# Homebuyer Assistance
# Policy & Procedure Manual

## 2021

SOUTH DAKOTA HOUSING DEVELOPMENT AUTHORITY

P.O. Box 1237
Pierre, SD 57501-1237
605/773-3181
TTY 605/773-6107
Fax 605/773-5154
Web site: www.sdhda.org

Alternate formats of this document are available upon request. Please write, call or e-mail SDHDA at the address, phone number or website found on the front cover. For information regarding Section 504 Accessibility, contact the South Dakota Housing Development Authority 504 Coordinator, Andy Fuhrman, at 1-800-540-4241.

Equal Opportunity Housing and Employment

# Contents

# INTRODUCTION

This Homebuyer Assistance Policy and Procedure Manual must be adhered to for all SDHDA programs administered through the Rental Housing Development Department, including the current programs of HOME, Housing Opportunity Fund, Neighborhood Stabilization Program and any future funding that may become available.

The HOME Investment Partnerships Program (HOME) was created under Title II of the National Affordable Housing Act of 1990. Under the HOME program, the Department of Housing and Urban Development (HUD) allocates funds to the State of South Dakota which may be used in accordance with Federal HOME regulations to provide housing opportunities.

South Dakota Housing Development Authority (SDHDA) has been designated by the State of South Dakota as the "participating jurisdiction" or (administrator) of the State's HOME funds received from HUD.

The National Affordable Housing Act requires that each state develop a Consolidated Housing & Community Development Plan (Consolidated Plan) to identify housing needs. The State of South Dakota's Consolidated Plan recognizes the need for homebuyer assistance as detailed in the HOME Program Allocation Plan. The HOME Program Allocation Plan, which can be found on SDHDA's website HOME Program | SDHDA outlines how SDHDA will administer the HOME Program.

The South Dakota Housing Opportunity Fund (HOF) was created via Senate Bill 235 the "Building South Dakota Fund" during the 2013 legislative session. The HOF program is designed to promote economic development by expanding the supply of decent, safe, sanitary and affordable housing. The HOF Program Allocation Plan, which can be found on SDHDA's website Housing Opportunity Fund | SDHDA outlines how SDHDA will administer the HOF Program.

The Neighborhood Stabilization Program (NSP) was established by Congress for the purpose of stabilizing communities that have suffered from abandoned and foreclosed homes, and to assist households whose annual incomes are up to 120 percent of the area median income.

# SECTION I: PROGRAM OVERVIEW

The primary purpose of the SDHDA programs are to provide decent, safe, and sanitary housing throughout the State of South Dakota. Providing homeownership opportunities through gap financing, mortgage financing or down payment and closing cost assistance can achieve this purpose.

SDHDA funds may be used for new construction or the purchase and rehabilitation of homeownership housing, housing preservation, including home repair, and homebuyer assistance unless otherwise noted in this plan. Some SDHDA programs have specific requirements that will be highlighted in the manual.

With exception to first mortgage financing, the maximum assistance available under all SDHDA programs combined is limited to $25,000. Please see the program specific allocation plans for maximum assistance per program.

To be eligible for SDHDA funding, a household's annual income must not exceed the income eligibility of the specific programs. The county Area Median Income (AMI) is determined by HUD and adjusted for family size

To receive SDHDA funds a person must occupy the home as their principle residence. Homeowners will be subject to recapture or repayment provisions as outlined within this manual and filed as restrictive covenants on the property.

Homeowners receiving homebuyer assistance must execute a Promissory Note and Mortgage and Security Agreement securing the property as collateral for the loan. The loan will be repaid based on the conditions of the Promissory Note.

# SECTION II: ELIGIBLE HOMEOWNERSHIP PROGRAMS

## A. LEASE-PURCHASE

A lease-purchase housing option is designed to bring homeownership within reach of very low-income and low-income families and individuals. The homebuyer must purchase the home within 36 months of signing the lease-purchase agreement. The homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed. If at the end of the 36-month period, the household occupying the lease-purchase unit is not eligible or able to purchase the unit, SDHDA may allow an additional six months to identify an eligible homebuyer to purchase the unit.

If the unit is financed under the HOME program and is not purchased by the end of the 42-month period, the unit must turn into a HOME rental unit and the HOME affordability requirements for rental housing will apply.

## B. HOMEOWNERSHIP DEVELOPMENT

Funds may be used for new construction, acquisition and rehabilitation of single family housing units, land trust activities, development subsidy, or the development of affordable lots in housing subdivisions only if construction of single family housing units will begin within 12 months of land purchase. Land banking is prohibited. Funds may be used for utility connections including off-site connections from the property line to the adjacent street and to make improvements to the project site that are in keeping with improvements of surrounding projects. Site improvements may include on-site roads and sewer and water lines necessary for the development of the project.

The developed lots must be sold to persons with qualifying income. The applicant will have six months from the time the loan commitment is executed to begin construction on the proposed project.

The purchase price of the single family housing unit must not exceed the appraised value. If financed with HOME funds, the purchase price also cannot exceed the HUD published Purchase Price Limits as stated in Section IV.B.1 of the HOME Program Allocation Plan.

Units financed with HOME funds that have not been sold to an eligible homebuyer within 9 months of project completion must be converted to a HOME rental unit and meet the rental requirements under Section IV.A., including the affordability requirement of Section III.C of the HOME Program Allocation Plan.

Funds used for development subsidy (financial assistance to developer to reduce project costs) cannot exceed $20,000 per unit. Development subsidies may only be used when the cost of the development exceeds the appraised value.

## C. HOME HOMEBUYER ASSISTANCE PROGRAM

The HOME Homebuyer Assistance Program will provide HOME funds for gap financing to eligible households who are able to obtain a portion, but not all, of the financing for the purchase of a home, including a Governor's House. The maximum loan available under this program is limited to $25,000 or 30 percent (30%) of the total Acquisition Costs minus all grants, deferred loans and donated items, whichever is less, taking into consideration the maximum first mortgage for which the borrower is qualified. Acquisition Cost is defined as all amounts paid either in cash or in kind as consideration for the residence, including closing costs or the cost of acquiring financing. The Acquisition Cost shall not exceed the latest published HOME Program Allocation Plan per unit cost limit, depending on the size of the home.

Should homebuyer need additional financial assistance, SDHDA will take into account all SDHDA funding sources regardless of financing program and whether financing is provided directly or through a sub recipient. Exceptions to the $25,000 total financing limitation are available for first mortgage financing or with prior approval by SDHDA for special circumstances.

## D. GAP FINANCING/DOWNPAYMENT ASSISTANCE

Through the HOME Program, SDHDA will provide funds for gap financing to eligible households who are able to obtain a portion, but not all, of the financing for the purchase of a single family home. The maximum loan available under HOME and all other SDHDA programs combined is limited to $25,000. The maximum first mortgage and affordability gap are determined by using SDHDA's Homebuyer Feasibility Analysis Tool located on the SDHDA website. The acquisition cost shall not exceed the per unit cost limits set in the applicable allocation plan, nor shall it exceed the appraised value. Acquisition cost is defined as all amounts paid either in cash or in kind as consideration for the residence, including closing costs or the cost of acquiring financing.

Through the HOF and NSP Programs, SDHDA will provide funds for down payment assistance to eligible households who are able to qualify for a mortgage but don't have funds for a down payment. Maximum amount of HOF assistance is $20,000. To utilize HOF assistance, the homebuyer's first mortgage must be a minimum of 70% of the acquisition cost.

For HOF loans to homebuyers 80.01% and above, the loan may be repaid or deferred and the homebuyer's first mortgage must be a minimum of 80% of the acquisition cost. HOF loans to homebuyers 80% AMI and below may be repaid, deferred, or forgiven, and the homebuyer's first mortgage must be a minimum of 70% of the acquisition cost.

# SECTION III: PROGRAM POLICIES

## A. INCOME ELIGIBILITY

To qualify for funds, the household's annual gross income may not exceed eighty percent (80%) of the county's AMI for HOME, (115%) of the county's AMI for HOF, and (120%) of the county's AMI for NSP, as established by the U.S. Department of Housing and Urban Development (HUD) and adjusted for family size, at the time funds are committed. Household income may be further restricted if the developer/sub-recipient has further restricted income eligibility in their application for SDHDA funding.

Acceptable methods for determining income are described in the HUD publication "Technical Guide for Determining Income and Allowances for the HOME Program" Third Addition Edition, January 2005, which can be ordered from HUD or downloaded online at https://files.hudexchange.info/resources/documents/HOMEGuideForIncomeAndAllowances.pdf

Income calculation and verification rules are summarized below:

i. To determine whether a household is income eligible, the adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual tax income purposes will be used.

ii. All sources of income used in the calculation, as describe above in Section A (i), must be verified. Therefore, it is not expected to just use the IRS 1040 Tax Form as verification.

   a. The preferred verification method is through third-party documentation. This method requires that a third-party be contacted to provide proof of the applicant's assets. Written requests mailed directly to the third-party are ideal, however, conversations with a third-party to verify income is acceptable, if accompanied by a memorandum in the file.

   b. Second-party verification such as documents provided by the applicant (e.g. pay stubs, tax returns, bank account statements, etc.) may be appropriate for verifying certain types of income and can be used as an alternative to third party verifications. Although easier to obtain than third-party verifications, a review of documents often does not provide the needed information. For instance, an employed applicant's pay stubs may not contain sufficient information about the average number of hours worked, overtime, tips and bonuses. A conversation with the third-party may be necessary to accurately project annual income.

   c. Annual income must be calculated by projecting the prevailing rate of income of the household at the time the household is determined to be income eligible and include any anticipated or known changes, such as raises or promotions. Annual income must include income from all household members over the age of 18.

iii. The income must be re-verified, if more than 180 days has passed since initial verification.

iv. If the income verification documentation has already been gathered by the first mortgage lender or service agency, a copy of this information will be sufficient for SDHDA review.

## B. PROPERTY ELIGIBILITY

Properties eligible for assistance must comply with the following criteria:

i. Property must be fee simple, leased, or individual allotted trust land located in South Dakota. Contract for deed and mobile homes are not eligible for financing. Manufactured homes are eligible only with HOF and NSP funds provided the following stipulations are met.
   a. Must be permanently affixed to the land by a foundation and taxed as real property
   b. Connected to permanent utility hookups
   c. Located on land that is owned by the manufactured homeowner, or on land for which the manufactured housing unit owner has a long-term lease for a period at least equal to the HOF financing or first mortgage, whichever is longer.

ii. The home must be the principal residence of an income-eligible homeowner occupant.

iii. For homebuyer activities involving acquisition of newly constructed housing or existing housing, the purchase price shall not exceed the appraised value, local market value, SDHDA's Project Cost Limits (as defined in the applicable allocation plans), or the HUD published 95% of area median purchase price at https://www.hudexchange.info/resource/2312/home-maximum-purchase-price-after-rehab-value/#:~:text=This%20new%20Rule%20was%20effective,data%20for%20newly%20constructed%20housing. for the HOME assisted units. For homebuyer activities involving acquisition and rehabilitation, the estimated value after rehabilitation shall not exceed the appraised value or the HUD published 95% of area median purchase price of existing housing. For rehabilitation, the estimated value after rehabilitation shall not exceed SDHDA's Project Cost Limits.

iv. The property cannot be in conflict with environmental regulations established in the National Environmental Policy Act (NEPA) of 1969. The environmental effects of each activity carried out with HOME funds must be assessed in accordance with HUD's implementing regulations at 24 CFR Parts 50 and 58. To ensure compliance with this Act, SDHDA will ensure the property meets certain determinations, one of which is if the property is eligible for federal flood insurance.

v. Rehabilitation of housing built before January 1, 1978, must conform to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and the implementing regulations, as applicable. The complete regulation, 24 CFR Part 35, "Lead Safe Housing Regulation: Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance, Final Rule" is available on the internet at: https://ecfr.federalregister.gov/current/title-24/subtitle-A/part-35

## C. PROPERTY STANDARDS AND INSPECTIONS

Property standards ensure that a set of housing quality standards are being used to determine if a unit is decent, safe, and sanitary. In addition, property standards provide a level of inspection for judging the actual physical condition of a property.

Upon completion of the new construction or rehabilitation, the property must:

i. Be decent, safe, and sanitary.

ii. Must comply with applicable State and local code(s) and ordinances.
   a. In the absence of a local or State code, the units must meet the International Residential Code 2012.
   b. Compliance may be evidenced by passing a building inspection by a local code official or in absence of local code, an inspector that is certified in accordance to the current state standards.

Upon completion of inspection of the home by local building official or home inspector a copy of the Certificate of Occupancy and/or the inspectors report should be submitted to SDHDA prior to closing.

SDHDA staff will perform periodic property inspections for new construction and acquisition/rehab. At a minimum, inspections will occur prior to construction start, at 50% completion and when the property is placed in service.

## D. UNDERWRITING STANDARDS

For purposes of ensuring feasible financing opportunities for homeowners, the underwriting requirements can be equivalent to the underwriting standards established by the purchaser's lender, except for HOME Gap Financing. For HOME Gap Financing the criteria below must be met with the maximum first mortgage and affordability gap determined by using SDHDA's Homebuyer Feasibility Analysis Tool. The Tool can be found on SDHDA's website. Variances of any underwriting criteria below must receive prior approval from SDHDA.

i. First mortgage loan cannot be an interest only loan, balloon payment loan, or a reverse mortgage.

ii. Interest rates cannot be greater than two percent (2%) above SDHDA's first-time homebuyer rate -Interest Rates | SDHDA. If it is an adjustable rate mortgage, the rate cannot increase more than two percent (2%) over the life of the loan.

iii. Origination fees, points and other lender fees cannot exceed $3,000. SDHDA may reject fees and closing costs that are not reasonable.

iv. First mortgage and deferred loans cannot exceed appraised value.

v. If repayment term of SDHDA financing is deferred, the minimum term of the first mortgage shall be 30 years.

vi. Homebuyer must have a minimum credit score of 620.

vii. The total of the homebuyer's monthly mortgage payments (principal, interest, taxes and insurance) should not exceed 31% of their gross effective monthly income.

viii. The homebuyer's total monthly fixed payments should not exceed 43% of gross effective monthly income.

ix. Homebuyer must have a minimum savings or cash reserves of 2 months of principal, interest, taxes and insurance at time of closing.

x. Homebuyer must have a minimum $500 cash investment.

xi. Homebuyer must document their attendance at Homebuyer Education presented by a HERO organization. See HERO Partners | SDHDA for a list of HERO organizations.

xii. First mortgage lender, or second mortgage lender if SDHDA is first, is required to escrow for taxes and insurance.

## E. SUBSIDY LAYERING

SDHDA must limit the investment of SDHDA funds, in combination with other sources of public and private funds, to only that amount necessary to meet the property standards identified within this Policies and Procedures Manual and meet project feasibility, in accordance with SDHDA's Subsidy Layering Policy.

SDHDA will underwrite HOME homebuyer assistance for financial feasibility while at the same time ensuring the borrower receives only the amount of funds necessary. Funds are considered gap financing.

## F. TERMS OF PROMISSORY NOTE, MORTGAGE AND SECURITY AGREEMENT

i. Terms. HOME funds will be provided to the homebuyer(s) as a zero percent interest (0%) loan, repayable per the terms of the promissory note. HOF and NSP funding will be provided in the form of a loan, the payback schedule and interest rate, which will be from zero to four percent, repayable per the terms of the promissory note.

ii. Deferred SDHDA Loan
Repayment of a deferred loan is required under the following circumstances:
   a. The date the mortgaged property is sold or transferred by the homeowner, whether voluntarily or involuntarily or by operation of law;
   b. The date a default occurs under the terms of any loan secured by the mortgaged property;
   c. The date the mortgaged property ceases to be the principal residence of the homeowner.

1. Transfer of Title. If, during the required affordability period, the homeowner sells or otherwise transfers title to the mortgaged property, the promissory note will become due and payable.

2. Refinance. Under limited circumstances during the period of affordability, SDHDA may subordinate to a new mortgage. These circumstances are described in the section that follows. Unless a refinance conforms to these circumstances, SDHDA will not subordinate its position.

iii. First Mortgage Financing

a. Initial note, mortgage and security agreement will be executed between SDHDA and the developer during construction.
b. When the home is sold, an assumption agreement will be signed between developer, homebuyer, and SDHDA.
c. The developer will service the loan payments from the homebuyer and remit payment to SDHDA. The developer's responsibility to make payment is not released with the loan assumption.
d. First mortgage financing provided by SDHDA is limited to 50% of the total acquisition/development cost.

## G. AFFORDABILITY PERIOD

SDHDA will require an affordability period ranging from 5 to 15 years depending on the amount of funds provided, as further defined in the program allocation plans. The affordability period and program requirements will be recorded as a restrictive covenant on the property.

## H. SUBORDINATION POLICY

i. Subordination of a loan made by SDHDA is granted at the discretion of SDHDA, and only after consideration of a recommendation made by the SDHDA Development Officer. Factors considered for subordination include the appraised value of the mortgaged property, the outstanding balance of all mortgages, the proposed use of the proceeds of the new mortgage, impact on the repayment of the SDHDA loan, the needs of the homeowner, and other pertinent facts. The mortgaged property must remain the homeowner's primary residence.

   A request for subordination must be in writing and document one or more of the following purposes:

   a. Refinance an existing mortgage to obtain a reduced (fixed) interest rate resulting in a lower monthly payment. (No cash out.)
   b. Refinance an existing mortgage to obtain a comparable (fixed) interest rate and extend payment terms resulting in a lower monthly payment. (No cash out.)
   c. Obtain a home equity loan for the sole purpose of improving the mortgaged property.
   d. Refinance an existing mortgage to halt foreclosure proceedings by a lender or halt tax deed foreclosure proceedings.
   e. Refinance an existing mortgage to pay for medical emergencies not covered by insurance.
   f. For any of the above circumstances, actual customary and reasonable costs required to close the new loan may be included in the new principal mortgage.

ii. Subordination Limitation

It is the duty of South Dakota Housing Development Authority to manage its loan portfolio in a responsible manner, to not subject tax dollars to unnecessary risk, and to maintain the integrity of the programs' intent to assist low income homeowners.

As such, SDHDA will not consider requests to subordinate for cash out for the consolidation of consumer debt, such as credit cards, vehicles, or other "cash to homeowner" transactions. In no case will SDHDA agree to subordinate in a transaction where the loan to value ratio (including outstanding SDHDA dollars) exceeds 100 percent (100%) of the appraised property value.

iii. Requested Documentation

All requests for subordination must include the following documents. Requests will not be processed or considered complete until all required documents are received.

a. Written request from the homeowner(s) indicating the reason for the subordination.
b. Copy of the appraisal performed on the mortgaged property by a qualified appraiser, if required by the lender. If the lender does not require an appraisal, homeowner must submit a copy of the most recent tax assessment.
c. Copy of the lender's loan estimate of closing costs, signed by the borrower.

Subordination request must be submitted to the following address:

South Dakota Housing Development Authority
3060 East Elizabeth
PO Box 1237
Pierre, SD 57501
Attn: Rental Housing Development
Tel: (605) 773-3181 / Fax: (605) 773-5154

Upon approval, SDHDA will draft and forward an executed subordination agreement to the homeowner or their agent. All filing costs associated with this document shall be the responsibility of the homeowner. Please allow 7-10 working days for subordination requests to be processed.

## I. RECAPTURE/RESALE RESTRICTIONS

Homebuyers assisted under SDHDA Programs will be required to adhere to the following recapture or resale guidelines.

i. Recapture: For HOME projects that utilize funds as homebuyer assistance, the following recapture requirements apply. If the house is sold (voluntary or involuntary), or is no longer used as a principal residence, prior to the end of the affordability period, SDHDA will recapture the entire amount of the funds provided to the homebuyer, or at minimum, net sale proceeds. Net sale proceeds is the sales price minus the first mortgage repayment and closing costs.

ii. Resale: For HOME projects that utilize HOME funds as a development subsidy, the following resale requirements apply:

a. The housing must remain affordable to low-income homebuyers for the period of affordability per Section III.C. of the HOME Program Allocation Plan starting at the date of initial purchase. The purchaser's household income must be at or below 80 percent (80%) of AMI as defined by the IRS Form 1040 Adjusted Gross Income definition for annual (gross) income and the purchaser must occupy the property as the purchaser’s principal residence.
b. The initial or subsequent buyer agrees to notify SDHDA in writing of any sale, transfer, or exchanged of the entire property, or any portion thereof.
c. The percentage of the purchaser's household income that can be used to pay the principal, interest, taxes, and insurance (PITI) is equivalent to the underwriting standards established by the purchaser's lender. However, if a non-traditional lender is underwriting the financing, the PITI must be 31 percent or less of the purchaser's household income.
d. If the property is sold during the HOME program affordability period, the initial and subsequent owner of the property is entitled to receive a fair return on investment. Fair return on investment shall be defined as a sale price no greater than the increase or decrease in the value of the property based the Federal Housing Finance Ageny’s House Price Index (HPI). Any increase or decrease in the HPI during the time the owner owns the home shall be added or subtracted from the original sales price at the time of the initial or subsequent sale. SDHDA will use the calculator at https://www.fhfa.gov/DataTools/Tools/Pages/HPI-Calculator.aspx to determine the maximum allowable sale price for a subsequent purchase.
e. Capital improvements made to the home by the owner will also be factored in when determining the base price to apply the HPI index to. Major renovations or remodels can add 60% of the cost of renovations to the base price. Any additions adding to the square footage of the home or additional accessory structures such as a detached garage, storage shed, fence, etc. can add 100% of the cost to the base price. The owner will be responsible for providing documentation of the costs incurred if they wish to include the capital improvement in their base price. The increase or decrease in the HPI should then be added to the base price to determine the maximum sales price allowable for a subsequent purchase.
f. If a subsequent low-income buyer is unable to afford the established resale price, SDHDA may provide additional assistance to that buyer. If this takes place, the maximum allowable sale price may not be adjusted accordingly. SDHDA reserves the right to deny purchase to a subsequent buyer if it deems the additional assistance excessive. Excessive assistance shall be defined as in excess of $25,000 needed to make the purchase affordable. If additional HOME assistance is required, the affordability period will be adjusted accordingly based on the affordability table found in the HOME Allocation Plan at HOME Program Allocation Plan (sdhda.org).