**24.27 False Entry in Bank Records**

**(18 U.S.C. § 1005)**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with making a False Bank Entry, in violation of Section 1005 of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, on or about the date charged in the indictment, the defendant [made a material false entry in the books or records of a bank] [caused a material false entry to be made in the books or records of a bank];

Second, the bank was [a Federal Reserve bank] [insured by the Federal Deposit Insurance Corporation (FDIC)] [*specific other covered bank*];

Third, the defendant knew the entry was false when it was made; and

Fourth, the defendant intended that the false entry injure or defraud the bank, or any individual person, or deceive any officer of a bank, or the Federal Deposit Insurance Corporation (FDIC), or any agent or examiner appointed to examine the affairs of a bank.

An entry in the books or records of a bank is false if it represents what is not true or does not exist. For purposes of this crime, an entry can be false if it omits, or leaves out, material information necessary to make what is stated or included in that entry not misleading or deceptive.

**Comment**

The common law test for materiality is the standard to use when false statement statutes, such as 18 U.S.C. § 1005, are charged. *See United States v. Peterson*, 538 F.3d 1064, 1072 (9th Cir. 2008) (citing *United States v. Gaudin*, 515 U.S. 506, 509 (1995)). That test is whether the statement has a “natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it was addressed.” *Kungys v. United States*, 485 U.S. 759, 770 (1988) (quoting *Weinstock v. United States*, 231 F.2d 699, 701-02 (D.C. Cir. 1956)). “The false statement need not have actually influenced the agency, and the agency need not rely on the information in fact for it to be material.” *United States v. Serv. Deli Inc*., 151 F.3d 938, 941 (9th Cir. 1998); *see also United States v. King*, 735 F.3d 1098, 1108 (9th Cir. 2013).

Materiality must be demonstrated by the government, *United States v. Oren*, 893 F.2d 1057, 1063 (9th Cir. 1990); *United States v. Talkington*, 589 F.2d 415, 416 (9th Cir. 1978), and must be submitted to the jury. *Gaudin*, 515 U.S. at 506. The materiality test applies to each allegedly false statement submitted to the jury. *Id*.

Material omissions are false statements for the purposes of § 1005. *United States v. Tat*, 15 F.4th 1248, 1251 (9th Cir. 2021). “[T]hat an accurately recorded bank transaction has a nexus to unlawful activity does not, standing alone, make all entries related to that transaction ‘false’ within the meaning of § 1005.” *Id*. at 1252. “Accurate records reflecting a customer’s purchase of a cashier’s check from her bank account are not false entries under § 1005 solely because that check has a nexus to money laundering.” *Id*. at 1253. However, an entry is false if it lists a fictitious payee. *Id.*

Depending on the evidence, it may be appropriate to amend this instruction with language requiring specific jury unanimity (*e.g*., “with all of you agreeing as to which statement was false and material”). *See* Instruction 6.27 (Specific Issue Unanimity).

In *United States v. Yates*, 16 F.4th 256 (9th Cir. 2021), the Ninth Circuit explained that an entry is false if it represents what is not true or does not exist. Conversely, the offense of false entry is not committed when the transaction entered actually took place and is entered exactly as it occurred. That is so even though it is a part of a fraudulent or otherwise illegal scheme. *Id*. at 272. The Ninth Circuit added that an entry is false, for purposes of § 1005, if it omits material information or vital facts requested by a bank or regulator, even if the entry, on its face, is literally true. *Id*. Further, an entry is false if it records a transaction that is itself false and fictitious, concocted for the very purpose of distorting a financial statement—as opposed to a transaction that is merely a part of some broader fraudulent or illegal scheme. *Id*.