, 2001

United States Sentencing Commission
Attention: Public Information
One Columbus Circle, N.E., Suite 2-500
Washington, D.C. 20002-8002

**Re: Proposed Amendment 13
Aggravating and Mitigating Factors in Fraud and Theft Cases**

Dear Sir/Madam:

I have reviewed proposed Amendment 13 that deals with aggravating and mitigating factors in fraud and theft cases and would like to present my concerns to you. I applaud the Commission's efforts to create comprehensive specific offense characteristics for fraud and theft cases, including the non-exhaustive list of factors to be considered when applying one of the specific offense characteristics dealing with aggravating and mitigating factors.

I have written over 300 presentence investigation reports over the past eight years and I am very familiar with the Federal sentencing guidelines. I currently write a few presentence investigation reports but my primary role is to review presentence investigation reports written by probation officers. My experience has shown me that the less complicated a guideline process is, the greater likelihood that it will be applied consistently by all parties dealing with the sentencing process. When I review options 1 and 2 of proposed Amendment 13, I see numerous problems with its application. I analogize applying the provisions of Amendment 13 to aggravating and mitigating roles as set forth in U.S.S.G. §§3B1.1 and 3B1.2. You do not have to look far at the problems these adjustments have presented the district courts and appellate courts. It was not until recently that the 11th Circuit gave significant guidance on how to apply mitigating role. See U.S. v. DeVaron, 175 F.3d 930 (11th Cir. 1999). As it currently stands, the standards for applying mitigating and aggravating role vary substantially between circuits and districts.

If you consider the average criminal defense attorney only handles five to 10 federal cases per year, I think it would be very difficult for them to apply the factors listed in proposed Application Note 17. Even experienced attorneys, probation officers and judges would find applying the provisions of Amendment 13 extremely difficult. The guidelines scheme is difficult enough in its current form. I would respectfully request that we not complicate it any further. Specific offense characteristics should be based on objective criteria whenever possible in the effort to avoid unwarranted disparity.

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If the Commission believes there is a need to increase or decrease a sentence based on the factors incorporated in Amendment 13, I would recommend that you include these factors as an encouraged departure in the Application Notes to the current §2F1.1 and §2B1.1, or the future §2F1.1.

Thank you for allowing me to submit comments for your consideration. I hope you have found these comments useful in your efforts to determine the appropriateness of Amendment 13. If you should require any additional information, please do not hesitate to contact me at (850) 521-3556.

Sincerely,



E. Jerry Moore, Jr.
Supervising U.S. Probation Officer

cc: W. Stephen Townley
Chief U.S. Probation Officer

ejm/