On behalf of the Association of State Floodplain Managers, we appreciate the opportunity to submit comments on the Building Resilient Infrastructure and Communities (BRIC) program developed under Section 1234 of the Disaster Recovery and Reform Act.

Submitted through the Federal Rulemaking Portal: http://www.regulations.gov/

ASFPM has been a champion of the federal government’s role in hazard mitigation since before the original Stafford Act in 1988 and continues to support FEMA’s pre- and post- disaster mitigation programs. Both are important elements in the nation’s overall approach to reduce long-term risk to hazards and build community resilience. DRRA served to amend the Stafford Act’s Section 203 on pre-disaster hazard mitigation (42 USC 5133) in the context of the existing law. ASFPM is pleased to see that the draft guidance recognizes existing provisions of law that were not changed, such as a more feasible non-federal cost share for small and impoverished communities which was a concern reflected in ASFPM’s initial comments from 2019. Overall, it appears the policy guidance closely follows the statutory changes that were made and provides a solid framework for state and communities to follow provided the NOFO for BRIC follows this policy. Below are specific comments which we hope are helpful to FEMA as it works to release its final guidance.

**Positive Policy Comments**

1. **Guiding Principle #1-** use of funds to support state/local government, tribes and territories through capability and capacity-building. We are happy to see this element included, as this is a critical funding element in order to sustain the ability of these entities to participate in the program and to take the lead in mitigation in the future. (See related concern below)

2. **Guiding Principle #5-** support for adoption and enforcement of building codes, standards, and policies. The foundational and long-lasting impact of this program element cannot be overstated, however we note that guidance for development and land use through planning, subdivision and zoning tools must also be considered in order to minimize increased future risk. One small modification for FEMA to consider is to eliminate the word “building” from guiding principle #5.

3. **Funding guidelines, item 4C-** FEMA has included special consideration (larger federal cost share) for small and impoverished communities. This is helpful and FEMA should include supplemental assistance for these communities during the application and project implementation stages. This is the right thing to do, so building state capability will support having this provided through the state as a best practice.

4. **Activity Eligibility Criteria, item #3F(i)-** FEMA has added NFIP program participation as a requirement for all projects in the FEMA Special Flood Hazard Area. This is a new and definitely important project
eligibility requirement. ASFPM strongly supports this so that that NFIP and Stafford Act provisions work in concert.

**Policy Concerns**

1. **Purpose, priorities and criteria set forth in annual NOFOs.** Over the past several years, ASFPM has been very concerned about unintended consequences and outright exclusions that PDM NOFOs have resulted in, whether it has been for traditional mitigation (acquisition/elevation) projects where a community might not have a repetitive loss property or through large set asides that are not in statute that could preclude viable traditional mitigation projects from being considered (i.e., large set-aside for infrastructure projects last year or priorities for projects that bring private sector funding to the table which is often a disadvantage for smaller or impoverished communities). ASFPM cautions FEMA to stay true to the statute and not create artificial barriers for states and communities to developing, submitting and implementing otherwise viable mitigation projects. The whipsaw nature of changing annual priorities has the overall effect of discouraging mitigation projects from being developed. As a general rule, ASFPM is concerned about specific set asides for any project type, but especially large structural projects or for infrastructure.

   We also note and support the conclusion of the 2019 National Advisory Council report to the Administrator noted that when taken together, the 2019 PDM NOFO criteria increases complexity, reduces transparency and reduces the weight of best practice risk reduction analysis. Under no circumstance should traditional flood mitigation (acquisition, elevation, relocation, floodproofing) ever be disallowed as a result of NOFO criteria.

2. **Funding, item #3 Available Funding Allocations (p.3 lines 69-73)** – The draft policy seems to be vague on the available funding allocations; specifically, it indicates that FEMA may allocate...state, territorial and trial set-asides. This is in contrast to the more direct statements on cost sharing later on the page (line 79) where it states “All financial assistance provided under BRIC will be subject to the following...” 42 USC 5133 (f)(2) states “the President shall [emphasis added] ensure that the amount of financial assistance made available to a State...” when describing the minimum and maximum allocation amounts. Our concern is that the guidance as written does not give states confidence that there will be a minimum funding allocation from year to year. This is in contrast to the 2015 HMA Guidance Manual which states much more directly “FEMA will allocate funds for eligible activities consistent with applicable, statutory base and/or maximum allocations in the authorizing and appropriation laws. FEMA will administer the program as directed by Congress. (p.114).” ASFPM recommends the section be rewritten more directly reflecting the tone of the existing PDM guidance.

3. **Applicant Eligibility, items #1 and 2 (p.4 lines 99-108)** - Regarding capacity building and program maintenance for state/tribal/territories: The policy states that “States and territories that have had a major disaster declaration under the Stafford Act in the seven years prior to the annual application period start date are eligible to apply to FEMA for federal assistance under BRIC.” We are concerned that even those entities that have not had a disaster within the past 7 years will need capability/capacity building/maintenance funding in order to be ready for disaster. FEMA should develop set-aside funding for EVERY state, tribe and territory for this purpose, even if to maintain minimum staff whose job it is to continue hazard mitigation planning efforts. BRIC should include a program similar to the CAP-SSSE program to help state hazard mitigation officers build a consistent program to maintain
mitigation staff capacity, manage grants, review and participate in hazard mitigation plans, and encourage local governments to apply for HMA grants.

Also, although it favorably appears that capability/capacity building will be the first level of allocation, (before projects), there must be oversight and auditing of capability funding so that funding does not continue for entities that are not accomplishing mitigation or performing to the standards of this program.

4. **Activity Eligibility Criteria, item #1b**: The Proposed Policy states: “They must not duplicate activities that another federal agency or program has more specific authority to conduct.” In the footnote for this statement is the explanation: “A federal agency cannot augment its purpose with activities it is not authorized to perform, or have its authority augmented by another federal agency’s activities.”

It appears that the intent of this is to prevent a federal agency from expanding its purpose and authority. This is good. Our concern, however, is that this statement does not clearly address the matter of funding. FEMA should make a clear statement about the use of the funds, with the intention that other funded federal agencies cannot use the BRIC funds for their projects.

This leads to the over-arching concern that BRIC funding will be available for large and costly infrastructure projects that can already be funded under other federal programs without negatively impacting BRIC’s traditional non-structural mitigation. Infrastructure for local stormwater systems for example are not the issue, but huge levee systems or dams should never be funded by BRIC. If this happens, there will be less funding for the traditional non-structural projects which are highly effective, faster to implement, and provide lasting risk reduction.

5. **Activity Eligibility Criteria, item #1d**: Included is this statement: “Projects for which ground disturbance has already been initiated or completed are not eligible for funding. Non-construction activities that have already started may not be considered for funding.” A supplemental FEMA guidance sheet (Policy Clarification: Eligibility of Hazard Mitigation Assistance Applications with Pre-Award Demolitions) was issued on August 26, 2019 to explain when previously demolished structures may be eligible for Hazard Mitigation Assistance (HMA) grant-funded projects. It would be good if this separate guidance could be included in the BRIC guidance for clarification. ASFPM thinks FEMA should reimburse eligible local and/or state expenses between the POP and award. Mitigation takes too long to be funded and completed, and if communities are willing to begin processes (specifically related to traditional non-structural mitigation), they should be reimbursed if the grant is awarded.

6. **Activity Eligibility Criteria**: We are considerably concerned by the overall program description that does not include any apparent prioritization of traditional, non-structural flood reduction measures such as structure elevation, acquisition, flood-proofing or relocation. In some ways, the Policy can be interpreted that a strong BRIC priority is the funding of large infrastructure projects; the following Policy draft statements are worrisome:
“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. The BRIC program seeks to fund effective and innovative projects that will reduce risk and increase resilience and serve as a catalyst to encourage the whole community to invest in and adopt policies related to mitigation.” (under Purpose)

“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.” (under Principles)

7. **Activity Eligibility Criteria, item 3b** – The purpose of this statement is to clearly indicate that projects need to meet the higher standards of recent codes. Also, some states and communities have higher standards in their local or state floodplain management, zoning or subdivision standards. Is there any reason not to mention these as well so there is zero ambiguity that all higher standards must be met?

8. **Activity Eligibility Criteria** We see no language in the policy that addresses the important alternatives of ecosystem restoration or nature-based mitigation as preferred solutions, or of consideration of future conditions. FEMA should include at the very least some criteria for eligibility and consideration for prioritization of these types of flood reduction projects. BRIC should also fund mitigation planning as PDM always has. This is an important activity in order to make communities resilient.

Also, full consideration of future conditions and long-term benefits in light of changes such as rainfall intensity and sea level rise must be included in project assessment and scoring. While FEMA may not itself provide risk assessment tools for future conditions at this time, there are many opportunities for applicants to include or perform these risk assessments.

9. **Activity eligibility criteria** The criteria should support Planned/Managed Retreat projects. From annual funding priorities expressed in past NOFOs, and the implied support of large infrastructure projects (see items # 4 and 6 above) there is clearly some desire by FEMA for big, bold infrastructure projects. ASFPM recommends pairing this desire with a true gap that exists – support for managed retreat projects. These are among the most complicated of all mitigation projects because various federal and state agencies are involved to support planning/relocating infrastructure, homes, and businesses. This is why very few community relocations have actually happened. Yet, as we have found and will increasingly find in the future, retreating from some areas is truly the best long-term option. ASFPM recommends that BRIC guidance include a section on supporting these types of projects (FEMA could use its recent experience helping Newtok, Alaska). Planning and project implementation work should be allowed under BRIC as long as tangible results are demonstrated with each proposed application.

Mitigation Projects - FEMA should strongly consider allowing the purchase of vacant property in the Special Flood Hazard Area through the BRIC program. All property purchased would be deed restricted as open space in perpetuity to ensure that no structures are built or people put at risk of flooding.

10. **Grant Award Administration**, item #6- As stated in the draft Policy: “The POP begins with the effective date of the federal award and generally ends 36 months from that date.” This is different from the
current HMA guidance that says “For HMGP, the POP begins at the “opening of the application period”.... and pre-award costs are allowed”. While we appreciate the fact that having a POP begin at award date maximizes the period of performance, we hope that FEMA will consider all valid and justified extension requests since 36 months can be a short window especially for large, complex projects such as community relocation. Secondly, FEMA should provide a mechanism to allow for pre-award costs prior to grant award conditioned on FEMA EHP clearance and proper justification. We should incentivize communities to financially prepare for mitigation and encourage them to take early steps on their own to speed up the project implementation process.

11. Uses of Assistance – Is there a reason that information dissemination activities are not included or mentioned? It does not appear that this section of law (42 USC 5133(e)(2)) was modified to eliminate the eligibility of such activities which are also described in the 2015 HMA Guidance (p.114)

12. Uses of Assistance, Capability- and Capacity-Building Activities (p.4, lines 124-131) – Is there a reason that the guidance couldn’t highlight the need to establish, adopt and enforce codes not only consistent with statute but that exceed minimum standards? This would send a clear message that communities with the bare minimum standards could get support for adopting higher standards which is critically important, especially in areas where future conditions are significantly more impactful.

13. Uses of Assistance, Capability- and Capacity-Building Activities (p.4, lines 124-131). For clarity ASFPM recommends the following word (in bold) be added: “…develop mitigation priorities and **develop/update** plans.” ASFPM wants to ensure that mitigation plan updates are eligible, consistent with past PDM guidance.

Traditional FEMA flood mitigation projects have demonstrated a 7-to-1 benefit cost value - far above the average structural water resources approach, and the need for such high value mitigation is far, far from satisfied. In many communities the need is growing rapidly with sea-level rise and upstream basin development. ASFPM sincerely hopes that through BRIC we never forget the importance of the traditional mitigation actions that have been the foundation of our nation’s efforts for the past 30+ years. We appreciate the opportunity to provide additional comments and hope that the BRIC program can move forward as expeditiously as possible. Please do not hesitate to contact me (cberginnis@floods.org), or Tim Trautman, ASFPM Mitigation POD Coordinator at Tim.Trautman@mecklenburgcountync.gov if we can be of further assistance.

Respectfully,

Chad Berginnis, CFM
Executive Director