

§ 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

RBS and RUS, USDA

§ 4290.310

the power to Control, directly or indirectly, the management, board of directors, general partners, or members of the RBIC.

(4) Any portion of an unfunded commitment from an Institutional Investor with a net worth of less than \$10 million that exceeds 10 percent of such Institutional Investor's net worth.

(5) An unfunded commitment from an investor if the Secretary determines that the collectibility of the commitment is questionable.

(d) *Non-cash capital contributions.* Capital contributions in a form other than cash are subject to the limitations in § 4290.240 of this part.

(e) *Contributions with borrowed funds.* You may not accept any capital contribution made with funds borrowed by a Person seeking to own an equity interest (whether direct or indirect, beneficial or of record) of at least 10 percent of your Private Capital. This exclusion does not apply if:

(1) Such Person's net worth is at least twice the amount borrowed; or

(2) The Secretary gives his or her prior written approval of the capital contribution.

§ 4290.240 Limitations on non-cash capital contributions in Private Capital.

Non-cash capital contributions to a RBIC or Applicant are included in Private Capital only if they are approved by the Secretary and they fall into one of the following categories:

(a) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States having a term of no more than one year.

(b) Services rendered or to be rendered to you, priced at no more than their fair market value.

(c) Other non-cash assets approved by the Secretary.

Subpart D—Application and Approval Process for RBIC Licensing

§ 4290.300 When and how to apply for a RBIC License.

(a) *Notice of Funds Availability ("NOFA").* The Secretary will publish a NOFA in the FEDERAL REGISTER advising potential applicants of the avail-

ability of funds for the RBIC program and inviting the submission of applications. The NOFA may specify limitations, special rules, procedures, and restrictions for a particular funding round. When submitting its application, an Applicant must comply with both this part 4290 and any requirements specified in the NOFA, including the opening and closing dates for submission of an application.

(b) *Application form.* An Applicant must apply for a RBIC license using the application packet provided by the Secretary. Upon receipt of a completed application packet, the Secretary may request clarifying or technical information on the materials submitted as part of the application.

§ 4290.310 Contents of application.

Each Applicant must submit a complete application, including the following:

(a) *Management team experience.* The Applicant must provide information generally as to the background, capability, education, reputation and training of its management team, including general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant also must provide information specifically on these individuals' qualifications and reputation in the areas of Community Development Finance and/or Relevant Venture Capital Finance, including the impact of these individuals' activities in these areas.

(b) *Amount of Regulatory Capital.* The Applicant must indicate the amount of Regulatory Capital it has raised or proposes to raise, which amount must satisfy the requirements of § 4290.210(a) of this part, unless the Applicant indicates that it has raised or proposes to raise at least \$2,500,000 and is applying for an exception pursuant to § 4290.210(b) of this part and includes in its application—

(1) A showing of special circumstances and good cause for the exception;

(2) Will satisfy all eligibility criteria for licensing as a RBIC as set forth in § 4290.390(a) of this part, except the capital requirement specified in paragraph