

Impairment computation, or the Portfolio Concern's pre-tax cash flow from operations for its most recent fiscal year was at least 10 percent of its average contributed capital for such fiscal year.

(4) Perform the appropriate computation from the table in 13 CFR 107.1840(d)(4).

(5) Reduce the gain computed in paragraph (d)(4) of this section by your estimate of related future income tax expense. Subject to any adjustment required by paragraph (d)(6) of this section, the result is your Adjusted Unrealized Gain for use in paragraph (c)(2) of this section.

(6) If any securities that are the source of either Class 1 or Class 2 Appreciation are pledged or encumbered in any way, you must reduce the Adjusted Unrealized Gain computed in paragraph (d)(5) of this section by the amount of the related borrowing or other obligation, up to the amount of the Unrealized Appreciation on the securities.

Subpart L—Ending Operations as a RBIC

§ 4290.1900 Termination of participation as a RBIC.

You may not terminate your participation as a RBIC without the Secretary's prior written approval. Your request for approval must be accompanied by an offer of immediate repayment of all of your outstanding Leverage (including any prepayment penalties thereon), or by a plan satisfactory to the Secretary for the orderly liquidation of the RBIC.

Subpart M—Miscellaneous

§ 4290.1910 Non-waiver of rights or terms of Leverage security.

The Secretary's failure to exercise or delay in exercising any right or remedy under the Act or the regulations in this part does not constitute a waiver of such right or remedy. The Secretary's failure to require you to perform any term or provision of your Leverage does not affect the Secretary's right to enforce such term or provision. Similarly, the Secretary's waiver of, or failure to enforce, any term or provision of

your Leverage or of any event or condition set forth in § 4290.1810 does not constitute a waiver of any succeeding breach of such term or provision or condition.

§ 4290.1920 RBIC's application for exemption from a regulation in this part 4290.

(a) *General.* You may file an application in writing with the Secretary to have a proposed action exempted from any procedural or substantive requirement, restriction, or prohibition to which it is subject under this part, unless the provision is mandated by the Act. The Secretary may grant an exemption for such applicant, conditionally or unconditionally, provided the exemption would not be contrary to the purposes of the Act.

(b) *Contents of application.* Your application must be accompanied by supporting evidence that demonstrates to the Secretary's satisfaction that:

(1) The proposed action is fair and equitable; and

(2) The exemption requested is reasonably calculated to advance the best interests of the RBIC program in a manner consistent with the policy objectives of the Act and the regulations in this part.

§ 4290.1930 Effect of changes in this part 4290 on transactions previously consummated.

The legality of a transaction covered by the regulations in this part is governed by the regulations in this part in effect at the time the transaction was consummated, regardless of later changes. Nothing in this part bars enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

§ 4290.1940 Integration of this part with other regulations applicable to USDA's programs.

(a) *Intergovernmental review.* To the extent applicable to this part, the Secretary will comply with subpart V of 7 CFR part 3015, "Intergovernmental Review of Department of Agriculture Programs and Activities." The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

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(b) *National flood insurance.* To the extent applicable to this part, the Secretary will comply with subpart B of 7 CFR part 1806. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(c) *Clean Air Act and Water Pollution Control Act requirements.* To the extent applicable to this part, the Secretary will comply with the requirements of the Clean Air Act, section 306; the Clean Water Act, section 508; Executive Order 11738; and 40 CFR part 32. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(d) *Historic preservation requirements.* To the extent applicable to this part, the Secretary will comply with subpart F of 7 CFR part 1901. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(e) *Lead-based paint requirements.* To the extent applicable to this part, the Secretary will comply with subpart A of 7 CFR part 1924. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(f) *Conflict of interest.* To the extent applicable to this part, the Secretary will comply with subpart D of 7 CFR part 1900 and RD Instruction 2045–BB. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(g) *Civil rights impact analysis.* To the extent applicable to this part, the Secretary will comply with RD Instruction 2006–P, “Civil Rights Impact Analysis.” The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(h) *Environmental requirements.* To the extent applicable to this part, the Secretary will comply with subpart G of 7 CFR part 1940. The Secretary has not

delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(i) *Appeals to the National Appeals Division for review of adverse decisions.* Applicants and RBICs have the right to request review by the National Appeals Division within the USDA of adverse decisions, as defined in 7 CFR 11.1, pursuant to 7 CFR part 11.

Subpart N—Requirements for Operational Assistance Grants to RBICs

§ 4290.2000 Operational Assistance Grants to RBICs.

(a) *Regulations governing.* Regulations governing Operational Assistance grants to RBICs may be found in subparts D and E of this part 4290 and in this § 4290.2000.

(b) *Restrictions on use.* A RBIC must use Operational Assistance grant funds only to provide Operational Assistance to Smaller Enterprises to which it either has made, or expects to make, a Financing.

(c) *Amount of grant.* Each RBIC will receive an Operational Assistance grant award equal to the lesser of 10 percent of the Regulatory Capital raised by the RBIC at the time of licensing or \$1,000,000.

(d) *Term.* Operational Assistance grants made under this part will be made for a multiyear period (not to exceed 10 years) under such terms as the Secretary may require.

(e) *Reporting and recordkeeping requirements.* Policies governing reporting, record retention, and record-keeping requirements applicable to RBICs may be found in subpart H of this part 4290.