



Billing Code: 9111-47-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA-2018-0006; OMB No. 1660-0103]

Agency Information Collection Activities: Proposed Collection; Comment Request;

Property Acquisition and Relocation for Open Space

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a reinstatement, with change, of a previously approved information collection for which approval has expired. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the property acquisition and relocation for open space process as part of the administration of FEMA's mitigation grant programs, and the withdrawal of three previously proposed forms (FEMA Form 086-0-31a, FEMA Form 086-0-31b, and FEMA Form 086-0-31c) from the Information Collection included in the initial 60-day public comment period regarding the Severe Risk Property Acquisition (SRPA) direct grant to property owners for acquisition and demolition of severe repetitive loss structures. After reviewing all the comments submitted, FEMA has determined there is no need for SRPA direct grant-related forms at this time. At this time, FEMA has decided not to implement the SRPA direct to property owners grant.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online*. Submit comments at *www.regulations.gov* under Docket ID FEMA-2018-0006. Follow the instructions for submitting comments.

(2) *Mail*. Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street, SW, 8NE, Washington, DC 20472-3100.

All submissions received must include the agency name and Docket ID.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at

http://www.regulations.gov, and will include any personal information you provide.

Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jennie Orenstein, Grants Policy Branch Chief, FIMA, FEMA, (202) 212-4071. You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: Regulations at 44 CFR part 80 govern property acquisitions for the creation of open space under FEMA's three hazard mitigation assistance (HMA) grant programs: The Pre-Disaster Mitigation program (PDM) and Hazard Mitigation Grant Program (HMGP), authorized under the Robert T. Stafford

Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121–5207; and the Flood Mitigation Assistance Program (FMA) authorized under the National Flood Insurance Act (NFIA) of 1968, as amended, 42 U.S.C. 4001 et seq. Acquisition and relocation of property for open space use is a popular mitigation activity eligible under PDM, HMGP, and FMA. These programs require any property acquired with FEMA funds to be deed restricted and maintained as open space in perpetuity to ensure against future risk from hazards to life and property, and to reduce the need for disaster assistance or insurance payments for damages to property. This proposed information collection previously published in the Federal Register on February 27, 2018 at 83 FR 8493 with a 60-day public comment period. The comment period closed on April 30, 2018. FEMA received ninety-two comments in response to Information Collection 1660-0103, including comments that express both support and opposition to different parts of the Collection. Many comments were similar, but they will be recorded as 102 distinct comments since they addressed multiple parts of the Collection. Of the 102 comments received, 67 comments were opposed to language in the three new forms pertaining to the Severe Risk Property Acquisition (SRPA) direct grants to property owners that included an option identified as “Pathway 2: Demolition of Structure(s) Only, Property Owner(s) Retains Ownership.” The Pathway allowed property owners to build new structures on the land after the existing structures were acquired and demolished by FEMA. A commitment to use the property as open space in perpetuity was not required. The new structures were required to meet current community flood management building codes, which presumably would be to a higher standard than the damaged structure was built to. Mitigation would thus be accomplished by reducing the long-term risk to a natural

hazard. In comparison, the other Pathway SRPA offered was that the subrecipient (local community) could acquire the property and commit the property to open space use in perpetuity. With either Pathway, the choice was up to the property owner, assuming the community was interested in acquisition if the property owner chose that option. A SRPA grant would only be offered under FEMA's Flood Mitigation Assistance (FMA) program.

Eleven (11) comments were supportive of SRPA and the three new related forms. 3 comments were neutral and recommended changes to provide support to SRPA. 3 comments opposed using the public comment period for discussing the feasibility of SRPA. 6 comments were beyond the scope of the Information Collection and 12 comments were not germane.

The 67 comments submitted in opposition to SRPA's Pathway 2: Demolition of Structure(s) Only, Property Owner(s) Retains Ownership option came from a variety of sources, including State and local government, non-profit organizations, individuals, and anonymous sources. Commenters listed primary reasons for opposition such as:

- Inconsistency under the National Flood Insurance Act (NFIA) of 1968 42 U.S.C. 4104c since the forms only offered property owners one mitigation option, acquisition, and no other mitigation activities such as relocation, structure elevation, or mitigation reconstruction
- Inconsistency under 44 CFR part 80 Property Acquisition and Relocation for Open Space, which restricts post-acquisition land use to outdoor recreational activities, wetlands management, nature reserves, farming (i.e., cultivation, grazing), camping and

other uses FEMA determines are compatible with open space and limits the type of new structures that can be built on the property

- Inconsistency with current Hazard Mitigation Assistance (HMA) Guidance for acquisition of properties, and inconsistency with the way FEMA has implemented acquisition projects for the past 30 years, which require the acquired property to be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions

Several comments cited additional reasons for opposition to the SRPA forms for Pathway 2: Demolition of Structure(s) Only, Property Owner(s) Retains Ownership, including:

- New structures would endanger first responders in the flood prone area
- Direct grants discourage conversion of developed land to open space
- Direct grants fail to reduce the risk posed to property and human lives
- Lack of robust codes in many communities would not guarantee a rebuild to a higher standard
- Lack of information justifying how Pathway 2 would be cost-effective (an eligibility requirement for all HMA projects), and demonstrate savings over alternative mitigation options
- Propose limitation to ensure direct grants would not be abused to spur coastal development

Commenters also noted that the new forms were not clear on who would be responsible for monitoring these properties post-acquisition to ensure that new structures and improvements conform to grant requirements. Without clear identification of

responsibilities, there was concern that new structures would not be constructed to meet community flood building standards.

The 11 comments in support of SRPA also came from a variety of sources, including local government, a non-profit organization and individuals. Commenters in support of SRPA provided the following reasons:

- Expedited access to funding that will help survivors recover more quickly
- Reduced risk of experiencing another flood at the same property in the short-term
- Increase in or maintenance of a community's tax base
- SRPA would result in reconstruction to a higher building code
- Provides a good alternative when a state does not prioritize substantially damaged homes, or does not expedite an acquisition project

Of the comments that expressed support, several of them had reservations. For example, one commenter expressed strong support for the property owner to retain land after a demolition but expressed concern regarding what would happen if the local government did not want the property owner to do this. Additionally, the commenter was unsure how the property would be maintained in perpetuity and reported every three years. The comment reflects a misconception about a SRPA direct grant as the property owner who retains ownership would not be required to commit the property to open space in perpetuity. Another commenter supported SRPA but opined that a property owner should only be eligible when neither the local jurisdiction nor state have a flood mitigation plan in place. One association supported SRPA but only if elevation is included in the eligible project list.

Three (3) comments neutral to SRPA came from individuals. The commenters offered recommendations that if followed would make SRPA acceptable to them. One commenter wanted the added option of elevation, in addition to the demolition and property owner retention option. According to the commenter, elevations would address the removal of tax bases and provide more flexibility in areas impacted by flooding.

One individual recommended that to make NFIP more fiscally secure, individuals should be denied NFIP insurance if they reject the options for a buyout, elevation, and mitigation reconstruction project after flooding multiple times in a set number of years and once flood insurance payments total the value of the house. While FEMA recognizes that denying flood insurance to property owners who reject the option to mitigate may incentivize mitigation, FEMA does not have statutory authority to implement such a measure.

Another commenter indicated a spelling error in the header of a form, recommended language change in the Statement of Voluntary Participation form to align more with what is written in the FEMA FORM 086-0-31C and inquired about why the acquisition and demolition process must be done by FEMA and not by the local community. The form with the spelling error is no longer an instrument of this Information Collection.

Three (3) comments opposed using the public comment period for discussing the feasibility of SRPA. One commenter expressed concern about making a fundamental change to buyout programs through “the obscure context and mechanism of reinstating and changing a series of federal forms.” The comment reflects a misconception that adding the forms to the Information Collection alone would be enough to implement this

new type of grant. Adding the forms was a means of FEMA preparing to implement the SRPA grant if FEMA received an appropriation for it. However, FEMA did not receive an appropriation to implement a SRPA grant and has no plans to implement a SRPA grant currently.

Another commenter felt the Information Collection lacked “explanatory material for the assumptions and procedures in which the proposed forms are expected to be used...” Specifically, the commenter wanted access to the proposed forms. FEMA is not able to publicly post the forms because they have not yet been approved by OMB. However, if the commenter reaches out to HMA’s Point of Contact for this Information Collection (Jennie Orenstein), they will be provided access to the forms.

Lastly, one commentator wanted to “extend and expand the public comment period to allow more knowledgeable evaluation.” A standard Paperwork Reduction Act Information Collection requires both a 60-day public comment period, followed by a 30-day public comment period. The program office is responsible for responding to all comments during these two comment periods. The commenter’s remark was part of the 60-day comment period and, thus, there will be another 30-day comment period following adjudication of responses and potential changes to forms.

Six (6) comments were beyond the scope of the Information Collection and involved the following topics:

- Inquire into specific mechanisms used to compel local governments to participate in SRPA grants
- Inquire about funding streams, which do not currently exist for SRPA grants

- Inquire about how to determine if a State and/or community would not have the capacity to manage direct grants
- Inquire about addressing urban flooding by redefining flood zones and providing a socially equitable solution to low to middle income communities when experiencing flooding
- Express a belief that current floodplains are based on best guesses and anecdotal evidence, which leads to inaccuracies

Following Hurricane Harvey, to address the dire circumstances of property owners with substantially damaged homes, FEMA explored implementing a statutory provision in the National Flood Insurance Act, 42 U.S.C 4104c(a)(3), which authorizes FEMA to provide direct grants to property owners with severe repetitive loss (SRL) properties under FMA. After considering the 102 comments submitted mostly in opposition to SRPA but also supporting it, in some cases with reservations, FEMA has decided not to implement SRPA and to withdraw the three forms related to the SRPA grant, consisting of FEMA Form 086-0-31a, FEMA Form 086-0-31b, and FEMA Form 086-0-31c from the Information Collection.

FEMA appreciated the input provided, and felt the commenters raised many worthy issues for discussion concerning a direct grant to property owners. Consequently, FEMA intends to pursue an ongoing dialogue with stakeholders, non-governmental organizations, and other entities or individuals, as appropriate, to address the merits and problems with implementing this type of grant.

In response to comments, FEMA has withdrawn three previously proposed forms (FEMA Form 086-0-31a, FEMA Form 086-0-31b, and FEMA Form 086-0-31c) from the

Information Collection included in the initial 60-day public comment period regarding the Severe Risk Property Acquisition (SRPA) direct grant to property owners for acquisition and demolition of severe repetitive loss structures. After reviewing all the comments submitted, FEMA has determined there is no need for SRPA direct grant-related forms at this time. At this time, FEMA has decided not to implement the SRPA direct to property owners grant.

With the withdrawal of the three SRPA-related forms, the Information Collection contains only three new forms necessary to obtain information for HMA's usual grants: Real Property Status Report, SF-429, Declaration and Release (Declaracion Y Autorizacion) (FEMA Form 009-0-3 or 009-0-4 (Spanish)), and FEMA Form 086-035a (Pages 9-10) NFIP Repetitive Loss Update Worksheet. The fourth form, the Property Owners' Voluntary Participation Statement (FEMA Form 86-0-31) is necessary for FEMA to ensure compliance with regulatory requirements that the property owner's participation in an acquisition is voluntary. See 44 CFR 80.13. This form was published in previous information collections.

The Real Property Status Report, SF-429 is a standard, OMB-approved form under OMB Collection 4040-0016, with a current expiration date of 02/28/2022. It is used to certify that the subrecipient has inspected properties to ensure consistency with the terms of the deed restrictions committing the properties to open space in perpetuity. The SF-429 is an addition to this collection as part of the 2 CFR 200.311 requirements for property management and disposition. While FEMA has always collected property management reports every three years for acquired properties, the SF-429 form was not included in previous collections. Historically, some recipients and subrecipients used the

SF-429 forms, and others used their own formats. FEMA is now proposing to use the SF-429 to have a uniform and consistent format.

FEMA collects Declaration and Release, FEMA Form 009-0-3 or Declaracion Y Autorizacion FEMA Form 009-0-4 (Spanish) (OMB No. 1660-0002), to certify an individual's information and eligibility. FEMA will be adding this form to this information collection to obtain necessary information for its eligibility determinations. This form is already approved under OMB Collection 1660-0002, Disaster Assistance Registration which expires on July 31, 2019 and is currently pending OMB's approval.

FEMA Form 086-0-35a (Pages 9-10) NFIP Repetitive Loss Update Worksheet, is a form used by the State, Tribe or local community when acquiring a property to update the status of properties classified as NFIP repetitive loss to indicate if they have been previously acquired, retrofitted or mitigated through a different eligible project type. These pages are included in an already approved OMB Collection No.1660-0022, Community Rating System (CRS) Program – Application Letter and CRS Quick Check, Community Annual Recertification and Environmental and Historic Preservation Certifications, which expires on March 31, 2020. This form is necessary to keep records for flood insurance purposes, which allows the NFIP to modify their flood insurance policies.

This information collection, OMB No. 1660-0103, expired on January 31, 2018. FEMA is requesting a reinstatement, with change, of a previously approved information collection for which approval has expired. The purpose of this 60-day notice is to notify the public of the changes FEMA has made to the originally proposed Information

Collection in the previous 60-day notice and allow for a new 60-day period for comments on the updated Information Collection.

Collection of Information

Title: Property Acquisition and Relocation for Open Space.

Type of Information Collection: Reinstatement, with change, of a previously approved information collection for which approval has expired.

OMB Number: 1660-0103

Form Titles and Numbers: FEMA Form 086-0-31, Statement of Voluntary Participation for Acquisition of Property for Purpose of Open Space, (OMB No.1660-0103); 009-0-3 (English) and 009-0-4 (Spanish), Declaration and Release, (OMB No. 1660-0002); 086-0-35a (Pages 9-10), NFIP Repetitive Loss Update Worksheet (OMB No. 1660-0022); SF-429, Real Property Status Report (OMB No. 4040-0016).

Abstract: FEMA and State, Tribal and local recipients of FEMA mitigation grant programs will use the information collected to meet the Property Acquisition requirements to implement acquisition activities under the terms of grant agreements for acquisition and relocation activities. FEMA and State/local grant recipients will also use the information to monitor and enforce the open space requirements for all properties acquired with FEMA mitigation grants.

Affected Public: State, local or Tribal Government; Individuals or Households.

Estimated Number of Respondents: 2,773

Estimated Total Annual Burden Hours: 11,528

Estimated Cost: The estimated annual cost to respondents for the hour burden is \$520,710.

Estimated Respondents' Operation and Maintenance Costs: There are no annual costs to respondents' operations and maintenance costs for technical services.

Estimated Respondents' Capital and Start-Up Costs: There is no annual start-up or capital costs.

Estimated Total Annual Cost to the Federal Government: The cost to the Federal Government is \$687,687.

Comments: Comments may be submitted as indicated in the ADDRESSES caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Maile Arthur,

Acting Records Management Branch Chief,

Office of the Chief Administrative Officer,

Mission Support,

Federal Emergency Management Agency,

Department of Homeland Security.

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