

## §2B1.1(a)(1) or (2) - Fraud Base Offense Level:

### Office of Education & Sentencing Practice

Correctly determining the Base Offense Level (BOL) for offenses referenced to §2B1.1 can make a difference in the defendant's sentencing guideline range. Since *Gall v. United States*, 552 U.S. 38 (2007), a district court should begin by correctly calculating the applicable Guidelines range.

#### §2B1.1 Base Offense Level Determination

<b>The Base Offense Level</b>	7, if (A) the defendant was convicted on an offense <b>referenced to this guideline</b> ; AND (B) that offense of conviction has a statutory maximum term of imprisonment of 20 years or more  6, otherwise
<b>§2B1.1, App. Note 2(A)</b>	<b>"Referenced to this Guideline".</b> —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>§1B1.2(a)</b>	Refer to the Statutory Index (Appendix A) to determine the Chapter Two offense guideline, referenced in the Statutory Index for the offense of conviction. (In other words, what guideline does Appendix A refer you to.)

Pursuant to §2B1.1 App. Note 2(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.

Pursuant to §2B1.1 App. Note 2(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.



## §2B1.1(a)(1) or (2) - Fraud Base Offense Level: Office of Education & Sentencing Practice

Question 1	Answer 1
<p>Defendant convicted of 18 U.S.C. § 371 (Conspiracy) to commit a violation of 18 U.S.C. § 1343 (Wire Fraud).</p> <p>Per Appendix A, the applicable guideline for § 371 is §2X1.1 which references to §2B1.1.</p> <p>The statutory maximum for § 371 is 5 years; the statutory maximum for § 1343 is 20 years.</p> <p>Which base offense level applies at §2B1.1(a)?</p>	<p>Answer – 6</p> <p><u>Part 1</u> - 18 U.S.C. § 371 in Appendix A directs you to go to §2X1.1. Which, according to §2B1.1, App. Note 2, ...in the case of a conviction for conspiracy, solicitation, or attempt to which §2X1.1 applies, §2B1.1 is the appropriate guideline for the offense the defendant was convicted.</p> <p><u>Part 2</u> - The second part is whether the offense of conviction has a statutory maximum of 20 years or more – and in this case the statutory maximum for a violation of 18 U.S.C. § 371 is only 5 years. See also §2B1.1, App. Note 2(B) that specifies the “statutory maximum term of imprisonment” means the maximum term of imprisonment authorized for the offense of conviction.</p>
Question 2	Answer 2
<p>Defendant convicted of 18 U.S.C. § 1343 (Wire Fraud) which carries a 20-year statutory maximum.</p> <p>The applicable guideline §2B1.1. Defendant was involved in a ponzi scheme in which he received funds and investments from the wire fraud scheme.</p> <p>Which base offense level applies at §2B1.1(a)?</p>	<p>Answer – 7</p> <p><u>Part 1</u> - 18 U.S.C. § 1343 in Appendix A directs you to §2B1.1.</p> <p><u>Part 2</u> - The statutory maximum penalty for the aforementioned statute of conviction is 20 years or more.</p>
Question 3	Answer 3
<p>Defendant convicted of 18 U.S.C. § 1956 (Money Laundering) which carries a 20-year statutory maximum; applicable guideline §2S1.1.</p> <p>Defendant was involved in a wire fraud scheme and was laundering proceeds from the wire fraud scheme §2S1.1(a)(1) directs the use of the offense level for the underlying offense from which the laundered funds were derived.</p> <p>Which base offense level applies at §2B1.1(a)?</p>	<p>Answer – 6</p> <p><u>Part 1</u> - 18 U.S.C. §1956 in Appendix A directs you to go to §2S1.1, not §2B1.1.</p> <p><u>Part 2</u> - The second part is whether the offense of conviction has a statutory maximum of 20 years or more – and in this case the statutory maximum for a violation of 18 U.S.C. § 1956 is 20 years. But, because it does not meet both criteria, the BOL is 6.</p>

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