

RBS and RUS, USDA

§ 4290.630

§ 4290.610 Required certifications for Loans and Investments.

For each of your Loans and Investments, you must have the documents listed in this section. You must keep these documents in your files and make them available to the Secretary upon request.

(a) For each Financing made to a Rural Business Concern or Smaller Enterprise, a certification by the Portfolio Concern stating the basis for its qualification as a Rural Business Concern or Smaller Enterprise.

(b) For each Financing made to a Small Business Concern, Size Status Declaration (SBA Form 480), executed both by you and by the Portfolio Concern certifying that the concern is a Small Business Concern. For securities purchased from an underwriter in a public offering, you may substitute a prospectus showing that the concern is a Small Business Concern.

(c) A certification by the Portfolio Concern that it will not discriminate in violation of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title V of the Equal Credit Opportunity Act.

(d) A certification by the Portfolio Concern of the intended use of the proceeds. For securities purchased from an underwriter in a public offering, you may substitute a prospectus indicating the intended use of proceeds.

§ 4290.620 Requirements to obtain information from Portfolio Concerns.

All the information required by this section is subject to the requirements of § 4290.600 and must be in English.

(a) *Information for initial Financing decision.* Before extending any Financing, you must require the Enterprise to submit such financial statements, plans of operation (including intended use of financing proceeds), cash flow analyses, projections, and such economic development information about the Enterprise, as are necessary to support your investment decision. The information submitted must be consistent with the size and type of the Enterprise and the amount of the proposed Financing.

(b) *Updated financial and economic development information.* (1) The terms of each Financing must require the Port-

folio Concern to provide, at least annually, sufficient financial and economic development information to enable you to perform the following required procedures:

(i) Evaluate the financial condition of the Portfolio Concern for the purpose of valuing your investment;

(ii) Determine the continued eligibility of the Portfolio Concern;

(iii) Verify the use of Financing proceeds;

(iv) Evaluate the economic development impact of the Financing; and

(v) In the case of any Portfolio Concern that is not a Rural Business Concern, the number and percentage of its employees residing in Rural Areas.

(2) The president, chief executive officer, treasurer, chief financial officer, general partner, or proprietor of the Portfolio Concern must certify the information submitted to you.

(3) For financial and valuation purposes, you may accept a complete copy of the Federal income tax return filed by the Portfolio Concern (or its proprietor) in lieu of financial statements, but only if appropriate for the size and type of the Enterprise involved.

(4) The requirements in this paragraph (b) do not apply when you acquire securities from an underwriter in a public offering (see § 4290.825). In that case, you must keep copies of all reports furnished by the Portfolio Concern to the holders of its securities.

(c) *Information required for examination purposes.* You must obtain any information requested by the Secretary's examiners for the purpose of verifying the certifications made by a Portfolio Concern under § 4290.610. In this regard, your Financing documents must contain provisions requiring the Portfolio Concern to give you and/or the Secretary's examiners access to its books and records for such purpose.

REPORTING REQUIREMENTS FOR RBICs

§ 4290.630 Requirement for RBICs to file financial statements and supplementary information with the Secretary (SBA Form 468).

(a) *Annual filing of SBA Form 468.* For each fiscal year, you must submit financial statements and supplementary information prepared on SBA Form 468. You must file Form 468 on or before the

§ 4290.640

last day of the third month following the end of your fiscal year, except for the information required under paragraphs (e) and (f) of this section, which must be filed on or before the last day of the fifth month following the end of your fiscal year.

(1) *Audit of Form 468.* An independent public accountant acceptable to the Secretary must audit the annual Form 468.

(2) *Insurance requirement for public accountant.* Unless the Secretary approves otherwise, your independent public accountant must carry at least \$1,000,000 of Errors and Omissions insurance, or be self-insured and have a net worth of at least \$1,000,000.

(b) *Interim filings of Form 468.* When requested by the Secretary, you must file interim reports on Form 468. The Secretary may require you to file the entire form or only certain statements and schedules. You must file such reports on or before the last day of the month following the end of the reporting period. When you submit a request for a draw under a Leverage commitment, you must also comply with any applicable filing requirements set forth in § 4290.1220.

(c) *Standards for preparation of Form 468.* You must prepare SBA Form 468 in accordance with SBA's Accounting Standards and Financial Reporting Requirements for SBICs, which you may obtain from SBA or at <http://www.sba.gov/INV/standards.pdf>.

(d) *Where to file Form 468.* Submit all filings of Form 468 to the Investment Division of SBA.

(e) *Reporting of economic development impact information for each Financing on Form 468.* Your annual filing of SBA Form 468 must include an assessment of the economic development impact of each Financing. This assessment must specify the fulltime equivalent jobs created, the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees, and a listing of the number and percentage of employees who reside in Rural Areas.

(f) *Reporting of economic development information for certain Financings.* For each Rural Business Concern Investment and each Smaller Enterprise Investment, your Form 468 must include

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

an assessment of each such Financing with respect to:

(1) The economic development benefits achieved as a result of the Financing;

(2) How and to what extent such benefits fulfilled the goals of your comprehensive business plan and Participation Agreement; and

(3) Whether you consider the Financing or the results of the Financing to have fulfilled the objectives of the RBIC program.

§ 4290.640 Requirement to file portfolio financing reports with the Secretary (SBA Form 1031).

For each Financing you make (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 within 30 days of the closing date.

§ 4290.650 Requirement to report portfolio valuations to the Secretary

You must determine the value of your Loans and Investments in accordance with § 4290.503. You must report such valuations to the Secretary within 90 days of the end of the fiscal year in the case of annual valuations, and within 30 days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within 30 days following the close of the quarter.

§ 4290.660 Other items required to be filed by RBIC with the Secretary.

(a) *Reports to owners.* You must give the Secretary a copy of any report you furnish to your investors, including any prospectus, letter, or other publication concerning your financial operations or those of any Portfolio Concern.

(b) *Documents filed with SEC.* You must give the Secretary a copy of any report, application or document you file with the Securities and Exchange Commission.

(c) *Litigation reports.* When you become a party to litigation or other proceedings, you must give the Secretary a report within 30 days that describes the proceedings and identifies the other parties involved and your relationship to them.