

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The text is centered within the hourglass.

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*Bipartisan Campaign Reform Act of 2002: Summary and
Comparison with Existing Law*

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January 9, 2004

Abstract. This report summarizes the Bipartisan Campaign Reform Act of 2002 (P.L. 107-155) and compares it with the previous law (in most cases, the Federal Election Campaign Act (FECA), 2 U.S.C. 431 et seq.). In general, the new Act took effect on November 6, 2002, the day after the 2002 general elections, although certain provisions had different effective dates, as noted in this report.

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Bipartisan Campaign Reform Act of 2002: Summary and Comparison with Previous Law

Updated January 9, 2004

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Bipartisan Campaign Reform Act of 2002: Summary and Comparison with Previous Law

Summary

The Bipartisan Campaign Reform Act of 2002 (BCRA) was enacted on March 27, 2002 as P.L. 107-155. It passed the House on February 14, 2002, as H.R. 2356 (Shays-Meehan), by a 240-189 vote. Its companion measure, on which it was largely based, had initially been passed by the Senate in 2001 as S. 27 (McCain-Feingold). On March 20, 2002, however, the Senate approved the House-passed H.R. 2356 by a 60-40 vote, thus avoiding a conference to reconcile differences between S. 27 and H.R. 2356. A series of technical amendments to the bill was passed later that day by the House, in the form of H.Con.Res. 361, which directed the Clerk of the House to make specified corrections in the enrolled H.R. 2356. The Senate approved the concurrent resolution on March 22, thus clearing the measure for the President.

The two primary features of P.L. 107-155 are restrictions on party soft money and issue advocacy. First, the new Act generally bans the raising of soft money by national parties and federal candidates or officials and restricts soft money spending by state parties on what the Act defines as “federal election activities.” The Act does, however, allow for some use of soft money under certain conditions for specified federal election activities by state and local parties.

Second, the Act regulates issue advocacy by creating a new term in federal election law, “electioneering communication”—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. Generally, the Act prohibits unions and certain corporations from spending treasury funds for such “electioneering communications.” For those individuals and groups permitted to finance such communications, it requires disclosure of disbursements of over \$10,000 and the identity of donors of \$1,000 or more.

The Act generally took effect on November 6, 2002, the day after the 2002 general elections. Certain provisions, however, had different effective dates, either to allow a transition period or, as in the case of increased contribution limits, to make the new rules coincide with the calendar year.

On December 10, 2003, in *McConnell v. FEC* (No. 02-1674), the U.S. Supreme Court upheld the constitutionality of key provisions of BCRA. A 5-to-4 majority of the Court upheld most portions of the law, including the key provisions relating to political party soft money and electioneering communications. The Court, however, invalidated two provisions of the law: the prohibition of contributions by minors age 17 and under and the provision requiring political parties to choose between coordinated and independent expenditures during the post-nomination, pre-election campaign period.

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Bipartisan Campaign Reform Act of 2002: Summary and Comparison with Previous Law

This report summarizes the Bipartisan Campaign Reform Act of 2002 (P.L. 107-155) and compares it with the previous law (in most cases, the Federal Election Campaign Act (FECA), 2 U.S.C. § 431 *et seq.*). In general, the new Act took effect on November 6, 2002, the day after the 2002 general elections, although certain provisions had different effective dates, as noted herein.

On December 10, 2003, the Supreme Court, in *McConnell v. FEC*, struck down two provisions of BCRA, dealing with contributions by minors and political party coordinated and independent expenditures. This revised report reflects the Court's ruling on those provisions, as noted herein.¹

Much of the recent campaign finance debate has revolved around the issues of so-called hard and soft money. In general, the term "hard money" has been used to refer to funds raised and spent according to the limits, prohibitions, and disclosure requirements of federal election law. By contrast, "soft money" has been used to describe funds raised and spent outside the federal election regulatory framework, but which may have at least an indirect impact on federal elections. Since the new statute described herein became effective, however, regulation was extended to some aspects of soft money that hitherto had not been regulated by federal election law.

The Report consists of a table providing a detailed comparison of the new Act and relevant previous law, organized according to major topics covered. The table provides the Act's section numbers, and for previous law, U.S. Code (U.S.C.) and Code of Federal Regulations (C.F.R.) citations and selected, abbreviated court-decision summaries. In the text summarizing the Act, *italics* are used to denote technical corrections made under H.Con.Res. 361, which was adopted following passage of H.R. 2356.² In the case of the two provisions struck down by the Supreme Court in *McConnell v. FEC*, the table shows the BCRA provision as originally enacted, highlighted with a reference that the Court invalidated these sections.

¹ For a discussion of the majority opinion in *McConnell v. FEC*, see: CRS Report RS 21693, *Campaign Finance Law: The Supreme Court Upholds Key Provisions of BCRA in McConnell v. FEC*, by L. Paige Whitaker.

² For a legislative history of floor amendments, see: CRS Report RL31290, *Campaign Finance Bills Passed in the 107th Congress: Comparison of S. 27 (McCain-Feingold), H.R. 2356 (Shays-Meehan), and Current Law*, by Joseph E. Cantor and L. Paige Whitaker.

Bipartisan Campaign Reform Act of 2002 (P.L. 107-155): Summary and Comparison with Previous Law*

Relevant Previous Law	Bipartisan Campaign Reform Act
Hard Money Sources: Individuals	
Limit on contributions to candidates: \$1,000 per candidate, per election; not indexed [2 USC §441a(a)(1)(A)]	Raises limit to \$2,000 per candidate, per election, indexed for inflation [Sec. 307]
Limit on 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 [Sec. 102]
Limit on contributions to national party committee: \$20,000 per year to federal account, not indexed [2 USC § 441a(a)(1)(B)]	Raises limit to \$25,000 per year, indexed for inflation [Sec. 307]
Limit on aggregate contributions: \$25,000 per year to PACs, parties, and candidates, not indexed [2 USC §441a(a)(3)]	Raises limit to \$95,000 per 2-year cycle, with sub-limits: (a) \$37,500 to all candidates; (b) \$57,500 to all PACs and parties (no more than \$37,500 of which is to state and local parties and PACs); indexed [Sec. 307]
Hard Money Sources: Political Parties	
Special limit on contributions to Senate nominees: \$17,500 in election year, by national and senatorial party committees combined, not indexed [2 USC §441a(h)]	Raises limit to \$35,000 in year of election, indexed for inflation [Sec. 307]
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; <i>clarifies that transfers of excess funds to national, state, and local parties are not subject to limits;</i> retains ban on personal use [Sec. 301]

* *Italics* reflect technical corrections per H.Con.Res. 361, passed after H.R. 2356. The term “GOTV” is used in the table to denote get-out-the-vote drives.

Relevant Previous Law	Bipartisan Campaign Reform Act
<p>Candidate loans to campaign: No rules regarding amount of candidate loans that can be paid from post-election contributions</p>	<p>Limits repayment of loans to \$250,000, from amounts contributed after election [Sec. 304]</p>
<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:</p> <ul style="list-style-type: none"> - Raises limits on individual and party support for Senate candidate whose opponent exceeds designated threshold level of personal campaign funding - Creates threshold of \$150,000 + 4¢ times number eligible voters in state - Once “opposition personal funds amount” (personal spending of candidate minus that of opponent) exceeds threshold by: (a) from 2 to under 4 times, then limit on individual contributions to opponent is tripled; (b) from 4 to under 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 - Limits would be raised only to extent of 110% of total “opposition personal funds amount” [Sec. 304] <p>In House elections:</p> <ul style="list-style-type: none"> - Raises limits on individual and party support for House candidate whose opponent exceeds threshold of \$350,000 in personal campaign funding - Once “opposition personal funds amount” (personal spending of candidate minus that of opponent) exceeds threshold, then limit on individual contributions to opponent is tripled and limit on party coordinated expenditures for opponent is lifted - Limits would be raised only to extent of 100% of total “opposition personal funds amount” [Sec. 319] <p>In House and Senate elections</p> <ul style="list-style-type: none"> - Aggregate individual limit raised to extent of higher contribution limits - 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) [Secs. 316/319]

Relevant Previous Law	Bipartisan Campaign Reform Act
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 committee) [2 USC §431(17)]</p>	<p>Defines independent expenditure as an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate, and that is not made in concert or cooperation with, or at request or suggestion of a candidate, party, or agent [Sec. 211]</p>
<p>Special disclosure rules: Requires 24-hour notice of independent expenditures of \$1,000 or more made in last 20 days of election, up to 24 hours prior to election [2 USC § 434(c)(2)]</p>	<p>- Requires 24-hour notice of independent expenditures of \$1,000 or more made or contracted to be made in last 20 days of election, up to 24 hours prior to election (<i>notice due at FEC within 24 hours</i>) - Adds requirement for a 48-hour notice of independent expenditures of \$10,000 or more, made or contracted to be made up to 20 days before an election [Sec. 212]</p>
<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)), Supreme Court ruled that, as applied to CO Republican Party, the coordinated party expenditure limit was unconstitutional, and that parties can make independent expenditures on behalf of candidates; in Colorado II, (No. 00-191 slip op. (June 25, 2001)), Court upheld the constitutionality of the coordinated party expenditure limit</i></p>	<p>After date of party nomination, prohibits party from making coordinated expenditures for a candidate it has made independent expenditures for and from making independent expenditures for a candidate it has made coordinated expenditures for [Sec. 213]</p> <p>Invalidated by Supreme Court in its December 10, 2003 ruling in <i>McConnell v. FEC</i></p>

Relevant Previous Law	Bipartisan Campaign Reform Act
Coordination (Hard and Soft Money)	
<p>Definition: <i>Statute:</i> FECA does not define “coordination” or “coordinated activity” <i>per se</i></p> <p><i>FEC Regulations:</i> New FEC coordination rules define “coordinated general public political communications” as coordinated communications including clearly identified candidates, paid for by persons other than candidates/parties, including express or issue advocacy; communication will be considered coordinated if: it is made at request or suggestion of candidate or party, candidate/party had control or substantial decision-making authority, or candidate/party engaged in substantial discussion or negotiation with those involved in creating, producing, distributing, or paying for communication [11 CFR §100.23 (2001)]</p>	<p><i>Statute:</i> No provision</p> <p><i>FEC Regulations:</i> - Repeals new FEC rules as of date new regulations are promulgated - Directs FEC to promulgate new regulations on coordinated communications by persons other than candidates, authorized committees, or parties - Specifies new rules will not require agreement or formal collaboration 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>Consequences of coordination: - 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> <p>(For express advocacy discussion, <i>see</i> “Soft Money: Party” & “Issue Advocacy” 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] - Treats expenditures by any person made in cooperation, consultation, or concert with, or at request or suggestion of, any party committee as a contribution to that party committee [Sec. 214]</p>

Relevant Previous Law	Bipartisan Campaign Reform Act
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 [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>- <i>In general</i>, 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 an association or group of state/local candidates or officials</p> <p>- <i>However</i>, allows state, district, or local party committee to use some funds raised under state law for an allocable share (at FEC-determined ratios) of a voter registration drive in last 120 days of a federal election, voter ID, GOTV, 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 or local candidates); (3) takes no more than \$10,000 a year (or less, if state law so limits) from any person (including an entity person establishes, finances, maintains, or controls) for such activity; (4) uses only funds raised by that party committee expressly for such purposes, with no transfers from other party committees (and agents/officers acting on their behalf or entity they directly/indirectly establish, finance, maintain, or control); and (5) uses no funds that were solicited, received, directed, transferred, or spent by or in name of natl. party, federal candidate or official, or joint fundraising activities by 2 or more state/local party committees [Sec. 101]</p> <p>- Prohibits state/local candidates from using soft money for public communications that promote/attack a clearly identified federal candidate, but exempts communications referring to a federal candidate who is also a state/local candidate</p>

Relevant Previous Law	Bipartisan Campaign Reform Act
<p>Federal or non-federal activity: FEC allocation rules offer guidance in determining if activity is federal or non-federal election 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 election 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 federal campaign law to reach only funds used for independent communications by non-political committees that include express words advocating election or defeat of clearly identified candidate; in lower courts, prevailing view is, generally, that regulation of such communications that do not contain specific express advocacy words (or “magic words,” e.g., “vote for,” “defeat”) is not constitutional; <i>but see</i>, 11 CFR §106.5(b), subjecting national party disbursements for non-express advocacy communications to allocation formulae, requiring specific % of hard money, §104.9(c), requiring reporting of natl. party soft money, and §106.5(b), (c), & (d), requiring party allocation 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 [Sec. 101]</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>Defines “public communications” 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) [Sec. 101]</p>
<p>Generic activity: No provision</p>	<p>Defines “generic campaign activity” as one that promotes a party but not a federal or non-federal candidate [Sec. 101]</p>

Relevant Previous Law	Bipartisan Campaign Reform Act
<p>Permissible state/local party spending: 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]</p>	<p>State parties may spend soft money on activities that are not “federal election activities,” including: public communications referring solely to state/local candidates; contributions to state/local candidates; state, district, or local convention costs; and grassroots materials only depicting state/local candidates [Sec. 101]</p>
<p>Fundraising costs: Parties may allocate costs [11 CFR §106.5(f)]</p>	<p>Prohibits party committees from using soft money to raise funds for use at least in part on “federal election activities” [Sec. 101]</p>
<p>Support for tax-exempt groups: No restrictions on parties’ ability to support tax-exempt groups</p>	<p>Prohibits party committees or agents from raising money for, or giving or directing money to, an Internal Revenue Code §501(c) tax-exempt organization that makes disbursements in connection with a federal election (including a “federal election activity”) or a §527 tax-exempt organization (if not a federal political committee) [Sec. 101]</p>
<p>Federal candidates/officeholders: <i>Role in raising soft money:</i> May participate in fundraisers without restriction</p>	<p><i>Role in raising soft money:</i> - 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 (including any “federal election activity”) or any money from sources beyond federal limits and prohibitions in non-federal elections - Ban does not apply to an individual who is or was also a state or local candidate, for activity allowed under state law and that refers only to the state/local candidate or opponents; does not prohibit appearing, speaking, or being featured guest at state/local party fundraiser [Sec. 101]</p>

Relevant Previous Law	Bipartisan Campaign Reform Act
<p>Federal candidates/officeholders: Role in tax-exempt fundraising: No restrictions</p>	<p>Role in tax-exempt fundraising: Regardless of other soft money restrictions, allows federal candidates/officials to make: (a) unrestricted general solicitations on behalf of 501(c)s involved in federal elections where solicitation doesn't specify how funds will be used, unless organization's principal purpose is voter registration in last 120 days of federal election, GOTV, voter ID, or generic activity where a federal candidate is on ballot; and (b) solicitations for 501(c)s involved in federal elections specifically for such activities, or for general use by 501(c) whose principal purpose is those activities, with solicitations only to individuals, subject to a \$20,000 per donor limit [Sec. 101]</p>
<p>Disclosure by national parties: Regulations require disclosure of all receipts and disbursements [11 CFR §104.8, 104.9]</p>	<p>Codifies FEC regulations on disclosure of all activity—federal and non-federal [Sec. 103]</p>
<p>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)]</p>	<p>- Requires disclosure of “federal election activities” by state/local party committees including entities directly or indirectly established, financed, maintained, or controlled by either state/local party committee and agent or by state/local candidates and officials, subject to \$5,000 threshold in aggregate activity per year - Disclosure must include all amounts raised and spent by special soft money accounts that are allowed to be used for “federal election activities” [Sec. 103]</p>
<p>Building funds: Donations to national/state party building funds are exempt [2 USC §431(8)(B)(viii)]</p>	<p>Ends building fund exemption; <i>clarifies that state law is to govern exclusively in regulating spending on state and local party buildings</i> [Sec. 103]</p>

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Relevant Previous Law	Bipartisan Campaign Reform Act
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, is 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” - Exempts news events, “expenditures,” “independent expenditures,” debates, and others by FEC regulation - Provides alternative definition of “electioneering communication,” in the event that the first definition is ruled unconstitutional [based on <i>FEC v. Furgatch</i> (807 F.2d 857 (9th Cir. 1987), cert. denied, 484 U.S. 850 (1987))]: i.e., broadcast, cable, or satellite communication that promotes/supports or attacks/opposes 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 advocacy [Sec. 201]</p>
<p>Targeted communications: Not defined</p>	<p>(In context of electioneering communications prohibited by 501(c) and 527 corporations:) “Targeted to the relevant electorate” defined as a communication that 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>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 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>

Relevant Previous Law	Bipartisan Campaign Reform Act
<p>Contents of disclosure: 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, 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>Corporations and labor unions: 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 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>

Relevant Previous Law	Bipartisan Campaign Reform Act
<p>Coordination— FECA does not define “coordination” or “coordinated activity” <i>per se</i>, but: - 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> <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, including 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 [Sec. 202]</p>

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Relevant Previous Law	Bipartisan Campaign Reform Act
<p>Broadcast attribution: Federal Communications Act imposes general requirement that political radio/TV ads include 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>	<p>(See discussion under “Advertising” section)</p>
<p>Broadcast public inspection files: When political ad was paid for by a corporation, committee, association, or unincorporated group, FCC regulations also require broadcaster to maintain records of group’s governing personnel, available for public inspection [47 CFR § 73.1212]</p>	<p>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 entity [Sec. 504]</p>

Relevant Previous Law	Bipartisan Campaign Reform Act
FEC Disclosure	
<p>Availability of reports: - Requires all reports filed electronically to be posted on FEC Web site within 24 hours of receipt [2 USC §434(a)(11)(B)] - Requires paper reports to be available for public inspection at FEC within 48 hours of receipt [2 USC §438(a)(4)]</p>	<p>Requires all reports filed with FEC to be posted on Internet and available for inspection within 48 hours, or 24 hours if filed electronically [Sec. 501]</p>
<p>Central website: No provision</p>	<p>Requires FEC to maintain central Web site of all publicly available election-related reports [Sec. 502]</p>
<p>Standardized software: No provision</p>	<p>Requires FEC to develop and provide standardized software for filing reports electronically, and requires candidates' use of such software [Sec. 306]</p>
<p>Filing schedule for candidates: Principal campaign committees of candidates must file quarterly, pre-election, and, for general, post-election reports in election years, and semi-annual reports in non-election years; presidential candidates with actual or expected contributions or expenditures over \$100,000 must file monthly in presidential election years [2 USC §434(a)]</p>	<p>Requires candidates to file quarterly reports in non-election years [Sec. 503]</p>
<p>Filing schedule for parties: Non-candidate committees (including parties) may file: (a) quarterly, pre-election, and, for general, post-election reports in election yrs., and semi-annual reports in non-election years; or (b) monthly reports [2 USC §434(a)]</p>	<p>Requires national party committees to file monthly reports in all years [Sec. 503]</p>

Relevant Previous Law	Bipartisan Campaign Reform Act
FEC Enforcement	
<p>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)]</p>	<p>Increases criminal penalties for knowing and willful violations involving contribution/expenditure/donation amounts aggregating from \$2,000 to less than \$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 amounts aggregating \$25,000 or more: a fine under Title 18 or up to five years in prison, or both [Sec. 312]</p>
<p>Statute of limitations: Three years for criminal violations of FECA [2 USC §455(a)]</p>	<p>Changes to five years, for criminal violations of FECA [Sec. 313]</p>
<p>Sentencing guidelines: No provision</p>	<p>Directs U.S. Sentencing Commission to promulgate guidelines and make legislative or administrative recommendations regarding penalties for violating federal election law, per specified considerations: reflect serious nature; enhancement for foreign national violation, large number of illegal transactions, large dollar amount of violations, misuse of government funds, or intent to gain federal government benefits; assure consistency with FEC regulations; account for aggravating or mitigating circumstances; and comply with purposes of 18 USC §3553(a)(2) [Sec. 314]</p>
<p>Penalties for violating ban on contributions made in the name of another: No <i>specific</i> penalties</p>	<p>Civil: Imposes penalties, for knowing and willful violations, of between 300% of violation amount and the greater of \$50,000 or 1000% of violation amount Criminal: For knowing/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 amount, or prison and fine [Sec. 315]</p>

Relevant Previous Law	Bipartisan Campaign Reform Act
Advertising	
<p>Candidate appearance in ads: No content requirements for lowest unit rate (LUR) ads</p>	<p>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) [Sec. 305]</p>
<p>Sponsor Identification: Public political advertisements, from expenditures by any person, including express advocacy, or those containing contribution solicitations, must state clearly who paid for communication and whether a candidate authorized it [2 USC §441d]</p>	<ul style="list-style-type: none"> - Adds requirement for sponsor identification by political committees for any public political advertising (including “electioneering communications”) - Requires specific minimal standards to enhance visibility of such identification in the communication, including an audio statement of candidate or sponsor approval in TV and radio ads; also in TV ads, requires a written statement of responsibility that appears in a clearly readable manner, with a reasonable degree of color contrast, for at least four seconds, and is conveyed in an unobscured, full-screen view of candidate/sponsor (or with image and voice-over thereof) [Sec. 311]
Foreign Money	
<p>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]</p>	<ul style="list-style-type: none"> - Bans direct or indirect contributions from foreign nationals (including soft money), or their solicitation or receipt, or any promise to make such donations, in connection with any U.S. election, to a national party committee, or for any expenditure, disbursement, or independent expenditure for an “electioneering communication” (retains permanent resident alien exemption) [Sec. 303] - Clarifies that ban does not apply to U.S. nationals [Sec.317]
Miscellaneous	
<p>Fundraising on government 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]</p>	<p>Bans solicitation or receipt of contributions, including soft money, from anyone or by federal officials, while in any federal government building used to discharge official duties [Sec. 302]</p>

Relevant Previous Law	Bipartisan Campaign Reform Act
<p>Inaugural committees: Donations to presidential inaugural committees are not considered contributions under FECA [<i>see, e.g.</i>, FEC Advisory Opinion 1980-144]</p>	<ul style="list-style-type: none"> - Requires FEC disclosure of over-\$200 donations to presidential inaugural committees within 90 days of event - Bans foreign national donations [Sec. 308]
<p>Fraudulent misrepresentation: Bans candidates' fraudulent misrepresentation on a matter that is damaging to other candidates or parties [2 USC §441h]</p>	<ul style="list-style-type: none"> - Prohibits fraudulent misrepresentation in the solicitation of campaign funds - Bans knowing and willful participation in conspiracy to engage in such violations [Sec. 309]
<p>Contributions by minors: No different treatment for minors and adults</p>	<p>Bans contributions to candidates and donations to parties by individuals 17 years of age and younger [Sec. 318]</p> <p>Invalidated by Supreme Court in its December 10, 2003 ruling in <i>McConnell v. FEC</i></p>
<p>GAO Study: No provision</p>	<p>Directs GAO to study and report to Congress statistics for and effects of public funding systems in AZ and ME [Sec. 310]</p>
<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 that if any action is brought for declaratory or injunctive relief challenging the constitutionality of the Act, it shall be filed in U.S. District Court for D.C. and heard by a 3-judge court; a copy of the complaint shall be delivered promptly to the Clerk of the House and the Secretary of the Senate; a final decision shall be reviewable only by direct appeal to the U.S. Supreme Court (notice of appeal to be filed within 10 days, and jurisdictional statement to be filed within 30 days); expedited consideration to be provided by both courts; and right of intervention provided to House/Senate Members[Sec. 403(a),(b)]</i></p> <p><i>- Expressly provides that any Member of Congress may challenge the Act's constitutionality, seeking declaratory or injunctive relief [Sec. 403(c)]</i></p>

Relevant Previous Law	Bipartisan Campaign Reform Act
<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 [Sec. 401]</p>
<p>—</p>	<p>Effective date: - Generally: Nov. 6, 2002, unless otherwise provided [Sec. 402] - For <i>all</i> hard money contribution limit changes: Jan. 1, 2003 [Secs. 307; 402] - <i>Severability; effective dates; regulations; judicial review: upon enactment [Sec. 402]</i> - <i>Runoffs, recounts, and contested elections arising from Nov. 5, 2002 elections to be conducted under same rules as other 2002 elections, including those on soft money spending by state/local parties [Sec. 402]</i></p> <p>Transition rules for soft money: - Prior to Jan. 1, 2003, parties may spend soft money raised before effective date to retire outstanding debts and obligations in connection with elections held through Nov. 5, 2002, provided that no soft money is used to repay hard money debts - At no time after effective date may national parties use soft money to defray costs of construction or purchase of a party office building or facility [Sec. 402]</p>
<p>—</p>	<p>Regulations: Requires FEC to promulgate regulations within 90 days of enactment to carry out provisions of Title 1 (on soft money) and within 270 days to carry out other provisions of Act [Sec. 402]</p>