



UNITED STATES POSTAL INSPECTION SERVICE

OFFICE OF THE CHIEF POSTAL INSPECTOR

March 10, 1998

Honorable Richard B. Conaboy
United States Sentencing Commission
One Columbus Circle, N.E., Suite 2-500
Washington, DC 20002-8002

SUBJECT: 1998 Proposed Guideline Amendments

Attention: Michael Courlander
Public Information Officer

Dear Chairman Conaboy:

The United States Postal Inspection Service respectfully submits its comments to the proposed amendments published by the Commission on January 6, 1998. Generally, we support the proposals that provide consistency and uniformity for the theft and fraud loss tables and those amendments that clarify and simplify the guidelines for determining loss. Further, we support the consolidation of the guidelines for theft, destruction of property, and fraud, provided the specific offense characteristics for undelivered mail are preserved in any new guideline. Our specific comments are referenced in the following by the amendment number and Federal Register page number.

Proposed Amendment 1, pages 602-605. This proposed guideline would provide uniformity in the dollar loss ranges and corresponding offense level increases for theft, fraud, and tax offenses and incorporates the more-than-minimal planning element into the loss tables.

We support the loss table amendments provided that these changes do not effect the two level enhancement for the theft of mail currently provided by §2B1.1(b)(3), regardless of the amount of dollar loss or the absence of more-than-minimal planning. See our additional comments on Proposed Amendment 3 and the proposed mail theft guideline, infra.

Proposed Amendment 3, pages 610 - 614. Generally, this amendment would consolidate the theft, fraud, and destruction of property guidelines into one extensive guideline and retain the specific offense characteristics and commentary for each type of offense. The new guideline proposes a base offense level of six with a loss table and incorporates specific application notes and commentary for each type of offense.

In our response to the Commission's initial notice for comment on the issue of loss (Federal Register, January 2, 1997), we stated our concern about the proposed elimination of the specific mail theft guideline if the base offense level for theft was raised to a level six. We believe the unique character of United States mail justifies an increase above any base offense level established for theft, even if the dollar loss is minimal. We want to ensure that the current offense level enhancement is retained in any new theft guideline. Further, this proposed amendment references the insertion of a loss table for the consolidated guideline. Since the Commission has proposed several loss table options in Proposed Amendment 1, we are unsure which loss table would be used.

Proposed Amendment 3, page 611 (Mail theft guideline). This proposed guideline will effectively maintain the two level increase for mail theft, even if the dollar loss is minimal (i.e., less than \$2000 under the proposed amendments). This mail theft guideline language depends on the Commission adopting a loss guideline with a base offense level of six and a guideline which provides for a two-level decrease for minimal dollar loss. If the Commission adopts this new theft guideline, we strongly support the provision that states that the two level decrease for minimal loss would not apply to the theft or destruction of mail.

Proposed Amendment 4, page 6, Note 3. (Credit card guideline). This proposal would move the credit card theft guideline into a "Special Rules" section within the loss guideline. In addition, it would clarify that this guideline applies to "access devices" and loss attributed to "purloined numbers." We support this proposed amendment.

In addition to comments on the proposed amendments, the Commission solicited alternative methods to determine loss. In the area of credit card theft, we request the Commission consider using the credit line of the card as the amount of the intended and potential loss, as an alternative to the current guideline language of "\$100 per card."

As another alternative for credit card loss, we propose a narrowly tailored guideline to address the more serious credit card offender, (i.e., a defendant that possesses multiple stolen cards). This concept is based on the presumption that an individual with multiple stolen or unlawfully acquired credit cards intends to use, sell, or fence.

the cards based on their credit line. Rather than focus on the credit line and the amount of intended loss, this proposal would increase the offense level based on the number of cards in the possession of the defendant.

Number of cards

Offense level

5 or more
10 or more
20 or more

2 levels
4 levels
6 levels

Proposed Amendment 4, page 617-618 (Noneconomic factors). The Commission also asked for comments on noneconomic factors used for upward departures in loss determinations. One of the proposed factors would consider the number of victims. We support the alternative language of a "large number of victims" rather than limiting the factor to "ten victims or more." In conjunction with a multiple victim factor, we suggest the Commission consider a graduated offense table based on the number of victims. The table would be used if the offense impacts ten or more victims up to a maximum of more than a hundred victims.

Number of victims

Increase in level

10 or more
20 or more
50 or more
100 or more

2
4
6
8

We appreciate the opportunity to comment on these proposed amendments. If you need additional information, please feel free to contact me at (202) 268-5445.

Sincerely,



for
J. M. Boswell
Deputy Chief Inspector
Office of Criminal Investigations