

May 11, 2020

Regulatory Affairs Division
Office of Chief Counsel
Federal Emergency Management Agency
500 C Street SW
Washington, DC 20472-3100

Submitted Via Regulations.gov

Re: NASEO Comments on FEMA Proposed Policy – Hazard Mitigation Assistance: Building Resilient Infrastructure and Communities

The National Association of State Energy Officials (NASEO) respectfully submits the following comments to the Federal Emergency Management Agency (FEMA) regarding the Proposed Policy on the Building Resilient Infrastructure and Communities (BRIC) Program. NASEO represents the Governors' Energy Directors and State Energy Office staff from the 56 states, territories, and the District of Columbia.

We greatly appreciate the care FEMA has taken in gathering state and private-sector input on this historic program aimed at steadily improving the resilience of states and communities. In particular, we thank FEMA officials for their interest in learning about State Energy Offices' energy expertise across energy production, transmission, distribution and major end-uses, including: petroleum, propane, regulated and unregulated electric and natural gas systems, microgrids, energy efficiency, renewables, storage, codes, and standards. State Energy Offices are deeply engaged in the energy-emergency management nexus, with most leading or co-leading Emergency Support Function #12–Energy functions and other energy lifeline initiatives. Their comprehensive energy knowledge and engagement with all energy subsectors is foundational in addressing issues that drive community resilience. State Energy Offices' work on mission critical facilities, building codes, product standards, transportation, and interdependent critical infrastructure provides them with a unique capability to assist FEMA and state and local emergency management and hazard mitigation officials leading the implementation of BRIC.

NASEO offers our continued assistance to FEMA and the states in the implementation of BRIC. We are supporting State Energy Offices in lending their energy expertise to BRIC, and assisting them in strategically leveraging investments in order to deliver the most value for taxpayers. We offer the following recommendations on FEMA's Proposed Policy on the BRIC Program:

Funding Allocations

- **Clarify Allocations:** NASEO recommends that FEMA clarify the amount, proportion, or formula determination of funding that will be allocated for: 1) State and Territory Allocation; 2) Tribal Set-Aside; and 3) Project Competition amounts within the Available Funding Allocations. FEMA should cite a specific reference for the 51 percent minimum allocation of the Disaster Recovery Fund (DRF) that is mandated for Project Competition.
- **Six Percent:** In order to provide a clear and somewhat predictable basis for planning and preparations by BRIC applicants and sub-applicants, NASEO recommends that FEMA clarify in policy that it “will,” rather than “may,” calculate and set aside 6 percent of the estimated aggregate amount of grants made under sections 403, 406, 407, 408, 410, 416, and 428 of the Stafford Act for the National Public Infrastructure Pre-Disaster Mitigation Fund to fund BRIC. This policy statement will offer a foundation for applicants to plan more comprehensive and cost-effective resilience solutions. Potential BRIC applicants and sub-applicants will view the 6 percent set-aside policy guarantee as a vote of confidence in long-term mitigation solutions, and as such this will inspire more innovative and higher-impact projects.

- **Public Private Investment Solutions:** NASEO recommends that under any competitive funding, FEMA should provide priority selection to projects that meet multiple state objectives and FEMA priorities and are therefore able to leverage private-sector investments and increase project impact and value. Further, BRIC policies that encourage projects to duplicate already-completed successful efforts would support effective and efficient project development and implementation. State Energy Offices have great expertise in developing public-private investment infrastructure actions that could dramatically leverage FEMA funds. For example, public-private mission critical facility projects that utilize utility bill cost savings from energy efficiency upgrades to finance those improvements result in downsizing (i.e., cost savings) on-site back-up power generation and/or energy storage. This reduces the overall demand for FEMA funds, improves the performance of the facility (e.g., essential services, basic comfort), reduces long-term operating costs, and eliminates deferred maintenance in community facilities.

This approach has [already been proven to increase the resilience of mission critical facilities \(e.g. emergency operations centers, hospitals, dispatch centers, fire and police departments\)](#). In addition, this same approach is being used by some State Energy Offices for interdependent critical infrastructure such as water and wastewater treatment plants; first-responder command centers; and facilities such as nursing homes, community cooling centers, and shelters. Many of these projects were completed by leveraging public-private partnerships, which aligns with FEMA's objective to reduce complexity and promote innovation, consistency, and flexibility. NASEO urges FEMA to prioritize these types of approaches which would ensure the best use of federal, state, and local taxpayer funds, and would more rapidly deliver the type of resilience envisioned by Congress.

- **Capability and Capacity:** We recommend that FEMA consider clarifying whether the Competitive Project funds are reserved explicitly for mitigation projects, or if they are inclusive of mitigation capability and capacity-building activities, similar to the State and Territory Allocation. Such activities can include developing emergency fuel plans, local energy assurance plans, and trainings which can aid state and local officials in preparing for and responding to emergencies, thereby lessening the federal burden during a response. As an example, delivered fuels (e.g. gasoline, diesel, propane) – a critical component of all FEMA Community Lifelines – are transported through a complex supply chain which is stressed and altered during times of emergency. These fuels are required for first responders and energy service response and recovery operations such black-starts, backup power, and heating in areas with limited natural gas options. Ensuring delivered fuels are provided expediently and reliably requires significant logistical planning, which can be supported through capability and capacity-building activities as identified in the proposed policy. Projects designed to build state and local capability and capacity to identify and mitigate obstacles in providing these fuels should be eligible for competitive funding under BRIC.
- **Defense Critical Energy Infrastructure:** Communities and critical infrastructure that support domestic defense facilities have been identified by the U.S. Department of Energy (DOE) and the U.S. Department of Defense (DOD) as priority recipients of energy resilience and energy system mitigation funding due to the role they play in supporting U.S. national security. The resilience of communities that support these critical defense sites is also important to the resilience of the sites themselves. Further, many of the communities surrounding such sites are challenged by aging energy sector infrastructure and struggle with energy affordability, issues that impact both the residents and the defense sites they serve. FEMA should consider the strategic importance and value of those communities adjacent to such critical defense sites and coordinate with DOE, DOD, and the states in prioritizing funding within the Project Competition category.

Cost Share

- **Non-Federal Cost Share Options:** BRIC applicants need clear identification of eligible non-federal sources for project cost-share. In this instance, “eligible” means funds whose federal statutory authority allows those funds to be used to meet cost-share requirement. For example, the U.S. Department of Housing and Urban Development-approved (HUD) State of Texas Community Development Block Grant—Mitigation (CDBG-MIT) Action Plan, which details the state’s prerogative and plan to distribute HUD funds notes the following:

“The Mitigation Needs Assessment and use of funds outlined in this Action Plan may align and leverage additional state and federal programs such as the National Flood Insurance Program (NFIP), the Hazard Mitigation Grant Program (HMGP), the Pre-Disaster Mitigation (PDM) Program (which will be transforming into the Building Resilient Infrastructure and Communities [BRIC] in 2020), as well as other state and local mitigation efforts.”¹

NASEO recommends that FEMA identify and collect non-federal sources eligible for project cost-share and maintain those sources in a verified and explicit clearinghouse to be referenced and leveraged by BRIC applicants.

Codes and Standards

- **Existing Codes and Standards:** NASEO recommends FEMA clarify that conformance with the latest published edition of relevant consensus-based codes, specifications, and standards includes all chapters of each applicable code or standard (e.g. all chapters of the International Building Code and International Residential Code, and the energy conservation code) and not inadvertently selected particular elements. The interrelationship and interdependencies across chapters and elements is critical and was contemplated in their development. The selection, elimination, or prioritization of some elements will result in unintended consequences that impact foundational elements of resilience, safety, and health, and will also negatively impact the operations of energy systems and the demands of the built environment on those systems.
- **New Starts and Continuing Education:** NASEO recommend FEMA clarify the “new starts” policy in *Section D. I.d.* to recognize that some pre-disaster mitigation training activities, such as building code trainings, require ongoing efforts which may lack a clear beginning or end date. Code training efforts are critical to achieving the benefits of code adoption as determined by state and local governments, as well as effective enforcement. Funding of code training activities through BRIC will result in the most resilient communities at the lowest long-term cost. The BRIC program should allow funding to support training and continuing education of building inspectors, builders, and other building industry stakeholders.
- **Power Sector Design Standards:** NASEO is encouraged by FEMA’s work with DOE to develop resilience-based design standards for electric power infrastructure. Robust engagement with State Energy Offices and the broader electric industry and supply chain is critical to arriving at an optimal outcome. FEMA should also distribute any FEMA-supported electricity industry codes, specifications, standards, or best practices for electric power infrastructure resilience to stakeholders and provide additional guidance on how these measures would affect the benefit-cost analysis of a project in the near term.

¹ <https://recovery.texas.gov/files/hud-requirements-reports/mitigation/mitigation-ap.pdf>

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Project Eligibility

- **Hazard Plan Specifics:** One of the core conditions of receiving BRIC funding is having a FEMA-approved hazard mitigation plan in place with localities and jurisdictions, including hazards listed and ranked, and feasible mitigation actions provided. However, it is unclear how specific those actions need to be and if changes in energy markets and commercially available technologies are reflected in existing guidance. For example, “utility protective measures” are cited in some state hazard mitigation plans as a mitigation action. Would more specific language need to be included in order to implement a wide range of energy resilient mitigation projects, or would “utility protective measures” be sufficient for multiple approaches? Where would a microgrid, energy storage or a combined heat and power system fit if it is not owned by a utility (which is often the case)? NASEO encourages FEMA to outline the minimum criteria or specific language that needs to be included in a state, county, or other hazard mitigation plan, and fully reflect the range of energy-sector related mitigation solutions.
- **Duplication:** NASEO recommends that FEMA clarify what constitutes, or provide examples of, “duplicate activities that another federal agency or program has more specific authority to conduct.” Examples of such would help narrow applicants’ and sub applicants’ projects and ensure that already limited staff time is spent developing a project that would not be deemed ineligible due to a different federal entity’s greater prerogative.

See also:

- [NASEO Letter to Acting Administrator Gaynor Regarding BRIC \(2019\)](#)
- [NASEO Comments on FEMA BRIC Program \(2019\)](#)

NASEO is grateful for the opportunity to provide comments on BRIC and we look forward to working with FEMA and its partners to enhance our Nation’s resilience through innovative energy solutions.

Best regards,



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