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Campaign Finance Bills in the 107th Congress: Comparison of S. 27 (McCain-Feingold), H.R. 2356 (Shays-Meehan), H.R. 2360 (Ney-Wynn), and Current Law

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Summary

S. 27 (McCain-Feingold), the Bipartisan Campaign Reform Act of 2001, was introduced January 22, 2001 in a form similar to prior versions of the last two Congresses. On April 2, after a two-week debate and adoption of 22 amendments, the Senate passed S. 27 by a vote of 59-41. That measure's companion Shays-Meehan bill, the Bipartisan Campaign Finance Reform Act of 2001, was initially introduced as H.R. 380 in a form similar to House-passed versions of the prior two Congresses; on June 28, the bill was modified and offered as H.R. 2356. H.R. 2360 (Ney-Wynn), the Campaign Finance Reform and Grassroots Citizen Participation Act of 2001, was introduced and ordered reported favorably by the House Administration Committee on June 28. (Shays-Meehan was ordered reported unfavorably at the same time.) The two primary features of the bills are restrictions on party soft money and issue advocacy.

Party soft money. The Shays-Meehan and McCain-Feingold bills would ban the raising of soft money by national parties and federal candidates or officials, and would restrict soft money spending by state parties on what the bills define as federal election activities. The bills have been changed from earlier versions to allow restricted use of soft money for federal election activities by state and local parties. The Ney-Wynn bill would also ban soft money raising and spending by national parties for federal election activities, as it defines them. However, it would allow continued soft money use for generic party activities that do not refer to federal candidates, and for overhead and fundraising costs, subject to a \$75,000 annual limit per donor. In addition, the Ney-Wynn bill would not curb the use of state and local party soft money.

Issue advocacy. S. 27 and H.R. 2356 would create a new term in federal election law, "electioneering communication," thereby regulating political advertisements that "refer" to a clearly identified federal candidate and are broadcast within 30 days of a primary or 60 days of a general election. While S. 27 further specifies that the communication be made to an audience that "includes" prospective voters in the election, its House companion would require that, except for presidential elections, the communication be "targeted to the relevant electorate." Generally, disclosure would be required for disbursements over \$10,000 for such communications, along with the identity of donors of \$1,000 or more, and union and certain corporate funds would be prohibited from being used to finance them. The Ney-Wynn bill (H.R. 2360) would require disclosure of spending on broadcast communications made within 120 days of a federal election that "mention" a clearly identified federal candidate (by name, image or likeness) or, for non-broadcast ads, that "refer to or depict" such a candidate, are targeted to the relevant electorate, and involve total spending of over \$50,000 in a year. H.R. 2360 would require disclosure of amounts spent, but not of sources of funds.

All the bills would raise certain hard money contribution limits. Shays-Meehan and McCain-Feingold would adjust contribution limits for opponents of Senate candidates who spend large amounts of personal wealth. The latter two would also, among other provisions, change broadcast rules applying to the lowest unit rate (LUR) for political advertisements and add enforcement and disclosure provisions to the Federal Election Campaign Act (FECA).

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Campaign Finance Bills in the 107th Congress: Comparison of S. 27 (McCain-Feingold), H.R. 2356 (Shays-Meehan), H.R. 2360 (Ney-Wynn), and Current Law

This report summarizes and compares three major campaign finance reform bills before the 107th Congress and current law (in most cases, the Federal Election Campaign Act, or FECA, 2 U.S.C. § 431 *et seq.*). The three bills are S. 27 (McCain-Feingold), the Bipartisan Campaign Reform Act of 2001, as amended and passed by the Senate on April 2, 2001; its House companion bill, H.R. 2356 (Shays-Meehan), the Bipartisan Campaign Finance Reform Act of 2001, a modified version of an earlier bill in this Congress (H.R. 380); and H.R. 2360 (Ney-Wynn), the Campaign Finance Reform and Grassroots Citizen Participation Act of 2001.

Much of the ongoing campaign finance debate revolves around the issues of so-called hard and soft money. In general, the term “hard money” is used to refer to funds raised and spent according to the limits, prohibitions, and disclosure requirements of federal election law. By contrast, “soft money” is used to describe funds raised and spent outside the federal election regulatory framework, but which may have at least an indirect impact on federal elections¹

The report consists of three tables, organized according to major topics covered and arranged as side-by-side comparisons. The first two tables use an abbreviated format to facilitate a quicker understanding of key differences between pairs of bills, with fuller explanations offered in the third table. Table 1 compares highlights of the Shays-Meehan and Ney-Wynn bills, while table 2 presents key differences between the McCain-Feingold and Shays-Meehan bills. Table 3 is the most detailed treatment, offering a comparison of all three bills and relevant current law. For S. 27, amendments adopted on the Senate floor are summarized in *italics*, with citations to the amendments identified in table notes. Table 3 also provides applicable bill section numbers,² and, for existing law, U.S. Code (U.S.C.) and Code of Federal Regulations (C.F.R.) citations and abbreviated court decision summaries. In some cases, broken lines separate a concept or provision that has several parts or which is modified in some way by related concepts or provisions.

¹ For further discussion of hard and soft money, see CRS Report 97-91, *Soft and Hard Money in Contemporary Elections: What Federal Law Does and Does Not Regulate*, by Joseph E. Cantor.

² In cases where the provisions are the same for the bills, those cells are joined; the first section number refers to S. 27 and the second to H.R. 2356.

Table 1. Comparative Highlights of Shays-Meehan and Ney-Wynn Bills

| Shays-Meehan (H.R. 2356) | Ney-Wynn (H.R. 2360) |
|---|---|
| Hard Money Contribution Limits | |
| <i>Individuals to candidates:</i> \$1,000 - House; \$2,000 - President and Senate | \$1,000 - all federal candidates (current limit) |
| <i>Individuals to national parties:</i> \$25,000 per year (now \$20,000) | \$30,000 per year |
| <i>Individuals to state parties:</i> \$10,000 per year (now \$5,000) | Same as H.R. 2356 |
| <i>Individual aggregate annual limit:</i> \$37,500 per year (now \$25,000) | \$37,500 per year, exempts amounts to national parties |
| <i>From PACs to state parties:</i> \$5,000 per year (no change) | \$10,000 per year |
| <i>From PACs to national parties:</i> \$15,000 per year (no change) | \$30,000 per year |
| <i>From parties to Senate candidates:</i> \$35,000 per year (now \$17,500) | \$17,500 (no change) |
| <i>Future indexing for inflation:</i> Only for individual limits to candidates and national parties, and aggregate annual total, and on party donations to Senate candidates | For all contribution limits |
| Party Soft Money | |
| <i>National parties:</i> Bans all soft money | (1) Bans soft money for “federal election activity” (2) Limits donations for non-federal election activities to \$75,000 a year |
| <i>Federal election activity defined:</i> Voter registration drives in last 120 days of federal election; voter ID, GOTV, and generic activity when federal candidate is on ballot; public communications that refer to federal candidates; and salary of state party workers who spend 25% of time or more in connection with federal elections | GOTV, voter registration drives in last 120 days of a federal election, and public communications that mention federal candidates; and all broadcast communications |
| <i>Non-federal election activity:</i> Exclusively state and local election-related activity that is not a “federal election activity” | Generic, non-candidate-specific party activity; party overhead and fundraising costs |

| Shays-Meehan (H.R. 2356) | Ney-Wynn (H.R. 2360) |
|--|--|
| <p><i>State and local parties</i> Generally bans use of soft money for federal election activities, <i>but</i> allows some soft money to fund GOTV, voter ID, voter registration, and generic activities that do not mention federal candidates, subject to 50-50 hard-soft money allocation ratio, a \$10,000 per donor, per committee limit, no party transfers for such accounts, and no fundraising in name of national party or federal candidates and officials</p> | No provision |
| <p><i>Federal candidates and officeholders</i> Prohibited from raising soft money in connection with federal elections and money beyond federal limits and prohibitions in non-federal elections</p> | No provision |
| <p><i>Tax-exempt groups</i> Bans parties from raising money for or giving to 501(c)(4)s involved in federal elections and 527s that are not FECA-political committees</p> | No provision |
| Issue Advocacy | |
| <p><i>Definition of communication to be regulated:</i> “Electioneering communication” – broadcast, cable, or satellite ad that “refers” to a clearly identified federal candidate, made within 60 days of general election or 30 days of a primary, and (for non-presidential elections) is targeted to relevant electorate (<i>i.e.</i>, received by 50,000 or more persons in state, for Senate elections, or district, for House elections)</p> | <ul style="list-style-type: none"> - Broadcast, cable, or satellite ad, made within 120 days of a federal election, which “mentions” a clearly identified federal candidate - Non-broadcast communication made within 120 days of a federal election, which “refers to or depicts” a clearly identified federal candidate, that involves aggregate spending of over \$50,000, and is “targeted to relevant electorate” (if over 10% of intended recipients are part of electorate or if over 10% of electorate receives communication) |
| <p><i>Required disclosure:</i> - For electioneering communications, within 24 hours of being made, once over \$10,000 aggregate, and in \$10,000 increments</p> | <ul style="list-style-type: none"> - For all broadcast, cable, or satellite communications, within 24 hours - For all non-broadcast targeted mass communications, within 24 hours, once over \$50,000, and in \$50,000 increments |
| <p><i>Contents of disclosure:</i> - Identity of spender - Amount of all disbursements over \$200 and identity of recipients - Amount and identity of donors of \$1,000 or more (to organization, or to segregated account with only donations from individuals who are citizens, U.S. nationals, or green-card holders)</p> | <ul style="list-style-type: none"> - Identity of spender - Amount of all disbursements (for targeted mass communications, only over-\$200 amounts) - Identity of recipients of over-\$200 targeted mass communications - Text of communications |

| Shays-Meehan (H.R. 2356) | Ney-Wynn (H.R. 2360) |
|--|----------------------|
| <p><i>Prohibited communications:</i> By unions and corporations using treasury money, including for-profit and non-profit corporations (e.g., 501(c)(4)s and 527s)</p> | <p>No provision</p> |
| <p>Other provisions</p> | |
| <p>Changes lowest unit rate for broadcast ads</p> | <p>No provision</p> |
| <p>Raises contribution limits for Senate candidates opposed by large sums of candidates' personal funds</p> | <p>No provision</p> |
| <p>Adds soft money to foreign national money ban and to ban fundraising in government buildings</p> | <p>No provision</p> |
| <p>Adds disclosure and enforcement provisions</p> | <p>No provision</p> |

Table 2. Key Differences between McCain-Feingold and Shays-Meehan Bills

| McCain-Feingold (S. 27) | Shays-Meehan (H.R. 2356) |
|---|--|
| Hard Money Contribution Limits | |
| Raises limit to \$2,000 per candidate, per election in all federal elections | Raises limit to \$2,000 in Presidential and Senate races, but retains \$1,000 limit in House races |
| Party Soft Money | |
| <p><i>Allowance for soft money for federal election activity by state and local parties:</i></p> <ul style="list-style-type: none"> - Communication may make no reference to a federal candidate - Based on current allocation formulae - No person may donate over \$10,000 a year to a committee for such activities (originated as Levin amendment) | <ul style="list-style-type: none"> - Communication may make no reference to a federal candidate - Requires 50-50 hard-soft money allocation formula - No person (or any entity established thereby) may donate over \$10,000 a year to a committee for such activities - May only use funds raised by the state, district, or local party expressly for such purposes and include no funds transferred from other party committees - No funds may be solicited, received, directed, transferred, or spent in name of national parties, federal candidates/officials, or by joint fundraising party committees - No payment for broadcast, cable, or satellite (unless communication refers solely to state/local candidates) |
| No provision | Federal candidates/officials may raise money for tax-exempt orgs. engaged primarily in voter registration and GOTV, subject to limit of \$10,000 per donor |
| No provision | No restriction on fundraising by federal candidates or officials to influence state reapportionment decisions |
| <p><i>Transition rules for national party disposal of soft money:</i></p> <p>No soft money use after 30 days after enactment</p> | <ul style="list-style-type: none"> - Parties may spend unrestricted soft money from effective date to 90 days thereafter - Until March 31, 2002, national parties may transfer soft money to state or local parties or to §501(c) or §527 tax-exempt organizations - At any time after effective date, national parties may use funds for construction or purchase of party office building or facility |
| Issue Advocacy | |
| Defines “electioneering communication” as one made to an audience that “includes members of the electorate” for such election | Defines “electioneering communication” as one that is “targeted to the relevant electorate” (<i>i.e.</i> , communication is received by 50,000 or more persons in state or district) |

| McCain-Feingold (S. 27) | Shays-Meehan (H.R. 2356) |
|---|---|
| Exempts §501(c)(4) or §527 tax-exempt corps. from corporate prohibition, if funds are solely donated by individuals who are citizens or permanent resident aliens, unless communication is “targeted,” <i>i.e.</i> , it was distributed from broadcast, cable, or satellite service whose audience “consists primarily” of residents of state in which candidate seeks election | New definition requires all communications to be targeted to the relevant electorate (in non-presidential races) to meet “electioneering communication” criteria, thus removing exemption from corporate prohibition for §501(c)(4) or §527 tax-exempt corporations |
| Advertising | |
| Sets lowest unit rate by comparing rates for same amount of time and period with prior 365 days | Sets lowest unit rate by comparing rates for same amount of time and period with prior 180 days |
| Foreign Money | |
| No provision | Clarifies that ban on money from foreign nationals does not include U.S. nationals |
| Miscellaneous | |
| Joint fundraising committees: No provision | Bans joint fundraising committees between federal candidates and party committees |
| Contributions by minors: No provision | Bans contributions and donations by individuals 17 years of age and younger |
| Candidate-solicited funds for intermediaries and conduits: No provision | Counts contributions raised by candidate to support his/her election and arranged through intermediary as contribution to candidate |
| FEC regulations to counter evasion: No provision | Requires new FEC regulations to prohibit evasions and circumventions of FECA |
| Expedited and judicial review: Provides for expedited review to the U.S. District Court for D.C. for declaratory judgment and injunctive relief; provides direct appeal to the U.S. Supreme Court from any final order or judgment; and provides for expedited consideration by both courts | <ul style="list-style-type: none"> - Provides for expedited review to the U.S. District Court for D.C. for declaratory judgment and injunctive relief, on constitutional grounds, with direct appeal to U.S. Supreme Court from any final order or judgment; and expedited consideration by both courts - Provides if any aggrieved person brings action for declaratory or injunctive relief, challenging constitutionality and naming U.S. as defendant, within 90 days of enactment: (a) action shall be heard by three-judge court in U.S. District Court for D.C.; (b) copy of complaint provided to Clerk of the House and Secretary of the Senate; (c) final decision only reviewable by direct appeal to U.S. Supreme Court; and (d) expedited consideration provided - Provides that in action challenging constitutionality, any Member of Congress has right to intervene |

Table 3. Comparison of McCain-Feingold, Shays-Meehan, and Ney-Wynn Bills, and Current Law

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
|--|--|--|--|
| Hard Money Sources: Individuals | | | |
| Contributions to candidates: \$1,000 per candidate, per election; not indexed [2 USC §441a(a)(1)(A)] | <i>Raises limit to \$2,000 per candidate, per election, indexed for inflation¹</i> [Sec. 308] | Raises limit to \$2,000 for Presidential and Senate elections; retains \$1,000 limit in House elections; indexes both for inflation [Sec. 308] | Indexes limit for inflation [Sec. 205] |
| Contributions to state party committee: \$5,000 per year to federal account, not indexed [2 USC §441a(a)(1)(C)] | Raises limit to \$10,000 per year [Secs. 102, 102] | | Raises limit to \$10,000 per year [Sec. 202] Indexes limit [Sec. 205] |
| Contributions to national party committee: \$20,000 per year to federal acct., not indexed [2 USC § 441a(a)(1)(B)] | <i>Raises limit to \$25,000 per year, indexed for inflation¹</i> [Secs. 308, 308] | | Raises limit to \$30,000 per year [Sec. 201] Indexes limit [Sec. 205] |
| Contributions to PACs: \$5,000 per year, not indexed [2 USC §441a(a)(1)(C)] | No provision | No provision | Indexes limit [Sec. 205] |
| Aggregate contributions: \$25,000 per year to PACs, parties, and candidates, not indexed [2 USC §441a(a)(3)] | <i>Raises limit to \$37,500 per yr., indexed for inflation^{1,2}</i> [Secs. 308, 308] | | <ul style="list-style-type: none"> - Raises limit to \$37,500 per year [Sec. 201] - Indexes limit [Sec. 205] - Exempts contributions to natl. parties from aggregate limit [Sec. 203] |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
|--|--|-----------------------------|--|
| Hard Money Sources: Political Action Committees (PACs)* | | | |
| Contributions to candidates: \$5,000 per candidate, per election; not indexed [2 USC §441a(a)(2)(A)] | No provision | No provision | Indexes limit [Sec. 205] |
| Contributions to state party cttee.: \$5,000 per year to federal account, not indexed [2 USC §441a(a)(2)(C)] | No provision | No provision | Raises limit to \$10,000 per year [Sec. 202] Indexes limit [Sec. 205] |
| Contributions to natl. party cttee.: \$15,000 per year to federal acct., not indexed [2 USC §441a(a)(2)(B)] | No provision | No provision | Raises limit to \$30,000 per year [Sec. 201] Indexes limit [Sec. 205] |
| Contributions to other PACs: \$5,000 per year, not indexed [2 USC §441a(a)(2)(C)] | No provision | No provision | Indexes limit [Sec. 205] |
| Hard Money Sources: Political Parties* | | | |
| Contributions to candidates: \$5,000 per candidate, per election; not indexed [2 USC §441a(a)(2)(A)] | No provision | No provision | Indexes limit [Sec. 205] |
| Special limit for Senate nominees: \$17,500 in election year, by natl. and senatorial party cttees. combined, not indexed [2 USC §441a(h)] | <i>Raises limit to \$35,000 in year of election, indexed for inflation¹</i> [Secs. 308, 308] | | Indexes limit [Sec. 205] |

* PAC and party limits are based on multicandidate political committee status, *i.e.*, the committee has been in existence for at least six months, has received contributions from at least 50 persons, and, except for state or local party committees, has contributed to at least five federal candidates [2 USC §441a(a)(4)].

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
|--|---|-----------------------------|---|
| Contributions to PACs/other committees: \$5,000 per year, not indexed [2 USC§441a(a)(2)(C)] | No provision | No provision | Indexes limit [Sec. 205] |
| Grassroots volunteer materials: State/local party costs of producing/distributing grassroots materials for volunteer activities are exempt from <i>contribution</i> and <i>expenditure definition</i> [2 USC§431(8)(B)(X), §431(9)(B)(viii)] | No provision | No provision | Extends exemption to national party committees [Sec. 204] |
| Hard Money Sources: Candidates | | | |
| Personal use of campaign funds: Bans candidate personal use [2 USC §439a] Regulations enumerate personal uses [11 CFR§113.1(g)] | Codifies FEC regulations on permissible uses for campaign funds; retains ban on personal use [Secs. 301, 301] | | No provision |
| Candidate loans to campaign: No rules regarding amount of candidate loans that can be paid from post-election contributions | <i>Limits repayment of loans to \$250,000, from amounts contributed after election</i> ³ [Secs. 304, 304] | | No provision |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
|---|--|-----------------------------|-------------------------|
| <p>Wealthy candidates: Contribution limits are the same for all candidates, regardless of whether opponents spend large amounts from personal funds [2 USC § 441a(a)(1)(A)]</p> <p>In <i>Buckley v. Valeo</i> (424 U.S. 1, 51-54 (1976)), Supreme Court struck down limits on spending from personal funds by candidates</p> | <p>(In Senate elections only:)</p> <ul style="list-style-type: none"> - Raises limits on individual and party support for Senate candidate whose opponent exceeds designated level of personal campaign funding - Creates threshold of \$150,000 + 4¢ times no. eligible voters in state - If “opposition personal funds amount” (personal spending of candidate minus that of opponent) exceeds threshold by: (a) 2-4 times, then limit on individual contributions to opponent is tripled; (b) 4-10 times, then limit on individual contributions to opponent is raised 6-fold; (c) 10 times, then limit on individual contributions to opponent is raised 6-fold and lifts limit on party coordinated expenditures for opponent - Aggregate individual limit would be raised to extent of higher contribution limits - Limits would be raised only to extent of 110% of total “opposition personal funds amount”³ [Secs. 304, 304] - In calculating “opponent personal funds amount,” subtracts “gross receipts advantage” of candidate opposed by wealthy candidate (50% of gross receipts of candidate minus 50% of gross receipts of wealthy opponent, as of Jun. 30 and Dec. 31 of prior year)⁴ [Secs. 318, 317] | | <p>No provision</p> |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
|---|--|--|-------------------------|
| Independent Expenditures (Hard Money) | | | |
| <p>Definition: An expenditure by a person expressly advocating election or defeat of a clearly identified candidate, made without cooperation or consultation with candidate (or authorized committee or agent), and not made in concert with, or at request or suggestion of, any candidate (or agent or cttee.) [2 USC §431(17)]</p> | <p>Defines independent expenditure as an expenditure by a person that expressly advocates election or defeat of a clearly identified candidate, and that is not a coordinated activity with a candidate, agent, or someone who has engaged in coordinated activity with the candidate [Sec. 211]</p> | <p>Defines independent expenditure as an expenditure by a person for a communication that is express advocacy, and that is not made in concert or cooperation with, at request or suggestion of, or pursuant to any particular or general understanding with candidate, party, or agent [Sec. 211]</p> | <p>No provision</p> |
| <p>Special disclosure rules: Requires 24-hour notice of independent expenditures of \$1,000 or more in last 20 days of election, up to 24 hours prior to election [2 USC § 434(c)(2)]</p> | <p>Adds requirement for a 48-hour notice of independent expenditures of \$10,000 or more, up to 20 days before an election [Secs. 212, 212]</p> | | <p>No provision</p> |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
|---|--|-----------------------------|-------------------------|
| <p>Party spending for party candidates: Parties may make expenditures in connection with a general election of a federal candidate’s campaign, subject to limits, also known as the “coordinated party expenditure limits” [2 USC §441a(d)]</p> <p><i>In Colorado Republican Federal Campaign Committee v. FEC (Colorado I) (518 U.S. 604 (1996)),</i> Supreme Court ruled that, as applied to the Colorado Republican Party, the coordinated party expenditure limit (2 USC §441a(d)) was unconstitutional, and that parties can make independent expenditures on behalf of candidates; in <i>Colorado II</i>, (No. 00-191 slip op. (June 25, 2001)), the Court upheld the constitutionality of the coordinated party expenditure limit</p> | <p>Prohibits parties from making both independent and coordinated expenditures for a general election candidate [Secs. 213, 213]</p> | | <p>No provision</p> |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
|---|---|--|-------------------------|
| Coordination (Hard and Soft Money) | | | |
| <p>Definition: Statute: FECA does not define “coordination” or “coordinated activity” <i>per se</i></p> | <p>Statute: <i>Defines “coordinated expenditure or other disbursement” as a payment made in concert or cooperation with, or at request or suggestion of, or pursuant to any particular or general understanding with a candidate or party</i>⁵ [Secs. 214, 214]</p> | | <p>No provision</p> |
| <p>FEC Regulations: New FEC coordination rules define “coordinated general public political communications” as coordinated communications including clearly identified candidates, paid for by persons other than candidates or parties, including express or issue advocacy; communication will be considered coordinated if: it is made at request or suggestion of candidate or party, candidate or party had control or substantial decision-making authority, or candidate or party engaged in substantial discussion or negotiation with those involved in creating, producing, distributing, or paying for the communication [11 CFR §100.23 (2001)]</p> | <p>FEC Regulations: - <i>Repeals new FEC rules</i> - <i>Directs FEC to promulgate new regulations within 90 days</i> - <i>Specifies new rules will not require explicit collaboration or agreement to establish coordination</i> - <i>Specifies rules will address issues of: (1) republication of campaign material; (2) common vendors; (3) prior employment status; (4) substantial discussion with candidate/party; and (5) impact of coordinating internal communications on “federal election activities”</i>⁵ [Sec. 214]</p> | <p>FEC Regulations: - Repeals new FEC rules - Directs FEC to promulgate new regulations within 90 days - Specifies new rules will not require explicit collaboration or agreement to establish coordination - Specifies rules will address issues of: (1) republication of campaign material; (2) common vendors; (3) prior employment status; and (4) substantial discussion with candidate or party [Sec. 214]</p> | <p>No provision</p> |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
|---|---|--|-------------------------|
| <p>Consequences of coordination:</p> <ul style="list-style-type: none"> - Expenditures made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate or agents shall be considered a contribution to candidate [2 USC §441a(a)(7)(B)(i)] - Financing of dissemination, distribution, or republication, in whole or part, of any broadcast or materials prepared by candidate or agents shall be considered an expenditure subject to relevant limits [2 USC§441a(a)(7)(B)(ii)] <p>(For discussion of express advocacy, see “Soft Money: Party” and “Issue Advocacy (Soft Money)” sections)</p> | <p>Treats an “electioneering communication” that is coordinated with a candidate, agent, or party as a contribution to and expenditure by candidate or party [Sec. 202]</p> <p><i>Includes in definition of “contribution”: any coordinated expenditures or other disbursements made in connection with candidate’s campaign, and any expenditure or disbursement made in coordination with party, regardless of whether communication contains express advocacy⁵ [Sec. 214]</i></p> | <p>Treats an “electioneering communication” that is coordinated with a candidate, agent, or party as a contribution to and expenditure by candidate or party [Sec. 202]</p> <p>Treats a coordinated expenditure or disbursement made in connection with a candidate’s campaign as a contribution to and expenditure by that candidate, and treats a coordinated expenditure or disbursement made in connection with a party committee as a contribution to/expenditure by party</p> <p>Includes in definition of contribution: any coordinated expenditure or other disbursement made in connection with candidate’s campaign, and any coordinated expenditure or disbursement made in coordination with party, regardless of whether communication contains express advocacy [Sec. 214]</p> | <p>No provision</p> |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) | | |
|--|--|-----------------------------|--|--|---------------------|
| Soft Money: Party | | | | | |
| <p>National party committees: May raise soft money (<i>i.e.</i>, generally, funds from sources or in amounts banned under federal election law), so long as funds are deposited in non-federal accounts, and may distribute funds, in accord with FEC allocation formulae [11 CFR §106.5]</p> | <p>Prohibits a national party committee, including entities directly or indirectly established, financed, maintained, or controlled by such committee or agent acting on its behalf, from soliciting, receiving, directing, transferring, or spending soft money [Secs. 101, 101]</p> | | <p><i>For federal election activities:</i> prohibits national political party committees, incl. officers/agents acting on their behalf and entities they directly/indirectly establish, maintain, or control, from soliciting, receiving, directing, or transferring soft money</p> <p><i>For non-federal election activities:</i> imposes a limit of \$75,000 per calendar year on the amount of soft money any person may donate or transfer to a national party cttee. [Sec. 101]</p> | | |
| <p>State and local party committees: May spend soft money on the state portion of mixed (federal/state) activities, according to detailed allocation requirements [11 CFR §106.5]</p> | <p>In general, bans soft money spending for a “federal election activity” by state/local party committees, including an entity directly or indirectly established, financed, maintained, or controlled by a state or local party committee (and agent acting on its behalf), or by:</p> <table border="1" data-bbox="573 1105 1562 1256"> <tr> <td data-bbox="573 1105 1062 1256">- an entity directly or indirectly established, financed, maintained, or controlled by one or more state/local candidates or officials</td> <td data-bbox="1062 1105 1562 1256">- an association or group of state/local candidates or officials</td> </tr> </table> <p>But permits authorized campaign cttee. of state/local candidate to raise and spend funds under state law if not for “federal election activity” that “refers” to clearly identified federal candidate</p> <p>Prohibits state/local candidates using soft money for public communications that promote/attack a clearly identified federal candidate, but exempts communications referring to a federal cand. who is also a state/local cand.</p> | | - an entity directly or indirectly established, financed, maintained, or controlled by one or more state/local candidates or officials | - an association or group of state/local candidates or officials | <p>No provision</p> |
| - an entity directly or indirectly established, financed, maintained, or controlled by one or more state/local candidates or officials | - an association or group of state/local candidates or officials | | | | |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| | <p><i>But allows a state, district, or local party committee to use funds raised under state law for allocable share (at current ratios) of voter registration drives in last 120 days of a federal election, voter ID, GOTV, & generic activity, if it: (1) does not refer to a federal candidate; and (2) takes no donations over \$10,000 a year for such activity⁶ [Sec. 101]</i></p> | <p>But allows state, district, or local party cttee. to use some funds raised under state law for an allocable share (at a 50-50 hard-soft money ratio) of voter registration drives in last 120 days of a federal election, voter ID, GOTV drives, and generic activity, if it: (1) does not refer to a federal candidate; (2) does not pay for a broadcast, cable, or satellite communication (unless it refers solely to state/local candidates); (3) takes no more than \$10,000 a year from any person (incl. entity person establishes, finances, maintains, or controls) for such activity; and (4) uses only funds raised by that party cttee. expressly for such purposes, with no transfers from other party cttees. (and agents/officers acting on their behalf or entity they directly/indirectly establish, finance, maintain, or control)</p> <p>Prohibits funds for these accounts from being solicited, received, directed, transferred, or spent in name of natl. party, fed. candidate/official, or joint fundraising activities by two or more party committees [Sec. 101]</p> | |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| <p>Federal or non-federal activity: FEC allctn. rules offer guidance in determining if activity is fed. or non-fed. elctn. related, by such means as “ballot composition” (for administration and generic voter drives), “time and space” allotted in a communication, etc. [11 CFR §106.1]</p> <p>Definition of activity generally triggering application of federal elctn. law – Express advocacy: Sup. Court, in <i>Buckley v. Valeo</i> (424 U.S. 1, 44 (1976)) and <i>FEC v. Mass. Citizens for Life</i> (479 U.S. 238, 249 (1986)), generally construed fed. campaign law to reach only funds used for indpt. communications by non-political cttees. that incl. express words advocating elctn./defeat of clearly identified cand.; in lower courts, prevailing view is, generally, that regulation of such communications that do not contain specific express advocacy words (or “magic words,” <i>e.g.</i>, “vote for,” “defeat”) is not constitutional; <i>but see</i>, 11 CFR §106.5(b), subjecting natl. party disbursements for non-express advocacy communications to allctn. formulae, requiring specific % of hard money, §104.9(c), requiring reporting of natl. party soft money, and §106.5(b), (c), & (d), requiring party allctn. of generic voter drive costs</p> | <p>“Federal election activity” defined to include: (1) voter registration drives in last 120 days of a federal election; (2) voter identification, GOTV drives, and generic activity in connection with an election in which a federal candidate is on the ballot; (3) “public communications” that refer to a clearly identified federal candidate and promote, support, attack, or oppose a candidate for that office (regardless of whether they expressly advocate a vote for or against); or (4) services by a state or local party employee who spends at least 25% of paid time in a month on activities in connection with a federal election [Secs. 101, 101]</p> | | <p>“Federal election activity” defined to include: (1) voter registration drives in the last 120 days of a federal election, unless for generic activity; (2) voter identification or GOTV drives in an election with at least one federal candidate on the ballot, unless for generic activity; (3) any public communication that refers to or depicts a clearly identified federal candidate and that supports, promotes, attacks, or opposes a candidate for that office, regardless of whether it expressly advocates a vote for or against a candidate; or (4) any public communication made by broadcast, cable, or satellite</p> <p>Exempts costs of administering and soliciting funds for national party committees, if funds are designated exclusively for such uses and are segregated accordingly [Sec. 101]</p> |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| <p><i>FEC v. Furgatch</i> (807 F.2d 857 (9th Cir. 1987), <i>cert. denied</i>, 484 U.S. 850 (1987)), which has emerged as a minority view, generally held that a communication will be considered issue advocacy if its message is unmistakable and unambiguous, suggestive of only one plausible meaning; if it presents a clear plea for action; and it is clear what action is advocated, <i>i.e.</i>, speech cannot be express advocacy when reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other action</p> | <p><i>Provides alternative definition of “public communication” (third type of “federal election activity”) in the event that the first definition is ruled unconstitutional, based on FEC v. Furgatch (807 F.2d 857 (9th Cir. 1987), cert. denied, 484 U.S. 850 (1987)) (i.e., communication promoting, supporting, attacking, or opposing a candidate, regardless of whether it advocates a vote for or against a candidate, and is suggestive of no plausible meaning other than an exhortation to vote for or against a candidate)⁹ [Sec. 101]</i></p> | <p>No provision</p> | <p>No provision</p> |
| <p>Public political communications: Defined by new regulations as those made through broadcast (including cable), newspaper, magazine, outdoor advertising facility, mailing or any electronic medium, including Internet or Web site, with intended audience of over 100 people [11 CFR §100.23(e)(1) 2001]</p> | <p>“Public communications” defined as those made by broadcast, cable, satellite, newspaper, magazine, outdoor advertising, mass mailing (over 500 identical or substantially similar pieces mailed within 30 days of each other), or phone bank (over 500 identical or substantially similar calls made within 30 days of each other) [Secs. 101, 101]</p> | | <p>“Public communications” defined as communications by broadcast, cable, satellite, newspaper, magazine, outdoor advertising facility, or direct mail [Sec. 101]</p> |
| <p>Generic activity: No provision</p> | <p>No provision</p> | <p>Defines <i>generic campaign activity</i> as one that promotes a party but not a federal or non-federal candidate [Sec. 101]</p> | <p>Defines <i>generic activity</i> as activity that does not mention, depict, or otherwise promote a clearly identified fed. candidate [Sec. 101]</p> |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| State/local parties may spend money on federal and non-federal races, if they allocate funds between hard and soft money [11 CFR §106.5] | Allows state parties to spend soft money on activities exclusively devoted to non-federal elections [Secs. 101, 101] | | No provision |
| Fundraising costs: Parties may allocate costs [11 CFR §106.5(f)] | Prohibits party committees from using soft money to raise funds for use at least in part on “federal election activities” [Secs. 101, 101] | | No provision |
| Support for tax-exempt groups: No restrictions on parties’ ability to support tax-exempt groups | Prohibits party committees or agents from raising money for, or giving to, Internal Revenue Code §501(c) or §527 tax-exempt organizations [Sec. 101] | Prohibits party committees or agents from raising money for, or giving to, an Internal Revenue Code §501(c) tax-exempt org. that makes disbursements in connection with a fed. election (incl. a “federal election activity”) or a §527 tax-exempt org. (if not a fed. political cttee.) [Sec. 101] | No provision |
| Federal candidates/officeholders: <i>- Role in raising soft money:</i> May participate in fundraisers without restriction | Prohibits federal candidates, officeholders, agents, or entities they directly or indirectly establish, maintain, finance, or control from raising soft money in connection with a federal election (incl. any “federal election activity”) or any money from sources beyond fed. limits and prohibitions in non-federal elections | | No provision |
| ban does not apply to state/local candidates for activity allowed under state law and is not for a “federal election activity” that refers to clearly identified federal candidate [Sec. 101] | | ban does not apply to state or local candidates for activity allowed under state law and refers only to the state/local candidate or opponents [Sec. 101] | |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| Federal candidates/officeholders: - Role in tax-exempt fundraising: No restrictions | No provision | Allows fed. candidates/officials to raise money for tax-exempt orgs. primarily engaged in voter registration/GOTV, subject to \$10,000 per donor limit (<i>i.e.</i> , bill’s limit on individual contributions to state parties) [Sec. 101] | No provision |
| Federal candidates/officeholders: - Role in reapportionment activity: No restrictions | No provision | Bill does not restrict fundraising by fed. candidates/officials to influence state reapportionment decisions [Sec. 101] | No provision |
| Disclosure by national parties: Regulations require disclosure of all receipts and disbursements [11 CFR §104.8, 104.9] | Codifies FEC regulations on disclosure of all activity–federal and non-federal ⁷ [Secs. 103, 103] | | No provision |
| State/local party disclosure: Required for activity by federal accounts only [2 USC § 434] All mixed activities must be funded through federal accounts [11 CFR § 106.5(a)] | Requires disclosure of “federal election activities” by state and local party committees (including entities directly or indirectly established, financed, maintained, or controlled by either state/local party committee and agent or by state or local candidates and officials) except by authorized campaign committees of state/local candidates, raising and spending funds under state law, if not for “federal elctn. activity” that “refers” to a clearly identified federal candidate [Sec. 103] | | No provision |
| Building funds: Donations to national/state party building funds are exempt [2 USC§431(8)(B)(viii)] | Ends building fund exemption [Secs. 103, 103] | | No provision |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| Issue Advocacy (Soft Money) | | | |
| <p>Definition of activity generally triggering application of federal election law- Express advocacy: Supreme Court, in <i>Buckley v. Valeo</i> (424 U.S. 1, 44 (1976)) and <i>FEC v. Massachusetts Citizens for Life</i> (479 U.S. 238, 249 (1986)), generally construed federal campaign law to reach only funds used for independent communications by non-political committees that include express words of advocacy of election or defeat of a clearly identified candidate; prevailing view in lower courts is that, generally, regulation of such communications that do not contain specific express words of advocacy (also referred to as the “magic words,” e.g., “vote for” or “defeat”) is unconstitutional; FEC, therefore, has had some difficulty in enforcing its more encompassing regulation, which includes a “reasonable person” standard for determining whether such communications constitute “express advocacy” [11 CFR §100.22]</p> | <p>“Electioneering communication”: Defined as a broadcast, cable, or satellite advertisement that “refers” to a clearly identified federal candidate, made within 60 days of a general election or 30 days of a primary for that federal office, to an audience that includes voters in that election</p> <p>Exempts news events, “expenditures,” and “independent expenditures”</p> | <p>“Electioneering communication”: Defined as a broadcast, cable, or satellite advertisement that “refers” to a clearly identified federal candidate, made within 60 days of a general election or 30 days of a primary, and, if for House or Senate elections, “is targeted to the relevant electorate”</p> <p>Exempts news events, “expenditures,” “independent expenditures,” debates, and others by FEC regulation</p> | <p>Disclosure (only) is required for spending on communications disseminated within 120 days of a fed. election, that, if broadcast, “mention” or, if non-broadcast, “refer to or depict” a clearly identified fed. candidate by name, image, or likeness [Sec. 301], and, for non-broadcast communications, are “targeted to the relevant electorate” and total over \$50,000 in a year on all such communications [Sec. 302]</p> |
| <p><i>Provides alternative definition of “electioneering communication,” in the event that the first definition is ruled unconstitutional, based on FEC v. Furgatch (807 F.2d 857 (9th Cir. 1987), cert. denied, 484 U.S. 850 (1987)) (i.e., communication promoting, supporting, attacking, or opposing a candidate, regardless of whether it expressly advocates a vote for or against a candidate, and is suggestive of no plausible meaning other than an exhortation to vote for or against a candidate); nothing in provision alters 11 CFR 100.22(b), FEC regulation defining express advocacy⁹ [Secs. 201]</i></p> | | | |
| <p>Exempts: broadcast news stories and commentaries; “expenditures” as defined by federal election law; payments by vendors acting solely pursuant to a contractual agreement with person sponsoring communication; and, in the case of non-broadcast media, communications by a membership organization (incl. a union) or a corporation solely to its members, stockholders, or executive and administrative personnel, if entity is not organized primarily for purposes of influencing federal elections [Secs. 301/302]</p> | | | |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| <p>Targeted communications: Not defined</p> | <p>(In context of prohibited electioneering communications by 501(c) and 527 corporations:) <i>“Targeted communication” defined as an electioneering communication that is distributed from TV/radio broadcast station or cable or satellite service whose audience “consists primarily” of residents of state for which candidate is running for office¹¹</i> [Sec. 204]</p> | <p>“Targeted to the relevant electorate” defined as a communication which can be received by 50,000 or more persons in state or district where Senate or House election, respectively, is occurring [Sec. 201]</p> | <p>(In context of disclosure requirements for non-broadcast communications:) “Targeted mass communication” defined as a communication disseminated within 120 days of a federal election that “refers to or depicts” a clearly identified federal candidate by name, image, or likeness, and that is “targeted to the relevant electorate”: (a) Broadcast communication is deemed as “targeted” if audience includes a substantial number of residents of the district (for House race) or state (for Senate race) where election is held, as determined by FEC regulations (b) Other communications will be deemed to be targeted if over 10% of intended recipients are part of that electorate or if over 10% of that total electorate receives the communication [Sec. 302]</p> |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| <p>Disclosure: Communications by non-political committees that avoid explicit advocacy language are outside purview of, and hence not subject to, FECA disclosure; but spending on such activities may be disclosed if group is “political organization” under Internal Rev. Code (26 USC §527)</p> | <p>Requires disclosure to FEC of disbursements for “electioneering communications” by any spender exceeding an aggregate of \$10,000 per year in such disbursements, within 24 hours of the first and each subsequent \$10,000 disbursement [Sec. 201]</p> | <p>Requires disclosure to FEC of disbursements for direct costs of producing and airing “electioneering communications” by any spender exceeding \$10,000 annual aggregate in such disbursements, within 24 hours of the first and each subsequent \$10,000 amount [Sec. 201]</p> | <p>For broadcast, cable, or satellite communications: requires FEC disclosure of disbursements that are disseminated within 120 days of a federal election, and that “mention a clearly identified federal candidate” by name, image, or likeness, within 24 hours after each such disbursement [Sec. 301]</p> <p>For non-broadcast communications: requires FEC disclosure of disbursements for communications disseminated within 120 days of a federal election, that “refer or depict a clearly identified federal candidate” by name, image, or likeness, and are targeted to relevant electorate, when total amount spent on such communications is over \$50,000 in a year, within 24 hours of exceeding threshold and each subsequent \$50,000 amount [Sec. 302]</p> |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| <p>Contents of disclosure:</p> <p>Only for activities meeting express advocacy standard and for FECA-defined political committees – Statement of organization identifies name of spender, sponsor (if any), treasurer, custodian of books, and banks [2 USC § 433]</p> <p>Periodic disclosure reports list aggregate cash on hand, receipts, expenditures, transfers, loans, rebates, refund dividends, and interest (and, for presidential candidates, public funds); itemized identification on contributions received and expenditures made of over \$200 per year, with name, address, occupation, and principal place of business of donor or recipient</p> <p>For persons other than political committees, disclosure requirements are triggered once independent expenditures over \$250 in a calendar year are made [2 USC § 434]</p> | <p>For “electioneering communications”:</p> <ul style="list-style-type: none"> - Identification of spender, custodian of books, and any entity exercising control over activity - principal place of business - identification of disbursements of over \$200 - identification of donors of \$1,000 or more (either to a separate segregated fund devoted exclusively to such activities or, if none, to organization itself) - notation as to election and candidates to which communications pertain [Sec. 201] | <p>For “electioneering communications”:</p> <ul style="list-style-type: none"> - Identification of spender, custodian of books, and any entity exercising control over activity - principal place of business - identification of disbursements of over \$200 - identification of donors of \$1,000 or more (either to a separate segregated fund devoted exclusively to such activities, with funds only from U.S. citizens or nationals or permanent resident aliens, or, if no separate segregated fund, to organization itself) - notation as to election and candidates to which communications pertain [Sec. 201] | <p>Statements to include:</p> <ul style="list-style-type: none"> - identification of person making the disbursement, any entity sharing or exercising control or direction over activity, and custodian of books and accounts - principal place of business of person making disbursement (if not an individual) - identity of candidates mentioned or those to whom communication pertains - text of communication - amount of disbursement (for non-broadcast communications, only amounts over \$200 and including identity of recipient, as well) [Secs. 301/302] |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| <p>Corporations and labor unions:</p> <p>FECA bans union and corporate general treasury spending to influence federal elections, subject to Supreme Court imposed express advocacy standards [2 USC §441b(a)]</p> <p>In <i>FEC v. Massachusetts Citizens for Life</i> (MCFL) (479 U.S. 238, 259 (1986)), Court held that ban on corporate general treasury spending cannot be constitutionally applied to non-profit political or ideological corporations that do not accept donations from for-profit corporations and unions and whose members have no economic incentive in the organization’s political activities</p> <p>As a result of court decisions, communications by non-political committees that avoid explicit advocacy language are generally outside purview of FECA regulation</p> | <p>Bans funding of “electioneering communications” with funds from union or certain corporate funds; but exempts Internal Revenue Code §501(c)(4) or §527 tax-exempt corporations making “electioneering communications” with funds solely donated by individuals, <i>who are U.S. citizens or permanent resident aliens</i>¹⁰ [Sec. 203], <i>unless a communication is “targeted,” i.e., it was distributed from a broadcaster or cable or satellite service whose audience “consists primarily” of residents of the state for which the candidate is running for office</i>¹¹ [Sec. 204]</p> | <p>Bans funding of “electioneering communications” with funds from union or certain corporate funds; but exempts Internal Revenue Code §501(c)(4) or §527 tax-exempt corporations making “electioneering communications” with funds solely donated by individuals who are U.S. citizens or nationals or permanent resident aliens [Sec. 203], unless a communication is a “targeted” communication, <i>i.e.</i>, it was distributed from a broadcaster or cable or satellite service and is received by 50,000 or more persons in state or district where Senate or House election, respectively, is occurring [Sec. 204]</p> | <p>No provision</p> |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| <p>Coordination–</p> <p>FECA does not define “coordination” or “coordinated activity” <i>per se</i>, but:</p> <ul style="list-style-type: none"> - Expenditures made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate/agent shall be deemed a contribution to the candidate [2 USC §441a(a)(7)(B)(i)] - Financing of dissemination, distribution, or republication, in whole or part, of any candidate-prepared materials/broadcasts is considered an expenditure, subject to relevant limits [2 USC§441a(a)(7)(B)(ii)] <p>New FEC coordination rules define “coordinated general public political communications” as coordinated communications concerning clearly identified candidates, paid for by persons other than candidates/parties, incl. express or issue advocacy; a communication will be considered coordinated if: it is made at request or suggestion of candidate or party, candidate or party had control or substantial decision-making authority, or candidate or party engaged in substantial discussion or negotiation with those involved in paying for, creating, producing, or distributing communication [11 CFR §100.23 (2001)]</p> | <p>Treats an “electioneering communication” that is coordinated with a candidate, agent, or party as a contribution to and expenditure by candidate or party [Secs. 202, 202]</p> | | <p>No provision</p> |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| <p>Broadcast disclosure: - Attribution: Fed. Communications Act imposes general requirement that political radio/TV ads incl. notice of who paid for ads [47 USC § 317]</p> <p>FCC regulations further require paid TV political ads and other matters involving the discussion of controversial issues of public importance to provide “true identity” of sponsor “with letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds” and require broadcasters to disclose extent to which any “film, record, transcription, talent, script, or other material” related to an ad, was furnished to the broadcaster in connection with the airing of a political advertisement or other matter involving the discussion of a controversial issue of public importance [47 CFR § 73.1212]</p> | (See discussion under “Advertising” section) | | No provision |
| <p>- Public inspection files: When political ad was paid for by a corporation, committee, association, or unincorporated group, FCC regs. also require broadcaster to maintain records of group’s governing personnel, available for public inspection [47 CFR § 73.1212]</p> | <p><i>Requires broadcasters to maintain and make available for public inspection records of broadcast time requests by candidates or by other entities whose messages relate to political matters of national importance, including messages about a legally qualified candidate, a federal election, or a legislative issue of public importance; requires records to include: whether request was accepted; rate charged; date and time message aired; class of time purchased; identification of candidate and office, election, or issue referred to; and identity of purchaser, including officers of any non-candidate entity¹² [Secs. 504 504]</i></p> | | No provision (requires disclosure to FEC; see above) |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| FEC Disclosure | | | |
| <p>- Requires all reports filed electronically to be posted on FEC Web site within 24 hours of receipt [2 USC §434(a)(11)(B)]</p> <p>- Requires paper reports to be available for public inspection at FEC within 48 hours of receipt [2 USC §438(a)(4)]</p> | <p><i>Requires all reports filed with FEC to be posted on Internet and available for inspection within 48 hours, or 24 hours if filed electronically</i>¹³ [Secs. 501, 502]</p> | | No provision |
| No provision | <p><i>Requires FEC to maintain central Web site of all publicly available election-related reports</i>¹³ [Secs. 502, 502]</p> | | No provision |
| No provision | <p><i>Requires FEC to develop and provide standardized software for filing reports electronically, and requires candidates' use of such software</i>¹⁴ [Secs. 307, 307]</p> | | No provision |
| <p>Filing schedule for candidates: Principal campaign cttees. of cand. must file quarterly, pre-elctn., and, for general, post-election reports in elctn. years, and semi-annual reports in non-elctn. years; presidential candidates with actual or expected contributions or expenditures over \$100,000 must file monthly in pres. election years [2 USC §434(a)]</p> | <p><i>Requires candidates to file monthly reports in election years and quarterly reports in non-election years</i>¹² [Secs. 503, 503]</p> | | No provision |
| <p>Filing schedule for parties: Non-candidate committees (incl. parties) may file: (a) quarterly, pre-elctn., and, for general, post-elctn. reports in elctn. yrs., and semi-annual reports in non-election years; or (b) monthly reports [2 USC §434(a)]</p> | <p><i>Requires national party committees to file monthly reports in all years</i>¹² [Secs. 503, 503]</p> | | No provision |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| FEC Enforcement | | | |
| Criminal penalties: For knowing and willful violations involving contributions/expenditures of \$2,000 or more per year: a fine equaling the greater of \$25,000 or 300% of amount involved or up to one year in prison, or both [2 USC §437g(d)(1)(A)] | <i>Increases criminal penalties for knowing and willful violations involving contribution/expenditure/donation amounts aggregating from \$2,000 to \$25,000 in a year: a fine under Title 18 (USC) or up to one year in prison, or both; for knowing and willful violations involving amts. aggregating \$25,000 or more: a fine under Title 18 or up to five years in prison, or both¹⁵ [Secs. 314, 313]</i> | | No provision |
| Statute of limitations: Three years for criminal violations of FECA [2 USC §455(a)] | <i>Changes to five years, for criminal violations of FECA¹⁵ [Secs. 315, 314]</i> | | No provision |
| Sentencing guidelines: No provision | <i>Directs U.S. Sentencing Commission to promulgate guidelines and make legislative or administrative recommendations regarding penalties for violating federal election law, per specified considerations¹⁵ [Secs. 316, 315]</i> | | No provision |
| Penalties for violating ban on contributions made in the name of another: No <i>specific</i> penalties | <i>Civil: Imposes penalties, for knowing and willful violations, of between 300% of violation amount and the greater of \$50,000 or 1000% of violation amt. Criminal: For knowing and willful violations in amounts of over \$10,000, imposes penalties of two years in prison for up to \$25,000 violation amount, or fine of between 300% of violation amount and the greater of \$50,000 or 1000% of violation amt., or prison and fine¹⁶ [Secs. 317, 316]</i> | | No provision |
| No provision | No provision | Requires FEC to promulgate regulations to prohibit efforts to evade or circumvent limitations, prohibitions, and reporting requirements of FECA [Sec. 322] | No provision |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
|---|--|---|-------------------------|
| Advertising | | | |
| <p>Lowest unit rate (LUR): Broadcasters must sell time to candidates during last 45 days of a primary and 60 days of a general election at LUR for same class and amount of time for same period [47 USC § 315(b)]</p> | <p><i>Makes TV, cable, and satellite LUR broadcast time non-preemptible, with rates based on comparison to prior 365 days; requires such rates to be available to parties buying time on behalf of candidates; and provides for random audits to insure compliance¹⁷ [Sec. 305]</i></p> | <p>Makes TV, cable, and satellite LUR broadcast time (for last 45/60 days of election) non-preemptible, with rates based on comparison to prior 180 days; requires such rates to be available to parties buying time for “coordinated expenditures” for their cand.; and provides for random audits to insure compliance [Sec. 305]</p> | <p>No provision</p> |
| | <p><i>Conditions party eligibility for LUR on voluntary compliance with party coordinated expenditure limits in event that Supreme Court finds them unconstitutional; in such event, allows broadcaster to not offer party LUR for independent expenditures¹⁸ [Sec. 309]</i></p> | | |
| <p>Candidate appearance in ads: No content requirements for lowest unit rate (LUR) ads</p> | <p><i>Requires federal candidate broadcast ads that are sold at lowest unit rate and that include direct reference to opponents to include candidate photo or image on TV and a statement of candidate approval (printed on TV and spoken by candidate on radio)¹⁹ [Secs. 306, 306]</i></p> | | <p>No provision</p> |
| <p>Sponsor Identification: Public political advertisements, from expenditures by any person, incl. express advocacy, or those containing contribution solicitations, must state clearly who paid for communication and whether a candidate authorized it [2 USC §441d]</p> | <p><i>- Adds requirement for sponsor ID by political committees for any public political advertising (including “electioneering communications”) - Requires specific minimal standards to enhance visibility of such identification in the communication²⁰ [Secs. 313, 312]</i></p> | | <p>No provision</p> |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| Foreign Money | | | |
| Prohibits direct or indirect contributions or anything of value, or their solicitation, from foreign nationals, in connection with election to any political office; exempts permanent resident aliens [2 USC §441e] | Bans direct or indirect contributions from foreign nationals (incl. soft money), or their solicitation or receipt, or any promise to make such donations, in connection with any U.S. election or to a natl. party committee (retains permanent resident alien exemption) [Sec. 303] | Bans direct or indirect contributions from foreign nationals (incl. soft money), or their solicitation or receipt, or any promise to make such donations, in connection with any U.S. election, to a natl. party committee, or for any expenditure, disbursement, or independent expenditure for an “electioneering communication” (retains permanent resident alien exemption) [Sec. 303] | No provision |
| | No provision | Clarifies that ban does not apply to U.S. nationals [Sec.318] | No provision |
| Miscellaneous | | | |
| Fundraising on govt. property: Bans solicitation or receipt of contributions, as defined by FECA, in any room or building used by federal officials or employees to discharge official duties [18 USC § 607] | Bans solicitation or receipt of contributions, including soft money, <i>from</i> anyone or <i>by</i> federal officials, while in any federal government building used to discharge official duties [Secs. 302, 302] | | No provision |
| Joint fundraising committees: Political committees (incl. party cttees.) may engage in joint fundraising with other political committees (incl. candidate cttees.) [11 CFR §102.17] (For permissible joint fundraising by presidential candidates receiving matching funds <i>see</i> 11 CFR §9034.8) | No provision | Prohibits federal candidates’ authorized committees from forming joint fundraising committees with any party committee [Sec. 321] | No provision |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| Inaugural committees: Donations to presidential inaugural committees are not considered contributions under FECA [<i>See, e.g.</i> , FEC Advisory Opinion 1980-144] | - <i>Requires FEC disclosure of over-\$200 donations to presidential inaugural committees within 90 days of event</i> - <i>Bans foreign national donations</i> ²¹ [Secs. 310, 309] | | No provision |
| Fraudulent misrepresentation: Bans candidates' fraudulent misrepresentation on a matter that is damaging to other candidates or parties [2 USC §441h] | - <i>Prohibits fraudulent misrepresentation in the solicitation of campaign funds</i> - <i>Bans knowing and willful participation in conspiracy to engage in such violations</i> ²² [Sec. 311, 310] | | No provision |
| Contributions by minors: No different treatment for minors and adults | No provision | Bans contributions to candidates and donations to parties by individuals 17 and younger [Sec. 319] | No provision |
| Contributions through conduits: Considers contributions made by a person directly or indirectly to a candidate, incl. those earmarked or directed through an intermediary or conduit, as contributions by person to candidate [2 USC §441a(a)(8)] | No provision | Adds that a contribution solicited by a candidate to support his/her election and arranged or suggested to be spent by or through an intermediary or conduit to assist that candidate's election, will be considered as a contribution to the candidate [Sec. 320] | No provision |
| No provision | GAO Study: <i>Directs GAO to study and report to Congress statistics for and effects of public funding systems in Arizona and Maine</i> ²³ [Secs. 312, 311] | | No provision |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
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| <p>Expedited review: Provides for expedited judicial review by appropriate district court, certifying all constitutional questions, to the court of appeals for the circuit involved, sitting <i>en banc</i> [2 USC § 437h] (Prior to 1988 amendments, FECA also provided expedited, direct appeal to U.S. Supreme Court) [P.L.100-352]</p> | <p><i>Provides for expedited review to the U.S. District Court for D.C. (and exclusive venue) for declaratory judgment and injunctive relief; provides direct appeal to the U.S. Supreme Court from any final order or judgment; and provides for expedited consideration by both courts</i>²⁴ [Sec. 403]</p> | <p>Provides for expedited review to the U.S. District Court for D.C. (and exclusive venue) for declaratory judgment and injunctive relief on constitutional grounds; provides direct appeal to the U.S. Supreme Court from any final order or judgment; and provides for expedited consideration by both courts</p> <p>Provides that if any person aggrieved by the statute brings an action for declaratory or injunctive relief, which challenges the constitutionality and names the U.S. as defendant, within 90 days of enactment: (a) action shall be heard by three-judge court in the U.S. District Court for D.C.; (b) copy of complaint shall be delivered promptly to Clerk of the House and Secretary of the Senate; (c) a final decision shall be reviewable only by direct appeal to U.S. Supreme Court; and (d) expedited consideration shall be provided by both courts</p> <p>Further provides that in any action challenging the constitutionality, any Member of the House or Senate shall have the right to intervene [Sec. 403]</p> | <p>No provision</p> |

| Current Law | S. 27 (McCain-Feingold) | H.R. 2356 (Shays-Meehan) | H.R. 2360 (Ney-Wynn) |
|---|--|---|--|
| <p>Partial Invalidity: If any provision of the Act, or its application to any person or circumstance, is held invalid, the validity of the remainder and its application to other persons and circumstances shall not be affected. [2 USC § 454]</p> | <p>Severability: If any provision of the Act or its amendments, or its application to any person or circumstance, is held unconstitutional, the remainder of the Act and its amendments, and its application to any person or circumstance, shall not be affected by the holding [Secs. 401, 401]</p> | | <p>No provision</p> |
| | <p>Effective date: 30 days after enactment, unless otherwise provided [Sec. 402]</p> | <p>Effective date: Generally: 90 days after enactment, unless otherwise provided</p> <p>Transition rules for soft money:</p> <ul style="list-style-type: none"> - Allows parties to spend without restriction soft money raised between effective date and 90 days thereafter - Until March 31, 2002, national parties may transfer soft money funds to state or local parties or to §501(c) or §527 tax-exempt organizations - At any time after effective date, national parties may use such funds to defray costs of construction or purchase of a party office building or facility [Sec. 402] | <p>Effective date: With respect to elections after December 2002 [Sec. 401]</p> |

Notes to Table

- ¹ Thompson-Feinstein (S.Amdt. 149)
- ² S. 27, as proposed, raised this limit to \$30,000 per year
- ³ Domenici (S.Amdt. 115)
- ⁴ Durbin (S.Amdt. 169)
- ⁵ McCain (S.Amdt. 165)
- ⁶ Levin (S.Amdt. 161)
- ⁷ Restated by Hagel (S.Amdt. 146, Div. 2)
- ⁸ Nickles-Gregg (S.Amdt. 139); dropped the “Beck provision,” no longer in any of these bills
- ⁹ Specter (S.Amdt. 140)
- ¹⁰ McCain (S.Amdt. 171)
- ¹¹ Wellstone (S.Amdt. 145)
- ¹² Hagel (S.Amdt. 146, Div. 2)
- ¹³ Cochran (S.Amdt. 137)
- ¹⁴ Landrieu (S.Amdt. 124)
- ¹⁵ Thompson (S.Amdt. 163)
- ¹⁶ Bond (S.Amdt. 166)
- ¹⁷ Torricelli (S.Amdt. 122)
- ¹⁸ Schumer (S.Amdt. 153)
- ¹⁹ Wyden-Collins (S.Amdt. 138)
- ²⁰ Durbin (S.Amdt. 162)
- ²¹ Bingaman (S.Amdt. 157)
- ²² Nelson, FL (S.Amdt. 159)
- ²³ Kerry (S.Amdt. 160)
- ²⁴ Hatch (S.Amdt. 167)

Common abbreviations in tables

| | | | |
|-----------------------|----------------------|-------------------------|----------------------|
| Acct. (account) | Allctn. (allocation) | Amt. (amount) | Cand. (candidate) |
| Connec. (connection) | Cttee. (committee) | Elctn. (election) | Exec. (executive) |
| Expend. (expenditure) | Fed. (federal) | GOTV (get-out-the-vote) | ID (identification) |
| Incl. (including) | Indiv. (individual) | Indpt. (independent) | Natl. (national) |
| No. (number) | % (percentage) | Pres. (presidential) | Prof. (professional) |
