

CHAPTER 12:21:01
BEGINNING FARMER LOAN PROGRAM

Section

12:21:01:01	Definitions.
12:21:01:02	Assets and liabilities.
12:21:01:03	Contents of application.
12:21:01:04	Net worth requirements.
12:21:01:05	Procedure for informal settlements in contested cases, <u>Repealed</u> .
12:21:01:06	Eligibility.
12:21:01:07	Maximums and minimums.
12:21:01:08	Limitations on improvements and depreciable property.
12:21:01:09	Loan requirements.
12:21:01:10	Availability of books and records.
12:21:01:11	South Dakota beginning farmer bond program.
12:21:01:12	Application procedures.
12:21:01:13	Issuance of bond.
12:21:01:14	Priority of applications.
12:21:01:15	Procedures following bond issuance.
12:21:01:16	Assignment of loans by participating lenders.
12:21:01:17	Assignment of loans by bond purchasers.
12:21:01:18	Assumption of loans, substitution <u>Substitution</u> of collateral, and transfer of property.

12:21:01:19 Right to audit.

12:21:01:01. Definitions. Terms defined in SDCL ~~1-16E-3~~ 1-16B-1 have the same meaning when used in this article. In addition, terms used in this article mean:

(1) "Agricultural improvements," any improvements, buildings, structures, or fixtures suitable for use in farming which are located on agricultural land, including the single-family dwelling located on agricultural land that is or will be occupied by the beginning farmer and any structure attached to or incidental to the use of the building;

(2) "Agricultural land," land that is suitable for use in farming and is or will be operated as a farm;

(3) "Bond purchaser," any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity, other than a participating lender, that purchases an authority bond under the ~~beginning farmer bond~~ program in connection with a contract sale or loan to the beginning farmer;

(4) "Commissioner," the commissioner of the Governor's Office of Economic Development;

~~(4)(5)~~ (5) "Depreciable agricultural property," personal property suitable for use in farming for which an income tax deduction for depreciation or cost recovery is allowable in computing federal income tax under ~~§ 144(11)(B) of the Internal Revenue Code as amended to July 1, 2008~~ 26 U.S.C. § 144(a)(11)(B) (May 1, 2023), and which is qualified for financing with tax-exempt bonds

pursuant to 26 U.S.C. § 144 ~~of the Internal Revenue Code as amended to July 1, 2008~~ (December 31, 2024);

~~(5)(6)~~ (6) "Eligible applicant," an individual who is a first-time farmer, as defined in 26 U.S.C. § 147(c)(2)(C) of the Internal Revenue Code ~~as amended to July 1, 2008~~ (December 31, 2024), who satisfies all of the criteria contained in ~~SDCL 1-16E-3(2A)~~ subdivision 1-16B-1(3) and this article relating to recipient eligibility, and who operates or will operate a farm;

~~— (6) "Executive director, the executive director of the Value Added Finance Authority;~~

(7) "Farm," a farming enterprise ~~which~~ that is recognized in the community as a farm rather than a rural residence;

(8) "Net worth," total assets minus total liabilities as determined in accordance with generally accepted accounting principles with exceptions and exemptions reasonably related to an equitable determination of the beginning farmer's net worth;

(9) "Participating lender," any lender, ~~as defined in SDCL 1-16E-3,~~ that purchases an authority bond under the ~~beginning farmer bond~~ program;

(10) "Program," the beginning farmer bond program;

(11) "Project," a description of the intended use of the loan proceeds; and

(12) "Qualified—~~purposes~~ purpose," agricultural land—~~and~~ or depreciable agricultural property.

Source: 22 SDR 97, effective January 22, 1996; 23 SDR 91, effective December 9, 1996; 35 SDR 67, effective September 30, 2008; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-24~~ 1-16B-1(3), 1-16B-57.

12:21:01:02. Assets and liabilities. For purposes of this chapter, total assets include cash, crops, or feed on hand, livestock held for sale, breeding stock, marketable bonds and securities, securities not readily marketable, accounts receivable, notes receivable, cash invested in growing crops, net cash value of life insurance, machinery, equipment, cars and trucks, farm and other real estate including life estates and personal residence, value or beneficial interest in a trust, government payments or grants, and other assets. Total assets do not include items used for personal, family, or household purposes by the applicant; but in no event may any property be excluded, to the extent a deduction for depreciation is allowable for federal income tax purposes. ~~All assets shall be valued at fair market value by the~~ The participating lender shall value all assets at fair market value. Fair market value is what a willing buyer would pay a willing seller in the locality. A deduction of ~~10~~ ten percent may be made from fair market value of farm and other real estate.

Total liabilities include accounts payable, notes or other indebtedness owed to any source, taxes, rent, amount owed on real estate contracts or real estate mortgages, judgments, accrued interest payable, and any other liabilities. Liabilities ~~shall~~ must be determined through the use of generally accepted accounting principles.

Source: 22 SDR 97, effective January 22, 1996.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-24~~ 1-16B-1(3), 1-16B-57.

Cross Reference: ~~Accounting principles, § 20:37:11:08.~~

12:21:01:03. Contents of application. An applicant for a beginning farmer loan ~~must~~ shall apply for the loan on a form provided by the ~~finance~~ authority. The application must include the following: the applicant's name, address, and credit data; a description of the anticipated use of loan proceeds; the amount of the loan ~~and~~; the applicant's down payment, if any; and proof of compliance with the net worth requirements in § 12:21:01:04. An application is complete when all ~~documents~~ information needed to approve a loan ~~are~~ is submitted.

Source: 22 SDR 97, effective January 22, 1996.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-24~~ 1-16B-1(3), 1-16B-57.

12:21:01:04. Net worth requirements. To qualify for a loan under this chapter, the ~~beginning farmer applicant~~ must meet the net worth requirements ~~as established by the Value Added Finance Authority and as provided in this section~~ set by the board. The board shall set and periodically review a policy for minimum and maximum net worth eligibility requirements. The board may include in its policy annual adjustments to the requirements to account for inflation or other factors reasonably affecting beginning farmers' net worth. ~~For the individual, the aggregate net worth of the individual and the individual's spouse and minor children may not exceed \$400,000. However, the authority may increase or decrease the net worth requirement by not more than \$100,000 if the resulting maximum net worth requirement for the individual and the individual's spouse and minor children does not exceed \$500,000 and is not less than \$300,000.~~

The authority may increase or decrease the net worth requirement not more than once in ~~12~~ twelve consecutive months.

The policy adopted by the board with respect to net worth requirements must be posted on the authority's website.

Source: 22 SDR 97, effective January 22, 1996; 26 SDR 169, effective June 27, 2000; 35 SDR 67, effective September 30, 2008; 37 SDR 111, effective December 8, 2010.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-24~~ 1-16B-1(3), 1-16B-57.

12:21:01:05. Procedure for informal settlements in contested cases.~~Unless precluded by statute, a dispute over rules of the authority that might otherwise result in contested case proceedings may be settled by an informal settlement negotiated by the executive director, which is subject to ratification by the authority board and by the parties contesting the rule in question. The settlement shall be expressed in a written stipulation representing an informed mutual consent~~
Repealed.

Source: 22 SDR 97, effective January 22, 1996.

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

Law Implemented: ~~SDCL 1-16E-24.~~

12:21:01:06. Eligibility. To be eligible for assistance under this chapter, the ~~first-time farmer applicant~~ must ~~meet the following requirements~~:

(1) ~~The first-time farmer must be~~ Be a resident of South Dakota and be at least eighteen years of age at the time the bond is issued to finance the loan ~~and must be at least 18 years of age~~;

(2) ~~The first-time farmer must document~~ Demonstrate to the lender and the authority sufficient training and experience for the anticipated farm operations;

(3) ~~The first-time farmer must, as~~ As a condition of loan closing, demonstrate to the satisfaction of the lender and the authority that the applicant has access as needed to working capital, farm machinery, livestock, and agricultural land;

(4) ~~Individuals must be first-time farmers regardless of the purpose of the loan as defined in § 147(C) of the Internal Revenue Code~~ Be a first-time farmer as defined in 26 U.S.C. § 147(c)(2)(C) as amended to July 1, 2008 (December 31, 2024);

(5) ~~The~~ Establish the agricultural land and agricultural improvements ~~may~~ will be used for farming only by the ~~individual applicant, the individual's applicant's spouse, the individual's minor children, or any of them~~ or the applicant's minor children;

(6) ~~The first-time farmer must meet~~ Meet the net worth requirements ~~as described~~ set forth in § 12:21:01:04;

(7) ~~The first-time farmer must meet~~ Meet the requirements of ~~§267(a), (b), and (c)(4)~~ 26 U.S.C. § 147(c)(2)(G) and 26 U.S.C. § 144(a) ~~of the Internal Revenue Code, as amended to July 1, 2008~~ (December 31, 2024), concerning related persons.

Source: 22 SDR 97, effective January 22, 1996; 23 SDR 91, effective December 9, 1996; 35 SDR 67, effective September 30, 2008.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-24~~ 1-16B-1(3), 1-16B-57.

12:21:01:07. Maximums and minimums. ~~Financing~~ Aggregate financing to an eligible applicant under the program may not exceed ~~\$600,000 to an individual beginning farmer participating in the program~~ six hundred and forty-nine thousand dollars, plus an adjustment for inflation using the methodology in 26 U.S.C. § 147(c)(2)(H) (December 31, 2024).

Source: 22 SDR 97, effective January 22, 1996; 35 SDR 67, effective September 30, 2008; 37 SDR 111, effective December 8, 2010.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-24~~ 1-16B-1(3), 1-16B-57.

12:21:01:08. Limitations on improvements and depreciable property. Agricultural improvements and agricultural depreciable property that are to become a fixture or an integral part of real estate may be financed by the authority only if the beginning farmer ~~owns~~:

(1) Owns the real estate on which the property or improvement ~~will~~ is to be located and the real estate is less than thirty percent of the median size farm in the county of residence; ~~or if the beginning farmer has~~

(2) Has a lease to use the real estate for a term at least as long as the loan remains outstanding.

Source: 22 SDR 97, effective January 22, 1996; 35 SDR 67, effective September 30, 2008.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: ~~SDCL 1-16E-24~~ 1-16B-1(3), 1-16B-57.

12:21:01:09. Loan requirements. ~~The following are requirements for a loan under the beginning farmer bond program:~~

~~——(1) The authority may take security for a loan in the form of a promissory note, security agreement, first mortgage, or similar agreement;~~

~~(2) A loan may not be assumed and any interest in agricultural land, agricultural improvements, or agricultural depreciable property may not be leased, sold, exchanged, used as a trade-in, used on an equipment for hire basis, or otherwise conveyed without the prior written consent of the authority. The authority may not consent to an assumption of its loan or the conveyance of property subject to its mortgage or security agreement unless the purchaser of the property financed by the loan is an eligible applicant for an authority loan and the program. Any change in collateral for the loan in conjunction with an assumption, including the disposition of the property subject to a mortgage or security agreement, must be approved by the authority.~~

~~——(3) The beginning farmer, bond purchaser, or lender must submit to the authority a nonrefundable \$100 fee with the application. A loan fee equal to 1.5 percent of the amount of the bond, but not less than \$500, must be submitted by the beginning farmer, bond purchaser, or lender at loan closing. The loan fee may be financed with bond proceeds.~~

Source: 22 SDR 97, effective January 22, 1996; 29 SDR 135, effective April 13, 2003.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-7(18)~~ 1-16B-1(3), 1-16B-57.

12:21:01:10. Availability of books and records. Participating lenders shall maintain books and records setting forth payments received and disbursements made ~~pursuant to~~ on all authority loans. The participating lender's books and records must be available for examination by the authority or its agent.

Source: 22 SDR 97, effective January 22, 1996.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-24~~ 1-16B-1(1), 1-16B-57.

12:21:01:11. South Dakota beginning farmer bond program. ~~The beginning farmer bond program allows beginning farmers to obtain lower interest rate loans for qualified purposes by obtaining loan funds from the proceeds of a tax-exempt bond issued by the authority and purchased by the lender.~~ The authority shall enter into a loan agreement with the beginning farmer and assign that loan to the lender. At the same time, the authority shall issue a tax-exempt bond in the amount of the loan and the lender shall purchase that bond, which is used to fund the loan assigned to the lender. The only security for the lender is the underlying security on the assigned loan.

~~The program also allows a bond purchaser to receive tax-exempt interest for a direct loan or contract sale made to beginning farmers.~~ The bond purchaser, after arranging the loan or sales contract, shall obtain from the authority a federal tax-exempt bond in the amount of the loan or the unpaid balance on the sales contract. In the case of a loan, the authority shall lend the amount paid by the bond purchaser for the bond to the beginning farmer and assign the loan and its collateral to the bond purchaser as security for the bond. In the case of a contract sale, the authority shall enter into the contract with the bond purchaser who will receive the bond as evidence of the authority's obligations under the contract. The authority shall then assign the authority's right, title, and interest in the contract to the beginning farmer who shall assume the payment obligations of the authority under the contract.

Source: 22 SDR 97, effective January 22, 1996.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-24~~ 1-16B-1(3), 1-16B-57.

~~Cross Reference:~~ Authority bonds not state or subdivision obligation, SDCL 1-16E-11.

12:21:01:12. Application procedures. ~~The beginning farmer~~ After identifying a lender and receiving the lender's approval, the applicant may apply for an authority loan with that lender on forms provided by the authority ~~for an authority loan with any lender. The authority shall assign the approved loan to that lender. Authority loan eligibility is determined by the requirements of SDCL chapter 1-16E and this article. If a beginning farmer meets the loan eligibility requirements in § 12:21:01:13, the decision on whether to enter into the loan agreement is between the beginning farmer and the lender. They~~ Prior to applying to the authority, the applicant and lender must agree on the terms of the loan, ~~such as including the~~ interest rates rate, length of loan, down payment, service fees, origination charges, and repayment schedule. The loan terms may ~~be no~~ not be more onerous than those charged to similar customers for similar loans, taking into account the tax-exempt nature of the interest on the loan.

~~Following completion of the loan application by the beginning farmer and approval by the lender, the loan application must be submitted to the authority for its review and approval. The authority's review shall~~ must be based on the requirements of SDCL chapter 1-16B and this article, and must include whether:

- (1) The loan applicant is a qualified beginning farmer;
- (2) The loan proceeds ~~will~~ are to be used for a qualified purpose by a qualified borrower under SDCL chapter ~~1-16E~~ 1-16B, this article, and 26 U.S.C. §§ 141 and 146 of the Internal Revenue Code as amended to July 1, 2008 (December 31, 2024), relating to private activity bonds;
- (3) The terms of the loan comply with this article; and
- (4) The lender meets the definition of a participating lender or bond purchaser.

As part of the review, the authority ~~and lender~~ may require the beginning farmer to submit appraisals on part or all of the property being financed by the loan or to submit other documents and information necessary to complete the review of the loan application.

Following the authority's approval and issuance of the bond, the authority shall enter into a loan agreement with the beginning farmer and then assign the loan to the lender. The authority may charge fees as needed to defray its costs for processing the loan and bond.

Source: 22 SDR 97, effective January 22, 1996; 23 SDR 91, effective December 9, 1996; 35 SDR 67, effective September 30, 2008.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-24~~ 1-16B-1(3), 1-16B-57.

Cross Reference: Authority bonds not state or subdivision obligation, SDCL ~~1-16E-11~~.

12:21:01:13. Issuance of bond. The authority may not issue a bond for the purpose of financing a project for a specific ~~beginning farmer~~ applicant unless, before its issuance, the authority has conducted a public hearing conforming to the applicable requirements of 26 U.S.C. § 147(f)(2)(B) of the United States Internal Revenue Code of 1986 as amended to July 1, 2008 (December 31, 2024). Upon receipt of a completed application and declaration of official intent to proceed with the issuance of the bond by the authority, the ~~executive director~~ commissioner shall set a date, time, and place for the hearing. The ~~executive director~~ commissioner shall publish notice of hearing at least ~~14~~ seven days before the date of the hearing in a newspaper of general circulation available to residents in the county where the project is located. The notice ~~shall~~ must include the date, time, and place of the hearing, the means by which interested parties may participate electronically, the name of the ~~beginning farmer~~ applicant, and a general description of the project, and the right of individuals to request a local hearing. ~~The hearing shall be held at the location stated in the notice unless, by the time scheduled for the hearing, the authority receives a written request that a local hearing be held.~~

If a local hearing is requested, the authority may cancel the previously scheduled hearing. The ~~executive director~~ commissioner shall set a date, time, and place for a local hearing and publish notice of the hearing in the local area as provided in this section. The date, time, and place for the local hearing must be reasonably convenient to persons affected by the project. Public hearings may be conducted by a ~~staff member~~, a board member of the authority, ~~an appointee~~ appointee, or employee of the authority, or another qualified hearing officer. The commissioner shall provide a means by which an interested party may participate electronically.

The authority may not issue a bond for the purpose of financing a project by a specific ~~beginning farmer applicant~~ unless, before the issuance, the Governor or another elected official of the state who is designated by the Governor, approves the issuance of the bond. Following the public hearing, the authority shall send to the Governor's office, or to the office of the designated official, a statement describing each bond or series of bonds ~~which~~ that it proposes to issue, along with a summary of the public comments received.

Following approval of the loan by the authority and upon completion of a public hearing and approval of the bond issuance by the Governor or another designated state official, the authority shall issue a bond, to be purchased by the lender, in the amount and fitting the terms of the loan to the ~~beginning farmer applicant~~. The principal and interest on the bond is a limited obligation payable solely out of the revenue derived from the loan to the beginning farmer and the underlying collateral or other security furnished by or on behalf of the beginning farmer. The principal and interest on the bond does not constitute an indebtedness of the authority or a charge against its general credit or general fund.

Source: 22 SDR 97, effective January 22, 1996; 23 SDR 91, effective December 9, 1996; 35 SDR 67, effective September 30, 2008.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-24~~ 1-16B-1(3), 1-16B-57.

Cross Reference: Authority bonds not state or subdivision obligation, SDCL ~~1-16E-11.~~

12:21:01:14. Priority of applications. The authority shall process applications on a first-come, first-served basis, based on the receipt of a complete application.

Source: 22 SDR 97, effective January 22, 1996.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-24~~ 1-16B-57, 1-16B-58.

12:21:01:15. Procedures following bond issuance. No bond proceeds may be used for an unqualified purpose or by an unqualified user. Following disbursement of the bond proceeds, the authority may require the lender and the beginning farmer to certify to the authority that the proceeds were used by a qualified beginning farmer for a qualified purpose.

Source: 22 SDR 97, effective January 22, 1996.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-24~~ 1-16B-57, 1-16B-58.

Cross Reference: Eligibility, § ~~12:21:01:07~~.

12:21:01:16. Assignment of loans by participating lenders. A participating lender may assign a loan in whole or in part, the servicing of the loan, or both the loan and servicing, to any regulated lender as defined in SDCL 54-3-14. ~~Servicing of the loan may also be assigned, but it must at all times be with a participating lender as defined.~~ The authority must be notified in writing before assignment of servicing of the loan.

Source: 22 SDR 97, effective January 22, 1996.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-24~~ 1-16B-57, 1-16B-58.

12:21:01:17. Assignment of loans by bond purchasers. A bond purchaser may assign a loan in whole or in part to any person as defined in SDCL 2-14-2(18) ~~or any organizations as defined in SDCL 47-2-1(20).~~ The authority must be notified in writing prior to assignment of the loan.

Source: 22 SDR 97, effective January 22, 1996.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-24~~ 1-16B-57.

12:21:01:18. ~~Assumption of loans, substitution~~ Substitution of collateral, and transfer of property. ~~Loans may only be assumed with the prior approval of the authority and then only if the purchaser of the property is an eligible applicant for an authority loan.~~ Equipment and other depreciable property may be exchanged or traded for similar property, and other property such as breeding livestock may be added or substituted as collateral at the discretion of the lender without the prior approval of the authority. The benefits of the loan made at the ~~tax-exempt~~ tax-exempt rate from the proceeds of an authority bond must remain with the qualified beginning farmer, and a person to whom property is traded or otherwise transferred may not obtain the benefits of the authority loan.

Source: 22 SDR 97, effective January 22, 1996.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-24~~ 1-16B-1(3), 1-16B-57.

12:21:01:19. Right to audit. The authority may audit the records of the lender and the beginning farmer relating to any loan or bond governed by this chapter to ensure that bond proceeds were used for a qualified purpose by a qualified user.

Source: 22 SDR 97, effective January 22, 1996.

General Authority: SDCL~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL~~1-16E-24~~ 1-16B-57.