

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission

ACTION: Request for public comment.

SUMMARY: The United States Sentencing Commission intends to examine the criteria it considers in selecting guideline amendments that may be applied retroactively under the *Guidelines Manual*. As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission is publishing these issues for comment to inform the Commission's consideration of the issues related to this topic. The issues for comment are set forth in the Supplementary Information portion of this notice.

DATES: Public comment regarding the issues for comment set forth in this notice should be received by the Commission not later than **April 18, 2025**. Any public comment received after the close of the comment period may not be considered.

ADDRESSES: There are two methods for submitting public comment.

Electronic Submission of Comments. Comments may be submitted electronically via the Commission's Public Comment Submission Portal at <https://comment.ussc.gov>. Follow the online instructions for submitting comments.

Submission of Comments by Mail. Comments may be submitted by mail to the following address: United States Sentencing Commission, One Columbus Circle, N.E., Suite 2-500, Washington, D.C. 20002-8002, Attention: Public Affairs – Retroactivity Criteria.

FOR FURTHER INFORMATION CONTACT: Jennifer Dukes, Senior Public Affairs Specialist, (202) 502-4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The Background Commentary to §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) provides a non-exhaustive list of criteria the Commission typically considers in selecting the amendments to be

included in §1B1.10(d) for retroactive application: “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)(1).” USSG §1B1.10, comment. (backg’d). This non-exhaustive list of criteria has remained substantively unchanged since the Commission originally promulgated the policy statement at §1B1.10 in 1989.

Issues for Comment:

1. The Commission seeks comment on whether it should provide further guidance on how the existing criteria for determining whether an amendment should apply retroactively are applied. If so, what should that guidance be? Should it revise or expand the criteria? Are there additional criteria that the Commission should consider beyond those listed in the existing Background Commentary to §1B1.10? Are there identifiable sources that the Commission should consult that highlight retroactivity criteria relied upon by other legislative or rulemaking bodies?

If the Commission continues to list criteria relevant to determining whether an amendment should apply retroactively, should it adopt any bright-line rules? Is there a different approach that the Commission should consider for these purposes?

2. The Commission seeks comment on whether any listed criteria are more appropriately addressed in the Commission's Rules of Practice and Procedure rather than the Background Commentary to §1B1.10.
3. Rule 4.1A (Retroactive Application of Amendments) of the Commission's Rules of Practice and Procedure provides "[g]enerally, promulgated amendments will be given prospective application only." The Commission seeks comment on whether it should retain this provision. If so, how should the Commission ensure that any listed criteria reflect this provision?

AUTHORITY: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure 2.2, 4.3, 4.4.

Carlton W. Reeves,

Chair.