

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

<b>Fiscal Year 2023 Enacted Appropriation</b>	<b>\$21,641,000</b>
<b>Fiscal Year 2024 Requested Appropriation</b>	<b>\$23,150,000</b>
<b>Requested Increase from Fiscal Year 2023 Enacted Appropriation</b>	<b>\$1,509,000</b>

**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, [~~\$21,641,000~~]**\$23,150,000**, of which not to exceed \$1,000 is authorized for official reception and representation expenses.

(P.L. 117-328 - Financial Services and General Government Appropriations Act, 2023)

**SUMMARY OF REQUEST  
 UNITED STATES SENTENCING COMMISSION  
 SALARIES AND EXPENSES  
 FISCAL YEAR 2024  
 (Dollar amounts in thousands)**

**Fiscal Year 2024 Resource Requirements:**

	<u>FTEs</u>	<u>Amount</u>
<b>Fiscal Year 2023 Obligations.....</b>	<b>96</b>	<b>23,310</b>
Carryforward balance from the Judiciary Information Technology Fund.....	-	(1,669)
<b>Fiscal Year 2023 Enacted Appropriation .....</b>	<b>96</b>	<b>21,641</b>

**Page No. Adjustments to Base to Maintain Current Services:**

**A. PERSONNEL**

*Pay and Benefit Adjustments*

10.13	1. Proposed 2024 pay adjustment (5.2% for nine months).....	-	647
10.13	2. Annualization of the FY 2023 pay adjustment (4.6% for three months).....	-	195
10.13	3. Promotions and within-grade increases.....	-	173
10.13	4. Benefits increases.....		
	a. Health benefits.....	-	276
	b. FICA adjustment.....	-	8
10.14	5. One more compensable day.....	-	69

**SUMMARY OF REQUEST  
 UNITED STATES SENTENCING COMMISSION  
 SALARIES AND EXPENSES  
 FISCAL YEAR 2024  
 (Dollar amounts in thousands)**

		<u>Original Request</u>	
		<u>FTEs</u>	<u>Amount</u>
<b>B. Other Adjustments</b>			
<i>General Inflationary Adjustments</i>			
10.14	6. Inflationary increases in charges for contracts, services, supplies, and equipment.....	-	141
	<b>Subtotal, Adjustments to Base to Maintain Current Services.....</b>	-	1,509
	<b>Total Current Services Appropriation Required.....</b>	<b>96</b>	<b>23,150</b>
	<b>Total, Fiscal Year 2024 Appropriation Required.....</b>	<b>96</b>	<b>23,150</b>
	<b>Total Appropriation Increase.....</b>	-	1,509
	<b>Total Estimated Obligations, Fiscal Year 2024.....</b>	-	<b>23,150</b>

**UNITED STATES SENTENCING COMMISSION**  
**SALARIES AND EXPENSES**  
**Obligations by Activity (\$000)**

Activity	FY 2022 Actual	FY 2023 Assumed	FY 2024 Request
Total Obligations	20,390	23,310	23,150
Unobligated Balance, Start of Year: Judiciary Information Technology Fund	(1,669)	(1,669)	-
Deposits and Other Adjustments: Judiciary Information Technology Fund	-	-	-
Unobligated Balance, End of Year: Judiciary Information Technology Fund	1,669	-	-
<i>Subtotal, Other Obligations</i>	-	(1,669)	-
<b>Direct Obligations</b>	<b>20,390</b>	<b>21,641</b>	<b>23,150</b>
Unobligated Balance, End of Year	174	-	-
Less Offsetting Collections	-	-	-
<b>Appropriation Total</b>	<b>20,564</b>	<b>21,641</b>	<b>23,150</b>

**Obligations by Budget Object Class (\$000)**

Description	FY 2022 Actual	FY 2023 Assumed	FY 2024 Request
11 Personnel compensation	11,877	12,747	13,598
12 Personnel benefits	4,396	4,266	4,665
21 Travel	46	312	330
22 Transportation of things	5	5	5
23 Rent, communications and utilities	26	25	26
24 Printing and reproduction	200	166	176
25 Other services	1,660	2,389	2,523
26 Supplies and materials	40	174	183
31 Equipment	2,140	1,557	1,644
<b>Direct Obligations</b>	<b>20,390</b>	<b>21,641</b>	<b>23,150</b>
Other Obligations (JITF Obligations)	-	1,669	-
Total Obligations	20,390	23,310	23,150

**UNITED STATES SENTENCING COMMISSION**  
**SALARIES AND EXPENSES**  
**Relation of Obligations to Outlays (\$000)**

	<b>FY 2022 Actual</b>	<b>FY 2023 Assumed</b>	<b>FY 2024 Request</b>	<b>Difference (+) or (-)</b>
Direct obligations incurred	20,390	21,641	23,150	1,509
Obligated balance, start of year	4,030	4,160	3,652	(508)
Adjustments of prior year activity	(132)	(140)	(150)	(10)
Obligated balance, end of year	<u>(4,160)</u>	<u>(3,652)</u>	<u>(3,025)</u>	<u>627</u>
<b>Total Outlays</b>	<b>20,128</b>	<b>22,009</b>	<b>23,627</b>	<b>1,618</b>
Less Offsets	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Net Outlays	20,128	22,009	23,627	1,618

**Personnel Summary**

	<b>FY 2022 Actual</b>	<b>FY 2023 Assumed</b>	<b>FY 2024 Request</b>	<b>Difference (+) or (-)</b>
Total compensable workyears:				
Full-time equivalent employment	96	96	96	0

## **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 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 the federal sentencing guidelines and federal sentencing generally.

On August 4, 2022, the Senate confirmed a full slate of seven new commissioners – Judge Carlton W. Reeves (Chair), Judge Luis Felipe Restrepo (Vice Chair), Laura Mate (Vice Chair), Claire Murray (Vice Chair), Judge Claria Horn Boom, Judge John Gleeson, and Candice C. Wong. The confirmation of these seven commissioners marks the first time since 2018 that the Commission has had a voting quorum – and the first time since 1999 that a full slate of seven voting commissioners was appointed at once.

Due to the absence of a voting quorum for four years, the Commission faces a significant backlog of policy work that will require Commission action in FY 2023 and 2024. The Commission will prioritize implementation of important sentencing legislation, chief among them the First Step Act of 2018 (Pub. L. No. 115-391), which expanded availability of compassionate release under 18 U.S.C.

§ 3582(c)(1) and the statutory safety valve under 18 U.S.C. § 3553(f), and the Bipartisan Safer Communities Act (Pub. L. No. 117-159), which increased penalties for certain firearms offenders.

Public interest in the Commission's work is at historic highs. On September 29, 2022, the newly reconstituted Commission published for comment its notice of proposed priorities for the amendment cycle ending May 1, 2023 and received more than 8,000 letters from members of Congress, the Department of Justice, judges, federal public defenders, probation officers, academics, advocacy groups, federal inmates and their family members, and concerned members of the public. This outpouring represented by far the most public comment the Commission has ever received in response to proposed priorities.

The Commission's strategic investment in information technology, automation, and cybersecurity enables it to meet the ever-increasing demand for its work product, information, and services. For example, in September 2021, the Commission launched *Judiciary Sentencing Information* (JSIN), an online tool that provides more granular sentencing data than were previously publicly available. JSIN is accessed by over 1,200 judges, prosecutors, defense attorneys, and others each month and will provide the data to be used in an upcoming two-year pilot authorized by the Judicial Conference of the United States to include comparative sentencing data in presentence reports.

The Commission continually audits and updates its cybersecurity measures and expands its technological capacity. It must continue investing in these areas to remain current, secure, and agile to respond to unexpected or changing circumstances. To oversee this expanding and increasingly complicated work, the Commission is recruiting for the Office of Technology, a new office that previously had been subsumed in the Office of Administration and Technology.<sup>1</sup>

The Commission's FY 2024 budget request is \$23,150,000 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**

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<sup>1</sup>The Commission has long faced a workforce recruiting and retention impediment because its compensation is statutorily tied to an outdated structure that Congress phased out in 2004 and imposes a cap to the Commission that applies to no other Judicial Branch entity. This hiring and retention challenge is particularly acute for highly skilled, technical positions such as the Director of Technology. The Commission seeks to remedy this issue through a proposed correction to its organic statute that could be included in its appropriations bill. No program increase would be asked for or required to support the correction.

## Policy Priorities

By statute, the Commission must submit guideline amendments to Congress for its review no later than May 1 of any given year. The Commission's policy priorities during its initial abbreviated amendment cycle ending May 1, 2023, focused on sentencing legislation signed into law during the four years that the Commission did not have a voting quorum.

The first priority is the First Step Act of 2018. The First Step Act expanded the availability of compassionate release by authorizing defendants to file motions on their own under 18 U.S.C. § 3582(c)(1)(A), whereas before only the Director of the Bureau of Prisons (BOP) could file such motions. Congress stripped the sole gatekeeping function from the BOP Director after finding the Director exercised authority in this area too sparingly. Many courts of appeal have since held that the Commission's policy statement governing compassionate release, §1B1.13, does not apply to motions filed by the defendant. This is cause for concern for two reasons. First, in the absence of guidance from the Commission, courts are left to fill the void themselves, a difficult task to accomplish in the uniform manner contemplated by either the Sentencing Reform Act or the First Step Act itself.

Second, this absence of guidance comes at a time when courts could use it the most, as they have been inundated with compassionate release motions during the pandemic. The COVID-19 pandemic highlighted the fact that courts would benefit from clearer guidance from the Commission. According to a 2022 Commission report, in FY 2020, courts decided 7,014 compassionate release motions, granting compassionate release to one-quarter (25.7%) of those offenders. The number of offenders granted relief increased more than twelvefold compared to 2019—the year immediately following passage of the First Step Act. The report also found, however, that the likelihood of compassionate release motions succeeding varied significantly depending on the circuit or district in which they were filed.

The First Step Act also expanded eligibility for the safety valve to certain offenders with more than one criminal history point. The Commission needs to amend §5C1.2 to recognize this change but must also consider changes to the two-level reduction in the drug trafficking guideline for meeting the safety valve criteria. Responding to this aspect of the First Step Act may be complicated by differing case law among the circuits regarding the scope of the new statutory safety valve criteria.

The Commission also prioritizes implementation of criminal provisions contained in the Bipartisan Safer Communities Act (Pub. L. No. 117-159), signed into law in June 2022. Among other provisions, this bill created two new offenses at 18 U.S.C. §§ 932 and 933



further proscribing straw purchasing and trafficking of firearms. The legislation also increases the statutory maximum penalties for certain firearms offenses and revises several definitions. The bill includes a directive to the Commission to review and amend the guidelines to ensure that persons convicted of straw purchase violations and firearms trafficking offenses are subject to increased penalties in comparison to those currently provided under the guidelines.

Additional multi-year priorities include continuation of the Commission's examination of the categorical approach in determining, for example, whether an offense is a crime of violence or a controlled substance offense. Moreover, the Commission may examine amendments to the criminal history guidelines to account for recent recidivism research regarding zero point offenders and the impact of status points.

Multi-year priorities also include possible amendments to prohibit the use of acquitted conduct in applying the guidelines; simplification of the guidelines; an examination of conflicting case law concerning the validity and enforceability of guideline commentary; and a study of court-sponsored diversion and alternatives-to-incarceration programs.

### **Conducting Research**

Research is a critical part of the Commission's mission and provides a valuable resource to policy makers and the Commission's stakeholders. 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, the executive branch, and the criminal justice community.

Despite not having a voting quorum until late FY 2022, the Commission continued its robust research agenda, releasing 14 reports in 2022. Many of the reports are on topics of concern to Congress and are relevant to policy making, considering how best to protect public safety while also focusing incarceration resources on the most dangerous offenders. These reports, which are all posted on the Commission's website, include two directly relevant to sentencing legislation awaiting implementation by the Commission, *Compassionate Release: The Impact of the First Step Act and COVID-19 Pandemic*; and *What do Federal Firearms Offenses Really Look Like?*.

Several focus on the Commission's continued study of recidivism:

- *Recidivism of Federal Drug Trafficking Offenders Released in 2010;*
- *Recidivism of Federal Firearms Offenders Released in 2010;*
- *Recidivism of Federal Violent Offenders Released in 2010;*
- *Recidivism and Federal Bureau of Prisons Programs:*
- *Drug Program Participants Released in 2010;*
- *Recidivism and Federal Bureau of Prisons Programs: Vocational Program Participants Released in 2010;*
- *Length of Incarceration and Recidivism; and Revisiting Status Points).*

Other reports address timely topics of ongoing concern and interest to Congress and policy makers, such as;

- *Older Offenders in the Federal System; Federal Robbery:*
- *Prevalence, Trends, and Factors in Sentencing;*
- *Federal Sentencing of Illegal Reentry:*
- *The Impact of the 2016 Guideline Amendment, Life Sentences in the Federal System; and*
- *The Organizational Sentencing Guidelines: Thirty Years of Innovation and Influence.*

The Commission plans to continue its robust research agenda throughout FY 2024 and beyond.

### **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 (where one exists), 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 2022, the Commission received and reviewed approximately 300,000 documents from the courts. These documents reported on more than 63,000 original sentencings and more than 3,000 resentencings or other modifications of a sentence, as well approximately 4,800 motions for a resentence or modification of sentence that were denied by the courts.

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 not only improved the efficiency and accuracy of its data collection, but also 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 more than 285,000 criminal history events each year, a scale of data collection that could not be maintained without its technology investments. This criminal history data is a valuable resource for both researchers and policymakers and has been used by the Commission to respond to numerous congressional inquiries.

### **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 the Commission's highly specialized resources. Feedback from Members of Congress and their staff indicates that the Commission's data is highly valuable to the legislative process and policy making decisions.

The Commission also provides circuit, district, and state-wide data analyses to the House and Senate Judiciary Committees and on an as-requested basis, to other Members of Congress. Additionally, the Commission provides frequent briefings to Members of Congress and their staff on the Commission's work and data reports.

### **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 FY 2022 the Commission trained judges, attorneys, probation officers, law clerks, and others from nearly all 94 federal districts.

The Commission's previous investments in eLearning, remote training platforms, and other online resources consistently provided effective and efficient training, even during the pandemic. In FY 2022, the Commission's recorded courses were accessed nearly 2,300 times, and eLearning courses were accessed more than 5,000 times. In addition, the Commission conducted 22 virtual training sessions attended by more than 3,300 individuals live online.

In March 2022, the Commission returned to providing in-person training programs. During FY 2022, the Commission conducted 28 in-person training programs attended by more than 1,100 individuals.

The Commission also maintains its HelpLine, accessible by phone and online, that responds to numerous questions each week from judges, law clerks, prosecutors, defense attorneys, and probation officers regarding proper guideline application.

### **Public Interface**

The Commission continues to expand and strengthen its public outreach efforts in a cost-efficient manner. In FY 2022, the Commission's website received approximately 1.8 million hits and averaged more than 40,000 users per month. These numbers reflect an increase in users (+9%) from the previous year, and an increase in sessions (+7%) for the fourth consecutive year. The Commission also leverages social media and uses cloud communication tools to disseminate information broadly and efficiently and to provide frequent electronic public updates on its work.

## **FISCAL YEAR 2023 APPROPRIATIONS**

The Judiciary built the FY 2024 discretionary budget request for the United States Sentencing Commission on the FY 2023 enacted appropriation, which is \$21,641,000. The amount requested in FY 2024, \$23,150,000, maintains current services. For bill language, the judiciary used the language from P.L. 117-328, Financial Services and General Government Appropriations Act, 2023.

## JUSTIFICATION OF CHANGES

The FY 2024 budget request of \$23,150,000 represents an overall increase of \$1,509,000, or 7.0 percent, over the FY 2023 enacted appropriation of \$21,641,000. The Commission's request reflects an increase over FY 2023 to account for inflationary increases and adjustments for personnel costs to maintain current services. The Commission requests no program increases for FY 2024.

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. PERSONNEL

##### *Pay and Benefit Adjustments*

#### 1. Proposed 2024 pay adjustment

**Requested Increase: \$647,000**

The judiciary is assuming federal pay rates will increase by 5.2 percent in January 2024. The requested increase provides for the cost of nine months of the anticipated pay raise in FY 2024, from January 2024 to September 2024. (If the pay adjustment

included in the President's FY 2024 budget request is different from this 4.7 percent guidance, the judiciary will revise this line item in its FY 2024 budget re-estimate.)

#### 2. Annualization of 2023 pay adjustment

**Requested Increase: \$195,000**

The requested increase provides for the annualized costs of the 2023 pay adjustment for Employment Cost Index (ECI) and locality pay. As a result of the ECI, federal pay rates increased by an average of 4.6 percent, effective as of January 2023. The requested increase provides for the cost of three months (from October 2023 to December 2023) of the 2023 pay increase in FY 2024.

#### 3. Promotions and within-grade increases

**Requested Increase: \$173,000**

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: \$276,000**

Based on information from the Office of Personnel Management, health benefit premium contributions are

projected to increase by an average of 6.6 percent both in January 2023 and January 2024. The requested increase annualizes the 2023 premium increase and includes a nine-month provision for the increase anticipated for FY 2024.

**b. FICA adjustment**

**Requested Increase: \$8,000**

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 2023. The salary cap for OASDI increased from \$147,000 to \$160,200 in January 2023. The requested amount is needed to pay the Commission's contribution in FY 2024.

**5. One more compensable day**

**Requested Increase: \$69,000**

There is one more compensable day in FY 2024 than in FY 2023. The requested increase adjusts for personnel compensation and benefits associated with one more compensable day.

**B. OTHER ADJUSTMENTS**

*General Inflationary Adjustments*

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

**Requested Increase: \$141,000**

Consistent with guidance from the Office of Management and Budget, this request of \$141,000 is required to fund inflationary increases of 2.4 percent for operating expenses such as travel, communications, printing, contractual services, supplies and materials, furniture, and equipment.