

Economic Crimes: Loss Determinations and Other Issues



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§2B1.1 – Base Offense Level

(a) Base Offense Level:

(40.5%) (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

(59.5%) (2) 6, otherwise.

§2B1.1 – Base Offense Level (cont.)

See Application Note 2

“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.

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.

§2B1.1 - Loss

Loss (Apply the Greatest) Increase in Level

17.0%	(A) \$5,000 or less	no increase
5.1%	(B) More than \$5,000	add 2
13.7%	(C) More than \$10,000	add 4
13.3%	(D) More than \$30,000	add 6
8.6%	(E) More than \$70,000	add 8
7.6%	(F) More than \$120,000	add 10
9.3%	(G) More than \$200,000	add 12
11.0%	(H) More than \$400,000	add 14

§2B1.1 - Loss (cont.)

6.9%	(I) More than \$1,000,000	add 16
4.2%	(J) More than \$2,500,000	add 18
2.1%	(K) More than \$7,000,000	add 20
0.7%	(L) More than \$20,000,000	add 22
0.3%	(M) More than \$50,000,000	add 24
0.1%	(N) More than \$100,000,000	add 26
0.04%	(O) More than \$200,000,000	add 28
0.1%	(P) More than \$400,000,000	add 30

§2B1.1 - Loss (cont.)

See Application Note 3

General Rule: Loss is the greater of actual loss or intended loss

Definitions of actual loss and intended loss and other relevant terms

Estimation of Loss – reasonable estimate

Exclusions and **Credits** against Loss

Special Rules to determine loss in particular types of cases

§2B1.1 - Victim Table

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

11.4% (A)(i) involved 10 or more victims;
or (ii) was committed through
mass-marketing, increase by 2
levels;

4.9% (B) involved 50 or more victims, increase
by 4 levels; or

2.4% (C) involved 250 or more victims,
increase by 6 levels.

§2B1.1 - Victim Table (cont.)

See Application Notes 1, 4

Note 1 – Definition of Victim

Note 4 - Rules regarding victims in cases involving **undelivered United States mail**

Inapplicability of **vulnerable victim enhancement**

Definition of victim in cases involving **means of identification**

§2B1.1 - Misrepresentation/Violation of Court Order

2.5% (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**.

§2B1.1 - Misrepresentation/Violation of Court Order

See Application Note 7

In General – adjustments are alternative rather than cumulative
Misrepresentations Regarding Charitable and Other Institutions - adjustment applies when defendant intended to divert all or part of benefit solicited.

Fraud in Contravention of Prior Judicial Order -does not apply if the same conduct resulted in an enhancement pursuant to a provision found elsewhere in the guidelines.

Non-Applicability of Chapter Three Adjustments - If the conduct that forms the basis for the enhancement is the only conduct that forms the basis for an adjustment under §3B1.3 or §3C1.1, do not apply adjustment.

§2B1.1 - Sophisticated Means

12.1% (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**.

§2B1.1 - Sophisticated Means

See Application Note 8

“Sophisticated Means” means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. Examples listed.

Non-Applicability of Chapter Three Adjustment - If the conduct that forms the basis for the enhancement is the only conduct that forms the basis for an adjustment under §3C1.1, do not apply that adjustment.

§2B1.1 - Means of Identification

11.3 % (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**.

§2B1.1 - Means of Identification

See Application Note 1 – definition of **Means of identification**

See Application Note 7

Other **Definitions**

Authentication Features and Identification Documents - If the primary purpose of the offense was to violate, or assist another to violate, the law pertaining to naturalization, citizenship, or legal resident status, apply §2L2.1 or §2L2.2

Examples of conduct to which the enhancement applies and does not apply.

Applicability of enhancement for **5 or more means of identification** regardless of number of individuals involved.

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