

## Policy Alert

July 29, 2013

### **FEC Clarifies Rules to Allow Same-Sex Married Couples the Same Rights as Heterosexual Married Couples**

In response to the Supreme Court's ruling in June 2013 striking down provisions of the Defense of Marriage Act (DOMA), the Federal Election Commission (FEC) has clarified that same-sex married couples are entitled to the same rights under federal election law as heterosexual married couples.

#### **Background**

The advisory opinions issued by the FEC note that the term "spouse" is not defined in any FEC regulations or in the Federal Election Campaign Act (the "Act"). The FEC had previously relied on state law to provide the meaning of terms "not explicitly defined in the Act or Commission regulations." Under the provisions of DOMA, the FEC was not able to treat same-sex married couples the same as heterosexual married couples. Following the Supreme Court's ruling in June on DOMA, the FEC has concluded that "same-sex couples married under state law are 'spouses' for the purpose of Commission regulations."

#### **Consequences of the Advisory Opinions**

- **Same-Sex Couples Married Under State Laws are "Spouses"**: The FEC has concluded that same-sex married couples are permitted to make joint contributions from one account, and the limitations on contributions shall apply separately to contributions made by each spouse of a same-sex married couple, even if only one spouse has an income.
- **Candidates Legally Married to a Same-Sex Spouse May Utilize "Jointly Owned Assets"**: A U.S. Senate candidate can make unlimited expenditures from his or her "personal funds" and unlimited contributions to his or her authorized committee. Personal funds include "the 'candidate's share' of assets that are jointly owned by the candidate and the candidate's spouse." Additionally, the spouse of a candidate is permitted to co-sign loans without being considered a contributor. The FEC concluded, "A Senate candidate who is legally married to a same-sex spouse under state law may utilize 'jointly owned assets' ... under the same conditions that those regulations impose on a Senate candidate who is married to an opposite-sex spouse."
- **Restricted Class to Include Same-Sex Spouses Legally Married Under State Law**: Because of the Supreme Court ruling on DOMA, the FEC has concluded that "a corporation's or labor organization's restricted class ... includes same-sex spouses legally married under state law." As such, spouses of same-sex married couples may be solicited and may legally contribute to a corporate PAC.

**Conclusion**

Advisory Opinions 2013-06 and 2013-06 look at various provisions of federal election law that pertain to the treatment of spouses. The Commission has reversed previous findings and now considers same-sex couples married under state law as “spouses” for the purpose of Commission regulations.

## Contact Information

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