



11 CFR Part 113

[NOTICE 2023-19]

Candidate Salaries

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising its regulations concerning the use of campaign funds by a candidate's principal campaign committee to pay compensation to the candidate. The Commission is issuing these rules in response to a Petition for Rulemaking filed by a former candidate for the United States House of Representatives.

DATES: The effective date is March 1, 2024.

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SUPPLEMENTARY INFORMATION: The Commission is revising its regulations at 11 CFR Part 113 concerning the use of campaign funds by a candidate's principal campaign committee to pay compensation to the candidate. Specifically, the Commission is revising the criteria for determining whether a candidate is eligible to receive compensation from campaign funds, the maximum amount of compensation that a candidate may receive from campaign funds, and the period during which a candidate may receive compensation from campaign funds. The Commission is also making miscellaneous changes to its regulations on candidate compensation for purposes of continuity, clarity, and administration. The Commission is not, at this time, addressing the use of campaign funds to pay a candidate's health insurance premiums and dependent care costs. The Commission's advisory opinions addressing the use of campaign funds to

pay a candidate’s dependent care costs remain in effect. Members of the public may also submit requests for additional advisory opinions on those subjects.

Transmitting Final Rules to Congress

Before promulgating rules or regulations to carry out the provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”),¹ the Commission transmits the rules or regulations to the Speaker of the House of Representatives and the President of the Senate for a thirty-legislative-day review period.² The effective date of this final rule is March 1, 2024.

I. Background

The Act prohibits a candidate’s authorized committee from converting campaign funds to “personal use.”³ “Personal use” is defined as the use of campaign funds “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.”⁴ The Act and Commission regulations provide a non-exhaustive list of expenses that, when paid using campaign funds, constitute *per se* conversion of those funds to personal use.⁵ The Commission determines on a case-by-case basis whether the use of campaign funds to pay expenses other than those listed would be a prohibited conversion of the funds to personal use.⁶

A. Candidates’ Salaries

¹ 52 U.S.C. 30101-45.

² *Id.* 30111(d).

³ *Id.* 30114(b).

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).

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

In 2002, the Commission proposed to codify this conclusion in a regulation.⁸ The proposed regulation would have prohibited candidates “from using campaign funds to pay themselves salaries or otherwise compensate themselves in any way for income lost as a result of campaigning for Federal office.”⁹ The Commission received several public comments opposing this proposal, and no public comments supporting it. Comments argued that the use of campaign funds to pay candidates’ salaries would not fulfill a commitment, obligation, or expense that would exist irrespective of the campaign, and therefore satisfies the Act’s “irrespective” test because, “were it not for their campaign responsibilities, candidates would not have to leave their jobs and give up their salaries.”¹⁰

The Commission “agree[d] with the commenters that the payment of a salary to a candidate is not a prohibited personal use as defined under Commission regulations.”¹¹ The Commission explained that this use of campaign funds satisfied the “irrespective” test because, “but for the candidacy, the candidate would be paid a salary in exchange for

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>.

⁹ *Id.* at 55353.

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

¹¹ *Id.*

services rendered to an employer.”¹² Moreover, the Commission stated, a “salary paid to a candidate would be in return for the candidate’s services provided to the campaign and the necessity of that salary would not exist irrespective of the candidacy.”¹³

The Commission included in the final regulation various safeguards against abuse. To be a permissible use of campaign funds, the salary paid to a candidate must not exceed the lesser of the minimum salary paid to a “Federal officeholder holding the Federal office that the candidate seeks” or the earned income received by the candidate the year before becoming a candidate.¹⁴ Further, any earned income that a candidate receives from salary or wages from any source other than campaign funds counts against the minimum salary paid to a federal officeholder as described in the regulation.¹⁵ In addition, candidates must provide income tax records for the relevant years and other evidence of earned income upon the Commission’s request.¹⁶ The regulation also provides that campaign funds cannot be used to pay a candidate’s salary before the filing deadline for access to the primary election ballot for the federal office that the candidate seeks, as determined by state law, or January 1 of each even-numbered year in states that do not conduct primaries.¹⁷ Finally, the regulation requires salary payments to be

¹² *Id.*

¹³ *Id.*

¹⁴ 11 CFR 113.1(g)(1)(i)(I).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* 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.

computed on a pro-rata basis and prohibits candidates who are also federal officeholders from receiving salary payments from campaign funds.¹⁸

B. Candidates' Childcare Expenses

The Act and Commission regulations do not include the use of campaign funds to pay candidates' childcare expenses as a *per se* personal use. The Commission has addressed this use of campaign funds in several advisory opinions, and has approved the use of campaign funds to pay candidates' overnight childcare expenses incurred when the candidates travel for their own campaigns,¹⁹ and to pay caregiver expenses and full-time daycare when candidates' campaign responsibilities and activities prevented them from caring for their children themselves.²⁰ In each of these advisory opinions, the Commission concluded that the candidate could use campaign funds to pay the candidate's childcare expenses to the extent that the expenses were a "direct result of campaign activity," because such expenses would not have existed irrespective of the candidate's campaign.²¹

C. Candidates' Medical Insurance Premiums

The Act and Commission regulations do not include the use of campaign funds to pay candidates' medical insurance premiums as a *per se* personal use, and the

¹⁸ *Id.*

¹⁹ Advisory Opinion 2022-07 (Swalwell); Advisory Opinion 1995-42 (McCrery).

²⁰ Advisory Opinion 2018-06 (Liuba for Congress); Advisory Opinion 2019-13 (MJ for Texas).

²¹ 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").

Commission has not addressed this issue in advisory opinions.²² The Commission has, however, addressed the use of campaign funds to pay health insurance premiums in an enforcement matter. In MUR 7068 (Mowrer for Iowa), the Commission found reason to believe that a congressional candidate and his campaign committee had improperly converted campaign funds to personal use by using funds from the candidate’s principal campaign committee to reimburse the candidate for payment of his health insurance premiums.

D. Petition for Rulemaking

On March 23, 2021, the Commission received a Petition for Rulemaking from Ms. Nabilah Islam, a former candidate for the United States House of Representatives in Georgia.²³ The Petition asked the Commission to amend Section 113.1(g) of its regulations to expand the category of candidates eligible to receive compensation from their authorized committees and the duration of their eligibility, and to authorize the use of campaign funds to pay candidates’ health insurance premiums.²⁴

The Petition asserted that ballot access deadlines for state primaries, which “vary wildly based on state law,”²⁵ leave many candidates with short periods for receiving a salary under the Commission’s regulation.²⁶ Moreover, the Petition alleged that the current maximum salary limitation “leaves candidates who are full time caretakers or

²² 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.

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

²⁴ *Id.* 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).

who have had gaps in employment out in the cold,”²⁷ and that rising health insurance costs act as a barrier to the prospective candidacies of “working class people.”²⁸

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

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

E. Public Comments on the Petition

On May 23, 2021, the Commission published a Notification of Availability (“NOA”) seeking public comment on the Petition.³² The Commission received 22 comments in response, 14 of which supported initiating a rulemaking, agreeing generally that the Petition’s proposals would make it easier for individuals of modest means who are not already federal officeholders to run for federal office.³³ Several comments noted that the current candidate salary regulation offers little assistance to full-time caregivers or those who have experienced a recent financial hardship because candidate salaries

²⁷ *Id.* at 4-5.

²⁸ *Id.* at 5.

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).

cannot currently exceed the amount of income earned in the year before their candidacy. Comments also indicated that the period during which a candidate is eligible to receive a salary is too short and does not reflect the financial costs and other demands of campaigning today. These comments generally agreed that a candidate's campaign committee should be able to use campaign funds to pay the candidate's health insurance premiums. Five comments opposed initiating a rulemaking.

F. Notice of Proposed Rulemaking

On December 12, 2022, the Commission published a Notice of Proposed Rulemaking ("NPRM") in the *Federal Register*, proposing to amend its regulations regarding the use of campaign funds to pay candidates' compensation, including salaries, health insurance premiums, and dependent care costs.³⁴

In the NPRM, the Commission proposed several changes to its personal use regulations, including a reorganization of the Commission's current regulations at 11 CFR 113.1(g)(1) through (8) addressing personal use, and the candidate salary regulation at 11 CFR 113.1(g)(1)(i)(I). The Commission proposed to remove, reserve, and redesignate several paragraphs³⁵ and add new paragraph (g)(6) to address candidate compensation.

The Commission proposed the new paragraph 11 CFR 113.1(g)(6) to have seven subparagraphs as follows, each of which is explained further below:

- New 11 CFR 113.1(g)(6)(i), to prohibit federal officeholders from receiving compensation as candidates from campaign funds. This prohibition already appears in the Commission's regulation.³⁶ The Commission is adopting this proposal.

³⁴ Candidate Salaries, Notice of Proposed Rulemaking ("NPRM"), 87 FR 75945 (Dec. 12, 2022), <https://sers.fec.gov/fosers/showpdf.htm?docid=421006>.

³⁵ The Commission proposed to remove and reserve 11 CFR 113.1(g)(1)(i)(I) and redesignate current paragraphs (g)(6), (g)(7), and (g)(8) as (g)(7), (g)(8), and (g)(9), respectively.

³⁶ See 11 CFR 113.1(g)(1)(i)(I).

- New 11 CFR 113.1(g)(6)(ii), to limit the amount of compensation that a candidate could receive from campaign funds. The Commission proposed six alternative compensation caps, each of which would have enabled principal campaign committees to compensate candidates even if they had not earned income the year prior to becoming a candidate. The Commission is adopting a modified version of these proposals.

- New 11 CFR 113.1(g)(6)(iii), to define “compensation” for purposes of the regulation. This definition does not currently appear in Commission regulations. The Commission proposed three alternative definitions, each of which would have defined compensation to include direct payments to the candidate and payments for at least some other employee-related benefits, such as health insurance premiums or dependent care costs. The Commission is adopting a modified version of these proposals.

- New 11 CFR 113.1(g)(6)(iv), to require a candidate’s committee to reduce the maximum amount of compensation that the candidate could receive from campaign funds by the amount of any earned income the candidate received while also receiving compensation from campaign funds. This provision would have revised a requirement already in the Commission’s regulation.³⁷ The Commission is adopting a modified version of this proposal.

- New 11 CFR 113.1(g)(6)(v), to establish the period during which a candidate would be eligible to receive compensation from campaign funds. This provision would have increased the length of the eligibility period already in Commission regulations.³⁸ The Commission is adopting a modified version of this proposal.

- New 11 CFR 113.1(g)(6)(vi), to prohibit a candidate’s principal campaign committee that seeks to settle debts for less than their full value from paying

³⁷ See *id.*

³⁸ See *id.*

compensation to the candidate or satisfying a debt to the candidate for compensation, and to prohibit any debt settlement plan created under 11 CFR 116.7 from providing for the payment of compensation to the candidate before all other creditors are paid. These prohibitions do not currently appear in the Commission's regulations. The Commission is adopting a modified version of this proposal.

- New 11 CFR 113.1(g)(6)(vii), to require a candidate who receives compensation from campaign funds to provide evidence of prior earned income upon the request of the Commission in certain circumstances, and to require a candidate to maintain and preserve such evidence for three years, pursuant to the Commission's regulations on the preservation of records. This provision would have revised a requirement currently appearing in the Commission's regulation.³⁹ The Commission is adopting this proposal.

G. Public Comments on the NPRM

The Commission received 62 written comments in response to the NPRM. Ten comments were submitted by or on behalf of 15 organizations, 3 were submitted by former candidates for federal office, and 49 were from other individuals.

As explained further below, these comments unanimously supported some version of the Commission's proposals to permit principal campaign committees to compensate candidates who did not receive income in the year prior to becoming a candidate, although the comments varied widely in the alternatives they supported. These comments echoed the Petition and comments on the Petition in pointing out that the current regulation does not allow full-time caregivers, or those who have had a recent gap in employment, to receive compensation from campaign funds. The comments also supported allowing candidates to obtain compensation from campaign funds at the start of their campaigns. These comments cited, as did the Petitioner and comments on the

³⁹ *See id.*

Petition, the wide disparity among state ballot access deadlines and the demands that modern campaigns place on candidates as early as the start of their campaigns. The comments also supported allowing winning candidates to accept compensation from campaign funds until they are sworn into office; some comments additionally urged the Commission to extend the eligibility period for losing candidates by allowing them to continue accepting campaign funds for a short period after the end of their candidacies to wind down their campaign committees. The comments also generally agreed that a candidate's campaign committee should be able to use campaign funds to pay the candidate's health insurance premiums or dependent care costs.

H. Public Hearing

On March 22, 2023, the Commission held a public hearing on Candidate Salaries. The Commission heard testimony from 11 witnesses, all but one of whom supported making changes to the Commission's regulations on candidate compensation. The witnesses included one Member of Congress, five former congressional candidates, a legal academic, and representatives from four organizations: a national labor organization, a national party committee, and two public interest organizations that advocate for campaign finance reform. After the hearing, four witnesses submitted additional information to the Commission.

As explained further below, the Member of Congress and former congressional candidates testified to the hardships they faced in running for federal office, due to the limited time period that candidates are eligible to receive compensation from campaign funds under the current regulation. These witnesses also expressed support for many of the Commission's proposals. The legal academic and most of the witnesses representing organizations generally argued that the cap on candidate compensation should be untethered from previous earnings, that the date of eligibility should be moved to the start of candidacy, and that candidates should be able to receive benefits from campaign funds.

One witness argued that the payment of any candidate compensation violates the Act’s “irrespective” test because it allows candidates to pay indirectly for personal living expenses. The witness suggested that the Commission should either repeal the current regulation or not increase the ability of candidates to receive compensation under it.

II. Revised 11 CFR Part 113.1 — Definitions

Considering the issues raised in the Petition, public comments, and witness testimony,⁴⁰ the Commission is amending its regulations regarding the use of campaign funds for compensation to candidates, as described below. The Commission has previously concluded that “the payment of a salary to the candidate is not a prohibited personal use as defined under the Commission regulations since, but for the candidacy, the candidate would be paid a salary in exchange for services rendered to an employer.”⁴¹ Nothing has occurred to change the Commission’s conclusion in this regard. Instead, the Commission intends to revise its regulations to reflect more accurately the appropriate amount of campaign funds that may be used to “compensate candidates for lost income that is forgone due to becoming a candidate.”⁴²

As proposed in the NPRM, the Commission is also reorganizing its current regulations at 11 CFR 113.1(g)(1) through (8) addressing personal use⁴³ and adding new paragraph (g)(6) to address candidate compensation. This reorganization is being made for purposes of clarity and to accommodate the regulatory revisions set out in this Notice.

A. New 11 CFR 113.1(g)(6)(i) — Federal officeholders.

⁴⁰ For purposes of this document, “comment” applies to both written comments and supplemental information and oral testimony at the public hearing.

⁴¹ 2002 Final Rule, 67 FR at 76972.

⁴² *Id.*

⁴³ Specifically, the Commission is removing and reserving 11 CFR 113.1(g)(1)(i)(I); redesignating current paragraphs (g)(6), (g)(7), and (g)(8) as (g)(7), (g)(8), and (g)(9), respectively; and adding new paragraph (g)(6) to address candidate compensation.

The Commission’s current regulations prohibit a federal officeholder who is also a federal candidate from receiving a salary from campaign funds.⁴⁴ The Commission explained that, in the absence of this prohibition, “an incumbent officeholder would be receiving two salaries, one from his or her campaign and one for his or her official duties.”⁴⁵

In the NPRM, the Commission proposed to maintain this prohibition at 11 CFR 113.1(g)(6)(i) by providing that a federal officeholder may not receive compensation as a candidate from campaign funds. The Commission received no comments on this proposal. The Commission is maintaining this prohibition and moving it to new 11 CFR 113.1(g)(6)(i).

B. New 11 CFR 113.1(g)(6)(ii) — Candidate compensation cap.

Under the current regulation, salary payments from campaign funds to a candidate are limited to the lesser of the minimum salary for the federal office that the candidate seeks, or the earned income that the candidate received during the year prior to becoming a candidate.⁴⁶ Accordingly, candidates may receive salary payments from campaign funds only if they earned income the year prior to becoming a candidate.

In the NPRM, the Commission proposed six alternatives (Proposed Compensation Cap Alternatives A through F) for revising the cap on the amount of compensation a candidate may receive from campaign funds. The Commission proposed these alternatives because, as indicated in the Petition and comments on the Petition, the current regulation does not adequately address “income that is forgone due to becoming a candidate,”⁴⁷ especially by individuals who had a gap in employment or an unusually low

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

⁴⁵ 2002 Final Rule, 67 FR at 76972.

⁴⁶ 11 CFR 113.1(g)(1)(i)(I).

⁴⁷ NPRM, 87 FR at 75948 (quoting 2002 Final Rule, 67 FR at 76972).

level of income the year before becoming a candidate. The Commission sought comment on whether it should adopt any of the proposals or a combination of aspects of the proposals.

For each alternative, the Commission proposed to require principal campaign committees to calculate the compensation and cap at the daily rate, rounded to the nearest dollar. Under this approach, the compensation and cap would be allocated based on the number of days per year that the candidate spent campaigning.

In addition to comments on specific alternatives as described below, the comments supporting the NPRM's proposals agreed that the Commission should expand the pool of candidates eligible to receive compensation from campaign funds to include people who otherwise might be prevented from campaigning due to a lack of funds, such as students, caregivers, and those who lost jobs before becoming a candidate. Several comments also agreed that no candidate should be able to accept compensation from campaign funds exceeding the salary for the federal office sought by the candidate.

Proposed Alternatives A, B, and C

Proposed Compensation Cap Alternatives A, B, and C did not consider a candidate's prior earned income in setting a cap on the amount of compensation the candidate could receive from campaign funds.

Proposed Compensation Cap Alternative A (50% minimum officeholder salary approach) would have capped the amount of campaign funds that a candidate's principal campaign committee could use to pay compensation to the candidate at 50% of the minimum salary for the federal office sought. This cap would have applied to all candidates for the same office, regardless of the amount of income they earned the year before becoming a candidate. Five comments generally supported the approach taken in Alternative A, but differed as to whether the cap should be set at 50% or 100% of the salary for the office sought by the candidate.

Proposed Compensation Cap Alternative B (hourly minimum wage approach) would have capped a candidate's compensation from campaign funds at the daily rate of the annualized hourly minimum wage. *Annualized hourly minimum wage* was defined as the amount an individual receiving the federal minimum wage would earn by working 40 hours a week for 52 weeks, except that an individual residing in a state with a higher minimum wage than the federal minimum wage could use the state minimum wage. Three comments opposed Alternative B, arguing that the annualized hourly minimum wage was too low to provide a living wage to candidates, not objectively justifiable, and neither compensated candidates for the services demanded by a modern campaign nor reasonably accounted for their opportunity costs incurred in running for office. No comments supported this alternative.

Proposed Compensation Cap Alternative C (\$15 per hour approach) would have capped candidate compensation based on the amount an individual receiving \$15 per hour would earn by working 40 hours per week for 52 weeks — calculated at the daily rate — rather than the federal or state minimum wage. Three comments opposed Alternative C, arguing that this alternative was too low to provide a living wage to candidates, not objectively justifiable, and would neither compensate candidates for their services to a campaign nor reasonably account for their opportunity costs incurred in running for office. No comments supported this alternative.

Proposed Alternatives D, E, and F

Proposed Compensation Cap Alternatives D, E, and F, like the current regulation, would have considered the candidate's previous earned income, but in different ways.

Proposed Compensation Cap Alternative D (prior 12-month income approach) would have capped a candidate's compensation from campaign funds at the candidate's earned income in the 12-month period before becoming a candidate or the annualized hourly minimum wage, whichever was greater, but not to exceed the minimum annual

salary for the office sought by the candidate. One comment supported Alternative D, because it would ensure that all candidates could receive at least the annualized minimum wage and enable candidates who had earned more during the relevant period to receive commensurately more compensation from campaign funds.

Proposed Compensation Cap Alternative E (three-year income approach) would have enabled a candidate to receive compensation from campaign funds up to the average annual income that the candidate had earned during the most recent three calendar years in which the candidate earned income prior to becoming a candidate, capped by the salary for the office sought by the candidate. No comments supported this alternative.

Proposed Compensation Cap Alternative F (three-year income with minimum wage approach) would have been the same as Alternative E, while also offering candidate committees the option of paying candidates up to the annualized minimum wage if the minimum wage was greater than the candidate's prior average earned income. Two comments supported Alternative F with modifications and two comments opposed it.

Final Rule

After considering the comments, the Commission is adopting a variation of Proposed Compensation Cap Alternative E. Under new 11 CFR 113.1(g)(6)(ii), the use of campaign funds by a candidate's principal campaign committee to pay compensation to the candidate is not personal use, provided that the compensation does not exceed the lesser of 50% of the minimum annual salary paid to a Member of the U.S. House of Representatives (regardless of the specific office sought), and the average annual income that the candidate earned during the most recent five calendar years in which the candidate earned income prior to becoming a candidate. The new regulation requires the average annual income and 50% of the minimum House Member salary to be calculated at the daily rate, rounded to the nearest dollar.

Example 1: Candidate A earned an average annual income of \$35,000 in the most recent five calendar years in which Candidate A earned income prior to becoming a candidate, which means the daily rate is \$96 for purposes of the compensation cap ($\$35,000/365$, rounded to the nearest dollar). The minimum annual House Member salary is \$174,000, which means the daily rate is \$238 ($(\$174,000 \times 50\%)/365$, rounded to the nearest dollar). Under these facts, Candidate A's compensation is capped at \$96 per day because the daily rate of the candidate's 5-year average earned income is less than the daily rate of 50% of the minimum House Member salary.

Example 2: Candidate B earned an average annual income of \$100,000 in the most recent five calendar years in which Candidate B earned income prior to becoming a candidate, which means the daily rate is \$274 ($\$100,000/365$). The minimum annual House Member salary is \$174,000, which means the daily rate is \$238 ($(\$174,000 \times 50\%)/365$, rounded to the nearest dollar). Under these facts, Candidate B's compensation is capped at \$238 per day because the daily rate of 50% of the minimum House Member salary is less than the daily rate of Candidate B's 5-year average earned income.

Example 3: Candidate C becomes a candidate in 2023. Candidate C earned income averaging \$60,000 per year in 2021, 2019, 2018, 2017, and 2016, but did not earn any income in 2022 or 2020. Because Candidate C's 5-year average earned income in the five most recent calendar years in which Candidate C earned income was \$60,000, which is less than 50% of the minimum House Member salary of \$174,000 in 2023, Candidate C would be entitled to receive \$164 per day ($\$60,000/365$) in compensation from campaign funds in 2023.

Like Proposed Compensation Cap Alternative E and the current regulation, the revised compensation cap allows a candidate's principal campaign committee to use campaign funds to pay the candidate compensation up to the lesser of the candidate's pre-

candidacy earned income and a percentage of the minimum annual salary paid to a federal officeholder. The revised cap, however, allows the principal campaign committee to consider the candidate's prior earned income over a period of five years, instead of three years as proposed in the NPRM and one year as in the current regulation. The Commission intends this longer look-back to provide a more realistic estimate of the income a candidate forgoes in running for office; averaging income earned over a longer period is intended to moderate any aberrations in the candidate's prior annual earnings.

The Commission's revised regulation also differs from Proposed Compensation Cap Alternative E and the Commission's current regulation in that it places an upper-level cap at 50% of the minimum annual salary paid to a Member of the U.S. House of Representatives, rather than 100% of the minimum annual salary paid to a federal officeholder holding the office that the candidate seeks. These changes are intended to better reflect substantial differences between running for federal office and holding federal office, especially in a higher-level position such as the presidency or a leadership position in Congress. Officeholders have significant duties under the Constitution, and their salaries are set by the political branches subject to Constitutional restraints.⁴⁸ Officeholders must continue to execute the duties of their offices while campaigning and they accordingly receive their full salaries while campaigning. Candidates who do not hold office may also choose to continue their employment while running for office, but should they decide otherwise and prefer to campaign full-time, the Commission notes that half of the minimum congressional salary exceeds the current median household income in the United States.⁴⁹ Limiting candidate compensation in this way helps protect

⁴⁸ See U.S. Const. amend. XXVII.

⁴⁹ In 2022, half of the annual salary for Members of the House of Representatives under 2 U.S.C. 4501(1)(A) was \$87,000, while the real median household income was \$74,580. Income in the United States: 2022, United States Census Bureau, Sept. 12, 2023, <https://www.census.gov/library/publications/2023/demo/p60-279.html>.

against personal enrichment from one's candidacy and is tailored to real financial need. Moreover, the record before the Commission does not establish the need for salaries exceeding this amount, with near-universal agreement in comments that changes to the Commission's regulations were needed to allow individuals of modest means to run for office.

The Commission is not adopting the other alternative cap proposals presented in the NPRM or comments. Although several comments presented policy arguments in favor of the other proposals (such as the desirability of providing a fair living wage, enhancing the diversity of candidates, and reducing bias that favors incumbents), these proposals would have enabled candidates to receive an amount of compensation from campaign funds that was divorced from the candidate's prior earnings history, and therefore did not reflect the candidate's demonstrated earning potential and income forgone by running for office. As the Commission has stated previously, the payment of campaign funds to a candidate is not personal use when it "compensate[s] candidates for lost income that is forgone due to becoming a candidate."⁵⁰

In the Commission's view, a candidate's earned income history over the most recent five years that the candidate earned income, capped by 50% of the minimum House Member salary, provides a better picture of the income forgone by a candidate running for office.

C. New 11 CFR 113.1(g)(6)(iii) — Definition of "compensation."

As explained above, the Act does not specifically address compensation to candidates in its provisions on the personal use of campaign funds. While the Commission's current regulations permit the use of campaign funds to pay a "salary" to a candidate in certain circumstances, the regulations do not define "salary" or explicitly

⁵⁰ 2002 Final Rule, 67 FR at 76972.

address the use of campaign funds to pay such employment-related benefits as health insurance premiums or dependent care costs. Nor do the Commission's current regulations define "compensation" in this context.

In the NPRM, the Commission proposed three alternative definitions of "compensation," each of which included "direct payments to the candidate," as well as payments for at least some other employment-related benefits. Several comments on the NPRM generally supported these proposals. One comment was concerned that the proposed definitions could be read to encompass payments to candidates for non-compensation purposes, such as campaign expense reimbursements and loan repayments.

The Commission agrees with this concern. The term "compensation" is intended to include only payments to a candidate to make up for salary forgone by becoming a candidate and is not intended to make otherwise permissible payments, such as candidate expense reimbursements and candidate loan repayments, subject to the compensation cap. Accordingly, new 11 CFR 113.1(g)(6)(iii) defines "compensation" as "direct payments to the candidate unless the payments are otherwise permitted by law, such as candidate expense reimbursements and candidate loan repayments under 11 C.F.R. Part 116."

The Commission is not addressing the payment of a candidate's health insurance premiums and dependent care costs in these final rules. Although several comments supported including payments for these benefits in the definition of "compensation," arguing that such benefits are inextricably linked to employment and requiring candidates to forgo those benefits while campaigning could prevent some individuals from running for federal office, the advisory opinion process is better suited to addressing this use of campaign funds. Determining whether an impermissible conversion of campaign funds to personal use would result from a campaign committee's payment of a candidate's

health insurance premiums or dependent care costs is a fact-specific inquiry.⁵¹

Accordingly, the Commission has decided to continue its current practice of addressing this issue on a case-by-case basis through the advisory opinion process.⁵² The Commission's advisory opinions addressing the use of campaign funds to pay a candidate's or officeholder's dependent care costs remain in effect. Any person whose factual circumstances differ materially from those described in these advisory opinions may request an advisory opinion.

D. New 11 CFR 113.1(g)(6)(iv) — Outside earned income.

As noted above, the Commission's current regulation caps the amount of campaign funds that a candidate may receive in salary from the candidate's principal campaign committee at either (1) the amount of income earned by the candidate in the 12-month period immediately preceding candidacy, or (2) the minimum annual salary for the federal office that the candidate seeks, whichever amount is lower. For purposes of this calculation, the current regulation further requires the minimum salary of the office that the candidate seeks to be reduced by the amount of any earned income that the candidate receives from salaries or wages from any source other than the candidate's principal campaign committee.⁵³ The Commission has explained that it requires

⁵¹ For example, in Advisory Opinion 2022-07 (Swalwell), the Commission concluded that an officeholder could use campaign funds to pay overnight childcare expenses that he incurred when traveling for his own campaign but did not approve a response to the question whether the officeholder could use campaign funds to pay childcare expenses incurred when he campaigned for others. In Advisory Opinion 2019-13 (MJ for Texas), the Commission concluded that a candidate who left her job to work full-time on her campaign could use campaign funds to pay for full-time daycare for her children, where she would spend the "vast majority" of her time away from her family on campaign activities and would reimburse the campaign for childcare costs incurred when not campaigning. In Advisory Opinion 2018-06 (Liuba for Congress), the Commission concluded that a candidate who had given up her in-home consulting work to campaign and hired a caregiver for her children could use campaign funds to pay childcare expenses when her campaign responsibilities prevented her from caring for the children herself.

⁵² *See, e.g.*, Advisory Opinion 2022-07 (Swalwell) at 4 (approving use of campaign funds to pay candidate's childcare expenses to extent expenses are the "direct result of campaign activity"); Advisory Opinion 2019-13 (MJ for Texas) at 3 (same); Advisory Opinion 2018-07 (Liuba for Congress) at 3 (same); *see also* Advisory Opinion 1995-42 (McCrery) at 2 (approving use of campaign funds to pay childcare expenses when Congressman and spouse attend campaign events, where expenses result only from campaign activity and otherwise would not exist).

⁵³ 11 CFR 113.1(g)(1)(i)(I).

campaign committees to count any outside earned income received by a candidate against the officeholder salary limit to “prevent candidates from paying themselves a salary from campaign funds on top of other earned income that they receive from other sources, such as from private sector employment, to the extent that such combined payments exceed the minimum annual salary for the Federal office that the candidate is seeking.”⁵⁴ The current regulation does not, however, require a campaign committee to count outside income earned by a candidate against the limit set by the amount of pre-candidacy income earned by a candidate.

In the NPRM, the Commission proposed new 11 CFR 113.1(g)(6)(iv) to rectify the apparent imbalance in the salary cap reduction by requiring the amount earned by a candidate from other sources to count against the maximum amount of compensation that a candidate can receive from campaign funds, rather than counting against only the minimum annual salary for the office sought by the candidate. Although these final rules incorporate a standard tied to the minimum House Member salary even if the candidate is not seeking that office, the NPRM’s proposal regarding the reduction for outside earned income remains otherwise unchanged.

Three comments supported the proposed regulation. They indicated that it would enhance oversight of candidates receiving compensation from campaign funds and was particularly apt considering the Commission’s proposed expansion of candidates’ ability to accept compensation from campaign funds and the period during which they may do so. No comment opposed the proposal.

The Commission agrees that earned income a candidate receives from non-campaign sources should count against the maximum amount of compensation that the candidate can receive from campaign funds. If a candidate earns income from outside sources while campaigning for federal office, that income has not been lost to

⁵⁴ 2002 Final Rule, 67 FR at 76972.

campaigning, and the Commission discerns no reason for treating outside earned income differently based on whether the applicable compensation cap is set by the candidate's pre-candidacy earned income or the minimum House Member salary. Therefore, the Commission is adopting the proposal at new 11 CFR 113.1(g)(6)(iv) to require a candidate's principal campaign committee to reduce the maximum amount of permissible candidate compensation from campaign funds by the amount of income earned by the candidate from other sources after the candidate files a Statement of Candidacy.⁵⁵

Example 1: Candidate A earned an annual average of \$60,000 during the most recent five calendar years in which Candidate A earned income before becoming a candidate, and the minimum House Member salary is \$174,000 per year. Because \$60,000 is less than half of the minimum House Member salary (\$87,000), Candidate A could receive up to \$164/day ($\$60,000/365$). But, if Candidate A earns \$30,000 in income from outside sources after filing a Statement of Candidacy with the Commission, the maximum amount that Candidate A may receive as compensation from campaign funds must be reduced by \$30,000, meaning that the total compensation paid to the candidate may not exceed \$82/day ($(\$60,000-\$30,000)/365$).

Example 2: Candidate B earned an annual average of \$100,000 during the most recent five calendar years in which Candidate B earned income before becoming a candidate, and the minimum annual House Member salary is \$174,000 per year. Because half of the Minimum Officeholder Salary (\$87,000) is less than \$100,000, Candidate B could receive up to \$238/day. But, if Candidate B earns \$30,000 in income from outside sources while also receiving compensation from campaign funds, the maximum amount

⁵⁵ The final rule differs from the proposed rule in one additional respect. The proposed rule would have reduced the maximum amount of compensation that a candidate could receive from campaign funds if the candidate earned income from outside sources "while the candidate receives compensation from campaign funds." In response to a comment, the final rule provides, instead, that the maximum amount of compensation a candidate can receive from campaign funds must be reduced if the candidate earns income from outside sources "after the candidate files a Statement of Candidacy under 11 CFR 101.3(a)." This revision is intended to avoid the impression that the compensation cap will be affected only if the candidate earns income from outside sources simultaneously with the receipt of compensation from campaign funds.

that Candidate B may receive as compensation from campaign funds must be reduced by \$30,000, meaning that the total compensation paid to the candidate may not exceed \$156/day $((\$87,000-\$30,000)/365)$.

E. New 11 CFR 113.1(g)(6)(v) — Eligibility period.

The Commission's current regulation prohibits the use of campaign funds to pay a candidate's salary before the filing deadline for access to the primary election ballot for the federal office that the candidate seeks, as determined by state law, or January 1 of each even-numbered year in states that do not conduct primaries.⁵⁶

In the NPRM, the Commission proposed to allow candidates to begin receiving compensation from campaign funds on the date the candidate's principal campaign committee files a Statement of Organization with the Commission, regardless of when the candidate is required to file for ballot access under state law. This proposal was intended to reflect more accurately when a candidate may start to forgo salary because of the campaign, and to apply uniform criteria for when candidates' principal campaign committees may start using campaign funds to compensate the candidate.

The comments generally supported this proposal. Echoing the Petition, several comments argued that ballot access deadlines are an inaccurate means of determining when a candidate begins losing income due to campaigning, and the lack of uniformity in state ballot access deadlines militates against using those deadlines to trigger candidates' eligibility to receive compensation from campaign funds. The comments largely agreed with the Commission's proposal to allow candidates to begin drawing compensation from campaign funds on the date that their principal campaign committee files a Statement of Organization with the Commission, but two comments suggested that the eligibility period should begin when the candidate files the Statement of Candidacy.

⁵⁶ 11 CFR 113.1(g)(1)(i)(I).

The Commission is adopting new 11 CFR 113.1(g)(6)(v) to allow candidates to begin receiving compensation from campaign funds on the date they file their Statement of Candidacy, rather than on the date of the state's filing deadline for ballot access as under the current regulation or when a principal campaign committee files a Statement of Organization with the Commission as proposed. The comments indicate that campaigns often start well before the state's filing deadline for ballot access under state law. Moreover, under the Act and Commission regulations, each candidate must file a new Statement of Candidacy with the Commission for each election in which the candidate runs for office, but a principal campaign committee is not required to file a new Statement of Organization for each election. The Statement of Candidacy is the first document that a campaign must file with the Commission.⁵⁷ Therefore, the Commission has determined that the filing of a Statement of Candidacy will serve as a more accurate standard than the state's deadline for filing for ballot access or a Statement of Organization for determining when a campaign begins and when a candidate becomes eligible to receive compensation from campaign funds in each election. Moreover, the new regulation will help promote uniformity in determining the start of the eligibility period.⁵⁸

The current regulation prohibits the use of campaign funds to pay a candidate's salary after the date the candidate loses the primary election, withdraws from the race, or

⁵⁷ A candidate must file a Statement of Candidacy within 15 days after becoming a candidate, 11 CFR 101(a), and a principal campaign committee must file a Statement of Organization within 10 days after the candidate's Statement of Candidacy, 11 CFR 102.1(a).

⁵⁸ The final rules differ from the proposed rules in one additional respect. In the NPRM, the Commission proposed to provide that, in the case of a special election, a candidate's principal campaign committee could pay the candidate compensation starting on the date the special election is set. The Commission received no comments on this proposal and as noted above, received ample comments supporting the notion that a candidate should be eligible to receive compensation upon filing a Statement of Candidacy. The Commission discerns no reason to differentiate special elections from other types of elections in this respect. Therefore, under these final rules, candidates, whether in special elections or regularly scheduled elections, may begin receiving compensation from campaign funds upon filing their Statement of Candidacy with the Commission.

otherwise ceases to be a candidate or, if the candidate wins the primary, after the date of the general election or general election runoff.⁵⁹ For special elections occurring in odd-numbered years, the eligibility period runs until the date of the special election.

In the NPRM, the Commission proposed to extend the eligibility period for candidates who win the general election, general election runoff, special election, or special election runoff by allowing them to continue receiving compensation from campaign funds up to the date they are sworn into office, rather than on the date of the election as under the current regulation. For losing candidates and any other individual who ceases to be a candidate, such as by withdrawing from the race, the Commission proposed to continue the approach under the current regulation and prohibit compensation from being paid beyond the date of losing the election or otherwise ceasing to be a candidate.⁶⁰

Many of the comments supported the Commission's proposal to permit winning candidates to receive compensation from campaign funds up to the date they are sworn into office, rather than the date of the election, and two suggested lengthening the period for losing candidates as well. One comment argued that losing candidates should be permitted to receive compensation for a reasonable period, such as 60 days after the election, and another organization suggested 1 or 2 months, so that the candidates may wind down their campaigns.

The Commission is adopting new 11 CFR 113.1(g)(6)(B) to enable all candidates to accept compensation from campaign funds for 20 calendar days after winning or losing the election or otherwise ceasing to become a candidate. As the comments pointed out, all candidates must spend time after a campaign winding down their campaigns, and a 20-day period reflects the timelines of reportable activity for post-general election

⁵⁹ 11 CFR 113.1(g)(1)(i)(I).

⁶⁰ *Id.*

reports.⁶¹ The Commission is extending the same rationale to candidates who lose primary elections or otherwise drop out of the race to maintain consistency between candidates who do and do not advance to the general election.

F. New 11 CFR 113.1(g)(6)(vi) — Debts and debt settlement.

To prevent candidates from enriching themselves at the expense of other campaign creditors, the Commission proposed in the NPRM to prohibit any principal campaign committee seeking to settle debts for less than full value from paying compensation to the candidate or satisfying a debt to the candidate for compensation. In addition, under the proposal, any debt settlement plan created under 11 CFR 116.7 would be prohibited from providing for the payment of compensation to the candidate before all other creditors are paid.

The Commission received two comments supporting this proposal, at least in part. One comment said the proposed revision is necessary for sufficient oversight of candidates receiving compensation from campaign funds. The other agreed that a principal campaign committee's debt to a candidate for compensation should be subordinated to debts owed to the committee's other creditors in any debt settlement plan, but suggested that committees seeking to settle debts for less than the full value should also be permitted to settle a debt for compensation with the candidate.

The Commission does not agree with the latter comment's suggestion. New 11 CFR 113.1(g)(6)(vi) is intended to prevent a principal campaign committee from paying compensation to a candidate at the expense of the committee's other creditors. When a principal campaign committee seeks to settle debts for less than the full amount owed, any campaign funds that the committee pays to the candidate for compensation are funds that could have been, but are not being, paid to help make other creditors whole. Accordingly, new 11 CFR 113.1(g)(6)(vi) prohibits a principal campaign

⁶¹ See *id.* 104.5(a)(2)(ii)(B).

committee from settling or satisfying a debt for compensation to the candidate, or otherwise paying compensation to the candidate, when seeking to settle debts to others for less than the full amount owed.

G. New 11 CFR 113.1(g)(6)(vii) — Evidence of earned income.

The Commission's current regulations require any candidate receiving a salary from campaign funds to provide income tax records and other evidence of earned income upon request of the Commission.⁶² In the NPRM, the Commission proposed in Proposed Compensation Cap Alternatives D, E, and F to maintain this requirement at new 11 CFR 113.1(g)(6)(vii). The Commission received one comment supporting the proposal as necessary for sufficient oversight of candidates receiving compensation from campaign funds. The Commission agrees. Because income earned by a candidate during certain time periods is a material consideration in determining the maximum compensation that the candidate may receive from campaign funds, new 11 CFR 113.1(g)(6)(vii) maintains the current requirement that candidates who receive compensation from campaign funds must provide income tax records or other evidence of earned income upon request of the Commission.

The Commission is also adopting a proposal from the NPRM to require candidates to maintain and preserve evidence of earned income for three years after their principal campaign committees file reports disclosing the payment of compensation to the candidates, pursuant to 11 CFR 102.9 and 104.14(b). The Commission received no comments on this proposal. Sections 102.9 and 104.14(b) already require political committees and their authorized agents to keep certain records of committee disbursements⁶³ and to maintain those records for three years after filing a report to which

⁶² *Id.* 113.1(g)(1)(i)(I).

⁶³ *Id.* 102.9(b). Such records include bank records, vouchers, worksheets, receipts, bills, and accounts. *Id.* 104.14(b)(1).

such records relate.⁶⁴ New 11 CFR 113.1(g)(6)(vii) clarifies that this record retention requirement applies to evidence of a candidate's earned income, as well.

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

The Commission certifies that the final rules do not have a significant economic impact on a substantial number of small entities. The final rules provide flexibility to principal campaign committees that choose to use campaign funds to pay their candidates compensation. Any final rule that could be construed as placing an obligation on a principal campaign committee would apply only to campaigns that choose to pay their candidates compensation. The final rules would not impose any new recordkeeping, reporting, or financial obligations on principal campaign committees that do not choose to pay their candidates compensation, and any such new obligations that are imposed on principal campaign committees that do choose to pay compensation to their candidates would be minimal. Thus, to the extent that any entities affected by these final rules might fall within the definition of "small businesses" or "small organizations," the economic impact of complying with these rules is not significant.

⁶⁴ *Id.* 102.9(c).

List of Subjects

11 CFR Part 113

Campaign funds.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR chapter 1 as follows:

Part 113 – PERMITTED AND PROHIBITED USES OF CAMPAIGN ACCOUNTS

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

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

§ 113.1 [Amended]

2. In § 113.1:

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

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

c. Add new paragraph (g)(6).

The addition reads as follows:

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

(ii) The use of campaign funds by a candidate's principal campaign committee to pay compensation to the candidate is not personal use, provided that the compensation does not exceed the lesser of: 50% of the minimum annual salary paid to a Member of the United States House of Representatives under 2 U.S.C. 4501, and the average annual income that the candidate earned during the most recent five calendar years in which the candidate earned income prior to becoming a candidate. The committee must calculate compensation, minimum annual salary, and average annual income at the daily rate, rounded to the nearest dollar.

(iii) For the purposes of this paragraph, *compensation* means direct payments to the candidate unless the payments are otherwise permitted by law, such as candidate expense reimbursements and candidate loan repayments under 11 CFR Part 116.

(iv) The candidate's principal campaign committee must reduce the maximum

amount of candidate compensation permissible under this paragraph (g)(6) by the amount of any earned income the candidate receives from any other source after filing a Statement of Candidacy under 11 CFR 101.1(a).

(v)(A) Compensation shall not accrue or be paid to a candidate before the date the candidate files a Statement of Candidacy with the Commission. *See* 11 CFR 101.1(a).

(B) A candidate's principal campaign committee may pay the candidate compensation from campaign funds up to 20 days after the candidate wins the general election, general election runoff, special election, or special election runoff, or otherwise ceases to be a candidate, such as by losing an election or withdrawing from the race.

(vi) Any principal campaign committee seeking to settle debts for less than the full value may not pay compensation to the candidate or settle or satisfy a debt to a candidate for compensation.

(vii) The candidate must provide evidence of earned income from the relevant years upon the request of the Commission. Any such evidence of earned income must be maintained and preserved for three years after the report disclosing the disbursement is filed, pursuant to 11 CFR 102.9 and 104.14(b).

Dated: December 14, 2023.

On behalf of the Commission,

Dara S. Lindenbaum,

Chair,

Federal Election Commission.

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