



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

STATEMENT OF COMMISSIONERS SHANA M. BROUSSARD AND ELLEN L. WEINTRAUB AND CHAIR DARA LINDENBAUM REGARDING THE COMMISSION'S ADOPTION OF FINAL RULES IN REG 2021-01 (CANDIDATE SALARIES)

"It is ... crazy to think that it's the patriotic thing to garner a bunch of credit card debt or get a possible lien on your home or, as I did, ask your children not to participate in their afterschool activities so you can have that extra income go toward a campaign."¹

Today we are pleased that the Commission has adopted new regulations governing the parameters within which candidates can use campaign funds for their own compensation.² This project began in 2021 with a Petition for Rulemaking ("Petition") submitted by Nabilah Islam, a former candidate for the U.S. House of Representatives and a current member of the Georgia State Senate. Senator Islam submitted her Petition for Rulemaking because of her experiences as a candidate, writing:

"I ran full time for 16 months and could barely pay rent and utilities. I had to cancel my health insurance because the premiums were too expensive without any income. I also had to put my student loans into forbearance because I could not afford the monthly payments. I depleted my savings to pay for my bare necessities."³

As the record in this rulemaking shows, Senator Islam's experiences are not unique. Regrettably, for many, the personal financial cost of running for office – not to mention the cost of a campaign – are too great an obstacle. Data from 2018 cited in the Petition show that working-class people make up 50% of Americans, but only two percent of Congress,⁴ and that nearly 40% of Members of Congress are

¹ Odessa Kelly, Transcript of Proceedings in the Matter of Public Hearing on Candidate Salaries ("Hearing Transcript") at 143 (Mar. 22, 2023), <https://sers.fec.gov/fosers/showpdf.htm?docid=422399>.

² See Candidate Salaries, Agenda Document No. 23-30-A (adopted Dec. 14, 2023).

³ Petition for Rulemaking to Improve Candidate Salary Rules ("Petition") (March 23, 2021), <https://sers.fec.gov/fosers/showpdf.htm?docid=413694>.

⁴ Petition at 2 (citing Dr. Nicholas Carnes, *Working-class people are underrepresented in politics. The problem isn't voters.*, VOX (Oct. 27, 2018), <https://www.vox.com/policy-and-politics/2018/10/24/18009856/working-class-income-inequality-randy-bryce-alexandria-ocasio-cortez>). Professor Carnes submitted a comment on the Petition to affirm the accuracy of the Petition's characterization of his research. Comment from Dr. Nicholas Carnes (July 2, 2021). All comments are available on the Commission's website at <https://sers.fec.gov/fosers/>, referencing REG 2021-01 (Candidate Salaries).

millionaires.⁵ One comment noted that during the 116th Congress, the median minimum net worth of members of Congress was quintuple the median net worth of an American household.⁶

We are proud of the work we have done at the Commission to bring this rulemaking across the finish line. We know that many of the changes in these final rules will help ordinary, working-class Americans to participate in our political process and to represent their communities by running for federal office. Specifically, we are very pleased by the change that will allow a federal candidate to draw compensation from their campaign committee starting on the date that the candidate files their Statement of Candidacy – this will have a meaningful impact on many candidates, whose campaigns could start over a year before they would have been entitled to draw a salary under the previous rules.⁷

But these significant improvements notwithstanding, we do not believe that this rulemaking goes as far as it could – and should – go to allow candidates to draw compensation from their campaign committees. In our view, there are two major ways in which these final rules fall short of the mark: first, the final rules continue to apply a cap on candidate compensation that is tied directly to the amount of income that a candidate has earned in the past, and second, the final rules will allow a candidate to draw compensation only for 20 days after they cease to be a candidate. We will address each of these limitations in turn.

I. Compensation Cap

It is unquestionable that to be viable (not to mention successful), a candidate must put a tremendous volume of work into their campaign.⁸ Especially for challengers, spending more than 40 hours a week soliciting funds, appearing at campaign events, and planning with campaign staff is not only common, but often necessary to overcome the name recognition and war chest gaps that they face relative to incumbents.⁹

⁵ Petition at 2 (citing Amanda Terkel, *Running for Office is Really Hard if You're Not a Millionaire*, HUFFPOST (Dec. 3, 2018), https://www.huffpost.com/entry/running-for-office-congress-house-millionaires_n_5c0019b2e4b0864f4f6b5535).

⁶ Comment from AFL-CIO, *et al.* at 2 (Feb. 10, 2023) (citing David Hawkings, *Wealth of Congress: Richer Than Ever, but Mostly at the Very Top*, ROLLCALL (Feb. 27, 2018), <https://rollcall.com/2018/02/27/wealth-of-congress-richer-than-ever-but-mostly-at-the-very-top/>).

⁷ Under the prior rules, the date of eligibility for candidate salaries varied from state to state, based on the filing deadline for ballot access to the primary election ballot, or in those states that do not conduct primaries, on January 1 of each even-numbered year. 11 C.F.R. § 113.1(g)(1)(i)(I) (2023). As noted in the Petition, during the 2018 election cycle, the primary ballot qualification deadlines varied from December 4, 2017, in Illinois to July 10, 2018, in Delaware, a difference of 218 days. Petition at 4. In Pennsylvania in 2018, for example, Congressional candidates were eligible to receive a salary for only 56 days. *Id.*

⁸ *See, e.g.*, Hearing Transcript at 18 (“I’d be campaigning from 8 or 9 a.m....to 10, 11 p.m. at night...”), 116 (“Six months before the primary, I had to step down from my company because it was necessary for me to...ramp up to 40 hours a week for just call time, not to mention preparing for candidate forums, attending events, or outreach and canvassing, which would average 80 hours a week.”), 122 (“[Running a campaign] takes a year to two years of your life, 18 hours a day minimum.”).

⁹ *See* Hearing Transcript at 38 (“...candidates, because they have that burden of explaining themselves to the voters, explaining the choice that the voters have, they have to show up at every hour of the day in which people in their communities are awake. They are doing work that is far beyond, in fact, what an incumbent might be expected of in that respect...”)

Beyond what may be considered “traditional” candidate work – dialing for dollars and meeting prospective voters – we heard from a former candidate that in smaller campaigns, the candidate often fills functions that would be the work of paid campaign staff in a larger, more well-funded campaign.¹⁰ This former candidate reflected on how independent or minor party candidates often manage their own social media, and directly handle their ballot access efforts and any legal issues that arise, rather than hiring someone else.¹¹

The question, then, is to what extent can and should a candidate lawfully receive compensation for that work? A candidate’s authorized committee has wide discretion to expend funds to influence the election of its candidate to federal office.¹² The Federal Election Campaign Act (“FECA”) permits a contribution accepted by a candidate to be used “for any...lawful purpose” so long as it is not “converted by any person to personal use.”¹³ Personal use is described as the use of a contribution “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.”¹⁴ The statute identifies a non-exhaustive list of specific uses that constitute personal use, including payments for home mortgages, clothing purchases, country club memberships, and household food items.¹⁵

Candidate compensation is not prohibited by this statutory provision; indeed, as the candidacy of an individual is the *raison d’être* of an authorized campaign committee, paying a candidate compensation – thereby ensuring that the candidate is able to continue campaigning and does not have to withdraw from a race because of an inability to meet their basic needs – is clearly *not* a commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign.¹⁶ As one commenter noted, “a candidate and a campaign are not the same person. One is a hopefully incorporated 527 nonprofit entity; the other one is an individual who is working day in and day out with the organization to elect themselves to office.”¹⁷ Indeed, in the 2002 rulemaking in which it expressly permitted a candidate to receive a salary from the campaign, the Commission observed correctly that

¹⁰ Hearing Transcript at 137.

¹¹ *Id.*

¹² *See, e.g., Fed. Election Comm’n v. Cruz*, 596 U.S. 289, 305 (2022) (“This Court has recognized only one permissible ground for restricting political speech: the prevention of ‘*quid pro quo*’ corruption or its appearance.” (citations omitted)); *Buckley v. Valeo*, 424 U.S. 1, 57 (1976) (holding unconstitutional limits on campaign expenditures, stating “The First Amendment denies government the power to determine that spending to promote one’s political views is wasteful, excessive, or unwise”).

¹³ 52 U.S.C. § 30114(a)(6), (b)(1).

¹⁴ *Id.* § 30114(b).

¹⁵ *Id.* § 30114(b)(2).

¹⁶ Notably, the statute prohibits “any person” from converting contributions for personal use. *Id.* § 30114(b)(1). But there does not appear to be any serious argument that the personal use provision in FECA prohibits an authorized committee from paying a *campaign staffer* a salary in exchange for their services, even though that salary would likely be used to pay for the staffer’s rent or mortgage or food. *See* Supplemental Comment from AFL-CIO at 3 (Mar. 29, 2023).

¹⁷ Hearing Transcript at 67.

“[a] salary paid to a candidate would be in return for the candidate’s services and the necessity of that salary would not exist irrespective of the candidacy.”¹⁸

Cognizant of the need to establish some kind of cap on salary to avoid abuse, the Commission in 2002 capped a candidate’s salary as the lesser of the minimum salary for the federal office the candidate seeks or the earned income that the candidate received in the year prior to becoming a candidate.¹⁹ The Commission described this cap as an “additional safeguard” to “ensure that campaign salaries are not used to enrich candidates.”²⁰ In the current rulemaking, however, some colleagues have taken this Commission-created prophylactic safeguard and assert that it is a statutory requirement under FECA.

While it is reasonable to set a cap on the amount of compensation a candidate may draw from their campaign committee, a single cap that applies to all candidates – in recognition that the nature and amount of work involved in campaigning are not dependent on the prior employment history of the candidate – is a more appropriate option. Some colleagues agree that the Commission has discretion to set a cap at 50 percent of the minimum annual salary paid to a Member of the House of Representatives, notwithstanding that a candidate’s prior salary may have exceeded that. We would hold that this is a reasonable cap to apply uniformly to *all* candidates, regardless of prior salary. An individual’s work before becoming a candidate – whether a highly-paid attorney, a schoolteacher, a stay-at-home caregiver to a dependent family member, a student, or a person who was unemployed for any of the myriad reasons people are unemployed in this country – does not reflect the work that they put into their candidacy.

During the pendency of this rulemaking the Commission received no data showing that candidate salaries are a source of widespread abuse. To the contrary, a commenter noted how inefficient it would be to create a sham campaign for financial gain, given the amount of time and resources necessary to raise campaign contributions.²¹ Importantly, the record in this rulemaking contains no evidence showing that the risk of misuse of campaign funds is correlated to a person’s income (or lack thereof) prior to becoming a candidate. As one commenter pointed out, it is already permissible for a campaign committee to pay a candidate in exchange for use of the candidate’s property or a candidate-owned business that serves as a vendor to the campaign committee.²² This, too, incurs a moral hazard of abuse, but one that, in the words of the commenter, “skews in favor of folks who already own businesses and property that they can maybe use with their campaign.”²³ Thus, the application of a salary cap tied to a candidate’s prior earned income as a means to prevent abuse is overbroad. FECA and the Commission’s regulations already provide safeguards for preventing abuse of

¹⁸ Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds (“2002 Explanation and Justification”), 67 Fed. Reg. 76962, 76972 (Dec. 13, 2002).

¹⁹ 11 C.F.R. § 113.1(g)(1)(i)(I) (2023); *see also* 2002 Explanation and Justification, 67 Fed. Reg. at 76972.

²⁰ 2002 Explanation and Justification, 67 Fed. Reg. at 76972.

²¹ *Id.* at 142.

²² *See* Hearing Transcript at 72.

²³ *Id.*

campaign funds, including public disclosure of campaign disbursements and amount limitations on contributions.²⁴

These final rules are unquestionably an improvement over the prior rule and a significant step in the right direction. By calculating the compensation cap based on an average of the five most recent previous years during which the candidate earned income, rather than the single year preceding their candidacy, the new rule will undoubtedly permit a larger pool of candidates to draw compensation than under the prior rule. But this new regulation is flawed both in its rationale, as explained above, and in its impact. Under the new regulation, the cap is set at the *lesser* of the average earned income over the lookback period and 50 percent of the minimum annual salary paid to a Member of the U.S. House of Representatives. Thus, this regulation will continue to close off the ability of a candidate who has never had earned income from drawing any compensation. This is true regardless of what that individual's earning potential might be if they had entered the work force rather than running for office. It is regrettable that some colleagues believe that this is necessary to prevent corruption. In the words of one commenter, “[i]n seeking to curb the misconduct of bad actions...we must not lose sight of the other important guideposts such as ensuring access to the political system for people who might not have deep pockets, secret financial backers, or a congressional legacy to hoist them into the halls of Congress.”²⁵

II. Eligibility Period

We are pleased that the new regulation will expand the period during which a candidate may draw compensation from campaign funds. By allowing a candidate to begin drawing compensation from the date on which they file a Statement of Candidacy, the new rule reflects the realities of running for federal office, which often involve full-time campaigning beginning more than a year before the election. The new regulation also expands the eligibility period by allowing a candidate to continue drawing compensation for a period of 20 days after they cease being a candidate. However, in our view, this too does not go far enough. As several commenters observed, candidates continue to have responsibilities to their campaign committees after their candidacies end. Campaign committees have reporting obligations and wind-down activities after ending a campaign.²⁶ As discussed above, especially in smaller campaigns, candidates themselves may serve in the roles most directly involved in the wind-down process, rather than paid staff. All these tasks often require the candidate's time.

Beyond the work that candidates often continue to do for their campaign committees after they end their campaigns, successful candidates have an additional consideration: as noted by several commenters, from the general election date in early November until the candidate is sworn in (typically about eight weeks after the election), the candidate is “highly unlikely to secure ethically and politically acceptable employment.”²⁷ During the interval between the general election and being officially sworn

²⁴ In striking down the Commission's regulation on the use of campaign funds after an election to repay a candidate's loans to their campaign committee, the Supreme Court rejected the government's assertion of an anti-corruption interest, explaining that “[i]ndividual contributions to candidates for federal office, including those made after the candidate has won the election, are already regulated in order to prevent corruption or its appearance. Such contributions are capped...and nontrivial contributions must be publicly disclosed.” *Fed. Election Comm'n v. Cruz*, 596 U.S. at 306 (internal citations omitted).

²⁵ Comment from Citizens for Responsibility and Ethics in Washington (“CREW”) at 3 (Feb. 10, 2023).

²⁶ *See, e.g.*, 11 C.F.R. § 104.5 (a)(2)(ii) (post-election reporting requirement).

²⁷ Comment from AFL-CIO, *et al.* at 3.

in and receiving their first paycheck, Members of Congress are setting up housing in Washington, DC, hiring office staff, and participating in orientation, in addition to winding down their campaigns.²⁸ As noted by a commenter, “[t]his employment gap certainly would not exist irrespective of candidacy.”²⁹ In 2022, shortly after winning his seat in the House of Representatives, Representative Maxwell Frost gained attention for a Tweet stating that he was denied a rental application in D.C. due to his low credit score “after running up ‘a lot of debt running for Congress for a year and a half.’”³⁰ At the hearing in this rulemaking, Representative Frost explained to the Commission that during the period between the election and the receipt of his first congressional paycheck, he was forced to incur significant debt, the consequences of which were a “very damaged credit score.”³¹

For these reasons, we would have preferred a longer compensation eligibility period following an individual ceasing to be a candidate. Eight weeks would provide a cushion during the period that a candidate is winding down their campaign and would allow successful candidates to bridge the gap until they receive their first congressional paychecks. The risk of misuse of funds is low – in addition to the disclosure obligations that exist throughout the campaign, a campaign committee can only raise contributions after an election to the extent that the committee has outstanding debts. Furthermore, if a former candidate can obtain employment during the eight-week period, any earned income would offset the amount of compensation that the candidate could draw from the campaign.

In sum, although this rulemaking did not extend as far as it could have, we remain optimistic that it will enable more people to run for office. We also take this opportunity to address a theme that stood out to us during the hearing in this matter: former candidates expressed feeling initial shame when faced with the financial realities of campaigning.³² We applaud these individuals for speaking up and sharing their stories. We hope that by doing so, they chip away at the stigma that often comes with taking compensation as a candidate. While all campaign expenditures can and should be evaluated by voters, we hope that voters see that significant work goes into campaigning and that all too often, running for federal office is reserved for those of means. We hope that future candidates who make the decision to draw compensation for the real work they do to advance their own campaigns will do so without shame.

²⁸ Hearing Transcript at 22.


²⁹ Comment from AFL-CIO, *et al.* at 3.

³⁰ Comment from CREW at 3 (citing Maxwell Alejandro Frost (@MaxwellFrostFL), Twitter (Dec. 8, 2022, 11:29 PM)).


³¹ Hearing Transcript at 19.

³² Hearing Transcript at 111, 141, 168.


December 14, 2023
Date


Shana M. Broussard
Commissioner

December 14, 2023
Date


Ellen L. Weintraub
Commissioner

December 14, 2023
Date


Dara Lindenbaum
Chair