

**§ 4290.165**

**7 CFR Ch. XLII (1–1–08 Edition)**

owe to the Secretary unless the Secretary, in the exercise of reasonable investment prudence, and with regard to your financial soundness, determines otherwise prior to the purchase or guaranty of your Leverage. The conditions specified in § 4290.1810 and § 4290.1910 apply to all general partners.

(c) *Special Leverage requirement for Partnership RBICs and LLC RBICs.* Before your first issuance of Leverage, you must furnish the Secretary with evidence that you qualify as a partnership for tax purposes, either by a ruling from the Internal Revenue Service or by an opinion of counsel.

**§ 4290.165 Obligations of Control Persons.**

All Control Persons are bound by the provisions of sections 384O and 384P of the Act and by the conflict-of-interest rules under § 4290.730. The term RBIC, as used in §§ 4290.30, 4290.460, and 4290.680, includes all of the RBIC's Control Persons.

CAPITALIZING A RBIC

**§ 4290.200 Adequate capital for RBICs.**

You must meet the requirements of §§ 4290.200 through 4290.230 in order to qualify as a RBIC and to receive Leverage.

**§ 4290.210 Minimum capital requirements for RBICs.**

(a) *General Rule.* You must have Regulatory Capital of at least \$10,000,000, or such lesser amount (but not less than \$5,000,000) as the Secretary may prescribe by notice published from time to time in the FEDERAL REGISTER, and Leverageable Capital of at least \$500,000, to become a RBIC.

(b) *Exception.* (1) The Secretary in his or her sole discretion and based on a showing of special circumstances and good cause may license an Applicant with Regulatory Capital of at least \$2,500,000, but only if the Applicant:

(i) Has satisfied all eligibility criteria for licensing as a RBIC as described in § 4290.390(a) of this part, except the capital requirement specified in paragraph (a)(1) of that section, as determined solely by the Secretary;

(ii) Has a viable business plan reasonably projecting profitable operations; and

(iii) Has a reasonable timetable for achieving Regulatory Capital of at least \$10,000,000.

(2) A RBIC licensed under this exception is not eligible to receive Leverage until it has complied with paragraph (a) of this section.

**§ 4290.230 Private Capital for RBICs.**

(a) *General.* Private Capital means the contributed capital of a RBIC, plus unfunded binding commitments by Institutional Investors (including commitments evidenced by a promissory note) to contribute capital to a RBIC.

(b) *Contributed capital.* For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate RBIC, the members' contributed capital of a LLC RBIC, or the partners' contributed capital of a Partnership RBIC, in each case subject to the limitations in paragraph (c) of this section.

(c) *Exclusions from Private Capital.* Private Capital does not include:

(1) Funds borrowed by an Applicant or a RBIC from any source.

(2) Funds obtained through the issuance of Leverage.

(3) Funds obtained directly or indirectly from the Federal government or any State (including by a political subdivision, agency or instrumentality of the Federal government or a State), except that the following categories of such funds are not excluded from Private Capital—

(i) Funds obtained directly or indirectly from the business revenues (excluding any governmental appropriation) of any federally-chartered or government-sponsored enterprise established prior to May 13, 2002;

(ii) Funds invested by an employee welfare benefit plan or pension plan; and

(iii) Qualified Non-private Funds in an amount not to exceed 33 percent of the total Private Capital of any Applicant or RBIC, *provided, however,* that in no event may any investor or investors of Qualified Non-private Funds have