

February 9, 2023

Federal Election Commission
Attn: Amy L. Rothstein
Assistant General Counsel for Policy
1050 First Street, NE
Washington, D.C. 20463

Comment Regarding Notice of Proposed Rulemaking (REG 2021-01)

Dear Ms. Rothstein:

I am writing with regards to the Federal Election Commission's ("FEC" or the "Commission") Notice of Proposed Rulemaking ("NPRM") regarding candidate salaries and other types of compensation.

I would like to thank the Commission for their response to my petition for rulemaking and for giving time and consideration to this issue. Although I have no plans to run for federal office at this time, I recall the difficulties created by running for office – particularly, the inability to have access to health care and a living wage during what was a full-time job as a candidate. It is my hope that the rules discussed here will alleviate the burdens I experienced during my candidacy in 2020 and foster a more representative population of federal candidates that mirrors the diversity of our country as a whole.

Comments on Commission Proposals

Alternative F for the salary cap and Alternatives A or B for the compensation definition most closely align with my reasoning for initiating this rulemaking petition.

1. Candidate Salaries

Alternative F ensures that a candidate's salary will be able to provide them with a living wage, but I have one recommended change. By providing a floor for a candidate's salary – no matter what the individual's previous income was, Alternative F will expand the universe of people who can sustainably run for federal office. However, I would suggest that the Commission combine Alternative F's salary cap (equal to the minimum salary for the office sought) with Alternative A by allowing a candidate to receive a salary equal to half the minimum salary for the office sought, if that amount is greater than the candidate's average income over the past three years.

Any salary based on the minimum wage is simply insufficient to support the out-of-pocket expenses required to work as a full-time candidate. Many necessities like rent, clothing,

food, and travel cannot be covered by a candidate's campaign under the Commission's personal use regulations, and as a result, anything below a salary equal to half the minimum salary for the office sought would not be a living wage for someone running for federal office full-time. The minimum wage of any state is not comparable to the compensation required to run for office and is not a suitable floor to support working-class candidates.

In addition, I particularly appreciate the Commission's proposed expansion of the eligibility period. Under the current rules, federal candidates in a number of states are forced to campaign full-time for months on end without the ability to take a salary. As a result, becoming a federal candidate is only in the realm of possibility for the privileged few. A working-class candidate simply could not sustain a campaign under those circumstances. Indeed, as noted in my initial petition, I emptied my savings just so I could run for Congress in 2020 – a reality I hope future working-class candidates can avoid. Therefore, I fully support the expansion of the payroll rules such that candidates may begin to earn a salary once their Statement of Candidacy has been filed with the Commission.

2. Fringe Benefits

With regards to the definition of compensation, I am in support of either Alternative A or B. Because most Americans' health insurance comes from their employers, either of these Alternatives would ensure that no candidate or campaign staffer would have to experience what I did – a months-long campaign without health insurance coverage (in the middle of a global pandemic with no salary). Alternative C, however, would open up campaign staff to the untenable possibility of working long hours on the campaign trail without being provided with the health care coverage that work deserves and requires. For this reason, I would strongly prefer Alternative A or B.

That said, the provision of health insurance or other benefits that are not considered wages by the Internal Revenue Service, as well as any other pre-tax benefits, should not be included in the definition of compensation. Inclusion of these items in the definition of compensation would not put a candidate on par with a member of Congress who is entitled to such benefits in addition to their salary. To be sure, the provision of non-taxable benefits could only be possible if provided within a campaign-wide plan available to all staff. Any payments to a candidate for fringe benefits not within such a plan would be taxable benefits and subject to the compensation limit.¹

¹ See generally Internal Revenue Service, *Publication 15-B, Employers Tax Guide to Fringe Benefits* (2023), available at www.irs.gov/pub/irs-pdf/p15b.pdf. Not only that, but allowing a campaign to reimburse employees, including the candidate, for health care costs may violate the Affordable Care Act and relevant regulations and leads to certain tax consequences. See, e.g., Internal Revenue Service, *Employer Health Care Arrangements* (last updated Sept. 29, 2022), available at <https://www.irs.gov/affordable-care-act/employer-health-care-arrangements> (citing IRS Notice 2013-54, *Application of Market Reform and other Provisions of the Affordable Care Act to HRAs, Health FSAs, and Certain other Employer Healthcare Arrangements*, available at <https://www.irs.gov/pub/irs-drop/n-13-54.pdf>).

3. Other provisions

Additionally, I am in full support of the miscellaneous rule changes (i.e., provisions related to outside income, compensation versus debt, and evidence of earned income), and view these provisions as necessary for sufficient oversight for the allowance of candidates to earn a salary and receive fringe benefits.

Conclusion

In conclusion, I sincerely appreciate the Commission's work on this matter. I began this process to ensure that those who come after me do not go through the same painful financial choices that I had to make in order to run for federal office, and my hope is that these changes will ultimately lower the barriers to running for office for working-class people, people of color, and other marginalized groups. The Alternatives discussed above will meet that goal. I would request that the Commission hold a public hearing on this issue, and that I be allowed to testify remotely at any such hearing.

If you have any questions or need additional information in connection with this Comment, please contact my counsel, Neil Reiff, at (202) 479-1111.

Sincerely,



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