

UNITED STATES SENTENCING COMMISSION
Salaries and Expenses
SUMMARY STATEMENT OF ACCOUNT REQUIREMENTS

Fiscal Year 2021 Enacted Appropriation	\$19,965,000
Fiscal Year 2022 Requested Appropriation	\$20,626,000
Requested Increase from Fiscal Year 2021 Enacted Appropriation	\$661,000

APPROPRIATION LANGUAGE

UNITED STATES SENTENCING COMMISSION
SALARIES AND EXPENSES

For the salaries and expenses necessary to carry out the provisions of chapter 58 of title 28, United States Code, [\$19,965,000]\$20,626,000, of which not to exceed \$1,000 is authorized for official reception and representation expenses.

(P.L. 116-260 - Financial Services and General Government Appropriations Act, 2021)

**SUMMARY OF REQUEST
 UNITED STATES SENTENCING COMMISSION
 SALARIES AND EXPENSES
 FISCAL YEAR 2022
 (Dollar amounts in thousands)**

Fiscal Year 2022 Resource Requirements:

	<u>FTEs</u>	<u>Amount</u>
Fiscal Year 2021 Assumed Obligations.....	95	21,634
Carryforward balance from the Judiciary Information Technology Fund.....	-	(1,669)
Fiscal Year 2021 Enacted Appropriation	95	19,965

Page No. Adjustments to Base to Maintain Current Services:

A. PERSONNEL

Pay and Benefit Adjustments

10.13	1. Proposed 2022 pay adjustment (1.0% for nine months).....	-	137
10.13	2. Annualization of assumed 2021 pay adjustment (1.0% for three months).....	-	47
10.13	3. Promotions and within-grade increases.....	-	145
10.13	4. Benefits increases.....		
	a. Health benefits.....	-	75
	b. FICA adjustment.....	-	25
	c. FERS adjustment.....	-	145

**SUMMARY OF REQUEST
 UNITED STATES SENTENCING COMMISSION
 SALARIES AND EXPENSES
 FISCAL YEAR 2022
 (Dollar amounts in thousands)**

		<u>Original Request</u>	
		<u>FTEs</u>	<u>Amount</u>
B. Other Adjustments			
<i>General Inflationary Adjustments</i>			
10.14	5. Inflationary increases in charges for contracts, services, supplies, and equipment.....	-	87
	Subtotal, Adjustments to Base to Maintain Current Services.....	-	661
	Total Current Services Appropriation Required.....	95	20,626
	Total, Fiscal Year 2022 Appropriation Required.....	95	20,626
	Total Appropriation Increase.....	-	661
	Total Estimated Obligations, Fiscal Year 2022.....	-	20,626

**UNITED STATES SENTENCING COMMISSION
SALARIES AND EXPENSES**

Obligations by Activity (\$000)

Activity	FY 2020 Actual	FY 2021 Assumed	FY 2022 Request
Total Obligations	19,538	21,634	20,626
Unobligated Balance, Start of Year:			
Judiciary Information Technology Fund	(1,669)	(1,669)	0
Deposits and Other Adjustments:			
Judiciary Information Technology Fund	0	0	0
Unobligated Balance, End of Year:			
Judiciary Information Technology Fund	1,669	0	0
<i>Subtotal, Other Obligations</i>	<i>0</i>	<i>(1,669)</i>	<i>0</i>
Direct Obligations	19,538	19,965	20,626
Unobligated Balance, End of Year	132	0	0
Less Offsetting Collections	0	0	0
Appropriation Total	19,670	19,965	20,626

Obligations by Budget Object Class (\$000)

Description	FY 2020 Actual	FY 2021 Assumed Obligations	FY 2022 Request
11 Personnel compensation	10,698	12,005	12,250
12 Personnel benefits	3,725	4,042	4,100
21 Travel	74	150	300
22 Transportation of things	3	5	5
23 Rent, communications and utilities	22	23	24
24 Printing and reproduction	124	160	160
25 Other services	3,305	1,774	2,124
26 Supplies and materials	28	159	167
31 Equipment	1,559	1,647	1,496
Direct Obligations	19,538	19,965	20,626
Other Obligations (JITF Obligations)	0	1,669	0
Total Obligations	19,538	21,634	20,626

UNITED STATES SENTENCING COMMISSION
Salaries & Expenses
Relation of Direct Obligations to Outlays (\$000)

	FY 2020 Actual	FY 2021 Assumed Obligations	FY 2022 Request
Direct obligations incurred	19,538	19,965	20,626
Obligated balance, start of year	4,030	4,160	3,652
Adjustments of prior year activity	(132)	(135)	(139)
Obligated balance, end of year	<u>(4,160)</u>	<u>(3,652)</u>	<u>(3,025)</u>
Total Outlays	19,276	20,338	21,114
Less Offsets	<u>0</u>	<u>0</u>	<u>0</u>
Net Outlays	19,276	20,338	21,114

Personnel Summary

	FY 2020 Actual	FY 2021 Assumed	FY 2022 Request
Total compensable workyears:			
Full-time equivalent employment	92	95	95

GENERAL STATEMENT AND INFORMATION

The Sentencing Reform Act of 1984 created the United States Sentencing Commission (Commission) as an expert independent agency within the judicial branch, whose seven voting members, including the Chair, are nominated by the President and confirmed by the Senate. By statute, no more than four Commissioners can be from the same political party, and at least three must be federal judges, thereby ensuring a bipartisan Commission of diverse backgrounds.

The statutory duties of the United States Sentencing Commission include:

- promulgating federal sentencing guidelines to be considered by sentencing judges in all federal criminal cases;
- collecting, analyzing, and reporting sentencing data to detect criminal trends, assess federal sentencing policies, and serve as a clearinghouse for federal sentencing statistics;
- conducting research on sentencing issues and serving as an information center for the collection, preparation, and dissemination of information on federal sentencing practices; and
- providing specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the federal criminal justice community concerning application of the federal sentencing guidelines and federal sentencing generally.

While the COVID-19 pandemic has had a significant impact on work processes, the Commission's sustained strategic investment in technology, automation, and cybersecurity enabled it to quickly pivot and maintain continuity of operations by maximizing telework while also protecting personally identifiable information contained in confidential sentencing documents. Consistent with the priorities of the Judicial Branch and in coordination with the Administrative Office of the United States Courts, the Commission continually audits and updates its cybersecurity measures and expands its technological capacity. The Commission must continue investing in these areas to remain current and secure.

With these investments, even with the challenges presented by COVID-19, the Commission has met the growing demand for its work products, information, and services, as evidenced by an increase of over 20 percent in its website traffic for the second year in a row. This increase is driven by innovations such as the *Interactive Data Analyzer* and mobile *Guidelines App* that have made the Commission's guidelines, data, and information more accessible and easily used, and the release of several new publications

addressing timely topics from sentencing disparities to recidivism, as well as the impact of the First Step Act. The Commission expects this heightened interest in, and use of, its sentencing data and information to extend through FY 2022 and beyond.

The FY 2022 request for the Commission totals \$20,626,000 to maintain current services. The Commission is not requesting any program increases. The Commission uses available resources efficiently and minimizes costs in fulfilling its duties.

ONGOING ACTIVITIES

Policy Priorities

Throughout FY 2020 and into FY 2021, the Commission has operated with only two voting commissioners—Chief Judge Danny C. Reeves (E.D. Kentucky) and Senior Judge Charles R. Breyer (N.D. California). As a result, the Commission has lacked the minimum four affirmative votes required to promulgate amendments to the federal sentencing guidelines. While awaiting the appointment of new voting commissioners, the Commission continues to work on several important policy priorities, chief among them the First Step Act of 2018 (Pub. L. No. 115-391). While most of the First Step Act is directed at the Executive Branch, the Commission must implement new statutory provisions concerning compassionate release (18 U.S.C. § 3582(c)(1)(A)) and safety valve relief from certain mandatory minimum penalties (18 U.S.C. § 3553(f)).

In order to inform a newly constituted Commission and to provide Congress and others a timely assessment of the First Step Act’s impact, the Commission is already collecting, analyzing, and reporting data on implementation of the Act. In August 2020, the Commission released *The First Step Act of 2018: One Year of Implementation*, a comprehensive report analyzing the law’s impact on the statutory safety valve, statutory enhancements under 21 U.S.C. § 851 for certain drug recidivists, stacking of 18 U.S.C. § 924(c) penalties, compassionate release, and retroactive application of the statutory reductions for crack cocaine offenses previously enacted in the Fair Sentencing Act of 2010.

Among the findings, as expected, the expansion of the statutory safety valve criteria has made it more likely for drug offenders to receive safety valve relief. One-fifth – 20% – of safety valve recipients, during the first year after enactment of the act, were eligible because of the new expanded statutory criteria. After one year, 2,387 crack cocaine offenders had their sentences reduced by retroactive application of the Fair Sentencing Act, and those numbers continued to rise in FY 2020. As of September 29, 2020, 3,613 crack cocaine offenders had their sentences retroactively reduced, and the reductions have been substantial, on average 71 months.

Courts also granted 145 motions for compassionate release during the first year after enactment of the First Step Act, a five-fold increase over 2018. Of the motions granted, about two-thirds were filed by the defendant, which was newly authorized by the Act. Since then, however, COVID-19 has had a substantial impact on compassionate release as the volume of motions has surged. The Commission is collecting data on how compassionate release is being applied in light of both the First Step Act and the pandemic to inform Congress and the public, as well as its own policy making.

In FY 2019, the Commission adopted an amendment effectively raising the guideline penalties for fentanyl analogues by clarifying that the guidelines are consistent with the relevant statutory provisions. Although only 4.5 percent of all drug trafficking cases in FY 2019 involved fentanyl or fentanyl analogues, the number of such cases has increased 3,940 percent since FY 2015, with no sign of abating. The Commission, therefore, continues to study this urgent problem as Congress considers legislation to stem the tide of fentanyl, fentanyl analogues, and opioid abuse. In FY 2021, the Commission will release a report providing Congress and others with the most current information about offenses involving fentanyl and fentanyl analogues and expects heightened congressional interest in this area to extend through FY 2022 and beyond.

An ongoing priority is the examination of the overall structure and operation of the guidelines post-*United States v. Booker*, the Supreme Court decision that rendered the guidelines advisory. In FY 2018, the Commission reported persistent demographic disparities in sentencing (*Demographic Differences in Sentencing: An Update to the 2012 Booker Report* (November 2017)). In FY 2019, the Commission reported increasing sentencing disparities among federal judges who sit within the same courthouses in 30 major cities across the country (*Intra-City Differences in Federal Sentencing Practices* (January 2019)). And in FY 2020, the Commission reported increasing geographical disparities in sentencing across the 94 federal judicial districts (*Inter-District Differences in Federal Sentencing Practices* (January 2020)).

In FY 2021, the Commission will issue another report in this series examining the anchoring effect of the advisory guidelines on sentences imposed during the last 15 years. The Commission expects to update and keep current the information contained in these reports in FY 2022 and beyond to inform Congress and the public, as well as its own policy making.

Conducting Research

Research is a critical part of the Commission's mission. The Commission regularly analyzes data to monitor how courts sentence offenders and use the guidelines, and the agency routinely uses these analyses to inform its proposed changes to the guidelines. The Commission publishes many of its analyses as a resource for Congress and the criminal justice community.

In recent years, the Commission has focused on recidivism research to help inform Congress and others on how best to protect public safety while targeting scarce prison resources on the most dangerous offenders. In FY 2020, the Commission released the last in a series of reports that examined in detail the 25,431 U.S. citizen federal offenders released from prison or placed on probation in 2005 and studied their recidivism over an eight-year follow-up period. The last in the series, *The Length of Incarceration and Recidivism*, (April 2020) found that offenders incarcerated longer than 120 months were 30 to 45 percent less likely to recidivate than a comparable group who received shorter sentences. At the other end of the spectrum, however, the study could not find sufficiently reliable evidence to conclude that shorter incarceration lengths of 12 to 24 months have either a criminogenic or deterrent effect.

In FY 2020, the Commission released a study on the impact of the retroactive application of the Commission’s 2014 “drugs minus two” amendment on recidivism, which reduced by two the offense levels assigned to each drug quantity in the drug trafficking guideline. Over 31,000 federal offenders received a retroactive sentence reduction of 25 months on average. The Commission compared these offenders with a comparable group who served their full sentences and found no statistical difference in their recidivism rates (approximately 28% for the retroactivity group and 30% for the full sentence group). This Commission believes this positive outcome may be attributed in part to the eligibility criteria required by the Commission and the careful attention to those criteria – particularly public safety considerations – paid by judges. These findings may help inform the ongoing consideration of drug penalties by Congress and others.

In FY 2021, the Commission plans to release another report studying the recidivism of offenders sentenced under the Armed Career Criminals Act.

Recidivism research will continue to be a major focus of the Commission in FY 2021, FY 2022, and beyond. The Commission plans to update and expand its recidivism research with a study of two more current groups of federal offenders who were released in 2010 and 2015. This will enable the Commission to examine the impact on recidivism of both the Supreme Court’s *Booker* decision in 2005 and more recent implementation of evidence-based practices in supervision by federal probation officers.

The issue of supervision is significant as the number of individuals under federal supervision ranged from 130,000 to 136,000 between 2013 and 2017, more than the number of individuals incarcerated in the Federal Bureau of Prisons at any one time. In FY 2020, the Commission released its first-ever report analyzing data relating to revocation hearings. *Federal Probation and Supervised Release Violations* presented data on approximately 108,000 violation hearings between 2013 and 2017, and examined the prevalence, types, and locations of federal supervision violations.

Collecting, Analyzing, and Reporting Sentencing Data

Each year the Commission collects and analyzes data regarding every felony and Class A misdemeanor offense sentenced during that year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case: the charging document, plea agreement, Presentence Report, Judgment and Commitment Order, and Statement of Reasons form. The Commission analyzes these documents to report information of interest and importance to policymakers and the federal criminal justice community.

In FY 2020, the Commission received approximately 310,000 documents for more than 67,000 original sentencings and more than 6,800 resentencings or other modifications of sentence.

The Commission is able to process this large volume of sentencing documents by continuously investing in means to automatically extract as much data and information as possible from court documents. These efforts have not only improved efficiency and accuracy of its data collection, but also have expanded the type of information the Commission can collect and analyze on a routine basis. For example, the Commission now analyzes and reports data regarding the nature of over 250,000 criminal history events each year, a capability it did not have prior to FY 2018 and could not maintain without its technology investments. This new criminal history dataset is a valuable resource for both researchers and policy makers and has been used by the Commission to respond to numerous congressional inquiries.

Each year the Commission compiles its annual sentencing dataset into one comprehensive publication. In March 2020, the Commission released the 2019 *Annual Report and Sourcebook of Federal Sentencing Statistics*. The *Sourcebook* provides detailed analyses of the 76,538 offenders sentenced in FY 2019, and a companion piece providing an easy-to-digest overview of the data was published in April 2020.

In June 2020, the Commission launched a new *Interactive Data Analyzer (IDA)*. With IDA, Congress, judges, litigants, the press, and the general public can now easily and independently analyze sentencing data by their state, district, or circuit, and can refine their inquiry to data relating to the specific type of crime of interest. In just a few months since its launch, more than 4,000 individuals answered their sentencing data questions through IDA. This new interactive tool uses the most current data visualization techniques and technology that will enable the Commission to easily add features and new data in years to come.

Congressional Data Inquiries and Briefings

Each year, the Commission receives frequent requests from Congress to complete prison and sentencing impact assessments of proposed legislation using real-time sentencing data. These assessments are often complex, time-sensitive, and require highly specialized resources.

The Commission also provides circuit, district, and state-wide data analyses to House and Senate Judiciary Committee members and, on an as-requested basis, to other members of Congress.

Specialized Training

The Commission continues to provide specialized seminars, workshops, and training programs for judges, probation officers, law clerks, prosecutors, and defense attorneys on application of the guidelines and federal sentencing generally. In FYs 2019 and 2020, the Commission trained judges, attorneys, probation officers, and law clerks from nearly all 94 federal districts.

In FY 2020, the COVID-19 pandemic forced the Commission to suspend all in-person training and seminars. However, the Commission's ongoing investments in eLearning allowed its training to continue unabated. For several years the Commission has been leveraging distance and online learning to expand the reach of its training and contain costs. When in-person training was cancelled mid-FY 2020, the Commission quickly pivoted to several remote learning platforms that allowed it to train groups even larger than ordinarily possible with in-person training. More than 1,500 individuals attended the Commission's virtual trainings during FY 2020.

In FY 2020, the Commission also updated and expanded its eLearning library of courses, including *Federal Sentencing: The Basics*, its most frequently accessed online course, as well as foundational courses on relevant conduct, the cornerstone of the guidelines, and two courses on determining criminal history. More than 3,100 individuals accessed the Commission's eLearning courses during FY 2020.

In FY 2020, the Commission launched an interactive quarterly newsletter as another means of providing training. These updates contain guideline application pointers, case law updates, and answers to frequently asked questions. To date, more than 1,000 individuals have accessed these newsletters.

In addition, the Commission maintains a HelpLine that responds to dozens of questions each week from judges, practitioners, and probation officers regarding proper guideline application.

In FYs 2021 and 2022, the Commission plans to continue expanding its eLearning library and remote learning opportunities, while standing ready to resume in-person training offerings when conditions permit.

Public Interface

The Commission continues to expand and improve its public outreach efforts in a cost-efficient manner. In FY 2020, the Commission's website received approximately 1.8 million hits and averaged approximately 37,000 visitors per month. For the second consecutive year, these numbers reflect a significant increase in visitors (+26%), sessions (+20%), and pages viewed (+16%) from the previous year. The Commission also leverages social media to disseminate information broadly and efficiently by using its social media accounts and cloud communications tools to provide frequent electronic public updates on its policy work and research.

FISCAL YEAR 2021 APPROPRIATIONS

The judiciary built the FY 2022 discretionary budget request for the United States Sentencing Commission on the FY 2021 enacted appropriation, which is \$19,965,000. This amount maintains current services in FY 2021. For bill language, the judiciary used the language from P.L. 116-260, Financial Services and General Government Appropriations Act, 2021.

JUSTIFICATION OF CHANGES

The FY 2022 budget request of \$20,626,000 represents an overall increase of \$661,000, or 3.3 percent, over the FY 2021 enacted appropriation of \$19,965,000. The Commission's request reflects an increase over FY 2021 to account for inflationary increases and adjustments for personnel costs to maintain current services. The Commission requests no program increases for FY 2022.

Adjustments to maintain current services include funds for pay and benefits, cost increases for current staff, and adjustments for ongoing activities, such as inflationary increases in contract rates and charges for services, supplies, equipment, and other Commission needs.

ADJUSTMENTS TO BASE TO MAINTAIN CURRENT SERVICES

A. COMMISSION PERSONNEL *Pay and Benefit Adjustments*

1. Proposed 2022 pay adjustment

Requested Increase: \$137,000

The judiciary is assuming federal pay rates will increase by 1.0 percent in January 2022. The requested increase provides for the cost of nine months of the anticipated pay adjustment in FY 2022, from January 2022 to September 2022. (If the pay adjustment included in the President's FY 2022 budget request

is different from this 1.0 percent guidance, the judiciary will revise this line item in its FY 2022 budget re-estimate.)

2. Annualization of assumed 2021 pay adjustment

Requested Increase: \$47,000

The requested increase provides for the annualized costs of a 2021 Employment Cost Index pay adjustment for federal civilian workers. Based on the FY 2021 enacted appropriation, federal pay rates increased by 1.0 percent, effective as of January 2021. The requested increase provides for the cost of three months (from October 2021 to December 2021) of the 2021 pay increase in FY 2022.

3. Promotions and within-grade increases

Requested Increase: \$145,000

The requested increase provides for promotions and within-grade increases for personnel. The salary plan for judicial support personnel provides for periodic within-grade increases for staff who receive at least a satisfactory performance rating.

4. Benefits increases

a. Health benefits

Requested Increase: \$75,000

Based on information from the Office of Personnel Management, agency health benefit premium contributions are projected to increase by an average of 3.0 percent both in January 2021 and January 2022. The requested increase annualizes the 2021 premium increase and includes a nine-month provision for an estimated 3.0 percent increase anticipated for FY 2022.

b. FICA adjustment

Requested Increase: \$25,000

Based on information from the Social Security Administration, employer contributions to the Old Age, Survivor, and Disability Insurance (OASDI) portion of the FICA tax will increase in 2021. The salary cap for OASDI increased from \$137,700 to \$142,800 in January 2021. The requested amount is needed to pay the agency contribution in FY 2022.

c. FERS adjustment

Requested Increase: \$145,000

Consistent with guidance from the Office of Management and Budget, funds are requested for an increase in the agency contribution rate to Federal Employees Retirement System (FERS) plans for FY 2022. For most employees, the agency contribution rate will increase from 17.3 percent to 18.4 percent. Any FERS increase is in accordance with revised estimates of the cost of providing benefits by the Board of

Actuaries of the Civil Service Retirement and Disability System.

B. OTHER ADJUSTMENTS

General Inflationary Adjustments

5. Inflationary increases in charges for contracts, services, supplies, and equipment

Requested Increase: \$87,000

Consistent with guidance from the Office of Management and Budget, the requested increase is required to fund inflationary adjustments of 2.0 percent for operating expenses such as travel, communications, printing, contractual services, supplies and materials, and furniture and equipment.