

GUIDELINE SCENARIOS – ECONOMIC CRIMES

For the following scenarios, assume that the defendants were over 18 years old when they committed the offenses, and that they all accepted responsibility for their offenses. Additionally, use the information in Appendix A to answer the questions regarding the scenarios:

Scenario #1

Defendant convicted of 18 U.S.C. § 371 (Conspiracy) to commit a violation of 18 U.S.C. § 1343 (Wire Fraud). Per Appendix A, the applicable guideline for § 371 is §2X1.1 which references to §2B1.1. The statutory maximum for § 371 is 5 years; the statutory maximum for § 1343 is 20 years. Which base offense level (BOL) applies at §2B1.1(a)?

Scenario #2

Defendant convicted of 18 U.S.C. § 1343 (Wire Fraud) which carries a 20-year statutory maximum; applicable guideline §2B1.1. Defendant was involved in a ponzi scheme in which he received funds and investments from the wire fraud scheme. Which base offense level (BOL) applies at §2B1.1(a)?

Scenario #3

Defendant convicted of 18 U.S.C. § 1956 (Money Laundering) which carries a 20-year statutory maximum; applicable guideline §2S1.1. Defendant was involved in a wire fraud scheme and was laundering proceeds from the wire fraud scheme §2S1.1(a)(1) directs the use of the offense level for the underlying offense from which the laundered funds were derived. Which base offense level (BOL) applies at §2B1.1(a)?

Scenario #4

Defendant convicted of 18 U.S.C. § 371 - Conspiracy to Commit Mail Fraud. Over the course of several years, the defendant used her expertise at the Minnesota Department of Revenue to create false refunds for family members using false names and fictitious businesses. Using multiple schemes, the defendant embezzlement \$1.9 million from the state of Minnesota. However, a search of bank records revealed approximately \$500,000 in a savings account.

Scenario #5

Defendant convicted of 18 U.S.C. § 371 - Conspiracy to Commit Mail Fraud. Over the course of several years, the defendant used her expertise at the Minnesota Department of Revenue to create false refunds for family members using false names and fictitious businesses. Using multiple schemes, the defendant defrauded the state of Minnesota of \$1.9 million. However, a closer analysis of her multiple false refund schemes, investigators learned she had applied for more than \$4 million in refunds.

Scenario #6

Defendant orchestrated a fraudulent scheme in which he purported to turn coal byproducts into natural gas. Over the course of several years, the defendant raised approximately \$57 million from more than 3,000 investors. Government records reveal approximately \$30 million was used by the defendant in

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pursuit of his natural gas technology. However, the defendant reported he only earned \$3.4 million from his failed enterprise. The technology never worked and the defendant was arrested and convicted of multiple counts of Mail Fraud, Wire Fraud, and Tax Evasion. What is the loss amount?

Scenario #7

Same facts as #6. In addition, numerous victims submitted victim impact statements that included additional losses stemming from unpaid interest, embarrassment, and added stress due to their now precarious financial predicament. Can these additional losses be included in the total loss determination?

Scenario #8

Could you have a mortgage fraud case with \$0 loss determination?

Scenario #9 and #10

Defendant is a medical equipment company owner. Convicted on multiple counts of health care fraud and conspiracy. Indictment stated defendant submitted \$350,000 in fraudulent bills for power wheelchairs from July 2013 through July 2015. Defendant has records indicating \$200,000 of the \$350,000 billed was for legitimate services/wheelchairs. PSR also noted defendant submitted additional \$150,000 in fraudulent healthcare bills in 2012.

Scenario #11

Defendant is convicted of Mail and Wire Fraud. Defendant defrauded customers of a travel agency and airlines through a scheme in which he collected payment for airline reservations that he canceled without his customers' knowledge. Because the customers had paper tickets in hand, many were not aware the tickets were void until they arrived at the airport. In some instances, customers were forced to purchase last-minute replacement tickets or forego their travel. In others, the airlines allowed the customers to travel on the voided tickets and received no compensation. All told, approximately 372 customers lost money through the City Travel scheme: five lost more than \$7,000 apiece, 14 lost over \$5,000, and 172 lost more than \$1,000.

Scenario #12

Defendant is convicted of Identify Theft. The defendant stole names, Social Security numbers and security clearance levels of roughly 400 members of his former Army unit and sold the information of 98 people to others so they could create false IDs for militia members in case they "ever wanted to disappear and become someone else." The defendant believed he was selling the information to Utah-based militia members, but in reality, they were really undercover FBI agents. Would the defendant be subject to an increase for number of victims?

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Scenario #13

Defendant convicted of bank fraud under 18 U.S.C. § 1344. Defendant used forged checks and a stolen identity to attempt bank fraud. In the process, he also used several phishing e-mails to gather information including on-line e-mail addresses and passwords, which then allowed him greater access to additional accounts with which he could access and continue to perpetrate his scheme. Should the defendant receive an enhancement for sophisticated means?

Scenario #14

Defendant possessed 425 credit card numbers. However, he only sent 267 of those cards to a co-defendant to reencode the stolen credit card information onto professional looking counterfeit credit cards. What is the loss?

Scenario #15

Defendant pled guilty to Securities Fraud (§2B1.1) and Tax Evasion (2T1.1). The defendant was an investment advisor and over the course of 4 years, the defendant used \$41 million of investor money for his own personal use. He then also failed to report all of his income to the IRS, resulting in an outstanding tax obligation of \$75,000.

Scenario 16, 17, and 18

Defendant, an investment advisor, defrauded a developmentally disabled woman. The defendant had been the investment advisor of the woman's father, and was introduced to the victim as "the person she could trust to manage her money after her father would no longer be able to do so." After the father passed away, the victim inherited her father's assets and the estate's executor spoke with the defendant several times about the importance of ensuring that her funds last as long as possible. Over the next two years, the defendant took nearly all the victim's money. He sold the holdings in the IRA account that was worth \$164,000 and convinced the victim to write checks to him to invest in various ventures. He caused the victim to sell her condo and convinced her to move into a much smaller apartment in a more dangerous neighborhood. The defendant pled guilty to mail fraud, wire fraud, and money laundering and was sentenced to sixty months' imprisonment and restitution.

At sentencing, the court determined the loss at §2B1.1 was \$575,000, based on the money stolen and various checks he cashed, which also included \$24,000 in early distribution tax penalties, \$1,000 in wire transfer fees and real estate fees of \$5,000 in the loss calculation. The court included a +14 level increase for loss exceeding \$550,000 and then also ordered restitution in the same amount of \$575,000. Was the court's loss ruling correct? Why or why not?