CHAPTER TWO

OFFENSE CONDUCT

Introductory Commentary

Chapter Two pertains to offense conduct. The chapter is organized by offenses and divided into parts and related sections that may cover one statute or many. Each offense has a corresponding base offense level and may have one or more specific offense characteristics that adjust the offense level upward or downward. Certain factors relevant to the offense that are not covered in specific guidelines in Chapter Two are set forth in Chapter Three, Parts A (Victim-Related Adjustments), B (Role in the Offense), and C (Obstruction and Related Adjustments); and Chapter Four, Parts B (Career Offenders and Criminal Livelihood) and C (Adjustment for Certain Zero-Point Offenders).

Historical Note	Effective November 1, 1987. Amended effective November 1, 2011 (amendment 758); November 1, 2024 (amendment 831); November 1, 2025 (amendment 836).

PART A — OFFENSES AGAINST THE PERSON

1. HOMICIDE

§2A1.1. First Degree Murder

(a) Base Offense Level: **43**

Commentary

Statutory Provisions: 18 U.S.C. §§ 1111, 1841(a)(2)(C), 1992(a)(7), 2113(e), 2118(c)(2), 2199, 2282A, 2291, 2332b(a)(1), 2340A; 21 U.S.C. § 848(e). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Applicability of Guideline.**—This guideline applies in cases of premeditated killing. This guideline also applies when death results from the commission of certain felonies. For example, this guideline may be applied as a result of a cross reference (*e.g.*, a kidnapping in which death occurs, *see* §2A4.1(c)(1)), or in cases in which the offense level of a guideline is calculated using the underlying crime (*e.g.*, murder in aid of racketeering, *see* §2E1.3(a)(2)).

2. **Offenses Involving Premeditated Killing.**—In the case of premeditated killing, life imprisonment is the appropriate sentence if a sentence of death is not imposed. If a mandatory statutory term of life imprisonment applies, a lesser term of imprisonment is permissible only in cases in which the government files a motion pertaining to the defendant's substantial assistance, as provided in 18 U.S.C. § 3553(e).

3. **Applicability of Guideline When Death Sentence Not Imposed.**—If the defendant is sentenced pursuant to 18 U.S.C. § 3591 *et seq.* or 21 U.S.C. § 848(e), a sentence of death may be

imposed under the specific provisions contained in that statute. This guideline applies when a sentence of death is not imposed under those specific provisions.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 82); November 1, 1990 (amendment 310); November 1, 1993 (amendment 476); November 1, 2002 (amendment 637); November 1, 2004 (amendment 663); November 1, 2006 (amendment 685); November 1, 2007 (amendments 699 and 700); November 1, 2010 (amendment 746); November 1, 2025 (amendment 836).

§2A1.2. Second Degree Murder

(a) Base Offense Level: **38**

Commentary

Statutory Provisions: 18 U.S.C. §§ 1111, 1841(a)(2)(C), 2199, 2282A, 2291, 2332b(a)(1), 2340A. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Historical Note	Effective November 1, 1987. Amended effective November 1, 2002 (amendment 637); November 1, 2004 (amendment 663); November 1, 2006 (amendment 685); November 1, 2007 (amendments 699 and 700); November 1, 2025 (amendment 836).

§2A1.3. Voluntary Manslaughter

(a) Base Offense Level: **29**

Commentary

Statutory Provisions: 18 U.S.C. §§ 1112, 1841(a)(2)(C), 2199, 2291, 2332b(a)(1). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Historical Note	Effective November 1, 1987. Amended effective November 1, 2002 (amendment 637); November 1, 2004 (amendment 663); November 1, 2006 (amendment 685); November 1, 2007 (amendment 699).

§2A1.4. Involuntary Manslaughter

(a) Base Offense Level:

(1) **12**, if the offense involved criminally negligent conduct; or

(2) (Apply the greater):

(A) **18**, if the offense involved reckless conduct; or

(B) **22**, if the offense involved the reckless operation of a means of transportation.

(b) Special Instruction

(1) If the offense involved the involuntary manslaughter of more than one person, subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) shall be applied as if the involuntary manslaughter of each person had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1112, 1841(a)(2)(C), 2199, 2291, 2332b(a)(1). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. **Definitions.—**For purposes of this guideline:

"***Criminally negligent***" means conduct that involves a gross deviation from the standard of care that a reasonable person would exercise under the circumstances, but which is not reckless. Offenses with this characteristic usually will be encountered as assimilative crimes.

"***Means of transportation***" includes a motor vehicle (including an automobile or a boat) and a mass transportation vehicle. "Mass transportation" has the meaning given that term in 18 U.S.C. § 1992(d)(7).

"***Reckless***" means a situation in which the defendant was aware of the risk created by his conduct and the risk was of such a nature and degree that to disregard that risk constituted a gross deviation from the standard of care that a reasonable person would exercise in such a situation. "Reckless" includes all, or nearly all, convictions for involuntary manslaughter under 18 U.S.C. § 1112. A homicide resulting from driving a means of transportation, or similarly dangerous actions, while under the influence of alcohol or drugs ordinarily should be treated as reckless.

Historical Note	Effective November 1, 1987. Amended effective November 1, 2002 (amendment 637); November 1, 2003 (amendment 652); November 1, 2004 (amendment 663); November 1, 2006 (amendment 685); November 1, 2007 (amendment 699); November 1, 2026 (amendment 840).

§2A1.5. Conspiracy or Solicitation to Commit Murder

(a) Base Offense Level: **33**

(b) Specific Offense Characteristic

(1) If the offense involved the offer or the receipt of anything of pecuniary value for undertaking the murder, increase by **4** levels.

(c) Cross References

(1) If the offense resulted in the death of a victim, apply §2A1.1 (First Degree Murder).

(2) If the offense resulted in an attempted murder or assault with intent to commit murder, apply §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder).

Commentary

Statutory Provisions: 18 U.S.C. §§ 351(d), 371, 373, 1117, 1751(d).

Historical Note	Effective November 1, 1990 (amendment 311). Amended effective November 1, 2004 (amendment 663).

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2. ASSAULT

§2A2.1. Assault with Intent to Commit Murder; Attempted Murder

(a) Base Offense Level:

(1) **33**, if the object of the offense would have constituted first degree murder; or

(2) **27**, otherwise.

(b) Specific Offense Characteristics

(1) If (A) the victim sustained permanent or life-threatening bodily injury, increase by **4** levels; (B) the victim sustained serious bodily injury, increase by **2** levels; or (C) the degree of injury is between that specified in subdivisions (A) and (B), increase by **3** levels.

(2) If the offense involved the offer or the receipt of anything of pecuniary value for undertaking the murder, increase by **4** levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 113(a)(1), 351(c), 1113, 1116(a), 1751(c), 1841(a)(2)(C), 1992(a)(7), 2199, 2291. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. **Definitions.**—For purposes of this guideline:

"***First degree murder***" means conduct that, if committed within the special maritime and territorial jurisdiction of the United States, would constitute first degree murder under 18 U.S.C. § 1111.

"***Permanent or life-threatening bodily injury***" and "***serious bodily injury***" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

Background: This section applies to the offenses of assault with intent to commit murder and attempted murder. An attempted manslaughter, or assault with intent to commit manslaughter, is covered under §2A2.2 (Aggravated Assault).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 83 and 84); November 1, 1990 (amendment 311); November 1, 1991 (amendment 391); November 1, 1995 (amendment 534); November 1, 2002 (amendment 637); November 1, 2004 (amendment 663); November 1, 2006 (amendment 685); November 1, 2007 (amendment 699); November 1, 2025 (amendment 836).

§2A2.2. Aggravated Assault

(a) Base Offense Level: **14**

(b) Specific Offense Characteristics

(1) If the assault involved more than minimal planning, increase by **2** levels.

(2) If (A) a firearm was discharged, increase by **5** levels; (B) a dangerous weapon (including a firearm) was otherwise used, increase by **4** levels; (C) a dangerous weapon (including a firearm) was brandished or its use was threatened, increase by **3** levels.

(3) If the victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

	DEGREE OF BODILY INJURY	INCREASE IN LEVEL
(A)	Bodily Injury	add **3**
(B)	Serious Bodily Injury	add **5**
(C)	Permanent or Life-Threatening Bodily Injury	add **7**
(D)	If the degree of injury is between that specified in subdivisions (A) and (B),	add **4** levels; or
(E)	If the degree of injury is between that specified in subdivisions (B) and (C),	add **6** levels.

However, the cumulative adjustments from application of subdivisions (2) and (3) shall not exceed **10** levels.

(4) If the offense involved strangling, suffocating, or attempting to strangle or suffocate a spouse, intimate partner, or dating partner, increase by **3** levels.

However, the cumulative adjustments from application of subdivisions (2), (3), and (4) shall not exceed **12** levels.

(5) If the assault was motivated by a payment or offer of money or other thing of value, increase by **2** levels.

(6) If the offense involved the violation of a court protection order, increase by **2** levels.

(7) If the defendant was convicted under 18 U.S.C. § 111(b) or § 115, increase by **2** levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 111, 112, 113(a)(2), (3), (6), (8), 114, 115(a), (b)(1), 351(e), 1751(e), 1841(a)(2)(C), 1992(a)(7), 2199, 2291, 2332b(a)(1), 2340A. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Aggravated assault***" means a felonious assault that involved (A) a dangerous weapon with intent to cause bodily injury (*i.e.*, not merely to frighten) with that weapon; (B) serious bodily injury; (C) strangling, suffocating, or attempting to strangle or suffocate; or (D) an intent to commit another felony.

"***Brandished***," "***bodily injury***," "***firearm***," "***otherwise used***," "***permanent or life-threatening bodily injury***," and "***serious bodily injury***," have the meaning given those terms in §1B1.1 (Application Instructions), Application Note 1.

"***Dangerous weapon***" has the meaning given that term in §1B1.1, Application Note 1, and includes any instrument that is not ordinarily used as a weapon (*e.g.*, a car, a chair, or an ice pick) if such an instrument is involved in the offense with the intent to commit bodily injury.

"***Strangling***" and "***suffocating***" have the meaning given those terms in 18 U.S.C. § 113.

"***Spouse***," "***intimate partner***," and "***dating partner***" have the meaning given those terms in 18 U.S.C. § 2266.

2. **Application of Subsection (b)(1).**—For purposes of subsection (b)(1), "***more than minimal planning***" means more planning than is typical for commission of the offense in a simple form. "More than minimal planning" also exists if significant affirmative steps were taken to conceal the offense, other than conduct to which §3C1.1 (Obstructing or Impeding the Administration of

Justice) applies. For example, waiting to commit the offense when no witnesses were present would not alone constitute more than minimal planning. By contrast, luring the victim to a specific location or wearing a ski mask to prevent identification would constitute more than minimal planning.

3. **Application of Subsection (b)(2).**—In a case involving a dangerous weapon with intent to cause bodily injury, the court shall apply both the base offense level and subsection (b)(2).

4. **Application of Official Victim Adjustment.**—If subsection (b)(7) applies, §3A1.2 (Official Victim) also shall apply.

Background: This guideline covers felonious assaults that are more serious than other assaults because of the presence of an aggravating factor, *i.e.*, serious bodily injury; the involvement of a dangerous weapon with intent to cause bodily injury; strangling, suffocating, or attempting to strangle or suffocate; or the intent to commit another felony. Such offenses occasionally may involve planning or be committed for hire. Consequently, the structure follows §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder). This guideline also covers attempted manslaughter and assault with intent to commit manslaughter. Assault with intent to commit murder is covered by §2A2.1. Assault with intent to commit rape is covered by §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

An assault that involves the presence of a dangerous weapon is aggravated in form when the presence of the dangerous weapon is coupled with the intent to cause bodily injury. In such a case, the base offense level and the weapon enhancement in subsection (b)(2) take into account different aspects of the offense, even if application of the base offense level and the weapon enhancement is based on the same conduct.

Subsection (b)(7) implements the directive to the Commission in subsection 11008(e) of the 21st Century Department of Justice Appropriations Act (the "Act"), Public Law 107–273. The enhancement in subsection (b)(7) is cumulative to the adjustment in §3A1.2 (Official Victim) in order to address adequately the directive in section 11008(e)(2)(D) of the Act, which provides that the Commission shall consider "the extent to which sentencing enhancements within the Federal guidelines and the authority of the court to impose a sentence in excess of the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by" 18 U.S.C. §§ 111 and 115.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 85 and 86); November 1, 1990 (amendment 311); November 1, 1995 (amendment 534); November 1, 1997 (amendment 549); November 1, 2001 (amendment 614); November 1, 2002 (amendment 637); November 1, 2004 (amendment 663); November 1, 2006 (amendment 685); November 1, 2007 (amendment 699); November 1, 2014 (amendment 781).

§2A2.3. Assault

(a) Base Offense Level:

(1) **7**, if the offense involved physical contact, or if a dangerous weapon (including a firearm) was possessed and its use was threatened; or

(2) **4**, otherwise.

(b) Specific Offense Characteristic

(1) If (A) the victim sustained bodily injury, increase by **2** levels; or (B) the offense resulted in substantial bodily injury to a spouse, intimate partner, or dating partner, or an individual under the age of sixteen years, increase by **4** levels.

(c) Cross Reference

(1) If the conduct constituted aggravated assault, apply §2A2.2 (Aggravated Assault).

Commentary

Statutory Provisions: 18 U.S.C. §§ 112, 113(a)(4), (5), (7), 115(a), 115(b)(1), 351(e), 1751(e), 2199, 2291. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Bodily injury***", "***dangerous weapon***", and "***firearm***" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

"***Spouse***," "***intimate partner***," and "***dating partner***" have the meaning given those terms in 18 U.S.C. § 2266.

"***Substantial bodily injury***" means "bodily injury which involves (A) a temporary but substantial disfigurement; or (B) a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty." *See* 18 U.S.C. § 113(b)(1).

2. **Application of Subsection (b)(1).—**Conduct that forms the basis for application of subsection (a)(1) also may form the basis for application of the enhancement in subsection (b)(1)(A) or (B).

Background: This section applies to misdemeanor assault and battery and to any felonious assault not covered by §2A2.2 (Aggravated Assault).

Historical Note	Effective November 1, 1987. Amended effective October 15, 1988 (amendment 64); November 1, 1989 (amendments 87 and 88); November 1, 1995 (amendment 510); November 1, 2004 (amendment 663); November 1, 2007 (amendment 699); November 1, 2014 (amendment 781).

§2A2.4. Obstructing or Impeding Officers

(a) Base Offense Level: **10**

(b) Specific Offense Characteristics

(1) If (A) the offense involved physical contact; or (B) a dangerous weapon (including a firearm) was possessed and its use was threatened, increase by **3** levels.

(2) If the victim sustained bodily injury, increase by **2** levels.

(c) Cross Reference

(1) If the conduct constituted aggravated assault, apply §2A2.2 (Aggravated Assault).

Commentary

Statutory Provisions: 18 U.S.C. §§ 40A, 111, 1501, 1502, 2237(a)(1), (a)(2)(A), 3056(d). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline, "***bodily injury***", "***dangerous weapon***", and "***firearm***" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

2. **Application of Certain Chapter Three Adjustments.**—The base offense level incorporates the fact that the victim was a governmental officer performing official duties. Therefore, do not apply §3A1.2 (Official Victim) unless, pursuant to subsection (c), the offense level is determined under §2A2.2 (Aggravated Assault). Conversely, the base offense level does not incorporate the possibility that the defendant may create a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement official (although an offense under 18 U.S.C. § 758 for fleeing or evading a law enforcement checkpoint at high speed will often, but not always, involve the creation of that risk). If the defendant creates that risk and no higher guideline adjustment is applicable for the conduct creating the risk, apply §3C1.2 (Reckless Endangerment During Flight).

Historical Note	Effective October 15, 1988 (amendment 64). Amended effective November 1, 1989 (amendments 89 and 90); November 1, 1992 (amendment 443); November 1, 1997 (amendment 550); November 1, 2004 (amendment 663); November 1, 2005 (amendment 679); November 1, 2007 (amendment 699); November 1, 2023 (amendment 815); November 1, 2025 (amendment 836).

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3. CRIMINAL SEXUAL ABUSE AND OFFENSES RELATED TO REGISTRATION AS A SEX OFFENDER

Historical Note	Effective November 1, 1987. Amended effective November 1, 2007 (amendment 701).

§2A3.1. Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse

(a) Base Offense Level:

(1) **38**, if the defendant was convicted under 18 U.S.C. § 2241(c); or

(2) **30**, otherwise.

(b) Specific Offense Characteristics

(1) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b), increase by **4** levels.

(2) If subsection (a)(2) applies and (A) the victim had not attained the age of twelve years, increase by **4** levels; or (B) the victim had attained the age of twelve years but had not attained the age of sixteen years, increase by **2** levels.

(3) If the victim was (A) in the custody, care, or supervisory control of the defendant; or (B) a person held in the custody of a correctional facility, increase by **2** levels.

(4) (A) If the victim sustained permanent or life-threatening bodily injury, increase by **4** levels; (B) if the victim sustained serious bodily injury, increase by **2** levels; or (C) if the degree of injury is between that specified in subparagraphs (A) and (B), increase by **3** levels.

(5) If the victim was abducted, increase by **4** levels.

(6) If, to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, or if, to facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct, the offense involved (A) the knowing misrepresentation of a participant's identity; or (B) the use of a computer or an interactive computer service, increase by **2** levels.

(c) Cross References

(1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder), if the resulting offense level is greater than that determined above.

(2) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply §2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), if the resulting offense level is greater than that determined above.

(d) Special Instruction

(1) If the offense occurred in the custody or control of a prison or other correctional facility and the victim was a prison official, the offense shall be deemed to have an official victim for purposes of subsection (c)(2) of §3A1.2 (Official Victim).

Commentary

Statutory Provisions: 18 U.S.C. §§ 2241, 2242. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Abducted***", "***permanent or life-threatening bodily injury***", and "***serious bodily injury***" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions). However, for purposes of this guideline, "***serious bodily injury***" means conduct other than criminal sexual abuse, which already is taken into account in the base offense level under subsection (a).

"***Custody or control***" and "***prison official***" have the meaning given those terms in Application Note 4 of the Commentary to §3A1.2 (Official Victim).

"***Child pornography***" has the meaning given that term in 18 U.S.C. § 2256(8).

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Distribution***" means any act, including possession with intent to distribute, production, transportation, and advertisement, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation

of a minor on a website for public viewing, but does not include the mere solicitation of such material by a defendant.

"***Interactive computer service***" has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

"***Minor***" means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

"***Participant***" has the meaning given that term in Application Note 1 of the Commentary to §3B1.1 (Aggravating Role).

"***Prohibited sexual conduct***" (A) means any sexual activity for which a person can be charged with a criminal offense; (B) includes the production of child pornography; and (C) does not include trafficking in, or possession of, child pornography.

"***Victim***" includes an undercover law enforcement officer.

2. **Application of Subsection (b)(1).—**

(A) **Definitions.—**For purposes of subsection (b)(1), "***conduct described in 18 U.S.C. § 2241(a) or (b)***" is engaging in, or causing another person to engage in, a sexual act with another person by: (A) using force against the victim; (B) threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping; (C) rendering the victim unconscious; or (D) administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol.

(B) **Application in Cases Involving a Conviction under 18 U.S.C. § 2241(c).—**If the conduct that forms the basis for a conviction under 18 U.S.C. § 2241(c) is that the defendant engaged in conduct described in 18 U.S.C. § 2241(a) or (b), do not apply subsection (b)(1).

3. **Application of Subsection (b)(3).—**

(A) **Care, Custody, or Supervisory Control.—**Subsection (b)(3) is to be construed broadly and includes offenses involving a victim less than 18 years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, babysitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the minor and not simply to the legal status of the defendant-minor relationship.

(B) **Inapplicability of Chapter Three Adjustment.—**If the enhancement in subsection (b)(3) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

4. **Application of Subsection (b)(6).—**

(A) **Misrepresentation of Participant's Identity.**—The enhancement in subsection (b)(6)(A) applies in cases involving the misrepresentation of a participant's identity to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(6)(A) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(6)(A) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(6)(A) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

(B) **Use of a Computer or Interactive Computer Service.**—Subsection (b)(6)(B) provides an enhancement if a computer or an interactive computer service was used to (i) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (ii) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(6)(B) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's Internet site.

5. **Application of Subsection (c)(2).—**

(A) **In General.**—The cross reference in subsection (c)(2) is to be construed broadly and includes all instances where the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

(B) **Definition.**—For purposes of subsection (c)(2), "***sexually explicit conduct***" has the meaning given that term in 18 U.S.C. § 2256(2).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 91 and 92); November 1, 1991 (amendment 392); November 1, 1992 (amendment 444); November 1, 1993 (amendment 477); November 1, 1995 (amendment 511); November 1, 1997 (amendment 545); November 1, 2000 (amendments 592 and 601); November 1, 2001 (amendment 615); November 1, 2003 (amendment 661); November 1, 2004 (amendment 664); November 1, 2007 (amendment 701); November 1, 2008 (amendment 725); November 1, 2025 (amendment 836); November 1, 2026 (amendment 843).

§2A3.2. Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts

(a) Base Offense Level: **18**

(b) Specific Offense Characteristics

(1) If the minor was in the custody, care, or supervisory control of the defendant, increase by **4** levels.

(2) If (A) subsection (b)(1) does not apply; and (B)(i) the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, or coerce the minor to engage in prohibited sexual conduct; or (ii) a participant otherwise unduly influenced the minor to engage in prohibited sexual conduct, increase by **4** levels.

(3) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce the minor to engage in prohibited sexual conduct, increase by **2** levels.

(c) Cross Reference

(1) If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse (as defined in 18 U.S.C. § 2241 or § 2242), apply §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse). If the victim had not attained the age of 12 years, §2A3.1 shall apply, regardless of the "consent" of the victim.

Commentary

Statutory Provision: 18 U.S.C. § 2243(a). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Interactive computer service***" has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

"***Minor***" means (A) an individual who had not attained the age of 16 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 16 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 16 years.

"***Participant***" has the meaning given that term in Application Note 1 of §3B1.1 (Aggravating Role).

"***Prohibited sexual conduct***" has the meaning given that term in Application Note 1 of §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

2. **Custody, Care, or Supervisory Control Enhancement.—**

(A) **In General.—**Subsection (b)(1) is intended to have broad application and is to be applied whenever the minor is entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the minor and not simply to the legal status of the defendant-minor relationship.

(B) **Inapplicability of Chapter Three Adjustment.—**If the enhancement in subsection (b)(1) applies, do not apply subsection (b)(2) or §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

3. **Application of Subsection (b)(2).—**

(A) **Misrepresentation of Identity.—**The enhancement in subsection (b)(2)(B)(i) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, or coerce the minor to engage in prohibited sexual conduct. Subsection (b)(2)(B)(i) is intended to apply only to misrepresentations made directly to the minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(2)(B)(i) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(2)(B)(i) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, or coerce the minor to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

(B) **Undue Influence.—**In determining whether subsection (b)(2)(B)(ii) applies, the court should closely consider the facts of the case to determine whether a participant's influence over the minor compromised the voluntariness of the minor's behavior. The voluntariness of the minor's behavior may be compromised without prohibited sexual conduct occurring.

However, subsection (b)(2)(B)(ii) does not apply in a case in which the only "minor" (as defined in Application Note 1) involved in the offense is an undercover law enforcement officer.

In a case in which a participant is at least 10 years older than the minor, there shall be a rebuttable presumption that subsection (b)(2)(B)(ii) applies. In such a case, some degree of undue influence can be presumed because of the substantial difference in age between the participant and the minor.

4. **Application of Subsection (b)(3).—**Subsection (b)(3) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce the minor to engage in prohibited sexual conduct. Subsection (b)(3) is intended to apply only to the use of a

computer or an interactive computer service to communicate directly with the minor or with a person who exercises custody, care, or supervisory control of the minor.

5. **Cross Reference.**—Subsection (c)(1) provides a cross reference to §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) if the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse, as defined in 18 U.S.C. § 2241 or § 2242. For example, the cross reference to §2A3.1 shall apply if (A) the victim had not attained the age of 12 years (*see* 18 U.S.C. § 2241(c)); (B) the victim had attained the age of 12 years but not attained the age of 16 years, and was placed in fear of death, serious bodily injury, or kidnapping (*see* 18 U.S.C. § 2241(a),(c)); or (C) the victim was threatened or placed in fear other than fear of death, serious bodily injury, or kidnapping (*see* 18 U.S.C. § 2242(1)).

Background: This section applies to offenses involving the criminal sexual abuse of an individual who had not attained the age of 16 years. While this section applies to consensual sexual acts prosecuted under 18 U.S.C. § 2243(a) that would be lawful but for the age of the minor, it also applies to cases, prosecuted under 18 U.S.C. § 2243(a), in which a participant took active measure(s) to unduly influence the minor to engage in prohibited sexual conduct and, thus, the voluntariness of the minor's behavior was compromised. A four-level enhancement is provided in subsection (b)(2) for such cases. It is assumed that at least a four-year age difference exists between the minor and the defendant, as specified in 18 U.S.C. § 2243(a). A four-level enhancement is provided in subsection (b)(1) for a defendant who victimizes a minor under his supervision or care. However, if the minor had not attained the age of 12 years, §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) will apply, regardless of the "consent" of the minor.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 93); November 1, 1991 (amendment 392); November 1, 1992 (amendment 444); November 1, 1995 (amendment 511); November 1, 2000 (amendment 592); November 1, 2001 (amendment 615); November 1, 2004 (amendment 664); November 1, 2009 (amendment 732); November 1, 2010 (amendment 746); November 1, 2025 (amendment 836); November 1, 2026 (amendment 843).

§2A3.3. Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts; Criminal Sexual Abuse of an Individual in Federal Custody

(a) Base Offense Level: **18**

(b) Specific Offense Characteristics

(1) If the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by **2** levels.

(2) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by **2** levels.

(c) Cross Reference

(1) If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse (as defined in 18 U.S.C. § 2241 or § 2242), apply §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse). If the victim had not attained the age of 12 years, §2A3.1 shall apply, regardless of the "consent" of the victim.

Commentary

Statutory Provision: 18 U.S.C. §§ 2243(b), 2243(c). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Interactive computer service***" has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

"***Minor***" means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years; and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

"***Participant***" has the meaning given that term in Application Note 1 of the Commentary to §3B1.1 (Aggravating Role).

"***Prohibited sexual conduct***" has the meaning given that term in Application Note 1 of the Commentary to §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

"***Ward***" means a person in official detention under the custodial, supervisory, or disciplinary authority of the defendant.

2. **Application of Subsection (b)(1).—**The enhancement in subsection (b)(1) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(1) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor.

The misrepresentation to which the enhancement in subsection (b)(1) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

3. **Application of Subsection (b)(2).—**Subsection (b)(2) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(2) is intended to apply only to the use of a

computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor.

4. **Inapplicability of §3B1.3.**—Do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 94); November 1, 1995 (amendment 511); November 1, 2000 (amendment 592); November 1, 2001 (amendment 615); November 1, 2004 (amendment 664); November 1, 2007 (amendment 701); November 1, 2010 (amendment 746); November 1, 2023 (amendment 816); November 1, 2026 (amendment 843).

§2A3.4. Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact

(a) Base Offense Level:

(1) **20**, if the offense involved conduct described in 18 U.S.C. § 2241(a) or (b);

(2) **16**, if the offense involved conduct described in 18 U.S.C. § 2242; or

(3) **12**, otherwise.

(b) Specific Offense Characteristics

(1) If the victim had not attained the age of twelve years, increase by **4** levels; but if the resulting offense level is less than **22**, increase to level **22**.

(2) If the base offense level is determined under subsection (a)(1) or (2), and the victim had attained the age of twelve years but had not attained the age of sixteen years, increase by **2** levels.

(3) If the victim was in the custody, care, or supervisory control of the defendant, increase by **2** levels.

(4) If the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by **2** levels.

(5) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by **2** levels.

(c) Cross References

(1) If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse (as defined in 18 U.S.C. § 2241 or § 2242), apply §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

(2) If the offense involved criminal sexual abuse of a minor or attempt to commit criminal sexual abuse of a minor (as defined in 18 U.S.C. § 2243(a)), apply §2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provision: 18 U.S.C. § 2244. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Interactive computer service***" has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

"***Minor***" means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

"***Participant***" has the meaning given that term in Application Note 1 of the Commentary to §3B1.1 (Aggravating Role).

"***Prohibited sexual conduct***" has the meaning given that term in Application Note 1 of the Commentary to §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

2. **Application of Subsection (a)(1).—**For purposes of subsection (a)(1), "***conduct described in 18 U.S.C. § 2241(a) or (b)***" is engaging in, or causing sexual contact with, or by another person by: (A) using force against the victim; (B) threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping; (C) rendering the victim unconscious; or (D) administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct.

3. **Application of Subsection (a)(2).—**For purposes of subsection (a)(2), "***conduct described in 18 U.S.C. § 2242***" is: (A) engaging in, or causing sexual contact with, or by another person by threatening or placing the victim in fear (other than by threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or (B) engaging

in, or causing sexual contact with, or by another person who is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act.

4. **Application of Subsection (b)(3).—**

(A) **Custody, Care, or Supervisory Control.—**Subsection (b)(3) is intended to have broad application and is to be applied whenever the victim is entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.

(B) **Inapplicability of Chapter Three Adjustment.—**If the enhancement in subsection (b)(3) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

5. **Misrepresentation of a Participant's Identity.—**The enhancement in subsection (b)(4) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(4) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(4) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(4) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

6. **Application of Subsection (b)(5).—**Subsection (b)(5) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(5) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor.

Background: This section covers abusive sexual contact not amounting to criminal sexual abuse (criminal sexual abuse is covered under §§2A3.1–3.3). Alternative base offense levels are provided to take account of the different means used to commit the offense.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 95); November 1, 1991 (amendment 392); November 1, 1992 (amendment 444); November 1, 1995 (amendment 511); November 1, 2000 (amendment 592); November 1, 2001 (amendment 615); November 1, 2004 (amendment 664); November 1, 2007 (amendments 701 and 711); November 1, 2026 (amendment 843).

§2A3.5. Failure to Register as a Sex Offender

(a) Base Offense Level (Apply the greatest):

(1) **16**, if the defendant was required to register as a Tier III offender;

(2) **14**, if the defendant was required to register as a Tier II offender; or

(3) **12**, if the defendant was required to register as a Tier I offender.

(b) Specific Offense Characteristics

(1) (Apply the greatest):

If, while in a failure to register status, the defendant committed—

(A) a sex offense against someone other than a minor, increase by **6** levels;

(B) a felony offense against a minor not otherwise covered by subdivision (C), increase by **6** levels; or

(C) a sex offense against a minor, increase by **8** levels.

(2) If the defendant voluntarily (A) corrected the failure to register; or (B) attempted to register but was prevented from registering by uncontrollable circumstances and the defendant did not contribute to the creation of those circumstances, decrease by **3** levels.

Commentary

Statutory Provision: 18 U.S.C. § 2250(a), (b).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Minor***" means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years; and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

"***Sex offense***" has the meaning given that term in 34 U.S.C. § 20911(5).

"***Tier I offender***", "***Tier II offender***", and "***Tier III offender***" have the meaning given the terms "tier I sex offender", "tier II sex offender", and "tier III sex offender", respectively, in 34 U.S.C. § 20911.

2. **Application of Subsection (b)(1).—**For purposes of subsection (b)(1), a defendant shall be deemed to be in a "failure to register status" during the period in which the defendant engaged in conduct described in 18 U.S.C. § 2250(a) or (b).

3. **Application of Subsection (b)(2).—**

(A) **In General.—**In order for subsection (b)(2) to apply, the defendant's voluntary attempt to register or to correct the failure to register must have occurred prior to the time the defendant knew or reasonably should have known a jurisdiction had detected the failure to register.

(B) **Interaction with Subsection (b)(1).—**Do not apply subsection (b)(2) if subsection (b)(1) also applies.

Historical Note	Effective November 1, 2007 (amendments 701 and 711). Amended effective November 1, 2010 (amendment 746); November 1, 2018 (amendments 812 and 813).

§2A3.6. Aggravated Offenses Relating to Registration as a Sex Offender

If the defendant was convicted under—

(a) 18 U.S.C. § 2250(d), the guideline sentence is the minimum term of imprisonment required by statute; or

(b) 18 U.S.C. § 2260A, the guideline sentence is the term of imprisonment required by statute.

Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) shall not apply to any count of conviction covered by this guideline.

Commentary

Statutory Provisions: 18 U.S.C. §§ 2250(d), 2260A.

Application Notes:

1. **In General.—**Section 2250(d) of title 18, United States Code, provides a mandatory minimum term of five years' imprisonment and a statutory maximum term of 30 years' imprisonment. The statute also requires a sentence to be imposed consecutively to any sentence imposed for a conviction under 18 U.S.C. § 2250(a) or (b). Section 2260A of title 18, United States Code, provides a term of imprisonment of 10 years that is required to be imposed consecutively to any sentence imposed for an offense enumerated under that section.

2. **Inapplicability of Chapters Three and Four.—**Do not apply Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) to any offense sentenced under this guideline. Such offenses are excluded from application of those chapters because the guideline sentence for each offense is determined only by the relevant statute. *See* §§3D1.1 (Procedure for Determining Offense Level on Multiple Counts) and 5G1.2 (Sentencing on Multiple Counts of Conviction).

3. **Inapplicability of Chapter Two Enhancement.—**If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense

characteristic that is based on the same conduct as the conduct comprising the conviction under 18 U.S.C. § 2250(d) or § 2260A.

Historical Note	Effective November 1, 2007 (amendment 701). Amended effective November 1, 2018 (amendment 812); November 1, 2025 (amendment 836).

* * * * *

4. KIDNAPPING, ABDUCTION, OR UNLAWFUL RESTRAINT

§2A4.1. Kidnapping, Abduction, Unlawful Restraint

(a) Base Offense Level: **32**

(b) Specific Offense Characteristics

(1) If a ransom demand or a demand upon government was made, increase by **6** levels.

(2) (A) If the victim sustained permanent or life-threatening bodily injury, increase by **4** levels; (B) if the victim sustained serious bodily injury, increase by **2** levels; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by **3** levels.

(3) If a dangerous weapon was used, increase by **2** levels.

(4) (A) If the victim was not released before thirty days had elapsed, increase by **2** levels.

(B) If the victim was not released before seven days had elapsed, increase by **1** level.

(5) If the victim was sexually exploited, increase by **6** levels.

(6) If the victim is a minor and, in exchange for money or other consideration, was placed in the care or custody of another person who had no legal right to such care or custody of the victim, increase by **3** levels.

(7) If the victim was kidnapped, abducted, or unlawfully restrained during the commission of, or in connection with, another offense or escape therefrom; or if another offense was committed during the kidnapping, abduction, or unlawful restraint, increase to—

(A) the offense level from the Chapter Two offense guideline applicable to that other offense if such offense guideline includes an adjustment for kidnapping, abduction, or unlawful restraint, or otherwise takes such conduct into account; or

(B) **4** plus the offense level from the offense guideline applicable to that other offense, but in no event greater than level **43**, in any other case,

if the resulting offense level is greater than that determined above.

(c) Cross Reference

(1) If the victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder).

Commentary

Statutory Provisions: 18 U.S.C. §§ 115(b)(2), 351(b), (d), 1201, 1203, 1751(b), 2340A. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. For purposes of this guideline—

   Definitions of "***serious bodily injury***" and "***permanent or life-threatening bodily injury***" are found in the Commentary to §1B1.1 (Application Instructions). However, for purposes of this guideline, "***serious bodily injury***" means conduct other than criminal sexual abuse, which is taken into account in the specific offense characteristic under subsection (b)(5).

2. "***A dangerous weapon was used***" means that a firearm was discharged, or a "firearm" or "dangerous weapon" was "otherwise used" (as defined in the Commentary to §1B1.1 (Application Instructions)).

3. "***Sexually exploited***" includes offenses set forth in 18 U.S.C. §§ 2241–2244, 2251, and 2421–2423.

4. In the case of a conspiracy, attempt, or solicitation to kidnap, §2X1.1 (Attempt, Solicitation, or Conspiracy) requires that the court apply any adjustment that can be determined with reasonable certainty. Therefore, for example, if an offense involved conspiracy to kidnap for the purpose of committing murder, subsection (b)(7) would reference first degree murder (resulting in an offense level of 43, subject to a possible 3-level reduction under §2X1.1(b)).

   Similarly, for example, if an offense involved a kidnapping during which a participant attempted to murder the victim under circumstances that would have constituted first degree murder had death occurred, the offense referenced under subsection (b)(7) would be the offense of first degree murder.

Background: Federal kidnapping cases generally encompass three categories of conduct: limited duration kidnapping where the victim is released unharmed; kidnapping that occurs as part of or to facilitate the commission of another offense (often, sexual assault); and kidnapping for ransom or political demand.

The guideline contains an adjustment for the length of time that the victim was detained. The adjustment recognizes the increased suffering involved in lengthy kidnappings and provides an incentive to release the victim.

An enhancement is provided when the offense is committed for ransom (subsection (b)(1)) or involves another federal, state, or local offense that results in a greater offense level (subsections (b)(7) and (c)(1)).

Section 401 of Public Law 101–647 amended 18 U.S.C. § 1201 to require that courts take into account certain specific offense characteristics in cases involving a victim under eighteen years of age and directed the Commission to include those specific offense characteristics within the guidelines. Where the guidelines did not already take into account the conduct identified by the Act, additional specific offense characteristics have been provided.

Subsections (a) and (b)(5), and the deletion of subsection (b)(4)(C), effective May 30, 2003, implement the directive to the Commission in section 104 of Public Law 108–21.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 96); November 1, 1991 (amendment 363); November 1, 1992 (amendment 445); November 1, 1993 (amendment 478); November 1, 1997 (amendment 545); November 1, 2002 (amendment 637); May 30, 2003 (amendment 650); October 27, 2003 (amendment 651).

§2A4.2. Demanding or Receiving Ransom Money

(a) Base Offense Level: **23**

(b) Cross Reference

(1) If the defendant was a participant in the kidnapping offense, apply §2A4.1 (Kidnapping, Abduction, Unlawful Restraint).

Commentary

Statutory Provisions: 18 U.S.C. §§ 876(a), 877, 1202. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. A "***participant***" is a person who is criminally responsible for the commission of the offense, but need not have been convicted.

Background: This section specifically includes conduct prohibited by 18 U.S.C. § 1202, requiring that ransom money be received, possessed, or disposed of with knowledge of its criminal origins. The actual demand for ransom under these circumstances is reflected in §2A4.1. This section additionally includes

extortionate demands through the use of the United States Postal Service, behavior proscribed by 18 U.S.C. §§ 876–877.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendment 479); November 1, 2023 (amendment 824).

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5. AIR PIRACY AND OFFENSES AGAINST MASS TRANSPORTATION SYSTEMS

Historical Note	Effective November 1, 1987. Amended effective November 1, 2002 (amendment 637).

§2A5.1. Aircraft Piracy or Attempted Aircraft Piracy

(a) Base Offense Level: **38**

Commentary

Statutory Provisions: 49 U.S.C. § 46502(a), (b) (formerly 49 U.S.C. § 1472 (i), (n)). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Background: This section covers aircraft piracy both within the special aircraft jurisdiction of the United States, 49 U.S.C. § 46502(a), and aircraft piracy outside that jurisdiction when the defendant is later found in the United States, 49 U.S.C. § 46502(b). Seizure of control of an aircraft may be by force or violence, or threat of force or violence, or by any other form of intimidation. The presence of a weapon is assumed in the base offense level.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1995 (amendment 534); November 1, 2026 (amendment 837).

§2A5.2. Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Navigation, Operation, or Maintenance of Mass Transportation Vehicle; Unsafe Operation of Unmanned Aircraft

(a) Base Offense Level (Apply the greatest):

(1) **30**, if the offense involved intentionally endangering the safety of: (A) an airport or an aircraft; or (B) a mass transportation facility or a mass transportation vehicle;

(2) **18**, if the offense involved recklessly endangering the safety of: (A) an airport or an aircraft; or (B) a mass transportation facility or a mass transportation vehicle;

(3) if an assault occurred, the offense level from the most analogous assault guideline, §§2A2.1–2A2.4; or

(4) **9**.

(b) Specific Offense Characteristic

(1) If (A) subsection (a)(1) or (a)(2) applies; and (B)(i) a firearm was discharged, increase by **5** levels; (ii) a dangerous weapon was otherwise used, increase by **4** levels; or (iii) a dangerous weapon was brandished or its use was threatened, increase by **3** levels. If the resulting offense level is less than level **24**, increase to level **24**.

(c) Cross References

(1) If death resulted, apply the most analogous guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

(2) If the offense involved possession of, or a threat to use (A) a nuclear weapon, nuclear material, or nuclear byproduct material; (B) a chemical weapon; (C) a biological agent, toxin, or delivery system; or (D) a weapon of mass destruction, apply §2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 39B, 1992(a)(1), (a)(4), (a)(5), (a)(6); 49 U.S.C. §§ 46308, 46503, 46504 (formerly 49 U.S.C. § 1472(c), (j)). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. **Definitions.—**For purposes of this guideline:

"***Biological agent***", "***chemical weapon***", "***nuclear byproduct material***", "***nuclear material***", "***toxin***", and "***weapon of mass destruction***" have the meaning given those terms in Application Note 1 of the Commentary to §2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction).

"***Brandished***", "***dangerous weapon***", "***firearm***", and "***otherwise used***" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

"***Mass transportation***" has the meaning given that term in 18 U.S.C. § 1992(d)(7).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 97 and 303); November 1, 1993 (amendment 480); November 1, 1995 (amendment 534); November 1, 2002 (amendment 637); November 1, 2007 (amendment 699); November 1, 2023 (amendment 815).

§2A5.3. Committing Certain Crimes Aboard Aircraft

(a) Base Offense Level: The offense level applicable to the underlying offense.

Commentary

Statutory Provision: 49 U.S.C. § 46506 (formerly 49 U.S.C. § 1472(k)(1)).

Application Note:

1. "***Underlying offense***" refers to the offense listed in 49 U.S.C. § 46506 of which the defendant is convicted.

Historical Note	Effective October 15, 1988 (amendment 65). Amended effective November 1, 1989 (amendment 98); November 1, 1995 (amendment 534); November 1, 2025 (amendment 836).

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6. THREATENING OR HARASSING COMMUNICATIONS, HOAXES, STALKING, AND DOMESTIC VIOLENCE

Historical Note	Effective November 1, 1987. Amended effective November 1, 1997 (amendment 549); November 1, 2006 (amendment 686).

§2A6.1. Threatening or Harassing Communications; Hoaxes; False Liens

(a) Base Offense Level:

(1) **12**; or

(2) **6**, if the defendant is convicted of an offense under 47 U.S.C. § 223(a)(1)(C), (D), or (E) that did not involve a threat to injure a person or property.

(b) Specific Offense Characteristics

(1) If the offense involved any conduct evidencing an intent to carry out such threat, increase by **6** levels.

(2) If (A) the offense involved more than two threats; or (B) the defendant is convicted under 18 U.S.C. § 1521 and the offense involved more than two false liens or encumbrances, increase by **2** levels.

(3) If the offense involved the violation of a court protection order, increase by **2** levels.

(4) If the offense resulted in (A) substantial disruption of public, governmental, or business functions or services; or (B) a substantial expenditure of funds to clean up, decontaminate, or otherwise respond to the offense, increase by **4** levels.

(5) If the defendant (A) is convicted under 18 U.S.C. § 115, (B) made a public threatening communication, and (C) knew or should have known that the public threatening communication created a substantial risk of inciting others to violate 18 U.S.C. § 115, increase by **2** levels.

(6) If (A) subsection (a)(2) and subdivisions (1), (2), (3), (4), and (5) do not apply, and (B) the offense involved a single instance evidencing little or no deliberation, decrease by **4** levels.

(c) Cross Reference

(1) If the offense involved any conduct evidencing an intent to carry out a threat to use a weapon of mass destruction, as defined in 18 U.S.C. § 2332a(c)(2)(B), (C), and (D), apply §2M6.1 (Weapons of Mass Destruction), if the resulting offense level is greater than that determined under this guideline.

Commentary

Statutory Provisions: 18 U.S.C. §§ 32(c), 35(b), 871, 876(c), 877, 878(a), 879, 1038, 1521, 1992(a)(9), (a)(10), 2291(a)(8), 2291(e), 2292, 2332b(a)(2); 47 U.S.C. § 223(a)(1)(C)–(E); 49 U.S.C. § 46507. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Scope of Conduct to Be Considered.**—In determining whether subsections (b)(1), (b)(2), and (b)(3) apply, the court shall consider both conduct that occurred prior to the offense and conduct that occurred during the offense; however, conduct that occurred prior to the offense must be substantially and directly connected to the offense, under the facts of the case taken as a whole. For example, if the defendant engaged in several acts of mailing threatening letters to the same victim over a period of years (including acts that occurred prior to the offense), then for purposes of determining whether subsections (b)(1), (b)(2), and (b)(3) apply, the court shall consider only those prior acts of threatening the victim that have a substantial and direct connection to the offense.

2. **Applicability of Chapter Three Adjustments.**—If the defendant is convicted under 18 U.S.C. § 1521, apply §3A1.2 (Official Victim).

3. **Multiple Counts.**—For purposes of Chapter Three, Part D (Multiple Counts), do not apply subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to multiple

counts involving making a threatening or harassing communication to the same victim, even if those acts occurred on separate occasions. Multiple acts of making a threatening or harassing communication to the same victim are already taken into account in the specific offense characteristics of this guideline.

Background: These statutes cover a wide range of conduct, the seriousness of which depends upon the defendant's intent and the likelihood that the defendant would carry out the threat. The specific offense characteristics are intended to distinguish such cases.

Subsection (b)(5) implements, in a broader form, the directive to the Commission in section 209 of the Court Security Improvement Act of 2007, Public Law 110–177.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendment 480); November 1, 1997 (amendment 549); November 1, 2002 (amendment 637); November 1, 2006 (amendment 686); November 1, 2007 (amendment 699); November 1, 2008 (amendment 718); November 1, 2009 (amendment 729); November 1, 2023 (amendment 824); November 1, 2025 (amendment 836); November 1, 2026 (amendment 840).

§2A6.2. Stalking or Domestic Violence

(a) Base Offense Level: **18**

(b) Specific Offense Characteristic

(1) If the offense involved one of the following aggravating factors: (A) the violation of a court protection order; (B) bodily injury; (C) strangling, suffocating, or attempting to strangle or suffocate; (D) possession, or threatened use, of a dangerous weapon; or (E) a pattern of activity involving stalking, threatening, harassing, or assaulting the same victim, increase by **2** levels. If the offense involved more than one of subdivisions (A), (B), (C), (D), or (E), increase by **4** levels.

(c) Cross Reference

(1) If the offense involved the commission of another criminal offense, apply the offense guideline from Chapter Two, Part A (Offenses Against the Person) most applicable to that other criminal offense, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 2261–2262.

Application Notes:

1. For purposes of this guideline:

"***Bodily injury***" and "***dangerous weapon***" are defined in the Commentary to §1B1.1 (Application Instructions).

"***Pattern of activity involving stalking, threatening, harassing, or assaulting the same victim***" means any combination of two or more separate instances of stalking, threatening, harassing, or assaulting the same victim, whether or not such conduct resulted in a conviction. For example, a single instance of stalking accompanied by a separate instance of threatening, harassing, or assaulting the same victim constitutes a pattern of activity for purposes of this guideline.

"***Stalking***" means conduct described in 18 U.S.C. § 2261A.

"***Strangling***" and "***suffocating***" have the meaning given those terms in 18 U.S.C. § 113.

2. Subsection (b)(1) provides for a two-level or four-level enhancement based on the degree to which the offense involved aggravating factors listed in that subsection. If the offense involved aggravating factors more serious than the factors listed in subsection (b)(1), the cross reference in subsection (c) most likely will apply, if the resulting offense level is greater, because the more serious conduct will be covered by another offense guideline from Chapter Two, Part A. For example, §2A2.2 (Aggravated Assault) most likely would apply pursuant to subsection (c) if the offense involved assaultive conduct in which injury more serious than bodily injury occurred or if a dangerous weapon was used rather than merely possessed.

3. In determining whether subsection (b)(1)(E) applies, the court shall consider, under the totality of the circumstances, any conduct that occurred prior to or during the offense; however, conduct that occurred prior to the offense must be substantially and directly connected to the offense. For example, if a defendant engaged in several acts of stalking the same victim over a period of years (including acts that occurred prior to the offense), then for purposes of determining whether subsection (b)(1)(E) applies, the court shall look to the totality of the circumstances, considering only those prior acts of stalking the victim that have a substantial and direct connection to the offense.

   Prior convictions taken into account under subsection (b)(1)(E) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

4. For purposes of Chapter Three, Part D (Multiple Counts), do not apply subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to multiple counts involving stalking, threatening, or harassing the same victim, even if those acts occurred on separate occasions. Multiple acts of stalking, threatening, harassing, or assaulting the same victim are already taken into account in the specific offense characteristic of this guideline. For example, if the defendant is convicted of two counts of stalking the defendant's ex-spouse under 18 U.S.C. § 2261A and one count of interstate domestic violence involving an assault of the ex-spouse under 18 U.S.C. § 2261, §3D1.1(b) does not apply to the stalking counts.

   Determine the combined offense level for multiple counts that are cross referenced to another offense guideline pursuant to subsection (c) by applying §3D1.1.

Historical Note	Effective November 1, 1997 (amendment 549). Amended effective November 1, 2001 (amendment 616); November 1, 2009 (amendment 737); November 1, 2014 (amendment 781); November 1, 2025 (amendment 836); November 1, 2026 (amendment 840).

PART B — BASIC ECONOMIC OFFENSES

1. THEFT, EMBEZZLEMENT, RECEIPT OF STOLEN PROPERTY, PROPERTY DESTRUCTION, AND OFFENSES INVOLVING FRAUD OR DECEIT

Introductory Commentary

These sections address basic forms of property offenses: theft, embezzlement, fraud, forgery, counterfeiting (other than offenses involving altered or counterfeit bearer obligations of the United States), insider trading, transactions in stolen goods, and simple property damage or destruction. (Arson is dealt with separately in Chapter Two, Part K (Offenses Involving Public Safety)). These guidelines apply to offenses prosecuted under a wide variety of federal statutes, as well as offenses that arise under the Assimilative Crimes Act.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 303); November 1, 2001 (amendment 617).

§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 $9,000, increase the offense level as follows:

	Loss (Apply the Greatest)	Increase in Level
(A)	$9,000 or less	no increase
(B)	More than $9,000	add **2**
(C)	More than $20,000	add **4**
(D)	More than $55,000	add **6**
(E)	More than $150,000	add **8**
(F)	More than $200,000	add **10**
(G)	More than $350,000	add **12**
(H)	More than $750,000	add **14**
(I)	More than $2,000,000	add **16**

(J)	More than $5,000,000	add **18**
(K)	More than $15,000,000	add **20**
(L)	More than $35,000,000	add **22**
(M)	More than $90,000,000	add **24**
(N)	More than $200,000,000	add **26**
(O)	More than $350,000,000	add **28**
(P)	More than $750,000,000	add **30**.

***Notes to Table:**

(A) **Loss.—**Loss is the greater of actual loss or intended loss.

(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) For purposes of this guideline—

(i) "***Actual loss***" means the reasonably foreseeable pecuniary harm that resulted from the offense.

(ii) "***Intended loss***" (I) means the pecuniary harm that the defendant purposely sought to inflict; 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***" 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***" means pecuniary harm that the defendant knew or, under the circumstances, reasonably should have known, was a potential result of the offense.

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

(A) (i) involved 10 or more victims; (ii) was committed through mass-marketing; or (iii) resulted in substantial financial hardship to one or more victims, increase by **2** levels;

(B) resulted in substantial financial hardship to five or more victims, increase by **4** levels; or

(C) resulted in substantial financial hardship to 25 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 theft of, damage to, destruction of, or trafficking in, property from a national cemetery or veterans' memorial, increase by **2** levels.

(6) 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.

(7) If (A) the defendant was convicted of a federal health care offense involving a government health care program; and (B) the loss under subsection (b)(1) to the government health care program was (i) more than $1,000,000, increase by **2** levels; (ii) more than $7,000,000, increase by **3** levels; or (iii) more than $20,000,000, increase by **4** levels.

(8) (Apply the greater) If—

(A) the offense involved conduct described in 18 U.S.C. § 670, increase by **2** levels; or

(B) the offense involved conduct described in 18 U.S.C. § 670, and the defendant was employed by, or was an agent of, an organization in the supply chain for the pre-retail medical product, increase by **4** levels.

(9) 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**.

(10) 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 and the defendant intentionally engaged in or caused the conduct constituting sophisticated means, increase by **2** levels. If the resulting offense level is less than level **12**, increase to level **12**.

(11) 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**.

(12) If the offense involved conduct described in 18 U.S.C. § 1040, increase by **2** levels. If the resulting offense level is less than level **12**, increase to level **12**.

(13) If the defendant was convicted under 42 U.S.C. § 408(a), § 1011(a), or § 1383a(a) and the statutory maximum term of ten years' imprisonment applies, increase by **4** levels. If the resulting offense level is less than **12**, increase to level **12**.

(14) (Apply the greater) If the offense involved misappropriation of a trade secret and the defendant knew or intended—

(A) that the trade secret would be transported or transmitted out of the United States, increase by **2** levels; or

(B) that the offense would benefit a foreign government, foreign instrumentality, or foreign agent, increase by **4** levels.

If subparagraph (B) applies and the resulting offense level is less than level **14**, increase to level **14**.

(15) 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 resulting offense level is less than level **14**, increase to level **14**.

(16) 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**.

(17) (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; or (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, increase by **4** levels.

(C) The cumulative adjustments from application of both subsections (b)(2) and (b)(17)(B) shall not exceed **8** levels, except as provided in subparagraph (D).

(D) If the resulting offense level determined under subparagraph (A) or (B) is less than level **24**, increase to level **24**.

(18) If (A) the defendant was convicted of an offense under 18 U.S.C. § 1030, and the offense involved an intent to obtain personal information, or (B) the offense involved the unauthorized public dissemination of personal information, increase by **2** levels.

(19) (A) (Apply the greatest) If the defendant was convicted of an offense under:

(i) 18 U.S.C. § 1030, and the offense involved 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, increase by **2** levels.

(ii) 18 U.S.C. § 1030(a)(5)(A), 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 subparagraph (A)(iii) applies, and the offense level is less than level **24**, increase to level **24**.

(20) 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.

(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 paragraph (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 or a paleontological resource, apply §2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful

Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 5 U.S.C. §§ 8345a, 8466a; 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, 220, 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, 1040, 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; 20 U.S.C. § 1097(a), (b), (d), (e); 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 or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources).

"***Equity security***" 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)).

"***Federal health care offense***" has the meaning given that term in 18 U.S.C. § 24.

"***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.

"***Government health care program***" means any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by federal or state government. Examples of such programs are the Medicare program, the Medicaid program, and the CHIP program.

"***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).

"***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.

"***Paleontological 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 or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources).

"***Personal information***" means sensitive or private information involving an identifiable individual (including such information in the possession of a third party), including (A) medical records; (B) wills; (C) diaries; (D) private correspondence, including e-mail; (E) financial records; (F) photographs of a sensitive or private nature; or (G) similar information.

"***Pre-retail medical product***" has the meaning given that term in 18 U.S.C. § 670(e).

"***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).

"***Supply chain***" has the meaning given that term in 18 U.S.C. § 670(e).

"***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 specifically referenced in Appendix A (Statutory Index) for the offense of conviction, as determined under the provisions of §1B1.2 (Applicable Guidelines); 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) **Rules of Construction in Certain Cases.**—In the cases described in clauses (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.

(B) **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, copied, 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) In the case of proprietary information (*e.g.*, trade secrets), the cost of developing that information or the reduction in the value of that information that resulted from the offense.

(iii) The cost of repairs to damaged property.

(iv) The approximate number of victims multiplied by the average loss to each victim.

(v) The reduction that resulted from the offense in the value of equity securities or other corporate assets.

(vi) More general factors, such as the scope and duration of the offense and revenues generated by similar operations.

(C) **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.

(D) **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.

(iii) Notwithstanding clause (ii), in the case of a fraud involving a mortgage loan, if the collateral has not been disposed of by the time of sentencing, use the fair market value of the collateral as of the date on which the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere*.

In such a case, there shall be a rebuttable presumption that the most recent tax assessment value of the collateral is a reasonable estimate of the fair market value. In determining whether the most recent tax assessment value is a reasonable estimate of the fair market value, the court may consider, among other factors, the recency of the tax assessment and the extent to which the jurisdiction's tax assessment practices reflect factors not relevant to fair market value.

(E) **Special Rules.**—Notwithstanding subparagraph (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 clause, "***counterfeit access device***" and "***unauthorized access device***" have the meaning given those terms in Application Note 10(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. § 3142, 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 or Paleontological Resources.**—In a case involving a cultural heritage resource or paleontological resource, loss attributable to that resource shall be determined in accordance with the rules for determining the "value of the resource" set forth in Application Note 2 of the Commentary to §2B1.5.

(viii) **Federal Health Care Offenses Involving Government Health Care Programs.**—In a case in which the defendant is convicted of a federal health care offense involving a government health care program, the aggregate dollar amount of fraudulent bills submitted to the government health care program shall constitute prima facie evidence of the amount of the intended loss, *i.e.*, is evidence sufficient to establish the amount of the intended loss, if not rebutted.

(ix) **Fraudulent Inflation or Deflation in Value of Securities or Commodities.**—In a case involving the fraudulent inflation or deflation in the value of a publicly traded security or commodity, the court in determining loss may use any method that is appropriate and practicable under the circumstances. One such method the court

may consider is a method under which the actual loss attributable to the change in value of the security or commodity is the amount determined by—

(I) calculating the difference between the average price of the security or commodity during the period that the fraud occurred and the average price of the security or commodity during the 90-day period after the fraud was disclosed to the market, and

(II) multiplying the difference in average price by the number of shares outstanding.

In determining whether the amount so determined is a reasonable estimate of the actual loss attributable to the change in value of the security or commodity, the court may consider, among other factors, the extent to which the amount so determined includes significant changes in value not resulting from the offense (*e.g.*, changes caused by external market forces, such as changed economic circumstances, changed investor expectations, and new industry-specific or firm-specific facts, conditions, or events).

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 subparagraph (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 10 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 the addressee's 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.

(E) **Cases Involving Means of Identification.**—For purposes of subsection (b)(2), in a case involving means of identification "***victim***" means (i) any victim as defined in Application Note 1; or (ii) any individual whose means of identification was used unlawfully or without authority.

(F) **Substantial Financial Hardship.**—In determining whether the offense resulted in substantial financial hardship to a victim, the court shall consider, among other factors, whether the offense resulted in the victim—

(i) becoming insolvent;

(ii) filing for bankruptcy under the Bankruptcy Code (title 11, United States Code);

(iii) suffering substantial loss of a retirement, education, or other savings or investment fund;

(iv) making substantial changes to his or her employment, such as postponing his or her retirement plans;

(v) making substantial changes to his or her living arrangements, such as relocating to a less expensive home; and

(vi) suffering substantial harm to his or her ability to obtain credit.

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)(6).**—For purposes of subsection (b)(6), "***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)(B).**—If subsection (b)(8)(B) applies, do not apply an adjustment under §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

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

(A) **In General.—**The adjustments in subsection (b)(9) are alternative rather than cumulative.

(B) **Misrepresentations Regarding Charitable and Other Institutions.—**Subsection (b)(9)(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)(9)(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)(9)(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)(9)(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 Chapter Three Adjustments.—**

(i) **Subsection (b)(9)(A).—**If the conduct that forms the basis for an enhancement under subsection (b)(9)(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)(9)(B) and (C).**—If the conduct that forms the basis for an enhancement under subsection (b)(9)(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.

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

(A) **Definition of United States.**—For purposes of subsection (b)(10)(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 under Subsection (b)(10)(C).**—For purposes of subsection (b)(10)(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 Chapter Three Adjustment.**—If the conduct that forms the basis for an enhancement under subsection (b)(10) is the only conduct that forms the basis for an adjustment under §3C1.1, do not apply that adjustment under §3C1.1.

10. **Application of Subsection (b)(11).—**

(A) **Definitions.**—For purposes of subsection (b)(11):

"***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.

"***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).

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

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

"***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)(11)(C)(i).—**

(i) **In General.—**Subsection (b)(11)(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)(11)(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) **Non-Applicability of Subsection (b)(11)(C)(i).—**Examples of conduct to which subsection (b)(11)(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)(11)(C)(ii).—**Subsection (b)(11)(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.

11. **Interaction of Subsection (b)(13) and §3B1.3 (Abuse of Position of Trust or Use of Special Skill).—**If subsection (b)(13) applies, do not apply §3B1.3.

12. **Application of Subsection (b)(15).—**Subsection (b)(15) 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.

13. **Gross Receipts Enhancement under Subsection (b)(17)(A).—**

(A) **In General.**—For purposes of subsection (b)(17)(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).

14. **Application of Subsection (b)(17)(B).—**

(A) **Application of Subsection (b)(17)(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.

(v) One or more of the criteria in clauses (i) through (iv) was likely to result from the offense but did not result from the offense because of federal government intervention, such as a "bailout".

(B) **Application of Subsection (b)(17)(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.

(VII) One or more of the criteria in subclauses (I) through (VI) was likely to result from the offense but did not result from the offense because of federal government intervention, such as a "bailout".

15. **Application of Subsection (b)(19).—**

(A) **Definitions.—**For purposes of subsection (b)(19):

"***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).

(B) **Subsection (b)(19)(A)(iii).—**If the same conduct that forms the basis for an enhancement under subsection (b)(19)(A)(iii) is the only conduct that forms the basis for an enhancement under subsection (b)(17)(B), do not apply the enhancement under subsection (b)(17)(B).

16. **Application of Subsection (b)(20).—**

(A) **Definitions.—**For purposes of subsection (b)(20):

"***Commodities law***" means (i) the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*) and 18 U.S.C. § 1348; and (ii) includes the rules, regulations, and orders issued by the Commodity Futures Trading Commission.

"***Commodity pool operator***" has the meaning given that term in section 1a(11) of the Commodity Exchange Act (7 U.S.C. § 1a(11)).

"***Commodity trading advisor***" has the meaning given that term in section 1a(12) of the Commodity Exchange Act (7 U.S.C. § 1a(12)).

"***Futures commission merchant***" has the meaning given that term in section 1a(28) of the Commodity Exchange Act (7 U.S.C. § 1a(28)).

"***Introducing broker***" has the meaning given that term in section 1a(31) of the Commodity Exchange Act (7 U.S.C. § 1a(31)).

"***Investment adviser***" has the meaning given that term in section 202(a)(11) 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)(18) 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(a)(17) 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)(20) 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)(20) applies, do not apply §3B1.3.

17. **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).

18. **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".

19. **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.

20. **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* subsection (a) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts).

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)(5) implements the instruction to the Commission in section 2 of Public Law 105–101 and the directive to the Commission in section 3 of Public Law 110–384.

Subsection (b)(7) implements the directive to the Commission in section 10606 of Public Law 111–148.

Subsection (b)(8) implements the directive to the Commission in section 7 of Public Law 112–186.

Subsection (b)(9)(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)(10) implements, in a broader form, the instruction to the Commission in section 6(c)(2) of Public Law 105–184.

Subsections (b)(11)(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)(11)(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) implements the directive in section 5 of Public Law 110–179.

Subsection (b)(14) implements the directive in section 3 of Public Law 112–269.

Subsection (b)(16)(B) implements, in a broader form, the instruction to the Commission in section 110512 of Public Law 103–322.

Subsection (b)(17)(A) implements, in a broader form, the instruction to the Commission in section 2507 of Public Law 101–647.

Subsection (b)(17)(B)(i) implements, in a broader form, the instruction to the Commission in section 961(m) of Public Law 101–73.

Subsection (b)(18) implements the directive in section 209 of Public Law 110–326.

Subsection (b)(19) implements the directive in section 225(b) of Public Law 107–296. The minimum offense level of level 24 provided in subsection (b)(19)(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.

Historical Note	Effective November 1, 1987. Amended effective June 15, 1988 (amendment 7); November 1, 1989 (amendments 99, 100, 101 and 303); November 1, 1990 (amendments 312, 317, and 361); November 1, 1991 (amendments 364, and 393); November 1, 1993 (amendments 481 and 482); November 1, 1995 (amendment 512); November 1, 1997 (amendment 551); November 1, 1998 (amendment 576); November 1, 2000 (amendment 596); November 1, 2001 (amendment 617); November 1, 2002 (amendments 637, 638, and 646); January 25, 2003 (amendment 647); November 1, 2003 (amendments 653, 654, 655, and 661); November 1, 2004 (amendments 665, 666, and 674); November 1, 2005 (amendment 679); November 1, 2006 (amendments 685 and 696); November 1, 2007 (amendments 699, 700, and 702); February 6, 2008 (amendment 714); November 1, 2008 (amendments 719 and 725); November 1, 2009 (amendments 726, 733, and 737); November 1, 2010 (amendments 745 and 747); November 1, 2011 (amendment 749); November 1, 2012 (amendment 761);

	November 1, 2013 (amendments 771, 772, and 777); November 1, 2015 (amendments 791 and 792), November 1, 2018 (amendments 806 and 813); November 1, 2023 (amendment 815); November 1, 2024 (amendments 827 and 831); November 1, 2025 (amendment 836); November 1, 2026 (amendments 838 and 840).

§§2B1.2 – 2B1.3. [Deleted]

Historical Note	Section 2B1.2 (Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property), effective November 1, 1987, and amended effective January 15, 1988 (amendment 8), June 15, 1988 (amendment 9), November 1, 1989 (amendments 102, 103, and 104), and November 1, 1990 (amendments 312 and 361), was deleted by consolidation with §2B1.1 effective November 1, 1993 (amendment 481). Section 2B1.3 (Property Damage or Destruction), effective November 1, 1987, and amended effective June 15, 1988 (amendment 10), November 1, 1990 (amendments 312 and 313), November 1, 1997 (amendment 551), and November 1, 1998 (amendment 576), was deleted by consolidation with §2B1.1 effective November 1, 2001 (amendment 617).

§2B1.4. Insider Trading

(a) Base Offense Level: **8**

(b) Specific Offense Characteristics

(1) If the gain resulting from the offense exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) If the offense involved an organized scheme to engage in insider trading and the offense level determined above is less than level **14**, increase to level **14**.

Commentary

Statutory Provisions: 15 U.S.C. § 78j and 17 C.F.R. § 240.10b-5. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Application of Subsection (b)(2).**—For purposes of subsection (b)(2), an "***organized scheme to engage in insider trading***" means a scheme to engage in insider trading that involves considered, calculated, systematic, or repeated efforts to obtain and trade on inside information, as distinguished from fortuitous or opportunistic instances of insider trading.

   The following is a non-exhaustive list of factors that the court may consider in determining whether the offense involved an organized scheme to engage in insider trading:

   (A) the number of transactions;

   (B) the dollar value of the transactions;

(C) the number of securities involved;

(D) the duration of the offense;

(E) the number of participants in the scheme (although such a scheme may exist even in the absence of more than one participant);

(F) the efforts undertaken to obtain material, nonpublic information;

(G) the number of instances in which material, nonpublic information was obtained; and

(H) the efforts undertaken to conceal the offense.

2. **Application of §3B1.3.**—Section 3B1.3 (Abuse of Position of Trust or Use of Special Skill) should be applied if the defendant occupied and abused a position of special trust. Examples might include a corporate president or an attorney who misused information regarding a planned but unannounced takeover attempt. It typically would not apply to an ordinary "tippee".

Furthermore, §3B1.3 should be applied if the defendant's employment in a position that involved regular participation or professional assistance in creating, issuing, buying, selling, or trading securities or commodities was used to facilitate significantly the commission or concealment of the offense. It would apply, for example, to a hedge fund professional who regularly participates in securities transactions or to a lawyer who regularly provides professional assistance in securities transactions, if the defendant's employment in such a position was used to facilitate significantly the commission or concealment of the offense. It ordinarily would not apply to a position such as a clerical worker in an investment firm, because such a position ordinarily does not involve special skill. *See* §3B1.3, comment. (n.4).

Background: This guideline applies to certain violations of Rule 10b-5 that are commonly referred to as "insider trading". Insider trading is treated essentially as a sophisticated fraud. Because the victims and their losses are difficult if not impossible to identify, the gain, *i.e.*, the total increase in value realized through trading in securities by the defendant and persons acting in concert with the defendant or to whom the defendant provided inside information, is employed instead of the victims' losses.

Certain other offenses, *e.g.*, 7 U.S.C. § 13(e), that involve misuse of inside information for personal gain also appropriately may be covered by this guideline.

Subsection (b)(2) implements the directive to the Commission in section 1079A(a)(1)(A) of Public Law 111–203.

Historical Note	Effective November 1, 2001 (amendment 617). Amended effective November 1, 2010 (amendment 746); November 1, 2012 (amendment 761); November 1, 2015 (amendment 791); November 1, 2026 (amendment 838).

§2B1.5. Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources

(a) Base Offense Level: 8

(b) Specific Offense Characteristics

(1) If the value of the cultural heritage resource or paleontological resource (A) exceeded $3,500 but did not exceed $9,000, increase by **1** level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) If the offense involved a cultural heritage resource or paleontological resource from, or that, prior to the offense, was on, in, or in the custody of (A) the national park system; (B) a National Historic Landmark; (C) a national monument or national memorial; (D) a national marine sanctuary; (E) a national cemetery or veterans' memorial; (F) a museum; or (G) the World Heritage List, increase by **2** levels.

(3) If the offense involved a cultural heritage resource constituting (A) human remains; (B) a funerary object; (C) cultural patrimony; (D) a sacred object; (E) cultural property; (F) designated archaeological or ethnological material; or (G) a pre-Columbian monumental or architectural sculpture or mural, increase by **2** levels.

(4) If the offense was committed for pecuniary gain or otherwise involved a commercial purpose, increase by **2** levels.

(5) If the defendant engaged in a pattern of misconduct involving cultural heritage resources or paleontological resources, increase by **2** levels.

(c) Cross Reference

(1) If the offense involved arson, or property damage by the use of any explosive, explosive material, or destructive device, apply §2K1.4 (Arson; Property Damage by Use of Explosives), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 16 U.S.C. §§ 470aaa–5, 470ee, 668(a), 707(b); 18 U.S.C. §§ 541–546, 554, 641, 661–662, 666, 668, 1163, 1168, 1170, 1361, 1369, 2232, 2314–2315.

Application Notes:

1. **Definitions.—**For purposes of this guideline:

(A) "***Cultural heritage resource***" means any of the following:

(i) A historic property, as defined in 54 U.S.C. § 300308 (*see also* section 16(l) of 36 C.F.R. pt. 800).

(ii) An archaeological resource, as defined in 16 U.S.C. § 470bb(1) (*see also* section 3(a) of 43 C.F.R. pt. 7; 36 C.F.R. pt. 296; 32 C.F.R. pt. 229; 18 C.F.R. pt. 1312).

(iii) A cultural item, as defined in section 2(3) of the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001(3) (*see also* 43 C.F.R. § 10.2(d)).

(iv) A commemorative work. "***Commemorative work***" (I) has the meaning given that term in 40 U.S.C. § 8902(a)(1); and (II) includes any national monument or national memorial.

(v) An object of cultural heritage, as defined in 18 U.S.C. § 668(a)(2).

(vi) Designated ethnological material, as described in 19 U.S.C. §§ 2601(2)(ii), 2601(7), and 2604.

(B) "***Paleontological resource***" has the meaning given such term in 16 U.S.C. § 470aaa.

2. **Value of the Resource Under Subsection (b)(1).**—This application note applies to the determination of the value of the resource under subsection (b)(1).

(A) **General Rule.**—For purposes of subsection (b)(1), the value of the resource shall include, as applicable to the particular resource involved, the following:

(i) The archaeological value. (Archaeological value shall be included in the case of any resource that is an archaeological resource.)

(ii) The commercial value.

(iii) The cost of restoration and repair.

(B) **Estimation of Value.**—For purposes of subsection (b)(1), the court need only make a reasonable estimate of the value of the resource based on available information.

(C) **Definitions.**—For purposes of this application note:

(i) "***Archaeological value***" of a resource means the cost of the retrieval of the scientific information which would have been obtainable prior to the offense, including the cost of preparing a research design, conducting field work, conducting laboratory analysis, and preparing reports, as would be necessary to realize the information potential. (*See, e.g.*, 43 C.F.R. § 7.14(a); 36 C.F.R. § 296.14(a); 32 C.F.R. § 229.14(a); 18 C.F.R. § 1312.14(a).)

(ii) "***Commercial value***" of a resource means the fair market value of the resource at the time of the offense. (*See, e.g.*, 43 C.F.R. § 7.14(b); 36 C.F.R. § 296.14(b); 32 C.F.R. § 229.14(b); 18 C.F.R. § 1312.14(b).)

(iii) "***Cost of restoration and repair***" includes all actual and projected costs of curation, disposition, and appropriate reburial of, and consultation with respect to, the resource; and any other actual and projected costs to complete restoration and repair of the resource, including (I) its reconstruction and stabilization; (II) reconstruction and stabilization of ground contour and surface; (III) research necessary to conduct reconstruction and stabilization; (IV) the construction of physical barriers and other protective devices; (V) examination and analysis of the resource as part of efforts to salvage remaining information about the resource; and (VI) preparation of reports.

(*See, e.g.*, 43 C.F.R. § 7.14(c); 36 C.F.R. § 296.14(c); 32 C.F.R. § 229.14(c); 18 C.F.R. § 1312.14(c).)

(D) **Determination of Value in Cases Involving a Variety of Resources.**—In a case involving a variety of resources, the value of the resources is the sum of all calculations made for those resources under this application note.

3. **Enhancement in Subsection (b)(2).**—For purposes of subsection (b)(2):

(A) "***Museum***" has the meaning given that term in 18 U.S.C. § 668(a)(1) except that the museum may be situated outside the United States.

(B) "***National cemetery***" and "***veterans' memorial***" have the meaning given those terms in Application Note 1 of the Commentary to §2B1.1 (Theft, Property Destruction, and Fraud).

(C) "***National Historic Landmark***" means a property designated as such pursuant to 54 U.S.C. § 302102.

(D) "***National marine sanctuary***" means a national marine sanctuary designated as such by the Secretary of Commerce pursuant to 16 U.S.C. § 1433.

(E) "***National monument or national memorial***" means any national monument or national memorial established as such by Act of Congress or by proclamation pursuant to 54 U.S.C. § 320301.

(F) "***National park system***" has the meaning given that term in 54 U.S.C. § 100501.

(G) "***World Heritage List***" means the World Heritage List maintained by the World Heritage Committee of the United Nations Educational, Scientific, and Cultural Organization in accordance with the Convention Concerning the Protection of the World Cultural and Natural Heritage.

4. **Enhancement in Subsection (b)(3).**—For purposes of subsection (b)(3):

(A) "***Cultural patrimony***" has the meaning given that term in 25 U.S.C. § 3001(3)(D) (*see also* 43 C.F.R. 10.2(d)(4)).

(B) "***Cultural property***" has the meaning given that term in 19 U.S.C. § 2601(6).

(C) "***Designated archaeological or ethnological material***" means archaeological or ethnological material described in 19 U.S.C. § 2601(7) *(see also* 19 U.S.C. §§ 2601(2) and 2604).

(D) "***Funerary object***" means an object that, as a part of the death rite or ceremony of a culture, was placed intentionally, at the time of death or later, with or near human remains.

(E) "***Human remains***" (i) means the physical remains of the body of a human; and (ii) does not include remains that reasonably may be determined to have been freely disposed of or naturally shed by the human from whose body the remains were obtained, such as hair made into ropes or nets.

(F) "***Pre-Columbian monumental or architectural sculpture or mural***" has the meaning given that term in 19 U.S.C. § 2095(3).

(G) "***Sacred object***" has the meaning given that term in 25 U.S.C. § 3001(3)(C) (*see also* 43 C.F.R. § 10.2(d)(3)).

5. **Pecuniary Gain and Commercial Purpose Enhancement Under Subsection (b)(4).—**

(A) **"For Pecuniary Gain".—**For purposes of subsection (b)(4), "***for pecuniary gain***" means for receipt of, or in anticipation of receipt of, anything of value, whether monetary or in goods or services. Therefore, offenses committed for pecuniary gain include both monetary and barter transactions, as well as activities designed to increase gross revenue.

(B) **Commercial Purpose.—**The acquisition of resources for display to the public, whether for a fee or donation and whether by an individual or an organization, including a governmental entity, a private non-profit organization, or a private for-profit organization, shall be considered to involve a "commercial purpose" for purposes of subsection (b)(4).

6. **Pattern of Misconduct Enhancement Under Subsection (b)(5).—**

(A) **Definition.—**For purposes of subsection (b)(5), "***pattern of misconduct involving cultural heritage resources or paleontological resources***" means two or more separate instances of offense conduct involving a resource that did not occur during the course of the offense (*i.e.*, that did not occur during the course of the instant offense of conviction and all relevant conduct under §1B1.3 (Relevant Conduct)). Offense conduct involving a resource may be considered for purposes of subsection (b)(5) regardless of whether the defendant was convicted of that conduct.

(B) **Computation of Criminal History Points.—**A conviction taken into account under subsection (b)(5) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

7. **Multiple Counts.—**For purposes of Chapter Three, Part D (Multiple Counts), apply subsection (a) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to determine the combined offense level for multiple counts involving offenses covered by this guideline.

Historical Note	Effective November 1, 2002 (amendment 638). Amended effective November 1, 2006 (amendment 685); November 1, 2007 (amendment 700); November 1, 2010 (amendments 745 and 746); November 1, 2014 (amendment 781); November 1, 2015 (amendment 791); November 1, 2018 (amendment 813); November 1, 2025 (amendment 836); November 1, 2026 (amendments 837, 838, and 840).

§2B1.6. Aggravated Identity Theft

(a) If the defendant was convicted of violating 18 U.S.C. § 1028A, the guideline sentence is the term of imprisonment required by statute. Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) shall not apply to that count of conviction.

Commentary

Statutory Provision: 18 U.S.C. § 1028A. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Imposition of Sentence.—**

   (A) **In General.—**Section 1028A of title 18, United States Code, provides a mandatory term of imprisonment. Accordingly, the guideline sentence for a defendant convicted under 18 U.S.C. § 1028A is the term required by that statute. Except as provided in subparagraph (B), 18 U.S.C. § 1028A also requires a term of imprisonment imposed under this section to run consecutively to any other term of imprisonment.

   (B) **Multiple Convictions Under Section 1028A.—**Section 1028A(b)(4) of title 18, United States Code, provides that in the case of multiple convictions under 18 U.S.C. § 1028A, the terms of imprisonment imposed on such counts may, in the discretion of the court, run concurrently, in whole or in part, with each other. *See* the Commentary to §5G1.2 (Sentencing on Multiple Counts of Conviction) for guidance regarding imposition of sentence on multiple counts of 18 U.S.C. § 1028A.

2. **Inapplicability of Chapter Two Enhancement.—**If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for the transfer, possession, or use of a means of identification when determining the sentence for the underlying offense. A sentence under this guideline accounts for this factor for the underlying offense of conviction, including any such enhancement that would apply based on conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct). "***Means of identification***" has the meaning given that term in 18 U.S.C. § 1028(d)(7).

3. **Inapplicability of Chapters Three and Four.—**Do not apply Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) to any offense sentenced under this guideline. Such offenses are excluded from application of those chapters because the guideline sentence for each offense is determined only by the relevant statute. *See* §§3D1.1 (Procedure for Determining Offense Level on Multiple Counts) and 5G1.2.

Historical Note	Effective November 1, 2005 (amendment 677). Amended effective November 1, 2024 (amendment 831).

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2. BURGLARY AND TRESPASS

§2B2.1. Burglary of a Residence or a Structure Other than a Residence

(a) Base Offense Level:

(1) **17**, if a residence; or

(2) **12**, if a structure other than a residence.

(b) Specific Offense Characteristics

(1) If the offense involved more than minimal planning, increase by **2** levels.

(2) If the loss exceeded $7,000, increase the offense level as follows:

	LOSS (APPLY THE GREATEST)	INCREASE IN LEVEL
(A)	$7,000 or less	no increase
(B)	More than $7,000	add **1**
(C)	More than $25,000	add **2**
(D)	More than $150,000	add **3**
(E)	More than $700,000	add **4**
(F)	More than $2,000,000	add **5**
(G)	More than $4,000,000	add **6**
(H)	More than $7,000,000	add **7**
(I)	More than $15,000,000	add **8**.

(3) If a firearm, destructive device, or controlled substance was taken, or if the taking of such item was an object of the offense, increase by **1** level.

(4) If a dangerous weapon (including a firearm) was possessed, increase by **2** levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 2113(a), 2115, 2117, 2118(b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. "***Firearm***," "***destructive device***," and "***dangerous weapon***" are defined in the Commentary to §1B1.1 (Application Instructions).

2. "***Loss***" means the value of the property taken, damaged, or destroyed.

3. Subsection (b)(4) does not apply to possession of a dangerous weapon (including a firearm) that was stolen during the course of the offense.

4. **More than Minimal Planning.—**"***More than minimal planning***" means more planning than is typical for commission of the offense in a simple form. "More than minimal planning" also exists if significant affirmative steps were taken to conceal the offense, other than conduct to which §3C1.1 (Obstructing or Impeding the Administration of Justice) applies. "More than minimal planning" shall be considered to be present in any case involving repeated acts over a period of time, unless it is clear that each instance was purely opportune. For example, checking the area to make sure no witnesses were present would not alone constitute more than minimal planning. By contrast, obtaining building plans to plot a particular course of entry, or disabling an alarm system, would constitute more than minimal planning.

Background: The base offense level for residential burglary is higher than for other forms of burglary because of the increased risk of physical and psychological injury. Weapon possession, but not use, is a specific offense characteristic because use of a weapon (including to threaten) ordinarily would make the offense robbery.

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 11); June 15, 1988 (amendment 12); November 1, 1989 (amendments 105 and 106); November 1, 1990 (amendments 315 and 361); November 1, 1993 (amendment 481); November 1, 2001 (amendment 617); November 1, 2014 (amendment 781); November 1, 2015 (amendment 791); November 1, 2025 (amendment 836); November 1, 2026 (amendment 838).

§2B2.2. [Deleted]

Historical Note	Section 2B2.2 (Burglary of Other Structures), effective November 1, 1987, and amended effective June 15, 1988 (amendment 13), November 1, 1989 (amendment 107), and November 1, 1990 (amendments 315 and 361), was deleted by consolidation with §2B2.1 effective November 1, 1993 (amendment 481).

§2B2.3. Trespass

(a) Base Offense Level: **4**

(b) Specific Offense Characteristics

(1) (Apply the greater) If—

(A) the trespass occurred (i) at a secure government facility; (ii) at a nuclear energy facility; (iii) on a vessel or aircraft of the United States; (iv) in a secure area of an airport or a seaport; (v) at a residence; (vi) at Arlington National Cemetery or a cemetery under the control of the National Cemetery Administration; (vii) at any restricted building or grounds; or (viii) on a computer system used (I) to maintain or operate a critical infrastructure; or (II) by or for a government entity in furtherance of the administration of justice, national defense, or national security, increase by **2** levels; or

(B) the trespass occurred at the White House or its grounds, or the Vice President's official residence or its grounds, increase by **4** levels.

(2) If a dangerous weapon (including a firearm) was possessed, increase by **2** levels.

(c) Cross Reference

(1) If the offense was committed with the intent to commit a felony offense, apply §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that felony offense, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1030(a)(3), 1036, 2199; 38 U.S.C. § 2413; 42 U.S.C. § 7270b. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. **Definitions.—**For purposes of this guideline:

"***Airport***" has the meaning given that term in section 47102 of title 49, United States Code.

"***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.

"***Felony offense***" means any offense (federal, state, or local) punishable by imprisonment for a term exceeding one year, whether or not a criminal charge was brought or a conviction was obtained.

"***Firearm***" and "***dangerous weapon***" are defined in the Commentary to §1B1.1 (Application Instructions).

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

"***Restricted building or grounds***" has the meaning given that term in 18 U.S.C. § 1752.

"***Seaport***" has the meaning given that term in 18 U.S.C. § 26.

Background: Most trespasses punishable under federal law involve federal lands or property. The trespass section provides an enhancement for offenses involving trespass on secure government installations (such as nuclear facilities) and other locations (such as airports and seaports) to protect a significant federal interest. Additionally, an enhancement is provided for trespass at a residence.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 108 and 109); November 1, 1997 (amendment 551); November 1, 2001 (amendment 617); November 1, 2002 (amendment 637); November 1, 2003 (amendment 654); November 1, 2007 (amendments 699 and 703); November 1, 2013 (amendment 777); November 1, 2015 (amendment 791); November 1, 2024 (amendment 827); November 1, 2026 (amendment 837).

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3. ROBBERY, EXTORTION, AND BLACKMAIL

§2B3.1. Robbery

(a) Base Offense Level: **20**

(b) Specific Offense Characteristics

(1) If the property of a financial institution or post office was taken, or if the taking of such property was an object of the offense, increase by **2** levels.

(2) (A) If a firearm was discharged, increase by **7** levels; (B) if a firearm was used to convey a specific (not general) threat of harm (*e.g.*, pointing the firearm at a specific victim or victims; directing the movement of a specific victim or victims with the firearm) or to make physical contact with a victim (*e.g.*, pistol whip; firearm placed against victim's body), increase by **6** levels; (C) if a firearm was brandished or possessed, increase by **5** levels; (D) if a dangerous weapon was otherwise used, increase by **4** levels; (E) if a dangerous weapon was brandished or possessed, increase by **3** levels; or (F) if a threat of death was made, increase by **2** levels.

(3) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

	DEGREE OF BODILY INJURY	INCREASE IN LEVEL
(A)	Bodily Injury	add **2**
(B)	Serious Bodily Injury	add **4**
(C)	Permanent or Life-Threatening Bodily Injury	add **6**
(D)	If the degree of injury is between that specified in subparagraphs (A) and (B),	add **3** levels; or
(E)	If the degree of injury is between that specified in subparagraphs (B) and (C),	add **5** levels.

Provided, however, that the cumulative adjustments from application of paragraphs (2) and (3) shall not exceed **11** levels.

(4) (A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by **4** levels; or (B) if any person's freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up, to facilitate commission of the offense or to facilitate escape, increase by **2** levels.

(5) If the offense involved carjacking, increase by **2** levels.

(6) If a firearm, destructive device, or controlled substance was taken, or if the taking of such item was an object of the offense, increase by **1** level.

(7) If the loss exceeded $25,000, increase the offense level as follows:

	LOSS (APPLY THE GREATEST)	INCREASE IN LEVEL
(A)	$25,000 or less	no increase
(B)	More than $25,000	add **1**
(C)	More than $150,000	add **2**
(D)	More than $700,000	add **3**
(E)	More than $2,000,000	add **4**
(F)	More than $4,000,000	add **5**
(G)	More than $7,000,000	add **6**
(H)	More than $15,000,000	add **7**.

(c) Cross Reference

(1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder).

Commentary

Statutory Provisions: 18 U.S.C. §§ 1951, 2113, 2114, 2118(a), 2119. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—"***Firearm***," "***destructive device***," "***dangerous weapon***," "***otherwise used***," "***brandished***," "***bodily injury***," "***serious bodily injury***," "***permanent or life-threatening bodily injury***," and "***abducted***" have the meaning given such terms in the Commentary to §1B1.1 (Application Instructions).

   "***Carjacking***" means the taking or attempted taking of a motor vehicle from the person or presence of another by force and violence or by intimidation.

2. **Dangerous Weapon.**—Consistent with Application Note 1(E)(ii) of §1B1.1 (Application Instructions), an object shall be considered to be a dangerous weapon for purposes of subsection (b)(2)(E) if (A) the object closely resembles an instrument capable of inflicting death or serious bodily injury; or (B) the defendant used the object in a manner that created the impression that the object was an instrument capable of inflicting death or serious bodily injury (*e.g.*, a defendant wrapped a hand in a towel during a bank robbery to create the appearance of a gun).

3. **Definition of "Loss".**—"***Loss***" means the value of the property taken, damaged, or destroyed.

4. **Cumulative Application of Subsections (b)(2) and (b)(3).**—The combined adjustments for weapon involvement and injury are limited to a maximum enhancement of 11 levels.

5. **"A Threat of Death".**—"A threat of death," as used in subsection (b)(2)(F), may be in the form of an oral or written statement, act, gesture, or combination thereof. Accordingly, the defendant does not have to state expressly his intent to kill the victim in order for the enhancement to apply. For example, an oral or written demand using words such as "Give me the money or I will kill you", "Give me the money or I will pull the pin on the grenade I have in my pocket", "Give me the money or I will shoot you", "Give me your money or else (where the defendant draws his hand across his throat in a slashing motion)", or "Give me the money or you are dead" would constitute a threat of death. The court should consider that the intent of this provision is to provide an increased offense level for cases in which the offender(s) engaged in conduct that would instill in a reasonable person, who is a victim of the offense, a fear of death.

Background: Possession or use of a weapon, physical injury, and unlawful restraint sometimes occur during a robbery. The guideline provides for a range of enhancements where these factors are present.

Although in pre-guidelines practice the amount of money taken in robbery cases affected sentence length, its importance was small compared to that of the other harm involved. Moreover, because of the relatively high base offense level for robbery, an increase of 1 or 2 levels brings about a considerable increase in sentence length in absolute terms. Accordingly, the gradations for property loss increase more slowly than for simple property offenses.

The guideline provides an enhancement for robberies where a victim was forced to accompany the defendant to another location, or a victim's freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up.

Historical Note	Effective November 1, 1987. Amended effective June 15, 1988 (amendments 14 and 15); November 1, 1989 (amendments 110 and 111); November 1, 1990 (amendments 314, 315, and 361); November 1, 1991 (amendment 365); November 1, 1993 (amendment 483); November 1, 1997 (amendments 545 and 552); November 1, 2000 (amendment 601); November 1, 2001 (amendment 617); November 1, 2010 (amendment 746); November 1, 2015 (amendment 791); November 1, 2018 (amendment 805); November 1, 2024 (amendment 831); November 1, 2025 (amendments 832 and 836); November 1, 2026 (amendment 838).

§2B3.2. Extortion by Force or Threat of Injury or Serious Damage

(a) Base Offense Level: **18**

(b) Specific Offense Characteristics

(1) If the offense involved an express or implied threat of death, bodily injury, or kidnapping, increase by **2** levels.

(2) If the greater of the amount demanded or the loss to the victim exceeded $25,000, increase by the corresponding number of levels from the table in §2B3.1(b)(7).

(3) (A)(i) If a firearm was discharged, increase by **7** levels; (ii) if a firearm was used to convey a specific (not general) threat of harm (*e.g.*, pointing the firearm at a specific victim or victims; directing the movement of a specific victim or victims with the firearm) or to make physical contact with a victim (*e.g.*, pistol whip; firearm placed against victim's body), increase by **6** levels; (iii) if a firearm was brandished or possessed, increase by **5** levels; (iv) if a dangerous weapon was otherwise used, increase by **4** levels; or (v) if a dangerous weapon was brandished or possessed, increase by **3** levels; or

(B) If (i) the offense involved preparation to carry out a threat of (I) death; (II) serious bodily injury; (III) kidnapping; (IV) product tampering; or (V) damage to a computer system used to maintain or operate a critical infrastructure, or by or for a government entity in furtherance of the administration of justice, national defense, or national security; or (ii) the participant(s) otherwise demonstrated the ability to carry out a threat described in any of clauses (i)(I) through (i)(V), increase by **3** levels.

(4) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

	DEGREE OF BODILY INJURY	INCREASE IN LEVEL
(A)	Bodily Injury	add **2**
(B)	Serious Bodily Injury	add **4**
(C)	Permanent or Life-Threatening Bodily Injury	add **6**
(D)	If the degree of injury is between that specified in subparagraphs (A) and (B),	add **3** levels; or
(E)	If the degree of injury is between that specified in subparagraphs (B) and (C),	add **5** levels.

Provided, however, that the cumulative adjustments from application of paragraphs (3) and (4) shall not exceed **11** levels.

(5) (A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by **4** levels; or (B) if any person's freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up, to facilitate commission of the offense or to facilitate escape, increase by **2** levels.

(c) Cross References

(1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder).

(2) If the offense was tantamount to attempted murder, apply §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder) if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 875(b), (d), 876(b), (d), 877, 1030(a)(7), 1951. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Abducted***," "***bodily injury***," "***brandished***," "***dangerous weapon***," "***firearm***," "***otherwise used***," "***permanent or life-threatening bodily injury***," and "***serious bodily injury***" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

"***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).

2. **Threat of Injury or Serious Damage.**—This guideline applies if there was any threat, express or implied, that reasonably could be interpreted as one to injure a person or physically damage property, or any comparably serious threat, such as to drive an enterprise out of business. Even if the threat does not in itself imply violence, the possibility of violence or serious adverse consequences may be inferred from the circumstances of the threat or the reputation of the person making it. An ambiguous threat, such as "pay up or else," or a threat to cause labor problems, ordinarily should be treated under this section.

3. **Offenses Involving Public Officials and Other Extortion Offenses.**—Guidelines for bribery involving public officials are found in Part C, Offenses Involving Public Officials. "Extortion under color of official right," which usually is solicitation of a bribe by a public official, is covered under §2C1.1 unless there is use of force or a threat that qualifies for treatment under this section. Certain other extortion offenses are covered under the provisions of Part E, Offenses Involving Criminal Enterprises and Racketeering.

4. **Cumulative Application of Subsections (b)(3) and (b)(4).**—The combined adjustments for weapon involvement and injury are limited to a maximum enhancement of 11 levels.

5. **Definition of "Loss to the Victim".**—"***Loss to the victim***," as used in subsection (b)(2), means any demand paid plus any additional consequential loss from the offense (*e.g.*, the cost of defensive measures taken in direct response to the offense).

6. **Defendant's Preparation or Ability to Carry Out a Threat.**—In certain cases, an extortionate demand may be accompanied by conduct that does not qualify as a display of a dangerous

weapon under subsection (b)(3)(A)(v) but is nonetheless similar in seriousness, demonstrating the defendant's preparation or ability to carry out the threatened harm (*e.g.*, an extortionate demand containing a threat to tamper with a consumer product accompanied by a workable plan showing how the product's tamper-resistant seals could be defeated, or a threat to kidnap a person accompanied by information showing study of that person's daily routine). Subsection (b)(3)(B) addresses such cases.

Background: The Hobbs Act, 18 U.S.C. § 1951, prohibits extortion, attempted extortion, and conspiracy to extort. It provides for a maximum term of imprisonment of twenty years. 18 U.S.C. §§ 875–877 prohibit communication of extortionate demands through various means. The maximum penalty under these statutes varies from two to twenty years. Violations of 18 U.S.C. § 875 involve threats or demands transmitted by interstate commerce. Violations of 18 U.S.C. § 876 involve the use of the United States mails to communicate threats, while violations of 18 U.S.C. § 877 involve mailing threatening communications from foreign countries. This guideline also applies to offenses under 18 U.S.C. § 1030(a)(7) involving a threat to impair the operation of a "protected computer."

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 112, 113, and 303); November 1, 1990 (amendment 316); November 1, 1991 (amendment 366); November 1, 1993 (amendment 479); November 1, 1997 (amendment 551); November 1, 1998 (amendment 586); November 1, 2000 (amendment 601); November 1, 2003 (amendment 654); November 1, 2015 (amendment 791); November 1, 2023 (amendment 824); November 1, 2024 (amendment 831); November 1, 2025 (amendments 832 and 836); November 1, 2026 (amendment 838).

§2B3.3. Blackmail and Similar Forms of Extortion

(a) Base Offense Level: **9**

(b) Specific Offense Characteristic

(1) If the greater of the amount obtained or demanded (A) exceeded $3,500 but did not exceed $9,000, increase by **1** level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(c) Cross References

(1) If the offense involved extortion under color of official right, apply §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).

(2) If the offense involved extortion by force or threat of injury or serious damage, apply §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage).

Commentary

Statutory Provisions: 18 U.S.C. §§ 873, 875–877, 1951. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. This section applies only to blackmail and similar forms of extortion where there clearly is no threat of violence to person or property. "***Blackmail***" (18 U.S.C. § 873) is defined as a threat to disclose a violation of United States law unless money or some other item of value is given.

Background: Under 18 U.S.C. § 873, the maximum term of imprisonment authorized for blackmail is one year. Extortionate threats to injure a reputation, or other threats that are less serious than those covered by §2B3.2, may also be prosecuted under 18 U.S.C. §§ 875–877, which carry higher maximum sentences.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 114); November 1, 1993 (amendment 479); November 1, 2001 (amendment 617); November 1, 2005 (amendment 679); November 1, 2015 (amendment 791); November 1, 2026 (amendment 838).

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4. COMMERCIAL BRIBERY AND KICKBACKS

§2B4.1. Bribery in Procurement of Bank Loan and Other Commercial Bribery

(a) Base Offense Level: **8**

(b) Specific Offense Characteristics

(1) If the greater of the value of the bribe or the improper benefit to be conferred (A) exceeded $3,500 but did not exceed $9,000, increase by **1** level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) (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 substantially jeopardized the safety and soundness of a financial institution, increase by **4** levels.

If the resulting offense level determined under subdivision (A) or (B) is less than level **24**, increase to level **24**.

(c) Special Instruction for Fines — Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of §8C2.4 (Base Fine), use the greatest of: (A) the value of the unlawful payment; (B) the value of the benefit received or to be received in return for the unlawful payment; or (C) the consequential damages resulting from the unlawful payment.

Commentary

Statutory Provisions: 18 U.S.C. §§ 215, 220, 224, 225; 26 U.S.C. §§ 9012(e), 9042(d); 41 U.S.C. §§ 8702, 8707; 42 U.S.C. §§ 1395nn(b)(1), (2), 1396h(b)(1),(2); 49 U.S.C. § 11902. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. This guideline covers commercial bribery offenses and kickbacks that do not involve officials of federal, state, or local government, foreign governments, or public international organizations. *See* Part C, Offenses Involving Public Officials, if any such officials are involved.

2. The "***value of the improper benefit to be conferred***" refers to the value of the action to be taken or effected in return for the bribe. *See* Commentary 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).

3. "***Financial institution***," as used in this guideline, is defined to include any institution described in 18 U.S.C. §§ 20, 656, 657, 1005–1007, and 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," as used above, primarily include large pension funds that serve many individuals (*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.

4. **Gross Receipts Enhancement under Subsection (b)(2)(A).—**

   (A) **In General.—**For purposes of subsection (b)(2)(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).

5. **Enhancement for Substantially Jeopardizing the Safety and Soundness of a Financial Institution under Subsection (b)(2)(B).—**For purposes of subsection (b)(2)(B), an offense

shall be considered to have substantially jeopardized the safety and soundness of a financial institution if, as a consequence of the offense, the institution (A) became insolvent; (B) substantially reduced benefits to pensioners or insureds; (C) was unable on demand to refund fully any deposit, payment, or investment; (D) was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or (E) was placed in substantial jeopardy of any of subdivisions (A) through (D) of this note.

6. 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."

Background: This guideline applies to violations of various federal bribery statutes that do not involve governmental officials. The base offense level is to be enhanced based upon the value of the unlawful payment or the value of the action to be taken or effected in return for the unlawful payment, whichever is greater.

One of the more commonly prosecuted offenses to which this guideline applies is offering or accepting a fee in connection with procurement of a loan from a financial institution in violation of 18 U.S.C. § 215.

As with non-commercial bribery, this guideline considers not only the amount of the bribe but also the value of the action received in return. Thus, for example, if a bank officer agreed to the offer of a $25,000 bribe to approve a $250,000 loan under terms for which the applicant would not otherwise qualify, the court, in increasing the offense level, would use the greater of the $25,000 bribe, and the savings in interest over the life of the loan compared with alternative loan terms. If a gambler paid a player $5,000 to shave points in a nationally televised basketball game, the value of the action to the gambler would be the amount that he and his confederates won or stood to gain. If that amount could not be estimated, the amount of the bribe would be used to determine the appropriate increase in offense level.

This guideline also applies to making prohibited payments to induce the award of subcontracts on federal projects for which the maximum term of imprisonment authorized is ten years. 41 U.S.C. §§ 8702, 8707. Violations of 42 U.S.C. § 1320a-7b involve the offer or acceptance of a payment to refer an individual for services or items paid for under a federal health care program (*e.g.*, the Medicare and Medicaid programs).

This guideline also applies to violations of law involving bribes and kickbacks in expenses incurred for a presidential nominating convention or presidential election campaign. These offenses are prohibited under 26 U.S.C. §§ 9012(e) and 9042(d), which apply to candidates for President and Vice President whose campaigns are eligible for federal matching funds.

This guideline also applies to violations of 18 U.S.C. § 224, sports bribery, as well as certain violations of the Interstate Commerce Act.

Subsection (b)(2)(A) implements, in a broader form, the instruction to the Commission in section 961(m) of Public Law 101–73.

Subsection (b)(2)(B) implements the instruction to the Commission in section 2507 of Public Law 101–647.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 317); November 1, 1991 (amendments 364 and 422); November 1, 1992 (amendment 468); November 1, 1997 (amendment 553); November 1, 2001 (amendment 617); November 1, 2002 (amendments 639 and 646); November 1, 2004 (amendment 666); November 1, 2010 (amendment 746); November 1, 2015 (amendments 791 and 796); November 1, 2023 (amendment 815); November 1, 2026 (amendment 838).

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5. COUNTERFEITING AND INFRINGEMENT OF COPYRIGHT OR TRADEMARK

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendment 481).

§2B5.1. Offenses Involving Counterfeit Bearer Obligations of the United States

(a) Base Offense Level: **9**

(b) Specific Offense Characteristics

(1) If the face value of the counterfeit items (A) exceeded $3,500 but did not exceed $9,000, increase by **1** level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) If the defendant (A) manufactured or produced any counterfeit obligation or security of the United States, or possessed or had custody of or control over a counterfeiting device or materials used for counterfeiting; or (B) controlled or possessed (i) counterfeiting paper similar to a distinctive paper; (ii) genuine United States currency paper from which the ink or other distinctive counterfeit deterrent has been completely or partially removed; or (iii) a feature or device essentially identical to a distinctive counterfeit deterrent, increase by **2** levels.

(3) If subsection (b)(2)(A) applies, and the offense level determined under that subsection is less than level **15**, increase to level **15**.

(4) If a dangerous weapon (including a firearm) was possessed in connection with the offense, increase by **2** levels. If the resulting offense level is less than level **13**, increase to level **13**.

(5) If any part of the offense was committed outside the United States, increase by **2** levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 470–474A, 476, 477, 500, 501, 1003. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

   "***Counterfeit***" refers to an instrument that has been falsely made, manufactured, or altered. For example, an instrument that has been falsely made or manufactured in its entirety is "counterfeit", as is a genuine instrument that has been falsely altered (such as a genuine $5 bill that has been altered to appear to be a genuine $100 bill).

   "***Distinctive counterfeit deterrent***" and "***distinctive paper***" have the meaning given those terms in 18 U.S.C. § 474A(c)(2) and (1), respectively.

   "***United States***" means each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

2. **Applicability to Counterfeit Bearer Obligations of the United States.**—This guideline applies to counterfeiting of United States currency and coins, food stamps, postage stamps, treasury bills, bearer bonds and other items that generally could be described as bearer obligations of the United States, *i.e.*, that are not made out to a specific payee.

3. **Inapplicability to Certain Obviously Counterfeit Items.**—Subsection (b)(2)(A) does not apply to persons who produce items that are so obviously counterfeit that they are unlikely to be accepted even if subjected to only minimal scrutiny.

Background: Possession of counterfeiting devices to copy obligations (including securities) of the United States is treated as an aggravated form of counterfeiting because of the sophistication and planning involved in manufacturing counterfeit obligations and the public policy interest in protecting the integrity of government obligations. Similarly, an enhancement is provided for a defendant who produces, rather than merely passes, the counterfeit items.

Subsection (b)(4) implements, in a broader form, the instruction to the Commission in section 110512 of Public Law 103–322.

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 16); November 1, 1989 (amendment 115); November 1, 1995 (amendment 513); November 1, 1997 (amendment 554); November 1, 1998 (amendment 587); November 1, 2000 (amendments 595 and 605); November 1, 2001 (amendments 617 and 618); November 1, 2009 (amendment 731); November 1, 2015 (amendment 791); November 1, 2026 (amendment 838).

§2B5.2. [Deleted]

Historical Note	Section 2B5.2 (Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), effective November 1, 1987, and amended effective January 15, 1988 (amendment 17) and November 1, 1989 (amendment 116), was deleted by consolidation with §2F1.1 effective November 1, 1993 (amendment 481).

§2B5.3. Criminal Infringement of Copyright or Trademark

(a) Base Offense Level: **8**

(b) Specific Offense Characteristics

(1) If the infringement amount (A) exceeded $3,500 but did not exceed $9,000, increase by **1** level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) If the offense involved the display, performance, publication, reproduction, or distribution of a work being prepared for commercial distribution, increase by **2** levels.

(3) If the (A) offense involved the manufacture, importation, or uploading of infringing items; or (B) defendant was convicted under 17 U.S.C. §§ 1201 and 1204 for trafficking in circumvention devices, increase by **2** levels. If the resulting offense level is less than level **12**, increase to level **12.**

(4) If the offense was not committed for commercial advantage or private financial gain, decrease by **2** levels, but the resulting offense level shall be not less than level **8**.

(5) If the offense involved a drug that uses a counterfeit mark on or in connection with the drug, increase by **2** levels.

(6) 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.**

(7) If the offense involved a counterfeit military good or service the use, malfunction, or failure of which is likely to cause (A) the disclosure of classified information; (B) impairment of combat operations; or (C) other significant harm to (i) a combat operation, (ii) a member of the Armed Forces, or (iii) national security, increase by **2** levels. If the resulting offense level is less than level **14**, increase to level **14**.

Commentary

Statutory Provisions: 17 U.S.C. §§ 506(a), 1201, 1204; 18 U.S.C. §§ 2318–2320, 2511. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Circumvention devices***" are devices used to perform the activity described in 17 U.S.C. §§ 1201(a)(3)(A) and 1201(b)(2)(A).

"***Commercial advantage or private financial gain***" means the receipt, or expectation of receipt, of anything of value, including other protected works.

"***Counterfeit military good or service***" has the meaning given that term in 18 U.S.C. § 2320(f)(4).

"***Drug***" and "***counterfeit mark***" have the meaning given those terms in 18 U.S.C. § 2320(f).

"***Infringed item***" means the copyrighted or trademarked item with respect to which the crime against intellectual property was committed.

"***Infringing item***" means the item that violates the copyright or trademark laws.

"***Uploading***" means making an infringing item available on the Internet or a similar electronic bulletin board with the intent to enable other persons to (A) download or otherwise copy the infringing item; or (B) have access to the infringing item, including by storing the infringing item as an openly shared file. "Uploading" does not include merely downloading or installing an infringing item on a hard drive on a defendant's personal computer unless the infringing item is an openly shared file.

"***Work being prepared for commercial distribution***" has the meaning given that term in 17 U.S.C. § 506(a)(3).

2. **Determination of Infringement Amount.**—This note applies to the determination of the infringement amount for purposes of subsection (b)(1).

(A) **Use of Retail Value of Infringed Item.**—The infringement amount is the retail value of the infringed item, multiplied by the number of infringing items, in a case involving any of the following:

(i) The infringing item (I) is, or appears to a reasonably informed purchaser to be, identical or substantially equivalent to the infringed item; or (II) is a digital or electronic reproduction of the infringed item.

(ii) The retail price of the infringing item is not less than 75% of the retail price of the infringed item.

(iii) The retail value of the infringing item is difficult or impossible to determine without unduly complicating or prolonging the sentencing proceeding.

(iv) The offense involves the illegal interception of a satellite cable transmission in violation of 18 U.S.C. § 2511. (In a case involving such an offense, the "retail value of the infringed item" is the price the user of the transmission would have paid to lawfully receive that transmission, and the "infringed item" is the satellite transmission rather than the intercepting device.)

(v) The retail value of the infringed item provides a more accurate assessment of the pecuniary harm to the copyright or trademark owner than does the retail value of the infringing item.

(vi) The offense involves the display, performance, publication, reproduction, or distribution of a work being prepared for commercial distribution. In a case involving such an offense, the "retail value of the infringed item" is the value of that item upon its initial commercial distribution.

(vii) A case under 18 U.S.C. § 2318 or § 2320 that involves a counterfeit label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature (I) that has not been affixed to, or does not enclose or accompany a good or service; and (II) which, had it been so used, would appear to a reasonably informed purchaser to be affixed to, enclosing or accompanying an identifiable, genuine good or service. In such a case, the "infringed item" is the identifiable, genuine good or service.

(viii) A case under 17 U.S.C. §§ 1201 and 1204 in which the defendant used a circumvention device. In such an offense, the "retail value of the infringed item" is the price the user would have paid to access lawfully the copyrighted work, and the "infringed item" is the accessed work.

(B) **Use of Retail Value of Infringing Item.**—The infringement amount is the retail value of the infringing item, multiplied by the number of infringing items, in any case not covered by subdivision (A) of this Application Note, including a case involving the unlawful recording of a musical performance in violation of 18 U.S.C. § 2319A.

(C) **Retail Value Defined.**—For purposes of this Application Note, the "***retail value***" of an infringed item or an infringing item is the retail price of that item in the market in which it is sold.

(D) **Determination of Infringement Amount in Cases Involving a Variety of Infringing Items.**—In a case involving a variety of infringing items, the infringement amount is the sum of all calculations made for those items under subdivisions (A) and (B) of this Application Note. For example, if the defendant sold both counterfeit videotapes that are identical in quality to the infringed videotapes and obviously inferior counterfeit handbags, the infringement amount, for purposes of subsection (b)(1), is the sum of the infringement amount calculated with respect to the counterfeit videotapes under subdivision (A)(i) (*i.e.*, the quantity of the infringing videotapes multiplied by the retail value of the infringed videotapes) and the infringement amount calculated with respect to the counterfeit handbags under subdivision (B) (*i.e.*, the quantity of the infringing handbags multiplied by the retail value of the infringing handbags).

(E) **Indeterminate Number of Infringing Items.**—In a case in which the court cannot determine the number of infringing items, the court need only make a reasonable estimate of the infringement amount using any relevant information, including financial records.

3. **Application of Subsection (b)(7).**—In subsection (b)(7), "***other significant harm to a member of the Armed Forces***" means significant harm other than serious bodily injury or death. In a case in which the offense involved a counterfeit military good or service the use, malfunction, or failure of which is likely to cause serious bodily injury or death, subsection (b)(6)(A) (conscious or reckless risk of serious bodily injury or death) would apply.

4. **Application of §3B1.3.**—If the defendant de-encrypted or otherwise circumvented a technological security measure to gain initial access to an infringed item, an adjustment under §3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply.

Background: This guideline treats copyright and trademark violations much like theft and fraud. Similar to the sentences for theft and fraud offenses, the sentences for defendants convicted of intellectual property offenses should reflect the nature and magnitude of the pecuniary harm caused by their crimes. Accordingly, similar to the loss enhancement in the theft and fraud guideline, the infringement amount in subsection (b)(1) serves as a principal factor in determining the offense level for intellectual property offenses.

Subsection (b)(1) implements section 2(g) of the No Electronic Theft (NET) Act of 1997, Pub. L. 105–147, by using the retail value of the infringed item, multiplied by the number of infringing items, to determine the pecuniary harm for cases in which use of the retail value of the infringed item is a reasonable estimate of that harm. For cases referred to in Application Note 2(B), the Commission determined that use of the retail value of the infringed item would overstate the pecuniary harm or otherwise be inappropriate. In these types of cases, use of the retail value of the infringing item, multiplied by the number of those items, is a more reasonable estimate of the resulting pecuniary harm.

Subsection (b)(5) implements the directive to the Commission in section 717 of Public Law 112–144.

Section 2511 of title 18, United States Code, as amended by the Electronic Communications Act of 1986, prohibits the interception of satellite transmission for purposes of direct or indirect commercial advantage or private financial gain. Such violations are similar to copyright offenses and are therefore covered by this guideline.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendments 481 and 482); May 1, 2000 (amendment 590); November 1, 2000 (amendment 593); November 1, 2001 (amendment 617); October 24, 2005 (amendment 675); September 12, 2006 (amendment 682); November 1, 2006 (amendment 687); November 1, 2007 (amendment 704); November 1, 2009 (amendment 735); November 1, 2013 (amendment 773); November 1, 2015 (amendment 791); November 1, 2018 (amendment 812); November 1, 2025 (amendment 836); November 1, 2026 (amendment 838).

§2B5.4. [Deleted]

Historical Note	Section 2B5.4 (Criminal Infringement of Trademark), effective November 1, 1987, was deleted by consolidation with §2B5.3 effective November 1, 1993 (amendment 481).

* * * * *

6. MOTOR VEHICLE IDENTIFICATION NUMBERS

§2B6.1. Altering or Removing Motor Vehicle Identification Numbers, or Trafficking in Motor Vehicles or Parts with Altered or Obliterated Identification Numbers

(a) Base Offense Level: **8**

(b) Specific Offense Characteristics

(1) If the retail value of the motor vehicles or parts (A) exceeded $3,500 but did not exceed $9,000, increase by **1** level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) If the defendant was in the business of receiving and selling stolen property, increase by **2** levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 511, 553(a)(2), 2321.

Application Note:

1. The term "***increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount***," as used in subsection (b)(1), refers to the number of levels corresponding to the retail value of the motor vehicles or parts involved.

Background: The statutes covered in this guideline prohibit altering or removing motor vehicle identification numbers, importing or exporting, or trafficking in motor vehicles or parts knowing that the identification numbers have been removed, altered, tampered with, or obliterated. Violations of 18 U.S.C. § 511 carry a maximum of five years imprisonment. Violations of 18 U.S.C. §§ 553(a)(2) and 2321 carry a maximum of ten years imprisonment.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 117, 118, and 119); November 1, 1993 (amendment 482); November 1, 2001 (amendment 617); November 1, 2010 (amendment 746); November 1, 2015 (amendment 791); November 1, 2026 (amendments 837 and 838).

PART C — OFFENSES INVOLVING PUBLIC OFFICIALS AND VIOLATIONS OF FEDERAL ELECTION CAMPAIGN LAWS

Historical Note	Effective November 1, 1987. Amended effective January 25, 2003 (amendment 648). The Introductory Commentary to Part C, effective November 1, 1987, was deleted effective January 25, 2003 (amendment 648) and November 1, 2003 (amendment 656).

§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

(a) Base Offense Level:

(1) **14**, if the defendant was a public official; or

(2) **12**, otherwise.

(b) Specific Offense Characteristics

(1) If the offense involved more than one bribe or extortion, increase by **2** levels.

(2) If the value of the payment, the benefit received or to be received in return for the payment, the value of anything obtained or to be obtained by a public official or others acting with a public official, or the loss to the government from the offense, whichever is greatest, exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(3) If the offense involved an elected public official or any public official in a high-level decision-making or sensitive position, increase by **4** levels. If the resulting offense level is less than level **18**, increase to level **18**.

(4) If the defendant was a public official who facilitated (A) entry into the United States for a person, a vehicle, or cargo; (B) the obtaining of a passport or a document relating to naturalization, citizenship, legal entry, or legal resident status; or (C) the obtaining of a government identification document, increase by **2** levels.

(c) Cross References

(1) If the offense was committed for the purpose of facilitating the commission of another criminal offense, apply the offense guideline applicable to a conspiracy to commit that other offense, if the resulting offense level is greater than that determined above.

(2) If the offense was committed for the purpose of concealing, or obstructing justice in respect to, another criminal offense, apply §2X3.1 (Accessory After the Fact) or §2J1.2 (Obstruction of Justice), as appropriate, in respect to that other offense, if the resulting offense level is greater than that determined above.

(3) If the offense involved a threat of physical injury or property destruction, apply §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), if the resulting offense level is greater than that determined above.

(d) Special Instruction for Fines — Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of §8C2.4 (Base Fine), use the greatest of: (A) the value of the unlawful payment; (B) the value of the benefit received or to be received in return for the unlawful payment; or (C) the consequential damages resulting from the unlawful payment.

Commentary

Statutory Provisions: 15 U.S.C. §§ 78dd-1, 78dd-2, 78dd-3; 18 U.S.C. §§ 201(b)(1), (2), 226, 227, 371 (if conspiracy to defraud by interference with governmental functions), 872, 1341 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services of a public official), 1342 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services of a public official), 1343 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services of a public official), 1352, 1951. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Government identification document***" means a document made or issued by or under the authority of the United States Government, a State, or a political subdivision of a State, which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

"***Payment***" means anything of value. A payment need not be monetary.

"***Public official***" shall be construed broadly and includes the following:

(A) "Public official" as defined in 18 U.S.C. § 201(a)(1).

(B) A member of a state or local legislature. "State" means a State of the United States, and any commonwealth, territory, or possession of the United States.

(C) An officer or employee or person acting for or on behalf of a state or local government, or any department, agency, or branch of government thereof, in any official function, under or by authority of such department, agency, or branch of government, or a juror in a state or local trial.

(D) Any person who has been selected to be a person described in subdivisions (A), (B), or (C), either before or after such person has qualified.

(E) An individual who, although not otherwise covered by subdivisions (A) through (D): (i) is in a position of public trust with official responsibility for carrying out a government program or policy; (ii) acts under color of law or official right; or (iii) participates so substantially in government operations as to possess de facto authority to make governmental decisions (*e.g.*, which may include a leader of a state or local political party who acts in the manner described in this subdivision).

2. **More than One Bribe or Extortion.—**Subsection (b)(1) provides an adjustment for offenses involving more than one incident of either bribery or extortion. Related payments that, in essence, constitute a single incident of bribery or extortion (*e.g.*, a number of installment payments for a single action) are to be treated as a single bribe or extortion, even if charged in separate counts.

In a case involving more than one incident of bribery or extortion, the applicable amounts under subsection (b)(2) (*i.e.*, the greatest of the value of the payment, the benefit received or to be received, the value of anything obtained or to be obtained by a public official or others acting with a public official, or the loss to the government) are determined separately for each incident and then added together.

3. **Application of Subsection (b)(2).—**"***Loss***", for purposes of subsection (b)(2), shall be determined in accordance with §2B1.1 (Theft, Property Destruction, and Fraud) and Application Note 3 of the Commentary to §2B1.1. The value of "***the benefit received or to be received***" means the net value of such benefit. **Examples:** (A) A government employee, in return for a $500 bribe, reduces the price of a piece of surplus property offered for sale by the government from $10,000 to $2,000; the value of the benefit received is $8,000. (B) A $150,000 contract on which $20,000 profit was made was awarded in return for a bribe; the value of the benefit received is $20,000. Do not deduct the value of the bribe itself in computing the value of the benefit received or to be received. In the preceding examples, therefore, the value of the benefit received would be the same regardless of the value of the bribe.

4. **Application of Subsection (b)(3).—**

(A) **Definition.—**"***High-level decision-making or sensitive position***" means a position characterized by a direct authority to make decisions for, or on behalf of, a government department, agency, or other government entity, or by a substantial influence over the decision-making process.

(B) **Examples.—**Examples of a public official in a high-level decision-making position include a prosecuting attorney, a judge, an agency administrator, and any other public official with a similar level of authority. Examples of a public official who holds a sensitive position include a juror, a law enforcement officer, an election official, and any other similarly situated individual.

5. **Application of Subsection (c).**—For the purposes of determining whether to apply the cross references in this section, the "***resulting offense level***" means the final offense level (*i.e.*, the offense level determined by taking into account both the Chapter Two offense level and any applicable adjustments from Chapter Three, Parts A–E). *See* §1B1.5(d); Application Note 2 of the Commentary to §1B1.5 (Interpretation of References to Other Offense Guidelines).

6. **Inapplicability of §3B1.3.**—Do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: This section applies to a person who offers or gives a bribe for a corrupt purpose, such as inducing a public official to participate in a fraud or to influence such individual's official actions, or to a public official who solicits or accepts such a bribe.

The object and nature of a bribe may vary widely from case to case. In some cases, the object may be commercial advantage (*e.g.*, preferential treatment in the award of a government contract). In others, the object may be issuance of a license to which the recipient is not entitled. In still others, the object may be the obstruction of justice. Consequently, a guideline for the offense must be designed to cover diverse situations.

In determining the net value of the benefit received or to be received, the value of the bribe is not deducted from the gross value of such benefit; the harm is the same regardless of value of the bribe paid to receive the benefit. In a case in which the value of the bribe exceeds the value of the benefit, or in which the value of the benefit cannot be determined, the value of the bribe is used because it is likely that the payer of such a bribe expected something in return that would be worth more than the value of the bribe. Moreover, for deterrence purposes, the punishment should be commensurate with the gain to the payer or the recipient of the bribe, whichever is greater.

Under §2C1.1(b)(3), if the payment was for the purpose of influencing an official act by certain officials, the offense level is increased by 4 levels.

Under §2C1.1(c)(1), if the payment was to facilitate the commission of another criminal offense, the guideline applicable to a conspiracy to commit that other offense will apply if the result is greater than that determined above. For example, if a bribe was given to a law enforcement officer to allow the smuggling of a quantity of cocaine, the guideline for conspiracy to import cocaine would be applied if it resulted in a greater offense level.

Under §2C1.1(c)(2), if the payment was to conceal another criminal offense or obstruct justice in respect to another criminal offense, the guideline from §2X3.1 (Accessory After the Fact) or §2J1.2 (Obstruction of Justice), as appropriate, will apply if the result is greater than that determined above. For example, if a bribe was given for the purpose of concealing the offense of espionage, the guideline for accessory after the fact to espionage would be applied.

Under §2C1.1(c)(3), if the offense involved forcible extortion, the guideline from §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) will apply if the result is greater than that determined above.

Section 2C1.1 also applies to offenses under 15 U.S.C. §§ 78dd-1, 78dd-2, and 78dd-3. Such offenses generally involve a payment to a foreign public official, candidate for public office, or agent or intermediary, with the intent to influence an official act or decision of a foreign government or political party. Typically, a case prosecuted under these provisions will involve an intent to influence governmental action.

Section 2C1.1 also applies to fraud involving the deprivation of the intangible right to honest services of government officials under 18 U.S.C. §§ 1341–1343 and conspiracy to defraud by interference with governmental functions under 18 U.S.C. § 371. Such fraud offenses typically involve an improper use of government influence that harms the operation of government in a manner similar to bribery offenses.

Offenses involving attempted bribery are frequently not completed because the offense is reported to authorities or an individual involved in the offense is acting in an undercover capacity. Failure to complete the offense does not lessen the defendant's culpability in attempting to use public position for personal gain. Therefore, solicitations and attempts are treated as equivalent to the underlying offense.

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 18); November 1, 1989 (amendments 120, 121, and 122); November 1, 1991 (amendments 367 and 422); November 1, 1997 (amendment 547); November 1, 2001 (amendment 617); November 1, 2002 (amendment 639); November 1, 2003 (amendment 653); November 1, 2004 (amendment 666); November 1, 2007 (amendment 699); November 1, 2008 (amendment 720); November 1, 2010 (amendment 746); November 1, 2015 (amendment 791); November 1, 2024 (amendment 827); November 1, 2025 (amendment 836); November 1, 2026 (amendments 838 and 842).

§2C1.2. Offering, Giving, Soliciting, or Receiving a Gratuity

(a) Base Offense Level:

(1) **11**, if the defendant was a public official; or

(2) **9**, otherwise.

(b) Specific Offense Characteristics

(1) If the offense involved more than one gratuity, increase by **2** levels.

(2) If the value of the gratuity exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(3) If the offense involved an elected public official or any public official in a high-level decision-making or sensitive position, increase by **4** levels. If the resulting offense level is less than level **15**, increase to level **15**.

(4) If the defendant was a public official who facilitated (A) entry into the United States for a person, a vehicle, or cargo; (B) the obtaining of a passport or a document relating to naturalization, citizenship, legal entry, or legal resident status; or (C) the obtaining of a government identification document, increase by **2** levels.

(c) Special Instruction for Fines — Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of §8C2.4 (Base Fine), use the value of the unlawful payment.

Commentary

Statutory Provisions: 18 U.S.C. §§ 201(c)(1), 212–214, 217. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Government identification document***" means a document made or issued by or under the authority of the United States Government, a State, or a political subdivision of a State, which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

"***Public official***" shall be construed broadly and includes the following:

(A) "Public official" as defined in 18 U.S.C. § 201(a)(1).

(B) A member of a state or local legislature. "State" means a State of the United States, and any commonwealth, territory, or possession of the United States.

(C) An officer or employee or person acting for or on behalf of a state or local government, or any department, agency, or branch of government thereof, in any official function, under or by authority of such department, agency, or branch of government, or a juror.

(D) Any person who has been selected to be a person described in subdivisions (A), (B), or (C), either before or after such person has qualified.

(E) An individual who, although not otherwise covered by subdivisions (A) through (D): (i) is in a position of public trust with official responsibility for carrying out a government program or policy; (ii) acts under color of law or official right; or (iii) participates so substantially in government operations as to possess de facto authority to make governmental decisions (*e.g.*, which may include a leader of a state or local political party who acts in the manner described in this subdivision).

2. **Application of Subsection (b)(1).—**Related payments that, in essence, constitute a single gratuity (*e.g.*, separate payments for airfare and hotel for a single vacation trip) are to be treated as a single gratuity, even if charged in separate counts.

3. **Application of Subsection (b)(3).—**

(A) **Definition.—**"***High-level decision-making or sensitive position***" means a position characterized by a direct authority to make decisions for, or on behalf of, a government department, agency, or other government entity, or by a substantial influence over the decision-making process.

(B) **Examples.—**Examples of a public official in a high-level decision-making position include a prosecuting attorney, a judge, an agency administrator, a law enforcement officer, and

any other public official with a similar level of authority. Examples of a public official who holds a sensitive position include a juror, a law enforcement officer, an election official, and any other similarly situated individual.

4. **Inapplicability of §3B1.3.**—Do not apply the adjustment in §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: This section applies to the offering, giving, soliciting, or receiving of a gratuity to a public official in respect to an official act. It also applies in cases involving (1) the offer to, or acceptance by, a bank examiner of a loan or gratuity; (2) the offer or receipt of anything of value for procuring a loan or discount of commercial bank paper from a Federal Reserve Bank; and (3) the acceptance of a fee or other consideration by a federal employee for adjusting or cancelling a farm debt.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 121); November 1, 1991 (amendment 422); November 1, 1995 (amendment 534); November 1, 2001 (amendment 617); November 1, 2004 (amendment 666); November 1, 2010 (amendment 746); November 1, 2015 (amendment 791); November 1, 2026 (amendment 838).

§2C1.3. Conflict of Interest; Payment or Receipt of Unauthorized Compensation

(a) Base Offense Level: **6**

(b) Specific Offense Characteristic

(1) If the offense involved actual or planned harm to the government, increase by **4** levels.

(c) Cross Reference

(1) If the offense involved a bribe or gratuity, apply §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) or §2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), as appropriate, if the resulting offense level is greater than the offense level determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 203, 205, 207, 208, 209, 1909; 40 U.S.C. § 14309(a), (b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. **Abuse of Position of Trust.**—Do not apply the adjustment in §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1995 (amendment 534); November 1, 2001 (amendment 619); November 1, 2003 (amendment 661); November 1, 2005 (amendment 679).

§2C1.4. [Deleted]

Historical Note	Section 2C1.4 (Payment or Receipt of Unauthorized Compensation), effective November 1, 1987, and amended effective November 1, 1998 (amendment 588), was deleted by consolidation with §2C1.3 effective November 1, 2001 (amendment 619).

§2C1.5. Payments to Obtain Public Office

(a) Base Offense Level: **8**

Commentary

Statutory Provisions: 18 U.S.C. §§ 210, 211.

Application Note:

1. Do not apply the adjustment in §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: Under 18 U.S.C. § 210, it is unlawful to pay, offer, or promise anything of value to a person, firm, or corporation in consideration of procuring appointive office. Under 18 U.S.C. § 211, it is unlawful to solicit or accept anything of value in consideration of a promise of the use of influence in obtaining appointive federal office. Both offenses are misdemeanors for which the maximum term of imprisonment authorized by statute is one year.

Historical Note	Effective November 1, 1987.

§§2C1.6 – 2C1.7. [Deleted]

Historical Note	Section 2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper), effective November 1, 1987, and amended effective November 1, 2001 (amendment 617), was deleted by consolidation with §2C1.2 effective November 1, 2004 (amendment 666). Section 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions), effective November 1, 1991 (amendment 368), and amended effective November 1, 1992 (amendment 468), November 1, 1997 (amendment 547), November 1, 2001 (amendment 617), and November 1, 2003 (amendment 653), was deleted by consolidation with §2C1.1 effective November 1, 2004 (amendment 666).

§2C1.8. Making, Receiving, or Failing to Report a Contribution, Donation, or Expenditure in Violation of the Federal Election Campaign Act; Fraudulently Misrepresenting Campaign Authority; Soliciting or Receiving a Donation in Connection with an Election While on Certain Federal Property

(a) Base Offense Level: **8**

(b) Specific Offense Characteristics

(1) If the value of the illegal transactions exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) (Apply the greater) If the offense involved, directly or indirectly, an illegal transaction made by or received from—

(A) a foreign national, increase by **2** levels; or

(B) a government of a foreign country, increase by **4** levels.

(3) If (A) the offense involved the contribution, donation, solicitation, expenditure, disbursement, or receipt of governmental funds; or (B) the defendant committed the offense for the purpose of obtaining a specific, identifiable non-monetary federal benefit, increase by **2** levels.

(4) If the defendant engaged in 30 or more illegal transactions, increase by **2** levels.

(5) If the offense involved a contribution, donation, solicitation, or expenditure made or obtained through intimidation, threat of pecuniary or other harm, or coercion, increase by **4** levels.

(c) Cross Reference

(1) If the offense involved a bribe or gratuity, apply §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) or §2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), as appropriate, if the resulting offense level is greater than the offense level determined above.

Commentary

Statutory Provisions: 18 U.S.C. § 607; 52 U.S.C. §§ 30109(d), 30114, 30116, 30117, 30118, 30119, 30120, 30121, 30122, 30123, 30124(a), 30125, 30126. For additional provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Foreign national***" has the meaning given that term in section 319(b) of the Federal Election Campaign Act of 1971, 52 U.S.C. § 30121(b).

"***Government of a foreign country***" has the meaning given that term in section 1(e) of the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(e)).

"***Governmental funds***" means money, assets, or property, of the United States government, of a State government, or of a local government, including any branch, subdivision, department, agency, or other component of any such government. "State" means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa. "Local government" means the government of a political subdivision of a State.

"***Illegal transaction***" means (A) any contribution, donation, solicitation, or expenditure of money or anything of value, or any other conduct, prohibited by the Federal Election Campaign Act of 1971, 52 U.S.C. § 30101 *et seq.*; (B) any contribution, donation, solicitation, or expenditure of money or anything of value made in excess of the amount of such contribution, donation, solicitation, or expenditure that may be made under such Act; and (C) in the case of a violation of 18 U.S.C. § 607, any solicitation or receipt of money or anything of value under that section. The terms "***contribution***" and "***expenditure***" have the meaning given those terms in section 301(8) and (9) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30101(8) and (9)), respectively.

2. **Application of Subsection (b)(3)(B).**—Subsection (b)(3)(B) provides an enhancement for a defendant who commits the offense for the purpose of achieving a specific, identifiable non-monetary federal benefit that does not rise to the level of a bribe or a gratuity. Subsection (b)(3)(B) is not intended to apply to offenses under this guideline in which the defendant's only motivation for commission of the offense is generally to achieve increased visibility with, or heightened access to, public officials. Rather, subsection (b)(3)(B) is intended to apply to defendants who commit the offense to obtain a specific, identifiable non-monetary federal benefit, such as a presidential pardon or information proprietary to the government.

3. **Application of Subsection (b)(4).**—Subsection (b)(4) shall apply if the defendant engaged in any combination of 30 or more illegal transactions during the course of the offense, whether or not the illegal transactions resulted in a conviction for such conduct.

Historical Note	Effective January 25, 2003 (amendment 648). Amended effective November 1, 2003 (amendment 656); November 1, 2005 (amendment 679); November 1, 2015 (amendments 791 and 796); November 1, 2024 (amendment 831); November 1, 2025 (amendment 836); November 1, 2026 (amendment 838).