

PROPOSED AMENDMENT: COLLEGE SCHOLARSHIP FRAUD

Synopsis of Proposed Amendment: *The following proposed amendment addresses the directive in section 3 of the College Scholarship Fraud Prevention Act of 1999, Pub. L. 106–420. The directive requires the Commission to amend the guidelines:*

...in order to provide for enhanced penalties for any offense involving fraud or misrepresentation in connection with the obtaining or providing of, or the furnishing of information to a consumer on, any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education, such that those penalties are comparable to the base offense level for misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency.

The misrepresentation provision referred to in the directive is part of a two-level enhancement (with a minimum offense level of level 10) that also applies (in the alternative) if the offense involves misrepresentation or fraud during a bankruptcy proceeding or a violation of a prior, specific judicial [or other specified] order. U.S.S.G. §2F1.1(b)(4).

The amendment would add an additional alternative enhancement to subsection (b)(4) that applies if the offense involves a misrepresentation to a consumer in connection with obtaining, providing, or furnishing financial assistance for an institution of higher education. This proposed enhancement is targeted at the provider of the financial assistance or scholarship services, not the individual applicant for such assistance or scholarship, consistent with the intent of the legislation. The “findings” of the Act demonstrate its concern with fraud that occurs in offering college education financial assistance services. The following are the findings contained in the Act:

- (1) A substantial amount of fraud occurs in the offering of college education financial assistance services to consumers.*
- (2) Such fraud includes the following:*
 - (A) Misrepresentations regarding the provision of sources from which consumers may obtain financial assistance (including scholarships, grants, loans, tuition, awards, and other assistance) for purposes of financing a college education.*
 - (B) Misrepresentations regarding the provision of portfolios of such assistance tailored to the needs of specific consumers.*
 - (C) Misrepresentations regarding the pre-selection of students as eligible to receive such assistance.*
 - (D) Misrepresentations that such assistance will be provided to consumers who purchase specified services from specified entities.*

- (E) *Misrepresentations regarding the business relationships between particular entities and entities that award or may award such assistance.*
- (F) *Misrepresentations regarding refunds of processing fees if consumers are not provided specified amounts of such assistance, and other misrepresentations regarding refunds.*

Proposed Amendment:

§2F1.1. Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States

- (a) Base Offense Level: **6**
- (b) Specific Offense Characteristics

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- (4) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious or political organization, or a government agency; (B) a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding; ~~or~~ (C) a violation of any prior, specific judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines; or (D) a misrepresentation to a consumer in connection with obtaining, providing, or furnishing financial assistance for an institution of higher education, increase by **2** levels. If the resulting offense level is less than level **10**, increase to level **10**.

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Commentary

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Application Notes:

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24. *For purposes of subsection (b)(4)(D):*

"Financial assistance" means any scholarship, grant, loan, tuition, discount, award, or other financial assistance for the purposes of financing an education.

"Institution of higher education" has the meaning given that term in section 101 of the Higher Education Act of 1954 (20 U.S.C. § 1001).

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Background:

Subsection (b)(4)(D) implements the instruction to the Commission in section 3 of Public Law 106-420.

Subsections (b)(5)(A) and (B) implement the instruction to the Commission in section 4 of the Wireless Telephone Protection Act, Public Law 105-172.

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