



# CITY OF IOWA CITY MEMORANDUM

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DATE: AUGUST 20, 2008  
TO: CITY COUNCIL  
FROM: ELEANOR M. DILKES, CITY ATTORNEY *Eleanor*  
RE: BUYOUT/PURCHASE PRICE//DUPLICATION OF BENEFITS

This memorandum addresses two questions that residents, who have expressed interest in a buy-out, have posed to staff regarding the purchase price.

### Subsequent Owner.

The first question is whether a subsequent owner will receive an offer based on the pre-flood fair market value. Assuming that the City receives Hazard Mitigation Grant Benefits (HMGB) for property acquisition, the City will make an offer to purchase the property. In order to receive an offer based on the pre-flood fair market value, the person must have owned the property at the time of the flood. If the person purchased it after the flood, the offer will be based on current fair market value. 44 C.F.R. 80.17(c)(4) provides that a person who did not own the property "at the time of the relevant event" (i.e., the flood) is "not eligible for a purchase offer based on pre-event fair market value...." Attached to this memorandum are pages 47-51 of a FEMA publication entitled "Hazard Mitigation Assistance (HMA) Program Guidance/Mitigation Project Subapplication Guidance" with additional information on this matter. On page 48, it states that pre-flood value "is only available to an owner who owned the property during the event...."

### Duplication of Benefits.

The second question is whether insurance proceeds will affect the purchase price. When making an offer to buy the property, the City will be required to ensure that there is not a "duplication of benefits" between HMGB and other forms of government assistance. 42 U.S.C. §5155, 44 C.F.R. 80.9, and 44 C.F.R. 206.191. The offer, assuming that the person owned the property at the time of the flood, will be based on the fair market value of the home before the flood. The State of Iowa and FEMA will provide to the City the amount of disaster assistance that each owner has already received, such as flood insurance benefits. If this assistance was awarded for the purpose of making repairs to the home, the City must reduce the purchase offer by this amount unless the property owner can verify that the funds were expended on repairs or clean up. It is very important for homeowners to keep receipts and other written documentation regarding how the money is spent. If a person received an SBA loan, the offer will be conditioned on owner paying off the SBA loan at closing. Any personal funds that the owner spent on the property is not a duplication of benefits and thus will not affect the purchase price. Pages 49-51 of the attached "Hazard Mitigation Assistance (HMA) Program Guidance/Mitigation Project Subapplication Guidance" contains additional information on duplication of benefits.

Enc.

Copy to:

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If several different entities or programs are acquiring property in the same area, property owners may find it confusing if different offers are made to area owners at different times. To avoid any negotiation difficulties or confusion, the subgrantee should coordinate the release of property valuation information and purchase offers to property owners for the various programs. The subgrantee may wish to set a time limit with the property owner for the validity of a purchase offer. The subgrantee must provide an appeal or reconsideration process for property owners who dispute the amount of the purchase offer property valuation.

Purchase offers made under the SRL program have different requirements than those made under FEMA's other mitigation grant programs and, in addition to the following requirements, must comply with the offer requirements identified in the SRL FY guidance. The purchase offer of an SRL property must be the greatest of the following amounts:

- The current market value of the property or the pre-event market value of the property;
- The original purchase amount paid by the property owner holding the flood insurance policy as demonstrated by property closing documents; and
- The outstanding amount of any loan to the property owner, secured by a recorded interest in the property at the time of the purchase offer.

When determining value based on the outstanding amount of loans to the property owner for the SRL program, the loans must be secured by a recorded interest in the property at the time of the purchase offer and the value shall not include home equity loans or lines of credit secured after the property owner signs the Pre-Award Consultation Agreement. Any loans secured after the property owner signs the Pre-Award Consultation Agreement are not eligible.

#### **2.3.13.3.1.5.1. Property Valuation**

For each property identified for acquisition, the subgrantee shall establish and document a property value based on market value. Market value is generally defined as:

The amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the valuation, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the valuation.

Current market value reflects the property value at the time of the final mitigation offer (see Section 3.4.5, Mitigation Offer Process, for more information). Pre-event market value is defined as the market value of the property immediately before the relevant event affecting the property. The relevant event for assistance under the HMGP is the major disaster under which funds are available. For the PDM program, pre-event value is the value before the most recent major disaster, however if the project is occurring separate from or more than 12 months after a disaster event, the current market value may be more appropriate. For the FMA, RFC, and SRL programs

the pre-event market value is defined as the value of the property immediately before the most recent flood event resulting in a NFIP claim of at least \$5,000.

The benefit of payment of pre-event market value is only available to an owner who owned the property during the event and is a U.S. National or qualified alien (see below for more information). If the current property owner purchased the disaster damaged property after the major relevant event, or is not a U.S. National or qualified alien, then the subgrantee shall not offer the owner more than the current market value.

Typically, acquisition projects require the valuation of the property (land and structure as a whole). In situations where an eligible entity already owns the property but wants to deed restrict it, valuation will be for the structure and development rights instead of for the land. Relocation projects require the valuation of land only.

### ***Valuation Methodologies***

The property value, either current or pre-event, must be derived from a methodology that results in a reasonable determination of market value. The subgrantee must coordinate with the Grantee to determine the methodology that will be used for property valuation determinations. This methodology must be applied consistently throughout the project area, using the same methodology for all properties to be acquired.

When practicable, the appraisal methodology shall be used. Appraisals must be conducted by an appraiser in accordance with the *Uniform Standards of Professional Appraisal Practice* (USPAP). The appraiser must comply with relevant State laws and requirements, and shall have the appropriate certification, qualifications, and competencies based on the type of property being appraised.

When determining value for a large number of structures, the subgrantee may choose to perform appraisals to establish a statistical sampling of property values, and develop an adjustment factor to apply to tax assessed values so that they reasonably reflect each property's market value.

#### **2.3.13.3.1.5.2. Purchase Offer and Nationality**

A property owner who is not a National of the United States or a qualified alien is not eligible for a pre-event market value determination of property value. The property value must be based on current market value.

The term "National of the United States" is defined at 8 U.S.C. § 1101 and means a citizen of the United States or a person who is not a citizen but who owes permanent allegiance to the United States. The term "qualified alien" is defined at 8 U.S.C. § 1641 and means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is:

- 1) An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. § 1101 et seq.];
- 2) An alien who is granted asylum under Section 208 of such Act [8 U.S.C. § 1158];

- 3) A refugee who is admitted to the United States under Section 207 of such Act [8 U.S.C. § 1157];
- 4) An alien who is paroled into the United States under Section 212(d)(5) of such Act [8 U.S.C. § 1182 (d)(5)] for a period of at least 1 year;
- 5) An alien whose deportation is being withheld under Section 243(h) of such Act [8 U.S.C. § 1253] (as in effect immediately before the effective date of Section 307 of division C of Public Law 104–208) or Section 241(b)(3) of such Act [8 U.S.C. § 1231 (b)(3)] (as amended by Section 305(a) of division C of Public Law 104–208);
- 6) An alien who is granted conditional entry pursuant to Section 203(a)(7) of such Act [8 U.S.C. § 1153 (a)(7)] as in effect prior to April 1, 1980; or
- 7) An alien who is a Cuban and Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980).

Subgrantees will ask all acquisition project participants (property owners) to certify that they are either a National of the United States or a qualified alien. Subgrantees will offer participants who refuse to certify, or who are not Nationals of the United States or qualified aliens, no more than the appraised current market value for their property. Participants who refuse to certify, or are not Nationals of the United States or qualified aliens, also may not receive supplemental housing payments as described in Section 2.3.13.3.1.7 (Additions to Purchase Offer).

Subgrantees may wish to use FEMA Form 90-69B to obtain certification from participating property owners. At the time of certification, the subgrantee will ask the property owner to show a form of identification (any identification displaying the signer's name will suffice). If the property owner applied for FEMA disaster assistance, a Form 90-69B will already be on file at FEMA and the subgrantee will instead request verification from FEMA through the State/Grantee that a certification is on file.

#### **2.3.13.3.1.6 Deductions from Purchase Offer**

##### ***Duplication of Benefits***

FEMA mitigation grant program funding is supplemental to other funding sources and must be reduced by amounts reasonably available (even if not sought or received) from other sources to address the same purpose or loss. Insurance payments, FEMA housing needs assistance, property-related legal claims and/or funds from any other sources that are available for the purpose of making repairs to or replacing a structure, or other compensation for the value of the real property, are considered duplicated amounts. In this case, the eligible project costs are reduced by the duplicative amount. This has the effect of reducing both the Federal and non-Federal shares of the project, and ensures that mitigation grant funds do not duplicate benefits available to owners and tenants from another source for the same purpose.

The Grantees, subgrantees and project participants (including property owners and tenants) must take reasonable steps to recover all such amounts. Amounts that are reasonably available to the individual or entity shall be treated as benefits available for the same purpose, even if he/she/it

did not seek them. Duplications can occur at any time in such cases, and if amounts for these purposes are received subsequent to the property settlement they must be reimbursed to FEMA.

Some examples when DOB occurs include the following:

- If the subgrantee decides to offer pre-event market value, duplication may occur if homeowners have insurance, loans, repair grants, or other assistance available to them to help address the damage to the structure. This is because paying full pre-event market value also compensates the owner for the loss of value that occurs due to damage. The subgrantee must make the deductions from the established pre-event market value purchase offer before making a final mitigation offer to the property owner;
- Duplication may occur when insurance benefits are available to the property owner under an existing policy, whether they submitted a claim or not. (If insurance paid a claim that included reimbursement for the property owner's own labor for clean up, this is not a DOB and it should not be deducted);
- Duplication may occur where legal claims are appropriate or legal obligations arise (e.g., to comply with a law or court order) that may provide a benefit to the property owner on the basis of that property. Parties involved in pending legal disputes must take reasonable steps to recover benefits available to them; and
- Duplications may also occur when relocated tenants receive relocation assistance and rental assistance if they have received payments for the same purposes as part of the disaster assistance provided by FEMA and other agencies, or payments from any other source, as described in Section 2.3.13.3.1.8 (Tenants). Any acquisition-related assistance provided to tenants must be reduced accordingly. This also affects the total eligible costs allowable for the project (Tenant-related DOB deductions do not affect amounts available to the property owner).

For property valuations based on pre-event market value, the following procedures assist in preventing mitigation grant funds from duplicating benefits available from other sources:

- For property owners, the subgrantee establishes the purchase offer property value as of a certain date;
- The subgrantee provides the State/Grantee with a list of property owners who are participating in the property acquisition project, and with a list of tenants that will potentially be affected by acquisition of the property they occupy;
- The State/Grantee and FEMA inform the subgrantee of the amount of repair or replacement assistance available to each property owner, and rental or relocation assistance available to tenants from FEMA and the State. FEMA shall provide to the State/Grantee and subgrantee NFIP coverage information, including the amount paid on a claim and the amount of coverage available;

- The subgrantee shall coordinate with property owners who shall disclose all potential amounts available to them for the same purpose, as described above, including repair or replacement assistance received, all insurance benefits available to them under an existing policy (whether they submitted a claim or not), and any potential recovery based on litigation or other legal obligations. The property owner must take reasonable steps to recover such amounts. Amounts that are reasonably available to the property owner shall be treated as benefits available for the same purpose, even if the property owner did not seek them. The subgrantee shall coordinate with tenants who shall disclose any amounts received from rental or relocation assistance;
- Property owners who have a U.S. Small Business Administration loan are required to repay the loan or roll it over to a new property at closing;
- The subgrantee shall identify any other potential sources of benefits to the subgrantee, property owner, or tenant; and
- The subgrantee shall reduce the purchase offer by the amount of any duplicating benefits. Deductions are not taken, however, for amounts the owner can verify with receipts that were expended on repairs or cleanup (Subgrantees may not credit homeowners for the homeowners' own labor hours for repair work).

#### **2.3.13.3.1.7 Additions to Purchase Offer**

##### ***Supplemental Housing Payments***

If a purchase offer for a property is less than the cost for the property owner to purchase a comparable replacement dwelling in a non-hazard-prone site in the same community, the State/Grantee and subgrantee may choose to make available a supplemental payment of up to \$22,500 for the property owner to apply to the difference. Subgrantees should consider the cost of relocating to a permanent residence that is of comparable value and that is functionally equivalent. The State/Grantee and subgrantee must demonstrate that all of the following circumstances exist:

- Decent, safe, and sanitary housing of comparable size and capacity is not available in non-hazard-prone sites within the community at the anticipated acquisition price of the property being vacated; and/or
- The project would otherwise have a disproportionately high adverse effect on low income or minority populations because project participants within those populations would not be able to secure comparable decent, safe, and sanitary housing; and
- Funds cannot be secured from other more appropriate sources such as housing agencies or voluntary groups.

**For SRL only:** Property owners that receive additional amounts of SRL program funds to cover the original purchase price of the property, or to cover second mortgages or other loans, are generally not eligible to receive supplemental housing payments.