



# Restitution



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# Main Statutes on Restitution (USSG §5E1.1)

- 18 U.S.C. § 3663A (Mandatory Victim Restitution Act)
- 18 U.S.C. § 3663 (Discretionary Restitution)
- 18 U.S.C. § 3664 (Procedures)
- 18 U.S.C. § 2259 (Mandatory Restitution in Sex Offenses)
- 18 U.S.C. 3583(e) (Condition of Supervised release)



# General Principles

- Loss for the guidelines is not the same as restitution.
- Restitution does not include relevant conduct
- The purpose of restitution is to make the victim whole
- A victim is one who was directly and proximately harmed by the offense of conviction, and may include the government



# General Principles

- The parties may agree to more restitution in a plea agreement, which must be specifically worded
- Restitution may be ordered as a condition of SR
- 18 U.S.C. § 3664(d)(5) contains a 90-day deadline for ordering restitution
- Court may take longer than 90 days to determine the amount of restitution



## Amount of Restitution / Offsets

- The defendant's inability to pay is irrelevant to the restitution amount.
- The Court sets the payment plan
- In the case of jointly undertaken criminal activity, the Court may apportion restitution or deem defendants jointly and severally liable.



## Amount of Restitution / Offsets

- Only forfeited amounts turned over to the victim can offset the restitution amount
- Restitution may be offset by the value of the services provided, or by the value of property returned to victim
- In sex trafficking cases, gain to the defendant may be used to determine the amount of restitution



# Common Restitution Pitfalls

1. Insufficient factual finding
2. Including losses outside the offense of conviction. Generally, court cannot rely on relevant conduct to determine restitution (exception for scheme, conspiracy, or pattern charged as such)
3. Conspiracy liability and restitution



# Common Restitution Pitfalls

4. Awarding restitution to “non-victims”
5. Not setting payment schedule
6. Offsets for restitution award

