

## RBS and RUS, USDA

## § 4290.450

(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

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your stock (or equivalent ownership interests) as collateral for indebtedness; and

(2) The shares pledged constitute at least 10 percent of your Regulatory Capital.

(b) If the transaction creates a change of ownership or Control, you must comply with § 4290.400 or § 4290.410, as appropriate.

**RESTRICTIONS ON COMMON CONTROL OR OWNERSHIP OF TWO OR MORE RBICS**

**§ 4290.460 Restrictions on Common Control or ownership of two (or more) RBICs.**

Without the Secretary's prior written approval, you must not have an officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) who is also:

(a) An officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) of another RBIC; or

(b) An officer or director of any Person that directly or indirectly controls, or is controlled by, or is under Common Control with, another RBIC.

**CHANGE IN STRUCTURE OF RBIC**

**§ 4290.470 Prior approval of merger, consolidation, or reorganization of RBIC.**

You may not merge, consolidate, change form of organization (corporation, limited liability company, or limited partnership) or reorganize without the Secretary's prior written approval. Any such merger, consolidation, or change of form is subject to § 4290.440.

**§ 4290.480 Prior approval of changes to RBIC's business plan.**

Without the Secretary's prior written approval, no change in your business plan, upon which you were selected and licensed as a RBIC, may take effect.

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**Subpart G—Managing the Operations of a RBIC**

**GENERAL REQUIREMENTS**

**§ 4290.500 Lawful operations under the Act.**

You must engage only in the activities permitted by the Act and in no other activities.

**§ 4290.502 Representations to the public.**

You may not represent or imply to anyone that the Secretary, the U.S. Government, or any of its agencies or officers has approved any ownership interests you have issued, obligations you have incurred, or Financings you have made. You must include a statement to this effect in any solicitation provided to investors. Example: You may not represent or imply that "USDA stands behind the RBIC" or that "Your capital is safe because the Secretary's experts review proposed investments to make sure they are safe for the RBIC."

**§ 4290.503 RBIC's adoption of an approved valuation policy.**

(a) *Valuation guidelines.* You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division or at <http://www.sba.gov/INV/valuation.pdf>.

(b) *The Secretary's approval of valuation policy.* You must have a written valuation policy approved by the Secretary for use in determining the value of your Loans and Investments. You must either:

(1) Adopt without change the model valuation policy set forth in section III of the Valuation Guidelines for SBICs; or

(2) Obtain the Secretary's prior written approval of an alternative valuation policy.

(c) *Responsibility for valuations.* Your board of directors, managing member(s), or general partner(s) will be solely responsible for adopting your