

§ 4290.507

of your financial data, personnel, Portfolio, funds and equipment. You must provide your bank and custodian with a certified copy of your resolution or other formal document describing your control procedures.

§ 4290.507 Violations based on false filings and nonperformance of agreements with the Secretary or SBA.

The following shall constitute a violation of this part:

(a) *Nonperformance.* Failure to perform any of the requirements of any Debenture or of any written agreement with the Secretary or SBA.

(b) *False statement.* In any document submitted to the Secretary or SBA:

- (1) Any false statement knowingly made; or
- (2) Any misrepresentation of a material fact; or
- (3) Any failure to state a material fact.

(4) A material fact is any fact that is necessary to make a statement not misleading in light of the circumstances under which the statement was made.

§ 4290.508 Compliance with non-discrimination laws and regulations applicable to federally-assisted programs.

In conducting your operations and providing Assistance to your Portfolio Concerns, you must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1 *et seq.*), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III), and Title V of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) and the following regulations promulgated by USDA to implement and enforce such laws: 7 CFR part 15.

§ 4290.509 Employment of USDA or SBA officials.

(a) Without the Secretary's prior written approval, for a period of two years after the date of your most recent issuance of Leverage or after the receipt of any assistance as defined in paragraph (b) of this section, you are not permitted to employ, offer employment to, or retain for professional services, any person who:

(1) Served as an officer, attorney, agent, or employee of SBA or USDA within one year before such date; and

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(2) In that capacity, occupied a position or engaged in activities which, in SBA's or the Secretary's determination, involved discretion with respect to the issuing of Leverage or the granting of such assistance.

(b) For purposes of this section, "assistance" means financial, contractual, grant, managerial, or other aid, including licensing, certifications, and other eligibility determinations made by USDA or SBA, and any express decision to compromise or defer possible litigation or other adverse action.

MANAGEMENT AND COMPENSATION

§ 4290.510 Approval of RBIC's Investment Adviser/Manager.

(a) *General.* You may employ an Investment Adviser/Manager who will be subject to the supervision of your board of directors, managing member(s), or general partner(s). If you have Leverage or plan to seek Leverage, you must obtain the Secretary's prior written approval of the management contract. Approval of an Investment Adviser/Manager for one RBIC does not indicate approval of that manager for any other RBIC.

(b) *Management contract.* The contract must:

(1) Specify the services the Investment Adviser/Manager will render to you and to your Portfolio Concerns; and

(2) Indicate the basis for computing Management Expenses.

(c) *Material change to approved management contract.* Any proposed material change must be approved by both you and the Secretary in advance. If you are uncertain whether the change is material, submit the proposed revision to the Secretary.

§ 4290.520 Management Expenses of a RBIC.

The Secretary must approve your initial Management Expenses and any increases in your Management Expenses.

(a) *Definition of Management Expenses.* Management Expenses include:

- (1) Salaries;
- (2) Office expenses;
- (3) Travel;
- (4) Business development, including finders' fees;
- (5) Office and equipment rental;

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- (6) Bookkeeping; and
- (7) Expenses related to developing, investigating and monitoring investments.
- (b) Management Expenses do not include services provided by specialized outside consultants, outside lawyers and independent public accountants, if they perform services not generally performed by a venture capital company.

CASH MANAGEMENT BY A RBIC**§ 4290.530 Restrictions on investments of idle funds by RBICs.**

(a) *Permitted investments of idle funds.* Funds not invested in Portfolio Concerns must be maintained in:

(1) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States, which mature within 15 months from the date of the investment; or

(2) Repurchase agreements with federally insured institutions, with a maturity of seven days or less. The securities underlying the repurchase agreements must be direct obligations of, or obligations guaranteed as to principal and interest by, the United States. The securities must be maintained in a custodial account at a federally insured institution; or

(3) Certificates of deposit with a maturity of one year or less, issued by a federally insured institution; or

(4) A deposit account in a federally insured institution, subject to a withdrawal restriction of one year or less; or

(5) A checking account in a federally insured institution; or

(6) A reasonable petty cash fund.

(b) *Deposit of funds in excess of the insured amount—(1) General rule.* You are permitted to deposit in a federally insured institution funds in excess of the institution's insured amount, but only if the institution is "well capitalized" in accordance with the definition set forth in regulations of the Federal Deposit Insurance Corporation (12 CFR 325.103).

(2) *Exception.* You may make a temporary deposit (not to exceed 30 days) in excess of the insured amount, in a transfer account established to facilitate the receipt and disbursement of

funds or to hold funds necessary to honor Commitments issued.

(c) *Deposit of funds in Associate institution.* A deposit in, or a repurchase agreement with, a federally insured institution that is your Associate is not considered a Financing of such Associate under § 4290.730, provided the terms of such deposit or repurchase agreement are no less favorable than those available to the general public.

SECURED BORROWING BY RBICs**§ 4290.550 Prior approval of secured third-party debt of RBICs.**

(a) *Definition.* In this § 4290.550, "secured third-party debt" means any debt that is secured by any of your assets and not guaranteed by the Secretary, including secured guarantees and other contingent obligations that you voluntarily assume and secured lines of credit.

(b) *General rule.* You must get the Secretary's written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), "expansion of the scope of a security interest or lien" does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual SBA Form 468) are comparable.

(c) *Conditions for approval.* As a condition of granting its approval under this § 4290.550, the Secretary may impose such restrictions or limitations as he or she deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). The Secretary will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(d) *Thirty-day approval.* Unless the Secretary notifies you otherwise within 30 days after he or she receives your