

**REVISED PROPOSED AMENDMENT: IMPLEMENTATION OF THE FOREIGN
CORRUPT PRACTICES ACT**

Synopsis of Proposed Amendment: *This amendment changes the Statutory Index reference for violations of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1 through 78dd-3, from §2B4.1(Bribery in Procurement of Bank Loan and Other Commercial Bribery) to §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right). This change is proposed because such violations involve public corruption of foreign officials and therefore are more like public corruption cases than commercial bribery cases. In addition, such a change arguably would better implement the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which requires the United States, as a signatory, to impose comparable sentences for foreign public bribery cases as for domestic public bribery cases.*

Proposed Amendment:

§2B4.1. Bribery in Procurement of Bank Loan and Other Commercial Bribery

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Commentary

Statutory Provisions: ~~15 U.S.C. §§ 78dd-1, 78dd-2,~~ 18 U.S.C. §§ 215, 224, 225; 26 U.S.C. §§ 9012(e), 9042(d); 41 U.S.C. §§ 53, 54; 42 U.S.C. §§ 1395nn(b)(1), (2), 1396h(b)(1),(2); 49 U.S.C. § 11902. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. This guideline covers commercial bribery offenses and kickbacks that do not involve officials of federal, state, or local government, **foreign governments, or public international organizations.** See Part C, Offenses Involving Public Officials, if ~~governmental~~any such officials are involved.

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Background:

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This guideline also applies to ~~violations of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1 and 78dd-2,~~ and to violations of 18 U.S.C. § 224, sports bribery, as well as certain violations of the Interstate Commerce Act.

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§2C1.1. Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right

Commentary

Statutory Provisions: 15 U.S.C. §§ 78dd-1, 78dd-2, 78dd-3; 18 U.S.C. §§ 201(b)(1), (2), 872, 1951. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Background:

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Section 2C1.1 also applies to extortion by officers or employees of the United States in violation of 18 U.S.C. § 872, and Hobbs Act extortion, or attempted extortion, under color of official right in violation of 18 U.S.C. § 1951. The Hobbs Act, 18 U.S.C. § 1951(b)(2), applies in part to any person who acts "under color of official right." This statute applies to extortionate conduct by, among others, officials and employees of state and local governments. The panoply of conduct that may be prosecuted under the Hobbs Act varies from a city building inspector who demands a small amount of money from the owner of an apartment building to ignore code violations to a state court judge who extracts substantial interest-free loans from attorneys who have cases pending in his court.

Section 2C1.1 also applies to offenses covered by the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, 78dd-2, and 78dd-3. Such offenses generally involve a payment to a foreign public official, candidate for public office, or agent or intermediary, with the intent to influence an official act or decision of a foreign government or political party. Typically, a case prosecuted under the Foreign Corrupt Practices Act will involve an intent to influence governmental action.

Offenses involving attempted bribery are frequently not completed because the victim reports the offense to authorities or is acting in an undercover capacity. Failure to complete the offense does not lessen the defendant's culpability in attempting to use public position for personal gain. Therefore, solicitations and attempts are treated as equivalent to the underlying offense.

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APPENDIX A- STATUTORY INDEX

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15 U.S.C. § 78dd-1	2B4.1 2C1.1
15 U.S.C. § 78dd-2	2B4.1 2C1.1
15 U.S.C. § 78dd-3	2C1.1
15 U.S.C. § 78ff	2B1.1, 2B4.1 2C1.1

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