

§8C3.3

- (b) In any other case, immediate payment of the fine shall be required unless the court finds that the organization is financially unable to make immediate payment or that such payment would pose an undue burden on the organization. If the court permits other than immediate payment, it shall require full payment at the earliest possible date, either by requiring payment on a date certain or by establishing an installment schedule.

Commentary

Application Note:

1. When the court permits other than immediate payment, the period provided for payment shall be the shortest time in which full payment can reasonably be made. 18 U.S.C. § 3572(d).

Historical Note

Effective November 1, 1991 (amendment 422). Amended effective November 1, 2023 (amendment 824).

§8C3.3. Reduction of Fine Based on Inability to Pay

- (a) The court shall reduce the fine below that otherwise required by §8C1.1 (Determining the Fine — Criminal Purpose Organizations), or §8C2.7 (Guideline Fine Range — Organizations) and §8C2.9 (Disgorgement), to the extent that imposition of such fine would impair the ability of the organization to make restitution to victims.
- (b) The court may impose a fine below that otherwise required by §8C2.7 (Guideline Fine Range — Organizations) and §8C2.9 (Disgorgement) if the court finds that the organization is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay the minimum fine required by §8C2.7 (Guideline Fine Range — Organizations) and §8C2.9 (Disgorgement).

Provided, that the reduction under this subsection shall not be more than necessary to avoid substantially jeopardizing the continued viability of the organization.

Commentary

Application Note:

1. For purposes of this section, an organization is not able to pay the minimum fine if, even with an installment schedule under §8C3.2 (Payment of the Fine — Organizations), the payment of that fine would substantially jeopardize the continued existence of the organization.

Background: Subsection (a) carries out the requirement in 18 U.S.C. § 3572(b) that the court impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the organization to make restitution for the offense; however, this section does not authorize a criminal purpose organization to remain in business in order to pay restitution.