

APPENDIX A

§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

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(b) Specific Offense Characteristics

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

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Commentary

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Application Notes:

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3. Loss Under Subsection (b)(1).—This application note applies to the determination of loss under subsection (b)(1).
- (A) General Rule.—Subject to the exclusions in subdivision (D), loss is the greater of actual loss or intended loss.
- (i) Actual Loss.—"Actual loss" means the reasonably foreseeable pecuniary harm that resulted from the offense.
- (ii) Intended Loss.—"Intended loss" (I) means the pecuniary harm that was intended to result from the offense; and (II) includes intended pecuniary harm that would have been impossible or unlikely to occur (e.g., as in a government sting operation, or an insurance fraud in which the claim exceeded the insured value).
- (iii) Pecuniary Harm.—"Pecuniary harm" means harm that is monetary or that otherwise is readily measurable in money. Accordingly, pecuniary harm does not include emotional distress, harm to reputation, or other non-economic harm.

- (iv) Reasonably Foreseeable Pecuniary Harm.—For purposes of this guideline, "reasonably foreseeable pecuniary harm" means pecuniary harm that the defendant knew or, under the circumstances, reasonably should have known, was a potential result of the offense.
- (v) Rules of Construction in Certain Cases.—In the cases described in subdivisions (I) through (III), reasonably foreseeable pecuniary harm shall be considered to include the pecuniary harm specified for those cases as follows:

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

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

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

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

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

156.

167.

178.

189.

1920.

Background:

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

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18 U.S.C. § 1039	2H3.1
18 U.S.C. § 1040	2B1.1
18 U.S.C. § 1071	2X3.1

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