Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Part 113

[NOTICE 2022–21]

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 February 10, 2023. The Commission may hold a public hearing on this rulemaking. 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.

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

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

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

I. Background

The Federal Election Campaign Act (the ''Act'') [2] 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

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. As the Commission explained in the explanation and justification accompanying the final rules, the commenters argued that the proposed rule would favor incumbents who do not face a reduction in compensation for time spent campaigning, and wealthy challengers who can afford to forego compensation.[10] The commenters also 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

[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).

[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.*

[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.*

have to leave their jobs and give up their salaries.'' [11]

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.'' [12] 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 services rendered to an employer.'' [13] 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.'' [14]

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.[15] 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.[16] These limitations were designed, in part, to ''help ensure that campaign salaries are not used to enrich candidates, but instead used to compensate candidates for lost income that is forgone due to becoming a candidate.'' [17] 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.[18] Finally, the regulation requires salary payments to be computed on a pro-rata basis and prohibits candidates who are also federal officeholders from receiving salary payments from campaign funds.[19]

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,[20] and to pay caregiver expenses and full-time daycare when candidates' campaign responsibilities and activities prevented them from caring for their children themselves.[21] 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.[22]

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 Commission has not addressed this issue in advisory opinions.[23] 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 the Petition, asking 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 asserts 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 alleges that the current maximum salary limitation ''leaves candidates who are full time caretakers or 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 asks 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

[11] *Id.* at 76971.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[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.*

[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.

[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.

[29] *Id.* at 4, 6.

[30] *Id.* at 4–5.

[31] *Id.* at 5.

the Petition.[32] The Commission received 22 comments in response, 6 from organizations and 16 from individuals.[33] Fourteen commenters, including the organizations, generally supported initiating a rulemaking. They agreed that some version of the Petition's proposals would make it easier for individuals of modest means who are not already federal officeholders to run for federal office. Several commenters 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 cannot currently exceed the amount of income earned in the year before their candidacy. Thus, a candidate who worked full time caring for the candidate's children or other family members without remuneration the year prior to becoming a candidate could not receive a campaign salary. Similarly, a candidate who was unemployed during any portion of the year prior to becoming a candidate would be able to receive only a reduced amount of salary from campaign funds, and potentially none at all.[34] Commenters also suggested 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.[35]

These commenters also generally agreed that a candidate's campaign committee should be able to use campaign funds to pay the candidate's health insurance premiums. One commenter cited statistics showing that most Americans obtain health insurance coverage through their employment [36] and argued that health insurance is, thus, inextricably linked to employment. Another commenter further urged the Commission to reconsider its conclusion in MUR 7068 (Mowrer for Iowa) that the use of campaign funds to pay a candidate's health insurance premiums is a prohibited personal use, ''in light of current societal conditions that pose challenges for working Americans'' who want to run for office.[37]

Five individual commenters opposed initiating a rulemaking. Two of them opposed using campaign funds to pay candidate salaries in any circumstance; the others opposed the proposed minimum salary because it exceeded the federal minimum wage or could encourage ''professional candidates.'' [38] Three commenters did not address issues raised in the NOA.

II. Proposed Regulations

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

A. Overview

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

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

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

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

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

Proposed 11 CFR 113.1(g)(6)(iv) would 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 receives from any other source while the candidate receives compensation from campaign funds. As explained further below, this amendment would expand a requirement in the Commission's current regulation.[41]

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

Proposed 11 CFR 113.1(g)(6)(vi) would prohibit a candidate's principal campaign committee that seeks to settle debts for less than their full value from paying compensation to the candidate or satisfying a debt to the candidate for compensation. It would also 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. This requirement does not currently appear in the Commission's regulations.

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

B. Proposed 11 CFR 113.1(g)(6)(i)—Federal Officeholder's Receipt of Compensation as a Candidate From Campaign Funds

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

[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).

[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).

[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).

[40] *See id.*

[41] *See id.*

[42] *See id.*

[43] 11 CFR 113.1(g)(1)(i)(I). The term ''federal officeholder'' is defined at 11 CFR 113.1(c).

candidate could receive from campaign funds.

C. Proposed 11 CFR 113.1(g)(6)(ii)—Cap on Candidate Compensation (Six Alternatives)

Under the current regulation, salary payments from campaign funds to a candidate are limited to the lesser of the minimum salary paid to a federal officeholder holding the federal office that the candidate seeks, or the earned income that the candidate received during the year prior to becoming a candidate.[44] Accordingly, candidates may receive salary payments from campaign funds only if they earned income the year prior to becoming a candidate. The Commission intended this limitation to provide an ''additional safeguard [to] help ensure that campaign salaries are not used to enrich candidates, but instead used to compensate candidates for lost income that is forgone due to becoming a candidate.'' [45]

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

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

Moreover, several of the alternatives would cap a candidate's compensation at ''the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks,'' which is the current regulatory language.[49] The Commission has explained that the ''minimum salary'' as used in the current regulation does not refer to the salary actually paid to the current incumbent of the office sought by the candidate, but the ''lowest salary for the . . . office.'' [50] For example, if a candidate seeks a seat held by a member of the House of Representatives who holds a leadership position and is thus paid more than the minimum salary payable to a member of the House of Representatives, the candidate's salary is capped at the lowest salary for that office, not the salary of the incumbent. Should the Commission consider revising the language in the regulation to clarify that the cap refers to the minimum annual salary for the office, rather than the minimum salary paid to the individual currently holding the office?

Compensation Cap Alternative A (50% officeholder salary minimum approach) would provide that 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 amount of compensation paid to the candidate does not exceed 50% of the minimum salary for the federal office sought by the candidate (''Minimum Officeholder Salary''). This cap would apply to all candidates for the same office, regardless of the amount of income earned by any candidate the year before becoming a candidate.

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

This alternative is intended to measure the value of a candidate's services to a campaign, based on 50% of the minimum salary the candidate could receive as an officeholder should the candidate win the election. Is basing candidate compensation on 50% of the officeholder's salary an accurate reflection of a candidate's duties, when compared to that of an officeholder's in the position the candidate is seeking? Would the 50% figure accurately reflect the candidates' opportunity cost of running for office, or the value of the services provided to the campaign? Would a different percentage provide a more accurate reflection?

Compensation Cap Alternative B (hourly minimum wage approach) would cap a candidate's compensation from campaign funds at the daily rate of the annualized hourly minimum wage. *Annualized hourly minimum* wage would mean the amount an individual receiving the federal minimum wage would earn by working 40 hours a week

[44] *Id.*

[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.*

[49] 11 CFR 113.1(g)(1)(I)(i).

[50] 2002 Final Rules, 67 FR at 76972.

for 52 weeks, except that an individual residing in a state with a higher minimum wage than the federal minimum wage could use the higher state minimum wage. Alternative B is intended to measure the opportunity cost to the candidate of running for office, not to provide the actual hourly minimum wage to the candidate. Therefore, under Alternative B, the amount that a candidate could receive from campaign funds would be capped at the amount that the candidate would have earned working 40 hours per week at the minimum wage in another job, even if the candidate spends more than 40 hours per week campaigning.

For example, if a candidate lives in a state whose hourly minimum wage is the same as or less than the current federal minimum wage of $7.25 per hour,[51] the annualized minimum wage would be $15,080 ($7.25 per hour × 40 hours per week × 52 weeks per year), and the daily rate would be $41.00 ($15,080/365 days per year, rounded to the nearest dollar). Therefore, under this example, a candidate who is eligible to receive compensation from campaign funds for 100 days in a particular year may receive no more than $4,100 in compensation from campaign funds in that year. But if the state's hourly minimum wage is higher than the federal minimum wage—for example, $10 per hour instead of $7.25—then the candidate's principal campaign committee could use the higher state minimum wage to determine the maximum amount of compensation that the candidate could receive from campaign funds. At $10 per hour, the annualized hourly minimum wage would be $20,800 ($10 per hour × 40 hours per week × 52 weeks per year), the daily rate would be $57.00 ($20,800/365 days per year, rounded to the nearest dollar), and the candidate could receive up to $5,700 that year as compensation from campaign funds ($57.00 per day × 100 days).

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

Compensation Cap Alternative C ($15 per hour approach) would cap 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. At $15 per hour, the daily rate would be $85.00 ($15 per hour × 40 hours per week × 52 weeks per year = $31,200; $31,200/365 days per year = $85.00 per day, rounded to the nearest dollar). Therefore, if a candidate is eligible to receive compensation for 100 days in a calendar year, the candidate could receive up to $8,500 that year as compensation from campaign funds. Compensation Cap Alternative C would also require this amount ($15) to be adjusted for inflation in odd-numbered years.

The Petitioner and several commenters suggested using $15 per hour as the base rate, indexed for inflation.[52] As one commenter noted, although $15 per hour is more than double the federal minimum wage of $7.25 per hour,[53] it ''equates to less than one and a half times the federal poverty limit for a family of three'' in 2021.[54] Would $15 per hour more accurately reflect the value of a candidate's services to the candidate's campaign committee or the candidate's opportunity costs than would the minimum wage? Should the Commission index this rate for inflation? Are the federal poverty limits relevant to determining candidate compensation from campaign funds?

Compensation Cap Alternatives A, B, and C, unlike the alternatives described below, do not consider any of the candidate's prior earned income. In sum, as shown by the examples above and represented in this table, a candidate who has no income in the 12-month period prior to becoming a candidate could receive up to the following amounts in compensation in a calendar year from campaign funds under the current regulation and Compensation Cap Alternatives A, B, and C, assuming the Minimum Officeholder Salary is $174,000 and the 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 salary minimum approach)	23,800	23,800
Alternative B (hourly minimum wage approach)	4,100	5,700
Alternative C ($15/hr. approach)	8,500	8,500

Compensation Cap Alternative D (prior 12-month income approach) would cap 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 is greater, but not to exceed the Minimum Officeholder Salary. The compensation, earned income, annualized hourly minimum wage, and Minimum Officeholder Salary would all be calculated at the daily rate, with *annualized hourly minimum wage*

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

[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).

[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 Norther 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)).

having the same definition as in Alternative B.

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

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

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

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

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

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

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

D. Proposed 11 CFR 113.1(g)(6)(iii)—Definition of ''Compensation'' (Three Alternatives)

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

In MUR 7068 (Mowrer for Iowa), the Commission found reason to believe that a congressional candidate and his principal campaign committee had improperly converted campaign funds to personal use by using them to reimburse the candidate for paying over $7,000 for his health insurance premiums. The Commission reasoned that ''health insurance premiums are of a character of those fringe benefit payments to the candidate that the Commission [and Congress] has determined are [*per se*] personal use,'' such as funeral, cremation, or burial expenses, tuition payments, sporting event, concert, theater, or other entertainment tickets,[55] country or health club dues or fees, and vacations—all of which, according to the Act and the Commission regulations, would exist irrespective of the candidate's campaign.

On childcare, the Commission has concluded that using campaign funds to pay a candidate's childcare expenses does not convert the funds to personal use to the extent that the expenses are a ''direct result of campaign activity,'' because such expenses would not have existed irrespective of the candidate's campaign.[56] Applying this standard, the Commission has concluded that a federal candidate could use campaign funds to pay overnight childcare expenses that he incurs when he travels for his own campaign and his spouse is not available to care for their children,[57] and that a federal candidate who had given up her in-home consulting work in order to campaign and hired a caregiver for her children could use campaign funds to pay her childcare expenses when her campaign responsibilities prevented her from caring for the children herself.[58] The Commission has also concluded that a federal 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, because she would be spending the ''vast majority'' of her time away from her family on campaign activities and would reimburse the campaign for childcare costs incurred at times she is not campaigning.[59]

The Petitioner and several commenters asked the Commission to reconsider its conclusion in MUR 7068 (Mowrer for Iowa) that using campaign funds to reimburse the candidate's payment of his health insurance premiums converted the campaign funds to personal use. The Petitioner noted that the average annual premiums for health insurance for single coverage in 2019 were over $7,000, which made

[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).

[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).

the cost of running for office prohibitive for many people, and urged the Commission to allow a candidate to join any health benefit plan already provided by the campaign to its employees when the candidate becomes eligible to receive compensation.[60] Several commenters pointed out that health insurance premiums are so intertwined with employment that they cannot be considered separately from salary.[61] As one commenter argued, the Commission ''has failed to consider the simple fact that a majority of American adults obtain their health insurance through work.'' [62]

In addition to healthcare costs, one commenter argued that other non-salary benefits are also ''often connected to employment, and therefore the Commission should allow candidates to receive compensation for other fringe benefits offered to full-time campaign employees, including retirement contributions, life insurance, and reimbursement for childcare expenses incurred to permit work outside of normal business hours.'' [63] That same commenter argued that the Commission's rulemaking should ensure that candidates who do not opt to pay themselves a salary can still use campaign funds to cover certain essential life expenses necessitated by a run for office, including payments for child and eldercare services.[64]

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

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

Compensation Definition Alternative B also would provide that a principal campaign committee may pay a candidate's dependent care expenses as part of the candidate's compensation from campaign funds when the same benefit is not made available to staff, to the extent the expenses are incurred as a direct result of the candidate's campaign activities. For example, under Alternative B, if a campaign provides a $200 per month credit to employees to use for full-time daycare costs, the candidate would be eligible to receive the same credit as compensation from campaign funds. In addition, the campaign could pay for any other dependent care costs incurred by the candidate as a direct result of the candidate's campaign activities; the use of campaign funds to pay any incremental dependent care expenses that result from non-campaign activities would be personal use, unless the candidate reimburses the campaign account for the incremental expenses within 30 days.

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

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

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

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

[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).

[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).

[65] *See* 52 U.S.C. 30114(b)(2).

[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).

suggested that the personal use prohibition would not apply to campaign funds used to pay the difference between the amount paid by the candidate for health insurance as a full-time employee, and the amount paid by the candidate for health insurance obtained under the Affordable Care Act or the Consolidated Omnibus Budget Reconciliation Act (COBRA).

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

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

E. Proposed 11 CFR 113.1(g)(6)(iv)—Reduction of Candidate Compensation for Other Income Earned by Candidate

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 Officeholder Salary, whichever amount is lower. For purposes of this calculation, the current regulation further requires the minimum salary of the office that the candidate seeks—but not the candidate's earned income from the prior year—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.[70]

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

Proposed 11 CFR 113.1(g)(6)(iv) would rectify this 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 officeholder salary.

Should the Commission exclude health insurance premiums, dependent care costs, or any other non-salary benefits from the reduction requirement? Should the Commission continue to apply the reduction requirement only to Minimum Officeholder Salary, as under the current regulation?

F. Proposed 11 CFR 113.1(g)(6)(v)—Eligibility Period for Receiving Compensation From Campaign Funds

The 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.[71] The current regulation also 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 otherwise ceases to be a candidate or, if the candidate wins the primary, after the date of the general election or general election runoff.[72] For special elections occurring in odd-numbered years, the current regulation authorizes a candidate's principal campaign committee to 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, the date on which the candidate withdraws from the race, or the date on which the candidate otherwise ceases to be a candidate.

The Petitioner and several commenters asked the Commission to standardize the date that a candidate first becomes eligible to receive a salary from campaign funds and to extend the period of time that a candidate could draw a salary from campaign funds.[73] The Petitioner asserts that the ballot access deadlines for state primaries ''vary wildly based on state law.'' [74] According to the petition, during the 2018 election cycle, the date on which a candidate could begin drawing a campaign salary under Commission regulations ''ranged from December 4, 2017 in Illinois to July 10, 2018 in Delaware, a difference of 218 days.'' [75] The Petitioner also said that she, herself, could have received a campaign salary for only 2 of the 16 months she campaigned as a candidate for the United States House of Representatives from Georgia.[76]

Several commenters confirmed this disparity in the eligibility starting date.[77] One commenter alleged that this ''disparity has real consequences for candidates, who face grueling schedules—juggling full-time jobs, families, and campaigning—while they wait to become eligible to collect salaries.'' [78] Another commenter argued that ''[t]here is no clear relationship between state primary ballot access dates and whether candidate salary costs would pass the 'irrespective' test,'' given that ''[s]alary costs are no less irrespective of one's candidacy whether one is campaigning in Illinois or Delaware.'' [79] The Petitioner and commenters suggested that the Commission permit a candidate to draw

[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.*

[70] 11 CFR 113.1(g)(1)(i)(I).

[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.

[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.

a salary from campaign funds for at least 180 days before the primary election.[80]

Proposed 113.1(g)(6)(v)(A) would make it possible for candidates to start receiving compensation from campaign funds as early as the first day of their campaigns, rather than requiring them to wait until their respective state's primary election ballot access deadline or January 1 in states that do not conduct primaries. Specifically, the proposed regulation would prohibit compensation from accruing or being paid to a candidate only before the date the candidate's principal campaign committee files a Statement of Organization with the Commission. The Commission invites comments on this proposal.

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

Proposed 11 CFR 113.1(g)(6)(v)(B) also would prohibit compensation from being paid beyond the date an individual ceases to be a candidate in all other cases, such as when the candidate loses a primary election or withdraws from the race. This proposal would continue the approach taken in the current regulation for candidates who do not win the office sought.[81]

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

G. Proposed 11 CFR 113.1(g)(6)(vi)—Candidate Compensation in Relation to Debts

Any political committee that seeks to terminate and to settle its debts for less than the full value is required to file a debt settlement plan for Commission review.[83] To prevent candidates from enriching themselves at the expense of other campaign creditors, proposed 11 CFR 113.1(g)(6)(vi) would prohibit any principal campaign committee seeking to settle its debts for less than their full value from paying compensation to the candidate or satisfying a debt to the candidate for compensation. Is the proposed regulation clear that a principal campaign committee would not be prohibited from settling its debts for less than the full value because it paid its candidate compensation prior to seeking to terminate? The proposed rule would also prohibit a principal campaign committee from filing a debt settlement plan that provides for the payment of compensation to the candidate before all other creditors are paid. The Commission invites comment on this proposal.

H. Proposed 11 CFR 113.1(g)(6)(vii)—Evidence of Earned Income

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

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

The Commission certifies that the proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rules would provide flexibility to principal campaign committees that choose to use campaign funds to pay their candidates a salary. Any proposed 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 proposed 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 may be 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 proposed rules might fall within the definition of ''small businesses'' or ''small organizations,'' the economic

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

[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.; see also* 11 CFR 116.7(a), 116.7(b) (describing debts subject to settlement).

[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.

impact of complying with these rules would not be significant.

List of Subjects in 11 CFR Part 113

Campaign funds.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend 11 CFR part 113 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.

■ 2. In § 113.1:
■ a. Remove and reserve paragraph (g)(1)(i)(I);
■ b. Redesignate paragraphs (g)(6) through (8) as paragraphs (g)(7) through (9);
■ c. Add new paragraph (g)(6) to read as follows:

§ 113.1 Definitions (52 U.S.C. 30114).

* * * * *

(g) * * *

(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.

Compensation Cap Alternative A

(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 amount of compensation paid to the candidate does not exceed 50% of the minimum annual salary paid to a Federal officeholder holding the Federal office that the candidate seeks, when calculated at the daily rate, rounded to the nearest dollar.

Compensation Cap Alternative B

(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 amount of compensation paid to the candidate does not exceed the amount of the annualized hourly minimum wage, when calculated at the daily rate. *Annualized hourly minimum wage* means 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 that has a higher minimum wage than the Federal minimum wage shall calculate the annualized hourly minimum wage based on the State minimum wage, rounded to the nearest dollar.

Compensation Cap Alternative C

(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 amount of compensation paid to the candidate does not exceed the amount of an annualized hourly minimum wage of $15 per hour, when calculated at the daily rate. *Annualized hourly minimum wage* means the amount an individual receiving a minimum wage of $15 per hour would earn by working 40 hours a week for 52 weeks, rounded to the nearest dollar. The hourly minimum wage established in this section ($15) shall be increased subject to the following conditions:

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

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

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

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

Compensation Cap Alternative D

(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 earned income that the candidate received during the 12-month period prior to becoming a candidate or the annualized hourly minimum wage, whichever is greater. Compensation may not exceed the minimum annual salary paid to a Federal officeholder holding the Federal office that the candidate seeks. *Annualized hourly minimum wage* means 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 that has a higher minimum wage than the Federal minimum wage shall calculate the annualized hourly minimum wage based on the State minimum wage. The committee must calculate compensation, earned income, annualized hourly minimum wage, and minimum annual salary at the daily rate, rounded to the nearest dollar.

Compensation Cap Alternative E

(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: the minimum annual salary paid to a Federal officeholder holding the Federal office that the candidate seeks, and the average annual income that the candidate earned during the most recent three 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.

Compensation Cap Alternative F

(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 annualized hourly minimum wage or the average annual income that the candidate earned during the most recent three calendar years in which the candidate earned income prior to becoming a candidate, whichever is greater. Compensation must not exceed the minimum annual salary paid to a Federal officeholder holding the Federal office that the candidate seeks for the same period of time. *Annualized hourly minimum wage* means 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 that has a higher minimum wage than the Federal minimum wage shall calculate the annualized hourly minimum wage based on the State minimum wage. The principal campaign committee must calculate compensation, earned income, minimum annual salary, and annualized hourly minimum wage at the daily rate, rounded to the nearest dollar.

Compensation Definition Alternative A

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

Compensation Definition Alternative B

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

Compensation Definition Alternative C

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

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

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

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

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

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

For Compensation Cap Alternatives D, E, and F

(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 1, 2022.

On behalf of the Commission,

Allen J. Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–26778 Filed 12–9–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, and 65

[Docket No. FAA–2022–1463; Notice No. 23–02]

RIN 2120–AL74

Airman Certification Standards and Practical Test Standards for Airmen; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise certain regulations governing airman certification. Specifically, the FAA Airman Certification Standards and Practical Test Standards are currently utilized as the testing standard for practical tests and proficiency checks for persons seeking or holding an airman certificate or rating. The FAA proposes to incorporate these Airman Certification Standards and Practical Test Standards by reference into the certification requirements for pilots, flight instructors, flight engineers, aircraft dispatchers, and parachute riggers.

DATES: Send comments on or before January 11, 2023.

ADDRESSES: Send comments identified by docket number FAA–2022–1463 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Daron Malmborg, Airman Testing Standards Branch, AFS–630, Federal Aviation Administration, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954–4151; *AFS630comments@faa.gov.*

SUPPLEMENTARY INFORMATION:

List of Abbreviations and Acronyms Frequently Used in This Document

Administrative Procedure Act (APA)
Airman Certification Standards (ACS)
Airline Transport Pilot (ATP)
Instrument Proficiency Check (IPC)
Instrument Flight Rules (IFR)