

Fed. R. Evid. 404(b) was amended, effective December 1, 2020.

As amended, [Rule 404\(b\)\(3\)\(B\)](#) provides that the Government must “articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose.” The advisory committee notes clarify that “[t]he prosecution must not only identify the evidence that it intends to offer pursuant to the rule but also articulate a non-propensity purpose for which the evidence is offered and the basis for concluding that the evidence is relevant in light of this purpose.” [Fed. R. Evid. 404, Advisory Committee’s Note to 2020 Amendment](#). This amendment was intended to combat the mistaken understanding by some courts that the Government could “satisfy the notice obligation without describing the specific act that the evidence would tend to prove, and without explaining the relevance of the evidence for a non-propensity purpose.” *Id.* Therefore, Defendant is entitled to notice containing descriptions of the specific bad acts the Government’s evidence would tend to prove, as well as the purpose for their admission.

This amendment, however, does not disturb the prior advisory committee note that the prosecution is not required “to disclose directly or indirectly the names and addresses of its witnesses. . . .” [Fed. R. Evid. 404, Advisory Committee’s Note to 1991 Amendment](#). Nor is the amendment inconsistent with existing caselaw holding that the Government has no obligation to supply a [Rule 404\(b\)](#) notice identifying documents or other evidence regarding, or witnesses with knowledge of, the bad acts. *See United States v. Mills*, No. 16-cr-20460, 2019 WL 409659, at *5 (E.D. Mich. Feb. 1, 2019) (collecting cases). Therefore, Defendant is not entitled to disclosure of witness identities or evidence regarding the underlying bad acts.

Accordingly, the Government shall provide formal written notice of its intent to introduce [Rule 404\(b\)](#) evidence, with content conforming to the amended rule no later than 10 days prior to the trial date. *See, e.g., United States v. French*, 974 F.2d 687, 694-95 (6th Cir. 1992) (one week deemed reasonable notice for [Rule 404\(b\)](#) purposes); *United States v. Paul*, 57 F. App’x 597, 607 (6th Cir. 2003) (same). Extrinsic evidence subject to [Rule 404\(b\)](#)’s notice requirements will be excluded unless the Government can establish good cause justifying its failure to provide notice. *See Fed. R. Evid. 404(b)(3)(C)*.