

government officials under 18 U.S.C. 1341–1343. Such fraud offenses typically involve an improper use of government influence that harms the operation of government in a manner similar to bribery offenses.”.

Section 2C1.2(a) is amended by striking “7” and inserting “[9]”.

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

“(b) (1) If the offense involved more than one incident, increase by 2 levels.

(2) If the value of the unlawful payment (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.

(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 15, increase to level 15.

(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 § 2C1.2 captioned “Statutory Provision” is amended by striking “Provision” and inserting “Provisions”; by inserting “§” after “18 U.S.C. §”; and by inserting “, 212–214, 217” after “201(c)(1)”.

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

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

‘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.

[‘Gratuity’ means anything of value given, or accepted for or because of an official act performed or to be performed.]

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

“2. 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.”.

The Commentary to § 2C1.2 captioned “Application Notes” is amended in Note 3, as redesignated by this amendment, by inserting “Inapplicability of § 3B1.3.—” before “Do not”; in Note 4, as redesignated by this amendment, by inserting “Determining Sentence Within Guideline Range.—” before “In some”; by striking “may be the initiator” and inserting “may be the instigator”; and in Note 5, as redesignated by this amendment, by inserting “Related Payments.—Subsection (b)(1) provides an adjustment for offenses involving

more than one incident.” before “Related payments that.”.

The Commentary to § 2C1.2 captioned “Background” is amended by striking the second and third sentences and inserting the following:

“It also applies in cases involving (1) the offer to, or acceptance by, a bank examiner of a loan or gratuity; (2) the offer or receipt of anything of value for procuring a loan or discount of commercial bank paper from a Federal Reserve Bank; and (3) the acceptance of a fee or other consideration by a federal employee for adjusting or cancelling a farm debt.”.

Chapter Two, Part C, is amended by striking §§ 2C1.6, 2C1.7, and all accompanying commentary.

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. § 209 by striking “2C1.4” and inserting “2C1.3”;

in the line referenced to 18 U.S.C. 212 by striking “2C1.6” and inserting “2C1.2”;

in the line referenced to 18 U.S.C. 213 by striking “2C1.6” and inserting “2C1.2”;

in the line referenced to 18 U.S.C. 214 by striking “2C1.6” and inserting “2C1.2”;

in the line referenced to 18 U.S.C. 217 by striking “2C1.6” and inserting “2C1.2”;

in the line referenced to 18 U.S.C. 371 by striking “2C1.7”;

in the line referenced to 18 U.S.C. 1341 by striking “2C1.7” and inserting “2C1.1”;

in the line referenced to 18 U.S.C. 1342 by striking “2C1.7” and inserting “2C1.1”;

in the line referenced to 18 U.S.C. 1343 by striking “2C1.7” and inserting “2C1.1”;

in the line referenced to 18 U.S.C. 1909 by striking “, 2C1.4”; and

in the line referenced to 41 U.S.C. 423(e) by striking “, 2C1.7”.

Issues for Comment:

1. The Commission requests public comment regarding the proposed consolidation of §§ 2C1.1 and 2C1.7, and §§ 2C1.2 and 2C1.6. Should the Commission instead consolidate all four guidelines into one comprehensive guideline that would apply to bribery, gratuity, extortion under color of official right, and fraud involving the deprivation of the intangible right to honest services? For example, such a guideline could distinguish between bribery and gratuity offenses by alternative base offense levels in a structure that would be consistent with § 2E5.1 (Offering, Accepting or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare