

Section 2C1.1(b)(1) is amended by striking “bribe or extortion” and inserting “incident”.

Section 2C1.1(b) is amended by striking subdivision (2) in its entirety and inserting the following:

“(2) If the value of the unlawful payment, the benefit received or to be received in return for the payment, or the loss to the government from the offense, whichever is greatest (A) exceeded \$2,000 but did not exceed \$5,000, increase by 1 level; or (B) exceeded \$5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.”.

Section 2C1.1(b) is amended by adding at the end the following:

“(3) If the offense involved an unlawful payment for the purpose of influencing an official act of a public official in a high position of public trust, increase by [2][4] levels. If the resulting offense level is less than level 18, increase to level 18.

(4) If the defendant was a public official at the time of the offense, increase by [2][4] levels.

(5) If the offense involved an unlawful payment (A) to a United States Customs Border Protection Inspector to permit a person, a vehicle, or cargo to enter the United States; (B) to obtain a passport or a document relating to naturalization, citizenship, legal entry, or legal resident status; or (C) to obtain a government issued identification document, increase by [2][4] levels.”.

The Commentary to § 2C1.1 captioned “Statutory Provisions” is amended by inserting after “872,” the following:

“1341 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services), 1342 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services), 1343 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services).”.

The Commentary to § 2C1.1 captioned “Application Notes” is amended by striking Note 1 in its entirety and inserting the following:

“1. Definitions.—For purposes of this guideline:

‘Bribe’ means anything of value given or accepted with the corrupt intent to influence, or to be influenced in, an official act. A bribe involves an agreed upon quid pro quo.]

‘Government issued identification document’ means a document made or issued by or under the authority of the United States Government, a State, or a political subdivision of a State, which, when completed with information

concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

‘Official act’ has the meaning given that term in 18 U.S.C. 201(a)(3).

‘Public official,’ means (A) an officer or employee in, or selected to be in, a position of public trust in a federal, state, or local government department or government agency; or (B) a juror.

‘Public official’ also includes a government contractor if such contractor is in a position of public trust with respect to a government department or government agency.

‘Unlawful payment’ means anything of value. An ‘unlawful payment’ need not be monetary.”.

The Commentary to § 2C1.1 captioned “Application Notes” is amended in Note 2 by inserting “Application of Subsection (b)(2).—” before “Loss”.

The Commentary to § 2C1.1 captioned “Application Notes” is amended by striking “5. Where the court finds” and all that follows through “(Departures).”.

The Commentary to § 2C1.1 captioned “Application Notes” is amended by redesignating Notes 3 and 4 as Notes 4 and 5, respectively; by inserting after Note 2 the following:

“3. Application of Subsection (b)(3).— Subsection (b)(3) applies in cases involving federal, state, or local public officials who hold high positions of public trust. Such officials are distinguished from other public officials by their direct authority to make decisions for, or on behalf of, a government department or government agency, and by their substantial influence over the decision-making process. Examples of public officials in high positions of public trust include (A) a legislator; (B) a judge or magistrate; (C) a prosecuting attorney; (D) an agency administrator; and (E) a [supervisory] law enforcement officer. Certain individuals may be considered, for purposes of subsection (b)(3), to be a public official who holds a high position of public trust because of the importance of the process over which the individual has substantial influence, as for example, a juror.

The degree of public trust involved in a high position of public trust is greater than that required for application of § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). Accordingly, the fact that a particular public official has managerial discretion does not, in and of itself, determine whether the public official holds a high position of public trust.”;

and in Note 4, as redesignated by this amendment, by inserting

“Inapplicability of § 3B1.3.—” before “Do not apply”.

The Commentary to § 2C1.1 captioned “Application Notes” is amended in Note 5, as redesignated by this amendment, by inserting “Upward Departure Provisions.—” before “In some cases”; and by adding at the end the following new paragraph:

“In a case in which the court finds that the defendant’s conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted. See § 5K2.7 (Disruption of Governmental Function).”.

The Commentary to § 2C1.1 captioned “Application Notes” is amended in Note 6 by inserting “Related Payments.—” before “Subsection (b)(1)”; by striking “either bribery or extortion” in the first sentence and inserting “bribery, extortion under color of official right, or fraud involving the deprivation of the intangible right to honest services”; by striking “of bribery or extortion” in the second sentence; by striking “single bribe or extortion” in the second sentence and inserting “single incident”; and by adding at the end the following new paragraph:

“In a case involving more than one incident of bribery, extortion, or fraud involving the deprivation of the intangible right to honest services, the applicable amounts under subsection (b)(2) (*i.e.*, the greatest of the value of the unlawful payment, the benefit received or to be received, or the loss to the government) are determined separately for each incident and then added together.”.

The Commentary to § 2C1.1 captioned “Application Notes” is amended in Note 7 by inserting “Application of Subsection (c).—” before “For the purposes”.

The Commentary to § 2C1.1 captioned “Application Notes” is amended by adding at the end the following:

“8. Determining Sentence Within Guideline Range.—In some cases, the public official is the instigator of the offense. In others, a private citizen may be the instigator. This factor may appropriately be considered in determining the placement of the sentence within the applicable guideline range.”.

The Commentary to § 2C1.1 captioned “Background” is amended by inserting before the paragraph that begins

“Offenses involving attempted” the following new paragraph:

“Section 2C1.1 also applies to fraud involving the deprivation of the intangible right to honest services of