



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 21-43-A**  
**AGENDA ITEM**  
**For meeting of December 16, 2021**

December 9, 2021

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS by NFS*  
Acting General Counsel

Neven F. Stipanovic *NFS*  
Associate General Counsel

Amy Rothstein *ALR*  
Assistant General Counsel

Kevin Paulsen *KMP*  
Attorney

Subject: AO 2021-13 (Hoh)

Attached is a proposed draft of the subject advisory opinion. We have been asked to place this draft on the Agenda by one or more Commissioners.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00pm (Eastern Time) on December 15, 2021.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2021-13

2

3 Matthew P. Hoh

4 339 E Pine Ave

5 Wake Forest, NC 27587

**DRAFT A**

6 Dear Mr. Hoh:

7 We are responding to your request for an advisory opinion asking whether the  
8 Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission  
9 regulations recognize your veteran disability benefits as “earned income” for purposes of  
10 receiving a candidate salary from your principal campaign committee. The Commission  
11 concludes that your disability benefits constitute “earned income” under the Act and,  
12 therefore, can be used to calculate the amount of any candidate salary that you may  
13 receive under 11 C.F.R. § 113.1(g)(1)(i)(I) (the “candidate salary regulation”).

14 ***Background***

15 The facts presented in this advisory opinion are based on your letter received on  
16 October 27, 2021, and your email received on November 12, 2021.<sup>1</sup>

17 You are a Marine Corps combat veteran who has been classified as “100%  
18 disabled” by the U.S. Department of Veterans Affairs (“VA”).<sup>2</sup> Accordingly, you have  
19 received non-taxable VA disability benefits for the past several years. Although “being  
20 classified as 100% disabled by the VA does not limit other income or employment,” due  
21 to your disability you were “unable to earn any money” for most of five years beginning  
22 in 2015.<sup>3</sup> In 2020, however, you earned approximately \$5,000 in taxable income as

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<sup>1</sup> Advisory Opinion Request (“AOR”).

<sup>2</sup> AOR001.

<sup>3</sup> *Id.*; AOR003.

1 compensation for employment. You anticipate earning approximately \$8,000 in taxable  
2 income from employment in 2021.<sup>4</sup>

3 You intend to run for the United States Senate in the 2022 election cycle.<sup>5</sup> You  
4 state that your candidacy will have no impact on your VA disability benefits, and you  
5 expect to continue to receive these benefits during your campaign.<sup>6</sup> You are interested in  
6 also receiving a candidate salary from your principal campaign committee once you  
7 become eligible under Commission regulations. You are “not interested in receiving a  
8 candidate salary greater than \$1,000-\$2,000 a month” from campaign funds, which would  
9 be less than you expect to receive in VA disability benefits.<sup>7</sup>

10 ***Question Presented***

11 *Do your VA disability benefits constitute “earned income” for purposes of the*  
12 *Commission’s candidate salary regulation?*

13 ***Legal Analysis and Conclusion***

14 Yes, your VA disability benefits constitute “earned income” for purposes of the  
15 candidate salary regulation. Accordingly, they can be used to calculate the maximum

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4 AOR003.

5 See Matthew Hoh for Senate, FEC Form 1 (Sept. 23, 2021), <https://docquery.fec.gov/pdf/247/202109239466978247/202109239466978247.pdf>; Matthew Patrick Hoh, Statement of Candidacy, FEC Form 2 (Sept. 9, 2021), <https://docquery.fec.gov/pdf/817/202109099466636817/202109099466636817.pdf>.

6 AOR003.

7 AOR001. According to the VA, a veteran classified as 100% disabled with no dependents receives \$3,146.42 per month in disability benefits in 2021. Past rates: 2021 Veterans disability compensation rates, U.S. Department of Veterans Affairs, <https://www.va.gov/disability/compensation-rates/veteran-rates/past-rates-2021/> (last visited Dec. 7, 2021).

1 amount of candidate salary that you may receive from your principal campaign  
2 committee.<sup>8</sup>

3 “[U]nder the Act and Commission regulations, a candidate and the candidate’s  
4 campaign committee have wide discretion in making expenditures to influence the  
5 candidate’s election, but may not convert excess campaign funds to personal use.”<sup>9</sup>  
6 “Personal use” is defined as the use of campaign funds “to fulfill any commitment,  
7 obligation, or expense of a person that would exist irrespective of the candidate’s election  
8 campaign or individual’s duties as a holder of Federal office.”<sup>10</sup> The Act and  
9 Commission regulations provide a non-exhaustive list of expenses that, when paid using  
10 campaign funds, constitute *per se* conversion of those funds to personal use.<sup>11</sup>

11 Commission regulations provide that salary payments by a candidate’s principal  
12 campaign committee to the candidate are *per se* personal use unless specific requirements  
13 are met.<sup>12</sup> One of these requirements is that candidate salary payments must not exceed  
14 “the lesser of: the minimum salary paid to a Federal officeholder holding the office that  
15 the candidate seeks; or the earned income that the candidate received during the year

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<sup>8</sup> A rulemaking petition to amend the candidate salary regulation is currently pending before the Commission. For the most recent updates on this rulemaking petition, visit <https://sers.fec.gov/fosers/>, reference REG 2021-01 (Candidate Salaries).

<sup>9</sup> Disclaimers, Fraudulent Solicitations, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,972 (Dec. 13, 2002) (internal citations omitted). *See also* 52 U.S.C. § 30114(b)(1), 11 C.F.R. § 113.2(e).

<sup>10</sup> 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g).

<sup>11</sup> 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i).

<sup>12</sup> 11 C.F.R. § 113.1(g)(1)(i)(I).

1 prior to becoming a candidate.”<sup>13</sup> Thus, a candidate’s “earned income” in the year prior  
2 to becoming a candidate determines (1) whether the candidate’s principal campaign  
3 committee may use campaign funds to pay the candidate a salary (because if the prior  
4 year’s earned income is zero dollars, then the maximum amount of campaign funds that  
5 could be used to pay the candidate a salary would also be zero dollars), and (2) the  
6 maximum amount of candidate salary that the committee may pay (if the prior year’s  
7 earned income is less than the minimum salary paid to a person holding the federal office  
8 the candidate seeks).

9 The Act and Commission regulations do not define the term “earned income” for  
10 purposes of the candidate salary regulation. Where the term appears elsewhere in the Act  
11 and Commission regulations, however, it typically refers to compensation for services  
12 rendered in an employment context.<sup>14</sup> This is consistent with the commonly understood  
13 meaning of the term “earned income.”<sup>15</sup>

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<sup>13</sup> *Id.* The candidate salary regulation also imposes the following requirements: (1) The salary must be paid from the candidate’s principal campaign committee funds; (2) any income that the candidate earns from any other source must be counted against the minimum annual salary for the office the candidate seeks; (3) salary payments must be computed on a pro rata basis; (4) the salary must not be paid before the date of the filing deadline for access to the primary election for the office the candidate seeks (or January 1<sup>st</sup> of each even-numbered year in states that do not conduct primaries); (5) salary payments must cease when the recipient is no longer a candidate for public office (*i.e.*, the candidate loses the primary or general election or otherwise withdraws from the race); and (6) candidates receiving a candidate salary must provide income tax records from the relevant years and other evidence of earned income to the Commission upon request.

<sup>14</sup> See 52 U.S.C. § 30101(26)(B) (defining “personal funds,” the Act lists “earned income” along with “salary” as income derived from employment, and as distinct from more passive forms of income resulting from dividends, bequests, trusts, personal gifts, stock sales, and lottery proceeds); 11 C.F.R. § 100.33(b)(1) (same).

<sup>15</sup> *Earned income*, Oxford English Dictionary Online, [www.oed.com/view/Entry/242656](http://www.oed.com/view/Entry/242656) (last visited Nov. 22, 2021) (defining “earned income” as “income derived from paid work, esp[ecially] as contrasted with [income] derived from property, interest payments, etc.”); *Income*, Black’s Law Dictionary (11th ed. 2019) (defining “earned income” as subset of “income” that includes “[m]oney derived from one’s own labor or active participation; earnings from services”).

1           By law, VA disability benefits are paid as “compensation” “[f]or disability  
2 resulting from personal injury suffered or disease contracted in line of duty, or for  
3 aggravation of a preexisting injury suffered or disease contracted in line of duty, in the  
4 active military, naval, air, or space service.”<sup>16</sup> Your VA disability benefits are, therefore,  
5 compensation that you earned as a direct result of your prior employment as a U.S.  
6 Marine. Further, you state that your ability to earn additional income is limited by your  
7 disability, and “working a job in parallel to running a state-wide campaign is not an  
8 option for [you]” due to your disability.<sup>17</sup> Because your VA disability benefits replace  
9 income forgone due to the continuing effects of the injury that you sustained in active  
10 military service, the Commission concludes that these benefits constitute “earned  
11 income” under 11 C.F.R. § 113.1(g)(1)(i)(I). Consequently, your VA disability benefits  
12 can be used to calculate the amount of any candidate salary that you may receive from  
13 campaign funds.<sup>18</sup>

14           This response constitutes an advisory opinion concerning the application of the  
15 Act and Commission regulations to the specific transaction or activity set forth in your

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<sup>16</sup> 38 U.S.C. § 1131 (“For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, air, or space service, . . . the United States will pay to any veteran thus disabled . . . compensation”). *See also* VA Disability Compensation, U.S. Department of Veterans Affairs, <https://www.va.gov/disability/> (last visited Dec. 7, 2021) (disability benefits are paid “to [v]eterans who got sick or injured while serving in the military and to [v]eterans whose service made an existing condition worse”).

<sup>17</sup> AOR001 (“Due to [your] disability, [you] have not been able to earn much income outside of the [disability benefits you] receive from the [VA]”).

<sup>18</sup> This conclusion is limited to the “VA disability compensation (pay)” that you have received as a disabled military veteran. VA Disability Compensation, *supra* note 16. The Commission expresses no opinion regarding VA disability payments received by spouses, dependents, or survivors of disabled veterans, or to any other government-provided benefit conferred upon military veterans or their spouses, dependents, or survivors. Further, the Commission expresses no opinion regarding the application of the Internal Revenue Code or any other law outside of the Commission’s jurisdiction.

1 request.<sup>19</sup> The Commission emphasizes that, if there is a change in any of the facts or  
2 assumptions presented, and such facts or assumptions are material to a conclusion  
3 presented in this advisory opinion, then the requestor may not rely on that conclusion as  
4 support for its proposed activity. Any person involved in any specific transaction or  
5 activity which is indistinguishable in all its material aspects from the transaction or  
6 activity with respect to which this advisory opinion is rendered may rely on this advisory  
7 opinion.<sup>20</sup> Please note that the analysis or conclusions in this advisory opinion may be  
8 affected by subsequent developments in the law including, but not limited to, statutes,  
9 regulations, advisory opinions, and case law. Any advisory opinions cited herein are  
10 available on the Commission's website.

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On behalf of the Commission,

Shana M. Broussard  
Chair

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<sup>19</sup> See 52 U.S.C. § 30108.

<sup>20</sup> See *id.* § 30108(c)(1)(B).