



AFFILIATED WITH THE GEORGE WASHINGTON UNIVERSITY

EXECUTIVE DIRECTOR
MICHAEL J. MALBIN

CO-CHAIRS
ANTHONY CORRADO
TREVOR POTTER

TRUSTEES
F. CHRISTOPHER ARTERTON
JEFFREY BELL
BECKY CAIN
DAVID COHEN
VIC FAZIO
C. BOYDEN GRAY
KENNETH A. GROSS

McCain-Feingold: Section by Section Analysis

May 2001

1990 M. Street NW
SUITE 380
WASHINGTON, DC 20036
202-969-8890
202-969-5612 FAX

www.CFInst.org
info@CFInst.org

MCCAIN-FEINGOLD: SECTION-BY-SECTION ANALYSIS

SEC	PROVISION	DESCRIPTION	ANALYSIS
SOFT MONEY			
101	Soft Money Ban	<ul style="list-style-type: none"> ● National Parties/Congressional Committees -- may raise/spend only hard money (i.e. limited contributions, no labor/corporate contributions. -- banned from making contributions to non-profits. ● State Parties: must use hard money to fund any “federal election activities” (defined to include generic Get-Out-The-Vote (“GOTV”) or voter registration in the 120 days preceding an election) during a federal election year (i.e. even numbered year) -- \$10,000 Soft Money Exception: State parties may fund Get-Out-The-Vote (“GOTV”) or voter registration in the 120 days preceding an election with soft money limited to \$10,000 per source if permissible under state law. ● Candidates: banned from raising soft money for voter registration, GOTV, other "federal election activities." ● Non-Profits: National parties banned from contributing to or soliciting contributions for non-profits; candidates banned from raising soft money for non-profits for “federal election activities.” 	<p>Impact: The hard money/\$10,000 soft money limit will have a major impact insofar as the vast majority of state elections coincide with federal elections, i.e. during even numbered years. However, impact will be reduced in many states where campaign finance limitations are already more restrictive than federal law.</p> <p>Legal: The state activity/"federal election activity" provisions will be challenged on First Amendment and federalism grounds.</p> <p>Not Covered: Candidates are <i>not</i> prohibited from fundraising for non-profits for purposes – including political purposes – which do not fall under the definition of “federal election activity.”</p>
ELECTIONEERING COMMUNICATIONS/ISSUE ADS			
201	"Electioneering Communication" -- Definition	<p>“Electioneering communication” is defined as a communication:</p> <ul style="list-style-type: none"> ● that clearly identifies a candidate for congress or president ● is made via broadcast, cable, or satellite media; ● is made within 60 days of a general election or 30 days of a primary election; ● is made to an audience that includes voters of the election 	Not Covered: Non-broadcast media (radio, mail, Internet, etc), or “issue ads” aired before the covered time periods.

MCCAIN-FEINGOLD: SECTION-BY-SECTION ANALYSIS

203	"Electioneering Communication" Restrictions – Corporations/Unions	Corporations and unions are prohibited from making electioneering communications (i.e. candidate-specific ads within 60/30 days of an election) except through their PAC with hard money.	Legal: Will be challenged; may be in conflict with <i>Citizens for Life</i> case (1986); but may be valid under <i>Michigan Chamber of Commerce</i> case (1990).
204	"Electioneering Communication" Restrictions -- Non-Profits	501(c)(4) non-profit organizations (i.e. many advocacy groups) are prohibited from making electioneering communications (i.e. candidate-specific ads within 60/30 days of an election) except through their PAC with hard money.	Legal: Provision appears to be in conflict with Supreme Court <i>Citizens for Life</i> case (1986).
201	"Electioneering Communication" Disclosure	<p>Covers broadcast "electioneering" ads (i.e. candidate-specific ads within 60/30 days).</p> <p>Threshold: Disclosure is triggered once sponsor spends \$10,000.</p> <p>Timing: Disclosure due each time an additional \$10,000 is spent.</p> <p>Disclosure Contents: sponsor, itemization of all disbursements over \$200.</p> <p>Full Sponsor/Conduit Disclosure: disclosure extends to "any entity sharing... control" over sponsor.</p> <p>Donor Disclosure: sponsor must disclose all donors of \$1,000 or more to a special advertising account, or general treasury fund, depending on how the ad is financed.</p>	<p>Legal: Donor disclosure constitutionality is controversial.</p> <p>Implementation: Full Sponsor/Conduit/controlling entity disclosure's efficacy will depend on FEC implementation.</p>
CONTRIBUTIONS LIMITS, TV RATES, MILLIONAIRE PROVISION			
308	Contribution Limits Increase	<ul style="list-style-type: none"> ● Individual Limit: Individual contribution limit raised from \$1,000 to \$2,000 ● Individual Aggregate Limit: raised from \$25,000 to \$37,500 ● Party Contributions to Senate Campaigns: raised from \$17,500 to \$35,000 ● Limits on Contributions to National Party: raised from \$20,000 to \$25,000 ● Limits Indexed: limits henceforth to be indexed for inflation ● Individual Contribution to State Party PAC Limit: Raises individual contribution limit to state parties for hard money activity (i.e. federal election activity) from \$5,000 to \$10,000 (sec. 101). 	Legislative History: \$2,000 was the compromise figure between current \$1,000 limit and \$3,000 (Thompson-Feinstein Amendment); original 1974 \$1,000 limit is worth \$3500 in 2001 dollars

MCCAIN-FEINGOLD: SECTION-BY-SECTION ANALYSIS

304	"Millionaire Opponent" Provision	<p>Increases contribution limits for Senate candidates facing self-financed candidates on sliding scale as follows:</p> <ul style="list-style-type: none"> ● creates initial threshold of \$150,000 + 4¢ times no. of eligible voters in state ● if "<i>opposition personal funds amount</i>" (personal spending of candidate minus that of opponent) exceeds threshold amount by: <ul style="list-style-type: none"> (a) 2-4 times, limit on indiv. contributions is increased 300% to \$6,000; (b) 4-10 times, limit on indiv. contributions is increased 600% to \$12,000; (c) more than 10 times, limit on indiv. contributions to opponent is raised 6-fold and limit on party coordinated expenditures is removed; ● Aggregate indiv. limit would not apply to extent of increased limits. ● Limits would be raised only to extent of 110% of total "<i>opposition personal funds amount</i>" ● "<i>Opposition personal funds amount</i>," is calculated deducing candidate's war chest, by including "<i>gross receipts advantage</i>" of candidate opposed by wealthy candidate (i.e., 50% of gross receipts of candidate minus 50% of gross receipts of wealthy opponent, as of 6/30 and 12/ 31 the year before election) (Sec. 318). 	
305	TV/Radio Rates for Candidates & Parties	<ul style="list-style-type: none"> ● Clarifies and provides for greater enforcement of special "lowest unit charge" advertising rates for candidates. ● LUC defined as lowest rate charged for time in the same slot at any time of year. ● To ensure compliance, provides for random audits of TV/radio stations. ● Extends LUC to parties. 	Legislative History: Meant to address inconsistent compliance by broadcasters with candidate advertising rate/lowest unit charge law.
INDEPENDENT EXPENDITURES, PARTY EXPENDITURES, "COORDINATION"			
214	Coordination Definition	<p>Definition: Defines coordination as a payment made in cooperation with, at the suggestion of, or per an understanding with a candidate, candidate's agent or campaign, or party.</p> <p>New FEC Regulations/Definition: Directs FEC to issue new regulations further defining coordination to extend beyond recently issued regulations, factoring in the following evidence of coordination:</p> <ul style="list-style-type: none"> ● re-publication of campaign materials; ● use of a common vendor ● common employees ● substantial discussion between an advertiser and a candidate/party ● coordination of corporate or union internal communications on GOTV/voter registration or <i>electioneering communication</i>. 	<p>Legislative History: Replaced coordination language in original bill, which was criticized as overbroad/too intrusive.</p> <p>Legal: Directive to FEC is to revise recent regulation which was response to Court decision in <i>Christian Coalition v. FEC</i> case.</p>

MCCAIN-FEINGOLD: SECTION-BY-SECTION ANALYSIS

202	Coordinated Issue Ads Treated as Contributions	Electioneering Communication (as defined in sec. 201) is a contribution (subject to hard money limits) if its sponsor coordinates the ad with a candidate or party	
211	Independent Expenditure Must Be Uncoordinated	Restates that independent expenditure must involve no coordination between group making independent expenditure and candidate it benefits or concerns.	
309	Political Ad Discount/LUC for Parties Conditioned on Coordinated Spending Limits	Parties may receive special political advertising rate/lowest unit charge only if they agree to voluntarily abide by coordinated spending limits for their candidates. (The provision will only take effect if the mandatory coordinated party spending limits are ruled unconstitutional in the pending <i>Colorado Republican</i> case).	Legal: If the mandatory party cording spending limits are declared unconstitutional in the Colorado case, may be challenged on theory that provision imposes an "unconstitutional condition"
213	Spending Selection or either Party Independent or 441ad Expenditures	Parties must opt either to make independent expenditures, or coordinated expenditures on behalf of congressional candidates; bars parties from making both.	
DISCLOSURE			
212	Disclosure Schedule for Independent Expenditure Groups	<ul style="list-style-type: none"> ● At any time during cycle, sponsors of independent expenditures totaling \$10,000 must file within 48 hours with FEC. ● In last 20 days of campaign, sponsors of independent expenditures totaling \$1,000 must file within 24 hours 	
503	Disclosure Schedule for Parties/ Candidates	<ul style="list-style-type: none"> ● Candidates must file monthly disclosure reports during election year ● National party committees must file monthly at all times. 	
504	Political Advertiser Disclosure to TV/Radio Stations	<ul style="list-style-type: none"> ● FCC licensees required to maintain records of all ad buy requests for ads relating to candidates, elections, or legislative issues. ● Ad sponsors/buyers required to provide to stations: <ul style="list-style-type: none"> -- person buying time, contact info, and list of sponsor's executives/directors -- candidate name/election or issue concerned -- rate charged/class of time -- date and time ad runs 	<p>Codifies FCC Rules: Substantially codifies existing FCC regulations (47 CFR 73.1212); however, the regulations require disclosure of sponsor's "<i>True Identity</i>" where a front group is being used to mask the actual sponsor; language of Hagel Amendment (from which this provision was adopted) dropped that language.</p> <p>No time limit or small business exception.</p>

MCCAIN-FEINGOLD: SECTION-BY-SECTION ANALYSIS

313	Disclaimers	<p>Amends existing requirements for disclaimers (i.e. disclosure contained within an ad itself). Currently, disclaimers are required for any express advocacy communication through any medium, and any fundraising solicitation (whether or not express advocacy). Amendment would further require disclaimers:</p> <ul style="list-style-type: none"> ● PACs: in the case of political committees (PACs, candidate committees, party committees), any public communication whatsoever. ● TV & Radio Communications: any electioneering issue ad (see sec. 201 above). <p>Disclaimer Contents/Format</p> <ul style="list-style-type: none"> ● General: (1) Sponsor name & (2) Website or street address. ● Print Disclaimer: provides technical requirements to ensure readability. ● TV/Radio Disclaimer: must include audio statement in which candidate or sponsor has approved/takes responsibility for the ad. ● TV: must include photo of candidate. 	<p>Not Covered: No disclaimer required for non-broadcast communications, e.g. phones, Internet & mail (except for political committees).</p> <p>Legal: The statute as enacted in '74 has no minimum threshold, making it vulnerable to challenge under the <i>McIntyre</i> case. However, it applies only to "public advertising" -- not leaflets. The amendment's alternative of providing Internet address in lieu of street address strengthens case against challenge based on the <i>NAACP</i> case/harassment.</p>
103	State Party "Federal Activity" Disclosure	<p>State parties must file FEC disclosure for any "federal election activity" (GOTV/Voter registration within 120 days of a federal election, etc.)</p>	
306	Photo/Audio Disclaimers	<p>Candidates, to be entitled to receive special candidate advertising rate/lowest unit charge, must certify to broadcast stations that they will include in their ads audio statement wherein candidate or sponsor has approved/takes responsibility for the ad. TV ad must include photo of candidate.</p>	<p>Largely restates parts of section 313 Disclaimer provision, but perhaps enhances enforcement by conditioning lowest unit charge on certification of compliance.</p>
502	FEC Website "Clearinghouse"	<p>Directs FEC to create Website of all reports required under FECA, and any other "election-related information" disclosed to other agencies.</p>	<p>Creates "Clearinghouse" Website: FEC Website would now include, for instance, IRS 527 and other disclosure reports. However, FCC disclosure required by section 504 would presumably <i>not be</i> posted because it is not disclosed to an "agency," but directly to the TV/radio stations.</p> <p>Implementation: Definition of "election-related information" is crucial to efficacy of provision.</p>
501	FEC Internet Posting of Disclosure	<p>Disclosure filed electronically must be posted by the FEC on its Website within 24 hours; paper disclosures must be posted within 48 hours.</p>	<p>Note: All campaigns, PACS, etc with receipts of \$50,000 or are now required to file electronically with FEC.</p>

MCCAIN-FEINGOLD: SECTION-BY-SECTION ANALYSIS

307	FEC Software	<p>FEC directed to provide for free -- and establish standards for -- software such that campaign finance disclosure is:</p> <ul style="list-style-type: none"> ● user-friendly ● transmitted instantaneously ● posted on Internet instantaneously 	
310	Presidential Inaugural Donations	<p>Provides for disclosure of contributions to presidential inaugural committee; bars donations by foreign nationals to same; disclosure to be posted on FEC Website.</p>	
<p>ENFORCEMENT, COMPLIANCE, CLARIFICATION OF CRIMINAL PROVISIONS</p>			
316	Sentencing Guidelines for FECA Violations	<p>US Sentencing Commission directed to develop/amend FECA violation guidelines based on aggravating or mitigating circumstances and make legislative recommendations to Congress within 90 days of Act's enactment.</p> <p>Penalties are to be enhanced for violations involving foreign money, large number of transactions, large dollar amount, use of governmental funds, intent to achieve a benefit from the government, and involvement of candidates/campaign officials</p>	
314	Increase in Penalties for FECA Violations	<p>Fines: to be determined per US Code Title 18/Federal Prosecution standards</p> <p>Sentencing:</p> <ul style="list-style-type: none"> ● For violations where sum involved > \$25,000: 5 years or less ● For violations where sum involved < \$25,000: 1 year or less 	
315	Statute of Limitations for FECA Violations	<p>FECA violation statute of limitations extended from 3 to 5 years</p>	
317	Conduit Contribution Penalties	<p>Civil penalty increased to at least 300% of amount involved, to a maximum of 1000% or \$50,000.</p> <p>Criminal Penalty increased to at least 300% of amount involved, to a maximum of 1000% or \$50,000 and up to 2 years imprisonment.</p>	
302	Fundraising on Federal Property Prohibition	<p>Ban on fundraising on federal property extended to any donation whatever in connection with an election.</p>	<p>Not Covered: fundraising for non-profits.</p>

MCCAIN-FEINGOLD: SECTION-BY-SECTION ANALYSIS

303	Foreign Donation Ban	Ban on fundraising from foreign national extended to any donation whatever in connection with an election. Foreign national is a person who is not a citizen or permanent legal resident.	Not Covered: fundraising for non-profits.
MISCELLANEOUS			
312	Public Financing Study	Provides for a study of " <i>Clean Money, Clean Elections</i> " public financing as implemented in certain states.	
301	Personal Use of Campaign Funds	Prohibits candidates from using campaign funds for personal use.	
401	Severability	Provides that, if Court invalidates any part of the Act, the remainder of the bill remains in force.	Legislative History: Senate rejected non-severability clause 57-43.
403	Expedited Court Review	Provides D.C. District Court as venue for court challenge, and thereafter for direct appeal to Supreme Court; directs courts to expedite "to the greatest possible extent" any such challenge.	
402	Effective date	30 days after enactment of bill.	