

RBS and RUS, USDA

§ 4290.550

CASH MANAGEMENT BY A RBIC

SECURED BORROWING BY RBICS

§ 4290.530 Restrictions on investments of idle funds by RBICs.

§ 4290.550 Prior approval of secured third-party debt of RBICs.

(a) *Permitted investments of idle funds.* Funds not invested in Portfolio Concerns must be maintained in:

(1) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States, which mature within 15 months from the date of the investment; or

(2) Repurchase agreements with federally insured institutions, with a maturity of seven days or less. The securities underlying the repurchase agreements must be direct obligations of, or obligations guaranteed as to principal and interest by, the United States. The securities must be maintained in a custodial account at a federally insured institution; or

(3) Certificates of deposit with a maturity of one year or less, issued by a federally insured institution; or

(4) A deposit account in a federally insured institution, subject to a withdrawal restriction of one year or less; or

(5) A checking account in a federally insured institution; or

(6) A reasonable petty cash fund.

(b) *Deposit of funds in excess of the insured amount.* (1) *General rule.* You are permitted to deposit in a federally insured institution funds in excess of the institution's insured amount, but only if the institution is "well capitalized" in accordance with the definition set forth in regulations of the Federal Deposit Insurance Corporation (12 CFR 325.103).

(2) *Exception.* You may make a temporary deposit (not to exceed 30 days) in excess of the insured amount, in a transfer account established to facilitate the receipt and disbursement of funds or to hold funds necessary to honor Commitments issued.

(c) *Deposit of funds in Associate institution.* A deposit in, or a repurchase agreement with, a federally insured institution that is your Associate is not considered a Financing of such Associate under § 4290.730, provided the terms of such deposit or repurchase agreement are no less favorable than those available to the general public.

(a) *Definition.* In this § 4290.550, "secured third-party debt" means any debt that is secured by any of your assets and not guaranteed by the Secretary, including secured guarantees and other contingent obligations that you voluntarily assume and secured lines of credit.

(b) *General rule.* You must get the Secretary's written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), "expansion of the scope of a security interest or lien" does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual SBA Form 468) are comparable.

(c) *Conditions for approval.* As a condition of granting its approval under this § 4290.550, the Secretary may impose such restrictions or limitations as he or she deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). The Secretary will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(d) *Thirty-day approval.* Unless the Secretary notifies you otherwise within 30 days after he or she receives your request, you may consider your request automatically approved if:

(1) You are in regulatory compliance;

(2) The security interest in your assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 2:1;

(3) Your request is for approval of a secured line of credit that would not

§ 4290.585

cause your total outstanding borrowings (not including Leverage) to exceed 50 percent of your Leverageable Capital.

VOLUNTARY DECREASE IN REGULATORY CAPITAL

§ 4290.585 Voluntary decrease in RBIC's Regulatory Capital.

You must obtain the Secretary's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and § 4290.210, and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 384E(d) of the Act.

Subpart H—Recordkeeping, Reporting, and Examination Requirements for RBICs

RECORDKEEPING REQUIREMENTS FOR RBICs

§ 4290.600 General requirement for RBIC to maintain and preserve records.

(a) *Maintaining your accounting records.* You must establish and maintain your accounting records using SBA's standard chart of accounts for SBICs, unless the Secretary approves otherwise. You may obtain this chart of accounts from SBA or at <http://www.sba.gov/INV/chartof.pdf>.

(b) *Location of records.* You must keep the following records at your principal place of business or, in the case of paragraph (b)(3) of this section, at the branch office that is primarily responsible for the transaction:

(1) All your accounting and other financial records;

(2) All minutes of meetings of directors, stockholders, executive committees, partners, members, or other officials; and

(3) All documents and supporting materials related to your business transactions, except for any items held by a custodian under a written agreement between you and a Portfolio Concern or lender, or any securities held in a safe deposit box, or by a licensed securities broker in an amount not exceeding the

7 CFR Ch. XLII (1-1-05 Edition)

broker's per-account insurance coverage.

(c) *Preservation of records.* You must retain all the records that are the basis for your financial reports. Such records must be preserved for the periods specified in this paragraph (c) and must remain readily accessible for the first two years of the preservation period.

(1) You must preserve for at least 15 years or, in the case of a Partnership RBIC or LLC RBIC, at least two years beyond the date of liquidation:

(i) All your accounting ledgers and journals, and any other records of assets, asset valuations, liabilities, equity, income, and expenses;

(ii) Your Articles, bylaws, minute books, and RBIC application; and

(iii) All documents evidencing ownership of the RBIC including ownership ledgers and ownership transfer registers.

(2) You must preserve for at least six years all supporting documentation (such as vouchers, bank statements, or canceled checks) for the records listed in paragraph (b)(1) of this section.

(3) After final disposition of any item in your Portfolio, you must preserve for at least six years:

(i) Financing applications and Financing instruments;

(ii) All loan, participation, and escrow agreements;

(iii) All certifications listed in § 4290.610 of this part;

(iv) Any capital stock certificates and warrants of the Portfolio Concern that you did not surrender or exercise; and

(v) All other documents and supporting material relating to the Portfolio Concern, including correspondence.

(4) You may substitute a microfilm or computer-scanned or generated copy for the original of any record covered by this paragraph (c).

(d) *Additional requirement.* You must comply with the recordkeeping and record retention requirements set forth in Circular A-110 of the Office of Management and Budget. (OMB Circulars are available from the addresses listed in 5 CFR 1310.3 and at <http://www.whitehouse.gov/omb/circulars/index.html>.)