

RECEIVED

By Office of the Commission Secretary at 8:55 am, Apr 16, 2021



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 21-22-A
AGENDA ITEM
For meeting of April 22, 2021
SUBMITTED LATE

April 16, 2021

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson
Acting General Counsel

KMP for LJS

Neven Stipanovic
Associate General Counsel

KMP for NFS

Amy Rothstein
Assistant General Counsel

ALR

Kevin Paulsen
Attorney

KMP

SUBJECT: Notice of Availability for REG 2021-01 (Candidate Salaries)

On March 23, 2021, the Federal Election Commission received a Petition for Rulemaking ("Petition") from Nabilah Islam asking the Commission to amend its existing regulations regarding candidate salaries and permissible uses of campaign funds.

The Office of General Counsel has examined the Petition and determined that it meets the requirements of 11 C.F.R. § 200.2(b). Therefore, we have drafted the attached Notice of Availability ("Notice") seeking comment on whether the Commission should initiate a full rulemaking on the proposal in the Petition. The Notice will be published in the *Federal Register* pursuant to 11 C.F.R. § 200.3(a)(1).

In keeping with the Commission's usual procedure, the Notice does not address the merits of the Petition. Instead, it states that consideration of the merits will be deferred until the close of the comment period.

The Office of General Counsel requests that this draft be placed on the agenda for the Commission's open meeting on April 22, 2021.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 113**

3 **[NOTICE 2021-XX]**

4 **Rulemaking Petition: Candidate Salaries**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Rulemaking Petition: Notification of Availability.

7 **SUMMARY:** On March 23, 2021, the Federal Election Commission received a Petition for
8 Rulemaking asking the Commission to amend its existing regulations regarding candidate
9 salaries and permissible uses of campaign funds. The proposed amendments would: (1) extend
10 the period during which a candidate can draw a salary from campaign funds; (2) establish a
11 minimum salary for candidates from campaign funds; and (3) designate the payment of certain
12 healthcare costs as permissible uses of campaign funds. The Commission seeks comment on the
13 petition.

14 **DATES:** Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER THE
15 DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

16 **ADDRESSES:** All comments must be in writing. Commenters may submit comments
17 electronically via the Commission's website at <http://sers.fec.gov/fosers/>, reference REG 2021-
18 01.

19 Each commenter must provide, at a minimum, his or her first name, last name, city, and
20 state. All properly submitted comments, including attachments, will become part of the public
21 record, and the Commission will make comments available for public viewing on the
22 Commission's website and in the Commission's Public Records Office. Accordingly,

1 commenters should not provide in their comments any information that they do not wish to make
2 public, such as a home street address, personal email address, date of birth, phone number, social
3 security number, or driver’s license number, or any information that is restricted from disclosure,
4 such as trade secrets or commercial or financial information that is privileged or confidential.

5 **FOR FURTHER INFORMATION CONTACT:** Ms. Amy Rothstein, Assistant General
6 Counsel, or Mr. Kevin Paulsen, Attorney, Office of the General Counsel, at
7 [CandidateSalaries@fec.gov].

8 **SUPPLEMENTARY INFORMATION:** On March 23, 2021 the Commission received a
9 Petition for Rulemaking from Nabilah Islam (“Petition”). The Petition asks the Commission to
10 amend 11 CFR § 113.1(g), which, in part, lists certain permissible and impermissible expenses
11 for which campaign funds may and may not be used and sets forth the conditions under which
12 candidates may pay themselves a campaign salary. Petition at 1. Each of the Petition’s
13 proposals is addressed in turn below.

14 *A. Candidate Salary Period*

15 Existing Commission regulations permit candidates to draw salaries from their principal
16 campaign committees using campaign funds, subject to certain conditions. 11 CFR
17 113.1(g)(1)(i)(I). If these conditions are met, an eligible candidate may begin receiving a
18 campaign salary on the date of “the filing deadline for access to the primary election ballot for
19 the Federal office that the candidate seeks, as determined by state law, or in those states that do
20 not conduct primaries, on January 1 of each even-numbered year.” *Id.* “If the candidate wins the
21 primary election, his or her principal campaign committee may pay him or her a salary from
22 campaign funds through the date of the general election, up to and including the date of any
23 general election runoff.” *Id.* If, however, the candidate loses the primary, withdraws from the

1 race, or otherwise ceases to be a candidate, no salary may be paid beyond the date he or she is no
2 longer a candidate. *Id.* In odd-numbered years in which a special election for a Federal office
3 occurs, the candidate’s principal campaign committee may pay him or her a salary from the date
4 the special election is set through the date of the special election. *Id.*

5 The Petition asserts that ballot access deadlines for state primaries “vary wildly based on
6 state law.” Petition at 3-4. According to the Petition, during the 2018 election cycle, the date on
7 which a candidate could begin drawing a campaign salary under Commission regulations
8 “ranged from December 4, 2017 in Illinois to July 10, 2018 in Delaware, a difference of 218
9 days.” *Id.* at 4. The Petition asks the Commission to amend 11 CFR 113.1(g)(1)(i)(I) to
10 “standardize and expand the ability for candidates to draw a salary” from their campaigns. *Id.*
11 The Petition proposes that the regulations be amended to permit a candidate to begin drawing a
12 campaign salary “at least 180 days before the primary election, but a full year would be
13 optimal.” *Id.* (emphasis in original).

14 *B. Minimum Candidate Salary*

15 The same provision of the Commission’s existing regulations limits the amount of salary
16 payments that a candidate may receive from his or her principal campaign committee. 11 CFR
17 113.1(g)(1)(i)(I). Under the regulation, salary payments may not exceed “the lesser of: the
18 minimum salary paid to a Federal officeholder holding the Federal office that the candidate
19 seeks; or the earned income that the candidate received during the year prior to becoming a
20 candidate.” *Id.* The regulation further states that “[a]ny earned income that a candidate receives
21 from salaries or wages from any other source shall count against the foregoing limit of the
22 minimum salary paid to a Federal officeholder holding the Federal office that the candidate
23 seeks.” *Id.* Any salary payments must also “be computed on a pro-rata basis.” *Id.*

1 The Petition alleges that the current maximum salary limitation “leaves candidates who
2 are full time caretakers or who have had gaps in employment out in the cold.” Petition at 4-5.
3 The Petition asks the Commission to amend 11 CFR 113.1(g)(1)(i)(I) by creating a minimum
4 “floor” for the salary that a candidate may draw from his or her principal campaign committee at
5 an amount “no less than the annualized salary of \$15 per hour.” *Id.*

6 *C. Healthcare Premiums*

7 The Federal Election Campaign Act, 52 U.S.C. 30101-45 (“FECA”), provides that a
8 candidate’s authorized committee may use its funds for several specific purposes, including
9 “otherwise authorized expenditures in connection with the campaign for Federal office of the
10 candidate.” 52 U.S.C. 30114(a)(1). An authorized committee may not, however, convert
11 campaign funds to “personal use.” 52 U.S.C. 30114(b); 11 CFR 113.1(g)(1)(ii). FECA defines
12 “personal use” as the use of campaign funds “to fulfill any commitment, obligation, or expense
13 of a person that would exist irrespective of the candidate's election campaign.” 52 U.S.C.
14 30114(b)(2); *see also* 11 CFR 113.1(g). FECA and Commission regulations provide a non-
15 exhaustive list of expenses that, when paid using campaign funds, constitute per se conversion to
16 personal use. 52 U.S.C. 30114(b)(2); 11 CFR 113.1(g)(1)(i). For expenses not listed, the
17 Commission determines on a case-by-case basis whether the expense would exist irrespective of
18 the candidate’s campaign. 11 CFR. 113.1(g)(1)(ii). Neither FECA nor Commission regulations
19 explicitly address health insurance premiums.¹

¹ As the Petition notes, the Commission recently determined in the context of an enforcement matter that the existing candidate salary provision at 11 C.F.R. § 113.1(g)(1)(i)(I) does not permit the use of campaign funds to reimburse a candidate’s out-of-pocket payments of health insurance premiums. *See* Factual & Legal Analysis at 10, MUR 7068 (Mowrer for Iowa, *et al.*) (Dec. 20, 2017), <https://www.fec.gov/files/legal/murs/7068/18044452908.pdf>. The Commission further concluded that the candidate’s use of campaign funds to pay his health insurance premiums was a prohibited “personal use” under 11 C.F.R. § 113.1(g)(1)(ii), because these expenses would exist irrespective of the candidate’s campaign. *Id.*

DRAFT

1 The Petition alleges that rising healthcare costs act as a barrier to the prospective
2 candidacies of “working class people.” Petition at 5. Accordingly, the Petition asks the
3 Commission to amend 11 CFR 113.1(g) to expressly permit a candidate to use campaign funds to
4 pay the costs of “any health benefit plan already provided to other campaign employees”
5 beginning on the date on which the candidate is eligible to receive a campaign salary.² *Id.* The
6 Petition also requests that such amendment “clarify that any payments for health insurance
7 premiums that are not otherwise taxable under Internal Revenue Service rules should not count
8 against any compensation cap set by the Commission.” *Id.*

9 The Commission seeks comment on the Petition. The public may inspect the Petition on
10 the Commission’s website at <http://sers.fec.gov/fosers/>.

11 The Commission will not consider the Petition’s merits until after the comment period
12 closes. If the Commission decides that the Petition has merit, it may begin a rulemaking
13 proceeding. The Commission will announce any action that it takes in the *Federal Register*.

14
15 Dated: _____

16
17 On behalf of the Commission,

18
19 Shana M. Broussard,

20 *Chair,*

21 *Federal Election Commission*

² The For the People Act of 2021, which was passed by the House of Representatives this year, would amend Section 30114 of FECA to expressly permit the use of a candidate’s authorized committee’s funds to pay for the candidate’s health insurance premiums. For the People Act of 2021, H.R. 1, 117th Cong. § 5302 (2021). If this legislation becomes law, the Petition notes that this particular aspect of the request would become moot.

DRAFT

1 BILLING CODE: 6715-01-P