

or Pension Plan). Should a consolidated § 2C1.1 or § 2C1.2 specifically include conspiracy and attempts? Alternatively, should the Commission maintain the current structure of Chapter Two, Part C (Offenses Involving Public Officials) and not consolidate any of the guidelines in that part?

2. The Commission requests comment regarding whether it should eliminate any or all of the cross references in § 2C1.1. For example, the Commission has received input that the cross reference in subsection (c)(2) is confusing and may result in circular application of multiple cross references. This cross reference instructs the court to apply § 2X3.1 (Accessory After the Fact) or § 2J1.2 (Obstruction of Justice) if the offense was committed to conceal, or obstruct justice in respect to, another offense. If § 2J1.2 is applied, for example, and the offense involved obstructing the investigation or prosecution of an offense, then the cross reference in § 2J1.2(c)(1) instructs the court to apply § 2X3.1. For these reasons, should the Commission eliminate the cross reference in § 2C1.1(c)(2)?

3. The proposed amendment adds to § 2C1.1 an application note indicating that whether the initiator of the offense is the public official or a private citizen is relevant in determining the placement of the sentence within the applicable guideline range. This note currently exists in § 2C1.2. The Commission requests comment regarding whether solicitation of a bribe or gratuity is a more serious offense than receipt of a bribe or gratuity. If so, should the Commission provide an enhancement in § 2C1.1 for the solicitation of a bribe and in § 2C1.2 for the solicitation of a gratuity? If so, what would be an appropriate offense level increase for such an enhancement?

4. The proposed amendment provides three new enhancements in both consolidated guidelines: (A) A two-level increase for offenses that involve an unlawful payment (i) to a United States Customs Border Protection Inspector to permit a person, a vehicle, or cargo to enter the United States; (ii) to obtain a government issued identification document; or (iii) to obtain a United States passport, or a document relating to naturalization, citizenship, legal entry, or legal resident status; (B) a [two][four]-level increase for offenses involving public officials in high positions of public trust; and (C) a [two][four]-level increase if the defendant was a public official at the time of the offense. Are there other enhancements that the Commission should consider adding to the proposed

consolidated guidelines, and if so, what are those enhancements? For example, should the Commission provide a specific offense characteristic for bribery, extortion, and honest services offenses that affect the integrity of the election process? With respect to the proposed enhancement for a public official in a high position of public trust, are there additional categories of public officials that the Commission should include within the scope of this enhancement? As an alternative to the proposed enhancement, should the Commission provide a two part enhancement that provides for different offense level increases based on the degree of public trust held by the public official involved in the offense? For example, should the Commission provide a two-level increase if the offense involved an unlawful payment for the purpose of influencing a public official holding a supervisory or managerial position, and a four-level enhancement if the offense involved an unlawful payment for the purposes of influencing a public official holding a high-level decision making or sensitive position? If so, what distinguishes one category from the other? Should any such enhancement, or any other proposed enhancement, provide for a minimum offense level and if so, what would be an appropriate minimum offense level?

5. According to Commission data, the enhancement for multiple incidents applies in approximately 64% of all § 2C1.1 cases and in approximately 69% of all § 2C1.2 cases. The Commission requests comment regarding whether the two levels from this enhancement should be incorporated into the base offense levels in §§ 2C1.1 and 2C1.2 to increase the proposed base offense level in those two guidelines an additional two levels.

6. The Commission requests comment regarding whether, in light of the proposed amendments to Chapter Two, Part C, it should amend other guidelines pertaining to bribery, gratuity, and extortion, and other similar offenses. For example, should the Commission increase the base offense levels for bribery and gratuity offenses in § 2E5.1 in order to maintain consistent and proportionate sentencing with respect to §§ 2C1.1 and 2C1.2? Should the Commission consider making any amendments to § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery), § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), or § 2B3.3 (Blackmail and Similar Forms of Extortion)?

## Proposed Amendment 5: Drugs

Synopsis of Proposed Amendment: This proposed amendment makes a number of amendments to §§ 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), and 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), and Appendix A (Statutory Index).

First, the proposed amendment addresses section 608 of the PROTECT Act, Public Law 108–21, by increasing the offense levels for gamma hydroxybutyric acid (“GHB”), a schedule I depressant, and gamma-butyrolactone (“GBL”), a precursor for GHB. Currently, GHB is sentenced with all other schedule I or II depressants (*i.e.*, 1 unit = 1 gram of marijuana). The proposed amendment provides two options for increasing the penalties for GHB in the Drug Equivalency Tables of Application Note 10 of § 2D1.1. The effect of Option One is that a five year term of imprisonment would be triggered by 3.785 liters (equivalent to one gallon) of GHB. The effect of Option Two is that a five year term of imprisonment would be triggered by 18.925 liters (equivalent to five gallons) of GHB. The proposed amendment provides two corresponding quantity options for increasing the penalties for GBL in § 2D1.11.

Second, the proposed amendment adds to Application Note 5 of § 2D1.1 a reference to controlled substance analogues. The note currently states that “[a]ny reference to a particular controlled substance in these guideline includes all salts, isomers, and all salts of isomers.” The proposed amendment modifies the rule specifically to include that any reference to a particular controlled substance also includes any analogue of that controlled substance, unless otherwise provided (*e.g.*, the Drug Quantity Table currently references fentanyl analogue).

Third, the proposed amendment corrects a technical error in the Drug Quantity Table of § 2D1.1 with respect to schedule III substances. The maximum base offense level for schedule III substances is level 20 (see § 2D1.1(c)(10)), but there is no corresponding language in the Drug Quantity Table to indicate that level 20 is the maximum base offense level for these substances. The amendment corrects this error.

Fourth, the proposed amendment updates the statutory references in § 2D1.11(b)(2) and accompanying