

CHAPTER 20:09:26

HOUSING INFRASTRUCTURE FINANCING PROGRAM

Section

- 20:09:26:01 Definitions.
- 20:09:26:02 Eligibility for housing infrastructure funding.
- 20:09:26:03 Ineligible housing infrastructure projects.
- 20:09:26:04 ~~Application~~ Housing infrastructure application form.
- 20:09:26:05 Consideration of housing infrastructure funding applicants.
- 20:09:26:06 Criteria for housing infrastructure funding.
- 20:09:26:07 Consultation.
- 20:09:26:08 Approval of housing infrastructure project by local governing body.
- 20:09:26:09 Location of housing infrastructure projects.
- 20:09:26:10 ~~Funding~~ Housing infrastructure funding limitations.
- 20:09:26:11 Use of housing infrastructure funding.
- 20:09:26:12 Total housing infrastructure project cost.
- 20:09:26:13 ~~Applications~~ Housing infrastructure project applications for ARPA funding.
- 20:09:26:14 Approval of housing infrastructure funding -- Conditional commitment --
Written agreement.
- 20:09:26:15 Modification of ~~authority financing terms~~ housing infrastructure funding.
- 20:09:26:16 Maturity and interest rate of housing infrastructure project loan.
- 20:09:26:17 Time restrictions on housing infrastructure funding applicant.
- 20:09:26:18 Payment and performance bonding for housing infrastructure projects -- Letter
of credit.
- 20:09:26:19 Disbursements of housing infrastructure funding.

20:09:26:20 Access and documents.

20:09:26:21 Waiver.

20:09:26:22 School district funding application form.

20:09:26:23 Criteria for school district funding.

20:09:26:24 School district funding approval -- Written agreement.

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 and making loans to a school district adjoining a federal military installation;
- (4) "Housing infrastructure ~~program~~ funding," a grant, a loan, or both a grant and a loan, from the housing infrastructure fund for a housing infrastructure project;
- (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) "Indian tribe," as defined in SDCL 2-14-2;
- (7) "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;
- (8) "Public infrastructure," as defined in SDCL 11-15-1;
- (9) "School district funding," a loan from the housing infrastructure fund for a school district as described in SDCL 11-15-8;
- (10) "School district project," the construction or expansion of a school building, as defined in SDCL 34-44-2;
- ~~(9)~~ (11) "Total project cost," the total cost of a housing infrastructure project; and
- ~~(10)~~ (12) "Written agreement," the contract between the applicant and the authority setting forth the terms and conditions of ~~the housing infrastructure project and the housing infrastructure program~~ funding or the school district funding.

Source: 49 SDR 125, effective July 3, 2023; 51 SDR 12, effective August 12, 2024.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive, 11-15-8.

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

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

(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: 49 SDR 125, effective July 3, 2023; 51 SDR 12, effective August 12, 2024.

General Authority: SDCL 11-15-6.

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

20:09:26:03. Ineligible housing infrastructure 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: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

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

20:09:26:04. ~~Application~~ Housing infrastructure application form. The authority shall prescribe the application form for housing infrastructure ~~program~~ funding and shall publish the form on the ~~authority's~~ 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: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

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

20:09:26:05. Consideration of housing infrastructure funding 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: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

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

20:09:26:06. Criteria for housing infrastructure funding. 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~~ 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 complies 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: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

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

20:09:26:08. Approval of housing infrastructure project by local governing body. An applicant shall submit with the application for housing infrastructure funding a resolution of the applicable political subdivision or Indian tribe stating:

- (1) The political subdivision or Indian tribe has approved the proposed housing infrastructure project;
- (2) The project satisfies the requirements of the political subdivision or Indian tribe;
- (3) The political subdivision or Indian tribe shall own, maintain, or provide the public infrastructure to be developed in the project; and
- (4) The political subdivision or Indian tribe has the capacity to support the public infrastructure to be developed in the project.

Source: 49 SDR 125, effective July 3, 2023; 51 SDR 12, effective August 12, 2024.

General Authority: SDCL 11-15-6.

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

20:09:26:09. Location of housing infrastructure projects. An eligible housing infrastructure project that is to be owned or maintained by a municipality must be located within the ~~municipality's~~ municipality's corporate limits, unless there is a plan to annex into the ~~municipality's~~ 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: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

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

20:09:26:10. ~~Funding~~ Housing infrastructure 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: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

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

20:09:26:11. Use of housing infrastructure 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: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

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

20:09:26:12. Total housing infrastructure project cost. The total project cost of a housing infrastructure project 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: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

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

20:09:26:13. Applications Housing infrastructure project applications for ARPA funding. An applicant for housing infrastructure funding 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: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

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

20:09:26:14. Approval of housing infrastructure funding -- Conditional commitment --

Written agreement. The board shall approve or deny an application for housing infrastructure funding based on the criteria established in § 20:09:26:06. 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~~ must 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: 49 SDR 125, effective July 3, 2023.

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~~ housing infrastructure funding.

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: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

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

20:09:26:16. Maturity and interest rate of housing infrastructure project loan. The maturity of a housing infrastructure project 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~~ 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~~ board's approval of an application.

Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

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

20:09:26:17. Time restrictions on housing infrastructure funding 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: 49 SDR 125, effective July 3, 2023.

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 for housing infrastructure projects --

Letter of credit. An applicant for housing infrastructure funding shall ensure compliance with the requirements of the applicable political subdivision or Indian tribe for contractor bonding. If the political subdivision or Indian tribe 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: 49 SDR 125, effective July 3, 2023; 51 SDR 12, effective August 12, 2024.

General Authority: SDCL 11-15-6.

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

20:09:26:19. Disbursements of housing infrastructure funding. 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: 49 SDR 125, effective July 3, 2023.

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~~ applicant's records. An applicant shall provide any information or documents required by the authority from ~~time to time~~ time-to-time, for the purpose of verifying compliance with applicable law and the terms and conditions of the written agreement.

Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

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

20:09:26:22. School district funding application form. An authority shall prescribe the application form for school district 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 school district project based on the criteria established in § 20:09:26:23.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-2, 11-15-8.

20:09:26:23. Criteria for school district funding. The authority shall evaluate an application for school district funding based on the following criteria:

- (1) Whether the application is a school district as described in SDCL 11-15-8;
- (2) The applicant's control of the school district project and the readiness of the applicant to proceed with the construction; and
- (3) Whether the proposed school district project complies with applicable design standards, ordinances, regulations, and law.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-2, 11-15-8.

20:09:26:24. School district funding approval – Written agreement. The board shall approve or deny an application based on the criteria established in § 20:09:26:23. If an application is approved by the board, the applicant must enter into a written agreement with the authority stating the amount, terms, and conditions of the school district funding. The applicant shall also provide any additional documents requested by the authority in connection with the school district funding loan.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-2, 11-15-8.