

15.35 Wire Fraud (18 U.S.C. § 1343)

The defendant is charged in [Count _____ of] the indictment with wire fraud in violation of Section 1343 of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly [participated in] [devised] [intended to devise] a scheme or plan to defraud for the purpose of obtaining money or property by means of false or fraudulent pretenses, representations, or promises [, or omitted facts.] [Deceitful statements of half-truths may constitute false or fraudulent representations];

Second, the statements made [or facts omitted] as part of the scheme were material; that is, they had a natural tendency to influence, or were capable of influencing, a person to part with money or property;

Third, the defendant acted with the intent to defraud, that is, the intent to deceive and cheat; and

Fourth, the defendant used, or caused to be used, an interstate [or foreign] wire communication to carry out or attempt to carry out an essential part of the scheme.

In determining whether a scheme to defraud exists, you may consider not only the defendant's words and statements but also the circumstances in which they are used as a whole.

[To convict the defendant of wire fraud based on omission[s] of material fact[s], you must find that the defendant had a duty to disclose the omitted fact[s] arising out of a relationship of trust. That duty can arise either out of a formal fiduciary relationship, or an informal, trusting relationship in which one party acts for the benefit of another and induces the trusting party to relax the care and vigilance that it would ordinarily exercise.]

A wiring is caused when one knows that a wire will be used in the ordinary course of business or when one can reasonably foresee such use.

[To convict [a] defendant[s] of wire fraud based on a scheme to induce a victim to enter a bargain, the false or fraudulent pretenses, representations, or promises[, or omitted facts] must directly or indirectly deceive the victim about the nature of the bargain. A misrepresentation will go to the nature of the bargain if it goes to price or quality, or otherwise to essential aspects of the transaction. [Whether a misrepresentation goes to the nature of the bargain may depend on the specific transaction at issue.]]

[A half-truth is a representation that states the truth only so far as it goes, while omitting critical qualifying information.]

[An oral or written statement is material if it has a natural tendency to influence, or was capable of influencing, a person to part with money or property. Neither proof of reliance on a false statement nor actual harm is needed to show materiality.]

It need not have been reasonably foreseeable to the defendant that the wire communication would be interstate [or foreign] in nature. Rather, it must have been reasonably foreseeable to the defendant that some wire communication would occur in furtherance of the scheme, and an interstate [or foreign] wire communication must have actually occurred in furtherance of the scheme.

Comment

See Comment to Instruction 15.32 (Mail Fraud—Scheme to Defraud or to Obtain Money or Property by False Promises). For cases involving wire fraud by deprivation of honest services, see Instruction 15.34 (Mail Fraud—Scheme to Defraud—Deprivation of Intangible Right of Honest Services).

In *Ciminelli v. United States*, 598 U.S. 306, 308-09 (2023), the Supreme Court held that a jury was improperly instructed that the term “property” in 18 U.S.C. § 1343 “includes intangible interests such as the right to control the use of one’s assets” because “the federal fraud statutes criminalize only schemes to deprive people of traditional property interests.” The Court explained that despite the inclusion of the term “or” in the phrase “or for obtaining money or property,” the Court has “consistently understood the ‘money or property’ requirement to limit the ‘scheme or artifice to defraud’ element because the ‘common understanding’ of the words ‘to defraud’ when the statute was enacted referred ‘to wrongdoing one in his property rights.’” *Id.* at 312 (quoting *Cleveland v. United States*, 531 U.S. 12, 19 (2000)). “Accordingly, the Government must prove not only that wire fraud defendants ‘engaged in deception,’ but also that money or property was ‘an object of their fraud.’” *Id.*

The validity of this instruction was initially confirmed in *United States v. Holden*, 908 F.3d 395, 399-401 (9th Cir. 2018), *as amended on denial of reh’g* (9th Cir. 2018). However, in *United States v. Miller*, 953 F.3d 1095, 1101-03 (9th Cir. 2020), the Ninth Circuit expressly considered this instruction and held that wire fraud requires the intent to “deceive *and* cheat,” thereby overruling prior holdings approving the “deceive *or* cheat” language in light of the Supreme Court’s decision in *Shaw v. United States*, 580 U.S. 63, 71-72 (2016). *Miller*, 953 F.3d at 1102. *Miller* reasoned that “to be guilty of wire fraud, a defendant must act with the intent not only to make false statements or utilize other forms of deception, but also to deprive a victim of money or property by means of those deceptions. In other words, a defendant must intend to deceive *and* cheat.” *Id.* at 1101. *Miller* does not disturb *Holden*’s ruling that although the mail and wire fraud statutes expressly punish only those who “devise . . . or intend . . . to devise” a fraudulent scheme, those who “participate in” such a scheme also fall within the statute’s ambit. *Holden*, 908 F.3d at 399-401. *Miller* also left unchanged the precedent that intent to repay “is not a defense to wire fraud.” *Miller*, 953 F.3d at 1103.

In *United States v. Jesenik*, 152 F.4th 924, 940-43 (9th Cir. 2025), the Ninth Circuit affirmed the accuracy of the half-truths and materiality Instructions. “False statements can include ‘misleading half-truths,’ representations that are partly true but misleading ‘because of [the defendant’s] failure to state additional or qualifying matter.’” *Id.* at 938 (alteration in original) (internal citations omitted) (quoting *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 188 (2016)). “A half-truth is a representation that states the truth only so far as it goes, while omitting critical qualifying information.” *Id.* at 940. For cases involving an investor or investment advisor, consider adding the following to a materiality instruction:

It is not a defense to a charge of mail or wire fraud or a charge of conspiracy to commit mail or wire fraud that an investor or registered investment advisor may have been gullible, careless, naive, or negligent or even that an investor or registered investment advisor intentionally disregarded information.

Id. at 944-45.

A defendant who “intentionally [lies] to induce a victim into a transaction that will cost her money or property,” even if the defendant did not seek to hurt the victim’s bottom line, violates the wire fraud statute. *Kousisis v. United States*, 145 S. Ct. 1382, 1398 (2025) (concluding that the government’s fraudulent-inducement theory is consistent with the text of § 1343 and the Court’s precedent interpreting it). That is, a defendant violates § 1343 “whenever he uses a material misstatement to trick a victim into a contract that requires handing over her money or property—regardless of whether the fraudster, who often provides something in return, seeks to cause the victim *net* pecuniary loss.” *Id.* at 1388.

A defendant acts with the intent to *deceive* when he “make[s] false statements or utilize[s] other forms of deception[.]” *Miller*, 953 F.3d at 1101. A defendant acts with the intent to *cheat* when he engages in “a scheme or artifice to defraud or obtain money or property” and “deprive[s] a victim of money or property” thereby “cheat[ing] someone out of something valuable.” *Id.*

In clarifying the distinction between “deceive” and “cheat,” *Miller* cites *United States v. Walters*, 997 F.2d 1219 (7th Cir. 1993). In *Walters*, the court reviewed the conviction for mail fraud of a sports agent who had defrauded the NCAA, not by stealing its property, but by inducing college athletes to sign secret representation contracts in violation of the Association’s rules. *Walters*, 997 F.2d at 1221. Finding that the agent had deceived, but not cheated, his victim, the Seventh Circuit reversed the agent’s conviction, holding that the statute requires “a scheme to obtain money or other property from the victim,” and that while a deprivation of money or property is a necessary condition of mail fraud, “[l]osses that occur as byproducts of a deceitful scheme do not satisfy the statutory requirement.” *Id.* at 1227.

The only difference between mail fraud and wire fraud is that the former involves the use of the mails and the latter involves the use of wire, radio, or television communication in interstate or foreign commerce. Much of the language of this instruction comes from the instructions approved in *United States v. Jinian*, 712 F.3d 1255, 1265-67 (9th Cir. 2013).

As with mail fraud, materiality is an essential element of the crime of wire fraud. *Neder v. United States*, 527 U.S. 1 (1999); *United States v. Milovanovic*, 678 F.3d 713, 726-27 (9th Cir. 2012) (en banc).

For cases involving a scheme to induce a victim to enter a bargain, in order for a misrepresentation to constitute fraud, the misrepresentation “must . . . go to the nature of the bargain.” *United States v. Milheiser*, 98 F.4th 935, 938, 944-45 (9th Cir. 2024) (“The nature of the bargain requirement properly excludes from liability cases in which a defendant’s misrepresentations about collateral matters may have led to the transaction but the buyer still got the product that she expected at the price she expected.”).

For a case involving wire fraud that “affects a financial institution” within the meaning of 18 U.S.C. § 1343, see *United States v. Stargell*, 738 F.3d 1018, 1022-23 (9th Cir. 2013) (defining term “affects”).

For cases involving the failure to disclose material information, see *United States v. Shields*, 844 F.3d 819, 822-23 (9th Cir. 2016); *Milovanovic*, 678 F.3d 723-24.

For a definition of “fiduciary” duty, see Instruction 15.34 (Mail Fraud—Scheme to Defraud—Deprivation of Intangible Right to Honest Services).

Cases Involving Mortgage Fraud. In prosecutions for mortgage fraud under this statute, lender negligence in verifying loan application information, or even intentional disregard of the information, is not a defense to fraud, and so evidence of such negligence or intentional disregard is inadmissible as a defense against charges of mortgage fraud. See *United States v. Lindsey*, 850 F.3d 1009, 1015 (9th Cir. 2017). Also, when a lender requests specific information in its loan applications, that information is objectively material as a matter of law, regardless of the lenders’ policies or practices with respect to use of that information. *Id.* at 1015. Evidence of general lending standards in the mortgage industry, however, is admissible to disprove materiality. “This difference matters because materiality measures natural capacity to influence, not whether the statement actually influenced any decision.” *Id.* at 1016.

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