

APPENDIX D

§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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(11) 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.

(12) 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.

(13) * * *

(14) * * *

(C) The cumulative adjustments from application of both subsections (b)(2) and (b)(13)(B) shall not exceed 8 levels, except as provided in subdivision (D).

* * *

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

* * *

(16) * * *

~~(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

Statutory Provisions: 7 U.S.C. §§ 6, 6b, 6c, 6h, 6o, 13, 23; 15 U.S.C. §§ 50, 77e, 77q, 77x, 78j, 78ff, 80b-6, 1644, 6821; 18 U.S.C. §§ 38, 225, 285-289, 471-473, 500, 510, 553(a)(1), 641, 656, 657, 659, 662, 664, 1001-1008, 1010-1014, 1016-1022, 1025, 1026, 1028, 1029, 1030(a)(4)-(5), 1031, 1037, 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; 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:

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3. Loss Under Subsection (b)(1).—This application note applies to the determination of loss under subsection (b)(1).

* * *

~~(H) 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.~~

* * *

10. Application of Subsection (b)(172).—Subsection (b)(172) provides a minimum offense level in the case of an ongoing, sophisticated operation (e.g., an auto theft ring or "chop shop") to steal or to receive stolen (A) vehicles or vehicle parts; or (B) goods or chattels that are part of a cargo shipment. For purposes of this subsection, "vehicle" means motor vehicle, vessel, or aircraft. A "cargo shipment" includes cargo transported on a railroad car, bus, steamboat, vessel, or airplane.

11. Gross Receipts Enhancement under Subsection (b)(134)(A).—

(A) In General.—For purposes of subsection (b)(134)(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.

* * *

12. Application of Subsection (b)(134)(B).—

(A) Application of Subsection (b)(134)(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:

* * *

(B) Application of Subsection (b)(134)(B)(ii).—

* * *

13. Application of Subsection (b)(145).—

(A) Definitions.—For purposes of subsection (b)(145):

* * *

(B) Subsection (b)(145)(iii).—If the same conduct that forms the basis for an enhancement under subsection (b)(145)(iii) is the only conduct that forms the basis for an enhancement under subsection (b)(134)(B), do not apply the enhancement under subsection (b)(134)(B).

14. Application of Subsection (b)(156).—

* * *

(B) In General.—A conviction under a securities law or commodities law is not required in order for subsection (b)(156) 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)(156) applies, do not apply §3B1.3.

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

~~—Definitions.—For purposes of this subsection:~~

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

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

165. * * *

176. * * *

187.

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198.

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2019. Departure Considerations.—

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(B) Upward Departure for Debilitating Impact on a Critical Infrastructure.—An upward departure would be warranted in a case in which subsection (b)(15)(iii) applies and the disruption to the critical infrastructure(s) is so substantial as to have a debilitating impact on national security, national economic security, national public health or safety, or any combination of those matters.

* * *

(D) Downward Departure for Major Disaster or Emergency Victims.—If (i) the minimum offense level of level 12 in subsection (b)(11) applies; (ii) the defendant sustained damage, loss, hardship, or suffering caused by a major disaster or an emergency as those terms are defined in 42 U.S.C. § 5122; and (iii) the benefits received illegally were only an extension or overpayment of benefits received legitimately, a downward departure may be warranted.

Background:

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

Subsection (b)(123)(B) implements, in a broader form, the instruction to the Commission in section 110512 of Public Law 103–322.

Subsection (b)(134)(A) implements, in a broader form, the instruction to the Commission in section 2507 of Public Law 101–647.

Subsection (b)(134)(B)(i) implements, in a broader form, the instruction to the Commission in section 961(m) of Public Law 101–73.

Subsection (b)(145) implements the directive in section 225(b) of Public Law 107–296. The minimum offense level of level 24 provided in subsection (b)(145)(B) for an offense that resulted in a substantial disruption of a critical infrastructure reflects the serious impact such an offense could have on national security, national economic security, national public health or safety, or a combination of any of these matters.

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

APPENDIX A - STATUTORY INDEX

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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