Federal employees may run for local partisan political office, subject to the limitations established by OPM, and accept or receive political contributions in connection with elections for local public office. This proposal reflects OPM’s determination that special or unusual circumstances exist so that it is in the domestic interest of Federal employees residing in Fauquier County to participate in these political activities. This determination is based on written material provided by the applicant, interviews with the applicant, and documentary material obtained through independent research. Principal factors leading to OPM’s determination are the proximity of Fauquier County to the District of Columbia, the rapid growth of the county within the past few years, and significant public issues associated with this growth.

A copy of this notice will be published in two local newspapers serving Fauquier County.

If this proposed rule is adopted, OPM will amend 5 CFR 733.107(c) by adding Fauquier County to the list of designated Virginia municipalities and political subdivisions in which Federal Government employees may participate in elections for local partisan political office in accordance with the conditions specified in 5 CFR 733.103-733.106. The addition of Fauquier County will be listed after Falls Church, Virginia, and before Herndon, Virginia.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the changes will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 733

Government employees, Political activities.


Linda M. Springer, Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 733 as follows:

PART 733—POLITICAL ACTIVITY—FEDERAL EMPLOYEES RESIDING IN DESIGNATED LOCALITIES

1. The authority citation for part 733 continues to read as follows:


2. Section 733.107(c) is amended by adding Fauquier County, Virginia, alphabetically to the list of designated Virginia municipalities and political subdivisions as set forth below.

§733.107 Designated localities.

* * * * *

(c) In Virginia

* * * * *

Fauquier County

* * * * *

[FED Register Vol. 62, No. 33, Tuesday, March 29, 1997, page 8093]
resulted from amendments to the Act by the Bipartisan Campaign Reform Act of 2002 ("BCRA") and the Consolidated Appropriations Act of 2005. Prior to the passage of BCRA, the Act and Commission regulations permitted the use of campaign funds for "any other lawful purpose" other than personal use. In BCRA, Congress deleted "any other lawful purpose" from section 439a and retained only four permissible uses of campaign funds. The Commission amended its regulation accordingly. Congress later amended section 439a again, in the Consolidated Appropriations Act of 2005, by reinstating "any other lawful purpose" and adding donations to State and local candidates as permissible uses of campaign funds. These changes to the Act have prompted this rulemaking.

I. Donations to State and Local Candidates

Section 439a(a)(5) of the Act expressly permits Federal candidates and officeholders to donate contributions accepted and other monies received to State and local candidates. The Commission proposes to amend 11 CFR 113.2 accordingly, by adding a new paragraph (d), which would permit Federal candidates and officeholders to donate campaign funds from their authorized committees to "State and local candidates subject to the provisions of State law." The Commission seeks comment on this proposed revision.

II. Any Other Lawful Purpose

The Commission also proposes to amend 11 CFR 113.2 by inserting a new paragraph (e), which would state that campaign funds "may be used for any other lawful purpose, unless such use is personal use under 11 CFR 113.1(g)." New paragraph (e) would follow current section 439a(a)(6) of the Act, which permits the use of campaign funds "for any other lawful purpose," unless the funds are converted by any person to personal use. The Commission seeks comment on this proposed revision to the regulation. The Commission notes that this change to the statute has the effect of superseding the analysis in Advisory Opinions 2003–26 (Voinovich) and 2004–03 (Dooley).

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that any individuals and not-for-profit entities that would be affected by this proposed rule are not "small entities" under 5 U.S.C. 601. The definition of "small entity" does not include individuals, but classifies a not-for-profit enterprise as a "small organization" if it is independently owned and operated and not dominant in its field. 5 U.S.C. 601(4). The proposed rule would affect authorized committees, which are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals. Authorized committees are financed by contributions from a large number of persons and controlled by the candidate and the candidate’s campaign employees and volunteers. To the extent that any authorized committees might be considered "small organizations," the number that would be affected by this proposed rule is not substantial.

The proposed rule also would not impose any additional restrictions or increase the costs of compliance for authorized committees. Instead, the proposed rule would provide authorized committees with additional options for using campaign funds. The proposed rule would not impose an undue burden upon authorized committees because they are already required to report the use of campaign funds to the Commission. Therefore, the attached proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 11 CFR Part 113

Campaign funds.

PART 113—USE OF CAMPAIGN ACCOUNTS FOR NON-CAMPAGN PURPOSES

For the reasons set out in the preamble, the Federal Election Commission proposes to amend Subchapter A of Chapter I of Title 11 of the Code of Federal Regulations as follows:

1. The authority citation for part 113 continues to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

2. Section 113.2 is amended by:

a. Adding paragraph (d); and

b. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g) and adding new paragraph (e) to read as follows:

§ 113.2 Permissible non-campaign use of funds (2 U.S.C. 439a).

* * * * *

(d) May be donated to State and local candidates subject to the provisions of State law; or

(e) May be used for any other lawful purpose, unless such use is personal use under 11 CFR 113.1(g).

* * * * *

Dated: July 12, 2007.

Robert D. Lenhard,
Chairman, Federal Election Commission.

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