

August 31, 2023

Federal Emergency Management Agency
500 C Street SW
Washington, DC 20472-3100

Via e-mail to FEMA-BRICFeedback@fema.dhs.gov

Re: Joint Comments in Response to FEMA’s Building Resilient Infrastructure and Communities (BRIC) 2023 Stakeholder Engagement Effort

Our organizations support the emphasis the Federal Emergency Management Agency (FEMA) has placed on mitigation—through the adoption and enforcement of current building construction, fire prevention, energy, and life safety codes and standards (hereafter collectively referred to as “building codes”), as well as by supporting new and innovative construction technologies—as integral to our national resilience. We appreciate FEMA’s commitment to regular stakeholder engagement of this kind to ensure continuous improvement of this vital program aimed at bolstering community and national resilience.

As the Agency has solicited, evaluated, and awarded applicants for the first three fiscal years that funding was available for the BRIC pre-disaster mitigation grant program, we have observed opportunities for change that would expand the advancement of building code-related projects, as well as amplify the return on investment of more traditional physical infrastructure applications.

The adoption and enforcement of current building codes and standards remain two of the most effective risk mitigation measures a jurisdiction can undertake. Across the last decade and a half, FEMA has noted as much in each of its five-year Strategic Plans, most recently stating that “helping a community adopt and enforce disaster resistant building codes improves the resilience of the whole community. Research has shown that every dollar invested in building to the latest codes and standards results in \$11 of future avoided losses. Therefore, advancing disaster resistant building codes through FEMA policies, programs, guidance, communications, and partnerships with state and local code officials are critical steps toward achieving a resilient nation.”¹ In the prior plan, the Agency noted that “[d]isaster resilience starts with building codes, because they enhance public safety and property protection.”²

That said, there are years of disaster recovery and billions of dollars in taxpayer resources that could have been avoided with more consistent and frequent adoption and implementation of building codes. FEMA’s 2020 report “Building Codes Save: A Nationwide Study,” found that adopting the then-current version of the International Codes (I-Codes) would save the U.S. \$600 billion over the next four decades.³ Further, during the first three BRIC cycles, the Agency encouraged the adoption and implementation of building codes as a “low cost, high impact” mitigation strategy.

FEMA’s efforts are reflected in the National Mitigation Investment Strategy, issued by the Mitigation Framework Leadership Group (MitFLG)—chaired by FEMA and comprised of 13 other federal agencies

¹ FEMA, 2022-2026 FEMA Strategic Plan (2022). Available at <https://www.fema.gov/about/strategic-plan>.

² FEMA, 2018-2022 FEMA Strategic Plan (2018). Available at: <https://www.fema.gov/about/strategic-plan/2018-2022>.

³ FEMA, *Building Codes Save: A Nationwide Study* (Nov. 2020). Available at: <https://www.fema.gov/emergency-managers/risk-management/building-science/building-codes-save-study>.

and departments as well as state, tribal, and local officials. The Strategy makes several recommendations concerning the adoption, use, and enforcement of building codes, including that “[a]rchitects, engineers, builders, and regulators should use the latest building codes for the most up-to-date requirements for structural integrity, mechanical integrity, fire prevention, and energy conservation” and that “[u]p-to-date building codes and standard criteria should be required in federal and state grants and programs.”⁴

For many years, FEMA has led efforts to advance the recognition of current building codes as a pillar of resilience. And the current Administration entrusted FEMA—through its chair of the MitFLG—to helm the National Initiative to Advance Building Codes (NIABC) and coordinate across the federal interagency regarding how departments and agencies use building codes and provide assistance to state, local, tribal, and territorial governments in a more consistent manner, ultimately “enabling [them] to be more resilient to hurricanes, flooding, wildfires, and other extreme weather events” and “sav[ing] lives, reduc[ing] property damage, and lower[ing] utility bills.”⁵

Congress was intentional with enhancements regarding assistance for building codes to both Sections 203 and 406 of the *Robert T. Stafford Emergency Assistance and Disaster Relief Act* with passage of the *Bipartisan Budget Act of 2018* (BBA18) and the *Disaster Recovery Reform Act* (DRRA). Following a series of costly disasters and related oversight hearings, Congress recognized the role modern building code adoption and implementation activities play in reducing losses of life and property during disaster and authorized an expanded pre-disaster mitigation program to incentivize states, tribes, and territories to undertake building codes activities and to use the most recent editions.

The Agency continues to be strongly positioned to advance building code related activities, and thereby drive meaningful improvement in building safety and performance in the face of increasingly damaging natural disasters. Safer and more resilient buildings strengthen community lifelines, reduce community risk, and ultimately reduce overall costs for community disaster recovery. The following recommendations would help BRIC better address the Agency and Administration’s building code priorities.

Furthering State and Local Code Activities through BRIC

While there has been dissatisfaction regarding the scoring of BRIC applications from states using older editions of building codes or those lacking a statewide enforced code, three states have taken significant steps to enhance statewide code environments since the establishment of the BRIC program: Nebraska in 2019,⁶ Colorado in 2023,⁷ and Illinois in 2023.⁸ And BRIC’s support for strong codes has also played a central role in rebutting political efforts to roll back or slow future adoptions over fears of increased

⁴ Mitigation Framework Leadership Group, *National Mitigation Investment Strategy* (Aug. 2019). Available at: https://www.fema.gov/sites/default/files/2020-10/fema_national-mitigation-investment-strategy.pdf.

⁵ The White House, *FACT SHEET: Biden-Harris Administration Launches Initiative to Modernize Building Codes, Improve Climate Resilience, and Reduce Energy Costs* (June 2022). Available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/01/fact-sheet-biden-harris-administration-launches-initiative-to-modernize-building-codes-improve-climate-resilience-and-reduce-energy-costs/>

⁶ Nebraska Legislature, *Nebraska Revised Statute 71-6403*. Available at: <https://nebraskalegislature.gov/laws/statutes.php?statute=71-6403>.

⁷ Colorado General Assembly, *SB23-166 Establishment of a Wildfire Resiliency Code Board*. Available at: <https://leg.colorado.gov/bills/sb23-166>.

⁸ Illinois General Assembly, *SB2368*. Available at: <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=103-0510>.

construction costs. In North Carolina this summer, Governor Cooper vetoed HB488 because it risks freezing the state's 2015 era residential code through 2031 and would have had implications for the state's BRIC competitiveness⁹, but the state legislature unfortunately overruled the veto this month.¹⁰

For these reasons, we still strongly believe in the importance of incentivizing statewide adoptions. But we recognize, too, that there are instances where there are BRIC applications from sub-applicants with strong building codes in force which are ultimately not competitive because their states have adopted lesser standards. We believe the scoring criteria should credit and incentivize these local efforts – while not disincentivizing statewide building code activities – in a way that ultimately benefits the competitiveness of subapplicants with strong codes.

Unlike individual projects – the impact of which is frequently geographically limited – the protection afforded by modern, hazard-resistant codes benefits all construction activities as well as post disaster re-occupancy and recovery. The benefits of the I-Codes have been thoroughly analyzed by FEMA, the National Institute of Building Sciences (NIBS), and other building science experts through peer-reviewed studies. FEMA should continue to prioritize support for these proven approaches. In future updates to BRIC, FEMA might consider administrative changes to the program, like the changes offered below, that expand the adoption of modern building codes. This would better align the importance FEMA has placed on building codes with the programmatic structure of BRIC.

Removing Barriers

Across the first three BRIC cycles, we have consistently heard from applicants and our members regarding a number of program-based limitations that hinder the ability of BRIC to expand coverage of modern hazard-resistant building codes across the nation in favor of more tangible projects.

Currently, BRIC limits dollars available for building code projects to state and tribal set-asides and classifies them as Capability and Capacity Building (CCB) projects. This choice forces communities and states to prioritize eligible projects against limited funds. This has typically meant \$1.5 million dollars or less is available for code related activities, regardless of a state's population. State, tribal, and territorial governments have consistently been oversubscribed, by as much as 30 times or more, for that small sum. Fewer BRIC applications for code projects are a clear consequence of this aspect of the BRIC program. To address this challenge:

1. Where applicants have proposed worthy projects but fall short on their adopted and enforced codes, FEMA should consider linking project awards to resilient code adoptions and/or improved implementation. This approach creates a direct and more powerful incentive to expand the footprint of areas protected by modern building codes and could address the state versus local scoring issue discussed above.
2. FEMA could consider excluding CCB funding for code projects from state and tribal set-aside caps. Building and fire prevention officials have long reported that it is nearly impossible for code activities to compete for grants with other eligible activities, particularly infrastructure and redevelopment efforts, which have greater visibility, and lack the political opposition, as noted

⁹ North Carolina Governor Roy Cooper, *Objections and Veto Message*. Available at: <https://webservices.ncleg.gov/ViewBillDocument/2023/6812/0/H488-BD-NBC-11126>.

¹⁰ Id., *Governor Cooper Comment on Veto Override Actions*. Available at: <https://governor.nc.gov/news/press-releases/2023/08/16/governor-cooper-comment-veto-override-actions>.

above.

A means to do so would be by establishing a separate set-aside each BRIC cycle for code-related activities. Such a change would ensure that emergency managers and building safety officials are coordinating annually in an effort to bolster community resilience. The U.S. House of Representatives advanced such a proposal in 2022, with limited opposition,¹¹ but the Senate failed to consider the measure before adjourning despite support for updated resilient codes from both sides of the aisle.¹² That said, and even though Congress ultimately did not require FEMA to adopt a set-aside, FEMA can make such a change under the current authorities of BRIC.

Additional barriers concern grant applicants and state grant processes. For instance, the offices most in tune with building code needs and the benefits codes and building safety professionals provide – building and fire prevention offices – are never the primary applicants for BRIC. That role is filled by state emergency managers, and local emergency managers for sub-applicants. Communication between state emergency management departments and agencies, sub-applicants, and FEMA needs improvement, as do the links between emergency managers and building safety officials. At the very least, FEMA should consider establishing requirements to drive emergency management consultation with building safety departments during the BRIC application process to determine whether building codes are in force and the recency of those codes.

Even if a building safety agency were presented with the opportunity to be a sub-applicant, access to a grant writer or knowledge of how to effectively write a grant is an intimidating hurdle for most municipal employees who are already understaffed and under-resourced. Code departments are rarely direct grant recipients and, consequently, rarely benefit from institutional grant application capabilities.

State-specific BRIC overlays have also proven challenging. Some states have excluded code related projects from consideration for their set-aside, while other states have adopted state-specific grant application timelines for which FEMA does not account. Many states require letters of intent months before FEMA announces a given year's Notice of Funding Opportunity.

Increasing Effectiveness

There are several enhancements that FEMA could consider for greater inclusion of building safety investments and outcomes during future BRIC cycles.

As noted above, emergency managers and building safety officials do not typically have a regular line of communication. FEMA should consider accepting applications for code projects from building and fire prevention departments directly, rather than up through prime applicants. This would eliminate additional steps for code applications and ensure the voices and needs of the departments with the greatest expertise in building safety are heard directly by FEMA.

The BRIC cycles thus far have also been opaque when it comes to the details of all applicants and the types of projects for which they are seeking awards. FEMA should request that states publish complete applicant lists for state, tribal, territorial set-aside funding. Greater visibility and transparency into local

¹¹ U.S. Reps. Peter DeFazio, Sam Graves, Dina Titus, Dan Webster, H.R. 5689 - *Resilient AMERICA Act*. Available at <https://www.congress.gov/bill/117th-congress/house-bill/5689>.

¹² U.S. Sen. Rick Scott, CBS News – Face the Nation (Oct. 2, 2022). Available here: <https://www.cbsnews.com/news/rick-scott-face-the-nation-transcript-2022-10-02/>.

submissions would inform future education efforts on codes as well as future BRIC programmatic considerations to better prioritize code activities.

FEMA should consider developing and making available forms to guide applicants, through which blanket approvals could be provided for certain common code projects, including, for example:

- New applications to train code officials or help code officials receive certification on the codes they enforce (funding could be provided automatically per capita based on the extent of training, certifications, and staff trained/certified);
- Code department modernization, including funding to enable electronic permits and plan review and remote virtual inspection;
- The adoption of hazard resistant codes in jurisdictions without hazard resistant codes; and
- Building department accreditation or recognition programs.

Finally, for straight forward service-based applications such as a static subscription (e.g., 3-year subscription to X resource), FEMA could expedite the award distribution given the lengthiness of the BRIC award distribution process. These recommendations would remove barriers to code applications which, to date, have failed to keep pace with need and demand across the country.

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Thank you for the opportunity to provide comments. If you have any questions, please do not hesitate to contact us.

Sincerely,

AEC-Science & Technology
Air Conditioning Contractors of America
Alliance for National & Community Resilience
American Concrete Institute
American Council for an Energy-Efficient Economy
American Institute of Architects
American Property Casualty Insurance Association
American Society of Civil Engineers
American Society of Interior Designers
American Supply Association
ASHRAE
Attachments Energy Rating Council (AERC)
Building Performance Association
BuildStrong Coalition
Concrete Masonry and Hardscapes Association
Congressional Fire Services Institute
E4TheFuture
Environmental and Energy Study Institute
EPDM Roofing Association
Extruded Polystyrene Foam Association (XPSA)
Federal Alliance for Safe Homes (FLASH)
Flood Mitigation Industry Association
Floodproofing.com
Green Building Initiative
Institute for Market Transformation

Insurance Institute for Business and Home Safety (IBHS)
International Association of Fire Chiefs
International Association of Structural Movers
International Code Council
International Institute of Building Enclosure Consultants
Knauf Insulation
Modular Building Institute
National Association of Mutual Insurance Companies
National Association of State Energy Officials (NASEO)
National Council of Structural Engineers Associations
National Environmental Health Association
National Fire Protection Association
National Institute of Building Sciences
National Insulation Association
North American Insulation Manufacturers Association
Polyisocyanurate Insulation Manufacturers Association
Reinsurance Association of America
Roof Coatings Manufacturers Association (RCMA)
Sheet Metal and Air Conditioning Contractors National Association (SMACNA)
Simpson Strong-Tie Company Inc.
Single Ply Roofing Industry
Smart Vent
Solar Energy Industries Association
Structural Insulated Panel Association (SIPA)
UL Solutions
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