

**EDWARD S. GARCIA, JR.**  
ATTORNEY AT LAW, P.C.



**Juris Doctor**  
University of Virginia (1978)

3333 Virginia Beach Blvd., Suite 26  
Virginia Beach, VA 23452

**Master of Laws (In Taxation)**  
New York University (1980)

(757) 486-1110 • (757) 340-1617 • Fax (757) 486-6975  
E-Mail: EGarcia@esglawfirm.com

**Master of Laws (In Estate Planning)**  
University of Miami (1993)

Edward S. Garcia, Jr.  
also admitted  
in Florida

Admitted to practice before  
the United States Tax Court

February 13, 2015

US Sentencing Commission  
Attn: Jeanne Doherty, Public Affairs Officer  
One Columbus Circle NE  
Washington, DC 20002

Friday / PM  
Certified Mail R.R.R.  
(70132630000075241492)

**Re:** Request for Comments on Revisions to  
Fraud Sentencing Guidelines (Including  
Section 2B1.1) Governing Fraud Offenses;  
Part C - Sophisticated Means in Subsection (b)(10)(c)

Dear Gentlemen/Ladies:

This communication shall constitute a formal response to the publication by the United States Sentencing Commission of a proposed amendment to the federal financial fraud sentencing guidelines, including, as pertains to the “sophisticated means enhancement”. This correspondence shall constitute a formal “public comment” on the proposed regulation(s):

As a practicing attorney and member of the Virginia and Florida State Bars for more than 35 years, as well as a concerned citizen and taxpayer apprehensive over the ever expanding percentage of the total population held in the federal prison system, I, hereby, extend my full support and belief that the changes referenced above should be fully implemented to create a more fair, equitable and sensible system. In addition, I believe these changes should be made retroactive and apply to all currently sentenced inmates in the federal system.

In particular, I support, with respect to economic crimes, a change (see §2B1.1) that will allow revision to the application of the “sophisticated means” enhancement test that now seems to result in lengthy prison sentences for many first-time, non-violent white collar offenders, in some cases, resulting in sentences higher than for the most heinous violent criminal offence, including, offenses such as rape and/or manslaughter.

Clearly the proper application of the “enhancement” augmentation should only be when compared with other similar white collar economic crimes in the same class. While it may be sensible to allow for the level of sentencing to increase, based upon the degree of financial loss, i.e., certainly a \$5,000 loss is much different than a \$10M loss, that comparison should not be reapplied when considering the “sophisticated nature of the scheme” enhancement. A \$1M



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economic crime should be compared with other equivalent loss crime(s), such that the “sophisticated nature of the scheme” enhancement would only be applied to the extent that the particular crime is unique and unusually egregious when compared to other similar crimes in the same class, i.e., bearing the same or similar level of dollar (\$) loss.

As an example, if we were looking at crimes generating a \$1M-\$5M loss, we would look at the type of scheme(s) that had been utilized and only utilize the “sophisticated means” enhancement when the facts and circumstances established a level of extreme sophistication when compared to *other crimes in the same class*. Surely, in most all cases, a million dollar (\$1M) crime is going to be derived from a more “sophisticated scheme” than a \$5,000 crime. It seems to me a case of “double accounting” to increase the sentence for both, i.e., the level of financial loss and then, thereafter, an additional augmentation of sentence based upon a “comparison of sophistication” between two vastly different offenses.

In summary, I support these changes and feel they should be made retroactively. First time, non-repetitive white collar, non-violent economic offender’s existing sentences should be further evaluated in light of the foregoing. I am hopeful that the Commission will adopt such an approach so that we can reasonably begin depopulating our federal prisons through the release of such non-violent offenders once they have served a reasonable incarceration sentence for their initial crime(s) and they are, otherwise, prepared to reenter our communities and resume a productive and law abiding life.

I thank you for your kind attention to this public comment and, of course, if I can provide any additional information or assist in any way the Commission’s “good work”, please do not hesitate to contact me.

Very truly yours,

Edward S. Garcia, Jr.,  
Attorney at Law, P.C.

By:   
Edward S. Garcia, Jr., Esquire

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