



CITIZENS FOR  
RESPONSIBILITY &  
ETHICS IN WASHINGTON

February 10, 2023

The Ms. Amy L. Rothstein  
Assistant General Counsel for Policy  
Federal Election Commission  
1050 First Street, N.E.  
Washington, DC 20463

Re: 11 C.F.R. Part 113, Campaign Funds for Candidate's Compensation

Dear Commissioners:

Citizens for Responsibility & Ethics in Washington (“CREW”) respectfully requests the Federal Election Commission (“FEC” or the “Commission”) [amend](#) 11 C.F.R. Part 113, the regulations governing the use of campaign funds to pay compensation to a candidate, including by adopting the proposed “Compensation Cap Alternative A.” We firmly believe that the FEC should amend these regulations; however, some of the Commission’s [proposed amendments](#), as written, would perpetuate prohibitive salary caps that hinder low-income candidates or chill low-income aspiring candidates from running for public office. We agree in part with the Petitioner’s proposals which stand to: (1) extend the date on which a candidate may begin drawing a campaign salary; (2) establish a minimum candidate salary; and (3) expressly permit a candidate to use campaign funds to pay costs of any health benefit plan already provided to other campaign employees.<sup>1</sup> The revisions we recommend, including the proposed “Compensation Cap Alternative A”, would help to guarantee that Americans, regardless of their financial background and income, can pursue, win and serve in the highest positions of government, without undermining existing safeguards to prevent exploitation of our campaign finance system by corrupt actors, including many who have been subjects of CREW complaints.

CREW is a non-partisan, non-profit organization dedicated to promoting ethics, transparency, and integrity in government institutions, and fighting the influence of money in our political system.<sup>2</sup> We work to foster a government that is ethical and accountable by highlighting abuses and laying the groundwork for new policies and approaches that encourage public officials to work for the benefit of the people, not wealthy and powerful special interests. CREW has filed numerous complaints regarding dark money, disclosure failures, and campaign spending for personal use including FEC and ethics complaints

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

<sup>2</sup> *About Us*, Citizens for Responsibility and Ethics in Washington, [www.citizensforethics.org/about/](http://www.citizensforethics.org/about/).

against former Reps. Duncan Hunter (R-CA)<sup>3</sup> and Rob Andrews (D-NJ)<sup>4</sup> for personal use of campaign funds, and a complaint against former Rep. Mark Meadows over other unethical campaign spending,<sup>5</sup> among others.<sup>6</sup>

The FEC's proposal on candidate salaries seeks to amend the FEC's regulations regarding the use of campaign funds by a candidate's principal campaign committee to pay compensation to the candidate. The Federal Election Campaign Act ("FECA") "prohibits a candidate's authorized committee from converting campaign funds to 'personal use.'"<sup>7</sup> The term "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."<sup>8</sup>

Under existing FEC rules, a candidate may receive a salary from his or her campaign committee only under certain conditions. Those restrictions include: (1) the salary must be paid by the principal campaign committee only; (2) the salary must not exceed the lesser of the minimum annual salary for the federal office sought or the earned income that candidate received during the year prior to becoming a candidate; (3) individuals who elect to receive a salary from their campaign committees must provide income tax records and additional proof of earnings from relevant years upon request from the FEC; (4) salary payments must be made on a pro-rata basis (meaning the candidate may not receive a whole year's salary if they are not a candidate for an entire twelve-month period); (5) incumbent federal officeholders are barred from receiving a salary payment from campaign funds; and (6) in states that hold primaries, the first payment of salary shall be made no sooner than the filing deadline for access to the primary ballot in the state in which the candidate is running.<sup>9</sup> FEC guidance states that salary payments may continue until the date when the candidate is no longer considered a candidate for office or until the date of the general election or general election runoff, with a separate provision related to special elections.<sup>10</sup>

The FEC's proposed amendments purport to address the issues created by the current regulations that inhibit candidates who are full time caretakers or those with gaps in their employment history arising from running for elected office. The FEC's mission is "to protect the integrity of the federal campaign finance process by providing transparency and fairly enforcing and administering federal campaign finance laws."<sup>11</sup> We believe that

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<sup>3</sup> *CREW files ethics complaint, requests FEC audit on Duncan Hunter*, CREW (Apr. 28, 2016), [www.citizensforethics.org/news/press-releases/crew-files-ethics-complaint-requests-fec-audit-duncan-hunter-2/](http://www.citizensforethics.org/news/press-releases/crew-files-ethics-complaint-requests-fec-audit-duncan-hunter-2/).

<sup>4</sup> *Compl.*, In Re Robert E. Andrews (Nov. 30, 2011), <https://www.fec.gov/files/legal/murs/6511/14044354083.pdf>.

<sup>5</sup> *CREW files complaint against Mark Meadows over campaign spending*, CREW (Oct. 30, 2020), [www.citizensforethics.org/legal-action/legal-complaints/crew-files-complaint-against-mark-meadows-over-campaign-spending/](http://www.citizensforethics.org/legal-action/legal-complaints/crew-files-complaint-against-mark-meadows-over-campaign-spending/).

<sup>6</sup> *CREW sues for DOJ and FBI records on Cohen campaign finance crimes*, CREW (July 30, 2019), [www.citizensforethics.org/legal-action/lawsuits/doj-fbi-records-cohen-campaign-finance-crimes/](http://www.citizensforethics.org/legal-action/lawsuits/doj-fbi-records-cohen-campaign-finance-crimes/).

<sup>7</sup> 52 U.S.C. § 30114(b).

<sup>8</sup> *Id.* at § 30114(b)(2).

<sup>9</sup> Federal Election Commission, Personal Use, [www.fec.gov/help-candidates-and-committees/making-disbursements/personal-use/](http://www.fec.gov/help-candidates-and-committees/making-disbursements/personal-use/) (accessed Feb. 4, 2023); see also 11 C.F.R. § 113.1(g).

<sup>10</sup> *Id.*

<sup>11</sup> *Mission and History*, Federal Election Commission, [www.fec.gov/about/mission-and-history/](http://www.fec.gov/about/mission-and-history/).

“fairness” and “integrity” in our campaign finance system necessarily entails a regulatory regime ensuring that individuals, regardless of financial background, are able to serve in government and participate in the political process. That mission also demands that the Commission’s regulations not favor incumbents and individuals that are independently wealthy over those of modest means who want to run for public office. These goals must be reflected in the amended regulations regarding candidate salaries.

We have ample evidence that the current rules present a challenge for many actual or aspiring candidates from lower-income backgrounds including stay-at-home parents, recent college graduates, and minimum-wage workers who want to run for and serve in public office. In 2018, non-incumbent House candidates “spent an average of \$3.5 million to win” their campaigns, a daunting sum for anyone, but especially for someone from a low income background without rich parents or friends.<sup>12</sup> For example, shortly after winning election to Congress, Rep. Maxwell Alejandro Frost (D-FL) tweeted that his housing application was denied in D.C. due to poor credit after running up “a lot of debt running for Congress for a year and a half.”<sup>13</sup> Frost explained that he quit his job to become a full time candidate and that he “didn’t make enough money from Uber itself to pay for my living,” tweeting that “[a]s a candidate, you can’t give yourself a stipend or anything till the very end of your campaign. So most of the run, you have no \$ coming in unless you work a second job.”<sup>14</sup> Frost included in his Tweet thread a sobering coda: “This ain’t meant for people who don’t already have money.”<sup>15</sup>

Rep. Alexandria Ocasio-Cortez (D-NY) also spoke of her difficulty securing housing in D.C. as well as the personal financial costs while she was running a congressional campaign, having started her campaign while still waiting tables and tending bar in a restaurant.<sup>16</sup> Under the FEC’s regulations, while running for office in 2018, Ocasio-Cortez would have only been able to receive a salary that was either in the amount of income earned in the 12-month period prior, or the minimum office holder salary, whichever is lower. In 2017, Ocasio Cortez’s income was \$27,000.<sup>17</sup> While these stories are notable, we only know about them because Reps. Maxwell-Frost and Ocasio-Cortez won their races despite these challenges. There are undoubtedly numerous other candidates who dropped out early or people who declined to run at all because they could not afford to leave their job to launch a robust campaign. Their stories might never be told, because they never had a fair shot of participating in the process.

CREW notes that the current regulations regarding candidate compensation unintentionally create barriers for those that do not come from wealth to run for public office. We think one goal of these regulations should be to ensure that individuals, regardless of financial background, are able to serve in government. Millionaires comprise

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<sup>12</sup> State of Money in Politics, Open Secrets (Feb. 19, 2019), [www.opensecrets.org/news/2019/02/state-of-money-in-politics-the-price-of-victory-is-steep/](http://www.opensecrets.org/news/2019/02/state-of-money-in-politics-the-price-of-victory-is-steep/).

<sup>13</sup> Maxwell Alejandro Frost (@MaxwellFrostFL), Twitter (Dec. 8, 2022, 11:29 PM), <https://twitter.com/MaxwellFrostFL/status/1600890367586406400>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See *How to run for Congress if you're broke*, NBC News (Dec. 10, 2018), [www.nbcnews.com/politics/elections/how-run-congress-if-you-re-broke-n945371](http://www.nbcnews.com/politics/elections/how-run-congress-if-you-re-broke-n945371).

<sup>17</sup> See Financial Disclosure Report, [disclosures-clerk.house.gov/public\\_disc/financial-pdfs/2018/10021221.pdf](https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2018/10021221.pdf).

almost 40% of congressional membership, despite only being 4% of the U.S. population.<sup>18</sup> Any candidate salary restriction is based in large part on what they made the previous year, hinders low-income individuals, young candidates, and those without a stable income from participating in the campaigning process. As a government ethics attorney for more than a decade, I have seen the practical impact of these issues on our government, particularly in Congress.

Because those lacking generational wealth are often unable to run for office, Congress is not nearly as racially or economically diverse as the American public. That homogeneity means that corporate or “old money” interests are over-represented in elected office and contributes to groupthink on any number of significant policy and ethical issues. For example, in the 117th Congress, efforts to pass a congressional stock ban failed, despite overwhelming bipartisan public support because members could not resolve concerns that they or their family’s financial portfolios might be disadvantaged in some way.<sup>19</sup> Policy proposals about corporate America’s stock buyback policy may also be the subject of congressional action this term following President Biden’s mention of them in the State of the Union Address this week.<sup>20</sup> Meanwhile Congress continues to face questions and even lawsuits regarding allegations of racial discrimination.<sup>21</sup> These are just a few recent examples of how a lack of socioeconomic and racial diversity in Congress can further exacerbate discrimination and ethical concerns in policymaking. A legislative body overrepresented by the wealthy and underrepresenting the working-class and people of color will always struggle to effectively develop policies regarding issues that disproportionately impact those in lower socioeconomic groups and people of color.<sup>22</sup>

CREW supports allowing candidates to pay themselves salaries from campaign funds in an amount that does not exceed 50% of the minimum annual salary (pro rata) for the office sought by the candidate less what the candidate currently earns after they declare. As a result, we endorse the [FEC’s proposed Option A](#), provided that it is understood as imposing a single cap on all candidates regardless of prior income. Our recommendation would lower the maximum amount of compensation a candidate could receive on top of their outside salary. For example, if a candidate previously earned \$100,000 per year, they could not also receive compensation from their campaign on top of that \$100,000 unless they were no longer receiving that stream of income after they began their candidacy. This salary restriction is also substantially more than the annualized salary of \$15,080 for the

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<sup>18</sup> Amanda Terkel, *Running For Office Is Really Hard If You’re Not A Millionaire*, HUFFPOST, (Dec. 3, 2018), [www.huffpost.com/entry/running-for-office-congress-house-millionaires\\_n\\_5c0019b2e4b0864f4f6b5535](http://www.huffpost.com/entry/running-for-office-congress-house-millionaires_n_5c0019b2e4b0864f4f6b5535).

<sup>19</sup> Bryan Metzger, *70% of voters support banning lawmakers from trading stocks, and nearly half say they’re more likely to vote for candidates who support it, too*, Business Insider (June 21, 2022), [www.businessinsider.com/poll-stock-trading-ban-congress-2022-6](http://www.businessinsider.com/poll-stock-trading-ban-congress-2022-6).

<sup>20</sup> Brian Sozzi, *President Biden calls out stock buybacks in State of the Union address*, Yahoo! News (Feb. 8, 2023), [news.yahoo.com/president-biden-calls-out-stock-buybacks-in-state-of-the-union-address-104810205.html](http://news.yahoo.com/president-biden-calls-out-stock-buybacks-in-state-of-the-union-address-104810205.html).

<sup>21</sup> Nicholas Wu and Katherine Tully-McManus, *Black House Staffer Files Lawsuit Alleging Hostile Work Environment and Discrimination*, Politico (July 15, 2021), [www.politico.com/news/2021/07/15/black-staffer-discrimination-lawsuit-brad-schneider-office-499769](http://www.politico.com/news/2021/07/15/black-staffer-discrimination-lawsuit-brad-schneider-office-499769); Marianna Sotomayor, *‘Dear White House Staffers’: Anonymous testimonials about workplace culture grip Capitol Hill*, Washington Post (Feb. 4, 2022), [www.washingtonpost.com/politics/2022/02/04/dear-white-staffers-congress/](http://www.washingtonpost.com/politics/2022/02/04/dear-white-staffers-congress/).

<sup>22</sup> Emma Vadehra, *Washington’s Lack of Diversity Is Hurting Democracy*, Progressive Magazine (June 28, 2022), [progressive.org/op-eds/washington-lack-diversity-hurting-democracy-vadehra-220628/](http://progressive.org/op-eds/washington-lack-diversity-hurting-democracy-vadehra-220628/).

long-antiquated federal minimum wage or any state minimum wage.<sup>23</sup> CREW also supports the Petitioner's proposed changes to the regulations that would (1) extend the date on which a candidate may begin drawing a campaign salary to at least 180 days before the primary election and (2) expressly permit a candidate to use campaign finance funds to pay the costs of any health benefit plan already provided to other campaign employees.

Many of the Commission's alternative proposals to set or cap the amount of salary that a candidate could receive tie the potential restriction to a candidate's income from the prior 12-month or three year period before becoming a candidate. Any provision that limits a candidate's compensation based on their prior income necessarily entrenches economic stratification. For example, a stay-at-home parent, full-time student, small family farmer, or minimum wage worker could be significantly limited in their ability to run, or worse, chilled from running at all, if their salary cap was tied to their prior income. Those limitations are even more stark depending on the median income, housing prices, childcare costs, advertising prices, and other economic indicators where they live. In addition, a young candidate, a low-income candidate, or a candidate without a stable income may not have the appropriate documentation of all streams of previous income to meet the burdens created by the proposed regulations. Any regulation implemented should be done in a way that does not require low-income or young individuals to provide more documentation than a candidate with a stable income.

CREW knows well the risks involved with allowing candidates to increase the amount of campaign funds that they can use in exception to the general ban on personal use. CREW filed numerous complaints with the FEC and federal law enforcement including against former Rep. Rob Andrews using campaign funds to fund a trip to a wedding in Scotland<sup>24</sup>, and Rep. Duncan Hunter, who spent campaign funds on lavish vacations, personal pets and even private school for his kids, in violation of federal law and FEC regulations.<sup>25</sup> The myriad scandals of Rep. George Santos might also give the Commission pause in relaxing its regulations at this time. However, thoughtful changes to the salary exception can be made to assist earnest candidates who need to pay themselves a modest salary to make ends meet while running for office and hinder grifters who would launch a political campaign simply to pocket money from their supporters. In seeking to curb the misconduct of bad actors like Andrews, Hunter, or Santos, we must not lose sight of the other important guideposts such as ensuring access to the political system for people who might not have deep pockets, secret financial backers, or a congressional legacy to hoist them into the halls of Congress.

The FEC is currently proposing implementing a new paragraph, (g)(6), to 11 C.F.R. § 113 which would address candidate compensation through defining "compensation," establishing the period during which a candidate is eligible to receive compensation, requiring a candidate to provide evidence of earned income from prior years, requiring a candidate's committee to reduce the maximum amount of compensation, and capping the amount of compensation a candidate can receive. The Commission proposed six alternative

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<sup>23</sup> *Federal Minimum Wage for 2022, 2023*, Minimum-Wage, [www.minimum-wage.org/federal](http://www.minimum-wage.org/federal).

<sup>24</sup> *Compl.*, In Re Robert E. Andrews (Nov. 30, 2011), <https://www.fec.gov/files/legal/murs/6511/14044354083.pdf>.

<sup>25</sup> CREW files Duncan Hunter complaint with OCE, requests FEC audit, CREW (Apr. 18, 2016), ; Morgan Cook, *Report on Rep. Hunter's campaign funds goes well beyond rabbit air travel, finds 'pervasive evidence' of misspending*, San Diego Union-Tribune (Dec. 9, 2019),

[www.sandiegouniontribune.com/news/watchdog/story/2019-12-09/congressional-ethics-office-found-pervasive-evidence-of-hunters-misspending-of-campaign-funds](http://www.sandiegouniontribune.com/news/watchdog/story/2019-12-09/congressional-ethics-office-found-pervasive-evidence-of-hunters-misspending-of-campaign-funds).

ways to cap the amount of compensation; Options A-F. Three of the FEC's proposed alternative options, Options D, E, and F, utilize an approach that bases the compensation cap on the candidate's prior income as the ceiling and the federal minimum wage as the floor. As stated above, any cap that is connected to a candidate's previous income exacerbates inequity by limiting or even functionally prohibiting those without a stable income, those who earned less than a livable wage, and those serving as full or part-time caretakers from being able to afford to live and run for congressional office.

Options B and C both utilize an hourly wage approach. Option B utilizes an hourly minimum wage approach based on the federal minimum wage, \$7.25.<sup>26</sup> Option C utilizes a compensation cap based on the amount an individual receiving \$15 per hour wage would earn by working 40 hours per week, for 52 weeks. The federal minimum wage annual salary, approximately \$15,080, is far less than a livable wage in any congressional district in the country. Minimum wages across jurisdictions vary from \$7.25 to \$16.10 in the District of Columbia, but any proposed method to adjust candidate salary limitations that is tied to either a minimum wage or the candidate's previous salary creates barriers and exacerbates inequity.

The Commission and those commenting have noted the concerns regarding candidates utilizing the regulations as a loophole for misappropriation of funds and potential corruption.<sup>27</sup> As noted above, in 2016, Rep. Duncan Hunter was found to have charged thousands of dollars in personal expenses to his campaign and generally used campaign funds for his personal use. CREW filed an ethics complaint, and, in August of 2016, the Office of Congressional Ethics referred him to the House Ethics Committee for a full investigation. In August of 2018, a federal grand jury indicted Hunter and his wife on 60 counts of wire fraud, falsifying records, campaign finance violations, and conspiracy. CREW also filed a complaint against Rob Andrews for his use of campaign funds to pay international travel to a lavish wedding and \$10,000 for a party that combined his 20th anniversary in Congress with his daughter's high-school graduation.<sup>28</sup> More recently, Rep. George Santos has been accused of hiding the true source of his campaign finances and lying on his FEC filings and on his congressional financial disclosure form. Many media outlets and ethics organizations, including CREW, have highlighted the discrepancies in Rep. Santos's campaign finances and continued to call for investigations into his misrepresentations.<sup>29</sup>

Candidates who have failed to truthfully disclose the sources or uses of their campaign funds have been highlighted in the news and by ethics organizations, prosecuted by law enforcement and voted out of office, suggesting that candidates in the future who attempt to use these regulations to misuse funds will also have attention drawn to their

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<sup>26</sup> The Federal minimum wage has not been updated since 2009. *History of Changes to the Minimum Wage Law*, U.S. Department of Labor, [www.dol.gov/agencies/whd/minimum-wage/history](http://www.dol.gov/agencies/whd/minimum-wage/history).

<sup>27</sup> See also 16 Individual Comments (Monk, William) at 2, REG 2021-01,.

<https://sers.fec.gov/fosers/showpdf.htm?docid=421025>.

<sup>28</sup> *Compl.*, In Re Robert E. Andrews (Nov. 30, 2011), <https://www.fec.gov/files/legal/murs/6511/14044354083.pdf>.

<sup>29</sup> *George Santos should not get intelligence information*, CREW (Jan. 10, 2023),

[www.citizensforethics.org/legal-action/legal-complaints/george-santos-should-not-get-intelligence-information/](http://www.citizensforethics.org/legal-action/legal-complaints/george-santos-should-not-get-intelligence-information/); Aaron Blake, *George Santos's shady campaign money, explained*, Washington Post (Jan. 1, 2023), [www.washingtonpost.com/politics/2023/02/01/george-santos-campaign-finances-explained/](http://www.washingtonpost.com/politics/2023/02/01/george-santos-campaign-finances-explained/).

corruption. Hunter's prosecution demonstrates one of the ways in which potential bad actors can be held accountable for their misuse of campaign funds.

While corruption remains a concern that the FEC should limit and address, campaign funds used for candidate salaries are publicly reported and traceable, unlike schemes we've seen like using campaign funds to rent a candidate's property, as in the case of former President Trump. Campaign funds are also limited to sources that are subject to contribution limits, again unlike other paths. Furthermore, under the *current* regulatory regime, the FEC allows candidates to draw as much as 100% of salary of the office sought from the campaign to pay a candidate's salary - it just only allows this type of arrangement if the candidate already earns a lucrative salary higher than that of the position they seek. The current rules seem to discriminate in favor of the affluent based on an assumption that they are less susceptible to corruption or bribery than lower income candidates. Of course, the very public corruption scandals of former Reps. Andrews and Hunter as well as Rep. Santos belie this erroneous view. Under the proposed rules, moreover, corruption concerns are lessened by reducing the maximum amount of compensation permitted. Additionally, the FEC can ameliorate remaining concerns if Congress takes action to "empower the FEC to address potentially fraudulent PAC practices of scam PACs," as the Commission has requested in its 2022 legislative recommendations.<sup>30</sup> The public needs to be informed if candidates are using funds to pay themselves an excessive salary disproportionate to the campaign's other activities, and prohibiting alternative avenues to siphon campaign funds like campaign leasing properties of the candidate or paying candidate owned vendors for services.

Establishing a robust salary cap set at 50% of the salary of the office sought, and applied regardless of a candidate's prior income addresses potential corruption, treats candidates equally regardless of personal wealth, and provides a reasonable and transparent mechanism to ensure candidates from lower-income backgrounds can compete to earn a seat for public office.

### **Conclusion**

Based on the foregoing, CREW strongly urges the Commission to amend the current regulations regarding the use of campaign funds to allow a candidate to issue a salary that is no more than 50% of the salary of the federal position sought on a pro rata basis. As these rules stand today, candidates from low-income backgrounds face a cap that hinders their ability to run robust and successful campaigns. The fact that some outliers exist despite these challenges does not change the reality that the FEC can facilitate a more representative and ethical process by revising its rules. We hope that the FEC takes this comment under consideration as it contemplates regulatory reform to improve the campaign finance system for all Americans.

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<sup>30</sup> *Legislative Recommendations of the Federal Election Committee*, Federal Election Committee (Adopted Dec. 12, 2022), <https://www.fec.gov/resources/cms-content/documents/legrec2022.pdf>.

February 10, 2023

Page 8

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Sherman", with a long horizontal flourish extending to the right.

Donald K. Sherman  
Senior Vice President & Chief Counsel  
Citizens for Responsibility & Ethics in Washington

\*Caroline Jones, Legal Intern for Citizens for Responsibility & Ethics in Washington, assisted in the drafting of this comment.