

Commentary

Statutory Provisions: 2 U.S.C. 437g(d)(1), 439a, 441a, 441a-1, 441b, 441c, 441d, 441e, 441f, 441g, 441h(a), 441i, 441k; 18 U.S.C. 607. For additional provision(s), see Statutory Index (Appendix A).

Application Notes

1. Definitions.—For purposes of this guideline:

‘Foreign national’ has the meaning given that term in section 319(b) of the Federal Election Campaign Act of 1971, 2 U.S.C. 441e(b).

‘Government of a foreign country’ has the meaning given that term in section 1(e) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(e)).

‘Governmental funds’ means money, assets, or property, of the United States government, of a State government, or of a local government, including any branch, subdivision, department, agency, or other component of any such government. ‘State’ means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa. ‘Local government’ means the government of a political subdivision of a State.

‘Illegal transaction’ means (A) any contribution, donation, solicitation, or expenditure of money or anything of value, or any other conduct, prohibited by the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq*; (B) any contribution, donation, solicitation, or expenditure of money or anything of value made in excess of the amount of such contribution, donation, solicitation, or expenditure that may be made under such Act; and (C) in the case of a violation of 18 U.S.C. 607, any solicitation or receipt of money or anything of value under that section. The terms ‘contribution’ and ‘expenditure’ have the meaning given those terms in section 301(8) and (9) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8) and (9)), respectively.

2. Application of Subsection (b)(3)(B).—Subsection (b)(3)(B) provides an enhancement for a defendant who commits the offense for the purpose of achieving a specific, identifiable non-monetary Federal benefit that does not rise to the level of a bribe or a gratuity.

Subsection (b)(3)(B) is not intended to apply to offenses under this guideline in which the defendant’s only motivation for commission of the offense is generally to achieve increased visibility with, or heightened access to, public officials. Rather, subsection (b)(3)(B) is intended to apply to defendants who

commit the offense to obtain a specific, identifiable non-monetary Federal benefit, such as a Presidential pardon or information proprietary to the government.

3. Application of Subsection (b)(4).—Subsection (b)(4) shall apply if the defendant engaged in any combination of 30 or more illegal transactions during the course of the offense, whether or not the illegal transactions resulted in a conviction for such conduct.

4. Departure Provision.—In a case in which the defendant’s conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted.”

Section 3D1.2(d) is amended by inserting “, 2C1.8” after “2C1.7”.

The Commentary to § 5E1.2 captioned “Application Notes” is amended in the second sentence of Note 5 by striking “and” after “Control Act;” and by inserting before the period at the end the following:

“; and 2 U.S.C. 437g(d)(1)(D), which authorizes, for violations of the Federal Election Campaign Act under 2 U.S.C. 441f, a fine up to the greater of \$50,000 or 1,000 percent of the amount of the violation, and which requires, in the case of such a violation, a minimum fine of not less than 300 percent of the amount of the violation.

There may be cases in which the defendant has entered into a conciliation agreement with the Federal Election Commission under section 309 of the Federal Election Campaign Act of 1971 in order to correct or prevent a violation of such Act by the defendant. The existence of a conciliation agreement between the defendant and Federal Election Commission, and the extent of compliance with that conciliation agreement, may be appropriate factors in determining at what point within the applicable fine guideline range to sentence the defendant, unless the defendant began negotiations toward a conciliation agreement after becoming aware of a criminal investigation”.

Appendix A (Statutory Index) is amended by inserting before the line referenced to 7 U.S.C. 6 the following new lines:

“2 U.S.C. 437g(d) 2C1.8
2 U.S.C. 439a 2C1.8
2 U.S.C. 441a 2C1.8
2 U.S.C. 441a-1 2C1.8
2 U.S.C. 441b 2C1.8
2 U.S.C. 441c 2C1.8
2 U.S.C. 441d 2C1.8
2 U.S.C. 441e 2C1.8
2 U.S.C. 441f 2C1.8

2 U.S.C. 441g 2C1.8
2 U.S.C. 441h(a) 2C1.8
2 U.S.C. 441i 2C1.8
2 U.S.C. 441k 2C1.8”.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 597 the following new line:

“18 U.S.C. 607 2C1.8”.

3. Use of Body Armor in a Crime of Violence or Drug Trafficking Crime

Synopsis of Proposed Amendment

In December 2002, the Commission published general issues for comment (see 67 FR 77532) regarding how to implement the directive in section 11009 of the 21st Century Department of Justice Appropriations Authorization Act (the “Act”), Public Law 107–273. The directive requires the Sentencing Commission to “review and amend the Federal sentencing guidelines and the policy statements of the Commission, as appropriate, to provide an appropriate sentencing enhancement for any crime of violence (as defined in section 16 of title 18, United States Code) or drug trafficking crime (as defined in section 924(c) of title 18, United States Code) (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) in which the defendant used body armor.” The Act further states that it is the sense of Congress that any such enhancement should be at least two levels.

In response to the directive, the proposed amendment provides for a new adjustment at § 3A1.5 (Use of Body Armor) for the use of body armor in an offense involving a crime of violence or drug trafficking crime. A proposed application note provides definitions of “crime of violence”, “drug trafficking crime”, and “body armor”.

The definitions of “crime of violence” and “drug trafficking crime” are those required by the directive. Consequently, the definition of “drug trafficking crime” (taken from 18 U.S.C. 924(c)(2)) includes any felony punishable under the Controlled Substances Act, and the definition of “crime of violence” (taken from 18 U.S.C. 16) includes offenses that involve the use or attempted use of physical force against property as well as persons. Both of these definitions are somewhat broader than the definitions of “crime of violence” and drug trafficking offense” used in a number of other guidelines. The definition of “body armor” is borrowed from the statutory definition provided in 18 U.S.C. 921(a)(35).

Background commentary is proposed to provide a cite for the directive