

§2B1.1

8. Application of Subsection (b)(9).—

- (A) **In General.**—The adjustments in subsection (b)(9) are alternative rather than cumulative.
- (B) **Misrepresentations Regarding Charitable and Other Institutions.**—Subsection (b)(9)(A) applies in any case in which the defendant represented that the defendant was acting to obtain a benefit on behalf of a charitable, educational, religious, or political organization, or a government agency (regardless of whether the defendant actually was associated with the organization or government agency) when, in fact, the defendant intended to divert all or part of that benefit (e.g., for the defendant's personal gain). Subsection (b)(9)(A) applies, for example, to the following:
- (i) A defendant who solicited contributions for a non-existent famine relief organization.
 - (ii) A defendant who solicited donations from church members by falsely claiming to be a fundraiser for a religiously affiliated school.
 - (iii) A defendant, chief of a local fire department, who conducted a public fundraiser representing that the purpose of the fundraiser was to procure sufficient funds for a new fire engine when, in fact, the defendant intended to divert some of the funds for the defendant's personal benefit.
- (C) **Fraud in Contravention of Prior Judicial Order.**—Subsection (b)(9)(C) provides an enhancement if the defendant commits a fraud in contravention of a prior, official judicial or administrative warning, in the form of an order, injunction, decree, or process, to take or not to take a specified action. A defendant who does not comply with such a prior, official judicial or administrative warning demonstrates aggravated criminal intent and deserves additional punishment. If it is established that an entity the defendant controlled was a party to the prior proceeding that resulted in the official judicial or administrative action, and the defendant had knowledge of that prior decree or order, this enhancement applies even if the defendant was not a specifically named party in that prior case. For example, a defendant whose business previously was enjoined from selling a dangerous product, but who nonetheless engaged in fraudulent conduct to sell the product, is subject to this enhancement. This enhancement does not apply if the same conduct resulted in an enhancement pursuant to a provision found elsewhere in the guidelines (e.g., a violation of a condition of release addressed in §3C1.3 (Commission of Offense While on Release) or a violation of probation addressed in §4A1.1 (Criminal History Category)).
- (D) **College Scholarship Fraud.**—For purposes of subsection (b)(9)(D):
- “**Financial assistance**” means any scholarship, grant, loan, tuition, discount, award, or other financial assistance for the purpose of financing an education.
- “**Institution of higher education**” has the meaning given that term in section 101 of the Higher Education Act of 1954 (20 U.S.C. § 1001).
- (E) **Non-Applicability of Chapter Three Adjustments.—**
- (i) **Subsection (b)(9)(A).**—If the conduct that forms the basis for an enhancement under subsection (b)(9)(A) is the only conduct that forms the basis for an adjustment under §3B1.3 (Abuse of Position of Trust or Use of Special Skill), do not apply that adjustment under §3B1.3.