

ARTICLE 20:09
HOUSING DEVELOPMENT AUTHORITY
CHAPTER 20:09:26
HOUSING INFRASTRUCTURE FINANCING PROGRAM

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20:09:26:01. Definitions. Terms used in this chapter mean:

(1) "Authority," the South Dakota Housing Development Authority;

(2) "Board," the board of commissioners of the authority;

(3) "Housing infrastructure fund," a fund authorized pursuant to SDCL chapter 11-15 and administered by the authority for the purpose of making loans and grants for housing infrastructure projects;

(4) "Housing infrastructure program funding," a grant, a loan, or both a grant and a loan, from the housing infrastructure fund;

(5) "Housing infrastructure project," the installation, replacement, upgrade, or improvement of public infrastructure for the support of a single-family or multi-family housing project;

(6) "Political subdivision," any association, authority, board, commission, committee, council, task force, school district, county, city, town, township, local government entity, or agency of the state of South Dakota that is created or appointed by statute, ordinance, or resolution and is authorized to exercise any sovereign power derived from state law;

(7) "Public infrastructure," as defined in SDCL 11-15-1;

(8) “Total project cost,” the total cost of a housing infrastructure project; and

(9) “Written agreement,” the agreement between the applicant and the authority setting forth the terms and conditions of the housing infrastructure project and the housing infrastructure program funding.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:02. Eligibility. To be eligible for housing infrastructure program funding, the applicant must:

(1) Be a for profit entity, nonprofit entity, tribal government, housing authority, local economic development corporation, or political subdivision of the state of South Dakota or agency of that political subdivision;

(2) Submit an application for housing infrastructure program funding to the authority; and

(3) Comply with the requirements, conditions, restrictions, and limitations imposed by this chapter and SDCL chapter 11-15.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:03. Ineligible projects. A housing infrastructure project not requesting funding from the American Rescue Plan Act of 2021, Pub. L. No. 117-2, as in effect on December 29, 2022, is not eligible for housing infrastructure program funding if construction on the housing infrastructure project began before February 1, 2023.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:04. Application form. The authority shall prescribe the application form for housing infrastructure program funding and shall publish the form on the authority's website. The form must require the applicant to provide the information and documentation necessary for the authority to evaluate the proposed housing infrastructure project based on the criteria established in § 20:09:26:06. A submitted application must include a market study demonstrating the need for the proposed housing infrastructure project, preliminary engineering plans approved by an engineer licensed in South Dakota, and an affidavit from the engineer stating that the total project cost is reasonable based on current market conditions and that the components included in the total project cost are necessary and allowable under this chapter and SDCL chapter 11-15. The market study may not be dated more than three years prior to the date of the application.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:05. Consideration of applications. The authority shall consider a complete application for housing infrastructure program funding in the order in which the applications are received by the authority. The authority is not required to consider an incomplete application.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:06. Criteria. The authority shall evaluate an application for housing infrastructure program funding based on the following criteria:

(1) The need for the proposed housing infrastructure project as demonstrated by a market study;

(2) The impact of the housing infrastructure project on the availability of housing in the local area;

(3) The existence of ongoing or proposed housing infrastructure projects in the community;

(4) The experience, management record, capacity, and financial status of the applicant, as applicable;

(5) The amount of housing infrastructure program funding requested by the applicant;

(6) The financial feasibility of the housing infrastructure project;

(7) The applicant's control of the site of the housing infrastructure project and the readiness of the applicant to proceed with construction;

(8) Whether the applicant and the proposed housing infrastructure project comply with applicable design standards, ordinances, regulations, and law;

(9) The suitability of the location of the housing infrastructure project for residential purposes;

(10) The input provided by the local governing body and community stakeholders;

(11) The availability of an adequate water supply, water treatment facilities, and wastewater treatment facilities to support the public infrastructure; and

(12) Other factors relevant to the authority in making a sound decision to award housing infrastructure program funding to applicants.

If the applicant applies for grant funding, the authority must also evaluate the application to determine what impact the grant will have in reducing purchase prices for homebuyers or rental costs to tenants in the local area.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:07. Consultation. Subject to any limitations under federal or state law, the authority may share information regarding the applicant, the application, or the housing infrastructure project, and may consult with the applicable political subdivision,

with state agencies, or with any outside party contracted by the authority for program administration, in order to evaluate the application and monitor the housing infrastructure project.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:08. Approval by local governing body. An applicant shall submit with the application a resolution of the applicable political subdivision stating:

(1) The political subdivision has approved the proposed housing infrastructure project;

(2) The project satisfies the requirements of the political subdivision;

(3) The political subdivision shall own, maintain, or provide the public infrastructure to be developed in the project; and

(4) The political subdivision has the capacity to support the public infrastructure to be developed in the project.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:09. Location of projects. An eligible housing infrastructure project that is to be owned or maintained by a municipality must be located within the municipality's

corporate limits, unless there is a plan to annex into the municipality's corporate limits the real estate where the public infrastructure is located. The authority may require the applicant to return housing infrastructure program funding if the annexation does not occur before the later of:

(1) The date on which the applicant commences construction of the housing infrastructure project; or

(2) The date on which the applicant and the authority enter into the written agreement.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:10. Funding limitations. The amount of housing infrastructure program funding that the authority may award to an eligible applicant is limited, based on the documented number of eligible housing units that the proposed public infrastructure supports, as follows:

(1) Up to ten thousand dollars per multifamily rental housing unit; and

(2) Up to twenty-five thousand dollars per single family lot.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:11. Use of funding. Housing infrastructure program funding may not be used to finance:

- (1) The acquisition of real property that is not developed as public infrastructure;
- (2) The construction of any permanent physical structure or building other than public infrastructure; or
- (3) Any debt of the applicant.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:12. Total project cost. The total project cost may include the direct costs associated with:

- (1) The purchase of real property to be developed as public infrastructure and housing;
- (2) Necessary site development and improvements;
- (3) Construction or acquisition of temporary structures and works necessary for the operation and protection of the housing infrastructure project;
- (4) Fees for services;
- (5) Approved in-kind contributions; or
- (6) Any other cost approved by the board.

The total project cost may not include any costs associated with the construction of any permanent physical structure or building other than public infrastructure or any costs associated with the acquisition of real property not developed for housing.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:13. Applications for ARPA funding. An applicant may only apply for funds from the American Rescue Plan Act of 2021, Pub. L. No. 117-2, as in effect on December 29, 2022 (ARPA), if the housing infrastructure project is eligible for funding under ARPA and related federal regulations, and the applicant and the housing infrastructure project comply with all applicable federal laws and regulations.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:14. Approval -- Conditional commitment -- Written agreement. The board shall approve or deny an application based on the criteria. If an application is approved by the board, the authority must issue a conditional commitment to the applicant setting forth the amount of the housing infrastructure program funding, the terms and conditions of the award, and any additional documents and information to be provided by the applicant. The applicant shall enter into a written agreement with the authority stating the terms and conditions of the housing infrastructure program funding. If the applicant fails to enter into a written agreement with the authority by the deadline stated in the

conditional commitment, the authority may either grant an extension or revoke the conditional commitment.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:15. Modification of authority financing terms. The authority may amend the amount of the housing infrastructure program funding at any time before closing, based on the final itemization of the total project cost. The executive director of the authority may approve and authorize an increase in the housing infrastructure program funding in an amount not to exceed five percent of the initial amount if the executive director finds the increase is justified by an increase in costs applicable to the public infrastructure and is necessary or desirable for the successful construction and operation of the public infrastructure.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:16. Maturity and interest rate. The maturity of a loan may not be more than ten years from the date of loan closing, with payments amortized over not more than twenty-five years. The authority shall establish the standard interest rate for loans from time-to-time and publish the rate on the authority's website. The interest rate may not exceed the applicable federal rate published by the Internal Revenue Service pursuant to

26 U.S.C. § 1274(d), in effect on May 11, 2023, as of the date of the board's approval of an application.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:17. Time restrictions on applicant. The authority may require the applicant to return housing infrastructure program funding if the applicant fails to commence construction on the housing infrastructure project within nine months of the date of the written agreement. The authority may agree to an extended construction commencement date as a term of the written agreement.

The authority may require the applicant to return housing infrastructure program funding that has not been expended by the applicant within two years of the date of the written agreement.

The executive director of the authority may authorize an extension of up to six months to the established construction commencement date or the date by which funding must be expended, if the executive director finds that mitigating circumstances prevent the applicant from meeting the deadline and the applicant has made a diligent effort to meet the deadline.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:18. Payment and performance bonding -- Letter of credit. An applicant shall ensure compliance with the applicable political subdivision's requirements for contractor bonding. If the political subdivision does not have contractor bonding requirements, the contractor, before commencing any work, must furnish surety in an amount not less than the contract price to the applicant, for the faithful performance of the contract, with the additional obligation that the contractor promptly pay all persons supplying the contractor with labor or material in the prosecution of the work provided for in the contract.

In lieu of a payment and performance bond, the applicant may obtain a letter of credit in the amount of the housing infrastructure program funding. The letter of credit must:

- (1) List the authority as the named beneficiary;
- (2) Be irrevocable and unconditional: and
- (3) Be issued by a federally insured financial institution.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:19. Disbursements. In order to receive a periodic disbursement of housing infrastructure program funding, the applicant must:

- (1) Enter into a written agreement;

- (2) Remain in compliance with the written agreement and applicable law; and
- (3) Provide any documents required by the authority.

The authority may not periodically disburse to the applicant an amount of housing infrastructure program funding, cumulative with prior disbursements, that exceeds one-third of the accumulated total project cost of the housing infrastructure project to date. The authority may not disburse the final ten percent of the total amount of the housing infrastructure program funding awarded to the applicant until after the housing infrastructure project is complete and the applicant has submitted to the authority lien waivers for all work performed and all other documentation required by the authority.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:20. Access and documents. An applicant shall grant the authority reasonable access to the housing infrastructure project site and to the applicant's records. An applicant shall provide any information or documents required by the authority from time to time, for the purpose of verifying compliance with applicable law and the terms and conditions of the written agreement.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:21. Waiver. An applicant unable to meet one or more of the requirements of this chapter may submit a waiver request with supporting documentation to the authority. The authority may grant or deny the waiver request based on the information submitted by the applicant. The authority may not grant a waiver with respect to any requirement, condition, restriction, or limitation imposed by SDCL chapter 11-15.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.