



**International Code Council**  
500 New Jersey Avenue, NW  
Sixth Floor  
Washington, DC 20001  
tel: 888.icc.safe (422.7233)  
fax: 202.783.2348  
www.iccsafe.org

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## **FEMA-2016-0003 Establishing a Deductible for FEMA's Public Assistance Program**

**COMMENTS OF:  
THE INTERNATIONAL CODE COUNCIL (ICC)  
500 New Jersey Ave, NW  
Washington, DC 20001**

**Contact:**  
**David Karmol, [dkarmol@iccsafe.org](mailto:dkarmol@iccsafe.org)**

The International Code Council (ICC) offers the following comments on ANPR  
**Establishing a Deductible for FEMA's Public Assistance Program**  
published by FEMA on January 20, 2016.

### **Background**

The International Code Council (ICC) is a membership association dedicated to building safety, fire prevention, and energy efficiency. The International Codes, or I-Codes, published by ICC, provide minimum safeguards for people at home, at school and in the workplace. Building codes benefit public safety and support the industry's need for one set of codes without regional limitations. FEMA's own publications acknowledge "mitigation increases occupant health and safety during a disaster, protects the local tax base, ensures continuity of essential services, and supports more rapid recovery from disasters"<sup>1</sup>.

Fifty states and the District of Columbia have adopted the I-Codes at the state or jurisdictional level. Federal agencies including the Architect of the Capitol, General Services Administration, National Park Service, Department of State, U.S. Forest Service and the Veterans Administration also use the I-Codes for the facilities that they own or manage. The Department of Defense references the International Building Code for constructing military facilities, including those that house U.S. troops, domestically and abroad. Puerto Rico and the U.S. Virgin Islands enforce one or more of the I-Codes.

The International Code Council (ICC) was established in 1994 as a non-profit organization dedicated to developing a single set of comprehensive and coordinated national model construction codes. The founders of the ICC are Building Officials and Code Administrators International, Inc. (BOCA), International Conference of Building Officials (ICBO), and Southern Building Code Congress

International, Inc. (SBCCI). Since the early part of the last century, these non-profit organizations developed three separate sets of model codes used throughout the United States. Although regional code development was effective and responsive to our country's needs, the time came for a single set of codes. The nation's three model code groups responded by creating the International Code Council (ICC) and by developing codes without regional limitations: the International Codes.

ICC's members are the code officials who adopt and enforce building, fire and energy codes, and the architects, engineers, builders and contractors who build and maintain structures in the built environment. Over 50,000 code officials are active members of the ICC. [www.iccsafe.org](http://www.iccsafe.org)

Most recently, the International Residential Code (IRC) and International Building Code (IBC) were recognized as key components in the new Federal Earthquake Safety Standard to assure the safety of Federal owned and leased buildings, in Presidential Executive Order 13717, signed February 2, 2016.

## **Summary**

The Federal Emergency Management Agency (FEMA) is considering the establishment of a disaster deductible, requiring a predetermined level of financial or other commitment from a Recipient (Grantee), generally the State, Tribal, or Territorial government, before FEMA will provide assistance under the Public Assistance Program when authorized by a Presidential major disaster declaration under the Stafford Act (PL 100-707). FEMA believes the deductible model would incentivize Recipients to make meaningful improvements in disaster planning, fiscal capacity for disaster response and recovery, and risk mitigation, while contributing to more effective stewardship of taxpayer dollars.

## **ICC Comments**

The proposal to establish a "Disaster Deductible" is one of the most logical and sensible ideas that could be applied to Stafford Act management, and to the Federal disaster assistance program generally. The current system, which allows states and local governments to apply for disaster funding, following a declared event, actually provides more funding the larger the financial impact of the disaster. The current system includes few incentives to mitigate potential or recurring events.

While greater assistance may be necessary when the impact of the disaster is greatest, more assistance for more damage is at odds with the concept of mitigation, to reduce the impact of natural and man-made disasters, before the disaster occurs. Under current practices, local and state governments that enact and enforce strong building codes, that greatly reduce property damage and injuries, receive no credit for their mitigation efforts, ironically receiving less Federal aid after disasters than communities and states that have no current code enforcement system in place. While this may be appropriate from a humanitarian standpoint, it certainly makes sense to give local and state governments some "credit" for the mitigation efforts they take, and finance, that reduce the damages and the expenses post-disaster.

A deductible is a sensible, and accepted method of incentivizing behavior and actions that benefit the public interest, and the concept is incorporated into almost every private insurance contract. As a means of reducing exposure to risks, and mitigating the costs of damages that do occur, a deductible

should certainly be applied to the Federal disaster response program, and should be done on an expeditious basis.

ICC strongly supports the concept of a deductible, as a means to incentivize state, local and tribal governments to fund disaster mitigation efforts before disasters occur, especially by adopting and enforcing the most current version of building codes, including elements aimed at reducing damage from fires, flooding, seismic events, hurricanes, tornados and other windstorms.

### **Comments on Specific Questions**

2. Scope of the deductible. Because the adoption and enforcement of building codes varies greatly in different parts of the U.S., and because states, local governments and tribal entities all have a role in the adoption and/or enforcement of building codes, we believe the deductible should apply to all levels of government. We believe that the deductible should apply, at minimum, to permanent work-infrastructure repair and replacement- and to management costs.

3.b. Satisfying the deductible. We strongly believe that if FEMA wishes to incentivize behavior that will actually reduce the overall cost of disasters, it must allow states, local governments and tribes to use each of the items listed as 3.b. xii, xiii, and xiv:

“xii. Planning, preparedness, or mitigation programs supported by non-Federal funding.

xiii. Adoption of standardized or enhanced building codes.

xiv. Proportion of the jurisdiction which is covered by standardized and/or enhanced building codes.”

However, both items xiii, and xiv should be modified to replace the words “standardized or enhanced” with the words “the most current edition of” building codes. Most current edition is well understood in the construction and code enforcement community to mean the most current edition of the model building codes, published every three years. The meaning of “standardized or enhanced” is vague, and subject to a number of conflicting interpretations. Whatever criteria are adopted should be clear and unambiguous.

Allowing expenditures in these areas to be counted toward the deductible is, in our opinion, an essential element of a sensible deductible concept for Federal disaster funding. We would go farther, however, and suggest that there should actually be a preference or higher value placed on pre-disaster mitigation efforts, such as building code adoption and enforcement efforts.

While allowing a rainy day fund, or other state and local funds set available to pay for disasters to count toward the deductible would lessen the burden on Federal funds, and might incentivize state and local governments to take other actions to reduce the impact of disaster, building code adoption and enforcement is proven through research to reduce the impact of disasters. Building code adoption and compliance efforts have been demonstrated through research following major disaster events to reduce the damage from disaster events by approximately \$4.00 for each \$1.00 spent for mitigation efforts.<sup>2</sup>

Thus, it would be sensible and consistent with the goals of the proposed deductible to count every dollar of state and local funds spent on building code adoption, compliance and enforcement efforts as \$2, \$3, or even \$4 towards the deductible amount.

Unlike a rainy day fund, or state and local funds spent on clean-up efforts, pre-disaster mitigation spending has the potential to reduce the overall costs of a disaster, in lives saved, injuries prevented and property damage avoided-- for both the private and public sector. As such, pre-disaster mitigation

spending should be given higher value in the calculation of the deductible than other spending that simply reduces the Federal share of the cost of the disaster clean-up and rebuilding effort. Therefore, sub-items 3.b.xii, xiii, and xiv should be allowed and counted using a multiplier factor over other possible means of meeting the overall deductible amount. These considerations also apply to the consideration addressed in question 4(b) of the Notice.

Relating to question 5, implementation considerations generally, there is already in place a private sector data collection mechanism that rates thousands of jurisdictions in the U.S. on their adoption and enforcement of building codes, that is administered by Insurance Services Organization, called Building Codes Effectiveness Grading Schedule, or BCEGS, that annually surveys communities to determine the extent to which they adopt current codes, and actively enforce codes, the two key elements in an effective code program. This data could be easily incorporated into the FEMA disaster program management to minimize additional costs for local and state jurisdictions, as well as the administrative burden on FEMA in monitoring actions and auditing local and state government programs.<sup>3</sup>

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<sup>1</sup> FEMA Building Science Branch: Building Disaster Resilient Communities, “Building Codes Fact Sheet”

<sup>2</sup> Recent studies indicating that, for every dollar expended on mitigation, a \$4 savings is subsequently realized (FEMA, 2007; Multihazard Mitigation Council, 2005).

<sup>3</sup> See ISO/BCEGS website, accessed 2/16/2016: <https://www.isomitigation.com/bcegs.html>