

3. “**Fiduciary of the benefit plan**” is defined in 29 U.S.C. § 1002(21)(A) to mean a person who exercises any discretionary authority or control in respect to the management of such plan or exercises authority or control in respect to management or disposition of its assets, or who renders investment advice for a fee or other direct or indirect compensation with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or who has any discretionary authority or responsibility in the administration of such plan.
4. “**Value of the improper benefit to the payer**” is explained in the Commentary to §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions).
5. If the adjustment for a fiduciary at §2E5.1(b)(1) applies, do not apply the adjustment at §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: This section covers the giving or receipt of bribes and other unlawful gratuities involving employee welfare or pension benefit plans, or labor organizations. The seriousness of the offense is determined by several factors, including the value of the bribe or gratuity and the magnitude of the loss resulting from the transaction.

<i>Historical Note</i>	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 149); November 1, 1991 (amendment 422); November 1, 1993 (amendment 481); November 1, 2001 (amendment 617); November 1, 2004 (amendment 666); November 1, 2015 (amendment 791).
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§2E5.2. [Deleted]

<i>Historical Note</i>	Section 2E5.2 (Theft or Embezzlement from Employee Pension and Welfare Benefit Plans), effective November 1, 1987, and amended effective June 15, 1988 (amendment 28), November 1, 1989 (amendment 150), and November 1, 1991 (amendment 399), was deleted by consolidation with §2B1.1 effective November 1, 1993 (amendment 481).
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§2E5.3. False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act; Destruction and Failure to Maintain Corporate Audit Records

- (a) Base Offense Level (Apply the greater):
 - (1) **6**; or
 - (2) If the offense was committed to facilitate or conceal (A) an offense involving a theft, a fraud, or an embezzlement; (B) an offense involving a bribe or a gratuity; or (C) an obstruction of justice offense, apply §2B1.1 (Theft, Property Destruction, and Fraud), §2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of