

# PUBLICATION

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## FEMA Requires Compliance with National Standard Building Codes for Restoration of Facilities Funded Through Public Assistance Grant Program

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**Several recent disasters will test the practical implications of a policy update released by the Federal Emergency Management Agency (FEMA) late last year. In issuing Recovery Policy FP-104-009-4, FEMA envisions that integration of nationally recognized consensus-based building codes and standards into requirements governing its Public Assistance Program activities will protect lives and property by increasing the safety and risk reduction capabilities of buildings restored with these funds and also support the efficient use of federal dollars. All will now watch to see how the new policy will impact recovery operations and if FEMA's goals will be realized.**

Section 406 of the Stafford Act requires that any building restorations funded by FEMA be in accordance with "applicable codes, specifications and standards." In a largely unsuccessful effort to persuade local governments to increase their disaster resilience and upgrade their building codes before disasters, FEMA adopted a regulation 18 years ago defining an "applicable code, specification and standard" as one adopted in writing before the disaster. However, following the many large-scale disasters that have occurred since, it became clear that many jurisdictions have not upgraded these requirements.

On September 30, 2016, FEMA creatively circumvented its regulation without repealing it through issuance of Recovery Policy FP-104-009-4, Public Assistance Required Minimum Standards. This new policy requires that, when using FEMA Public Assistance funds to repair, replace or construct buildings located in hazard-prone areas, applicants must use, at a minimum, the hazard-resistant design standards of the International Building Code (IBC), the International Existing Building Code (IEBC) and/or the International Residential Code (IRC). Importantly, the policy confirms that costs associated with meeting these standards will be eligible for Public Assistance funding.

Section 323 of the Stafford Act requires applicants for Public Assistance grant funding to carry out any repair or new construction to be funded by the grant in conformity with applicable codes, specifications and standards, and FEMA's regulations still define an "applicable code, specification or standard" as one adopted in writing prior to the disaster. However, Section 406 gives FEMA authority to fund restoration of facilities in accordance with "mitigation standards required by the President (FEMA)." FEMA has announced – with its new policy FP-104-009-4 – that it will use this authority to fund more resilient reconstruction of damaged facilities. It will ignore local government codes (unless they are more stringent) and essentially implement a minimum federal standard for facilities that are being repaired or replaced using FEMA Public Assistance funds following a disaster declaration.

While the final policy does not have the force or effect of law, it should ensure that entities impacted by federally declared disaster events have the resources available to rebuild stronger, safer facilities. Entities who wish to take advantage of the new policy should be sure to consult with assigned state and FEMA personnel to confirm that all necessary protocols are followed. Notably, while the policy will benefit Public Assistance recipients by allowing entities the ability to obtain funding to build back to these mandatory construction standards, it may also increase an entity's out-of-pocket costs, as compliance will be generally required and

the entity will be responsible for the non-federal cost-share (up to 25 percent), subject to any agreement with the state grantee to cover a portion.

The final policy is available online [here](#) and on [FEMA's website](#). The proposed and final policy, all related Federal Register notices and all public comments received during the comment period are available [here](#) under Docket ID FEMA-2016-0007.

If you have questions about the specific items covered by this alert, or would like to discuss FEMA's disaster assistance programs, please contact Wendy Huff Ellard, Ernest B. Abbott or any of the members of our Disaster Recovery and Government Services Team.