

March 23rd, 2021

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
Office of General Counsel
1050 First Street, NE
Washington, D.C. 20463

VIA EMAIL: LSTEVENSON@FEC.GOV

Petition for Rulemaking to Improve Candidate Salary Rules

Dear Ms. Stevenson:

I am writing in accordance 11 C.F.R. § 200.2(a)(1) to petition the Commission to update and improve its regulations found at 11.C.F.R. § 113.1(g)(1)(i)(I) related to candidate salaries, including creating a salary floor and lengthening the available salary period. In addition, as discussed below, I request that the Commission include health care costs as a permissible expense to make it easier for working Americans to run for federal office.¹

Background

I was a candidate for United States Representative for the 7th District of Georgia in 2020. I was unsuccessful in obtaining my party's nomination in the primary election. During the primary election, I requested an Advisory Opinion seeking clarification as to whether the payment of a candidate's health insurance premiums was a permissible campaign expense.² However, since the Commission did not have a quorum, it was unable to render an opinion. I am submitting this petition because I think it is vitally important that working Americans who are running for Federal office have access to healthcare and a living wage during their candidacy.

Running for office is a full time job and is cost prohibitive. Working people are underrepresented in Congress because they cannot afford to run for office. I announced my candidacy for Congress in February 2019. I ran full time for 16 months and could barely pay rent and utilities. I had to cancel my health insurance because the premiums were too expensive without any income. I also had to put my student loans into forbearance because I could not afford the monthly payments. I depleted my savings to pay for my bare necessities. Under the

¹ It is worth noting that H.R.1, which was passed by the House on March 3, 2021, would authorize the payment of a candidate's health insurance premiums mooting the need for this rule change. The salary rule changes would still be relevant under the current version of H.R. 1.

² FEC Advisory Opinion Request 2020-01.

Commission’s current regulations, I was unable to pay myself a salary for well over a year until the primary ballot qualification deadline on March 6, 2020. This only gave me two months to receive a salary from campaign funds before the Primary election—it was too little, too late by then. I ran for Congress in the middle of a pandemic without a salary or health insurance and I was not the only one.

Nearly 40% of our Members of Congress are millionaires, which does not reflect the economic diversity of this country.³ If we want a representative democracy with lawmakers that share our lived experiences, we need to eliminate financial barriers that prevent so many qualified Americans from running for office. Our current rules are tipped in favor of wealthy candidates. American campaigns are incredibly expensive, which means candidates have to start campaigning earlier in order to raise the money to be competitive. This puts working class candidates at a severe disadvantage since they have to work harder to make up for the fact that they do not have wealthy donor networks. Working class candidates also struggle to make ends meet because they have to wait to draw a salary until, on average, three months before the primary election. Because of the financial impediments, many working people choose not to run for office, and women and people of color are at an even greater disadvantage due to wage and wealth gaps.⁴ The 117th Congress, which is the most diverse in American history, is still only comprised of 23% people of color and 26% women, despite the fact that people of color make up nearly 40% and women over 50% of the population.⁵ Further still, a study in 2018 found that workers make up half of America but only **two percent** of Congress.⁶

The Commission took the first step when it passed the current regulations in 2002 allowing candidates to draw a salary. Then Commissioner Michael Toner, who sponsored the measure, said at the time: “Candidates of modest means too often have been crowded out of running for office. [The regulation] may allow people like blue-collar workers, school teachers

³ Amanda Terkel, *Running For Office Is Really Hard If You’re Not A Millionaire*, HUFFPOST, (Dec. 3, 2018), https://www.huffpost.com/entry/running-for-office-congress-house-millionaires_n_5c0019b2e4b0864f4f6b5535.

⁴ Kilolo Kijakazi and Heather McCulloch, *Building Women’s Wealth Is Key to Economic Security*, SLATE, May 29, 2018), <https://slate.com/human-interest/2018/05/gender-inequality-closing-the-wealth-gap-is-critical-to-future-financial-security.html>.

⁵ Katherine Schaeffer, *Racial, ethnic diversity increases yet again with the 117th Congress*, Pew Research Center (Jan. 28, 2021), <https://www.pewresearch.org/fact-tank/2021/01/28/racial-ethnic-diversity-increases-yet-again-with-the-117th-congress> (last visited Feb. 11, 2021); see also Census QuickFacts available at <https://www.census.gov/quickfacts/fact/table/US/PST045219> (last visited February 11, 2021).

⁶ Dr. Nicholas Carnes, *Working-class people are underrepresented in politics. The problem isn’t voters.*, VOX (Oct. 27, 2018), <https://www.vox.com/policy-and-politics/2018/10/24/18009856/working-class-income-inequality-randy-bryce-alexandria-ocasio-cortez>.

and others who don't make six-figure salaries to run for office.”⁷ In its Explanation & Justification, the Commission specifically noted that the rule change was intended to “compensate candidates for lost income that is foregone due to becoming a candidate.”⁸ As intended, the current regulations have opened the doors, but the odds are still stacked against working Americans. Representative Jamaal Bowman is a prime example of the extreme lengths required for working Americans to win a competitive primary. For the first six months of his campaign for Congress in 2019, he worked full-time as a middle school principal.⁹ An average day would go something like:

“He'd canvass at a train station from 6:30-7 in the morning, then go to work from 8 a.m. until 3:30 p.m. After school, he'd leave to do call time for a few hours until 6:30 or 7:30 p.m., and then go to a house party or a meet-and-greet at someone's home until 9:30. On weekends, he would spend 6-12 hours doing campaign work, meaning he never really got a day off.”¹⁰

Representative Bowman's story is just one of many stories of the sacrifices that working Americans have to make to run for Federal office. Allowing candidates to draw a salary earlier in their campaigns would go along way to easing the burdens of running for office and normalizing the idea of candidates receiving salaries from their campaigns. The Commission should build upon the first step it took nearly twenty years ago and expand the ability for candidates to draw a salary from their campaign funds by lengthening the salary period, implementing a salary floor, and allowing the candidate's authorized committee to pay for the candidate's health insurance.

The FEC should amend its regulations to lengthen the salary period.

The current text of the candidate salary regulation states that a “salary shall not be paid to a candidate 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 in those states that do not conduct primaries, on January 1 of each even numbered year.”¹¹ These filing deadlines vary wildly based on state law and are put in place by the states to be final deadlines for announcing a candidacy

⁷ Katherine Q. Seelye, *Candidates Allowed to Have Salaries From Campaigns*, NEW YORK TIMES, (NOV. 26, 2002), <https://www.nytimes.com/2002/11/26/us/candidates-allowed-to-have-salaries-from-campaigns.html>.

⁸ Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,971 (December 13, 2002).

⁹ Rachel M. Cohen, *A Campaign Finance Rule Makes Life Much Harder for Working-Class Challengers*, THE INTERCEPT (Jan. 16, 2020), <https://theintercept.com/2020/01/16/campaign-finance-law-wealthy-working-class-candidates/>.

¹⁰ *Id.*

¹¹ 11 C.F.R. § 113.1(g)(1)(i)(I).

for election administration purposes. During the 2018 election cycle, for example, the primary ballot qualification deadlines ranged from December 4, 2017 in Illinois to July 10, 2018 in Delaware, a difference of 218 days.¹² It is becoming more and more common for candidates to start their campaigns early in the calendar year before the election, and in states like Delaware, along with the fourteen other states with ballot qualification deadlines occurring between May and July of the election year, this means candidates are often campaigning for well over a year before they have the opportunity to receive a salary. Furthermore, many states have ballot qualification deadlines just two to three months prior to their primary election.¹³ For example, in 2018 in Pennsylvania, the ballot qualification deadline was March 20th, and the Primary was held on May 15th, just 56 days later. In my home state of Georgia in 2018, the ballot qualification deadline was March 9th, and the Primary was held on May 22nd, just 74 days later. This forces candidates into a no-win situation: campaign full-time without a salary putting their economic security at risk to increase their chances of winning or keep working while campaigning on their off hours diminishing their chance of winning.

The Commission should amend 11 C.F.R. § 113.g(1)(i)(I) to standardize and expand the ability for candidates to draw a salary.¹⁴ One possible solution would be to set the first date a candidate may draw a salary to a set number of days before the primary election instead of relying on the ballot access deadline. I would recommend that the Commission set the start date *at least* 180 days before the primary election, but a full year would be optimal. The other conditions to candidate salaries would remain the same to prevent any possible abuse of the rule.

The FEC should amend its regulations to create a salary floor that enables candidates to earn a living wage.

The Commission should also amend its regulations to implement a salary floor for candidates running for office who may have had minimal or low income previously to ensure that candidates are paid a living wage for doing the important work of running for office. Currently, Commission regulations set the maximum a candidate can earn based on the **lesser of**: the minimum salary of the office the candidate is seeking or the amount of income earned by the candidate in the year prior to becoming a candidate. This leaves candidates who are full time caretakers or who have had gaps in employment out in the

¹² The 2018 cycle is used as an example since so many election dates were changed in 2020 due to the coronavirus pandemic. See, Exhibit A: 2018 Candidate Salary Windows based upon the FEC 2018 Congressional Primary Dates and Candidate Filing Deadlines for Ballot Access (<https://www.fec.gov/resources/cms-content/documents/2018pdates.pdf>).

¹³ See, Exhibit A.

¹⁴ The current regulations have proven to be extremely difficult to implement during the course of a campaign. See, MUR 5787 (Kalyn for Congress), MUR 7068 (Mowrer for Iowa), and ADR 196, 198, 199, 200, 213 (LeSuer for Congress).

cold. The Commission should set the floor at no less than the annualized salary of \$15 per hour.

Campaigns should be allowed to pay the health insurance premiums for candidate-employees.

The cost of healthcare in the U.S. is rising, creating another major structural barrier to working class Americans considering a run for office.¹⁵ In 2019, the average annual premiums for single coverage were over \$7,000.¹⁶ In order to launch a successful campaign, most people must forgo full-time employment — the source of some or all of health insurance premium payments for nearly 58% of non-elderly Americans.¹⁷ And in Georgia, the accessibility of healthcare for working class folks is especially dire, with 17% of people in my own district not having health insurance.¹⁸ The ability to use campaign funds to pay for health insurance premiums would be another important step towards lowering the barriers for working class people who are considering running for office.

The current regulations are silent as to whether payment of candidate health insurance premiums is considered personal use. However, the Commission has previously determined that reimbursing a candidate's health insurance premiums from campaign funds was not covered by the 2002 candidate salary rule.¹⁹ The Commission's new rule should permit a candidate to join any health benefit plan already provided to other campaign employees at the time they become eligible to receive compensation from the committee. In addition, the Commission rule should clarify that any payments for health insurance premiums that are not otherwise taxable under Internal Revenue Service rules should not count against any compensation cap set by the Commission.

¹⁵ Megan Leonhardt, *Americans now spend twice as much on health care as they did in the 1980s*, CNBC, (Oct. 9, 2019), <https://www.cnbc.com/2019/10/09/americans-spend-twice-as-much-on-health-care-today-as-in-the-1980s.html>. See also, Jan Ransom and Jeffrey C. Mays, *Tiffany Cabán Was the Next Progressive Hope. Now What?*, THE NEW YORK TIMES (Aug. 13, 2019), <https://www.nytimes.com/2019/08/13/nyregion/tiffany-caban-future-queens-da.html>.

¹⁶ Alicia Adamczyk, *Health insurance premiums increased more than wages this year*, CNBC, (Sept. 26, 2019), <https://www.cnbc.com/2019/09/26/health-insurance-premiums-increased-more-than-wages-this-year.html>.

¹⁷ Matthew Rae, Gary Claxton, Larry Lefitt, Daniel McDermott, *Long Term Trends in Employer-Based Coverage*, Peterson-KFF, (Apr. 3, 2020), <https://www.healthsystemtracker.org/brief/long-term-trends-in-employer-based-coverage/> (last visited Feb. 11, 2021).

¹⁸ U.S. Census Bureau, American Community Survey “Socio-Economic” <https://www.census.gov/mycd/?st=13&cd=07>

¹⁹ See MUR 7068 (Mowrer for Iowa) (the Commission found that since health care premiums would exist irrespective of candidacy, payment with campaign funds constituted an impermissible personal use).

As I learned firsthand, the inability for full-time candidates to receive the same health insurance benefits offered to other fulltime campaign employees is a major roadblock for working people who want to run for office. The prohibitions on personal use exist to prevent potential abuse by candidates misusing campaign funds. Allowing a candidate to use campaign funds to pay her own health insurance premiums does not give rise to any such concern for abuse — there is no risk of enriching a candidate where the premium payments would be paid directly to the health insurance provider and those payments would be fully disclosed to the public. Allowing campaign funds to be used for health insurance would be another step towards removing the obstacles facing working people running for office and is permissible under the current law.

For the reasons stated above, I am requesting that Commission initiate a rulemaking to amend 11 C.F.R. § 113.1(g) to lower the barriers for working Americans to run for Federal office.

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

Sincerely,

A handwritten signature in black ink that reads "Nabilah Islam". The signature is written in a cursive, flowing style.

Nabilah Islam
1808 Philadelphia Court
Lawrenceville, GA 30043

EXHIBIT A

2018 Primary Candidate Salary Windows

State	2018 Ballot Qualification Date	2018 Primary Date	Days Between Qualification and Primary
Pennsylvania (House)	3/20/2018	5/15/2018	56
Delaware	7/10/2018	9/6/2018	58
Connecticut	6/12/2018	8/14/2018	63
New Jersey	4/2/2018	6/5/2018	64
North Dakota	4/9/2018	6/12/2018	64
Idaho	3/9/2018	5/15/2018	67
Kansas	6/1/2018	8/7/2018	67
Hawaii	6/5/2018	8/11/2018	67
North Carolina	2/28/2018	5/8/2018	69
Oregon	3/6/2018	5/15/2018	70
Pennsylvania (Senate)	3/6/2018	5/15/2018	70
South Dakota	3/27/2018	6/5/2018	70
Minnesota	6/5/2018	8/14/2018	70
Georgia	3/9/2018	5/22/2018	74
South Carolina	3/30/2018	6/12/2018	74
Oklahoma	4/13/2018	6/26/2018	74
Wisconsin	6/1/2018	8/14/2018	74
Nebraska	3/1/2018	5/15/2018	75
Virginia	3/29/2018	6/12/2018	75
New York	4/12/2018	6/26/2018	75
Vermont	5/31/2018	8/14/2018	75
Rhode Island	6/27/2018	9/12/2018	77
Iowa	3/16/2018	6/5/2018	81
Washington	5/18/2018	8/7/2018	81
Alaska	6/1/2018	8/21/2018	81
Wyoming	6/1/2018	8/21/2018	81
Arkansas	3/1/2018	5/22/2018	82
New Mexico	3/13/2018	6/5/2018	84
Texas	12/11/2017	3/6/2018	85
Montana	3/12/2018	6/5/2018	85
Indiana	2/9/2018	5/8/2018	88
California	3/9/2018	6/5/2018	88
Nevada	3/16/2018	6/12/2018	88
Virgin Islands	5/8/2018	8/4/2018	88
New Hampshire	6/15/2018	9/11/2018	88
Nebraska (Incumbents)	2/15/2018	5/15/2018	89
Maine	3/15/2018	6/12/2018	89
Ohio	2/7/2018	5/8/2018	90
Arizona	5/30/2018	8/28/2018	90
Mississippi	3/1/2018	6/5/2018	96
Colorado	3/20/2018	6/26/2018	98
West Virginia	1/27/2018	5/8/2018	101
Utah	3/15/2018	6/26/2018	103
Michigan	4/24/2018	8/7/2018	105
Illinois	12/4/2017	3/20/2018	106
Kentucky	1/30/2018	5/22/2018	112
Alabama	2/9/2018	6/5/2018	116
Florida	5/4/2018	8/28/2018	116
Maryland	2/27/2018	6/26/2018	119
Tennessee	4/5/2018	8/2/2018	119
Massachusetts	5/8/2018	9/4/2018	119
Missouri	3/27/2018	8/7/2018	133
Louisiana	01/01/2018 (first date salary may be drawn when no primary)	No primary	