

## CHAPTER 12:22:02

### VALUE ADDED AGRIBUSINESS RELENDING PROGRAM

#### Section

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**12:22:02:01. Definitions.** Terms used in this chapter mean:

(1) "Agency," the Rural Business Development Program office in the South Dakota state office of the United States Department of Agriculture, or its successor;

(2) "Agricultural production," the cultivation, production, growing, raising, feeding, housing, breeding, hatching, or managing of crops, plants, animals, or birds, either for fiber, food for human consumption, or livestock feed;

(3) "Applicant," a natural person, partnership, limited liability partnership, joint venture, corporation, limited liability company, or other entity that has completed a VAARP application for a loan from the VAARP fund;

(4) "Board," the board of directors of the South Dakota Value Added Finance Authority;

(5) "Borrower," an applicant who has been awarded a loan from the VAARP fund;

(6) "Equity," capital that has no guaranteed or mandatory return which must be paid out in any event, has no definite timetable for repayment of the capital investment, and may not be withdrawn at the contributor's option without the permission of the superior debt holders;

(7) "Federal discount rate," the discount rate established by the United States Federal Reserve Board of Governors;

(8) "IRP," the Intermediary Relending Program revolving loan fund created through an Intermediary Relending Program loan from the United States Department of Agriculture;

(9) "Preliminary design stage," that portion of the project associated with market research studies identifying the project scope and need, compilation of the business plan, written initial cost estimates, written site options and description, and the commitment of the regulated lender;

(10) "Prime rate," the New York prime rate of interest, as published in the "Money" section of the Wall Street Journal;

(11) "Rural area," all territory in South Dakota that meets the United States Department of Agriculture's definition of a rural area;

(12) "Total project costs," the direct costs associated with the purchase of land, necessary site development and improvements, construction or acquisition and remodeling of buildings and works necessary to the operation and protection of the project, purchase and installation of machinery and equipment, fees for services, approved in-kind contributions, and adequate financing of working capital;

(13) "VAARP," the value-added agribusiness relending program; and

(14) "VAFA," the South Dakota Value Added Finance Authority.

**Source:** 28 SDR 44, effective October 2, 2001; 42 SDR 14, effective August 10, 2015.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:02. Eligibility requirements.** To be eligible for a loan under this chapter, an applicant must satisfy the following requirements:

- (1) Applicants may be individuals, public or private organizations, or other legal entities with the necessary power and authority to incur the debt and carry out the purpose of the loan;
- (2) The project must be located in a rural area;
- (3) The project must directly or indirectly benefit South Dakota farmers or ranchers;
- (4) The applicant must be unable to finance the project from its own resources or through commercial credit or other federal, state, or local programs upon reasonable rates and terms; and
- (5) No individual applicant or the principal officers or directors of an applicant other than an individual, nor the immediate family of any such individual, officer, or director, may hold any legal or financial interest or influence in the VAFA. Neither the VAFA nor its principal officers nor their immediate family may hold any legal or financial interest or influence in the applicant.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:03. Application requirements.** Application forms shall be provided by the VAFA and must be completed and signed before an application is presented to the board.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:04. Loan amounts.** The total of all loans to any borrower may not exceed the lesser of:

- (1) \$250,000; or
- (2) Seventy-five percent of the total project cost.

No more than 25 percent of the VAARP loan fund may be used for loans that exceed \$150,000.

**Source:** 28 SDR 44, effective October 2, 2001; 42 SDR 14, effective August 10, 2015.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:05. Equity contribution.** An applicant must provide an equity contribution of a minimum of ten percent of the total project cost. In-kind contributions and completed work may be applied toward the equity contribution and total project cost if, in the judgment of the VAFA and the agency, such in-kind contributions and work completed contribute sufficiently to the current project. The equity requirement may be waived by a two-thirds vote of the VAFA, with the approval of the agency.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:06. Permissible uses of loan proceeds.** VAARP loan proceeds must be used for community development projects, establishment of new businesses, expansion of existing businesses, creation of employment opportunities or saving existing jobs, and add value to South Dakota agricultural commodities through further processing or marketing. Such uses may include:

- (1) Business and industrial acquisitions if the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities;
- (2) Business construction, conversion, enlargement, repair, modernization, or development;
- (3) Purchase or leasing of land, and the development thereof, including easements, rights-of-way, or buildings;
- (4) Purchase of equipment, leasehold improvements, machinery, or supplies;
- (5) Pollution control or abatement;
- (6) Transportation services;
- (7) Start-up operating costs and working capital;
- (8) Interest during the period before the project becomes operational, but not to exceed three years;
- (9) Feasibility studies;
- (10) Debt refinancing, under the following conditions:

(a) The VAFA shall make a complete review to determine whether the loan will restructure debts on a schedule that will allow the borrower to operate successfully and pay off the loan;

(b) Refinancing loans are allowed only if VAFA determines that the project is viable and refinancing is necessary to create new or save existing jobs or create or continue a needed service; and

(c) On any request for refinancing of existing secured loans, the VAFA will require, at a minimum, the previously held collateral as security for the loans and may not pay off a creditor in excess of the value of the collateral;

(11) Revolving lines of credit, if:

(a) No more than 25 percent of VAARP loan fund may be committed to or in use for revolving lines of credit at any time;

(b) All borrowers receiving revolving lines of credit are required to reduce the outstanding balance of the revolving line of credit to zero at least once on or before each anniversary of the making of the loan;

(c) No revolving line of credit loan exceeds the limits established in § 12:22:02:04;

(d) All revolving line of credit loans have a specific final due date, not to exceed a term of two years; and

(e) The VAFA receives the agency's written authorization to use the IRP revolving fund for revolving lines of credit.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:07. Impermissible uses of loan proceeds.** The borrower may not use the proceeds for any of the following purposes:

- (1) Assistance in excess of what is needed to accomplish the purpose of the project;
- (2) Distribution of payment to the owner, partners, shareholders, or beneficiaries of the borrower or members of their families if such persons will retain any portion of their equity in the borrower;
- (3) Charitable institutions that would not have revenue from sales or fees to support the operation and repay the loan, churches, organizations affiliated with or sponsored by churches, and fraternal organizations;
- (4) A loan to an applicant which has an application pending with or loan outstanding from another intermediary involving an IRP revolving fund if the IRP revolving fund loans would exceed the limits established in § 12:22:02:04;
- (5) Agricultural production;
- (6) The transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities;
- (7) Community antenna television services or facilities;
- (8) Any illegal activity;
- (9) Any project that is in violation of either a federal, state, or local environmental protection law or regulation or an enforceable land use restriction unless the assistance given will result in curing or removing the violation;
- (10) Lending and investment institutions and insurance companies; or
- (11) Golf courses, race tracks, or gambling facilities.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:08. Factors for action by VAFA.** The VAFA, in making a decision on an application, may, in addition to other factors necessary to make a sound loan decision, consider the following:

- (1) Program impact factors:
  - (a) Population of the community where the project is to be located;
  - (b) Amount of agricultural products used;
  - (c) Number of jobs created for low-income persons and displaced farm families;
  - (d) Amount of loan requested;
  - (e) Net economic effect of increasing or stabilizing the economy on the community, area, and state;
  - (f) Competitive effect on existing businesses;
  - (g) Support of the public entities of the community and area;
  - (h) The amount of the owner's equity contributed to the project;
  - (i) The effect of the project on the environment, health, and safety of the people in the community and state;
  - (j) Compatibility with economic development plans of the area and state;
  - (k) Potential for creating quality jobs and growth of those jobs;
  - (l) Payroll pay structure; and
  - (m) Employee benefit package;
  
- (2) Business feasibility factors;
  - (a) The potential success of the business;
  - (b) The character, experience, management record, and background of the applicant;
  - (c) The capacity of the applicant to repay the loan. In determining the capacity of the applicant, the VAFA shall consider the following:
    - (i) The amount of the loan;
    - (ii) The economic feasibility of the project and product;
    - (iii) The ability of the applicant to service the debt from cash flow of operations, capital, or collateral;
    - (iv) The review of financial status of the project, business plan, and applicant;
    - (v) The satisfaction of engineering standards, legal requirements, and environmental regulations; and
    - (vi) The availability of necessary public utilities;
  
  - (d) The total capitalization of the project, which includes all capitalization subordinated to VAARP;
  - (e) The terms and conditions of the loan and their compatibility with the needs of the business and VAARP; and
  - (f) The availability of sufficient unencumbered collateral to secure the interests of VAARP.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:09. Action by VAFA on applications.** Within 60 days after the VAFA receives a completed application, the VAFA shall either approve the application as submitted, approve the application with conditions, or disapprove the application. The VAFA may extend the time for consideration of an application for up to 50 additional days by advising the applicant of the extension in writing or by telephone.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:10. Reservation of right to make loan.** If the VAFA approves the loan application, the application shall then be sent to the agency for approval. Except as provided in this section, no loan agreement may be made unless approved by the agency. If the agency rejects a loan application, the VAFA may approve the loan from VAFA funds that are not subject to an agreement between the VAFA and the agency if the loan otherwise complies with this chapter.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:11. Acceptance by applicant -- Time restrictions.** Within six months after the official loan approval by the VAFA and the agency, the applicant must accept the approval in writing or the approval may be withdrawn at the discretion of the VAFA. Within six months after written acceptance, the applicant must begin the project. Final disbursement of the loan proceeds must be made within one year after approval by the VAFA, unless the VAFA pursuant to prior written consent extends the time. The request for extension must be submitted at a regularly scheduled meeting before the expiration of the six-month period. The VAFA shall decide the length of the extension period.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:12. Review of financial status.** After the VAFA and the agency approve the loan but before the loan agreement is entered into, the VAFA 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 ability of the applicant to honor the loan commitments. If the applicant's financial condition has materially changed since the approval of the loan, the VAFA may disapprove the loan or modify the terms of the loan.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:13. Loan agreement.** After the application is approved by the VAFA and the agency, and after the financial status of the applicant is reviewed, the VAFA shall execute a loan agreement with the borrower. The loan agreement shall contain the rights and responsibilities of the parties and the terms and conditions of the loan. Any requirements for loan security shall be included in the loan agreement. Loans may be secured or unsecured. Secured loans may be secured by liens on the interest of the borrower in real or personal property, tangible or intangible property, easements, rights-of-way, water rights, leasehold interest used in connection with the project, and any other assets of the borrower considered necessary by the VAFA to adequately collateralize the loan.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:14. Maturity and interest rate.** In no event may the maturity of the loan be more than 10 years, nor may regular payments be amortized over more than 20 years. The VAFA shall match the term with the useful life of the collateral securing the loan. The interest rate shall be fixed for the term of the loan. The interest rate may not exceed the prime rate and may not be less than the federal discount rate, as published on the date of approval. The borrower is responsible for arranging other financing, if necessary, when the note comes due. If the borrower is unable to obtain financing, the borrower may apply before the loan due date for an extension of the loan by the VAFA at an interest rate and for a time period to be set by the VAFA.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:15. Reporting requirements for borrower.** The borrower shall submit to the VAFA annually a report containing the following information:

- (1) An employment report;
- (2) The amount of agricultural products used in the business and the amount of the product that is exported from the state;
- (3) The number of jobs for low-income persons and displaced farm families;
- (4) Financial statements in a form acceptable to the VAFA as specified in the loan authorization document; and
- (5) Other information as requested by the VAFA. The VAFA may require that the financial statements be compiled, reviewed, or audited by an independent accountant at the expense of the borrower.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.



**12:22:02:16. Inspection of project by VAFA -- Retention of records.** During the term of the loan, the VAFA may inspect construction, inspect the operation of the project, and request the borrower to provide accounting records, payments, and invoices to ensure compliance with the terms of the loan agreement. The borrower shall retain accounting and tax records for the term of the loan or for a period of three years, whichever is longer. The VAFA may contract for project monitoring and servicing during the planning, construction, and operation of the business and project.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:17. Default on loan agreement.** If the borrower violates any of the terms of the loan agreement, the VAFA may place the borrower in default. Upon default, the VAFA may do one or more of the following:

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

(2) Take possession of or title to the project and its facilities; repair, maintain, operate, sell, lease, or otherwise dispose of the project and its facilities to another entity; and charge the account of the borrower for expenses for repair, maintenance, and operation of the project and other expenses necessary to cure the cause of the default;

(3) Take any other action considered appropriate by the VAFA to protect the interest of the VAFA and agency;

(4) Exercise any rights of a creditor under the South Dakota uniform commercial code or any other statute; and

(5) Enforce any remedies agreed to in the loan agreement executed between the borrower and the VAFA.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.

**12:22:02:18. Interim financing.** Interim financing is not refinancing of existing debt. The VAFA may require that the borrower use a commitment for a VAARP loan to secure interim financing from a regulated lender. The VAFA shall satisfy the interim financing loan in accordance with the terms of the interim financing loan agreement upon certification of completion of the project in accordance with the VAARP commitment.

**Source:** 28 SDR 44, effective October 2, 2001.

**General Authority:** SDCL 1-16E-24.

**Law Implemented:** SDCL 1-16E-8.