

5.4.5 HARRIS COUNTY MITIGATION METHOD OF DISTRIBUTION (MOD)

Harris County has been allocated \$750,000,000 of CDBG-MIT funds for a Method of Distribution (MOD) program. This program will be administered by the GLO as a direct recipient of funding from HUD. Harris County will be a subrecipient of the GLO as memorialized in a subrecipient agreement between Harris County and the GLO upon HUD approval of Amendment 1 of the State of Texas CDBG-MIT Action Plan.

Harris County will develop a local MOD for allocation of funds to eligible entities, including units of local government, special purpose districts, and port and river authorities. The GLO encourages the prioritization of regional investments with regional impacts in risk reduction posed by hurricanes, tropical storms and depressions, flooding, wind and other hazards to develop disaster-resistant infrastructure; upgrading of water, sewer, solid waste, communications, energy, transportation, health and medical, and other public infrastructure to address specific, identified risks; financing multi-use infrastructure; and green or natural mitigation infrastructure development.

Due to the nature of this activity, this program will be administered by the GLO, with local eligible entities as subrecipients to Harris County. Harris County may request that the GLO provide datasets to assist in the creation of the MOD.

The MOD developed by Harris County provides the opportunity for local quantifiable factors for the distribution of funds. Given the size of the CDBG-MIT eligible impacted area, how disasters impact each region differently, and the varying risks in each region, local control through a regional approach is vital for a comprehensive mitigation approach.

Harris County is the third most populous county in the United States. Its boundaries contain 1,777 square miles which includes 22 primary watersheds. In combination with this and the Hurricane Harvey damage, this allocation is being made for distribution within the County.

Local MOD guidelines will require that Harris County follow a citizen participation process. The county is required to publish notice of any public hearings prior to holding the hearings. Notices shall be published in all newspapers of record for all eligible entities in the region, posted on the Harris county website, and provided to all eligible units of government. Hearings must fully comply with the Texas Open Meetings Act.

The GLO will review and provide preliminary approval to the MOD prior to its posting by Harris County for public comment. The MOD shall be posted on the Harris County website for public comment prior to formal submission to the GLO. The public comment period shall be no less than 15 days. Each comment shall be responded to and any changes made to the MOD shall be noted in the response section for GLO review. The GLO will set the due date for completion of the MOD.

Upon completion, the GLO will review and approve the MOD submission. The MOD will be wholly reviewed to ensure that it provides a detailed description of the methodology used to allocate and prioritize funds within the County. If the MOD is not approved, the GLO will provide feedback to Harris County, including specific issues.

Harris County will be the sole subrecipient of the GLO from this MOD. Harris County, as allocated in its MOD, may enter into subrecipient and partnership arrangements with the local eligible entities through interlocal agreements or other appropriate contractual measures, to develop or implement mitigation projects.

5.4.5.1 Connection to Identify Risk:

As outlined in Mitigation Needs Assessment, hurricanes/tropical storms/tropical depressions, and severe coastal/riverine flooding are the top two severe risks Texas experiences. Each proposed project must mitigate against one of these identified risks.

5.4.5.2 Allocation Amount: \$750,000,000

5.4.5.3 Maximum Award Amount: The maximum award will be determined by the Harris County Mitigation MOD.

5.4.5.4 Eligible Entities: Funds from the Harris County MOD may be allocated to:

- i. Harris County;
- ii. Cities or towns within Harris County;
- iii. Special purpose districts including, but not limited to:
 - a. municipal utility districts;
 - b. water control and improvement districts;
 - c. special utility districts;
 - d. flood and drainage districts;
 - e. municipal management districts;
 - f. redevelopment authorities;
 - g. tax increment reinvestment zones;
 - h. navigation districts;
 - i. Port Authorities; and
 - j. River Authorities

5.4.5.5 *Local MOD Requirements:*

- i. Harris County will facilitate the MOD process;
- ii. Establish objective replicable criteria for allocation of funds to eligible entities or activities;
- iii. Develop a citizen participation plan;
- iv. GLO will review and provide preliminary approval to MOD prior to the public comment period;
- v. Conduct a minimum of two (2) public hearings prior to finalizing the MOD and after the publication of this amendment by the GLO;
- vi. One (1) public hearing shall be a “Public Planning Meeting;”
- vii. Ensure a public comment period of at least 15 days;
- viii. Implement a minimum of \$1,000,000 in CDGB-MIT funds to any local entity receiving funding through the MOD;
- ix. Facilitate local prioritization through the MOD;
- x. Connection to regional mitigation needs assessment and risk;
- xi. Identify set asides for regional mitigation priorities and regional projects;
- xii. Identify Covered Project(s);
- xiii. A plan to meet the 50 percent LMI benefit requirement pertaining to the Harris County Mitigation MOD; and
- xiv. Establish any additional parameters for eligibility beyond what is required by HUD or the GLO.

5.4.5.6 *Eligible Activities: All activities allowed under CDBG-MIT; HCDA Section 105(a) (1-5), 105(a) (7-9), and 105(a)(11), including but not limited to:*

- i. Flood control and drainage improvements, including the construction or rehabilitation of stormwater management system;
- ii. Infrastructure improvements (such as water and sewer facilities, streets, provision of generators, removal of debris, bridges, etc.);
- iii. Natural or green infrastructure;
- iv. Communications infrastructure;
- v. Public facilities;
- vi. Buyouts or Acquisition with or without relocation assistance, down payment assistance, housing incentives, and demolition;

- vii. Activities designed to relocate families outside of floodplains;
- viii. Public service within the 15 percent cap (e.g., housing counseling, legal counseling, job training, mental health, and general health services);
- ix. FEMA Hazard Mitigation Grant Program (HMGP) cost share for CDBG-MIT eligible project;
- x. Economic development (assistance to businesses for the installation of disaster mitigation improvements and technologies; financing to support the development of technologies, systems and other measures to mitigate future disaster impacts; “hardening” of commercial areas and facilities; and financing critical infrastructure sectors to allow continued commercial operations during and after disasters); and
- xi. Nonresidential structures must be elevated to the standards described in this paragraph or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 100-year (or 1 percent annual chance) floodplain. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 500-year floodplain elevation or 3 feet above the 100-year floodplain elevation. If the 500-year floodplain or elevation is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed at least 3 feet above the 100-year floodplain elevation. Critical Actions are defined as an “activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage to property.” For example, Critical Actions include hospitals, nursing homes, police stations, fire stations and principal utility lines.
- xii. Planning activities within a five (5) percent cap. For purposes of clarity, the Harris County five (5) percent planning cap will be calculated based on five (5) percent of the total of \$750,000,000.00 which equals \$37,500,000.00.
- xiii. Project delivery funding beyond reasonable engineering and design activities will remain within a six (6) percent cap. For purposes of clarity, the Harris County six (6) percent project delivery cap will be calculated based on six (6) percent of the total of \$750,000,000.00 which equals \$45,000,000.00.

5.4.5.7 Ineligible Activities:

- i. Emergency response services. Emergency response services shall mean those services that are carried out in the immediate response to a disaster or other emergency in order to limit the loss of life and damage to assets by state and local governmental and nongovernmental emergency public safety, fire, law

- enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities;
- ii. Enlarge a dam or levee beyond the original footprint of the structure that existed prior to the disaster event. CDBG-MIT funds for levees and dams are required to:
 - a. Register and maintain entries regarding such structures with the USACE National Levee Database or National Inventory of Dams;
 - b. Ensure that the structure is admitted in the USACE PL 84–99 Rehabilitation Program (Rehabilitation Assistance for Non-Federal Flood Control Projects);
 - c. Ensure the structure is accredited under the FEMA NFIP; and
 - d. Maintain file documentation demonstrating a risk assessment prior to funding the flood control structure and documentation that the investment includes risk reduction measures.
 - iii. Assist a privately-owned utility for any purpose. A private utility, also referred to as an investor-owned utility, is owned by private investors and is for-profit as opposed to being owned by a public trust or agency (e.g., a coop or municipally owned utility);
 - iv. Buildings and facilities used for the general conduct of government (e.g., city halls, courthouses, and emergency operation centers);
 - v. By law, (codified in the HCD Act as a note to 105(a)), the amount of CDBG-MIT funds that may be contributed to a USACE project is \$250,000 or less;
 - vi. Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for “repair, replacement, or restoration” for damage to any personal, residential, or commercial property if that person at any time has received federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable federal law on such property. No disaster assistance may be provided for the repair, replacement, or restoration of a property to a person who has failed to meet this requirement;
 - vii. If the property is purchased through the use of eminent domain, the ultimate use of that property may not benefit a particular private party and must be for a public use; eminent domain can be used for public use, but public use shall not be construed to include economic development that primarily benefits private entities; and

- viii. Incentive payments to households that move to disaster-impacted floodplains.

5.4.5.8 Program Guidelines for Residential Buyout or Acquisition Activities (Only):

Each subrecipient will develop guidelines in accordance with CDBG-MIT requirements and regulations to set maximum assistance amounts, target area locations, Disaster Risk Reduction Area, and additional eligibility requirements. Guidelines must be posted for public comment before use. The GLO must approve all guidelines. Subrecipients are required to develop and follow a RARAP. With respect to the buyout of properties, an “intended, planned, or designated project area,” as referenced at 49 CFR 24.101(b)(1)(ii), shall be an area for which a clearly defined end use has been determined at the time that the property is acquired, in which all or substantially all of the properties within the area must be acquired within an established time period as determined by the grantee or acquiring entity for the project to move forward.

To conduct a buyout in a Disaster Risk Reduction Area, the subrecipient must establish criteria in its policies and procedures to designate the area subject to the buyout, pursuant to the following requirements:

- i. The hazard must have been caused or exacerbated by the Presidentially declared disaster for which the grantee received its CDBG-MIT allocation;
- ii. The hazard must be a predictable environmental threat to the safety and well-being of program beneficiaries, as evidenced by the best available data (e.g., FEMA RL Data) and science;
- iii. The Disaster Risk Reduction Area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area. The distinction between buyouts and other types of acquisitions is important, because subrecipient may only redevelop an acquired property if the property is not acquired through a buyout program (i.e., the purpose of acquisition was something other than risk reduction); and
- iv. In carrying out acquisition activities, subrecipient must ensure they are in compliance with their long-term redevelopment plans.

5.4.5.9 Project Eligibility:

- i. Meets the definition of mitigation activities;
- ii. Addresses the current and future risks identified; Mitigation related to Hurricanes, Tropical Storms and Tropical Depressions, and Severe Coastal and Riverine Flooding;
- iii. Meets the definition of a CDBG-eligible activity under title I of HCDA or otherwise pursuant to a waiver or alternative requirement;

- iv. Meets a CDBG national objective;
- v. Includes a plan for the long-term funding and management of the operations and maintenance of the project; and
- vi. Cost verification controls must be in place to assure that construction costs are reasonable and consistent with market costs at the time and place of construction.

5.4.5.10 National Objectives:

UNM, LMI, low/mod buyout (LMB), and low/mod incentive; at least fifty (50) percent of Harris County Mitigation MOD funds must benefit LMI persons.

5.4.5.11 AFFH Review:

All proposed projects will undergo AFFH review by the GLO before approval. Such review will include assessments of (1) a proposed project's area demography, (2) socioeconomic characteristics, (3) housing configuration and needs, (4) educational, transportation, and health care opportunities, (5) environmental hazards or concerns, and (6) all other factors material to the AFFH determination. Applications should show that projects are likely to lessen area racial, ethnic, and low-income concentrations, and/or promote affordable housing in low-poverty, nonminority areas in response to natural hazard-related impacts.

5.4.5.12 Timeline:

The proposed program start date is four months after HUD's approval amendment 1 of this Action Plan. No less than 50% of the \$750,000,000 CDBG-MIT allocated to Harris County must be expended by January 12, 2027 with the full balance expended by January 12, 2032.