

## **TOURISM ENHACEMENT PROGRAM**

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**68:02:03:23. Definitions.** Terms used in this chapter mean:

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

(2) "Board," the Board of Economic Development;

(3) "Borrower," an applicant who has been awarded a TEP loan;

(4) "Equity," capital that has no guaranteed or mandatory return which must be invested in the project in any event and which has no definite timetable for repayment to the equity holder;

(5) "GOED," the Governor's Office of Economic Development;

(6) "Permitted use," the feasibility study or marketing study, including any associated business plan, conducted in connection a project and to be funded from the TEP; or a marketing campaign to be funded from the TEP;

(7) "Project," the new business or expansion or redirection of an existing business that is eligible for a TEP loan;

(8) "REDI fund," the revolving economic development and initiative fund;

(9) "TEP," the tourism enhancement program provided for by this chapter.

Source:

General Authority: SDCL 1-16G-5, 1-16G-8

Law Implemented: SDCL 1-16G-5

**68:02:03:24. Eligibility.** Any natural person or entity whose permitted use or project meets one or more of the following criterion may apply for a TEP loan:

(1) The permitted use or project is directed at attracting more visitors to South Dakota from other states and countries;

(2) The permitted use or project is directed at lengthening the stay of visitors to South Dakota or at pursuing additional activities or destinations during their stay;

(3) The permitted use or project has the potential of expanding the visitor season into the spring or fall; or

(4) The permitted use or project has the potential of creating primary jobs in the visitor industry or increasing wages in certain sectors of the visitor industry.

Any proposal aimed solely at serving in-state visitors without regard to recruiting visitors from other states or countries, any proposal that cannot reasonably be expected to attract additional out-of-state visitors, or any proposal for construction or expenditures associated with real property costs, is not eligible for a TEP loan.

Source:

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

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

**68:02:03:25. Application requirements - screening.** Application forms shall be provided by GOED and shall be completed and signed before being presented to the board. GOED shall screen all applications for completeness and eligibility upon receipt. No incomplete or ineligible applications may be presented to the board. Applications shall include the following information, if applicable:

(1) Applicant's name and address;

(2) Names, addresses, résumés, and references of officers, board members, principals, consultants, and key management of the applicant and project;

(3) Articles of incorporation and bylaws or other legal documents or agreements that describe the legal operation or structure of the applicant;

(4) Project narrative, including, if applicable:

(a) Description of the intended results of the project and how the project will benefit or impact drawing new visitors to South Dakota, existing visitor resources and the South Dakota economy;

(b) Summary of prior market or feasibility research, or other work on the project, done by the applicant or others and the development of the service, attraction, or other product to date. A copy of any marketing plan to date and a copy of any business plan to date must be attached;

(c) Description of any planned marketing effort or of any feasibility or market research methodology to be employed for potential markets for services, attractions, or other products to be developed, including a schedule of planned activities and timeframe for completion;

(d) Explanation of any patent or regulatory approval needed, granted, or expected to be granted as a result of any successful feasibility study, market research, or project;

(e) Explanation of the estimated benefit of the project to one or more sectors of South Dakota tourism, such as increased markets, new uses, or improvements to existing tourism products or services; and

(f) Explanation of the estimated benefit of the project in terms of impact on tax base; job creation; stability of the economy; or stimulation of other local businesses, together with other positive and negative effects of the project on the area;

(5) Up to three years of historical financial information from the organization, if an existing organization;

(6) Project budget, as directly related to the project or permitted use, including the following categories:

(a) Salaries, wages, and fringe benefits;

(b) Consultant contracts;

(c) Equipment required;

(d) Materials and supplies;

(e) Travel;

(f) Publication costs;

(g) Accounting and legal services; and

(h) All other direct and indirect costs;

(7) List of project co-sponsors or funding sources including name, address, telephone number, key contact, and the dollar amount of participation. A commitment letter must be attached; and

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

Source:

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

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

**68:02:03:26. Loan amount.** Unless waived by the affirmative vote of two-thirds of the members of the board present and voting the total TEP loan amount may not exceed \$100,000. Unless waived by the affirmative vote of two-thirds of the members of the board present and voting, a TEP loan may not exceed 45% of the total cost of the permitted use. Matching funds may not include grant or loan funds from another agency or grant or loan program of the state.

Source:

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

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

**68:02:03:27. Equity contribution.** An applicant shall provide an equity contribution of at least 10 percent of the total cost of the permitted use. The requirement may be waived by a two-thirds affirmative vote of the members of the board present and voting if the equity contribution is not necessary to secure the interests of the board. In-kind contributions and completed work may be applied toward the equity contribution if, in the judgment of the board, such in-kind contributions and work completed contribute substantially to the permitted use. The applicant shall provide proof of the existence or availability of the equity contribution.

Source:

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

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

**68:02:03:28. Uses of loan proceeds.** Loan proceeds may be used for salaries, consultant contracts, supplies, equipment, and necessary services for permitted uses, and other purposes not listed in this section as may be individually approved by the board.

Loan proceeds may not be used to refinance existing debt or finance the purchase of land; for site development or improvement; for construction fees or services; or for other costs related to the construction of the project.

Source:

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

Law Implemented: SDCL 1-16G-5, 1-16G-8(9)

**68:02:03:29. Factors for board action.** When making a decision on an application, the board may, in addition to other factors necessary to make a prudent loan decision, consider the following:

(1) Whether preliminary research has been conducted by the applicant or others, and there is a reasonable assurance that the project is viable;

(2) The applicant has demonstrated the capacity and commitment to manage and implement the project, and whether the applicant has an implementation plan;

(3) There are favorable references to determine the applicant's qualifications and background;

(4) The capacity of the applicant to repay a loan if awarded, taking into consideration the amount of the loan; the economic feasibility of the project; the ability of the applicant to service the debt from cash flow of operations, capital, or collateral; and the review of the financial status of the project, business plan, and applicant;

(5) The amount, terms, and conditions of the loan, if awarded, and compatibility with the needs of the applicant and the REDI fund;

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

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

(8) The balance available in the REDI fund and the amount and nature of other pending loan applications.

Source:

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

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

**68:02:03:30. Board action on applications.** Within 30 days after GOED receives a completed application, the board shall either approve the application as requested, disapprove the application for modification, approve the application contingent on realization of certain defined conditions, or disapprove the application. The board may extend the time for consideration of an application for up to 50 additional days by advising the applicant of the extension.

Source:

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

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

**68:02:03:31. Acceptance and time restrictions of applicant.** The applicant shall comply with any conditions required by the board before the application is approved. Within sixty days after the official loan approval by the board, the applicant shall accept the approval in writing or the approval is void. Within six months after written acceptance, the applicant shall commence the permitted use. Final disbursement of the loan proceeds shall be made within one year after approval by the board. The board may extend the time for completion of the permitted use if mitigating circumstances prevent the start of the permitted use and the final disbursement of loan proceeds and the applicant has made a diligent effort so to do. The applicant shall submit any request for

extension by the monthly application deadline prior to the expiration of the one year period for completion of the permitted use or study. The board shall decide the length of the extension period, if any, based on the mitigating circumstances.

Source:

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

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

**68:02:03:32. Review of financial status.** After the loan is approved but before the loan is closed, the board or GOED may conduct an overall review of the applicant's financial status. This review may include an analysis of all assets and liabilities and an analysis of the applicant's ability to repay the loan and comply with the loan covenants. The board may withdraw the commitment at any time if a material adverse change occurs.

Source:

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

Law Implemented: SDCL 1-16G-5, 1-16G-8(7), 1-16G-8(10)

**68:02:03:33. Loan documents.** After an application for a loan is approved, the board 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. The requirements to secure the loan shall be included in the loan agreement. A loan may be secured or unsecured. A secured loan may be secured by a lien on the interest of the borrower in real and personal property, whether tangible or intangible, considered necessary by the board to adequately collateralize the loan.

Source:

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

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

**68:02:03:34. Reporting.** The borrower shall submit to the board quarterly reports describing progress on the permitted use, including compliance with the timeline and budget contained in the application. Any material deviation from any condition imposed by the board or in the loan agreement may result in the withholding of further funding or the declaration of a default. The borrower shall submit a final written report describing the work performed, results obtained, and potential economic impact shall be submitted within 90 days of completion of the permitted use.

Source:

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

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

**68:02:03:35 Inspection by the board and retention of records.** All financial documents, books, receipts, orders, expenditures, electronic data, and accounting procedures and practices of the borrower are subject to examination by or for the board at any time for three years following the completion of the permitted use or for the life of the loan, whichever period is greater.

Source:

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

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

**68:02:03:36. Additional notification requirements.** The borrower shall provide the board with written notice within 10 business days of any changes in top level management of the borrower's business or of any plans for sale, public offering, or lease

of the business. Any 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 declare the loan immediately due and payable.

Source:

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

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

**68:02:03:37. Maturity and interest rate.** Unless different terms are established upon the affirmative vote of two-thirds of the members of the board present and voting, the maturity date of the TEP loan may not be more than six years from the date of the final disbursement of loan proceeds, with regular payments amortized over not more than 20 years from the date of final disbursement of loan proceeds. The first payment shall be due one year from the date of final disbursement of loan proceeds. The borrower may request an extension of the date of the first payment, but the extension will not act to extend the final maturity date. The application for an extension must be submitted by the monthly loan application deadline prior to the first payment date.

The standard interest rate for TEP 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, risk, and other prudent lending criteria.

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

- (1) State and national market interest rates;
- (2) State and national economic conditions;
- (3) The solvency and balance of the REDI fund; and

(4) Other economic or business information necessary to fulfill the board mission and to develop and promote South Dakota tourism.

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 for an extension of the loan by the board at an interest rate and term established by the board. The borrower shall submit any application for an extension by the monthly loan application deadline prior to the loan maturity date.

Source:

General Authority: SDCL 1-16G-5, 1-16G-8(10), 1-16G-8(11)

Law Implemented: SDCL 1-16G-5, 1-16G-8(10), 1-16G-8(11)

**68:02:03:38. Loan forgiveness.** Upon the borrower's written petition and a showing of good cause, the board may forgive all or part of the loan upon terms and conditions established by the board. When determining whether to forgive all or any part of the loan, the board shall consider the following:

(1) If the permitted use is a marketing or feasibility study, whether the permitted use deemed the project to be feasible;

(2) If the permitted use is a marketing campaign, the effect of the permitted use on the borrower's business;

(3) Whether the borrower has proceeded or intends to proceed with the project;

(4) Whether the borrower has acted in conformity with the terms of the loan agreement and applicable law, including this chapter; and

(5) Whether the borrower has acted in good faith in connection with the application, the permitted use, the project, the loan, and the decision not to proceed with the project.

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

Source:

General Authority: SDCL 1-16G-5, 1-16G-8(10), 1-16G-8(11)

Law Implemented: SDCL 1-16G-5, 1-16G-8(10), 1-16G-8(11)

**68:02:03:39. Default.** If the borrower violates any of the terms of the loan agreement, the other loan documents, this chapter, or other applicable law, the board may declare the loan in default. Upon default, the board may do one or more of the following:

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

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

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

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

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

Source:

General Authority: SDCL 1-16G-5, 1-16G-8(10), 1-16G-8(11)

Law Implemented: SDCL 1-16G-1.1(6), 1-16G-5, 1-16G-8(10), 1-16G-8(11)

**68:02:03:40. 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 fund without specific authorization by the board. Only the board may make a loan award from the REDI fund to an applicant.

Source:

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

Law Implemented: SDCL 1-16G-5, 1-52-3.2, 1-52-3.3, 1-52-5

**68:02:03:41. Official forms.** The board from time-to-time shall establish official forms of loan documents, including a loan agreement, promissory note, mortgage, security agreement, employment agreement, and such other documents, certifications, and agreements as the board deems necessary and appropriate. GOED may consent on behalf of the board on a case-by-case basis to any non-substantive modification or to any modification necessary to conform the official forms to the terms of the loan as established by the board.

Source:

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

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

**68:02:03:42. Conflict of interest.** No member of the board or GOED staff may participate in or vote upon a decision of the board relating to an application or loan servicing action relating to a borrower in which that individual has a direct personal or financial interest.

Source:

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

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

**68:02:03:43. Confidentiality.** The board and GOED shall, to the extent it constitutes or contains trade secrets or commercial or financial information relating to the operations of an applicant or borrower, maintain as confidential any documents, materials, information, or data received or generated by the board or GOED in connection with a proposed or pending application for a TEP loan or an existing TEP loan. If requested by the applicant, the fact that an application has been proposed or is pending shall be maintained as confidential until such time as the application is presented to the board for approval.

Source:

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

Law Implemented: SDCL 1-16G-5, 1-16G-11

**68:02:03:44. Pre-existing loans.** Any loan made prior to the effective date of this chapter shall be administered based upon the law in effect at the time the loan was approved by the board.

Source:

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

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