### FREQUENTLY ASKED QUESTIONS

This document remains effective until it is amended, superseded, or rescinded.

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

#### PURPOSE & BACKGROUND

This document is intended to provide an overview of the AHCP-Small Rental Program to potential applicants and awarded projects, including details regarding program eligibility and applicable crosscutting federal requirements. Its publication follows informal and formal informational sessions, including the AHCP-Small Rental Funding Opportunity Overview & Outreach session, an informational webinar held on November 16, 2023.

This resource document may be updated as the program is finalized and implemented. A record of changes is so incorporated.

In early 2019, the State of Nebraska suffered record-breaking damage due to severe winter weather (Winter Storm Ulmer), straight-line winds, and flooding, all of which contributed to a major disaster declaration (DR-4420) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). On behalf of the State, the Nebraska Department of Economic Development (DED) is administering a \$108,938,000 grant through the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant — Disaster Recovery (CDBG-DR) Program to support long-term recovery efforts. A portion of these funds will be used to implement the **Affordable Housing Construction Program (AHCP)**. Small Rental is a funding opportunity (i.e., subprogram) of AHCP.

For updates and additional program information, see DED's CDBG-DR website, <a href="https://opportunity.nebraska.gov/cdbg\_dr/">https://opportunity.nebraska.gov/cdbg\_dr/</a>.

If you have specific questions about the information presented within this document, please contact DED. The principal contact for AHCP-Small Rental is the DR Housing Program Manager.

# **RECORD OF CHANGES**

The following table summarizes changes to these FAQs.

Date Approved	Version Number	Description of Changes	
01/08/2024	1	Initial Publication	
04/01/2024	2	<ol> <li>Updated to include:</li> <li>Questions asked during the Small Rental Application Overview webinar</li> <li>Application Timeline</li> <li>Additional Helpful Resources</li> </ol>	
05/28/2024	3	Updated to include Q/A portion of the Small Rental Office Hour	



# **Table of Contents**

RECORD OF CHANGES	2
PROGRAM OVERVIEW	
PROGRAM ELIGIBILITY AND IMPLEMENTATION	
CROSS-CUTTING REQUIREMENTS	
FREQUENTLY ASKED QUESTIONS	10
SMALL RENTAL TIMELINE	14
SMALL RENTAL PROCESS FLOW	15
HELPFUL CONTACTS AND RESOURCES	16

# PROGRAM OVERVIEW

### WHAT IS THE AHCP-SMALL RENTAL PROGRAM?

In disaster-impacted communities, the Small Rental program provides development financing (i.e., loans) for affordable multifamily rental housing not otherwise seeking LIHTC, particularly projects sponsored by nonprofits and/or public housing authorities and those serving special needs populations.

The overarching goal of the program is to increase affordable housing supply in flood-impacted areas and increase community resiliency in the face of future natural disasters.

AHCP-Small Rental is anticipated to support projects having between **12-32 units**; however, DED may fund projects outside of this unit production range if they provide clear benefits to the targeted populations and otherwise meet program requirements. In such cases, DED may impose additional or alternative requirements including but not limited to alternative financing terms to mitigate any risks identified in underwriting. Funding for awards comes from the state's CDBG-DR allocation.

Small Rental is intended to focus on small multifamily projects that are **not** otherwise likely to be viable candidates for financing through the syndication of LIHTC awards. It is not intended to provide a "less competitive" program whereby projects that could reasonably be expected to qualify for and successfully syndicate a LIHTC award to "avoid" the competitive application process for LIHTC. Consequently, DED reserves the right to reject any application that it determines (including through feedback from DED consultants or NIFA) could otherwise obtain LIHTC financing. Any such applications may be redirected to the next combined DED/NIFA funding round.

#### WHAT ARE THE AWARD LIMITS?

Certain program details are established in the CDBG-DR Action Plan, as amended, based on the unmet needs assessment, market analysis, and any HUD-imposed limitations.

Cost Limitations		
Maximum Award	\$2,000,000.00 per awarded project;	
	\$150,000 per affordable housing unit constructed; and	
	\$150,000 per unit award cap includes all hard and soft construction costs.	
Developer Fee	15% of project costs less the developer fee itself	

Contractor Fees	18% of construction costs less contractor fees
(i.e., Profit, Overhead, General Requirements)	
Acquisition	Capped at the lesser of the actual acquisition purchase price or the current as-is market value
Architectural/ Engineering	Not exceed 7% of total hard construction costs (not including any contractor overhead, profit, general requirements, or construction contingency)

### PROGRAM ELIGIBILITY AND IMPLEMENTATION

### WHAT TYPES OF ENTITIES ARE ELIGIBLE FOR AHCP-SMALL RENTAL PROGRAM?

Developers of affordable rental housing, including:

- Non-profit organizations, e.g., 501(c)(3) or 501(c)(4);
- For profits
- PHAs; and
- Units of local government including the following:
  - Counties:
  - Cities:
  - Villages;
  - Tribal Nations.

Given the structure of this program, following competitive review of applications, DED expects to enter into direct funding agreements with single-purpose, single-asset entities (e.g., limited liability companies) established to be the owner of the proposed project.

### ARE CERTAIN AREAS OF THE STATE RECEIVING FUNDING PRIORITY?

Program funds through the AHCP will be directed to benefit the **HUD-defined MID areas** (Sarpy, Dodge, and Douglas counties). Furthermore, DED-sponsored housing development shall affirmatively further fair housing and adhere to sound real estate investment principles. The figure below shows eligible counties and characteristics of preferred versus ineligible sites under AHCP-Small Rental.

# Dodge County Douglas County

**Sarpy County** 

# **Preferred Sites**

Educational Opportunities

Essential Retail

Job Centers

Medical Services

Public/Gov't Services

Recreational Amenities

Transit

# Ineligible Sites

100-year Floodplain

**Airport Clear Zones** 

Adverse Environmental Risk to Residents

### WHAT TYPES OF ACTIVITIES ARE ELIGIBLE FOR AHCP-SMALL RENTAL?

DED will accept applications for small multifamily rental projects including proposals for new construction and rehabilitation.

### **Activity Type**

- New Construction
- Rehabilitation

### **Population Served**

- Seniors
- Families

### **Priority**

- Distaster-displaced Residents (DR-4420)
- Vulnerable Populations

Acquisition is allowable in concert with either new construction or rehabilitation.

# **CROSS-CUTTING REQUIREMENTS**

CDBG-DR is a federal funding program designed to help communities navigate disaster recovery and as such, there are multiple compliance requirements to consider. Below is a list of CDBG-DR cross-cutting requirements that must be adhered to, include but not limited to:

Key Federal Cross-	Description	CDBG-DR Manual
Cutting Requirements		Reference
Environmental Reviews	This preliminary award does not constitute a	Chapter 8: NEPA
required by 24 CFR Part 58 and issuance by HUD of an Authority to Use	formal commitment of CDBG-DR funds or site approval. Any future binding commitment of funds to the project is conditioned on DED's determination to proceed with, modify, or cancel	<u>Environmental</u>



# STATE OF NEBRASKA DR-4420 CDBG-DR AHCP-SMALL RENTAL PROGRAM FREQUENTLY ASKED QUESTIONS (FAQS)

Last Updated: May 28, 2024, Version 3

Last Updated: M	ay 28, 2024, Version 3	
Grant Funds (HUD form 7015.16)	the project based on the results of the Environmental Review (ER).	
	Regardless of the source of funds for specific items, <b>no choice limiting actions</b> , including actual acquisition of the property, may be taken prior to completion of the environmental review process and receipt of the Authority to Use Grant Funds.	
	Taking a choice limiting action prior to such point will make the project(s) ineligible for CDBG-DR funding.	
	<b>Next Step:</b> Work with CDBG-DR Housing Program Manager to determine the Level of Review and ER Process.	
	An environmental review may take up to four (4) to eight (8) weeks to complete and submit for HUD's fifteen (15) day objection period.	
Uniform Relocation Act (URA)	Successful Applicants must document that any purchase of property that meets the requirements of URA, including provisions of notices to the seller identifying as a voluntary sale not under the threat of eminent domain.  Next Steps: Work with CDBG-DR Housing Program Manager to Determine if a Voluntary	Chapter 12: One- for-One Replacement Housing, Relocation, and Real Property Acquisition
	URA Notice is required.	
Davis Bacon and Related Acts (DBRA)	The use of CDBG-DR funding for construction or rehabilitation of a residential project with eight (8) or more residential units triggers.	Chapter 14: Davis Bacon
Section 3	CDBG-DR requires the payment of prevailing wages, various worker protections, and weekly payroll and compliance reporting by contractors and subcontractors on federally assisted projects.	Chapter 13: Section 3
Debarment/Suspension	In contracting for any services associated with their operation of the program, Developers and Subrecipients must follow the requirements of 24 CFR Part 2424, including checking SAM.gov to ensure that contractors	



# STATE OF NEBRASKA DR-4420 CDBG-DR AHCP-SMALL RENTAL PROGRAM FREQUENTLY ASKED QUESTIONS (FAQS)

Last Updated: May 28, 2024, Version 3

	ay 28, 2024, Version 3	Γ
Minority and Women- Owned Businesses	Developers must develop and maintain a Minority-Owned Business Enterprises (MBE)	Chapter 15: MBE/WBE
(MBE/WBE)	and Women-Owned Business Enterprises (MBE/WBE) plan that demonstrates marketing	
	and solicitation of MBE/WBE businesses and contractors for the construction of the project.	
Property Standards	In addition to any applicable State and/or local	Chapter 10: Green
Troporty Standards	code requirements, projects must be designed and certified to meet a selected Green Building Standard.	Building Standards Guide
	Elected Green Building Standard: ICC-700 National Green Building Standard	
	Any newly constructed homes must be	
	"visitable" as defined by the Nebraska  Department of Education's Assistive	
	Technology Partnership (ATP).	
	Any newly constructed homes must be provided with a storm shelter which may be	
	located in ground, above-ground, in a	
	basement, or on-site within reasonable proximity to the newly construction home.	
	Storm shelters must be built to meet or exceed	
	the specifications outlined in the Internal Code Council (ICC) and National Storm Shelter	
	Association (NSSA) ICC/NSSA 500-2020	
	standard as approved by American National Standards Institute (ANSI).	
Affirmative Fair Housing	In addition to the general Sales and Marketing Plan, DED will require Applicants to develop	Chapter 11: AFFH
	plans to affirmatively market the homes they produce under the Affordable Housing	
	Construction Program (AHCP), including those	
	populations least likely to apply and specifically targeting outreach and advertising to those	
Duplication of Benefits	populations (see 24 CFR §570.601)  Duplication of Benefits (DOB) refers to a	Chapter 18:
2 aprication of Dononto	situation where assistance is received from	<u>Duplication</u> of
	multiple funding sources and the total assistance amount exceeds the need for a	<u>Benefits</u>
	particular recovery purpose. DED and	
	Successful Applicants must comply with DOB rules and regulations.	
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For further reference, see the HUD overview available <u>here</u>.

# FREQUENTLY ASKED QUESTIONS

DED complied the following questions and responses following program informational sessions including the Question & Answer (Q&A) portion of the **AHCP-Small Rental Funding Opportunity Overview & Outreach** session, an informational webinar held on November 16, 2023. Questions and answers are lightly edited for clarity. If you have specific questions, please contact DED. The principal contact for AHCP-Small Rental is the DR Housing Program Manager.

# Q1: If the related entity is the one who will be handling the acquisition of a property, does an environmental review still need to be completed?

**A1**: Yes, an Environmental Assessment (EA), which is the level of review anticipated for projects awarded via AHCP-Small Rental, must be completed prior to any choice-limiting actions, including but not limited to acquisition of real property, closing on funding commitments of any type of public or private, and/or performing any site work or construction on the site. This prohibition extends beyond just the ultimate ownership entity (e.g., an LLC formed to be the project owner) but to "any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors" (24 CFR 58.22(a)).

### Q2: How long does the NEPA process take?

**A2:** The NEPA process can vary for each project. It is recommended discussing specific project timelines with the CDBG-DR Housing Program Manager. It is important that environmental clearance <sup>1</sup>from HUD is given prior to any action being taken on the property. If action is taken prior to clearance being granted, this would be considered a choice limiting action.

# Q3: What are some of the key factors that should be considered when applying for a potential project? Such as; National Green Building Standards (NGBS) / Plan and Cost Review (PCR) /ERR

**A3:** Listed below are some key considerations when preparing for your project application:

- HUD imposes specific standards related to Environmental Review:
  - Hiring an ERR consultant with experience in HUD Part 58 may be cost-effective as they can help identify and manage common issues including project description, aggregation, and timing missteps;
  - Costs associated with the Environmental Review may be included as project costs (e.g., third-party reports such as a Phase I, needed further testing, etc.);
- Green Building standards are required where CDBG-DR is a resource:
  - Applications identify the standard applied during construction;
  - Certification (including verification testing such as blower door tests as called for in the particular standard selected) of that standard being met is needed following construction.

<sup>&</sup>lt;sup>1</sup> Environmental Clearance is HUD's provision of an Authority to Use Grant Funds (AUGF) following approval by the Responsible Entity (DED) of an Environmental Review (ERR) conducted under 24 CFR part 58 and submission of a Request for Release of Funds (RROF), or final approval from a HUD Approving Official of an ERR conducted under 24 CFR part 50.



- The A&E Plan and Cost Review (PCR) helps to ensure that the project plans are constructible, that costs are sufficient but not excessive, and that payments to the contractor are scheduled appropriately.
  - o DED has procured a third-party vendor to conduct the PCR.
  - Prior to conducting the PCR, the third-party vendor requires the following documentation from the subrecipient/developer:
    - Construction Documents for all divisions (architecture, structural, mechanical, electrical, AND civil).
    - Specifications (on drawings or separate project manual).
    - Cost breakdown (best to be itemized by CSI Division including contractor fees and general conditions – Division 00: Procurement and Contracting, Division 01: General Requirements, Division 02: Existing Conditions, Division 03: Concrete, etc.)
    - Environmental/performance requirements/goals for funding: LEED, Energy Star, WELL, etc.
- Davis-Bacon wages apply for projects involving eight (8) or more units. Applicants should consider any additional cost to comply with DBRA as part of the project budget.
- Compliance with Section 504 accessibility standards in addition to accessibility requirements of the Fair Housing Act Amendments and the Americans with Disabilities Act.

### Q4: When will Davis Bacon apply to awarded projects? Can funds be used for soft costs only?

**A4:** Use of CDBG-DR for construction/rehab of residential properties containing eight (8) or more units will require compliance with Davis Bacon. The program allows for CDBG-DR to be used exclusively for soft costs that would not trigger Davis Bacon, but it is expected that in most cases funding will be needed for construction/rehab and will therefore trigger Davis Bacon. If you have further questions, please contact DED.

# Q5: If the property was owned previously and the Environmental Review has already been completed, will that Environmental Review be accepted?

**A5:** Yes, where possible DED will seek to make use of any existing environmental record and/or prior reports, however, that does not relieve a project of the NEPA requirements. However, many environmental reports (e.g., Phase I, certain testing, etc.) may have a "shelf life," and need to be updated/repeated.

#### Q6: If CDBG funds were used for the land purchase, will this cause any problems?

**A6:** This shouldn't be an issue. However, any land use restrictions associated with the prior use of CDBG, and specific terms of the CDBG assistance (i.e., award agreement) would need to be reviewed. This will be factored into the underwriting, especially as it relates to a potential Duplication of Benefit (DOB) issue.

# Q7: When determining a project, does DED anticipate that all units be the same size or in the same location?

A7: The definition of "project" will be driven by common ownership, common management, and common plan of finance. It is expected that in nearly all cases this will involve the development of contiguous or proximate parcels. (e.g., rehab of several single-family homes in the same



neighborhood for rental and/or duplex/quadplex rehab or new construction in a similar development pattern)

# Q8: What is the minimum number of housing units eligible for funding via AHCP-Small Rental?

**A8: DED estimates awarding projects having 12-32 units.** Projects outside of this range may be more difficult to balance in a final proforma underwriting. If you wish to propose a project outside of this range, contact DED prior to submitting your application.

# Q9: If a developer previously purchased a site, for example a few years ago, does that represent a choice limiting action? And can the costs of acquisition be reimbursed by the CDBG-DR loan?

**A9: This would not be a choice limiting action.** Having purchased a site prior to the decision to seek federal funding for a project does not constitute a choice limiting action. However, no "new" actions should be taken at the site once an application has been submitted, and any ongoing physical activity on the site must be suspended until the NEPA process is complete.

In the case of property acquired prior to application, DED expects that in most cases the ultimate ownership entity receiving CDBG-DR funds will likely be a recently formed special purpose entity (e.g., a project-specific LLC) which would take title at the point of closing. In such an instance, the property would be purchased at closing, but from a related party (i.e., whatever entity the underlying sponsor had used to acquire the property originally). CDBG-DR or other project financing could be used to pay the acquisition cost in such an instance. However, in such a case the price at which the ultimate owner purchases from the sponsor (or sponsor affiliate) will be limited to the lesser of the original cost basis (i.e., purchase price) for the related party seller or the current appraised value.

# Q10: How much housing funding is available in total? How much total DR funding is available?

**A10:** DED recently received approval for their Substantial Amendment from HUD allowing additional funding to be used in the Affordable Housing Construction Program (AHCP). To date 56,800,000 has been allocated to fund AHCP projects. This funding will be shared among all three AHCPs. Approximately \$18,000,000 is still available in funding; which includes both project costs and activity delivery costs.

### Q11: Does the funding remain the same for all 4 green street categories?

**A11:** The maximum funding is \$2 million per project (\$150,000 per affordable unit) regardless of which of the 5 standards you choose.

### Q12: Are projects in Dodge, Douglas and Sarpy eligible for funding?

**A12:** Yes, those areas are the HUD Most Impacted and Distressed (MID) counties. 80% of funding must be spent in those three counties. Projects outside of those counties can still apply, you just would not receive the point related to "is the project located in the HUD-MID?".

Q13: When adding the Market Study and/or Housing Need Study to the application, does DED want the entire PDF or only the relevant sections to the build?

**A13:** Please provide the entire report. If the study is broader than your specific project, please specify which sections or pages are most relevant in the application.

Q14: Please explain the term/amortization requirements for those requiring additional construction/permanent financing. I'm hearing this financing described as "Gap" financing, please explain. Understanding this is for small project financing but for larger projects requiring additional financing, what is the collateral position of this loan?

**A14:** Construction financing should be sized adequately to complete construction and with a term that is in line with the projected construction schedule and lease up. Permanent loan terms should be at least 20 years and consistent with current competitive interest rates. The CDBG-DR loan may take a subordinate position to both construction and permanent financing.

### Q15: Is the construction loan required to have a 20-year term?

**A15: The** 20-year term is required for permanent financing; construction financing needs only to be long enough to complete construction and lease up with some margin for error.

# Q16: How long does the process take to receive reimbursement once a request has been made?

**A16:** Once a project has achieved closing and starts providing requests for reimbursement, DED traditionally reimburses within 30 days of a full approved request being submitted.

### Q17: Is the cap \$2,000,000 no matter the number of units? And is it 150,000 per unit?

**A17:** The maximum award is \$150,000 per affordable unit, up to a maximum of \$2,000,000 per project.

### Q18: What is the typical energy standard selection approach used by applicants?

**A18:** Energy Star Standards are the standards that most are familiar with and should be used for Small Rental projects.

# Q19: Is the contract able to be amended if the city planning department makes changes to the permitting process if the application is successful.

**A19:** The notice of intent to award funds will be tied to performance of the project as described in the application. The Award Agreement Documents outlining the loan details will not be executed until all underwriting and due diligence items are completed, and DED has a reasonable expectation that the project will proceed as documented.

**Additional Clarification:** If the project plan changes post-notice of intent to award, but prior to award execution, it may impact the amount of funding that the project is eligible for, and if the changes are significant enough, it may impact the overall eligibility of the project to receive the award. However, minor design changes, and changes that do not impact the affordability or the unit characteristics are unlikely to impact funding eligibility changes, and changes that do not impact the affordability or the unit characteristics are unlikely to impact funding eligibility.

# Q20: What questions have you received most commonly preceding this office hour meeting?

**A20:** Most commonly, we have been asked about Davis Bacon requirements. Davis Bacon does apply to eight (8) or more units.

### Q21: Does the environmental review need to be completed prior to the application?

**A21:** No, the Environmental Assessment does not need to be completed prior to the Small Rental application being submitted.

Q22: If the developer puts a property under contract with a closing date after the environmental inspection is completed, is it considered cross checking cutting violation?

**A22:** Federal Environmental clearance is a different process than what you would have as a purchase agreement.

Q23: If a developer builds 4- 4 plex structures on different parcels would Davis Bacon still be a requirement?

**A24:** If the project is continuous parcels, then Davis Bacon would apply.

Q24: Can the number of units change during the process if required by City planning?

**A25:** Yes, this can take place during the due diligence process.

Q25: Is there a minimum grant request? Example 8 affordable units @ \$150,000 each for \$1.2 million?

**A26:** Yes, that is correct. CDBG-DR funding can only support affordable housing units. CDBG-DR funding requires that 51% of the units be LMI with a max of \$150,000 in funding per unit.

Q26: If we use funding from a bank. Will the bank have a first mortgage and the CBDG- DR funds stay with the property as a second mortgage until 20 years of requirement with the guidelines.

A27: Yes, DED would subordinate to the senior lender.

### SMALL RENTAL TIMELINE

The following milestones and dates are subject to change.

Application Overview: Thursday, March 21 at 9:00 a.m. CST

Application Opens: Friday, March 22 at 8:00 a.m. CST

LOI Due: Friday, April 05 at 5:00 p.m. CST

Office Hours: Thursday, May 8 at 9:00 a.m. CST

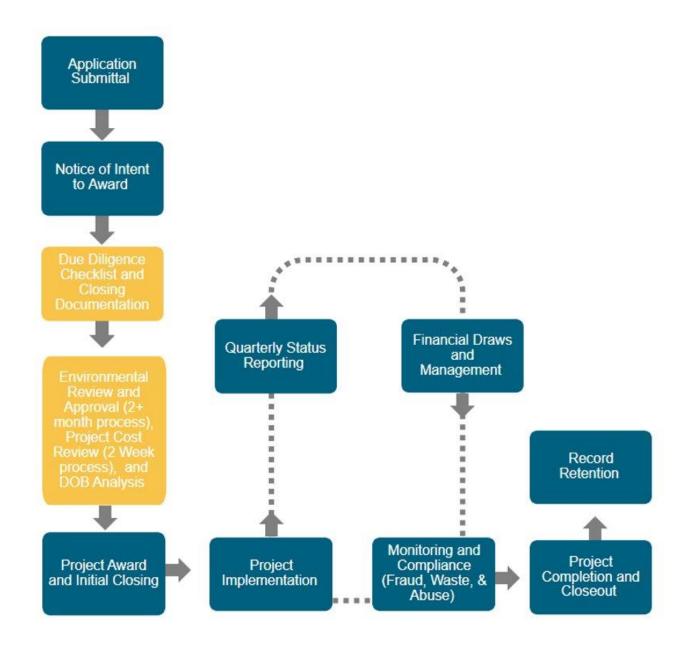
Application closes: Friday, May 24 at 5:00 p.m. CST

NOIA: Friday, July 16, 2024



# **SMALL RENTAL PROCESS FLOW**

The following milestones and dates are subject to change.



# **HELPFUL CONTACTS AND RESOURCES**

In general, the following resources are listed in order from general to specific. This list is not intended to be exhaustive.

For specific program or project related questions, please contact Christina Zink, Housing Program Manager at Christina.zink@nebraska.gov.

Resource		
Name/Title	Author	Link
HUD Community Development Block Grant Disaster Recovery Program (CDBG-DR)	HUD	https://www.hudexchange.info/programs/cd bg-dr/
Nebraska DED CDBG-DR Website	DED	https://opportunity.nebraska.gov/programs/community/cdbg-dr/
Nebraska CDBG-DR Action Plan, as amended	DED	https://opportunity.nebraska.gov/hud-requirements/
Small Rental Program Guide	DED	https://opportunity.nebraska.gov/hud- requirements/cdbg-dr-program-guidelines/
Small Rental Application Guide	DED	https://opportunity.nebraska.gov/wp- content/uploads/2024/03/Small-Rental- Application-Guidelines.pdf
Affordable Housing Construction Program Frequently Asked Questions (FAQS)	DED	https://opportunity.nebraska.gov/wp- content/uploads/2021/12/Nebraska_Afforda ble-Housing-Construction-Program- FAQs_122021.pdf
CDBG-DR Green Building Standards	DED	https://opportunity.nebraska.gov/wp- content/uploads/2022/01/Green-Building- Standards-Guide_01032022.pdf
CDBG-DR Manual and Toolkit	DED	https://opportunity.nebraska.gov/hud- requirements/#toolkit
Nebraska CDBG-DR Technical Assistance Website	DED	https://opportunity.nebraska.gov/programs/community/cdbg-dr/technical-assistance/