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REPORT

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IN THE MATTER OF ALLEGATIONS
RELATING TO REPRESENTATIVE
RASHIDA TLAIB

R E P O R T
OF THE
COMMITTEE ON ETHICS



August 7, 2020.—Referred to the House Calendar and ordered to
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**116TH CONGRESS, 2ND SESSION
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO
REPRESENTATIVE RASHIDA TLAIB**

August 7, 2020

Mr. DEUTCH from the Committee on Ethics submitted the following

REPORT

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ONE HUNDRED SIXTEENTH CONGRESS

U.S. House of Representatives

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August 5, 2020

The Honorable Cheryl L. Johnson
Clerk, House of Representatives
Washington, DC 20515

Dear Ms. Johnson:

Pursuant to clauses 3(a)(2) and 3(b) of Rule XI of the Rules of the House of Representatives, we herewith transmit the attached report, "In the Matter of Allegations Relating to Representative Rashida Tlaib."

Sincerely,

Theodore E. Deutch
Chairman

Kenny Marchant
Ranking Member

CONTENTS

I.	INTRODUCTION.....	1
II.	PROCEDURAL BACKGROUND.....	2
III.	HOUSE RULES, LAWS, REGULATIONS, AND OTHER STANDARDS OF CONDUCT.....	2
IV.	BACKGROUND.....	4
	A. REPRESENTATIVE TLAIB’S DECISION TO RECEIVE A SALARY FROM THE CAMPAIGN.....	4
	B. REPRESENTATIVE TLAIB’S POST-PRIMARY SALARY PAYMENTS.....	7
	C. REPRESENTATIVE TLAIB’S POST-GENERAL ELECTION CAMPAIGN PAYMENTS.....	9
	D. RESPONSE TO THE POST-ELECTION PAYMENTS.....	12
V.	FINDINGS AND CONCLUSIONS.....	14
	A. PERSONAL USE OF CAMPAIGN FUNDS.....	14
	1. <i>November 16, 2018 Payment</i>	17
	2. <i>December 1, 2018 Payment</i>	17
	3. <i>Total Payment Owed by Representative Tlaib to her Campaign</i>	20
	B. REPORTING REQUIREMENTS FOR DEBTS AND OBLIGATIONS.....	21
VI.	CONCLUSION.....	23
VII.	STATEMENT UNDER HOUSE RULE XIII, CLAUSE 3(C).....	24

APPENDIX A: REPORT AND FINDINGS OF THE OFFICE OF CONGRESSIONAL ETHICS (REVIEW NO. 19-4114)

APPENDIX B: REPRESENTATIVE TLAIB’S RESPONSE TO THE OFFICE OF CONGRESSIONAL ETHICS REFERRAL

APPENDIX C: EXHIBITS TO COMMITTEE REPORT

**116TH CONGRESS, 2ND SESSION
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO
REPRESENTATIVE RASHIDA TLAIB**

August 7, 2020

Mr. DEUTCH from the Committee on Ethics submitted the following

R E P O R T

In accordance with House Rule XI, clauses 3(a)(2) and 3(b), the Committee on Ethics (Committee) hereby submits the following Report to the House of Representatives:

I. INTRODUCTION

On August 16, 2019, the Office of Congressional Ethics (OCE) forwarded to the Committee a Report and Findings (OCE's Referral) regarding Representative Rashida Tlaib. OCE reviewed allegations that, Representative Tlaib's campaign committee, Rashida Tlaib for Congress (the Campaign), reported campaign disbursements that may not be legitimate and verifiable campaign expenditures attributable to a bona fide campaign or political purposes.¹ Specifically, OCE considered whether salary payments that Representative Tlaib received after the 2018 general election, totaling \$17,500, were prohibited under campaign finance laws and regulations governing the personal use of campaign funds. OCE recommended that the Committee further review the matter.

The Committee, after further reviewing the allegations, has determined that the evidence is sufficient to support a determination that a portion of the salary payments that Representative Tlaib received after the 2018 general election was inconsistent with the requirements outlined by the Federal Election Campaign Act of 1971 (FECA) and its implementing regulations.² The Committee also recognizes, however, that Representative Tlaib's violation of the applicable restrictions was one of bad timing and not ill intent. Representative Tlaib engaged in good faith efforts to comply with the relevant FECA requirements. The Committee did not find that she sought to unjustly enrich herself by receiving the campaign funds at issue. Indeed, during her campaign, Representative Tlaib received a conservative amount of campaign funds, well below

¹ Report and Findings of the Office of Congressional Ethics (Review No. 19-4114) (Appendix A) (hereinafter OCE's Referral).

² 52 U.S.C. § 30101, et. seq; *see also* 11 C.F.R. § 113.1(g).

the legal threshold for the maximum amount of salary she was eligible to receive; these payments allowed her to forego her salary from her full-time employment so that she could fully participate in campaign activities. However, because she received some of those funds, totaling \$10,800, for time periods in which she was no longer a congressional candidate, those funds were inconsistent with FECA's personal use restrictions.

Accordingly, the Committee directs Representative Tlaib to reimburse her Campaign \$10,800 within a year of the date of this Report.

Based on its review, the Committee unanimously voted to issue this Report and take no further action in this matter.

II. PROCEDURAL BACKGROUND

On April 15, 2019, OCE undertook a preliminary review of this matter. On May 13, 2019, OCE initiated a second-phase review of this matter. The Committee received OCE's Referral on August 16, 2019. Representative Tlaib submitted a written response to OCE's Referral through her attorney on August 29, 2019.³ On September 30, 2019, the Chairman and Ranking Member of the Committee issued a statement announcing that they had jointly decided to extend the Committee's consideration of OCE's Referral regarding Representative Tlaib for an additional 45-day period.⁴ On November 14, 2019, pursuant to House and Committee rules, the Committee publicly released OCE's Referral, along with a copy of Representative Tlaib's written response.⁵

The Committee reviewed all the materials provided to it by OCE. The Committee also requested and received additional information from Representative Tlaib. In total, the Committee reviewed more than 600 pages of materials. The Committee also interviewed five witnesses, including Representative Tlaib, who fully cooperated with the Committee's investigation.

On July 23, 2020, the Committee unanimously voted to adopt this Report and take no further action with respect to Representative Tlaib.

III. HOUSE RULES, LAWS, REGULATIONS, AND OTHER STANDARDS OF CONDUCT

Federal laws and regulations regulate the use of a congressional candidate's campaign funds.⁶

FECA, and its implementing regulations, states that contributions or donations "received by an individual as support for activities of the individual as a holder of Federal office" may not be "converted by any person to personal use."⁷ The term "personal use" is defined as using campaign funds "to fulfill a commitment, obligation, or expense of any person that would exist

³ See Appendix B.

⁴ House Rule XI, cl. 3(b)(8)(A); Committee Rule 17A(c)(1).

⁵ House Rule XI, cl. 3(b)(8)(A)(i); Committee Rule 17A(c)(2).

⁶ *House Ethics Manual* (2008) at 152 (hereinafter *Ethics Manual*).

⁷ 52 U.S.C. § 30114(a), (b)(1).

irrespective of the candidate's campaign or duties as a Federal officeholder.”⁸ In the regulations, an example of a “personal use” includes a candidate's receipt of salary payments unless certain conditions are met.⁹ These conditions require that the salary payments:

- only be paid from the candidate's principal campaign committee;
- not exceed the minimum salary for the Federal office sought and any salary or wages the candidate receives from another source will count towards the limit of the minimum annual salary for the Federal office sought;
- not exceed what the candidate received as earned income in the year prior to becoming a candidate;
- be computed on a pro-rata basis;
- not be paid to an incumbent Federal officeholder;
- not be paid before the filing deadline for access to the primary election ballot for Federal candidates, as determined by State law, and, if the candidate wins the primary election, the salary must be paid through the date of the general election. Alternatively, if the candidate loses the primary election, withdraws from the race, or otherwise ceases to be a candidate, salary payments cannot be made beyond that date; and
- the candidate must provide income tax records from the relevant years and other evidence of earned income upon request of the FEC.¹⁰

In addition to restrictions on the *use* of campaign funds, FECA requires that candidates report certain information to the FEC describing the use of the funds.¹¹ These reporting requirements include, for example, reporting whether the campaign committee has any outstanding debts or obligations.¹² A debt or obligation can include “a loan, written contract, written promise, or written agreement to make an expenditure” as well as “rent, salary or other regularly reoccurring administrative expense.”¹³ With regard to reporting a candidate's salary, the FEC has emphasized that because the salary “will be fully disclosed to the public, those who contribute to the campaign and who support the candidate will be able to voice their approval, or disapproval of this use of campaign funds.”¹⁴

The personal use of campaign funds may also implicate the Code of Official Conduct. Specifically, House Rule XXIII, clauses 1 and 2 state that “[a] Member . . . of the House shall

⁸ 11 C.F.R. § 113.1(g) (defining the term “personal use”); 52 U.S.C. § 30114(b)(2).

⁹ 11 C.F.R. § 113.1(g)(1)(i)(I).

¹⁰ *Id.* § 113.1(g)(1)(i)(I) (describing the seven requirements for a candidate's receipt of salary payments from a campaign committee).

¹¹ *See* 52 U.S.C. § 30104(a)(2) (explaining the reporting requirements for a House candidate's principal campaign committee); *see also* 11 C.F.R. § 104.1 (defining the scope of the reporting requirements).

¹² *See id.* § 30104(b)(8) (requiring the disclosure of “the amount and nature of outstanding debts and obligations owed by or to such political committee”); *see also* 11 C.F.R. § 104.11(a), (b) (explaining the reporting requirements for debts and obligations).

¹³ 11 C.F.R. § 104.11(b).

¹⁴ Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds; 67 Fed. Reg. 76,962, 76,972-73 (Dec. 13, 2002) (to be codified at 11 C.F.R.pt. 113).

behave at all times in a manner that shall reflect creditably on the House[,]” and “shall adhere to the spirit and the letter of the Rules of the House.”

Finally, the House Code of Official Conduct subjects Members to additional restrictions relating to the personal use of campaign funds.¹⁵ The *Ethics Manual* explains that “campaign funds are to be used for bona fide campaign or political activity only . . . **not** to . . . enhance a Member’s lifestyle, or to pay a Member’s personal obligations.”¹⁶ The *Ethics Manual* acknowledges, however, that “Members have wide discretion in determining what constitutes a bona fide campaign or political purpose to which campaign funds and resources may be devoted.”¹⁷ Nonetheless, the *Ethics Manual* cautions that “Members have **no** discretion whatsoever to convert campaign funds to personal use.”¹⁸ Moreover, the *Ethics Manual* advises that a “Member’s use of campaign funds for federal office is permissible only if it complies with the provisions of **both** the House Rules **and** FECA.”¹⁹

IV. BACKGROUND

On February 5, 2018, Representative Tlaib registered her principal campaign committee, Rashida Tlaib for Congress (the Campaign), with the Federal Election Commission (FEC).²⁰ On February 6, 2018, Representative Tlaib announced her candidacy for Michigan’s 13th congressional district election.²¹ At the time she announced her candidacy, Representative Tlaib worked as the Community Partnerships Director at the Maurice and Jane Sugar Law Center for Economic & Social Justice (Sugar Law Center).²² In 2017, a year prior to her congressional campaign, Representative Tlaib’s total income was \$129,357—she earned \$42,500 from her full-time employment with the Sugar Law Center, she received a \$85,307 stipend from a fellowship, and she also received \$1,500 from consulting arrangements with two organizations.²³

A. REPRESENTATIVE TLAIB’S DECISION TO RECEIVE A SALARY FROM THE CAMPAIGN

Shortly after announcing her candidacy, Representative Tlaib began performing campaign work full-time in March 2018, thereby significantly reducing her hours and income from her employment with the Sugar Law Center.²⁴ Ultimately, given the intensity of her campaign schedule, starting in May 2018, Representative Tlaib only worked for the Sugar Law Center on an

¹⁵ House Rule XXIII, cl. 6(a)-(c).

¹⁶ *Ethics Manual* at 173 (emphasis in original).

¹⁷ *Id.*

¹⁸ *Id.* (emphasis in original).

¹⁹ *Id.* at 152 (emphasis in original).

²⁰ Rashida Tlaib for Congress, Statement of Organization (Feb 5, 2018).

²¹ Todd Spangler, *Former Michigan state Rep. Rashida Tlaib to seek Conyers’ seat in Congress*, Detroit Free Press, (Feb. 6, 2018), <https://www.freep.com/story/news/local/michigan/2018/02/06/rashida-tlaib-running-congress-conyers-seat/310378002/>.

²² 18(a) Interview of Representative Rashida Tlaib.

²³ See Exhibit 1; see also 18(a) Interview of Representative Rashida Tlaib.

²⁴ 18(a) Interview of Representative Rashida Tlaib.

as-needed basis; approximately seven hours per week.²⁵ Additionally, in comparison to the prior year, in 2018, Representative Tlaib did not receive a stipend from her fellowship, and only received a small amount of income for her consulting work.²⁶ As a result, shortly after reducing her hours with the Sugar Law Center, Representative Tlaib “realized [that she] was going to have some issues paying [her] bills.”²⁷ Thus, on April 4, 2018, she informed her campaign managers, Campaign Staffer A and Campaign Staffer B, that she was experiencing personal financial difficulties and asked about receiving a one-time, \$5,000 loan from the Campaign.²⁸ Representative Tlaib testified that she only sought \$5,000 at that time because she “wanted to be conservative” and because she “didn’t know if [the Campaign] had the money” to pay her.²⁹

In response to Representative Tlaib’s request for funds from the Campaign, her campaign managers told her that they wanted to seek legal guidance to determine what was permissible under the law before taking action.³⁰ A few weeks after her initial email, on April 27, 2018, Representative Tlaib reached out to her campaign staff and indicated that she was “not going to make it through the campaign without a stipend” and requested “\$2,000 per two weeks but not exceeding \$12,000” from the Campaign.³¹ Representative Tlaib testified that she requested this amount because she was “thinking of how much . . . [she] need[ed] to be able to pay for childcare . . . [her] bills, [her] mortgage and [her] rent.”³² She also testified that she increased her request from a one-time payment of \$5,000 because she was “more in debt by that time” and because she thought the new amount would get her through the primary election.³³

On April 27, 2018, the same day that Representative Tlaib proposed the \$2,000 bimonthly stipend, Campaign Staffer B received legal guidance confirming that the use of campaign funds to pay a candidate a salary is permissible subject to certain conditions.³⁴ Even if legally permissible, however, both Campaign Staffer B and Campaign Staffer A had concerns about the political risks associated with Representative Tlaib’s receipt of a campaign salary.³⁵ Campaign Staffer A testified that there were concerns that she would be exposed to political attacks because receiving a salary from a campaign is still viewed as “a somewhat uncommon thing.”³⁶ Notably, the legal guidance regarding the campaign salary was not immediately conveyed to Representative Tlaib by campaign staff.³⁷ As a result, on May 7, 2018, she informed her campaign staff that if she could

²⁵ *Id.*; *see also* Exhibit 1 (reporting that Representative Tlaib began a “limited leave of absence” from her position with the Sugar Law Center in May 2018, which reduced her compensation to 7.2 hours per week).

²⁶ 18(a) Interview of Representative Rashida Tlaib; *see also* Exhibit 1.

²⁷ 18(a) Interview of Representative Rashida Tlaib.

²⁸ *See* OCE’s Referral, Exhibit 2.

²⁹ 18(a) Interview of Representative Rashida Tlaib.

³⁰ *See* OCE’s Referral, Exhibit 2; *see also* 18(a) Interview of Campaign Staffer A.

³¹ OCE’s Referral, Exhibit 3.

³² *See* 18(a) Interview of Representative Rashida Tlaib.

³³ *See id.*

³⁴ *See* Exhibit 2; *see also* 18(a) Interview of Campaign Staffer A (stating that the campaign committee did not issue Representative Tlaib any salary payments before hearing back from their attorney).

³⁵ *See* OCE’s Referral, Exhibit 4 (Email from Campaign Staffer B to Campaign Staffer A suggesting that Representative Tlaib’s receipt of a campaign salary “ha[d] the potential to be a bad story.”).

³⁶ 18(a) Interview of Campaign Staffer A.

³⁷ 18(a) Interview of Representative Rashida Tlaib (stating that her campaign staffers “took a while to respond to [her] . . . every time [she] brought . . . up” the salary issue).

not receive funding from the Campaign, she would need to return to the Sugar Law Center to work part-time.³⁸

In response to the urgency of Representative Tlaib's request, Campaign Staffer A advised her that "[t]he campaign can pay [her] no more than [what she] made in income [in 2017] on a monthly basis. [W]e just accept that it may become a political issue."³⁹ He also advised her that she would have to make the decision to accept salary payments from the Campaign and that she could receive approximately \$7,900 per month.⁴⁰ Campaign Staffer A testified that at the time he advised Representative Tlaib that she could receive \$7,900 per month in salary, it was based on his own calculations "by taking her income from the previous year and dividing it by 12"; he acknowledged, however, that it was "an erroneous calculation."⁴¹ Indeed, based on the May 2018 Financial Disclosure Statement that Representative Tlaib filed a few months after declaring her candidacy, her 2017 monthly income was approximately \$9,300 per month.⁴² Subsequently, after receiving updated financial information, Representative Tlaib filed an Amended Financial Disclosure Statement in December 2018, which clarified that she had actually received approximately \$10,700 per month in 2017.⁴³

Representative Tlaib testified that she does not know how Campaign Staffer A made the \$7,900 per month salary determination.⁴⁴ Ultimately, however, she chose to receive \$4,000 per month because she "was trying to be as conservative as possible" and because she wanted to stay within the Campaign's budget.⁴⁵ Therefore, on May 7, 2018, Campaign Staffer C, the campaign treasurer at the time, issued Representative Tlaib her first salary payment for \$2,000.⁴⁶ Thereafter, Representative Tlaib received bimonthly \$2,000 payments throughout the primary season during the same pay periods as the other campaign staffers.⁴⁷ Representative Tlaib did not enter into a contract or written agreement with the Campaign regarding the terms of her receipt of the salary payments.⁴⁸

In July 2018, a few months after Representative Tlaib began receiving the salary payments, the press began to report on the payments.⁴⁹ Campaign Staffer A testified that the Campaign

³⁸ See Exhibit 3.

³⁹ See OCE's Referral, Exhibit 1.

⁴⁰ *Id.* See also 18(a) Interview of Campaign Staffer A.

⁴¹ 18(a) Interview of Campaign Staffer A.

⁴² See Exhibit 4.

⁴³ See Exhibit 1.

⁴⁴ 18(a) Interview of Representative Rashida Tlaib.

⁴⁵ *Id.*

⁴⁶ 18(a) Interview of Campaign Staffer C.

⁴⁷ See 18(a) Interview of Campaign Staffer E.

⁴⁸ 18(a) Interview of Campaign Staffer A; 18(a) Interview of Representative Rashida Tlaib.

⁴⁹ See Exhibit 5 (Email from Rashida Tlaib to Campaign Staffer F, Campaign Staffer A, and Campaign Staffer B, telling them a reporter "called to ask why [she] [was] paying [her]self."). The campaign committee initially disclosed the salary payments a few weeks before the August 7 primary election. See, e.g., Rashida Tlaib for Congress, July 2018 Quarterly Report of Receipts and Disbursements, at 298-99 (July 15, 2018) (reporting

viewed the press reporting on the payments as “distressing” and “disappoint[ing].”⁵⁰ In response to the reporting, the Campaign emphasized that Representative Tlaib’s payments were far less than what she was entitled to receive under applicable FEC rules.⁵¹ The Campaign was also able to “fundraise[] off” of the attention it received because of the payments.⁵²

B. REPRESENTATIVE TLAIB’S POST-PRIMARY SALARY PAYMENTS

On August 23, 2018, a few weeks after she won her August 7th primary election, Representative Tlaib asked Campaign Staffer A and her campaign finance director, Campaign Staffer D, to confirm whether she could continue to receive the salary payments.⁵³ The staffers confirmed that the Campaign could afford to continue the payments, but also advised her that she may receive political attacks and negative press reporting if she did so—similar to the reaction she had received when the Campaign reported the payments before the primary.⁵⁴ Campaign Staffer D also advised Representative Tlaib about the political risks associated with returning to work at the Sugar Law Center part-time while still being paid by the Campaign.⁵⁵ Ultimately, Representative Tlaib decided not to return to work after the primary election as she had previously planned because of her unrelenting campaign schedule.⁵⁶

Around the same time that Representative Tlaib reached out to Campaign Staffer A and Campaign Staffer D to confirm the continuation of her salary payments, she asked Campaign Staffer C to create a budget for the campaign staff’s salaries for the general election.⁵⁷ Campaign Staffer C’s budget included a proposal to increase Representative Tlaib’s salary payments from \$4,000 to \$6,000 per month.⁵⁸ Campaign Staffer C told the Committee she does not recall whether Representative Tlaib specifically requested a salary increase at that time; she also said she does not remember why she suggested \$6,000 as the proposal or Representative Tlaib’s reaction to the proposal.⁵⁹ According to Campaign Staffer C, she only recalls that she was aware that Representative Tlaib “was having trouble making her ends meet [and] covering all of her expenses with the \$2,000 bi[monthly] amount, [so she] bumped [the amount] up.”⁶⁰ Representative Tlaib confirmed that she received Campaign Staffer C’s budget, but was not familiar with the \$6,000

Representative Tlaib’s salary payments issued on May 7, May 16, June 1, and June 16, 2018). A press report about the payments was published just three days after the July 2018 Quarterly Report. *See* Melissa Nann Burke and Beth LeBlanc, *U.S. House hopeful Tlaib pays self salary from campaign funds*, *The Detroit News* (July 18, 2018), <https://www.detroitnews.com/story/news/politics/2018/07/18/tlaib-pays-self-salary-congress-campaign/797307002/> (hereinafter *Detroit News Article*).

⁵⁰ 18(a) Interview of Campaign Staffer A.

⁵¹ *See, e.g.*, 18(a) Interview of Campaign Staffer A; *see also* *Detroit News Article* (quoting the Campaign’s spokesman as stating that Representative Tlaib “is actually entitled to ‘far more’ under FEC guidelines than the \$4,000 a month she has elected to pay herself during the campaign”).

⁵² 18(a) Interview of Campaign Staffer D.

⁵³ *See* OCE’s Referral, Exhibit 7.

⁵⁴ *See id.*; *see also* 18(a) Interview of Campaign Staffer A.

⁵⁵ *See* OCE’s Referral, Exhibit 7.

⁵⁶ 18(a) Interview of Representative Rashida Tlaib.

⁵⁷ *Id.*

⁵⁸ 18(a) Interview of Campaign Staffer C.

⁵⁹ *Id.*

⁶⁰ *Id.*

per month proposal.⁶¹ Additionally, although they were included in Campaign Staffer C's communications regarding the budget proposal, Campaign Staffer A and Campaign Staffer D testified that they did not have any knowledge of the proposal.⁶²

Increasing the amount of Representative Tlaib's salary payments was an ongoing discussion among senior campaign staff during the campaign. For example, Campaign Staffer E, who served as the Campaign treasurer from early May 2018 to approximately March 2019,⁶³ and Campaign Staffer D testified that they recall Representative Tlaib requesting to be paid more during the 2018 election cycle.⁶⁴ Representative Tlaib told the Committee that she does not recall requesting an increase in salary payments; she only remembers discussing the continuation of the payments after the primary election because of the amount of campaign work she performed.⁶⁵ Ultimately, Representative Tlaib's salary remained at \$4,000 per month through the general election.⁶⁶

When asked why Representative Tlaib did not receive a salary increase despite her requests, Campaign Staffer D indicated that it would have been Representative Tlaib's decision not to increase her salary.⁶⁷ He also testified that the decision could have been motivated by several factors such as ensuring that the Campaign had sufficient resources for the election and the "potential for political attacks" from her opponents.⁶⁸ According to Campaign Staffer D, there were also discussions among senior campaign staff about "delaying [Representative Tlaib's salary] payment[s] until after [a FEC] deadline" because she had received criticism in the press, and from her opponents, after the payments had been reported in the Campaign's July 2018 FEC filings.⁶⁹ As a result, campaign resources and political considerations may have impacted the decision about whether and when to increase Representative Tlaib's salary payments.

⁶¹ 18(a) Interview of Representative Rashida Tlaib.

⁶² 18(a) Interview of Campaign Staffer A; 18(a) Interview of Campaign Staffer D.

⁶³ *See* 18(a) Interview of Campaign Staffer E (confirming that May 2, 2018 corresponds with the time that he became treasurer for the Campaign); *see id.* (confirming that the Campaign offered the treasurer position to Sonya McGrady in March 2019, but that he worked in a transitional capacity for a few months after that time). Campaign Staffer E has returned to his role as the Campaign's treasurer as of April 2020. *See* Rashida Tlaib for Congress, Statement of Organization, at 1 (Apr. 22, 2020) (listing Campaign Staffer E as treasurer).

⁶⁴ *See* 18(a) Interview of Campaign Staffer E (stating that Representative Tlaib mentioned several times "half-jokingly" that she wanted to be paid more by the campaign committee); 18(a) Interview of Campaign Staffer D (indicating that Representative Tlaib may have asked for an increase in her salary before or after the primary election because she had "some financial hardships"); *see also* 18(a) Interview of Campaign Staffer A (stating that increasing Representative Tlaib's salary payments was "something that frequently [the campaign committee] wanted to do for her").

⁶⁵ 18(a) Interview of Representative Rashida Tlaib.

⁶⁶ *See* OCE's Referral, Exhibit 10. Representative Tlaib received two \$3,000 payments in August 2018 to account for three-week pay periods. *See* 18(a) Interview of Campaign Staffer E.

⁶⁷ 18(a) Interview of Campaign Staffer D; *see also* 18(a) Interview of Campaign Staffer E (stating that in response to Representative Tlaib's request for a salary increase, she spoke to Campaign Staffer A and Campaign Staffer B, but they indicated that the payments should remain the same).

⁶⁸ 18(a) Interview of Campaign Staffer D.

⁶⁹ *Id.*; *see also* 18(a) Interview of Campaign Staffer A (stating that "we did, in fact, receive the political attacks we were worried about in the primary" because of the salary payments and that he advised Representative Tlaib she would likely receive political attacks again if she continued receiving a salary after the primary, but noting that the payments did not have to be publicly disclosed until the campaign committee filed its October 2018 Quarterly Report).

C. REPRESENTATIVE TLAIB'S POST-GENERAL ELECTION CAMPAIGN PAYMENTS

Representative Tlaib won her general election on November 6, 2018.⁷⁰ Within days of her election, Campaign Staffer E issued her a \$2,000 payment on November 16, 2018 (the same date on which he issued paychecks to other campaign staff for the November 1, 2018 to November 15, 2018 pay period).⁷¹ Campaign Staffer E testified that it was his understanding, based on communications with Campaign Staffer A, that Representative Tlaib would only be paid a salary through election day.⁷² However, because he did not issue any salary payments on election day, Representative Tlaib's November 16 payment represented the amount owed to her "only up to the point of the election day."⁷³ Representative Tlaib has asserted, through counsel, that the November 16 payment "make[s] up some of the difference between what she was entitled to receive for her service through Election Day . . . and what the Campaign had previously paid her for services rendered through that date" and that it "cover[s] the period through the November 6 general election."⁷⁴

When Committee staff asked Campaign Staffer E to explain why the November 16 payment was not prorated to reflect a shorter pay period—*e.g.*, a pay period from November 1 to November 6—he speculated that it was because Representative Tlaib was working on election day.⁷⁵ Contemporaneous campaign records show, however, that the November 16 payment was a salary payment meant to cover the pay period from November 1 to November 15.⁷⁶ Indeed, a notation on the check states "salary (11/1 – 11/15)" on the memo line.⁷⁷

On November 21, 2018, Campaign Staffer E sent Campaign Staffer D a spreadsheet he created that included "the list of [campaign] staff with projected amounts to be paid [to them] on 12/1/2018."⁷⁸ The spreadsheet has been recreated below.

⁷⁰ See Todd Spangler and Kat Stafford, *Rashida Tlaib becomes John Conyers' full-term replacement in Congress*, Detroit Free Press (Nov. 6, 2018), <https://www.freep.com/story/news/politics/elections/2018/11/06/michigan-13-th-district-results-tlaib-jones/1737484002/>.

⁷¹ See OCE's Referral, Exhibit 10.

⁷² 18(a) Interview of Campaign Staffer E.

⁷³ *Id.*

⁷⁴ Appendix B at 3, 6.

⁷⁵ 18(a) Interview of Campaign Staffer E.

⁷⁶ See OCE's Referral, Exhibit 9.

⁷⁷ See OCE's Referral, Exhibit 10.

⁷⁸ See OCE's Referral, Exhibit 12.

amount.⁸⁴ He also stated that even though the calculation listed under the “Notes” column in the spreadsheet—“\$2,000/mo for 3.75 mo.”—adds up to the \$7,500 amount under the “Adjustment” column, he does not know the origin of the \$7,500 amount either.⁸⁵ Other senior campaign staffers—who had experience with the Campaign’s finances and budget during the campaign—also denied knowledge of the origins of the projections listed for Representative Tlaib in the spreadsheet.⁸⁶

Representative Tlaib testified that she has never seen the spreadsheet before and is unfamiliar with most of the information contained in the spreadsheet.⁸⁷ She also testified, however, that she believes that the \$2,000 payment proposed through the end of November 30 was a continuation of the salary payments that she had been receiving.⁸⁸ Additionally, she indicated that even though she does not recall having any discussions about the \$7,500 amount, she believes that the “Adjustment” column is related to her “working full time at a campaign and [the Campaign] pay[ing] [her an] additional amount.”⁸⁹ Furthermore, she believes that the “3.75/mo.” time period referenced in the “Notes” column was related to the period after the “primary until November . . . [b]ecause [she] kept . . . working up until the . . . [general] election.”⁹⁰

On December 1, 2018, Campaign Staffer E issued the \$15,500 payment to Representative Tlaib.⁹¹ The consensus among senior campaign staff interviewed by the Committee, and the congresswoman herself, is that at the time this payment was made, Representative Tlaib’s post-election payments represented compensation for work she performed prior to the election.⁹² Specifically, all witnesses interviewed by the Committee contend that she received less than her legal threshold amount with the understanding that she could receive some kind of “back pay” or “deferred compensation” at a later date.⁹³ Representative Tlaib confirmed that she “remember[s] specifically saying [that she] want[ed] to get back pay” and that she wanted to receive additional compensation because she had been unable to return to work after the August primary.⁹⁴ Thus, the \$15,500 payment “was the adjustment for the work [she] did throughout the campaign.”⁹⁵

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See 18(a) Interview of Campaign Staffer D; see also 18(a) Interview of Campaign Staffer C.

⁸⁷ 18(a) Interview of Representative Rashida Tlaib.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ See OCE’s Referral, Exhibit 10.

⁹² See 18(a) Interview of Campaign Staffer E; 18(a) Interview of Campaign Staffer A; 18(a) Interview of Campaign Staffer C; Interview of Campaign Staffer D; 18(a) Interview of Representative Rashida Tlaib.

⁹³ See, e.g., 18(a) Interview of Campaign Staffer A (stating that the campaign committee was “paying [Representative Tlaib] less than what she was entitled to” during the campaign so “the payments in November and December were intended to catch up some of what she had been owed to the extent [the campaign committee] had funds available to pay it”); 18(a) Interview of Campaign Staffer D (explaining that Representative Tlaib was “entitled to pay herself significantly more over the course of the campaign,” but “rather than paying herself the full amount that she could and should [have received], she was only receiving . . . smaller checks to try to limit how much was coming out of the campaign so that she could use those resources for other things”).

⁹⁴ 18(a) Interview of Representative Rashida Tlaib.

⁹⁵ *Id.*

Although there is consensus among the witnesses regarding the reasoning for the post-general election payments, there is a notable lack of consensus regarding *when* Representative Tlaib and the Campaign made the decision to defer the payments. For example, some former senior campaign staff testified that they did not know when the decision was made, but indicated that it was likely made around the time of the general election.⁹⁶ In contrast, other former senior campaign staff, such as Campaign Staffer D and Representative Tlaib, indicated that the post-general election payments were an ongoing discussion that started around the time of the primary election.⁹⁷ Indeed, according to Campaign Staffer D, one of the reasons that Representative Tlaib decided to defer additional compensation after the primary was because she had a write-in challenger in the general election campaign and needed to dedicate the Campaign’s resources to that effort.⁹⁸ Thus, it is unclear when Representative Tlaib entered into an agreement to receive “back pay” or “deferred compensation” from the Campaign.

D. RESPONSE TO THE POST-ELECTION PAYMENTS

The Campaign filed FEC reports disclosing Representative Tlaib’s post-general election payments in early December 2018 and late January 2019.⁹⁹ Beginning in March 2019, various news reports raised allegations that the timing of the payments may be inconsistent with FEC requirements.¹⁰⁰ Shortly thereafter, Campaign Staffer E created a chart “in response to how Congresswoman Tlaib’s payments were distributed”; the chart provides a “breakdown of [the] payments [issued] to Representative Tlaib” during the campaign.¹⁰¹ The chart has been reproduced below.¹⁰²

⁹⁶ See, e.g., 18(a) Interview of Campaign Staffer A (stating that he does not know when the campaign committee made the decision to pay Representative Tlaib for work she performed prior to the election, but that he believes the decision was made after the election); 18(a) Interview of Campaign Staffer E (indicating that he learned about the nature of the December 1 payment from Campaign Staffer A in November).

⁹⁷ See, e.g., 18(a) Interview of Campaign Staffer D (indicating that there were ongoing discussions about deferring Representative Tlaib’s salary payments and that these discussions took place around the primary election); 18(a) Interview of Representative Rashida Tlaib (testifying that she remembers having discussions regarding “back pay” after the primary election and before the general election).

⁹⁸ 18(a) Interview of Campaign Staffer D.

⁹⁹ See Rashida Tlaib for Congress, 2018 30-Day Post-General Report of Receipts and Disbursements, at 90 (Dec. 5, 2018); Rashida Tlaib for Congress, 2018 Year-End Report of Receipts and Disbursements, at 32 (Jan. 21, 2019).

¹⁰⁰ See, e.g., Joe Schoffstall, *Rashida Tlaib Paid Herself \$45,550 From Campaign Funds: Made \$17,500 in payments following election*, Washington Free Beacon (Mar. 1, 2019), <https://freebeacon.com/politics/rashida-tlaib-paid-herself-45500-from-campaign-funds/> (emphasizing the timing of the two payments and quoting from FEC regulations explaining the permissible time period to receive a salary from a campaign committee); Lukas Mikelionis, *Rashida Tlaib’s campaign paid her \$17,500 in salary after Election Day, in possible violation of FEC rules: report*, Fox News (Mar. 2, 2019), <https://www.foxnews.com/politics/rashida-tlaib-faces-questions-after-data-shows-campaign-paid-her-17500-salary-in-two-weeks-after-election-day> (questioning whether Representative Tlaib’s “campaign broke the rules after making salary payments to [her] after Election Day [in 2018]”).

¹⁰¹ 18(a) Interview of Campaign Staffer E; see *id.* (stating that he believes that the chart was created in 2019); 18(a) Interview of Campaign Staffer A (stating that Campaign Staffer E created the chart at the direction of the Campaign’s attorney).

¹⁰² Exhibit 6. The original chart included three dates with the year 2019; Campaign Staffer E acknowledged that this was an error and that the years for these dates should be 2018. See 18(a) Interview of Campaign Staffer E.

Pay Period Starts	Pay Period Ends	Paid On	Amount Paid	Salary Deferred
		5/7/2018	\$ 2,000.00	\$ -
4/24/2019	4/30/2019	5/16/2018	\$ 2,000.00	\$ 1,000.00
5/1/2019	5/15/2018	6/1/2018	\$ 2,000.00	\$ 1,000.00
5/16/2018	5/31/2018	6/16/2018	\$ 2,000.00	\$ 1,000.00
6/1/2018	6/15/2018	7/1/2018	\$ 2,000.00	\$ 1,000.00
6/16/2018	6/30/2018	7/16/2018	\$ 2,000.00	\$ 1,000.00
7/1/2018	7/15/2018	8/1/2018	\$ 2,000.00	\$ 1,000.00
7/16/2018	8/7/2018	8/11/2018	\$ 3,000.00	\$ 1,500.00
8/8/2018	8/31/2018	8/29/2018	\$ 3,000.00	\$ 1,500.00
9/1/2018	9/15/2018	9/16/2018	\$ 2,000.00	\$ 1,300.00
9/16/2018	9/30/2018	10/1/2018	\$ 2,000.00	\$ 1,300.00
10/1/2018	10/15/2018	10/16/2018	\$ 2,000.00	\$ 1,300.00
10/16/2018	10/31/2018	11/1/2018	\$ 2,000.00	\$ 1,300.00
11/1/2018	11/6/2018	11/16/2018	\$ 2,000.00	\$ 1,300.00
		12/1/2018	\$ 15,500.00	
			\$ 45,500.00	\$ 15,500.00

Some of the information Campaign Staffer E included in this chart is inconsistent with contemporaneous campaign records.¹⁰³ The most notable difference, however, is the inclusion of the various “salary deferred” amounts; no other campaign documents reference this information.¹⁰⁴ Campaign Staffer E explained that the phrase “salary deferred” means “[b]ack pay or [the] amount that [Representative Tlaib] was supposed to get that she didn’t get paid.”¹⁰⁵ He also indicated that the “salary deferred” amounts “tall[y] up to [\$15,500] for the payment for December 1st.”¹⁰⁶ When questioned by Committee staff about the source of the “salary deferred” amounts, Campaign Staffer E testified that he did not “recall the specifics” but that the amounts were probably given to him by either Campaign Staffer A or Campaign Staffer D.¹⁰⁷ Both former campaign staffers, however, denied knowledge about the source of the amounts, as did Campaign Staffer C.¹⁰⁸ Representative Tlaib also denied knowledge about the source of the amounts, but testified that she

¹⁰³ For example, a spreadsheet that Campaign Staffer E updated during the campaign listed “4/16–4/30” for Representative Tlaib’s May 16 payment in comparison to the “4/24–4/30” pay period included in the chart above. *See* OCE’s Referral, Exhibit 9. The same spreadsheet listed “11/1–11/15” for Representative Tlaib’s November 16 payment in comparison to the “11/1–11/6” pay period included in the chart above. *See* OCE’s Referral, Exhibit 9. Campaign Staffer E could not adequately explain these discrepancies. *See* 18(a) Interview of Campaign Staffer E.

¹⁰⁴ 18(a) Interview of Campaign Staffer E.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *See* 18(a) Interview of Campaign Staffer A (stating that the “salary deferred” column “was how [Campaign Staffer E] was calculating the adjustment that had been made” for Representative Tlaib, but also confirming that he did not “have input” for the information in the column); 18(a) Interview of Campaign Staffer D (stating that he does not know where the salary deferred amounts came from and did not have any input into the amounts); 18(a) Interview of Campaign Staffer C.

recalls discussing a back pay proposal involving “an additional maybe thousand or so every paycheck.”¹⁰⁹

Campaign Staffer E acknowledged that the “salary deferred” payments could have been considered a debt owed by the Campaign during the election cycle, and thus may have been required to be reported as such in FEC filings, but that he did not do so because he “wasn’t aware of the back payment” during the campaign.¹¹⁰ Campaign Staffer D and Campaign Staffer C were not aware of any discussions among the Campaign’s staff about reporting the deferred payments as debt.¹¹¹ Campaign Staffer D stated, however, that he understood during the campaign that Representative Tlaib’s deferred payments were “funding that she was owed and entitled to, that . . . [the Campaign] would be paying her to the extent money could be raised after the general to . . . cover that.”¹¹²

V. FINDINGS AND CONCLUSIONS

As a candidate, Representative Tlaib had an obligation to act in accordance with the strict technical requirements of federal campaign laws and regulations, including the restrictions on personal use of campaign funds; as a Member-elect, Representative Tlaib was also on notice of her responsibility to act in a manner consistent with the more general ethical standards of the House.¹¹³

A. PERSONAL USE OF CAMPAIGN FUNDS

The FEC’s personal use regulations restrict the time period in which a candidate can receive a salary from his or her principal campaign committee.¹¹⁴ The regulations state that “[i]f 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.”¹¹⁵ The regulations

¹⁰⁹ 18(a) Interview of Representative Rashida Tlaib.

¹¹⁰ 18(a) Interview of Campaign Staffer E.

¹¹¹ 18(a) Interview of Campaign Staffer D; 18(a) Interview of Campaign Staffer C.

¹¹² 18(a) Interview of Campaign Staffer D; *see* 11 C.F.R. § 110.1(b)(3)(iii)(B) (stating that a candidate and his or her campaign committee may accept contributions made after the date of the election if the contributions do not exceed amounts sufficient to retire any remaining debt); 18(a) Interview of Campaign Staffer D (confirming that “[a]fter the general election, the committee can raise money to pay off a debt”).

¹¹³ The Committee has jurisdiction to investigate the conduct of Members, officers, and employees of the House of Representatives. The Committee has long found that its jurisdiction also includes the conduct of a Member in connection with his or her successful election because the conduct may impact the integrity of the House. *See* House Comm. on Standards of Official Conduct, *In the Matter of Representative Jay Kim*, H. Rept. 105-797, 105th Cong. 2d Sess. (1998); House Comm. on Standards of Official Conduct, *In the Matter of Representative Earl F. Hilliard*, H. Rept. 107-130, 107th Cong. 1st Sess. (2001); Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Michael Grimm (Nov. 26, 2012); Comm. on Ethics, *In the Matter of Allegations Relating to Representative Ruben Kihuen*, H. Rept. 115-1041, 115th Cong. 2d Sess. (2018). The allegations against Representative Tlaib involve conduct that occurred in connection with her successful election to the House, during the time she was a Member-elect of Congress.

¹¹⁴ *See* 11 C.F.R. § 113.1(g)(1)(i)(I).

¹¹⁵ *Id.*

reiterate, however, that “[i]f the candidate . . . ceases to be a candidate, no salary payments may be paid beyond the date he or she is no longer a candidate.”¹¹⁶

The FEC has provided some analysis of the candidate salary regulations in its enforcement cases, known as Matters Under Review (MURs), which are handled by the Office of General Counsel.¹¹⁷ For example, in *Mowrer for Iowa, et al.* (MUR 7068), a candidate received two salary payments from his campaign committee after the date of his general election on November 4, 2014—a payment on November 15 covering the period from November 1 to November 15 and a payment on December 5 covering the period from November 16 to November 30.¹¹⁸ The Respondents in the matter disputed that the payments violated the personal use restrictions by asserting that “the regulations are not clear as to whether the pay periods must fall within the regulations’ window or whether the window is used merely for calculating the permissible salary amount.”¹¹⁹ The Acting General Counsel, however, noted that “[t]he controlling factor . . . is that some of the salary payments covered *the period* after [the candidate] ceased to be a candidate, and were thus impermissible.”¹²⁰ As a result, the FEC ultimately concluded that the Respondents violated the personal use restriction to the extent that they used campaign funds to make salary payments to the candidate during the period in which he was no longer a candidate—*i.e.*, the period from November 5 to November 30.¹²¹ Thus, the time period covered by the payment in question is crucial to the analysis of whether a candidate’s salary is permissible.

The FEC’s MURs have not specifically stated whether “deferred compensation” or “back pay” arrangements are permissible under the personal use regulation. In *Kalyn Free for Congress, et al.* (MUR 5787), however, the FEC indirectly addressed this issue.¹²² In that matter, the campaign committee issued two salary payments totaling \$50,000 to the candidate two months after she lost her primary election and reported the payments as a debt to the candidate.¹²³ In response, the FEC’s Reports Analysis Division (RAD) sent a Request for Additional Information to the campaign committee, noting that salary payments made after the primary election constituted personal use of campaign funds and directing the campaign committee to seek a full reimbursement from the candidate and notify the FEC of the reimbursement.¹²⁴ Thereafter, the committee filed a statement explaining that the candidate would refund the committee the salary paid to her in excess of the maximum amount permitted for the time period prior to the primary election.¹²⁵ RAD then requested evidence demonstrating that the committee had an obligation to pay the candidate a salary *before* the primary election date.¹²⁶ In response, the campaign

¹¹⁶ *Id.*

¹¹⁷ *Enforcing federal campaign finance law*, FEC, <https://www.fec.gov/legal-resources/enforcement/> (“Enforcement cases are primarily handled by the Office of General Counsel and are known as Matters Under Review (MURs).”).

¹¹⁸ See MUR 7068, First Gen. Counsel’s Rpt. at 2, 6.

¹¹⁹ *Id.* at 5.

¹²⁰ *Id.* at 6 (emphasis added).

¹²¹ MUR 7068, Conciliation Agreement at 3-5; see *id.* at 3-4 (determining the portion of the salary that did not violate the personal use restriction by calculating the amount “covering November 1 through November 4, 2014, the day of the general election, when Mowrer was a candidate”).

¹²² See generally MUR 5787, First Gen. Counsel’s Rpt.; MUR 5787, Conciliation Agreement.

¹²³ MUR 5787, First Gen. Counsel’s Rpt. at 2-3.

¹²⁴ *Id.* at 3.

¹²⁵ *Id.* at 3-4.

¹²⁶ *Id.* at 4.

committee's former campaign manager asserted that it was always the committee's intention to pay the candidate a salary based on an oral agreement between himself and the candidate that took place months before the primary election.¹²⁷ The former campaign manager also stated that the candidate "agreed to defer payment of her salary until the end of the campaign to ensure that all campaign bills and staff were paid."¹²⁸ Ultimately, RAD referred the matter to the Office of General Counsel for additional review.¹²⁹

In the First General Counsel's Report for MUR 5787, the General Counsel determined that the campaign manager's statements were insufficient to resolve the issue, suggesting instead that an affidavit from the campaign manager and the candidate that "attest[ed] to the oral agreement" about the deferred compensation would have been more persuasive.¹³⁰ Thus, the Office of the General Counsel recommended that the FEC find reason to believe that a personal use violation had occurred.¹³¹ The Office also "recommend[ed] an investigation to obtain evidence regarding the [c]ommittee's purported agreement to pay a . . . salary" to the candidate.¹³² The FEC found reason to believe the personal use violation occurred and authorized an investigation, as recommended. The FEC explained its actions in the accompanying Factual and Legal Analysis that mirrored the First General Counsel's Report, including a discussion of the campaign committee's assertion that there was an oral agreement to pay salary to the candidate.¹³³

Approximately two years later, the matter was resolved through a Conciliation Agreement. In the Conciliation Agreement, the FEC noted the campaign committee's assertion that there was an oral agreement to pay salary,¹³⁴ and without further discussion of the impact of that oral agreement, found a personal use violation only with respect to the "overpayment of salary" to the candidate, which the candidate had already reimbursed.¹³⁵ The Conciliation Agreement directed the candidate to return certain reimbursements that the campaign committee did not adequately document but notably did not direct a refund of the salary payments that were under the maximum threshold.¹³⁶ Although, the FEC's adoption of the Factual and Legal Analysis indicates that the existence of an oral agreement to make the payments to the candidate before the primary election

¹²⁷ *Id.*

¹²⁸ *Id.* at 4-5.

¹²⁹ *Id.* at 4; *see generally* MUR 5787, Reports Analysis Referral to Office of General Counsel (July 19, 2005).

¹³⁰ MUR 5787, First Gen. Counsel's Rpt. at 7-8.

¹³¹ *Id.* at 2, 8.

¹³² *Id.* at 2.

¹³³ MUR 5787, Notification with Factual and Legal Analysis (Aug. 9, 2006). The Respondents informed the FEC that they would "submit the requested information and [were] interested in discussing pre-probable cause conciliation." MUR 5787, Response from Kalyn Free for Congress (Aug. 22, 2006). Subsequent filings in the matter do not disclose the nature of the information that the Respondents submitted to the FEC. Instead, on July 3, 2008, the FEC issued a Third General Counsel's Report. *See generally* MUR 5787, Gen. Counsel's Rpt. #3. Notably, this Report cites to a Second General Counsel's Report. *Id.* at 2. However, because the Third General Counsel's Report has been heavily redacted, and the Second General Counsel's Report is not publicly available, it is unclear if the FEC provided any additional analysis about the deferred compensation payment issue based on new information submitted by the Respondents.

¹³⁴ *See* MUR 5787, Conciliation Agreement at 4, 7.

¹³⁵ MUR 5787, Conciliation Agreement at 7; *see also* MUR 5787, Gen. Counsel's Rpt. #3, at 1 (stating that the FEC previously found reason to believe that the candidate violated the personal use restriction in connection with her receipt of the salary overpayment, but not mentioning the post-election timing of the salary overpayment).

¹³⁶ MUR 5787, Conciliation Agreement at 7.

date was part of the FEC's investigation, it is not clear from publicly available records whether the FEC obtained additional information regarding that agreement during the investigation, nor is it clear how the existence of the oral agreement impacted the FEC's ultimate resolution of the matter. The absence of a direction to refund the entirety of the salary payments, however, indicates that the FEC may find a deferred compensation or back pay agreement created before a candidate ceases to be a candidate to be consistent with the personal use regulations' timing restrictions.

Based on the foregoing, the Committee has determined that Representative Tlaib's receipt of a portion of the post-general election payments violated FECA's personal use restrictions because: (1) it represented a salary payment that covered a time period after she ceased being a candidate; and (2) it represented a deferred compensation payment that covered a time period after she ceased being a candidate.

1. *November 16, 2018 Payment*

Similar to MUR 7068, a portion of Representative Tlaib's November 16 salary payment covered a period after she ceased being a candidate. Campaign Staffer E testified that this payment represented the amount owed to her "only up to the point of the election day," and suggested it was only equal to her normal bimonthly payment because she received a larger rate for election day that brought her salary to the exact same sum.¹³⁷ However, his testimony is inconsistent with contemporaneous campaign records that demonstrate that the payment covered the full two-week period before and after the election—November 1 to November 15.¹³⁸ Notably, however, in the chart that Campaign Staffer E created after the general election, and after press reports raised allegations about the payments, he included a shorter pay period for the November 16 payment—November 1 to November 6.¹³⁹ This ad hoc modification is not enough to rebut other, more reliable evidence in the record about the nature of this payment, including the memo line of the check itself, which indicates the payment was for the entirety of the November 1 to November 15 pay period. Thus, consistent with the analysis from MUR 7068, Representative Tlaib is entitled to retain \$800 from the November 16 payment that covers the time period when she was still a candidate—November 1 through November 6.¹⁴⁰ The remaining \$1,200 covered the time period when she was no longer a candidate—November 7 through November 15—therefore it must be returned to the Campaign.¹⁴¹

2. *December 1, 2018 Payment*

¹³⁷ 18(a) Interview of Campaign Staffer E. *See also* Appendix B at 6 (stating that the November 16 payment covered the period through election day).

¹³⁸ *See* OCE's Referral, Exhibit 9; OCE's Referral, Exhibit 10.

¹³⁹ *See* Exhibit 6.

¹⁴⁰ To determine the amount that Representative Tlaib was entitled to retain, the Committee used the same calculation the FEC used in the conciliation agreement for MUR 7068, i.e., the amount of the payment (\$2,000) divided by the number of days the payment covered (15) equals the amount that Representative Tlaib received per day for this payment (\$133.33). *See* MUR 7068, Conciliation Agreement at 3-4. Therefore, if Representative Tlaib was entitled to receive a salary for a 6-day period, she can retain \$800 from the November 16 payment (\$133.33 x 6).

¹⁴¹ *See id.* (\$2,000 - \$800 = \$1,200).

Representative Tlaib and her former senior campaign staff have characterized the December 1, 2018, payment of \$15,500 as “deferred compensation” or “back pay” and have maintained that it represents compensation for work she performed during the campaign, but chose to defer until after the election to ensure that the Campaign had enough resources.¹⁴² As noted above, the FEC has indicated that salary payments received after an election may be permissible if they represent compensation for a period during the election cycle; however, as demonstrated in the FEC’s analysis of a similar arrangement, the timing of the decision should be considered—specifically, whether there was an agreement to make the salary payments while Representative Tlaib was still a candidate.¹⁴³ The FEC has explicitly rejected the argument that salary payments made to a candidate after a general election are permissible so long as the total amount of salary paid falls under the maximum eligible amount.¹⁴⁴ To find otherwise would also be contrary to the spirit of the regulations; in permitting candidates to receive a salary, the FEC noted that its decision was informed by the fact that the salaries would be “fully disclosed to the public,” and therefore, “those who contribute to the campaign and who support the candidate will be able to voice their approval, or disapproval, of this use of campaign funds.”¹⁴⁵ If candidates were able to delay payment of salary until after an election, without having entered into an agreement to do so and thereby creating a reportable obligation, then the assurance of transparency underlying the FEC’s rulemaking would be undermined.

There has been conflicting testimony regarding the timing of the decision for Representative Tlaib’s deferred compensation. Some former senior staffers, such as Campaign Staffer E and Campaign Staffer A, testified that they learned about the decision around the general election; possibly after the election.¹⁴⁶ Others, such as Campaign Staffer D and Representative Tlaib, indicated that they recall discussions about the additional compensation around the time of the primary election.¹⁴⁷ Representative Tlaib testified that she started asking about “back pay” after the primary election because she was unable to return to work as she had previously planned.¹⁴⁸ Her interest in receiving additional compensation at that time is consistent with

¹⁴² See, e.g., 18(a) Interview of Campaign Staffer A (stating that the Campaign was “paying [Representative Tlaib] less than what she was entitled to” during the campaign so “the payments in November and December were intended to catch up some of what [Representative Tlaib] had been owed to the extent [the Campaign] had funds available to pay it”); 18(a) Interview of Campaign Staffer D (explaining that Representative Tlaib was “entitled to pay herself significantly more over the course of the campaign,” but “rather than paying herself the full amount that she could and should [have received], she was only receiving . . . smaller checks to try to limit how much was coming out of the campaign so that she could use those resources for other things”); 18(a) Interview of Campaign Staffer C.

¹⁴³ See MUR 5787, First Gen. Counsel’s Rpt. at 7-8.

¹⁴⁴ See MUR 7068, First Gen. Counsel’s Rpt. at 6-7.

¹⁴⁵ Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,972-73 (Dec. 13, 2002) (to be codified at 11 C.F.R. 113).

¹⁴⁶ See, e.g., 18(a) Interview of Campaign Staffer A (stating that he does not know when the Campaign made the decision to pay Representative Tlaib for work she performed prior to the election, but that he believes the decision was made after the election); 18(a) Interview of Campaign Staffer E (indicating that he learned about the nature of the December 1 payment from Campaign Staffer A in November).

¹⁴⁷ 18(a) Interview of Campaign Staffer D (indicating that there were ongoing discussions about deferring Representative Tlaib’s salary payments and that these discussions took place around the primary election); 18(a) Interview of Representative Rashida Tlaib (testifying that she remembers having discussions regarding “back pay” after the primary election and before the general election).

¹⁴⁸ 18(a) Interview of Representative Rashida Tlaib.

Campaign Staffer C’s post-primary budget proposal to increase her monthly salary.¹⁴⁹ Representative Tlaib also confirmed that she had concerns about the Campaign’s ability to continue to pay her salary after the primary election, which supports Campaign Staffer D’s testimony that she requested that any additional compensation be deferred until after the election to ensure that the Campaign had sufficient resources.¹⁵⁰ The Committee credits Representative Tlaib’s testimony that she made an informal agreement with the Campaign to receive “back pay” while she was still a candidate after the primary election.¹⁵¹ Nonetheless, she is not entitled to retain the full \$15,500 payment.

Former senior campaign staffers testified that they could not recall the basis or the origin of the \$15,500 payment.¹⁵² According to Campaign Staffer E’s November 2018 spreadsheet, the payment represented three different amounts that have three different purposes—a \$2,000 salary payment for the “amount owed through” November 30, 2018, a \$6,000 “advance” as the “[a]mount owed for the month of December” 2018, and a \$7,500 “[a]djustment to be made for the previous payments” to Representative Tlaib.¹⁵³ As a result, based on the spreadsheet, \$8,000 of the December 1 payment represented salary payments to Representative Tlaib during a time period in which she was no longer a candidate. With regard to the \$7,500 “adjustment” amount, the notes in the spreadsheet indicate that this amount is based on the calculation of \$2,000 per month for 3.75 months.¹⁵⁴ Several former senior campaign staff and Representative Tlaib also testified that they do not know the basis for the adjustment amount, or the calculation, but it appears to represent “back pay” or “deferred compensation” for Representative Tlaib starting after the August primary election through the November general election.¹⁵⁵ This calculation also seems consistent with Representative Tlaib’s testimony indicating that she recalls having discussions that the back pay amount would be “an additional . . . thousand or so every paycheck” as well as Campaign Staffer C’s post-primary budget proposal increasing Representative Tlaib’s monthly salary by \$2,000.¹⁵⁶

¹⁴⁹ 18(a) Interview of Campaign Staffer C (stating that she proposed increasing Representative Tlaib’s post-primary salary because she was having trouble making ends meet).

¹⁵⁰ 18(a) Interview of Campaign Staffer D.

¹⁵¹ Cf. MUR 5787, First Gen. Counsel’s Rpt. at 7-8.

¹⁵² See, e.g., 18(a) Interview of Campaign Staffer E; 18(a) Interview of Campaign Staffer C.

¹⁵³ See OCE’s Referral, Exhibit 12.

¹⁵⁴ See *id.*

¹⁵⁵ See 18(a) Interview of Campaign Staffer D (stating that he does not know where the \$7,500 adjustment amount came from; he does know where the “\$2,000 per month for 3.75 months” calculation came from; and that he did not discuss the basis for the calculation with Campaign Staffer E); 18(a) Interview of Campaign Staffer C (testifying that the \$7,500 amount does not have any particular meaning to her and does not sound familiar; that she does not know where the \$7,500 amount came from; and that she does not know where the “\$2,000 per month for 3.75 months” calculation came from); 18(a) Interview of Representative Rashida Tlaib (stating that she has never seen the spreadsheet before, does not know when it was created, and does not know who provided input for the spreadsheet); see *id.* (indicating that she did not have discussions with anyone about the \$7,500 amount, but she believes that the 3.75 month period represents “the additional money for the work [she] did throughout the months” and that the time period is “[a]fter [the] primary . . . up until the November election”); cf. 18(a) Interview of Campaign Staffer E (testifying that the calculation of \$2,000 per month for 3.75 months “adds up to that 7,500 adjustment” and speculating that the 3.75 month period represents the time between the primary election and the general election, but then stating that he does not know where the adjustment amount came from); see *id.* (stating that it is “possible” that Campaign Staffer D provided the equation for the adjustment amount—\$2,000 per month for 3.75—but that he does not recall the details).

¹⁵⁶ 18(a) Interview of Representative Rashida Tlaib; see also 18(a) Interview of Campaign Staffer C.

Notably, however, the November 2018 spreadsheet reflects a different plan than the one Campaign Staffer E created in Spring 2019, in which the entirety of the \$15,500 December 1 payment has been spread out as additional \$1,000, \$1,300, or \$1,500 “Salary Deferred” payments in the pay periods before and after the primary election.¹⁵⁷ The Committee credits the November 2018 chart over the later chart for three reasons.¹⁵⁸ First, the Spring 2019 document was created after the December 1 payment was made, and after press reports raised allegations about the nature of the post-general election payments. Second, some of the information in the chart is inconsistent with contemporaneous campaign records and appears to be ad hoc modifications to address criticisms regarding the payments; this includes, for example, the shortened pay period for the November 16 payment.¹⁵⁹ Third, despite creating the chart, Campaign Staffer E could not adequately explain the basis or the source for the “Salary Deferred” amounts.¹⁶⁰ In contrast, Campaign Staffer E’s November 2018 spreadsheet appears to be a contemporaneous accounting of the Campaign’s remaining funds after the general election and proposed salary and bonus payments for its staffers.

Based on the November 2018 spreadsheet, and other campaign records, the Committee has determined that Representative Tlaib is entitled to retain \$5,900 from the December 1 payment, but must reimburse the Campaign \$9,600 because this amount of the payment violates the personal use restriction.

3. *Total Payment Owed by Representative Tlaib to her Campaign*

The chart below demonstrates the breakdown of Representative Tlaib’s pay periods, base salary, and corresponding back pay amounts after her 2018 primary election, as found by the Committee’s review.

Pay Period Starts	Pay Period Ends	Base Pay	Back Pay/Deferred Salary
8/8/18	8/31/18	\$3,000	\$1,500
9/1/18	9/15/18	\$2,000	\$1,000
9/16/18	9/30/18	\$2,000	\$1,000
10/1/18	10/15/18	\$2,000	\$1,000
10/16/18	10/31/18	\$2,000	\$1,000
11/1/18	11/15/18	\$2,000 (must repay \$1,200) ¹⁶¹	\$1,000 (must repay \$600) ¹⁶²

¹⁵⁷ See OCE’s Referral, Exhibit 12; cf. Exhibit 5.

¹⁵⁸ The Committee also notes that OCE “discount[ed] the veracity” of Exhibit 5 based on similar reasons. See OCE’s Referral at 14 n. 43.

¹⁵⁹ Cf. OCE’s Referral, Exhibit 9, 10.

¹⁶⁰ See 18(a) Interview of Campaign Staffer E.

¹⁶¹ As noted in the discussion regarding the November 16 payment, Representative Tlaib must repay the prorated amount for November 7, 2018 to November 15, 2018, which is \$1,200.

¹⁶² Representative Tlaib must repay a prorated amount for this “back pay/deferred salary” payment because a portion of the payment covers a time period in which she was no longer a candidate. The prorated amount is \$533.33 (\$1,000 payment ÷ 15 days = \$66.67 per day) (\$66.67 x 9 days = \$600). Representative Tlaib is entitled to retain \$400.

11/16/18	11/30/18	\$2,000 (must repay in full) ¹⁶³	\$1,000 (must repay in full) ¹⁶⁴
12/1/18	12/31/18	\$6,000 (must repay in full) ¹⁶⁵	

While the Committee acknowledges that the post-general election payments were far below the amount that Representative Tlaib was legally permitted to receive during the course of her campaign, because a portion of the payments was inconsistent with FECA’s personal use requirements, and she received it while she was a Member-Elect of Congress, the Committee concludes that Representative Tlaib’s acceptance of \$10,800 (\$1,200 from the November 16 payment + \$9,600 from the December 1 payment) in salary and deferred compensation after the 2018 general election was contrary to the restrictions on personal use of campaign funds.

B. REPORTING REQUIREMENTS FOR DEBTS AND OBLIGATIONS

FEC regulations state that “[i]f a political committee does not pay an employee for services rendered to the . . . committee in accordance with an employment contract or a formal or informal agreement to do so, the unpaid amount . . . may be treated as a debt owed by the political committee to the employee.”¹⁶⁶ If an employee’s unpaid salary is treated as a debt, “the political committee shall continue to report the debt in accordance with [applicable debt reporting requirements] . . . or until the political committee pays the debt.”¹⁶⁷

The consensus among former senior campaign staff who were interviewed by the Committee is that there had not been any discussions about reporting the deferred payments as a debt owed by the Campaign to Representative Tlaib.¹⁶⁸ Campaign Staffer E, however, acknowledged that the payments could have been defined as a debt, and “in hindsight . . . it would have been [a] good practice” to record it as a debt in the Campaign’s FEC filings.¹⁶⁹ Campaign Staffer D also acknowledged that during the campaign, he understood that the payments were considered “funding that [Representative Tlaib] was owed and entitled to, that . . . [the Campaign] would be paying her to the extent money could be raised after the general [election].”¹⁷⁰ Thus, there was some awareness by senior campaign staffers, during and after the election, that the deferred compensation agreement could be considered a debt owed by the Campaign to Representative Tlaib.

¹⁶³ Representative Tlaib must repay the full amount of this salary payment because it covers a time period in which she was no longer a candidate.

¹⁶⁴ Representative Tlaib must repay the full amount of this back pay/deferred salary payment because it covers a time period in which she was no longer a candidate.

¹⁶⁵ Representative Tlaib must repay the full amount of this salary payment because it covers a time period in which she was no longer a candidate.

¹⁶⁶ 11 C.F.R. § 116.6(a).

¹⁶⁷ *Id.* § 116.6(c).

¹⁶⁸ See 18(a) Interview of Campaign Staffer D; 18(a) Interview of Campaign Staffer C; 18(a) Interview of Campaign Staffer E.

¹⁶⁹ 18(a) Interview of Campaign Staffer E.

¹⁷⁰ 18(a) Interview of Campaign Staffer D.

As discussed above, the FEC has not specifically addressed whether a “back pay” or “deferred compensation” arrangement is permissible under the personal use regulation. However, in the First General Counsel’s Report for MUR 5787, the General Counsel determined that there was reason to believe that the post-election payments violated certain reporting requirements because the campaign committee failed to contemporaneously report salary-related debt based on the purported oral agreement between the campaign manager and the candidate.¹⁷¹ The Conciliation Agreement in that matter, however, did not address the salary debt reporting issue.¹⁷² Therefore, it is unclear whether such an arrangement must be contemporaneously reported as a “debt” or “obligation” in a campaign committee’s FEC filings.¹⁷³

Despite the lack of a definitive requirement to report a “back pay” or “deferred compensation” arrangement to the FEC, the Committee agrees with Representative Tlaib’s treasurer that reporting such an arrangement during Representative Tlaib’s campaign would have been a “good practice.”¹⁷⁴ One of the main purposes of the FEC’s reporting requirements is to facilitate transparency in campaign spending. As discussed previously, when explaining its decision to approve the candidate salary exception to the personal use restrictions, the FEC stated that “it is satisfied that, because all candidate . . . salaries will be fully disclosed to the public, those who contribute to the campaign and who support the candidate will be able to voice their approval, or disapproval of this use of campaign funds.”¹⁷⁵ Thus, disclosure of any agreement for a candidate to receive “back pay” or “deferred compensation” at the end of an election should also be fully disclosed during a campaign for the same reason. There is some evidence in the record indicating that the senior campaign staff’s heightened awareness about the political risks associated with Representative Tlaib’s salary payments may have influenced the decision to defer additional compensation, and thereby, the disclosure of the additional compensation until after the general election.¹⁷⁶ Such political risks, however, are inherent in the process and categorizing salary as “back pay” cannot be used as an end run around the transparency required by campaign finance

¹⁷¹ MUR 5787, First Gen. Counsel’s Rpt. at 8.

¹⁷² MUR 5787, Conciliation Agreement at 7.

¹⁷³ Cf. FEC Advisory Opinion (AO) Quayle 2000 (AO 2004-27). This FEC Advisory Opinion involved a treasurer’s “proposed use of campaign funds to reimburse two former employees for unpaid salary dating back” several years. *Id.* at 1. During the campaign, the employees agreed to volunteer their services to help the campaign committee preserve funds for the election. *Id.* at 2. Several years after the election, the treasurer sought to pay these employees for their services with remaining campaign funds. *Id.* The FEC concluded that the campaign committee was prohibited from using campaign funds to pay the two employees because, among other reasons, it failed to timely report the unpaid salaries as an outstanding debt or obligation. *Id.* at 3. As a result, because the payments did not apply to one of the other permitted uses of contributions, the payments were impermissible. *Id.* at 4.

¹⁷⁴ See 18(a) Interview of Campaign Staffer E (indicating that it would have been a “good practice” to report the deferred payments as debts during the campaign).

¹⁷⁵ Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds; 67 Fed. Reg. 76,962, 76,972-73 (Dec. 13, 2002) (to be codified at 11 C.F.R. pt. 113).

¹⁷⁶ See, e.g., 18(a) Interview of Campaign Staffer D (indicating that Representative Tlaib may have decided not to increase her salary during the campaign because of past criticism from her political opponents); *id.* (indicating that senior campaign staff had discussions about delaying Representative Tlaib’s salary payments after the primary election to a void political fallout); see also 18(a) Interview of Campaign Staffer A (testifying that he advised Representative Tlaib that she would likely receive political attacks again if she continued receiving a salary after the primary, but noting that the payments did not have to be publicly disclosed until the Campaign filed its October 2018 Quarterly Report with the FEC).

laws and regulations. The Committee urges Representative Tlaib to take care to ensure that her Campaign's activities are consistent with that goal of transparency.

VI. CONCLUSION

A congressional candidacy can be an incredibly expensive endeavor that only a few individuals have been able to successfully execute. The FEC has attempted to ease some of the financial burdens associated with this endeavor for those candidates who may not have the resources to forego a salary to participate in a campaign, by allowing them to receive a salary from campaign funds. Representative Tlaib's 2018 candidacy fit within this category—she did not have the resources to relinquish her salary from her full-time employment without also receiving financial assistance from her Campaign. The Committee recognizes Representative Tlaib's good faith efforts to comply with FECA's candidate salary requirements, which included seeking legal guidance before receiving campaign funds. Representative Tlaib also chose to receive a monthly salary that was significantly lower than her legal threshold amount. Nonetheless, her receipt of payments after the general election—though conservative in comparison to her legal threshold amount—was inconsistent with certain FECA requirements.

Although the regulations on candidate salary payments are complex, they reflect a recognition that such payments create a heightened risk of unjust personal enrichment. The Committee recommends that all candidates who believe they will use campaign funds to pay themselves a salary seek early, and ongoing, guidance from the FEC regarding the salary requirements. Additionally, to avoid questions about the legitimacy of certain payments, such as back pay or deferred compensation payments after a primary or general election, the Committee recommends that candidates contemporaneously memorialize such arrangements to clearly reflect the intent and terms of the agreement, and, consistent with the purpose behind the FEC's reporting requirements, publicly disclose the agreement in the appropriate FEC reports.

While the Committee recognizes that the campaign environment can at times lend itself to hurried decision-making, as a Member-Elect of Congress, Representative Tlaib had a greater duty to ensure that any funding she received from her Campaign after her general election was fully compliant with statutory requirements and fully transparent with the public. Based on its review, the Committee determined that Representative Tlaib did not comply with the letter of the relevant laws and regulations governing her receipt of salary payments from her Campaign. The Committee did not find evidence, however, that Representative Tlaib intended to unjustly enrich herself, and recognizes that she made efforts to ensure her compliance with the applicable requirements. In light of this, the Committee determined that no sanction was merited, provided Representative Tlaib returns the funds that she improperly received to her Campaign in full within a year of the date of this Report, with the understanding that she can make smaller payments over the course of the year.

The Committee unanimously voted to adopt this Report and take no further action. Upon publication of this Report and the Committee's receipt of a notification from Representative Tlaib of her satisfactory completion of the above steps, the Committee will consider this matter closed.

VII. STATEMENT UNDER HOUSE RULE XIII, CLAUSE 3(C)

The Committee made no special oversight findings in this Report. No budget statement is submitted. No funding is authorized by any measure in this Report.