901 Seventh Street NW, Suite 200
Washington, DC 20001
info@buildstrongamerica.com

September 3, 2024

SUBMITTED VIA REGULATIONS.GOV:
Office of Response and Recovery, Public Assistance Division
Federal Emergency Management Agency (FEMA)
500 C Street, SW
Washington, DC 20472

Re: BuildStrong America's Comments on the DHS/FEMA Proposed Rule: "Update of FEMA's Public Assistance Regulations" - Docket ID FEMA-2023-0005

BuildStrong America unites a diverse coalition of stakeholders dedicated to minimizing disaster costs and fostering resilience across America. It is our mission to draw down disaster costs and losses by reducing risks to individuals, communities, and lifeline infrastructure systems and maximizing government investment in mitigation. Our vision extends to proactively mitigating risks associated with all hazards in the built environment, paving the way for a nation that thrives in the face of any disaster. The strength and success of BuildStrong is based entirely on its members, who are a coalition of firefighters, emergency managers and responders, insurers, engineers, architects, contractors and manufacturers, as well as consumer organizations, code specialists, and many others committed to building a more resilient America.

Over the past decade, BuildStrong America and our partners have been strong advocates for solutions to address the rising costs and impacts of disasters in the United States. We have identified many important opportunities for policy changes that promote mitigation and the smart investment of federal resources, including providing input that informed several key provisions of the *Bipartisan Budget Act of 2018* (BBA, P.L. 115-123) and the *Disaster Recovery Reform Act of 2018* (DRRA, Division D of P.L. 115-254).

INTRODUCTION

We appreciate the opportunity to provide feedback on FEMA's Proposed Rule: "Update of FEMA's Public Assistance Regulations" - Docket ID FEMA-2023-0005. As key stakeholders in the field of disaster resilience and recovery, we recognize the critical importance of clear, equitable, and effective guidelines to ensure that communities can rebuild stronger and more resiliently following disasters. We remain concerned that critical policies and regulations have not been implemented to date. Not being included in this current proposed rulemaking signals further delay of these important measures.

FEDERAL COST SHARE

The *Disaster Mitigation Act of 2000 (*DMA2K*)* established a framework for state, local, tribal, and territorial governments to engage in hazard mitigation planning as a prerequisite for receiving certain types of non-emergency disaster assistance.[1] BuildStrong strongly believes that

[1] 42 USC 5172: Repair, restoration, and replacement of damaged facilities

incentivizing proactive measures is the most effective way to drive meaningful change in disaster resilience. We are increasingly concerned about FEMA's delay in implementing regulations that would reduce federal assistance to at least 25 percent for the repair or replacement of eligible public or nonprofit facilities that have been damaged by the same type of disaster more than once in the past 10 years, if the property owner has not taken adequate steps to mitigate the risk.

While the DMA2K laid the groundwork for proactive planning, further legislative efforts have sought to strengthen this approach by directly incentivizing communities to act before disasters strike. One such effort was Stafford Act Section 406, which allows for "Incentive Measures" that increase readiness and resilience in disaster response. This provision permits FEMA to raise the Federal share for Section 406 assistance from 75 percent up to 85 percent for measures that enhance disaster readiness and resilience, as authorized under 42 U.S.C. 5172(b)(3)(A). These incentive measures were included in the *Bipartisan Budget Act of 2018* (Sec. 20606 of P.L. 115-123). This provision was designed to incentivize communities to take proactive steps before a disaster by increasing federal recovery assistance available after a disaster. This original DRRA provision was so vital to Congress in the aftermath of hurricanes Harvey, Irma, and Maria, as well as the record-breaking 2017 wildfire season, that it was fast-tracked through the BBA in February 2018, eight months before DRRA's eventual passage in October.

Despite this urgency, the policy remains unimplemented more than six years after the law's enactment. This delay has rendered some of the proposed incentives outdated. For instance, an approved mitigation plan was the first proposed criterion in the law.[2] As of June 30, 2024, all 50 states, the District of Columbia, and five territories, including American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, have approved mitigation plans. Moreover, we are concerned that the recent federal emphasis on energy codes may detract from the original intent to prioritize and incentivize the enforcement of hazard-resistant building codes.

We recognize resiliency as a co-benefit of energy efficiency. However, as a nation, we cannot allocate resources into solving only a singular problem while ignoring more comprehensive risks. There has been unprecedented funding into our national resiliency and lifeline infrastructure through the Infrastructure Investment and Jobs Act (IIJA) and the Inflation Reduction Act (IRA). The IRA invests a historic $369 billion in climate- and energy-related provisions over the next decade to reduce emissions and bolster clean energy, for example. Unfortunately, none of this funding was included to specifically ensure homes and businesses are built to better withstand natural hazards. As new case studies emerge from areas like Texas and Florida in the aftermath of Hurricanes Beryl and Debby in 2024, it has never been more evident that individuals and communities are kept safe through the strength of their homes and by the infrastructure that provides critical resources and services in affected areas.

We understand the challenges surrounding the implementation of Stafford Act Section 406 which permits FEMA to raise the Federal share for Section 406 assistance from 75 percent up to 85 percent for measures that enhance disaster readiness and resilience, as authorized under 42 U.S.C. 5172(b)(3)(A). FEMA has broad discretion under Section 406(b) to determine which readiness measures to incentivize, such as investments in emergency management programs,

[2] Section 406(b)(3)(A)(i) of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (P.L. 93-288)

adoption of building codes, participation in the Community Rating System, and funding mitigation projects. Despite this authority, FEMA has faced significant challenges in implementing these incentives, particularly in determining the appropriate value and corresponding effectiveness for incremental cost share increases.

Given these complexities and outstanding questions over the cost share-incentive structure, BuildStrong America once again offers to convene a panel of stakeholders and experts to assist in developing effective policy solutions. This panel could provide valuable insights and recommendations to help FEMA implement this authority in a way that truly incentivizes readiness and resilience, ultimately benefiting communities nationwide, while in line with the original intent of the law.

CONCLUSION

BuildStrong America is committed to working collaboratively with FEMA to address the challenges around the cost share implementation requirements in a way that maximizes its impact on community resilience and disaster recovery. We look forward to continuing this vital dialogue and contributing to a more resilient future for all communities.

Respectfully,

Natalie F. Enclade

Natalie F. Enclade, Ph.D.
Executive Director
BuildStrong America