

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".

Reason for Amendment: This amendment implements the directive from Congress contained in the Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155, (the "BCRA") to the effect that the Commission "promulgate a guideline, or amend an existing guideline * * *, for penalties for violations of the Federal Election Campaign Act of 1971 (the "FECA") and related election laws * * *". The BCRA significantly increased statutory penalties for campaign finance crimes, formerly misdemeanors under the FECA. The new statutory maximum term of imprisonment for even the least serious of these offenses is now two years and for more serious offenses, the maximum term of imprisonment is five years.

To effectively punish these offenses, the Commission chose to create a new guideline at § 2C1.8 (Making, Receiving, or Failing to Report a Contribution, Donation, or Expenditure in Violation of the Federal Election Campaign Act; Fraudulently Misrepresenting Campaign Authority; Soliciting or Receiving a Donation in Connection with an Election While on Certain Federal Property). The Commission opted against simply amending an existing guideline because it determined after

review that the characteristics of election-violation cases did not bear sufficient similarity to cases sentenced under any existing guideline. The offenses which will be sentenced under § 2C1.8 include: violations of the statutory prohibitions against "soft money" (2 U.S.C. 441i); restrictions on "hard money" contributions (2 U.S.C. 441a); contributions by foreign nationals (2 U.S.C. 441e); restrictions on "electioneering communications" as defined at 2 U.S.C. 434(f)(3)(C); certain fraudulent misrepresentations (2 U.S.C. 441h); and "conduit contributions" (2 U.S.C. 441f).

The new guideline has a base offense level of level 8, which reflects the fact that these offenses, while they are somewhat similar to fraud offenses (sentenced under § 2B1.1 (Theft, Property Destruction, and Fraud) at a base offense level of level 6), generally are more serious due to the additional harm, or the potential harm, of corrupting the elective process.

The new guideline provides five specific offense characteristics to ensure appropriate penalty enhancements for aggravating conduct which may occur during the commission of certain campaign finance offenses. First, the new guideline provides a specific offense characteristic, at § 2C1.8(b)(1), that uses the fraud loss table in § 2B1.1 to incrementally increase the offense level in proportion to the monetary amounts involved in the illegal transactions. This both assures proportionality with penalties for fraud offenses and responds to Congress' directive to provide an enhancement for "a large aggregate amount of illegal contributions."

Second, the new guideline provides alternative enhancements, at § 2C1.8(b)(2), if the offense involved a foreign national (two levels) or a foreign government (four levels). These enhancements respond to another specific directive in the BCRA and reflect the seriousness of foreign entities attempting to tamper with the United States' election processes.

Third, the new guideline provides alternative two level enhancements, at § 2C1.8(b)(3), when the offense involves either "governmental funds," defined broadly to include Federal, State, or local funds, or an intent to derive "a specific, identifiable non-monetary Federal benefit" (e.g., a presidential pardon). Each of these enhancements responds to specific directives of the BCRA.

Fourth, the new guideline provides a two level enhancement, at subsection (b)(4), when the offender engages in "30 or more illegal transactions." After a