

CHAPTER 12:22:03

VALUE-ADDED AGRICULTURE SUBFUND

Section

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12:22:03:1 Definitions. Terms used in this chapter mean:

(1) "Applicant," any natural person or entity that has completed a VASF funding application;

(2) "Board," the Value Added Finance Authority;

(3) "Recipient," an applicant who has been awarded funds from the VASF;

(4) "SDDA," the South Dakota Department of Agriculture;

(5) "Project," the new business or expansion of an existing business, or any development activities that will encourage or enhance agricultural development, that is eligible for funds from the VASF;

(6) "Study," any study, including any associated business plan; or marketing study, including any associated business plan; or land use study, including any associated business plan; to be conducted in connection with the project and funded from the VASF. The term, "study," does not include research and development study; or advertising, travel, salaries, consultant expense, or any other work associated with an equity drive;

(7) "VASF," the value-added agriculture subfund of the rural rehabilitation fund created by SDCL 38-6-1.

(8) "VAFA," the Value Added Finance Authority.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-13

12:22:03:2. Eligibility. Any natural person or entity whose project meets the following criterion may apply for VASF funding:

(1) The food, feed, and fiber products and uses of the project utilize South Dakota agricultural products and add to the value of agricultural products; or

(2) Will directly or indirectly benefit farmers and ranchers or agricultural related processing businesses; including providing access to new markets.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-16

12:22:03:3. Application requirements. Application forms shall be provided by SDDA, and shall be completed and signed before being presented to VAFA. SDDA shall screen all applications for completeness and eligibility upon receipt. No incomplete or ineligible applications may be presented to the board. The VAFA Board may charge an application fee to be determined annually on July 1. At a minimum the application will include:

(1) Applicant's name and address; including all owners, investors, and management of the project; including resumes and references;

(2) Articles of incorporation and bylaws or other legal documents or agreements that describe the legal operation or structure of the business or of an intent to form a legal entity upon the award of VASF funding;

(3) An executive summary, summarizing the essential elements of the project, including narrative and funding request;

(4) Project narrative and how it complies with the eligibility of the VASF; including a detailed budget of how all funds will be spent;

(5) Any other information as requested by the board in order to make a sound and prudent funding decision.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-16

12:22:03:04. Funding amount. Annually by July 1, VAFA may determine a percentage of the fund which will be specifically designated for political subdivisions and how that designation amount will be administered. The remainder of the VASF funding unless waived by a majority of the members of the board present and voting, pursuant to this chapter may not exceed \$100,000 for any one project.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-14

12:22:03:05. Uses of funds. Funding must be for project specific requests; including consultant contracts, attorney fees, down payment, strategic planning, supplies, and necessary services for studies and/or business planning, land use studies, and for other purposes not listed in this section as may be individually approved by the board. Funding may not be used to finance or refinance existing debt; for the purchase of land; for the construction, purchase, or installation of equipment; or for other fees, services, and costs related to the construction of the project. No more than once per fiscal year, the board may commission a study and pay the entire cost of the study from VASF if it determines that doing so may avoid duplication of effort or will serve an unmet need. The cost to the VASF of a board-commissioned study may not exceed \$100,000.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-14 and 38-6-16

12:22:03:06 Factors for board action. When making a decision on an application, the board may, in addition to other factors necessary to make a prudent funding decision, consider the following:

(1) The concept is new technology or a new application of existing technology with a reasonable assurance that the concept will work;

(2) Preliminary market and feasibility research has been conducted by the applicant or others, and there is a reasonable assurance of a potential market;

(3) The applicant has demonstrated the ability to manage the commercialization of the concept and has prepared a commercialization development plan;

(4) There are favorable recommendations for the project from local economic development groups, university-based technical specialists, or other qualified service providers;

(5) There are adequate references available to determine the applicant's qualifications and background;

(6) The applicant demonstrates a personal commitment to the project;

(7) The capacity of the applicant to repay a loan if awarded, including the amount of the loan, the economic feasibility of the project and product; the ability of the applicant to service the debt from cash flow of operations, capital, or collateral; the review of the financial status of the project, business plan, and applicant; the satisfaction of engineering, legal and environmental regulations; and the availability of necessary utilities;

(8) The amount, terms, and conditions of the loan, if awarded, and compatibility with the needs of the business and the VASF;

(9) There is an adequate and realistic budget projection;

(10) Compatibility with economic development plans of the area and state; and

(11) The balance remaining in the VASF.

(12) The project follows or will adhere to all environmental laws and regulations.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-16

12:22:03:07. Board action on applications. Within 30 days after SDDA receives a completed application, the board shall approve the application as requested, disapprove the application for modification, approve the application contingent on realization of certain defined conditions, or disapprove the application. The board may extend the time for consideration of an application for up to 50 additional days by advising the applicant of the extension.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-14 and 38-6-16

12:22:03:08. Acceptance and time restrictions of applicant. The applicant must comply with any conditions required by the board before the application is approved. Within sixty days after official funding approval by the board, the applicant must accept the approval in writing or the approval is void. Within six months after written acceptance, the applicant must commence the project. The official funding approval will lay out the disbursement schedule and repayment terms, if any, of the approved funding.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-16

12:22:03:09. Review of financial status. After the funding is approved but before the funding is disbursed, the board or SDDA may conduct an overall review of the applicant's financial status. This review may include an analysis of all assets and liabilities and an analysis of the applicant's ability to repay the loan, if necessary, and comply with the official funding approval. The board may withdraw the commitment at any time if a material adverse change occurs.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-16

12:22:03:10. Funding documents. After an application for funding is approved, the board shall execute a funding agreement with the recipient. The official funding agreement shall contain the rights and responsibilities of the parties and the terms and conditions of the funding. The requirements to secure funding shall be included in the agreement.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-16

12:22:03:11. Reporting. The recipient shall submit to the board quarterly reports describing progress on the project, including compliance with the time line and budget contained in the application. Any material deviation from any condition imposed by the board or in the funding agreement may result in the withholding of further funding or the declaration of a default. The recipient shall submit a final written report describing the work performed, results obtained, and potential economic impact within 90 days of completion of the project.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-16

12:22:03:12. Inspection by the board and retention of records. All financial documents, books, receipts, orders, expenditures, electronic data, and accounting procedures and practices of the borrower are subject to examination by or for the board at any time for three years following the completion of the study or project or for the life of the loan, if applicable, whichever period is greater.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-16

12:22:03:13. Maturity and interest rate. If a loan is made, unless different terms are established upon the affirmative vote of two-thirds of the members of the board present and voting, the maturity date of the VASF funding may not be more than five years from the date of the final disbursement of loan proceeds, with regular payments amortized over not more than 10 years from the date of final disbursement of loan proceeds. The first payment shall be due one year from the date of the final disbursement of loan proceeds. The borrower may request an extension of the date of the first payment, but the extension will not act to extend the final maturity date. The application for an extension must be submitted by the monthly loan application deadline prior to the first payment date.

The standard interest rate for VASF loans shall be established by the board from time-to-time. The board may deviate from the standard interest rate based on the economic impact of the project, risk, and other prudent lending criteria.

The board shall consider the following when establishing the standard interest rate:

- (1) State and national market interest rates;
- (2) State and national economic conditions;
- (3) The solvency and balance of the VASF; and
- (4) Other economic or business information necessary to fulfill the board mission and to develop and promote production agriculture and value-added agricultural products.

The borrower is responsible for arranging other financing when the VASF loan is due. If the borrower is unable to obtain financing, the borrower may apply for an extension of the loan by the board at an interest rate and term established by the board. The borrower shall submit any application for an extension by the monthly loan application deadline prior to the loan maturity date.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-14 and 38-6-16

12:22:03:14. Loan forgiveness. Upon the recipient's written petition and a showing of good cause, the board may forgive all or part of a VASF loan upon terms and conditions established by the board. When determining whether to forgive all or any part of a VASF loan, the board shall consider the following:

- (1) Whether the study deemed the project to be feasible;
- (2) Whether the borrower has proceeded or intends to proceed with the project;
- (3) Whether the borrower has acted in conformity with the terms of the loan agreement and applicable law, including this chapter; and
- (4) Whether the borrower has acted in good faith in connection with the application, the project, the loan, and the decision not to proceed with the project.

A petition for loan forgiveness shall be accompanied by the original and all copies of the study and related documents, including any related business plan. If the loan is forgiven in whole or in part, all right, title, and interest in the study, including the exclusive right to use the study and any business plan associated with the study, becomes the property of the board.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-14 and 38-6-16

12:22:03:15. Default. If the borrower violates any of the terms of the funding agreement, the other loan documents, this chapter, or other applicable law, the board may declare the funding in default. Upon default, the board may do one or more of the following:

(1) Declare the entire principal amount then outstanding and interest accrued thereon immediately due and payable;

(2) Increase the interest rate to the default rate established in the loan documents;

(3) Take possession of the study or other collateral;

(4) Repair, maintain, and operate the collateral, or sell, lease, or otherwise dispose of the collateral to another person or entity; or

(5) Take any other action considered appropriate by the board to protect the interest of the board and the VASF.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-16

12:22:03:16. Delegation of administrative functions. The SDDA shall perform the administrative functions of the creation, processing, and review of funding applications; the preparation and negotiation of agreements; the review of the financial status of an applicant; loan servicing; and other functions necessary to expedite and assist it in the performance of its duties. Notwithstanding any assurance, guarantee, communication, or representation made to the contrary, there is no commitment of the VASF without specific authorization by the board. Only the board may make an award from the VASF to an applicant. The board may make changes and set policy as needed.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-14

12:22:03:17. Official forms. The board may from time-to-time establish official forms of documents, including a loan agreement, promissory note, mortgage, security agreement, employment agreement, and such other documents, certifications, and agreements as the board deems necessary and appropriate. SDDA may consent on behalf of the board on a case-by-case basis to any non-substantive modification or to any modification necessary to conform the official forms to the terms of the funding as established by the board.

Source:

General Authority: SDCL 36-6-16

Law Implemented: SDCL 38-6-14

12:22:03:18. Pre-existing loans. Any loan made prior to July 1, 2013, shall be administered by SDDA based upon the loan documents and law in effect at the time the loan was approved.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-14

12:22:03:19. Conflict of interest. No member of the board or SDDA staff may participate in or vote upon a decision of the board relating to an application or loan servicing action relating to a borrower in which that individual has a direct personal or financial interest.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-14

12:22:03:20. Confidentiality. The board and VAFA shall, to the extent it constitutes or contains trade secrets or commercial or financial information relating to the operations of an applicant or borrower, maintain as confidential any documents, materials, information, or data

received or generated by the board or VAFA in connection with a proposed or pending application for a VASF loan or an existing VASF loan. If requested by the applicant, the fact that an application has been proposed or is pending shall be maintained as confidential until such time as the application is presented to the board for approval.

Source:

General Authority: SDCL 38-6-16

Law Implemented: SDCL 38-6-14