

CHAPTER 68:02:01

REDI LOANS

Section

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68:02:01:35. Application requirements -- Screening. ~~Application~~ GOED shall provide loan application forms, which the applicant shall be provided by GOED and shall be completed complete and signed sign before an application ~~is~~ may be presented to the board. GOED shall screen all applications for completeness and eligibility upon receipt. No incomplete application or ineligible ~~applications~~ applicant may be presented to the board.

~~Applications shall~~ must include the following information:

- (1) ~~Applicant's~~ The applicant's name and address;
- (2) ~~Names, addresses, résumés, and references of owners, investors, and management of the business~~ The name, address, resume, and references of any owner, investor, or management of the business;
- (3) ~~Articles~~ The articles of incorporation and bylaws, or other agreements, that describe the legal operation or structure of the business;
- (4) ~~Name~~ The name and address of the owner or operator of the business during the term of the loan;
- (5) A business plan ~~which that~~ contains information, as applicable:
 - (a) Information regarding the housing, products, or services to be offered by the applicant; ~~job~~

(b) Job descriptions with attendant salary or wage information by job category;
employee

(c) ~~Employee~~ Information regarding any employee benefit package;
educational

(d) Educational requirements by job category; and ~~methods~~

(e) Methods of accounting, financing, marketing, sales, merchandising, and
other disciplines proposed to be used for business growth and expansion;

(6) ~~Letters~~ A letter of commitment from ~~all every funding sources~~ source;

(7) Up to three years of historical balance sheets, cash flow statements, and income
statements or federal tax returns;

(8)- Pro forma balance sheets, cash flow statements, and income statements for the greater
of three years or the term of the loan;

(9)- A statement of licensing requirements applicable to the applicant's business operations
and their status;

(10)- A statement that ~~addresses~~ describes the effect of the business on the tax base of the
area of the project and other positive and negative effects of the project on the area;

(11) ~~Assurance of compliance~~ Evidence the project does or will comply with local zoning laws and building codes and that the necessary public utilities are available or will be available when needed by the project;

(12) ~~Approximate~~ A statement describing the approximate construction date, construction completion date, and the date by which the project ~~will~~ is to be fully operational;

(13) Documentation that the preliminary design stage has been completed; and

(14) -Any other information, as requested by the board, in order to make a ~~sound loan~~ decision on the application.

Source: 34 SDR 68, effective September 13, 2007.

General Authority: SDCL 1-16G-5, 1-16G-8(7).

Law Implemented: SDCL 1-16G-5, ~~1-16G-8(7)~~.

68:02:01:36. Loan amounts. Unless waived by ~~the~~ an affirmative vote of two-thirds of the members of the board present and voting, a loan made pursuant to this chapter may not exceed the original principal amount of ~~\$1,000,000~~ three million dollars. Unless waived by ~~the~~ an affirmative vote of two-thirds of the members of the board present and voting, a loan made pursuant to this chapter may not exceed ~~45~~ forty-five percent of the total project cost.

Source: 34 SDR 68, effective September 13, 2007.

General Authority: SDCL 1-16G-5, 1-16G-8(10).

Law Implemented: SDCL 1-16G-5, ~~1-16G-8(10)~~.

68:02:01:47. Additional notification requirements. The borrower shall provide written notice to the board ~~with written notice within 10~~ within ten business days of any ~~changes~~;

(1) Change in top level management of the borrower's business;

(2) Change in ownership of ten percent or more of the business's stock, membership interests, or ownership interests; ~~or of any plans~~

(3) Plans for sale, public offering, or lease of the business.

~~Any~~The sale, public offering, or lease of the business requires ~~the~~ prior written approval of the board. If the notification and prior approval requirements of this section are not satisfied, the board may call the loan immediately due and payable.

Source: 34 SDR 68, effective September 13, 2007.

General Authority: SDCL 1-16G-5, 1-16G-8(5).

Law Implemented: SDCL 1-16G-5, ~~1-16G-8(5)~~.

68:02:01:48. Maturity and interest rate. ~~Except in the case of a project consisting solely of multifamily housing, the maturity of the loan may not be more than five years from the date of loan closing, with payments amortized over not more than 20 years. Upon the affirmative vote of two-thirds of the members of the board present and voting, the board may, at the time the loan is approved, establish a longer maturity for the loan, but in no event may the original maturity date be more than 10 years from the date of loan closing. In the case of a project consisting solely of multifamily housing, the maturity of the loan may not be more than 30 years from the date of loan closing, with payments amortized over not more than 30 years.~~

~~The standard interest rate for REDI loans shall be established by the board from time to time and published on the GOED website. The board may deviate from the standard interest rate based on the economic impact of the project, nature and extent of collateral, risk, the amortization period of the loan, 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 REDI fund; and~~

~~—(4) Other economic or business information necessary to fulfill the board mission to promote economic development in South Dakota.~~

~~—The borrower is responsible for arranging other financing when the loan is due. If the borrower is unable to obtain financing, the borrower may apply before the loan due date for~~

~~extension of the loan by the board at an interest rate and time period established by the board. The borrower shall submit any application for extension by the monthly loan application deadline prior to the loan maturity date.~~**Loan term and amortization.** The maturity of a loan and amortization of payments are as follows:

For a project consisting solely of multifamily housing, a maturity date up to thirty years from the date of loan closing, with payments amortized over not more than thirty years; and

For all other loans, a maturity date of up to five years from the date of loan closing, with payments amortized over not more than twenty years. However, upon an affirmative vote of two-thirds of the board members present and voting, loans for projects other than multifamily housing may be made with a maturity date up to ten years from the date of loan closing, with payments amortized over not more than twenty years.

Source: 34 SDR 68, effective September 13, 2007; 39 SDR 16, effective August 6, 2012; 46 SDR 123, effective May 12, 2020.

General Authority: SDCL 1-16G-5, 1-16G-8(7)(10).

Law Implemented: SDCL 1-16G-5.

68:02:01:48.01 Interest rate. The board shall establish the standard interest rate for REDI loans from time-to-time and publish the rates on the GOED website. The board may deviate from the standard interest rate based on the economic impact of the project, nature and extent of collateral, risk, the amortization period of the loan, 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 REDI fund; and

(4) Other economic or business information necessary to fulfill the board mission to promote economic development in this state.

The borrower is responsible for arranging other financing when the loan is due. If the borrower is unable to obtain financing at reasonable rates and upon reasonable terms, the borrower may apply, before the loan due date, for an extension of the loan at an interest rate and for a time period established by the board. The borrower shall submit an application for extension by the monthly loan application deadline prior to the loan maturity date.

Source:

General Authority: SDCL 1-16G-5, 1-16G-8(7)(10).

Law Implemented: SDCL 1-16G-5.

68:02:01:50. Delegation of administrative functions. ~~The GOED shall perform the administrative functions of the creation, processing, and review of loan applications; the preparation and negotiation of loan 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 REDI fund without specific authorization by the board. Only the board may make an award from the REDI fund to an applicant. GOED shall, on behalf of the board with respect to loans:~~

(1) Perform the administrative functions of the creation, processing, and review of loan applications, including the financial status of an applicant, prior to board consideration;

(2) Prepare and negotiate loan commitment letters and loan agreements with a borrower following the board's approval of a loan;

(3) Add collateral requirements or co-borrowers to conform to the circumstances of the borrower and the loan at the time of loan closing;

(4) Add or remove guarantors at the time of loan closing based on applicable board policy with respect to a guarantor-owner's interest in the project;

(5) Consent to immaterial variances in total project costs or financing terms from other funding sources in connection with loan closing;

(6) Close and fund a loan made pursuant to this chapter in a principal amount up to five percent greater than originally approved by the board, subject to the following restrictions:

(a) The borrower documents specific, increased project costs incurred between loan approval and loan closing;

(b) The increase in total project cost is not due to the borrower's decision to enlarge the scope of the project or its business materially from what was presented in its application;

(c) The increased loan amount does not increase the percentage of the total project cost funded by the loan;

(d) All other lenders agree to increase their respective funding for the project on the same basis; and

(e) The board resolution approving the loan did not revoke or specifically limit GOED's authority under this subdivision;

(7) Review the financial status of an applicant or borrower;

(8) Perform loan servicing after loan closing and other functions necessary to expedite and assist it in the performance of its administration of loans on behalf of the board;

(9) Allow a partial lien release or substitution of collateral for a loan, if requested in connection with the disposition of real or personal property collateral made in a borrower's normal course of business after loan closing.

Notwithstanding any assurance, guarantee, communication, or representation made to the contrary, there is no commitment of the REDI fund without specific authorization by the board. Only the board may make an award from the REDI fund to an applicant.

Source: 34 SDR 68, effective September 13, 2007.

General Authority: SDCL 1-16G-5, 1-16G-8(5)(7).

Law Implemented: SDCL 1-16G-5, ~~1-52-3.2, 1-52-3.3, 1-52-5~~ 1-53-3, 1-53-4.

68:02:01:55. Banking Commission examination. The board shall request the South Dakota State Banking Commission to make an annual examination of the board's lending policies and procedures and the documentation and classification of loans in the REDI fund loan portfolio; ~~including loans made under chapter 68:02:02 of this article~~ and all other loans administered by the board.

Source: 34 SDR 68, effective September 13, 2007; 39 SDR 16, effective August 6, 2012.

General Authority: SDCL 1-16G-5.

Law Implemented: SDCL 1-16G-5.

68:02:10:01. Definitions. Terms used in this chapter mean:

- (1) "Applicant," any person that has completed a REDI fund grant application;
- (2) "Board," the Board of Economic Development;
- (3) "Commissioner," the commissioner of the Governor's Office of Economic Development;
- (4) "Completed the project" or "completion of the project," the first date when the project is operational;
- (5) "Construction date," the first date earth is excavated or a contractor has initiated work for the purpose of constructing a new or expanded facility or the first date new equipment is located on the project site or existing equipment is removed from the project site for the purpose of equipment upgrades, whichever occurs first;
- (6) "Equipment upgrades," the installation of new equipment or the replacement or improvement of existing equipment, which is subject to the sales use tax imposed by chapters 10-45 or 10-46 or contractor's excise tax imposed by SDCL chapter 10-46A or 10-46B;
- (7) "GOED," the Governor's Office of Economic Development;

(8) "New or expanded facility," a new building or structure, or the expansion, renovation, or retrofitting of an existing building or structure, which is subject to the contractor's excise tax imposed by SDCL chapter 10-46A or 10-46B;

(9) "Person," any individual, firm, copartnership, joint venture, association, cooperative, nonprofit development corporation, limited liability company, limited liability partnership, corporation, estate, trust, business trust, receiver, or any group or combination acting as a unit;

(10) "Project," a new or expanded facility with a project cost which is less than twenty million dollars, or equipment upgrades with a project cost which is less than two million dollars. A project includes laboratory and testing facilities, manufacturing facilities, data centers, power generation facilities, power transmission facilities, agricultural processing facilities, wind energy facilities, and facilities defined by GOED as targeted industries. A project does not include a building or structure:

- (a) Used predominantly for the sale of products at retail, other than the sale of electricity at retail, to individual consumers;
- (b) Used predominantly for residential housing or transient lodging;
- (c) Used predominantly to provide health care services;
- (d) Used predominantly for the transportation or transmission of natural gas, oil, or crude oil by means of a pipeline; or
- (e) That is not subject to ad valorem real property taxation or equivalent taxes measured by gross receipts;

(11) "Project cost," the amount paid by the project owner in money, credits, property, or other consideration associated with a project, including without limitation, land, labor, material, furniture, equipment, fees, or fixtures;

(12) "REDI fund," the Revolving Economic Development and Initiative Fund created pursuant to SDCL 1-16G-3;

(13) "South Dakota Jobs subfund," that portion of the REDI fund funded pursuant to SDCL 1-16G-48(5); and

(14) "South Dakota Jobs grant," a grant disbursed from the South Dakota Jobs subfund in accordance with this chapter.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-8

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(6), ~~1-16G-48(5)~~.

68:02:10:02. Eligibility. A person may apply for a South Dakota Jobs grant pursuant to this chapter for a project as defined in § 68:02:10:01(10). The person shall:

- (1) Timely file an application with GOED as required by § 68:02:10:03;
- (2) Request the board take action to approve or deny its application for South Dakota Jobs grant pursuant to § 68:02:10:06;
- (3) Accept the board's approval pursuant to § 68:02:10:07;
- (4) Timely file an affidavit for a South Dakota Jobs grant with GOED as required by § 68:02:10:11; and
- (5) Otherwise comply with the conditions, restrictions, and limitations imposed by this chapter.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(6).

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(6), ~~1-16G-48(5)~~.

68:02:10:03. Application. Any person commencing a project in South Dakota is eligible to apply for a South Dakota Jobs grant. Each application shall be made on the form prescribed by the commissioner, signed by the project owner, and submitted to GOED. The application must be submitted to GOED no later than ninety days after the construction date. The application shall be executed under penalties of perjury.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(7).

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(6), ~~1-16G-48(5)~~.

68:02:10:04. South Dakota Jobs grant. The board may approve South Dakota Jobs grant as it deems appropriate based on the criteria set forth in this chapter.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(9).

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(9), ~~1-16G-48(5)~~.

68:02:10:05. Criteria. When making a decision on an application, the board shall consider the following:

- (1) Likelihood the project would have occurred without the grant;
- (2) Economic impact of primary jobs created or retained by the project;
- (3) Net economic effects of increasing or stabilizing the economy on the community, area, and state;
- (4) Competitive effect of the project on existing businesses;
- (5) Support of the public entities of the community and area for the project;
- (6) The effect of the project on the environment, health, and safety of the people in the community, area, and state;
- (7) Compatibility of the project with economic development plans of the area and state;
- (8) Type of project;
- (9) Infrastructure needed to support the project;
- (10) Impact of the project on the property tax base;
- (11) Projected payroll, pay structure, and employee benefit structure;
- (12) Number of jobs created or retained by the project;
- (13) The potential success of the project and the potential for creating quality jobs and the growth of those jobs; and
- (14) The character, experience, management record, and background of the applicant.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(8).

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(8), ~~1-16G-48(5)~~.

68:02:10:06. Board action on application. After GOED has received the completed application, the applicant may make a written request to GOED for the board to take action on the application. 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 applicant makes a written request for the board to take action on the application. At the next regular meeting that is more than 15 days after the request to take action or within 60 days of the request, whichever is sooner, the board shall approve the application as requested, approve the application contingent on the realization of certain defined conditions, or disapprove the application. If the application is disapproved, the reasons shall be transmitted to the applicant in writing. An applicant whose application has been disapproved may submit another application that addresses the reason for disapproval. The board may extend the time for consideration of an application for up to 50 additional days by advising the applicant of the extension in writing. No action may be taken by the board on any application submitted to GOED until requested in writing by the applicant. Any official action on the application shall be taken in open session.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(7), ~~1-16G-48(5)~~.

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(6), ~~1-16G-48(5)~~.

68:02:10:07. Acceptance. Within 90 days of board approval of the application, the applicant must accept the approval in writing or the approval is void. At the time of acceptance, the applicant must either show it has complied with any requirements imposed by the board, or agree in writing to comply with any such conditions prior to payment of the South Dakota Jobs grant.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(7)(11).

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(6), 1-16G-48(5).

68:02:10:08. Conditions of South Dakota Jobs grant. At the time it takes action on an application, the board may place conditions on any South Dakota Jobs grant approved under this chapter in order to ensure substantial conformity with the representations contained in the application and the criteria described in § 68:02:10:05 under which the grant was awarded.

The applicant shall notify the GOED in writing within 30 days of the construction date to indicate the project has commenced.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(11)

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(11), 1-16G-48(5).

68:02:10:09. Application for modification. If after receiving board approval of its application, a material change occurs in the information contained in the approved application, the applicant may apply to modify its approved application. The board may approve the application for modification as requested, disapprove the application for modification, approve the application for modification contingent on the realization of certain defined conditions, or disapprove the application for modification. If the application for modification is disapproved, the reasons shall be transmitted to the applicant in writing. An applicant whose application for modification has been disapproved may submit another application for modification that addresses the reason for disapproval.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(7).

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(7), ~~1-16G-48(5)~~.

68:02:10:10. Time restrictions on applicant. The construction date must be no later than six months after receiving a permit from GOED, however, the board may extend the time for the construction date at the time the board approves the application if the request has been made in writing by the applicant, or at a later date if mitigating circumstances prevent the applicant from meeting the construction date deadline and the applicant has made diligent effort to meet the construction date deadline established pursuant to this section.

Unless an extension is granted at the sole discretion of the board, no project costs that occur after three years from the construction date may be included in the final project cost determination. Any request for extension of the time allowed pursuant to this chapter to complete the project must state the grounds for the requested extension and must be received by GOED within two years and nine months from the date of construction. In no event may project costs incurred more than four years from the date of construction be included in the final project cost determination.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(7)(11), ~~1-16G-48(5)~~.

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(7)(11), ~~1-16G-48(5)~~.

68:02:10:11. Affidavit for South Dakota Jobs grant. Within six months after the completion of the project, the applicant shall file an affidavit for a South Dakota Jobs grant with GOED. The affidavit for a South Dakota Jobs grant shall be on the form prescribed by the commissioner, shall include a statement that the project, as completed, substantially conforms to the project described in the original application or as modified pursuant to § 68:02:10:09, shall contain all other information required by the chapter, and be signed by the project owner. The affidavit for a South Dakota Jobs grant shall be executed under penalties of perjury.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(7)(11).

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(7)(11), ~~1-16G-48(5)~~.

68:02:10:12. Payment. Within 90 days of receiving the completed affidavit for a South Dakota Jobs grant and a determination by GOED that all terms and conditions imposed pursuant to this chapter have been met, GOED shall tender the South Dakota Jobs grant to the project owner or the project owner's assignee. If the project owner or assignee has granted a security interest in the expectation of receipt of a South Dakota Jobs grant, payment shall be made jointly-payable to the project owner or assignee and the holder of the security interest. If GOED requests additional information or documentation from the project owner, the 90 day period shall begin to run from the date of receipt of the additional documents or information.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(9)(11).

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(9)(11), ~~1-16G-48(5)~~.

68:02:10:13. Delegation of administrative functions. The GOED shall perform the administrative functions of the creation, processing, and review of South Dakota Jobs grant applications; the creation, processing, and review of documentation necessary to evidence compliance with the terms and conditions of the South Dakota Jobs grant and the requirements of this chapter; disbursement of South Dakota Jobs grant and the requirements of this chapter; and other tasks necessary to expedite and assist the board in the board's duties. Notwithstanding any assurance, guarantee, communication, or representation made to the contrary, there is no commitment of the South Dakota Jobs subfund without specific authorization by the board. Only the board may approve a South Dakota Jobs grant from the South Dakota Jobs subfund.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(5)(7).

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(5)(7), ~~1-16G-48(5)~~.

68:02:10:14. Access and reporting. An applicant shall grant GOED reasonable access to the project and to applicant's records, and provide such information, documentation, and reports as GOED may require, for the purpose of determining compliance with the conditions of the reinvestment payment and of this chapter.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(5)(11).

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(5)(11), ~~1-16G-48(5)~~.

68:02:10:15. Default. Any of the following constitutes a default upon the conditions of a reinvestment payment:

(1) If the person filing the affidavit for a South Dakota Jobs grant knowingly makes any material false statement or report in the affidavit for a South Dakota Jobs grant;

(2) Failure to adhere to the conditions of the South Dakota Jobs grant;

(3) Repeated failure by the applicant to provide access to the project or related documents or to provide the reports and other information required by this chapter; or

(4) Failure of the applicant to remain current on its tax obligations to the State of South Dakota. However, for the purposes of this section, the applicant is not deemed delinquent on its tax obligations to the State of South Dakota if the applicant is currently disputing its tax obligation in accordance with the appeal procedures provided by law.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(9)(11).

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(9)(11), ~~1-16G-48(5)~~.

68:02:10:16. Remedies. If there is a default pursuant to § 68:02:10:15 as determined by the board, within thirty days of written demand from the board, the project owner shall repay to GOED the South Dakota Jobs grant disbursed to the project owner. In addition to any other action considered appropriate by the board to protect the interest of the board and the South Dakota Jobs subfund, the board may retain counsel and commence a civil action to recover any grant proceeds that the project owner is required to repay.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(11), 1-16G-16.1.

Law Implemented: SDCL 1-16G-1.1(5)(7), 1-16G-3, 1-16G-5, 1-16G-8(11), 1-16G-16.1.

68:02:10:17. Conflicts of interest. No member of the board or the GOED staff may participate in or vote upon a decision of the board concerning an application relating to a project in which that member has a direct personal or financial interest.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL 1-16G-5, 1-16G-8(7).

Law Implemented: SDCL 1-16G-3, 1-16G-5, 1-16G-8(7).