

Chapter 13.00

FALSE STATEMENTS TO THE UNITED STATES GOVERNMENT

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Introduction to False Statements Instructions

(current through August 1, 2016)

Title 18 U.S.C. § 1001 provides:

§ 1001. Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation;

or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

(c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to--

(1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or

(2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

The pattern instructions cover the three subsections of 18 U.S.C. § 1001(a) with three elements instructions:

13.01 Concealing a Material Fact in a Matter within the Jurisdiction of the United States Government (18 U.S.C. § 1001(a)(1))

13.02 Making a False Statement in a Matter within the Jurisdiction of the United States Government (18 U.S.C. § 1001(a)(2))

13.03 Making or Using a False Writing in a Matter within the Jurisdiction of the United States Government (18 U.S.C. § 1001(a)(3))

The Committee defined the crime in three instructions because it is the most effective way to describe the three subsections, (a)(1), (a)(2), and (a)(3). The Sixth Circuit has made clear that these subsections are stated in the disjunctive and constitute alternative means of committing a

single crime. *United States v. Hixon*, 987 F.2d 1261, 1265 (6th Cir. 1993) (construing pre-1996 version of statute, but disjunctive language was carried forward in 1996 revision); *United States v. Zalman*, 870 F.2d 1047, 1054 (6th Cir. 1989) (same).

13.01 CONCEALING A MATERIAL FACT IN A MATTER WITHIN THE JURISDICTION OF THE UNITED STATES GOVERNMENT (18 U.S.C. § 1001(a)(1))

(1) The defendant is charged with [falsifying] [concealing] [covering up] a material fact in a matter within the jurisdiction of the United States government. For you to find the defendant guilty of this offense, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) First, that the defendant [falsified] [concealed] [covered up] a fact that he had a duty to disclose;

(B) Second, that the fact was material;

(C) Third, that the defendant [falsified] [concealed] [covered up] the fact by using a trick, scheme, or device;

(D) Fourth, that the defendant acted knowingly and willfully; and

(E) Fifth, that the fact pertained to a matter within the jurisdiction of the [executive] [legislative] [judicial] branch of the United States government.

(2) Now I will give you more detailed instructions on some of these terms.

(A) A “material” fact or matter is one that has the natural tendency to influence or is capable of influencing a [decision] [function] of [*insert name of government entity*].

(B) The term “using a trick, scheme, or device” means acting in a way intended to deceive others.

(C) An act is done “knowingly and willfully” if it is done voluntarily and intentionally, and not because of mistake or some other innocent reason.

(D) A matter is “within the jurisdiction of the [executive] [legislative] [judicial] branch of the United States government” if [*insert name of government entity*] has the power to exercise authority in that matter.

(3) [It is not necessary that the government prove [that the defendant knew the matter was within the jurisdiction of the United States government] [that the statements were made directly to, or even received by, the United States government]].

(4) If you are convinced that the government has proved all of the elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of the elements, then you must find the defendant not guilty of this charge.

Use Note

The court may need to modify the language if the charge is based on aiding and abetting or causing under 18 U.S.C. § 2.

Brackets indicate options for the court. Brackets with italics are notes to the court.

The provisions of paragraph (3) should be used only if relevant.

Committee Commentary Instruction 13.01 (current through August 1, 2016)

This instruction covers violations of § 1001 listed in subsection (a)(1) which prohibits falsifying, concealing or covering up a material fact.

Paragraph (1), which sets out the five elements for violating § 1001 by concealment, is based on *United States v. Rogers*, 118 F.3d 466, 470 (6th Cir. 1997) (*citing* *United States v. Steele*, 933 F.2d 1313, 1318-19 (6th Cir. 1991) (en banc)). For the legal duty element of concealment, the Committee relied on *United States v. Gibson*, 409 F.3d 325, 332 (6th Cir. 2005) (*citing* *United States v. Zalman*, 870 F.2d 1047, 1055 (6th Cir. 1989) and *United States v. Curran*, 20 F.3d 560, 566-67 (3d Cir. 1994)). In paragraph (1)(E), the term “pertained to” is from *Steele, supra* at 1319, and the phrase “a matter within the jurisdiction of the [executive] [legislative] [judicial] branch of” the United States government is based on the language of § 1001(a).

The basic definition of “material” in paragraph (2)(A) is based on *United States v. White*, 270 F.3d 356, 365 (6th Cir. 2001) (*citing* *United States v. Lutz*, 154 F.3d 581, 588 (6th Cir. 1998)). The bracketed terms “decision” and “function” are drawn from *United States v. Dedhia*, 134 F.3d 802, 806 (6th Cir. 1998). The term “function” may be appropriate, for example, when the defendant is charged with making a false statement to a federal law enforcement official conducting an investigation. The use of brackets for the name of the government entity is based on Tenth Circuit Pattern Instruction Inst. 2.46.

The definition of “using a trick, scheme, or device” in paragraph (2)(B) as requiring an intent to deceive is based on *United States v. Geisen*, 612 F.3d 471, 487 (6th Cir. 2010).

As to the definition of “knowingly and willfully,” the government must prove that the defendant knew the statement was false. *United States v. Geisen*, 612 F.3d 471, 487 (6th Cir. 2010); *United States v. Brown*, 151 F.3d 476, 484 (6th Cir. 1998); *United States v. Arnous*, 122 F.3d 321, 322-23 (6th Cir. 1997). The government need not prove that the defendant made the statement with knowledge of federal agency jurisdiction. *United States v. Yermian*, 468 U.S. 63 (1984).

For the term “willfully,” aside from the discussion of knowledge of federal jurisdiction in *Yermian, supra*, the Supreme Court has not defined the term in the context of § 1001. The Sixth Circuit holds that the government must prove that the defendant acted with an intent to deceive.

Geisen, supra (citing *United States v. Ahmed*, 472 F.3d 427, 433 (6th Cir. 2006)). This intent to deceive element is present in paragraph (2)(B) in the definition of trick, scheme, or device.

The Sixth Circuit has not addressed whether the term “willfully” requires the defendant to have specific knowledge that his conduct is criminal. In the absence of such authority, the Committee adopted the approach taken in a plurality of the circuit courts of appeals. Other circuits have concluded that “willfully” in § 1001 does not require the defendant to have specific knowledge that his conduct is criminal. *See United States v. Hsia*, 176 F.3d 517, 522 (D.C. Cir. 1999); *United States v. Daughtry*, 48 F.3d 829, 831-32 (4th Cir.), *vacated on other grounds*, 516 U.S. 984 (1995); *United States v. Curran*, 20 F.3d 560, 567-70 (3d Cir. 1994); *United States v. Rodriguez-Rios*, 14 F.3d 1040, 1048 n.21 (5th Cir. 1994). *But cf. United States v. Whab*, 355 F.3d 155, 159, 162 (2d Cir. 2004) (no plain error where the instruction provided: “[I]t is not necessary for the Government to establish that the defendant knew that he was breaking any particular law or particular rule. He need only have been aware of the generally unlawful nature of his actions.”).

The definition of “within the jurisdiction of the [executive] [legislative] [judicial] branch of the United States government” in paragraph (2)(D) is based on *United States v. Rodgers*, 466 U.S. 475 (1984). The Court explained, “A department or agency has jurisdiction . . . when it has the power to exercise authority in a particular situation. . . . [T]he phrase ‘within the jurisdiction’ merely differentiates the official, authorized functions of an agency or department from matters peripheral to the business of that body.” *Id.* at 479 (citation omitted). *See also United States v. Gibson*, 881 F.2d 318, 322 (6th Cir. 1989) (quoting this definition from *Rodgers*). The Sixth Circuit has further explained that, “[W]hen the federal agency has power to exercise its authority, even if the federal agency does not have complete control over the matter,’ the matter is within the agency’s jurisdiction.” *United States v. Grenier*, 513 F.3d 632, 638 (6th Cir. 2008) (quoting *United States v. Shafer*, 199 F.3d 826, 829 (6th Cir. 1999)). The term “[executive] [legislative] [judicial] branch” was substituted for the term “department or agency” to reflect the statutory amendment in 1996.

Paragraph (3) lists some but not all items the government is not required to prove. Many pattern instructions include such a provision. These provisions should be used only if relevant. The bracketed provision stating that the government need not prove the defendant knew the matter was within the jurisdiction of the federal government is based on *United States v. Yermian*, 468 U.S. 63 (1984) and *United States v. Gibson*, 881 F.2d 318, 323 (6th Cir. 1989) (citing *United States v. Lewis*, 587 F.2d 854 (6th Cir. 1978)). The bracketed provision stating that the false statement need not be made directly to, or even received by, the United States government is based on *United States v. Lutz*, 154 F.3d 581, 587 (6th Cir. 1998) (quoting *United States v. Gibson*, 881 F.2d 318, 322 (6th Cir. 1989)).

Intent and knowledge need not be proved directly. Pattern Instruction 2.08 Inferring Required Mental State states this principle and should be given in appropriate cases. In addition, Pattern Instruction 2.09 Deliberate Ignorance explains one approach to proving knowledge under § 1001. *See, e.g., United States v. Brown*, 151 F.3d 476, 484 (6th Cir. 1998) (quoting *United States v. Arnous*, 122 F.3d 321, 323 (6th Cir. 1997) (conviction affirmed based on evidence defendant deliberately ignored a high probability that food stamp application contained a material false statement)).

13.02 MAKING A FALSE STATEMENT IN A MATTER WITHIN THE JURISDICTION OF THE UNITED STATES GOVERNMENT (18 U.S.C. § 1001(a)(2))

(1) The defendant is charged with making a false [statement] [representation] in a matter within the jurisdiction of the United States government. For you to find the defendant guilty of this offense, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

- (A) First, that the defendant made a [statement] [representation];
- (B) Second, that the statement was [false] [fictitious] [fraudulent];
- (C) Third, that the [statement] [representation] was material;
- (D) Fourth, that the defendant acted knowingly and willfully; and
- (E) Fifth, that the statement pertained to a matter within the jurisdiction of the [executive] [legislative] [judicial] branch of the United States government.

(2) Now I will give you more detailed instructions on some of these terms.

(A) A statement is “false” or “fictitious” if it was untrue when it was made, and the defendant knew it was untrue at that time. A statement is “fraudulent” if it was untrue when it was made, the defendant knew it was untrue at that time, and the defendant intended to deceive.

(B) A “material” statement or representation is one that has the natural tendency to influence or is capable of influencing a [decision] [function] of [*insert name of government entity*].

(C) An act is done “knowingly and willfully” if it is done voluntarily and intentionally, and not because of mistake or some other innocent reason.

(D) A matter is “within the jurisdiction of the [executive] [legislative] [judicial] branch of the United States government” if [*insert name of government entity*] has the power to exercise authority in that matter.

(3) [It is not necessary that the government prove [that the defendant knew the matter was within the jurisdiction of the United States government] [that the statements were made directly to, or even received by, the United States government]].

(4) If you are convinced that the government has proved all of the elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of the elements, then you must find the defendant not guilty of this charge.

Use Note

The court may need to modify the language if the charge is based on aiding and abetting or causing under 18 U.S.C. § 2.

Brackets indicate options for the court. Brackets with italics are notes to the court.

The provisions of paragraph (3) should be used only if relevant.

Committee Commentary Instruction 13.02 (current through August 1, 2016)

This instruction covers violations of § 1001 listed in subsection (a)(2) based on making a false statement to the United States government.

Paragraph (1), which characterizes the false statement violation of § 1001 as having five elements, is based on *United States v. Geisen*, 612 F.3d 471, 489 (6th Cir. 2010); *United States v. Lutz*, 154 F.3d 581, 587 (6th Cir. 1998); and *United States v. Rogers*, 118 F.3d 466, 470 (6th Cir. 1997) (*both citing* *United States v. Steele*, 933 F.2d 1313, 1318-1319 (6th Cir. 1991) (en banc)). The Sixth Circuit has occasionally used a different formulation of the five elements. *See, e.g.*, *United States v. Gatewood*, 173 F.3d 983, 986 (6th Cir. 1999) (*citing* *United States v. Hixon*, 987 F.2d 1261, 1266 (6th Cir. 1993)). The Committee chose the formulation based on *Steele* because it is closer to the statutory language and because *Steele* was decided en banc. In paragraph (1)(E), the phrase “the statement pertained to” is from *Steele, supra* at 1319, and the phrase “a matter within the jurisdiction of the [executive] [legislative] [judicial] branch of” the United States government is based on the language of § 1001(a).

In paragraph (2)(A), the definitions of false, fictitious and fraudulent are, in the absence of Sixth Circuit authority, based on the Seventh Circuit Pattern Instructions for § 1001. The definition of “false or fictitious” is substantially verbatim from the Seventh Circuit definition. The definition of “fraudulent” is based on the Seventh Circuit instruction; the Sixth Circuit implicitly approved the language in *United States v. Brown*, 151 F.3d 476, 484 (6th Cir. 1998) (*quoting* *United States v. Shah*, 44 F.3d 285, 289 (5th Cir. 1995)).

The basic definition of “material” in paragraph (2)(B) is based on *United States v. White*, 270 F.3d 356, 365 (6th Cir. 2001) (*citing* *United States v. Lutz*, 154 F.3d 581, 588 (6th Cir. 1998)). The bracketed terms “decision” and “function” are drawn from *United States v. Dedhia*, 134 F.3d 802, 806 (6th Cir. 1998). The term “function” may be appropriate, for example, when the defendant is charged with making a false statement to a federal law enforcement official conducting an investigation. The use of brackets for the name of the government entity is based on Tenth Circuit Pattern Instruction Inst. 2.46.

As to the definition of “knowingly and willfully,” in paragraph (2)(C), no Supreme Court or Sixth Circuit cases define either of these terms in the context of § 1001. In the absence of specific

authority, the Committee relied on the definition of knowingly given in *United States v. McGuire*, 744 F.2d 1197, 1201 (6th Cir. 1984) (prosecution under 18 U.S.C. § 1005 for making a false entry in a bank report). Beyond the general definition of knowingly, case law on § 1001 does establish particular elements to which the term “knowingly” applies. The government must prove that the defendant knew the statement was false. *United States v. Brown*, 151 F.3d 476, 484 (6th Cir. 1998); *United States v. Arnous*, 122 F.3d 321, 322-23 (6th Cir. 1997). The government need not prove that the defendant made the statement with knowledge of federal agency jurisdiction. *United States v. Yermian*, 468 U.S. 63 (1984).

For the term “willfully,” in paragraph (2)(C), aside from the discussion of knowledge of federal jurisdiction in *Yermian, supra*, neither the Supreme Court nor the Sixth Circuit has defined the term in the context of § 1001. In *Geisen, supra* at 487, the court suggested that knowingly and willfully under § 1001 encompass an intent to deceive, but the court was evaluating the sufficiency of the evidence, not the jury instructions. In the absence of such authority, the Committee adopted the approach taken in a plurality of the circuit courts of appeals. Other circuits have concluded that “willfully” in § 1001 does not require the defendant to have specific knowledge that his conduct is criminal. *See United States v. Hsia*, 176 F.3d 517, 522 (D.C. Cir. 1999); *United States v. Daughtry*, 48 F.3d 829, 831-32 (4th Cir.), *vacated on other grounds*, 516 U.S. 984 (1995); *United States v. Curran*, 20 F.3d 560, 567-70 (3d Cir. 1994); *United States v. Rodriguez-Rios*, 14 F.3d 1040, 1048 n.21 (5th Cir. 1994). *But cf.* *United States v. Whab*, 355 F.3d 155, 159, 162 (2d Cir. 2004) (no plain error where the instruction provided: “[I]t is not necessary for the Government to establish that the defendant knew that he was breaking any particular law or particular rule. He need only have been aware of the generally unlawful nature of his actions.”).

The definition of “within the jurisdiction of the [executive] [legislative] [judicial] branch of the United States government” in paragraph (2)(D) is based on *United States v. Rodgers*, 466 U.S. 475 (1984). The Court explained, “A department or agency has jurisdiction . . . when it has the power to exercise authority in a particular situation. . . . [T]he phrase ‘within the jurisdiction’ merely differentiates the official, authorized functions of an agency or department from matters peripheral to the business of that body.” *Id.* at 479 (citation omitted). *See also United States v. Gibson*, 881 F.2d 318, 322 (6th Cir. 1989) (quoting this definition from *Rodgers*). The Sixth Circuit has further explained that, “[W]hen the federal agency has power to exercise its authority, even if the federal agency does not have complete control over the matter,’ the matter is within the agency’s jurisdiction.” *United States v. Grenier*, 513 F.3d 632, 638 (6th Cir. 2008) (*quoting United States v. Shafer*, 199 F.3d 826, 829 (6th Cir. 1999)). The term “[executive] [legislative] [judicial] branch” was substituted for the term “department or agency” to reflect the statutory amendment in 1996.

Paragraph (3) lists some but not all items the government is not required to prove. Many pattern instructions include such a provision. These provisions should be used only if relevant. The bracketed provision stating that the government need not prove the defendant knew the matter was within the jurisdiction of the federal government is based on *United States v. Yermian*, 468 U.S. 63 (1984) and *United States v. Gibson*, 881 F.2d 318, 323 (6th Cir. 1989) (*citing United States v. Lewis*, 587 F.2d 854 (6th Cir. 1978)). The bracketed provision stating that the false statement need not be made directly to, or even received by, the United States government is based on *United*

States v. Lutz, 154 F.3d 581, 587 (6th Cir. 1998) (*quoting* United States v. Gibson, 881 F.2d 318, 322 (6th Cir. 1989)).

Sixth Circuit cases on falsity indicate that a conviction cannot be based on an ambiguous question where the response is not false on its face and may be literally and factually correct. United States v. Gatewood, 173 F.3d 983, 986 (6th Cir. 1999); United States v. Hixon, 987 F.2d 1261, 1267 (6th Cir. 1993) (*quoting* United States v. Gahagan, 881 F.2d 1380, 1383 (6th Cir. 1989) *and citing* United States v. Vesaas, 586 F.2d 101, 103 (8th Cir. 1978)). In addition, the false statement need not be express; an implied false statement can support a conviction. In United States v. Brown, *supra* at 484-85, the court affirmed a conviction on the basis that the use of a document makes the factual assertions necessarily implied from the statute, regulations and announced policies that created the document. The court explained, "While no case law is directly on point, we conclude that the body of law, in the aggregate, makes plain that implied falsity is a basis for a conviction." *Id.* at 485.

Oral and written statements are treated the same under § 1001. United States v. Steele, 933 F.2d 1313, 1319 n.4 (6th Cir. 1991) (en banc) (*citing* United States v. Bramblett, 384 U.S. 503 (1955)).

Intent and knowledge need not be proved directly. Pattern Instruction 2.08 Inferring Required Mental State states this principle and should be given in appropriate cases. In addition, Pattern Instruction 2.09 Deliberate Ignorance explains one approach to proving knowledge under § 1001. *See, e.g.*, United States v. Brown, 151 F.3d 476, 484 (6th Cir. 1998) (*quoting* United States v. Arnous, 122 F.3d 321, 323 (6th Cir. 1997) (conviction affirmed based on evidence defendant deliberately ignored a high probability that food stamp application contained a material false statement)).

13.03 MAKING OR USING A FALSE WRITING IN A MATTER WITHIN THE JURISDICTION OF THE UNITED STATES GOVERNMENT (18 U.S.C. § 1001(a)(3))

(1) The defendant is charged with making or using a false writing or document in a matter within the jurisdiction of the United States government. For you to find the defendant guilty of this offense, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) First, that the defendant [made] [used] a false [writing] [document];

(B) Second, that the [writing] [document] contained a [statement] [entry] that was [false] [fictitious] [fraudulent];

(C) Third, that the [statement] [entry] was material;

(D) Fourth, that the defendant acted knowingly and willfully; and

(E) Fifth, that the [writing] [document] pertained to a matter within the jurisdiction of the [executive] [legislative] [judicial] branch of the United States government.

(2) Now I will give you more detailed instructions on some of these terms.

(A) A [statement] [entry] is “false” or “fictitious” if it was untrue when it was made, and the defendant knew it was untrue at that time. A statement is “fraudulent” if it was untrue when it was made, the defendant knew it was untrue at that time, and the defendant intended to deceive.

(B) A “material” statement or entry is one that has the natural tendency to influence or is capable of influencing a [decision] [function] of [*insert name of government entity*].

(C) An act is done “knowingly and willfully” if it is done voluntarily and intentionally, and not because of mistake or some other innocent reason.

(D) A matter is “within the jurisdiction of the [executive] [legislative] [judicial] branch of the United States government” if [*insert name of government entity*] has the power to exercise authority in that matter.

(3) [It is not necessary that the government prove [that the defendant knew the matter was within the jurisdiction of the United States government] [that the statements were made directly to, or even received by, the United States government]].

(4) If you are convinced that the government has proved all of the elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of the elements, then you must find the defendant not guilty of this charge.

Use Note

The court may need to modify the language if the charge is based on aiding and abetting or causing under 18 U.S.C. § 2.

Brackets indicate options for the court.

The provisions of paragraph (3) should be used only if relevant.

Committee Commentary Instruction 13.03 (current through August 1, 2016)

This instruction covers violations of § 1001 listed in subsection (a)(3) which prohibits making or using a false writing or document within the jurisdiction of the United States government.

In Paragraph (1), the five elements of the false writing offense are based on *United States v. White*, 492 F.3d 380, 396 (6th Cir. 2007) (*quoting* *United States v. Raithatha*, 385 F.3d 1013, 1022 (6th Cir. 2004), *vacated on other grounds*, 543 U.S. 1136 (2005)). *See also* *United States v. Geisen*, 612 F.3d 471, 489 (6th Cir. 2010). Some of the language used in *White* was modified to reflect the language of the statute more completely. In paragraph (1)(E), the term “pertained to” is drawn from *United States v. Steele*, 933 F.2d 1313, 1319 (6th Cir. 1991) (en banc), and the phrase “a matter within the jurisdiction of the [executive] [legislative] [judicial] branch of” the United States government is based on the language of § 1001(a).

In paragraph (2)(A), the definitions of false, fictitious and fraudulent are, in the absence of Sixth Circuit authority, based on the Seventh Circuit Pattern Instructions for § 1001. The definition of “false or fictitious” is substantially verbatim from the Seventh Circuit definition. The definition of “fraudulent” is based on the Seventh Circuit instruction; the Sixth Circuit implicitly approved the language in *United States v. Brown*, 151 F.3d 476, 484 (6th Cir. 1998) (*quoting* *United States v. Shah*, 44 F.3d 285, 289 (5th Cir. 1995)).

The basic definition of “material” in paragraph (2)(B) is based on *United States v. White*, 270 F.3d 356, 365 (6th Cir. 2001) (*citing* *United States v. Lutz*, 154 F.3d 581, 588 (6th Cir. 1998)). The bracketed terms “decision” and “function” are drawn from *United States v. Dedhia*, 134 F.3d 802, 806 (6th Cir. 1998). The term “function” may be appropriate, for example, when the defendant is charged with making a false statement to a federal law enforcement official conducting an investigation. The use of brackets for the name of the government entity is based on Tenth Circuit Pattern Instruction Inst. 2.46.

As to the definition of “knowingly and willfully,” in paragraph (2)(C), no Supreme Court or Sixth Circuit cases define either of these terms in the context of § 1001. In the absence of specific authority, the Committee relied on the definition of knowingly given in *United States v. McGuire*, 744 F.2d 1197, 1201 (6th Cir. 1984) (prosecution under 18 U.S.C. § 1005 for making a false entry

in a bank report). Beyond the general definition of knowingly, case law on § 1001 does establish particular elements to which the term “knowingly” applies. The government must prove that the defendant knew the statement was false. *United States v. Brown*, 151 F.3d 476, 484 (6th Cir. 1998); *United States v. Arnous*, 122 F.3d 321, 322-23 (6th Cir. 1997). The government need not prove that the defendant made the statement with knowledge of federal agency jurisdiction. *United States v. Yermian*, 468 U.S. 63 (1984).

For the term “willfully,” in paragraph (2)(C), aside from the discussion of knowledge of federal jurisdiction in *Yermian*, *supra*, neither the Supreme Court nor the Sixth Circuit has defined the term in the context of § 1001. In *Geisen*, *supra* at 487, the court suggested that knowingly and willfully under § 1001 encompass an intent to deceive, but the court was evaluating the sufficiency of the evidence, not the jury instructions. In the absence of such authority, the Committee adopted the approach taken in a plurality of the circuit courts of appeals. Other circuits have concluded that “willfully” in § 1001 does not require the defendant to have specific knowledge that his conduct is criminal. *See United States v. Hsia*, 176 F.3d 517, 522 (D.C. Cir. 1999); *United States v. Daughtry*, 48 F.3d 829, 831-32 (4th Cir.), *vacated on other grounds*, 516 U.S. 984 (1995); *United States v. Curran*, 20 F.3d 560, 567-70 (3d Cir. 1994); *United States v. Rodriguez-Rios*, 14 F.3d 1040, 1048 n.21 (5th Cir. 1994). *But cf. United States v. Whab*, 355 F.3d 155, 159, 162 (2d Cir. 2004) (no plain error where the instruction provided: “[I]t is not necessary for the Government to establish that the defendant knew that he was breaking any particular law or particular rule. He need only have been aware of the generally unlawful nature of his actions.”).

The definition of “within the jurisdiction of the [executive] [legislative] [judicial] branch of the United States government” in paragraph (2)(D) is based on *United States v. Rodgers*, 466 U.S. 475 (1984). The Court explained, “A department or agency has jurisdiction . . . when it has the power to exercise authority in a particular situation. . . . [T]he phrase ‘within the jurisdiction’ merely differentiates the official, authorized functions of an agency or department from matters peripheral to the business of that body.” *Id.* at 479 (citation omitted). *See also United States v. Gibson*, 881 F.2d 318, 322 (6th Cir. 1989) (quoting this definition from *Rodgers*). The Sixth Circuit has further explained that, “[W]hen the federal agency has power to exercise its authority, even if the federal agency does not have complete control over the matter,’ the matter is within the agency’s jurisdiction.” *United States v. Grenier*, 513 F.3d 632, 638 (6th Cir. 2008) (quoting *United States v. Shafer*, 199 F.3d 826, 829 (6th Cir. 1999)). The term “[executive] [legislative] [judicial] branch” was substituted for the term “department or agency” to reflect the statutory amendment in 1996.

Paragraph (3) lists some but not all items the government is not required to prove. Many pattern instructions include such a provision. These provisions should be used only if relevant. The bracketed provision stating that the government need not prove the defendant knew the matter was within the jurisdiction of the federal government is based on *United States v. Yermian*, 468 U.S. 63 (1984) and *United States v. Gibson*, 881 F.2d 318, 323 (6th Cir. 1989) *citing United States v. Lewis*, 587 F.2d 854 (6th Cir. 1978). The bracketed provision stating that the false statement need not be made directly to, or even received by, the United States government is based on *United States v. Lutz*, 154 F.3d 581, 587 (6th Cir. 1998) *quoting United States v. Gibson*, 881 F.2d 318, 322 (6th Cir. 1989).

Oral and written statements are treated the same under § 1001. *United States v. Steele*, 933 F.2d 1313, 1319 n.4 (6th Cir. 1991) (en banc) *citing* *United States v. Bramblett*, 384 U.S. 503 (1955).

Sixth Circuit cases on falsity indicate that a conviction cannot be based on an ambiguous question where the response is not false on its face and may be literally and factually correct. *United States v. Gatewood*, 173 F.3d 983, 986 (6th Cir. 1999); *United States v. Hixon*, 987 F.2d 1261, 1267 (6th Cir. 1993) (*quoting* *United States v. Gahagan*, 881 F.2d 1380, 1383 (6th Cir. 1989) *and citing* *United States v. Vesaas*, 586 F.2d 101, 103 (8th Cir. 1978)). In addition, the false statement need not be express; an implied false statement can support a conviction. In *United States v. Brown*, 151 F.3d 476, 484-85 (6th Cir. 1998), the court affirmed a conviction on the basis that the use of a document makes the factual assertions necessarily implied from the statute, regulations and announced policies that created the document. The court explained, “While no case law is directly on point, we conclude that the body of law, in the aggregate, makes plain that implied falsity is a basis for a conviction.” *Id.* at 485.

Intent and knowledge need not be proved directly. Pattern Instruction 2.08 Inferring Required Mental State states this principle and should be given in appropriate cases. In addition, Pattern Instruction 2.09 Deliberate Ignorance explains one approach to proving knowledge under § 1001. *See, e.g.*, *United States v. Brown*, *supra* at 484 (*quoting* *United States v. Arnous*, 122 F.3d 321, 323 (6th Cir. 1997) (conviction affirmed based on evidence defendant deliberately ignored a high probability that food stamp application contained a material false statement)).