**13.6 Transmitting or Presenting False Writing to**

**Defraud United States (18 U.S.C. § 495)**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [transmitting] [presenting] a false writing in support of or in relation to an account or claim with intent to defraud the United States. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant [transmitted] [presented] a [[falsely made] [altered] [forged] [counterfeit]] [*specify writing*] to an [office] [officer] of the United States;

Second, the defendant knew that the [*specify writing*] was [falsely made] [altered] [forged] [counterfeit];

Third, the [*specify writing*] was [transmitted] [presented] in support of [*specify account or claim*];

Fourth, the defendant acted with intent to defraud the United States; and

Fifth, the [*specify writing*] was material to action on the [*specify account or claim*]; that is, the [*specify writing*] had a natural tendency to influence, or was capable of influencing, action on the [*specify account or claim*].

**Comment**

For a definition of “intent to defraud,” *see* Instruction 4.13 (Intent to Defraud).

In *Neder v. United States*, 527 U.S. 1, 22-23 (1999), the Court explained that materiality is a necessary aspect of the legal concept of fraud which is incorporated into criminal statutes concerning fraud unless the statute says otherwise (holding materiality of falsehood must be proved in prosecution under bank, mail, and wire fraud statutes). The common law test for materiality in the false statement statutes, as reflected in the fifth element of this instruction, is the preferred formulation. *United States v. Peterson*, 538 F.3d 1064, 1072 (9th Cir. 2008).