

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7579

DATE COMPLAINT FILED: Mar. 15, 2019
DATE OF NOTIFICATION: Mar. 20, 2019

DATE OF LAST RESPONSE: May 8, 2019

DATE ACTIVATED: Dec. 3, 2019

EXPIRATION OF SOL: Nov. 16, 2023 (earliest)

Dec. 1, 2023 (latest)

ELECTION CYCLE: 2018

COMPLAINANT: Sheila A. Oxsher

RESPONDENTS: Rashida Tlaib for Congress and Sonya McGrady in her official capacity as treasurer¹
Rashida Tlaib

RELEVANT STATUTES AND REGULATIONS:	52 U.S.C. § 30114(a)(1)
	52 U.S.C. § 30114(b)(1)
	52 U.S.C. § 30114(b)(2)
	11 C.F.R. § 113.1(g)
	11 C.F.R. § 116.6

INTERNAL REPORTS CHECKED: FEC Disclosure Reports

FEDERAL AGENCIES CHECKED:

I. INTRODUCTION

32 The Complaint alleges that Rashida Tlaib for Congress and Sonya McGrady in her
33 official capacity as treasurer (“Committee”) and Rashida Tlaib (collectively, “Respondents”)
34 violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission
35 regulations by converting campaign funds to personal use by making two candidate salary

¹ Soh Suzuki was treasurer at the time of the activity in this matter. Rashida Tlaib for Congress named Sonya McGrady as its new treasurer on July 15, 2019. *See* Rashida Tlaib for Congress Amended Statement of Organization (July 15, 2019).

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1 payments to Tlaib after the date of the general election.² For the reasons set forth below, we
 2 recommend the Commission find reason to believe Respondents violated 52 U.S.C. § 30114(b)
 3 and 11 C.F.R. § 113.1(g)(1)(I) by converting campaign funds to personal use and enter into
 4 pre-probable cause conciliation with Respondents.

5 **II. FACTUAL BACKGROUND**

6 Rashida Tlaib was a first-time candidate in Michigan's 13th Congressional District in
 7 2018.³ During the first four months of 2018 she worked full-time at Sugar Law Center for
 8 Economic & Social Justice in Detroit.⁴ On May 1, 2018, Tlaib reduced her employment by 85
 9 percent, reducing her total income to about \$200 per week.⁵ During the candidate's primary
 10 election campaign and carrying on through the general election campaign, the Committee paid
 11 Tlaib a bi-weekly salary of \$2,000. The Complaint alleges, however, that salary payments
 12 totaling \$17,000, continued to be disbursed to Tlaib even after the November 6, 2018, general
 13 election in violation of the Act and Commission regulations.⁶ The Complaint's allegations
 14 overlap with those in a matter referred from the Office of Congressional Ethics ("OCE") to the
 15

² The Complaint also alleges Tlaib violated the law by running in a Congressional district in which she did not live and refusing to disclose income and the source thereof on her financial disclosure forms for the U.S. House of Representatives upon her election. The Commission lacks jurisdiction to consider these allegations.

³ See Rashida Tlaib for Congress Resp. at 2 (May 13, 2019) ("Tlaib Resp."). Tlaib won the Democratic primary election on August 7, 2018, and won the general election on November 6, 2018. See FEC, FEDERAL ELECTIONS 2018: ELECTION RESULTS FOR THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES (Oct. 2019), <https://www.fec.gov/resources/cms-content/documents/federalelections2018.pdf>.

⁴ Tlaib Resp. at 2. See <https://www.sugarlaw.org/>.

⁵ Tlaib Resp. at 2.

⁶ Compl. at 1-2 (Mar. 15, 2019). The Complaint references the Washington Free Beacon as the source of the allegations, but does not cite a specific article. See *id.* at 1; Joe Schöffstall, *Rashida Tlaib Paid Herself \$45,500 from Campaign Funds*, WASH. FREE BEACON (Mar. 1, 2019) ("WFB Article"), <https://freebeacon.com/politics/rashida-tlaib-paid-herself-45500-from-campaign-funds/>.

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1 U.S. House of Representatives Committee on Ethics (“House Ethics Committee”). An OCE
 2 Report containing the results of an investigation and Tlaib’s response thereto was made public on
 3 November 14, 2019.⁷

4 Tlaib filed her Statement of Candidacy and the Committee filed its Statement of
 5 Organization with the Commission on February 5, 2018. The filing deadline for access to the
 6 primary election ballot in Michigan was April 24, 2018.⁸ The Committee made its first salary
 7 payment to Tlaib on May 7, 2018,⁹ and through December 1, 2018, the Committee disbursed a
 8 total of \$45,500 in salary payments to Tlaib, made on the dates and in the amounts depicted in
 9 the chart below:¹⁰

⁷ See Office of Cong. Ethics, Findings of Fact and Citations to Law and Exhibits, Review No. 19-4114 (Aug. 9, 2019) (“OCE Report” and “OCE Report Ex.”) at 1 & ¶ 10, https://oce.house.gov/sites/congressionalethics.house.gov/files/documents/OCE%20Review%20No.%2019-4114_Referral.pdf; <https://oce.house.gov/sites/congressionalethics.house.gov/files/documents/Referral%20Exhibits.pdf>; Letter from Karl J. Sandstrom, Counsel to Rep. Tlaib, to Theodore E. Deutch, Chairman, U.S. House of Representatives Committee on Ethics (Aug. 29, 2019) (“Tlaib House Ethics Resp.”), <https://ethics.house.gov/sites/ethics.house.gov/files/20190829%20COE%20Response%20Letter%20%28Review%20No.%2019-4114%29.pdf>.

On August 9, 2019, OCE found there is “substantial reason to believe that Rep. Tlaib converted campaign funds from Rashida Tlaib for Congress to personal use or Rep. Tlaib’s campaign committee expended funds that were not attributable to bona fide campaign or political purposes” and voted to refer the matter to the House Ethics Committee. OCE Report at 1 & ¶ 10. On August 16, 2019, OCE transmitted its report and findings to the House Ethics Committee. *Id.* ¶ 11. On November 14, 2019, the House Ethics Committee announced it would review the matter further to “gather additional information” and published the OCE Report, accompanying exhibits, and Representative Tlaib’s Response. Press Release, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Rashida Tlaib, U.S. House of Representatives Comm. on Ethics (Nov. 14, 2019), <https://ethics.house.gov/press-release/statement-chairman-and-ranking-member-committee-ethics-regarding-representative-17>. This General Counsel’s Report incorporates factual information contained in the OCE Report, its accompanying exhibits, and Rep. Tlaib’s response thereto. The OCE materials are available in the Commission’s Voting Ballot Matters folder.

⁸ See https://www.michigan.gov/documents/sos/2018_Dates_600221_7.pdf.

⁹ See Rashida Tlaib for Congress, 2018 July Quarterly Report at 298 (July 15, 2018); Tlaib Resp. at 3.

¹⁰ See Rashida Tlaib for Congress, 2018 July Quarterly Report at 298-99 (July 15, 2018); Rashida Tlaib for Congress, 2018 12-Day Pre-Primary Report at 113 (July 26, 2018); Rashida Tlaib for Congress, Amended 2018 October Quarterly Report at 291-92 (Nov. 26, 2018); Rashida Tlaib for Congress, 2018 12-Day Pre-General Report at 87-88 (Oct. 25, 2018); Rashida Tlaib for Congress, 2018 30-Day Post-General Report at 90 (Dec. 5, 2018); Rashida Tlaib for Congress, 2018 Year-End Report at 32 (Jan. 22, 2019); *see also* Tlaib Resp. at 2; OCE Report ¶ 27; OCE Report Ex. 9 at 19-4114_0029-35 (Tlaib spreadsheet listing campaign salary payments).

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Salary Payments to Tlaib		
Payment Date	Pay Period ¹¹	Amount
May 7, 2018	N/A ¹²	\$2,000
May 16, 2018	April 16-30, 2018	\$2,000
June 1, 2018	May 1-15, 2018	\$2,000
June 16, 2018	May 16-31, 2018	\$2,000
July 1, 2018	June 1-15, 2018	\$2,000
July 16, 2018	June 16-30, 2018	\$2,000
August 1, 2018	July 1-15, 2018	\$2,000
August 11, 2018	July 16-August 7, 2018	\$3,000
August 29, 2018	August 8-31, 2018	\$3,000
September 16, 2018	September 1-15, 2018	\$2,000
October 1, 2018	September 16-30, 2018	\$2,000
October 16, 2018	October 1-15, 2018	\$2,000
November 1, 2018	October 16-31, 2018	\$2,000
November 16, 2018	November 1-15, 2018	\$2,000
December 1, 2018	November 16-December 31, 2018	\$15,500

- 1 The Complaint alleges that two salary payments violated the Act and Commission regulations:
- 2 \$2,000 on November 16, 2018, and \$15,500 on December 1, 2018.¹³ According to the
- 3 Complaint, these payments were illegally made after Tlaib won the general election on

¹¹ The designated pay periods derive from documents and other evidence provided by Rep. Tlaib to OCE during its investigation. Specifically, Rep. Tlaib produced several spreadsheets documenting salary payments to Tlaib and campaign staffers, including notations of the pay periods which each salary payment covered. *See* OCE Report Ex. 9 at 19-4114_0029-35; OCE Report Ex. 12 at 19-4114_0056. Rep. Tlaib also produced photocopies of the checks she received for her salary payments, which contain contemporaneous memo entries corroborating the pay periods listed in the chart above and in the spreadsheets. *See* OCE Report Ex. 10 at 19-4114_0037-51. In her response to the OCE Report, Rep. Tlaib contends the spreadsheets' reference to specific pay periods is not dispositive as to when the salary accrued and instead reflect "standardized" dates for "accounting purposes." *See* Tlaib Ethics Committee Resp. at 6-7.

¹² An office salaries spreadsheet Tlaib provided to OCE does not indicate a pay period for this payment as it does for other salary payments to Tlaib and campaign staffers. *See* OCE Report Ex. 9 at 19-4114_0030. Furthermore, the memo line of the Committee check made payable to Tlaib dated May 7, 2018, appears blank in comparison to the other salary payment checks to Tlaib which indicate the relevant pay period in the memo line. *See* OCE Report Ex. 10 at 19-4114_0037.

¹³ Compl. at 1.

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1 November 6, 2018, and was no longer a candidate.¹⁴ Respondents contend that “[a]ll salary
 2 payments were for the covered period prior to the November 6, 2018 general election,” and
 3 therefore do not violate the Act or Commission regulations.¹⁵ They argue that, under their
 4 interpretation, Commission regulations permit payment of salary covering time through the date
 5 of the general election but do not require that payment to be made *by* the date of the general
 6 election.¹⁶ Respondents further assert that the total salary paid to Tlaib in 2018 (\$45,500) did not
 7 exceed the maximum amount allowed because it was less than her 2017 earned income
 8 (\$129,357) and less than the annual salary of a U.S. Representative (\$174,000).¹⁷

9 **III. LEGAL ANALYSIS**

10 Under the Act, a contribution accepted by a candidate may be used by the candidate for
 11 otherwise authorized expenditures in connection with the campaign for federal office of the
 12 candidate.¹⁸ However, a contribution shall not be converted by any person to personal use.¹⁹
 13 “Personal use” means any use of funds in a campaign account of a present or former candidate to
 14 fulfill a commitment, obligation, or expense of any person that would exist irrespective of the
 15 candidate’s campaign or duties as a federal officeholder.²⁰

¹⁴ *Id.*

¹⁵ Tlaib Resp. at 2-5.

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ 52 U.S.C. § 30114(a)(1).

¹⁹ *Id.* § 30114(b)(1).

²⁰ *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g).

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1 The Act and Commission regulations enumerate certain expenses that are considered *per*
2 *se* “personal use” and thus prohibited, including salary payments to a candidate that do not meet
3 specified criteria.²¹ A candidate’s principal campaign committee may pay a salary to the
4 candidate that will not constitute personal use of campaign funds so long as it does not exceed
5 the lesser of the minimum salary paid to a Federal officeholder holding the Federal office that the
6 candidate seeks or the earned income that the candidate received during the year prior to
7 becoming a candidate.²² Any earned income that a candidate receives from salaries or wages
8 from any other source, however, shall count against the minimum salary paid to a federal
9 officeholder holding the seat sought by the candidate.²³ Moreover, the committee shall not pay
10 salary to a candidate before the filing deadline for access to the primary election ballot for the
11 Federal office that the candidate seeks, as determined by state law.²⁴ During the time period in
12 which a principal campaign committee may pay a salary to a candidate, such payment must be
13 computed on a pro-rata basis.²⁵ If the candidate wins the primary election, his or her principal
14 campaign committee may pay him or her a salary from campaign funds through the date of the

²¹ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i)(I).

²² 11 C.F.R. § 113.1(g)(1)(i)(I).

²³ *Id.* Upon request of the Commission, the candidate must provide evidence of earned income. *Id.*

²⁴ *Id.*

²⁵ *Id.* This is intended to prevent a candidate’s principal campaign committee from paying the candidate the entire minimum annual salary for the Federal office sought by the candidate, unless he or she is a candidate, as defined by 11 C.F.R. § 100.3(a), for at least one year. *See Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds*; 67 Fed. Reg. 76,962, 76,972 (Dec. 13, 2002) (“Personal Use E&J”).

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1 general election.²⁶ The payment of salary to candidates that do not meet these conditions is
 2 considered *per se* personal use.²⁷

3 Finally, if a political committee does not pay an employee for services rendered to the
 4 committee in accordance with a formal or informal agreement to do so, the unpaid amount either
 5 may be treated as a debt owed by the committee to the employee or the employee agrees to be
 6 considered a volunteer.²⁸ If the unpaid amount is treated as a debt, the committee shall continue
 7 to report the debt in accordance with 11 C.F.R. §§ 104.3 and 104.11.²⁹

8 **A. November 16, 2018, Salary Payment**

9 The Committee made a \$2,000 salary payment to Tlaib on November 16, 2018, that
 10 occurred after the November 6 general election and appears to compensate the candidate for time
 11 both before and after that date. According to a salaries spreadsheet Respondents provided to
 12 OCE (“Office Salaries Spreadsheet”) and the memo line of the Committee check made payable
 13 to Tlaib dated November 16, 2018, the payment covered the period from November 1 to
 14 November 15, 2018.³⁰ Respondents assert without explanation that the payment covered a
 15 “period prior to the general election.”³¹ In response to the OCE Report, Tlaib further contends
 16 that the Office Salaries Spreadsheet was “standardized to reflect payments to every individual on

26 *Id.*

27 *Id.*; *see also* Personal Use E&J at 76,972.

28 11 C.F.R. § 116.6(a).

29 11 C.F.R. § 116.6(c).

30 OCE Report Ex. 9 at 19-4114_0034 (listing “11/1 – 11/15” in the “Notes” column); OCE Report Ex. 10 at 19-4114_0050 (listing “Salary (11/1 – 11/15)” in the memo field).

31 Tlaib Resp. at 4; *see also* Tlaib House Ethics Resp. at 6 (“[A] payment on November 16, 2018[] cover[ed] the period through the November 6 general election . . .”).

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1 the Campaign's payroll," and does "not say one way or the other when the underlying work was
 2 actually performed."³² However, Respondents do not rebut the contemporaneous documentation
 3 of the memo line of the Committee check. In light of this information, it is reasonable to
 4 conclude that a portion of the November 16, 2018, payment impermissibly compensated Tlaib
 5 for time after the general election on November 6, 2018, and therefore that portion constituted
 6 personal use of campaign funds.

7 The Commission confronted similar circumstances in MUR 7068 (Mowrer for Iowa, *et*
 8 *al.*), where a candidate committee made a salary payment to a candidate covering a period before
 9 and after the general election.³³ The Commission determined that a portion of a November 15,
 10 2014, salary payment was permissible, *i.e.*, that compensated the candidate for the period of
 11 November 1 through November 4, the day of the general election, and that the post-election
 12 portion constituted a violation of the Act's personal use prohibition.³⁴

13 Accordingly, in the instant matter the portion of the November 16 payment covering
 14 November 1 through November 6 was permissible and equals \$800 ($\$2,000 \div 15 \text{ days} = \133.34
 15 per day; $\$133.34 \times 6 \text{ days} = \800). Therefore, the portion of the November 16 payment that
 16 covered November 7 through November 15 equals \$1,200 ($\$2,000 - \$800 = \$1,200$) and was an
 17 impermissible personal use of campaign funds.

³² Tlaib House Ethics Resp. at 6.

³³ Factual & Legal Analysis at 6 ("F&LA"), MUR 7068 (Mowrer for Iowa, *et al.*). In MUR 7068, the committee and candidate acknowledged that the salary payments compensated the candidate for the prior two week to 15-day pay period and were typically made a few days after the end of each period. *See id.* at 6 n.22 (citing Mowrer Response to the Complaint at 2, MUR 7068 (July 18, 2016)).

³⁴ *See id.* at 6-7; Conciliation Agreement ¶ IV.7, MUR 7068 (Mowrer for Iowa, *et al.*).

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1 **B. December 1, 2018, Salary Payment**

2 The Committee made a \$15,500 salary payment to Tlaib on December 1, 2018, after the

3 general election. According to Respondents' Office Salaries Spreadsheet, the payment covered

4 the period from November 16 through December 31, 2018.³⁶ According to another Committee

5 spreadsheet provided to OCE with projected amounts to be paid on December 1, 2018

6 ("December Payments Spreadsheet"), and the memo line of the Committee check made payable

7 to Tlaib dated December 1, 2018, the payment covered the period from November 16 to

8 December 31, 2018, and an "adjustment."³⁷ Specifically, the December Payments Spreadsheet

9 characterizes the \$15,500 payment to Tlaib as the summation of: (i) \$2,000 for the standard pay

10 period from November 16 through November 30, 2018; (ii) a \$6,000 salary advance for the

11 month of December 2018; and (iii) \$7,500 in "adjustments to be made for the previous

12 payments."³⁸ The \$7,500 adjustment is described as an "[a]ddition of \$2000/mo[nth] for 3.75

13 mo[nths]."³⁹

14 Respondents assert in their response to the Complaint that the December 1, 2018,

15 payment covered a "period prior to the general election," and describe the payment as

16 permissibly filling the gap between the amount Commission regulations permitted in salary

17 payments and what the Committee actually paid her in salary up until the election.⁴⁰

³⁶ OCE Report Ex. 9 at 19-4114_0035 (listing "11/16 – 12/31" in the "Notes" column).

³⁷ See OCE Report Ex. 12 at 10-4114_0055-56 (containing the December Payments Spreadsheet); OCE Report Ex. 10 at 19-4114_0051 (noting "11/16 – 12/31 + Adjustment" in the memo field).

³⁸ See OCE Report Ex. 12 at 19-4114_0056.

³⁹ See *id.*

⁴⁰ See Tlaib Resp. at 3-4 ("The campaign made th[e December payment] in order to make up some – though not all – of the difference between what [Tlaib] has been permitted to receive for services provided through Election Day, November 6, 2018, and what the campaign had actually paid her for those same services.").

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1 Respondents explain that the Committee lacked sufficient resources to make the maximum salary
 2 payments prior to the election and indicate that the lump-sum payment satisfied a prior
 3 agreement to retroactively adjust Tlaib's salary upwards toward the permissible maximum
 4 amount.⁴¹ With regard to the purported deferred compensation agreement, no information was
 5 provided on the dates of the agreement, specific amounts due, or whether the agreement was ever
 6 reduced to writing.

7 Respondents' arguments are not persuasive. Even if the Committee's aggregate salary
 8 payments to Tlaib fall within the overall permissible amount,⁴² none of that amount may be paid
 9 for a period after she ceased to be a candidate.⁴³ According to Respondents' own information,
 10 \$8,000 of the \$15,500 paid to Tlaib on December 1, 2018, compensated her for the time period

⁴¹ *Id.* at 4-5 (stating the lump-sum payment represented "some of the salary Tlaib was owed but not paid due to the campaign's lack of resources prior to the general election" and that the Committee was paying "its agreed upon salary obligation to Tlaib after the election"); *see also* Tlaib House Ethics Resp. at 3 ("The Campaign included Representative Tlaib in those [post-election day] disbursements to make up some of the difference between what she was entitled to receive for her service through Election Day, November 6, 2018, and what the Campaign had previously paid her for services rendered through that date."); *id.* at 1 ("[T]he Campaign's two final payments to Representative Tlaib... were issued in November and December to make up for amounts unpaid before the date of the election.").

⁴² The Committee's salary payments to Tlaib, combined with her other earned income in 2018, do not appear to exceed the permitted maximum aggregate for the year. According to Tlaib and her House Financial Disclosure Report, she earned \$129,357 in 2017. *See* Tlaib Resp. at 3; Rashida Tlaib, Amendment Report 2 (Dec. 7, 2018), http://clerk.house.gov/public_disc/financial-pdfs/2018/10024977.pdf. Because her earned income was less than the \$174,000 annual salary of a freshman U.S. Representative, the maximum aggregate for permissible salary payments to Tlaib was \$129,357. *See* 11 C.F.R. § 113.1(g)(1)(I). In 2018, Tlaib earned \$33,955.30 in salary from the Sugar Law Center for Economic & Social Justice and \$45,500 in salary from the Committee. Tlaib Resp. at 2; Rashida Tlaib, New Filer Report 2 (Aug. 8, 2019), http://clerk.house.gov/public_disc/financial-pdfs/2018/10026889.pdf. Thus, Tlaib's aggregated earned income in 2018, including salary payments from the Committee, was \$79,455.30 and within the permissible aggregate maximum. In addition, this matter does not turn on the permissible pro-rata salary amount paid to Tlaib because the entire \$45,500 in salary payments appears to be of a permissible size even though Tlaib was a candidate for less than a full year during 2018. *Cf.* F&LA at 6 n.23, MUR 7068 (Mowrer for Iowa, *et al.*) (concluding the appropriate method for calculating permissible pro-rata salary payments was not relevant where aggregate salary payments "appear[ed] to be of a permissible size, but a portion of [them were] paid to cover a period after the general election").

⁴³ *See* 11 C.F.R. § 113.1(g)(1)(I).

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1 between November 16 and December 31, 2018, after the general election and therefore is an
 2 impermissible conversion of campaign funds to personal use.

3 As for the \$7,500 “adjustment” to “previous [salary] payments,” we similarly conclude
 4 that it is not permitted under the Commission’s personal use regulation. First, such a practice
 5 would undermine the candidate salary exception to the personal use prohibition. The
 6 Commission promulgated the candidate salary provision to allow campaign funds to
 7 “compensate candidates for lost income that is forgone due to becoming a candidate.”⁴⁴ But in
 8 making the decision to do so, the Commission was “satisfied that, because all candidate . . .
 9 salaries will be fully disclosed to the public, those who contribute to the campaign and who
 10 support the candidate will be able to voice their approval, or disapproval, of this use of campaign
 11 funds.”⁴⁵ Such disclosure is thwarted where salary payments are made retroactively after the
 12 general election.⁴⁶ Although Respondents assert that “the public has been fully apprised of
 13 [Tlaib’s] salary payments in FEC reports,”⁴⁷ the salary payments disclosed before the general
 14 election provided no indication that Tlaib’s semi-monthly salary payments would be later
 15 supplemented by an adjustment of \$7,500 that amounted to an additional \$2,000 per month (a
 16 50% increase) for nearly four months of the regularly reported salary payments. Respondents
 17 state that the December 1, 2018, payment to Tlaib “represent[ed] some of the salary Tlaib was

⁴⁴ Personal Use E&J at 76,972.

⁴⁵ *See id.* at 76,972-73.

⁴⁶ Respondents themselves recognize the potential public perception of candidates receiving salaries. *See* Tlaib Resp. at 3 (“[Rashida Tlaib for Congress campaign manager Andrew] Goddeeris informed [then-candidate] Tlaib that under campaign finance regulations, she was allowed to receive about \$7,900 per month in salary from the campaign committee, but warned that she might face baseless political retribution for allegedly using her campaign funds to enrich herself.”).

⁴⁷ *Id.* at 4 n.5; *see also* OCE Report at 5 n.24 (“Representative Tlaib and the Campaign were forthright about the candidate salary payments from the beginning, disclosing them on FEC reports during the campaign.”).

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1 owed but not paid due to the campaign's lack of resources prior to the general election[,]” and
 2 that “[a]llowing the Committee to fulfill its agreed upon salary obligation to Tlaib after the
 3 election is consistent with 11 C.F.R. 116.6.”⁴⁸ However, even if they could enter into a deferred
 4 compensation agreement with the candidate, Respondents have not provided any documentation
 5 of such an agreement. Moreover, the Committee did not report any deferred salary obligation as
 6 a debt owed to Tlaib on any disclosure reports.⁴⁹ Finally, although the Respondents assert,
 7 without elaboration, that their conduct is consistent with 11 C.F.R. § 116.6, that regulation
 8 applies to salary payments owed to committee employees rather than candidates and that
 9 provision too requires the committees to disclose unpaid amounts treated as debts, something
 10 that did not happen here.⁵⁰

11 Therefore, Respondents converted campaign funds to personal use when the Committee
 12 paid Tlaib \$15,500 in salary on December 1, 2018, either as compensation for the period after the

⁴⁸ Tlaib Resp. at 4-5.

⁴⁹ See 52 U.S.C. § 30104(b)(8) and 11 C.F.R. §§ 104.3(d) and 104.11. Section 116.6 of the Commission's regulations cited by Respondents applies to salary payments owed to committee employees rather than candidates, but that provision too requires the committees to disclose unpaid amounts treated as debts. See 11 C.F.R. § 116.6(c); Debts Owed by Candidates and Political Committees, Final Rule and Explanation and Justification, 55 Fed. Reg. 26,378, 26,383 (June 27, 1990).

⁵⁰ In a previous matter, MUR 5787 (Kalyn Free for Congress), a candidate committee made lump-sum salary payments to a candidate two months after the candidate lost the primary election and stated it had an oral agreement with the candidate to defer the salary amount until the end of her campaign. See F&LA at 6, MUR 5787. The Commission found reason to believe those respondents violated the personal use prohibition, in part because they failed to provide any evidence, such as affidavits, to substantiate the alleged oral agreement to defer the salary payment. *Id.* at 6-7. The Commission further noted that Kalyn Free for Congress never reported the salary arrangement as a debt owed to the candidate, which would have served as evidence of a prior agreement. See *id.* at 6 (“[T]he Committee did not originally include, or amend its 2004 12 Day Pre-Primary Report, to reflect the purported May 2004 salary arrangement as debt owed to the candidate.”). Although the Tlaib Respondents would distinguish MUR 5787 on the basis that no candidate salaries were disclosed prior to the election and that the salary was entirely deferred, see Tlaib Resp. at 4 n.5, the cases share the key characteristics that no deferral agreement was documented and no salary debts were disclosed.

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1 November 6, 2018, general election when she was no longer a candidate,⁵¹ or as a retroactive
 2 adjustment to increase prior salary payments.

3 **C. Conclusion**

4 Based on the foregoing analysis, we recommend the Commission find reason to believe
 5 that Rashida Tlaib for Congress and Sonya McGrady in her official capacity as treasurer and
 6 Rashida Tlaib violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g)(1)(i)(I) by converting
 7 \$16,700 of campaign funds to personal use in connection with salary payments to the
 8 candidate.⁵²

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⁵¹ See MUR 7068 (Mowrer for Iowa, *et al.*) F&LA at 6 (the Commission found a December 5, 2014, salary payment covering November 16 through November 30, 2014 to be entirely impermissible because it compensated the candidate from campaign funds for a period after the date of the general election).

⁵² The first two salary payments to Tlaib, on May 7 and May 16, 2018, after the primary ballot filing deadline in Michigan on April 24, 2018, but appearing to correspond to pay periods before the filing deadline, are not addressed in the Complaint. *See supra* at 4 & nn.9-10; 11 C.F.R. § 113.1(g)(1)(i)(I) (the committee shall not pay salary to a candidate before the filing deadline for access to the primary election ballot for the federal office that the candidate seeks, as determined by state law). In view of the payments being made within the permissible period, the lack of Commission precedent in this area, and to focus this matter going forward on the clearer alleged payments after the general election (and thus undisclosed before the election) constituting personal use, we do not recommend including the May payments in the reason to believe finding.

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7 **V. RECOMMENDATIONS**

- 8 1. Find reason to believe that Rashida Tlaib for Congress and Sonya McGrady in her
9 official capacity as treasurer violated 52 U.S.C. § 30114(b) and 11 C.F.R.
10 § 113.1(g)(1)(i)(I) by converting campaign funds to personal use in connection with
11 salary payments to the candidate;
- 12 2. Find reason to believe that Rashida Tlaib violated 52 U.S.C. § 30114(b) and
13 11 C.F.R. § 113.1(g)(1)(i)(I) by converting campaign funds to personal use in
14 connection with salary payments to the candidate;
- 15 3. Enter into conciliation with Rashida Tlaib for Congress and Sonya McGrady in her
16 official capacity as treasurer and Rashida Tlaib prior to a finding of probable cause to
17 believe;
- 18 4. Approve the attached Factual and Legal Analysis;
- 19 5. Approve the attached proposed conciliation agreement; and

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3 6. Approve the appropriate letter.

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5 Lisa J. Stevenson
6 Acting General Counsel
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April 1, 2020

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Date

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Other Staff Assigned:

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Thaddeus Ewald

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Charles Kitcher
Acting Associate General Counsel for Enforcement

Peter G. Blumberg

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Acting Deputy Associate General Counsel
for Enforcement

Mark Allen

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Assistant General Counsel