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Hazard Mitigation Planning  
Risk Management Directorate  
Federal Emergency Management Agency  
400 C Street SW  
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Via email: [fema-mitplan-guide-updates@fema.dhs.gov](mailto:fema-mitplan-guide-updates@fema.dhs.gov)

**Re: Comments of the International Code Council in Response to FEMA’s Request for Feedback on its Upcoming State and Local Mitigation Planning Policy Updates**

The International Code Council (ICC) is nonprofit organization, driven by the engagement of its more than 64,000 members, that is dedicated to helping communities and the building industry provide safe, resilient, and sustainable construction through the development and use of model codes (I-Codes) and standards used in design, construction, and compliance processes. Most U.S. states and communities, federal agencies, and many global markets choose the I-Codes to set the standards for regulating construction and major renovations, plumbing and sanitation, fire prevention, and energy conservation in the built environment. The Code Council appreciates the opportunity to submit the following comments in response to FEMA’s request for feedback on its upcoming state and local mitigation planning policy updates.

**I. Code Consideration under FEMA’s Existing State and Local Mitigation Plan Guidance**

FEMA’s mitigation plan regulations require local jurisdictions “identify and analyze a comprehensive range of specific mitigation actions . . . to reduce the effects of hazards, **with emphasis on new and existing buildings** and infrastructure . . . [and provide] [a]n action plan describing how the actions . . . will be prioritized, implemented, and administered by the local jurisdiction” (emphasis added).<sup>1</sup> FEMA’s Local Mitigation Plan Review Guide expressly recognizes “building codes” as means through which the jurisdiction can “accomplish hazard mitigation.”<sup>2</sup>

Standard State Mitigation Plans must include an “evaluation of State laws, regulations, policies, and programs related to hazard mitigation.”<sup>3</sup> For Enhanced State Mitigation Plans, states can “demonstrate commitment to a comprehensive mitigation program” through adoption of “codes and ordinances . . . that reduce risks.”<sup>4</sup>

While FEMA’s mitigation plan regulations and guidance encourage plans to consider adopting hazard resistant codes, include an evaluation of regulations (which would include adopted codes) and policies (which could include enforcement practices), and stress the importance of a comprehensive approach

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<sup>1</sup> 44 CFR § 201.6.

<sup>2</sup> Local Mitigation Plan Review Guide (Oct. 1, 2011).

<sup>3</sup> 44 CFR § 201.4,

<sup>4</sup> State Mitigation Plan Review Guide, FP 302-094-2 (Mar. 2016).

that addresses the built environment, Agency guidance does not require plans to consider whether adopted codes address hazard risk. The guidance also does not require plans include action items that speak to an analysis of the adoption, updating, or improved implementation of hazard resistant codes.

Consequently, of the roughly 33 states where, as determined by FEMA, hazard resistant codes are not in effect for the majority of jurisdictions, 10 of these states' plans do not discuss adopting codes that address existing hazards while 7 state plans discuss adoption of codes that do not do not fully address hazard risks (e.g., proposing adoption of a code provision to address flooding without addressing existing hurricane risk ).<sup>5</sup> Of the 22 states that would not meet the Building Code Effectiveness Grading Schedule (BCEGS) criteria under the Building Resilient Infrastructure and Communities (BRIC) program, were it applied to statewide BCEGS scores,<sup>6</sup> 14 do not discuss efforts to improve code implementation.<sup>7</sup>

## **II. State and Local Plans Should Address Hazard Resistant Code Adoption and Implementation**

FEMA should update its state and local mitigation plan guidance to require that plans consider (1) whether adopted codes, as implemented, adequately address natural hazards; (2) whether updated or new codes should be adopted to address hazard risk, particularly in areas that, per FEMA, have not adopted hazard resistant codes, and (3) whether code implementation and enforcement should be enhanced to better address hazard risk (e.g. considering staffing based on permitting demand, providing for training and certification of code officials). FEMA could structure these inclusions to help better connect planning with the hazard resistant code adoption and BCEGS criteria under the BRIC program.

As FEMA recognized in its current Strategic Plan, “[d]isaster resilience starts with building codes, because they enhance public safety and property protection.”<sup>8</sup> In the Plan’s very first objective, FEMA highlighted the importance of the Agency’s “advocate[ing] for the adoption and enforcement of modern building and property codes.” The Agency’s emphasis stems from its recognition of the sizable mitigation benefits codes provide. A 2019 FEMA-funded study by the congressionally-established National Institute of Building Sciences (NIBS) found that up-to-date model building codes save \$11 for every \$1 invested through earthquake, flood, and wind mitigation benefits, with a \$4 to \$1 wildfire mitigation benefit.<sup>9</sup> So far, FEMA’s ongoing national loss avoidance study has found that Florida and California’s consistent adoption of the modern codes (and their hazard mitigation provisions) since 2000 will provide long-term average future savings of \$1 billion a year.<sup>10</sup>

Yet, code adoption and enforcement lags in wide swaths of the country where disaster risks are acute. According to FEMA’s data, less than 4 in 10 of communities facing hazard risk have adopted hazard resistant codes. Less than half of the 45 states participating in the BCEGS program, which measures effectiveness by considering staffing to permitting load ratios and code official training/testing, would

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<sup>5</sup> Our analysis focuses on state mitigation plans to illustrate themes in mitigation plan approaches. Similar themes likely exist for local plans.

<sup>6</sup> State BCEGS scores were determined based on ISO’s 2019 National Building Code Assessment Report.

<sup>7</sup> Code implementation is the primary driver behind BCEGS scoring.

<sup>8</sup> FEMA’s 2018-2022 Strategic Plan (2018).

<sup>9</sup> NIBS, *Natural Hazard Mitigation Saves: 2018 Interim Report* (Jan. 2019).

<sup>10</sup> FEMA, *FACT SHEET - Building Codes Save: A Nationwide Study of Loss Prevention* (Apr. 2020).



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receive FY20 BRIC program credit for their residential and commercial effectiveness scores. In 2016, the most recent year for which complete data was available, more than 30 percent of new construction was done to either no code or codes outdated by 20 or more years.<sup>11</sup>

FEMA can help improve code adoption and implementation outcomes by strengthening the connection between mitigation planning, emergency management, and building codes. Generally speaking, departments charged with building code adoption and implementation reside outside of the agencies charged with emergency management and hazard mitigation. This structure impedes communications and relationship building between code officials, emergency managers, and mitigation planners. It results in an inconsistent, sporadic consideration of mitigation benefits offered by the adoption and implementation of current codes and standards. This is evidenced both by the infrequency of their mention in mitigation plans (as mentioned above) and the fact that the Hazard Mitigation Grant Program (HMGP), FEMA’s largest and longest standard mitigation program, has provided grants for just 78 code-related projects out of more than 22,000 project awards.<sup>12</sup>

By ensuring codes and standards are integrated into its hazard mitigation plan guidance FEMA can both address this disconnect and help foster relationship building between these interrelated departments. Doing so would be consistent with the U.S. Department of Housing and Urban Development’s (HUD) approach in its Community Development Block Grant Disaster Recovery (CDBG-DR) program. For the past seven years, and across multiple allocations, HUD has required CDBG-DR applicants demonstrate in their action plans how they will support the adoption of resilient building codes.<sup>13</sup>

The Agency’s requiring code consideration in mitigation planning also tracks with the Administration’s National Mitigation Investment Strategy (NMIS) issued last summer by the Mitigation Framework Leadership Group (MitFLG)—chaired by FEMA and made up of HUD, 12 other federal agencies and departments as well as state, tribal, and local officials—which states 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,” “trained, certified professionals [should] handle building inspections and code administration,” and “[u]p-to-date building codes and standard criteria should be required in federal and state grants and programs.”

Even before the NMIS was issued, Congress required current and well implemented codes be a consideration for BRIC funding awards and an enhanced federal match for post-disaster public assistance funding.<sup>14</sup> If modern codes, implemented by adequately staffed, trained, and certified professionals, are to be criteria in its programs, FEMA should ensure applicants consider them as part of

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<sup>11</sup> FEMA, *Draft Report – Building Codes Save: A Nationwide Study* (Aug. 2020).

<sup>12</sup> OpenFEMA Data Sets (last accessed Aug. 10, 2020).

<sup>13</sup> HUD, Allocations, Common Application, Waivers, and Alternative Requirements for 2017 Disaster Community Development Block Grant Disaster Recovery Grantees, 83 Fed. Reg. 5844, (Feb. 9, 2018); Notice of National Disaster Resilience Competition Grant Requirements, 81 Fed. Reg. 36,557 (June 7, 2016); Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy, 78 Fed. Reg. 14,329 (Mar. 5, 2013).

<sup>14</sup> Pub. L. 115-123; Pub. L. 115-254.



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the longer term mitigation planning the Agency requires<sup>15</sup> for state and local governments to access the resources these programs provide. Doing so ensures the Administration's code strategy is cohesive and that applicants are best positioned to satisfy current and future code criteria.

In sum, we encourage FEMA to ensure that state and local mitigation plans include consideration and discussion of whether current codes and implementation practices address hazard risks, and whether updates, new adoptions, and/or improved implementation and enforcement are necessary to address those risks. Doing so reflects the focus the Agency has placed on advancing resilient codes in its Strategic Plan. It would further the NMIS by ensuring cohesion between required planning and code criteria in grant programs and by aligning planning approaches across FEMA and HUD, the two agencies that provide the lion's share of federal recovery funding. Finally, it would help better integrate and align code departments and the state and local agencies charged with mitigation planning and response.

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Thank you for the opportunity to provide comments. If you have any questions concerning ICC's recommendations, please do not hesitate to contact me.

Sincerely,

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<sup>15</sup> FEMA requires Hazard Mitigation Assistance (HMA) program applicants have an approved hazard mitigation plan in place. Hazard Mitigation Assistance Guidance (Feb. 27, 2015).