

§ 4290.380

(d) The strength and likelihood for success of the Applicant's operations and investment strategies, including whether the Applicant has projected adequate profitability and financial soundness;

(e) Whether the Applicant will be able to operate soundly and profitably over the long term;

(f) Whether the Applicant will be able to operate actively in its identified Rural Areas in accordance with its business plan;

(g) The need for Developmental Venture Capital investments in the Rural Areas in which the Applicant intends to invest;

(h) The extent to which the Applicant will concentrate its activities on serving Smaller Enterprises and Small Business Concerns located in the Rural Areas in which it intends to invest, including the ratio of resources that it proposes to invest in such Enterprises as compared to other Enterprises;

(i) The Applicant's demonstrated understanding of the markets in the Rural Areas in which it intends to focus its activities;

(j) The likelihood that and the time frame within which the Applicant will be able to raise the Regulatory Capital it proposes to raise for its investments;

(k) The strength of the Applicant's proposal to provide Operational Assistance to Smaller Enterprises in which it plans to invest;

(l) The extent to which the activities proposed by the Applicant will promote economic development and the creation of wealth and job opportunities in the Rural Areas in which it intends to invest and among individuals living in such Areas; and

(m) The strength of the Applicant's application compared to applications submitted by other Applicants intending to invest in the same or proximate Rural Areas.

§ 4290.380 Selection.

From among the Applicants that have submitted eligible and complete applications, the Secretary on behalf of USDA and the Administrator on behalf of SBA, in their sole discretion, will select some, all, or none of such Applicants to participate in the RBIC program. Selection will entitle the Appli-

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cant to proceed with obtaining a license as a RBIC but only if the Applicant also meets the conditions set forth in § 4290.390.

§ 4290.390 Licensing as a RBIC.

(a) *Eligibility criteria for licensing as a RBIC.* Each selected Applicant must meet the following conditions before it is eligible to be licensed as a RBIC:

(1) Raise, within a time period specified by the Secretary but not to exceed 12 months after selection under § 4290.380 the specific amount of Regulatory Capital that the Applicant had projected in its application that it would raise (*see* § 4290.210 for additional information);

(2) Raise \$500,000 in Leverageable Capital as required by § 4290.210;

(3) Complete and submit to the Secretary all legal and other documentation concerning the RBIC, including but not limited to its Articles and updated financial information concerning the RBIC in order to qualify for a Leverage commitment; and

(4) Enter into a Participation Agreement with the Secretary.

(b) *Licensing as a RBIC.* If the selected Applicant has satisfactorily met all the conditions specified in paragraph (a) of this section, as determined within the sole discretion of the Secretary, then the Secretary on behalf of USDA and the Administrator on behalf of SBA will license the Applicant as a RBIC.

(c) *Failure to meet eligibility criteria for licensing.* Each selected Applicant that does not meet the eligibility criteria for licensing described in paragraph (a) of this section, within a time period specified by the Secretary, will not be licensed as a RBIC. Failure to meet any of those conditions, including but not limited to failure to raise the projected Regulatory Capital within the required time period, will cause the Applicant's selection to lapse. The Secretary will not restore the selection of such an Applicant after the expiration of that time period. After the expiration of that time period, an Applicant that is not licensed as a RBIC must cease to represent itself as a participant or potential participant in the RBIC program.

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(d) *Effect of a RBIC license.* The Participation Agreement executed by the Secretary with each Applicant licensed as a RBIC will include the following:

- (1) Approval to operate as a RBIC under the Act;
- (2) A commitment of Leverage; and
- (3) An Operational Assistance grant award.

Subpart F—Changes in Ownership, Structure, or Control

CHANGES IN CONTROL OR OWNERSHIP OF RBIC

§ 4290.400 **Changes in ownership of 10 percent or more of RBIC but no change of Control.**

You must obtain the Secretary's prior written approval for any proposed transfer or issuance of ownership interests that results in the ownership (beneficial or of record) by any Person, or group of Persons acting in concert, of at least 10 percent of any class of your stock, partnership capital or membership interests.

§ 4290.410 **Changes in Control of RBIC (through change in ownership or otherwise).**

You must obtain the Secretary's prior written approval for any proposed transaction or event that results in Control by any Person(s) not previously approved by the Secretary.

§ 4290.420 **Prohibition on exercise of ownership or Control rights in RBIC before approval.**

Without the Secretary's prior written approval, no change of ownership or Control may take effect and no officer, director, employee or other Person acting on your behalf shall:

- (a) Register on your books any transfer of ownership interest to the proposed new owner(s);
- (b) Permit the proposed new owner(s) to exercise voting rights with respect to such ownership interest (including directly or indirectly procuring or voting any proxy, consent or authorization as to such voting rights at any meeting of shareholders, partners or members);
- (c) Permit the proposed new owner(s) to participate in any manner in the

conduct of your affairs (including exercising control over your books, records, funds or other assets; participating directly or indirectly in any disposition thereof; or serving as an officer, director, partner, manager, employee or agent); or

- (d) Allow ownership or Control to pass to another Person.

§ 4290.430 **Notification of transactions that may change ownership or Control.**

You must promptly notify the Secretary as soon as you have knowledge of transactions or events that may result in a transfer of Control or ownership of at least 10 percent of your Regulatory Capital. If the effect of a particular transaction or event is unclear, you must report all pertinent facts to the Secretary.

§ 4290.440 **Standards governing prior approval for a proposed transfer of Control.**

The Secretary's approval of a proposed transfer of Control is contingent upon full disclosure of the real parties in interest, the source of funds for the new owners' interest, and other data requested by the Secretary. As a condition of approving a proposed transfer of control, the Secretary may:

- (a) Require an increase in your Regulatory Capital;
- (b) Require the new owners or the transferee's Control Person(s) to assume, in writing, personal liability for your Leverage, effective only in the event of their direct or indirect participation in any transfer of Control not approved by the Secretary; or
- (c) Require compliance with any other conditions set by the Secretary, including compliance with the requirements for minimum capital and management-ownership diversity in effect at such time for new RBICs.

§ 4290.450 **Notification of pledge of RBIC's shares.**

(a) You must notify the Secretary in writing, within 30 calendar days, of the terms of any transaction in which:

- (1) Any Person, or group of Persons acting in concert, pledges shares of