

July 15, 2024

United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002
Attention: Public Affairs – Priorities Comment

Dear Chairman Reeves and Members of the Commission:

This letter responds to the U.S. Sentencing Commission's request for public comments in conjunction with its recent Notice of Proposed Priorities. The undersigned applaud the Commission's efforts to consider how the U.S. Sentencing Guidelines could and should be redesigned to better serve the statutory goals set forth by Congress and our nation's commitments to liberty and justice. To that end, this letter focuses specifically on the need to revise the Guidelines applicable in fraud cases, particularly with respect to the undue emphasis placed on loss amount.

The Widely-Recognized Issue with Guideline 2B1.1

As the Commission knows, modern times have seen a dramatic increase in the severity of authorized and mandated sentencing terms for nonviolent offenders. Not long ago, any sentence of more than a few years of imprisonment for a nonviolent white-collar offender was rare. But sentencing guidelines that were perhaps originally designed to ensure that the most culpable and harmful of white-collar offenders face significant sentences now operate to increase excessively the prison terms recommended for less culpable fraud offenders. The U.S. Sentencing Guidelines can often call for decades in prison even for first-time offenders whose fraud offense may have been driven by dire personal or professional circumstances and who have shown great remorse for their wrongdoing and are eager to make amends for harms caused.

Extreme increases in recommended prison terms for white-collar offenders have largely been driven by the U.S. Sentencing Guidelines placing extraordinary emphasis on loss (and intended loss) calculations and giving too little consideration to those other factors that are most important to a fair and just sentence and that Congress emphasized in 18 U.S.C. §3553(a). As courts and commentators have pointed out, the Guidelines' heavy emphasis on loss calculations can problematically drive a sentencing court away from focusing on Congress's statutory instruction that a sentence be "sufficient, but not greater than necessary" to comply with the purposes of sentencing set out in 18 U.S.C. §3553(a)(2). In Guideline calculations, which still serve as the starting point and initial benchmark for federal sentencing decisions, the loss table too often dwarfs all other factors and can distort the assessment and impact of all other sentencing considerations.

There is no reason to believe Congress intended for loss determinations to overwhelm other considerations set forth in applicable sentencing statutes. Indeed, there is every reason to believe that the Guidelines' undue emphasis on loss can undermine Congress's interest in fair and balanced sentencing decision-making. The considerable tensions between the Guidelines' emphasis on loss