



## Make GLBT Families Eligible for Disaster Relief Services

### Issue

Current Federal Emergency Management Agency (“FEMA”) regulations are insufficient to ensure that same-sex couples and their families are eligible for federal disaster assistance.

### Short Answer

In response to Congressional silence on the matter, FEMA should use its discretion to interpret “household” in the Robert T. Stafford Disaster Relief and Emergency Act (“SDREA”)<sup>1</sup> to include “one or two cohabiting individuals and the dependent children of either individual, regardless of biological relation or adoptive relationship, for whom an individual is currently acting as the primary caregiver.” FEMA should provide guidance explicitly stating that “household” includes same-sex couples whether or not they are in a relationship recognized under state law.

### Background

Originally passed in 1988, SDREA modernized the country’s federal disaster assistance programs. Because same-sex couples and their children are treated unequally in most states and by the Federal Government, these programs can neglect gay, lesbian, bisexual, and transgender (“GLBT”) families. Like other families, in times of disaster, GLBT people might be forced to quickly relocate and leave much of their lives behind. In these periods when FEMA is most desperately needed by all affected families, marginalizing GLBT families is completely unacceptable. During Hurricane Katrina, only the American Red Cross and the Rainbow Fund specifically provided assistance to same-sex couples and their children in need. For the GLBT community, times of crisis can become the times in which their families can be most victimized by discrimination.

Because FEMA officials and others inaccurately assured that the Defense of Marriage Act barred them from assisting gay and lesbian couples as families, a multitude of problems arises as same-sex couples and their children attempt to navigate the disaster relief process and rebuild their lives. These families could be separated even if their relationships are recognized under state law. As a result, relief monies are often distributed to them as if they were individuals and may not take into account the children being raised within the family. A person caring for his or her partner’s children could find it more difficult to procure housing or financial support to provide for those children, simply because the law does not recognize their relationship.

Congress has provided the President with enormous authority to ensure that the provision of aid is fair and equitable. In fact, the statutory language regarding what constitutes a “household” under SDREA was left intentionally vague because Congress wanted the President to determine who should qualify for federal disaster relief. Therefore, we urge the President to clarify this definition of “household” to provide for equal treatment for GLBT families.

### Recommendation

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<sup>1</sup> 42 U.S.C. § 5121 *et seq.*



1. The President should issue a regulation that clarifies the provisions of SDREA by defining “household” as “one or two cohabiting individuals and the dependent children of either individual, regardless of biological relation or adoptive relationship, for whom an individual is currently acting as the primary caregiver.”
2. The Administrator of FEMA should issue guidance that would explicitly state that, under this regulation, “household” would include same-sex couples regardless of whether the couple was in a relationship recognized under state law.

### Authority

Under SDREA, the President has the authority to “provide financial assistance, and if necessary, direct services, to individuals and *households* in the State who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means.”<sup>2</sup> To that end, Congress stated that the President “shall prescribe rules and regulations to carry out this section, including criteria, standards, and procedures for determining eligibility for assistance.”<sup>3</sup> SDREA does not, however, provide any statutory definition of a “household.” The President has the authority, by regulation or procedure, to define “household” in determining eligibility for assistance.<sup>4</sup>

Under the SDREA, FEMA has the authority to define “household” as follows: “one or two cohabiting individuals and the dependent children of either individual, regardless of biological relation or adoptive relationship, for whom an individual is currently acting as the primary caregiver.” This interpretation would not only ensure coverage for GLBT families but also for heterosexual couples and their children as well, which is consistent with the goals of SDREA.

In order to ensure compliance, it will be necessary for FEMA to issue guidance that would explicitly inform employees, applicants, beneficiaries, government bodies, or other organizations that cohabiting couples in same-sex relationships would qualify for federal assistance aid, regardless of whether the couple is in a relationship recognized under state law. Such guidance would not only explicitly inform same-sex couples of their eligibility for federal assistance, but would also inform interested parties that this interpretation of “household” does not conflict with the Defense of Marriage Act.<sup>5</sup>

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<sup>2</sup> 42 U.S.C. § 5174(a)(1) (2006).

<sup>3</sup> *Id.* at § 5174(j).

<sup>4</sup> *Id.* See also *id.* at § 5164.

<sup>5</sup> 1 U.S.C. § 7, which defines marriage to include only different-sex couples, does not preclude the government from assisting same-sex couples. It excludes them from benefits solely limited to “spouses.”