



UNITED STATES POSTAL INSPECTION SERVICE

OFFICE OF THE COUNSEL

March 10, 2000

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

SUBJECT: 2000 Proposed Guideline Amendments

Attention: Michael Courlander
Public Information Officer

Dear Mr. Courlander:

The United States Postal Inspection Service respectfully submits its comments to the proposed guideline amendments for identity theft and fraud published by the Commission on January 18, 2000. During the last year, we have met and discussed with the Commission's Economics Crimes Policy Team (the "Team") the problems associated with the investigation of identity theft offenses.

As background, the Postal Inspection Service was one of the primary law enforcement agencies involved in the legislative initiative to combat identity theft, due to the impact of these offenses on the Postal Service and the mail. We feel those issues the legislation instructs the Commission to consider in its deliberations address the significant issues in identity offenses and their resulting harm to victims.

We have also reviewed the Team report in conjunction with the proposed guidelines. Although mail theft and mail fraud (18 U.S.C. §§ 1708, 1341) are not cited in the report as prevalent violations associated with identity theft, they are, in fact, two of the primary means by which identity information is unlawfully obtained. For example, of the 12 case summaries included in the report, nine of them involve either theft of mail or mail fraud, in order to

obtain the victim's personal information. Since mail theft and mail fraud adversely effect the U.S. mails and the postal system as an essential government function, we believe a person's mailing address should be included in the guideline language as found in the definition of "means of identification" as stated in 18 U.S.C. § 1028(d)(3)(C).

In our discussions with the Team, it was our understanding there was concern about the expanded reach of 18 U.S.C. § 1028, with the inclusion of the "means of identification" element. As we read the Team's report and the proposed options, we believe the limited application of the "means of identification" and the addition of "identifying information" and "unauthorized identification means" are confusing in light of the statutory language. Furthermore, we believe the legislative intent was to make the statute apply to all crimes where the identity element was essential to the commission of the crime. We do not believe Option 1 captures the scope of illegal conduct as contemplated in the legislative intent, and for that reason, oppose this option as proposed.

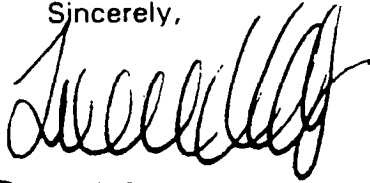
We support Option 2 as the better alternative because it tracks the statutory elements and covers the key elements of identity offenses, specifically, harm to victims. Based on our experience with identity theft and fraud offenses, including their impact on victims, financial institutions and the Postal Service, we support the proposed minimum offense level of 12. We agree with the proposed enhancement language regarding "more than minimal" harm to the victim as clarified in the application notes, but feel the "production or transfer" enhancement based on the number of identity items should start at three or more such items, as opposed to the proposed six items.

As we have stated in previous submissions to the Commission, we are in favor of a specific guideline to address the offense element of multiple victims in both the theft and fraud guidelines (Comment Issue 1). If a specific offense characteristic is added for identity offenses, we believe it should be a graduated offense level increase based on the number of victims. Alternatively, we believe a separate offense characteristic should be added to address the number of unauthorized identification means involved in the offense. Additionally, we agree the offense level increase should apply if the identity offense involves five or more victims or means of identification.

We support a change in the alternate loss valuation for credit card offenses (Comment Issue 5). In past years, we have asked the Commission to establish the alternate loss based on the credit line of the card as being the

better measurement of intended loss, as opposed to the current \$100 per card. We believe this is a more accurate measurement of loss, but support the \$1,000 valuation as the minimal loss for credit cards that have been stolen but not used.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. J. Bauman', written in a cursive style.

 H. J. Bauman
Inspector in Charge/Counsel
Office of the Counsel

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