



A timely concept: The new national building code initiative Success will lie in the details and implementation - by Andrew Rosenberg

September 27, 2022 - Design / Build

The Background

Earlier this year, the Biden administration launched an ambitious initiative to modernize building codes across the country to conform to the latest standards with the goal of increasing safety, energy efficiency, and greater resiliency to natural disasters and extreme weather events.

Released by the Federal Emergency Management Agency (FEMA), the Building Codes Strategy seeks to impose the modern building code standards on all projects built under FEMA programs including new buildings and buildings rebuilt with FEMA funds. Through this strategy, FEMA's stated intent is to work with all stakeholders to integrate the most up-to-date building codes and standards across all FEMA projects, resulting in safer and more resilient buildings and to educate communities about the benefits of modernizing their building codes.

The federal government will review funding and financing requirements for building construction to ensure that, when federal funds are used, the modern standards will be met to the greatest extent possible. Additionally, the federal government will review its building portfolio with the goal of updating existing buildings and constructing new buildings to meet the current standards. The administration will create a set of federal building performance standards which are intended to advance the federal building portfolio to its goal of net-zero emissions by 2045. Additionally, the administration will utilize \$225 million of infrastructure funding allocated to the Department of Energy to support energy efficient buildings. Buildings receiving Community Development Block Grants or Disaster Recovery Funding will also be subject to compliance with the new standards.

In addition to resulting in more resilient and efficient building stock, the administration's research indicates that the initiative will create quality jobs in minority, disadvantaged and low-income communities where many of the substandard buildings are located and disaster recovery has traditionally lagged.

Balancing Act

There can be little doubt that constructing and upgrading buildings to the most up-to-date standards of resiliency and efficiency is a laudable and important goal. What could be bad about buildings with lower operating costs that were also able to better withstand hurricanes, tornados, fires, and other

natural disasters? And, if the process creates jobs for underserved and low-income communities, so much the better. The portfolio of federal buildings alone would seem to provide an endless supply of projects. The affordable housing industry has long used incentives to spur commercial for-profit developers to create affordable housing for the workforce. The success of this initiative, as with many government initiatives that have come before, will, in large part, depend on the way the initiative is implemented as well as the incentives and funding available to the private sector for compliance with the modernized standards.

Companies engaging in commercial construction, whether office buildings or multifamily, need to be able to realize a reasonable return on their investment. Upgrading the country's building stock will not be cheap and will require a significant investment from the private sector. Therefore, the specifics of the incentives and how they are allocated will play an important role in whether the industry gets behind the initiative. Will there be tax benefits on a federal or state level and/or real estate tax benefits on a local level? Will incentives be in the form of grants and/or low- or no-interest loans? The answers to these questions matter. There is always a tug-of-war between government and the private sector, with the government focused on extracting the greatest degree of public benefit for each dollar of incentive and the private sector focused on whether the deal makes sense. Incentives and similar programs work best when both sides of the equation understand and are attentive to the other side's concerns.

The specifics of the federal building code initiative will be fleshed out over the coming months with a healthy stack of rules, regulations, and other guidance likely to be issued. It is during this process and in these documents that the fate of the initiative can be expected to be determined. The devil is in the details.

Stay tuned.

Andrew Rosenberg is a partner at Cassin & Cassin LLP, New York, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540