

expenditure in connection with any federal election to any federal political office, or a disbursement, using non-PAC money, for an "electioneering communication".

An electioneering communication is any broadcast, cable, or satellite communication which (A) refers to a clearly identified candidate for Federal office; (B) is made within 60 days before a general election or 30 days before a primary election. The communication must be targeted to the pertinent electorate. See 2 U.S.C. 434(f)(3)(C).

#### (2) Violations of Section 316(b)

Section 309(d)(1)(B) of the FECA states that "[i]n the case of a knowing and willful violation of section 316(b)(3), the penalties set forth in this subsection shall apply to a violation involving an amount aggregating \$250 or more during a calendar year." Such violation of section 316(b)(3) may incorporate a violation of section 317(b), 320, or 321.

Section 316(b)(3) of the FECA (2 U.S.C. 441b(b)(3)) makes it unlawful for a national bank, any corporation organized by authority of any law of Congress, or any labor union (A) to use a political fund to make a political contribution or expenditure from money or anything of value that was secured by physical force, job discrimination, financial reprisals (or the threat thereof), or from dues, fees, or other money required as a condition of membership in the labor organization or as a condition of employment; (B) who solicits an employee for contribution to a political fund to fail to inform the employee of the purposes of the fund at the time of the solicitation; and (C) who solicits an employee for contribution to a political fund to fail to inform the employee of his right to refuse to contribute without reprisal.

The sections which may incorporate violations of section 316(b)(3) of the FECA are section 317(b), which prohibits government contractors from making contributions of currency in excess of \$100 for any candidate for Federal office, section 320 which prohibits a person from making a contribution in the name of another or accepting a contribution so made, and section 321, which prohibits any person from making contributions of currency in excess of \$100 for any candidate for Federal office.

#### (3) Fraudulent Misrepresentations Under Section 322

Section 309(d)(1)(C) of the FECA states that "[i]n the case of a knowing and willful violation of section 322, the penalties set forth in this subsection

shall apply without regard to whether the making, receiving, or reporting of a contribution or expenditure of \$1,000 or more is involved."

Section 322(a) of the FECA (2 U.S.C. 441h) states that "[n]o person who is a candidate for Federal office or an employee or agent of such a candidate shall (1) fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof; or (2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1)."

Section 322(b) states that "[n]o person shall (1) fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or (2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1)."

#### (4) Conduit Contributions under Section 320

Section 309(d)(1)(D) of the FECA states that "[a]ny person who knowingly and willfully commits a violation of section 320 involving an amount aggregating more than \$10,000 during a calendar year shall be (i) imprisoned for not more than 2 years if the amount is less than \$25,000 (and subject to imprisonment under subparagraph (A) if the amount is \$25,000 or more); (ii) fined not less than 300 percent of the amount of the violation and not more than the greater of (I) \$50,000; or (II) 1,000 percent of the amount involved in the violation; or (iii) both imprisoned under clause (i) and fined under clause (ii)."

Section 320 of the FECA (2 U.S.C. 441f) states that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person."

In addition to changes made to the FECA, section 302 of the Act amended section 607 of title 18, United States Code, to make it "unlawful for any person to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied

in the discharge of official duties by an officer or employee of the United States. It shall be unlawful for an individual who is an officer or employee of the Federal Government, including the President, Vice President, and Members of Congress, to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person." The penalty is a fine of not more than \$5,000, not more than 3 years or imprisonment, or both.

In order to implement the directive in the Act, this proposed amendment expands the scope of Chapter Two, Part C (Offenses Involving Public Officials) by providing within that Part a new guideline for offenses under the FECA and related offenses. A new guideline, rather than amendment of an existing guideline, seems more appropriate to implement the directive. Currently there exists no guideline which already incorporates the elements of the FECA and related offenses, although the fraud guideline in particular (§ 2B1.1) and the public corruption guidelines to a lesser degree (Chapter Two, Part C) provide some overlap in the elements of the offense and aggravating conduct. In addition, the enhancements required to be added by the directive in the Act would fit nicely into a guideline devoted solely to campaign finance offenses but would prove unwieldy if added to the fraud or public corruption guidelines, which cover so many other non-campaign finance offenses.

The proposed amendment provides for a base offense level of level 8. The statutorily authorized maximum term of imprisonment for the conduct covered by the proposed guideline was raised by the Act from one year for all such offenses to two years for some offenses and five years for others. The base offense level is set at level 8 in recognition of the relative similarity of these offenses to fraud offenses covered by § 2B1.1 and public corruption offenses covered by Chapter Two, Part C. A base offense level of level 8 both insures proportionality with relatively similar offenses and permits various sentencing enhancements directed by the Act to operate as well.

The proposed amendment also creates a number of specific offense characteristics in response to the directive in section 314(b) of the Act. First, the directive requires the Commission to provide an enhancement if the offense involved a large aggregate amount of illegal contributions, donations, or expenditures. To address