



May 11, 2020

Regulatory Affairs Division, Office of Chief Counsel  
Federal Emergency Management Agency  
8 NE Ste. 1007  
500 C Street, SW  
Washington, DC 20472-3100

RE: Federal Emergency Management Agency Building Resilient Infrastructure and Communities Policy  
Docket ID FEMA 2019-0018

VIA Federal eRulemaking Portal: <http://www.regulations.gov>

**Comments of the Business Council for Sustainable Energy on the FEMA BRIC Policy**

The Business Council for Sustainable Energy (BCSE) respectfully submits the following comments regarding the Federal Emergency Management Agency (FEMA) Policy regarding the Building Resilient Infrastructure and Communities (BRIC) Program, which was established under section 1234 of the Disaster Recovery and Reform Act (DRRA) of 2018 (P.L. 115-254).

BCSE is a coalition of companies and trade associations from the energy efficiency, natural gas, and renewable energy sectors. It includes independent electric power producers, investor-owned utilities, public power, manufacturers, commercial end users and service providers in energy and environmental markets. Founded in 1992, the coalition's diverse business membership is united around the continued revitalization of the economy and the creation of a secure and reliable energy future in America.

BCSE is pleased to have an independent small- and medium-size businesses initiative under its banner, the Clean Energy Business Network (CEBN). Together, BCSE and CEBN represent a broad range of the clean energy economy, from Fortune 200 companies to small businesses working in all 50 states and over 350 Congressional districts. On a national basis, the energy efficiency, natural gas and renewable energy sectors support over 3.2 million U.S. jobs.

BCSE has worked closely with its members and partners, including the National Association of State Energy Officials (NASEO) to enact DRRA and now in the implementation phase. We note that NASEO and several BCSE members and partners are submitting comments and we encourage their full review.

**Energy is Critical Infrastructure**

The proposed policy represents a broad framework under which the BRIC grant program is to be executed, providing minimal administrative burdens on states and local governments, and allowing applicants flexibility and creativity to transform the risk profiles of their communities, regions, and states. As stated in lines 30-33 of the Policy Document,

“the BRIC Program is designed to promote a national culture of preparedness and public safety through encouraging investments to protect our communities and infrastructure and through strengthening national mitigation capabilities to foster resilience.”

To this end, BCSE emphasizes that the energy system is critical infrastructure and we **strongly encourage FEMA to grant BRIC funding for clean, resilient energy projects**. Reliable and secure energy systems power the U.S. economy and sustain other critical infrastructure systems such as transportation, water, waste, and the built environment.

Further, as has been demonstrated in recent years, the BRIC Program should also **fund community resilience to various climate risks, including heat waves and wildfires**.

BCSE has previously submitted examples of the types of projects FEMA should consider in comments that were submitted regarding the FEMA guidance for project eligibility under the BRIC Program in July 2019 (Docket ID FEMA 2019-0018). We cite those examples again [here](#) as well as the full set of BCSE comments on the BRIC guidance found [here](#). Investments in clean energy and wildfire mitigation projects would address multiple objectives including resource efficiency, consumer savings, environmental performance, resilience, and sustainability.

Projects should optimize design, construction, and operation for resilience, and should incorporate—to the extent possible—the use of third parties to ensure that projects meet their performance objectives. Efforts should be made to integrate micro-grids and community grids, to enhance further resilience and access to energy when certain portions of the grid are disabled, relying more heavily on on-site renewable energy, municipal renewable infrastructure, and natural gas along with energy storage, in addition to advancing transportation system resilience through the inclusion of propane, natural gas, electricity, and fuel cells for emergency and disaster recovery fleets and appropriate charging or refueling infrastructure.

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. **Projects addressing critical facilities that need hardening and/or update or replace existing power sources (such as generators or resilience systems) to mitigate emergency-related challenges should be strongly considered**. If an application has two or more critical facilities identified that would be benefitted by a project, that application would be given increased and higher preference.

### **Specific Comments on FEMA BRIC Policy Document**

In addition to fundamental support for investment in clean, reliable energy infrastructure, including the built environment, BCSE makes the following specific comments on the Policy Document.

#### **1. Six Percent Set Aside**

Section (A)(1), beginning on line 60 of the draft Policy Document, addresses the six percent set aside of annual disaster relief funds (DRF) for the BRIC Program and states that FEMA “*may* set aside six percent of that amount from the DRF for deposit into the National Public Infrastructure Pre-Disaster Mitigation Fund to fund BRIC” (Italics added). BCSE believes the policy document should be clarified to state that FEMA “*will*” set aside six percent of the DRE funds.

While the Disaster Recovery Reform Act gives discretion to the Agency regarding the annual set aside, BCSE believes **the policy document should be clarified to state that FEMA “will” set aside six percent of funds in the DRF** to provide confidence that the Agency intends to execute the BRIC Program to the fullest extent authorized by law.

## 2. Modern Building Codes Return Benefits to U.S. Taxpayers

Consistent with congressional intent in the DRRRA the draft Policy Document states that BRIC funding may be used to adopt, enforce and conform to modern building codes. Section (C)(2) of the draft Policy Document states on line 128 that funds may be used to, “establish, adopt, and enforce codes and standards consistent with statute,” while Section (D)(3)(b) beginning on line 177 of the draft Policy Document states that a project “must, at a minimum, be in conformance with the latest published editions (meaning either of the two most recently published editions) of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs.”

Building codes are an essential piece of the BRIC Policy. The DRRRA recognized that modern building codes help to avoid casualties, property damage, business interruptions, and insurance costs in times of extreme weather events. Building to the latest codes returns benefits over the lifetime of the building that far exceed the initial costs of construction. For example, the National Institute of Building Sciences’ recent *Natural Hazard Mitigation Saves* report<sup>1</sup> demonstrates that modern codes can return a benefit of \$11 for every \$1 invested.

Given the benefit to taxpayers for using modern building codes **FEMA should give strong preference to projects which use the most recent version of the code.** In addition, **FEMA should 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 or International Residential Code).**

## 3. Support for Technical Assistance and Capacity Building and Needed Clarification

Section (C)(1) and (2) beginning on line 118 of the draft Policy Document states BRIC funding may be used for technical assistance and capacity building to applicants to create and support partnerships that will mitigate risk, develop mitigation priorities and plans, and other activities, while section (3) states that funds are to be used to fund mitigation projects.

BCSE supports the use of BRIC funds for the technical assistance and capacity building activities; however, while the Policy Document states that all activities should result in a tangible mitigation product, the **language should be strengthened to ensure that more funds are allocated to project development.**

Furthermore, **FEMA should ensure that projects most in line with FEMA principles receive funding and projects should have pre-submission reviews with both State and FEMA before an award, to assure proper guidance and applicability of a project as it related to FEMA rules.**

Finally, **FEMA should develop, in conjunction with DOE, technical assistance to states on regulations and targets for microgrid programs,** both for long-term deployment of islanding-capable microgrid systems to short-term, rapid-response mobile technologies for immediate post-disaster recovery.

## 4. BRIC should Facilitate Partnerships and Leverage Private Sector Involvement and Investment

Principle (3) beginning on line 43 of the BRIC Policy states that the BRIC Program should, “Promote partnerships and enable high-impact investments to reduce risk from natural hazards with a focus on critical services and facilities, large-scale public infrastructure, public safety, public health, and communities.” The most impactful resilience projects will involve multiple strategic partners working together with public and private investment.

BRIC will be able to take advantage of work already being done by partners in the private sector, including best practices, lessons learned, training and education. FEMA should consider adding specific language to **clarify that while a**

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<sup>1</sup> <https://www.nibs.org/page/mitigationsaves>

**nongovernmental entity cannot be a direct applicant for BRIC funds, a state or local government can apply for funds that will be executed in partnership with that entity for the benefit of implementing a cost-effective, risk-reducing mitigation project.** FEMA must facilitate the ability of state and local partners to utilize the expertise and knowledge of industry and private sector partners to increase disaster resilience.

Further, **BRIC should leverage federal investment with private capital through performance-based contract vehicles such as energy savings performance contracting, public-private partnerships (P3) and “Infrastructure as a Service” and “Energy as a Service” models.**

The Policy Document is unclear about whether the Energy as a Service model would fully qualify under BRIC. We respectfully ask FEMA to **clarify whether Energy as a Service projects could participate under the BRIC framework** and provide examples and case studies so that states may leverage this innovative financial model and accelerate deployment timelines. In addition, we recommend that FEMA give weight to applications that utilize public private partnerships.

#### 5. The BRIC Program and Policy Must Leverage Existing Programs and Other Streams of Funding

Congress intended BRIC to build upon and leverage existing disaster recovery programs that encourage mitigation, such as Public Assistance Mitigation, the Hazard Mitigation Grant Program available post-disaster, and the National Flood Insurance Program, as well as provide for the ability to “blend” multiple lines of funding from various sources, both public and private. The BRIC Policy should articulate how multiple (i.e. not duplicative) lines of funding can be brought together to maximize the outcomes of these investments.

FEMA should **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.** “Eligible” in this instance 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.”<sup>2</sup>

#### 6. Clarify Whether Tax Credits are Considered Duplicative

The Policy Document should be **clarified to state whether a project receiving any tax credits (such as a solar Investment Tax Credit) would be precluded and deemed “duplicative” from participating in the BRIC Program.** For example, microgrids can harness multiple distributed energy resources (DERs), including solar, storage, fuel cells, and combined heat and power (CHP) systems, among others, which have significant clean energy and sustainability benefits to communities. The intent of the Investment Tax Credit is economic incentives to grow nascent clean energy industries, not to achieve resilience outcomes, and should not be considered duplicative for purposes of BRIC funding.

#### 7. FEMA Should Convene a BRIC Forum and Provide Additional Stakeholder Education

**FEMA should consider convening a BRIC Forum that would bring together all stakeholders,** including governors, state officials, flood commissioners, DOE, facility managers, leaders of coastal severe weather-affected communities, and

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<sup>2</sup> <https://recovery.texas.gov/files/hud-requirements-reports/mitigation/mitigation-ap.pdf>

communities affected by wildfire. Program content would include overviews on optimal projects and resilience solutions and would highlight various financing mechanisms available to states and local communities. Such an initiative would “support connectors” as indicated in prior FEMA presentations on BRIC.

FEMA should fund education and deployment for frontline states and underserved communities regarding topics such as microgrid and other resilience technologies, and FEMA should establish a working group or encourage education from systems and solution providers with program administrators.

### **Conclusion**

The Business Council for Sustainable Energy (BCSE) appreciates the opportunity to submit these comments regarding the Policy for the Building Resilient Infrastructure and Communities (BRIC) Program. If you have questions, please feel free to reach out to Ruth McCormick on the Council’s staff at [rmccormick@bcse.org](mailto:rmccormick@bcse.org) or by cell phone at 202-557-4002.