

## §2C1.1

- (B) A member of a state or local legislature. “State” means a State of the United States, and any commonwealth, territory, or possession of the United States.
  - (C) An officer or employee or person acting for or on behalf of a state or local government, or any department, agency, or branch of government thereof, in any official function, under or by authority of such department, agency, or branch of government, or a juror in a state or local trial.
  - (D) Any person who has been selected to be a person described in subdivisions (A), (B), or (C), either before or after such person has qualified.
  - (E) An individual who, although not otherwise covered by subdivisions (A) through (D): (i) is in a position of public trust with official responsibility for carrying out a government program or policy; (ii) acts under color of law or official right; or (iii) participates so substantially in government operations as to possess de facto authority to make governmental decisions (e.g., which may include a leader of a state or local political party who acts in the manner described in this subdivision).
2. **More than One Bribe or Extortion.**—Subsection (b)(1) provides an adjustment for offenses involving more than one incident of either bribery or extortion. Related payments that, in essence, constitute a single incident of bribery or extortion (e.g., a number of installment payments for a single action) are to be treated as a single bribe or extortion, even if charged in separate counts.
- In a case involving more than one incident of bribery or extortion, the applicable amounts under subsection (b)(2) (*i.e.*, the greatest of the value of the payment, the benefit received or to be received, the value of anything obtained or to be obtained by a public official or others acting with a public official, or the loss to the government) are determined separately for each incident and then added together.
3. **Application of Subsection (b)(2).**—“*Loss*”, for purposes of subsection (b)(2), shall be determined in accordance with §2B1.1 (Theft, Property Destruction, and Fraud) and Application Note 3 of the Commentary to §2B1.1. The value of “*the benefit received or to be received*” means the net value of such benefit. **Examples:** (A) A government employee, in return for a \$500 bribe, reduces the price of a piece of surplus property offered for sale by the government from \$10,000 to \$2,000; the value of the benefit received is \$8,000. (B) A \$150,000 contract on which \$20,000 profit was made was awarded in return for a bribe; the value of the benefit received is \$20,000. Do not deduct the value of the bribe itself in computing the value of the benefit received or to be received. In the preceding examples, therefore, the value of the benefit received would be the same regardless of the value of the bribe.

### 4. **Application of Subsection (b)(3).**—

- (A) **Definition.**—“*High-level decision-making or sensitive position*” means a position characterized by a direct authority to make decisions for, or on behalf of, a government department, agency, or other government entity, or by a substantial influence over the decision-making process.
- (B) **Examples.**—Examples of a public official in a high-level decision-making position include a prosecuting attorney, a judge, an agency administrator, and any other public official with a similar level of authority. Examples of a public official who holds a sensitive position include a juror, a law enforcement officer, an election official, and any other similarly situated individual.