Prison and Sentencing Impact Assessments for Proposed 2015 Amendments for Inflationary Adjustments to Monetary Tables in the Federal Sentencing Guidelines

On January 9, 2015 the Commission published for comment two options for adjusting the monetary tables in the guidelines for inflation. The analysis that follows estimates the prison and sentencing impact of the proposed amendments if adopted by the Commission. The estimates are based on offenders sentenced in fiscal year 2012 with a guideline computation using one of the monetary tables in §§2B1.1 (Theft, Property Destruction, and Fraud) 2B2.1 (Burglary), 2B3.1 (Robbery), 2R1.1 (Bid-Rigging, Price-Fixing, or Market-Allocation Agreements Among Competitors), and 2T4.1 (Tax Table).[1] Both of the inflationary adjustments were analyzed. They are as follows:

Option 1 adjusts the amounts in the monetary tables using a specific multiplier derived from the Consumer Price Index, and then rounds the amounts using the rounding methodology applied when adjusting civil monetary penalties for inflation under section 5(a) of the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note). Specifically, this methodology rounds—

amounts greater than $200,000 to the nearest multiple of $25,000;
amounts greater than $100,000 to the nearest multiple of $10,000;
amounts greater than $10,000 to the nearest multiple of $5,000;
amounts greater than $1,000 to the nearest multiple of $1,000;
amounts greater than $100 to the nearest multiple of $100; and
amounts less than or equal to $100 to the nearest multiple of $10.

Option 2 adjusts the amounts in the monetary tables using a specific multiplier derived from the Consumer Price Index, but then rounds the amounts using a different set of rounding rules extrapolated from the methodology used in Option 1. This "extrapolated" methodology provides rules that address a wider range of values than Option 1, such as by providing rounder numbers for amounts significantly greater than $200,000. Specifically, this methodology rounds—

amounts greater than $100,000,000 to the nearest multiple of $50,000,000;
amounts greater than $10,000,000 to the nearest multiple of $5,000,000;
amounts greater than $1,000,000 to the nearest multiple of $500,000;
amounts greater than $100,000 to the nearest multiple of $50,000;
amounts greater than $10,000 to the nearest multiple of $5,000;
amounts greater than $1,000 to the nearest multiple of $500; and
amounts of $1,000 or less to the nearest multiple of $50.

For the loss table in §2B1.1(b)(1) and the tax table in §2T4.1, the options would adjust for inflation since 2001, the year both tables were last amended. According to the Consumer Price Index, $1.00 in 2001 has the same buying power as $1.34 in 2014. For the loss tables in §§2B2.1 (Burglary) and 2B3.1 (Robbery), the options would adjust for inflation since 1989, the year these tables were last amended. The adjustments would take into account that $1.00 in 1989 has the same buying power as $1.91 in 2014, according to the Consumer Price Index. The options for the antitrust table in §2R1.1(b)(2) would

[1] Cases can involve multiple guideline computations. The primary sentencing guideline for each case is the guideline computation resulting in the highest adjusted offense level. Cases were selected for this analysis based on the presence of a guideline computation under one of the listed guidelines, regardless of whether it was the primary sentencing guideline. As a result, the total number of cases in the analysis for a particular guideline may exceed the number of cases reported elsewhere by the Commission for that specific guideline. *See, e.g.*, 2013 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS S—39-40 (2014).

adjust for inflation since 2005, the year the table was last amended. According to the Consumer Price Index, $1.00 in 2005 has the same buying power as $1.22 in 2014.

For this analysis, the proposed monetary table adjustments was the only change from the original guideline computation and all original enhancements and mitigators continue to apply as at the original sentencing. A new guideline range then was calculated for each offender. In each case, the offender was sentenced to the same position, relative to the guideline minimum or maximum, as at the original sentencing – that is, if an offender received a sentence in the middle of the guideline range when sentenced, the program resentenced that offender to the middle of the new guideline range. Offenders with a sentence above or below the original guideline range were sentenced the same distance above or below as at the original sentencing. The estimated sentencing impact for each of the proposed options for each monetary table is presented below.

Change in Sentences Imposed. The table below shows the estimated change in sentence imposed for offenders currently sentenced using each of the monetary tables. For example, of the 8,854 §2B1.1 offenders identified for this analysis, it is estimated that 18.8 percent (n = 1,665) would have been affected by the proposal if it had been in place at the time of sentencing. The average sentence imposed on these 1,665 offenders was 35 months. It is estimated that, had the proposal been in effect at the time these offenders had been sentenced, the average sentence would have been 27 months resulting in a 22.9 percent reduction (8 months). The table also shows the current average sentence imposed and new estimated average sentence for all 8,854 offenders. The current average sentence imposed on these 8,854 offenders was 23 months, it is estimated that, had the proposal been in effect at the time these offenders had been sentenced, the average sentence would have been 21 months.

Option 1
Estimated Effect on Sentencing of Adjusting the Monetary Tables for Inflation with Amounts Then Rounded Consistent With 28 U.S.C. § 2641 Note
FY 2012 Cases
Change in Sentences Imposed

				Affected Cases			Total Cases	
	Total Cases[2]	Total Cases Affected[3]	Percent of Cases Affected	Current Average Sentence	New Average Sentence	Percent Change	Current Average Sentence	New Average Sentence
§2B1.1[4]	8,854	1,665	18.8	35	27	-22.9	23	21
Guidelines Referring to §2B1.1[5]	2,329	442	19.0	38	28	-26.3	27	26
§2B2.1 (Burglary)[6]	77	7	9.1	29	25	-13.8	29	29
§2B3.1 (Robbery)[7]	1,841	174	9.5	118	110	-6.8	135	134
§2R1.1 (Antitrust)[8]	14	3	21.4	20	15	-25.0	12	11
§2T4.1 (Tax)[9]	895	149	16.6	29	23	-26.1	23	22

[2] **Total Cases** are those with a particular sentencing factor being analyzed.
[3] **Affected Cases** are those in which the sentence is estimated to change as a result of the sentencing factor being analyzed. Not all cases will change as a result of the application of the sentencing factor being analyzed.
[4] Inflation adjustment uses an initial 1.34 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.
[5] Inflation adjustment uses an initial 1.34 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.
[6] Inflation adjustment uses an initial 1.91 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.
[7] Inflation adjustment uses an initial 1.91 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.
[8] Inflation adjustment uses an initial 1.22 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.
[9] Inflation adjustment uses an initial 1.34 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.

Change in years of incarceration served for offenders sentenced in a single fiscal year. The table below shows, for all cases combined, the estimated change in sentences served for cases affected by the inflationary adjustment. It is estimated that this proposal would reduce the federal Bureau of Prison (BOP) population by 250 person years of bed space in the first year. It is estimated, based solely on the sentencing of a single year of offenders, that this proposal ultimately would save the BOP 1,322 person years of bed space once the last offenders of this cohort have finished serving their sentences.

Change in total BOP Population in Future Years. It is estimated that the BOP would have an additional 250 additional prison beds available at the end of the first year after implementation. At the end of the fifth year after implementation of this proposal it is estimated that the BOP would have saved 967 prison beds.

Option 1

Estimated Effect on Sentences Served of Adjusting the Monetary Tables for Inflation with Amounts Then Rounded Consistent With 28 U.S.C. § 2641 Note

All Affected FY12 Cases Combined[10]

Change in years of incarceration served for offenders sentenced in a single fiscal year[11]

1st Year	2nd Year	3rd Year	4th Year	5th Year	10th Year	15th Year	Total[12]
-250	-213	-227	-173	-104	-24	-7	-1,322

Change in total BOP population in future years[13]

One Year After Effective Date	Two Years After Effective Date	Three Years After Effective Date	Four Years After Effective Date	Five Years After Effective Date
-250	-462	-689	-863	-967

The following tables present the same data for estimated sentence imposed and estimated sentences served for Option 2.

[10] This analysis combines all cases affected under Option 1 that referenced guidelines using one of the monetary tables in §§2B1.1, 2B2.1, 2B3.1, 2R1.1, or 2T4.1. Each analysis involves a unique offender population exclusive of the others. Because of this the prison impact estimates for each group can be combined to provide an overall estimate.

[11] This table represents the number of prison beds saved each year by a cohort of offenders sentenced in a single year.

[12] This is the total number of prison beds that will be saved when all offenders who were sentenced in the same year are released from prison.

[13] This is the annual number of prison beds saved as additional cohorts of offenders who have been sentenced based on the changed sentencing factor enter the Bureau of Prisons.

Option 2
Estimated Effect on Sentencing of Adjusting the Monetary Tables for Inflation with Amounts Then Rounded Under an Extrapolated Methodology
FY 2012 Cases
Change in Sentences Imposed

				Affected Cases				All Relevant Cases	
	Total Cases[14]	**Affected Cases**[15]	**Percent Affected**	**Current Average Sentence**	**New Average Sentence**	**Number Of Months Change**	**Percent Change**	**Current Average Sentence**	**New Average Sentence**
§2B1.1[16]	8,854	1,654	18.7	37	29	-8	-21.6	23	21
Guidelines Referring to §2B1.1[17]	2,329	423	18.2	41	31	-10	-24.4	27	26
§2B2.1 (Burglary) [18]	77	7	9.1	29	25	-4	-13.8	29	29
§2B3.1 (Robbery) [19]	1,841	175	9.5	118	109	-9	-7.6	135	134
§2R1.1 (Antitrust) [20]	14	2	14.3	25	19	-6	-24.0	12	11
§2T4.1 (Tax)[21]	895	137	15.3	33	26	-7	-21.2	23	22

[14] **Total Cases** are those with a particular sentencing factor being analyzed.
[15] **Affected Cases** are those in which the sentence is estimated to change as a result of the sentencing factor being analyzed. Not all cases will change as a result of the application of the sentencing factor being analyzed.
[16] Inflation adjustment uses an initial 1.34 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.
[17] Inflation adjustment uses an initial 1.34 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.
[18] Inflation adjustment uses an initial 1.91 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.
[19] Inflation adjustment uses an initial 1.91 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.
[20] Inflation adjustment uses an initial 1.22 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.
[21] Inflation adjustment uses an initial 1.34 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.

Option 2

Estimated Effect on Sentences Served of Adjusting the Monetary Tables for Inflation with Amounts Then Rounded Using an Extrapolated Methodology

All Affected FY12 Cases Combined[22]

Change in years of incarceration served for offenders sentenced in a single fiscal year[23]

1st Year	2nd Year	3rd Year	4th Year	5th Year	10th Year	15th Year	Total[24]
-224	-203	-233	-179	-115	-29	-9	-1,354

Change in total BOP population in future years[25]

One Year After Effective Date	Two Years After Effective Date	Three Years After Effective Date	Four Years After Effective Date	Five Years After Effective Date
-224	-428	-661	-840	-956

[22] This analysis combines all cases affected under Option 2 that referenced guidelines using one of the monetary tables in §§2B1.1, 2B2.1, 2B3.1, 2R1.1, or 2T4.1. Each analysis involves a unique offender population exclusive of the others. Because of this the prison impact estimates for each group can be combined to provide an overall estimate.
[23] This table represents the number of prison beds saved each year by a cohort of offenders sentenced in a single year.
[24] This is the total number of prison beds that will be saved when all offenders who were sentenced in the same year are released from prison.
[25] This is the annual number of prison beds saved as additional cohorts of offenders who have been sentenced based on the changed sentencing factor enter the Bureau of Prisons.