



FEDERAL ELECTION COMMISSION
Washington, DC

1 **TO:** The Commission
 2 **FROM:** Lisa Stevenson
 3 Acting General Counsel
 4 Charles Kitcher
 5 Acting Associate General Counsel for Enforcement
 6 **BY:** Peter G. Blumberg
 7 Acting Deputy Associate General Counsel for Enforcement
 8 Mark Allen
 9 Assistant General Counsel
 10 Thaddeus H. Ewald
 11 Attorney
 12 **DATE:** March 29, 2021
 13 **SUBJECT:** MUR 7579 (Rashida Tlaib for Congress, *et al.*)
 14 Supplement to First General Counsel's Report

15 I. INTRODUCTION

16 The Office of General Counsel (“OGC”) circulated a First General Counsel’s Report
 17 (“FGCR”) in this matter to the Commission dated April 1, 2020, recommending that the
 18 Commission find reason to believe that Rashida Tlaib for Congress and its treasurer in their
 19 official capacity (the “Committee”) and Rashida Tlaib (collectively, the “Respondents”) violated
 20 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g)(1)(i)(I) by converting \$16,700 of campaign funds
 21 to personal use in connection with salary payments made by the Committee to Tlaib and enter
 22 into pre-probable cause conciliation with the Respondents.

23 The allegations in this matter overlap with those of a referral by the Office of
 24 Congressional Ethics (“OCE”) to the U.S. House of Representatives Committee on Ethics
 25 (“HEC”).¹ The FGCR incorporated facts detailed in OCE’s Report into its analysis, but HEC’s
 26 investigation of the OCE referral was still pending when the FGCR circulated. HEC concluded

¹ See First Gen. Counsel’s Rpt. at 2-3 & n.7, MUR 7579 (Rashida Tlaib for Congress, *et al.*) (“FGCR”); OFFICE OF CONG. ETHICS, REVIEW NO. 19-4114 (2019) (“OCE Report”), https://oce.house.gov/sites/coingressionalethics.house.gov/files/documents/OCE%20Review%20No.%2019-4114_Referral.pdf; <https://oce.house.gov/sites/congressionalethics.house.gov/files/documents/Referral%20Exhibits.pdf>.

1 its investigation and adopted an accompanying report (“HEC Report”) on July 23, 2020, and
2 released the HEC Report publicly on August 7, 2020.² The HEC Report provides new
3 information but is consistent with the facts and analysis contained in the FGCR. Although the
4 HEC Report reached a different conclusion as to a portion of the salary payments at issue, it did
5 so in large part based in recognition that the Commission “has not specifically addressed whether
6 a ‘back pay’ or ‘deferred compensation’ arrangement is permissible under the personal use
7 regulation.”³ As explained in greater detail below, we retain our analysis and legal conclusions,
8 and we therefore recommend the Commission approve recommendations 1-3, and 6 in the
9 FGCR. In order to acknowledge the HEC Report and its findings in the record of this MUR, we
10 also recommend the Commission approve the revised Factual and Legal Analysis and proposed
11 Conciliation Agreement attached hereto.

12 **II. POST-GENERAL ELECTION SALARY PAYMENTS**

13 The FGCR concluded that the Respondents converted \$16,700 of the Committee’s
14 campaign funds to Tlaib’s personal use.⁴ The \$16,700 amount is the sum of (1) a \$1,200 *pro*
15 *rata* portion of the \$2,000 salary payment to Tlaib made on November 16, 2018, and (2) the
16 entirety of the \$15,500 salary payment made on December 1, 2018.⁵

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

18 The FGCR reasoned that the \$2,000 salary payment on November 16, 2018, covered the
19 two-week pay period of November 1 through November 15 and calculated that the Committee
20 permissibly compensated Tlaib \$800 for the pre-election period of November 1 through
21 November 6, but impermissibly compensated her \$1,200 for the post-election period of
22 November 7 through November 15.⁶ The HEC Report reached an identical conclusion.⁷

² COMM. ON ETHICS, IN THE MATTER OF ALLEGATIONS RELATING TO REPRESENTATIVE RASHIDA TLAIB, H.R. REP. NO. 116-473 (2020) (“HEC Report”), <https://www.govinfo.gov/content/pkg/CRPT-116hrpt473/pdf/CRPT-116hrpt473.pdf>.

³ See HEC Report at 20.

⁴ FGCR at 13.

⁵ *Id.* at 7-13.

⁶ *Id.* at 7-8.

⁷ HEC Report at 16-17. Both the FGCR and the HEC Report determined the \$2,000 salary payment corresponded to a standard bi-monthly pay period for the first half of the month preceding the payment based on an office salaries spreadsheet the Respondents provided to OCE during its investigation. See *id.* (citing OCE Report Ex. 9); FGCR at 7-9 (same). HEC’s investigation confirmed that Tlaib was paid a monthly salary of \$4,000 on the same bi-monthly schedule as other Committee salaries were paid, with the exception of two salary payments in August 2018, which corresponded to three-week pay periods. HEC Report at 7-8 & n.66.

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

2 The FGCR recommended that the Commission find the entire \$15,500 salary payment on
 3 December 1, 2018, to be impermissible because it appeared that \$8,000 compensated Tlaib for
 4 the post-election period from November 16 through December 31, 2018, and \$7,500 was a
 5 retroactive adjustment to Tlaib's prior salary payments under a back pay or deferred
 6 compensation agreement ("BP/DCA").⁸ The FGCR concluded that, similar to the November 16,
 7 2018, salary payment, the \$8,000 portion of the December payment compensating Tlaib for
 8 periods after the general election was impermissible.⁹ As to the \$7,500 portion of the December
 9 payment, the FGCR concluded that a retroactive adjustment is not permitted under the
 10 Commission's personal use regulation because it would undermine the transparency rationale of
 11 the candidate salary exception, the Respondents did not provide documentation of a BP/DCA,
 12 and the Committee did not contemporaneously report the alleged adjustments as debts.¹⁰

13 The HEC Report, however, ordered Tlaib to reimburse only \$9,600 from the December 1,
 14 2018, salary payment.¹¹ HEC reached an identical conclusion as OGC did as to \$8,000 of the
 15 payment, finding the Committee impermissibly compensated Tlaib \$8,000 for post-election
 16 periods in November and December of 2018.¹² The HEC Report's analysis of retroactive
 17 adjustments to candidate salary diverged from the FGCR's, and HEC ordered Tlaib to refund
 18 only \$1,600 of the remaining \$7,500 of the December 1, 2018, salary payment.¹³

19 HEC observed the Commission "ha[s] not specifically stated whether 'deferred
 20 compensation' or 'back pay' arrangements are permissible," but interpreted prior candidate
 21 salary matters to indicate that "the FEC *may find* a [BP/DCA] created before a candidate ceases

⁸ FGCR at 9-12.

⁹ *Id.* at 10-11. According to a December salaries spreadsheet the Respondents provided to OCE during its investigation, \$2,000 covered the two-week pay period of November 16 through November 30 and \$6,000 was an advance for the month of December 2018. *See id.* (citing OCE Report Ex. 12).

¹⁰ *Id.* at 11-12.

¹¹ HEC Report at 17-20.

¹² *Id.* at 17-19. Both the FGCR and the HEC Report relied upon the December salaries spreadsheet the Respondents provided to OCE. *Id.* (citing OCE Report Ex. 12); *see also* FGCR at 9-11 (same).

¹³ HEC Report at 17-19. Like the FGCR, HEC accepted that \$7,500 was a retroactive adjustment to Tlaib's prior salary payments. *See id.* at 18; FGCR at 9, 11-12. HEC interpreted the \$2,000 per month for 3.75 months notation on the December salaries spreadsheet to correspond to the period between the August 7 primary election and November 6 general election, and calculated that \$5,900 of the \$7,500 amount was back pay or deferred compensation corresponding to that period: (1) \$1,500 for the post-primary August period; (2) \$2,000 each for September and October; and (3) \$400 *pro rata* for the pre-election November period. HEC Report at 18-20 & nn.155, 162.

1 to be a candidate to be consistent with the personal use regulations' timing restrictions."¹⁴ Thus,
 2 HEC credited the existence of an informal agreement between Tlaib and the Committee.¹⁵
 3 Despite conflicting testimony from interviewees regarding the timing, amount, affected pay
 4 periods, and the individuals involved in the decision-making on the purported BP/DCA, HEC
 5 nevertheless credited Tlaib's personal testimony that she reached an informal BP/DCA with the
 6 Committee after the primary election in August 2018, when she recalled discussing back pay of
 7 an additional \$1,000 per pay period.¹⁶

8 The HEC Report provides additional information that was not previously available to
 9 OGC in its consideration of MUR 7579 but that reinforces the rationale and conclusions in the
 10 FGCR.¹⁷ First, HEC's confirmation that neither Tlaib's regular salary payments nor the
 11 purported BP/DCA were ever reduced to a contract or other written agreement lends support to
 12 the FGCR's conclusion that, even if retroactive adjustments were permissible, Respondents
 13 failed to document the existence or terms of such an agreement here.¹⁸ Further, HEC also found
 14 a "notable lack of consensus" about *when* the parties entered into the purported BP/DCA.¹⁹

15 Second, the investigation did not yield a definitive explanation of how the Committee
 16 calculated the \$15,500 salary payment on December 1, 2018, and at times produced conflicting

¹⁴ HEC Report at 14-16, 20-21 (emphasis added) (citing MUR 5787 (Kalyn Free for Congress, *et al.*)) (arguing the Commission's positions on retroactive adjustments to candidate salary and debt reporting requirements thereof were "not clear from publicly available records"). After initially finding reason to believe a candidate's retroactive salary payments were impermissible because there was no evidence of an oral BP/DCA and where such was not contemporaneously reported as debt, the Conciliation Agreement in MUR 5787 only noted a violation with regard to the excess salary above the legally permissible limit, not by virtue of the post-election salary payments in their entirety. *See* Factual & Legal Analysis at 6, MUR 5787 (Kalyn Free for Congress); Conciliation Agreement, MUR 5787 (Kalyn Free for Congress); HEC Report at 14-16 (citing MUR 5787).

¹⁵ HEC Report at 17-18.

¹⁶ *Id.* at 17-19.

¹⁷ The new information derived from HEC's investigation that included interviews with Tlaib and Committee staff, who had previously declined to submit to interviews with OCE during its investigation. *Compare* HEC Report at 2, *with* OCE Report ¶¶ 29, 35, 38.

¹⁸ *See* HEC Report at 6; FGCR at 10, 12.

¹⁹ HEC Report at 10-11 & nn.93, 96-97.

1 or inconsistent testimony on that calculation.²⁰ Thus, these findings support the FGCR's reliance
 2 upon two campaign salary spreadsheets as the contemporaneous evidence of the time periods to
 3 which the salary payments corresponded.²¹ Finally, the investigation revealed some awareness
 4 that the retroactive adjustments might be subject to Commission debt reporting requirements,
 5 which supports the FGCR's conclusion that a retroactive adjustment is not permitted, especially
 6 where it was not reported as debt.²²

7 **III. CONCLUSION**

8 The new information in the HEC Report that became available to the Commission
 9 subsequent to the circulation of the FGCR supports the recommendations in the FGCR that the
 10 Commission find reason to believe that Rashida Tlaib for Congress and its treasurer in their
 11 official capacity and Rashida Tlaib violated 52 U.S.C. § 30114(b) and 11 C.F.R.
 12 § 113.1(g)(1)(i)(I) by converting campaign funds to personal use in connection with salary
 13 payments made by the Committee to Tlaib, and therefore, we recommend the Commission
 14 approve the substantive recommendations in the FGCR and a revised Factual and Legal Analysis

²⁰ See, e.g., *id.* at 18 (“Former senior campaign staffers testified that they could not recall the basis or the origin of the \$15,500 payment.”). Tlaib, for instance, recalled requesting back pay and believed the \$15,500 salary payment on December 1, 2018, represented that back pay. See *id.* at 10-11 & n.94. However, when asked about the December salaries spreadsheet, which indicated more than half of that payment was regular or advance salary, Tlaib explained her belief that the \$2,000 allocated through the end of November was a “continuation” of her standard bi-monthly salary payment, and the \$7,500 adjustment amount was back pay corresponding to the period between the August primary and November general election. *Id.* at 11; see also OCE Report Ex. 12.

²¹ See, e.g., FGCR at 7-12; HEC Report at 16-20; OCE Report Exs. 9, 12.

²² See HEC Report at 13, 20-21; FGCR at 12.

It appears that budgetary concerns were one of several factors influencing the decision to make retroactive adjustments to Tlaib's salary under the purported BP/DCA. See, e.g., Rashida Tlaib for Congress Resp. at 3 (May 13, 2019) (“Shortly thereafter the campaign decided to pay the Congresswoman a salary, although it was understood that the salary . . . would be paid according to the availability of resources.”); HEC Report at 17-18 & n.142 (quoting an interview with a Committee staffer that the post-election salary payments were to “catch up” Tlaib to the maximum allowable salary amount “to the extent [the Campaign] had funds available to pay it”); *id.* (explaining the deferred salary payments as the Committee “try[ing] to limit how much was coming out of the campaign so that [it] could use those resources for other things”). However, there is no evidence here that the purported BP/DCA, at the time of the deferrals, was expressly contingent on the availability of funds and there was at least some awareness by at least one Committee staffer of the debt reporting issue. See HEC Report at 6, 14, 21.

1 and proposed Conciliation Agreement.²³

2 **IV. RECOMMENDATIONS**

3 1. Approve recommendations 1, 2, 3, and 6 in the First General Counsel's Report in
4 MUR 7579 dated April 1, 2020;²⁴

5 2. Approve the attached Factual and Legal Analysis; and

6 3. Approve the attached proposed Conciliation Agreement.

7
8
9

²³ The attached Factual and Legal Analysis includes technical edits and revisions to the one attached to the FGCR to include reference to HEC's conclusion of its investigation. The HEC Report requires Tlaib to refund \$10,800 to the Committee within one year of the Report — by August 7, 2021 — and permits installment payments of the refund. HEC Report at 22.

²⁴ Since the circulation of the FGCR, the Committee has filed Amended Statements of Organizations listing Soh Suzuki as its treasurer. *See, e.g.*, Rashida Tlaib for Congress, Amended Statement of Organization (July 5, 2020). Therefore, the attached Factual and Legal Analysis and the proposed Conciliation Agreement make references and recommendations pertaining to Rashida Tlaib for Congress and Soh Suzuki in his official capacity as treasurer.