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DEPT. OF ECONOMIC DEVELOPMENT

Affordable Housing Construction Program Guide:

Homeownership Production Program

State of Nebraska CDBG-DR Program

DECEMBER 2022 | Version 1.1

RECORD OF CHANGES

Affordable Housing Construction Program Guide: Homeownership Production Program ("HPP")

The table below summarizes changes by version. This identifier is also located on the cover page of this document.

Version	Date	Description of Change
1.0	01/31/2022	Initial draft published.
1.1	12/28/2022	In addition to minor reformatting and revisions to clarify process throughout, responsive to HUD feedback, revisions also include: 1. Addition of Toolkit Documents. 2. Updating Resource Links. 3. Addition of Additional Funding Statement. 4. Replaced references from Policies and Procedure with CDBG-DR Policy Manual Chapters.

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1 EXECUTIVE SUMMARY

The purpose of this Program Guide is to outline the process for administering the State of Nebraska's Department of Economic Development (DED) Affordable Housing Construction Program (AHCP), funded by the United States (US) Department of Housing and Urban Development's (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR).

Pursuant to CDBG-DR requirements, at least 80% of the State's total CDBG-DR award must be invested in areas identified by HUD as the "most impacted and distressed" (MID). To meet this requirement, DED has elected to focus its housing investments to the MID counties. As such, 100% of funding for AHCP (inclusive of all three (3) elements or "sub-programs") will be reserved for the MID counties. The AHCP focuses on providing support related to affordable housing recovery and housing resilience, including the construction of affordable housing that reduces flood vulnerabilities in counties declared under associated allocation(s). Structures within the 1% annual chance (100-year) floodplain will not be eligible.

AHCP makes available assistance for housing activities through three (3) distinct "sub-programs" for which CDBG-DR may be used to acquire, newly construct, or rehabilitate housing:

- ***Homeownership Production***: Provides development financing to support the production of affordable for-sale housing targeted to low- to moderate-income (LMI) buyers by covering "appraisal gaps" (i.e., the difference between total development cost and market value, sometimes referred to as "development subsidy") and "affordability gaps" (i.e., the difference between an eligible buyer's purchasing power and the market value of the house);
- ***CDBG DR LIHTC Gap Financing***: Provides gap financing for the production of affordable multifamily rental housing simultaneously seeking an award of Low-Income Housing Tax Credits (LIHTC) from the Nebraska Investment Finance Authority (NIFA); and
- ***Small/Non-LIHTC Rental Production***: Provides development financing (i.e., loans) for affordable multi-family rental housing not otherwise seeking LIHTC, particularly projects sponsored by nonprofits or public housing authorities (PHAs) and those serving special needs populations.

In the event DED increases the funds allocated to AHCP, DED may re-consider acceptable applications not previously selected for funding without re-opening the Program.

This Guide covers the **Homeownership Production Program** (HPP) element of the overarching Affordable Housing Construction Program and is intended to outline the "rules of the road" for prospective Applicants, including underwriting criteria, transactional terms, and the applicability of various Federal cross-cutting requirements. Additional guides for the other two Affordable

Housing Construction Program Sub-Programs—***LIHTC Gap Financing*** and ***Small Project Rental Production*** programs—are published separately.

To promote the production of additional affordable homeownership opportunities, HPP will provide financing to eligible Applicants (which are expected to primarily be nonprofit Developers but includes local units of government Subrecipients)[1] who will, in turn, use CDBG-DR and other funding to acquire property, build or rehabilitate single-family homes, and sell those homes to low- and moderate-income (LMI) households.

The State of Nebraska enforces conduct of the CDBG-DR program to ensure that no person is excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability, marital status, or any other protected class.

1.1 ASSOCIATED ALLOCATION(S)

- Winter Storm Ulmer (DR-4420)
    - In early 2019, the State of Nebraska suffered record-breaking damage from severe winter weather, straight-line winds, and its worst flooding event in 50 years, leading to a Federal major disaster declaration (DR-4420) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). Damage from DR-4420 was widespread, leading to disaster declarations in 84 of the State's 93 counties (and four tribal areas), with the worst damage located in the eastern part of the state.
    - HUD designated the MID, as detailed in the Action Plan, as Dodge, Douglas, and Sarpy counties.
    - Pursuant to the federal requirements for DR-4420, a minimum of 80% of this allocation must be invested in HUD-designated MID areas.
    - A minimum of 70% of total CDBG-DR program funds must be spent on LMI populations.

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[1] As discussed in ***Section 5.1: Eligibility Criteria***, there are important regulatory differences between a "Developer" and a "Subrecipient," especially related to procurement and the eligibility of certain costs. However, for most aspects of the HPP, this distinction does not lead to different expectations. So, when the requirement is the same, this guide will use the capitalized terms "Applicant" or "Applicants" to refer collectively to Developers and Subrecipients. When the distinction matters, the proper term will be used. Additionally, prospective buyers of homes produced under the HPP may be referred to using the uncapitalized terms "individual applicant" or "individual applicants" as appropriate to the context.

This subsection may be updated should other allocations become available due to subsequent disaster events or supplemental allocations.

2 SCOPE

This policy applies to all DED employees, providers, vendors, contractors, consultants, Developers, Subrecipients, individual beneficiaries (i.e., potential LMI purchasers of homes produced under the program), partners, citizens, external departments, and agencies doing business with DED, as well as beneficiaries and others associated with, working for, accessing, or attempting to access benefits under the CDBG-DR programs.

3 HOMEOWNERSHIP PRODUCTION SUB-PROGRAM OVERVIEW

On December 3, 2019, HUD announced an allocation to Nebraska of $108,938,000 in CDBG-DR funding. Issuance of the associated Federal Register Notice followed on January 27, 2020 (85 FR 4681). These funds are intended to assist Nebraskans and their communities in recovering from the devastating effects of the severe weather conditions and subsequent flooding that occurred during the first half of 2019. The impacts of these disasters on Nebraska's infrastructure, housing, and economy were widespread, with damage particularly focused in the eastern part of the state.

In accordance with the Action Plan and consistent with the data HUD used in determining Nebraska's allocation amount and the findings of the Unmet Needs Assessment (UNA) (Section 2 of the ***Action Plan***), DED is investing in affordable housing across the State of Nebraska. To distribute these funds, the Affordable Housing Construction Program (AHCP) makes available a portion of those funds for the Homeownership Production Program.

The Homeownership Production Program provides CDBG-DR financing to nonprofit developers and local units of government (see ***Section 6.1.1: Eligible Applicants*** below). The CDBG-DR funds are used initially to reimburse development costs ranging from acquisition to hard construction to soft costs. Homes are then sold to income-eligible buyers. At the end of the project, program funding is allocated as a development subsidy (i.e., addressing the "appraisal gap" between total costs and appraised value), for direct buyer assistance (i.e., the "affordability gap" between a buyer's purchasing power and total cost of their acquisition at market value) with any remaining CDBG-DR funds returned to DED as program income which is reinvested in additional projects. The included buyer assistance is secured in the form of a second mortgage that is forgivable over a five (5) year affordability period provided the purchaser continues to occupy the home.

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.

3.1 SUMMARY OF REQUIREMENTS AND PRIORITIES

Table 1 summarizes the AHCP's priorities in the context of Federal and State requirements.

Table 1: Summary of CDBG-DR Requirements and Priorities

Entity	Requirement/Priority	Citation
HUD	Tie Back to the Disaster	85 FR 4681
	Eligible Activity[2]	24 CFR 570.482
	Meet a National Objective	24 CFR 570.483
	Prioritization of HUD-defined MID areas	85 FR 4681
	Prioritization of Vulnerable Populations	Section 4.4.1 of the State of Nebraska DR-4420 Disaster Recovery Action Plan
State	Local and Regional Coordination	Section 4.4.2 of the State of Nebraska DR-4420 Disaster Recovery Action Plan
	Ongoing Outreach	Section 2.4.2.3 of the State of Nebraska DR-4420 Disaster Recovery Action Plan
Affordable Housing Construction Program	• Invest in projects that are cost reasonable and consider proportion of impact to expected population. • Prioritize disaster survivor populations. • Prioritize mitigation and resilience measures (capped at 25% of total cost). • Support resource coordination with existing housing programs. • Support and address the needs of PHAs.	Section 5.2.1 of the State of Nebraska DR-4420 Disaster Recovery Action Plan

[2] HUD allows grantees to use up to 15% of the total grant award for planning activities. Planning expenditures can be counted towards the 80% expenditure requirement for spending in HUD-defined MID areas as long as there's a clear tie regarding how planning activities benefit those areas.

3.2 SUB-PROGRAM OBJECTIVES

Program funds through the AHCP will be exclusively directed to benefit the HUD-defined MID areas (Sarpy, Dodge, and Douglas counties). To promote the production of additional affordable housing in disaster-impacted communities, DED will use CDBG-DR funds to provide **financing** to support homeowners for single-family units.

To promote long-term resiliency and mitigate future flood vulnerabilities, structures within the 1% annual chance (100-year) floodplain will **not** be eligible.

Following the disaster and through the federally guided Nebraska Housing Recovery Support Functions (RSFs), HUD coordinated a Housing Impact Assessment report that identified four key recovery considerations for housing.[3] As summarized in ***Table 2*** below and described in Section 5.1 of the ***Action Plan***,[4] DED developed housing program objectives based on these four housing issues, which HUD developed based on the needs as communicated by local long-term recovery groups and through outreach efforts.

Table 2: HUD Housing Impact Assessment and CDBG-DR Housing Program Objective Matrix

HUD-Identified Housing Issue	CDBG-DR Housing Program Objective
Increased need for affordable, accessible housing stock, particularly rental housing and subsidized rental housing for very- and extremely low-income renters.	DED will use CDBG-DR funds to leverage existing resources, including LIHTC, to increase the supply of affordable rental housing stock. Preference will be given to projects that target households earning less than 50% of AMI.
Improve housing resiliency.	DED will incorporate sustainability and resilience requirements within its CDBG-DR Affordable Housing Construction Program, including restricting building activity within the 100-year floodplain.

[3] Housing Recovery Support Function, "Nebraska Housing Impact Assessment, DR-4420," August 27, 2019.

[4] "State of Nebraska DR-4420 Disaster Recovery Action Plan." DED. See: https://opportunity.nebraska.gov/wp-content/uploads/2021/04/StateofNebraskaDR-4420ActionPlan_04.26.2021.pdf.

HUD-Identified Housing Issue	CDBG-DR Housing Program Objective
Increase availability of workforce housing, particularly near rural employment hubs, to support agricultural workers and reduce commute times.	DED will partner with NIFA to develop workforce housing in the areas that experienced significant flooding through the joint application process, layering CDBG-DR with the LIHTC Program. CDBG-DR funds will be used as gap funding for LIHTC developments in impacted communities, incentivizing developers to target these communities.
Improve housing rehabilitation and construction capacity in impacted communities, i.e., smaller communities with limited capacity will need assistance in housing rehabilitation and new construction.	DED will provide and make available technical assistance to facilitate project development.

3.3 SUB-PROGRAM GOALS

The need to rebuild communities with an emphasis on resiliency became apparent after the 2019 disasters. In an effort to promote recovery and to prevent future catastrophic disaster-related damages, 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.

As defined in ***Table 1***, the AHCP is structured to meet a series of Federal and state requirements. Program goals that will inform Applicant selection include:

- Benefit LMI persons (i.e., provide housing for low-income buyers);
- Implement projects in HUD-defined MID areas; and
- Support community resiliency.

DED will review applications to evaluate their eligibility under CDBG-DR, as described in section 6, ***Application Award Process***. If eligible, CDBG-DR funds under this sub-program may be used to fund:

- Hard and soft costs of new construction or rehabilitation of homes for sale to income eligible buyers; and

- Land acquisition for eligible construction/rehabilitation activities.[5]

Analysis will be conducted to verify that projects are compliant with CDBG-DR requirements as described in ***Section 5.2: Key Federal Requirements.*** Following verification of eligibility and compliance, DED will select awardees and proceed with funding agreements with Successful Applicants.

3.4 ONGOING UNMET NEEDS ASSESSMENT

As contemplated in the ***Action Plan***[6] and discussed in the ***Citizen Participation Plan***,[7] Nebraska will actively work to identify housing projects that address resiliency and achieve an equitable, effective recovery. Especially as AHCP sits in a shared arena with other ongoing programs, DED will work with State partners to continually identify unmet needs that housing activities may be able to support, and similarly communicate emerging unmet needs that are ineligible for the AHCP to programs that may be able to address them.

4 PROJECT FUNDING REQUIREMENTS

4.1 ELIGIBILITY CRITERIA

4.1.1 ELIGIBLE APPLICANTS

HPP is open to two (2) types of Applicants:

- Non-profit organizations (with tax exemption under either 501(c)(3) or 501(c)(4) of the Internal Revenue Code). Nonprofits will be designated as "**Successful Applicants**" within the context of their funding agreement(s) with DED. For this program, Developers will be considered Successful Applicants.
- Units of local government (e.g., counties, cities, or villages). Pursuant to CDBG regulations, local units of government are designated as "**Subrecipients**."

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[5] Acquisition alone, such as land banking of property for future housing development, is not permissible.

[6] "State of Nebraska DR-4420 Disaster Recovery Action Plan." DED. See: https://opportunity.nebraska.gov/wp-content/uploads/2021/04/StateofNebraskaDR-4420ActionPlan_04.26.2021.pdf.

[7] "State of Nebraska DR-4420 Disaster Recovery Citizen Participation Plan." DED. See: https://opportunity.nebraska.gov/wp-content/uploads/2021/10/CPP-rev08312021_clean-StateofNebraskaDR-4420.pdf.

The designation as a Successful Applicant or Subrecipient has significant implications, particularly around the applicability of the uniform administrative requirements from 2 CFR Part 200. While originally written for the NSP and predating the codification and revision of prior OMB Circulars at 2 CFR Part 200, NSP Policy Alerts from November 2011 and June 2012 discuss these key differences.

Among the most critical differences, Subrecipients:

- Are required to use Federal procurement processes in all CDBG-DR-related purchasing of good and services (including conflict of interest provisions);
- May only be reimbursed for actual, necessary, and adequately documented activity delivery costs; and
- Are subject to Federal/single audit requirements (if triggered based on total federal funding received).

Developers, on the other hand:

- Are not specifically required to follow formal federal procurement processes;
- Are responsible for ensuring that projects costs are reasonable;
- May purchase goods or services from related parties;
- May receive a reasonable "Developer Fee" in compensation for the risk, cost, and effort related to developing the project; and
- Are not, as a result of receiving CDBG-DR financing, subject to Federal audit requirements (though, a given nonprofit Developer may also receive other Federal funding in a manner that does trigger this requirement).

In all cases, however, to ensure the reasonableness of cost and avoid the appearance of impropriety, Developers must disclose any identity of interest (e.g., related party) relationships, including with the seller of property to be developed, the purchase of goods or services related to construction, and the purchase of professional services. Additionally, Developers may not sell an HPP property to any individual who is an employee, agent, consultant, officer, or owner of the Developer or any individual with family or business ties to such a person without disclosing such relationship to DED and obtaining prior permission, which will be in DED's sole and exclusive discretion.

For more information, see also ***Section 8.3: Identity of Interest*** (as it applies to Developers) and ***Section 8.4: Conflict of Interest*** (as it applies to Subrecipients).

4.1.2 ELIGIBLE ACTIVITY LOCATION

The Affordable Housing Construction Program, including HPP covered by this guide, is limited to projects located in the MID counties of Dodge, Douglas, and Sarpy. In addition, specific sites must **not** be located within the 100-year flood plain and must not have characteristics that pose environmental risks (see ***Section 5.2.1: Environmental Review***).

In keeping with DED's affirmative fair housing obligations and sound real estate investment principals, sites should provide reasonable access to retail (e.g., grocery, pharmacy, general retail, etc.), educational opportunities, medical services, recreational amenities, job centers, transit, and public/governmental services. Sites should not be unduly impacted by incompatible nearby uses such as industrial facilities, hubs for commercial truck traffic, landfills, adult entertainment establishments, or similar land uses.

4.1.3 ELIGIBLE ACTIVITIES

DED seeks proposals for new construction and acquisition/rehabilitation of single-family homes intended for sale to households with incomes at or below 80% of the AMI as adjusted for family size and published annually by HUD.

HPP financing may be used to address three (3) types of funding gaps common in the production of affordable homeownership units:

- **Appraisal gap**: In part due to the neighborhoods Applicants often target and the relatively small scale of production, especially for infill development, the total cost of producing a home (including acquisition, site preparation, construction, soft costs, sales costs, and a reasonable developer fee[8]) often ***exceeds*** the as-completed market (i.e., appraised) value. Funding to address this "**appraisal gap**" between the cost and the appraised value is also referred to by some funders as "**development subsidy**". Even if the home is affordable to LMI buyers at market value, this funding is needed to subsidize the development of the home itself.
- **Affordability gap**: Even when development subsidies to address the appraisal gap can be identified, there is almost always a gap between a typical LMI buyer's purchasing power (i.e., the combination of the first mortgage they can reasonably afford and any cash contributions they can make toward a down payment and/or closing costs) and the total investment required to purchase the home (i.e., the purchase price <u>plus</u> a buyer's closing costs). This "**affordability gap**" can also be addressed with CDBG-DR funding and at the sale (i.e., closing with), the LMI buyer will be secured by a second mortgage.

[8] See section 8.5, ***Eligible Costs*** for a discussion of when developer fees are permissible.

- **Financing gap**: While the appraisal gap and affordability gap represent *permanent* forms of CDBG-DR subsidy, DED expects that in some cases, there will also be a "**financing gap.**" That is a gap between the total development period financing needed (total development cost less the costs of sale and/or developer fee paid from sales proceeds) and the Applicant's ability to obtain third-party construction financing and/or provide its own working capital. The financing gap can also be covered with CDBG-DR funds, but in such cases is an *interim* form of subsidy. That portion of the CDBG-DR assistance to the developer will be recouped by DED from the proceeds of the sale to the LMI buyer. Insomuch as possible, however, DED will prioritize projects where CDBG-DR funding is attributable entirely to the need for appraisal and affordability gap (i.e., permanent subsidy) and seek to limit the use of HPP funding as interim financing.

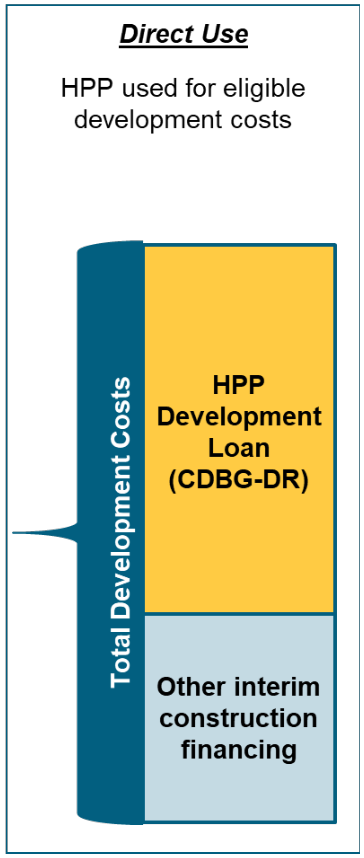
Understanding HPP funding ultimately is invested to address a project's appraisal, affordability, and financing gaps is critical. However, these characterizations are ultimately "backward looking" with the exact determinations made only at the end of a project when all of the financial details can be reconciled.

On the "front end" of the project, however, HPP funding is invested directly into the development of the home. Reconciling the forward- and backward-looking characterizations of the use of HPP financing can be challenging to reconcile.

First, funds are used on a *direct* basis to reimburse an Applicant for eligible project costs during the development period. For example, the Applicant may seek reimbursement from DED for the cost of acquiring the property, hard costs of construction, and the like. The file record will show that CDBG-DR funding was used for these costs. This process is presented in *Figure 1*.

While estimates of total development cost, sales price, and buyer purchasing power allow the Applicant and DED to anticipate how HPP funding will ultimately be characterized, the actual determinations of these key figures cannot be fully known until the end (i.e., at closing with LMI buyer).

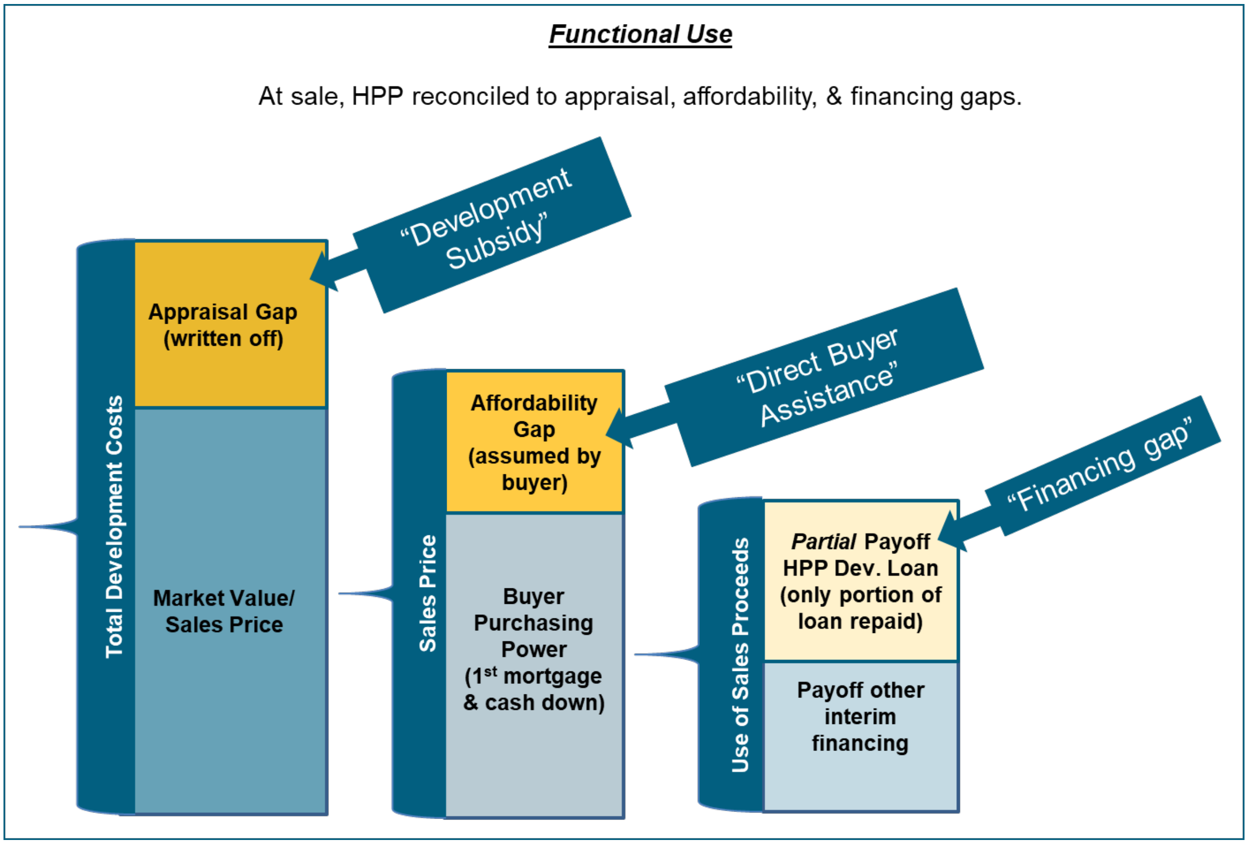
Figure 1: Direct Use



It is only at the end of the project that the final characterization of how CDBG-DR funds were used on a *functional* basis for the appraisal gap, affordability gap, or financing gap in a project can be fully reconciled and finalized (see above for a discussion of these concepts).

Figure 2 below provides a visual representation of how HPP funding can be broken into these three functional pieces.

Figure 2: Functional Use



To fully meet a National Objective, construction on HPP housing must be complete and the housing must be sold to and occupied by eligible buyers. Prior to meeting a National Objective, the use of CDBG-DR funds is only preliminarily eligible. So, to protect DED's interests (and by extension HUD's), HPP funding is formally structured as a loan (see also ***Section 5.3: HPP Development Loan***) and secured by a Deed of Trust (i.e., mortgage) on the property being developed.

At the end sale to the LMI buyer, based on financial reporting by the Applicant and assuming everything else is in order and compliant with program requirements, the HPP Development Loan is conceptually split into three (3) tranches, aligning to the functional use of CDBG-DR funding.

- The portion of the loan attributable to the ***appraisal gap*** (i.e., the amount by which the development of the project exceeds its value) is *forgiven* and "written off" by DED. In effect, this portion of the HPP assistance becomes a *grant* to the Applicant.
- The portion of the CDBG-DR financing that "passes through" as direct assistance to the income-eligible buyer as a second mortgage covering the ***affordability gap*** (i.e., the combination of assistance used for the down payment, closing costs, and/or to "buy down"

the first mortgage to an affordable level) is credited against the balance of the HPP Development Loan and is not repaid in cash by the Applicant. In effect, this portion of the HPP assistance is assumed by the buyer at closing and that portion of the HPP Development Loan is written off relative to the Applicant.

- Only the portion of the HPP Development Loan that covered the ***financing gap*** is repayable to DED. Such repayments will be collected by DED as Program Income and used to fund additional CDBG-DR eligible activities. In effect this portion of the HPP assistance is purely an interim construction loan to the Applicant.

The inset box below provides a simplified narrative example of the HPP transaction structure considering a “project” consisting of a single home. To help make it more understandable, the example uses round numbers and essentially assumes there are no buyer or seller closing costs which would be accounted for in actual projects. DED will provide a standard proforma format for Applicants to use that address these additional layers of financial analysis and tracks all sources and uses for a given project.

Simplified Example of HPP Transaction Structure

ACME Building & Construction Nonprofit Housing Corporation (ABC) received an award under HPP to build a single house. The total development cost, inclusive of acquisition, hard costs, soft costs, developer fee, and sales costs, is $150,000. ABC used a $50,000 construction loan from First Bank and received $100,000 in a CDBG-DR-funded HPP Development Loan from DED to pay for development costs during the construction period.

Upon completion, the home is appraised and listed for sale at $100,000. The identified buyers, John and Anita Brown, are determined by ABC to be eligible. The Browns, however, can only afford an $80,000 mortgage from their credit union and will require $20,000 of buyer assistance. DED has reviewed the Brown's materials and concurred they are eligible under these terms.

At the closing, there is only $80,000 in "cash" actually available, from the first mortgage the Browns obtained from their credit union. The Browns also sign a $20,000 second mortgage to ABC, covering the CDBG-DR assistance they need to complete the purchase at the $100,000 sales price.

On the seller's side of the transaction, because the house was sold for $50,000 less than its total development cost, that "appraisal gap" will be forgiven by DED and credited against the balance of ABC's HPP Development Loan.

Similarly, the $20,000 CDBG-DR assistance to the Browns is credit against ABC's HPP Development Loan payoff as well. Of the $100,000 HPP Development Loan from DED to ABC, a total $70,000 has been written off or "forgiven" leaving a balance of only $30,000 due to DED.

Of the $80,000 in "real cash" at the closing, $50,000 is used to repay ABC's construction loan from First Bank, and the remaining $30,000 is accepted by DED as full and final payment on the HPP Development Loan to ABC. Those funds are deposited by DED as CDBG-DR Program income and used for additional eligible activities, such as another HPP project.

On a simplified basis, the settlement statement would look something like this:

Buyer Transaction	
Amounts Due From Buyer	
Sales Price	$100,000
Paid By/On Behalf of Buyer	
Credit Union Mortgage	$ (80,000)
HPP Buyer 2nd Mortgage	$ (20,000)
Cash to/from buyer	$0.00

Seller Transaction	
Amounts Due to Seller	
Sales Price	$100,000
Reductions in Amount Due Seller	
Payoff Construction Loan	$ (50,000)
HPP Buyer 2nd Mortgage	$ (20,000)
Payoff of HPP Development Loan	$ (30,000)
Cash to/from seller	$0.00

4.2 KEY FEDERAL REQUIREMENTS

Subrecipients and Successful Applicants will be monitored for compliance with Federal requirements set forth for CDBG-DR programs and as described in ***Chapter 16: Monitoring and Compliance Plan***. Specific applicability of these requirements to this sub-program are described below.

4.2.1 ENVIRONMENTAL REVIEW

Federally assisted projects are subject to a variety of environmental requirements, including of environmental clearance prior to the commitment of any federal or non-federal funds for choice limiting actions. Applicants should be familiar with these requirements and are strongly encouraged to discuss any questions they have with DED staff prior to entering into a purchase agreement or submitting an application.

Submitting an application for CDBG-DR funds triggers Environmental Review requirements under 24 CFR Part 58, which is the implementing regulation for NEPA. These requirements are described in further detail under ***Chapter 8: National Environmental Policy Act***. Once an application for Federal funds is submitted, a project proposal is subject to the Environmental Review requirements and requires an environmental clearance and, as applicable, submission of a RROF to and issuance of an AUGF by HUD.

DED is responsible for conducting the Environmental Review, completing all necessary public notifications, and submitting the RROF, as applicable, to HUD. However, the Applicant is responsible for cooperating with DED in the Environmental Review process and providing information necessary for DED to fulfill its responsibilities under 24 CFR Part 58 and other applicable regulations.

Applicants are prohibited from undertaking or committing or expending any funds (including non-Federal funds) to any physical or **choice-limiting actions** on the site prior to an environmental clearance as required by 24 CFR Part 58. Physical and choice-limiting actions include, but are not limited to, property acquisition, demolition, movement, rehabilitation, conversion, repair, or construction. This prohibition applies regardless of whether Federal or non-Federal funds are used and taking a choice limiting action prior to completion of the required environmental clearance process will result in the denial of any CDBG-DR funds from DED.

4.2.2 RELOCATION

All CDBG-DR projects are subject to requirements of the URA. Applicants must further document that any purchase of property meets the requirements of URA, including provision of notices to the seller identifying the transaction as a voluntary sale not under the threat of eminent domain.

Details regarding these requirements for the CDBG-DR program are provided for in ***Chapter 12: One-for-One Replacement Housing, Relocation, and Real Property Acquisition.***

As a matter of policy and to minimize the displacement of existing tenants, DED will limit funding to properties that are/were vacant as of the submission of the application for HPP (if such property is already owned by the Applicant or the Applicant has site control) or the initiation of negotiations for the purchase (in the event DED provides a Preliminary Award of HPP funding and the Applicant subsequently identifies additional properties to be developed).

4.2.3 LABOR STANDARDS

A CDBG project is one or more buildings on an undivided lot or on contiguous lots or parcels, which are commonly-owned and operated as one rental, cooperative or condominium project. The use of CDBG-DR funding for construction or rehabilitation of a residential project with eight (8) or more residential units triggers Federal labor standards including DBA and the Contract Work Hours and Safety Standards Act. Among other requirements, DBA requires the payment of prevailing wages, various worker protections, and weekly payroll and compliance reporting by contractors and subcontractors on federally assisted projects. Additional detail regarding these requirements is provided in ***Chapter 14: Davis-Bacon Act***.

In the case of CDBG-DR, however, labor standards are triggered, in part, by which project costs are paid with CDBG-DR funding. If CDBG-DR funding is used *exclusively* for otherwise eligible non-construction costs, then DBA is not triggered. This may include scenarios where the CDBG-DR investment can be dedicated solely to property acquisition, architectural/engineering fees, and/or legal and accounting services (see CDBG FAQ 2258 and also ***Section 8.5: Eligible Costs***).

Given the nature of the projects anticipated in this program, DED expects that few awards will trigger labor standards. To avoid confusion or the submission of inadequate funding requests, Applicants who believe their project has the potential to trigger labor standards should contact DED in advance to discuss whether or not the anticipated characterization of the "project" and its financing plan triggers labor standards.

In the event that other project sources, such as HOME funds, trigger labor standards, then the entire project will be subject to DBA even if CDBG-DR funding, on its own, did not trigger the requirements. In such cases, reporting to DED on labor standards requirements including DBA will be required.

4.2.4 MBE/WBE

Developers must develop and maintain a Minority-Owned Business Enterprises (MBE) 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.

4.2.5 SECTION 3

The applicability of Section 3 and how it will be implemented under all CDBG-DR programs for the State of Nebraska is provided for in ***Chapter 13: Section 3.***

4.2.6 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 (including service providers) are not precluded and maintaining records of such checks (see 24 CFR § 5.105(c)).

4.2.7 PROPERTY STANDARDS

In addition to any applicable State and/or local code requirements, projects must be developed to meet the following standards:

- **Energy Efficient/Green Building**
  - Any newly constructed or substantially rehabilitated (e.g., gut rehab where most interior walls are removed down to the studs, allowing access for substantially complete replacement of electrical, plumbing, and HVAC systems) home must be designed and certified to meet either the Department of Energy's ENERGY STAR (Certified Homes) standard or the EPA's Indoor airPLUS standard.
  - Projects involving less extensive rehabilitation must adhere to HUD CPD's ***Green Building Retrofit Checklist*** in its entirety and apply all measures within the checklist to the extent applicable to the unit.
- **Housing Resiliency Best Practices**
  - All newly constructed homes should be all electric and not make use of natural gas, propane, or other fossil fuel combustion heating, cooking, or other devices.
  - To the extent any existing furnaces, cooking devices, or other fossil fuel burning devices are being replaced as part of a rehabilitation project, they should be replaced with electric devices.
  - Projects not adhering to these best practices must document the reasoning such measures were not incorporated, e.g., identify an alternative approach to meeting housing resiliency considerations.
- **Disaster prevention and mitigation**

  - Any newly constructed home must be provided with a storm shelter which may be located in ground, above-ground, in a basement, or on-site within a reasonable proximity to the newly constructed home. Storm shelters must be built to meet or exceed the specifications outlined in the International Code Council (ICC) and National Storm Shelter Association (NSSA) ICC/NSSA 500-2020 standard as approved by American National Standards Institute (ANSI).
  - To the maximum extent practicable in rehabilitation projects, DED will also require the installation of storm shelters that meet ICC/NSSA 500-2020. Applicants will be required to show, to DED's satisfaction, that installation of a storm shelter is not financially feasible within the budget for a given property to be granted a waiver for this requirement. In such cases, DED may require other less stringent efforts to provide some reinforced space that increases occupant protections from severe weather.
- Any newly constructed homes must be "visitable" as defined by the Nebraska Department of Education's Assistive Technology Partnership (ATP).[9]
- In the case of projects involving rehabilitation, the following additional standards will apply:
  - Lead Based Paint assessment, testing, and remediation requirements of 24 CFR Part 35;
  - Upon completion, all major systems (defined to include structural elements, the building envelope, electrical, plumbing, and mechanical systems) must have an expected remaining useful life of not less than five (5) years.

DED reserves the right to fund an Applicant's proposal incrementally, including on a house-by-house basis or in small groupings of homes, rather than as a single multi-address "project." As discussed in ***Section 8.1.2: Spec Building Approach***, an incremental funding approach will allow DED to match awards to the demonstrated capacity of an Applicant and mitigate concerns about the depth of market in particular neighborhoods.

4.3 HPP DEVELOPMENT LOAN

CDBG-DR funding will be provided to Successful Applicants in the form of an HPP Development Loan. Structured as a construction loan repayable from sales proceeds, the loan will be secured by a Deed of Trust against the property upon which the Applicant will develop homes for sale to

[9] See https://atp.nebraska.gov/sites/atp.nebraska.gov/files/doc/Housing%20Visitability.pdf

eligible buyers. The DED Deed of Trust may be junior to the lien of a conventional construction lender (e.g., a local bank) acceptable to DED as part of the project's overall underwriting.

While the face value of the HPP Development Loan will be the entire budgeted CDBG-DR investment in the project, the terms will limit repayment to the net proceeds of the sale to an eligible buyer following the use of sales proceeds to repay any interim construction financing (or the investment of working capital by the Applicant), the Applicant's costs of sale, and any balance of the Developer Fee due to a nonprofit Developer (as noted in ***Sections 5.1: Eligibility Criteria,*** and 8.5, ***Eligible Costs***, local government Subrecipients may not collect a Developer Fee).

4.4 RECONCILIATION UPON SALE

Prior to the sale of a home to an eligible buyer, DED will review a house-specific proforma submitted by the Applicant that certifies to and quantifies the final/actual sources and uses of all funds (i.e., including CDBG-DR and other sources) invested in the home. The proforma will also calculate and categorize the use of each source of funds toward the appraisal gap, affordability gap, or as interim financing repayable from sales proceeds.

For the closing, DED will provide a discharge of the Deed of Trust pertaining to the specific home being sold with an instruction letter to the closing agent outlining the conditions for its release and recording. The instruction letter will specify the amount of the approved CDBG-DR buyer assistance and the anticipated actual payoff (if any) due to DED from the sales proceeds. In practice, DED anticipates that the payoff to DED will be substantially less than the original balance of the HPP Development Loan.

4.5 AWARD LIMITS

The maximum award is $2,000,000. Consistent with the Action Plan, awards are subject to the following additional restrictions:

- Not to exceed $150,000 per housing unit; and
- The $150,000 award cap for each household includes all hard and soft construction costs.

These limits will apply even if DED elects to award funding to a given entity via smaller individual contracts (e.g., one [1] covering production in a given county, one [1] covering production in another). Additional limits on specific elements of total cost are included in ***Section 8.5: Eligible Costs*** below, and direct buyer assistance to a given household is limited per ***Section 11.4.1: Maximum Assistance Available*** below.

4.6 TOTAL ALLOCATION

The total allocation for the Affordable Housing Construction Program is up to $26,000,000.

In the event DED increases the funds allocated to AHCP, DED may re-consider acceptable applications not previously selected for funding without re-opening the Program.

5 APPLICATION AND AWARD PROCESS

DED will issue one (1) or more NOFOs inviting applications from eligible Applicants (see ***Section 7.3: Contracting / Commitment Process*** below). DED does not expect that the initial NOFO will exhaust all available funds, so it is likely that additional funding rounds will be announced in the future. The NOFO will outline both threshold and competitive criteria, and awards are made on a competitive basis. Proposed Projects will be evaluated on a case-by-case basis, based on the program priority. For further discussion of priorities, objectives, and goals, see also ***Section 4: Homeownership Production Sub-Program Overview.***

In the event DED increases the funds allocated to AHCP, DED may re-consider acceptable applications not previously selected for funding without re-opening the Program.

5.1 SUBMISSION OF MATERIALS

All Applicants for CDBG-DR must comply with the submission criteria set forth in the NOFO published by DED. In all cases, DED reserves the right to require the submission of additional information as needed to complete project underwriting prior to closing on the CDBG-DR loan (see ***Section 8: Underwriting and Subsidy Layering)***. Submission of materials must be completed withing AmpliFund, DED's grant management system.

5.2 INITIAL REVIEW AND PRELIMINARY AWARDS

Following receipt of an application for CDBG-DR funds, DED will conduct a review and analysis of the project(s) and developer(s) as presented in the application. Proposals will be scored using criteria in the NOFO. Awards will be based on a combination of factors including project costs reasonableness, soundness of approach, and program priorities.

Projects seeking CDBG-DR funds prior to the receipt of all other funding commitments may be provided with non-binding Preliminary Awards. Further, Preliminary Awards will be contingent upon the (1) continued availability of CDBG-DR funds from HUD; (2) DED's receipt of the HUD AUGF following completion of the Environmental Review process (as applicable); (3) receipt of firm commitments for all other financing needed for the project; (4) final underwriting; and (5) other items noted in the Applicant's-specific Preliminary Award.

5.3 CONTRACTING / COMMITMENT PROCESS

Following issuance of a Preliminary Award, Successful Applicants will be assigned to a DED Project Manager who is responsible for shepherding projects within DED through final underwriting and toward formal commitment and closing (i.e., execution of binding legal agreements obligating CDBG-DR funding). Successful Applicants will be required to submit additional due diligence items and/or other documentation needed for final underwriting, demonstrating satisfaction of general or special conditions of the Preliminary Award, and standard pre-closing items (e.g., title commitments, evidence of full zoning approvals, etc.).

Following commitment and closing, the Project Manager will also be the primary point of contact for the Applicant through the development and sale of units funded by CDBG-DR and thus responsible for processing draw requests, reviewing construction progress and compliance with applicable labor standards, negotiating and seeking internal approvals on any proposed contract changes, and monitoring the Applicant's compliance with award conditions and CDBG-DR requirements.

6 CITIZEN PARTICIPATION

As defined within the state's Citizen Participation Plan, DED recognizes the importance of public participation in the process of disaster recovery, particularly those most vulnerable to the impacts of the disaster.[10] This includes residents of impacted areas, LMI individuals, and people with access and functional or limited English proficiency.

For more information, see the ***Citizen Participation Plan***.

6.1 PUBLIC ENGAGEMENT

DED is dedicated to soliciting feedback from, and providing timely, accessible information about the AHCP to, all relevant stakeholders throughout the life of the program. This approach is rooted in DED's Citizen Participation Plan applicable to the CDBG-DR grant. For more information, see the ***Citizen Participation Plan***.

[10] "State of Nebraska Citizen Participation Plan." DED.

All publications and communication related to the AHCP will comply with the effective communications requirements of 24 CFR § 8.6[11] and other fair housing and civil rights requirements, such as the effective communications requirements under the ADA.

6.2 WEBSITE

DED has a website with CDBG-DR information on the Department's website, located at https://opportunity.nebraska.gov/. The DR program-specific page is at https://opportunity.nebraska.gov/cdbg-dr/. Pursuant to Federal requirements as described in in the FR published on February 9, 2018 (83 FR 5844), some information – including contractor information related to this AHCP – must be posted and maintained. For more information, refer to the ***Recordkeeping and Data Management Plan***.

DED will continue to update and release guidance (e.g., FAQs) for the AHCP to provide the community an opportunity to learn more about the program's requirements. DED will utilize public outreach, meetings, public comment periods to request questions and comments related to the materials and update AHCP documents appropriately.

DED updates their website in a timely manner to ensure the most current information is available publicly. At a minimum, the website is updated monthly. All program materials on the website will be available in both English and Spanish.

The program materials on the website are available upon request to people with disabilities. The Action Plan and other materials on the DED CDBG-DR website are already uploaded in accessible formats for people who use screen readers. For assistance with website accessibility or translations into language other than English or Spanish, call 800-426-6505, email DED using the contact form at https://opportunity.nebraska.gov/contact-us/, or write a letter to:

Nebraska Department of Economic Development
245 Fallbrook Blvd, Suite 002
Lincoln, NE 68521

Los materiales del programa disponibles en la página web están disponibles previa petición para personas con discapacidades. El Plan de Acción y otros materiales en la página web de DED CDBG-DR ya han sido subidos en formatos accesibles para las personas que usan lectores de pantalla. Para obtener ayuda con temas de accesibilidad de la página web o traducciones a otros idiomas que no sean inglés o español, llame al 800-426-6505, envíe un correo electrónico al DED

[11] 24 CFR § 8.6.

usando el formulario de contacto en https://opportunity.nebraska.gov/contact-us/, o escriba una carta a:

Nebraska Department of Economic Development
245 Fallbrook Blvd, Suite 002
Lincoln, NE 68521

6.3 MEETINGS

Community meetings will be held as part of the AHCP implementation in a variety of formats, including in-person and online. These meetings will provide residents of MID areas and other stakeholders or interested parties with an opportunity to learn more about AHCP activities in their area and to provide input.

For more information, see the ***Citizen Participation Plan***.

7 UNDERWRITING AND SUBSIDY LAYERING

7.1 MARKET ASSESSMENT

DED's approach to market assessment of for-sale proposals will generally vary based on whether the Applicant is proposing a "pre-sale" or "spec building approach."

7.1.1 PRE-SALE APPROACH

Some Applicants use a pre-sale approach whereby they identify specific buyers for a given unit prior to beginning construction. This may involve the buyer having formally signed a purchase agreement (subject to appropriate approvals by DED) for the unit or may involve other less binding reservation agreements. For example, a Habitat for Humanity chapter applying as a Developer may have already selected the buyer for a given unit, prequalified that buyer, and begun to recognize sweat equity contributions from the buyer's volunteer time on other Habitat builds even without the buyer having signed a binding purchase agreement.

In such cases, to assess the market for the unit(s) proposed, DED will primarily review:

- Information about the specifically identified buyers, focusing on their pre-qualification information suggesting they are income eligible, able to meet DED's Homebuyer Underwriting Standards (including their ability to qualify for an acceptable first mortgage as applicable), and the formality of the "pre-sale" arrangement; and
- Information about any "excess" pipeline of potential buyers currently working with the Applicant. This may include formal waiting lists of similarly pre-qualified buyers, lists of

interested beneficiaries who are at earlier stages of the pre-qualification process (e.g., individuals who have completed counseling but are not yet pre-qualified for a mortgage, those who are participating in homeownership and/or similar financial counseling and working through credit issues, etc.).

Key Evaluation: In general, when units are presold, the primary market risk to address is the potential that a given buyer will "fall out" and need to be replaced. This can happen for reasons ranging from a buyer losing a job, getting sick, receiving a new job outside the region, or backing out of the purchase for some other reason. When the Applicant has a strong track record of closing with originally identified buyers, DED will expect a waiting list of pre-qualified buyers beyond the buyers specifically tied to the project's unit(s) equal to or greater than half the number of units under construction (rounded up to a whole number). For example, if an Applicant is proposing to build six (6) units, then, in addition to the six (6) originally identified buyers, the waiting list must have at least three (3) additional prequalified buyers.

For situations where the pipeline is made up of potential buyers who are in earlier stages of the process but not fully prequalified, DED will expect to see a higher ratio of documented pipeline to proposed units. This may be based on a review of the Applicant's track record of converting its potential buyer pipeline to closings. Alternatively, absent a waiting list of pre-qualified "backup" buyers, DED may require submission of market data as outlined in ***Section 8.1.2: Spec Building Approach***.

7.1.2 SPEC BUILDING APPROACH

In all cases, DED reserves the right to award funds on an incremental basis, limiting the number of "spec houses" under construction without identified buyers. *For example, DED may award funds for only a few spec built units at a time and incrementally award additional funds as homes are sold (or placed under contract by the execution of purchase agreements by qualified buyers prior to completion of construction) such that no more than a given number of (e.g., three) unsold homes are under development at any given time.*

When units are not presold or DED is not satisfied with depth of the buyer pipeline, Applicants must prepare and submit an analysis of the market for the proposed project. Applicants seeking funding to produce houses in multiple neighborhoods must submit an analysis for each neighborhood in which it is proposing to develop. Applicants may engage a real estate agent or another qualified party to help assemble the information.

The assessment must:

- **Identify the neighborhood market area** in which the housing is proposed. This may involve existing, recognized neighborhood boundaries or other relevant boundaries such as jurisdictional or school district lines, major traffic corridors, natural features like rivers, etc. It may also involve recognized "neighborhood" or "submarkets" commonly used in the area MLS.

- Itemize and summarize **residential sales from the past year**. Sales should be broken out, insomuch as possible, by owner-occupied vs. rental (investor owned), new vs. existing, and price range. Particular emphasis should be given to sales within +/-$25,000 of the anticipated market value of the unit(s) being proposed by the applicant. To the degree known, the following data must also be provided:
    - Number of bedrooms/bathrooms, sq. footage, other amenities, etc.
    - Original list vs. final sales price;
    - "Days on market" for each home sale should be listed and an average compiled;
    - Seller concessions offered or provided;
    - Cash sales vs. those financed with a mortgage;
    - Data should include all publicly disclosed sales, including any that may have been "for-sale by owner" or otherwise not listed through a realtor and/or identified in the MLS.
- Itemize and summarize **current for-sale properties**. Other than actual sales pricing, the same information for past sales must be provided for currently for-sale properties. Particular emphasis should be given to homes offered within +/-$25,000 of the unit(s) being proposed.
- Identify and summarize the **pipeline of homes under development**, including the availability of "build to suit" lots with infrastructure already in place.
- Based on the information above, the assessment must calculate "months of supply" available for both residential homes in general and for those within +/-$25,000 of the proposed unit(s).

Key Evaluation: In general, DED will focus on whether the average days on the market competing (i.e., within a reasonable price range of proposed units) is less than 120 days and whether, as of the application, there is less than six-months' supply of competing product available. DED will also consider whether sales volume and available supply has increased/decreased over shorter, more recent analysis periods. For example, if the total sales volume from the past year overall is strong but has markedly declined in the last three (3) to six (6) months, DED may take a more cautious approach.

7.2 APPLICANT AND DEVELOPMENT TEAM

Eligible Applicants and their Development Team must address capacity considerations, including technical and/or professional proficiency and financial support. See also ***Section 5.1.1: Eligible Applicants***.

7.2.1 APPLICANT CAPACITY

Applicants should demonstrate their technical and/or professional capacity through:

- Recent, ongoing, and successful experience with the development and sale of similar regulated affordable housing; and
- The presence of adequate staff, with specific experience appropriate to their role in the project, to successfully implement and oversee the project. This includes the assembly and oversight of the development team.

DED requires Applicants to provide descriptions of all for-sale projects completed in the last five (5) years, including any under development and land held (or under option) for additional projects. The description must identify the number of units produced, total/average cost per unit, sales prices/market values, and sales history including number of units sold, average (and maximum) time on the market from listing to sales contract, and typical income range of buyers. Applicants must identify if any units developed took longer than six (6) months between construction completion and sales contract execution and whether any units were converted from for-sale to rental as a result of the inability to identify a qualified buyer.

Applicants are also required to provide descriptions of the role played by specific staff members relative to the proposed project along with resumes or other similar information demonstrating experience appropriate to the assigned staff member's role.

7.2.2 FINANCIAL CAPACITY

Applicants must also demonstrate the financial capacity to support the proposed project both during construction and lease-up as well during ongoing operations. This includes not just that the Applicant has sufficient financial resources but that it has adequate financial systems in place to appropriately manage project funding, accurately account for all project costs, and provide reliable reporting to DED and other project funders.

At minimum, DED will review audited financial statements, interim financial statements, and individual personal financial statements to ensure that:

- The Applicant's most recent audit demonstrates compliance with GAAP and does not express material weaknesses in the entity's system of internal controls or financial management systems.

In the case of nonprofit Developers, DED will also require:

- The Applicant's net worth is equal to at least 25% of the total development cost of all real estate projects underway or $1M whichever is greater;

- The Applicant has net liquid assets (current assets less current liabilities) equal to at least 10% of the total development cost of all projects underway; and

- After accounting for any equity committed to the proposed project(s) as working capital, the Applicant's balance sheet should demonstrate a quick ratio of 1.25 or better.

7.2.3 DEVELOPMENT TEAM

DED will also review the capacity of the development team, including but not limited to the general contractor, architect/engineer, real estate agent, attorney, and any other specialized professionals or consultants who have been identified by the Applicant.

As a whole, the development team should have the skills and expertise necessary to successfully complete the development. Insomuch as possible, the development team members should have worked successfully on other projects in the past. That is, while an Applicant may identify new development team members from project to project, an "entirely new" team may present added risk.

Additionally, DED will consider whether assigned team members have recent local experience.

In no case may any Applicant or any member of the development team be a suspended, debarred, or otherwise excluded party.

7.3 IDENTITY OF INTEREST

Nonprofit Developers must disclose all identity of interest relationships/contracts and/or costs involved in a transaction, including during the development period and following completion of the project. DED reserves the right to review any such costs further to ensure they are reasonable and consistent with the costs expected from arms-length relationships. Approval of any identity of interest contracts will be in DED's sole and exclusive discretion.

An "Identity of Interest" (whether or not such term is capitalized) is any relationship based on family ties or financial interests between or among two (2) or more entities involved in a project-related transaction that reasonably could give rise to a presumption that the entities may not operate at arms-length. DED will take a broad approach to defining identities of interest and expects all applicants to err on the side of disclosure. That is, if there is any question about whether an identity of interest may exist, the relationship should be disclosed and explained to DED.

Beyond this general definition, an identity of interest relationship will be deemed to exist if:

- An entity, or any owner of any direct or indirect ownership interest in such entity, or any family member of any such owner is also an owner, through a direct or indirect ownership interest, or an officer, director, stockholder, partner, trustee, manager, or member of the counterparty; or

- Any officer, director, stockholder, partner, trustee, manager, member, principal staff, contract employee or consultant of an entity, or any family member thereof, is an owner, through any direct or indirect ownership interest, or an officer, director, stockholder, partner, trustee, manager, or member of the counterparty.

For purposes of this definition, “family member” means the spouse, parents or stepparents, children or stepchildren, grandparents or step-grandparents, grandchildren or step-grandchildren, aunts, uncles, parents-in-law, and siblings-in-law (or their children or stepchildren). It also includes any other similar relationship established by operation of law, including but limited to guardianship, adoption, foster parents, domestic partnerships, and the like.

7.4 CONFLICT OF INTEREST

Local government Subrecipients are subject to the conflict-of-interest provisions at 24 CFR § 570.489(h) which address both procurement (e.g., of goods and services related to the development of the project) and provision of benefits to individual households (e.g., direct assistance to LMI buyers).

7.5 ELIGIBLE COSTS

On a direct basis, CDBG-DR funding under HPP may be used to reimburse an Applicant for any of the following costs:

- **Acquisition** of property upon which new housing will be developed or existing housing will be rehabilitated, including reasonable and necessary closing costs associated with the purchase;

- **Site Preparation, Clearance, and Site Improvements** necessary for the production of housing, which may include selective demolition, grading, excavation, removal of vegetation and the like;

- **Hard Costs** related to the construction or rehabilitation of housing, including labor and materials;
- **Soft Costs** determined by DED to be necessary and reasonable which may include but not be limited to:
  - Architectural, engineering, and design services;
  - Third-party studies or reports (such as lead-based paint testing and assessment, radon testing, energy efficiency modeling and verification testing, appraisals required by DED, and the like);
  - Financing costs including origination fees and closing costs associated with interim construction financing (interest on such loans will not be allowed, see further discussion of the Developer Fee below);
  - Legal costs directly related to the purchase, construction or rehabilitation, and subsequent sale of specific properties; and
  - Impact, permit, plan review, zoning, or other similar fees payable to state or local authorities.
- **Developer Fees** of up to lesser of (1) 15% of the subtotal of acquisition, hard, and soft costs but excluding the developer fee itself and the disposition/sales costs noted below; or (2) $20,000. *This item is not applicable to local government Subrecipients.*
  - DED will **not** allow for carrying costs (including interest on construction loans, interim utilities, insurance, lawn care or snow removal, or other similar ongoing cost of ownership) to be included as a development cost. Rather, Developers will be expected to pay such costs from the proceeds of the Developer fee. This simplifies accounting and recordkeeping requirements for both the Developer and DED and reduces the administrative burdens of monitoring. Most importantly, it aligns a Developer's economic interest with DED's interests in cost effective use of limited CDBG-DR funding and promoting timely production and sale of CDBG-DR funded units. The effect of this approach then is that Developers who are most cost effective in managing carrying costs and keeping projects on schedule (thus reducing the Developer's period of ownership) will receive larger "net" Developer Fees compared to other Developers who manage such costs less efficiently or are unable to keep their projects on schedule.
- **Activity Delivery Costs**, including staff and overhead costs of a local government Subrecipient directly attributable to carrying out the housing development activity, including but not limited to identifying and negotiating the purchase of property, evaluation and development of work specifications for construction, procurement and oversight of contractors and service providers, and other similar functions. DED will limit Activity

Delivery Costs to no more than 20% of a Subrecipient's total CDBG-DR award, not to exceed an average of $20,000 per anticipated unit. Activity delivery costs do not include general reporting to DED on the progress of a Subrecipient's overall award or other award level administrative items. Subrecipients will not receive any allotment in their award from DED for planning and administrative costs. *This item is not applicable to nonprofit Developers.*

- **Disposition and Sales Costs**, including realty commissions and seller closing costs determined to be reasonable and customary in the market (not to include any "seller concessions" or other seller-paid contributions to the down payment or closing costs otherwise regularly paid by a buyer of residential real estate). In practice, notwithstanding their general eligibility, DED expects that most disposition and sales costs will be paid at the closing table from the proceeds of sale.

See also ***Chapter 4: Financial Management*** for cost principles and other requirements.

7.6 DEVELOPMENT COST CONSIDERATIONS

In general, DED will review the entire project budget to ensure that all costs are reasonable and that the budget is sufficient to complete and sustain the project. All line items, whether or not paid directly with CDBG-DR funds, must be necessary and reasonable.

DED will consider the cost of both specific line items as well as the total development cost on a per unit and per square foot basis, comparing costs to other projects funded by DED from other sources, similar projects in the region (such as those funded by local HOME PJs), input from local building officials, and/or third-party indices such as RS Means. DED also reserves the right to obtain a third-party review of development costs prior to awarding funds or committing to specific projects.

DED has also developed the following standards provided in the sections below for selected development cost items.

7.6.1 ACQUISITION

Acquisition costs must be supported by an independent third-party appraisal prepared by a State-licensed appraiser. The purchase price must be at or below the as-is market value of the property. In the event an Applicant (or a related party) has previously purchased land prior to applying to DED, the project budget may only reflect the lesser of the actual purchase price or the current market value. Standard closing costs from the acquisition may be included. In the case of properties acquired for less than $25,000, DED may use local tax assessments to determine cost reasonableness in lieu of an appraisal.

Applicants who purchased property prior to applying to DED, or following environmental releases under NEPA but prior to closing, may not charge or include financing costs associated with interim financing, whether from third-party or related lenders.

7.6.2 ARCHITECTURAL FEES

Architectural fees cannot exceed the following:

- Design services: 6% of total construction costs
- Supervision/Administration: 2% of total construction costs

7.6.3 CONTINGENCIES

Applicants should include a contingency (inclusive of hard and soft costs) within the minimum and maximum amounts noted below. The contingency will be measured as a percentage of hard costs.

- New construction projects should include a contingency of least 5% and no more than 10% of hard costs; and
- Acquisition/rehabilitation projects should include a contingency of at least 10% and no more than 15% of hard costs.

DED may consider higher contingencies based on identified risk factors such as the known need for environmental remediation or rehabilitation of a historic structure requiring compliance with SHPO/THPO standards.

7.6.4 CONTRACTOR FEES

When a general contractor has not been competitively procured and is paid on any sort of “cost plus” basis, contractor fees (whether defined as profit, overhead, general conditions, or in some other manner) are limited as a percentage of net construction costs as further identified below. Net construction costs exclude the contractor fees, any budgeted contingency, and (even if otherwise included in the construction contract) permits and builder’s risk insurance.

- Construction contracts for fewer than 10 units: 18% of net construction costs; or
- Construction contracts for 10 or more units: 15% of net construction costs.

In the case of a nonprofit Developer that is acting as its own general contractor, a “construction management fee” not to exceed 10% of third-party hard costs (i.e., excluding itemized labor costs for any in-house construction staff) may be included.

7.6.5 DEVELOPER FEES

Developer Fees are intended to compensate a Developer for the time and effort of assembling a project, overseeing the development team, and carrying a project to fruition. Developer Fees are also intended to compensate for the risk inherent in the development process, including that not every potential project proves viable and that Developers must necessarily advance funds for their own operating costs and various third-party predevelopment costs prior to closing (or in some cases for projects that never proceed). DED, therefore, allows the inclusion of Developer Fees as follows:

- **Developer Fee:** Up to 15% of total development costs less (1) the Developer Fee itself; and (2) disposition and sales costs (e.g., realtor commissions or other seller closing costs).
- **Maximum Limit:** Regardless of percentage calculation, the maximum Developer fee shall be $20,000 per unit.

In some cases, Applicants may delegate some of its responsibilities to third-party professionals or consultants. This may include contracting specific tasks, such as construction oversight of the builder or specialized consulting related to applying for or structuring various financial incentives. The costs of engaging such professionals, whether they are third-parties or identity of interest relationships, must be paid from (and if separately itemized will be counted against) the allowable Developer Fee.

7.6.6 REALTOR COMMISSIONS

Realtor commissions, paid from the proceeds of sale, cannot exceed 6% of the sales price.

7.7 PROJECTING AND USING SALES PROCEEDS

DED will review an Applicant's projection of sales proceeds to ensure they are reasonable and achievable. All units must be sold at the fair market value as determined by an "as-completed" or "subject to completion" appraisal completed by an independent third-party state licensed appraiser. Applicants shall submit such an appraisal prior to project commitment, and DED may require an updated appraisal prior to listing or construction completion if the appraisal is more than nine (9) months old at that point. Any reductions in the listing or sales price below the DED-approved appraised value must be approved in writing by DED and will generally require updated market information justifying the reduction.

While all units are to be sold at fair market value, actual sales proceeds available to repay interim construction sources are affected by the buyer's purchasing power (i.e., the mortgage they can reasonably afford). A portion of HPP Development Loan funds originally advanced toward development costs are effectively "transferred" to income-eligible buyers in the form of second mortgage assistance at closing. In other words, the buyer will assume a portion of the HPP

Development Loan made to the Applicant at closing in lieu of the Applicant repaying the construction loan in full.

As a result, the gross sales proceeds will generally be the lesser of the sales price or the buyer's mortgage amount and cash investment (minus the buyer's closing costs). From the sales proceeds, Applicants must:

- Pay seller closing costs (e.g., real estate commissions and other closing fees). These are paid at closing from sales proceeds rather than being directly disbursed by the Applicant;
- Repay interim construction sources. This may include construction loans from a bank or DED-approved equity/working capital invested by the Applicant;
- Pay any outstanding development costs. In limited cases, the contractor may be owed a final payment or other miscellaneous development costs may be outstanding and paid at closing from sales proceeds. Any such arrangement must be disclosed to and approved by DED prior to closing; and
- Pay remaining Developer Fee. DED allows no more than 50% of the Developer Fee to be paid prior to closing on the sale to an eligible buyer.

In most cases, the remaining sales proceeds available after payment of these items is expected to be less than the original investment made by DED. For projects otherwise meeting all requirements of the program, including all federal requirements of CDBG-DR (or other federal funding sources), DED will accept the remaining sales proceeds as full and final payment of the HPP Development Loan disbursed to the Applicant.

7.8 OTHER FUNDING SOURCES

Prior to entering into the HPP Development Loan, all other funding sources necessary for a project must be identified, committed in writing, and consistent with the both DED's underwriting requirements and the affordability restrictions of the CDBG-DR program. In general, Applicants must make all reasonable efforts to maximize the availability of other funding sources, including construction lending and/or Applicant equity, within commercially available and reasonable terms. Further details on duplication of benefits (DOB) are referenced in ***Chapter 18: Duplication of Benefits***.

Additionally, restrictions or limitations imposed by other funding sources cannot conflict with any applicable CDBG-DR requirements and cannot, in the discretion of DED, create undue risk to DED.

To limit the risk of taking on too much construction debt, DED generally expects an Applicant to obtain interim construction sources (loans or equity) equal to no more than 80% of the projected buyer's funds (i.e., an affordable first mortgage minus buyer closing costs)

7.9 EXCEPTIONS AND INTERPRETATION

DED has developed these underwriting guidelines for several reasons. Not only are they required for meeting HUD's requirements related to cost reasonableness, but more generally, they are intended to provide clarity to Applicants on what DED expects and transparency about the "rules of the road." However, DED recognizes that it cannot pre-emptively identify every possible special circumstance that may warrant an exception to its general requirements, nor can it identify every possible "loophole" whereby a creative presentation of costs or other financial projections might subvert the general need to balancing of viability and reasonable returns, risk to DED and public benefit.

Consequently, DED reserves the right to waive specific underwriting criteria for specific projects when, in its sole judgement, the purposes of the program can be better achieved without taking on undue risk. When waiving any given requirement, DED may impose additional special conditions or business terms that are not otherwise typically applied to all projects.

For administrative ease, DED may also align its underwriting standards with those required by other public funders involved in a given transaction, particularly if those standards are more restrictive or conservative than DED's. However, DED retains the right, in its sole discretion, to decide whether to accept alternative standards.

DED also reserves the right to reject any element of a transaction that, despite not being specifically prohibited, was not anticipated by these guidelines or if such an element or business term otherwise creates unacceptable risks, excessive returns to a Developer, or otherwise undermines the public purposes of the CDBG-DR program.

Insomuch as is reasonable, DED will update and clarify these guidelines over time to account for exceptions, waivers, or additional restrictions it imposes.

8 DRAW PROCESS

8.1 DRAWING FUNDS

Proceeds of the CDBG-DR funded HPP Development Loan will only be released to an Applicant for reimbursement of eligible project costs, with supporting documentation for actual costs incurred. All requests for payment must be submitted in AmpliFund.

8.1.1 CONDITIONS OF PERIODIC DRAWS

The obligation of DED to approve any draw request of HPP funds is subject to the satisfaction of the following conditions at the time of making such request and such other conditions as outlined in the CDBG-DR Agreement between DED and the Applicant.

- Draws will not be processed if the Applicant is in default under the CDBG-DR loan or any other loan the Applicant has received for the Project;
- The project shall not have been materially damaged by fire or other casualty since the date of the award;
- DED shall have received evidence satisfactory to DED that all work and improvements requiring inspection by any governmental authority having jurisdiction have been inspected and approved by such authorities and by any other persons or entities having the right to inspect and approve construction; and
- Owner shall have submitted, at least 30 calendar days prior to the date a disbursement is desired, a completed disbursement request form including AIA G-702 (Contractor's Application for Payment) and G-703 (Continuation) forms and such other appropriate source documentation as may be required by DED and/or HUD including, without limitation, the following:

    a. Current Contractor Tracking Form and lien waivers, which are to be dated no less than 10 business days prior to the date of the submission of the requested disbursement.

    b. Evidence satisfactory to DED that the project(s) and the contemplated use thereof are permitted by and comply with all applicable uses or other restrictions and requirements in prior conveyances, zoning ordinances, or regulations that have been duly approved by the municipal or other governmental authorities having jurisdiction; that the required building permits and other permits have been obtained as required; and that no environmental impact statement is required or that such environmental impact statement has been properly filed and approved.

    c. Appropriate certifications of compliance in all respects with labor standards and prevailing wage requirements applicable under Federal law.

    d. Such other supporting evidence as may be requested by DED or its agents to substantiate all payments (proof of payment) which are to be made from the relevant disbursement and/or to substantiate all payments then made with respect to the project(s), including but not limited to, canceled checks, invoices, and receipts.

e. DED shall have determined that all CDBG-DR requirements pertaining to the disbursement of funds have been met.

f. DED shall have received a current inspection report from a DED inspector (which may include a contracted third-party inspector) that verifies satisfactory completion of work to CDBG-DR standards.

g. DED shall have received a current/updated title endorsement, if required.

h. No determination shall have been made by DED that the undisbursed amount of the loan is less than the amount necessary to pay all costs and expenses of any kind that reasonably may be anticipated in connection with the completion of the project(s).

8.1.2 CONDITIONS OF FINAL DEVELOPER FEE DRAW

In addition to the requirements set forth in ***Section 9.1.1: Conditions of Periodic Draws***, DED shall withhold payment on 50% of the Developer Fee due on a given home (or at least 10% of the CDBG-DR investment on units built by a Subrecipient) until all of the following conditions have been met:

- Completion of the project(s), including all landscape requirements and offsite utilities and streets (if applicable) and correction of defects in workmanship and/or materials;
- A certificate of occupancy, if applicable, or certificate of substantial completion from the Applicant (and, insomuch as applicable, the supervising architect), the builder's warranty from the general contractor (which must be transferable to the buyer), and a final approved construction report from DED's inspector for the unit, and any other special requirements as outlined in the DED's Agreement with the Applicant;
- Evidence satisfactory to DED that the unit has been completed lien free and substantially in accordance with the plans and specifications;
- Such other supporting evidence as may be requested by DED or its agent to substantiate all payments of outstanding development costs which are to be made from the proceeds of sale and/or to substantiate all payments then made with respect to the particular unit;
- Submission of closing documents, including copies of the note, Deed of Trust, and HPP Homebuyer Agreement signed by the approved buyer(s), the buyer's final Closing Disclosure, and any settlement statement detailing the seller's transaction and distribution of sales proceeds (if not otherwise included in the Closing Disclosure);

- A determination by DED that, subject to additional post-completion monitoring, all CDBG-DR requirements pertaining to the initial development of the unit have been met, including but not limited to, the monitoring of compliance with any applicable labor standards.

9 SALES AND MARKETING PROCESS

As part of the application process, Applicants must submit a Sales and Marketing Plan in a form acceptable to DED, identifying among other items the profile of typical buyers, relationships with HUD-approved homeownership counseling agencies or other sources of buyer referrals, and plans for marketing the homes. In developing the plan and marketing their homes, Applicants must ensure compliance with a range of federal and state requirements.

9.1 KEY FEDERAL REQUIREMENTS PERTAINING TO MARKETING AND SALES

9.1.1 FAIR HOUSING AND EQUAL OPPORTUNITY

The following Federal nondiscrimination and equal opportunity guidelines apply to all CDBG-DR projects and affect both development and sale of assisted housing:

- The requirements of the Fair Housing Act (42 USC 3601-19) and implementing regulations at 24 CFR Part 100; EO11063, as amended by EO12259 (3 CFR § 1958 B1963 Comp., P. 652 and 3 CFR § 1980 Comp., P. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and of the Civil Rights Act of 1964 (42 USC 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

- The prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 USC 6101-07) and implementing Regulations at 24 CFR Part 146,

- The requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794) and implementing regulations at 24 CFR Part 8;

- The requirements of EO 11246, as amended by EO11375, EO11478, EO12086, and EO12107 (3 CFR § 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60;

- The requirements of 24 CFR § 5.105(a)(2) requiring that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and prohibiting Applicants or their agents from inquiring about the sexual orientation or gender identity of an applicant for (i.e. prospective tenant), or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity.

9.1.2 AFFIRMATIVE MARKETING

In addition to the general Sales and Marketing Plan, DED will require Applicants to develop plans to affirmatively market the homes they produce under the HPP, including by identifying those populations least likely to apply and specifically targeting outreach and advertising to those populations (see 24 CFR § 570.601). For further detail, see ***Chapter 11: Affirmatively Furthering Fair Housing***.

9.1.3 REASONABLE ACCOMMODATION

Administration of HPP is subject to the requirements of Section 504 of the Rehabilitation Act of 1973. When necessary to provide prospective buyers with disabilities reasonable access and participation to the program, Applicants must provide the opportunity for individuals to request reasonable accommodations to allow for their participation in the local HPP program. Examples may include allowing an Applicant to complete an application at another location, providing an interpreter for meetings with program staff, etc. (see 24 CFR § 570.602). In the event a specific buyer with a disability is identified early enough in the construction process for their eventual home, the Applicant should make reasonable efforts to modify the design to accommodate the disabled buyer's particular needs (e.g., providing accessible bathrooms, modifying kitchen build outs for accessibility, installing a ramp for wheelchair access, etc.).

9.1.4 CONFIDENTIALITY

Except as may be required by law or regulation, Applicants must maintain client files, both electronic and paper, in a confidential manner to protect personal identifiable information. However, all files are made available to HUD, the HUD Office of Inspector General, the Government Accountability Office, or any of their designees for all monitoring and audit purposes (see 2 CFR § 200.303(e)).

10 BUYER REQUIREMENTS

Successful Applicants will be responsible for all day-to-day marketing of the units they produce, identifying applicants and selecting and preliminarily qualifying buyers. Prior to selling an HPP developed home, Successful Applicants will be required to submit documentation to DED documenting that the selected buyer meets all applicable requirements and is eligible for the

CDBG-DR funded buyer assistance described herein which will take the form of an HPP Buyer Assistance loan[12] as further described in ***Section 11.4: Structure of Buyer Assistance*** below.

10.1 BUYER ELIGIBILITY REQUIREMENTS

In providing assistance to homebuyers, DED has to balance potentially competing perspectives. First, DED wants to ensure that participating buyers are successful homeowners. The program should target households who are ready for homeownership and provide sufficient assistance to make the home affordable (i.e., the program shall assist mortgage-ready, income-eligible homebuyers). To ensure the program is targeting households prepared for homeownership, participating buyers are required to attend and complete a pre-purchase homebuyer counseling class provided by a HUD-approved counseling agency. At the same time, buyers should only be provided with the assistance they "need" so that the program can serve as many households as possible with the state's limited CDBG-DR funds. Finally, DED seeks to ensure that assisted buyers are informed consumers and avoid the use of risky lending products.

10.1.1 INCOME

To qualify to purchase an HPP-assisted home and receive HPP Buyer Assistance, individual applicants must have a gross household income of at least 40% and no more than 80% AMI.

HUD publishes income limits, adjusted for household size, for the CDBG program annually.[13] Homebuyer income eligibility is determined using the "Part 5" definition of income found at 24 CFR § 5.619 (often referred to as the "Section 8" definition). The gross household income is used for determining program eligibility and must be documented with at least two (2) months of source documentation (e.g., paystubs, benefit records, bank statements) or third-party verifications (e.g., verification of employment). Income attributable to all household members aged 18 years and older, whether related by blood or marriage or not, are included for eligibility purposes regardless of whether a given household member is on the title or is a party to the buyer's mortgage.

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[12] The HPP Buyer Assistance is fundamentally the same as DED's separate CDBG-DR funded Homeownership Assistance Program (HAP). The difference is that in HPP the CDBG-DR was initially provided to and used by the Successful Applicant to develop the home, with a portion of that investment "passing through" to the buyer as described earlier in this guide. As a result, HPP buyer assistance does not arrive at closing in the form of a check but is debited against the Successful Applicant's proceeds of sale on the Closing Disclosure/settlement statement. HAP, on the other hand, is for buyers purchasing homes that were not otherwise developed with CDBG-DR financing, and the assistance is sent to the closing in the form of check (or electronic transfer) on behalf of the buyer who signs a note and deed of trust.

[13] HUD's income limits are published and available at https://www.huduser.gov/portal/datasets/il.html.

However, for underwriting purposes only (i.e., to determine the appropriate level of assistance), the following adjustments to income are made:

- The income of adults who do not have an ownership interest in the property are excluded.

  For example, the income of an elderly parent (or grandparent) that is part of the household but is neither listed on the title to the property nor included on the loan documents should not be included in calculations of the income available to make the mortgage payment. This exclusion for "non-purchasing" adults is not intended to optionally exclude the income of a household member with marginal credit. In the case of married couples, the income of both spouses is always included for underwriting purposes.

- Significant sources of income such as social security benefits, child support payments, or the like that are not expected to continue for three (3) years are excluded. For example, child support received for a 16 ½ year old is included in the Part 5 definition of income because it continues over the upcoming 12 months but is not counted in buyer underwriting as the income will cease when the child turns 18.

- Any imputed income from assets is excluded for underwriting purposes.

Note: Income determinations are good for six (6) months. Applicants must be income eligible under the income limits in effect at the time of executing a "Homebuyer Agreement" with the Applicant.

In defining and calculating income and assets for eligibility purposes, DED relies on the Technical Guide for Determining Income and Allowances for the HOME Program and encourages Applicants to use the CPD Income Calculator.

10.1.2 COUNSELING

All adult household members who hold title and/or are party to the senior mortgage must complete pre-purchase counseling provided by a HUD-certified counselor employed by a HUD-certified housing counseling agency acceptable to DED within the 12 months prior to receiving HPP Buyer Assistance.

- See: HUD-approved Housing Counseling Agencies in Nebraska

10.2 BUYER UNDERWRITING REQUIREMENTS

10.2.1 REQUIRED BUYER INVESTMENT AND REMAINING ASSETS

Participating buyers must contribute at least 1% of the purchase price toward their down payment and closing costs. Additionally, it is DED's policy that buyers must have sufficient cash resources (including savings, checking, money market, or other similar non-retirement accounts) such that after closing, they have savings of at least three (3) times their total monthly payment, including principal, interest, taxes, insurance, and any association fees.

10.2.2 LIQUID ASSET LIMIT

Buyers must invest any liquid assets in excess of $25,000 toward the purchase of the home before receiving CDBG-DR assistance. For purposes of this requirement, liquid assets are those readily convertible to cash (including but limited to savings or checking accounts, certificates of deposit, stocks and bonds, etc.). Liquid assets, however, exclude life insurance policies and any savings held in a tax-preferred retirement account (e.g., pension, 401(k), IRA, etc.), educational savings account (e.g., 529 Plans), or health savings account recognized by the Internal Revenue Service.

10.2.3 MINIMUM MONTHLY PAYMENT

CDBG-DR assistance is limited to and shall not exceed that which is necessary to achieve homeownership. Put plainly, assisted buyers are expected to make reasonable contributions toward their monthly payment and should not be provided with more assistance than necessary to make their housing affordable.

As such, DED's initial expectation is that all buyers are expected to make monthly payments equal to 30% of the household's underwritten income. DED does not intend to artificially reduce front-end ratios below this target but recognizes that existing consumer debt may reduce some households' ability to qualify for and afford the full target payment of 30% of underwritten income. In such cases, and only to the extent that the payment is reduced to keep the back-end ratio at 43% of income, DED provides assistance necessary to further "buy down" the first mortgage to lower the monthly payment (not to exceed the maximum buyer assistance limit in ***Section 11.4.1: Maximum Assistance Available***). In no case, however, does CDBG-DR provide assistance to bring a buyer's projected monthly mortgage payment to less than 24% of underwritten income.

Note: When the first mortgage is limited by the senior lender's LTV ratio (rather than a buyer's payment ability), these minimum front-end ratio requirements do not apply.

10.2.4 MAXIMUM DEBT TO INCOME RATIO

While the minimum payment provisions above set an initial target for a 30% front-end ratio, some buyers may wish to “stretch” and take on a larger mortgage, potentially to afford a given house within the maximum assistance available. Within some margin, this may be reasonable.

However, to ensure they are not over-leveraged, in all cases participating buyers must obtain a loan whose monthly payment (i.e., front-end ratio) does not exceed 33% of monthly income and that does not result in a total debt burden (i.e., back-end ratio) in excess of 43%. While changes in the mortgage market following the Great Recession have reduced the availability of lending products that allow buyers to take on excessive monthly payments, some such products are still available. Even when assisted buyers are willing to take on larger monthly payments, DED has determined that buyers with excessive payments are less likely to sustain homeownership.

10.3 FIRST MORTGAGE REQUIREMENTS

To ensure that buyers receive high quality loans that are sustainable over time, DED requires that the senior loan (i.e., first mortgage) of any buyer receiving CDBG-DR assistance towards closing costs, down-payment, or a portion of the purchase price meet the following criteria.

10.3.1 QUALIFIED MORTGAGE/CLOSING COSTS

Except for the exceptions noted, the loan must be a “Qualified Mortgage” (QM) under the requirements of the CFPB outlined at 12 CFR § 1026.43(e). QMs, among other features, limit total points and lender fees to reasonable levels. QMs also strictly limit pre-payment penalties and contain many other features intended to protect consumers.

- Federal regulations exempt state housing financing agencies from the QM standard. So, while NIFA loans are not, per se, “QM” as defined by CFPB, NIFA loans are otherwise subject to strong consumer protections, including limitations on excessive fees and clear underwriting standards that ensure consumers have a reasonable ability to repay the loans. Consequently, NIFA loans are acceptable first mortgage products despite being exempt from, and therefore not technically meeting, the QM definition.
- Similarly, loans from USDA-RD program, which are made directly by the Federal government to an individual borrower, particularly those under USDA-RD’s Section 502 Direct Loan Program, are not subject to the QM standard but are acceptable to DED as they also provide similarly strong consumer protections.

10.3.2 INTEREST RATE

Interest rates must be competitive and must NOT be a “Higher Priced” loan as defined by CFPB. Higher Priced loans are those that exceed the Average Prime Offer Rate by more than 1.5% as of the date of the loan's rate lock. Loans can be checked against the Average Prime Offer Rate by visiting the following website: https://ffiec.cfpb.gov/tools/rate-spread.

10.3.3 TERM

Lending products must be fully amortizing 30-year fixed rate loans (or 33 years for USDA direct loans). While some buyers may prefer shorter loans (e.g., 15-year), DED only considers such loans on an exception basis if it determines that the buyer's payment is sustainable and that the use of a shorter-term product does not require additional CDBG-DR assistance compared to a 30-year loan.

10.3.4 LOAN TO VALUE RATIO

The LTV of a buyer's first mortgage cannot exceed 100%. Loan products used must generally allow LTV ratios of at least 95%. While assisted buyers are not required to be approved for loan amounts equal to 95% of the purchase price, buyers who use more restrictive lending products (e.g., those limiting the LTV to 80%) do not receive CDBG-DR assistance toward their purchase if they could otherwise afford the monthly payment on a larger loan. In short, buyers should obtain the largest loan they can reasonably afford, and DED does not further subsidize purchases just to avoid mortgage insurance on higher LTV lending products.

10.3.5 PARTICIPATING LENDER LIST

Applicants **may** develop and maintain a "participating lender list." To be placed on the participating lender list, Applicants should establish a process by which lenders indicate an interest in working with HPP buyers to provide first mortgage financing and have acknowledged HPP program requirements, including those related to acceptable first mortgage financing.

In all cases, individual applicants are free to choose any lender from the participating lender list when seeking their first mortgage and are encouraged to shop around to obtain the best mortgage product for their personal circumstances. Additionally, individual applicants wishing to obtain a first mortgage from another State-licensed lender may do so provided the loan product being offered meets all program requirements.

New lenders can be added to the participating lenders list at any time following an indication of interest, meeting with Applicant staff on program requirements, and acknowledgement of the first mortgage requirements in particular.

10.4 STRUCTURE OF BUYER ASSISTANCE

10.4.1 MAXIMUM ASSISTANCE AVAILABLE

Subject to compliance with the buyer underwriting standards above, the maximum assistance available toward the combination of down payment, closing cost, and direct financing assistance (together referred to as "direct buyer assistance") to any given buyer is $50,000 unless a lower level has been designated based on the Applicant's application to and CDBG-DR funding agreement with DED. While the Action Plan initially stated a higher number, DED has decided to impose a lower limit at this time to maximize the number of households served.

10.4.2 STRUCTURE OF HPP BUYER ASSISTANCE

All HPP Buyer Assistance is provided to buyers in the form of an interest-free deferred payment loan that is due upon any sale or transfer of the property within the loan term, which runs concurrently with the required affordability period. The HPP Buyer Assistance loan is forgiven on a prorated basis over the five-year term of the loan.

During the affordability period, if the buyer sells or otherwise voluntarily or involuntarily transfers title to the property, including transfer as a result of foreclosure, then the direct CDBG-DR assistance to the buyer (i.e., *remaining, unpaid* balance of the loan amount) must be "recaptured" (i.e., repaid to) by the Applicant. However, if the net proceeds of the sale are insufficient to repay the loan, then the entire net proceeds are recaptured by the Subrecipient as full and complete repayment of the loan. If there are no net proceeds, recapture is waived. Any payments collected by an Applicant are Program Income (see ***Section 12.5: Program Income***).

The term "net proceeds" is defined as the sale price less the balance due on superior mortgages and closing costs. In calculating the net proceeds of sale, DED reserves the right to determine whether the sales price is comparable to the sales price in an arms-length transaction for a similar unit and to evaluate the closing costs be charged to seller (i.e., the assisted buyer who is now selling the home) to ensure they are reasonable and customary. Any net sales proceeds in excess of the outstanding HPP Buyer Assistance loan balance are retained by the buyer.

For the note and Deed of Trust, Applicants are required to use standard form templates provided by DED.

10.4.3 HPP HOMEBUYER AGREEMENT

In addition to a mortgage and Note securing the HPP Buyer Assistance, all buyers are required to execute an HPP Homebuyer Agreement with the Applicant. DED provides a standard form template which Applicants must use. The Homebuyer Agreement stands alone from the note and Deed of Trust, is independently enforceable, and applies largely overlapping provisions. In the event the buyer prepays the HPP Buyer Assistance (i.e., second mortgage), the Homebuyer Agreement remains in effect through its term.

10.4.4 PRINCIPAL RESIDENCY

The buyer must agree to maintain the home as their primary place of residence. The property may not be leased, rented, or converted to commercial use, nor may the buyer move from the assisted property, establish residency at another location, and/or allow others to live in the home rent-free. If the buyer does not maintain the home as their principal place of residence, the Applicant, after consultation with DED, may declare a default in the HPP Buyer Assistance loan and/or independently seek to enforce the terms of the Homebuyer Agreement including by requiring the owner move back into, sell the home, or repay the entire HPP Buyer Assistance.

10.4.5 REFINANCING & SUBORDINATION

After providing assistance to eligible homebuyers, DED and its Applicants have ongoing interests in the success of those buyers from the standpoint of both the CDBG-DR program and as a local stakeholder concerned about the impact of foreclosures on residents and neighborhoods. To help prevent future foreclosures and to protect the program's financial investment in assisted-units, subordination of HPP Buyer Assistance liens to future refinancing by assisted buyers are considered under the following circumstances:

- The new loan must be for the sole purpose of improving the rate and/or extending the term of the existing loan and must result in a lowered monthly principal and interest payment for the homeowner. Applicants may not subordinate for "cash out" refinancing. For purposes of this requirement, the new loan may allow the assisted homeowner to finance their closing costs without being considered cash out. Additionally, nominal cash back at closing of less than $500 resulting from last-minute adjustments to payoff figures, closing costs, tax/insurance escrows and the like is permitted without being considered "cash out."
- The proposed new loan must meet all requirements in the First Mortgage Requirements ***Section 11.3: First Mortgage Requirements*** above.
- The proposed new loan must result in a lowered monthly principal and interest payment for the assisted owner.

11 OTHER ADMINISTRATIVE REQUIREMENTS

11.1 REPORTING

DED establishes procedures for Applicants to collect and report data relevant to HUD. At the award and/or project level (as may be appropriate), DED requires Applicants to report on general award progress (e.g., individual sites acquired, house starts, construction completion, marketing activity, and the like).

Additionally, Applicants are required to report on demographic information on all individual applicants/prospective buyers, including those not selected for benefits, including, but not limited to:

- Household income at the time of application/assistance;
- Household income as a percentage of AMI at the time of assistance, as defined by HUD;
- The race, ethnicity, and gender of the head of household;
- The household’s familial status;
- The presence or non-presence of a household member with a disability; and
- The presence or non-presence of a household member who is a veteran.

11.2 RECORDKEEPING

Applicants are to contact DED to obtain an approved electronic record management system utilizing DED’s Activity File Checklist (or similar form supplied by DED). All projects, program activity files, and Applicant information received must be maintained within DED’s system of record.

Consistent with HUD requirements, at minimum, Applicants must maintain all records for at least three (3) years following the “Closeout Date” which is the closeout of DED’s CDBG-DR grant with HUD. It is likely this will be some time after the expiration of the award between DED and funded Applications. DED formally notifies Applicants when the Closeout Date is known. To provide further clarity, DED is providing the following additional expectations for any locally maintained records not otherwise uploaded to DED’s electronic system of record:

- General award records including but not limited to written agreement(s) with DED, financial records, correspondence, local policies and procedures, records related to affirmative marketing or other cross-cutting Federal requirements, and similar records must be retained for at least three (3) years beyond the Closeout Date.

- For ineligible individual applicants, files shall be retained for at least three (3) years beyond the Closeout Date.
- Applicants must keep records of advertisements, flyers, website, public meeting, mailers, or other methods used to market homes, including all affirmative marketing records, for at least three (3) years beyond the Closeout Date.
- Applicants must retain copies of any waiting list, lottery results, or other process used to prioritize and select individual buyers at least three (3) years beyond the Closeout Date.

Additionally, in all cases:

- If any litigation, claim, negotiation, audit, monitoring, inspection, or other action starts the expiration of the required record retention period, records are retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
- If any other applicable state or local requirements, including locally adopted record retention procedures, call for a longer retention period, Applicants must retain records for such longer period.

For further detail regarding policies related to recordkeeping, see ***Chapter 17: Recordkeeping and Data Management.***

11.3 ONGOING MONITORING OF ASSISTED BUYERS

Applicants are required to conduct annual monitoring to ensure that assisted buyers continue to occupy HPP-assisted homes as their primary place of residence.

Buyers are required to cooperate with Applicants annual monitoring efforts by providing a certification and/or other proof of ongoing principal residency as may be requested, at least annually.

Additional information is available in ***Chapter 16: Monitoring and Compliance Plan***.

11.4 ANNUAL MONITORING OF PRIMARY RESIDENCE

Applicants are required to verify occupancy of HPP-assisted units during a five-year affordability period. Homebuyers who do not comply with occupancy requirements during the affordability period are required to pay back the full amount of CDBG-DR direct assistance received. In general, Applicants can meet this obligation as follows:

- Each year either on the anniversary of the closing of the loan or a standard schedule for all such HPP projects, the Applicant sends a letter to the owner (i.e., the DR-assisted household) requesting they provide evidence that the property continues to be owner-occupied (e.g., by providing a copy of their driver's license, voter registration, utility bills, or sworn statement evidencing the owner occupies the property).
- If the owner does not respond within a reasonable timeframe (e.g., 30 days), the Applicant must take other steps to contact the owner (e.g., phone calls, email, etc.) to obtain a response. This may include conducting a "drive-by" physical inspection and/or knocking on the door. If the owner is still not responsive or evidence suggests the assisted buyer no longer occupies the property, the Applicant must advise the owner in writing that they are in violation of their agreement and they have no more than 60 days to return to the home and provide evidence that they have moved back into the property.
    - If the owner moves back within the 60 days, the Applicant must amend the Homebuyer Agreement (along with the Note and Mortgage) and change the date of the affordability period to include the time that the owner was out of compliance.
    - If the owner cannot provide evidence that they have moved back into the home within 60 days, the Applicant must coordinate with DED staff and issue a letter that the owner is in violation of the Homebuyer Agreement and how compliance can be re-established and establishing a further deadline (not to exceed another 60 days) by which compliance must be achieved.
    - If no corrective action is taken within 60 days, after consultation with DED, the Applicant must take legal action to obtain repayment of the full CDBG-DR investment in the project or to compel the owner to reoccupy or sell the property.

11.5 PROGRAM INCOME

Owing to the forgivable nature of the assistance to assisted households, DED does not anticipate the receipt of substantial program income from payoffs during the term of its HUD grant for DR-4420. To the degree a Developer or Subrecipient receives program income (i.e., from the payoff of an assisted buyer's loan resulting from either a sale or non-compliance prior to the end of the affordability period described below) DED requires the Developer or Subrecipient to remit the program income to DED within 30 days of receipt. Additional information is available in ***Chapter 7: Program Income***.

11.6 DED MONITORING AND COMPLIANCE

Throughout the period of performance, DED will conduct regular desktop and on-site monitoring of Successful Applicants as described in ***Chapter 16: Monitoring and Compliance Plan***. The purpose of on-site monitoring visits will include, at minimum, reviews of project records and inspection of the premises, including common areas and residential units. Following project closeout, DED will monitor the project for ongoing compliance with CDBG-DR requirements including, but not limited to, income and rent restrictions or the longer of the Affordability Period or so long as the CDBG-DR loan is outstanding. In all cases, DED reserves the right to conduct site visits at a frequency based on changes to CDBG-DR regulations, DED policy, or based on evidence of compliance deficiencies in a prior monitoring visit.

11.6.1 MONITORING REVIEWS

The monitoring and compliance review process informs reporting to DED and, as applicable, the Nebraska APA and HUD. A monitoring review and report may indicate one or more of the following:

- The performance complied with the requirements of the program;
- Certain findings require corrective actions by the Successful Applicant;
- Concerns about the performance of the projects or activities;
- Observations about efficiencies or items of note; or
- Technical assistance is necessary.

11.6.2 ANTI-FRAUD, WASTE, AND ABUSE

DED does not support or condone the commission or concealment of acts of fraud, waste, and abuse. According to HUD's ***Buying Right CDBG-DR and Procurement: A Guide to Recovery***, Grantees and Subrecipients procuring goods and services with grant funds must follow all applicable statutory and regulatory requirements.[14] All employees are responsible for reporting suspected instances of fraud, waste, and abuse in accordance with ***Chapter 19: Anti-Fraud, Waste, and Abuse.***

DED leverages existing investigative and corrective action within State of Nebraska guidelines, among others, to meet HUD requirements. If fraud, waste, and/or abuse are identified, DED shall pursue investigation, including taking legal action where warranted. If the owner is identified as having conducted activity involving fraud, waste, or abuse, DED may immediately terminate the contract and take further legal action as necessary. To the extent that any substantiated actions

[14] "Key Internal Controls Related to Disaster Recovery Procurement." HUD OIG. Accessed December 9, 2021 via: https://www.hudoig.gov/sites/default/files/2021-03/Key%20Internal%20Controls%20Related%20to%20Disaster%20Recovery%20Procurement.pdf.

violate Federal, State, or local laws, Nebraska officials shall evaluate pursuing appropriate criminal or civil penalties.

11.6.3 FINANCIAL MANAGEMENT

OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200) establish financial management requirements for the CDBG-DR funds. DED will maintain compliance with these requirements, as described by the processes held within ***Chapter 4: Financial Management***.

11.6.4 DUPLICATION OF BENEFITS

Duplication of Benefits (DOB) refers to a situation where assistance is received from multiple funding sources and the total assistance amount exceeds the need for a particular recovery purpose. DED and Successful Applicants must comply with DOB rules and regulations as described in DED's ***Chapter 18: Duplication of Benefits.***

As it applies to the Homeownership Production Program, this means that activities funded through this program cannot be duplicated or matched by other funding sources intended for the same purpose (i.e., consolidating multiple funding sources for homebuyer assistance and/or housing counseling).

11.6.5 AFFIRMATIVELY FURTHERING FAIR HOUSING

The State of Nebraska is required by Federal statute to "affirmatively further fair housing". DED shall work to affirmatively further fair housing by conducting activities as per ***Chapter 11: Affirmatively Furthering Fair Housing***. In alignment with this policy, Subrecipients and Successful Applicants will be provided resources to incorporate affirmative marketing considerations to the implementation process.

11.6.6 RECORDS RETENTION

Recordkeeping must be conducted as set forth by the general requirements set forth in ***Chapter 17: Recordkeeping and Data Management.*** All program activity files and associated data will be maintained within DED's system of record. DED and its Subrecipients and Successful Applicants must retain contract-related documents for at least five (5) years[15] after closeout of the CDBG-DR grant for DR-4420.

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[15] See https://sos.nebraska.gov/sites/sos.nebraska.gov/files/doc/records-management/state-government/7%20-%20Department%20of%20Economic%20Development%20Website.pdf.

12 TOOLKIT DOCUMENTS

In order to facilitate program implementation, in addition to this program guide, DED established a toolkit. This toolkit includes documents, forms, and templates for the state's CDBG-DR program generally and the HPP program specifically. Such documents help the state, its subrecipients and Successful Applicants, and other stakeholders work within the policies and procedures of the program and set expectations for successful outcomes. These documents include, but are not limited to, those listed below.

Homeownership Production Program Toolkit List:

- Annual Occupancy Certification
- Buyer Agreement
- Deed of Trust Release Template
- Developer Note/Deed of Trust Template
- First Deed of Trust Certification
- Income Determination Form
- Note/Deed of Trust
- Second Position Deed of Trust Template
- Payment Request Template
- Proforma Standard Template
- Process Flowchart
- Program File Checklist
- Project File Checklist
- Seller Notice/ Seller Certification