

# CDBG-MIT Action Plan and FHEO Requirements

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## Purpose and Background

The U.S. Department of Housing and Urban Development's (HUD) Office of Fair Housing and Equal Opportunity (FHEO) and the Disaster Recovery and Special Issues (DRSI) division within the Office of Community Planning and Development (CPD) are jointly issuing this document to provide technical assistance to grantees in the development of Community Development Block Grant Mitigation (CDBG-MIT) action plans.

This document focuses on the *Federal Register* notice (84 FR at 45847) that governs the use of CDBG-MIT allocations to grantees recovering from qualifying 2015, 2016, and 2017 disasters (CDBG-MIT Notice).<sup>1</sup> It is designed to provide technical assistance to CDBG-MIT grantees on topics to consider when developing responses to required elements of a CDBG-MIT action plan. Grantees must implement their programs and projects in accordance with their CDBG-MIT action plan and with the descriptions provided by the grantee in the CDBG-MIT action plan. This document does not establish any new requirements, but instead provides recommendations and examples to help grantees effectively respond to the fair housing and civil rights-related required elements of CDBG-MIT action plans, as well as other required elements.

## CDBG-MIT Action Plan Requirements, HUD's Recommendations, and Grantee Examples

### 1. Requirement:

**84 FR 45847:** *“Grantees must also assess how the use of CDBG–MIT funds may affect members of protected classes under fair housing and civil rights laws, racially and ethnically concentrated areas, as well as concentrated areas of poverty;”*

### Recommendations:

*STEP 1:* To meet the requirement to assess how the use of CDBG-MIT funds may affect members of protected classes, racially and ethnically concentrated areas, as well as concentrated areas of poverty, HUD recommends the grantee first collect data on the HUD-identified and grantee-identified most impacted and distressed areas (MID) to identify the following:

- Racial and ethnic make-up of population;
- Limited English proficiency (LEP) populations;
- Number or percentage of persons with disabilities;
- Number or percentage of persons belonging to other protected classes (The federally protected classes under the Fair Housing Act are race, color, national

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<sup>1</sup> Funds allocated by this notice were made available by the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018, Pub. L. 115-123 (approved February 9, 2018).

- origin, religion, sex, familial status, and disability); and
- Racially and ethnically concentrated areas and concentrated areas of poverty.



**Tips:** Grantees are encouraged to use federal government sources such as the most recent U.S. Census data, American Community Survey (ACS) data, FEMA data, the [RAD Minority Concentration Tool](https://www.huduser.gov/portal/maps/rad/home.html#:~:text=The%20purpose%20of%20the%20RAD,an%20area%20of%20minority%20concentration.) (<https://www.huduser.gov/portal/maps/rad/home.html#:~:text=The%20purpose%20of%20the%20RAD,an%20area%20of%20minority%20concentration.>) as well as any relevant local data and local knowledge. Local knowledge includes information gathered during community participation and by consulting with local, state, or regional planning departments, academics, and others with knowledge of the local area.



**Tips:** When presenting demographic data in an action plan, grantees may consider providing data tables that compare the demographics of the MID areas with the county, region, or state as a whole. Grantees may also provide data at a smaller scale (i.e. town, neighborhood) to help identify areas where members of protected classes are concentrated or where natural hazards are located. When presenting poverty and demographic data, the grantee could go a step further and demonstrate the overlap of poverty and minority status, through the use of maps.

*STEP 2:* Utilizing the information gathered from Step 1, a grantee can then complete a demographic analysis and would be able to identify if racially and ethnically concentrated areas or concentrated areas of poverty are in the MID areas and may more accurately assess how the use of CDBG–MIT funds may affect those areas in Step 3.



**Tips:** Grantees may include a Social Vulnerability Index (SoVI) assessment<sup>2</sup> in their action plans. However, grantees should note that a SoVI assessment alone is not an adequate substitute for the requirement to assess how the use of CDBG-MIT may affect members of protected classes, racially and ethnically concentrated areas, and concentrated areas of poverty.



**Tips:** Grantees may choose to identify the proximity of communities, including those with significant percentages of members of protected classes, to hazardous material facilities and possible mitigation activities that could reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property.

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<sup>2</sup> Social Vulnerability Index (SoVI) assessments are maps that can define the most vulnerable populations and environmental hazards within a designated area. See <http://sovius.org> for more information about the construction of SoVI assessments and its use in practice and in research.

*STEP 3:* Utilizing the information gathered from Step 1, a grantee can then complete a demographic analysis, and is better positioned to now assess how its proposed use of CDBG-MIT funds may affect members of protected classes.

When discussing the use of CDBG-MIT funds and their potential impact on protected classes, the grantee may choose to include a broad discussion of its mitigation programs and activities and how these efforts are likely to mitigate the risks faced by protected classes.

Grantees may want to consider providing the following information in their CDBG-MIT action plans:

- Descriptions of how mitigation programs and activities respond to disaster risks and how the use of CDBG-MIT funds may affect members of protected classes, racially and ethnically concentrated areas, and concentrated areas of poverty.
- A description of how mitigation activities will be prioritized in a way that will not disadvantage members of protected classes, including residents of racially and ethnically concentrated areas, and a description of how activities will be prioritized to help overcome the effects of prior discrimination based on protected class or, in the absence of prior discrimination, help overcome the effects of conditions that resulted in limiting the participation of members of protected classes, including residents of racially and ethnically concentrated areas.
- Documentation of grantee efforts to engage members of protected classes and to specifically identify their mitigation needs as part of its citizen participation efforts.



**Tips:** Grantees may want to go a step further and describe in detail how it considered potential impacts on protected classes when allocating CDBG-MIT funds to programs. To further refine the considerations of the potential impact of CDBG-MIT activities on each population,<sup>20</sup> grantees are encouraged to engage protected classes and to specifically identify their needs as part of their citizen participation efforts. Grantees are encouraged to use their publication efforts, required public hearings, and meaningful community engagement requirement as opportunities to identify the mitigation needs of protected classes and develop mitigation programs and projects that will address the needs identified.

### **Examples:**

- 1) In a locality prone to wildfires, residents of racially and ethnically concentrated areas and concentrated areas of poverty may be less likely to have the infrastructure or resources to prepare for or recover from the impacts of future wildfire events. If there is currently a lack of investment in fire safety measures in these areas, the risk of significant impacts from a wildfire increase. A grantee may propose using CDBG-MIT funds for eligible emergency planning and mitigation strategies for these areas to ensure

their protection in the future.

- 2) A grantee may have housing in its MID areas that serves predominantly low-income minority families built in or next to areas that have repetitive flooding and erosion. To address this concern, a grantee may propose using CDBG-MIT funding for an eligible stormwater drainage study for known problem areas and eligible preparation and adoption of a stormwater drainage plan and ordinance for that community.
- 3) A grantee uses the information provided by its assessment to consider if the use of CDBG-MIT funds would benefit homeowners more so than renters and review the demographic composition of each group to assess whether such use of CDBG-MIT funds would lead to an inequitable effect on minority or low-income communities. Similarly, if a grantee is using CDBG-MIT funds to mitigate the disaster risks to single-family homes and multifamily rental developments, a grantee uses the data to assess whether CDBG-MIT funds are being invested equitably to benefit members of protected classes, racially and ethnically concentrated areas, or concentrated areas of poverty.

2. **Requirement:**

**84 FR 45848:** *“Plans to minimize displacement and ensure accessibility. Each grantee must describe how it plans to minimize displacement of persons or entities, and assist any persons or entities displaced through its mitigation activities (except for mitigation through voluntary buyout activities that are designed to move households out of harm’s way). This description shall focus on proposed activities that may directly or indirectly result in displacement and the assistance that shall be required for those displaced. Grantees are reminded that they must take into consideration the functional needs of persons with disabilities in the relocation process.”*

**Recommendations:**

- During the early stages of development, a grantee shall plan programs or projects in a manner that recognizes problems associated with the displacement of individuals, families, businesses, farms and nonprofit organizations and develop solutions to minimize the adverse impacts of displacement. Generally, a displaced person under the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (URA), as amended, is an individual, family, partnership, association, corporation, or organization, which moves from their home, business, or farm, or moves their personal property, as a direct result of acquisition, demolition or rehabilitation for a federally funded project. Generally, displaced persons are eligible for relocation assistance and payments under the URA.
- A grantee will want to adopt policies and procedures that ensure applicable requirements are satisfied and include the steps a grantee will take to minimize displacement.

- Requirements to include in policies and procedures for residential and nonresidential displacements and temporary relocation are the steps to:
  - Identify who may be displaced,
  - Determine if relocations will be temporary or permanent,
  - Provide relocation advisory services to displaced tenants and owner occupants, a minimum 90-day written notice to vacate, reimbursement for eligible moving expenses, payments for added costs of renting or purchasing comparable replacement housing and reestablishment expenses (if applicable).
- Grantees are encouraged to engage the populations that may be displaced as part of their citizen participation efforts to determine whether there are any alternatives that would mitigate the identified risks from disasters without causing displacement.



**Tips:** HUD recommends that a grantee describe in its action plan how it considered the extent to which CDBG-MIT-funded activities may result in the displacement of persons or entities, and the steps that it took to minimize displacement. When describing how it will assist any persons or entities displaced through its mitigation activities, grantees are encouraged to describe the assistance that it will provide displaced persons with disabilities to ensure that they are able to relocate to housing that meets their accessibility needs and need to access supportive services.



**Tips:** Grantees are reminded of the Section 504 and ADA requirements to ensure that their communications with persons with vision, hearing, and/or speech disabilities are as effective as communication with nondisabled persons. Grantees are required to give primary consideration to the type of auxiliary aide (sign language interpreter, braille documents, etc.) requested by the individual and to consider the nature and complexity of the communication. Discussions involving displacement and relocation generally are complex and require a grantee to provide a sign language interpreter or relevant documents in braille or electronic format.



**Tips:** Populations such as LMI persons, persons with disabilities, Limited English Proficiency, and minority communities, particularly those with ties to local racial, ethnic, religious, or cultural organizations in the area may have additional needs for a grantee to consider if displaced.

### 3. **Requirement:**

**84 FR 45848:** *“For each mitigation program providing a direct benefit to a person, household*

*or business, the action plan must specify the maximum amount of assistance available to a beneficiary under each of the grantee’s mitigation programs. A grantee may find it necessary to provide exceptions on a case-by-case basis to the maximum amount of assistance and must describe the process it will use to make such exceptions in its action plan.... Each grantee must also indicate that it will make exceptions to the maximum award amounts when necessary to comply with federal accessibility standards or to reasonably accommodate a person with disabilities.”*

### **Recommendations:**

- While grantees are required to include information addressing the above requirement in their action plan, as a best practice a grantee will adopt policies and procedures governing maximum award amounts. Best practices to include in its policies and procedures for maximum awards include the procedures to:
  - Communicate the maximum amounts and any exceptions to the public,
  - Make an exception determination, as needed,
  - Demonstrate the assistance is necessary and reasonable, and
  - Consider exceptions to comply with federal accessibility standards or to reasonably accommodate a person with disabilities.
- HUD recommends that grantees work with their subrecipients to develop policies and procedures that include exceptions to maximum award amounts when necessary to comply with federal accessibility standards or to reasonably accommodate a person with disabilities.



**Tips:** HUD recommends that a grantee identify the potential needs of persons with disabilities during the planning and development stage of the action plan for each mitigation program providing a direct benefit to a person, household, or business.



**Tips:** In its implementation, grantees can evaluate how meeting federal accessibility requirements and providing accessibility features that are needed as a reasonable accommodation may impact the maximum amount of assistance available per beneficiary. This consideration may be helpful to a grantee as it determines its exception policies and procedures to the maximum award amounts.

### **Examples:**

1) The grantee is undertaking a mitigation program to increase the resilience of critical small businesses in the MID area. While the grantee has defined a maximum award amount in its action plan, the grantee must permit exceptions to that amount, if necessary, so the critical business can comply with applicable federal accessibility requirements, including Section 504 and the Americans with Disabilities Act.

2) The grantee is undertaking a housing mitigation program to provide funds to homeowners in flood-prone areas to elevate their homes. The grantee must permit exceptions to the maximum award amount to allow a household that includes a person with a mobility impairment to include an elevator, lift, or other structural feature when necessary to meet Federal, state, and local requirements to address the accessibility needs of the person with a disability.

4. **Requirement:**

**84 FR 45847:** *“Proposed mitigation programs and projects must prioritize the protection of low-and-moderate income (LMI) individuals. Each grantee must describe in its action plan how it will prioritize programs and projects that will protect LMI persons in order to meet the overall benefit requirement pursuant to this notice.”*

**Recommendations:**

- To meet the overall benefit requirement that at least 50 percent of the funds must benefit LMI persons in the action plan how a grantee will first categorize and identify projects that meet an LMI national objective, and then how the grantee will prioritize those programs that benefit and protect LMI persons. Under the CDBG-MIT Notice, **all grantees** that seek to competitively award CDBG–MIT funds must publish on their CDBG–MIT website the eligibility requirements for such funding, all criteria to be used by the grantee in its selection of applications for funding (including the relative importance of each criterion) and the time frame for consideration of applications (for a State grantee that will carry out activities directly, the CDBG-MIT Notice separately requires the State grantee to include this description in its action plan). Because grantees can develop eligibility requirements, threshold factors, and criteria for selection of applicants to prioritize programs that will protect LMI persons in order to meet the overall benefit requirement of the CDBG-MIT Notice, HUD recommends that all grantees that will solicit applications include in their action plans descriptions of eligibility requirements, threshold factors, and all criteria used to select applications for funding, including the relative importance of each of those criteria.

**Example:**

A State grantee may consider demonstrating LMI priority in its CDBG-MIT action plan by first selecting a program or project that prioritizes the protection of LMI persons over a program or project that does not prioritize the protection of LMI persons. A grantee can do this by applying selection criteria or threshold factors that award a higher rank or weight to an activity that benefits or protects LMI persons.

5. **Requirements:**

**84 FR 45847:** *“Additionally, if the grantee’s programs or projects will increase the resiliency of housing, the grantee must describe how the programs or projects will do so for housing that typically serves vulnerable populations, including the following housing:*

*Transitional housing, permanent supportive housing, permanent housing serving individuals and families (including subpopulations) that are homeless and at-risk of homelessness, and public housing developments.”*

**84 FR 45847:** “will promote more resilient affordable housing and will respond to natural hazard-related impacts.”

**Recommendations:**

- If a grantee has decided to include a housing program in its CDBG-MIT action plan, grantees can promote more resilient affordable housing by describing steps they will take to identify affordable housing and what measures they could implement to promote resiliency in those affordable housing units.
- In addition, if a grantee has decided to include a housing program in its CDBG-MIT action plan, it could first focus on identifying the types of housing that typically serve vulnerable populations, including transitional housing, permanent supportive housing, permanent housing serving individuals and families that are homeless and at-risk of homelessness, and public housing developments, and then identify what resiliency measures could be taken to address the identified disaster impacts to that housing.
- Historically, natural hazards (e.g. hazardous waste sites, landfills, floodplains etc.) are often found in or adjacent to areas with a concentration of minority and low-income populations. The grantee may want to analyze and identify the overlap between natural hazards and minority and/or low-income communities through narratives, data tables, and maps. This may help grantees assess how CDBG-MIT funds can be used to promote more resilient affordable housing and respond to natural hazard-related impacts.



**Tips:** HUD recommends that a grantee increasing the resiliency of housing determine if the identified affordable housing, including the housing types that typically serve vulnerable populations are at risk of suffering damage from current and future hazards due to their location and, if so, the grantee may describe, in its CDBG-MIT action plan, how it will consider carrying out strategic and high-impact activities to mitigate this risk to reduce future losses.



**Tips:** Housing that serves vulnerable populations may have a higher concentration of persons with disabilities. HUD recommends that grantees describe in their CDBG-MIT action plans how their mitigation measures will address the physical accessibility needs and supportive services needs of persons with disabilities.

**Examples:**

1) A grantee has identified specific housing that serves vulnerable populations. The housing is located in a flood-prone area which has been subject to repetitive disaster loss. To demonstrate how the grantee's program will meet the requirements above, the grantee can describe in its CDBG-MIT action plan that it will setup a voluntary buyout program of the identified housing and fund the development of new affordable housing that serves vulnerable populations in a lower-risk area, as well as provide financial incentives and assistance to the residents of such housing, including payment of moving expenses and allowable costs for relocation to other housing, or down payment assistance or other types of homeownership assistance to affected households.

2) A grantee has identified public housing in an area that is at risk of experiencing damage from hazards or future disasters, such as its location in a floodplain, near environmental hazards, or near a hazardous materials facility. To mitigate this risk, a grantee may elevate or otherwise protect the housing or its utilities, in accordance with the CDBG-MIT requirements to protect the housing residents from future disaster impacts.

For further questions, a grantee should contact their assigned CPD representative.