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Proposals to Eliminate Public Financing of Presidential Campaigns

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What Are the Essential Policy Issues?

Congress is faced with determining whether it wants public financing of presidential campaigns to continue and, if so, how. The 113th Congress and President Obama chose to eliminate part of the program—public funding for nominating conventions—in April 2014 via P.L. 113-94 (H.R. 2019).¹ The 2016 conventions were the first to be entirely privately financed since 1972. Public matching funds and grants remain in place for candidates who choose to participate. There is, however, a consensus even among supporters that the presidential public financing program is antiquated and offers insufficient benefits to attract the most competitive candidates.

Most major presidential candidates have declined to participate in public financing since at least 2008. In 2016, Democratic candidate Martin O'Malley's campaign qualified for primary matching funds, as did Green Party nominee Jill Stein. 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.

Proposals to curtail the presidential public financing program have been a consistent theme in recent Congresses. In the 115th Congress, H.R. 133, H.R. 25, and S. 18 would eliminate the program, although the latter two bills primarily address other topics. On February 7, 2017, the Committee on House Administration ordered H.R. 133 reported favorably. In the 114th Congress, H.R. 412 would have eliminated candidate funding—the only remaining component of the program. By voice vote and without debate or amendments, on March 4, 2015, the Committee on House Administration ordered the bill reported favorably. The committee issued its report on December 3, 2015.² Eight bills introduced in the 113th Congress—H.R. 94, H.R. 95, H.R. 260, H.R. 270, H.R. 1724, H.R. 2019, H.R. 2857, and S. 118—would have terminated all or parts of the program. As noted previously, one of those measures, H.R. 2019, became law.

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 H.R. 359 to repeal public financing of presidential campaigns and nominating conventions. In addition, on December 1, 2011, the House passed H.R. 3463. The latter bill 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 may consult the following CRS products for additional background.

- CRS Report RL34534, *Public Financing of Presidential Campaigns: Overview and Analysis*, by (name redacted)
- CRS Report R43976, *Funding of Presidential Nominating Conventions: An Overview*, by (name redacted) and (name redacted)
- CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by (name redacted)

¹ 128 Stat. 1085.

² U.S. Congress, House Committee on House Administration, *Termination of Taxpayer Financing of Presidential Election Campaigns*, report to accompany H.R. 412, 114th Cong., 1st sess., December 3, 2015, H.Rept. 114-362, Part I (Washington: GPO, 2015).

For discussion of increased contribution limits for political parties, including for privately financed conventions, see CRS Report R43825, *Increased Campaign Contribution Limits in the FY2015 Omnibus Appropriations Law: Frequently Asked Questions*, by (name redacted). For a discussion of constitutional considerations, which are beyond the scope of this report and those noted above, readers may consult CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by (name redacted).

What Would Recent Bills Do?

Now that public financing of conventions has been eliminated (except separately appropriated security funds), only candidate funding remains. (Additional discussion of the funding types appears below.) In the 115th Congress, H.R. 133, sponsored by Representative Cole, would terminate candidate funding upon enactment. Remaining amounts in the Presidential Election Campaign Fund (PECF), a segregated account that maintains public financing designations from individual tax returns, would be transferred to two sources. First, the bill specifies that approximately \$63 million of the PECF balance would go toward a pediatric research fund to which convention funds were transferred under P.L. 113-94.³ Second, remaining amounts would go to the general fund of the U.S. Treasury “to be used only for reducing the deficit.” As of December 31, 2016, the PECF balance was approximately \$320 million.⁴

For historical reference, **Table 1** below provides a brief summary of legislation considered since the 113th Congress. All bills would have terminated convention financing, candidate financing, or both.

Table 1. Recent Legislation Proposing to Eliminate Aspects of the Presidential Public Financing Program

Congress	Bill	Primary Sponsor	Short Title	Brief Summary	Most Recent Major Action
115 th	H.R. 25	Woodall	Fair Tax Act of 2017	Primarily addresses tax amendments unrelated to this report; also would eliminate PECF	—

³ Health care research issues and details of the pediatric research fund are beyond the scope of this report. Congressional requesters may contact CRS Analyst Judith Johnson at x7-.... with additional questions.

⁴ Information provided to CRS by the Bureau of Fiscal Service, U.S. Treasury Department, via email, February 2017.

Congress	Bill	Primary Sponsor	Short Title	Brief Summary	Most Recent Major Action
115 th	H.R. 133	Cole	—	Would eliminate PECF and transfer remaining amounts to “10-Year Pediatric Research Initiative Fund,” with some amounts available to National Institutes of Health (NIH); contains health-research provisions unrelated to this report; with remaining amounts transferred to the U.S. Treasury general fund for deficit reduction ^a	Committee on House Administration ordered reported favorably, 02/07/2017
115 th	S. 18	Moran	—	Primarily addresses tax amendments unrelated to this report; also would eliminate PECF	—
114 th	H.R. 412	Cole	—	Would have eliminated PECF and transfer remaining amounts to “10-Year Pediatric Research Initiative Fund,” with some amounts available to National Institutes of Health (NIH); contained health-research provisions unrelated to this report; with remaining amounts transferred to the U.S. Treasury general fund for deficit reduction ^a	Committee on House Administration reported favorably (H.Rept. 114-362) 12/03/2015

Congress	Bill	Primary Sponsor	Short Title	Brief Summary	Most Recent Major Action
113 th	H.R. 94	Cole	—	Would have eliminated 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)
113 th	H.R. 95	Cole	—	Would have eliminated PECF and transferred 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)
113 th	H.R. 260	Harper	—	Would have eliminated PECF and transferred balance to the general fund of the U.S. Treasury for use in deficit reduction; would have eliminated Election Assistance Commission (EAC) and transferred some functions to the Federal Election Commission (FEC)	Referred to Committees on House Administration; Ways and Means 01/15/2013

Congress	Bill	Primary Sponsor	Short Title	Brief Summary	Most Recent Major Action
113 th	H.R. 270	Price (N.C.)	Empowering Citizens Act	Relevant provisions would have eliminated PECF convention financing; remainder of bill proposed 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
113 th	H.R. 1724	Harper	Kids First Research Act of 2013	Relevant provisions would have eliminated PECF and converted it to “10-Year Pediatric Research Initiative Fund,” with some amounts available to National Institutes of Health (NIH); contained health-research provisions unrelated to this report ^a	Referred to Committees on Energy and Commerce; House Administration; Ways and Means 04/25/2013
113 th	H.R. 2019	Harper	Kids First Research Act of 2013	Relevant provisions eliminated PECF convention funding and converted amounts to “10-Year Pediatric Research Initiative Fund,” with some amounts available to NIH; contained health-research provisions unrelated to this report ^a	Became P.L. 113-94, 04/03/2014

Congress	Bill	Primary Sponsor	Short Title	Brief Summary	Most Recent Major Action
113 th	H.R. 2857	Barletta	Disaster Loan Fairness Act of 2013	Relevant provisions would have eliminated PECF convention financing; contained small business disaster-loan provisions unrelated to this report ^b	Referred to Committees on Small Business; House Administration 07/30/2013
113 th	S. 118	Coburn	—	Would have eliminated 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 x73752. See also CRS Report R41309, *The SBA Disaster Loan Program: Overview and Possible Issues for Congress*, by (name redacted).

What Is the Presidential Public Financing Program?

Until 2014, the public financing program provided three types of benefits for parties and candidates that chose to participate:

- *Grants to party nominating conventions.* In 2012, the Democratic and Republican parties each received grants of \$18.2 million. Convention committees receiving public funds agreed not to raise more funds, but separate “host committees” often raised substantial private amounts. As noted previously, convention funding has been eliminated. The 2016 conventions were privately financed.
- *Grants for general-election nominees.* In 2016, each major-party nominee would have been eligible for a \$96.1 million grant had they accepted public funds.⁵ Neither Democratic nominee Hillary Clinton nor Republican nominee Donald Trump accepted public funds in 2016. 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.⁶

⁵ Federal Election Commission, “Presidential Spending Limits for 2016,” http://www.fec.gov/pages/brochures/pubfund_limits_2016.shtml.

⁶ Limited exceptions exist for additional fundraising and spending for legal and accounting expenses.

- *Matching funds for primary candidates.* Publicly financed primary candidates may receive 100% matches of individual contributions up to \$250, in exchange for limited spending. For 2016, primary candidates Martin O'Malley (D) and Jill Stein (G) received a total of approximately \$1.5 million in matching funds.⁷ In 2012, Libertarian Governor Gary Johnson, Governor Buddy Roemer III,⁸ and Green Party candidate Jill Stein qualified for a total of approximately \$1.2 million in matching funds.⁹ The more highly competitive candidates most recently received primary matching funds in 2008. Matching funds remain available for candidates who choose to participate.

Congress established the public financing system during the early and mid-1970s, especially via the 1974 Federal Election Campaign Act (FECA) amendments.¹⁰ Congress created the voluntary public financing option amid concerns about potential corruption in campaign fundraising following Watergate and after other questionable fundraising practices. Initially, individual taxpayers could designate \$1 (\$2 for married couples filing jointly) to the PEFCF.¹¹ Congress tripled the checkoff designation from \$1 to \$3 (and from \$2 to \$6 for married couples) in 1993.¹² Since the 1976 election cycle, approximately \$1.6 billion has gone to publicly financed candidates and nominating conventions.¹³

What Might Happen If the Legislation Were Enacted?

If public financing were eliminated, all presidential campaigns would be privately financed, as all other federal campaigns are today.¹⁴ Repealing the public financing program would eliminate a major tenet of modern campaign finance policy—albeit a controversial one that increasingly is viewed as inadequate for current competitive campaign needs.

- 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.

⁷ Information provided to CRS by the Bureau of Fiscal Service, U.S. Treasury Department, via email, February 2017.

⁸ 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.

⁹ 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.

¹⁰ P.L. 93-443; 88 Stat. 1263.

¹¹ On the presidential public financing portion of the Revenue Act, see 85 Stat. 573.

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

¹³ This figure is based on CRS analysis of data in Federal Election Commission, “Presidential Election Campaign Fund Tax Check-Off Chart,” http://fec.gov/press/bkgnd/presidential_fund.shtml. Data on program totals sometimes vary over time and by source.

¹⁴ 52 U.S.C. §30101 *et seq.*

- 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 PEF could be used for other purposes. As noted previously, as of December 31, 2016, the PEF balance was approximately \$320 million. It is also possible that additional savings could be achieved if the FEC and Treasury Department no longer had to administer the program.¹⁵

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, then-governor Bush accepted only general election public funds.
- In 2008, then-senator Barack Obama became the first person elected President since 1976 without accepting any public funds. The most highly competitive candidates did not accept public funds in 2012 or 2016.
- Given these developments, and the rise in non-candidate spending from entities such as super PACs¹⁶, there is a 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 PEF. Participation has generally declined since then. In 2015 (the latest data available as of this writing), the checkoff rate was 5.4%.¹⁷

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¹⁵ For a recent Congressional Budget Office cost estimate, see U.S. Congress, House Committee on House Administration, *Termination of Taxpayer Financing of Presidential Election Campaigns*, report to accompany H.R. 412, 114th Cong., 1st sess., December 3, 2015, H.Rept. 114-362, Part I (Washington: GPO, 2015).

¹⁶ For additional discussion, see CRS Report R42042, *Super PACs in Federal Elections: Overview and Issues for Congress*, by (name redacted)

¹⁷ This figure is based on CRS analysis of data in Federal Election Commission, "Presidential Election Campaign Fund Tax Check-Off Chart," http://fec.gov/press/bkngnd/presidential_fund.shtml. Data on program totals sometimes vary over time and by source.

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