CLIENT ALERTS & INSIGHTS

2026 Proposed Amendments to the Federal Sentencing Guidelines-Key Changes for Economic Crimes

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Key Takeaways:

- The U.S. Sentencing Commission's proposed amendments to the Federal Sentencing Guidelines shift focus beyond monetary loss, signaling a more holistic approach to assessing culpability.
- The proposed amendments introduce enhancements for substantial noneconomic harm along with new mitigating factors tied to defendant vulnerability, early remediation and self-reporting.
- These proposed changes may materially alter investigation strategy and compliance planning, as adjustments to monetary thresholds, enhancement applicability and loss calculations could reshape exposure analyses, arguments at sentencing and the design of corporate compliance and internal investigation protocols.

The United States Sentencing Commission (the "Commission") published its proposed 2026 amendments to the Federal Sentencing Guidelines in two phases-in December 2025 and January 2026-with a period for public comment through February 10, 2026, and March 18, 2026, respectively. Unless Congress rejects or modifies the proposed amendments, they will take effect November 1, 2026.[1]

These proposals include significant reforms to the economic crimes guideline (§2B1.1), adjustments to the loss table to account for inflation and refinements to the sophisticated means enhancement. Because these changes have the potential to materially affect sentencing exposure in fraud, embezzlement, and other financial crime matters, companies and individuals facing federal investigations should understand the direction of the Commission's reform efforts.

United States Sentencing Guidelines

The United States Sentencing Guidelines (the "Guidelines"), published annually by the Commission, are the bedrock of sentencing in federal courts. Although the guidelines have not been mandatory since the watershed 2005 Supreme Court decision, *United States v. Booker,* 543 U.S. 220 (2005), the Guidelines are essential to how judges, lawyers and even clients understand and approach sentencing in federal criminal cases. The Guidelines provide a recommended sentencing range by weighing the seriousness of the offense with the defendant's criminal history.[2] Courts start with a base offense level for the specific crime, apply enhancements or reductions for various factors like the amount of monetary loss or the defendant's role, and then pair the final offense level with the defendant's criminal-history category to determine the advisory range.

Each year, the Sentencing Guidelines are modified through a yearlong cycle of research, review, debate and revision.[3] Every June, the Commission publishes proposed priorities for amending the guidelines and opens a period of public comment. Through December, the Commission works with stakeholders, reviews new research and holds public briefings to gather input on the guidelines. And finally, in January, the proposed amendments are released, with a few weeks of public comment, before the Commission's final vote in April.

2026 Proposed Amendments Bring Major Change for Economic Crimes

On December 12, 2025,[4] and January 30, 2026,[5] the Commission released this year's proposed amendments. The stated goal for the economic crime guidelines was to simplify their application, adjust them for inflation and ensure they better reflect victim harm and defendant culpability.[6] These proposed amendments reflect years of criticism from courts, practitioners and the public about the complexity and severity of economic crime sentencing.[7] The Department of Justice, however, has shown "limited" support for the amendments.[8] The DOJ approved of the inclusion of non-economic harm considerations, but decried the overall trend toward lower sentences, calling it "the wrong message to send."[9]

This article highlights the most relevant and weighty proposed amendments for white collar criminal defense.

Simplifying the Loss Table

Section 2B1.1 covers federal economic crimes such as fraud, theft and embezzlement.[10] Although these offenses begin with a relatively low base offense level, it is the loss table that often significantly increases a defendant's recommended sentence. The loss table contains 16 tiers of monetary loss, reflecting the actual or intended loss caused by the offense. Some tiers are separated by only a few thousand dollars, others by much larger margins, but each increase adds two offense levels.

The 2026 Proposed Amendments restructure the loss table, collapsing it from 16 tiers to just eight. Under the proposed amendments, conduct that previously triggered steep enhancements may now fall into lower tiers with fewer offense level adjustments. A reduction in severity aligns the guidelines with what advocates have said for many years-the current guidelines are not in line with modern economic realities and create disproportionately severe outcomes for defendants. The DOJ,

however, said that lower sentences were the "wrong way to go" when economic crime "continue[s] to devastate individual victims and the public fisc alike."[11] Broader tiers could also mean less litigation over the loss amount given that greater margins will lead to more cases fitting comfortably within one tier versus the other.

Broadening Culpability and Victim Impact

The Proposed Amendments seek to place a greater emphasis on culpability and victim harm beyond monetary loss. Beyond the loss table, other specific offense characteristics can increase the offense level and thus the advisory guideline range.[12] These characteristics have historically focused almost exclusively on economic harm. A finding of substantial financial hardship caused to another, for instance, can increase the offense level by 2-6 points, depending on the number of victims impacted.

The Proposed Amendments seek to balance out the analysis by creating a new specific offense characteristic at §2B1.1(b)(3) that adds an enhancement for offenses that resulted in substantial noneconomic harm to one or more victims.[13] Noneconomic harm could include physical harm, psychological harm, emotional trauma, harm to reputation or credit rating, and invasion of privacy.

The Commission has also proposed two mitigating factors to balance the analysis of a defendant's culpability. One factor allows a two-level decrease if the defendant committed the offense because of pressure from an employer, a close relationship, threats or a personal vulnerability that made them more easily persuaded. The second factor provides a tiered decrease if, before learning of any investigation, the defendant stopped the misconduct, tried to return the money or property, or reported the offense to authorities.

Clarifying Sophisticated-Means Enhancement

The Proposed Amendments also seek to address the much maligned sophisticated-means enhancement. This provision, carrying a two-level increase,[14] has historically been applied inconsistently, with courts differing on what constitutes "especially complex or intricate" conduct.[15] The 2026 proposals aim to narrow and clarify the enhancement's scope, possibly through narrowing the definition of sophisticated means to exclude modern but commonplace technology. The Commission suggested the definition, "committing or concealing an offense with a greater level of complexity than typical for an offense of that nature" and said it would provide further guidance for courts to use when determining whether conduct fits the description.[16]

If passed, this amendment could lead to more uniform application of the sophisticated means enhancement to cases of truly sophisticated schemes. Courts have redefined this enhancement to apply broadly through case law over the years-to include any fraud scheme more complex than a "garden variety" one-and thus any passed amendment or guidance could lead to a reduction or standardization of the enhancement's application. This could also reduce the stacking of enhancements that leads to disproportionately long sentences for those convicted of economic crimes.

Inflation Adjustments Across Monetary Thresholds

Separate from the specific offense characteristics, the Commission proposes a systematic inflationary adjustment to monetary thresholds across the Guidelines. This proposed amendment is consistent with the Commission's efforts to tailor the Guidelines to modern economic conditions while keeping the guidelines as fair as possible.

Practical Implications & Key Takeaways for Companies and Individuals

Proposed amendments to the Guidelines always present an opportunity for creative arguments, in accordance with 18 U.S.C. § 3661, which broadly authorizes a wide variety of information that courts can consider at sentencing. For white-collar defendants and corporations subject to government investigation:

- Cases involving losses near current offense level boundaries may see materially reduced guideline ranges under the new, proposed structure;
- Challenges to the sophisticated means enhancement may prove increasingly successful, and in any event, alternative arguments should be presented regarding the logic of this enhancement under § 3553(a);
- Non-economic hardship should be more carefully considered during the course of an investigation and assumed to play a more central role in financial criminal matters; and
- Exposure analyses may shift significantly under the proposed amendments, requiring companies to re-evaluate compliance programs and internal investigation protocols.

Previously sentenced defendants may benefit if the U.S. Sentencing Commission applies the amendments retroactively. The Commission is currently soliciting public comment on whether the proposed amendments, if approved, should also apply retroactively.[17] Retroactive application would allow eligible defendants to petition the courts for reduced sentences under the revised guidelines.[18] Benesch will continue to monitor the Commission's April vote and stands ready to assist.

If you have questions regarding these Proposed Amendments, government investigations related thereto or enforcement actions more generally, the White Collar Practice Group at Benesch is here to help.

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[1] From 1987 to 2024 Congress has rejected only two amendments out of over 800 proposed. Congressional Research Service, *Amending the U.S. Sentencing Guidelines* (April 28, 2025), https://www.congress.gov/crs-product/IG10078.

[2] United States Sentencing Commission, *An Overview of the Federal Sentencing Guidelines* (2022), https://www.ussc.gov/sites/default/files/pdf/about/overview/Overview_Federal_Sentencing_Guidelines.pdf.

[3] Congressional Research Service, *supra* note 1.

[4] U.S. Sentencing Commission, *Proposed Amendments to the Sentencing Guidelines*

(Dec. 12, 2025), https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202512_rf-p

[5] U.S. Sentencing Commission, *Proposed Amendments to the Sentencing Guidelines* (Jan. 30, 2026), https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202602_rf-p

[6] U.S. Sentencing Commission, *News Release: U.S. Sentencing Commission Invites Comment On*

Proposed Updates to the Guidelines Manual (Dec. 12, 2025), https://www.ussc.gov/about/news/press-releases/december-12-2025.

[7] Barry Boss & Kara Kapp, *How the Economic Loss Guideline Lost its Way, and How to Save It*, Ohio St, J. Crim. L., 605 (2021).

[8] U.S. Department of Justice, *Comment on December 12, 2025 Proposed Amendments* (Feb. 10, 2026), https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/202602/90FR59660_pub

[9] *Id.*

[10] U.S. Sentencing Guidelines Manual §2B1.1 (U.S. Sentencing Comm'n 2025), https://guidelines.ussc.gov/apex/r/ussc_apex/guidelinesapp/guidelines?app_gl_id=%C2%A72B1.1.

[11] U.S. Department of Justice, *supra* note 8, at 2.

[12] U.S. Sentencing Guidelines Manual §2B1.1, *supra*.

[13] U.S. Sentencing Commission, *supra* note 4, at 65.

[14] USSG §2, *amend.* 587 (Nov. 1, 1998).

[15] Ashley Adams & Chase Wortham, *Sophisticated Means Enhancement Under Fire: United States v. Guldi*, Adams & Associates, PLC (Jul. 19, 2025), https://www.azwhitecollarcrime.com/blog/2025/07/19/sophisticated-means-enhancement-under-fire-united

[16] U.S. Sentencing Commission, *supra* note 4, at 65.

[17] *Id.* at ii; U.S. Sentencing Commission *supra* note 5, at ii.

[18] 18 U.S.C. § 3582(c)(2).