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January 29, 2025

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: Comments on the Public Assistance Mitigation Cost Share Incentives Policy, Docket ID: FEMA-2024-0029.

For over a decade, BuildStrong America and our undersigned partners — a coalition of firefighters, emergency managers, insurers, engineers, architects, contractors, manufacturers, consumer organizations, and the broad business community — have advocated for solutions to address rising disaster costs and impacts, contributing to provisions in 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).

Thus, we appreciate the opportunity to provide feedback on FEMA's Public Assistance Mitigation Cost Share Incentives Policy (Docket ID: FEMA-2024-0029), released on September 26, 2024, which implements Section 406(b)(3) of the Stafford Act as required by the Bipartisan Budget Act of 2018. While the law aimed to incentivize proactive state investments in risk reduction, the interim policy falls short of meeting congressional intent, missing critical opportunities to operationalize key measures of the law. The interim policy misses the mark by:

- Ignoring statutory language, including specific resilience measures listed in the law.
- Favoring a reactive approach, increasing administrative burdens, and complicating access to incentives.
- Coupling energy codes with hazard-resistant building codes, shifting focus away from predisaster mitigation.
- Overlooking critical infrastructure and failing to prioritize insurance, including parametric solutions, as a resilience measure.
- Adding bureaucracy and emphasizing post-disaster compliance, which risks fostering reliance on federal aid instead of encouraging state-led predisaster investments.

These shortcomings are especially unfortunate as our organizations have consistently highlighted the provision and offered to support policy and practical implementation with subject matter, emergency management, and industry experts.[1]

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[1] (see: Coalition & Stakeholder Letter to FEMA Leadership on Lack of Cost Share Implementation | March 22, 2023; BuildStrong America Letter to FEMA re: Public Assistance Program and Policy Guide | August 15, 2024; BuildStrong America Letter to FEMA re: Proposed Rule on FEMA's Public Assistance Regulation | September 3, 2024); National Institute of Building Sciences. (n.d.). *Disaster resilience is a trillion-dollar challenge—Here's what FEMA can do to help*. Retrieved January 3, 2025, from https://www.nibs.org/blog/disaster-resilience-trillion-dollar-challenge-heres-what-fema-can-do-help.)

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INTRODUCTION

States have consistently demonstrated the value of investing in proactive resilience, predisaster mitigation projects and measures, building capacity, and reducing risks that ultimately lower federal disaster costs. These efforts align with the type of programs Congress intended to reward with increased cost-share post-disaster. For example:

- Strengthen Alabama Homes promotes resilient, disaster-resistant housing by encouraging higher safety standards like the FORTIFIED Home program, ensuring affordability and energy efficiency, and partnering with local stakeholders.[2] Despite its success in reducing repair costs, improving housing stock, and lowering insurance rates, the program would not be recognized under the interim policy as currently drafted due to Alabama's lack of a statewide building code.
- Florida has implemented innovative resilience programs to address weather challenges, such as the My Safe Florida Home Program, which provides grants for retrofitting homes against hurricanes, and the Resilient Florida Program, which funds projects addressing flooding and sea-level rise. These efforts, complemented by research from the Florida Flood Hub for Applied Research and Innovation, enhance community resilience and mitigate risks. While Florida has adopted the codes required by the interim policy, Florida would first have to submit 406 proposals on a project-by-project basis post disaster, adding administrative burdens and failing to fully reward the state's numerous other proactive resilience investments.

The examples above highlight how effective resilience initiatives are overlooked or burdened by the interim policy's narrow scope and administrative demands. These programs demonstrate proactive investments that reduce disaster risks yet are not recognized under the current framework. To further outline our concerns, we offer the following comments on the interim policy.

Misalignment with Congressional Intent

The original intent of the law was clear: to incentivize states and tribal and territorial governments[3] to make their own meaningful, proactive investments in risk reduction, which in turn would lower federal disaster expenditures over time. The sliding scale authorized by Congress would allow the President to increase the federal cost share to 85% postdisaster (from 75%) for predisaster measures such as:

- Adoption of an approved mitigation plan.[4]
- Investments in disaster relief, insurance, and emergency management programs.

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[2] Alabama Department of Insurance. (n.d.). *State Assistance for Homeowners program*. Alabama Department of Insurance. https://www.aldoi.gov/sahbio.aspx

[3] For simplification, hereinafter, "states" is used to refer to "states, territories, and tribes."

[4] To date, every state and territory has a mitigation plan.

- Adoption and enforcement of the latest building codes.
- Participation in the Community Rating System (CRS).
- Funding mitigation projects or offering tax incentives for risk-reduction projects.

FEMA's interim policy, however, relies heavily on federal funding, offering a cost share increase for proposed mitigation projects that would be predominantly supported by federal dollars post disaster, which undermines incentives for proactive, predisaster state investments. It is important to note that proposals for 406 projects are not included in the law. Additionally, the interim FEMA policy expanded eligibility to local governments and nonprofits, which could be an additional, important step, but not in the context of the statutory requirements. This approach further shifts the focus away from state-driven resilience efforts.

Discouraging Proactive Resilience

The interim policy's incentives fall short of encouraging meaningful additional investment in resilience and predisaster mitigation. While a 10% cost share increase may seem appealing, the policy's focus on postdisaster mitigation, rather than rewarding predisaster investments, undermines its effectiveness. The interim policy's misalignment with proactive resilience measures and projects represents a missed opportunity to foster long-term disaster resilience and a good use of taxpayer dollars. By prioritizing federal postdisaster spending over state led predisaster investments, the policy overlooks successful state-led resilience programs, such as the examples cited above, which have demonstrated significant benefits in improving community, business, and individual citizen resilience.

Furthermore, the policy's narrow focus on building and energy codes neglects critical lifeline infrastructure resilience, including roads, bridges, the electric grid, and water systems, which are essential components of a community's ability to withstand and recover from disasters. The interim policy does not acknowledge the broader scope of emergency management and disaster relief programs that contribute to resilience. Comprehensive preparedness programs that address community-wide risks, such as wildfire management, flood prevention, and use of nature-based solutions are essential but are not considered under the current framework, further limiting the policy's potential to foster long-term resilience and missing the opportunity to encourage holistic approaches to resilience that could yield substantial long-term benefits and reduce overall disaster costs.

Administrative Burden and Complexity

The interim policy's administrative burden and complexity create significant challenges that undermine its effectiveness and accessibility. By requiring project-by-project 406 proposals, the policy dramatically increases workload for state and local governments, slowing recovery efforts and diverting resources from critical disaster response activities. The expansion of the applicant pool to include local governments and nonprofits, while well-intentioned, strains already limited state resources and complicates coordination efforts. Moreover, the imposition of complex compliance requirements for building and energy codes adds another layer of bureaucracy, making it difficult for many communities to participate fully. Perhaps most concerning is the risk of deobligations years after project completion due to cost fluctuations or miscalculations, which introduces long-term financial uncertainty for communities struggling to rebuild. These administrative hurdles disproportionately affect disadvantaged and under-resourced communities, potentially widening the gap in disaster preparedness and recovery capabilities across the nation.

Equity and Accessibility Issues

Disadvantaged communities will face significant challenges meeting the interim policy's requirements. Expanding the applicant pool to local governments and nonprofits burdens states with additional administrative and financial responsibilities, stretching limited resources and exacerbating inequities in disaster resilience. The complex 406 proposal process will likely deter participation, especially in under-resourced communities.

Coupling energy codes with hazard-resistant codes adds further strain on disadvantaged jurisdictions, which often lack the workforce, funding, or expertise to implement these codes. This widens the gap between well-funded and resource-limited communities. Additionally, nonprofits, not structured to manage regulatory compliance, face challenges that divert focus from their core missions. Without providing greater technical assistance, FEMA risks deepening existing inequalities in disaster preparedness and response.

RECOMMENDATIONS

There are several ways to align the interim policy with Congressional intent and make it more accessible while reducing the public burden in its implementation, particularly for under-resourced communities that may struggle with the administrative complexity of the current approach. Below are our recommendations to enhance accessibility and reduce the administrative burden of the interim policy.

Incorporate the criteria outlined in the Bipartisan Budget Act of 2018 and engage stakeholders to determine how to operationalize the technical criterion. FEMA should consider the provisions outlined in the BBA of 2018 as they were the intent of Congress. These bipartisan provisions were thoroughly researched, vetted, and debated. FEMA should consider a range of options to reward states for proactively investing in their own resilience, with a cap of 10%. For instance, each criterion could be assigned a 2%-5% increase, with the total not exceeding 10%, allowing for States to implement resilience measures that would be most impactful for their specific hazards. For smaller or resource-limited communities, the financial burden of meeting the requirements for the 10% cost-share increase — especially when coupled with building and energy code adoption — may be prohibitive. FEMA could consider offering more flexible cost-share arrangements for communities with limited financial capacity, such as tiered or scaled incentives based on the size of the community or the level of local resources. This would ensure that communities are not excluded from the program due to financial constraints.

- **Mitigation Plans:** FEMA should consider the adoption of enhanced mitigation plans as an alternative to the mitigation plans criterion.
- **Investments in Disaster Relief and Emergency Management Programs:** Rather than focusing primarily on post-disaster recovery through 406, FEMA should consider

incentivizing investments in comprehensive state emergency management programs, such as statewide disaster relief funds, early warning systems, prepositioned contracts, disaster response training, and coordinated resilience planning.

- **Investments in Insurance:** We must break the cycle of taxpayers footing the bill for self-insured recovery. Measuring insurance and offering cost-share incentives is straightforward, as key metrics like coverage rates and insurance-to-loss ratios can assess a state's resilience effectiveness. The insurance industry has also developed solutions such as parametric products that can provide additional coverage options for communities and infrastructure. Many subject matter experts in the insurance and resilience fields are ready to work with FEMA to operationalize this approach to incentive resilience and close the insurance gap.
- **Decouple Energy Code Requirements**: To honor the original intent of the law — promoting hazard-resistant building codes to mitigate disaster risks and reduce recovery costs — FEMA should separate energy code requirements from hazard-resistant codes. If energy efficiency remains a priority, it should be addressed as a distinct incentive criterion, ensuring that efforts to enhance disaster resilience are not burdened by unrelated compliance requirements.
- **Building Codes and Beyond**: The final policy should reference FEMA's Consensus-based Codes and Standards, Version 3 policy to promote consistency among the Public Assistance Program and accommodate the diverse needs of communities as well as cover resilience of critical infrastructure, including the electric grid, water systems, roads and bridges. A more holistic approach that includes these elements would help ensure that communities can maintain connectivity and functionality in the aftermath of a disaster. Incentives could be provided for communities that implement resilience measures for infrastructure — such as elevating roads, reinforcing bridges, or improving flood barriers — that go beyond the scope of traditional building codes.
- **Community Rating System (CRS)**: Participation in CRS is another powerful tool for incentivizing preparedness and resilience. The CRS rewards communities that take proactive steps to reduce flood risks, such as adopting stronger building codes, investing in floodplain management, and implementing public outreach programs. The final policy should consider offering enhanced cost-share incentives for communities that actively engage in the CRS, particularly those that target improvements in floodplain management and mitigation efforts. This would help communities reduce long-term insurance costs and incentivize resilience measures tailored to local needs.
- **Funding mitigation projects or granting tax incentives for projects that reduce risk:** FEMA already possesses a robust system for gathering crucial information on states' investments in resilience through its comprehensive state capability assessments. These assessments provide a holistic view of each state's mitigation landscape, encompassing everything from laws and regulations to funding mechanisms and tax incentives. By encouraging states to conduct these thorough evaluations, FEMA gains invaluable insights into both FEMA and non-FEMA programs supporting mitigation efforts, effectively capturing the full spectrum of a state's commitment to resilience. The agency's data-driven approach, which includes tracking total investments in mitigation projects and assessing the benefit-to-cost ratio of Hazard Mitigation Grants, allows FEMA to quantify the tangible impacts of various initiatives. This existing framework not only provides a clear picture of current state-level resilience investments but also promotes a culture of proactive mitigation by encouraging states to identify and address gaps in their efforts. Given that FEMA already collects this vital information through its well-established assessment processes,

implementing additional reporting requirements or creating new systems to track state investments in resilience would be redundant and unnecessary. The current capability assessments offer a comprehensive and efficient means of evaluating states' commitment to and progress in building resilience, enabling FEMA to make informed decisions about a state's resource allocation and strategy refinement without imposing additional bureaucratic burdens on states or the agency itself.

Remove the 406 proposal requirement completely from the final policy. The inclusion of the 406 proposal is problematic because it prioritizes postdisaster recovery over proactive mitigation, imposes significant financial risk and administrative burdens on communities, and creates barriers for underfunded jurisdictions. Instead of promoting long-term resilience, it reinforces a cycle of reactive disaster recovery that ultimately increases federal spending while failing to reward proactive investments. This gateway requirement to access the extra incentive for building codes is problematic in the following ways:

- The 406 proposal requirement that mitigation costs meet or exceed 20% of eligible project costs exposes communities to financial risks and potential de-obligation years or even decades later, creating uncertainty and unexpected shortfalls, especially if costs fluctuate over time.
- The 406 proposal involves a complex, project-by-project approval process that increases administrative workload and slows recovery, particularly for smaller, under-resourced communities with limited capacity.
- By focusing on post-disaster funding, the 406 proposal promotes a reactive approach via the recovery process instead of incentivizing proactive, pre-disaster mitigation that could reduce future risks and promote long-term resilience.
- The 406 program's complexity and financial risks disproportionately burden smaller or underfunded communities, exacerbating inequities in disaster recovery as wealthier communities are better positioned to comply with its requirements.
- The intricate cost-sharing rules and administrative burdens of the 406 proposal often deter states and local governments from participating, resulting in missed opportunities for mitigation funding and reducing the program's overall impact.
- The 406 proposal fails to address the root causes of ineffective mitigation, such as inadequate planning, coordination, and long-term investments, focusing instead on reactive post-disaster response.

Simplify the application process and re-focus the applicant pool. The interim policy's project-by-project submission requirement creates an overwhelming administrative burden, especially for small or underfunded communities. FEMA should allow states to submit a single, comprehensive plan, reducing complexity and streamlining the process. Standardized templates and clear guidance would further ease compliance. Additionally, limiting the applicant pool to states, as originally intended by Congress, would reduce administrative challenges and align with the focus on broader resilience efforts. FEMA could enhance support by offering annual training to state applicants, rather than managing individual project worksheets for each applicant for each disaster declaration. To realign the final policy with the original intent of the law, local governments and nonprofits should not be eligible for the cost share increase.

CONCLUSION

The current interim policy falls short of its intended goal to incentivize meaningful, proactive state investments in disaster resilience. By prioritizing postdisaster compliance over predisaster mitigation, overlooking successful state-led resilience programs, neglecting critical infrastructure, and failing to recognize the full spectrum of emergency management efforts, the policy fails to address the root causes of vulnerability and exacerbate existing inequalities. A recent economic study, by the U.S. Chamber of Commerce, the U.S. Chamber of Commerce Foundation, and Allstate, called the Preparedness Payoff found that for every $1 invested in resilience and predisaster mitigation projects and measures, there is $13 in reduced losses and economic savings.[5] To truly take advantage of this economic opportunity, reduce federal disaster costs, and enhance the nation's resilience, FEMA must refocus its approach on incentivizing predisaster investments, supporting state innovation, and addressing the broad array of infrastructure and programs that contribute to long-term community safety and sustainability.

We urge FEMA to revise the interim policy to ensure it effectively promotes a forward-thinking and comprehensive strategy for disaster risk reduction — one that empowers states, preserves and considers successful programs, and prioritizes the mitigation measures necessary to protect all communities. We would welcome the opportunity to meet with your office to provide comprehensive resources and further discuss the path toward a measured implementation of a successful policy.

Sincerely,

BuildStrong America
International Association of Plumbing and Mechanical Officials (IAPMO)
Marsh McLennan
National Institute of Building Sciences (NIBS)
Precast/Prestressed Concrete Institute
U.S. Chamber of Commerce

[5] U.S. Chamber of Commerce, U.S. Chamber of Commerce Foundation, & Allstate. (2024). *Preparedness payoff*. Retrieved from uschamber.com/assets/documents/USChamber_AllState-2024-Climate-Resiliency-Report.pdf