PROPERY ACQUISITION (FAQ's)

The information below is provided for eligible applicants (government agencies, certain private non-profits) and interested property owners that may participate in property acquisition ("buy-out") programs announced by the New York State Office of Emergency Management (State OEM) on December 22, 2011. These programs are funded through the Federal Emergency Management Agency's (FEMA's) Hazard Mitigation Grant Program (HMGP) for the Presidentially-declared disasters DR-1957, DR-1993, DR-4020 and DR-4031.

HMGP funding will be available Statewide. However, given the recent widespread severe flooding related to Hurricane Irene and Tropical Storm Lee, the State will give preference to projects that:

- **Are in the following declared counties for the four disasters: Albany, Allegany, Bronx, Broome, Chemung, Chenango, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Kings, Lewis, Livingston, Madison, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Schoharie, Steuben, Sullivan, Suffolk, Tioga, Tompkins, Ulster, Warren, Washington, Westchester, Wyoming and Yates;**

- **Realize permanent flood mitigation solutions (e.g., removing properties from a floodplain);**

- **Significantly reduce a property's risk from flooding (e.g., structure elevation, or alternatives that provide benefits similar to property acquisition and elevation projects).**

Given the strong level of interest in acquisitions in the declared counties, the State will process only substantially damaged properties in the acquisitions category, with few exceptions. Substantial damage occurs when a structure sustains damages that equal or exceed 50% of its Fair Market Value (FMV) prior to the event, as determined by a local authorized official (generally, a code officer).

FEMA reimburses 75% of all eligible expenses. There are currently no plans for a State contribution. Interested applicants are encouraged to view complete details for this grant cycle on State OEM's website at http://www.dhses.ny.gov/oem/programs/hmgp.cfm.

What is Property Acquisition and How Does it Work?

1. What is the FEMA buy-out program?

There is no actual "buy-out program." Acquiring flood-prone property is always an eligible activity under the FEMA hazard mitigation programs administered by State OEM. This is the most effective form of mitigation because it permanently removes people and structures from harm's way.

Communities generally sponsor projects to buy private property, acquire title, and then demolish all structures. By law, the parcel becomes public property that must be forever maintained as open space. The community can use it for parks, wildlife refuges, and other public uses, and even enter into long-term leases for its management or use consistent with open-space principles (for example, for a boat launch or trailhead), but the community cannot sell it to private individuals or develop it.

While the structures on acquired property are usually demolished, some may be relocated. (Relocation is a good way to keep residents in your town and part of the school, church and business communities they enjoyed before the flood. It also protects historic resources and retains their contribution to your community.) In this scenario, a home would be physically relocated from its current location to another outside the 100-year floodplain. Two important considerations are the availability of vacant lots and the condition of the structure (that is, can it be moved?).

2. My home was flooded during Hurricane Irene and Tropical Storm Lee. Can I apply for a buy-out?

Homeowners and business owners are not eligible applicants under the HMGP. However, eligible government agencies and certain private non-profits (PNPs) can apply on your behalf. Eligible PNP applicants under the HMGP must provide a government-like service <u>and</u> have land conservation as an objective or mission of their organization.

3. How do I know if my property qualifies for the acquisition program?

Generally speaking, properties must have been substantially damaged from flooding during Hurricane Irene and/or Tropical Storm Lee and lie within the 100-year floodplain.

- Substantial damage occurs when a property sustains damages that equal or exceed 50% of the Fair Market Value (FMV) *of the structure* prior to the event, as determined by a local authorized official (e.g., a code officer).
- Floodplain determinations are made by reviewing the currently adopted Flood Insurance Rate Map (FIRM) or a preliminary FIRM prepared by FEMA but not yet adopted. For unmapped streams, it may be possible for a licensed engineer to perform hydraulic and hydrologic analyses to document that the property would fall within the 100-year floodplain for that system. Wetland maps, and maps created for other purposes, cannot be used as the sole basis for this determination.

It may be possible to acquire repetitively damaged properties that were not substantially damaged in these floods, either individually or as part of a multi-structure acquisition. Applicants interested in this option should call State OEM to discuss before submitting a Letter of Intent (LOI).

<u>Please note</u>: Damaged properties purchased by a new owner after the flood are eligible acquisition candidates if they meet the State priorities, damage thresholds and floodplain criteria cited above <u>*and*</u> an eligible applicant is willing to sponsor their application. However, the property's value is capped at the post-flood purchase price, plus any post-flood improvements you verify with receipts.

4. Can multi-family, vacation, mobile or historic homes be acquired? What about businesses?

Yes, if they meet the State priorities, damage thresholds and floodplain criteria cited above <u>*and*</u> an eligible applicant is willing to sponsor their application. However, please remember:

- The State will not purchase only part of a structure (for example, one-half of a duplex, or one condominium in a larger complex);
- The State may acquire commercial structures, but will not purchase the businesses in them;
- The land must be included in the transaction: while it may be possible to acquire mobile homes on rented lots, in all instances the park's acreage must be part of the application;
- Relocating or destroying historic properties has an adverse effect on the built environment, or your community's unique character. These transactions will involve additional up-front coordination with the State Historic Preservation Office (SHPO) to explore options that might avoid or reduce the project's impacts. One example of this is offering to sell historic structures to third parties for relocation rather than destroying them.

5. Can vacant parcels be purchased?

- Vacant parcels *can* be acquired if an existing structure on them was destroyed and removed by flooding associated with Irene and Lee, or by an eligible applicant that was reimbursed for the work under FEMA's Public Assistance (PA) program due to public safety concerns (the structure's pre-flood Fair Market Value (FMV) would be included in the appraisal);
- Vacant parcels *cannot* be acquired if structures damaged by flooding associated with Irene and Lee were removed by the applicant or property owner. (FEMA and State OEM cannot fund work begun or completed prior to grant award.)
- Vacant parcels cannot generally be purchased if they did not contain a structure before the flooding. However, they may be combined with parcels containing structures to support a comprehensive approach to flood mitigation for an entire neighborhood. Applicants considering this option should call State OEM before submitting a Letter of Intent (LOI).

Establishing Property Values

1. How is the value of my property determined?

In the Letter of Intent (LOI) and application phases, a property's *preliminary* acquisition value for the HMGP is based on the Fair Market Value (FMV) of the structure just before the flood damage occurred. Determining FMV can be challenging if your property bears little resemblance to its condition before the flood. However, appraisals are not required at this stage of the process.

Instead, communities may use a combination of inspections, the market value of comparable properties in similar neighborhoods, recent pre-flood appraisals, and public records, including tax records and the State Office of Real Property Service's equalization factors. Applicants (that is, local governments) must be consistent in their approach to determining both the FMV and the value of damages and the repairs required to restore the property to its pre-flood condition.

Only after FEMA awards your community a grant to acquire properties is the final property value---and the purchase offer---determined through a more formal appraisal process (see 4 below).

Please note: If you purchased a property after the flood, its value is capped at the cost you paid and any post-flood repairs you can verify with receipts. FEMA's reimbursement is capped at 75% of that.

Please note: For properties already owned by an eligible government applicant, the HMGP can reimburse the value of the parcel's development rights, the value of the structure (without land, because the community already owns it), demolition costs and site restoration.

2. Are land values factored into the appraised fair market value?

Yes, they are considered in the appraisal process that is used to prepare the purchase offer for your property. (The land value is specifically called out in the report).

3. Can parcels be subdivided prior to purchase?

Generally speaking, parcels within the floodplain cannot be subdivided in the acquisition process, although portions of your property that fall outside the floodplain may be subdivided. Also, where a property (like a farm) consists of a residence on several acres of land, it may be possible to subdivide the land, allowing for its continued farming, for example. (Property owners can also sell the entire parcel and continue farming through long-term leases with the purchasing government.) Applicants interested in this option should call State OEM to discuss before submitting a Letter of Intent (LOI).

4. Can I salvage elements from my home before it is purchased?

You can always take personal effects that are not physically attached to the home, for example, furniture, appliances like washers and dryers, etc. You can also remove some features that are attached, with proper coordination before removal, to ensure that their removal does not affect the property value (or is accounted for in the appraisal and purchase offer if it does).

5. How does the appraisal process work, and what if I don't agree with the outcome?

After FEMA approves your community's proposal, appraisals are performed to better establish the value of your property. The first independent appraisal is initiated by the applicant (the community) and is eligible for reimbursement per FEMA policy. Applicants and/or property owners can always perform a second appraisal at their expense (second appraisals are not eligible for reimbursement).

- If the value of the second appraisal is within 15% of the first, no additional appraisals are required and the higher value is used;
- If the value of the second appraisal exceeds the first by more than 15%, a third reimbursable appraisal is performed and the median value of the three is used to establish the offer.

For example:

1.	First appraisal:	$87,000	SELECTED
	Second appraisal:	$82,000	
2.	First appraisal:	$86,000	
	Second appraisal:	$117,000 (+36%)	SELECTED
	Third appraisal:	$120,000	
3.	First appraisal:	$67,000	
	Second appraisal:	$101,000 (+51%)	
	Third appraisal:	$80,500	SELECTED

This appraisal process provides the base price from which we will deduct earlier Federal assistance. (See "Duplication of Benefits" below.) It's important to remember that unless someone contributes a cash match, the homeowner will likely have to accept less than FMV in this transaction.

6. Does acquisition affect an owner's existing financial obligations for the property?

The involvement of FEMA and the State does not alter your obligations as a property owner. HMGP acquisitions are handled like any other real estate transaction performed by your community:

- Property owners are responsible for paying all school and property taxes and taxes or fees to special taxing districts (taxes are not reimbursable expenses under the HMGP);
- Obligations to lienholders must be satisfied and a free and clear title must be provided before FEMA reimbursement can occur;
- If the property owner owes more than the acquisition offer, the difference must be paid and all legal obligations must be met before FEMA reimbursement can occur (loans and taxes <u>are not</u> forgiven for properties that participate in this program).

<u>Please note</u>: The State will not process properties in foreclosure. However, those already owned by bank or former mortgage-holders can participate if they meet State priorities, damage thresholds and floodplain criteria cited above <u>and</u> an eligible applicant is willing to sponsor their application. Clear property title is a prerequisite for participation in the HMGP acquisition program.

<u>Please note</u>: FEMA, the State of New York, and your community will not use their eminent domain authority to take ownership of your property under this program. Communities cannot force or pressure owners to sell, and by law can only buy property from owners that voluntarily sell. Therefore, property owners are responsible for their moving costs and any costs associated with buying or renting a new property.

7. Will I be required to contribute money?

The answer is "maybe." The HMGP allows FEMA to reimburse up to 75% of all eligible expenses. It also requires a minimum 25% contribution that is called the "non-Federal match." This match must come from non-Federal sources, that is, an applicant cannot use Federal funds to match the HMGP's 75%. Currently there are no plans for the State to contribute to property acquisitions. This means that property owners and communities should discuss overall project costs, realistically assess their ability to contribute the non-Federal match at each phase, and memorialize all understandings before the start of work.

8. What can be used to provide the non-Federal match?

While federal funds cannot be used, there are still several mechanisms that can help with the required non-Federal match:

- The value of an applicant's staff and expenses in processing the HMGP application;
- The value of a property owner's time and materials in performing post-flood repairs;
- Donations, private funds, and non-Federal funds received from government agencies;
- U.S. Dept. of HUD Community Development Block Grants (CDBG);

- Increased Cost of Compliance (ICC) funds received from your National Flood Insurance Program (NFIP) policy, which can pay up to $30,000 for qualifying work items.

Please note: ICC funds cannot pay for property acquisition, but they can be used to pay for costs associated with the structure's demolition or relocation. If the ICC payment is being used toward the non-Federal match, the NFIP policyholder must assign the claim to the subapplicant (that is, the community). However, only that part of the ICC benefit that pertains to the project can be assigned to the community. The NFIP policyholder can only assign the ICC benefit to the community; in no case can the policyholder assign the ICC benefit to another individual. For information on how:

- ICC relates to communities' administration of floodplain management ordinances following a flood, see http://www.fema.gov/library/viewRecord.do?id=1532;
- Owners assign ICC claims to a community, see www.fema.gov/business/nfip/iccdmw.shtm.

9. What other expenses *are* eligible for reimbursement?

The costs typically associated with any real estate transaction can be repaid at FEMA's 75% rate: this includes attorney's fees, appraisal, title search, necessary lot surveys, and closing costs. Also included are demolition and site restoration costs, and, if applicable, tenant relocation assistance.

10. What expenses *are not* eligible for reimbursement?

FEMA does not reimburse for the following items:

- Taxes owed communities, school districts, special tax districts or the like;
- A property owner's costs associated with moving, renting or buying new property;
- The time a community's employees or consultants spend developing and processing applications and managing projects, although the value of these services can be used to offset the required 25% non-Federal match if identified as a pre-award cost line item (see pages 27-28 of the Hazard Mitigation Assistance Unified Guidance document at www.dhses.ny.gov/oem/mitigation/documents/FY2011-HMA-Unified_Guidance.pdf ;
- Fair Market Value (FMV), if an applicant already owns the parcel (for example, a DPW garage in a floodplain); in these instances FEMA will only pay for the fair market value of the structure, its demolition, and acquisition of the parcel's development rights. It will not pay a community for land it already owns.

Please note: There are exceptions for tenants who are displaced by an owner's decision to sell, and for owners whose income level may prevent them from acquiring affordable housing in the area.

Please note: Some other Federal benefits can affect your payout under FEMA's "Duplication of Benefits" policy immediately below.

Duplication of Benefits

Please read this next section carefully! It will explain how other types of assistance from the Federal government may---or may not--- be subtracted from your property's Fair Market Value (FMV) and ultimately reduce the purchase offer your community can make for your property.

1. **What is "Duplication of Benefits?"**

When federal funds are used to acquire property, the Federal government takes steps to not duplicate benefits paid by one Federal program with benefits from another source. This means that we are required to subtract the amount of some other Federal assistance you, as an individual property owner, might receive from the purchase price you are offered for your property. This includes flood insurance claims that are associated with damage to your structure (*not* to your contents) and Federal grants that are available to individuals, which the government considers to be a down-payment on your property if you choose to sell it. However, if you have receipts to document that the money was used to repair those damaged elements of the structure, it will not be deducted. Examples of Federal assistance that may be deducted include, but are not limited to:

- Claims paid under a National Flood Insurance Program policy, unless you can document that they were used to repair the flood-damaged property (see examples below);
- Low-interest loans from the Small Business Administration (SBA);
- Grants from FEMA's Individual Assistance (IA), Other Needs Assistance (ONA), and the Individuals and Households Program (IHP).

2. **How does this work? Who calculates my deductions?**

We will work with you to determine if deductions must occur and, if so, what their value will be. Based on the State's experience after the 2006 floods, if you receive an NFIP insurance check for damage to the structure (not contents) and use $10,000 of it to buy new kitchen cabinets to replace damaged cabinet units:

- $10,000 will be deducted from the purchase offer for your property if you have no receipts (that is, you cannot document how you spent the money);
- $5,000 will be deducted if you have receipts and the insurance adjuster valued the damaged units at $5,000 (that is, you spent $5,000 more on new cabinets than the originals were worth);
- $0 will be deducted if you have receipts and the insurance adjuster valued the damaged cabinets at $10,000 (that is, you spent exactly the same on new cabinets as the originals were worth).

As you can imagine, this reconciliation process can be time-consuming. However, it allows FEMA and the State to identify assistance that does not need to be deducted and therefore offer the highest possible price for your home. <u>You should save all your documents and receipts after a flood</u>.

<u>Odds and Ends</u>

1. **What relocation assistance is provided to <u>owners</u> who sell their homes in this program?**

Generally speaking, relocation assistance is not available to willing sellers under the HMGP program. However, you may be eligible for additional assistance if your income might preclude you from purchasing affordable housing in your community.

2. What assistance is provided to tenants affected by the sale of private property under HMGP?

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) provides relocation payments and assistance to tenants displaced from their homes. This includes any family or individual that must move as a direct result of rehabilitation, demolition or acquisition for a project in which Federal funds are used. If you are notified that you will be displaced, it is important that you do not move before you learn what you must do to receive the relocation payments and other assistance that you're entitled to.

If you are a tenant, continue to pay your rent, as failure to do so (or meet your other obligations) as a tenant can result in eviction and loss of relocation assistance. If you move or sign any agreement to purchase or lease a new unit before receiving formal notice that you are eligible for relocation assistance, you may not receive that assistance.

If the property is acquired and you are eligible for relocation assistance, you will be given advisory services, including referrals for replacement housing, and at least 90 days advance written notice prior to the date you will be required to move. You might also receive moving expenses and be eligible for financial assistance to help you rent or buy a replacement home.

Assistance may be available for displaced tenants, businesses, private non-profits, and farms.

3. What relocation assistance is provided to mobile home owners and tenants?

The assistance available to you depends on whether you own or rent your mobile home and/or pad. See www.fema.gov/pdf/government/grant/resources/hbf_ii_3.pdf for more details.

- If you rent both your mobile home and the home pad it rests on, you are eligible for URA relocation assistance for tenants (see 2 above).
- If you own your mobile home but rent the pad it rests on, you are eligible for additional assistance:
    - Home pad rental assistance is available only to mobile home owners who can certify that they will use it for rental and utility increases resulting from renting a comparable home pad and moving expenses. Compensation for home pad rental is calculated in the same way as URA relocation assistance for tenants.
    - Replacement housing assistance is available only to mobile home owners who can certify that they will use it to replace their primary residence or for other housing needs. Compensation for mobile home replacement is equal to the difference between the value of the displacement mobile home and the cost of a replacement mobile home. If you relocate, rather than replace you r mobile home, you may not receive assistance.

4. What might prevent my property from being acquired?

You may not be able to take part in (or may find it difficult to take part in) the buy-out program if:

- Your community does not want to participate in the acquisition program or sponsor an application to acquire your property;

- Damages from the Irene and/or Lee flood events do not equal or exceed 50% of your property's Fair Market Value before the storms hit (State priority);
- Your property is not in the 100-year floodplain on a currently adopted Flood Insurance Rate Map (FIRM), or on a Preliminary FIRM mapped by FEMA but not yet adopted (State priority);
- You do not agree with the appraisal and resulting purchase offer;
- Multiple liens, foreclosure, or other legal proceedings prevent clear title to the property;
- You've received more in Federal assistance than the property's Fair Market Value (FMV);
- The purchase offer is significantly reduced by the amount of your NFIP claims payments because you cannot document that you put the money back into the property;
- You bought the property after the flood, which caps our offer at your purchase price;
- You rehabilitated the flood-damaged property to meet your local floodplain ordinance and/or the New York state Uniform Fire Prevention and Building Code, and that required elevating the structure to 2' above the Base Flood Elevation (BFE): in this scenario the property is already habitable and the hazard has already been mitigated.

5. What can interested property owners expect?

It's important to remember that while property acquisition might not make you whole, it will ensure that you and your family won't be flooded again. On one hand, you will receive fair compensation for your property, and you will be able to recoup a good part of your investment in property that may have lost some of its value or appeal. On the other, there is no way to compensate for all of your emotional and financial losses, and you may have to accept less than 100% of the Fair Market Value (FMV) without a cash contribution (for example, a community donation, or money from an Increased Cost of Compliance (ICC) rider on your National Flood Insurance Program (NFIP) flood insurance policy).

Also, property acquisition takes time. The HMGP is not a response, insurance or recovery program. (There are other FEMA programs to address those needs.) The HMGP starts as a planning process in which communities assess their natural hazards, evaluate their risks, develop strategies, and identify projects to carry out when funds become available. Please remember that no matter how dedicated your community, State and FEMA team may be, property acquisition requires a lot of work and simply cannot be completed in just a few weeks, no matter how large our staffs are or how many hours they work. Under the best occurrences, property acquisition---from disaster declaration to real estate closing, demolition and site restoration---might take 12 to 18 months to complete.

6. What can property owners do to make the process run more smoothly?

- Attend all meetings to be aware of all important program requirements and deadlines.
- Provide all requested information as soon as you can. We know you have a lot going on just trying to return to some semblance of normalcy, but giving us information quickly allows us to process these applications just as quickly;
- Keep appointments with the State, FEMA and your community representatives, appraisers, and those involved in the closing;
- Make your decision in a timely matter. We understand this is an intensely personal decision, and no two families would make the same choice. One couple whose children are grown may welcome the opportunity to sell their home and move to a smaller one; another may not want to leave the home where they raised their family. Let us know if you're having problems, and don't be afraid to ask for answers.