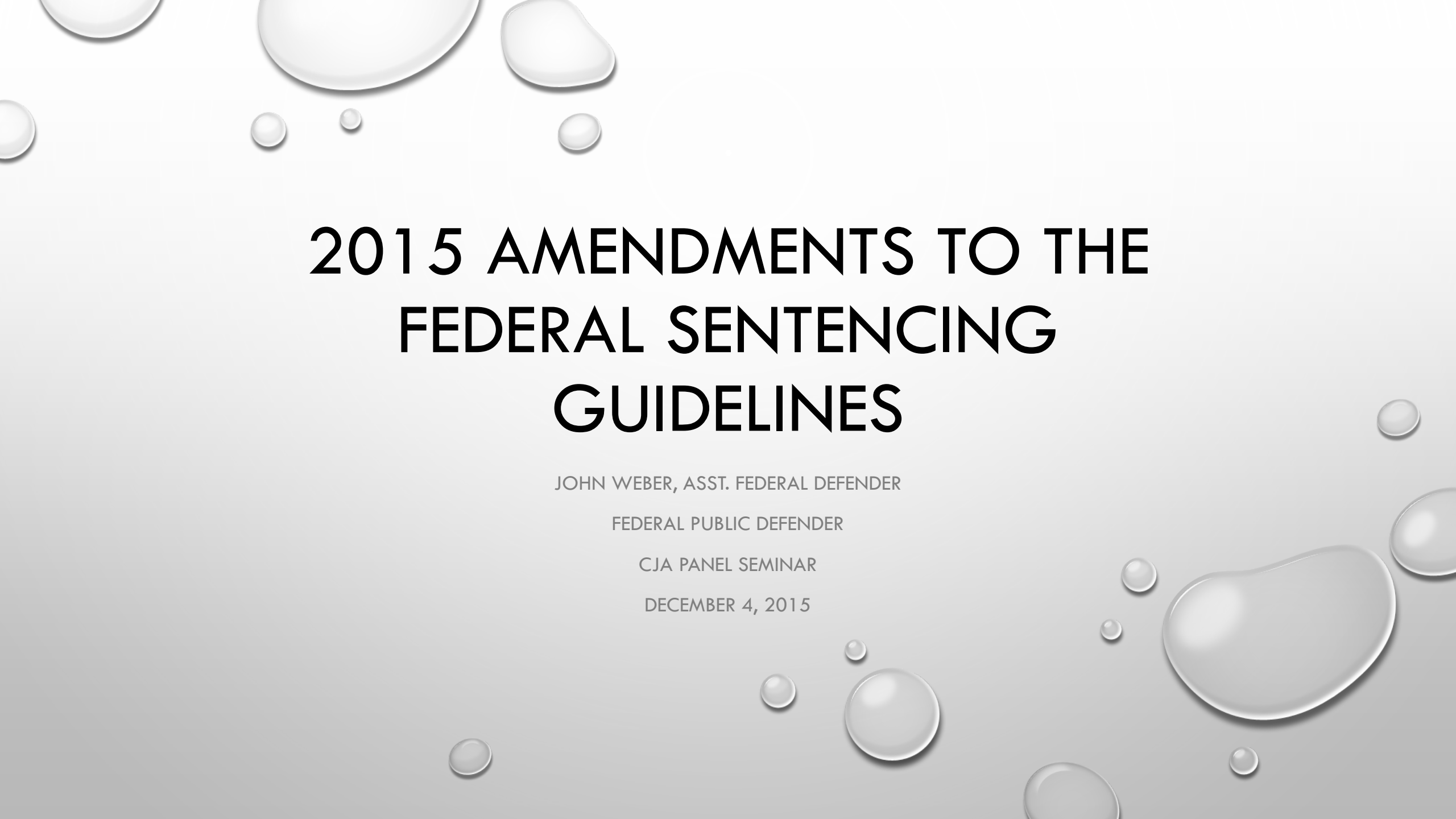


The background of the slide is a light gray gradient. It is decorated with numerous realistic water droplets of various sizes. Some droplets are at the top left, some are scattered in the middle, and a large, prominent one is on the right side. The droplets have highlights and shadows, giving them a three-dimensional appearance.

# 2015 AMENDMENTS TO THE FEDERAL SENTENCING GUIDELINES

JOHN WEBER, ASST. FEDERAL DEFENDER

FEDERAL PUBLIC DEFENDER

CJA PANEL SEMINAR

DECEMBER 4, 2015

# WE WILL DISCUSS

- BASICS OF THE NEW AMENDMENTS INCLUDED IN THE 2015 GUIDELINES MANUAL.
- AMENDMENTS TO 6 AREAS:

|                                             |                               |
|---------------------------------------------|-------------------------------|
| §2B1.1 Economic Crimes                      | §3B1.2 Mitigating Role        |
| §1B1.3 Jointly Undertaken Criminal Activity | Monetary Tables               |
| §2D1.1 Hydrocodone                          | §4A1.2 “Single Sentence” Rule |

## §2B1.1 ECONOMIC CRIMES

- AMENDMENT IS THE RESULT OF THE COMMISSION'S MULTI-YEAR STUDY OF §2B1.1 AND RELATED GUIDELINES.
- SEVERAL CHANGES WERE MADE TO ACCOUNT FOR:
  - HARM TO VICTIMS,
  - THE DEFENDANT'S INDIVIDUAL CULPABILITY, AND
  - THE DEFENDANT'S INTENT.
- AMENDMENT MADE CHANGES TO THE FOLLOWING:
  - VICTIMS TABLE,
  - DEFINITION OF "INTENDED LOSS,"
  - THE "SOPHISTICATED MEANS" ENHANCEMENT, AND
  - FRAUD ON THE MARKET OFFENSES.

# 2015 VICTIMS TABLE

- SIGNIFICANT REVISION TO INCORPORATE CONSIDERATION OF FINANCIAL HARDSHIP INCURRED BY THE VICTIMS AS A RESULT OF THE ECONOMIC CRIME

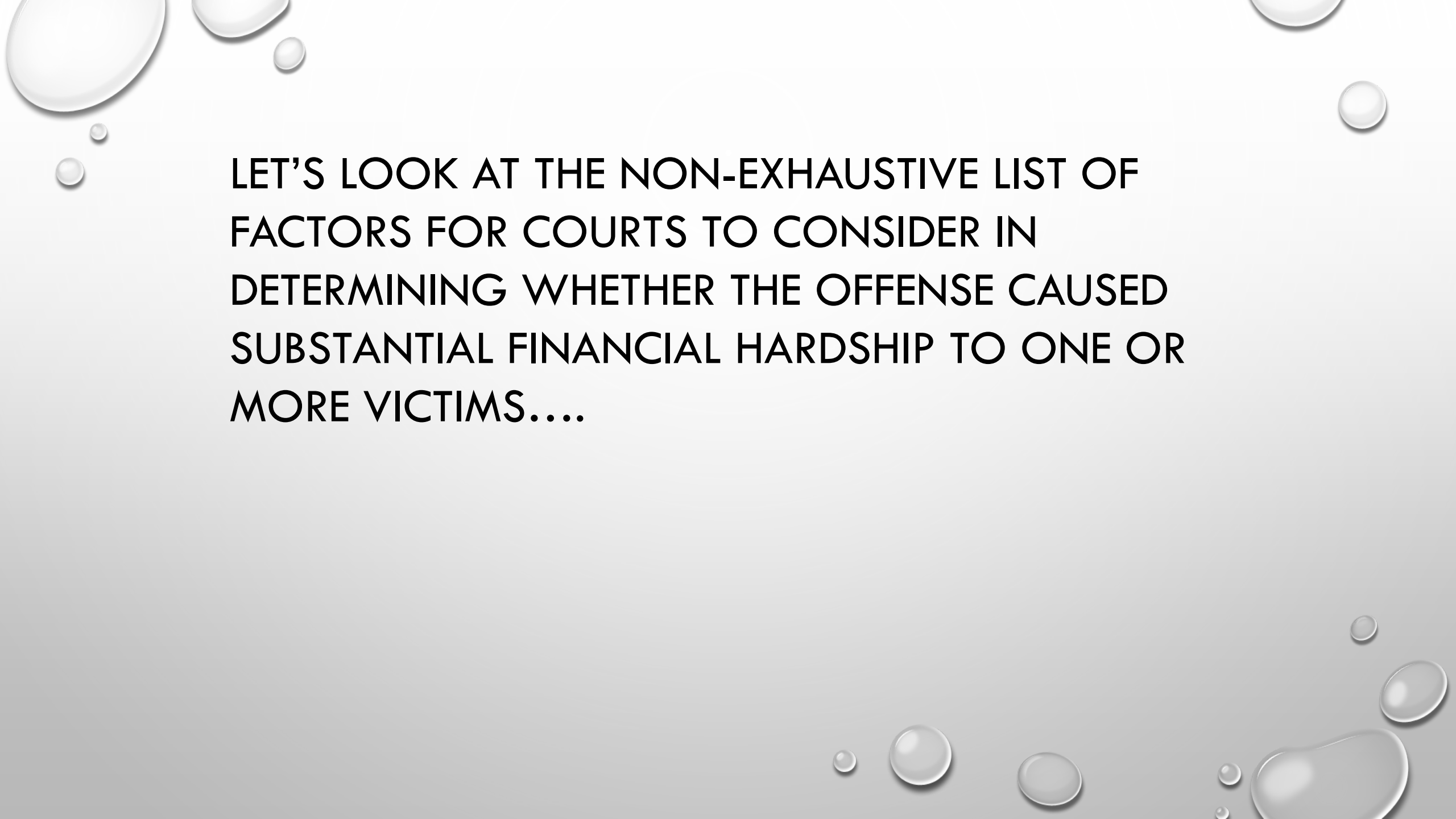
(2) (Apply the greatest) If the offense—

- (A) (i) involved 10 or more victims; (ii) was committed through mass-marketing; or (iii) resulted in substantial financial hardship to one or more victims, increase by 2 levels;
- (B) resulted in substantial financial hardship to five or more victims, increase by 4 levels; or
- (C) resulted in substantial financial hardship to 25 or more victims, increase by 6 levels.

## 2014 VICTIMS TABLE

(2) (Apply the greatest) If the offense—

- (A) (i) involved 10 or more victims; or (ii) was committed through mass-marketing, increase by **2** levels;
- (B) involved 50 or more victims, increase by **4** levels; or
- (C) involved 250 or more victims, increase by **6** levels.

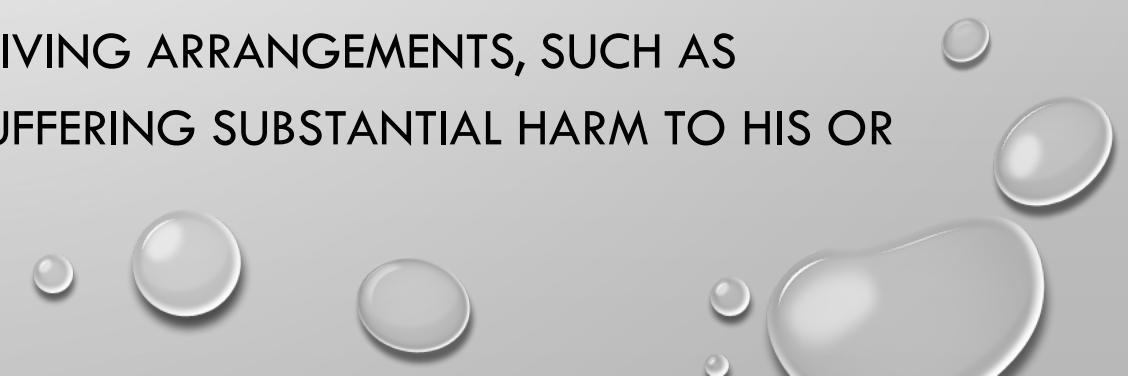


LET'S LOOK AT THE NON-EXHAUSTIVE LIST OF  
FACTORS FOR COURTS TO CONSIDER IN  
DETERMINING WHETHER THE OFFENSE CAUSED  
SUBSTANTIAL FINANCIAL HARDSHIP TO ONE OR  
MORE VICTIMS....



# SUBSTANTIAL FINANCIAL HARDSHIP

## NON-EXHAUSTIVE LIST OF FACTORS TO DETERMINE FINANCIAL IMPACT:

- I. BECOMING INSOLVENT;
  - II. FILING FOR BANKRUPTCY UNDER THE BANKRUPTCY CODE (TITLE 11);
  - III. SUFFERING SUBSTANTIAL LOSS OF A RETIREMENT, EDUCATION, OR OTHER SAVINGS OR INVESTMENT FUND;
  - IV. MAKING SUBSTANTIAL CHANGES TO HIS OR HER EMPLOYMENT, SUCH AS POSTPONING HIS OR HER RETIREMENT PLANS;
  - V. MAKING SUBSTANTIAL CHANGES TO HIS OR HER LIVING ARRANGEMENTS, SUCH AS RELOCATING TO A LESS EXPENSIVE HOME; AND SUFFERING SUBSTANTIAL HARM TO HIS OR HER ABILITY TO OBTAIN CREDIT.
- 

# NUMBER OF VICTIMS

- AMENDMENTS REFLECT COMMISSION'S OVERALL GOAL OF FOCUSING MORE ON VICTIM HARM.
- REVISIONS TO VICTIMS TABLE ENSURES THAT EVEN ONE VICTIM SUFFERING SUBSTANTIAL FINANCIAL HARM RECEIVES INCREASED PUNISHMENT.
- NEW AMENDMENT DOES NOT DOWNPLAY THE NUMBER OF VICTIMS AS AN INDICATOR TO THE SERIOUSNESS OF AN OFFENSE – TABLE MAINTAINS A 2-LEVEL ENHANCEMENT FOR OFFENSES INVOLVING TEN OR MORE VICTIMS.

# INTENDED LOSS

- THE AMENDED LANGUAGE FOCUSES THIS ENHANCEMENT FOR INTENDED LOSS ON THE DEFENDANT'S SPECIFIC INTENT.

(ii) Intended Loss.—“Intended loss” (I) means the pecuniary harm that the defendant purposely sought to inflict; and (II) includes intended pecuniary harm that would have been impossible or unlikely to occur (e.g., as in a government sting operation, or an insurance fraud in which the claim exceeded the insured value).

## §2B1.1(b)(10)(C) - SOPHISTICATED MEANS

(10) If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

- PRIOR TO AMENDMENT, THE ENHANCEMENT APPLIED IF “THE OFFENSE OTHERWISE INVOLVED SOPHISTICATED MEANS.”
- FOCUS ON DEFENDANT’S OWN CONDUCT WAS “SOPHISTICATED” NOT ON LEVEL OF SOPHISTICATION OF SCHEME.
- REFLECTS INDIVIDUAL CULPABILITY AND MINIMIZE APPLICATION TO LESS CULPABLE OFFENDERS.

# FRAUD ON THE MARKET

- RESPONSE TO ISSUES RELATING TO METHODS USED TO DETERMINE LOSS IN HIGHLY COMPLEX AND FACT-INTENSIVE CASES INVOLVING FRAUDULENT INFLATION OR DEFLATION IN THE VALUE OF A PUBLICLY TRADED SECURITY OR COMMODITY.
- THE SPECIAL RULE AT APPLICATION NOTE 3(F)(ix) WAS INITIALLY ADDED AS A PRESUMED STARTING POINT TO PROVIDE A REBUTTABLE PRESUMPTION THAT THE SPECIFIED LOSS CALCULATION METHODOLOGY PROVIDES A REASONABLE ESTIMATE OF THE ACTUAL LOSS.
- AS AMENDED, THIS SPECIAL RULE NOW STATES THAT THE PROVIDED METHOD IS ONE METHOD THAT THE COURTS CAN CONSIDER BUT ARE FREE TO USE ANY APPROPRIATE METHOD TO DETERMINE LOSS.

(ix) *Fraudulent Inflation or Deflation in Value of Securities or Commodities.*—In a

2014

(ix) *Fraudulent Inflation or Deflation in Value of Securities or Commodities.*—In a case involving the fraudulent inflation or deflation in the value of a publicly traded security or commodity, there shall be a rebuttable presumption that the actual loss attributable to the change in value of the security or commodity is the amount determined by—

the change in value of the security or commodity during the 90-day period after the fraud was disclosed to the market, and

2015

(ix) *Fraudulent Inflation or Deflation in Value of Securities or Commodities.*—In a case involving the fraudulent inflation or deflation in the value of a publicly traded security or commodity, the court in determining loss may use any method that is appropriate and practicable under the circumstances. One such method the court may consider is a method under which the actual loss attributable to the change in value of the security or commodity is the amount determined by—

(e.g., changes caused by external market forces, such as changed economic circumstances, changed investor expectations, and new industry-specific or firm-specific facts, conditions, or events).



# ECONOMIC CRIMES CONCLUSION

- SEVERAL CHANGES TO §2B1.1 – THEFT, PROPERTY DESTRUCTION, AND FRAUD.
  - DESIGNED TO BETTER ACCOUNT FOR VICTIM HARM.
  - BETTER TO GAUGE OFFENDER'S INDIVIDUAL CULPABILITY AND INTENT.
- 

## §3B1.2 MITIGATING ROLE INTRODUCTION

- AMENDMENTS DESIGNED TO FACILITATE A MORE CONSISTENT USE OF THIS GUIDELINE.
- COMMISSION CONDUCTED A STUDY THAT REVIEWED CASES OF LOW-LEVEL OFFENDERS, CASE LAW, AND CONSIDERED PUBLIC COMMENT AND TESTIMONY.
- STUDY CONCLUDED THAT THE MITIGATING ROLE ADJUSTMENT IS APPLIED INCONSISTENTLY AND MORE SPARINGLY THAN THE COMMISSION INTENDED.
- AMENDMENT COULD HAVE A SUBSTANTIAL IN DRUG AND ECONOMIC CRIME CASES WHERE ADJUSTMENT WAS APPLIED IN A LIMITED FASHION.

## §3B1.2 MITIGATING ROLE INTRODUCTION CONTINUED:

- COMMISSION FOCUSED ON FOUR AREAS OF THIS GUIDELINE:
  - AMENDMENT ADDRESSES A CIRCUIT CONFLICT REGARDING WHAT CONSTITUTES AN “AVERAGE PARTICIPANT.”
  - AMENDMENT PROVIDES ADDITIONAL GUIDANCE TO SENTENCING COURTS BY PROVIDING A NON-EXHAUSTIVE LIST OF FACTORS FOR CONSIDERATION.
  - AMENDMENT CLARIFIES WHAT IT MEANS TO BE “INDISPENSABLE OR CRITICAL TO THE SUCCESS OF A SCHEME.”
  - AMENDMENT CLARIFIES LANGUAGE THAT MAY HAVE HAD THE UNINTENDED EFFECT OF HINDERING COURTS FROM APPLYING THE MITIGATING ROLE ADJUSTMENT.

## §3B1.2 MITIGATING ROLE

### WHAT IS AN “AVERAGE PARTICIPANT?”

- AMENDMENT ADOPTS THE APPROACH OF THE 7<sup>TH</sup> AND 9<sup>TH</sup> CIRCUITS – THE “AVERAGE PARTICIPANT” REFERS ONLY TO THOSE PERSONS WHO ACTUALLY PARTICIPATED IN THE CRIMINAL ACTIVITY AT ISSUE WITHIN THE DEFENDANT’S CASE.
- DEFENDANT’S RELATIVE CULPABILITY IS DETERMINED ONLY BY COMPARISON TO CO-PARTICIPANTS, WHETHER CHARGED OR NOT.
- DEFENDANT’S CULPABILITY IS NOT BASED ON A COMPARISON TO SIMILAR ACTIVITIES UNDERTAKEN IN SIMILAR BUT UNRELATED CASES.

## §3B1.2 MITIGATING ROLE

### NON-EXHAUSTIVE LIST OF FACTORS:

- (i) *the degree to which the defendant understood the scope and structure of the criminal activity;*
- (ii) *the degree to which the defendant participated in planning or organizing the criminal activity;*
- (iii) *the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;*
- (iv) *the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts;*
- (v) *the degree to which the defendant stood to benefit from the criminal activity.*

## §3B1.2 MITIGATING ROLE

### • WHAT DOES IT MEAN TO BE “INTEGRAL” OR “INDISPENSABLE?”

- AMENDMENT ATTEMPTS TO SUGGEST COURTS LESSEN THE IMPORTANCE OF WHETHER A DEFENDANT’S ROLE IN A CRIMINAL ENDEAVOR WAS “INTEGRAL” OR “INDISPENSABLE” TO THE CRIME.
- ENCOURAGES COURTS TO MAKE THE MITIGATING ROLE ADJUSTMENT BASED ON THE “AVERAGE PARTICIPANT” CLARIFICATION.
- DEFENDANT WOULD BE ELIGIBLE FOR A MITIGATING ROLE ADJUSTMENT IF IN COMPARISON TO OTHERS INVOLVED IN THE CRIME, DEFENDANT PERFORMED IMPORTANT TASKS BUT LACKED A GREATER UNDERSTANDING OF AND INVOLVEMENT IN THE ENTIRETY OF THE CRIME.
- EVEN IF DEFENDANT’S TASK WAS CENTRAL TO THE CRIME, IF OVERALL ROLE WAS LIMITED WHEN COMPARED TO OTHER PARTICIPANTS, DEFENDANT MAY RECEIVE A MITIGATING ROLE ADJUSTMENT.

3. Applicability of Adjustment.—

- (A) Substantially Less Culpable than Average Participant.—This section provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant in the criminal activity.

*A defendant who is accountable under §1B1.3 (Relevant Conduct) only for the conduct in which the defendant personally was involved and who performs a limited function in the criminal activity may receive an adjustment under this guideline. For example, a defendant who is convicted of a drug trafficking offense, whose participation in that offense was limited to transporting or storing drugs and who is accountable under §1B1.3 only for the quantity of drugs the defendant personally transported or stored may receive an adjustment under this guideline.*

*Likewise, a defendant who is accountable under §1B1.3 for a loss amount under §2B1.1 (Theft, Property Destruction, and Fraud) that greatly exceeds the defendant's personal gain from a fraud offense or who had limited knowledge of the scope of the scheme may receive an adjustment under this guideline. For example, a defendant in a health care fraud scheme, whose participation in the scheme was limited to serving as a nominee owner and who received little personal gain relative to the loss amount, may receive an adjustment under this guideline.*

# MITIGATING ROLE CONCLUSION

- AMENDMENT IS AN EFFORT TO EXPAND THE COURTS' USE OF THE MITIGATING ROLE ADJUSTMENT.
- INVOLVED LANGUAGE REFINEMENTS, MORE CLEARLY DEFINED TERMS, AND LIST OF HELPFUL CRITERIA.
- DOWNPLAYS THE IMPORTANCE OF WHETHER A DEFENDANT'S ROLE WAS "INTEGRAL" OR "INDISPENSABLE."
- AMENDMENT IS AN EFFORT TO ENSURE A MORE CONSISTENT AND BROADER APPLICATION OF THE ADJUSTMENT.



## §1 B 1.3 RELEVANT CONDUCT JOINTLY UNDERTAKEN CRIMINAL ACTIVITY

- AMENDMENT SEEKS TO CLARIFY §1 B 1.3, RELEVANT CONDUCT, AS IT RELATES TO JOINTLY UNDERTAKEN CRIMINAL ACTIVITY.
  - NOT A SUBSTANTIVE CHANGE IN POLICY.
  - ADDRESSES WHEN TO HOLD A DEFENDANT ACCOUNTABLE FOR THE ACTS OF OTHERS.
  - ADDS THE “THREE-STEP PROCESS” IN THE TEXT OF THE GUIDELINE AND TAKES IT OUT OF THE COMMENTARY.
- 

# §1 B1.3 RELEVANT CONDUCT

## JOINTLY UNDERTAKEN CRIMINAL ACTIVITY

### THREE STEP PROCESS

- (B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all acts and omissions of others that were—
- (i) within the scope of the jointly undertaken criminal activity,
  - (ii) in furtherance of that criminal activity, and
  - (iii) reasonably foreseeable in connection with that criminal activity;

## §1 B 1.3 RELEVANT CONDUCT

- (ii) *Defendants F and G, working together, design and execute a scheme to sell fraudulent stocks by telephone. Defendant F fraudulently obtains \$20,000. Defendant G fraudulently obtains \$35,000. Each is convicted of mail fraud. Defendants F and G each are accountable for the entire amount (\$55,000). Each defendant is accountable for the amount he personally obtained under subsection (a)(1)(A). Each defendant is accountable for the amount obtained by his accomplice under subsection (a)(1)(B) because the conduct of each was within the scope of the jointly undertaken criminal activity (the scheme to sell fraudulent stocks), was in furtherance of that criminal activity, and was reasonably foreseeable in connection with that criminal activity.*

## §1 B1.3 RELEVANT CONDUCT

DEFENDANT IS **NOT** ACCOUNTABLE:

- (i) *Defendant D pays Defendant E a small amount to forge an endorsement on an \$800 stolen government check. Unknown to Defendant E, Defendant D then uses that check as a down payment in a scheme to fraudulently obtain \$15,000 worth of merchandise. Defendant E is convicted of forging the \$800 check and is accountable for the forgery of this check under subsection (a)(1)(A). Defendant E is not accountable for the \$15,000 because the fraudulent scheme to obtain \$15,000 was not within the scope of the jointly undertaken criminal activity (i.e., the forgery of the \$800 check).*



# MONETARY TABLES

## INFLATIONARY ADJUSTMENTS

- SINCE ARRIVAL OF GUIDELINES IN 1987, THERE HAVE BEEN OCCASIONAL CHANGES TO THE MONETARY TABLES.
  - NO CHANGES MADE TO SPECIFICALLY ADDRESS THE IMPACT OF ECONOMIC INFLATION.
  - COMMISSION ADDRESSED THE DEVALUING EFFECT INFLATION HAS HAD ON MONETARY AND TAX TABLES CITED WITHIN THE GUIDELINES.
  - COMMISSION USED A SPECIFIC MULTIPLIER DERIVED FROM THE CONSUMER PRICE INDEX TO CALCULATE FOR THE INFLATIONARY ADJUSTMENTS.
- 

(b) Specific Offense Characteristics

(1) If the loss exceeded ~~\$5,000~~ \$6

[Multiplier Comparison  
to Current Table]

[1.30]

[1.30]

[1.50]

[1.33]

[1.36]

[1.25]

[1.25]

[1.38]

[1.50]

[1.40]

[1.36]

[1.25]

[1.30]

[1.50]

[1.25]

[1.38]



Loss (Apply the Gr

(A)

~~\$5,000~~ \$6,500

(B)

More than \$5,000

(C)

More than \$10,000

(D)

More than \$30,000

(E)

More than \$70,000

(F)

More than \$120,000

(G)

More than \$200,000

More than \$500,000

More than \$1,000,000

More than \$2,500,000

More than \$7,000,000

More than \$20,000,000

More than \$50,000,000

More than \$100,000,000

More than \$200,000,000

More than \$400,000,000

I'm gonna kick his  
A\$\$! for putting  
my picture up  
there.

add 18

add 20

add 22

add 24

add 26

add 28

add 30.

# MONETARY TABLES

## INFLATIONARY ADJUSTMENTS

EX POST FACTO:

WITH REGARD TO §§5E1.2 AND 8C2.4 A SPECIAL INSTRUCTION CLARIFIES THAT FOR OFFENSES COMMITTED PRIOR TO NOVEMBER 1, 2015 THE COURT SHALL USE THE FINE PROVISIONS THAT WERE IN EFFECT ON NOVEMBER 1, 2014.

# MONETARY TABLES

## INFLATIONARY ADJUSTMENTS

**2015**

**2014**

Fine Table

| Offense<br>Level | A<br>Minimum | B<br>Maximum |
|------------------|--------------|--------------|
| 3 and below      | \$100        | \$5,000      |
| 4-5              | \$250        | \$5,000      |
| 6-7              | \$500        | \$5,000      |
| 8-9              | \$1,000      | \$10,000     |
| 10-11            | \$2,000      | \$20,000     |
| 12-13            | \$3,000      | \$30,000     |
| 14-15            | \$4,000      | \$40,000     |
| 16-17            | \$5,000      | \$50,000     |
| 18-19            | \$6,000      | \$60,000     |
| 20-22            | \$7,500      | \$75,000     |
| 23-25            | \$10,000     | \$100,000    |
| 26-28            | \$12,500     | \$125,000    |
| 29-31            | \$15,000     | \$150,000    |
| 32-34            | \$17,500     | \$175,000    |
| 35-37            | \$20,000     | \$200,000    |
| 38 and above     | \$25,000     | \$250,000.   |

Fine Table

| Offense<br>Level | A<br>Minimum | B<br>Maximum |
|------------------|--------------|--------------|
| 3 and below      | \$200        | \$9,500      |
| 4-5              | \$500        | \$9,500      |
| 6-7              | \$1,000      | \$9,500      |
| 8-9              | \$2,000      | \$20,000     |
| 10-11            | \$4,000      | \$40,000     |
| 12-13            | \$5,500      | \$55,000     |
| 14-15            | \$7,500      | \$75,000     |
| 16-17            | \$10,000     | \$95,000     |
| 18-19            | \$10,000     | \$100,000    |
| 20-22            | \$15,000     | \$150,000    |
| 23-25            | \$20,000     | \$200,000    |
| 26-28            | \$25,000     | \$250,000    |
| 29-31            | \$30,000     | \$300,000    |
| 32-34            | \$35,000     | \$350,000    |
| 35-37            | \$40,000     | \$400,000    |
| 38 and above     | \$50,000     | \$500,000.   |

## §2D1.1 DRUG EQU

HYDROCC

Mmmmmmm  
Hydrocodone.....



# §2D1.1 DRUG EQUIVALENCY TABLE

## HYDROCODONE

- HYDROCODONE HAS BEEN RESCHEDULED FROM A LESS RESTRICTED SCHEDULE III TO A MORE RESTRICTED SCHEDULE II.
- SIGNIFICANT IMPACT TO THE DRUG EQUIVALENCY TABLE.
- MARIJUANA EQUIVALENCY:
  - 2014: MARIJUANA EQUIVALENCY OF 1 UNIT HYDROCODONE TO 1GM OF MARIJUANA).
  - 2015: MARIJUANA EQUIVALENCY OF 1GM HYDROCODONE (ACTUAL) TO 6700GM OF MARIJUANA).



## §2D1.1 DRUG EQUIVALENCY TABLE HYDROCODONE

- VARIETY OF FORMULATIONS OF PRODUCTS CONTAINING HYDROCODONE.
  - COMMISSION CHANGED THE METHODOLOGY USED TO CALCULATE TOTAL DRUG QUANTITY OF PHARMACEUTICALS THAT INCLUDE HYDROCODONE TO REFLECT THE ACTUAL WEIGHT OF THE HYDROCODONE.
- 

## §2D1.1 DRUG EQUIVALENCY TABLE

### HYDROCODONE

- PREVIOUSLY UNDER §2D1.1, THE BASE OFFENSE LEVEL RELATED TO HYDROCODONE HAS BEEN DETERMINED BY THE TOTAL WEIGHT OF THE TOTAL NUMBER OF PILLS CONTAINING HYDROCODONE, EVEN THOUGH A PILL MIGHT CONTAIN ONLY 15% HYDROCODONE WITH THE BALANCE OF THE PILL BEING A COMBINATION OF FILLERS OR IBUPROFEN.
- FDA APPROVAL OF NEW PRODUCTS.
- IT IS IMPORTANT TO IDENTIFY THE EXACT AMOUNT OF HYDROCODONE WHEN CALCULATING BASE OFFENSE LEVEL.

Example:

§ Defendant distributed 18,000 dosage units (d.u.) of Hydrocodone 10mg.

2014 Guidelines:

1 d.u. of Hydrocodone = 1gm of Marijuana (MJ).

18,000 d.u. of Hydrocodone = 18,000gm or 18kg of MJ.

18kg of MJ = BASE OFFENSE LEVEL 14.



# SINGLE SENTENCE RULE

- THE AMENDMENT RESPONDS TO A CIRCUIT CONFLICT REGARDING THE MEANING OF THE “SINGLE SENTENCE” RULE.
  - THE “SINGLE SENTENCE” RULE REDUCES THE CUMULATIVE IMPACT OF PRIOR SENTENCES IN DETERMINING A DEFENDANT’S CRIMINAL HISTORY SCORE.
  - THIS NEW AMENDMENT HAS IMPLICATIONS FOR THE CAREER OFFENDER GUIDELINE AND OTHER GUIDELINES THAT PROVIDE SENTENCING ENHANCEMENTS FOR PREDICATE OFFENSES.
- 

## SINGLE SENTENCE RULE

- (2) If the defendant has multiple prior sentences, determine whether those sentences are counted separately or treated as a single sentence. Prior sentences always are counted separately if the sentences were imposed for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense). If there is no intervening arrest, prior sentences are counted separately unless (A) the sentences resulted from offenses contained in the same charging instrument; or (B) the sentences were imposed on the same day. Treat any prior sentence covered by (A) or (B) as a single sentence. See also §4A1.1(e).

For purposes of applying §4A1.1(a), (b), and (c), if prior sentences are treated as a single sentence, use the longest sentence of imprisonment if concurrent sentences were imposed. If consecutive sentences were imposed, use the aggregate sentence of imprisonment.

# SINGLE SENTENCE RULE

## CIRCUIT COURT CONFLICT

KING V. UNITED STATES, EIGHTH CIRCUIT:

- IF TWO OR MORE PRIOR SENTENCES ARE TREATED AS A SINGLE SENTENCE UNDER THE GUIDELINES, THEN ALL CRIMINAL HISTORY POINTS ATTRIBUTABLE TO THE SINGLE SENTENCE ARE ASSIGNED TO ONLY THE PRIOR SENTENCE THAT WAS THE LONGEST.
- ONLY THIS SPECIFIC LONGER SENTENCE MAY BE CONSIDERED AS A PREDICATE OFFENSE FOR PURPOSES OF THE CAREER OFFENDER GUIDELINE.

NOT CONSIDERED A PREDICATE OFFENSE EVEN  
IF ELIGIBLE

SINGLE SENTENCE {

SENTENCE 1

SENTENCE 2

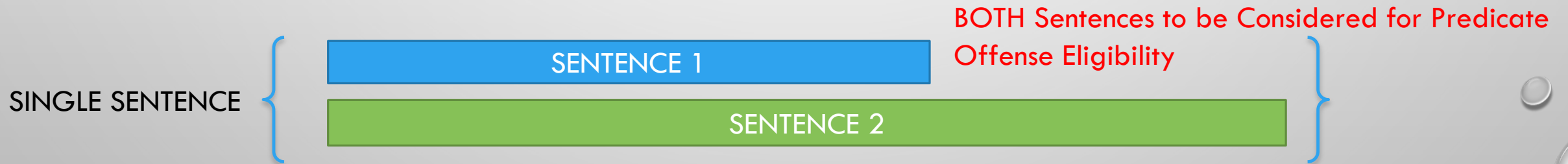
ONLY CONSIDERED BECAUSE LONGER SENTENCE

# SINGLE SENTENCE RULE

## CIRCUIT COURT CONFLICT

UNITED STATES V. WILLIAMS, SIXTH CIRCUIT:

- CONSIDERED AND REJECTED KING.
- COMMISSION ADOPTED THE SIXTH CIRCUIT APPROACH IN THE AMENDMENT.
- COMMISSION AMENDED THE COMMENTARY TO §4A1.2 TO PROVIDE THAT, FOR PURPOSES OF DETERMINING A PREDICATE OFFENSE, A PRIOR SENTENCE INCLUDED IN A SINGLE SENTENCE SHOULD BE TREATED AS IF IT RECEIVED CRIMINAL HISTORY POINTS IF IT INDEPENDENTLY WOULD HAVE RECEIVED THEM.



# SINGLE SENTENCE RULE

## EXAMPLE #1

Eight years ago and on the same day, Defendant received concurrent sentences for the following convictions: Robbery with one year in jail and Theft with two years in jail. These convictions were NOT separated by an intervening arrest and are subject to the Single Sentence Rule.

Both convictions occurred within the time limits for receiving criminal history points. The theft sentence, which is the longer of the two concurrent sentences, drives the calculation of the criminal history points. Assuming the robbery meets the definition of a crime of violence, it WILL QUALIFY as a predicate for career offender.

What if these crimes occurred *thirteen* years ago.....

# SINGLE SENTENCE RULE

## EXAMPLE #2

Thirteen years ago and on the same day, Defendant received concurrent sentences for the following convictions: Robbery with one year in jail and Theft with two years in jail. These convictions were NOT separated by an intervening arrest and are subject to the Single Sentence Rule.

In this case, each conviction must be viewed individually. Though the robbery is a crime of violence, the time limit for scoring criminal history points is ten years. Because the robbery alone would not have received criminal history points, it cannot serve as a career offender predicate.

# SINGLE SENTENCE RULE CONCLUSION

- AMENDMENT ENSURES THAT DEFENDANTS WHO HAVE COMMITTED MORE CRIMES, IN ADDITION TO A PREDICATE OFFENSE, REMAIN SUBJECT TO ENHANCED PENALTIES SUCH AS THE CAREER OFFENDER GUIDELINE.
- BY CLARIFYING HOW THE SINGLE SENTENCE RULE INTERACTS WITH TIME LIMITS SET FORTH IN §4A1.2(e), THE AMENDMENT PROVIDES THAT WHEN A PRIOR SENTENCE WAS SO REMOTE IN TIME THAT IT DOES NOT INDEPENDENTLY RECEIVE CRIMINAL HISTORY POINTS, IT CANNOT SERVE AS A PREDICATE OFFENSE.

The background of the slide is a light gray gradient. It is decorated with numerous realistic water droplets of various sizes. Some droplets are large and prominent, while others are small and subtle. They are scattered across the slide, with a higher concentration in the top-left and bottom-right corners. The droplets have highlights and shadows, giving them a three-dimensional appearance.

**QUESTIONS?**