

§2S1.1

3. Application of Subsection (a)(2).—

- (A) **In General.**—Subsection (a)(2) applies to any case in which (i) the defendant did not commit the underlying offense; or (ii) the defendant committed the underlying offense (or would be accountable for the underlying offense under §1B1.3(a)(1)(A)), but the offense level for the underlying offense is impossible or impracticable to determine.
- (B) **Commingled Funds.**—In a case in which a transaction, financial transaction, monetary transaction, transportation, transfer, or transmission results in the commingling of legitimately derived funds with criminally derived funds, the value of the laundered funds, for purposes of subsection (a)(2), is the amount of the criminally derived funds, not the total amount of the commingled funds, if the defendant provides sufficient information to determine the amount of criminally derived funds without unduly complicating or prolonging the sentencing process. If the amount of the criminally derived funds is difficult or impracticable to determine, the value of the laundered funds, for purposes of subsection (a)(2), is the total amount of the commingled funds.
- (C) **Non-Applicability of Enhancement.**—Subsection (b)(2)(B) shall not apply if the defendant was convicted of a conspiracy under 18 U.S.C. § 1956(h) and the sole object of that conspiracy was to commit an offense set forth in 18 U.S.C. § 1957.

4. Enhancement for Business of Laundering Funds.—

- (A) **In General.**—The court shall consider the totality of the circumstances to determine whether a defendant who did not commit the underlying offense was in the business of laundering funds, for purposes of subsection (b)(2)(C).
- (B) **Factors to Consider.**—The following is a non-exhaustive list of factors that may indicate the defendant was in the business of laundering funds for purposes of subsection (b)(2)(C):
 - (i) The defendant regularly engaged in laundering funds.
 - (ii) The defendant engaged in laundering funds during an extended period of time.
 - (iii) The defendant engaged in laundering funds from multiple sources.
 - (iv) The defendant generated a substantial amount of revenue in return for laundering funds.
 - (v) At the time the defendant committed the instant offense, the defendant had one or more prior convictions for an offense under 18 U.S.C. § 1956 or § 1957, or under 31 U.S.C. § 5313, § 5314, § 5316, § 5324 or § 5326, or any similar offense under state law, or an attempt or conspiracy to commit any such federal or state offense. A conviction taken into account under subsection (b)(2)(C) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).
 - (vi) During the course of an undercover government investigation, the defendant made statements that the defendant engaged in any of the conduct described in clauses (i) through (iv).
- 5. (A) **Sophisticated Laundering under Subsection (b)(3).**—For purposes of subsection (b)(3), “*sophisticated laundering*” means complex or intricate offense conduct pertaining to the execution or concealment of the 18 U.S.C. § 1956 offense.