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FEDERAL ELECTION COMMISSION
1050 FIRST STREET, N.E.
WASHINGTON, D.C. 20463

AGENDA DOCUMENT NO. 22-53-B
AGENDA ITEM
For meeting of December 1, 2022
SUBMITTED LATE

TO: The Commission
The Office of the Commission Secretary

FROM: Shana M. Broussard *SMB*
Commissioner

DATE: November 28, 2022

RE: REG 2021-01 Draft Notice of Proposed Rulemaking on Candidate Salaries - Revised

I ask that the enclosed draft Notice of Proposed Rulemaking concerning Candidate Salaries be placed on the Commission's agenda for the Open Meeting of December 1, 2022.

The attached draft differs from Agenda Document 22-53-A by:

- 1) Clarifying when dependent care costs would fall under the alternative proposed definitions of "compensation" (pages 24-25 and 39-40);
- 2) Providing that the proposed \$15 minimum wage compensation cap would be adjusted for inflation (pages 17 and 37-38);
- 3) Requiring the proposed caps on candidate compensation to be rounded to the nearest dollar (pages 36-39); and
- 4) Adding examples to enhance the discussion of the current regulation (page 28) and the differences between the alternative proposed definitions of "compensation" (pages 24-25).

The attached draft also differs from Agenda Document 22-53-A in certain technical respects, such as by augmenting the discussion of precedent in the analysis of the Commission's prior treatment of candidates' childcare expenses (page 6).

FEDERAL ELECTION COMMISSION

11 CFR Part 113

[Notice 2022-XX]

Candidate Salaries

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: After considering comments received in response to its May 3, 2021, Notification of Availability, the Federal Election Commission seeks comments on proposed changes to its regulations regarding the use of campaign funds by a candidate’s principal campaign committee to pay compensation to the candidate. The Notification of Availability was published in response to a Petition for Rulemaking filed by a former candidate for the United States House of Representatives. The Commission has made no final decision on the issues presented in this rulemaking.

DATES: Comments must be received on or before [insert date 60 days after date of publication in the *FEDERAL REGISTER*]. The Commission may hold a public hearing on this Notice. Commenters wishing to testify at a hearing must so indicate in their comments. If a hearing is to be held, the Commission will publish a notice in the *FEDERAL REGISTER* announcing the date and time of the hearing.

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission’s website at <http://sers.fec.gov/fosers>, reference REG 2021-01. Alternatively, comments may be submitted in paper form addressed to the Federal Election Commission, Attn.: Ms. Amy L. Rothstein, Assistant General Counsel for Policy, 1050 First Street, NE, Washington, DC 20463.

1 Each commenter must provide, at a minimum, his or her first name, last name, city, and
2 state. All properly submitted comments, including attachments, will become part of the public
3 record, and the Commission will make comments available for public viewing on the
4 Commission’s website and in the Commission’s Public Records Office. Accordingly,
5 commenters should not provide in their comments any information that they do not wish to make
6 public, such as a home street address, personal email address, date of birth, phone number, social
7 security number, or driver’s license number, or any information that is restricted from disclosure,
8 such as trade secrets or commercial or financial information that is privileged or confidential.

9 **FOR FURTHER INFORMATION CONTACT:** Amy L. Rothstein, Assistant General
10 Counsel for Policy, Joseph P. Wenzinger, Attorney, or Cheryl A. Hemsley, Attorney, 1050 First
11 Street NE, Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

12 **SUPPLEMENTARY INFORMATION:** Following its receipt and consideration of a Petition
13 for Rulemaking (“Petition”)¹ from Ms. Nabilah Islam, a former candidate for the United States
14 House of Representatives in Georgia, and public comments on the Petition, the Commission now
15 proposes to amend its regulations regarding the use of campaign funds to pay candidates’
16 compensation, including salaries, health insurance premiums, and dependent care costs. The
17 Commission invites public comments on these regulatory proposals.

18 **I. Background**

19 The Federal Election Campaign Act (the “Act”)² prohibits a candidate’s authorized
20 committee from converting campaign funds to “personal use.”³ “Personal use” is defined as the

¹ Petition for Rulemaking to Improve Candidate Salary Rules (“Petition”) (Mar. 23, 2021),
<https://sers.fec.gov/fosers/showpdf.htm?docid=413694>.

² 52 U.S.C. 30101-45.

³ *Id.* 30114(b).

1 use of campaign funds “to fulfill any commitment, obligation, or expense of a person that would
2 exist irrespective of the candidate’s election campaign or individual’s duties as a holder of
3 Federal office.”⁴ The Act and Commission regulations provide a non-exhaustive list of expenses
4 that, when paid using campaign funds, constitute *per se* conversion of those funds to personal
5 use.⁵ The Commission determines on a case-by-case basis whether the use of campaign funds to
6 pay expenses other than those listed would be a prohibited conversion of the funds to personal
7 use.⁶

8 **A. Candidates’ Salaries**

9 The Act does not identify the use of campaign funds to pay candidate salaries as *per se*
10 personal use. In Advisory Opinion 1999-01 (Greene), however, the Commission concluded that
11 the Act would prohibit a federal candidate from using campaign funds to pay himself a salary
12 because the candidate would indirectly use the funds to pay his mortgage, utilities, groceries, and
13 clothing — all of which are *per se* personal use.⁷

14 In 2002, the Commission proposed to codify this conclusion in a regulation.⁸ The
15 proposed regulation would have prohibited candidates “from using campaign funds to pay
16 themselves salaries or otherwise compensate themselves in any way for income lost as a result of

⁴ *Id.* 30114(b)(2); *see also* 11 CFR 113.1(g) (defining “personal use”).

⁵ *See* 52 U.S.C. 30114(b)(2); 11 CFR 113.1(g)(1)(i).

⁶ *See* 11 CFR 113.1(g)(1)(ii) (providing non-exhaustive list of expenses to be determined for personal use on a case-by-case basis).

⁷ Advisory Opinion 1999-01 (Greene) at 4.

⁸ Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds (“2002 Proposed Rule”), 67 FR 55348 (Aug. 29, 2002), <https://www.govinfo.gov/content/pkg/FR-2002-08-29/pdf/02-21893.pdf>.

1 campaigning for Federal office.”⁹ The Commission received several public comments opposing
2 this proposal, and no public comments supporting it. As the Commission explained in the
3 explanation and justification accompanying the final rules, the commenters argued that the
4 proposed rule would favor incumbents who do not face a reduction in compensation for time
5 spent campaigning, and wealthy challengers who can afford to forego compensation.¹⁰ The
6 commenters also argued that the use of campaign funds to pay candidates’ salaries would not
7 fulfill a commitment, obligation, or expense that would exist irrespective of the campaign, and
8 therefore satisfies the Act’s “irrespective” test because, “were it not for their campaign
9 responsibilities, candidates would not have to leave their jobs and give up their salaries.”¹¹

10 The Commission “agree[d] with the commenters that the payment of a salary to a
11 candidate is not a prohibited personal use as defined under Commission regulations.”¹² The
12 Commission explained that this use of campaign funds satisfied the “irrespective” test because,
13 “but for the candidacy, the candidate would be paid a salary in exchange for services rendered to
14 an employer.”¹³ Moreover, the Commission stated, a “salary paid to a candidate would be in
15 return for the candidate’s services provided to the campaign and the necessity of that salary
16 would not exist irrespective of the candidacy.”¹⁴

⁹ *Id.* at 55353.

¹⁰ *See* Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds (“2002 Final Rule”), 67 FR 76962, 76971-72 (Dec. 13, 2002), <https://sers.fec.gov/fosers/showpdf.htm?docid=8982#page=11>.

¹¹ *Id.* at 76971.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

1 The Commission included in the final regulation various safeguards against abuse. To be
2 a permissible use of campaign funds, the salary paid to a candidate must not exceed the lesser of
3 the minimum salary paid to a “Federal officeholder holding the Federal office that the candidate
4 seeks” or the earned income received by the candidate the year before becoming a candidate.¹⁵
5 Further, any earned income that a candidate receives from salary or wages from any source other
6 than campaign funds counts against the minimum salary paid to a federal officeholder as
7 described in the regulation.¹⁶ These limitations were designed, in part, to “help ensure that
8 campaign salaries are not used to enrich candidates, but instead used to compensate candidates
9 for lost income that is forgone due to becoming a candidate.”¹⁷ The regulation also provides that
10 campaign funds cannot be used to pay a candidate’s salary before the filing deadline for access to
11 the primary election ballot for the federal office that the candidate seeks, as determined by state
12 law, or January 1 of each even-numbered year in states that do not conduct primaries.¹⁸ Finally,
13 the regulation requires salary payments to be computed on a pro-rata basis and prohibits
14 candidates who are also federal officeholders from receiving salary payments from campaign
15 funds.¹⁹

16 **B. Candidates’ Childcare Expenses**

¹⁵ 11 CFR 113.1(g)(1)(i)(I).

¹⁶ *Id.*

¹⁷ 2002 Final Rule, 67 FR at 76972.

¹⁸ 11 CFR 113.1(g)(1)(i)(I). Under this regulation, if the candidate wins the primary election, his or her principal campaign committee may pay him or her a salary from campaign funds through the date of the general election, up to and including the date of any general election runoff. If the candidate loses the primary, withdraws from the race, or otherwise ceases to be a candidate, no salary payments may be paid beyond the date he or she is no longer a candidate. In odd-numbered years in which a special election for a federal office occurs, the principal campaign committee for that office may pay the candidate a salary from campaign funds starting on the date the special election is set and ending on the day of the special election.

¹⁹ *Id.*

1 The Act and Commission regulations do not include the use of campaign funds to pay
2 candidates' childcare expenses as a *per se* personal use. The Commission has addressed this use
3 of campaign funds in several advisory opinions, and has approved the use of campaign funds to
4 pay candidates' overnight childcare expenses incurred when the candidates travel for their own
5 campaigns,²⁰ and to pay caregiver expenses and full-time daycare when candidates' campaign
6 responsibilities and activities prevented them from caring for their children themselves.²¹ In
7 each of these advisory opinions, the Commission concluded that the candidate could use
8 campaign funds to pay the candidate's childcare expenses to the extent that the expenses were a
9 "direct result of campaign activity," because such expenses would not have existed irrespective
10 of the candidate's campaign.²²

11 **C. Candidates' Medical Insurance Premiums**

12 The Act and Commission regulations do not include the use of campaign funds to pay
13 candidates' medical insurance premiums as a *per se* personal use, and the Commission has not
14 addressed this issue in advisory opinions.²³ The Commission has, however, addressed the use of
15 campaign funds to pay health insurance premiums in an enforcement matter. In MUR 7068
16 (Mowrer for Iowa), the Commission found reason to believe that a congressional candidate and

²⁰ Advisory Opinion 2022-07 (Swalwell); Advisory Opinion 1995-42 (McCrery).

²¹ Advisory Opinion 2018-06 (Liuba for Congress); Advisory Opinion 2019-13 (MJ for Texas).

²² Advisory Opinion 2022-07 (Swalwell) at 3-4; Advisory Opinion 2019-13 (MJ for Texas) at 3; Advisory Opinion 2018-07 (Liuba for Congress) at 3; Advisory Opinion 1995-42 (McCrery) at 2; *c.f.* Advisory Opinion 2005-09 (Dodd) at 3 (approving proposed use of campaign funds to pay travel expenses for candidate's children to accompany their parents "provided that the parents are traveling to participate in a function directly connected to the Senator's bona fide official responsibilities"); Advisory Opinion 1995-20 (Roemer) at 2 (approving proposed use of campaign funds to pay travel expenses of candidate's young children when they travel with candidate and his wife for campaign events, where such travel is "only required because of the campaign").

²³ The petitioner had previously requested an advisory opinion to clarify whether a candidate's health insurance premiums were a permissible campaign expense, *see* Advisory Opinion Request 2020-01 (Nabilah for Georgia), but her request became moot when she stopped being a candidate.

1 his campaign committee had improperly converted campaign funds to personal use by using
2 funds from the candidate’s principal campaign committee to reimburse the candidate for
3 payment of his health insurance premiums.

4 **D. Petition for Rulemaking**

5 On March 23, 2021, the Commission received the Petition, asking the Commission to
6 amend Section 113.1(g) of its regulations to expand the category of candidates eligible to receive
7 compensation from their authorized committees and the duration of their eligibility, and to
8 authorize the use of campaign funds to pay candidates’ health insurance premiums.²⁴

9 The Petition asserts that ballot access deadlines for state primaries, which “vary wildly
10 based on state law,”²⁵ leave many candidates with short periods for receiving a salary under the
11 Commission’s regulation.²⁶ Moreover, the Petition alleges that the current maximum salary
12 limitation “leaves candidates who are full time caretakers or who have had gaps in employment
13 out in the cold,”²⁷ and that rising health insurance costs act as a barrier to the prospective
14 candidacies of “working class people.”²⁸

15 The Petition asks the Commission to “lower the barriers for working Americans to run
16 for Federal office” by amending its personal use regulations at 11 CFR 113.1(g) to:

²⁴ Petition at 4-5.

²⁵ *Id.* at 3-4.

²⁶ *Id.* at 4 (noting, for example, that in Pennsylvania in 2018, Congressional candidates were eligible to receive a salary for only 56 days).

²⁷ *Id.* at 4-5.

²⁸ *Id.* at 5.

- 1 (1) Extend the date on which a candidate may begin drawing a campaign salary to at least
2 180 days before the primary election;²⁹
- 3 (2) Establish a minimum candidate salary of no less than the annualized salary of \$15 per
4 hour;³⁰ and
- 5 (3) Expressly permit a candidate to use campaign funds to pay the costs of any health
6 benefit plan already provided to other campaign employees beginning on the date the
7 candidate is eligible to receive a campaign salary.³¹

8 **E. Public Comments on the Petition**

9 On May 23, 2021, the Commission published a Notification of Availability (“NOA”)
10 seeking public comment on the Petition.³² The Commission received 22 comments in response,
11 6 from organizations and 16 from individuals.³³ Fourteen commenters, including the
12 organizations, generally supported initiating a rulemaking. They agreed that some version of the
13 Petition’s proposals would make it easier for individuals of modest means who are not already
14 federal officeholders to run for federal office. Several commenters noted that the current
15 candidate salary regulation offers little assistance to full-time caregivers or those who have
16 experienced a recent financial hardship because candidate salaries cannot currently exceed the
17 amount of income earned in the year before their candidacy. Thus, a candidate who worked full
18 time caring for the candidate’s children or other family members without remuneration the year

²⁹ *Id.* at 4, 6.

³⁰ *Id.* at 4-5.

³¹ *Id.* at 5.

³² Rulemaking Petition: Candidate Salaries, Notification of Availability (“NOA”), 86 FR 23300 (May 3, 2021), <https://sers.fec.gov/fosers/showpdf.htm?docid=413869>.

³³ The comments are available on the Commission’s website at <https://sers.fec.gov/fosers/>, referencing REG 2021-01 (Candidate Salaries).

1 prior to becoming a candidate could not receive a campaign salary. Similarly, a candidate who
2 was unemployed during any portion of the year prior to becoming a candidate would be able to
3 receive only a reduced amount of salary from campaign funds, and potentially none at all.³⁴
4 Commenters also suggested that the period during which a candidate is eligible to receive a
5 salary is too short and does not reflect the financial costs and other demands of campaigning
6 today.³⁵

7 These commenters also generally agreed that a candidate’s campaign committee should
8 be able to use campaign funds to pay the candidate’s health insurance premiums. One
9 commenter cited statistics showing that most Americans obtain health insurance coverage
10 through their employment³⁶ and argued that health insurance is, thus, inextricably linked to
11 employment. Another commenter further urged the Commission to reconsider its conclusion in
12 MUR 7068 (Mowrer for Iowa) that the use of campaign funds to pay a candidate’s health
13 insurance premiums is a prohibited personal use, “in light of current societal conditions that pose
14 challenges for working Americans” who want to run for office.³⁷

15 Five individual commenters opposed initiating a rulemaking. Two of them opposed
16 using campaign funds to pay candidate salaries in any circumstance; the others opposed the

³⁴ See Issue One, Comment at 2 (June 29, 2021), REG 2021-01, <https://sers.fec.gov/fosers/showpdf.htm?docid=414051>.

³⁵ See Campaign Legal Center, Comment at 2 (June 30, 2021), REG 2021-01, <https://sers.fec.gov/fosers/showpdf.htm?docid=414052>; DSCC and DCCC, Comment at 1 (July 2, 2021), REG 2021-01, <https://sers.fec.gov/fosers/showpdf.htm?docid=414049>.

³⁶ Petition at 5; AFL-CIO *et al.*, Comment at 3 (July 4, 2021), REG 2021-01, <https://sers.fec.gov/fosers/showpdf.htm?docid=414082>.

³⁷ AFL-CIO *et al.*, Comment at 3 (July 4, 2021).

1 proposed minimum salary because it exceeded the federal minimum wage or could encourage
2 “professional candidates.”³⁸ Three commenters did not address issues raised in the NOA.

3 **II. Proposed Regulations**

4 The Commission proposes to amend its regulations as described below to address issues
5 raised in the Petition and public comments on the Petition. A general overview of the proposed
6 amendments is followed by specific details of each proposal. The Commission seeks comments
7 on its proposed amendments and emphasizes that it has not made any final decisions on whether
8 or how to amend its regulations.

9 **A. Overview**

10 The Commission’s current regulations at 11 CFR 113.1(g)(1) through (8) address
11 personal use, and the candidate salary regulation is at 11 CFR 113.1(g)(1)(i)(I). The
12 Commission proposes to remove and reserve 11 CFR 113.1(g)(1)(i)(I), redesignate current
13 paragraphs (g)(6), (g)(7), and (g)(8) as (g)(7), (g)(8), and (g)(9), respectively, and add new
14 paragraph (g)(6) to address candidate compensation.

15 New paragraph (g)(6) addressing candidate compensation would have several
16 subparagraphs as follows.

17 Proposed 11 CFR 113.1(g)(6)(i) would prohibit federal officeholders from receiving
18 compensation as candidates from campaign funds. This prohibition already appears in the
19 Commission’s regulation.³⁹

³⁸ 16 Individual Comments (Monk, William) at 2, REG 2021-01, <https://sers.fec.gov/fosers/showpdf.htm?docid=414054>.

³⁹ See 11 CFR 113.1(g)(1)(i)(I).

1 Proposed 11 CFR 113.1(g)(6)(ii) would cap the amount of compensation that a candidate
2 could receive from campaign funds. A compensation cap already appears in the Commission’s
3 regulation.⁴⁰ As explained further below, the Commission proposes six alternative caps.

4 Proposed 11 CFR 113.1(g)(6)(iii) would define “compensation” for purposes of the
5 candidate salary regulation. This definition does not currently appear in the candidate salary
6 regulation. As explained further below, the Commission proposes three alternative definitions.

7 Proposed 11 CFR 113.1(g)(6)(iv) would require a candidate’s committee to reduce the
8 maximum amount of compensation that the candidate could receive from campaign funds by the
9 amount of any earned income the candidate receives from any other source while the candidate
10 receives compensation from campaign funds. As explained further below, this amendment
11 would expand a requirement in the Commission’s current regulation.⁴¹

12 Proposed 11 CFR 113.1(g)(6)(v) would establish the period during which a candidate
13 would be eligible to receive compensation from campaign funds. An eligibility period already
14 appears in the Commission’s regulation.⁴² As explained further below, the Commission
15 proposes to lengthen the eligibility period.

16 Proposed 11 CFR 113.1(g)(6)(vi) would prohibit a candidate’s principal campaign
17 committee that seeks to settle debts for less than their full value from paying compensation to the
18 candidate or satisfying a debt to the candidate for compensation. It would also prohibit any debt
19 settlement plan created under 11 CFR 116.7 from providing for the payment of compensation to

⁴⁰ *See id.*

⁴¹ *See id.*

⁴² *See id.*

1 the candidate before all other creditors are paid. This requirement does not currently appear in
2 the Commission’s regulations.

3 Last, proposed 11 CFR 113.1(g)(6)(vii) would require a candidate to provide evidence of
4 earned income from prior years upon the request of the Commission in certain circumstances.
5 This requirement currently appears in the Commission’s regulation. The new regulation would
6 also require a candidate to maintain or preserve such evidence for three years, pursuant to the
7 Commission’s regulations on the preservation of records.

8 **B. Proposed 11 CFR 113.1(g)(6)(i) — federal officeholder’s receipt of compensation**
9 **as a candidate from campaign funds.**

10 The Commission’s current regulations prohibit a federal officeholder who is also a
11 candidate for federal office from receiving salary payments from campaign funds.⁴³ Proposed 11
12 CFR 113.1(g)(6)(i) would maintain this prohibition and would also apply it to any other form of
13 compensation that a candidate could receive from campaign funds.

14 **C. Proposed 11 CFR 113.1(g)(6)(ii) — cap on candidate compensation (six**
15 **alternatives).**

16 Under the current regulation, salary payments from campaign funds to a candidate are
17 limited to the lesser of the minimum salary paid to a federal officeholder holding the federal
18 office that the candidate seeks, or the earned income that the candidate received during the year
19 prior to becoming a candidate.⁴⁴ Accordingly, candidates may receive salary payments from
20 campaign funds only if they earned income the year prior to becoming a candidate. The
21 Commission intended this limitation to provide an “additional safeguard [to] help ensure that

⁴³ 11 CFR 113.1(g)(1)(i)(I). The term “federal officeholder” is defined at 11 C.F.R. 113.1(c).

⁴⁴ *Id.*

1 campaign salaries are not used to enrich candidates, but instead used to compensate candidates
2 for lost income that is forgone due to becoming a candidate.”⁴⁵

3 The Petitioner and several commenters, however, suggest that this limitation necessarily
4 excludes any candidate who did not earn income in the previous year from receiving
5 compensation from campaign funds, even though that individual also forgoes income by
6 becoming a candidate. They noted that the current regulation does not cover “candidates who
7 are full time caretakers or who have had gaps in employment,” or who have otherwise gone
8 through a recent period of “minimal or low income.”⁴⁶ Moreover, as one commenter noted, the
9 Commission has explained that the use of campaign funds to pay a candidate’s salary is not
10 personal use because the “salary paid to a candidate would be in return for the candidate’s
11 services provided to the campaign and the necessity of that salary would not exist irrespective of
12 that candidacy.”⁴⁷ According to the commenter, the Commission “chose to cap salaries at the
13 rate a candidate earned in the previous year, but there is nothing inherent to the Commission’s
14 approach to personal use that requires doing so, provided the salary and other benefits paid to the
15 candidate are fair compensation for services rendered to, or otherwise necessary for, their
16 campaign.”⁴⁸

⁴⁵ 2002 Final Rules, 67 FR at 76972.

⁴⁶ Petition at 4-5; *see also* Issue One, Comment at 2 (June 29, 2021) (noting that the current regulation leaves out candidates who spent all or part of the previous year “caring for family members” or experiencing “gaps in employment”); Common Cause, Comment at 2 (July 2, 2021) (noting that “under the current regulation, a pause in paid employment or a period of very low wages currently leaves working people seeking federal office in a precarious financial position”); DCCC and DSCC, Comment at 2 (July 2, 2021) (noting that “candidates who have spent the previous year as homemakers or caretakers of young children or ailing family members, are prohibited from drawing a salary at all”); Brennan Center for Justice, Comment at 2-3 (July 2, 2021) (noting that “nontraditional candidates, such as those with significant caregiving responsibilities (which even today fall disproportionately on women) are at a significant disadvantage”).

⁴⁷ Brennan Center for Justice, Comment at 4-5 (July 2, 2021) (citing 2002 Final Rule, 67 FR at 76972).

⁴⁸ *Id.*

1 Because the current regulation might not adequately cover individuals who had a gap in
2 employment or an unusually low level of income the year before becoming a candidate, the
3 Commission is proposing six alternative ways to cap the amount of compensation that a
4 candidate could receive from campaign funds. The Commission has not decided on any
5 approach and invites comment on these proposals, detailed below. Should the Commission’s
6 approach to candidate salaries be directed toward compensating candidates for services rendered,
7 or instead be based upon the opportunity cost incurred by a candidate running for office or other
8 considerations? Which proposal would most accurately reflect fair compensation for services
9 rendered by a candidate to the candidate’s campaign committee? Which proposal would most
10 accurately reflect the income lost or foregone by becoming a candidate? For each alternative, are
11 the calculations clear and workable? Are there other alternatives for capping candidate
12 compensation that the Commission should consider? Should the Commission combine certain
13 aspects of various alternatives?

14 Moreover, several of the alternatives would cap a candidate’s compensation at “the
15 minimum salary paid to a Federal officeholder holding the Federal office that the candidate
16 seeks,” which is the current regulatory language.⁴⁹ The Commission has explained that the
17 “minimum salary” as used in the current regulation does not refer to the salary actually paid to
18 the current incumbent of the office sought by the candidate, but the “lowest salary for the . . .
19 office.”⁵⁰ For example, if a candidate seeks a seat held by a member of the House of
20 Representatives who holds a leadership position and is thus paid more than the minimum salary
21 payable to a member of the House of Representatives, the candidate’s salary is capped at the

⁴⁹ 11 CFR 113.1(g)(1)(I)(i).

⁵⁰ 2002 Final Rules, 67 FR at 76972.

1 lowest salary for that office, not the salary of the incumbent. Should the Commission consider
2 revising the language in the regulation to clarify that the cap refers to the minimum annual salary
3 for the office, rather than the minimum salary paid to the individual currently holding the office?

4 **Compensation Cap Alternative A** (50% officeholder salary minimum approach) would
5 provide that the use of campaign funds by a candidate's principal campaign committee to pay
6 compensation to the candidate is not personal use, provided that the amount of compensation
7 paid to the candidate does not exceed 50% of the minimum salary for the federal office sought
8 by the candidate ("Minimum Officeholder Salary"). This cap would apply to all candidates for
9 the same office, regardless of the amount of income earned by any candidate the year before
10 becoming a candidate.

11 As proposed, the amount that a candidate could receive must be calculated at the "daily
12 rate." The daily rate is determined by taking 50% of the Minimum Officeholder Salary and
13 dividing that amount by 365 days per year. For example, if 50% of the Minimum Officeholder
14 Salary is \$87,000, the daily rate is \$238.00 (\$87,000/365, rounded to the nearest dollar). Under
15 this scenario, a candidate who is eligible to receive compensation from campaign funds for 100
16 days in a particular year, for example, could receive up to \$23,800 (\$238.00 per day x 100 days)
17 in compensation from campaign funds in that year.

18 This alternative is intended to measure the value of a candidate's services to a campaign,
19 based on 50% of the minimum salary the candidate could receive as an officeholder should the
20 candidate win the election. Is basing candidate compensation on 50% of the officeholder's
21 salary an accurate reflection of a candidate's duties, when compared to that of an officeholder's
22 in the position the candidate is seeking? Would the 50% figure accurately reflect the candidates'

1 opportunity cost of running for office, or the value of the services provided to the campaign?
2 Would a different percentage provide a more accurate reflection?

3 **Compensation Cap Alternative B** (hourly minimum wage approach) would cap a
4 candidate's compensation from campaign funds at the daily rate of the annualized hourly
5 minimum wage. *Annualized hourly minimum wage* would mean the amount an individual
6 receiving the federal minimum wage would earn by working 40 hours a week for 52 weeks,
7 except that an individual residing in a state with a higher minimum wage than the federal
8 minimum wage could use the higher state minimum wage. Alternative B is intended to measure
9 the opportunity cost to the candidate of running for office, not to provide the actual hourly
10 minimum wage to the candidate. Therefore, under Alternative B, the amount that a candidate
11 could receive from campaign funds would be capped at the amount that the candidate would
12 have earned working 40 hours per week at the minimum wage in another job, even if the
13 candidate spends more than 40 hours per week campaigning.

14 For example, if a candidate lives in a state whose hourly minimum wage is the same as or
15 less than the current federal minimum wage of \$7.25 per hour,⁵¹ the annualized minimum wage
16 would be \$15,080 (\$7.25 per hour x 40 hours per week x 52 weeks per year), and the daily rate
17 would be \$41.00 (\$15,080/365 days per year, rounded to the nearest dollar). Therefore, under
18 this example, a candidate who is eligible to receive compensation from campaign funds for 100
19 days in a particular year may receive no more than \$4,100 in compensation from campaign funds
20 in that year. But if the state's hourly minimum wage is higher than the federal minimum wage
21 — for example, \$10 per hour instead of \$7.25 — then the candidate's principal campaign

⁵¹ Minimum Wage, U.S. Department of Labor (last visited Aug. 25, 2022), <https://www.dol.gov/general/topic/wages/minimumwage>.

1 committee could use the higher state minimum wage to determine the maximum amount of
2 compensation that the candidate could receive from campaign funds. At \$10 per hour, the
3 annualized hourly minimum wage would be \$20,800 (\$10 per hour x 40 hours per week x 52
4 weeks per year), the daily rate would be \$57.00 (\$20,800/365 days per year, rounded to the
5 nearest dollar), and the candidate could receive up to \$5,700 that year as compensation from
6 campaign funds (\$57.00 per day x 100 days).

7 Is the minimum wage a reasonable estimate of the opportunity cost of campaigning
8 instead of obtaining a minimum wage job on the open market? Does the minimum wage
9 accurately reflect the value of services provided by the candidate to the campaign committee?

10 **Compensation Cap Alternative C** (\$15 per hour approach) would cap candidate
11 compensation based on the amount an individual receiving *\$15 per hour* would earn by working
12 40 hours per week for 52 weeks — calculated at the daily rate — rather than the federal or state
13 minimum wage. At \$15 per hour, the daily rate would be \$85.00 (\$15 per hour x 40 hours per
14 week x 52 weeks per year = \$31,200; \$31,200/365 days per year = \$85.00 per day, rounded to
15 the nearest dollar). Therefore, if a candidate is eligible to receive compensation for 100 days in a
16 calendar year, the candidate could receive up to \$8,500 that year as compensation from campaign
17 funds. Compensation Cap Alternative C would also require this amount (\$15) to be adjusted for
18 inflation in odd-numbered years.

19 The Petitioner and several commenters suggested using \$15 per hour as the base rate,
20 indexed for inflation.⁵² As one commenter noted, although \$15 per hour is more than double the

⁵² Petition at 5; *see also* Issue One, Comment at 2 (June 29, 2021) (suggesting an annualized salary of \$15 per hour for 40 hours per week, indexed for inflation); Common Cause, Comment at 2 (July 2, 2021) (same); 16 Individual Comments at 3 (same).

1 federal minimum wage of \$7.25 per hour,⁵³ it “equates to less than one and a half times the
 2 federal poverty limit for a family of three” in 2021.⁵⁴ Would \$15 per hour more accurately
 3 reflect the value of a candidate’s services to the candidate’s campaign committee or the
 4 candidate’s opportunity costs than would the minimum wage? Should the Commission index
 5 this rate for inflation? Are the federal poverty limits relevant to determining candidate
 6 compensation from campaign funds?

7 Compensation Cap Alternatives A, B, and C, unlike the alternatives described below, do
 8 not consider any of the candidate’s prior earned income. In sum, as shown by the examples
 9 above and represented in this table, a candidate who has no income in the 12-month period prior
 10 to becoming a candidate could receive up to the following amounts in compensation in a
 11 calendar year from campaign funds under the current regulation and Compensation Cap
 12 Alternatives A, B, and C, assuming the Minimum Officeholder Salary is \$174,000 and the
 13 candidate is eligible to receive compensation from campaign funds during the entire year:

	If the state minimum wage is less than or equal to \$7.25/hr. (less than or equal to the federal minimum wage)	If the state minimum wage is \$10/hr. (greater than the federal minimum wage)
Current regulation	\$0	\$0
Alternative A (50% officeholder)	\$23,800	\$23,800

⁵³ The only jurisdiction in which the minimum wage exceeds \$15 is the District of Columbia (\$16.10). Consolidated Minimum Wage Table, U.S. Department of Labor (last updated July 1, 2022), <https://www.dol.gov/agencies/whd/mw-consolidated>. At this time, 30 states and the District of Columbia, Guam, and the Virgin Islands have a minimum wage that exceeds the federal minimum wage; 15 states and Puerto Rico and the Commonwealth of the Northern Mariana Islands have a minimum wage that equals the federal minimum wage; and 5 states do not have a minimum wage.

⁵⁴ Brennan Center for Justice, Comment at 3 (July 2, 2021) (citing Annual Update of the HHS Poverty Guidelines, 86 FR 7732, 7733 (Feb. 1, 2021) (providing that 2021 poverty guidelines for the 48 contiguous states and the District of Columbia for a 3-person household was \$21,960); *see also* Annual Update of the HHS Poverty Guidelines, 87 FR 3315, 3316 (Jan 21, 2022) (providing that 2022 poverty guidelines for the 48 contiguous states and the District of Columbia for a 3-person household is \$23,030)).

salary minimum approach)		
Alternative B (hourly minimum wage approach)	\$4,100	\$5,700
Alternative C (\$15/hr. approach)	\$8,500	\$8,500

1 **Compensation Cap Alternative D** (prior 12-month income approach) would cap a
2 candidate’s compensation from campaign funds at the candidate’s earned income in the 12-
3 month period before becoming a candidate or the annualized hourly minimum wage, whichever
4 is greater, but not to exceed the Minimum Officeholder Salary. The compensation, earned
5 income, annualized hourly minimum wage, and Minimum Officeholder Salary would all be
6 calculated at the daily rate, with *annualized hourly minimum wage* having the same definition as
7 in Alternative B.

8 For example, under Alternative D, if a candidate earned \$35,000 in the 12 months before
9 becoming a candidate, and this amount was greater than the annualized hourly minimum wage
10 and less than the Minimum Officeholder Salary, the maximum daily rate for which the candidate
11 could be compensated from campaign funds would be \$96.00 (\$35,000/365 days per year,
12 rounded to the nearest dollar), and the total maximum amount of compensation in a particular
13 year would be \$96.00 multiplied by the number of days that year that the candidate was eligible
14 to receive compensation from campaign funds.

15 Would this alternative provide a workable way for a candidate who earned income in the
16 previous 12 months to receive compensation from campaign funds that exceeds the minimum
17 wage? To what extent does the previous year’s income reflect the opportunity cost of becoming
18 a candidate, or the value of the candidate’s services to the campaign?

1 The final two alternatives would similarly permit a candidate to look back at previous
2 income in calculating the limit on compensation from campaign funds but would extend the
3 period to include *three* years.

4 **Compensation Cap Alternative E** (three-year income approach) would enable the
5 candidate to receive compensation from campaign funds up to the average annual income that
6 the candidate earned during the most recent three calendar years in which the candidate earned
7 income prior to becoming a candidate, capped by the Minimum Officeholder Salary, when both
8 are calculated at the daily rate.

9 **Compensation Cap Alternative F** (three-year income with minimum wage approach)
10 would provide the same limits as under Alternative E, except that a candidate under Alternative
11 F would have the additional option of using the minimum wage instead of earned income (*see*
12 Alternatives B and D) if the minimum wage is greater than the candidate’s average income in the
13 most recent three calendar years in which the candidate received earned income before becoming
14 a candidate.

15 For example, under both Compensation Cap Alternatives E and F, if an individual who
16 earned income averaging \$60,000 per year in 2020, 2018, and 2017, but who did not earn any
17 income in 2021 or 2019, became a candidate in 2022, that candidate would be entitled to receive
18 up to \$60,000 in compensation from campaign funds in 2022, when calculated at the daily rate.
19 But if the same individual earned an average of only \$5,000 per year in 2020, 2018, and 2017 —
20 the most recent three years that the individual earned income before becoming a candidate —
21 under Alternative E the individual would be limited as a candidate to receiving a maximum of
22 \$5,000 per year from campaign funds calculated at the daily rate, even if \$5,000 is less than the
23 federal minimum wage (or the state minimum wage, if greater). Under Alternative F, by

1 contrast, the candidate would have the option of receiving up to the federal minimum wage or
2 state minimum wage, whichever amount is greater, calculated at the daily rate.

3 Does the three-year lookback period provide a reasonable estimate of the amount the
4 candidate could expect to earn in the marketplace, or the value of the candidate’s services to the
5 campaign? Should the Commission consider a different, multi-year lookback period? Would the
6 proposed multi-year lookback provisions be overly complicated to administer? If so, how could
7 the Commission institute a multi-year lookback provision that would be less complicated to
8 administer, while still providing a reasonable estimate of a candidate’s opportunity cost or value
9 of the candidate’s services to the campaign?

10 **D. Proposed 11 CFR 113.1(g)(6)(iii) — definition of “compensation” (three**
11 **alternatives).**

12 The Commission has addressed the use of campaign funds to pay non-salary
13 compensation to candidates on a case-by-case basis in advisory opinions and enforcement
14 matters, using the “irrespective” test. Several have involved health insurance premiums and
15 childcare costs.

16 In MUR 7068 (Mowrer for Iowa), the Commission found reason to believe that a
17 congressional candidate and his principal campaign committee had improperly converted
18 campaign funds to personal use by using them to reimburse the candidate for paying over \$7,000
19 for his health insurance premiums. The Commission reasoned that “health insurance premiums
20 are of a character of those fringe benefit payments to the candidate that the Commission [and
21 Congress] has determined are [*per se*] personal use,” such as funeral, cremation, or burial

1 expenses, tuition payments, sporting event, concert, theater, or other entertainment tickets,⁵⁵
2 country or health club dues or fees, and vacations—all of which, according to the Act and the
3 Commission regulations, would exist irrespective of the candidate’s campaign.

4 On childcare, the Commission has concluded that using campaign funds to pay a
5 candidate’s childcare expenses does not convert the funds to personal use to the extent that the
6 expenses are a “direct result of campaign activity,” because such expenses would not have
7 existed irrespective of the candidate’s campaign.⁵⁶ Applying this standard, the Commission has
8 concluded that a federal candidate could use campaign funds to pay overnight childcare expenses
9 that he incurs when he travels for his own campaign and his spouse is not available to care for
10 their children,⁵⁷ and that a federal candidate who had given up her in-home consulting work in
11 order to campaign and hired a caregiver for her children could use campaign funds to pay her
12 childcare expenses when her campaign responsibilities prevented her from caring for the children
13 herself.⁵⁸ The Commission has also concluded that a federal candidate who left her job to work
14 full-time on her campaign could use campaign funds to pay for full-time daycare for her
15 children, because she would be spending the “vast majority” of her time away from her family

⁵⁵ MUR 7068 (Mowrer for Iowa), Notification with Factual and Legal Analysis to James Mowrer, Mower for Iowa and Dennis Skinner in his official capacity as treasurer (Dec. 20, 2017), at 8-10 <https://www.fec.gov/files/legal/murs/7068/18044452908.pdf>.

⁵⁶ Advisory Opinion 2022-07 (Swalwell) at 4; Advisory Opinion 2019-13 (MJ for Texas) at 3; Advisory Opinion 2018-07 (Liuba for Congress) at 3; *see also* Advisory Opinion 1995-42 (McCrery) at 2 (approving proposed use of campaign fund to pay Congressman’s childcare expenses when he and his wife attend campaign events, where childcare expenses result only from campaign activity and otherwise would not exist).

⁵⁷ Advisory Opinion 2022-07 (Swalwell).

⁵⁸ Advisory Opinion 2018-06 (Liuba for Congress).

1 on campaign activities and would reimburse the campaign for childcare costs incurred at times
2 she is not campaigning.⁵⁹

3 The Petitioner and several commenters asked the Commission to reconsider its
4 conclusion in MUR 7068 (Mowrer for Iowa) that using campaign funds to reimburse the
5 candidate’s payment of his health insurance premiums converted the campaign funds to personal
6 use. The Petitioner noted that the average annual premiums for health insurance for single
7 coverage in 2019 were over \$7,000, which made the cost of running for office prohibitive for
8 many people, and urged the Commission to allow a candidate to join any health benefit plan
9 already provided by the campaign to its employees when the candidate becomes eligible to
10 receive compensation.⁶⁰ Several commenters pointed out that health insurance premiums are so
11 intertwined with employment that they cannot be considered separately from salary.⁶¹ As one
12 commenter argued, the Commission “has failed to consider the simple fact that a majority of
13 American adults obtain their health insurance through work.”⁶²

14 In addition to healthcare costs, one commenter argued that other non-salary benefits are
15 also “often connected to employment, and therefore the Commission should allow candidates to

⁵⁹ Advisory Opinion 2019-13 (MJ for Texas); *see also* Advisory Opinion 1995-42 (McCrery) at 2 (approving proposed use of campaign fund to pay Congressman’s childcare expenses when he and his wife attend campaign events, where childcare expenses result only from campaign activity and otherwise would not exist).

⁶⁰ Petition at 5.

⁶¹ *See* Issue One, Comment at 2 (June 29, 2021); Campaign Legal Center, Comment at 3 (June 30, 2021); Common Cause, Comment at 2 (July 2, 2021); DSCC & DCCC, Comment at 2 (July 2, 2021); Brennan Center for Justice, Comment at 2 (July 2, 2021); AFL-CIO *et al.*, Comment at 3-4 (July 2, 2021). One commenter suggested that, for a candidate who quits his or her job to run for office and therefore loses employer-based healthcare and must seek health insurance through the Affordable Care Act (ACA) or Consolidated Omnibus Budget Reconciliation Act (COBRA), the difference between the amount the candidate is responsible for paying for an ACA or COBRA plan and the amount the candidate was responsible for under the employer-based plan, should be treated by the Commission as a permissible use of campaign funds should a campaign choose to cover such costs. Campaign Legal Center, Comment at 3 (June 30, 2021).

⁶² AFL-CIO *et al.*, Comment at 4 (July 2, 2021).

1 receive compensation for other fringe benefits offered to full-time campaign employees,
2 including retirement contributions, life insurance, and reimbursement for childcare expenses
3 incurred to permit work outside of normal business hours.”⁶³ That same commenter argued that
4 the Commission’s rulemaking should ensure that candidates who do not opt to pay themselves a
5 salary can still use campaign funds to cover certain essential life expenses necessitated by a run
6 for office, including payments for child and eldercare services.⁶⁴

7 In light of these comments, the Commission is proposing three alternative definitions of
8 candidate compensation at proposed 11 CFR 113.1(g)(6)(iii). Each alternative definition would
9 include direct payments to the candidate and payments for at least some other employment-
10 related benefits.

11 **Compensation Definition Alternative A and Compensation Definition Alternative B**
12 would both define “compensation” for purposes of 11 CFR 113.1(g)(6) as direct payments to the
13 candidate and payments for any employment-related benefit that the campaign also provides to
14 its staff, including, but not limited to, health insurance premiums and dependent care costs. For
15 example, if a campaign provides a \$200 per month credit to employees to use for full-time day
16 care costs, this benefit would also be available to candidates as compensation from campaign
17 funds.

18 **Compensation Definition Alternative B** also would provide that a principal campaign
19 committee may pay a candidate’s dependent care expenses as part of the candidate’s

⁶³ Brennan Center for Justice, Comment at 2, 4 (July 2, 2021).

⁶⁴ Brennan Center for Justice, Comment at 4 (July 2, 2021). The commenter noted that a bill has been introduced in the United States House of Representatives, which would provide that campaign funds could be used for childcare services, elder care services, services similar to childcare or eldercare services which are provided on behalf of any dependent who is a qualifying relative under section 152 of the Internal Revenue Code of 1986, and health insurance premiums if the payments for such services or premiums are necessary to enable the participation of the candidate in campaign-connected activities. Help America Run Act, H.R. 1623, 116th Cong. § 2 (2019).

1 compensation from campaign funds when the same benefit is not made available to staff, to the
2 extent the expenses are incurred as a direct result of the candidate’s campaign activities. For
3 example, under Alternative B, if a campaign provides a \$200 per month credit to employees to
4 use for full-time daycare costs, the candidate would be eligible to receive the same credit as
5 compensation from campaign funds. In addition, the campaign could pay for any other
6 dependent care costs incurred by the candidate as a direct result of the candidate’s campaign
7 activities; the use of campaign funds to pay any incremental dependent care expenses that result
8 from non-campaign activities would be personal use, unless the candidate reimburses the
9 campaign account for the incremental expenses within 30 days.

10 **Compensation Definition Alternative C** would define compensation as direct payments
11 to the candidate and payments for *any* employment-related benefit, regardless of whether that
12 same benefit is provided to campaign staff, including, but not limited to, health insurance
13 premiums and dependent care costs. Like Alternative B, Compensation Definition Alternative C
14 also would provide that, if a committee uses campaign funds to pay dependent care expenses that
15 are incurred from both campaign and non-campaign activities, the incremental expenses that
16 result from the non-campaign activities would be personal use, unless the candidate reimburses
17 the campaign account for the incremental expenses within 30 days.

18 These alternatives are not intended to permit candidate committees to pay for expenses
19 that are listed in the Act or Commission regulations as a *per se* personal use.⁶⁵ Is this clear from
20 the text of the proposals?

21 The use of campaign funds to pay any expense defined as “compensation” would be
22 subject to the compensation cap. Therefore, should the definition of “compensation” include the

⁶⁵ See 52 U.S.C. 30114(b)(2).

1 use of campaign funds to pay a candidate’s dependent care costs and health insurance premiums,
2 as in the proposed alternatives, or should these expenses be separately provided for in the
3 regulation? If the latter, should the use of campaign funds to pay these expenses be subject to a
4 separate cap? If so, what should that cap be? Or should a candidate’s principal campaign
5 committee continue to be able to pay an unlimited amount of the candidate’s dependent care
6 costs if the costs directly result from campaign activity?⁶⁶ In Advisory Opinion 2022-07
7 (Swalwell) and Advisory Opinion 1995-42 (McCrery), the Commission concluded that a federal
8 officeholder and candidate could use campaign funds to pay for certain childcare expenses
9 directly resulting from campaign activity. If childcare expenses were included in the definition
10 of “compensation,” then proposed 11 CFR 113.1(g)(6)(i) would supersede these advisory
11 opinions to the extent that a candidate is also a sitting federal officeholder. Should the
12 Commission distinguish between federal officeholders and candidates who are not federal
13 officeholders for the purpose of determining whether childcare expenses exist irrespective of the
14 candidate’s candidacy?

15 One commenter suggested that the use of campaign funds to pay a candidate’s health
16 insurance premiums would generally be personal use, but there might be certain situations where
17 a candidate would not incur healthcare costs irrespective of candidacy.⁶⁷ The commenter
18 offered, as an example, a candidate who left full-time employment to campaign and thereby lost
19 the employer-sponsored health insurance that the candidate otherwise would have received. The
20 commenter suggested that the personal use prohibition would not apply to campaign funds used

⁶⁶ Prior advisory opinions have addressed only childcare expenses and not expenses for care of other dependents. Advisory Opinion 2022-07 (Swalwell); Advisory Opinion 2019-13 (MJ for Texas); Advisory Opinion 2018-07 (Liuba for Congress); Advisory Opinion 1995-42 (McCrery).

⁶⁷ Campaign Legal Center, Comment at 3 (June 30, 2021).

1 to pay the difference between the amount paid by the candidate for health insurance as a full-
2 time employee, and the amount paid by the candidate for health insurance obtained under the
3 Affordable Care Act or the Consolidated Omnibus Budget Reconciliation Act (COBRA).

4 The Commission invites comments on this example. Should the Commission issue
5 regulations allowing campaign funds to be used to pay only the additional expense incurred by
6 candidates who previously had health insurance but lost their coverage to campaign? Under
7 what other circumstances would a candidate incur health insurance costs that would not exist
8 irrespective of the candidacy?

9 The Help America Run Act,⁶⁸ introduced in Congress in 2019, would have authorized the
10 use of campaign funds to pay for childcare, eldercare, and similar services “which are provided
11 on behalf of any dependent who is a qualifying relative under section 152 of the Internal
12 Revenue Code of 1986,” as long as “the services are necessary to enable the participation of the
13 candidate in campaign-connected activities.”⁶⁹ Should the Commission consider identifying in a
14 regulation impermissible or permissible dependent care expenses, as either an exhaustive or non-
15 exhaustive list? If so, which expenses should be included on the list?

16 **E. Proposed 11 CFR 113.1(g)(6)(iv) — reduction of candidate compensation for**
17 **other income earned by candidate.**

18 As noted above, the Commission’s current regulation caps the amount of campaign funds
19 that a candidate may receive in salary from the candidate’s principal campaign committee at
20 either (1) the amount of income earned by the candidate in the 12-month period immediately

⁶⁸ H.R. 1623 § 2. Under the Help America Run Act, the amount of campaign funds that could be used to pay for childcare and elder care services would have been subject to any otherwise applicable salary cap, but the use of campaign funds to pay medical insurance premiums would not have been capped.

⁶⁹ *Id.*

1 preceding candidacy, or (2) the Minimum Officeholder Salary, whichever amount is lower. For
2 purposes of this calculation, the current regulation further requires the minimum salary of the
3 office that the candidate seeks — but not the candidate’s earned income from the prior year — to
4 be reduced by the amount of any earned income that the candidate receives from salaries or
5 wages from any source other than the candidate’s principal campaign committee.⁷⁰

6 For example, if Candidate A earned \$60,000 in the 12-month period immediately
7 preceding candidacy and Candidate B earned \$600,000, Candidate A would be capped at
8 receiving \$60,000 from campaign funds as salary, while Candidate B would be capped at
9 \$174,000 (the Minimum Officeholder Salary) because the Minimum Officeholder Salary is less
10 than Candidate B’s earned income in the year preceding candidacy. Under the current
11 regulation, if both candidates earned income from outside sources of \$30,000 while receiving a
12 salary from campaign funds, the maximum amount of salary that Candidate A would be eligible
13 to receive from campaign funds would not be affected, but Candidate B would be eligible to
14 receive only up to \$147,000 (\$174,000 Minimum Officeholder Salary - \$30,000 earned income
15 from outside sources) as salary from campaign funds.

16 Proposed 11 CFR 113.1(g)(6)(iv) would rectify this apparent imbalance in the salary cap
17 reduction by requiring the amount earned by a candidate from other sources to count against the
18 maximum amount of compensation that a candidate can receive from campaign funds, rather
19 than counting against only the minimum officeholder salary.

20 Should the Commission exclude health insurance premiums, dependent care costs, or any
21 other non-salary benefits from the reduction requirement? Should the Commission continue to

⁷⁰ 11 CFR 113.1(g)(1)(i)(I).

1 apply the reduction requirement only to Minimum Officeholder Salary, as under the current
2 regulation?

3 **F. Proposed 11 CFR 113.1(g)(6)(v) — eligibility period for receiving compensation**
4 **from campaign funds.**

5 The current regulation prohibits the use of campaign funds to pay a candidate’s salary
6 before the filing deadline for access to the primary election ballot for the federal office that the
7 candidate seeks, as determined by state law, or January 1 of each even-numbered year in states
8 that do not conduct primaries.⁷¹ The current regulation also prohibits the use of campaign funds
9 to pay a candidate’s salary after the date the candidate loses the primary election, withdraws
10 from the race, or otherwise ceases to be a candidate or, if the candidate wins the primary, after
11 the date of the general election or general election runoff.⁷² For special elections occurring in
12 odd-numbered years, the current regulation authorizes a candidate’s principal campaign
13 committee to pay the candidate a salary from campaign funds starting on the date the special
14 election is set and ending on the day of the special election, the date on which the candidate
15 withdraws from the race, or the date on which the candidate otherwise ceases to be a candidate.

16 The Petitioner and several commenters asked the Commission to standardize the date that
17 a candidate first becomes eligible to receive a salary from campaign funds and to extend the
18 period of time that a candidate could draw a salary from campaign funds.⁷³ The Petitioner
19 asserts that the ballot access deadlines for state primaries “vary wildly based on state law.”⁷⁴

⁷¹ *Id.*

⁷² *Id.*

⁷³ Petition at 4; Issue One, Comment at 2 (June 29, 2021); Campaign Legal Center, Comment at 2 (June 30, 2021).

⁷⁴ Petition at 3.

1 According to the petition, during the 2018 election cycle, the date on which a candidate could
2 begin drawing a campaign salary under Commission regulations “ranged from December 4, 2017
3 in Illinois to July 10, 2018 in Delaware, a difference of 218 days.”⁷⁵ The Petitioner also said that
4 she, herself, could have received a campaign salary for only 2 of the 16 months she campaigned
5 as a candidate for the United States House of Representatives from Georgia.⁷⁶

6 Several commenters confirmed this disparity in the eligibility starting date.⁷⁷ One
7 commenter alleged that this “disparity has real consequences for candidates, who face grueling
8 schedules — juggling full-time jobs, families, and campaigning — while they wait to become
9 eligible to collect salaries.”⁷⁸ Another commenter argued that “[t]here is no clear relationship
10 between state primary ballot access dates and whether candidate salary costs would pass the
11 ‘irrespective’ test,” given that “[s]alary costs are no less irrespective of one’s candidacy whether
12 one is campaigning in Illinois or Delaware.”⁷⁹ The Petitioner and commenters suggested that the
13 Commission permit a candidate to draw a salary from campaign funds for at least 180 days
14 before the primary election.⁸⁰

15 Proposed 113.1(g)(6)(v)(A) would make it possible for candidates to start receiving
16 compensation from campaign funds as early as the first day of their campaigns, rather than
17 requiring them to wait until their respective state’s primary election ballot access deadline or

⁷⁵ *Id.* at 4.

⁷⁶ *Id.* at 1.

⁷⁷ *See* Issue One, Comment at 1-2 (June 29, 2021); Campaign Legal Center (June 30, 2021) at 2; Comment, Common Cause (July 2, 2021) at 2; Comment, DSCC and DCCC (July 2, 2021) at 1.

⁷⁸ Comment, Issue One (June 29, 2021) at 2.

⁷⁹ Comment, Campaign Legal Center (June 30, 2021) at 2.

⁸⁰ Petition at 4; Comment, Issue One (June 29, 2021) at 2; Comment, Campaign Legal Center (June 30, 2021) at 2.

1 January 1 in states that do not conduct primaries. Specifically, the proposed regulation would
2 prohibit compensation from accruing or being paid to a candidate only before the date the
3 candidate's principal campaign committee files a Statement of Organization with the
4 Commission. The Commission invites comments on this proposal.

5 Moreover, proposed 11 CFR 113.1(g)(6)(v)(B) would enable candidates who win the
6 general election, general election runoff, or a special election or special election runoff to
7 continue to receive compensation from campaign funds up to the date they are sworn into office.
8 This proposal would allow winning candidates, who have duties in winding down a campaign, to
9 continue receiving compensation from campaign funds while they are unable to seek other
10 employment as they await their term in office. For candidates who win the general election or
11 general election runoff, or a special election or special election runoff, this proposal would
12 significantly extend the period that they remain eligible to receive compensation from their
13 principal campaign committees. Does a candidate continue to lose or forego income between the
14 time the candidate wins the election and is sworn in? Is there any reason why a candidate who
15 wins a special election or special election runoff should not be eligible to receive compensation
16 from campaign funds up to the date of the swearing in? Does a candidate who wins a general or
17 special election or runoff continue to provide services to the candidate's campaign committee
18 after the election, such that the use of campaign funds to compensate the candidate would not
19 exist irrespective of the candidacy?

20 Proposed 11 CFR 113.1(g)(6)(v)(B) also would prohibit compensation from being paid
21 beyond the date an individual ceases to be a candidate in all other cases, such as when the

1 candidate loses a primary election or withdraws from the race. This proposal would continue the
2 approach taken in the current regulation for candidates who do not win the office sought.⁸¹

3 Finally, proposed 11 CFR 113.1(g)(6)(v)(C) would address the eligibility period for
4 candidates running in special elections. It would authorize a candidate's principal campaign
5 committee to pay the candidate compensation from campaign funds starting on the date the
6 special election is set and ending on the day of the special election, the date on which the
7 candidate withdraws from the race, or the date on which the candidate otherwise ceases to be a
8 candidate. This proposal would continue the current regulation's approach to special elections,
9 except that the proposed regulation would apply to all special elections, not just those in odd-
10 numbered years.⁸² The Commission invites comments on this proposal.

11 **G. Proposed 11 CFR 113.1(g)(6)(vi) — candidate compensation in relation to debts.**

12 Any political committee that seeks to terminate and to settle its debts for less than the full
13 value is required to file a debt settlement plan for Commission review.⁸³ To prevent candidates
14 from enriching themselves at the expense of other campaign creditors, proposed 11 CFR
15 113.1(g)(6)(vi) would prohibit any principal campaign committee seeking to settle its debts for
16 less than their full value from paying compensation to the candidate or satisfying a debt to the
17 candidate for compensation. Is the proposed regulation clear that a principal campaign
18 committee would not be prohibited from settling its debts for less than the full value because it
19 paid its candidate compensation prior to seeking to terminate? The proposed rule would also

⁸¹ 11 CFR 113.1(g)(1)(i)(I).

⁸² *Id.*

⁸³ Instructions for Debt Settlement Plan, Part I (FEC Form 8) at 1, [https://www.fec.gov/resources/cms-content/documents/fecfrm8i.pdf#:~:text=Every%20terminating%20committee%20that%20settles%20a%20debt%20for,not%20be%20made%20until%20completion%20of%20Commission%20review.](https://www.fec.gov/resources/cms-content/documents/fecfrm8i.pdf#:~:text=Every%20terminating%20committee%20that%20settles%20a%20debt%20for,not%20be%20made%20until%20completion%20of%20Commission%20review.;); see also 11 CFR 116.7(a), 116.7(b) (describing debts subject to settlement).

1 prohibit a principal campaign committee from filing a debt settlement plan that provides for the
2 payment of compensation to the candidate before all other creditors are paid. The Commission
3 invites comment on this proposal.

4 **H. Proposed 11 CFR 113.1(g)(6)(vii) — evidence of earned income.**

5 Currently, any candidate receiving a salary from campaign funds must provide income
6 tax records and other evidence of earned income upon request of the Commission.⁸⁴ Proposed
7 11 CFR 113.1(g)(6)(vii) would maintain this requirement under Compensation Cap Alternatives
8 D, E, and F — the alternatives that permit a candidate to receive compensation from campaign
9 funds as limited by the candidate’s prior earned income — and additionally require such
10 evidence of earned income to be maintained and preserved for three years after the report
11 disclosing the disbursement has been filed, pursuant to 11 CFR 102.9 and 104.14(b).⁸⁵ This
12 record preservation requirement would not apply under Compensation Cap Alternatives A, B, or
13 C, because they are not based on a candidate’s prior earned income. Should the Commission
14 require principal campaign committees to maintain and produce the information they use to
15 calculate candidate compensation for all alternatives? Should a principal campaign committee
16 be required to provide evidence demonstrating a candidate’s lack of earned income for the
17 purpose of complying with proposed 11 CFR 113.1(g)(6)(iv) (requiring reduction of a
18 candidate’s compensation by the amount of other income earned by the candidate)?

19 **Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

20 The Commission certifies that the proposed rules, if adopted, would not have a
21 significant economic impact on a substantial number of small entities. The proposed rules would

⁸⁴ 11 CFR 113.1(g)(1)(i)(I).

⁸⁵ Sections 102.9 and 104.14(b) require certain records and accounts of contributions and expenditures to be preserved for three years after the report to which the records and accounts relate has been filed.

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1 provide flexibility to principal campaign committees that choose to use campaign funds to pay
2 their candidates a salary. Any proposed rule that could be construed as placing an obligation on
3 a principal campaign committee would apply only to campaigns that choose to pay their
4 candidates compensation. The proposed rules would not impose any new recordkeeping,
5 reporting, or financial obligations on principal campaign committees that do not choose to pay
6 their candidates compensation, and any such new obligations that may be imposed on principal
7 campaign committees that do choose to pay compensation to their candidates would be minimal.
8 Thus, to the extent that any entities affected by these proposed rules might fall within the
9 definition of “small businesses” or “small organizations,” the economic impact of complying
10 with these rules would not be significant.

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1 **List of Subjects**

2 *11 CFR Part 113*

3 Campaign funds.

4

5

1 For the reasons set out in the preamble, the Federal Election Commission proposes to
2 amend 11 CFR chapter 1 as follows:

3 **Part 113 – PERMITTED AND PROHIBITED USES OF CAMPAIGN FUNDS**

4 1. The authority citation for part 113 continues to read as follows:

5 **Authority:** 52 U.S.C. 30102(h), 30111(a)(8), 30114, and 30116.

6 **§ 113.1 [Amended]**

7 2. In § 113.1:

8 a. Remove and reserve paragraph (g)(1)(i)(I);

9 b. Redesignate paragraphs (g)(6) through (g)(8) as paragraphs (g)(7) through (g)(9);

10 c. Add new paragraph (g)(6) to read as follows:

11 (6) *Candidate compensation.*

12 (i) A Federal officeholder, as defined in paragraph (c) of this section, must not receive
13 compensation as a candidate from campaign funds.

14 **Compensation Cap Alternative A**

15 (ii) The use of campaign funds by a candidate’s principal campaign committee to pay
16 compensation to the candidate is not personal use, provided that the amount of
17 compensation paid to the candidate does not exceed 50% of the minimum annual salary
18 paid to a Federal officeholder holding the Federal office that the candidate seeks, when
19 calculated at the daily rate, rounded to the nearest dollar.

20 **Compensation Cap Alternative B**

21 (ii) The use of campaign funds by a candidate’s principal campaign committee to pay
22 compensation to the candidate is not personal use, provided that the amount of
23 compensation paid to the candidate does not exceed the amount of the annualized hourly

1 minimum wage, when calculated at the daily rate. *Annualized hourly minimum wage*
2 means the amount an individual receiving the Federal minimum wage would earn by
3 working 40 hours a week for 52 weeks, except that an individual residing in a State that
4 has a higher minimum wage than the Federal minimum wage shall calculate the
5 annualized hourly minimum wage based on the State minimum wage, rounded to the
6 nearest dollar.

7 **Compensation Cap Alternative C**

8 (ii) The use of campaign funds by a candidate's principal campaign committee to pay
9 compensation to the candidate is not personal use, provided that the amount of
10 compensation paid to the candidate does not exceed the amount of an annualized hourly
11 minimum wage of \$15 per hour, when calculated at the daily rate. *Annualized hourly*
12 *minimum wage* means the amount an individual receiving a minimum wage of \$15 per
13 hour would earn by working 40 hours a week for 52 weeks, rounded to the nearest dollar.
14 The hourly minimum wage established in this section (\$15) shall be increased subject to
15 the following conditions:

16 (A) Increases shall take place in odd-numbered years and shall remain in
17 effect for the 2-year period beginning on the first day following the date
18 of the last general election in the year preceding the year in which the
19 amount is increased and ending on the date of the next general election.

20 (B) The amount shall be increased by the percent difference between the
21 price index as defined in 11 CFR 110.17(d), as certified to the
22 Commission by the Secretary of Labor, for the 12 months preceding the
23 beginning of the calendar year and the price index for the base period.

1 (C) For purposes of this paragraph (ii), the term base period means calendar
2 year 2022.

3 (D) If any amount after the increases under this paragraph (ii) is not a multiple
4 of \$0.01, such amount shall be rounded to the nearest multiple of \$0.01.

5 **Compensation Cap Alternative D**

6 (ii) The use of campaign funds by a candidate's principal campaign committee to pay
7 compensation to the candidate is not personal use, provided that the compensation does
8 not exceed the earned income that the candidate received during the 12-month period
9 prior to becoming a candidate or the annualized hourly minimum wage, whichever is
10 greater. Compensation may not exceed the minimum annual salary paid to a Federal
11 officeholder holding the Federal office that the candidate seeks. *Annualized hourly*
12 *minimum wage* means the amount an individual receiving the Federal minimum wage
13 would earn by working 40 hours a week for 52 weeks, except that an individual residing
14 in a State that has a higher minimum wage than the Federal minimum wage shall
15 calculate the annualized hourly minimum wage based on the State minimum wage. The
16 committee must calculate compensation, earned income, annualized hourly minimum
17 wage, and minimum annual salary at the daily rate, rounded to the nearest dollar.

18 **Compensation Cap Alternative E**

19 (ii) The use of campaign funds by a candidate's principal campaign committee to pay
20 compensation to the candidate is not personal use, provided that the compensation does
21 not exceed the lesser of: the minimum annual salary paid to a Federal officeholder
22 holding the Federal office that the candidate seeks, and the average annual income that
23 the candidate earned during the most recent three calendar years in which the candidate

1 earned income prior to becoming a candidate. The committee must calculate
2 compensation, minimum annual salary, and average annual income at the daily rate,
3 rounded to the nearest dollar.

4 **Compensation Cap Alternative F**

5 (ii) The use of campaign funds by a candidate’s principal campaign committee to pay
6 compensation to the candidate is not personal use, provided that the compensation does
7 not exceed the annualized hourly minimum wage or the average annual income that the
8 candidate earned during the most recent three calendar years in which the candidate
9 earned income prior to becoming a candidate, whichever is greater. Compensation must
10 not exceed the minimum annual salary paid to a Federal officeholder holding the Federal
11 office that the candidate seeks for the same period of time. *Annualized hourly minimum*
12 *wage* means the amount an individual receiving the Federal minimum wage would earn
13 by working 40 hours a week for 52 weeks, except that an individual residing in a State
14 that has a higher minimum wage than the Federal minimum wage shall calculate the
15 annualized hourly minimum wage based on the State minimum wage. The principal
16 campaign committee must calculate compensation, earned income, minimum annual
17 salary, and annualized hourly minimum wage at the daily rate, rounded to the nearest
18 dollar.

19 **Compensation Definition Alternative A**

20 (iii) For the purposes of this paragraph, *compensation* means direct payments to the
21 candidate and payments for any employment-related benefit that the campaign also
22 provides to its staff, including, but not limited to, health insurance premiums and
23 dependent care costs.

1 **Compensation Definition Alternative B**

2 (iii) For the purposes of this paragraph, *compensation* means direct payments to the
3 candidate and payments for any employment-related benefit that the campaign also
4 provides to its staff, including, but not limited to, health insurance premiums and
5 dependent care costs. *Compensation* also includes payments for the candidate's
6 dependent care expenses when such payments are not included as a benefit to staff, if the
7 expenses are incurred as a direct result of the candidate's campaign activities; the use of
8 campaign funds to pay any incremental dependent care expenses that result from non-
9 campaign activities is personal use, unless the candidate reimburses the campaign
10 account within thirty days for the incremental expenses.

11 **Compensation Definition Alternative C**

12 (iii) For the purposes of this paragraph, *compensation* means direct payments to the
13 candidate and payments for any employment-related benefit including, but not limited to,
14 health insurance premiums and dependent care costs. If a committee uses campaign
15 funds to pay for dependent care expenses incurred from both campaign and non-
16 campaign activities, the incremental expenses that result from the non-campaign
17 activities are personal use, unless the candidate reimburses the campaign account within
18 thirty days for the incremental expenses.

19 (iv) The candidate's principal campaign committee must reduce the maximum amount of
20 candidate compensation permissible under this paragraph by the amount of any earned
21 income the candidate receives from any other source while the candidate receives
22 compensation from campaign funds.

23 (v) Period of eligibility.

1 (A) Compensation shall not accrue or be paid to a candidate before the date
2 the candidate's principal campaign committee files a Statement of
3 Organization with the Commission. *See* 11 CFR 102.1(a).

4 (B) If the candidate wins the general election, a general election runoff, a
5 special election, or a special election runoff, the candidate's principal
6 campaign committee may pay the candidate compensation from campaign
7 funds up to the date the candidate is sworn into the office to which the
8 candidate has been elected. In all other situations in which an individual
9 ceases to be a candidate, such as by losing the primary election or
10 withdrawing from the race, no compensation may be paid beyond the date
11 the individual is no longer a candidate.

12 (C) In the case of a special election for a Federal office, the principal
13 campaign committee of a candidate for that office may pay the candidate
14 compensation from campaign funds starting on the date the special election is
15 set. *See* 11 CFR 100.24(a)(1)(ii).

16 (vi) Candidate compensation in relation to debts. Any principal campaign committee
17 seeking to settle debts for less than the full value may not pay compensation to the
18 candidate or satisfy a debt to a candidate for compensation. Additionally, any debt
19 settlement plan created under 11 CFR 116.7 must not provide for the payment of
20 compensation to the candidate before all other creditors are paid.

21 **For Compensation Cap Alternatives D, E, and F**

22 (vii) The candidate must provide evidence of earned income from the relevant years
23 upon the request of the Commission. Any such evidence of earned income must be

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1 maintained and preserved for three years after the report disclosing the disbursement is
2 filed, pursuant to 11 CFR 102.9 and 104.14(b).

3

4 Dated: _____

5 On behalf of the Commission,

6 **Allen J. Dickerson,**

7

8 *Chairman,*

9

10 *Federal Election Commission.*

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12 BILLING CODE: 6715-01-P