

(I) The organization became insolvent or suffered a substantial reduction in the value of its assets.

(II) The organization filed for bankruptcy under Chapters 7, 11, or 13 of the Bankruptcy Code (title 11, United States Code).

(III) The organization suffered a substantial reduction in the value of its equity securities or the value of its employee retirement accounts.

(IV) The organization substantially reduced its workforce.

(V) The organization substantially reduced its employee pension benefits.

(VI) The liquidity of the equity securities of a publicly traded company was substantially endangered. For example, the company was delisted from its primary listing exchange, or trading of the company's securities was halted for more than one full trading day.

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

(A) Definition.—For purposes of this subsection, ‘securities law’ (i) means 18 U.S.C. 1348, 1350, and the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)); and (ii) includes the rules, regulations, and orders issued by the Securities and Exchange Commission pursuant to the provisions of law referred to in such section.

(B) In General.—A conviction under a securities law is not required in order for subsection (b)(13) 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. 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)(13) applies, do not apply § 3B1.3.”

The Commentary to § 2B1.1 captioned “Application Notes” is amended in Note 16, as redesignated by this amendment, by striking subdivision (v); and by redesignating subdivisions (vi) and (vii) as subdivisions (v) and (vi), respectively.

The Commentary to § 2B1.1 captioned “Background” is amended in the last paragraph by inserting “(i)” after “(B)”.

Section 2E5.3 is amended in the heading by adding at the end;

“Destruction and Failure to Maintain Corporate Audit Records”.

Section 2E5.3(a)(2) is amended to read as follows:

“(2) If the offense was committed to facilitate or conceal (A) an offense involving a theft, a fraud, or an embezzlement; (B) an offense involving a bribe or a gratuity; or (C) an obstruction of justice offense, apply § 2B1.1 (Theft, Property Destruction, and Fraud), § 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations), or § 2J1.2 (Obstruction of Justice), as applicable.”.

The Commentary to § 2E5.3 captioned “Statutory Provisions” is amended by inserting “§” before “1027”; and by inserting “, 1520” after “1027”.

Section 2J1.2(a) is amended by striking “12” and inserting “14”.

Section 2J1.2(b) is amended by adding at the end the following:

“(3) If the offense (A) involved the destruction, alteration, or fabrication of a substantial number of records, documents, or tangible objects; (B) involved the selection of any essential or especially probative record, document, or tangible object, to destroy or alter; or (C) was otherwise extensive in scope, planning, or preparation, increase by 2 levels.”.

The Commentary to § 2J1.2 captioned “Statutory Provisions” is amended by inserting “, 1519” after “1516”.

Section 2T4.1 is amended in the table by striking the period and adding at the end the following:

“(O) More than \$200,000,000 34
“(P) More than \$400,000,000 36.”.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1347 the following new lines:

“18 U.S.C. 1348 2B1.1
18 U.S.C. 1349 2X1.1
18 U.S.C. 1350 2B1.1”.

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. 1512(c) by striking “(c)” and inserting “(d)”.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1512(b) the following new line:

“18 U.S.C. 1512(c) 2J1.2”.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1518 the following new lines:

“18 U.S.C. 1519 2J1.2
18 U.S.C. 1520 2E5.3”.

Issues for Comment: Corporate Fraud

1. On January 8, 2003, the Commission promulgated a temporary, emergency amendment in response to directives contained in the Sarbanes-Oxley Act of 2002. The Commission specified an effective date of January 25, 2003, for the amendment. The amendment will remain in effect until the Commission repromulgates the emergency amendment as a permanent amendment under the Commission's general promulgation authority at 28 U.S.C. 994(p).

(A) As part of that emergency amendment, the Commission expanded the loss table in § 2B1.1(b)(1). The amendment provided two additional levels to the table; an increase of 28 levels for offenses in which the loss exceeded \$200,000,000 and an increase of 30 levels for offenses in which the loss exceeded \$400,000,000. The Commission requests comment regarding whether, when it repromulgates the emergency amendment as a permanent amendment, the loss table should be modified more extensively to provide increased offenses levels for offenses involving lower loss amounts. The Commission requests comment specifically on the following three options and invites public comment on any other alternative loss table:

Section § 2B1.1(b)(1) is amended to read as follows:

Option A:

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

Loss (apply the greatest)	Increase in level
(A) \$5,000 or less	no increase
(B) More than \$5,000	add 2
(C) More than \$10,000	add 4
(D) More than \$25,000	add 6
(E) More than \$60,000	add 8
(F) More than \$100,000	add 10
(G) More than \$200,000	add 12
(H) More than \$400,000	add 14
(I) More than \$700,000	add 16
(J) More than \$1,000,000	add 18
(K) More than \$2,500,000	add 20
(L) More than \$7,000,000	add 22
(M) More than \$20,000,000 ...	add 24
(N) More than \$50,000,000 ...	add 26
(O) More than \$100,000,000 ..	add 28
(P) More than \$200,000,000 ..	add 30.”.

Option B:

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

Loss (apply the greatest)	Increase in level
(A) \$5,000 or less	no increase
(B) More than \$5,000	add 2
(C) More than \$10,000	add 4