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Proposals to Eliminate Public Financing of Presidential Campaigns

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What Are the Essential Policy Issues?

There is a consensus that the presidential public financing program is antiquated and offers insufficient benefits to attract the most competitive candidates. No major candidate accepted public funds in 2012. In 2008, then-candidate Barack Obama became the first person, since the public financing program's inception, elected President without accepting any public funds. For some, these developments signal an urgent need to save the public campaign financing program that has existed since the 1970s; for others, they suggest that the program is unnecessary.

Eight bills introduced in the 113th Congress would terminate all or parts of the program. These measures—H.R. 94, H.R. 95, H.R. 260, H.R. 270, H.R. 1724, H.R. 2019, H.R. 2857, and S. 118—are discussed in the next section of this report. On December 11, 2013, the House passed H.R. 2019, which would terminate convention funding. The 112th Congress also considered terminating the program; two bills passed the House but died in the Senate. On January 26, 2011, the House passed (239-160) H.R. 359, sponsored by Representative Cole, to repeal public financing of presidential campaigns and nominating conventions. In addition, on December 1, 2011, the House passed (235-190) H.R. 3463. The latter bill, sponsored by Representative Harper, proposed 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.

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?

All bills would end public financing either entirely or for party conventions. Some bills also specify other purposes for remaining balances after the Presidential Election Campaign Fund (PECF) was terminated. **Table 1** below provides a brief summary.

Table 1. | 113th Congress Legislation That Proposes to Eliminate Aspects of the Presidential Public Financing Program

Bill	Primary Sponsor	Short Title	Brief Summary	Most Recent Major Action
H.R. 94	Cole	—	Would eliminate PECF convention funding	Committee on House Administration markup held; bill ordered reported favorably 06/04/2013 (voice vote); reported 12/12/2013 (H.Rept. 113-291)
H.R. 95	Cole	—	Would eliminate PECF and transfer balance to the general fund of the U.S. Treasury for use in deficit reduction	Committee on House Administration markup held; bill ordered reported favorably 06/04/2013 (voice vote); reported 12/12/2013 (H.Rept. 113-292)
H.R. 260	Harper	—	Would eliminate PECF and transfer balance to the general fund of the U.S. Treasury for use in deficit reduction; would eliminate Election Assistance Commission (EAC) and transfer some functions to the Federal Election Commission (FEC)	Referred to Committees on House Administration; Ways and Means 01/15/2013
H.R. 270	Price	Empowering Citizens Act	Relevant provisions would eliminate PECF convention financing; remainder of bill proposes revised public financing of presidential campaigns, and new public financing program for House campaigns	Referred to Committees on House Administration; Ways and Means 01/15/2013

Bill	Primary Sponsor	Short Title	Brief Summary	Most Recent Major Action
H.R. 1724	Harper	Kids First Research Act of 2013	Relevant provisions would eliminate PECF and convert it to “10-Year Pediatric Research Initiative Fund,” with some amounts available to National Institutes of Health; contains health-research provisions unrelated to this report ^a	Referred to Committees on Energy and Commerce; House Administration; Ways and Means 04/25/2013
H.R. 2019	Harper	Kids First Research Act of 2013	Relevant provisions of amended version of bill that passed House would eliminate PECF convention funding and convert amounts to “10-Year Pediatric Research Initiative Fund,” with some amounts available to National Institutes of Health; contains health-research provisions unrelated to this report ^a	Passed House under suspension of the rules (295-103, roll call vote no. 632), 12/11/2013
H.R. 2857	Barletta	Disaster Loan Fairness Act of 2013	Relevant provisions would eliminate PECF convention financing; contains small business disaster-loan provisions unrelated to this report ^b	Referred to Committees on Small Business; House Administration 07/30/2013
S. 118	Coburn	—	Would eliminate PECF convention funding	Referred to Committee on Rules and Administration 01/23/2013

Source: CRS analysis of bill texts.

Notes: The table excludes provisions unrelated to public financing of campaigns.

- a. For additional information on health-research provisions in the bill, congressional requesters may contact CRS Analyst Judith Johnson at x77077.
- b. For additional information on small business disaster-relief provisions in the bill, congressional requesters may contact CRS Analyst Bruce Lindsay at x77048. See also CRS Report R41309, *The SBA Disaster Loan Program: Overview and Possible Issues for Congress*, by Bruce R. Lindsay.

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 conventions.* In 2012, the Democratic and Republican parties each received grants of \$18.2 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.
- *Grants for general-election nominees.* In 2012, neither Democratic nominee Barack Obama nor Republican nominee Mitt Romney chose to accept a grant of approximately \$91.2 million. In 2008, then-candidate John McCain accepted the \$84.1 million grant available to major-party nominees. Then-candidate 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.¹
- *Matching funds for primary candidates.* Publicly financed primary candidates may receive 100% matches of individual contributions up to \$250, in exchange for limited spending. In 2012, Libertarian Governor Gary Johnson, Governor Buddy Roemer III,² and Green Party candidate Jill Stein qualified for a total of approximately \$1.2 million in matching funds.³ Major candidates most recently received primary matching funds in 2008.

Congress established the current public financing system during the early and mid-1970s, especially via the 1974 Federal Election Campaign Act (FECA) amendments.⁴ 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.⁵ Congress tripled the checkoff designation from \$1 to \$3 (and from \$2 to \$6 for married couples) in 1993.⁶

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 ran as a Democrat) collectively received about 4% of approximately \$1.3 billion provided to candidates overall.⁷

¹ Limited exceptions exist for additional fundraising and spending for legal and accounting expenses.

² The cited source does not provide a party affiliation for Gov. Roemer. As is often the case with minor candidates, it appears that he pursued ballot access under different party labels depending on the state.

³ CRS aggregated these figures from data in Federal Election Commission, “Federal Election Commission Certifies Federal Matching Funds for Gary Johnson,” press release, December 20, 2012, http://fec.gov/press/press2012/20121220_JohnsonMatchFund.shtml.

⁴ P.L. 93-443; 88 Stat. 1263.

⁵ On the presidential public financing portion of the Revenue Act, see 85 Stat. 573.

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

⁷ 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 (continued...)

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.⁸ 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 November 2013, the PECF balance was approximately \$271.4 million.⁹ It is also 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 election funding). 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. No major candidate accepted public funds in 2012.

(...continued)

releases. Data on program totals sometimes vary over time and by source.

⁸ 2 U.S.C. §431 *et seq.*

⁹ Information provided to CRS by the Financial Management Service, U.S. Treasury Department, via email, December 2013.

- Given these developments, and the rise in non-candidate spending from entities such as super PACs¹⁰, there is general consensus that the spending limits associated with the current program are insufficient to attract the most competitive candidates.

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 has generally declined since then. In 2012, the checkoff rate reached a low of 6.0%.¹¹

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¹⁰ For additional discussion, see CRS Report R42042, *Super PACs in Federal Elections: Overview and Issues for Congress*, by R. Sam Garrett.

¹¹ These are Financial Management Service figures provided by the FEC. The 2012 figure is for FY2012. Some FEC and Treasury sources vary in their use of calendar year data vs. fiscal year data. Calendar year and fiscal year participation rates generally vary by approximately 1%-2% per year.