

The Commission now seeks comment on a proposed permanent amendment to implement the Act. The most pertinent provision for the Commission is section 314, which states:

“(a) IN GENERAL.—The United States Sentencing Commission shall—

(1) promulgate a guideline, or amend an existing guideline under section 994 of title 28, United States Code, in accordance with paragraph (2), for penalties for violations of the Federal Campaign Act of 1971 and related election laws; and

(2) submit to Congress an explanation of any guidelines promulgated under paragraph (1) and any legislative or administrative recommendations regarding enforcement of the Federal Campaign Act of 1971 and related election laws.

(b) CONSIDERATIONS.—The Commission shall provide guidelines under subsection (a) taking into account the following considerations:

(1) Ensure that the sentencing guidelines and policy statements reflect the serious nature of such violations and the need for aggressive and appropriate law enforcement action to prevent such violations.

(2) Provide a sentencing enhancement for any person convicted of such violation if such violation involves—

(A) a contribution, donation, or expenditure from a foreign source;

(B) a large number of illegal transactions;

(C) a large aggregate amount of illegal contributions, donations, or expenditures;

(D) the receipt or disbursement of governmental funds; and

(E) an intent to achieve a benefit from the Federal Government.

(3) Assure reasonable consistency with other relevant directives and guidelines of the Commission.

(4) Account for aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements.

(5) Assure the guidelines adequately meet the purposes of sentencing under section 3553(a)(2) of title 18, United States Code.”.

Since section 314 directed the Commission to provide a guideline for violations of the Federal Election Campaign Act of 1971 (the “FECA”) and related elections laws, examination of the FECA’s criminal penalty provisions (and related criminal penalty provisions) is necessary. Section 309(d)(1) of the FECA sets forth the Act’s criminal penalty provisions as follows:

(1) Violations of the FECA as Penalized Under Section 309(d)(1)(A)

Section 309(d)(1)(A) is the main penalty provision of the FECA (2 U.S.C. 437g(d)(1)(A)). As amended by section 312 of the Act, it states that “[a]ny person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation, or expenditure (i) aggregating \$25,000 or more during a calendar year shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both; or (ii) aggregating \$2,000 or more (but less than \$25,000) during a calendar year shall be fined under such title, imprisoned for not more than 1 year, or both.”. (Before amendment by the Act, section 309(d)(1)(A) of the FECA provided for a maximum term of imprisonment of one year, or a fine, or both.)

The major violations of the FECA to which section 309(d)(1)(A) applies are:

(A) The Ban on Soft Money

Section 323 of the FECA (2 U.S.C. 441i) prohibits national political party committees (including senatorial and congressional campaign committees) from accepting soft money from any person (including an individual) after November 6, 2002.

(B) Restrictions on Hard Money Contributions

The FECA limits the amount of hard money that may be contributed to a Federal campaign. The FECA limits the amount of hard money that persons other than multicandidate political committees may contribute as follows:

(i) The contribution to a candidate for Federal office may not exceed \$2,000 per election. (The limit used to be \$1,000; *see* section 315(a)(1)(A) of the FECA, as amended by section 307(a)(1) of the Act.)

(ii) The contribution to a national party committee may not exceed \$25,000 per calendar year. (The limit used to be \$20,000; *see* section 315(a)(1)(B) of the FECA, as amended by section 307(a)(2) of the Act.)

(iii) The contribution to any other political committee, including a political action committee (PAC), may not exceed \$5,000 per calendar year. (No change in the former law; *see* section 315(a)(1)(C) of the FECA.)

(iv) The contribution to a State or local political party may not exceed \$10,000 per calendar year. (The limit used to be \$5,000; *see* section 315(a)(1)(D) of the FECA, as amended by section 102(3) of the Act.)

The FECA limits the amount of hard money that multicandidate political committees may contribute as follows:

(i) The contribution to a candidate for Federal office may not exceed \$5,000 per election. (*See* section 315(a)(2)(A) of the FECA.)

(ii) The contribution to a national party committee may not exceed \$15,000 per calendar year. (*See* section 315(a)(2)(B) of the FECA.)

(iii) The contribution to any other political committee, including a political action committee (PAC), may not exceed \$5,000 per calendar year. (No change in the former law; *see* section 315(a)(2)(C) of the FECA.)

(iv) The contribution to a State or local political party may not exceed \$5,000 per calendar year. (*See* section 315(a)(2)(C) of the FECA.)

(C) The Ban on Contributions and Donations by Foreign Nationals

Section 319 of the FECA (2 U.S.C. 441e) makes it “unlawful for (1) a foreign national, directly or indirectly, to make (A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election; (B) a contribution or donation to a committee of a political party; or (C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 304(f)(3)); or (2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.”.

“Foreign national” is broadly defined to mean (1) a foreign principal, as defined in the Foreign Agent Registration Act of 1938 (22 U.S.C. 611(b)); or (2) an individual who is not a citizen or national of the United States or who is not lawfully admitted for permanent residence. The term “foreign principal” includes foreign governments and corporations.

(D) Restrictions on Electioneering Communications

Section 304(f) of the FECA, as added by section 201 of the Act, requires any person who makes a disbursement for the direct costs of producing and airing electioneering communications exceeding \$10,000 in a calendar year to file a disclosure statement to the Federal Election Commission.

Section 316 of the FECA (2 U.S.C. 441b) makes it unlawful for any national bank, a corporation organized by authority of any Federal law, or any labor union to make a contribution or