
UNITED STATES SENTENCING COMMISSION

SUPPLEMENT TO THE 2007 GUIDELINES MANUAL



MARCH 3, 2008

This supplement incorporates the following: (1) amendments to §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)), effective March 3, 2008; and (2) emergency guideline amendments to §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) and Appendix A (Statutory Index), effective February 6, 2008. Upon their respective effective dates, the amended guideline and policy statement, as set forth in the enclosed document, will supercede the versions of §§1B1.10 and 2B1.1 set forth in the 2007 Guidelines Manual (blue with white lettering), and together with the rest of the 2007 Guidelines Manual, will constitute the operative Guidelines Manual.

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AMENDED GUIDELINES*

*For guidelines other than those shown in this supplement, see the main volume of the 2007 Guidelines Manual.

§1B1.10. Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)

(a) Authority.—

- (1) In General.—In a case in which a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (c) below, the court may reduce the defendant's term of imprisonment as provided by 18 U.S.C. § 3582(c)(2). As required by 18 U.S.C. § 3582(c)(2), any such reduction in the defendant's term of imprisonment shall be consistent with this policy statement.
- (2) Exclusions.—A reduction in the defendant's term of imprisonment is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. § 3582(c)(2) if—
 - (A) none of the amendments listed in subsection (c) is applicable to the defendant; or
 - (B) an amendment listed in subsection (c) does not have the effect of lowering the defendant's applicable guideline range.
- (3) Limitation.—Consistent with subsection (b), proceedings under 18 U.S.C. § 3582(c)(2) and this policy statement do not constitute a full resentencing of the defendant.

(b) Determination of Reduction in Term of Imprisonment.—

- (1) In General.—In determining whether, and to what extent, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (c) had been in effect at the time the defendant was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (c) for the corresponding guideline provisions that were applied when the defendant was sentenced and shall leave all other guideline application decisions unaffected.
- (2) Limitations and Prohibition on Extent of Reduction.—
 - (A) In General.—Except as provided in subdivision (B), the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range determined under subdivision (1) of this subsection.

- (B) Exception.—If the original term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing, a reduction comparably less than the amended guideline range determined under subdivision (1) of this subsection may be appropriate. However, if the original term of imprisonment constituted a non-guideline sentence determined pursuant to 18 U.S.C. § 3553(a) and United States v. Booker, 543 U.S. 220 (2005), a further reduction generally would not be appropriate.
- (C) Prohibition.—In no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served.
- (c) Covered Amendments.—Amendments covered by this policy statement are listed in Appendix C as follows: 126, 130, 156, 176, 269, 329, 341, 371, 379, 380, 433, 454, 461, 484, 488, 490, 499, 505, 506, 516, 591, 599, 606, 657, 702, and 706 as amended by 711.

Commentary

Application Notes:

1. Application of Subsection (a).—

- (A) Eligibility.—*Eligibility for consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment listed in subsection (c) that lowers the applicable guideline range. Accordingly, a reduction in the defendant’s term of imprisonment is not authorized under 18 U.S.C. § 3582(c)(2) and is not consistent with this policy statement if: (i) none of the amendments listed in subsection (c) is applicable to the defendant; or (ii) an amendment listed in subsection (c) is applicable to the defendant but the amendment does not have the effect of lowering the defendant’s applicable guideline range because of the operation of another guideline or statutory provision (e.g., a statutory mandatory minimum term of imprisonment).*
- (B) Factors for Consideration.—
- (i) In General.—*Consistent with 18 U.S.C. § 3582(c)(2), the court shall consider the factors set forth in 18 U.S.C. § 3553(a) in determining: (I) whether a reduction in the defendant’s term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).*
- (ii) Public Safety Consideration.—*The court shall consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant’s term of imprisonment in determining: (I) whether such a reduction is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).*
- (iii) Post-Sentencing Conduct.—*The court may consider post-sentencing conduct of the*

defendant that occurred after imposition of the original term of imprisonment in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

2. Application of Subsection (b)(1).—*In determining the amended guideline range under subsection (b)(1), the court shall substitute only the amendments listed in subsection (c) for the corresponding guideline provisions that were applied when the defendant was sentenced. All other guideline application decisions remain unaffected.*

3. Application of Subsection (b)(2).—*Under subsection (b)(2), the amended guideline range determined under subsection (b)(1) and the term of imprisonment already served by the defendant limit the extent to which the court may reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement. Specifically, if the original term of imprisonment imposed was within the guideline range applicable to the defendant at the time of sentencing, the court shall not reduce the defendant's term of imprisonment to a term that is less than the minimum term of imprisonment provided by the amended guideline range determined under subsection (b)(1). For example, in a case in which: (A) the guideline range applicable to the defendant at the time of sentencing was 41 to 51 months; (B) the original term of imprisonment imposed was 41 months; and (C) the amended guideline range determined under subsection (b)(1) is 30 to 37 months, the court shall not reduce the defendant's term of imprisonment to a term less than 30 months.*

If the original term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing, a reduction comparably less than the amended guideline range determined under subsection (b)(1) may be appropriate. For example, in a case in which: (A) the guideline range applicable to the defendant at the time of sentencing was 70 to 87 months; (B) the defendant's original term of imprisonment imposed was 56 months (representing a downward departure of 20 percent below the minimum term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing); and (C) the amended guideline range determined under subsection (b)(1) is 57 to 71 months, a reduction to a term of imprisonment of 46 months (representing a reduction of approximately 20 percent below the minimum term of imprisonment provided by the amended guideline range determined under subsection (b)(1)) would amount to a comparable reduction and may be appropriate.

In no case, however, shall the term of imprisonment be reduced below time served. Subject to these limitations, the sentencing court has the discretion to determine whether, and to what extent, to reduce a term of imprisonment under this section.

4. Supervised Release.—
 - (A) Exclusion Relating to Revocation.—*Only a term of imprisonment imposed as part of the original sentence is authorized to be reduced under this section. This section does not authorize a reduction in the term of imprisonment imposed upon revocation of supervised release.*

 - (B) Modification Relating to Early Termination.—*If the prohibition in subsection (b)(2)(C) relating to time already served precludes a reduction in the term of imprisonment to the extent the court determines otherwise would have been appropriate as a result of the amended guideline range determined under subsection (b)(1), the court may consider any such reduction that it was unable to grant in connection with any motion for early termination of a term of supervised release under 18 U.S.C. § 3583(e)(1). However, the fact*

that a defendant may have served a longer term of imprisonment than the court determines would have been appropriate in view of the amended guideline range determined under subsection (b)(1) shall not, without more, provide a basis for early termination of supervised release. Rather, the court should take into account the totality of circumstances relevant to a decision to terminate supervised release, including the term of supervised release that would have been appropriate in connection with a sentence under the amended guideline range determined under subsection (b)(1).

Background: Section 3582(c)(2) of Title 18, United States Code, provides: "[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

This policy statement provides guidance and limitations for a court when considering a motion under 18 U.S.C. § 3582(c)(2) and implements 28 U.S.C. § 994(u), which provides: "If the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced."

Among the factors considered by the Commission in selecting the amendments included in subsection (c) were the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under subsection (b)(1).

The listing of an amendment in subsection (c) reflects policy determinations by the Commission that a reduced guideline range is sufficient to achieve the purposes of sentencing and that, in the sound discretion of the court, a reduction in the term of imprisonment may be appropriate for previously sentenced, qualified defendants. The authorization of such a discretionary reduction does not otherwise affect the lawfulness of a previously imposed sentence, does not authorize a reduction in any other component of the sentence, and does not entitle a defendant to a reduced term of imprisonment as a matter of right.

The Commission has not included in this policy statement amendments that generally reduce the maximum of the guideline range by less than six months. This criterion is in accord with the legislative history of 28 U.S.C. § 994(u) (formerly § 994(t)), which states: "It should be noted that the Committee does not expect that the Commission will recommend adjusting existing sentences under the provision when guidelines are simply refined in a way that might cause isolated instances of existing sentences falling above the old guidelines or when there is only a minor downward adjustment in the guidelines. The Committee does not believe the courts should be burdened with adjustments in these cases." S. Rep. 225, 98th Cong., 1st Sess. 180 (1983).*

* So in original. Probably should be "to fall above the amended guidelines".

Historical Note: Effective November 1, 1989 (see Appendix C, amendment 306). Amended effective November 1, 1990 (see Appendix C, amendment 360); November 1, 1991 (see Appendix C, amendment 423); November 1, 1992 (see Appendix C, amendment 469); November 1, 1993 (see Appendix C, amendment 502); November 1, 1994 (see Appendix C, amendment 504); November 1, 1995 (see Appendix C, amendment 536); November 1, 1997 (see Appendix C, amendment 548); November 1, 2000 (see Appendix C, amendment 607); November 5, 2003 (see Appendix C, amendment 662); November 1, 2007 (see Appendix C, amendment 710); March 3, 2008 (see Appendix C, amendments 712 and 713).

§2B1.1. Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer

Obligations of the United States

(a) Base Offense Level:

- (1) **7**, if (A) the defendant was convicted of an offense referenced to this guideline; and (B) that offense of conviction has a statutory maximum term of imprisonment of 20 years or more; or
- (2) **6**, otherwise.

(b) Specific Offense Characteristics

- (1) If the loss exceeded \$5,000, increase the offense level as follows:

<u>Loss</u> (Apply the Greatest)	<u>Increase in Level</u>
(A) \$5,000 or less	no increase
(B) More than \$5,000	add 2
(C) More than \$10,000	add 4
(D) More than \$30,000	add 6
(E) More than \$70,000	add 8
(F) More than \$120,000	add 10
(G) More than \$200,000	add 12
(H) More than \$400,000	add 14
(I) More than \$1,000,000	add 16
(J) More than \$2,500,000	add 18
(K) More than \$7,000,000	add 20
(L) More than \$20,000,000	add 22
(M) More than \$50,000,000	add 24
(N) More than \$100,000,000	add 26
(O) More than \$200,000,000	add 28
(P) More than \$400,000,000	add 30 .

- (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.
- (3) If the offense involved a theft from the person of another, increase by **2** levels.
- (4) If the offense involved receiving stolen property, and the defendant was a person in the business of receiving and selling stolen property, increase by **2** levels.
- (5) If the offense involved misappropriation of a trade secret and the defendant knew or intended that the offense would benefit a foreign government,

- foreign instrumentality, or foreign agent, increase by **2** levels.
- (6) If the offense involved theft of, damage to, or destruction of, property from a national cemetery or veterans' memorial, increase by **2** levels.
- (7) If (A) the defendant was convicted of an offense under 18 U.S.C. § 1037; and (B) the offense involved obtaining electronic mail addresses through improper means, increase by **2** levels.
- (8) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency; (B) a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding; (C) a violation of any prior, specific judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines; or (D) a misrepresentation to a consumer in connection with obtaining, providing, or furnishing financial assistance for an institution of higher education, increase by **2** levels. If the resulting offense level is less than level **10**, increase to level **10**.
- (9) 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, increase by **2** levels. If the resulting offense level is less than level **12**, increase to level **12**.
- (10) If the offense involved (A) the possession or use of any (i) device-making equipment, or (ii) authentication feature; (B) the production or trafficking of any (i) unauthorized access device or counterfeit access device, or (ii) authentication feature; or (C)(i) the unauthorized transfer or use of any means of identification unlawfully to produce or obtain any other means of identification, or (ii) the possession of 5 or more means of identification that unlawfully were produced from, or obtained by the use of, another means of identification, increase by **2** levels. If the resulting offense level is less than level **12**, increase to level **12**.
- (11) If the offense involved an organized scheme to steal or to receive stolen (A) vehicles or vehicle parts; or (B) goods or chattels that are part of a cargo shipment, increase by **2** levels. If the offense level is less than level **14**, increase to level **14**.
- (12) If the offense involved (A) the conscious or reckless risk of death or serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by **2** levels. If the resulting offense level is less than level **14**, increase to level **14**.
- (13) (Apply the greater) If—
- (A) the defendant derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense, increase

- by **2** levels; or
 - (B) the offense (i) substantially jeopardized the safety and soundness of a financial institution; (ii) substantially endangered the solvency or financial security of an organization that, at any time during the offense, (I) was a publicly traded company; or (II) had 1,000 or more employees; or (iii) substantially endangered the solvency or financial security of 100 or more victims, increase by **4** levels.
 - (C) The cumulative adjustments from application of both subsections (b)(2) and (b)(13)(B) shall not exceed **8** levels, except as provided in subdivision (D).
 - (D) If the resulting offense level determined under subdivision (A) or (B) is less than level **24**, increase to level **24**.
- (14) (A) (Apply the greatest) If the defendant was convicted of an offense under:
- (i) 18 U.S.C. § 1030, and the offense involved (I) a computer system used to maintain or operate a critical infrastructure, or used by or for a government entity in furtherance of the administration of justice, national defense, or national security; or (II) an intent to obtain personal information, increase by **2** levels.
 - (ii) 18 U.S.C. § 1030(a)(5)(A)(i), increase by **4** levels.
 - (iii) 18 U.S.C. § 1030, and the offense caused a substantial disruption of a critical infrastructure, increase by **6** levels.
- (B) If subdivision (A)(iii) applies, and the offense level is less than level **24**, increase to level **24**.
- (15) If the offense involved—
- (A) a violation of securities law and, at the time of the offense, the defendant was (i) an officer or a director of a publicly traded company; (ii) a registered broker or dealer, or a person associated with a broker or dealer; or (iii) an investment adviser, or a person associated with an investment adviser; or
 - (B) a violation of commodities law and, at the time of the offense, the defendant was (i) an officer or a director of a futures commission merchant or an introducing broker; (ii) a commodities trading advisor; or (iii) a commodity pool operator, increase by **4** levels.
- (16) If the offense involved fraud or theft involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a declaration of a major disaster or an emergency, increase by **2** levels.

(c) Cross References

- (1) If (A) a firearm, destructive device, explosive material, or controlled substance was taken, or the taking of any such item was an object of the offense; or (B) the stolen property received, transported, transferred, transmitted, or possessed was a firearm, destructive device, explosive material, or controlled substance, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), §2D2.1 (Unlawful Possession; Attempt or Conspiracy), §2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), or §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), as appropriate.
- (2) If the offense involved arson, or property damage by use of explosives, apply §2K1.4 (Arson; Property Damage by Use of Explosives), if the resulting offense level is greater than that determined above.
- (3) If (A) neither subdivision (1) nor (2) of this subsection applies; (B) the defendant was convicted under a statute proscribing false, fictitious, or fraudulent statements or representations generally (e.g., 18 U.S.C. § 1001, § 1341, § 1342, or § 1343); and (C) the conduct set forth in the count of conviction establishes an offense specifically covered by another guideline in Chapter Two (Offense Conduct), apply that other guideline.
- (4) If the offense involved a cultural heritage resource, apply §2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 7 U.S.C. §§ 6, 6b, 6c, 6h, 6o, 13, 23; 15 U.S.C. §§ 50, 77e, 77q, 77x, 78j, 78ff, 80b-6, 1644, 6821; 18 U.S.C. §§ 38, 225, 285-289, 471-473, 500, 510, 553(a)(1), 641, 656, 657, 659, 662, 664, 1001-1008, 1010-1014, 1016-1022, 1025, 1026, 1028, 1029, 1030(a)(4)-(5), 1031, 1037, 1341-1344, 1348, 1350, 1361, 1363, 1369, 1702, 1703 (if vandalism or malicious mischief, including destruction of mail, is involved), 1708, 1831, 1832, 1992(a)(1), (a)(5), 2113(b), 2282A, 2282B, 2291, 2312-2317, 2332b(a)(1), 2701; 19 U.S.C. § 2401f; 29 U.S.C. § 501(c); 42 U.S.C. § 1011; 49 U.S.C. §§ 14915, 30170, 46317(a), 60123(b). For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. Definitions.—For purposes of this guideline:

"Cultural heritage resource" has the meaning given that term in Application Note 1 of the Commentary to §2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources).

"Equity securities" has the meaning given that term in section 3(a)(11) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(11)).

"Financial institution" includes any institution described in 18 U.S.C. § 20, § 656, § 657, § 1005, § 1006, § 1007, or § 1014; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medical, or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and any similar entity, whether or not insured by the federal government. "Union or employee pension fund" and "any health, medical, or hospital insurance association," primarily include large pension funds that serve many persons (e.g., pension funds of large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (e.g., medical or hospitalization insurance) to large numbers of persons.

"Firearm" and "destructive device" have the meaning given those terms in the Commentary to §1B1.1 (Application Instructions).

"Foreign instrumentality" and "foreign agent" have the meaning given those terms in 18 U.S.C. § 1839(1) and (2), respectively.

"National cemetery" means a cemetery (A) established under section 2400 of title 38, United States Code; or (B) under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.

"Publicly traded company" means an issuer (A) with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78l); or (B) that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(d)). "Issuer" has the meaning given that term in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. § 78c).

"Theft from the person of another" means theft, without the use of force, of property that was being held by another person or was within arms' reach. Examples include pick-pocketing and non-forcible purse-snatching, such as the theft of a purse from a shopping cart.

"Trade secret" has the meaning given that term in 18 U.S.C. § 1839(3).

"Veterans' memorial" means any structure, plaque, statue, or other monument described in 18 U.S.C. § 1369(a).

"Victim" means (A) any person who sustained any part of the actual loss determined under subsection (b)(1); or (B) any individual who sustained bodily injury as a result of the offense.

"Person" includes individuals, corporations, companies, associations, firms, partnerships, societies, and joint stock companies.

2. Application of Subsection (a)(1).—

(A) "Referenced to this Guideline."—For purposes of subsection (a)(1), an offense is "referenced to this guideline" if (i) this guideline is the applicable Chapter Two guideline determined under the provisions of §1B1.2 (Applicable Guidelines) for the offense of conviction; or (ii)

in the case of a conviction for conspiracy, solicitation, or attempt to which §2X1.1 (Attempt, Solicitation, or Conspiracy) applies, this guideline is the appropriate guideline for the offense the defendant was convicted of conspiring, soliciting, or attempting to commit.

- (B) Definition of "Statutory Maximum Term of Imprisonment".—For purposes of this guideline, "statutory maximum term of imprisonment" means the maximum term of imprisonment authorized for the offense of conviction, including any increase in that maximum term under a statutory enhancement provision.
- (C) Base Offense Level Determination for Cases Involving Multiple Counts.—In a case involving multiple counts sentenced under this guideline, the applicable base offense level is determined by the count of conviction that provides the highest statutory maximum term of imprisonment.
3. Loss Under Subsection (b)(1).—This application note applies to the determination of loss under subsection (b)(1).
- (A) General Rule.—Subject to the exclusions in subdivision (D), loss is the greater of actual loss or intended loss.
- (i) Actual Loss.—"Actual loss" means the reasonably foreseeable pecuniary harm that resulted from the offense.
- (ii) Intended Loss.—"Intended loss" (I) means the pecuniary harm that was intended to result from the offense; 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).
- (iii) Pecuniary Harm.—"Pecuniary harm" means harm that is monetary or that otherwise is readily measurable in money. Accordingly, pecuniary harm does not include emotional distress, harm to reputation, or other non-economic harm.
- (iv) Reasonably Foreseeable Pecuniary Harm.—For purposes of this guideline, "reasonably foreseeable pecuniary harm" means pecuniary harm that the defendant knew or, under the circumstances, reasonably should have known, was a potential result of the offense.
- (v) Rules of Construction in Certain Cases.—In the cases described in subdivisions (I) through (III), reasonably foreseeable pecuniary harm shall be considered to include the pecuniary harm specified for those cases as follows:
- (I) Product Substitution Cases.—In the case of a product substitution offense, the reasonably foreseeable pecuniary harm includes the reasonably foreseeable costs of making substitute transactions and handling or disposing of the product delivered, or of retrofitting the product so that it can be used for its intended purpose, and the reasonably foreseeable costs of rectifying the actual or potential disruption to the victim's business operations caused by the product substitution.
- (II) Procurement Fraud Cases.—In the case of a procurement fraud, such as a fraud affecting a defense contract award, reasonably foreseeable pecuniary

harm includes the reasonably foreseeable administrative costs to the government and other participants of repeating or correcting the procurement action affected, plus any increased costs to procure the product or service involved that was reasonably foreseeable.

- (III) Offenses Under 18 U.S.C. § 1030.—*In the case of an offense under 18 U.S.C. § 1030, actual loss includes the following pecuniary harm, regardless of whether such pecuniary harm was reasonably foreseeable: any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other damages incurred because of interruption of service.*
- (IV) Disaster Fraud Cases.—*In a case in which subsection (b)(16) applies, reasonably foreseeable pecuniary harm includes the administrative costs to any federal, state, or local government entity or any commercial or not-for-profit entity of recovering the benefit from any recipient thereof who obtained the benefit through fraud or was otherwise ineligible for the benefit that were reasonably foreseeable.*
- (B) Gain.—*The court shall use the gain that resulted from the offense as an alternative measure of loss only if there is a loss but it reasonably cannot be determined.*
- (C) Estimation of Loss.—*The court need only make a reasonable estimate of the loss. The sentencing judge is in a unique position to assess the evidence and estimate the loss based upon that evidence. For this reason, the court’s loss determination is entitled to appropriate deference. See 18 U.S.C. § 3742(e) and (f).*

The estimate of the loss shall be based on available information, taking into account, as appropriate and practicable under the circumstances, factors such as the following:

- (i) *The fair market value of the property unlawfully taken or destroyed; or, if the fair market value is impracticable to determine or inadequately measures the harm, the cost to the victim of replacing that property.*
- (ii) *The cost of repairs to damaged property.*
- (iii) *The approximate number of victims multiplied by the average loss to each victim.*
- (iv) *The reduction that resulted from the offense in the value of equity securities or other corporate assets.*
- (v) *More general factors, such as the scope and duration of the offense and revenues generated by similar operations.*
- (D) Exclusions from Loss.—*Loss shall not include the following:*
 - (i) *Interest of any kind, finance charges, late fees, penalties, amounts based on an agreed-upon return or rate of return, or other similar costs.*

- (ii) *Costs to the government of, and costs incurred by victims primarily to aid the government in, the prosecution and criminal investigation of an offense.*
- (E) Credits Against Loss.—*Loss shall be reduced by the following:*
 - (i) *The money returned, and the fair market value of the property returned and the services rendered, by the defendant or other persons acting jointly with the defendant, to the victim before the offense was detected. The time of detection of the offense is the earlier of (I) the time the offense was discovered by a victim or government agency; or (II) the time the defendant knew or reasonably should have known that the offense was detected or about to be detected by a victim or government agency.*
 - (ii) *In a case involving collateral pledged or otherwise provided by the defendant, the amount the victim has recovered at the time of sentencing from disposition of the collateral, or if the collateral has not been disposed of by that time, the fair market value of the collateral at the time of sentencing.*
- (F) Special Rules.—*Notwithstanding subdivision (A), the following special rules shall be used to assist in determining loss in the cases indicated:*
 - (i) Stolen or Counterfeit Credit Cards and Access Devices; Purloined Numbers and Codes.—*In a case involving any counterfeit access device or unauthorized access device, loss includes any unauthorized charges made with the counterfeit access device or unauthorized access device and shall be not less than \$500 per access device. However, if the unauthorized access device is a means of telecommunications access that identifies a specific telecommunications instrument or telecommunications account (including an electronic serial number/mobile identification number (ESN/MIN) pair), and that means was only possessed, and not used, during the commission of the offense, loss shall be not less than \$100 per unused means. For purposes of this subdivision, "counterfeit access device" and "unauthorized access device" have the meaning given those terms in Application Note 7(A).*
 - (ii) Government Benefits.—*In a case involving government benefits (e.g., grants, loans, entitlement program payments), loss shall be considered to be not less than the value of the benefits obtained by unintended recipients or diverted to unintended uses, as the case may be. For example, if the defendant was the intended recipient of food stamps having a value of \$100 but fraudulently received food stamps having a value of \$150, loss is \$50.*
 - (iii) Davis-Bacon Act Violations.—*In a case involving a Davis-Bacon Act violation (i.e., a violation of 40 U.S.C. § 276a, criminally prosecuted under 18 U.S.C. § 1001), the value of the benefits shall be considered to be not less than the difference between the legally required wages and actual wages paid.*
 - (iv) Ponzi and Other Fraudulent Investment Schemes.—*In a case involving a fraudulent investment scheme, such as a Ponzi scheme, loss shall not be reduced by the money or the value of the property transferred to any individual investor in the scheme in excess of that investor's principal investment (i.e., the gain to an individual investor*

in the scheme shall not be used to offset the loss to another individual investor in the scheme).

- (v) Certain Other Unlawful Misrepresentation Schemes.—*In a case involving a scheme in which (I) services were fraudulently rendered to the victim by persons falsely posing as licensed professionals; (II) goods were falsely represented as approved by a governmental regulatory agency; or (III) goods for which regulatory approval by a government agency was required but not obtained, or was obtained by fraud, loss shall include the amount paid for the property, services or goods transferred, rendered, or misrepresented, with no credit provided for the value of those items or services.*
- (vi) Value of Controlled Substances.—*In a case involving controlled substances, loss is the estimated street value of the controlled substances.*
- (vii) Value of Cultural Heritage Resources.—*In a case involving a cultural heritage resource, loss attributable to that cultural heritage resource shall be determined in accordance with the rules for determining the "value of the cultural heritage resource" set forth in Application Note 2 of the Commentary to §2B1.5.*

4. Application of Subsection (b)(2).—

- (A) Definition.—*For purposes of subsection (b)(2), "mass-marketing" means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce a large number of persons to (i) purchase goods or services; (ii) participate in a contest or sweepstakes; or (iii) invest for financial profit. "Mass-marketing" includes, for example, a telemarketing campaign that solicits a large number of individuals to purchase fraudulent life insurance policies.*
- (B) Applicability to Transmission of Multiple Commercial Electronic Mail Messages.—*For purposes of subsection (b)(2), an offense under 18 U.S.C. § 1037, or any other offense involving conduct described in 18 U.S.C. § 1037, shall be considered to have been committed through mass-marketing. Accordingly, the defendant shall receive at least a two-level enhancement under subsection (b)(2) and may, depending on the facts of the case, receive a greater enhancement under such subsection, if the defendant was convicted under, or the offense involved conduct described in, 18 U.S.C. § 1037.*
- (C) Undelivered United States Mail.—
 - (i) In General.—*In a case in which undelivered United States mail was taken, or the taking of such item was an object of the offense, or in a case in which the stolen property received, transported, transferred, transmitted, or possessed was undelivered United States mail, "victim" means (I) any victim as defined in Application Note 1; or (II) any person who was the intended recipient, or addressee, of the undelivered United States mail.*
 - (ii) Special Rule.—*A case described in subdivision (C)(i) of this note that involved—*
 - (I) *a United States Postal Service relay box, collection box, delivery vehicle, satchel, or cart, shall be considered to have involved at least 50 victims.*

- (II) *a housing unit cluster box or any similar receptacle that contains multiple mailboxes, whether such receptacle is owned by the United States Postal Service or otherwise owned, shall, unless proven otherwise, be presumed to have involved the number of victims corresponding to the number of mailboxes in each cluster box or similar receptacle.*
 - (iii) *Definition.—"Undelivered United States mail" means mail that has not actually been received by the addressee or his agent (e.g., mail taken from the addressee's mail box).*
 - (D) *Vulnerable Victims.—If subsection (b)(2)(B) or (C) applies, an enhancement under §3A1.1(b)(2) shall not apply.*
5. *Enhancement for Business of Receiving and Selling Stolen Property under Subsection (b)(4).—For purposes of subsection (b)(4), the court shall consider the following non-exhaustive list of factors in determining whether the defendant was in the business of receiving and selling stolen property:*
- (A) *The regularity and sophistication of the defendant's activities.*
 - (B) *The value and size of the inventory of stolen property maintained by the defendant.*
 - (C) *The extent to which the defendant's activities encouraged or facilitated other crimes.*
 - (D) *The defendant's past activities involving stolen property.*
6. *Application of Subsection (b)(7).—For purposes of subsection (b)(7), "improper means" includes the unauthorized harvesting of electronic mail addresses of users of a website, proprietary service, or other online public forum.*
7. *Application of Subsection (b)(8).—*
- (A) *In General.—The adjustments in subsection (b)(8) are alternative rather than cumulative. If, in a particular case, however, more than one of the enumerated factors applied, an upward departure may be warranted.*
 - (B) *Misrepresentations Regarding Charitable and Other Institutions.—Subsection (b)(8)(A) applies in any case in which the defendant represented that the defendant was acting to obtain a benefit on behalf of a charitable, educational, religious, or political organization, or a government agency (regardless of whether the defendant actually was associated with the organization or government agency) when, in fact, the defendant intended to divert all or part of that benefit (e.g., for the defendant's personal gain). Subsection (b)(8)(A) applies, for example, to the following:*
 - (i) *A defendant who solicited contributions for a non-existent famine relief organization.*
 - (ii) *A defendant who solicited donations from church members by falsely claiming to be a fundraiser for a religiously affiliated school.*
 - (iii) *A defendant, chief of a local fire department, who conducted a public fundraiser representing that the purpose of the fundraiser was to procure sufficient funds for*

a new fire engine when, in fact, the defendant intended to divert some of the funds for the defendant's personal benefit.

(C) Fraud in Contravention of Prior Judicial Order.—Subsection (b)(8)(C) provides an enhancement if the defendant commits a fraud in contravention of a prior, official judicial or administrative warning, in the form of an order, injunction, decree, or process, to take or not to take a specified action. A defendant who does not comply with such a prior, official judicial or administrative warning demonstrates aggravated criminal intent and deserves additional punishment. If it is established that an entity the defendant controlled was a party to the prior proceeding that resulted in the official judicial or administrative action, and the defendant had knowledge of that prior decree or order, this enhancement applies even if the defendant was not a specifically named party in that prior case. For example, a defendant whose business previously was enjoined from selling a dangerous product, but who nonetheless engaged in fraudulent conduct to sell the product, is subject to this enhancement. This enhancement does not apply if the same conduct resulted in an enhancement pursuant to a provision found elsewhere in the guidelines (e.g., a violation of a condition of release addressed in §3C1.3 (Commission of Offense While on Release) or a violation of probation addressed in §4A1.1 (Criminal History Category)).

(D) College Scholarship Fraud.—For purposes of subsection (b)(8)(D):

"Financial assistance" means any scholarship, grant, loan, tuition, discount, award, or other financial assistance for the purpose of financing an education.

"Institution of higher education" has the meaning given that term in section 101 of the Higher Education Act of 1954 (20 U.S.C. § 1001).

(E) Non-Applicability of Enhancements.—

(i) Subsection (b)(8)(A).—If the conduct that forms the basis for an enhancement under subsection (b)(8)(A) is the only conduct that forms the basis for an adjustment under §3B1.3 (Abuse of Position of Trust or Use of Special Skill), do not apply that adjustment under §3B1.3.

(ii) Subsection (b)(8)(B) and (C).—If the conduct that forms the basis for an enhancement under subsection (b)(8)(B) or (C) is the only conduct that forms the basis for an adjustment under §3C1.1 (Obstructing or Impeding the Administration of Justice), do not apply that adjustment under §3C1.1.

8. Sophisticated Means Enhancement under Subsection (b)(9).—

(A) Definition of United States.—For purposes of subsection (b)(9)(B), "United States" means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

(B) Sophisticated Means Enhancement.—For purposes of subsection (b)(9)(C), "sophisticated means" means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction ordinarily indicates sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore

financial accounts also ordinarily indicates sophisticated means.

- (C) *Non-Applicability of Enhancement.*—*If the conduct that forms the basis for an enhancement under subsection (b)(9) is the only conduct that forms the basis for an adjustment under §3C1.1, do not apply that adjustment under §3C1.1.*

9. *Application of Subsection (b)(10).*—

- (A) *Definitions.*—*For purposes of subsection (b)(10):*

"Authentication feature" has the meaning given that term in 18 U.S.C. § 1028(d)(1).

"Counterfeit access device" (i) has the meaning given that term in 18 U.S.C. § 1029(e)(2); and (ii) includes a telecommunications instrument that has been modified or altered to obtain unauthorized use of telecommunications service.

"Telecommunications service" has the meaning given that term in 18 U.S.C. § 1029(e)(9).

"Device-making equipment" (i) has the meaning given that term in 18 U.S.C. § 1029(e)(6); and (ii) includes (I) any hardware or software that has been configured as described in 18 U.S.C. § 1029(a)(9); and (II) a scanning receiver referred to in 18 U.S.C. § 1029(a)(8). "Scanning receiver" has the meaning given that term in 18 U.S.C. § 1029(e)(8).

"Means of identification" has the meaning given that term in 18 U.S.C. § 1028(d)(7), except that such means of identification shall be of an actual (i.e., not fictitious) individual, other than the defendant or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct).

"Produce" includes manufacture, design, alter, authenticate, duplicate, or assemble. "Production" includes manufacture, design, alteration, authentication, duplication, or assembly.

"Unauthorized access device" has the meaning given that term in 18 U.S.C. § 1029(e)(3).

- (B) *Authentication Features and Identification Documents.*—*Offenses involving authentication features, identification documents, false identification documents, and means of identification, in violation of 18 U.S.C. § 1028, also are covered by this guideline. If the primary purpose of the offense, under 18 U.S.C. § 1028, was to violate, or assist another to violate, the law pertaining to naturalization, citizenship, or legal resident status, apply §2L2.1 (Trafficking in a Document Relating to Naturalization) or §2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization), as appropriate, rather than this guideline.*

- (C) *Application of Subsection (b)(10)(C)(i).*—

(i) *In General.*—*Subsection (b)(10)(C)(i) applies in a case in which a means of identification of an individual other than the defendant (or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct)) is used without that individual's authorization unlawfully to produce or obtain another means of identification.*

(ii) *Examples.*—*Examples of conduct to which subsection (b)(10)(C)(i) applies are as*

follows:

(I) *A defendant obtains an individual's name and social security number from a source (e.g., from a piece of mail taken from the individual's mailbox) and obtains a bank loan in that individual's name. In this example, the account number of the bank loan is the other means of identification that has been obtained unlawfully.*

(II) *A defendant obtains an individual's name and address from a source (e.g., from a driver's license in a stolen wallet) and applies for, obtains, and subsequently uses a credit card in that individual's name. In this example, the credit card is the other means of identification that has been obtained unlawfully.*

(iii) Nonapplicability of Subsection (b)(10)(C)(i).—*Examples of conduct to which subsection (b)(10)(C)(i) does not apply are as follows:*

(I) *A defendant uses a credit card from a stolen wallet only to make a purchase. In such a case, the defendant has not used the stolen credit card to obtain another means of identification.*

(II) *A defendant forges another individual's signature to cash a stolen check. Forging another individual's signature is not producing another means of identification.*

(D) Application of Subsection (b)(10)(C)(ii).—*Subsection (b)(10)(C)(ii) applies in any case in which the offense involved the possession of 5 or more means of identification that unlawfully were produced or obtained, regardless of the number of individuals in whose name (or other identifying information) the means of identification were so produced or so obtained.*

10. Application of Subsection (b)(11).—*Subsection (b)(11) provides a minimum offense level in the case of an ongoing, sophisticated operation (e.g., an auto theft ring or "chop shop") to steal or to receive stolen (A) vehicles or vehicle parts; or (B) goods or chattels that are part of a cargo shipment. For purposes of this subsection, "vehicle" means motor vehicle, vessel, or aircraft. A "cargo shipment" includes cargo transported on a railroad car, bus, steamboat, vessel, or airplane.*

11. Gross Receipts Enhancement under Subsection (b)(13)(A).—

(A) In General.—*For purposes of subsection (b)(13)(A), the defendant shall be considered to have derived more than \$1,000,000 in gross receipts if the gross receipts to the defendant individually, rather than to all participants, exceeded \$1,000,000.*

(B) Definition.—*"Gross receipts from the offense" includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. See 18 U.S.C. § 982(a)(4).*

12. Application of Subsection (b)(13)(B).—

(A) Application of Subsection (b)(13)(B)(i).—*The following is a non-exhaustive list of factors*

that the court shall consider in determining whether, as a result of the offense, the safety and soundness of a financial institution was substantially jeopardized:

- (i) *The financial institution became insolvent.*
- (ii) *The financial institution substantially reduced benefits to pensioners or insureds.*
- (iii) *The financial institution was unable on demand to refund fully any deposit, payment, or investment.*
- (iv) *The financial institution was so depleted of its assets as to be forced to merge with another institution in order to continue active operations.*

(B) Application of Subsection (b)(13)(B)(ii).—

- (i) Definition.—*For purposes of this subsection, "organization" has the meaning given that term in Application Note 1 of §8A1.1 (Applicability of Chapter Eight).*
- (ii) In General.—*The following is a non-exhaustive list of factors that the court shall consider in determining whether, as a result of the offense, the solvency or financial security of an organization that was a publicly traded company or that had more than 1,000 employees was substantially endangered:*

- (I) *The organization became insolvent or suffered a substantial reduction in the value of its assets.*
- (II) *The organization filed for bankruptcy under Chapters 7, 11, or 13 of the Bankruptcy Code (title 11, United States Code).*
- (III) *The organization suffered a substantial reduction in the value of its equity securities or the value of its employee retirement accounts.*
- (IV) *The organization substantially reduced its workforce.*
- (V) *The organization substantially reduced its employee pension benefits.*
- (VI) *The liquidity of the equity securities of a publicly traded company was substantially endangered. For example, the company was delisted from its primary listing exchange, or trading of the company's securities was halted for more than one full trading day.*

13. Application of Subsection (b)(14).—

- (A) Definitions.—*For purposes of subsection (b)(14):*

"Critical infrastructure" means systems and assets vital to national defense, national security, economic security, public health or safety, or any combination of those matters. A critical infrastructure may be publicly or privately owned. Examples of critical infrastructures include gas and oil production, storage, and delivery systems, water supply systems, telecommunications networks, electrical power delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), transportation systems and services (including highways, mass transit, airlines, and

airports), and government operations that provide essential services to the public.

"Government entity" has the meaning given that term in 18 U.S.C. § 1030(e)(9).

"Personal information" means sensitive or private information (including such information in the possession of a third party), including (i) medical records; (ii) wills; (iii) diaries; (iv) private correspondence, including e-mail; (v) financial records; (vi) photographs of a sensitive or private nature; or (vii) similar information.

- (B) Subsection (b)(14)(iii).—If the same conduct that forms the basis for an enhancement under subsection (b)(14)(iii) is the only conduct that forms the basis for an enhancement under subsection (b)(13)(B), do not apply the enhancement under subsection (b)(13)(B).

14. Application of Subsection (b)(15).—

- (A) Definitions.—For purposes of this subsection:

"Commodities law" means (i) the Commodities Exchange Act (7 U.S.C. § 1 et seq.); and (ii) includes the rules, regulations, and orders issued by the Commodities Futures Trading Commission.

"Commodity pool operator" has the meaning given that term in section 1a(4) of the Commodities Exchange Act (7 U.S.C. § 1a(4)).

"Commodity trading advisor" has the meaning given that term in section 1a(5) of the Commodities Exchange Act (7 U.S.C. § 1a(5)).

"Futures commission merchant" has the meaning given that term in section 1a(20) of the Commodities Exchange Act (7 U.S.C. § 1a(20)).

"Introducing broker" has the meaning given that term in section 1a(23) of the Commodities Exchange Act (7 U.S.C. § 1a(23)).

"Investment adviser" has the meaning given that term in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-2(a)(11)).

"Person associated with a broker or dealer" has the meaning given that term in section 3(a)(48) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(18)).

"Person associated with an investment adviser" has the meaning given that term in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-2(a)(17)).

"Registered broker or dealer" has the meaning given that term in section 3(a)(48) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(48)).

"Securities law" (i) means 18 U.S.C. §§ 1348, 1350, and the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(47)); and (ii) includes the rules, regulations, and orders issued by the Securities and Exchange Commission pursuant to the provisions of law referred to in such section.

- (B) In General.—A conviction under a securities law or commodities law is not required in

order for subsection (b)(15) to apply. This subsection would apply in the case of a defendant convicted under a general fraud statute if the defendant's conduct violated a securities law or commodities law. For example, this subsection would apply if an officer of a publicly traded company violated regulations issued by the Securities and Exchange Commission by fraudulently influencing an independent audit of the company's financial statements for the purposes of rendering such financial statements materially misleading, even if the officer is convicted only of wire fraud.

(C) Nonapplicability of §3B1.3 (Abuse of Position of Trust or Use of Special Skill).—If subsection (b)(15) applies, do not apply §3B1.3.

15. Application of Subsection (b)(16).—

Definitions.—For purposes of this subsection:

"Emergency" has the meaning given that term in 42 U.S.C. § 5122.

"Major disaster" has the meaning given that term in 42 U.S.C. § 5122.

16. Cross Reference in Subsection (c)(3).—Subsection (c)(3) provides a cross reference to another guideline in Chapter Two (Offense Conduct) in cases in which the defendant is convicted of a general fraud statute, and the count of conviction establishes an offense involving fraudulent conduct that is more aptly covered by another guideline. Sometimes, offenses involving fraudulent statements are prosecuted under 18 U.S.C. § 1001, or a similarly general statute, although the offense involves fraudulent conduct that is also covered by a more specific statute. Examples include false entries regarding currency transactions, for which §2S1.3 (Structuring Transactions to Evade Reporting Requirements) likely would be more apt, and false statements to a customs officer, for which §2T3.1 (Evading Import Duties or Restrictions (Smuggling); Receiving or Trafficking in Smuggled Property) likely would be more apt. In certain other cases, the mail or wire fraud statutes, or other relatively broad statutes, are used primarily as jurisdictional bases for the prosecution of other offenses. For example, a state employee who improperly influenced the award of a contract and used the mails to commit the offense may be prosecuted under 18 U.S.C. § 1341 for fraud involving the deprivation of the intangible right of honest services. Such a case would be more aptly sentenced pursuant to §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions).

17. Continuing Financial Crimes Enterprise.—If the defendant is convicted under 18 U.S.C. § 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the "continuing financial crimes enterprise".

18. Partially Completed Offenses.—In the case of a partially completed offense (e.g., an offense involving a completed theft or fraud that is part of a larger, attempted theft or fraud), the offense level is to be determined in accordance with the provisions of §2X1.1 (Attempt, Solicitation, or Conspiracy) whether the conviction is for the substantive offense, the inchoate offense (attempt, solicitation, or conspiracy), or both. See Application Note 4 of the Commentary to §2X1.1.

19. Multiple-Count Indictments.—Some fraudulent schemes may result in multiple-count indictments, depending on the technical elements of the offense. The cumulative loss produced by a common scheme or course of conduct should be used in determining the offense level, regardless of the number of counts of conviction. See Chapter Three, Part D (Multiple Counts).

20. Departure Considerations.—

- (A) Upward Departure Considerations.—*There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such cases, an upward departure may be warranted. The following is a non-exhaustive list of factors that the court may consider in determining whether an upward departure is warranted:*
- (i) *A primary objective of the offense was an aggravating, non-monetary objective. For example, a primary objective of the offense was to inflict emotional harm.*
 - (ii) *The offense caused or risked substantial non-monetary harm. For example, the offense caused physical harm, psychological harm, or severe emotional trauma, or resulted in a substantial invasion of a privacy interest (through, for example, the theft of personal information such as medical, educational, or financial records). An upward departure would be warranted, for example, in an 18 U.S.C. § 1030 offense involving damage to a protected computer, if, as a result of that offense, death resulted. An upward departure also would be warranted, for example, in a case involving animal enterprise terrorism under 18 U.S.C. § 43, if, in the course of the offense, serious bodily injury or death resulted, or substantial scientific research or information were destroyed.*
 - (iii) *The offense involved a substantial amount of interest of any kind, finance charges, late fees, penalties, amounts based on an agreed-upon return or rate of return, or other similar costs, not included in the determination of loss for purposes of subsection (b)(1).*
 - (iv) *The offense created a risk of substantial loss beyond the loss determined for purposes of subsection (b)(1).*
 - (v) *In a case involving stolen information from a "protected computer", as defined in 18 U.S.C. § 1030(e)(2), the defendant sought the stolen information to further a broader criminal purpose.*
 - (vi) *In a case involving access devices or unlawfully produced or unlawfully obtained means of identification:*
 - (I) *The offense caused substantial harm to the victim's reputation or credit record, or the victim suffered a substantial inconvenience related to repairing the victim's reputation or a damaged credit record.*
 - (II) *An individual whose means of identification the defendant used to obtain unlawful means of identification is erroneously arrested or denied a job because an arrest record has been made in that individual's name.*
 - (III) *The defendant produced or obtained numerous means of identification with respect to one individual and essentially assumed that individual's identity.*
- (B) Upward Departure for Debilitating Impact on a Critical Infrastructure.—*An upward departure would be warranted in a case in which subsection (b)(14)(iii) applies and the disruption to the critical infrastructure(s) is so substantial as to have a debilitating impact*

on national security, national economic security, national public health or safety, or any combination of those matters.

- (C) *Downward Departure Consideration.—There may be cases in which the offense level determined under this guideline substantially overstates the seriousness of the offense. In such cases, a downward departure may be warranted.*

Background: This guideline covers offenses involving theft, stolen property, property damage or destruction, fraud, forgery, and counterfeiting (other than offenses involving altered or counterfeit bearer obligations of the United States).

Because federal fraud statutes often are broadly written, a single pattern of offense conduct usually can be prosecuted under several code sections, as a result of which the offense of conviction may be somewhat arbitrary. Furthermore, most fraud statutes cover a broad range of conduct with extreme variation in severity. The specific offense characteristics and cross references contained in this guideline are designed with these considerations in mind.

The Commission has determined that, ordinarily, the sentences of defendants convicted of federal offenses should reflect the nature and magnitude of the loss caused or intended by their crimes. Accordingly, along with other relevant factors under the guidelines, loss serves as a measure of the seriousness of the offense and the defendant's relative culpability and is a principal factor in determining the offense level under this guideline.

Theft from the person of another, such as pickpocketing or non-forcible purse-snatching, receives an enhanced sentence because of the increased risk of physical injury. This guideline does not include an enhancement for thefts from the person by means of force or fear; such crimes are robberies and are covered under §2B3.1 (Robbery).

A minimum offense level of level 14 is provided for offenses involving an organized scheme to steal vehicles or vehicle parts. Typically, the scope of such activity is substantial, but the value of the property may be particularly difficult to ascertain in individual cases because the stolen property is rapidly resold or otherwise disposed of in the course of the offense. Therefore, the specific offense characteristic of "organized scheme" is used as an alternative to "loss" in setting a minimum offense level.

Use of false pretenses involving charitable causes and government agencies enhances the sentences of defendants who take advantage of victims' trust in government or law enforcement agencies or the generosity and charitable motives of victims. Taking advantage of a victim's self-interest does not mitigate the seriousness of fraudulent conduct; rather, defendants who exploit victims' charitable impulses or trust in government create particular social harm. In a similar vein, a defendant who has been subject to civil or administrative proceedings for the same or similar fraudulent conduct demonstrates aggravated criminal intent and is deserving of additional punishment for not conforming with the requirements of judicial process or orders issued by federal, state, or local administrative agencies.

Offenses that involve the use of financial transactions or financial accounts outside the United States in an effort to conceal illicit profits and criminal conduct involve a particularly high level of sophistication and complexity. These offenses are difficult to detect and require costly investigations and prosecutions. Diplomatic processes often must be used to secure testimony and evidence beyond the jurisdiction of United States courts. Consequently, a minimum offense level of level 12 is provided for these offenses.

Subsection (b)(6) implements the instruction to the Commission in section 2 of Public Law 105–101.

Subsection (b)(8)(D) implements, in a broader form, the directive in section 3 of the College Scholarship Fraud Prevention Act of 2000, Public Law 106–420.

Subsection (b)(9) implements, in a broader form, the instruction to the Commission in section 6(c)(2) of Public Law 105–184.

Subsections (b)(10)(A)(i) and (B)(i) implement the instruction to the Commission in section 4 of the Wireless Telephone Protection Act, Public Law 105–172.

Subsection (b)(10)(C) implements the directive to the Commission in section 4 of the Identity Theft and Assumption Deterrence Act of 1998, Public Law 105–318. This subsection focuses principally on an aggravated form of identity theft known as "affirmative identity theft" or "breeding", in which a defendant uses another individual's name, social security number, or some other form of identification (the "means of identification") to "breed" (i.e., produce or obtain) new or additional forms of identification. Because 18 U.S.C. § 1028(d) broadly defines "means of identification", the new or additional forms of identification can include items such as a driver's license, a credit card, or a bank loan. This subsection provides a minimum offense level of level 12, in part because of the seriousness of the offense. The minimum offense level accounts for the fact that the means of identification that were "bred" (i.e., produced or obtained) often are within the defendant's exclusive control, making it difficult for the individual victim to detect that the victim's identity has been "stolen." Generally, the victim does not become aware of the offense until certain harms have already occurred (e.g., a damaged credit rating or an inability to obtain a loan). The minimum offense level also accounts for the non-monetary harm associated with these types of offenses, much of which may be difficult or impossible to quantify (e.g., harm to the individual's reputation or credit rating, inconvenience, and other difficulties resulting from the offense). The legislative history of the Identity Theft and Assumption Deterrence Act of 1998 indicates that Congress was especially concerned with providing increased punishment for this type of harm.

Subsection (b)(12)(B) implements, in a broader form, the instruction to the Commission in section 110512 of Public Law 103–322.

Subsection (b)(13)(A) implements, in a broader form, the instruction to the Commission in section 2507 of Public Law 101–647.

Subsection (b)(13)(B)(i) implements, in a broader form, the instruction to the Commission in section 961(m) of Public Law 101–73.

Subsection (b)(14) implements the directive in section 225(b) of Public Law 107–296. The minimum offense level of level 24 provided in subsection (b)(14)(B) for an offense that resulted in a substantial disruption of a critical infrastructure reflects the serious impact such an offense could have on national security, national economic security, national public health or safety, or a combination of any of these matters.

Subsection (b)(16) implements the directive in section 5 of Public Law 110–179.

Historical Note: Effective November 1, 1987. Amended effective June 15, 1988 (see Appendix C, amendment 7); November 1, 1989 (see Appendix C, amendments 99-101 and 303); November 1, 1990 (see Appendix C, amendments 312, 317, and 361); November 1, 1991 (see Appendix C, amendments 364 and 393); November 1, 1993 (see Appendix C, amendments 481 and 482); November 1, 1995 (see Appendix C, amendment 512); November 1, 1997 (see Appendix C, amendment 551); November 1, 1998 (see Appendix C, amendment 576); November 1, 2000 (see Appendix C, amendment 596); November 1, 2001 (see Appendix C, amendment 617); November 1, 2002 (see Appendix C, amendments 637, 638, and 646); January 25, 2003 (see Appendix C, amendment 647); November 1, 2003 (see Appendix C, amendments 653, 654, 655, and 661); November 1, 2004 (see Appendix C, amendments 665, 666, and 674); November 1, 2005 (see Appendix C, amendment 679); November 1, 2006 (see Appendix C, amendments 685 and 696); November 1, 2007 (see Appendix C, amendments 699, 700, and 702); February 6, 2008 (see Appendix C, amendment

714).

APPENDIX A - STATUTORY INDEX

INTRODUCTION

This index specifies the offense guideline section(s) in Chapter Two (Offense Conduct) applicable to the statute of conviction. If more than one guideline section is referenced for the particular statute, use the guideline most appropriate for the offense conduct charged in the count of which the defendant was convicted. For the rules governing the determination of the offense guideline section(s) from Chapter Two, and for any exceptions to those rules, see §1B1.2 (Applicable Guidelines).

Historical Note: Effective November 1, 1987. Amended effective November 1, 1989 (see Appendix C, amendments 296 and 297); November 1, 1993 (see Appendix C, amendment 496); November 1, 2000 (see Appendix C, amendment 591).

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18 U.S.C. § 643	2B1.1	18 U.S.C. § 666(a)(2)	2C1.1, 2C1.2
18 U.S.C. § 644	2B1.1	18 U.S.C. § 667	2B1.1
18 U.S.C. § 645	2B1.1	18 U.S.C. § 668	2B1.5
18 U.S.C. § 646	2B1.1	18 U.S.C. § 669	2B1.1
		18 U.S.C. § 709	2B1.1
		18 U.S.C. § 712	2B1.1

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18 U.S.C. § 751	2P1.1	18 U.S.C. § 844(h)	2K2.4 (2K1.4 for offenses committed prior to November 18, 1988)
18 U.S.C. § 752	2P1.1, 2X3.1		
18 U.S.C. § 753	2P1.1		
18 U.S.C. § 755	2P1.1	18 U.S.C. § 844(i)	2K1.4
18 U.S.C. § 756	2P1.1	18 U.S.C. § 844(m)	2K1.3
18 U.S.C. § 757	2P1.1, 2X3.1	18 U.S.C. § 844(n)	2X1.1
18 U.S.C. § 758	2A2.4	18 U.S.C. § 844(o)	2K2.4
18 U.S.C. § 793(a)-(c)	2M3.2	18 U.S.C. § 871	2A6.1
18 U.S.C. § 793(d),(e)	2M3.2, 2M3.3	18 U.S.C. § 872	2C1.1
18 U.S.C. § 793(f)	2M3.4	18 U.S.C. § 873	2B3.3
18 U.S.C. § 793(g)	2M3.2, 2M3.3	18 U.S.C. § 874	2B3.2, 2B3.3
18 U.S.C. § 794	2M3.1	18 U.S.C. § 875(a)	2A4.2, 2B3.2
18 U.S.C. § 798	2M3.3	18 U.S.C. § 875(b)	2B3.2
18 U.S.C. § 831	2M6.1	18 U.S.C. § 875(c)	2A6.1
18 U.S.C. § 832	2M6.1	18 U.S.C. § 875(d)	2B3.2, 2B3.3
18 U.S.C. § 842(a)-(e)	2K1.3	18 U.S.C. § 876	2A4.2, 2A6.1, 2B3.2, 2B3.3
18 U.S.C. § 842(f)	2K1.6		
18 U.S.C. § 842(g)	2K1.6	18 U.S.C. § 877	2A4.2, 2A6.1, 2B3.2, 2B3.3
18 U.S.C. § 842(h),(i)	2K1.3	18 U.S.C. § 878(a)	2A6.1
18 U.S.C. § 842(j)	2K1.1	18 U.S.C. § 878(b)	2B3.2
18 U.S.C. § 842(k)	2K1.1	18 U.S.C. § 879	2A6.1
18 U.S.C. § 842(l)-(o)	2K1.3	18 U.S.C. § 880	2B1.1
18 U.S.C. § 842(p)(2)	2K1.3, 2M6.1	18 U.S.C. § 892	2E2.1
18 U.S.C. § 844(b)	2K1.1	18 U.S.C. § 893	2E2.1
18 U.S.C. § 844(d)	2K1.3	18 U.S.C. § 894	2E2.1
18 U.S.C. § 844(e)	2A6.1	18 U.S.C. § 911	2B1.1, 2L2.2
18 U.S.C. § 844(f)	2K1.4, 2X1.1	18 U.S.C. § 912	2J1.4
18 U.S.C. § 844(g)	2K1.3	18 U.S.C. § 913	2J1.4
		18 U.S.C. § 914	2B1.1
		18 U.S.C. § 915	2B1.1

18 U.S.C. § 917	2B1.1	18 U.S.C. § 1001	2B1.1, 2J1.2 (when the statutory maximum term of eight years' imprisonment applies because the matter relates to international terrorism or domestic terrorism, or to sex offenses under 18 U.S.C. § 1591 or chapters 109A, 109B, 110, or 117 of title 18, United States Code)
18 U.S.C. § 922(a)-(p)	2K2.1		
18 U.S.C. § 922(q)	2K2.5		
18 U.S.C. § 922(r)-(w)	2K2.1		
18 U.S.C. § 922(x)(1)	2K2.1		
18 U.S.C. § 923	2K2.1		
18 U.S.C. § 924(a)	2K2.1		
18 U.S.C. § 924(b)	2K2.1		
18 U.S.C. § 924(c)	2K2.4		
18 U.S.C. § 924(e)	2K2.1 (<u>see also</u> 4B1.4)	18 U.S.C. § 1002	2B1.1
18 U.S.C. § 924(f)	2K2.1	18 U.S.C. § 1003	2B1.1, 2B5.1
18 U.S.C. § 924(g)	2K2.1	18 U.S.C. § 1004	2B1.1
18 U.S.C. § 924(h)	2K2.1	18 U.S.C. § 1005	2B1.1
18 U.S.C. § 924(i)	2K2.1	18 U.S.C. § 1006	2B1.1, 2S1.3
18 U.S.C. § 924(j)(1)	2A1.1, 2A1.2	18 U.S.C. § 1007	2B1.1, 2S1.3
18 U.S.C. § 924(j)(2)	2A1.3, 2A1.4	18 U.S.C. § 1010	2B1.1
18 U.S.C. § 924(k)-(o)	2K2.1	18 U.S.C. § 1011	2B1.1
18 U.S.C. § 929(a)	2K2.4	18 U.S.C. § 1012	2B1.1, 2C1.3
18 U.S.C. § 930	2K2.5	18 U.S.C. § 1013	2B1.1
18 U.S.C. § 931	2K2.6	18 U.S.C. § 1014	2B1.1
18 U.S.C. § 956	2A1.5, 2X1.1	18 U.S.C. § 1015(a)-(e)	2B1.1, 2J1.3, 2L2.1, 2L2.2
18 U.S.C. § 970(a)	2B1.1, 2K1.4	18 U.S.C. § 1015(f)	2H2.1
		18 U.S.C. § 1016	2B1.1
		18 U.S.C. § 1017	2B1.1
		18 U.S.C. § 1018	2B1.1
		18 U.S.C. § 1019	2B1.1
		18 U.S.C. § 1020	2B1.1
		18 U.S.C. § 1021	2B1.1
		18 U.S.C. § 1022	2B1.1
		18 U.S.C. § 1023	2B1.1

18 U.S.C. § 1024	2B1.1	18 U.S.C. § 1111(a)	2A1.1, 2A1.2
18 U.S.C. § 1025	2B1.1	18 U.S.C. § 1112	2A1.3, 2A1.4
18 U.S.C. § 1026	2B1.1	18 U.S.C. § 1113	2A2.1, 2A2.2
18 U.S.C. § 1027	2E5.3	18 U.S.C. § 1114	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1
18 U.S.C. § 1028	2B1.1, 2L2.1, 2L2.2	18 U.S.C. § 1115	2A1.4
18 U.S.C. § 1028A	2B1.6	18 U.S.C. § 1116	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1
18 U.S.C. § 1029	2B1.1	18 U.S.C. § 1117	2A1.5
18 U.S.C. § 1030(a)(1)	2M3.2	18 U.S.C. § 1118	2A1.1, 2A1.2
18 U.S.C. § 1030(a)(2)	2B1.1	18 U.S.C. § 1119	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1
18 U.S.C. § 1030(a)(3)	2B2.3	18 U.S.C. § 1120	2A1.1, 2A1.2, 2A1.3, 2A1.4
18 U.S.C. § 1030(a)(4)	2B1.1	18 U.S.C. § 1121	2A1.1, 2A1.2
18 U.S.C. § 1030(a)(5)	2B1.1	18 U.S.C. § 1129(a)	2X5.2
18 U.S.C. § 1030(a)(6)	2B1.1	18 U.S.C. § 1152	2B1.5
18 U.S.C. § 1030(a)(7)	2B3.2	18 U.S.C. § 1153	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A3.1, 2A3.2, 2A3.3, 2A3.4, 2A4.1, 2B1.1, 2B1.5, 2B2.1, 2B3.1, 2K1.4
18 U.S.C. § 1030(b)	2X1.1	18 U.S.C. § 1163	2B1.1, 2B1.5
18 U.S.C. § 1031	2B1.1	18 U.S.C. § 1167	2B1.1
18 U.S.C. § 1032	2B1.1, 2B4.1	18 U.S.C. § 1168	2B1.1
18 U.S.C. § 1033	2B1.1, 2J1.2	18 U.S.C. § 1170	2B1.5
18 U.S.C. § 1035	2B1.1	18 U.S.C. § 1201(a)	2A4.1
18 U.S.C. § 1036	2B2.3	18 U.S.C. § 1201(c),(d)	2X1.1
18 U.S.C. § 1037	2B1.1	18 U.S.C. § 1202	2A4.2
18 U.S.C. § 1038	2A6.1	18 U.S.C. § 1203	2A4.1, 2X1.1
18 U.S.C. § 1039	2H3.1	18 U.S.C. § 1204	2J1.2
18 U.S.C. § 1040	2B1.1	18 U.S.C. § 1301	2E3.1
18 U.S.C. § 1071	2X3.1	18 U.S.C. § 1302	2E3.1
18 U.S.C. § 1072	2X3.1		
18 U.S.C. § 1073	2J1.5, 2J1.6		
18 U.S.C. § 1082	2E3.1		
18 U.S.C. § 1084	2E3.1		
18 U.S.C. § 1091	2H1.3		

18 U.S.C. § 1303	2E3.1	18 U.S.C. § 1429	2J1.1
18 U.S.C. § 1304	2E3.1	18 U.S.C. § 1460	2G3.1
18 U.S.C. § 1306	2E3.1	18 U.S.C. § 1461	2G3.1
18 U.S.C. § 1341	2B1.1, 2C1.1	18 U.S.C. § 1462	2G3.1
18 U.S.C. § 1342	2B1.1, 2C1.1	18 U.S.C. § 1463	2G3.1
18 U.S.C. § 1343	2B1.1, 2C1.1	18 U.S.C. § 1464	2G3.2
18 U.S.C. § 1344	2B1.1	18 U.S.C. § 1465	2G3.1
18 U.S.C. § 1347	2B1.1	18 U.S.C. § 1466	2G3.1
18 U.S.C. § 1348	2B1.1	18 U.S.C. § 1466A	2G2.2
18 U.S.C. § 1349	2X1.1	18 U.S.C. § 1468	2G3.2
18 U.S.C. § 1350	2B1.1	18 U.S.C. § 1470	2G3.1
18 U.S.C. § 1361	2B1.1, 2B1.5	18 U.S.C. § 1501	2A2.2, 2A2.4
18 U.S.C. § 1362	2B1.1, 2K1.4	18 U.S.C. § 1502	2A2.4
18 U.S.C. § 1363	2B1.1, 2K1.4	18 U.S.C. § 1503	2J1.2
18 U.S.C. § 1364	2K1.4	18 U.S.C. § 1505	2J1.2
18 U.S.C. § 1365(a)	2N1.1	18 U.S.C. § 1506	2J1.2
18 U.S.C. § 1365(b)	2N1.3	18 U.S.C. § 1507	2J1.2
18 U.S.C. § 1365(c)	2N1.2	18 U.S.C. § 1508	2J1.2
18 U.S.C. § 1365(d)	2N1.2	18 U.S.C. § 1509	2J1.2
18 U.S.C. § 1365(e)	2N1.1	18 U.S.C. § 1510	2J1.2
18 U.S.C. § 1365(f)	2X5.2	18 U.S.C. § 1511	2E3.1, 2J1.2
18 U.S.C. § 1366	2B1.1	18 U.S.C. § 1512(a)	2A1.1, 2A1.2, 2A1.3, 2A2.1
18 U.S.C. § 1369	2B1.1, 2B1.5	18 U.S.C. § 1512(b)	2A1.2, 2A2.2, 2J1.2
18 U.S.C. § 1422	2B1.1, 2C1.2	18 U.S.C. § 1512(c)	2J1.2
18 U.S.C. § 1423	2L2.2	18 U.S.C. § 1512(d)	2J1.2
18 U.S.C. § 1424	2L2.2	18 U.S.C. § 1513	2J1.2
18 U.S.C. § 1425	2L2.1, 2L2.2	18 U.S.C. § 1516	2J1.2
18 U.S.C. § 1426	2L2.1, 2L2.2	18 U.S.C. § 1517	2J1.2
18 U.S.C. § 1427	2L2.1	18 U.S.C. § 1518	2J1.2
18 U.S.C. § 1428	2L2.5		

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18 U.S.C. § 1519	2J1.2	18 U.S.C. § 1709	2B1.1
18 U.S.C. § 1520	2E5.3	18 U.S.C. § 1710	2B1.1
18 U.S.C. § 1541	2L2.1	18 U.S.C. § 1711	2B1.1
18 U.S.C. § 1542	2L2.1, 2L2.2	18 U.S.C. § 1712	2B1.1
18 U.S.C. § 1543	2L2.1, 2L2.2	18 U.S.C. § 1716 (felony provisions only)	2K1.3, 2K3.2
18 U.S.C. § 1544	2L2.1, 2L2.2	18 U.S.C. § 1716C	2B1.1
18 U.S.C. § 1546	2L2.1, 2L2.2	18 U.S.C. § 1716D	2Q2.1
18 U.S.C. § 1581	2H4.1	18 U.S.C. § 1720	2B1.1
18 U.S.C. § 1582	2H4.1	18 U.S.C. § 1721	2B1.1
18 U.S.C. § 1583	2H4.1	18 U.S.C. § 1728	2B1.1
18 U.S.C. § 1584	2H4.1	18 U.S.C. § 1735	2G3.1
18 U.S.C. § 1585	2H4.1	18 U.S.C. § 1737	2G3.1
18 U.S.C. § 1586	2H4.1	18 U.S.C. § 1751(a)	2A1.1, 2A1.2, 2A1.3, 2A1.4
18 U.S.C. § 1587	2H4.1	18 U.S.C. § 1751(b)	2A4.1
18 U.S.C. § 1588	2H4.1	18 U.S.C. § 1751(c)	2A2.1, 2A4.1, 2X1.1
18 U.S.C. § 1589	2H4.1	18 U.S.C. § 1751(d)	2A1.5, 2A4.1, 2X1.1
18 U.S.C. § 1590	2H4.1	18 U.S.C. § 1751(e)	2A2.2, 2A2.3
18 U.S.C. § 1591	2G1.1, 2G2.1, 2G1.3	18 U.S.C. § 1791	2P1.2
18 U.S.C. § 1592	2H4.1	18 U.S.C. § 1792	2P1.3
18 U.S.C. § 1621	2J1.3	18 U.S.C. § 1801	2X5.2
18 U.S.C. § 1622	2J1.3	18 U.S.C. § 1831	2B1.1
18 U.S.C. § 1623	2J1.3	18 U.S.C. § 1832	2B1.1
18 U.S.C. § 1700	2H3.3	18 U.S.C. § 1841(a)(1)	2X5.1
18 U.S.C. § 1702	2B1.1, 2H3.3	18 U.S.C. § 1841(a)(2)(C)	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2
18 U.S.C. § 1703	2B1.1, 2H3.3	18 U.S.C. § 1851	2B1.1
18 U.S.C. § 1704	2B1.1	18 U.S.C. § 1852	2B1.1
18 U.S.C. § 1705	2B1.1	18 U.S.C. § 1853	2B1.1
18 U.S.C. § 1706	2B1.1	18 U.S.C. § 1854	2B1.1
18 U.S.C. § 1707	2B1.1		
18 U.S.C. § 1708	2B1.1		

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18 U.S.C. § 1855	2K1.4	18 U.S.C. § 1992(a)(1)	2A5.2, 2B1.1, 2K1.4, 2X1.1
18 U.S.C. § 1857	2B1.1, 2B2.3	18 U.S.C. § 1992(a)(2)	2K1.4, 2M6.1, 2X1.1
18 U.S.C. § 1860	2R1.1	18 U.S.C. § 1992(a)(3)	2M6.1, 2X1.1
18 U.S.C. § 1861	2B1.1	18 U.S.C. § 1992(a)(4)	2A5.2, 2K1.4, 2M6.1, 2X1.1
18 U.S.C. § 1864	2Q1.6	18 U.S.C. § 1992(a)(5)	2A5.2, 2B1.1, 2X1.1
18 U.S.C. § 1901	2C1.3	18 U.S.C. § 1992(a)(6)	2A5.2, 2X1.1
18 U.S.C. § 1902	2B1.4	18 U.S.C. § 1992(a)(7)	2A1.1, 2A2.1, 2A2.2, 2X1.1
18 U.S.C. § 1903	2C1.3	18 U.S.C. § 1992(a)(8)	2X1.1
18 U.S.C. § 1905	2H3.1	18 U.S.C. § 1992(a)(9)	2A6.1, 2X1.1
18 U.S.C. § 1909	2C1.3	18 U.S.C. § 1992(a)(10)	2A6.1, 2X1.1
18 U.S.C. § 1915	2T3.1	18 U.S.C. § 2071	2B1.1
18 U.S.C. § 1919	2B1.1	18 U.S.C. § 2072	2B1.1
18 U.S.C. § 1920	2B1.1	18 U.S.C. § 2073	2B1.1
18 U.S.C. § 1923	2B1.1	18 U.S.C. § 2111	2B3.1
18 U.S.C. § 1951	2B3.1, 2B3.2, 2B3.3, 2C1.1	18 U.S.C. § 2112	2B3.1
18 U.S.C. § 1952	2E1.2	18 U.S.C. § 2113(a)	2B1.1, 2B2.1, 2B3.1, 2B3.2
18 U.S.C. § 1952A	2E1.4	18 U.S.C. § 2113(b)	2B1.1
18 U.S.C. § 1952B	2E1.3	18 U.S.C. § 2113(c)	2B1.1
18 U.S.C. § 1953	2E3.1	18 U.S.C. § 2113(d)	2B3.1
18 U.S.C. § 1954	2E5.1	18 U.S.C. § 2113(e)	2A1.1, 2B3.1
18 U.S.C. § 1955	2E3.1	18 U.S.C. § 2114(a)	2B3.1
18 U.S.C. § 1956	2S1.1	18 U.S.C. § 2114(b)	2B1.1
18 U.S.C. § 1957	2S1.1	18 U.S.C. § 2115	2B2.1
18 U.S.C. § 1958	2E1.4	18 U.S.C. § 2116	2A2.2, 2A2.3, 2B2.1, 2B3.1
18 U.S.C. § 1959	2E1.3	18 U.S.C. § 2117	2B2.1
18 U.S.C. § 1960	2S1.1, 2S1.3	18 U.S.C. § 2118(a)	2B3.1
18 U.S.C. § 1962	2E1.1		
18 U.S.C. § 1963	2E1.1		
18 U.S.C. § 1991	2A2.1, 2X1.1		

18 U.S.C. § 2118(b)	2B2.1	18 U.S.C. § 2251(c)(1)(B)	2G2.1
18 U.S.C. § 2118(c)(1)	2A2.1, 2A2.2, 2B3.1	18 U.S.C. § 2251A	2G2.3
18 U.S.C. § 2118(c)(2)	2A1.1	18 U.S.C. § 2252	2G2.2
18 U.S.C. § 2118(d)	2X1.1	18 U.S.C. § 2252A	2G2.2
18 U.S.C. § 2119	2B3.1	18 U.S.C. § 2252B	2G3.1
18 U.S.C. § 2153	2M2.1	18 U.S.C. § 2252C	2G3.1
18 U.S.C. § 2154	2M2.1	18 U.S.C. § 2257	2G2.5
18 U.S.C. § 2155	2M2.3	18 U.S.C. § 2257A	2G2.5
18 U.S.C. § 2156	2M2.3	18 U.S.C. § 2260(a)	2G2.1
18 U.S.C. § 2197	2B1.1	18 U.S.C. § 2260(b)	2G2.2
18 U.S.C. § 2199	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2B1.1, 2B2.3	18 U.S.C. § 2260A	2A3.6
18 U.S.C. § 2231	2A2.2, 2A2.3	18 U.S.C. § 2261	2A6.2
18 U.S.C. § 2232	2B1.5, 2J1.2	18 U.S.C. § 2261A	2A6.2
18 U.S.C. § 2233	2B1.1, 2B3.1	18 U.S.C. § 2262	2A6.2
18 U.S.C. § 2237(a)(1), (a)(2)(A)	2A2.4	18 U.S.C. § 2271	2X1.1
18 U.S.C. § 2237(a)(2)(B)	2B1.1	18 U.S.C. § 2272	2B1.1
18 U.S.C. § 2241	2A3.1	18 U.S.C. § 2275	2B1.1, 2K1.4
18 U.S.C. § 2242	2A3.1	18 U.S.C. § 2276	2B1.1, 2B2.1
18 U.S.C. § 2243(a)	2A3.2	18 U.S.C. § 2280	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A4.1, 2B1.1, 2B3.1, 2B3.2, 2K1.4, 2X1.1
18 U.S.C. § 2243(b)	2A3.3	18 U.S.C. § 2281	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A4.1, 2B1.1, 2B3.1, 2B3.2, 2K1.4, 2X1.1
18 U.S.C. § 2244	2A3.4	18 U.S.C. § 2282A	2A1.1, 2A1.2, 2B1.1, 2K1.4, 2X1.1
18 U.S.C. § 2245	2A1.1	18 U.S.C. § 2282B	2B1.1, 2K1.4, 2X1.1
18 U.S.C. § 2250(a)	2A3.5	18 U.S.C. § 2283	2K1.3, 2M5.3, 2M6.1
18 U.S.C. § 2250(c)	2A3.6	18 U.S.C. § 2284	2M5.3, 2X2.1, 2X3.1
18 U.S.C. § 2251(a),(b)	2G2.1		
18 U.S.C. § 2251(c)(1)(A)	2G2.2		

18 U.S.C. § 2291	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A6.1, 2B1.1, 2K1.4, 2M6.1	18 U.S.C. § 2339	2M5.3, 2X2.1, 2X3.1
18 U.S.C. § 2292	2A6.1	18 U.S.C. § 2339A	2X2.1, 2X3.1
18 U.S.C. § 2312	2B1.1	18 U.S.C. § 2339B	2M5.3
18 U.S.C. § 2313	2B1.1	18 U.S.C. § 2339C (a)(1)(A)	2X2.1
18 U.S.C. § 2314	2B1.1, 2B1.5	18 U.S.C. § 2339C (a)(1)(B)	2M5.3
18 U.S.C. § 2315	2B1.1, 2B1.5	18 U.S.C. § 2339C (c)(2)(A)	2X3.1
18 U.S.C. § 2316	2B1.1	18 U.S.C. § 2339C (c)(2)(B)	2M5.3, 2X3.1
18 U.S.C. § 2317	2B1.1	18 U.S.C. § 2340A	2A1.1, 2A1.2, 2A2.1, 2A2.2, 2A4.1
18 U.S.C. § 2318	2B5.3	18 U.S.C. § 2342(a)	2E4.1
18 U.S.C. § 2319	2B5.3	18 U.S.C. § 2344(a)	2E4.1
18 U.S.C. § 2319A	2B5.3	18 U.S.C. § 2381	2M1.1
18 U.S.C. § 2319B	2B5.3	18 U.S.C. § 2421	2G1.1, 2G1.3
18 U.S.C. § 2320	2B5.3	18 U.S.C. § 2422	2G1.1, 2G1.3
18 U.S.C. § 2321	2B6.1	18 U.S.C. § 2423(a)	2G1.3
18 U.S.C. § 2322	2B6.1	18 U.S.C. § 2423(b)	2G1.3
18 U.S.C. § 2332(a)	2A1.1, 2A1.2, 2A1.3, 2A1.4	18 U.S.C. § 2425	2G1.3
18 U.S.C. § 2332(b)(1)	2A2.1	18 U.S.C. § 2511	2B5.3, 2H3.1
18 U.S.C. § 2332(b)(2)	2A1.5	18 U.S.C. § 2512	2H3.2
18 U.S.C. § 2332(c)	2A2.2	18 U.S.C. § 2701	2B1.1
18 U.S.C. § 2332a	2K1.4, 2M6.1	18 U.S.C. § 3056(d)	2A2.4
18 U.S.C. § 2332b(a)(1)	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A4.1, 2B1.1	18 U.S.C. § 3146(b)(1)(A)	2J1.6
18 U.S.C. § 2332b(a)(2)	2A6.1	18 U.S.C. § 3146(b)(1)(B)	2J1.5
18 U.S.C. § 2332d	2M5.1	19 U.S.C. § 283	2T3.1
18 U.S.C. § 2332f	2K1.4, 2M6.1	19 U.S.C. § 1304	2T3.1
18 U.S.C. § 2332g	2K2.1	19 U.S.C. § 1433	2T3.1
18 U.S.C. § 2332h	2M6.1	19 U.S.C. § 1434	2B1.1, 2T3.1

19 U.S.C. § 1435	2B1.1, 2T3.1	21 U.S.C. § 141	2N2.1
19 U.S.C. § 1436	2B1.1, 2T3.1	21 U.S.C. § 143	2N2.1
19 U.S.C. § 1464	2T3.1	21 U.S.C. § 144	2N2.1
19 U.S.C. § 1465	2T3.1	21 U.S.C. § 145	2N2.1
19 U.S.C. § 1586(e)	2T3.1	21 U.S.C. § 151	2N2.1
19 U.S.C. § 1707	2T3.1	21 U.S.C. § 152	2N2.1
19 U.S.C. § 1708(b)	2T3.1	21 U.S.C. § 153	2N2.1
19 U.S.C. § 1919	2B1.1	21 U.S.C. § 154	2N2.1
19 U.S.C. § 2316	2B1.1	21 U.S.C. § 155	2N2.1
19 U.S.C. § 2401f	2B1.1	21 U.S.C. § 156	2N2.1
19 U.S.C. § 3907	2T3.1	21 U.S.C. § 157	2N2.1
20 U.S.C. § 1097(a)	2B1.1	21 U.S.C. § 158	2N2.1
20 U.S.C. § 1097(b)	2B1.1	21 U.S.C. § 331	2N2.1
20 U.S.C. § 1097(c)	2B4.1	21 U.S.C. § 333(a)(1)	2N2.1
20 U.S.C. § 1097(d)	2B1.1	21 U.S.C. § 333(a)(2)	2B1.1, 2N2.1
21 U.S.C. § 101	2N2.1	21 U.S.C. § 333(b)	2N2.1
21 U.S.C. § 102	2N2.1	21 U.S.C. § 458	2N2.1
21 U.S.C. § 103	2N2.1	21 U.S.C. § 459	2N2.1
21 U.S.C. § 104	2N2.1	21 U.S.C. § 460	2N2.1
21 U.S.C. § 105	2N2.1	21 U.S.C. § 461	2N2.1
21 U.S.C. § 111	2N2.1	21 U.S.C. § 463	2N2.1
21 U.S.C. § 115	2N2.1	21 U.S.C. § 466	2N2.1
21 U.S.C. § 117	2N2.1	21 U.S.C. § 610	2N2.1
21 U.S.C. § 120	2N2.1	21 U.S.C. § 611	2N2.1
21 U.S.C. § 121	2N2.1	21 U.S.C. § 614	2N2.1
21 U.S.C. § 122	2N2.1	21 U.S.C. § 617	2N2.1
21 U.S.C. § 124	2N2.1	21 U.S.C. § 619	2N2.1
21 U.S.C. § 126	2N2.1	21 U.S.C. § 620	2N2.1
21 U.S.C. § 134a-e	2N2.1	21 U.S.C. § 622	2C1.1
21 U.S.C. § 135a	2N2.1	21 U.S.C. § 642	2N2.1

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21 U.S.C. § 643	2N2.1	21 U.S.C. § 844(a)	2D2.1
21 U.S.C. § 644	2N2.1	21 U.S.C. § 845	2D1.2
21 U.S.C. § 675	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3	21 U.S.C. § 845a	2D1.2
21 U.S.C. § 676	2N2.1	21 U.S.C. § 845b	2D1.2
21 U.S.C. § 841(a)	2D1.1	21 U.S.C. § 846	2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2
21 U.S.C. § 841(b)(1)-(3)	2D1.1	21 U.S.C. § 848(a)	2D1.5
21 U.S.C. § 841(b)(4)	2D2.1	21 U.S.C. § 848(b)	2D1.5
21 U.S.C. § 841(b)(7)	2D1.1	21 U.S.C. § 848(e)	2A1.1
21 U.S.C. § 841(c)(1),(2)	2D1.11	21 U.S.C. § 849	2D1.2
21 U.S.C. § 841(c)(3)	2D1.13	21 U.S.C. § 854	2S1.1
21 U.S.C. § 841(d)	2D1.9	21 U.S.C. § 856	2D1.8
21 U.S.C. § 841(f)(1)	2D1.11, 2D1.13	21 U.S.C. § 857	2D1.7
21 U.S.C. § 841(g)	2D1.1	21 U.S.C. § 858	2D1.10
21 U.S.C. § 842(a)(1)	2D3.1	21 U.S.C. § 859	2D1.2
21 U.S.C. § 842(a)(2), (9),(10)	2D3.2	21 U.S.C. § 860	2D1.2
21 U.S.C. § 842(b)	2D3.2	21 U.S.C. § 860a	2D1.1
21 U.S.C. § 843(a)(1),(2)	2D3.1	21 U.S.C. § 861	2D1.2
21 U.S.C. § 843(a)(3)	2D2.2	21 U.S.C. § 863	2D1.7
21 U.S.C. § 843(a)(4)(A)	2D1.13	21 U.S.C. § 864	2D1.12
21 U.S.C. § 843(a)(4)(B)	2D1.13	21 U.S.C. § 865	2D1.1, 2D1.11
21 U.S.C. § 843(a)(6),(7)	2D1.12	21 U.S.C. § 952	2D1.1
21 U.S.C. § 843(a)(8)	2D1.13	21 U.S.C. § 953	2D1.1
21 U.S.C. § 843(a)(9)	2D3.1	21 U.S.C. § 954	2D3.2
21 U.S.C. § 843(b)	2D1.6	21 U.S.C. § 955	2D1.1
21 U.S.C. § 843(c)	2D3.1	21 U.S.C. § 955a(a)-(d)	2D1.1
		21 U.S.C. § 959	2D1.1, 2D1.11
		21 U.S.C. § 960(a),(b)	2D1.1

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21 U.S.C. § 960(d)(1),(2)	2D1.11	26 U.S.C. § 5608	2T2.1
21 U.S.C. § 960(d)(3),(4)	2D1.11	26 U.S.C. § 5661	2T2.1, 2T2.2
21 U.S.C. § 960(d)(5)	2D1.13	26 U.S.C. § 5662	2T2.2
21 U.S.C. § 960(d)(6)	2D3.1	26 U.S.C. § 5671	2T2.1, 2T2.2
21 U.S.C. § 960(d)(7)	2D1.11	26 U.S.C. § 5684	2T2.1
21 U.S.C. § 960a	2D1.14	26 U.S.C. § 5685	2K1.3, 2K2.1
21 U.S.C. § 961	2D3.2	26 U.S.C. § 5691(a)	2T2.1
21 U.S.C. § 963	2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2	26 U.S.C. § 5751(a)(1),(2)	2T2.1
22 U.S.C. § 1980(g)	2B1.1	26 U.S.C. § 5752	2T2.2
22 U.S.C. § 2197(n)	2B1.1	26 U.S.C. § 5762(a)(1), (2),(4),(5),(6)	2T2.2
22 U.S.C. § 2778	2M5.2	26 U.S.C. § 5762(a)(3)	2T2.1
22 U.S.C. § 2780	2M5.2	26 U.S.C. § 5861(a)-(l)	2K2.1
22 U.S.C. § 4217	2B1.1	26 U.S.C. § 5871	2K2.1
22 U.S.C. § 4221	2B1.1	26 U.S.C. § 7201	2T1.1
25 U.S.C. § 450d	2B1.1	26 U.S.C. § 7202	2T1.6
26 U.S.C. § 5148(1)	2T2.1	26 U.S.C. § 7203	2S1.3, 2T1.1
26 U.S.C. § 5214(a)(1)	2T2.1	26 U.S.C. § 7204	2T1.8
26 U.S.C. § 5273(b)(2)	2T2.1	26 U.S.C. § 7205	2T1.8
26 U.S.C. § 5273(c)	2T2.1	26 U.S.C. § 7206(1), (3), (4),(5)	2S1.3, 2T1.1
26 U.S.C. § 5291(a)	2T2.1, 2T2.2	26 U.S.C. § 7206(2)	2S1.3, 2T1.4
26 U.S.C. § 5601(a)	2T2.1, 2T2.2	26 U.S.C. § 7207	2T1.1
26 U.S.C. § 5602	2T2.1	26 U.S.C. § 7208	2B1.1
26 U.S.C. § 5603	2T2.1, 2T2.2	26 U.S.C. § 7210	2J1.1
26 U.S.C. § 5604(a)	2T2.1, 2T2.2	26 U.S.C. § 7211	2T1.1
26 U.S.C. § 5605	2T2.1, 2T2.2	26 U.S.C. § 7212(a)	2A2.4
26 U.S.C. § 5607	2T2.1	26 U.S.C. § 7212(a) (omnibus clause)	2J1.2, 2T1.1
		26 U.S.C. § 7212(b)	2B1.1, 2B2.1, 2B3.1
		26 U.S.C. § 7213(a)(1)	2H3.1

26 U.S.C. § 7213(a)(2)	2H3.1	31 U.S.C. § 5313	2S1.3
26 U.S.C. § 7213(a)(3)	2H3.1	31 U.S.C. § 5314	2S1.3
26 U.S.C. § 7213(a)(5)	2H3.1	31 U.S.C. § 5316	2S1.3
26 U.S.C. § 7213(d)	2H3.1	31 U.S.C. § 5318	2S1.3
26 U.S.C. § 7213A	2H3.1	31 U.S.C. § 5318A(b)	2S1.3
26 U.S.C. § 7214	2B1.1, 2C1.1, 2C1.2	31 U.S.C. § 5322	2S1.3
26 U.S.C. § 7215	2T1.7	31 U.S.C. § 5324	2S1.3
26 U.S.C. § 7216	2H3.1	31 U.S.C. § 5326	2S1.3, 2T2.2
26 U.S.C. § 7232	2B1.1	31 U.S.C. § 5331	2S1.3
26 U.S.C. § 7512(b)	2T1.7	31 U.S.C. § 5332	2S1.3
26 U.S.C. § 9012(e)	2B4.1	31 U.S.C. § 5363	2E3.1
26 U.S.C. § 9042(d)	2B4.1	33 U.S.C. § 403	2Q1.3
28 U.S.C. § 1826(c)	2P1.1	33 U.S.C. § 406	2Q1.3
28 U.S.C. § 2902(e)	2P1.1	33 U.S.C. § 407	2Q1.3
29 U.S.C. § 186	2E5.1	33 U.S.C. § 411	2Q1.3
29 U.S.C. § 431	2E5.3	33 U.S.C. § 506	2J1.1
29 U.S.C. § 432	2E5.3	33 U.S.C. § 1227(b)	2J1.1
29 U.S.C. § 433	2E5.3	33 U.S.C. § 1232(b)(2)	2A2.4
29 U.S.C. § 439	2E5.3	33 U.S.C. § 1319(c)(1), (2),(4)	2Q1.2, 2Q1.3
29 U.S.C. § 461	2E5.3	33 U.S.C. § 1319(c)(3)	2Q1.1
29 U.S.C. § 501(c)	2B1.1	33 U.S.C. § 1321	2Q1.2, 2Q1.3
29 U.S.C. § 530	2B3.2	33 U.S.C. § 1342	2Q1.2, 2Q1.3
29 U.S.C. § 1131	2E5.3	33 U.S.C. § 1415(b)	2Q1.2, 2Q1.3
29 U.S.C. § 1141	2B1.1, 2B3.2	33 U.S.C. § 1517	2Q1.2, 2Q1.3
29 U.S.C. § 1851	2H4.2	33 U.S.C. § 1907	2Q1.3
30 U.S.C. § 1461(a)(3), (4),(5),(7)	2A2.4	33 U.S.C. § 1908	2Q1.3
30 U.S.C. § 1463	2A2.4	38 U.S.C. § 787	2B1.1
31 U.S.C. § 5311 note (section 329 of the USA PATRIOT Act of 2001)	2C1.1	38 U.S.C. § 2413	2B2.3
		38 U.S.C. § 3501(a)	2B1.1

38 U.S.C. § 3502	2B1.1	42 U.S.C. § 1761(o)(1)	2B1.1
40 U.S.C. § 5104(e)(1)	2K2.5	42 U.S.C. § 1761(o)(2)	2B1.1
40 U.S.C. § 14309(a),(b)	2C1.3	42 U.S.C. § 1973i(c)	2H2.1
41 U.S.C. § 53	2B4.1	42 U.S.C. § 1973i(d)	2H2.1
41 U.S.C. § 54	2B4.1	42 U.S.C. § 1973i(e)	2H2.1
41 U.S.C. § 423(e)	2B1.1, 2C1.1	42 U.S.C. § 1973j(a)	2H2.1
42 U.S.C. § 261(a)	2D1.1	42 U.S.C. § 1973j(b)	2H2.1
42 U.S.C. § 262	2N2.1	42 U.S.C. § 1973j(c)	2X1.1
42 U.S.C. § 300h-2	2Q1.2	42 U.S.C. § 1973aa	2H2.1
42 U.S.C. § 300i-1	2Q1.4	42 U.S.C. § 1973aa-1	2H2.1
42 U.S.C. § 408	2B1.1	42 U.S.C. § 1973aa-1a	2H2.1
42 U.S.C. § 1011	2B1.1	42 U.S.C. § 1973aa-3	2H2.1
42 U.S.C. § 1307(a)	2B1.1	42 U.S.C. § 1973bb	2H2.1
42 U.S.C. § 1307(b)	2B1.1	42 U.S.C. § 1973gg-10	2H2.1
42 U.S.C. § 1320a-7b	2B1.1, 2B4.1	42 U.S.C. § 2000e-13	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3
42 U.S.C. § 1383(d)(2)	2B1.1	42 U.S.C. § 2077	2M6.1
42 U.S.C. § 1383a(a)	2B1.1	42 U.S.C. § 2122	2M6.1
42 U.S.C. § 1383a(b)	2B1.1	42 U.S.C. § 2131	2M6.1
42 U.S.C. § 1395nn(a)	2B1.1	42 U.S.C. § 2272	2M6.1
42 U.S.C. § 1395nn(b)(1)	2B4.1	42 U.S.C. § 2273	2M6.2
42 U.S.C. § 1395nn(b)(2)	2B4.1	42 U.S.C. § 2274(a),(b)	2M3.1
42 U.S.C. § 1395nn(c)	2B1.1	42 U.S.C. § 2275	2M3.1
42 U.S.C. § 1396h(a)	2B1.1	42 U.S.C. § 2276	2M3.5
42 U.S.C. § 1396h(b)(1)	2B4.1	42 U.S.C. § 2278a(c)	2B2.3
42 U.S.C. § 1396h(b)(2)	2B4.1	42 U.S.C. § 2283(a)	2A1.1, 2A1.2, 2A1.3, 2A1.4
42 U.S.C. § 1713	2B1.1	42 U.S.C. § 2283(b)	2A2.2, 2A2.3
42 U.S.C. § 1760(g)	2B1.1	42 U.S.C. § 2284(a)	2M2.1, 2M2.3
		42 U.S.C. § 3220(a)	2B1.1

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42 U.S.C. § 3220(b)	2B1.1	46 U.S.C. § 1276	2B1.1
42 U.S.C. § 3426	2B1.1	46 U.S.C. § 3718(b)	2Q1.2
42 U.S.C. § 3611(f)	2J1.1	46 U.S.C. App. § 1707a (f)(2)	2B1.1
42 U.S.C. § 3631	2H1.1	46 U.S.C. App. § 1903(a)	2D1.1
42 U.S.C. § 3791	2B1.1	46 U.S.C. App. § 1903(g)	2D1.1
42 U.S.C. § 3792	2B1.1	46 U.S.C. App. § 1903(j)	2D1.1
42 U.S.C. § 3795	2B1.1	47 U.S.C. § 223(a)(1)(C)	2A6.1
42 U.S.C. § 5157(a)	2B1.1	47 U.S.C. § 223(a)(1)(D)	2A6.1
42 U.S.C. § 5409	2N2.1	47 U.S.C. § 223(a)(1)(E)	2A6.1
42 U.S.C. § 6928(d)	2Q1.2	47 U.S.C. § 223(b)(1)(A)	2G3.2
42 U.S.C. § 6928(e)	2Q1.1	47 U.S.C. § 553(b)(2)	2B5.3
42 U.S.C. § 7270b	2B2.3	47 U.S.C. § 605	2B5.3, 2H3.1
42 U.S.C. § 7413(c)(1)-(4)	2Q1.2, 2Q1.3	49 U.S.C. § 121	2B1.1(for offenses committed prior to July 5, 1994)
42 U.S.C. § 7413(c)(5)	2Q1.1	49 U.S.C. § 1809(b)	2Q1.2(for offenses committed prior to July 5, 1994)
42 U.S.C. § 9151(2),(3), (4),(5)	2A2.4	49 U.S.C. § 5124	2Q1.2
42 U.S.C. § 9152(d)	2A2.4	49 U.S.C. § 11902	2B4.1
42 U.S.C. § 9603(b)	2Q1.2	49 U.S.C. § 11903	2B1.1
42 U.S.C. § 9603(c)	2Q1.2	49 U.S.C. § 11904	2B1.1(2B4.1 for offenses committed prior to January 1, 1996)
42 U.S.C. § 9603(d)	2Q1.2	49 U.S.C. § 11907(a)	2B4.1(for offenses committed prior to January 1, 1996)
42 U.S.C. § 14133	2X5.2		
42 U.S.C. § 14905	2B1.1		
42 U.S.C. § 16962	2H3.1		
42 U.S.C. § 16984	2H3.1		
43 U.S.C. § 1350	2Q1.2		
43 U.S.C. § 1733(a) (43 C.F.R. 4140.1(b)(1)(i))	2B2.3		
43 U.S.C. § 1816(a)	2Q1.2		
43 U.S.C. § 1822(b)	2Q1.2		
45 U.S.C. § 359(a)	2B1.1		

49 U.S.C. § 11907(b)	2B4.1(for offenses committed prior to January 1, 1996)	49 U.S.C. § 46507	2A6.1
49 U.S.C. § 14103(b)	2B1.1	49 U.S.C. § 60123(b)	2B1.1, 2K1.4, 2M2.1, 2M2.3
49 U.S.C. § 14905(b)	2B1.1	49 U.S.C. § 60123(d)	2B1.1
49 U.S.C. § 14909	2J1.1	49 U.S.C. § 80116	2B1.1
49 U.S.C. § 14912	2B1.1	49 U.S.C. § 80501	2B1.1
49 U.S.C. § 14915	2B1.1	49 U.S.C. App. § 1687(g)	2B1.1(for offenses committed prior to July 5, 1994)
49 U.S.C. § 16102	2B1.1	50 U.S.C. § 421	2M3.9
49 U.S.C. § 16104	2J1.1	50 U.S.C. § 783(b)	2M3.3
49 U.S.C. § 30170	2B1.1	50 U.S.C. § 783(c)	2M3.3
49 U.S.C. § 31310	2X5.2		
49 U.S.C. § 32703	2N3.1		

49 U.S.C. § 32704	2N3.1
49 U.S.C. § 32705	2N3.1
49 U.S.C. § 32709(b)	2N3.1
49 U.S.C. § 46308	2A5.2
49 U.S.C. § 46312	2Q1.2
49 U.S.C. § 46317(a)	2B1.1
49 U.S.C. § 46317(b)	2D1.1
49 U.S.C. § 46502(a),(b)	2A5.1, 2X1.1
49 U.S.C. § 46503	2A5.2
49 U.S.C. § 46504	2A5.2
49 U.S.C. § 46505	2K1.5
49 U.S.C. § 46506	2A5.3

50 U.S.C. § 1701	2M5.1, 2M5.2, 2M5.3
50 U.S.C. § 1705	2M5.3
50 U.S.C. App. § 462	2M4.1
50 U.S.C. App. § 2410	2M5.1

Historical Note: Effective November 1, 1987. Amended effective January 15, 1988 (see Appendix C, amendments 60 and 61); June 15, 1988 (see Appendix C, amendments 62 and 63); October 15, 1988 (see Appendix C, amendments 64 and 65); November 1, 1989 (see Appendix C, amendments 297-301); November 1, 1990 (see Appendix C, amendment 359); November 1, 1991 (see Appendix C, amendment 421); November 1, 1992 (see Appendix C, amendment 468); November 1, 1993 (see Appendix C, amendment 496); November 1, 1995 (see Appendix C, amendment 534); November 1, 1996 (see Appendix C, amendment 540); November 1, 1997 (see Appendix C, amendment 575); November 1, 1998 (see Appendix C, amendment 589); November 1, 2000 (see Appendix C, amendment 592); May 1, 2001 (see Appendix C, amendment 612); November 1, 2001 (see Appendix C, amendments 617, 622, 626, 627, 628, 633, and 634); November 1, 2002 (see Appendix C, amendments 637, 638, 639, and 646); January 25, 2003 (see Appendix C, amendments 647 and 648); November 1, 2003 (see Appendix C, amendments 653, 654, 655, 656, 658, and 661); November 1, 2004 (see Appendix C, amendments 664, 665, 666, 667, 669, and 674); October 24, 2005 (see Appendix C, amendments 675 and 676); November 1, 2005 (see Appendix C, amendments 677, 679, and 680); November 1, 2006 (see Appendix C, amendments 685, 686, 687, 689, and 690); May 1, 2007 (see Appendix C, amendment 697); November 1, 2007 (see Appendix C, amendments 699, 700, 701, 703, 704, 705, 707, 708, and 711); February 6, 2008 (see Appendix C, amendment 714).

SUPPLEMENT TO THE 2007 SUPPLEMENT TO APPENDIX C

This supplement to the 2007 supplement to Appendix C presents (1) the amendments to §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) effective March 3, 2008; and (2) the emergency amendment to §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) pursuant to section 5(c) of the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007, Pub. L. 110–179, effective February 6, 2008.

The format under which the amendments are presented in Appendix C, including the 2007 supplement to Appendix C and this supplement, is designed to facilitate a comparison between previously existing and amended provisions, in the event it becomes necessary to reference the former guideline, policy statement, or commentary language. For amendments to the guidelines, policy statements, and official commentary effective November 1, 2007, and earlier, see Volumes I and II of Appendix C and the 2007 supplement to Appendix C.

AMENDMENT

712. Amendment: Chapter One, Part B, Subpart One, is amended by striking §1B1.10 and its accompanying commentary as follows:

"§1B1.10. Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)

- (a) Where a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (c) below, a reduction in the defendant's term of imprisonment is authorized under 18 U.S.C. § 3582(c)(2). If none of the amendments listed in subsection (c) is applicable, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) is not consistent with this policy statement and thus is not authorized.
- (b) In determining whether, and to what extent, a reduction in the term of imprisonment is warranted for a defendant eligible for consideration under 18 U.S.C. § 3582(c)(2), the court should consider the term of imprisonment that it would have imposed had the amendment(s) to the guidelines listed in subsection (c) been in effect at the time the defendant was sentenced, except that in no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served.
- (c) Amendments covered by this policy statement are listed in Appendix C as follows: 126, 130, 156, 176, 269, 329, 341, 371, 379, 380, 433, 454, 461, 484, 488, 490, 499, 505, 506, 516, 591, 599, 606, 657, and 702.

Commentary

Application Notes:

1. Eligibility for consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an

- amendment listed in subsection (c) that lowers the applicable guideline range.
2. In determining the amended guideline range under subsection (b), the court shall substitute only the amendments listed in subsection (c) for the corresponding guideline provisions that were applied when the defendant was sentenced. All other guideline application decisions remain unaffected.
 3. Under subsection (b), the amended guideline range and the term of imprisonment already served by the defendant limit the extent to which an eligible defendant's sentence may be reduced under 18 U.S.C. § 3582(c)(2). When the original sentence represented a downward departure, a comparable reduction below the amended guideline range may be appropriate; however, in no case shall the term of imprisonment be reduced below time served. Subject to these limitations, the sentencing court has the discretion to determine whether, and to what extent, to reduce a term of imprisonment under this section.
 4. Only a term of imprisonment imposed as part of the original sentence is authorized to be reduced under this section. This section does not authorize a reduction in the term of imprisonment imposed upon revocation of supervised release.
 5. If the limitation in subsection (b) relating to time already served precludes a reduction in the term of imprisonment to the extent the court determines otherwise would have been appropriate as a result of the amended guideline range, the court may consider any such reduction that it was unable to grant in connection with any motion for early termination of a term of supervised release under 18 U.S.C. § 3583(e)(1). However, the fact that a defendant may have served a longer term of imprisonment than the court determines would have been appropriate in view of the amended guideline range shall not, without more, provide a basis for early termination of supervised release. Rather, the court should take into account the totality of circumstances relevant to a decision to terminate supervised release, including the term of supervised release that would have been appropriate in connection with a sentence under the amended guideline range.

Background: Section 3582(c)(2) of Title 18, United States Code, provides: '[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.'

This policy statement provides guidance for a court when considering a motion under 18 U.S.C. § 3582(c)(2) and implements 28 U.S.C. § 994(u), which provides: 'If the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.'

Among the factors considered by the Commission in selecting the amendments included in subsection (c) were the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment

retroactively to determine an amended guideline range under subsection (b).

The listing of an amendment in subsection (c) reflects policy determinations by the Commission that a reduced guideline range is sufficient to achieve the purposes of sentencing and that, in the sound discretion of the court, a reduction in the term of imprisonment may be appropriate for previously sentenced, qualified defendants. The authorization of such a discretionary reduction does not otherwise affect the lawfulness of a previously imposed sentence, does not authorize a reduction in any other component of the sentence, and does not entitle a defendant to a reduced term of imprisonment as a matter of right.

The Commission has not included in this policy statement amendments that generally reduce the maximum of the guideline range by less than six months. This criterion is in accord with the legislative history of 28 U.S.C. § 994(u) (formerly § 994(t)), which states: ‘It should be noted that the Committee does not expect that the Commission will recommend adjusting existing sentences under the provision when guidelines are simply refined in a way that might cause isolated instances of existing sentences falling above the old guidelines* or when there is only a minor downward adjustment in the guidelines. The Committee does not believe the courts should be burdened with adjustments in these cases.’ S. Rep. 225, 98th Cong., 1st Sess. 180 (1983).

*So in original. Probably should be ‘to fall above the amended guidelines’.

and inserting the following:

"§1B1.10. Reduction in Term of Imprisonment as a Result of Amended Guideline Range
(Policy Statement)

(a) Authority.—

- (1) In General.—In a case in which a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (c) below, the court may reduce the defendant’s term of imprisonment as provided by 18 U.S.C. § 3582(c)(2). As required by 18 U.S.C. § 3582(c)(2), any such reduction in the defendant’s term of imprisonment shall be consistent with this policy statement.
- (2) Exclusions.—A reduction in the defendant’s term of imprisonment is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. § 3582(c)(2) if—
 - (A) none of the amendments listed in subsection (c) is applicable to the defendant; or
 - (B) an amendment listed in subsection (c) does not have the effect of lowering the defendant’s applicable guideline range.
- (3) Limitation.—Consistent with subsection (b), proceedings under 18 U.S.C. § 3582(c)(2) and this policy statement do not constitute a full

resentencing of the defendant.

(b) Determination of Reduction in Term of Imprisonment.—

(1) In General.—In determining whether, and to what extent, a reduction in the defendant’s term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (c) had been in effect at the time the defendant was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (c) for the corresponding guideline provisions that were applied when the defendant was sentenced and shall leave all other guideline application decisions unaffected.

(2) Limitations and Prohibition on Extent of Reduction.—

(A) In General.—Except as provided in subdivision (B), the court shall not reduce the defendant’s term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range determined under subdivision (1) of this subsection.

(B) Exception.—If the original term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing, a reduction comparably less than the amended guideline range determined under subdivision (1) of this subsection may be appropriate. However, if the original term of imprisonment constituted a non-guideline sentence determined pursuant to 18 U.S.C. § 3553(a) and United States v. Booker, 543 U.S. 220 (2005), a further reduction generally would not be appropriate.

(C) Prohibition.—In no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served.

(c) Amendments covered by this policy statement are listed in Appendix C as follows: 126, 130, 156, 176, 269, 329, 341, 371, 379, 380, 433, 454, 461, 484, 488, 490, 499, 505, 506, 516, 591, 599, 606, 657, and 702.

Commentary

Application Notes:

1. Application of Subsection (a).—

(A) Eligibility.—Eligibility for consideration under 18 U.S.C. § 3582(c)(2) is

triggered only by an amendment listed in subsection (c) that lowers the applicable guideline range. Accordingly, a reduction in the defendant's term of imprisonment is not authorized under 18 U.S.C. § 3582(c)(2) and is not consistent with this policy statement if: (i) none of the amendments listed in subsection (c) is applicable to the defendant; or (ii) an amendment listed in subsection (c) is applicable to the defendant but the amendment does not have the effect of lowering the defendant's applicable guideline range because of the operation of another guideline or statutory provision (e.g., a statutory mandatory minimum term of imprisonment).

(B) Factors for Consideration.—

(i) In General.—Consistent with 18 U.S.C. § 3582(c)(2), the court shall consider the factors set forth in 18 U.S.C. § 3553(a) in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(ii) Public Safety Consideration.—The court shall consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment in determining: (I) whether such a reduction is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(iii) Post-Sentencing Conduct.—The court may consider post-sentencing conduct of the defendant that occurred after imposition of the original term of imprisonment in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

2. Application of Subsection (b)(1).—In determining the amended guideline range under subsection (b)(1), the court shall substitute only the amendments listed in subsection (c) for the corresponding guideline provisions that were applied when the defendant was sentenced. All other guideline application decisions remain unaffected.

3. Application of Subsection (b)(2).—Under subsection (b)(2), the amended guideline range determined under subsection (b)(1) and the term of imprisonment already served by the defendant limit the extent to which the court may reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement. Specifically, if the original term of imprisonment imposed was within the guideline range applicable to the defendant at the time of sentencing, the court shall not reduce the defendant's term of imprisonment to a term that is less than the minimum term of imprisonment provided by the amended guideline range determined under subsection (b)(1). For example, in a case in which: (A) the guideline range applicable to the defendant at the time of sentencing was 41 to 51 months; (B) the original term of imprisonment imposed was 41 months; and (C) the amended guideline range determined under subsection (b)(1) is 30 to 37 months, the court shall not reduce the defendant's term of imprisonment to a term less than 30 months.

If the original term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing, a reduction comparably less than the amended guideline range determined under subsection (b)(1) may be appropriate. For example, in a case in which: (A) the guideline range applicable to the defendant at the time of sentencing was 70 to 87 months; (B) the defendant's original term of imprisonment imposed was 56 months (representing a downward departure of 20 percent below the minimum term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing); and (C) the amended guideline range determined under subsection (b)(1) is 57 to 71 months, a reduction to a term of imprisonment of 46 months (representing a reduction of approximately 20 percent below the minimum term of imprisonment provided by the amended guideline range determined under subsection (b)(1)) would amount to a comparable reduction and may be appropriate.

In no case, however, shall the term of imprisonment be reduced below time served. Subject to these limitations, the sentencing court has the discretion to determine whether, and to what extent, to reduce a term of imprisonment under this section.

4. Supervised Release.—

(A) Exclusion Relating to Revocation.—Only a term of imprisonment imposed as part of the original sentence is authorized to be reduced under this section. This section does not authorize a reduction in the term of imprisonment imposed upon revocation of supervised release.

(B) Modification Relating to Early Termination.—If the prohibition in subsection (b)(2)(C) relating to time already served precludes a reduction in the term of imprisonment to the extent the court determines otherwise would have been appropriate as a result of the amended guideline range determined under subsection (b)(1), the court may consider any such reduction that it was unable to grant in connection with any motion for early termination of a term of supervised release under 18 U.S.C. § 3583(e)(1). However, the fact that a defendant may have served a longer term of imprisonment than the court determines would have been appropriate in view of the amended guideline range determined under subsection (b)(1) shall not, without more, provide a basis for early termination of supervised release. Rather, the court should take into account the totality of circumstances relevant to a decision to terminate supervised release, including the term of supervised release that would have been appropriate in connection with a sentence under the amended guideline range determined under subsection (b)(1).

Background: Section 3582(c)(2) of Title 18, United States Code, provides: ‘[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.’

This policy statement provides guidance and limitations for a court when considering a motion under 18 U.S.C. § 3582(c)(2) and implements 28 U.S.C. § 994(u), which provides:

‘If the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.’

Among the factors considered by the Commission in selecting the amendments included in subsection (c) were the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under subsection (b)(1).

The listing of an amendment in subsection (c) reflects policy determinations by the Commission that a reduced guideline range is sufficient to achieve the purposes of sentencing and that, in the sound discretion of the court, a reduction in the term of imprisonment may be appropriate for previously sentenced, qualified defendants. The authorization of such a discretionary reduction does not otherwise affect the lawfulness of a previously imposed sentence, does not authorize a reduction in any other component of the sentence, and does not entitle a defendant to a reduced term of imprisonment as a matter of right.

The Commission has not included in this policy statement amendments that generally reduce the maximum of the guideline range by less than six months. This criterion is in accord with the legislative history of 28 U.S.C. § 994(u) (formerly § 994(t)), which states: ‘It should be noted that the Committee does not expect that the Commission will recommend adjusting existing sentences under the provision when guidelines are simply refined in a way that might cause isolated instances of existing sentences falling above the old guidelines* or when there is only a minor downward adjustment in the guidelines. The Committee does not believe the courts should be burdened with adjustments in these cases.’ S. Rep. 225, 98th Cong., 1st Sess. 180 (1983).

*So in original. Probably should be ‘to fall above the amended guidelines’.”.

Reason for Amendment: This amendment makes a number of modifications to §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) to clarify when, and to what extent, a reduction in the defendant’s term of imprisonment is consistent with the policy statement and is therefore authorized under 18 U.S.C. § 3582(c)(2).

The amendment modifies subsection (a) to state the statutory requirement under 18 U.S.C. § 3582(c)(2) that a reduction in the defendant’s term of imprisonment be consistent with the policy statement. The amendment also modifies subsection (a) to state that, consistent with subsection (b), proceedings under 18 U.S.C. § 3582(c)(2) do not constitute a full resentencing of the defendant.

In addition, the amendment amends subsection (a) to clarify circumstances in which a reduction in the defendant’s term of imprisonment is not consistent with the policy statement and therefore is not authorized under 18 U.S.C. § 3582(c)(2). Specifically, the amendment provides that a reduction in the defendant’s term of imprisonment is not consistent with §1B1.10 and therefore is not authorized under 18 U.S.C. § 3582(c)(2) if (1) none of the amendments listed in subsection (c) is applicable to the defendant; or (2) an amendment listed in subsection (c) does not have the effect of lowering the defendant’s applicable guideline range. Application Note 1 provides further explanation that an amendment may be listed in subsection (c) but not have the effect of lowering the defendant’s applicable guideline range because of the operation of another guideline or statutory provision (e.g., a statutory mandatory minimum term of imprisonment). In such a case, a reduction in the defendant’s term of imprisonment is not consistent with §1B1.10 and therefore is not authorized under 18 U.S.C.

§ 3582(c)(2).

The amendment modifies subsection (b) to clarify the limitations on the extent to which a court may reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and §1B1.10. Specifically, in subsection (b)(1) the amendment provides that, in determining whether, and to what extent, a reduction in the defendant's term of imprisonment is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (c) had been in effect at the time the defendant was sentenced, substituting only the amendments listed in subsection (c) for the corresponding guideline provisions that were applied when the defendant was sentenced and leaving all other guideline application decisions unaffected.

In subsection (b)(2) the amendment provides further clarification that the court shall not reduce the defendant's term of imprisonment to a term that is less than the minimum of the amended guideline range, except if the original term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing, a reduction comparably less than the amended guideline range may be appropriate. However, if the original term of imprisonment constituted a non-guideline sentence determined pursuant to 18 U.S.C. § 3553(a) and United States v. Booker, 543 U.S. 220 (2005), a further reduction generally would not be appropriate. The amendment clarifies that in no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served. The amendment adds in Application Note 3 examples illustrating the limitations on the extent to which a court may reduce a defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and §1B1.10.

The amendment also modifies Application Note 1 to delineate more clearly factors for consideration by the court in determining whether, and to what extent, a reduction in the defendant's term of imprisonment is warranted under 18 U.S.C. § 3582(c)(2). Specifically, the amendment provides that the court shall consider the factors set forth in 18 U.S.C. § 3553(a), as required by 18 U.S.C. § 3582(c)(2), and the nature and seriousness of the danger to any person or the community that may be posed by such a reduction, but only within the limits described in subsection (b). In addition, the amendment provides that the court may consider post-sentencing conduct of the defendant that occurred after imposition of the original term of imprisonment, but only within the limits described in subsection (b).

The amendment makes conforming changes and adds headings to the application notes, and makes conforming changes to the background commentary.

Effective Date: The effective date of this amendment is March 3, 2008.

- 713. Amendment:** Section 1B1.10, as amended by Amendment 712, is further amended in subsection (c) by inserting "Covered Amendments," before "Amendments"; by striking "and 702"; and by inserting "702, and 706 as amended by 711" before the period.

Reason for Amendment: This amendment expands the listing in §1B1.10(c) to implement the directive in 28 U.S.C. § 994(u) with respect to guideline amendments that may be considered for retroactive application. The Commission has determined that Amendment 706, as amended by Amendment 711, should be applied retroactively because the applicable standards set forth in the background commentary to §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) appear to be met. Specifically: (1) as stated in the reason for amendment accompanying Amendment 706, the purpose of that amendment was to alleviate some of the urgent and compelling problems associated with the penalty structure for crack cocaine offenses; (2) the

Commission's analysis of cases potentially eligible for retroactive application of Amendment 706 (available on the Commission's website at www.ussc.gov) indicates that the number of cases potentially involved is substantial, and the magnitude of the change in the guideline range, *i.e.*, two levels, is not difficult to apply in individual cases; and (3) the Commission received persuasive written comment and testimony at its November 13, 2007 public hearing on retroactivity that the administrative burdens of applying Amendment 706 retroactively are manageable. In addition, public safety will be considered in every case because §1B1.10, as amended by Amendment 712, requires the court, in determining whether and to what extent a reduction in the defendant's term of imprisonment is warranted, to consider the nature and seriousness of the danger to any person or the community that may be posed by such a reduction.

Effective Date: The effective date of this amendment is March 3, 2008.

714. Amendment: Section 2B1.1(b) is amended by adding at the end the following:

"(16) If the offense involved fraud or theft involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a declaration of a major disaster or an emergency, increase by 2 levels."

The Commentary to §2B1.1 captioned "Application Notes" is amended in Note 3 by inserting after the paragraph that begins "(III) Offenses Under 18 U.S.C. § 1030.—" the following:

"(IV) Disaster Fraud Cases.—In a case in which subsection (b)(16) applies, reasonably foreseeable pecuniary harm includes the administrative costs to any federal, state, or local government entity or any commercial or not-for-profit entity of recovering the benefit from any recipient thereof who obtained the benefit through fraud or was otherwise ineligible for the benefit that were reasonably foreseeable."

The Commentary to §2B1.1 captioned "Application Notes" is amended by redesignating Notes 15 through 19 as Notes 16 through 20, respectively; and by inserting after Note 14 the following:

"15. Application of Subsection (b)(16).—

Definitions.—For purposes of this subsection:

‘Emergency’ has the meaning given that term in 42 U.S.C. § 5122.

‘Major disaster’ has the meaning given that term in 42 U.S.C. § 5122."

The Commentary to §2B1.1 captioned "Background" is amended by adding at the end the following:

"Subsection (b)(16) implements the directive in section 5 of Public Law 110–179."

Appendix A (Statutory Index) is amended by inserting after the line reference to 18 U.S.C. § 1039 the following:

"18 U.S.C. § 1040 2B1.1".

Reason for Amendment: This amendment implements the emergency directive in section 5 of the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007, Pub. L. 110–179. The directive, which requires the Commission to promulgate an amendment under emergency amendment

authority by February 6, 2008, directs that the Commission forthwith shall—

promulgate sentencing guidelines or amend existing sentencing guidelines to provide for increased penalties for persons convicted of fraud or theft offenses in connection with a major disaster declaration under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or an emergency declaration under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191) . . .

Section 5(b) of the Act further requires the Commission to—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in subsection (a) and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) make any necessary conforming changes to the sentencing guidelines; and

(5) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

The amendment addresses the directive by creating a two-level enhancement that applies if the offense involved fraud or theft in connection with a declaration of a major disaster or emergency, as those terms are defined in 42 U.S.C. § 5122. In addition, the amendment modifies Application Note 3 to provide that for purposes of determining loss under subsection (b)(1), reasonably foreseeable pecuniary harm includes certain administrative costs in such cases.

Effective Date: The effective date of this amendment is February 6, 2008.