# Proposals to Eliminate Public Financing of Presidential Campaigns

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# What Are the Essential Policy Issues?

There is a consensus that, in 2012 and beyond, the most competitive presidential candidates will either need substantial additional resources via a reformed public financing program or will need to engage in substantial private fundraising. For some, this signals an urgent need to save the public campaign financing program that has existed since the 1970s; for others, it signals the program's demise.

On January 26, 2011, the House passed (239-160) H.R. 359, sponsored by Representative Tom Cole, to repeal public financing of presidential campaigns and nominating conventions. If the Senate decides to pursue that bill or companion S. 194 (introduced by Senator Mitch McConnell), Senators might seek to curtail all or part of the program, strengthen the program, or pursue other options. Two other bills may also be relevant. H.R. 3463 proposes to terminate the public financing program (in addition to eliminating the Election Assistance Commission) and transfer remaining amounts to the general fund of the U.S. Treasury for use in deficit reduction. In addition, Section 620 of the FY2012 Financial Services and General Government appropriations bill, H.R. 2434, contains a provision that would prohibit spending funds to administer the public financing program for the fiscal year.

This report provides a brief policy overview and raises potential issues for congressional consideration. Readers are encouraged to consult the following CRS products for additional information.

- CRS Report RL34534, *Public Financing of Presidential Campaigns: Overview and Analysis*, by R. Sam Garrett;
- CRS Report RL34630, *Federal Funding of Presidential Nominating Conventions: Overview and Policy Options*, by R. Sam Garrett and Shawn Reese; and
- CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett (the "Public Financing Issues" section).

For a discussion of constitutional considerations, which are beyond the scope of this report and those noted above, readers may consult CRS Report RL30669, *The Constitutionality of Campaign Finance Regulation: Buckley v. Valeo and Its Supreme Court Progeny*, by L. Paige Whitaker.

# What Would The Bills Do?

H.R. 359 and S. 194 would end public financing of presidential campaigns and party conventions. The bills would make inapplicable a section of the Internal Revenue Code that permits individuals to make voluntary designations on their individual income tax returns to support public financing.[1] Amounts already designated would be transferred from the Presidential Election Campaign Fund (PECF) to the general fund of the U.S. Treasury. Unlike the Senate bill,

[1] 26 U.S.C. §6096.

an amendment to H.R. 359 would require that amounts returned to the Treasury be used specifically for deficit reduction. The Senate bill only requires that funds be returned to the Treasury.

The public financing provisions of H.R. 3463 are substantially similar to H.R. 359, although the former bill would although abolish the Election Assistance Commission.[2] H.R. 3463 would terminate the public financing program and direct that amounts remaining in the PECF be returned to the general fund of the U.S. Treasury for use in deficit reduction. As of November 28, 2011, approximately $199.0 million remained in the PECF.[3]

Finally, Section 620 of the FY2012 Financial Services and General Government appropriations bill, H.R. 2434, contains a provision that would prohibit spending funds to administer the public financing program for the fiscal year.

# What Is the Presidential Public Financing Program?

For those candidates and party conventions choosing to participate, the presidential public financing program provides funds for three phases of the campaign:

- *Grants to party nominating convention*s. In 2008, the Democratic and Republican parties were eligible to receive approximately $16.8 million. The Republican convention, which ended early due to Hurricane Gustav, ultimately received $13.0 million. Convention committees receiving public funds must agree not to raise more funds, but separate "host committees" often raise substantial private amounts. Funding for convention grants is reserved first, followed by payments for general and primary funding. For the 2012 cycle, two convention grants of approximately $17.7 million each have already been paid to the Democratic and Republican convention committees. Inflation adjustments of approximately $600,000 each are scheduled to follow in 2012.
- *Grants for general-election nominees*. In 2008, then-candidate John McCain accepted the $84.1 million grant available to major-party nominees. Then-candidate Barack Obama chose not to accept public funds. Candidates who accept general election grants must agree not to engage in additional private fundraising for their campaigns, and not to spend funds other than the general election grant.[4] It is currently unclear whether any candidate will participate in 2012 general-election public financing.
- *Matching funds for primary candidates*. Publicly financed primary candidates may receive 100% matches of individual contributions up to $250. In 2008, primary candidates could spend up to approximately $42 million. It is currently unclear whether any candidate will participate in 2012 primary-election public financing.

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[2] EAC issues are beyond the scope of this report. For additional discussion, see CRS Report RS20898, *The Help America Vote Act and Elections Reform: Overview and Issues*, by Kevin J. Coleman and Eric A. Fischer.

[3] The Financial Management Service of the U.S. Treasury Department provided this information to CRS, November 2011. CRS rounded the amount provided.

[4] Limited exceptions exist for additional fundraising and spending for legal and accounting expenses.

Congress established the current public financing system during the early and mid-1970s, especially via the 1974 Federal Election Campaign Act (FECA) amendments.[5] Congress created the voluntary public financing option amid concerns about potential corruption in campaign fundraising following Watergate. Initially, individual taxpayers could designate $1 ($2 for married couples filing jointly) to the PECF.[6] Congress tripled the checkoff designation from $1 to $3 (and from $2 to $6 for married couples) in 1993.[7]

Since the 1976 election cycle, approximately $1.5 billion has gone to publicly financed candidates and nominating conventions. Almost all that money has benefitted Democratic and Republican campaigns. Third party candidates, independents, and Lyndon LaRouche (who often runs as a Democrat) collectively received about 4% of approximately $1.3 billion provided to candidates overall.[8]

## What Might Happen If the Bills Were Enacted?

If any of the bills discussed above became law, presidential candidates and nominating conventions would have to be entirely privately financed, as all other federal campaigns are today.[9] H.R. 2434 appears to limit spending funds to administer the public financing program only for the FY2012 fiscal year, whereas the other bills would repeal public financing itself. In any case, however, the effect would be to at least temporarily halt public funds for presidential campaigns. Repealing the public financing program would eliminate a major tenet of modern campaign finance policy, albeit a controversial one.

- For those who believe that they could raise higher amounts than would be available through public funds—or who wanted to spend more than would be permitted—an end to public financing might be of little consequence. Those who are philosophically opposed to using public funds would likely support repealing or otherwise curtailing the program.
- Some otherwise qualified candidates could be deterred from seeking the presidency because they do not have access to, or do not believe they can raise, sufficient private funds.
- Candidates might have to spend additional time raising private funds, perhaps with an incentive to pursue large contributions, to make up for the lack of public funds.
- Amounts currently in the PECF could be used for other purposes. As of January 21, 2011, the PECF balance was approximately $194.8 million.[10] It is also

[5] P.L. 93-443; 88 Stat. 1263.

[6] On the presidential public financing portion of the Revenue Act, see 85 Stat. 573.

[7] 26 U.S.C. §6096(a). On the increase, see P.L. 103-66; 107 Stat. 567-568.

[8] These figures are based on CRS analysis of data provided by the Federal Election Commission, data in Federal Election Commission, *Report on the Presidential Public Funding Program* (FEC: April 1993), and data in FEC press releases. Data on program totals sometimes vary over time and by source.

[9] 2 U.S.C. §431 *et seq*.

[10] Information provided to CRS by the Financial Management Service, U.S. Treasury Department, via email, January 21, 2011.

possible that additional savings could be achieved if the Federal Election Commission and Treasury Department no longer had to administer the program.

## Why Are There Concerns About the Program's Viability?

Elections since 2000 have raised concerns about whether spending limits required of publicly financed candidates, and funds available to those candidates, are sufficient.

- In 2000, then-candidate George W. Bush was the first person elected President since 1976 without participating in all elements of the public financing program open to candidates (primary and general). Instead, Mr. Bush accepted only general election public funds.
- In 2008, Barack Obama became the first person elected President since 1976 without accepting any public funds.

Taxpayer designations have also generally declined over time.

- Designations reached a high point in 1980, when 28.7% of filers designated funds for the PECF; participation reached a low of 7.3% in 2009. Despite a slight increase in 2010, for rounding purposes, the figure remained at 7.3%.[11]

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[11] Financial Management Service data obtained via the FEC indicate that the 2009 rate was 7.27%, compared with 7.28% for 2010.