

**Application Rates for §2B1.1
Fiscal Year 2012**

§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 States¹

(a) Base Offense Level:

39.2% (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

60.8% (2) **6**, otherwise.

(b) Specific Offense Characteristics

(1) If the loss exceeded \$5,000, increase the offense level as follows:

	<u>Loss (Apply the Greatest)</u>	<u>Increase in Level</u>
14.7%	(A) \$5,000 or less	no increase
4.5%	(B) More than \$5,000	add 2
13.7%	(C) More than \$10,000	add 4
12.6%	(D) More than \$30,000	add 6
8.5%	(E) More than \$70,000	add 8
8.2%	(F) More than \$120,000	add 10
9.5%	(G) More than \$200,000	add 12
11.5%	(H) More than \$400,000	add 14
8.6%	(I) More than \$1,000,000	add 16
5.0%	(J) More than \$2,500,000	add 18
2.0%	(K) More than \$7,000,000	add 20
0.8%	(L) More than \$20,000,000	add 22
0.5%	(M) More than \$50,000,000	add 24

¹ SOURCE: U. S. Sentencing Commission 2012 Datafile, USSCFY2012. The FY2012 datafile consists of cases sentenced and received at the Commission between October 1, 2011 and September 30, 2012; therefore the latest *Guidelines Manual* referenced for these cases was effective November 1, 2011. Of the 84,173 cases in the fiscal year 2012 datafile, 9,678 were excluded due to incomplete guideline application information. Of the 74,495 remaining cases, 65,985 were excluded that were not sentenced under §2B1.1. Of the remaining 8,510 cases sentenced under §2B1.1, three were excluded that were sentenced using a *Guidelines Manual* in effect prior to November 1, 2001 or for other logical criteria. Cases sentenced using a *Guidelines Manual* in effect prior to the promulgation of a specific offense characteristic were excluded from the calculation of the percentage for that specific offense characteristic.

0.02%	(N)	More than \$100,000,000	add 26
0.04%	(O)	More than \$200,000,000	add 28
0.1%	(P)	More than \$400,000,000	add 30 .

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

13.2% (A) (i) involved 10 or more victims; or (ii) was committed through mass-marketing, increase by **2** levels;

6.1% (B) involved 50 or more victims, increase by **4** levels; or

3.5% (C) involved 250 or more victims, increase by **6** levels.

0.3% (3) If the offense involved a theft from the person of another, increase by **2** levels.

1.0% (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.

0.04% (5) If the offense involved misappropriation of a trade secret and the defendant knew or intended that the offense would benefit a foreign government, foreign instrumentality, or foreign agent, increase by **2** levels.

0.0% (6) 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.

0.1% (7) 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.

0.1% (8) 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.

- 3.0%** (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**.
- 12.7%** (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, increase by **2** levels. If the resulting offense level is less than level **12**, increase to level **12**.
- 11.8%** (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**.
- 0.3%** (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**.
- 0.9%** (13) 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**.
- 0.6%** (14) 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**.

- (15) (Apply the greater) If–
- 1.4%** (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
 - 0.3%** (B) the offense (i) substantially jeopardized the safety and soundness of a financial institution; (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; or (iii) substantially endangered the solvency or financial security of 100 or more victims, increase by **4** levels.
 - (C) The cumulative adjustments from application of both subsections (b)(2) and (b)(15)(B) shall not exceed **8** levels, except as provided in subdivision (D).
 - 0.01%** (D) If the resulting offense level determined under subdivision (A) or (B) is less than level **24**, increase to level **24**.
- 0.3%** (16) 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.
- (17) (A) (Apply the greatest) If the defendant was convicted of an offense under:
- 0.1%** (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.
 - 0.2%** (ii) 18 U.S.C. § 1030(a)(5)(A), increase by **4** levels.

- 0.0%** (iii) 18 U.S.C. § 1030, and the offense caused a substantial disruption of a critical infrastructure, increase by **6** levels.
- 0.0%** (B) If subdivision (A)(iii) applies, and the offense level is less than level **24**, increase to level **24**.
- 0.8%** (18) 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.